



LEGALISE CANNABIS ALLIANCE

PO Box 198, Norwich, Norfolk, NR3 3WB, England

E-mail: lca@lca-uk.org

<http://www.lca-uk.org>

SUBMISSION TO ADVISORY COUNCIL ON THE MISUSE OF DRUGS DRUGS ACT 2005: SECTION 2: THRESHOLDS

1 March 2006

Thank you for inviting the Legalise Cannabis Alliance to give evidence (opinion) to the Advisory Committee on the Misuse of Drugs inquiry into the Thresholds to be to be inserted into Section 2 of the Drugs Act 2005.

Please find attached our report: Cannabis Thresholds: The Highs and Lows.

Extract from House of Commons Home Affairs Committee "The Government's Drugs Policy: Is it working?" Volume 1, Third Report of Session 2001-2002 (ISBN 0 215 00334 9):
Page 8, Para 3: "*With a handful of brave exceptions --- drugs policy is an area where British politicians have feared to tread.*"

Chuck Palahniuk, "Fight Club":

"When you have a gun barrel between your teeth you can only speak in vowels."

CONCLUSION FIRST

The Legalise Cannabis Alliance REJECT the proposal of thresholds, as they can only be arbitrarily set, are ill-considered, unworkable in practice, unjust and will inevitably prejudice verdicts and generate greater confusion on the legal status of cannabis.

SUMMARY

The proposal is akin to suggesting that a threshold should be put on, say, the number of sweets stolen from a shop where above the threshold would suggest intent to sell; or the number of bottles of wine allowed in a cellar, where above that number (and the weight of evidence) would imply intent to supply.

Thresholds mean very little in how first-time adults found in possession of a small amount of cannabis are disposed with - (i.e. subject to no evidence of intent to supply or aggravated circumstances under the Drugs Act 2005)

A recent survey on a UK website shows 14.9% using more than 28 grams (1 ounce) per week. There are people using considerably more than that amount.

A person using 28 grams per week (1 ounce) who buys his / her supply on an annual basis, if caught collecting the supply, could be assumed to hold it for intent to supply. A consumer of 1 oz of cannabis per week holding 52 weeks supply would possess up to 52 ounces = approx. 1.5 kilos, for personal use only.

There are also those who prefer to grow their own (albeit illegal) and would probably face a cultivation charge – it would be difficult to grow a plant with less than 500 grams of leaf.

A single crop of four cannabis plants can produce up to 60 ounces of dried tops and heads, in addition a greater weight of waste materials (leaf) classed in law as illegal.

If this was grown at home waste leaf material could amount to an additional 15 kilos, making a total possession of 25 kilos for an individual's use.

Today the courts tend to take a lenient view on people (first-time offenders) found growing 4 cannabis plants for personal use.

Section II of the Drugs Act will require courts to assume it was for intent to supply with a minimum sentence of two years.

Furthermore: The threshold does not does not say how "joint" possession amongst couples or groups of friends would be disposed: For example:

A husband and wife (couple) who both use cannabis found in possession (in their home) of one bag containing, say, double the amount permitted by an individual: would the threshold be multiplied?

Students (friends) sharing a flat who were found in possession of a collective supply in one bag: would this amount be divided equally or assumed as be indicative of a more serious offence of acting together – conspiracy?

Unless there was true intent to supply, it would be unreasonable to assume intent to supply in any of these cases.

Items and paraphernalia may be listed as evidence of intent to supply, if possessed by cannabis users who have no intention to supply anyone. This we believe will make wrongful conviction inevitable

We believe that before deciding what circumstance could lead to arrest and how long a person should go to prison for, government should give good reasons for sending them

there in the first place! Is the law fair? Is the law just?

We acknowledge the remit does not extend to an overall debate on cannabis legislation.

We are very concerned that Government spin, media hype and idiosyncratic reading of the evidence has resulted in much confusion over the possible risks and consequences from cannabis use. What does the UK government's policy on cannabis mean in the real world?

We believe that if society is to come to a consensus on the risks and consequences from using cannabis, we should not be forced to guess or have to rely on Government spin, media hype and idiosyncratic reading of the evidence, to form an opinion.

We believe that dealing with cannabis issues piecemeal with numerous committees of inquiries, conferences and other forums not only adds to the confusion. It is not best practice or value for money.

We respectfully suggest:

- Before deciding how much cannabis is too much cannabis, the committee takes a good look at Government's policy on cannabis and its prohibition.
- Our submission is designed to give food for thought and assist everyone to question his or her understanding and beliefs about cannabis.

We hope the committee will take time to open some of the doors we are about to knock on.

- **If you think it would help the Committee come to a consensus how we address the presence, possible risks and consequences of cannabis use in a modern day society The Legalise Cannabis Alliance can supply witnesses to give verbal evidence.**

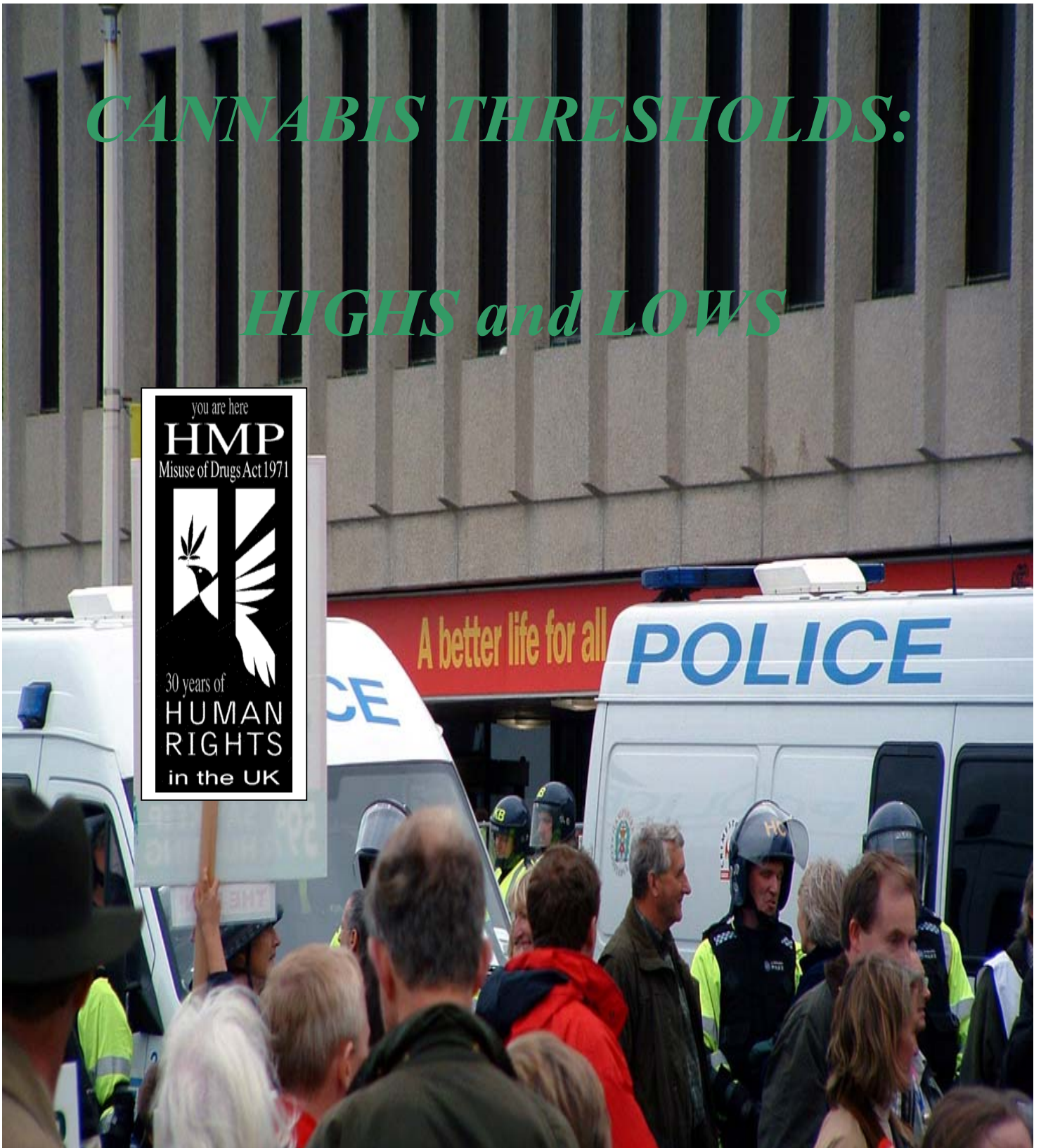
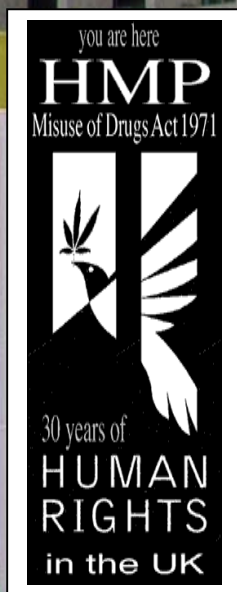
BUILDING A SAFE, JUST AND TOLERANT SOCIETY

“The outcome of the cannabis debate cannot be predicted but changes to the law must not take place without the most careful consideration of all the issues”.

(**The Challenge;** Legalise Cannabis Alliance 2003; <http://www.lca-uk.org/challenge.php>)

CANNABIS THRESHOLDS:

HIGHS and LOWS



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<http://www.lca-uk.org>



INTRODUCTION

- **The Legalise Cannabis Alliance (LCA) REJECT the concept of thresholds as they can only be arbitrarily set, are ill-considered, unworkable in practice, unjust and will inevitably prejudice verdicts.**
- The decision to prosecute for possession with intent to supply ought to be based upon allegations of harm, witness statements, collaborating material, and not prejudiced by legal thresholds established by people with no or little experience of cannabis and cannabis users and growers.
- Any presumption in law risks wrongful conviction: in fact the **Judge instructs Jurors that they should be sure of guilt before convicting.**
- Unlike almost other classified drugs, cannabis is a PLANT that can be grown at home (see below) which poses particular problems when considering thresholds.
- Given that thresholds are required by Act of Parliament, and in order to avoid as many wrongful allegations and convictions, the Legalise Cannabis Alliance therefore proposes that the recommendation should be of thresholds much higher than those proposed.

The LCA further recommends that prosecutions follow only upon the discovery of harm done by the accused.

DISCUSSION

Before deciding how much cannabis is too much cannabis, it should be asked what circumstances should lead to arrest and how long a person should go to prison: the committee should look at the reasons for arresting them in the first place.

The LCA does not accept arresting and prosecuting people who are found growing or possessing cannabis for their own personal use or to share with friends – social supply - can be justified as in being in the public interest.

We believe that the prohibition on the cannabis plant presently embodied in the Misuse of Drugs Act 1971 and associated legislation has:

- Proved ineffective in the achievement of its objectives.
- Been counter-productive in its side-effects.
- Been a costly waste of public resources and revenue.
- Been destructive in its cultivation of criminality.
- Been inhumane in its operation.

Legalising cannabis would:

- Reduce drug-acquisition crime.
- Facilitate the education both of the young and of adult users.
- Reduce the incidence of problematic drug use.
- Facilitate the deployment of therapeutic support.
- Release public and Police Service resources for other deployment.
- Constitute a system compatible with the European Convention of Human Rights and Fundamental Freedoms.

The Legalise Cannabis Alliance public consultation document “Cannabis: Challenging the Criminal Justice System” was designed to give food for thought and assist everyone to question their understanding a beliefs about cannabis. [ISBN 0 9535693 1 4]

<http://www.lca-uk.org/challenge.php>

HIGHS AND LOWS OF CANNABIS

First a question: are we wasting our time?

“As hon. Members will be aware, the Home Office recently published a consultation exercise to look at the threshold levels of cannabis in a person’s possession at which that person would be deemed to be a supplier. I would like to inform the House that my final decision will involve a considerably lower level than the 500g suggested in the current consultation.” (The Home Secretary [HS] Charles Clarke MP during the cannabis reclassification debate on the 19 January 2006)

Apart from pre-empting the conclusion of this consultation Mr Clarke gave no indication what the new lower thresholds might be.

SETTING THE SCENE

Proof of intention to supply a controlled drug
<http://www.opsi.gov.uk/acts/acts2005/50017--b.htm#2>

Section II - Proof of Intention to Supply Cannabis - the Drugs Act 2005 amended the 1971 Misuse of Drugs Act to include provision for a specified threshold (upper limit) of cannabis (and other drugs) a person can be caught with before being categorised as a possible supplier: it

- created a new presumption of intent to supply where a defendant is found to be in possession of a certain quantity of cannabis;
<http://www.opsi.gov.uk/acts/acts2005/50017--b.htm#2>
- requires courts when sentencing to take account any aggravating factors – aggravated supply of controlled drug: Section I of the Drugs Act 2005.
<http://www.opsi.gov.uk/acts/acts2005/50017--b.htm#1>

For the purpose of this consultation the Home Office's Drugs Legislation and Enforcement Unit has suggests limits of: “113g or 10 individual pieces or wraps of cannabis resin and 0.5kg or 20 individual 2 inch by 2 inch bags of cannabis leaf.”

- The Home Secretary and other politicians, the police, various anti-drug organisations and mental health groups have already dismissed the “suggested thresholds” as too high, claiming it will encourage dealers to carry just under the amount to avoid being accused as being a dealer thus facing a lesser penalty.
- **While these limits may sound high at first sight, it must be remembered it is not unheard of for personal reserves to reach well above this level.**
- It must be noted that there are an increasing number of people who grow their own cannabis (albeit illegal) for personal use in order to try and avoid the added risks and dangers of going to an illegal street dealer.

- The Legalise Cannabis Alliance is not persuaded that intent to supply should be presumed on the basis of amounts of cannabis found.

We are not persuaded there is a need for thresholds

- Today the prosecutor, when determining whether the appropriate charge is “possession with intent to supply” rather than to possession, already recognises that large quantities are likely to be more consistent with supply than personal use. However, the policy has long been that this is not a conclusive indicator, The prosecutor will in addition, consider other factors such as: the cannabis was prepared for sale, (other evidence), scales, large amounts of money and evidence from diaries and other documents etc.
- Where there is doubt the prosecutor must prove to the courts jury that the cannabis was held with intent to supply.
- The punishment passed down is based on how serious the judge perceives the offence to be.
- Many judges do not send people to prison who are involved in so-called domestic supply (no aggravating circumstance) - Section I of the Drugs Act 2005.
- Cultivation of a few cannabis plants (where there is no aggravating circumstance) is also frequently given non-custodial sentences.

WE ARE CONCERNED:

- **That setting low thresholds will result in more people being wrongfully accused and convicted of intent to supply.**
- That it will remove the discretion of prosecutors on what charge would be appropriate – e.g. above the amount an automatic charge of Intent to supply will be brought forward.
- That it will “handcuff” our judges: if possession is punishable with a maximum two years imprisonment it follows that anyone found in possession of above the amount prescribed (on proof) will almost certainly be imprisoned above the two years maximum for possession.
- That it will lead to mandatory minimum sentence by the back door.
- That it will reverse the supposedly steadfast concept of **innocent until proven guilty**

SETTING THE THRESHOLDS

- There are several practical difficulties and concerns when determining whether an act constitutes simple possession or the more serious offence of possession with intent to supply (which carries much higher maximum penalties—see table below) where proof

is based upon the amounts of substances in question that one person might reasonably be expected to take him or herself.

Offence	Maximum penalty if tried on indictment (Class A drug involved)
Supplying cannabis	14 years
Possession of cannabis	2 years
Having possession of cannabis with intent to supply it to another	14 years

- We are aware “Intent to Supply” is very difficult to prove and, where proof is based upon the amounts of substances in question, much court time is taken up with expert witnesses giving evidence on the amount that one person might reasonably be expected to take him or herself.
- Section II of the Drugs Act 2005 – “presumption of intent to supply” – is allegedly designed to remove any confusion among the police, prosecutors, courts and juries when the offence of possession of cannabis becomes the more serious offence of intent to supply cannabis by lending greater clarity to both the courts jury and to users.

PRACTICAL DIFFICULTIES OF THRESHOLDS

Thresholds seldom exist on illegal substances. Normally thresholds would be used to distinguish between what is and what is not considered a criminal activity.

- A prime example of this is in the UK the limit on the amount of tobacco or alcohol that can be imported for “personal consumption”.
- In Holland the Government have set a limit on both personal possession and possession for retail through “Coffeeshops”. Although cannabis remains illegal, the thresholds determine whether or not a prosecution will be brought at all.
- In Spain the Government has established an undefined threshold that distinguishes between personal cultivation of cannabis (not prosecuted) and large-scale cultivation that is considered a public health risk (prosecuted).
- In part of South Australia, possession of a small numbers of plants is not prosecuted, a larger number is.

Where proof is based upon the amounts of cannabis that one person might reasonably be expected to consume, the threshold should not be set too low and result in people being prosecuted for supply for a small amount of cannabis.

- **This is very important since:**
- Prosecutors discretionary power of pursuing a lesser charge of possession are removed - above the amount prescribed will result in a prosecution for intent to supply.
- Courts and jurors will be expected to assume intent to supply in case involving more than the prescribed amount.
- Above the prescribed amount on conviction will carry a mandatory minimum 2 years imprisonment (up to a maximum of 14 years).

Thresholds mean very little in how first-time adults found in possession of a small amount of cannabis are disposed with.

- Subject to no evidence intent to supply or aggravated circumstances
- NOTE: repeat offending is subject to arrest - Section I of the Drugs Act 2005.

However, when determining whether an act constitutes simple possession or the more serious offence of possession with intent to supply where proof is based upon the amounts of cannabis in question is less clear when it comes to heavy cannabis users or those who grow their own.

- We are concerned a recent survey on a UK website com shows 14.9% using more than 28 grams (1 ounce) per week.
- Therefore: a person using 28 grams per week (1 ounce) who buys their supply on an annual basis, should they be caught collecting that supply, may be assumed to hold it for intent to supply and possibly face a mandatory two years up to a maximum sentence of 14 years, whereas previously the court could have given a community sentence or even an absolute discharge.

There are those who prefer to grow their own (albeit illegal) and may face a cultivation charge – which in itself carries a maximum sentence of 14 years imprisonment.

- The threshold proposed is 0.5 kilograms of "leaf" or above 20 individual 2" by 2" bags.
- There does not seem to be any threshold for possession of the tops and heads, the "buds" that constitute the bulk of the usable and, for the home-grower, desirable produce. Most home-growers of cannabis indoors and outdoors throw away the majority of the "leaf".
- A single crop of four plants (in addition a greater weight of waste materials (leaf) classed in law as illegal) can produce up to 60 ounces of dried tops and heads (grown expertly). Therefore a consumer of 1 oz of cannabis per week may be holding 60 weeks supply 140 ounces = 4 kilos in total, from one such crop. There would be no legal way to dispose of either waste material of excess.

- For a person who consumed 1 ounce per day, one year's supply would be 365 ounces = approx 10 kilo's. These cases also exist.
- If this was grown at home waste leaf material could amount to an additional 15 kilos, making a total possession of 25 kilos for an individual's use.
- Section II of the Drugs Act requires courts to assume it was for intent to supply with a minimum sentence of two years up to a maximum sentence of 14 years.

The Drugs Act does not does not say how "joint" possession amongst couples or groups of friends would be disposed:

For example:

- A husband and wife (couple) who both use cannabis and are found in possession (in their home) of, say, double the amount permitted by an individual: would the threshold be multiplied?
- Students (friends) sharing a flat who were found in possession of a collective supply in: would this amount be divided equally?

We are also concerned items listed (paraphernalia) may be used as evidence of intent to supply by cannabis users who have no intention to supply another. This we believe will make wrongful conviction inevitable

IN SUMMARY

- The proposal is like suggesting that a threshold should be put on say, the number of sweets stolen from a shop where above the threshold would suggest intent to sell. Or the number of bottles of wine allowed in a cellar, where above that number (and the weight of evidence) would imply intent to supply.
- Apart from adding confusion about cannabis, Section II will, result in more people wrongfully accused of intent to supply (more cases being defended).

For example:

- members of a small social group who supplied or intended to another member or other members of that group believing they was acting, or had acted, on behalf of that group, which shared a common intention to use the drug for personal consumption.
- Today, it is common practice for the courts treat adult offender growing a few plants leniently (where there are no aggravating circumstances). Courts seldom send people to prison for a FEW plants.
- Section II of the Drugs Act will effectively handcuff our prosecutors and judges: above the amount prescribed amount on proof will carry automatic prosecution and where

taken to court on proof a mandatory minimum 2 years imprisonment (up to a maximum of 14 years).

CONCLUSION

- Judgments (discretion) made by individual prosecutors in individual cases as to how particular types of offence should be prosecuted. This has always been a matter for the discretion of prosecutors.
- Sentencing has been at the discretion of the courts as has how particular types of offence should be disposed with (time spent in prison?)
- Guilt has always been that for the jury to decided, based on the facts and the evidence before them.
- http://www.lca-uk.org/leaflets/jury_nullification_flier.pdf

**The Legalise Cannabis Alliance urges the ACMD to
REJECT the proposal of thresholds,
as they can only be arbitrarily set,
are ill considered,
unworkable in practice,
unjust and will inevitably prejudice verdicts
and lead to wrongful convictions and
greater confusion on the legal status of cannabis**

- If the committee requires clarification on any of the bullet points we have raised above - please feel free to contact us.
- If you think it would help the committee to come to a consensus on how we address the presence, possible risks and consequence of cannabis use in a modern day society, The Legalise Cannabis Alliance can supply witnesses to give verbal evidence.

Don Barnard, LCA Press Officer

Alun Buffry, BSc, Dip Com (Open) LCA Nominating Officer