TRANSFORM Drug Policy Foundation

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Release Drugs, The Law & Human Rights

EuroNPUD European Network of People who Use Drugs

The Right to Recovery Bill Consultation: Response from Cranstoun, Transform Drug Policy Foundation and Release

This is a joint response to the Scottish Conservatives consultation for the Right to Addiction Recovery (Scotland) Bill'[1] which is being proposed within the Scottish Parliament as a potential act of law.

Introduction

While we recognise the good intentions those proposing this Bill have, in its current form we cannot support it. Our main concerns are highlighted in this response.

The Bill and the consultation falls short by leaving questions unasked or unanswered, and by appearing to aim towards the attainment of a drug free society - something that is impossible to achieve, and the pursuit of which has harmfully distorted policies around the globe. In Scotland, we have previously seen how these strategies can negatively impact the role of medication assisted recovery and treatment, while encouraging stigma around opiate substitute treatment.

Throughout the text there is an evident skew towards favouring a right to access certain types of treatment and health intervention options (specifically; abstinence based rehab and detox services) and marginalisation or absence of others (specifically; a group of interventions commonly grouped under 'Harm Reduction'[2], including needle and syringe programs, substitute prescribing, supervised consumption facilities, drug checking services, heroin assisted treatment etc).

Statements such as:

'[Scotland] fixates on treating problems like heroin use by increasing methadone prescriptions instead of rehabilitation and recovery programmes' , and 'The key aim of treatment must be to wean those who suffer from addiction off the substance which they are dependent on' reflects this narrow viewpoint. While "short-term residential rehabilitation, long-term residential rehabilitation, community based rehabilitation, residential detoxification, community-based detoxification" are all mentioned, notably the phrase 'harm reduction' only appears once in the document, in reference to Scotland's 2008 drug strategy. This is despite Harm Reduction being a policy paradigm pioneered in the UK, and now established as best practice across the UN system,

[1] https://www.parliament.scot/bills-and-laws/bills/proposals-for-bills/proposed-right-to-addiction-recovery-scotland-bill

[2] Harm reduction refers to policies, programmes and practices that aim to minimise negative health, social and legal impacts associated with drug use, drug policies and drug laws. For a summary of Harm Reduction, and its history, see https://www.hri.global/what-is-harm-reduction

explicitly featuring in the national drug strategies of 98 UN member states.[3] Yet this Bill contains no reference to a right to harm reduction services, beyond the occasional mention of substitute prescribing.

A full range of treatment and harm reduction services all have important roles in Scotland's drug response, but decisions about appropriate treatment need to be made by clinicians and service users based on evidence of best practice, absent of external political or ideological pressures. A commitment to the right to health should be absolute, but decisions on best practice are rightly the domain of practitioners not politicians.

Policy making needs to ensure service providers meet people who use drugs where they actually are, not where people may wish they were. Otherwise interventions risk being inappropriate for many - and may even have harmful unintended consequences. For example, in Scotland, most problematic drug use and the majority of drug related deaths involve poly drug use.[4] The needs of these people have been overlooked in Scottish drug policy historically, and specifically, the types of rehab and detox emphasised in the consultation will often not be relevant or appropriate for addressing the complex needs of many among these populations. When opiate users leave a rehab facility with no/lower tolerance to opioids there is a particular risk of them dying if they relapse. We need to be very careful we are not detoxing people merely for them to overdose upon leaving rehab. As Public Health England put it; 'poor recovery-orientated practice could put people at greater risk [of death]'.[5]

More broadly, there appears to have been little serious attempt to assess the Bill's likely actual impacts, or possible unintended consequences, which is in itself a concern.

Making service provision in the proposed Bill balanced

The current measures in the Bill are unbalanced. We would urge that focus must be placed on key protective factors to reduce harm, to support a reduction in drug deaths and allow people to live healthier lives.

With that in mind, the following proven harm reduction measures currently missing must as a bare minimum be included and given equal weighting with abstinence based approaches if the Bill proceeds: heroin assisted treatment[6], overdose prevention centres (safer injection facilities)[7], long term optimal dose methadone prescribing, benzodiazepines prescribing, drug checking services[8], and access to housing that has safer use policies in place[9]. There is also no mention of supporting diversion schemes[10] proven to help reduce harms to individuals and communities. Diversion both reduces the threat of criminalisation as well as providing a pathway for vulnerable individuals to access services. While formal *de jure* decriminalisation of people who use drugs is not currently within the Scottish Government's power, it should be referred to as an aspiration given that harms resulting directly and indirectly from criminalisation are a key aspect of what we, drug user networks, and most academics and professionals feel must be addressed. Criminalisation is acknowledged as an obstacle to

[3] 'The Global State of Harm Reduction 2020', HRI, (2021) https://www.hri.global/global-state-of-harm-reduction-2020

[4] 'Drug-related deaths in Scotland in 2020', NRS, (30 July 2021) https://www.nrscotland.gov.uk/files/statistics/drug-related-deaths/20/drug-related-deaths-20-pub.pdf

[5] 'Understanding and preventing drug-related deaths', PHE, (2016) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/669308/Understanding_and_preventing_drug_related_deaths_report.pdf

[6] Heroin Assisted Treatment https://transformdrugs.org/drug-policy/uk-drug-policy/heroin-assisted-treatment

[7] Overdose Prevention Centres/Supervised |Drug Consumption Rooms https://transformdrugs.org/drug-policy/uk-drug-policy/overdose-prevention-centres

[8] 'Drug Checking Works', Prof Fiona Measham and Gavin Turnbull (2021) https://transformdrugs.org/blog/drug-checking-works-new-evidence-from-the-loop/?amp

[9] For example the 'Housing First' model backed by both the Scottish and UK Governments https://www.crisis.org.uk/ending-homelessness/the-plan-to-end-homelessness-full-version/solutions/chapter-9-the-role-of-housing-first-in-ending-homelessness/#:~:text=The%20Housing%20First%20model%20prioritises%20getting%20people%20quickly%20into%20stable%20homes.&text=It%20focuses%20on%20first%20giving,with%20complex%20and%20multiple%20needs

[10] For information and links to evidence underpinning police drug offence diversion schemes see https://transformdrugs.org/drug-policy/uk-drug-policy/diversion-schemes

treatment access, while decriminalisation is backed by all 31 UN Agencies[11] and acknowledged by the World Health Organization as a 'critical enabler' of service access[12].

To focus on Opioid Substitution Treatment (OST) in particular, on the Scottish Conservative website which promotes this consultation, a statement reads: "*The SNP's system for treating addiction is simply not fit for purpose. It focuses on treating problems like heroin use by increasing methadone prescriptions, rather than by rehabilitation and recovery programmes.*"[13]

We fundamentally disagree with this statement. One of the key measures to save lives and reduce both individual and societal harms from illegal drugs should be increasing access to methadone (and buvidal and diamorphine) prescribing - less than 40% of people who require it are connected to any form of treatment in Scotland (compared with 60% in England and Wales, itself too low). Yet getting people into OST is the globally recognised gold standard way[14] [15] to reduce drug death risk, underpinned by a huge body of evidence. One of the key goals of Scottish drug policy must be to get more people into optimal level substitute prescribing. In many cases that will involve increasing current dosing for those in treatment already, which provides stability and reduces the need to rely on supply from criminal gangs and dangerous illicit use. This is not properly addressed, and should be central to the Bill.

Costings

While the Bill suggests costs shouldn't be capped but met according to need, no attempt we are aware of has been made to assess what those costs would be. Drug treatment services, we agree, have been underfunded in Scotland. However, unless funding is unlimited, there is a risk a law so heavily focussed on rehab would end up taking money away from the harm reduction and treatment system. In the event of providers lacking the funds to deliver every desired intervention, who would decide who got priority, and using what criteria?

A further unintended consequence could be that if people don't get what they want, and seek legal remedy, the resulting legal costs (presumably payable for both sides if treatment providers lose) ends up taking considerable funds out of the system, reducing the available money for treatment. How would this risk be mitigated against, and what are the estimated costs from legal actions?

Fair access and distorting clinical decisions

If people can take legal action to ensure their desired service access, how will fair access for the most vulnerable be protected? It is widely accepted that in society, more privileged public service users with higher social and cultural capital (education, networks, skills and resources) are better at negotiating with service providers. If people can, and indeed are encouraged to take or threaten legal action by this Bill, how will fair access for the most vulnerable, who lack this social capital, be protected? There are those who won't want to take legal action because they are intimidated by the system, or are not in a position to do so even if they wished to. The Bill could result in entrenching privileged access, by handing people with higher cultural capital a new legal tool while leaving the most vulnerable even more disadvantaged as resources are skewed away from them.

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[11] UN Systems Chief Executives Board for Coordination Position Statement (2018) https://unsceb.org/sites/default/files/imported_files/CEB-2018-2-SoD.pdf

[12] 'Consolidated guidelines on HIV prevention, diagnosis, treatment and care for key populations' WHO, (2014) https://www.who.int/publications/i/item/9789241507431

[13] https://www.scottishconservatives.com/policies/our-right-to-recovery-bill/

[14] 'Risk factors for mortality, hospitalisation and imprisonment in substance misuse patients', Colette Montgomery Sardar et al, The Pharmacy Journal, (2018) https://pharmaceutical-journal.com/article/research/risk-factors-for-mortality-hospitalisation-and-imprisonment-in-substance-misuse-patients

[15] "There are a number of evidence-based approaches that can be used to reduce the risk of death among people who use opioids. The strongest evidence supports the provision of opioid substitution treatment (OST) of optimal quality, dosage and duration." Advisory Council on the Misuse of Drugs, 'Reducing Opioid-Related Deaths in the UK' (2016) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/576560/ACMD-Drug-Related-Deaths-Report-161212.pdf

We also think there is a risk the Bill if Enacted could distort clinical decisions as experience in other areas suggests those under threat of legal action will become more risk averse, and shape their decisions to avoid legal action, perhaps even delivering suboptimal treatment options and outcomes to those who do get what they want.

Legal detail

The consultation does not provide legal clarity on what remedies would be available where a breach of statutory duty has occurred. It does not provide any detail on who would be held liable, when a breach would occur, and what the standard of liability would be. There are already a number of legal routes someone could take against a provider where harm has been caused, for example an action for negligent conduct or, in the case of concerns of how a decision affecting a person has been reached, through an action for judicial review. The problem is not the lack of legal protection, it is about people being empowered to take that action and fully supported throughout that legal process. The devil is in the detail, and unfortunately, the detail is absent from this consultation.

Conclusion

Ultimately we feel that although well-intentioned, this Bill would, as written, cause more harm than good if it became law. It also risks further fuelling a harm reduction *or* recovery debate that is both unhealthy and damaging to those people trying to access help, rather than a useful discussion about where the optimum combination of both approaches lies.

We have heard many times from campaigners that "people cannot recover if they are dead". We note that a considerable amount of money has been ring-fenced for residential rehabilitation, and that £11 million has just been awarded to two drug rehab projects. We firmly believe that while residential rehabilitation is one important element of the system which we fully support, we now also need a bigger focus on safe supply and harm reduction for those unwilling or unable to stop using drugs - something that has been lost both in Scotland and across the UK over the last decade. We now have to do things differently to make a real impact on reducing drug related deaths.

So while welcoming the commitment to improving services and service access, we cannot support the 'Right to Addiction Recovery (Scotland) Bill' in its current form due to a combination of concerns around legal, financial, and balancing of content issues.

Instead, we call on the Scottish Conservatives to work cross-party in the Scottish Parliament and with the wider sector to ensure the Scottish Government delivers a fully funded, balanced approach to drugs for all who need it as soon as possible. This should include residential rehabilitation, implementing the new Medically Assisted Treatment standards in full; rolling out heroin assisted treatment, and Housing First and safer use in hostels. And to ensure that there is enough good education, treatment and other support capacity for everyone diverted via drug diversion schemes as announced by the Lord Advocate. We would also like all parties, and particularly the Scottish Conservatives to encourage the UK Government to remove barriers to the opening of Overdose Prevention Centres, and to implement decriminalisation to stop the revolving door of prison and punishment for those with a substance use issue.

We hope to continue to work with people and organisations from across the recovery and treatment spectrum, on our shared mission of reducing drug related harms and deaths in Scotland.

Notes

Release is the UK's centre of expertise on drugs and drug laws, providing free and confidential legal and drug services to people who use drugs and/or those caught up in the criminal justice system. The organisation campaigns for evidence-based drugs policies and for reform of the UK's current drug policy, with a specific call for

the end of criminal sanctions for possession offences. Release has Consultative Status with the UN Economic and Social Council.

Transform Drug Policy Foundation is a UK based organisation that operates nationally and internationally, advising and supporting governments, national and local bodies, including holding ECOSOC Special Consultative Status at the UN. We seek a world where drug policy promotes health, protects the vulnerable and puts safety first.

Cranstoun offer a wide range of services, including substance use services, housing support, specialist services for young people and families and carers, domestic abuse services and criminal justice provision.
Our skilled and compassionate teams work with service users, families and communities, helping them to make positive changes. We've been making a difference since 1969 by combining our expertise with innovative approaches and putting people at the heart of what we do.

EuroNPUD has evolved in order to challenge the widespread misinformation, discrimination and marginalisation of people who use drugs in communities throughout the European Union. As part of a long and proud history of drug user organising in Europe, EuroNPUD aims to provide a platform for networks and groups from across the EU to act collectively on issues of political and social importance

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