

Release's submission to the Home Affairs Committee's Inquiry into Drugs

Release is the national centre of expertise on drugs and drugs law – providing free and confidential specialist advice to the public and professionals. Release also campaigns for changes to UK drug policy to bring about a fairer and more compassionate legal framework to manage drug use in our society. Release's campaign 'Drugs – Time for Better Laws' was launched in June 2011 and calls for the Government to carry out an urgent review into the UK's drug policy giving proper consideration to decriminalisation of drug possession (www.release.org.uk/decriminalisation).

Release welcomes the Committee's inquiry into drugs and hopes this will be an opportunity for greater debate and analysis of this important policy area.

Release's submission will provide evidence on the following: the impact of policing drugs in the UK; the experiences of jurisdictions that have adopted a decriminalised approach to drug possession; the failure of successive UK Governments to properly consider the advice of the Advisory Council on the Misuse of Drugs ('ACMD'); the misinterpretation of the role of the classification system as defined by the Misuse of Drugs Act 1971 ('MDA 1971'); and the recommendations of previous Committees in respect of alternative ways of tackling drugs. It is our opinion that this information will be of assistance to the Committee in relation to the following:

- The extent to which the Government's 2010 drug strategy is a 'fiscally responsible policy with strategies grounded in science, health, security and human rights';
- The criteria used by the Government to measure the efficacy of its drug policies;
- The independence and the quality of expert advice which is being given to the Government;
- The cost effectiveness of different policies to reduce drug usage;

- Whether detailed considerations ought to be given to alternative ways of tackling the drugs dilemma as recommended by previous Committees.

An effective drug strategy will be dependent on a number of factors including investment in drug treatment and harm reduction services¹. One of the major components of an effective policy is the approach taken to the policing and prosecution of drug offences, in particular, possession offences. Release's submission will focus on this aspect of the UK's drug policy and will demonstrate that the current criminal justice system ('CJS') approach fails in its aim to deter drug use and in fact creates significant harms for certain sections of society.

1. The impact of policing drugs in the United Kingdom

One of the major failings of the current drugs laws is the disproportionate application of those laws and the policing of them. The reality is that the vast majority of people who use controlled drugs in the UK will never face prosecution nor will they be subject to a police stop and search.

The British Crime Survey estimates that one in three adults in England and Wales have used an illicit drug in their lifetime². Nearly 3 million people used an illegal substance in the last year³, during the same period almost 80,000⁴ were found guilty of or cautioned for possession, a further 95,000⁵ were dealt with under the cannabis warning scheme. Even if it is accepted that none of these individuals were repeat offenders it would appear, based on the statistics, just over 5% of those who used illicit drugs in the last year actually fell foul of the law.

It is impossible to police and prosecute everyone who uses drugs within the UK. In practice what is occurring is that those from black and Asian communities, the young and those from areas of deprivation are disproportionately policed. Research has found that black people are 9.2 times more likely to be stopped and searched for drug offences; 6.1 times more

¹ Release refers the Committee to the submission from the UK Drug Policy Consortium which properly asserts that that drug use and drug policy should not be seen in isolation from other social policy issues (UKDPC, Evidence to the Home Affairs Select Committee Inquiry into Drugs, January 2012, page 6).

² Smith & Flatley, Drug Misuse Declared: Findings from the 2010/11 British Crime Survey, July 2011, Home Office at page 12 (<http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/crime-research/hosb1211/hosb1211?view=Binary>) page 12

³ Ibid p.12

⁴ Ministry of Justice, Criminal Justice Statistics 2010, Supplementary Tables 'All Courts', Volume 5, Table 5.1 (<http://www.justice.gov.uk/publications/statistics-and-data/criminal-justice/criminal-justice-statistics-editions.htm>) details convictions at Court – a total of 43,406 people were convicted of possession of a controlled drug in England & Wales in 2010. Supplementary Table, Volume 3 Part 7, Table 3A provides details of cautions and confirms that 35,998 people received a caution for drug possession in 2010.

⁵ Taylor & Chaplin, Crimes Detected in England and Wales 2011, July 2011 (HOSB:11/11) at page at page 10 (<http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/crime-research/hosb1111/hosb1111?view=Binary>) – the total figure was 95,408 and includes PNDs issued for cannabis possession.

likely to be arrested and 11.4 times more likely to go to prison⁶. This is despite the fact that the British Crime Survey shows that drug use is higher amongst the white population than the non-white population⁷.

In 2010, the Metropolitan Police carried out over half a million stop and searches⁸, of this number over 50% were for drugs. Over half of those stopped and searched were under the age of 24 and both those from the black and Asian communities were significantly overrepresented. The arrest rate resulting from these stops and searches was 8%.

Release is currently undertaking research with the London School of Economics which further examines the disproportionate policing of drug offences. On initial analysis it would appear that less harsh criminal justice responses, such as cannabis warnings, are more readily available to those from a white background.

The policing of drugs significantly undermines community relations. It is young black and Asian men from certain communities who are subject to such police interference from an early age. In most cases these stops occur using the powers conferred on police by the MDA 1971. The fact that these young people are repeatedly stopped and searched results in a breach of trust between them, the police and other state actors. Further to this, studies have shown that black people are twice as likely to enter the criminal justice system following stop and search⁹.

The unequal application of a law, that is essentially unenforceable, is a powerful reason for other alternatives to be considered. A system which adopted a civil legal approach to drug possession would see a reduction in policing of drug use and divert people away from the criminal justice system.

⁶ Stevens A. Prof., 'Drugs, Crime and Public Health', 2010, Routledge at page 96 – a copy of the chapter relating to disproportionate policing of drug offences has been appended to this submission. Further to this the Guardian recently undertook an analysis of more than one million court records, their results showed that those from black and Asian backgrounds received a harsher sentence than their white counterparts. In respect of drug offences those of black ethnicity were 27% more likely to be sentenced for drugs possession. Asian offenders were 41% more likely to receive a custodial sentence for drug offences than their white counterparts (<http://www.guardian.co.uk/law/2011/nov/25/ethnic-variations-jail-sentences-study>)

⁷ Smith & Flatley, Drug Misuse Declared: Findings from the 2010/11 British Crime Survey, July 2011, Home Office at page 21 (<http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/crime-research/hosb1211/hosb1211?view=Binary>)

⁸ Metropolitan Police Authority, 'Stop and Searches Monitoring Mechanism', December 2010, (www.met.police.uk/foi/pdfs/priorities_and_how_we_are_doing/corporate/mps_stop_and_search_monitoring_report_december_2010.pdf) – these searches were based on 'reasonable suspicion' based searches such as section 1 PACE 1984 or s23 Misuse of Drugs Act 1971, it excludes s40 Terrorism Act 2000 and s66 Criminal Justice and Public Order Act 1994 searches.

⁹ Bowling B Prof. & Phillips C., 'Disproportionate and Discriminatory: Reviewing the Evidence on Police Stop and Search', The Modern Law Review, (2007) 70(6) 936 – 961.

2. The experiences of jurisdictions that have adopted a decriminalised approach to drug possession

The main concern of those that oppose a decriminalisation model for drug possession is that it would be a 'green light' for drug use and would result in a cataclysmic increase in consumption. The evidence shows this is not the case.

Release has recently undertaken a review¹⁰ of jurisdictions that have adopted a model of decriminalisation. For clarity, the term 'decriminalisation' is generally accepted by those in the policy field as meaning that drugs are still illegal, but either the police decide not to enforce the laws (a de facto model) or that possession and use are dealt with through the civil system (a de jure model). Based on this definition, it is estimated that between 30 – 35 jurisdictions have adopted some form of decriminalisation¹¹.

The main aim of the paper is to ascertain what impact the enforcement policy adopted has on the drug prevalence rates within that jurisdiction; the conclusion is that the model adopted has very little relationship with the levels of drug use. The paper has been submitted to the Committee in draft form and it is expected to be published in the next two months. However, to assist the Committee the following examples support the conclusion put forward:

2.1 Portugal

In 2001 Portugal decriminalised possession and use of all illicit drugs. Along with significant investment in treatment and harm reduction services, Portugal introduced a civil legal system for dealing with drug possession. Those caught in possession of illicit substances¹² are now referred to a 'dissuasion commission' (CDT), a three person panel made up of medical experts, social workers and legal professionals¹³. The Panel can recommend treatment or can impose a low level sanction such as a fine or community service. However, on the first occasion the person does not receive a sanction and does not have to access treatment unless they choose to do so. In such cases, the offence is recorded and is kept on record for 6 months, after this period it is removed from the system. A person only receives a sanction or is mandated to treatment if they appear before the CDT within the prescribed six month period.

¹⁰ Rosmarin A. & Eastwood N., 'A Quiet Revolution: Drug Decriminalisation Policies in Practice Across the Globe'. 2012, Release – the paper is currently in draft form and has been appended to this submission. The final paper will be made available to the Committee by mid-February.

¹¹ In some jurisdictions only cannabis has been decriminalised.

¹² There is a threshold amount of 10 days' worth of drugs.

¹³ Kreit, Alex. 2010., The Decriminalization Option: Should States Consider Moving from a Criminal to a Civil Drug Court Model? University of Chicago Legal Forum. pp. 299 - 326.

When first introduced many critics of the scheme expected it to be a disaster which would result in rocketing rates of drug use and drug tourism. This was not the case. The Portuguese model has been extensively reviewed and there is broad agreement that whilst there has been a slight increase in the overall drug use amongst the population, (this is an experience shared with the country's neighbours) there has been a small reduction in the number of young people using illicit drugs (cannabis use is significantly lower in Portugal than in the neighbouring countries of Spain and Italy¹⁴) and a reduction in the numbers who use drugs problematically. Furthermore, HIV transmission rates have significantly reduced from 907 new cases in 2000 to 267 in 2008. There has also been a reduction in drug related deaths attributed to overdose¹⁵.

On the criminal justice side, Portugal has reduced the number of criminal drug offences from approximately 14,000 per year to an average of 5,000 to 5,500 per year after decriminalisation.¹⁶ This has led to a significant reduction in the proportion of individuals in Portuguese prisons for drug related offences —in 1999, 44 per cent of prisoners were incarcerated for drug-related offences; by 2008, that figure had reduced to 21 per cent. This resulted in a major reduction in prison overcrowding in Portuguese prisons.¹⁷ Since decriminalisation, Portuguese law enforcement statistics have also revealed an increase in operational capacity resulting in more domestic drug trafficking seizures and an increase in international anti-trafficking collaborations that have provided for greater targeting of drug traffickers by sea.¹⁸

2.2 Australia

To date, three Australian states¹⁹ have laws in place decriminalising possession and use of cannabis.²⁰ In the review of analytical literature about the impact of decriminalisation on cannabis usage in Australia, we found: one study finding a significant increase in cannabis usage in decriminalised states;²¹ one study demonstrating a decrease in cannabis usage after decriminalisation;²² and four studies finding decriminalisation had

¹⁴ EMCDDA, 'Lifetime prevalence of drug use by age and country, most recent national general population survey available since 2000', Statistical Bulletin 2011, Table GPS-1, (<http://www.emcdda.europa.eu/stats11/gpstab1c>)

¹⁵ Hughes, Caitlin Elizabeth and Alex Stevens. 2010. What Can We Learn From The Portuguese Decriminalization of Illicit Drugs? *British Journal of Criminology* 50, pp. 999 at page 1008.

¹⁶ Hughes and Stevens at 1015.

¹⁷ Hughes and Stevens at 1010.

¹⁸ Hughes and Stevens at 1012-1013.

¹⁹ An early adopter of decriminalisation, some Australian states have had cannabis decriminalization schemes in place for nearly 25 years.

²⁰ Until August 2011, there were four decriminalised states. Western Australia repealed its decriminalisation policy then.

²¹ Damrongplasit, Kannika (with Cheng Hsiao and Xueyan Zhao). Decriminalization and Marijuana Smoking Prevalence: Evidence from Australia. *Journal of Business and Economic Statistics*, 28, 344-356

²² Fetherston, James and Simon Lenton., 2007. *Effects of the Western Australian Cannabis infringement Notice Scheme on Public Attitudes, Knowledge, and Use*. National Drug Research Institute. p.54.

no significant impact on cannabis usage prevalence.²³ Collectively, these studies suggest that cannabis decriminalisation in Australia has had a minor, if any, impact on cannabis usage.

Yet the decriminalised states have shown a capacity to keep individuals out of the criminal justice system. One study compared individuals given a cannabis enforcement notice (non-criminal response) in South Australia and individuals given a criminal sentence in Western Australia (pre-decriminalisation) and found that the individuals given criminal penalties were more likely to suffer negative employment, relationship, and accommodation consequences as a result of their cannabis charge and were more likely to come into further contact with the criminal justice system than the South Australia individuals.²⁴ The data also suggests decriminalisation can save States scarce fiscal resources as opposed to criminalisation policies.²⁵

2.3 Czech Republic

The Czech Republic decided to legislate to decriminalise drug possession after carrying out a cost-benefit analysis of the criminal system. After a two year project that was concluded in 2002, research found that:

1. Penalisation of drug use had not prevented the availability of illicit drugs;
2. There was an increase in the levels of drug use within the country;
3. The social costs of illicit drugs increased significantly.

As a result of this analysis, the Czech Republic formally decriminalised possession of illegal drugs in 2010. It is too soon to determine the impact of the new policy approach but it is interesting to see a country adopting a new model for addressing drug use based on an evidenced assessment of a criminal justice approach.

Based on the review undertaken by Release the evidence appears to support the position that the law enforcement approach taken has little impact on the levels of drug consumption within a country. The question that should then be asked is why pursue an expensive law enforcement approach that criminalises individuals creating significant harms in terms of employability and education.

²³ See Donnelly, Neil, Wayne Hall, Paul Christie. 1999. Effects of the Cannabis Expiation Notice Scheme on Levels and Patterns of Cannabis Use in South Australia: Evidence from the National Drug Strategy Household Surveys 1985-1995. Drug and Alcohol Services Council, South Australia; Lenton, Simon, Paul Christie, Rachel Humeniuk, Alisen Brooks, Mike Bennett, Penny Heale. 1999. Infringement versus conviction: the social impact of a minor cannabis offence under a civil penalties system and strict prohibition in two Australian States. Drug and Alcohol Services Council, South Australia. 1999; Lenton, Simon. 2000. Cannabis policy and the burden of proof: is it now beyond reasonable doubt that cannabis prohibition is not working? *Drug and Alcohol Review* 19; Single, Christi, Ali.

²⁴ McLaren, Jennifer and Richard P. Mattick. 2007., Cannabis in Australia: Use, supply, harms, and responses. National Drug and Alcohol Research Centre, University of New South Wales. p. 57 at p. 60.

²⁵ Single, Eric, Paul Christie and Robert Ali., 2000. The Impact of Cannabis Decriminalisation in Australia and the United States. *Journal of Public Health Policy*. Vol. 21, No. 2. pp. 167.

According to the European Monitoring Centre on Drugs and Drug Abuse the UK spends the highest proportion of GDP on 'the drug problem' and yet has some of the highest rates of drug use within Western Europe²⁶. It would certainly appear that the current strategy is not 'fiscally responsible' and that criminalising drug possession does not meet its aim of deterring use. In fact, research has shown that criminalisation plays a significant factor in stigmatising those who use drugs problematically and can therefore act as a deterrent in seeking treatment²⁷.

3. The failure of successive Governments to properly consider the advice of the ACMD

Successive governments have ignored or failed to act upon the advice of the ACMD. Evidence of this is well established and decisions relating to the reclassification of ecstasy and cannabis or to the debacle around mephedrone clearly demonstrate the weakness of the ACMD. A more benign example includes the ACMD's recommendation that foil be added to the list of paraphernalia exempted under section 9A of the MDA 1971. The recommendation was made by the ACMD in November 2010 - to date no action has been taken by the Home Secretary.

Policy should be based on evidence and the ACMD must be given a stronger mandate in developing the UK's drug strategy. However, recognition should be given to the lack of clarity as to the role of the ACMD. The MDA 1971 states that the Council is required to examine the harm associated with drugs yet there is no definition of harm which the ACMD can use to properly evaluate the impact of a substance on an individual or society.

The reality is that we have an arbitrary system where drugs are irrationally classified²⁸ within the three main groupings, where movement between those groupings based on evidence becomes impossible, and no consideration is given to possible alternatives for dealing with a substance.

Beyond the controversy over the role of scientific advice provided by AMCD is an underlying problem of government being prepared to base drug policy on the evidence. The Committee has referred to the report of the Global Commission on Drug Policy in this inquiry, the Home Office's rejection of the report was so quick and dismissive it ran the danger of sending the

²⁶ EMCDDA, November 2011, 2011 Annual report on the state of the drugs problem in Europe, page 22 (<http://www.emcdda.europa.eu/publications/annual-report/2011>)

²⁷ Lloyd C, August 2010, 'Sinning and Sinned Against: The Stigmatisation of Problem Drug Users', UKDPC, page 9 (http://www.ukdpc.org.uk/resources/Stigma_Expert_Commentary_final2.pdf)

²⁸ Nutt D Prof. et al., 'Drug harms in the UK: a multicriteria decision analysis', The Lancet, Volume 376, Issue 9752, Pages 1558 - 1565, 6 November 2010. Professor Nutt's paper clearly demonstrates how the classification system bears no resemblance to the hierarchy of harms associated with specific controlled drugs.

signal that any critique or suggested improvement of the current policy would not be given an evaluation based on merit.

A failure to base drug policy on evidence is linked to the perception that even the most minimal deviation from the existing policy is akin to abandoning any attempt at drug control, even when policy changes may in fact improve our ability to control both drug use and supply. This block on policy development has resulted in:

- A highly limited scope to piloting innovation and to further test the findings of successful pilots.
- Preventing police forces feeling free to focus resources on local priorities rather than policing drug possession.
- A failure to effectively tackle problematic drug use through joint working between the police, NHS and drug services.
- The ability for drug policy to be mainstreamed with other policy areas to seek outcomes that bring a wider benefit to society.

4. Misinterpretation of the role of the classification system as defined by the MDA 1971

As already indicated, the legislatures responsible for the MDA 1971 were vague when it came to defining the classification system and how the ACMD assessed the harm(s) of a particular drug. The Act states that drugs should be ‘controlled’ where it appears they ‘are being or appear to them [ACMD] likely to be misused and of which the misuse is having... harmful effects sufficient to constitute a social problem’²⁹. In recent years, the classification of drugs has been used to send ‘a message to young people’³⁰, this is an un-evidenced approach to drug policy and undermines the government’s credibility in terms of messaging the actual harms associated with a drug. This use of the classification system to send ‘messages’ was strongly criticised by the House of Commons Science and Technology Committee³¹.

5. Previous Committee’s advocating an alternative approach to tackling drugs

The past decade has seen increasing calls for a review of the current legal approach to tackling drug use in our society and greater acknowledgment of the failure of the current system. The Strategy Unit Drugs Report undertaken by No 10 in 2003 identified that ‘*the drugs supply market is highly sophisticated, and attempts to intervene have not resulted in sustainable disruption to the market at any level*’.

²⁹ Misuse of Drugs Act 1971, Section 1 (2), (<http://www.legislation.gov.uk/ukpga/1971/38/section/1>)

³⁰ ‘Gordon Brown: I overrule drugs advisors to avoid sending mixed messages to the young’, The Daily Mail, 3/11/09. (<http://www.dailymail.co.uk/news/article-1224830/Sacked-adviser-Nutt-wrong-risks-drugs-say-scientists.html>)

³¹ ‘Drug classification: making a hash of it? Fifth Report of Session 2005-06, House of Commons Science and Technology Committee. 6 Evidence base for classification (80) (<http://www.publications.parliament.uk/pa/cm200506/cmselect/cmsctech/1031/103109.htm#a24>)

This Committee's previous inquiry in 2002 recommended that the Government initiate a discussion within the CND of alternative ways to tackle the global drug dilemma.

In addition to the above are an increasing number of high profile figures who have added their voices to the calls for reform³².

Despite these calls for reform and the growing evidence demonstrating the failure of the current system there has been no significant change to the UK's drug policy in the last forty years.

Recommendations:

1. The Committee endorses a call for decriminalisation of drug possession.
2. A Royal Commission is established to look at drug legislation and policy reform within the UK and that an expert body is set up to participate in or advise the Commission on alternative models for tackling drugs.
3. The Committee calls for a full independent Impact Assessment of UK Drug Policy as recommended by Transform Drug Policy Foundation in their submission. As part of this process a Human Rights Impact Assessment should also be undertaken, Release would refer the Committee to the submission of the International Centre on Human Rights and Drug Policy which provides a detailed analysis of the human rights implications for this policy area.

³² Kofi Annan, former Secretary General of the United Nations, Cesar Gaviria, former President of Mexico, Ernesto Zedillo, former President of Mexico as well as other world leaders have all called for an end to the war on drugs, Report of the Global Commission on Drug Policy, June 2011. In the UK former Chairman of the Bar Council, Nicholas Green QC called for a review of UK drug policy and Sir Ian Gilmore Former Chair of the Royal College of Physicians has called for drug possession to be decriminalised.