

Crime and the Criminal Justice System: Substance Misuse

an Ideas Wales Policy Discussion Paper

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1. Background:

In 1998 the UK government introduced a 10 year drug strategy, *Tackling Drugs to Build a Better Britain* (HMSO 1998). This document was supported by the appointment of an Anti-Drugs Co-ordinator (Drug Czar) to oversee the implementation of this strategy. Two years later Wales introduced its own long-term strategy, *Tackling Substance Misuse in Wales: A Partnership Approach* (National Assembly for Wales 2000). This document represented a more forward thinking approach that: included alcohol; recognised the need to tackle social inclusion; and sought to address the substance misuse problem through multi-agency partnerships. In 2008 the Welsh Assembly Government introduced a new 10 year substance misuse strategy, *Working Together to Reduce Harm* (Welsh Assembly Government 2008), which provided a clear national agenda for tackling and reducing the harms associated with substance misuse across Wales.

2. Principles that should inform Future Policy and Practice

It should be recognised that there is a difference between substance use and misuse. As far as substance misuse policy and practice are concerned, it is helpful to be clear about what we already know in relation to the use of substances (which includes illicit and licit drugs) in the general population, ‘what works’ and ‘what makes sense’. For the sake of clarity these are set out below.

- i. Substance use and misuse is not confined to illegal substances – it includes legal substances such as alcohol, caffeine and tobacco.
- ii. Some legal substances can be more harmful than some illegal substances.
- iii. Virtually everyone in Wales uses substances.
- iv. Most people use substances recreationally for pleasure without causing themselves or others harm. Only a small minority develop significant problems.
- v. Care and control interventions should target the minority of people that misuse substances.
- vi. A substance misuse problem is multi-faceted involving social, psychological, physical and legal difficulties.

- vii. Substance misuse can be difficult to control and recovery often involves numerous attempts and could take several years.
- viii. Stigmatisation and exclusion of people who develop substance misuse problems make recovery less likely and should therefore be avoided.
- ix. Positive action is required to enable recovering substance misusers to engage and reintegrate with mainstream society.
- x. Integrated agency responses are needed to ensure co-ordinated wrap-around support to assist recovering substance misusers.
- xi. The criminalisation of substances generally increases risks in terms of: the uncertainty of purity; uncertainty of strength; the engagement with the criminal 'underworld'; the hidden nature and isolation of consumption; and the acquisition and consequences of a criminal record for drug related crime.

For a more detailed discussion see Buchanan 2008, and Buchanan 2009.

3. Positive Features of Current Substance Misuse Policy

Like its predecessor, the present Wales substance misuse policy is inclusive in that it does not just focus upon illicit drugs, but includes a wide range of substances such as medicines, volatile substances and alcohol. Recognising the extent of alcohol misuse and ensuring that alcohol services are not overlooked by a pre-occupation upon illicit drugs, the Wales substance misuse policy calls for agencies to redress the imbalance and redouble efforts to tackle alcohol problems.

The Welsh Substance Misuse policy is progressive in its approach in that it concentrates upon harm reduction, making support for substance misusers central to the strategy. The focus on social inclusion and the need for integrated wrap-around support services to enable recovering substance misusers to participate in mainstream society is in accordance with research evidence and should help tackle underlying issues that precipitate relapse. The policy is also realistic in acknowledging that some people use substances more responsibly than others. It therefore rightly focuses efforts upon the 'misuse' of substances, recognising that Class A drug-related crime costs in Wales are in excess of £700 million (Welsh Assembly Government 2008, p.1).

4. Areas for Improvement:

While existing policy is to be commended for its inclusive approach (for example, preferring the term 'substance' rather than the traditional and rather narrow term 'drugs'), the policy fails to incorporate tobacco – a drug which is responsible for more deaths than all other substances combined, killing 120,000 people in the UK every year (DoH 1998). Caffeine is also excluded, despite being the most frequently used recreational substance – found in drinks such as tea, coffee, chocolate, coca cola and energy products such as Lucozade and Red Bull. Caffeine is also present in tablet form: in ProPlus and diet pills.

It is probably reasonable to assume that awareness of the health issues involved in caffeine use is probably lower than that in respect of other substances. In light of all of this, it is our argument that the Welsh substance misuse strategy should widen its remit to include the full range of substances currently consumed in Wales.

The current policy correctly seeks to concentrate efforts upon those who misuse substances, recognising that it is only a small minority who develop problematic patterns of use. Targeting resources at those who pose the greatest risk makes good sense; however, this approach is undermined by the Misuse of Drugs Act 1971 which adopts a broad based enforcements strategy that imposes a range of penalties and punishments for all illicit substance users (rather than substance misusers). This outdated legislation is indiscriminate and arguably causes more harm than good. It focuses attention upon anyone who possesses or supplies any illicit substances of any amount regardless of whether it is for personal use, self medication or large scale supply.

The use of police time to apprehend all illicit drug users regardless of the type of drug, the quantity, or the nature of use, effectively diverts considerable enforcement resources away from where the need and risks are greatest. Considerable resources are devoted to policing substance misusers rather than tackling substance misusers. For example, the number of drug seizures across England and Wales doubled from 107,359 in 2004, to 216,792 in 2007/08 and 164,888 of these seizures involved cannabis (Smith & Dodd, 2009). Those caught in personal possession of substances are not necessarily those that misuse substances and pose a risk to society.

The British Crime Survey found that 22% of 16-24 year-olds in Wales admitted to using an illicit drug in the past twelve months (Statistical Directorate, 2009). Arguably, it would be waste of criminal justice resources if 1 in 5 young people living in Wales who have possessed or used an illicit drug in the past year were apprehended. Perhaps more importantly, it would also have serious negative implications upon their future if 1 in 5 young people in Wales were given a criminal conviction for possession of illegal drugs. Drug convictions can have an adverse impact employment, housing, travel and insurance. Instead, attention and resources should be directed to those people in Wales whose misuse of substances is causing harm to themselves and to others. There is a need for a more considered and discerning approach to substance use and misuse that is befitting of the 21st century. While substance use and misuse are complex issues that warrant careful consideration, some lessons could be learnt from our European colleagues.

In 2001 Portugal introduced Law 30/2000. This statute did not legalise drug use, but it decriminalised possession of illicit drugs for personal use (defined as being up to ten days supply). Apart from these strictly defined circumstances, possession remains illegal under Portuguese law and enforcement focuses upon drug growers, dealers and traffickers. Instead of criminalising people, those caught in possession for personal use are referred to the Commissions for the Dissuasion of Drug Addiction where they can receive advice and guidance. In 2007 it was reported that this more tolerant approach had resulted in: a decreased use of heroin; an increased use of cannabis; a reduction in drug related deaths; and an increased uptake of treatment (Hughes & Stevens 2007). More

recently a report by the US Cato institute who reviewed the Portuguese approach concluded:

'None of the fear promulgated by opponents of Portuguese decriminalisation has come to fruition ... While drug addiction, usage and associated pathologies continue to skyrocket in many EU states, those problems –in virtually every relevant category –have either been contained or measurably improved within Portugal since 2001'

(Greenwald 2009 pp.27-28).

In the late 1980s Switzerland had a serious problem with large numbers of chaotic injecting drug users. In 1992, they attempted to isolate and ghettoise drug users by allowing them to use and supply drugs within the confines of a particular park in Zurich. The experiment went horribly wrong and resulted in a chaotic and unmanaged gathering of substance misusers from Switzerland and beyond. The unsightly park strewn with needles and using equipment, with crowds of people selling and buying drugs, was commonly referred to as 'Needle Park'. Following this error of judgment the Swiss tried a bold alternative approach: they offered prescribed injectable heroin which was available by appointment at a dedicated medical centre where substance misusers could receive medical attention and support. The heroin had to be self administered at the clinic before leaving the premises. This pilot project proved a success. It reduced illicit drug consumption and criminal activity (Kiillias & Aebi 2000) and helped chaotic drug users to begin living normal lives. In 2008 following a public referendum, the scheme received 68% support and has become a permanent arrangement.

Another strategy to attract long term injecting drug users into contact with supportive services - used in Holland, Germany and Switzerland - is the creation of medically based Drug Consumption Rooms (DCRs). The DCRs have been shown to help reduce medical complications, drug related deaths and nuisance caused to the public by keeping drug use and needles away from the streets (Roberts, Klein & Trace 2004). This strategy has been described as a *'unique and promising way to work with the most problematic users, in order to reduce the risk of overdose, improve their health and lessen the damage and costs to society'* (JRF 2006 p.108). However, despite these benefits DCRs have struggled to receive support from the English based National Drug Treatment Agency.

At present valuable resources are committed to drug education in an attempt to deter substance use. Whilst the principle of preventing problematic substance misuse makes sense, in practice it is a largely unproven strategy. Indeed, drugs prevention could even have unintended consequences, possibly making substance use *more* rather than *less* likely. There is clearly a need for more evaluative research in this area.

Research does indicate, though, that positive outcomes can be achieved by allocating resources to treatment interventions (Gossop et al., 2003). The Drugs Interventions Programme, in conjunction with the Community Order introduced by the Criminal Justice Act 2003, gives courts across Wales the opportunity to develop a range of community-based drug rehabilitation interventions. The present policy, however, makes

no proposals in relation to this statutory framework of interventions. A wide range of intensive alternatives to custody, specifically aimed at diverting substance misusers away from prison and into treatment, should be piloted and independently evaluated. Notwithstanding the importance of such initiatives, efforts to engage constructively with the most problematic substance misusers should not rely solely on court-based and criminal justice interventions. Low threshold harm reduction services should be established to attract more difficult to reach and problematic substance misusers into regular voluntary contact with agencies. Such services should include heroin prescription and the provision of clinically managed safe injecting rooms. If these misusers are living on the margins of society, then the services needed to address their problems must be willing and able to operate in a manner that makes them accessible and appropriate to meet their need. Ultimately, this will be a benefit to assist the chaotic substance misusers as well as to the benefit of the local community and wider society.

5. Recommendations:

In summary, we would advance the following recommendations as a way forward:

- (1) Ensure that the Substance Misuse Policy incorporates all substances, including tobacco and caffeine.
- (2) Create a clearer distinction between substance use and substance misuse, and target resources at those engaged in the latter.
- (3) Pilot and independently evaluate projects that prescribe heroin and provide clinically managed safe injecting rooms. The rationale behind such programmes is to reduce harm and bring problematic substance misusers off the streets and into treatment.
- (4) As part of a range of options available under the Community Order, pilot and independently evaluate integrated intervention packages for problematic substance misusers caught up in the criminal justice system.
- (5) Independently review the outcomes of existing drugs/substance misuse prevention education, establish effectiveness and viability criteria and allocate resources accordingly.
- (6) Learning from the Portuguese approach, explore with law enforcement agencies creative options under existing legislation to divert police attention away from substance users and towards substance misusers, concentrating efforts on those substances that are known to cause most harm.
- (7) Seek to repeal or amend the Misuse of Drugs Act 1971 so that:
 - a. Legislation reflects a drug classification system which more accurately correlates with the research evidence.
 - b. Personal possession of substances results in a referral for drug education/treatment rather than criminal conviction and a penalty.

- c. Legislation includes all substances that are currently used recreationally for pleasure.

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