

# Swift, Certain, Tough: New Consequences for Drug Possession' White Paper – WithYou response (2022)

## Tier 1 questions

**13. Do you agree with our proposals that for a first offence of possession of a controlled drug an individual should be required to attend a drug awareness course designed to make them consider their behaviour? Please select one option.**

*d. Disagree*

- Referring everyone caught in possession to a drug awareness course is disproportionate and we do not think there is a strong enough evidence base that it will be effective.
- As outlined in the 10-year drugs strategy – the prolonged shortage of funding has depleted the drugs sector workforce resulting in a loss of skills, expertise and capacity from this sector. Caseloads have grown too high, reducing the quality of treatment. While the recent additional funding to the sector has started to have a positive impact on this, there is a risk that increasing the number of referrals from mandatory awareness courses could place unsustainable additional pressure on over-stretched drugs services. Building the capacity and quality of drug services for those experiencing problematic use (as recommended by the Black review) should be the priority rather than sending thousands of people on courses they do not need.

**14. Do you agree that the individual should pay for the cost of the drug awareness course? Please select one option**

*e. Strongly disagree*

- Though the Tier 1 proposals are similar to many existing diversion programmes, they include an additional risk of financial penalties as well as an offender-paid drug awareness course, which most UK diversion schemes do not implement. Potentially making offenders not only pay for the course, but to potentially pay more than the cost of the course is an unnecessarily punitive measure.
- The proposal requiring people to pay for a drug awareness course, or pay an enhanced fine for non-attendance, will disproportionately impact people on low

incomes. Many people will not have the means to pay and we believe this could create a deeply unfair system whereby those who can pay avoid further penalties. No one should not be able to buy their way out of the criminal justice system. If there is to be a cost for a drug awareness course, it is essential that it is at an appropriately low-level as non-payment will lead to escalation and criminalisation.

**15. Do you agree that there should be a consequence in the form of a financial penalty for those who refuse to attend the drug awareness course? Please select one option**

*E. Strongly disagree*

- As noted above, we believe this will negatively impact people who cannot afford to pay to attend a course, or who are unable to take time off work who will then have to pay an additional fine. With non-attendance at a course or failure to pay a Drug Enforcement Notice both increasing the chance of someone being charged and prosecuted, we believe this will disproportionately impact those on low incomes, or who are economically disadvantaged, who are already more likely to be stopped and searched, and arrested for drug possession.

**16. Do you think that current police-referred drug awareness courses have a positive, negative or no impact on illicit drug use and re-offending rates? Please select one option for each answer.**

- *n/a*

**17. Do you know of available evidence on police-referred drug awareness courses (not educational settings) and their effectiveness in reducing drug use and re-offending? If yes, please share any evidence.**

- *n/a*

**18. Do you think that the drug awareness course should be a standardised national offer across all police forces? Please select one option.**

- We would welcome a standardised national offer of a drug awareness course which can be used across all police forces, however, as noted earlier, we do not believe this should be a mandatory requirement for people with drug possession offences.

**20. In your experience, on average, what proportion of proven drug possession offenders do you think are currently referred to drug awareness courses?**

## Tier 2 questions

**23. Do you agree that those who are caught in possession of drugs for a second time should be offered a caution with rehabilitative conditions, (where their alternative option is to face arrest and charge)? Please select one option.**

*d. Disagree*

- The Tier 2 proposals include a 'diversionary caution', however, this is still a formal police record that would appear on certain forms of background checks, and would be a criminal record. We know that this can have a significant impact on limiting people's life opportunities, increasing the likelihood of re-offending and can increase the chance of progressing into more problematic patterns of drug use.
- Offering a caution with rehabilitative conditions could also place unsustainable pressure on already overstretched local drug services who may be required to deliver some of the conditions attached to this Tier. Providing additional support to local drug services to support this extra provision would need to be considered to offset any secondary impact to other parts of their service delivery.
- With You's preferred approach would be to remove criminal sanctions for drug possession altogether. There is little evidence that removing criminal sanctions from drug possession increases drug use, and there is significant evidence it improves health outcomes.

**24. Do you agree that, where proportionate, the Tier 2 conditions should include:  
i. A mandatory drug testing requirement?**

*e. Strongly disagree*

- Mandatory drug testing can be disproportionate, expensive, ineffective and can lead to significant net-widening of people being brought into contact with the criminal justice system. It can also have a significant impact on the individual, on their right to privacy, and can lead to problems with employment or family responsibilities and so on. There is also limited evidence for the use of mandatory drug testing for people who are arrested for using drugs recreationally.
- Though Tier 1 proposals will be a de-escalation for class A drug possession which is welcome, the Tier 2 proposals would be a significant escalation of the current approach to most possession offences which are for cannabis.

Currently, many of these lead to unconditional out-of-court disposals. Most cannabis use is not problematic, and as cannabis can be detectable for weeks, many people who are not impaired or even regular users will test positive and be drawn into more punitive measures.

- Furthermore, we know that mandatory drug testing can have unintended consequences, leading to people to use potentially more dangerous drugs that are not tested for. For example, random testing for cannabis has led to much more risky use of synthetic cannabinoids (not tested for) or heroin (which is detectable for a much shorter time period).
- Lastly, mandatory drug testing on a mass scale would be a significant resource burden on already stretched police and forensic services.

**24. ii. Attendance at a further drug awareness course?**

*e. Strongly disagree*

- It is not clear that there is a strong evidence base to support the use of mandatory drug awareness courses as a tool changing behaviour of individuals with non-dependent possession offences. It is also unclear what the benefit of a further attendance at a course would do, and if a condition of a caution, this would be a criminal record.

**25. Do you agree that drug awareness courses should be different for first time offenders and repeat offenders? Please select one option**

- *n/a*

**28. Do you think that mandatory drug testing could have a positive, negative or no impact on reducing illicit drug use and re-offending?**

- Evidence does not suggest that mandatory drug testing will reduce drug use or reoffending. As noted in question 24, there is also a risk that such testing could lead to the use of other drugs associated with greater levels of risk – potentially increasing, rather than reducing drug harms (even if negative tests are held up as a positive outcome)
- The proposals suggest that a positive drug test would lead to automatic charge and criminalisation. This can lead to the undermining of a person's life chances, and stigma (potentially made worse by the disruption of random drug testing) associated with criminalisation are likely to increase the chances of reoffending and progression into problematic patterns of drug use.

## Tier 3 questions

**30. Do you agree that those caught in possession of drugs for a third time should attend a drug awareness course? Please select one option.**

- At Tier 3, a person would be subject to multiple sanctions, including attendance at an awareness course, a criminal penalty, and a civil order. Delivered in combination, we believe these measures are disproportionate, and would increase social and health harms, with limited evidence they would deter drug use. Their criminal record would also have a long term economic impact as well as negative impacts on health, social and factors.
- Furthermore, people with a third possession offence could indicate a higher chance that a person's drug use is problematic or dependent. However, this white paper is clear that people who are drug dependent should not be subject to this regime, and it is unclear what the implications of this would be. For example, are they diverted into treatment at this point? Are previous criminal records accrued in tier 1 and 2 expunged/deleted? This area would need additional clarification.
- Lastly, it's not clear if making people do and pay for a drug awareness course if it hasn't worked the previous two times is going to be effective.

**31. Do you agree with the proposal to include a drug awareness course in each tier? Please select one option.**

*n/a*

**32. Do you agree that those caught in possession of drugs for a third time should receive a Drug Court Order, which includes one of the following interventions: An exclusion order, A drug tag, Passport confiscation, Driving licence, disqualification**

*e. Strongly disagree for an exclusion order, a drug tag, passport confiscation and driving licence disqualification*

- We believe these interventions are disproportionate and lack an evidence base. Exclusion orders are a disproportionate response to simple drug possession and could negatively impact a person's ability to work, look after their children, engage with their family and so on. There is limited evidence that exclusion orders would be effective at reducing demand or act as a deterrent.
- Drug tags also lack an evidence base for use with non-problematic users and is also a disproportionate response to simple drug possession and would

undermine a person's civil rights.

- Passport confiscation and/or driving licence disqualification is again, an extreme and disproportionate response for a drug possession offence. There are clear civil rights issues related to these measures and could significantly impact people's lives, from reducing people's ability to work, look after their children, and engage with their family, which could make re-offending and progression into problematic use more likely, not less.

**33. Should there be circumstances where an offender receives a Drug Court Order without having first received a Tier 1 and Tier 2 intervention? (in essence, skipping to Tier 3 straight away) If yes, please outline what you think those circumstances should be.**

- Not for possession offences

**34. Do you think the minimum and maximum periods proposed for each Drug Court Order intervention are appropriate? Please select one for each answer.**

c. No, too long for all

**35. Do you think there are other conditions that should be available to the court to include as part of a Drug Court Order? If yes, please provide details**

n/a

**36. Do you agree that the consequences for breaching a Drug Court Order are appropriate? The consequences we propose are considering the breach as a separate criminal offence which may attract a custodial sentence.**

e. Strongly disagree

- For minor possession offences, prison is clearly a costly, significantly disproportionate response. It is ineffective as a deterrent, it isn't rehabilitative and causes long-term harm across many aspects of a person's life, exposing individuals to trauma and violence, and making the progression to problematic and high risk drug use (both in prison and on release) and re-offending more likely, not less.
- Many of the people we work with use drugs as a way of coping with emotional pain, often relating to early trauma. Our service users often tell us how punishing them only adds to their feelings of shame and isolation.

**What impacts, if any, do you think this new regime will have on:**

**a. Police b. Courts c. Employers d. Third sector] e. Other f. Don't know g. No**

**impacts Please describe these impacts**

- The proposed 3 tiers will require a significant new infrastructure. Police forces and the court system would require additional resources to ensure they have capacity to deal with these new processes, both of which are already stretched to capacity.
- Employers could be negatively impacted, experiencing staffing issues related to having to exclude staff due to the increased number of people with criminal records, and could face additional disruption as a result of random drug testing appointments.
- Drug services would also face additional costs and would likely require additional resource, at a time when the drug treatment sector workforce is already stretched to capacity and struggling to fill vacancies to meet the targets in the recent drugs strategy, after a decade of disinvestment.

**40. Do you believe that our proposals to create a tiered drug possession regime will have an impact (both positive or negative) on individuals with a protected characteristic under the Equality Act 2010? If yes, please describe the potential impact. Protected characteristics under the Act are disability, gender reassignment, age, pregnancy and maternity, race, marriage and civil partnership, sex, sexual orientation and religion or belief.**

*a. Yes, please describe the potential impact*

*The proposals could have a negative impact on a number of groups with protected characteristics.*

- Police enforcement for drug offences is [disproportionally](#) experienced by socially and economically marginalised individuals and communities, undermining health and increasing inequalities. Drug policing is also well documented to contribute to racial disparities in the criminal justice system which could likely be exacerbated by this system.
- [Young people and members of the LGBTQ+ community](#) who both use drugs at higher rates than the general population and will correspondingly be subject to greater levels of punitive drug enforcement and the harms of criminalisation.
- With You's recent research on women's experiences of drug treatment has also shown that women who are parents and who use drugs are less likely to seek support from services if they are having issues with their drug use for fear of criminalisation, costs, and social service involvement (even in the absence of risk to children). These proposals will exacerbate that fear and will cause more

harm than good.

**41. Where you have identified potential negative impacts, could you suggest ways to mitigate them?**

a. Yes, please suggest potential mitigations

- Our suggestion is to focus on decriminalising the possession of drugs, as recommended by the ACMD in 2016. Any effective system of decriminalisation should be complemented with investment in public health and social services, harm reduction interventions, and treatment.
- Any model must be subject to assessment and where it is determined that it is not working effectively then it should be revised. The fundamental aim of a decriminalisation system should be to divert people away from a criminal justice system and offer voluntary engagement with health programs when needed, but recognise that it is neither necessary nor effective to impose the harms and costs of criminalisation of drug use and possession in order to reduce drug use and related harms

**Questions on operational best practice and new reforms for Drug Testing on arrest**

**42. Do you agree with our proposal to expand the range of illicit drugs which can be tested for under Drug Testing on Arrest legislation? Please select one option.**

e. Strongly disagree

- Please see our response to question 24 on the problems associated with mandatory drugs testing.

**43. Which drugs do you think are important to be able to test for under Drug Testing on Arrest? You can select more than one option.**

g. Other, please specify

- None. See response to question 42

**44. Do you agree with our proposal to expand the range of offences which police can drug test for under Drug Testing on Arrest legislation (“trigger offences”)?**

- n/a

**45. The current trigger offences are: theft and attempted theft, robbery and attempted robbery, burglary, attempted and aggravated burglary, handling stolen goods and attempting to do so, taking a conveyance without owner’s**



***consent/authority and aggravated taking conveyance without the owner's consent authority, going equipped for burglary or theft, fraud and attempted fraud, possession of articles for use in frauds, begging and persistent begging, possession of a specified class A controlled drug, production or supply or possession with intent to supply of a specified class A controlled drug.***

b. No

N/a

***46. Do you believe that our proposals to expand the Drug Testing on Arrest programme will have an impact (both positive or negative) on individuals with a protected characteristic under the Equality Act 2010? If yes, please describe the potential impact. Protected characteristics under the Act are disability, gender reassignment, age, pregnancy and maternity, race, marriage and civil partnership, sex, sexual orientation and religion or belief.***

Yes, please describe the potential impact

- Please see answer to Question 40. Drug testing on arrest will disproportionately negatively impact vulnerable and marginalised communities.

***47. Where you have identified potential negative impacts, can you propose ways to mitigate these?***

a. Yes, please suggest potential mitigations

- Do not adopt a widening of testing on arrest as policy and, more generally, stop criminalising people who use drugs.

***48. Do you have any other comments on our proposed changes to Drug Testing on Arrest?***

b. No

***49. Do you have any further comments on the white paper you would like to share with us?***

a. Yes, please provide any additional comments

- Firstly, there are aspects of the Tier 1 proposals that are promising, and it's welcome that there is desire to try and avoid people caught committing minor possession offences from being drawn into the criminal justice system. However, though the Tier 1 proposals are similar to other existing diversion programmes, they include an additional risk of financial penalties as well as an offender-paid drug awareness course, which most UK diversion schemes do not

implement. Potentially making offenders not only pay for the course, but to pay more than the cost of the course is an unnecessarily punitive measure thrown in for good measure.

- The approach outlined in the White Paper states that this framework will not apply to people who are drug dependent. However, in practice it is hard to see how this will work. Police officers lack the necessary qualifications and knowledge to make a determination on drug dependency.
- The proposed framework only applies to adults. It is unclear what will happen to children caught in possession of drugs. Expanding the policing of drug use will inevitably result in more young adults and children coming into contact with the criminal justice system, undermining their life chances and increasing the risk of future offending. At With You, we are running a restorative diversion programme called Re:Frame in Cornwall, Kent, and Sefton diverting children from the criminal justice system when they are found in possession of a Class B or C substance. It avoids the use of financial penalties and offers 1-2-1 keyworking rather than a drug awareness course. Uniquely whilst With You staff are delivering the intervention academic's at the University of Kent are evaluating the programme through a robust Randomised Control Trial (RCT). We would welcome the opportunity to offer a visit to one of our services to demonstrate how this model operates.
- Lastly, we welcome the attempt to create a more uniform approach to how police deal with drug offences. There should not be a 'postcode lottery' for how police deal with drug offences where someone can get different treatment responses to possession offences depending on where you are caught - ranging from a life-impacting prosecution, to an informal telling-off. Equality before the law is a fundamental part of the rule of law and the White Paper's attempt to address this problem is welcome. However, we should not pursue national consistency at the cost of entrenching bad practices. If rolled out these proposals would, in many areas, represent a form of levelling down (the proposals have already been rejected by the Scottish Drugs Minister - as a regressive step backwards from their existing diversion program).