UKDPC

UK DRUG POLICY COMMISSION

Response to Liberal Democrat Conference motion on drug harms

(to be debated Sunday 18 September)

Briefing
September 2011

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The UK Drug Policy Commission (UKDPC) is an independent body providing objective analysis of evidence related to UK drug policy. It aims to improve political, media and public understanding of drug policy issues and the options for achieving an effective, evidence-led response to the problems caused by illegal drugs.

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The UKDPC brings together senior figures from policing, public policy and the media along with leading experts from the drug treatment and medical research fields:

A motion[1] will be debated at Liberal Democrat Conference on Sunday 18th September 2011, which calls for the government to:

- Establish a panel to:
    - Review the impact of the Misuse of Drugs Act and the legal framework
    - Consider reform of the law based on the Portuguese model (ie decriminalisation of all controlled drugs for personal possession)
    - Consider a regulated cannabis market
- Provide evidence-based services for those affected by drug problems including the widespread availability of heroin maintenance clinics for the most problematic and vulnerable heroin users

(see Appendix for full text of the motion)

The UK Drug Policy Commission welcomes the commitment in the motion to an evidence-based drug policy and supports the call for the drug legislation to be reviewed. While the Commission supports the general thrust of the motion, it has reservations about some aspects of the proposers' conclusions and the potential impact of their proposals.

EFFECTIVENESS OF UK DRUG POLICY

"IV. the UK's drugs policy is not only ineffective and not cost-effective but actually harmful"

The UKDPC believes this statement is too broad a generalisation. Drug policy is not simply about the law and enforcement of it. In the motion drug policy appears to be understood as being principally related to the legal status of controlled substances, ie whether use/possession/supply/production of certain substances is subject to criminal sanction. However, this narrow perspective ignores the wide range of factors, such as social deprivation and inequalities, family circumstances and adverse life events, that influence the harms caused by drugs (as recognised in one of the proposed amendments).

Over the last decade, in many Western countries with established drug problems, there has been a general decline in the levels of use of many controlled drugs.[2] This has occurred regardless of each country's overall approach to control (whether stringent or more relaxed), indicating that the decision to criminalise or de-penalise drug use has only a limited impact on overall levels of use. Other social and environmental factors may be equally important.

However, other aspects of a country's drug policy can and do have a significant impact on the harms caused by controlled substances. For example, public health measures such as the provision of syringe and needle exchange in the UK led to a much lower rate of HIV infection than occurred in other countries that did not introduce such schemes to the same extent.

Similarly, treatment for people with drug addictions has been shown to be cost effective[3] and the use of methadone as a treatment for heroin users in the UK has reduced the level of harm caused by opiate dependency to users and communities (eg less crime and improved health). The growing provision of naloxone to reverse the effects of accidental heroin overdose is also helping to save the lives of some heroin users. As the motion acknowledges

[1] http://www.libdems.org.uk/siteFiles/resources/docs/conference/Aut11%20agenda%20book.pdf
[2] http://www.emcdda.europa.eu/publications/annual-report/2010; http://www.unodc.org/documents/frontpage/UNODC_Annual_Report_2010_LowRes.pdf
[3] http://www.nao.org.uk/publications/0910/problem_drug_use.aspx

later, trials of heroin-assisted treatment have proved to have positive impacts both in the UK and elsewhere. Education and prevention efforts have also helped young people to become more informed about substances.

It is also the case there is evidence that certain types of enforcement activity may be able to reduce community harms from certain types of crime.[4]

This is not to say that there are not legitimate concerns about the unintended negative consequences of some aspects of UK drug policy. For example, large numbers of people are being given criminal records for relatively modest non-violent offences; deaths from overdoses are relatively high in the UK, especially for those leaving prisons; and the cost of enforcement by the police and criminal justice system on a wide range of drug-related offences restricts their ability to pursue other crimes.

Nevertheless, it is misleading to state without some of the qualifications above that the UK's drug policy is *'ineffective and harmful'.*

It may indeed be the case that the current legal status of controlled drugs in the UK has disadvantages, and that it could be improved (see below "Consideration of the Portuguese model"). As UKDPC research has illustrated,[5] there are often unintended consequences from the enforcement of controlled drugs. However, it would be a serious mistake to assume both that the legal status is the only important factor that influences the harms caused by drugs, and that the UK's current drug policy is a 'complete failure'.

ESTABLISHMENT OF ANOTHER INDEPENDENT PANEL

"1. The Government to immediately establish an independent panel tasked with carrying out an Impact Assessment of the Misuse of Drugs Act 1971"

UKDPC agrees that some recent international developments in drug policy, especially the Portuguese approach and initiatives elsewhere in Europe and in South America, have provided useful evidence that is worthy of more detailed consideration.

In principle, UKDPC sees merit in more rigorous impact assessments of various aspects of drug policy including the application of the underpinning legislation. However, one major obstacle to a meaningful Impact Assessment of the Misuse of Drugs Act at this point is the absence of adequate research into the efficiency and effectiveness of various elements of national drug policy.

There are glaring gaps in the evidence base, making any Impact Assessment very difficult to undertake with the current state of knowledge. More important in the medium term is to ensure there is more and better robust research and independent analysis to lay the foundations for such an impact assessment. In 2007, UKDPC called on the then Labour government to introduce a new 'knowledge development' pillar in its drug strategy. [6] Unfortunately the government failed to do this. The same shortfall in robust evidence across

[4] UKDPC, Tackling Drug Markets and Distribution Networks in the UK: a review of the recent literature, 2008
[5] UKDPC, Refocusing Drug-Related Law Enforcement to Address Harm, 2009
[6] UKDPC, Response to the UK Government's Drug Strategy Consultation Paper, October 2007

drug policy remains, something the National Audit Office and the Commons Science & Technology Committee similarly commented on.[7] [8]

It is important also to note that in recent years there have been other highly regarded wide-ranging inquiries into UK drug policy that have provided important and detailed conclusions. Among others these include the 2000 Police Foundation Independent Inquiry into the Misuse of Drugs Act[9], the government's Foresight Drugs Futures 2025 project (2005)[10], the 2007 RSA Commission on Illegal Drugs, Communities and Public Policy[11], the Academy of Medical Sciences' 2008 report "Brain science, addiction and drugs"[12], and of course, reports from the Advisory Council on the Misuse of Drugs.[13] There have also been numerous other studies on specific areas of drug policy, including reports published by UKDPC since 2007.[14]

The findings of these independent inquiries and reports remain valid, and there is a danger of duplicating previous work. It is UKDPC's view that another independent panel, if it reaches conclusions broadly similar to other bodies, runs the risk of being marginalised or ignored by policymakers.

In order to move beyond the conclusions of these reports, there is a need for a comprehensive research programme to build a solid knowledge base about the effectiveness of current drug policies, and to test new approaches. How this can best be achieved will be one part of a review of the governance of drug policy in the UK that UKDPC is embarking upon, because the way we make drug policy in the UK is in serious need of review and reform.

CONSIDERATION OF THE PORTUGUESE MODEL

2. "The panel also to consider reform of the law, based on the Portuguese model, such that:
a) Possession of any controlled drug for personal use would not be a criminal offence.
b) Possession would be prohibited but should cause police officers to issue citations for individuals to appear before panels tasked with determining appropriate education, health or social interventions."

From the analysis of available evidence, UKDPC concludes on balance that a gradual move towards ceasing the use of criminal sanctions for personal possession cases is *un*likely to lead to a significant increase in the usage of controlled drugs. Alternative control methods could include either no sanctions or perhaps civil sanctions or fines for personal possession, as

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[7] NAO, op cit
[8] House of Commons Science & Technology Committee, 5th Report *'Drug classification: making a hash of it?* 2006; HC 1031
[9] The Police Foundation, The Independent Inquiry into the Misuse of Drugs Act, 2000, http://www.police-foundation.org.uk/site/police-foundation/latest/independent-inquiries/inquiry-into-the-misuse-of-drugs?
[10] BIS, Drugs Futures 2025, 2005 http://www.bis.gov.uk/files/file15418.pdf
[11] RSA, Drugs – Facing Facts, 2007 http://www.thersa.org/projects/past-projects/drugs-commission/drugs-report#report
[12] AMS, Brain science, addiction and drugs, 2008, http://www.acmedsci.ac.uk/p99puid126.html
[13] http://www.homeoffice.gov.uk/drugs/
[14] http://www.ukdpc.org.uk, particularly, UKDPC/Demos, Taking Drugs Seriously, 2011

happens in some other countries.[15] We note that the Advisory Council on the Misuse of Drugs has also suggested that this be examined.[16]

The impacts of the reform of the Portuguese drug laws on level and associated harms of drug use have been widely debated[17] and the impacts have been disputed.[18] However, despite the disagreements it is clear that the change to the law has not been the disaster that some predicted it would be. Drug use in Portugal has certainly not increased greatly, nor does it seem the country has become a major destination for tourists seeking easy access to drugs.[19]

However there continue to be some ongoing public health concerns in Portugal, especially about blood borne virus infections. Equally, the current experience in the Netherlands, where the policy of 'administrative expediency' (ie the coffee shops) is in the process of being tightened, indicates that a less strict approach can lead to unintended negative consequences.

In spite of this, the main benefit of this approach if adopted would likely be the reduction in the harms associated with the criminalisation of many drug users. This includes the consequences for employment prospects of the acquisition of a criminal record, and the likelihood that some drug dependent users currently do not seek treatment because they are concerned about possible punishment from the authorities.

But to put things in perspective, it should be noted that the current UK approach is not one of 'strict' legal enforcement in the usual sense of the term. Relatively few drug users are incarcerated for simple possession offences. Between 2007-9, only 6% of those convicted of possession of a class A substance were given a jail sentence. However, it does remain the case that those convicted have acquired a criminal record.

With the introduction of Cannabis Warnings and Penalty Notices for Disorder, the UK has, de facto, started to move towards practical de-penalisation and decriminalisation for low-level cannabis possession. This is perhaps not surprising given the drug is so widespread, but for the same reason the likelihood of a cannabis user being caught is still small so the deterrent value may be limited. However, it appears many people are still prosecuted and fined for cannabis possession, with associated resource implications. Under planned new Temporary Banning Orders for new drugs, those found in possession of smaller amounts will not be prosecuted.

It should not be anticipated that the decriminalisation of personal possession would allow a significant abatement of overall enforcement activity. Much police, SOCA and Border Agency time and resource is devoted to tackling the middle- and higher-level drug markets and the associated organised crime. It is questionable that there would be any substantial saving in cost or time from such a 'modest' law reform. In reality, most drug-related offenders in the UK are convicted for drug-related crimes such as acquisitive crime, rather than for personal possession. As long as production and supply continued to be subject to criminal sanctions,

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[15] Police Foundation (op cit); EMCDDA country reports
[16] ACMD submission to the Drug Strategy 2010 http://www.homeoffice.gov.uk/publications/drugs/acmd1/acmd-response-drug-strategy-2010?view=Binary
[17] For example: Alex Stevens, What can we learn from the Portuguese decriminalization of illicit drugs?, Br J Criminol (2010) 50 (6): 999-1022.
[18] For example: http://www.cps.org.uk/index.php?option=com_content&view=article&id=555:drug-decriminalisation-the-new-orthodoxy&catid=4:social-policy&Itemid=42
[19] http://www.cato.org/pubs/wtpapers/greenwald_whitepaper.pdf

as proposed, enforcement actions against producers, traffickers and dealers would likely remain a high priority for police and the new National Crime Agency.

An important element of the Portuguese approach was an open political and public debate about the issues of drug dependency, and the challenges facing those in recovery and their families, set against the backdrop of the costs to the taxpayer of repeat imprisonment. The stigma experienced by drug users and families is a major barrier to recovery in the UK;[20] the adoption of an alternative approach could incorporate responses to this issue in addition to any legal changes.

Perhaps the most important element of any move to decriminalisation of drug possession along the lines of the Portuguese model would be the support offered to those diverted to treatment, and to their families. In recent years the UK's drug treatment system has been greatly expanded to enable easier access to treatment, a notable proportion of which is now through the criminal justice system. This system is now undergoing increasing financial pressure. These pressures would need to be resisted and the system would need to continue to offer treatment services to meet all demand if this model of legal reform were to be adopted. In any event, recovery from drug dependency and addiction also requires other factors that hinder recovery to be addressed, including reducing stigma[21] and removing barriers to employment and accommodation.[22]

In view of these points, UKDPC concludes that the lessons from the Portuguese and other public health oriented models are worthy of serious consideration for the UK. Subject to continued resourcing of activities to control drug supply, and support for extensive treatment services, the decriminalisation of personal drug possession offences could reduce some of the harms associated with current law enforcement without causing serious negative consequences.

As proposed in the 2011 report *Taking Drugs Seriously*[23], it would be desirable to move towards an approach to control of all substances (including those currently controlled, and newly developed substances) that uses a consistent framework, and makes use of the full range of control measures available to authorities.

REGULATED CANNABIS MARKET

"3. The panel also to consider as an alternative, potential frameworks for a strictly controlled and regulated cannabis market and the potential impacts of such regulation on organised crime, and the health and safety of the public, especially children."

This proposal would move beyond the Portuguese approach of decriminalising personal possession, and would allow cannabis to be supplied and possessed legally within constraints similar to those used to regulate the supply of substances like alcohol, tobacco and perhaps prescribed medicines.

In a number of other countries, various 'back-door' approaches to the distribution of cannabis for personal consumption have emerged in recent years. The long-standing administrative

[20] UKDPC, Sinning & Sinned Against: The Stigmatisation of Problem Drug Users, 2010
[21] Ibid
[22] UKDPC, Working Towards Recovery, 2008
[23] UKDPC/Demos, Taking Drugs Seriously, 2011

expediency approach in the Netherlands is well known, although as noted above steps are being taken to restrict sales to Dutch residents only. In Spain there is a growing number of cannabis clubs.[24] In the USA, a number of states now allow the production and sale of cannabis for medicinal purposes.

The most comprehensive and up to date analysis of the pros and cons of the arguments about cannabis control are in the Beckley Foundation's Global Cannabis Commission Report. [25] This report acknowledged the potential health, social and economic harms of cannabis, but concluded, "*Control regimes that criminalize users are intrusive on privacy, socially divisive and expensive. Thus it is worth considering alternatives."*

In looking for alternatives, the Global Commission concluded:

"There are four main choices for a government seeking to make cannabis available in a regulated market in the context of the international (drug) conventions:

(1) In some countries (those that follow the expediency principle), it is possible to meet the letter of the international conventions while allowing de facto legal access. The Dutch model is an example. If a nation is unwilling to do this, there are three routes which are the most feasible:

(2) Opting for a de jure regulated availability regime which frankly ignores the conventions. A government that follows this route must be prepared to withstand substantial international pressure.

(3) Denouncing the 1961 and 1988 conventions, and re-acceding with reservations with respect to cannabis.

(4) Along with other willing countries, negotiating a new cannabis convention on a supra-national basis."

The Global Commission went on to say, "*The record is mixed concerning whether making cannabis use and sale legal in a highly regulated market would lead to increased harm from cannabis use in the long run. Experience with control regimes for other psychoactive substances (alcohol & tobacco) teaches that lax regimes and allowing extensive commercial promotion can result in high levels of use and of harm, while stringent control regimes can hold down levels of use and of harm."*

The report recommended that *"The principal aim of a cannabis control system should be to minimize any harms from cannabis use. In our view this means grudgingly allowing use and attempting to channel such use into less harmful patterns (e.g. by delaying onset of use until early adulthood, encouraging all users to avoid substantial daily use, driving a car after using, and smoking cannabis mixed with tobacco)."*

UKDPC supports this approach, particularly considering the protection of children and young people, and would also urge better help and support for those who develop problems with using cannabis.

But, within the parameters of the international conventions, there is room for manoeuvre as to how the UK government can respond to cannabis control. In particular UKDPC shares the Global Cannabis Commission's conclusion that *"there is no justification for incarcerating an individual for a cannabis possession or use offense, nor for creating a criminal conviction".*

[24] http://www.idpc.net/publications/tni-cannabis-social-clubs-in-spain
[25] Beckley Foundation, The Global Cannabis Commission Report, 2008

However, moving beyond these modest steps (ie de-penalisation and decriminalisation) may well bring the UK government into conflict with the international drug treaty control system. As well, public opinion in the UK is divided about the wisdom of moving to a different control regime, although various survey findings will be used by those in opposing camps to support their particular arguments.

HEROIN MAINTENANCE CLINICS

"5. ...services should include widespread availability of heroin maintenance clinics for the most problematic and vulnerable heroin users"

Professor John Strang, a UKDPC Commissioner, led the review of the Heroin Assisted Treatment trials in England examining the efficacy of prescribing clinical heroin to a discrete group of drug users for whom other treatments had not been successful.

Elsewhere in the UK, patients with heroin dependency are currently offered methadone or buprenorphine as part of medically assisted treatment programmes, both in prisons and in community services. This has been shown through substantive international research to improve health and wellbeing of users, and to reduce crime rates.[26]

However, some people with severe addiction problems are unable to sustain engagement with traditional treatment programmes. In view of this, the National Treatment Agency and Department of Health supported a clinical trial whereby a small number of patients are prescribed diamorphine (heroin) instead of methadone. The medical trial, RIOTT (Randomised Injecting Opioid Treatment Trial), is measuring the effectiveness and consequences of diamorphine prescription.[27] Such programmes have also been operating in other countries for some years.[28]

For those patients with opiate use problems who do not respond effectively to methadone or other treatment and who might benefit from diamorphine, there is a good argument for its use. It is difficult to see why we should accept the prescribing of methadone, but would not accept the prescribing of diamorphine, other than on the basis of cost.

Currently the availability of diamorphine prescription is very limited and directed towards those with opioid dependence for whom other treatments have not proved successful. From the accumulating evidence there is a good case for expanding the treatment so that it is available to all of those patients who would benefit. This should be informed by the results of clinical trials, and should be just an adjunct to other treatment and recovery services for those who have a particular requirement for this type of treatment who then may progress on to other services. It would be particularly important to ensure that prescribed diamorphine is sufficiently controlled to avoid its becoming widely available on the illicit market. The model of supervised injecting that is currently being trialled is important in this respect and may also be a key component of successful outcomes.

[26] http://www.nice.org.uk/TA114
[27] http://www.iop.kcl.ac.uk/news/default.aspx?id=409&
[28] http://idpc.net/sites/default/files/library/Heroin%20Briefing%20Paper%20July%202010.pdf

APPENDIX - LIBERAL DEMOCRAT AUTUMN CONFERENCE 2011

16.40 Sunday 18 September Policy motion

Chair: Andrew Wiseman (Chair, Federal Conference Committee)
Aide: Baroness Doocey AM (London)

F20 Protecting Individuals and Communities from Drug Harms

Glasgow South, Liberal Youth and 23 conference representatives
Mover: Ewan Hoyle; Summation: Sir Graham Watson MEP

Conference notes:

I. That drugs are powerful substances which can have serious consequences for the individual user and society in general; and that it is therefore right and proper that the state should intervene to regulate and control the use of such substances as it does the consumption of legal drugs such as alcohol and tobacco and both prescription and over-the-counter medicines.

II. That the misuse of drugs can blight the lives of individuals and families and the purchase of illegal drugs can help to fuel organised crime.

III. The need for evidence-based policy making on drugs with a clear focus on prevention and harm-reduction.

IV. That there is increasing evidence that the UK's drugs policy is not only ineffective and not cost-effective but actually harmful, impacting particularly severely on the poor and marginalised.

Conference further notes:

i) The positive evidence from new approaches elsewhere, including Portuguese reforms that have been successful in reducing problematic drug use through decriminalising possession for personal use of all drugs and investing in treatment programmes.

ii) That those countries and states that have decriminalised possession of some or all drugs have not seen increased use of those drugs relative to their neighbours.

iii) That heroin maintenance clinics in Switzerland and the Netherlands have delivered great health benefits for addicts while delivering considerable reductions in drug-related crime and prevalence of heroin use.

iv) The contribution of the Advisory Council on the Misuse of Drugs to the 200 Drug Strategy consultation which states that "people found to be in possession of drugs (any) for personal use (and involved in no other criminal offences) should not be processed through the criminal justice system but instead be diverted into drug education/awareness courses or possibly other, more creative civil punishment".

v) The report of the Global Commission on Drug Policy whose members include former UN Secretary General Kofi Annan, former heads of state of Colombia, Mexico, Brazil and Switzerland, the current Prime Minister of Greece, a former US Secretary of State and many other eminent world figures, which encouraged governments to consider the legal regulation

of drugs in order to, "undermine the power of organised crime and safeguard the health and security of their citizens".

vi) That the United Kingdom remains bound by various international conventions and that any re-negotiation or new agreements will require international co-ordination.

Conference believes that:

A. Individuals, especially young people, can be damaged both by the imposition of criminal records and by a drug habit, and that the priority for those addicted to all substances must be healthcare, education and rehabilitation, not punishment.

B. Governments should reject policies if they are demonstrated to be ineffective in achieving their stated goals and should seek to learn from policies which have been successful.

C. At a time when Home Office and Ministry of Justice spending is facing considerable contraction, there is a powerful case for examining whether an evidence-based policy would produce savings, allowing the quality of service provided by these departments to be maintained or to improve.

D. One of the key barriers to developing better drugs policy has been the previous Labour Government's persistent refusal to take on board scientific advice, and the absence of an overall evaluative framework of the UK's drugs strategy.

E. The Department of Health and devolved equivalents should take on a greater responsibility for dealing with drugs.

Conference calls for:

1. The Government to immediately establish an independent panel tasked with carrying out an Impact Assessment of the Misuse of Drugs Act 1971, to properly evaluate, economically and scientifically, the present legal framework for dealing with drugs in the United Kingdom.

2. The panel also to consider reform of the law, based on the Portuguese model, such that:

a) Possession of any controlled drug for personal use would not be a criminal offence.

b) Possession would be prohibited but should cause police officers to issue citations for individuals to appear before panels tasked with determining appropriate education, health or social interventions.

3. The panel also to consider as an alternative, potential frameworks for a strictly controlled and regulated cannabis market and the potential impacts of such regulation on organised crime, and the health and safety of the public, especially children.

4. The reinvestment of any resources released into effective education, treatment and rehabilitation programmes.

5. The widespread provision of the highest quality evidence-based medical, psychological and social services for those affected by drugs problems; these services should include widespread availability of heroin maintenance clinics for the most problematic and vulnerable heroin users.