



House of Commons
Scottish Affairs Committee

Problem drug use in Scotland: Government response to the Committee's First Report of Session 2019

First Special Report of Session
2019–21

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The Scottish Affairs Committee

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First Special Report

The Scottish Affairs Committee published its First Report of Session 2019, [Problem drug use in Scotland](#) (HC 44) on 4 November 2019. The Government's response was received on 22 July 2020 and is appended to this report.

Appendix: Government Response

Scottish Affairs Select Committee—Inquiry into Problem Drug Use in Scotland

I am grateful to the Scottish Affairs Committee for its report of their Inquiry into Problem Drug Use in Scotland, published on 4 November 2019. The timing of this response reflects the 2019 General Election period which closely followed the publication of the report and during which it was necessary for work on this response to be paused, as well as a range of prioritisation pressures including in the context of the ongoing challenges of the coronavirus pandemic. Nevertheless, the Government has made progress in its work to tackle the misuse of drugs and the harms that result from problematic drug use and we are grateful for the opportunity to respond to the recommendations of the Committee on this issue.

KIT MALTHOUSE MP

Minister of State for Crime and Policing

Recommendation 1

Scotland is in the midst of a drug death crisis. The relentless increase in drug deaths in Scotland is a tragedy that cannot be allowed to continue. We call on the UK Government to declare a public health emergency, and to work with the Scottish Government to take urgent and radical steps to halt Scotland's spiralling drug crisis. Both Governments must be open to implementing innovative evidence-based solutions with the scale and urgency required by Scotland's drug crisis. (Paragraph 12)

We reject the recommendation to declare a public health emergency but accept the importance of working across the UK to tackle drug misuse. The UK Government shares the Committee's concern about problem drug use and the very real damage that dependence on drugs such as heroin and crack cocaine can do to individuals, their families and whole communities.

The number of drug deaths across the UK is extremely concerning, and we recognise that the figures for Scotland are higher than those for other nations of the UK. The data is a stark reminder of the need for action, and behind each of these deaths are people with families and loved ones whose loss is immeasurable. The Government is determined to do more to help prevent such deaths, whilst recognising that in many cases their origins are in problematic drug use which started decades ago and which has taken its toll on the mental and physical health of those who have become dependent. Some of the deaths relate to illicit drug use, some to over-prescribing or misuse of prescription medicines and in some cases vulnerable individuals are using combinations of drugs, sometimes with excessive alcohol and other risky behaviours.

As a Government we will continue to work closely in partnership with the administrations in Scotland, Wales and Northern Ireland and with healthcare, policing, housing and employment, voluntary sector and other partners at all levels to tackle drug misuse.

We are already taking action to tackle problem drug use and our approach continues to be a balanced one which is anchored in: education to reduce demand; tough and intelligent enforcement to restrict supply; evidence-based treatment to aid recovery; and co-ordinated global action.

We are continuing to increase our efforts to choke off the supply of harmful drugs and relentlessly pursue the organised criminals behind this trade. Tough enforcement is a fundamental part of our drug strategy and we are taking coordinated action to tackle illicit drug use alongside other criminal activity.

We work closely with the National Police Chiefs Council lead for drugs and are determined to crack down on criminals who supply drugs, causing misery to families and communities. Law enforcement and the criminal justice system must also have the tools to deal robustly with serious and repeat offenders who cause the most harm in our communities. However, it is also right that the police have a range of powers at their disposal, including out of court disposals, to deal with drug-related offences in a way that is proportionate to the circumstances of the offender and the public interest.

We are also intent on maximising efforts internationally to tackle drug trafficking. The National Crime Agency works with partners around the world to target crime groups that traffic drugs into the UK. At the same time, we need more focus on reducing the demand for drugs and on building recovery for those who have become dependent on them.

We recognise, however, that there is more that we can and should do. Dame Carol Black's Review of Drugs, published at the UK Drugs Summit in Glasgow in February, set out very clearly and with detailed analysis the patterns of drug supply and demand to date. Further work is already underway to go further in tackling drug supply as a result of the Review, and Dame Carol has been commissioned to undertake a review of prevention, treatment and recovery in order to inform further action in those areas.

This is a major challenge which we intend to face head on, and we will be acting in line with the evidence we have and taking immediate measures where we can including to bear down on criminals and support users into treatment during the exceptional circumstances of the coronavirus pandemic, as well as continuing to build the evidence base and inform our approach over the medium to longer term.

Going forward we will continue to work alongside the Scottish Government on all areas of mutual concern regarding problem drug use, in order to tackle this significant problem across the United Kingdom.

Recommendation 2

People's drug use often becomes problematic because of things beyond their control, rather than because of a proactive 'decision' to become dependent on substances. People who use drugs are a vulnerable group who require help and support, not prejudice and judgement. Both Governments must ensure that their approaches to problem drug

use acknowledge and address the underlying causes, such as poverty and inequality, social marginalisation, trauma and the lack of strong family structures and support networks. (Paragraph 27)

Recommendation 3

Addressing the root causes of problem drug use requires radical, whole-system change, rather than piecemeal reform. We welcome the planned cross-government summit in Glasgow and encourage the UK and Scottish Governments to be bold, imaginative and evidence-based. Both Governments must work together to implement an integrated, cross-departmental, and cross-government approach to drugs, which fully utilises the potential impact of joined-up policing, justice, employment, welfare, housing, physical and mental health policies and services. The UK Government must also ensure that all departments are proactively engaging with each other, the health services and third-sector organisations, in order to help address problem drug use in Scotland. (Paragraph 38)

We accept these recommendations in principle. The Government acts wherever possible to prevent the harms caused by problem drug misuse. There is significant concern across Government about problem drug use and the very real damage that dependence on drugs such as heroin or crack cocaine do to individuals, their families and whole communities. We believe in taking clear action on the root causes of drug misuse and will continue to work closely at all levels and across the nations of the UK to tackle the issue of drug misuse.

We are already taking forward a range of work across Government to tackle substance misuse and are willing to listen to all arguments in favour of options to reduce the problems caused by drug misuse. For example, the UK Drug Summit was held on 27 February 2020, hosted by Kit Malthouse MP, the Minister of State for Crime and Policing, alongside Jo Churchill MP, Minister for Prevention, Public Health and Primary Care, and Rt Hon Alister Jack MP, the Secretary of State for Scotland.

The Summit brought together healthcare professionals, drug recovery experts, senior police officers, voluntary sector organisations, Ministers and officials from the UK Government and devolved administrations, those with lived experience of drug dependence and experts from the US and Portugal among others.

The event represented an important step forward in drawing together the evidence and data on drug misuse across the UK, and in facilitating constructive discussions among those with a range of perspectives and views. There were a large number of recognised experts in healthcare, recovery, law enforcement as well as those with unique personal perspectives which helped to ensure discussion and, in some cases, debate on the challenges and the potential further solutions that are needed.

Following on from the Summit a UK Drugs Ministerial Meeting will be held to enable the UK Government and devolved administrations to discuss the actions we can take individually and collectively across the UK. A number of specific pieces of policy and operational activity are also being undertaken linked to the Summit, including the further review by Dame Carol Black of Prevention, Treatment and Recovery, announced at the event by Jo Churchill MP.

Recommendation 4

The welfare policies of the Department for Work and Pensions have a detrimental impact on people who use drugs, and often become a barrier for many people trying to enter recovery. The Scottish Government should also make full use of its existing powers to support people recovering from problem drug use. The UK Government must review the impact welfare sanctions have on people who use drugs, and outline steps it will take to make the welfare system less adversarial for people who use drugs who are trying to enter recovery. (Paragraph 42)

We reject this recommendation. The UK Government remains committed through our welfare reforms to making work pay and creating a strong safety net through the welfare system that's fair to all. We are also committed to tackling worklessness by addressing the complex employment barriers that can affect vulnerable claimants, including those with drug dependency.

The Department for Work and Pensions provides a range of support to help those with a drug dependency to recover, find work and turn their lives around. This includes Jobcentre Plus work coaches who are able to identify claimants with complex needs and tailor support accordingly; referral to a local treatment provider to discuss their dependency issues and treatment options; switching off work search and work availability requirements for up to 6 months when in structured recovery treatment to give people the time and space to recover; early priority access to the Work and Health Programme so work support can be provided as soon as needed and; priority access to Alternative Payment Arrangements (APAs) in Universal Credit where benefit payments can be paid more frequently than monthly and/or housing costs can be paid direct to the landlord.

The Department for Work and Pensions keeps its policies under review and believes the aims of conditionality and sanctions is clear, fair and effective in promoting positive behaviours.

Conditionality requirements are set in order to support claimants and to increase the likelihood of claimants finding employment, either now or in the future; therefore, we want to encourage compliance.

Suitable and appropriate work-related requirements can help claimants to build up their skills, capability and confidence, using small and achievable steps. These requirements can also be voluntary where the work coach considers that is more appropriate, for their wellbeing for example, and there is no risk of a sanction if a claimant fails to comply with a voluntary requirement.

No one will be expected to undertake an activity that is beyond their capability. In some circumstances it might be reasonable for the claimant to have no work-related requirements.

Where a claimant with drug or alcohol dependency also has a health condition, and this is supported by acceptable evidence, the Work Coach will remove work-search activities for up to 14 days (for the first two spells of sickness in a rolling 12-month period). From day 15 onwards the Work Coach applies discretion in determining what sort of work-related activities are appropriate and has the flexibility to tailor requirements based on the impact

of the health condition. The aim is to keep claimants close to the labour market from the outset and encourage them to undertake activities to prepare for a return to work as soon as possible.

Sanctions are only used in a minority of cases and only where it is clear there is no good reason for a claimant failing to meet the conditionality requirements they agreed to. Claimants are given every opportunity to explain before any sanction decision is made and that includes having up to 7 days after the failure to provide DWP with any reason.

The decision to apply a sanction is always thoroughly considered and is not something DWP does lightly. If there is no contact or if the reason offered does not appear straight forward such as with sickness then the case will be referred to a trained Decision Maker to resolve. Decision Makers will take into account all the claimant's individual circumstances, including any health conditions or disabilities, and any evidence of good reason they have provided, before deciding whether a sanction is warranted.

Where it is clear that the claimant has good reason for failing to meet their requirement, a sanction will not be applied.

Recommendation 5

The criminal justice approach to people with problem drug use has failed. Problem drug use is a health issue, and it should be treated as such by the UK Government. The Government must revise its strategy for addressing problem drug use in line with a public health approach. We support the call from the Health and Social Care Committee for the UK Government to transfer lead responsibility for drugs policy from the Home Office to the Department for Health and Social Care. This would demonstrate its commitment to a health-focused approach to drugs. (Paragraph 61)

We reject this recommendation. We do not accept that problem drug use is singularly a health issue. That is why we take a cross-government approach that reflects the need for coordinated action to tackle the problem in all its dimensions: reducing demand, restricting supply and building recovery. Given the strong link between drug use and offending, the Home Office provides the governance and accountability essential to the effective delivery of this cross-departmental approach.

The Department of Health and Social Care leads on work to reduce demand and dependency on illicit drugs. Public Health England supports local authorities in their work of commissioning drug treatment services, by providing bespoke data to assist the joint strategic needs assessment and to show the effectiveness of the local treatment system, as well as value for money tools, topical briefings, and advice on good practice. Many other Departments are also involved, including Ministry of Justice, Department for Education, Department for Work and Pensions and the Ministry of Housing, Communities and Local Government.

There is a strong link between drugs and crime, which is why we reject the assertion that the Department for Health and Social Care should lead on drug misuse. We know that people who regularly use heroin, cocaine or crack cocaine are estimated to commit around 45% of all acquisitive crime.

Drugs have been identified as a major driver of the national increases in serious violence over the last few years and around 74% of homicides in 2018/19 were known to be drug-related (i.e. the victim or offender was a known drug user or dealer). Given this link, it makes sense for the Home Office to lead on driving activity to tackle drug misuse through stemming the supply of illicit drugs. However, we do believe in a recovery based approach to drug misuse playing a key role in reducing the problems associated with drug misuse, which is why we will continue to work with health partners in this area.

Recommendation 6

The adoption of a public health approach must reflect the UK Government taking an evidence-based approach to drugs policy. *The Home Office must commit to implementing an evidence-based approach to drugs policy. This includes the Government giving full weight to all reports and recommendations from the ACMD. Where the UK Government chooses to go against expert advice from the ACMD, the Government must publicly outline its reasons for doing so and set out its evidence base.* (Paragraph 64)

We reject this recommendation because we already take a balanced and evidence-based approach to tackling drugs and drug harms across Government. This was demonstrated by the appointment of Dame Carol Black to undertake the independent review of drugs, our previous Drugs Strategies, and our ongoing work with the Advisory Council on the Misuse of Drugs. We undertake significant work to help those struggling with substance misuse to recover from dependence, as well as our work to tackle the organised crime gangs behind the illicit drug trade.

Under the Misuse of Drugs Act 1971 ('the 1971 Act'), which established the Advisory Council on the Misuse of Drugs ('the Advisory Council'), the Home Office has a duty to consult with the Advisory Council on the Misuse of Drugs (ACMD) prior to controlling drugs or making regulations under the 1971 Act. This is a duty we fully comply with and publish a response to all ACMD advice to demonstrate how their advice has been fully considered.

Recommendation 7

We have heard that the Misuse of Drugs Act 1971 is outdated, its classification system is arbitrary, and that it is fundamentally incompatible with a public health approach. If the UK Government is to implement a public health approach as we have called for then the Misuse of Drugs Act must be substantially reformed. (Paragraph 68)

We do not accept this recommendation. The overall legislative framework on illicit drugs continues to strike a balance between controlling harmful substances and enabling appropriate access to those drugs for legitimate medicinal, research and in exceptional cases for industrial purposes.

The controls on harmful drugs continue to be adjusted in light of new evidence and information, including for example the changes over recent years to allow specialist clinicians to prescribe, where appropriate, cannabis-based products for medicinal use, or the additional controls brought in to reflect evidence of the harms of gabapentin and pregabalin. The Home Office considers the advice from the ACMD before all decisions on classification.

The ACMD are an independent body of experts who consider, amongst other matters, drugs which are being or appear likely to be misused and of which the misuse is having or is capable of having harmful effects sufficient to constitute a societal problem. In addition, the ACMD's advice and the Government's responses to that advice are published online, in order to ensure transparency.

We will remain open to evidence in relation to harms or benefits associated with all substances and how these fit in the classification system.

Recommendation 8

Throughout this inquiry we heard that there is more the Scottish Government could, and should, be doing to address problem drug use with the powers it already has, in areas such as mental health, housing, education, community regeneration, policing and justice. We were particularly concerned to hear of the impact that funding cuts, including previous cuts to alcohol and drug partnerships in the 2016/17 Scottish Government budget, have had on health services for people who use drugs. While it is not for us to make recommendations to the Scottish Government, we believe that if it wants to call for greater powers to tackle the drugs crisis it must demonstrate that it is doing everything it can within its existing responsibilities, including properly funding health services. (Paragraph 71)

The Scottish Government has its own approach to tackling drug and alcohol misuse in areas where responsibility is devolved, including healthcare, criminal justice, housing, and education. On issues relating to drugs that are UK wide, particularly around enforcement, we work closely with the National Crime Agency, Police Scotland, and other operational partners to assist the Scottish Government wherever we can. We are building on the work of the UK Drugs Summit by hosting a UK Drugs Ministerial in due course, which will further strengthen the levels of co-operation and support between the UK Government and devolved administrations.

Recommendation 9, 10, 11

Safe consumption facilities are proven to reduce the immediate health risks associated with problem drug use. These facilities do not come without their challenges. However, when effectively managed with appropriate levels of funding and cooperation from the police and other stakeholders, these risks can be mitigated. However safe consumption facilities should not be seen as a 'silver bullet', but as a way to get people with problem drug use to engage in other services which can address the underlying causes of their substance use. (Paragraph 85)

We believe there is a strong evidence base for a safe consumption facility in Glasgow, which would be a practical step to reducing the number of drug-related deaths in Scotland. Health is a devolved matter, and it is therefore deeply regrettable that the UK Government has chosen to block the proposed facility. We are not convinced by the UK Government's argument that it will not give permission for such facilities because it believes that there are more cost-effective health care interventions. Under the devolution settlement, spending on health delivery is a matter for the Scottish Government. *We recommend that the UK Government supports the proposed pilot safe consumption facility in Glasgow.* (Paragraph 93)

We do not believe that it would be acceptable to try to open a safe consumption facility in Glasgow under the current legal framework. Doing so would risk putting clients, NHS staff, and governance bodies in legal jeopardy. We recommend that the UK Government brings forward the legislation necessary to allow for the lawful establishment of a pilot safe consumption facility in Scotland. If the UK Government is unwilling to do so, it must instead devolve competence for drugs legislation to the Scottish Parliament, so that it can implement the health approach it deems to be in Scotland's best interest. (Paragraph 101)

We want to do all we can to stop people having access to drugs that could ultimately kill them. No illegal drug-taking can be assumed to be safe and there is no safe way to take them.

At present, Drug Consumption Rooms (DCRs) are not legal in the UK, due to a range of offences that are likely to be committed under the Misuse of Drugs Act 1971 should a DCR be in place. That would be the case regardless of whether a DCR is piloted or whether there is full roll out of DCRs across the UK.

Therefore, any potential plan for a DCR would need to obtain an exemption from the Misuse of Drugs Act 1971. The UK Government does have powers to do this, by making regulations such as the Misuse of Drugs Regulations 2001.

However, these regulations would not be able to provide wider exemption from potential common law offences, such as manslaughter, or offences under other legislation. There would also be additional challenges regarding civil liability, were things to go wrong.

Primary legislation would therefore be required to provide complete security to those operating DCRs, which would take a great deal of time to develop and implement. These issues were made clear in the letter from the Minister for Crime and Policing to the Committee on this issue following his appearance before the Committee.

Furthermore, many of the responsibilities to drive improvements, such as healthcare, housing and criminal justice, are devolved to Scotland. In particular, appropriate provision of drug treatment services is the responsibility of the Scottish Government.

Recommendation 12–17

Decriminalisation of the possession of drugs for personal use is an evidencebased solution to problem drug use. There is a strong case for doing this across the UK, as decriminalisation is proven to address the root causes of problem drug use. Decriminalisation would also allow the Government to focus efforts and resources on tackling the drug supply chain and providing services to support people who use drugs into recovery. (Paragraph 114)

We support the innovative approaches to decriminalisation taken by police forces across the UK, but believe that statutory decriminalisation is a preferable solution which removes the legal ambiguities inherent in non-statutory approaches. (Paragraph 125)

We also believe that decriminalisation should be implemented by elected and accountable politicians. Whilst we are encouraged to hear the Home Office minister

tacitly supports de facto decriminalisation schemes in the UK, it is unclear to us why the Government has not implemented diversion as a UK-wide policy, and has chosen instead to leave this difficult issue to local police officials. It is also not clear why the UK Government is supportive of de facto decriminalisation, but will not support statutory decriminalisation. The UK Government must be clear on its policy and be accountable for its decisions. (Paragraph 126)

We recommend that the UK Government decriminalises the possession of small amounts of drugs for personal use across the whole of the UK and should consult on how this could be rolled out in practice. As a transitional approach, the Home Office should encourage all police forces across the UK to introduce diversion schemes. If the UK Government does not decriminalise drugs, this will only strengthen the case for the devolution of drugs laws. (Paragraph 127)

We welcome the high level of co-operation between the UK and Scottish law enforcement agencies to address the supply of drugs, as well as the Organised Crime Partnership which has strengthened joint efforts to combat drug supply. However, we are not convinced by the minister's argument that decriminalisation, in Scotland or the whole of the UK, would undermine these efforts, as the decriminalisation of possession for personal use would not alter the illegality of organised crime groups supplying illicit drugs, which this joint work seeks to address. Decriminalising drugs could free-up resources which could be put into efforts to combat supply and import of drugs. (Paragraph 132)

Whilst we heard that the legalisation of drugs would deliver more benefits than decriminalisation, decriminalisation alone would be a radical departure from the Government's current approach to drug policy. We therefore believe that the Government should focus on delivering decriminalisation. (Paragraph 139)

This Government has no plans to decriminalise drug possession. The decriminalisation of drug possession in the UK would not eliminate the crime committed by the illicit trade, nor would it address the harms associated with drug dependence and the misery that this can cause to families and communities. There is a substantial body of scientific and medical evidence to show that controlled drugs, when misused, are harmful and can damage people's mental and physical health, and our wider communities.

Our approach on drugs remains clear—we must prevent drug use in our communities, support people through treatment and recovery, and tackle the supply of illegal drugs.

Out of court disposals aim to allow the police to deal quickly and proportionately with low-level, often first time offending, which could be more appropriately resolved without a prosecution at court. They are not intended for serious, persistent or contested cases. Factors such as the seriousness of the offence, any previous criminal history, and the public interest in prosecution should be considered when determining the appropriateness of an out of court disposal.

It has long been established that a chief officer of police has a wide discretion when dealing with operational decisions and the deployment of resources. Whilst a chief officer has a duty to the public to enforce the law, he retains a wide discretion as to how he does this. Chief officers retain operational discretion as to the relative priority to be given to various crimes. Equally it has never been the case that every criminal offence must be prosecuted.

It is right that the police have a range of powers at their disposal, including out of court disposals, to deal with drug-related offences in a way that is proportionate to the circumstances of the offender and the public interest. But law enforcement and the criminal justice system must also have the tools to deal robustly with serious and repeat offenders who cause the most harm in our communities.

Recommendation 18

The UK Government should be doing everything it can to reduce the stigma surrounding problem drug use. The UK Government must lead by example by ensuring it promotes appropriate and non-stigmatising language when discussing drugs. The Government should also be proactively challenging stigmatising language and misrepresentation, in order to improve the quality of public and political understanding of drug-related issues. (Paragraph 148)

We accept this recommendation whilst noting that there is not consensus on a single set of terminology which is acceptable to everyone. The UK Government recognises the real harms of drugs and aims to take a balanced approach to tackling drugs and drug harms. This work is based around reducing demand, restricting supply, and building recovery.

In order to aid recovery, we believe in reducing stigma wherever possible, particularly when it results in drug misusers feeling unable to accept treatment. However, there is a balance to be struck between the potential positive elements of stigma dissuading individuals from taking illicit drugs in the first place.

Nevertheless, building recovery for those who have become dependent on illicit drugs is key to the UK Government's strategy and that is why we appointed a UK Government Recovery Champion last year. Dr Ed Day is an expert practitioner in the field of addiction and brings a wealth of front-line experience in treatment. His work has focused on the broad theme of effective treatment intervention for drug dependence, which is why he participated in the UN Technical Session on Stigma in January 2020 in order to look at the problems associated with stigma in access to treatment.

Recommendation 19

It is unacceptable that drug dependence is excluded from the Equality Act 2010, despite it being fully recognised (in the UK and internationally) as a health condition. This can have damaging real-life consequences for many people who use drugs—often by preventing them fully accessing recovery services. The UK Government must immediately review the exemption of substance dependence from equality legislation and assess the impact it has on people who use drugs. (Paragraph 154)

We do not accept this recommendation. The Equality Act was drafted to explicitly exclude addiction to substances, where this addiction arose as a consequence of a substance being medically prescribed, or to non-prescribed substances. These definitions were excluded for public policy reasons, for example to avoid providing protection for people where the effect of their condition may involve anti-social or criminal activity. For disability discrimination legislation to be credible, it should provide protection for people who are disabled in the generally understood sense of the term. Substance misuse does not fit with the generally accepted meaning of disability.