Novel Psychoactive Substances – Trading Standards Enforcement Action

Executive summary

The growing use of Novel Psychoactive Substances (NPS) has led to serious health concerns for users. Often incorrectly know as ‘Legal Highs’, the open sale and availability of these substances has encouraged usage and led to the misconception amongst some users that these are safe to use in comparison with illegal or controlled drugs.

The response to the use of NPS within the city has been co-ordinated in the form of a thematic citywide Community Improvement Partnership (CIP), with all partners including Trading Standards, Community Safety and Council Neighbourhood Teams, Police Scotland, the Scottish Fire and Rescue Service, NHS Lothian and third sector agencies working together to provide a co-ordinated approach to tackling the issues.

Trading Standards in Edinburgh, supported by Police Scotland has recently successfully utilised consumer protection legislation to substantially limit the supply of NPS within the city.

Links

Coalition pledges P3,P34
Council outcomes CO10, CO15, CO2
Single Outcome Agreement SO2, SO4
Novel Psychoactive Substances - Trading Standards Enforcement Action

Recommendations

It is recommended that the Health, Social Care and Housing Committee:

1.1 notes the contents of this report;

1.2 notes that the Edinburgh Community Safety Partnership is overseeing the enforcement approach to NPS and;

1.3 refers this report to the Police and Fire Scrutiny Panel for information.

Background

2.1 NPS, which are commonly known as “legal highs” are drugs deliberately manufactured to mimic the effects of traditional illegal drugs, so they stimulate or depress the central nervous system. They are specifically designed to evade drug laws and although often marketed as “legal” alternatives to banned drugs, have the potential to pose serious risks to public health and safety and can be fatal.

2.2 NPS are generally supplied from China, and to some extent India, and are sent to the UK to be sold mainly in specialist high street shops called “head shops” or over the internet. In Edinburgh 13 premises were know to be selling NPS.

2.3 This report summarises the key challenges presented by NPS use in Edinburgh and outlines the enforcement actions taken within the multi-agency response through the CIP approach to tackle the key issues.

2.4 The CIP and multi agency response is reporting through the Edinburgh Community Safety Partnership and has ongoing liaison with the Edinburgh Alcohol and Drug Partnership.

Main report

NPS Usage

3.1 NPS are being used by a range of users in Edinburgh including recreational and first time users, people involved in and on the fringes of crime, as well as a group of known drug users who are choosing these drugs instead of, or as well as, heroin and other dependency forming drugs. The problem appears to have been particularly acute within Edinburgh compared to other areas.
Although the effects of the stimulant version of these substances are intense, they are short-lived and this has led to a rapid increase in injecting among known drug users with serious health issues resulting.

Furthermore, due to the increase in injecting, over the course of 2014 and in the early part of 2015, needle exchange programmes saw an increase in uptake for those services and local communities reported an increase in needle discards in their areas.

Police Scotland also reported an increase in antisocial behaviour and violent crime amongst those taking these substances, as well as aggressive and unpredictable behaviour, including fire raising.

**Neighbourhood Overview**

A picture emerged of NPS usage showing variations across the six neighbourhood areas, with the South and City Centre neighbourhoods reporting the most significant increase in needle discards and related antisocial behaviour.

- **South Neighbourhood** – During the period October to December 2014, there were 23 needle find/complaints dealt with by the Environmental Wardens/Task Force/partners. This increased to 68 needle finds/complaints between January and March 2015.
- The greatest increase was between December 2014 and January 2015 when there was an increase from seven needle finds/complaints to 20 needle finds/complaints.
- **City Centre/Leith Neighbourhood** - during the period October to December 2014, there were 70 needle find/complaints dealt with by the Environmental Wardens/Task Force/partners, this increased to 84 needle finds/complaints between January and March 2015.
- The greatest increase was between February 2015 and March 2015 when there was an increase from 18 needle finds/complaints to 44 needle finds/complaints.
- **The East, North, South West and West neighbourhoods** did not identify cases of NPS as a concern.

**Developing a Response**

**NPS Community Improvement Partnership**

A response to these challenges has been co-ordinated through a citywide thematic Community Improvement Partnership (CIP). The CIP brings together key partners, including NHS Lothian, in developing a response to tackle the emerging issues. The first NPS CIP took place in November 2014, with the last CIP taking place in September 2015. A key element of the CIP was to explore all enforcement options to disrupt or stop the supply of NPS.

NHS Lothian continues to coordinate a pan Lothian response to the treatment and recovery needs of those developing problems around NPS use.
Enforcement actions

3.8 As part of Police Scotland’s Operation Redwall during August 2014, Council Trading Standards officers, working alongside Environmental Health teams and supported by police officers, visited 11 shops and seized 160 NPS products for analysis.

3.9 The operation was backed up by a two week nationwide marketing campaign to help raise awareness of the dangers associated with the drugs. In addition to this, police officers visited schools, youth groups and community events.

3.10 Trading Standards officers and police thereafter continued to visit premises on a regular basis, taking images of products being sold for intelligence purposes and sharing information with other partners. To this end, a small number of products have been temporarily removed from sale due to potentially misleading markings regarding importers and responsible persons.

3.11 Council officers and Police Scotland approached the Crown Office and Procurator Fiscal Service (CoPFS) early in 2015 to seek support for a tougher enforcement strategy using existing Consumer Protection Legislation. The position of Trading Standards is that there was no legitimate basis for the sale of these goods and the sellers should reasonably know that they were being consumed in an unsafe manner. At that time agreement was reached on a possible strategy.

3.12 Thereafter there followed a detailed joint Trading Standards and police investigation during which 20 witnesses were interviewed and analysis of NPS seized undertaken. Significant resources were diverted to the investigation.

3.13 As a result, in May 2015, Trading Standards produced a report to the Procurator Fiscal seeking forfeiture of the samples seized from two premises during Operation Redwall. This was in effect a test of the General Product Safety (GPS) Regulations 2005 as they apply to NPS. If a Sherriff is satisfied that they are unsafe he/she has powers to have such goods forfeited.

3.14 CoPFS advised that they required to consult senior law officers on this unique request. The Lord Advocate thereafter gave consent to these proceedings in September 2015 and the forfeiture request was considered by the Sherriff Court on 15 October 2015. Having considered the evidence in support of this application, the Sherriff granted both forfeiture orders. These are the first such forfeiture orders for NPS granted in Scotland. It is important to note the order relates to the GPS Regulations statutory provisions and is not a new piece of legislation.

3.15 On 16 October 2015, Trading Standards and Police Scotland began a series of joint visits to all known retailers in the city and issued them with a formal warning requiring them to stop the sale of NPS. There were 13 known sellers of NPS from so called head shops in the city. These businesses were offered an opportunity to surrender their stock but were advised that any future sales of NPS would result in prosecution. At the time all indicated they would comply.
3.16 As at 23 October 2015 pro active monitoring of all retailers confirmed that all had ceased selling these products, with eight voluntarily handing over their stock, worth some £50,000, for destruction and two sending their stock back to suppliers. The supply of NPS has therefore been severely disrupted in the city. Ongoing monitoring is taking place to ensure no resumption of sales takes place.

3.17 The use of these powers is unique within Scotland to tackle NPS and there are only two or three examples of similar actions elsewhere in the UK. It should be noted that local authorities outwith Scotland can apply to the Courts directly without the agreement of CoPFS or its equivalent.

Other Legislative Powers

3.18 The UK Government has also sought to address NPS and in 2011 introduced Temporary Class Drug Orders (TCDOs).

3.19 To date four TCDOs have been made. In April 2015, following evidence provided by the Edinburgh Division of Police Scotland to the Advisory Council on the Misuse of Drugs (ACMD), a 12 month temporary ban on the use of methylphenidate-based substances, including ethylphenidate which is used as an alternative to cocaine, was granted.

3.20 Once the temporary ban came into force, Police Scotland, working along side the Council’s Trading Standards officers, visited those shops selling NPS within Edinburgh advising them of the ban. It warned them that if they were caught supplying any of the banned substances they could face up to 14 years in prison.

Current Position

3.21 Since the introduction of the NPS CIP and the TCDO that was brought into place in April 2015, there has been a general reduction in activity. Figures show that there has been a reduction in complaints due to sharps and needle finds and updates from partners such as NHS Lothian note that the number of new infections related to users injecting these substances have decreased considerably. These reductions indicate that use is declining.

3.22 The recent action by Trading Standards and Police Scotland in stopping the sales of these products will further support these trends.

3.23 Police Scotland has also reported that following the welcomed introduction of the TCDO it has observed a marked improvement with a decrease in the number and severity of incidents involving individuals under the influence of NPS showing extreme irrational and chaotic behaviour.

3.24 Due to the reduction in NPS activity, ongoing work to tackle NPS will no longer be carried out through a citywide thematic CIP, but instead be monitored at a local neighbourhood CIP level, on the understanding that any future emerging issues will be fed up to the citywide strategic CIP to oversee and respond to as necessary.
The Psychoactive Substance Bill

3.25 In an attempt to get fully ahead of the NPS market, the UK Government has introduced the Psychoactive Substance Bill which seeks a blanket ban on all psychoactive substances whilst exempting certain substances such as caffeine.

3.26 The Bill proposes to give police and other law enforcement agencies greater powers to tackle trade in psychoactive substances, instead of having to take a substance by substance approach.

3.27 The legislation will be UK wide and will include powers to seize and destroy NPS as well as to search persons, premises and vehicles.

Measures of success

4.1 Key Performance Indicators (KPIs) to inform the CIPs impact on the NPS problem are:

- Number of transactions at Needle Exchange where users report NPS use;
- Admissions to the Poisons Ward at the Royal Infirmary Edinburgh (RIE);
- Number of outlets supplying the substances;
- Levels of antisocial behaviour; and
- Levels of violent crime.

4.2 Current monitoring of retail outlets in Edinburgh suggests none are supplying NPS.

Financial impact

5.1 There are no financial implications arising from this report, as the information provided is for reporting purposes only.

Risk, policy, compliance and governance impact

6.1 The CIP model enhanced successful local partnership arrangements and therefore is perceived to be low risk. There are no impacts on health and safety, governance, compliance or regulation.

6.2 By seeking forfeiture orders and inviting retailers to voluntarily surrender their stocks of NPS, the risk to the Council has been mitigated.

Equalities impact

7.1 No direct equalities impacts arise from this report as the information provided is for update purposes.

Sustainability impact

8.1 There is no sustainability impact arising from this report.
Consultation and engagement

9.1 Consultation was carried out with key stakeholders in developing a Framework to address NPS.

Background reading/external references

None

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Links

| Coalition pledges          | P32 – Develop and strengthen local community links with the police |
|                           | P34 – Work with the police on an antisocial behaviour unit to target persistent offenders. |
| Council outcomes          | CO10 – Improved health and reduced inequalities |
|                           | CO15 – The public is protected |
|                           | CO21 – Residents, visitors and businesses feel that Edinburgh is a safe city |
| Single Outcome Agreement  | SO2 – Edinburgh’s citizens experience improved health and wellbeing, with reduced inequalities in health |
|                           | SO4 – Edinburgh’s communities are safer and have improved physical and social fabric |
| Appendices                | None |