Release
Drugs, The Law & Your Rights

RELEASE'S WRITTEN SUBMISSION TO THE LABOUR CAMPAIGN FOR DRUG POLICY REFORM

Release is the national centre of expertise on drugs and drugs law in the UK. The organisation, founded in 1967, is an independent and registered charity. Release provides free non-judgmental, specialist advice and information to the public and professionals on issues related to drug use and to drug laws. The organisation campaigns directly on issues that impact on its clients - it is their experiences that drive the policy work that Release does and why Release advocates for evidence-based drug policies that are founded on principles of public health rather than criminal justice. Release believes in a just and fair society where drug policies should reduce the harms associated with drugs, and where those who use drugs are treated based on principles of human rights, dignity and equality. Release is a NGO in Special Consultative Status with the Economic and Social Council of the United Nations.

SECTION 1: KEY ISSUES WITH UK DRUG POLICY

Structural problems:

1. **Structural poverty** – One of the key issues with drug policy is structural poverty, which is a driver of problematic drug use and a form of a trauma in itself.[i] This has been compounded by the Conservative government's "harsh and uncaring" austerity policies, which have decimated the social welfare net and inflicted "systemic disadvantage" on women, children, people with disabilities, older people, and ethnic minority groups.[ii] In this context, it is understandable why some people feel that their only options are to sell drugs or to undertake sex work to survive[iii]. The effect on people who use drugs (PWUDs) and who have dependency issues has also been profound. The Advisory Council on the Misuse of Drugs (ACMD) has reported that the "implementation of Universal Credit, the pursuit of localism and the lack of affordable housing add to the risk of homelessness among" PWUDs, thereby exposing them to higher rates of drug-related death and other health harms, including HIV, HCV, chronic obstructive pulmonary disease (COPD) and serious bacterial infections amongst homeless people who inject drugs (PWIDs).[iv]

2. **Structural racism** – Drug policy and in broader terms, prohibition has historically been a breeding site for racialised systems of oppression and social control. To be clear, Release is of the view that drug policy cannot be examined without giving due thought to the profound impact this has had (and continues to have) on people of colour. Drug laws have effectively exacerbated racial profiling and mass criminalisation of these groups – a failed approach that has devastated countless lives.

3. **Carceral Logic –** The war on drugs is fuelled by a carceral logic where PWUDs are treated as criminals in need of punishment. The term criminal is used less as a descriptor of activity, and more of an identity label, inasmuch as criminals are deemed undeserving of care, morally corrupt and generally bad people with nothing to contribute to society. This stigma is held up by the criminal justice system, which emphasises "crimes" instead of harms, and meets those crimes with punishment instead of support. Carceral logics do not address the root causes of harm such as social inequity, punitive policies, and limited access to health and wellbeing

services, instead doubling down on those who are most vulnerable in our societies (and turning a blind eye to those whose privilege is "proof" of their morality – those who, in effect, enjoy immunity from policing and criminalisation).

Problems with drug policy specifically:

4. **Current drug policy is ineffective** – the ineffective nature of the UK's approach to controlled drugs has been evidenced by the Home Office's own research. The Home Office's 2014 report *Drugs: International Comparators* compared the experiences of fourteen countries and how their legal frameworks impacted on levels of drug use. The countries reviewed ranged from Sweden and Japan, who have highly punitive responses to drug possession offences, through to Uruguay and Portugal, where neither jurisdiction criminalises possession of a controlled drug. That report found that "there is no apparent correlation between the 'toughness' of a country's approach and the prevalence of adult drug use."[v] This experience is borne out by countries that have ended criminal sanctions for possession and use of controlled substances, where there is no statistically significant impact on prevalence as a result of a new policy direction being implemented.

Further evidence from the Home Office also highlights the futility of drug law enforcement. In a 2017 evaluation of the 2010 Drug Strategy, the Home Office found that the UK spent an estimated £1.6billion on drug law enforcement in 2014/15 alone, yet it has "little impact on availability", this analysis also describes the market as "resilient".[vi] Beyond the harms of current drug policy that Release has highlighted in this submission, the evaluation also points out that the current law enforcement approach creates unintended consequences including:

- Increased violence in the market place resulting from enforcement activities;
- Criminalisation negatively impacting on employment prospects; and
- Parental imprisonment, which can have dire consequences for children, increasing the risks of child offending and experience of mental health problems and problematic drug use.

One of the main problems with the current Government approach – and previous governments – is an over focus on levels of drug use within in society as a metric of a successful policy. For many years, the Home Office have stated – despite its own evidence - that drug policy in the UK is working because drug use is falling. This position is largely incorrect. According to the Crime Survey for England and Wales, whilst cannabis use declined in the noughties, this decline tapered out in the 2010s and has largely been stable since 2010. At the same time, the use of other controlled drugs has remained at about the same levels since 2000 bar small fluctuations.[vii] It is estimated that 90 per cent of people who use drugs do so without becoming dependent, largely for recreational purposes. Approximately 10 per cent will suffer from problematic drug use,[viii] but as highlighted in this briefing, that is largely in order to self-medicate to deal with emotional or physical pain, in the context of a lack of access to support in the form of health and wellbeing services. Whilst the Home Office has focused on levels of drug consumption as the main metric of success, we have been witnessing unprecedented levels of drug-related deaths across the country. It is this issue - as well as other health and social harms - that policies should focus on. Essentially, a successful drug policy should focus on reducing harms including death, overdose, hospital admissions and

blood borne viruses (BBVs) and reducing the risk of job loss, school exclusion, family separation, community isolation, eviction from the home, deportation, and eliminating any and all racial inequalities that result directly from prohibitionist and punitive policies.

5. **Current drug policy aggravates harms**:

Health harms – The UK's current drug policy aggravates harms experienced by PWUD, and many of the health harms that they experience are as a consequence of an unregulated market where there is significant variation in drug potency, purity and adulteration[ix]. Drug-related deaths have reached record levels in recent years - in 2017, there were 3,756 drug-related overdose deaths registered in England and Wales[x] and in 2018, there were 1,187 drug-related deaths registered in Scotland[xi]. In comparison to other EU counties the UK has one of the highest rates of drug-related deaths in Europe – with a rate of 74 deaths per million in 2016 – and "9 out of 10 overdose deaths (89 per cent) involved some form of opioid"[xii]. Over a third (34 per cent) of the overdose deaths registered in Europe occurred in the UK in 2015.[xiii] In Northern Ireland, there were 136 drug-related deaths registered in 2017 – 60 per cent more than the 86 deaths recorded 10 years ago[xiv]. Health-related harms are further exacerbated by the Conservative government's reluctance to support evidence-based harm reduction interventions in response to the UK's rising number of drug-related deaths and BBVs. Fear of detection by law enforcement and the possibility of further criminalisation is a crucial driver for high-risk drug taking behaviours, including sharing (and use of) nonsterile injecting equipment[xv]; rushed consumption of drugs in unhygienic and unsupervised environments increasing risk of overdose or injury[xvi]; and pre-loading drugs before entering a venue to evade detection[xvii]. Furthermore, if someone is present at the scene of an overdose or crime, and they are in possession of drugs, they are less likely to contact emergency services due to worry of police involvement and arrest.

Economic & Social Harms – Over the last decade, 732,406 people have been criminalised for simple possession of drugs in England and Wales.[xviii] In any given year approximately 1,000 people are imprisoned solely for possession of controlled drugs, and in 2017 the number was 1,017[xix]. The crippling effect of a criminal record has a profound impact on employment and consequentially income levels. A recent study by the Institute for Social and Economic Research estimates "of the twenty-eight thousand cannabis arrestees in 2010 (with average annual earnings of roughly £21,500) - the total loss of earnings through this scarring effect [criminalisation] is predicted to be just over £100m."[xx] In other words criminalisation of low-level cannabis offences has a scarring effect on an individual's income. Once more, it is deeply concerning that both drug use and drug-related criminal records are an important factor in employer's decision-making, which will disproportionately impact people of colour[xxi]. Aside from spent convictions, employers are increasingly requesting applicants to reveal unspent convictions, with a failure to do so resulting in immediate dismissal[xxii]. Furthermore, people seeking regular work that involves contact with children or vulnerable groups are subject to enhanced DBS checks meaning that those with unspent convictions will never benefit from this outcome - hindering the type of employment they are able to pursue. Stigma and discrimination against PWUD is pervasive, employers are reluctant to hire people with a

history of drug use, many of which have a 'zero tolerance' policy and incorporate random drug testing as part of the recruitment processes as well as being grounds for dismissal[xxiii].

6. **Current drug policy misallocates public resources –** While it is clear that harm reduction[xxiv] and drug treatment[xxv] services are cost-effective, the same cannot be said for drug law enforcement, which has no demonstrated value for money[xxvi]. Nevertheless, the Conservative government spent an estimated £1.6 billion on drug law enforcement in 2014/15, compared to £541 million on drug services over the same period.[xxvii] Since then, not only has the Conservative government continued to prioritise funding for criminal justice over public health, they have also overseen massive funding cuts to drug services. Net expenditure on adult drug and alcohol services has decreased by 19 per cent in real terms between 2014/15 and 2018/19[xxviii] and further cuts are predicted from 2020 if the ring-fenced Public Health Grant for local authorities expires and funding moves to business rates retention[xxix].

7. **Scale of criminalisation for possession offences** – Considering that the UK's approach to drugs is largely driven by a criminal justice approach - despite the evidence for the failure of the current policy (see section 4) - it is unsurprising that hundreds of thousands of people have been criminalised for simple possession of a controlled drug since the inception of the Misuse of Drugs Act 1971. In the last 20 years, there has been just over 1.9 million records for simple possession of a controlled drug, where people have received either a caution or have been convicted at court for the offence, both a caution and conviction result in a criminal record.[xxx] In 2018, just over 35,000 people received a criminal record for possession of a controlled drug.[xxxi] As highlighted above, the effect of a criminal record can be devastating, impacting employment opportunities, educational aspirations, ability to travel to other countries; criminalisation can stigmatise an individual and whole communities.

8. **Criminalisation of people of colour and those living in deprivation -** Drug law enforcement in England and Wales has fallen most heavily on people of colour and those living in deprivation. The use of stop and search powers to police drugs dominates the statistics, with around 60 per cent of all searches in England and Wales carried out for this activity.[xxxii] It is worth noting that Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) estimate that 70 per cent of all drug searches are for possession offences rather than supply offences - this analysis was based on their inspection of 8,000 search records.[xxxiii] Moreover, it is estimated that approximately 70 per cent of searches result in no drugs being found, so in the vast majority of cases people have committed no offence. Research carried out by Release, StopWatch and LSE found that black people were nine times more likely to be stopped and searched for drugs despite being less likely to use controlled substances compared to the white population.[xxxiv] Further, when caught in possession of a controlled substance, black people are treated more harshly than white people and are less likely to receive out of court disposals, many of which result in no criminal record, and are more likely to be arrested. For example, black people are 12 times more likely to be sentenced for cannabis possession compared to the white population.[xxxv] Research also shows that the use of stop and search in London is most focused on areas of deprivation, again despite the fact that drug use is prevalent across all socio-economic groups.[xxxvi] The widespread use of stop and search for drugs is unsurprising as establishing grounds for such searches is relatively easy for police

officers compared to other grounds. The targeting of deprived communities and people of colour raises considerable issues of whether this police power is being discriminatorily used as a tool of social control.

9. **Criminalisation of people who use drugs problematically** - The majority of people who become dependent on controlled substances have suffered trauma in their lives. The Advisory Council on the Misuse of Drugs (ACMD) has recognised that childhood experiences and "stressful negative life events such as emotional violence, abuse and social exclusion" can influence "the development of substance-related harms". For this group the use of the criminal law to punish their actions is frankly immoral, these are vulnerable people who are often disadvantaged and marginalised and whose drug use is a form of self-medication. Criminal law is used as a blunt and unjust tool to address what is essentially a health issue. The risk of criminalisation and the impact of being defined first and foremost a criminal creates barriers to accessing treatment and other services which can support a person in these circumstances. This position has been acknowledged by the United Nations which calls for the repeal of the criminal law in relation to the use and possession of drugs in recognition that it acts as a barrier to, and contributes to discrimination in health settings.[xxxvii] Public Health England states that 54 per cent of people who died from opiate-related deaths in 2013 had not been contact with services for the preceding 5 years.[xxxviii] This raises real issues about why people are not accessing drug treatment or harm reduction services – where available - and points to barriers created by criminalisation and discrimination.

10. **Criminalisation of people using cannabis and derived products for medicinal purposes –** As a part of the wider criminal justice agenda, Release views the continued criminalisation of people using cannabis and derived products for medicinal purposes as a particularly egregious aspect of the current drug control framework. The reality is that legal access to cannabis and derived products for medicinal purposes remains extremely limited, largely due to regulatory and financial barriers[xxxix], and people are left with no choice but to self-medicate via illegally obtained cannabis. They then face the risk of non-trivial prosecution and receiving a criminal record. Such prosecutions are not uncommon and have, on occasion, resulted in imprisonment. Medical cannabis users calling the Release legal helpline have sought advice in relation to a variety of drug offences, including personal possession, possession with intent to supply, cultivation, production, importation, and confiscation proceedings.

11. **Failure to expand harm reduction –** Evidence-based harm reduction interventions, some of which have existed for decades, are still not widely available in the UK, if at all. There are currently no Overdose Prevention Sites (OPS) – or otherwise called 'Drug Consumption Rooms' - or Prison Needle and Syringe Programmes (PNSPs) in the UK. Take-home Naloxone (THN) provision in England is wholly insufficient[xl], particularly on prison release[xli], in part due to "a lack of clarity about which [government] agency is responsible"[xlii]. While drug checking services are currently operating via the Loop, WEDINOS and the pilot drug checking clinic in North Somerset[xliii], in most parts of the UK, PWUDs and people involved in supply do not have access to drug checking services.

12. **Disregard for human rights** – The UK has consistently failed to review existing (and proposed) drug laws and policies for human rights compliance.[xliv] Currently, drug policy in the UK impedes the enjoyment of a number of human rights and fundamental freedoms.
    a. **Right to the highest attainable standard of health** is impeded by: retrogressive funding cuts to drug services; the failure to expand harm reduction; poor practice provision of Opioid Substitution Therapy (OST) where OST is not prescribed in optimal dose and duration[xlv]; a drug treatment sector that is not responsive to diverse and complex needs; the lack of medical amnesty for those seeking emergency assistance for overdose; and barriers to accessing cannabis for medical purposes.
    b. **Right to equality and freedom from discrimination** is impeded by the lack of measures to address ethnic disproportionalities in drug law enforcement – for example, the 'explain or reform' approach recommended in the Lammy Review[xlvi], has clearly not been applied to drug policy.
    c. **Right to social security & right to an adequate standard of living** are impeded by: the punitive welfare system, which entrenches PWUDs into poverty; and the mandatory and discretionary grounds for evicting people from their homes based on a tenant, resident or a visitor's drug-related activity.
    d. **Right to a fair trial** is impeded by the lack of free legal representation for people charged with drug possession offences (following the cuts and reforms to legal aid, most drug possession cases are not considered serious enough for legal aid entitlement).
    e. **Children's rights** are impeded by: drug-related school exclusions; and the lack of measures to address the root causes of children's involvement in the drug trade, including child poverty and social marginalisation resulting from austerity policies.
    f. **Women's rights** are impeded by: the lack of measures to address ethnic disproportionalities in drug law enforcement, such as the hugely disproportionate incarceration of black women for drug offences[xlvii]; and the lack of gender-specific and gender-sensitive drug services, including services catered to the needs of lone and primary caretakers[xlviii]. The lack of data regarding, and specialist services for, black transgender girls and women and transgender girls and women of all races and backgrounds and status is also lacking.
    g. **The rights of persons deprived of liberty** are impeded by: the lack of prison Needle Syringe Programmes (PNSPs) in the UK; and the lack of Take-Home Naloxone (THN) programmes for people released from prisons in England, particularly young people, foreign nationals, and the remand population[xlix].

SECTION 2: RELEASE'S PROPOSED REFORMS TO THE LABOUR PARTY'S DRUG POLICY

1. **Decriminalise drug possession offences and other personal use offences** – Release advocates for the ending of criminal sanctions for possession of controlled drugs and for cultivation of cannabis where it is for personal use. Whilst the organisation is broadly supportive of regulated markets for controlled drugs, subject to principles of fair trade and social equity, we are also very clear that the focus currently is on a regulated market for cannabis. Whilst this

may reduce the risk of criminalisation for people who use cannabis it will do little to help some of the most vulnerable PWUDs, those who are dependent on heroin or crack cocaine and most at risk of drug-related deaths. It is for this reason we argue that ending criminal sanctions for all personal use offences should be the first step in reforming the UK's drug laws. This is especially important in light of the high rates of drug-related deaths and the evidence from other jurisdictions on the positive impact of this approach. Research undertaken by Release analysed 25 jurisdictions that had ended criminal sanctions for possession of all drugs or for cannabis only, it is worth noting that in the vast majority of states the policy applied to all drugs.[l] None of the countries that have taken this approach experienced statistically significant increases in prevalence, in some countries it went up slightly in some it went down.[li] This experience is borne out in other academic research, such as Professor Alex Stevens' review into the impact of liberal reforms of cannabis laws on adolescent use, which found no correlation in levels of use and the change in legislation.[lii] Decriminalisation has been associated with reduced rates of recidivism, lower rates of incarceration, reduced burden on police resources and savings to the public purse related to social costs. By decriminalising the possession of controlled drugs for personal use, resources could be diverted from the criminal justice system into health and other services for PWUDs.

a) **Decriminalisation can save lives and reduce health harms** - Portugal decriminalised by ending criminal sanctions for possession of all controlled drugs in 2001, while also investing in harm reduction initiatives, treatment and prevention. Now people caught in possession are instead referred to a dissuasion committee to see whether they need help to address their substance use – in over 80 per cent of cases proceedings are adjourned. The drug-related death rate (aged 15-64 years) in Portugal was "4 deaths per million in 2017, which is considerably lower than the most recent European average of 22 deaths per million"[liii]. Other positive outcomes have included[liv]:
   - Decrease in use amongst problematic users
   - Decrease in young people becoming dependent on drugs such as heroin;
   - Decrease (over 40 per cent) of the estimated numbers of people who inject drugs;
   - Increased treatment engagement;
   - Significant decrease in HIV and TB transmission;
   - Decrease in prison population;
   - Reduced burden on criminal justice system allowing police to focus on more serious societal harms;
   - Improved relationship between the community and police;[lv] and
   - Decrease (18 per cent) in the social costs of drug use in the first 10 years of decriminalisation[lvi].

   The rate of drug-related deaths is 22 per million in the Netherlands, 16 per million in Spain, 5 per million in the Czech Republic, 8 per million in Italy, 4 per million in Portugal and 21 per million in Germany[lvii]. These rates are all significantly lower than the UK's drug-related death rate of 74 per million of the population[lviii]. While the lower rates of drug-related deaths in these countries will not necessarily stem from the legal framework, it is nonetheless noteworthy that all of these countries have ended criminal sanctions for drug possession offences under various models of decriminalisation. Evidently, better health

outcomes can be achieved when drug dependency is viewed through the lens of public health rather than criminal justice.

b) Decriminalisation can produce better social outcomes – Research from Australia compared outcomes for individuals who had been criminalised for cannabis possession, to those who had received civil sanctions. Of those criminalised 32 per cent reported a negative impact on employment compared to 2 per cent who were given civil sanctions, for accommodation it was 16 per cent versus 0 per cent, and for relationships 20 per cent of those criminalised reported an adverse impact versus 5 per cent of those receiving civil sanctions.[lix]

c) **Decriminalisation can reduce reoffending –** the same research from Australia found that of the cohort who were criminalised, 32 per cent of respondents reported further contact with the criminal justice system compared to zero per cent of respondents who received civil penalties.[lx]

d) **Decriminalisation as a policy response is supported by the United Nations and other international bodies -** The United Nations System Chief Executives Board for Coordination (UNCEB) recently called for the decriminalisation of drug possession for personal use[lxi], joining the likes of the World Health Organisation[lxii] and the Global Commission on Drug Policy[lxiii].

Most models of decriminalisation are *de jure* models, that is, they have been implemented through statutory law or by way of a Constitutional Court decision. However, *de facto* decriminalisation can be achieved through the use of diversion schemes, as we are witnessing across several police forces in England and Wales (please see section 3, paragraph 8) for a discussion on diversion schemes). There are also a number of countries currently considering moving towards or implementing decriminalisation in recognition of the failures of prohibition, including Ireland, Norway, Ghana and Malaysia. This approach is gaining new support in countries across the Globe. And whilst decriminalisation does leave the supply of drugs within the illicit market - it is in our expert opinion the first step towards reform and is complementary to the move to regulate drugs.

It is imperative that if this approach is taken that proper data monitoring to measure impacts across a number of health, societal and economic indicators are implemented. For example, Washington DC legalised the possession and sharing of cannabis (where it is home grown), this led to a significant reduction in the number of African Americans coming into contact with the criminal justice system but there was evidence that there were increased racial disparities in the policing of public consumption and small-scale supply.[lxiv] This displacement is one example of why proper analysis and ultimately adaption of law enforcement is required to reduce the risk of these kinds of consequences happening in the UK.

2. The Labour Party should champion a move away from the criminal justice-led approach to drug use and towards a health, social and education focused approach, such as by:

a. Re-investing in and protecting drug treatment and harm reduction budgets. Resources should be diverted away from drug law enforcement, which is overwhelmingly focused on policing drug possession (please refer to Section 1, paragraphs 7 and 8), and towards drug treatment and harm reduction budgets. Consideration should be given to reverting

back to central funding (as previously under the National Treatment Agency), placing commissioning within NHS structures, or mandating these services within local authority budgets[lxv] (as with sexual health).

b. **Recognising that drug use should sit under a health remit –** The responsibility for drugs policy should sit within the Department of Health and Social Care, rather than the Home Office, with inter-departmental and multi-agency working where appropriate. The Drug Strategy Board should be chaired by the Secretary of State for Health and Social Care, instead of the Home Secretary, and should expand its membership to include the Minister for Women and Equalities.

c. **Repealing and replacing drug control legislation, to remove legal barriers to establishing OPSs, drug checking services, and other harm reduction facilities, or to dispensing crack pipes and other equipment in the UK.** In the absence of legislative reform (including devolution of the matter), the Labour Party could seek out agreements between local Police and Crime Commissioners and Chief Constables[lxvi] not to arrest and bring prosecutions, to allow for the provision of such facilities or equipment. A similar situation exists for NSPs where national Crown Prosecution Service ('CPS') guidance states that it is not in the public interest to bring prosecutions for possession of controlled substances where a person has been accessing sterile injecting equipment provided by a drug treatment service. The CPS guidance acknowledges that in relation to NSPs "those who run and use them will necessarily commit offences under the [Misuse of Drugs] Act".[lxvii]

d. **Implementing a medical amnesty policy to protect people who are seeking medical attention for drug-related injury or overdose from prosecution for related drug offences.** Medical amnesty or 'Good Samaritan' policies have been widely implemented across the US and save lives by removing the fear of prosecution and hesitation during a life-threatening emergency. This could easily be implemented in the UK by developing prosecutorial guidelines with the Crown Prosecution Service or National Police Chiefs Council.

e. **Adopting evidence-based social, employment and housing programmes, which specifically address the needs of PWUDs and people, involved in low-level drug supply.** **'**Housing First' is an evidence-based approach to supporting PWUDs experiencing homelessness into housing, with successful pilots operating in a number of sites across the UK[lxviii]. Release supports the ACMD's recommendation to increase local spending on evidence-based housing provisions for PWUDs, such as Housing First.[lxix] Please refer to Section 2, paragraph 7 on improving access to housing. As part of the Portuguese approach to drug use, in particular, problematic drug use, they have recognised the importance of providing employment opportunities to those who access their services. "Program Life Employment" is part of an integrated approach which seeks to ensure social inclusion for people with a history of problematic use. Some of the initiatives implemented as part of this programme include state contribution towards salary costs (not unlike the apprenticeship scheme in the UK); the provision of micro loans for those wishing to set up their own business and technical support; and supporting those at risk of relapse. This approach was associated with positive outcomes for both employers, employees and those who were self-employed.[lxx]

3. **The Labour Party should ensure that evidence-based harm reduction interventions are widely available and accessible across the UK, such as by:**
    a. **Providing high-quality OST**, of optimal dose and duration, with wider use of take home doses – please refer to Section 3, paragraph 5 on diamorphine prescribing;
    b. **Having a THN programme in every local authority and prison** which makes THN widely available to all those who may need it – this could be achieved in prisons if NHS England was responsible for commissioning THN programmes;
    c. **Setting up OPSs** which are appropriate to local needs, including lower threshold models[lxxi], womxn-only and smoking facilities;
    d. **Expanding access to drug checking services across the UK**, including in city centres, OPSs and drug services; and
    e. **Setting up a national monitoring system for NSPs in England**; and
    f. **Establishing a national steering committee to oversee the introduction of Prison Needle Syringe Programmes (PNSPs) across the UK, which meaningfully involves key stakeholders including currently incarcerated people and harm reduction organisations.** PNSPs successfully operate in Spain, Germany, Switzerland, Luxembourg and elsewhere outside of Europe[lxxii]. Not only does the lack of PNSPs in the UK leave PWIDs in prison vulnerable to blood borne viruses and other health harms[lxxiii], it also violates international human rights obligations, as PWIDs in prison are entitled to enjoy the right to the highest attainable standard of health and to receive health care in prisons equivalent to that in the community[lxxiv].
    g. **Learning from innovative approaches, especially those developed by peers, service users and drug user activists, such as:**
    - The OPSs – including unsanctioned and pop-up facilities – that have been set up by activist groups across Canada[lxxv];
    - 'Metzineres' in Spain, which is a low-threshold and integrated harm reduction programme and space exclusively for womxn who use drugs[lxxvi];
    - The distribution of crack pipes to reduce the spread of blood borne viruses, driven by the 'The Urban Survivors Union' in the US[lxxvii]; and
    - The pilot of hydromorphone dispensing machines in Canada to facilitate low-threshold access to OST and prevent overdose deaths[lxxviii].

4. **The Labour Party should prioritise the meaningful participation of impacted populations in the development of drug services and drug policy.** It is imperative that people with lived and living experience of drug use are meaningfully involved in the development of drug treatment and harm reduction services; no one understands their needs and the barriers they experience better than them. Likewise, people affected by the criminal justice-led approach to drug policy should be meaningfully involved in the development of the drug policies that affect their lives**.** This will require investment in drug user / peer support / service user / community networks and a commitment to involving marginalised, disenfranchised and under-represented groups, such as womxn, LGBT+, BME communities, young people, people with a disability, sex workers, people experiencing homelessness, formerly and currently incarcerated people, people with living experience of drug use, and people involved in drug cultivation and supply.

5. **The Labour Party should ensure that people are not criminalised for using cannabis or derived medicines for medicinal purposes,** including for personal possession, possession with

intent to supply, cultivation, production, and importation. Clearly if drug possession were to be decriminalised, a considerable number of people using cannabis for medicinal purposes would no longer be criminalised for possession, and as such, we would strongly recommend this approach. Consideration should also be given to developing a statutory defence of medical necessity in these circumstances, or non-prosecutorial guidelines for the Crown Prosecution Service to deal with such cases, to ensure that people using cannabis for medicinal purposes are not prosecuted for related offences (which would include possession in the absence of decriminalisation).

6. **The Labour Party should implement reforms to the wider criminal justice system, including:**
    a. **Restricting the use of prison sentences.** The prison service is overstrained and overpopulated but continues to be used as a punitive tool to penalise people for their drug use. A number of people are also given a custodial sentence or recalled to prison for low-level offences driven by drug use such as shoplifting or theft. People are released from prison only to be recalled for breaching license conditions attached to drug testing or a failure to adhere to Drug Rehabilitation Requirements (DRRs). In 2018 alone 24,268 people were recalled to prison – of which 1,231 were recalled for reasons related to drugs/alcohol.[lxxix] Furthermore a greater proportion of women report having a problem with a drug on arrival to prison than men (41 per cent versus 27 per cent)[lxxx] – this is deeply concerning as women are not only underrepresented in drug treatment but there are a lack of female-centric services which cater to their needs. LGBQT+ people of all genders are specifically failed by the criminal justice system.

        As of 31st March 2019, there were 11,131 people under an immediate custodial sentence for drug offences and a further 1,738 people on remand in England and Wales. [lxxxi] To be clear, Release recommends decriminalising drug possession and diverting people involved in low-level supply and possession away from the criminal justice system. However, in the absence of such reforms, Release would urge the Labour Party to abolish custodial sentences for drug possession offences and introduce a presumption against short custodial sentences, as recommended by the Justice Select Committee[lxxxii]. Short-term custodial sentences are ineffective at reducing recidivism[lxxxiii], offers greater exposure to poorer health outcomes[lxxxiv], and due to a period of forced abstinence, increases the risk of a fatal opioid overdose in the immediate post-release period[lxxxv].
    b. **Ensuring that people facing proceedings for drug possession offences have access to legal representation.** While we would strongly recommend that the Labour Party decriminalise drug possession, in the absence of reform in this area, drug possession offences should be considered serious enough for entitlement to free legal aid.
    c. **Conducting a review of the Proceeds of Crime Act (POCA) 2002 and its effects in practice.** In POCA cases, prosecutors often inflate the value of drugs seized beyond the defendant's actual means, resulting in additional sentence time[lxxxvi]. People subject to such proceedings may have to sell their house or car, serve a custodial sentence, and still have major outstanding debts against them (with accrued interest) once they are released from prison. Although the intention was to target people at

the high end of the supply chain, in reality POCA often hits people with the least means the hardest, who can get caught in a cycle of debt and incarceration. Partners, children and other loved ones (who may have had nothing to do with the offence) are also affected, for example, where they have to move out of their home. There is no publicly available data on the characteristics of those subject to POCA proceedings in the UK. However, research from the US indicates that people of colour and low-income communities are disproportionately affected by asset forfeiture proceedings[lxxxvii]. Law enforcement agencies are using POCA as a source of revenue while facing funding cuts, despite the likely net loss to the taxpayer, due to the cost of court proceedings and holding people in custody for lengthy sentences.

7. **The Labour Party should improve access to housing for people affected by the current drug control framework, such as by:**
    a. **Excluding drug use, possession and cannabis cultivation for personal use as discretionary grounds for evicting people from their homes.** No one should be evicted from their home and made to be homeless simply because they, or a visitor, uses drugs. Yet, people can be evicted on this basis under a number of discretionary grounds. This includes committing a criminal offence, such as possessing a controlled drug or cultivating cannabis (even where this is for medicinal purposes), or where using the property for "illegal or immoral purposes" constitutes a breach of the tenancy agreement.
    b. **Removing specified drug offences and breach of a Criminal Behaviour Order as mandatory grounds for evicting people from their homes.** There is currently no discretion in relation to possession proceedings where a specific drug offence[lxxxviii] has been committed (by either a tenant or a visitor), including cultivation of cannabis (for profit) and possession with intent to supply, or where a Criminal Behaviour Order has been breached. Where someone has perhaps supplied a small amount of drugs on a social basis for no financial gain, or failed to attend a drugs awareness course or engage in drug treatment, mandatory possession of their home is wholly disproportionate.
    c. **Removing barriers to housing for people recently released from prison.** If someone is sentenced to prison while claiming housing benefit and they fail to notify their local council that they are going to prison, they may incur rent arrears and lose the property while in prison or face proceedings for benefit overpayment after being released. They are then at risk of being declared 'intentionally homeless' and unable to access housing, simply by virtue of having gone to prison.

8. **The Labour Party should improve access to education for people affected by the current drug control framework, such as by:**
    a. **Issuing guidance to stop excluding people from school and higher education for drug use/possession[lxxxix], in favour of more proportionate and compassionate responses to drugs (including for involvement in drug supply) in educational settings.** In the 2016/17 academic year, there were 565 permanent and 9,075 fixed period 'drug or alcohol related' school exclusions in England[xc], 361 drug-related school exclusions in Scotland[xci], and at least 21 permanent and 38 temporary exclusions from higher

education for drug possession in the UK[xcii]. Students in higher education also face other punitive responses to drug possession, including heavy fines, eviction from student accommodation, being reported to the police, and having their fitness to practice questioned (for example where a medical student can be barred from practicing medicine). Beyond the immediate impact of being excluded from education, exclusions seriously impede young peoples' life chances, for example through loss of qualifications and future earnings, stigma, marginalisation, and family estrangement.[xciii] Evidence also indicates that pupils from Traveller of Irish Heritage and Gypsy/Roma, Black and Mixed ethnic groups are disproportionately excluded from schools[xciv] and that exclusions increase exposure to the criminal justice system[xcv]. There is also evidence that suggests that school exclusions place children at risk of involvement with knife crime, therefore, there are significant reasons why we should reduce the risk of exclusion for drugs.[xcvi]

b. **Ceasing the use of invasive surveillance measures to detect drugs on campus.** Students in higher education may be subject to invasive surveillance measures on campus, such as drug swab testing and sniffer dogs[xcvii], and pupils in school may be searched for drugs without consent.

SECTION 3: COMMENTS ON OTHER POTENTIAL RECOMMENDATIONS

1. **Fair and effective arrest, court and prosecution procedures –** In our view, the criminal justice system is inherently unfair and ineffective, and as such, we would not suggest that this is achievable. This is also completely undermined by the criminalisation and incarceration of PWUDs and those involved in low-level supply, ethnic disproportionalities in policing and prosecution (including for drug offences), and cuts to legal aid.

2. **Bespoke and integrated treatment system –** There is clearly a need for bespoke drug treatment and harm reduction services, which are catered to the needs of its diverse client group, and in particular, for womxn[xcviii], LGBT+[xcix] and BME[c] communities, young people[ci], and sex workers[cii]. The best way to achieve this is by re-investing in the sector, prioritising the meaningful participation of affected populations in the development of drug services, and learning from innovative approaches developed by peers, service users and drug user activists – please refer to section 2, paragraph 3(g). There is also the issue of people falling through the gaps within the treatment system, namely during custody-community transitions and for those with co-occurring mental health and problematic drug use (i.e. 'dual diagnosis'). The best way to prevent people from falling through these gaps is to stop sending them to prison and criminalising them in the first place – please refer to section 2, paragraph 6.

3. **Reform how international aid is spent on drug policy issues –** As a signatory to the European Convention on Human Rights and the International Covenant on Civil and Political Rights, the UK opposes the use of the death penalty irrespective of the offence. However, foreign aid donations have facilitated in the development of sophisticated anti-narcotics regimes across the globe, with many of those detected being sentenced to death. Release is immensely alarmed that as an abolitionist state, the UK is providing material and technical assistance to

retentionist states that mandate capital punishment for drug trafficking offences - including Pakistan who was a recipient of the Conflict, Stability and Security Fund (CSSF) in 2017. [ciii] International organisations have frequently highlighted concerns regarding unfair trials in Pakistan and the use of coercion and torture to extract confessions for capital drug cases.[civ] A recent independent performance review of the CSSF emphasised that "working with such counterparts risks legitimising them and their actions, or even becoming complicit in [human rights] violations"[cv] thus, undermining the very object and purpose of the fund – peace, safety and security. Moreover, the UK pledged a further $3,455,353 into UNODC special purpose fund,[cvi] allowing countries such as Iran - a state that has executed at least 3,950 individuals including women and children for drug offences alone between 2008 and 2017 to strengthen drug control[cvii]. A failure to refrain from providing technical expertise and financial resources used for the imposition of the death penalty would inadvertently make the UK complicit and in violation of international human rights law. **The Labour Party should ensure that UK foreign aid and technical assistance is not used for the imposition of the death penalty for drug offences (or any other offences) outside of their jurisdiction. Furthermore, in light of the failures and harms of prohibition foreign aid and technical assistance should focus on supporting harm reduction, treatment, education and prevention rather than law enforcement initiatives.**

4. **Review of the Misuse of Drugs Act (MDA) 1971 –** Release is not convinced that a review of the MDA 1971 (or a Royal Commission to review current drug policy[cviii]) would be useful. It is already clear that the entire drug control framework is not fit for purpose; this has been demonstrated by an overwhelming amount of evidence, including in the Drug Strategy 2010[cix] and Psychoactive Substances Act (PSA) 2016 evaluations[cx]. **The Labour Party should repeal and replace drug control legislation, with meaningful involvement from key stakeholders, including those most affected by the current drug control regime and civil society, to develop an evidence-based approach to drug policy, which is subject to "transparent human rights risk and impact assessments"[cxi].**

5. **Wider delivery of Heroin Assisted Treatment (HAT)** – HAT is a "high intensity treatment", which requires in person attendance at a clinic – "daily or even more frequently" – and injecting prescribed diamorphine under the supervision of a medical professional. A lower threshold option is to prescribe take home doses of diamorphine to pick up from a community pharmacy.[cxii] **The Labour Party should prioritise lower-threshold delivery of OST, including diamorphine prescribing, to make it easier for people to adhere to their prescriptions and stay alive.** Consideration should also be given to innovative approaches to delivering low-threshold OST (and cheaper alternatives to diamorphine), such as the pilot of hydromorphone dispensing machines in Canada[cxiii].

6. **Implementation of legal regulated cannabis market, with taxation going into public services -** The war on drugs has saddled millions of people globally with criminal convictions consequentially restricting employment, education, and other life opportunities. Moving on from an era of enforcement-led prohibition, a number of American States[cxiv] have begun sealing the records of low-level cannabis misdemeanours with more legislators calling for expungement- a complete destruction of criminal convictions from government records.[cxv] In many of these states, tax revenue accumulated from the legal cannabis market is redistributed

for social good to low-income neighbourhoods among other things to, tackle homelessness and develop specialised youth drug and healthcare services.[cxvi] In considering a regulated legal cannabis market, Release would encourage the Labour campaign to explore social justice initiatives as a form of reparation particularly to impacted communities for enduring years of stigmatisation, violence, demonization and discrimination in the form of profiling and over policing. Efforts should be focused on increasing minority participation into the new licit markets with the introduction of social equity programmes by removing barriers and giving priority access to the legal cannabis market to people of colour in recognition of the disproportionate application of drug law enforcement. In Sacramento, California, social equity programmes are also extended to immediate family members of those who have been arrested or convicted of a cannabis offence prior to legalisation.[cxvii] Release would be in support of similar intergenerational justice initiatives in recognition of the secondary impacts that criminalisation has on families as well as the prosecuted individual.[cxviii] Similarly, the state of Illinois passed a Cannabis Regulation and Taxation Act, which encompasses a racial justice provision – where tax revenue and permit prioritisation will be used to aid minorities and promote diversity in a predominantly white industry.[cxix] A number of people living in deprivation are dependent on the drugs trade as a primary source of income – incorporating equity, social and economic justice measures are fundamental in ensuring policy does not preserve or exacerbate deprivation but dismantles it. Concentrating on participation of minorities, poorer and impacted communities in the cannabis market would initiate a reverse of the devastation produced (and reproduced) by the war on drugs[cxx]. **In the context of a legalised cannabis market, the Labour Party should explore ways of redistributing accumulated tax revenue to fund public health issues and in increasing minority participation in the cannabis industry - particularly those who have been impacted by prohibition.**

7. **Decriminalisation of children who use and supply drugs** – Release fully supports this proposal – please refer to Section 2, paragraph 1 on decriminalisation of all age groups, including young people. **In addition to decriminalisation, the Labour Party should support children who use and supply drugs by:**
    a. Prioritising diversion away from the criminal justice system;
    b. Supporting the Age of Criminal Responsibility Bill [HL] 2017-19, which seeks to raise the age of criminal responsibility to 12 years, and consider raising this further, given the UN Committee on the Rights of the Child's draft revised General Comment on this issue encouraging States "to increase their minimum age to at least 14 years of age" and commending States "that have a higher minimum age, for instance 15 or 16 years of age"[cxxi];
    c. Restricting the use of stop and search on children for drugs, and in particular for more thorough and intimate searches; ;
    d. Issuing guidance to stop excluding pupils from schools for drug use/possession and ensure compassionate and proportionate responses to other drug-related activity in schools;
    e. Cease the use of invasive surveillance measures to detect drugs in schools, including sniffer dogs and searching pupils without consent;
    f. Scaling-up youth services, including specialist drug services for diverse young people;

g. Proposing a bold alternative to the Conservative Government's Serious Violence Strategy (which overstates and misrepresents the link between drugs and serious violence instead of looking at root causes, such as the impact of austerity policies[cxxii]); and
h. Providing access to harm reduction information and tools, including in schools, so that they can make more informed choices about drugs.

8. **Wider implementation of Diversion schemes –** In the absence of decriminalisation Labour should support the growing number of police forces across the country implementing diversion schemes. Labour PCCs should promote the use of these schemes in their local areas in recognition of the positive outcomes associated with this approach. Durham Police force's diversion scheme, "Checkpoint", is for a range of low-level offences, including drug possession and low-level supply offences where the offender is determined to be a user- dealer. 'Checkpoint' diverts people after arrest on the condition that they undertake a four-month programme to address their offending behaviour. Initial findings from the pilot period found lower reoffending rates compared to those who were subject to out of court disposals, such as cautions. Participants in Checkpoint also reported improved outcomes in relation to: substance misuse; alcohol misuse; accommodation; relationships; finances and mental health. Avon and Somerset Police force implemented an on-the-street diversion programme in Bristol for those caught in personal possession of drugs. The 'Drug Education Programme' ('DEP') was initially launched as a pilot in 2016. Attendees of the DEP are less likely to re-offend when compared to those who had gone through the criminal justice system. The majority of attendees at the DEP reported cessation or reduction in their drug use. The DEP saved police officers significant resources and the reduced burden of diverting drug possession offences to the DEP meant that it freed them up to focus on other tasks. The success of the DEP in Bristol saw the scheme rolled out across other areas in Avon and Somerset from April 2018. A 2008 national review of eight jurisdictions' diversion schemes in Australia demonstrated that a majority of people did not reoffend following diversion, and that in five jurisdictions out of eight, the majority of reoffenders were only charged with one new offending incident. Thames Valley Police have also implemented a street diversion programme for people caught in possession of drugs, and North Wales police have just launched a mix model of diversion where people caught in possession are diverted at street level and low level drug suppliers are referred to a Checkpoint type scheme. Diversion should be treated as an interim solution until national reform can be achieved, otherwise a postcode lottery will exist across the country in terms of how people caught possession of controlled drugs are treated.

9. **Industry standard workforce competence for substance use sector –** Too many of Release's clients have experienced stigmatising, patronising and controlling attitudes from workforce in the sector; this is in addition to the stigma and marginalisation they experience in a criminalised and recovery-oriented environment. Furthermore, in a sector which is largely catered to needs of white men who inject heroin[cxxiii], the workforce is not always sensitive to the needs of other groups, namely womxn[cxxiv], LGBT+[cxxv] and BME[cxxvi] communities, young people[cxxvii], and sex workers[cxxviii]. **The Labour Party should incorporate de-stigmatisation and diversity training into industry standard workforce competence for the sector as well as ring-fencing funds for specialist services.**

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