

Briefing paper: Changes in UK Policing Attitudes to Drug Offences

Executive Summary

Eight Police Forces in England and Wales (12.5%) are presently implementing or developing drug diversion programmes. Additional Police Forces are also known to employ an organisation called DrugLink to run drug diversion schemes for them. In recent years, national police staff associations and a number of police forces across the UK have made statements in support of drug policing reform and several forces have introduced programmes to divert individuals who use drugs into treatment and education rather than into the criminal justice system.

The administrative and financial burden on police forces of processing cannabis-related offences is substantial. In 2015, more than a million police hours were spent on processing cannabis-related offences¹ and it has been estimated that taxpayers pay at least £13.5 million for the cost of police forces locking up people for 12 hours or more after arresting them for possession².

There is no convincing evidence to show that criminal sanctions of drug offences and drug users reliably curb use or supply of drugs. In fact, a 2014 Home Office report concluded the contrary, that there was no “obvious relationship between the toughness of a country’s law enforcement against drug possession and levels of drug use in that country”.

There is significant racial discrimination in rates of arrest and prosecution for drug offences. A 2018 study found Black and Asian people were convicted of cannabis possession at 11.8 and 2.4 times the rate of white people despite their lower rates of self-reported use.

The reporting of cannabis possession crimes by police forces has fallen by an average of 40% for more than half of police forces. This is more likely to represent changes in policing attitudes toward the processing of individuals caught in possession of cannabis than a representative reduction in rates of possession, since rates of use have not fallen commensurately in that time.

Polling by the CDPRG in June 2019 found that 76% of the British public believed the threat of criminal punishment for unlawful drug use is an ineffective deterrent.

This supports consistent evidence that punitive law-enforcement responses to cannabis use or possession fails to decrease the rates of these offences, either for individuals who have received criminal sanctions or for the general public.

There is little support for the prosecution of patients accessing cannabis for medicinal purposes unlawfully. Five Police Forces have suggested they would support schemes enabling patients to grow their own cannabis for medicinal use. Just 17% of the public back the prosecution of patients obtaining medicinal cannabis illegally.

Introduction

In recent years, UK law-enforcement attitudes toward the management of minor drug offences have begun to shift away from punishment and in the direction of support and treatment. This is evidenced by falling arrests for cannabis, recent public statements in support of drug policing reform by national police staff associations, and the enactment or planning of diversion or deflection schemes by a number of police forces. These schemes refer to the referral of individuals caught using or possessing drugs to health, treatment or education schemes, and are discussed further below.

In 2019, the National Police Chiefs' Council (NPCC) gave officers approval to stop arresting cannabis users, instead advising or diverting them to seek treatment. The NPCC lead on drugs claimed that there "is strong evidence to suggest that recommending minor offenders for early intervention treatment instead of pursuing convictions can prevent re-offending."³ In 2018, calling for a Government review on drug policy, the lead on drugs for the Police Federation of England and Wales wrote that "[it] is clear that the current legislation which prohibits the possession, consumption and supply of substances under the Misuse of Drugs Act 1971 does not work... There is mounting empirical evidence of alternative approaches to the drugs problem around the world for us to explore which are more effective and bring far more benefits to society financially and with fewer people finding themselves in either medical or criminal justice systems."⁴

The Law Enforcement Action Partnership (LEAP), an international body of policing staff who support less punitive drug offense enforcement, which has a UK chapter, delivered a statement to the UN's 62nd Commission on Narcotic Drugs in Vienna.⁵ Citing "growing concerns about a system that pits [police] against everyday citizens, creates opportunities for corruption, leads to violence, generates profits for criminals, increases risk of disease and undermines their public health mandate," the statement explicitly called for the consideration of improved harm reduction measures in drug policy, such as "programmes that provide people who use drugs with health and social support as well as a bridge into drug treatment, housing and employment." The statement also recommended removing criminal penalties for minor drug offences, such as possession and use.

There is also strong evidence of racial bias in the enforcement of drug offences in the UK. A paper co-authored by The International Drug Policy Unit at the London School of Economics and Political Science reported that "Black and Asian people were convicted of cannabis possession at 11.8 and 2.4 times the rate white people despite their lower rates of self-reported use, providing prima facie evidence of discrimination."⁶

It is already well evidenced that the deterrence effect of criminalising drug users has no impact on rates of supply or use

Theoretically, individuals should choose not to participate in criminalised behaviours when the perceived risk of punishment exceeds the anticipated rewards but in reality, the weight of the evidence amassed so far fails to find any consistent association between perceived risk of arrest and probability of committing drug offences. One meta-analysis drawing on 40 published studies found that harsher penalties were associated with higher, not lower, probabilities of drug-related crimes.⁷ A number of survey studies at university sites in the U.S. have found no significant association between perceived severity of sanctions and personal use of cannabis.^{8,9} Literature reviews of perceptual deterrence studies have found weak or non-existent statistical associations between perceived certainty and perceived severity of sanctions with offense rates¹⁰, with MacCoun & Reuter concluding that deterrence effects account for only 5 – 10% of the variance in rates of cannabis use.¹¹

The United States has been the driving force of punitive international drug control strategies for a century and imprisons more people than any other nation in the world,¹² with 47% of people in federal prisons incarcerated for drug law violations.¹³ Despite this focus on law-enforcement, the United States have one of the highest rates of drug use in the world.

Studies reviewing specific deterrence effects on recidivism have found that residential treatment programs are associated with lower rates of reoffence than prison sentences for drug supply crimes;¹⁴ that the number of days spent behind bars is associated with a slight but non-significant increase in the odds of rearrest; and that the number of days spent in treatment programs is significantly associated with a reduction in the odds of rearrest.¹⁵

Although the UK Government has stated that it “fundamentally believes that illegality is an important factor when people are considering engaging in risk-taking behaviour”,¹⁶ a number of UK reports have challenged the strength of the general deterrent effect on drug taking. The 2006 Science and Technology Select Committee’s report, *Drug Classification: Making a hash of it?* reported “no solid evidence to support the existence of a deterrent effect.”¹⁷ A 2013 report from the British Medical Association’s Board of Science, *Drugs of Dependence: The Role of Medical Professionals*, concluded that “the evidence justifying the conclusion that criminal prohibition deters use is not strong... there is little evidence that punitive enforcement is significantly effective in ‘sending a message’ that will help reduce or eliminate drug use.”¹⁸ These findings are in concert with those of The Police Foundation inquiry report, *Drugs and the Law* (1999), which suggested that the deterrent effect from the threat of law-enforcement had a less significant role than health concerns and general disinterest.¹⁹

Even a 2014 Home Office report which compared the legal framework of 14 different countries had to make the conclusion that there was no “obvious relationship between the toughness of a country’s law enforcement against drug possession and levels of drug use in that country”²⁰.

Decrease in arrests for cannabis drug offences

A Times investigation using Home Office data found that the number of offences for cannabis possession has dropped nationally. More than half of police forces recorded 40 per cent fewer crimes despite cannabis remaining the most popular drug with only 3 out of 43 Police Forces in England and Wales showing an increase²¹. A freedom of information request obtained by VICE also found that arrests for growing cannabis have fallen by more than half since 2012. Of those who are arrested, which included patients using cannabis for medicinal purposes as well as organised crime groups, less than half subsequently faced charges²². Such findings have led to claims of back door decriminalisation of cannabis. While we cannot conclude if this is the case or not, the deprioritisation of cannabis nationally indicates that support for punitive measures towards cannabis has waned (perhaps in favour of other priorities). What we can conclude however is that this trend towards de facto decriminalisation is inconsistent across the country and lacks national and government oversight.

Implementation of diversion of drug offenders from punishment to support and treatment

Deflection refers to the referral of people who use drugs to health, treatment or education services instead of processing the individual through arrest and prosecution, meaning that they do not receive criminal records. Diversion means the referral of individuals already in the criminal justice process to appropriate support services. In practice, the term diversion is often used to describe both processes.

Eight police forces in England and Wales are presently implementing or considering diversion programmes: Durham, Avon & Somerset, Thames Valley, West Midlands, Dyfed Powys, North Wales, South Wales and Cleveland:

Police Force	Diversion Programme Status
Durham	Currently running
Avon & Somerset	Currently running
Thames Valley	Currently running
West Midlands	Developing diversion schemes
Dyfed Powys	Developing diversion schemes
North Wales	Developing diversion schemes
South Wales	Developing diversion schemes
Cleveland	Developing diversion schemes

Only the former three are presently up and running – the remaining five forces are in the process of developing diversion programmes. While data on the outcomes of these programmes are still limited at this early stage, Jason Kew of Thames Valley Police reported an 80% success rate on diversion courses at an oral evidence session on drug policing at the APPG on Drug Policy Reform in May, 2019.

A report by West Midlands Police and Crime Commissioner (PCC) David Jamieson²³ also details the outcomes of a diversion scheme pilot, Operation Turning Point (OTP), which was set up as a randomised pilot and ran from 2011 to 2014 with Cambridge University. The experiment involved offenders who had not previously been convicted at court, but whom the police would otherwise charge for prosecution, to explore if they can be more cost effectively dealt with by police-led offender management rather than prosecution. One group would face prosecution as normal, while the other group had their prosecution deferred, entering into a contract instead, which agrees the offender will go through a programme of structured interventions which included drug and alcohol treatment. Those who successfully complete the programme would have their prosecution dropped. While we do not have specific outcome data on the results of those going through the drug and alcohol programmes specifically, the overall results of OTP are positive. Evaluation showed that victims whose case went through the diversionary scheme were significantly more satisfied with the process than those victims whose cases went to court. Victims felt that the Turning Point scheme was more likely than court to prevent the offender reoffending with many dissatisfied by their experiences at court, with cases being dismissed, finding individuals not guilty or only given a conditional sentence. Positive impact on reoffending rates was also evidenced by the programme. Reoffending rates were 35% fewer under OTP and individuals were less likely to engage in serious reoffending when they did. While these outcomes demonstrate successes by both reducing reoffending and victim satisfaction, the cost of diversion was also found to be lower than traditional prosecutions. OTP yielded 68% fewer court cases than those cases that were prosecuted in the usual way. The result was a saving of around £1,000 per case, despite the costs associated with the interventions which were paid for through the Turning Point scheme.

Building on the results of the OTP scheme and an earlier ‘cost of drugs’ report which revealed an estimated 1.4bn annual cost of substance misuse to the west midlands alone, the report makes a number of drug policy recommendations including diversion schemes, drug interventions and heroin assisted treatment. PPC David Jamieson also highlights the importance of these schemes for economic development, “if people are at risk of falling into addiction or choosing to deal drugs, we need to ensure alternatives are available so they can instead pursue positive opportunities for themselves and enter work. Scenes of public injecting, overdoses and needle litter reflect poorly on a region’s reputation and ability to attract investment”. West Midlands are currently in the process of developing a diversion scheme built on the legacy of the Turning Point Pilot.

The current Durham 'Checkpoint Programme' which offers eligible offenders a 4-month long contract to engage as an alternative to prosecution for low level offences such as drug possession, is also acknowledged as building on the success of West Midlands Turning Point pilot and early analysis has shown a positive impact on re-offending. Her Majesty's Inspectorate of Constabulary (HMIC) said Checkpoint is "an exceptional offender management scheme".

There are also Police Forces running alcohol and drug diversion schemes by employing an organisation called DrugLink²⁴ who offer 3-hour diversion courses covering Drugs, Cannabis and alcohol, designed for first time or 'low level' offenders who have committed an offence involving alcohol or certain drugs. Attendance can result in the cancellation of the ticket and fine (although the individual will only have to pay to attend the course, as part of an 'offender-pays' model). The course asks attendees to examine how their actions affect themselves and the wider community around them, encouraging personal responsibility. Sessions such as these create the opportunity for an individual to make more informed decisions about future behaviours and can also act a gateway to other, more in-depth support services. Responses from those who have attended the courses in 2017 show that:

- **88%** found that the course led to a reduction in Alcohol, Cannabis or Drug use
- **96%** of attendees felt attending a session had increased their knowledge of effects of alcohol, Cannabis or drug use on their health
- **97%** felt that the attending a session had been a valuable experience

A response from DrugLink's director of business development, Dave Gill told us they work with 16 Police Forces across England.

In light of the data evidencing a largely nationwide decrease in arrest for cannabis possession and growing of cannabis which seems to suggest a shift towards de facto decriminalisation, diversion schemes are an opportunity to legitimate a change in approach, which can also be monitored and accessed for positive outcomes.

There are clear benefits from the implementation of diversion schemes and national implementation should be considered alongside the development of best practice guidelines

At the moment, diversion schemes are not uniformly implemented but, on the whole, the following outcomes have been found:

- Falls in reoffending rates
- Reduction in the number of people receiving a criminal record for 'low level' drug offences, improving the social and employment circumstances of those diverted
- Reduced drug use and users are able to learn about the risks of drug use
- Connection of individuals to treatment, information sources and support (including mental health services)
- Improved relationships between police and people who use drugs
- Reduces the financial and resource burden on police sources

Based on the results of existing diversion programmes and pilots such as the Turning Point scheme, establishing a common set of standards or guidelines for diversion schemes should be considered with a view to standardising the application of this approach across police forces and demographically. A political push to implement diversion programmes nationally would help reduce obstacles to the upfront funding

required to set up these schemes. Despite the success of the West Midlands Turning Point scheme back in 2001-2014, securing the upfront investment (which would create long-term savings for the police force) beyond the pilot has not been easy despite its success and acting as inspiration for further schemes further afield.

There is little support for the prosecution of patients accessing cannabis for medicinal purposes unlawfully signifying the need for a different scheme for patients

Polling for the CDPRG in June 2019 found that just 17% of the public backed prosecution of people accessing cannabis for medicinal purposes illegally. While cannabis-based medicines are now legal, hardly any prescriptions are available on the NHS and private prescriptions are often prohibitively expensive. Some patients and families are accessing medicinal cannabis illegally. In some cases, these patients are even being charged and prosecuted. However, there is support from a number of Police Forces for decriminalisation of access for patients. For example, Carly's Amnesty is a scheme by which patients who can benefit from medicinal cannabis but cannot afford private prescriptions would be able to grow their own at home. They would declare and register with their local authorities what, where and how much they are growing, and agree to hand in anything above their needs, in return for immunity from arrest and prosecution. Five Police and Crime Commissioners have said that they support the Carly's Amnesty scheme. The scheme has also been publicly supported by the Drugs Policy Lead at the Police Federation, and the Director of the Police Foundation. While access to cannabis-based medicines through medical routes remains severely limited, we need to guarantee that those who are taking their health into their own hands and treating their conditions successfully with cannabis products are not treated like criminals for doing so. A scheme such as Carly's Amnesty protects patients and offers the opportunity for patients to work with police forces, rather than in fear of them.

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² Fisher, L (2017) Cost of detaining cannabis users is £13.5m. The Times. Available at <https://www.thetimes.co.uk/article/cost-of-detaining-cannabis-users-is-13-5m-g87n6n237>

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⁴ A Summer 2018 statement from the Police Federation of England and Wales, calling for a public debate on the future of drugs legislation. Available at: <https://web.archive.org/web/20180704150511/http://www.polfed.org/newsroom/5886.aspx>

⁵ The Police Statement of Support for Drug Policy Reform calls for "more humane drug policies." Available at: https://cleph.com.au/application/files/4815/4957/9983/Statement_of_Support_for_Drug_Policy_Reform_Feb_2019.pdf

⁶ Shiner, M., Carre, Z., Delsol, R. & Eastwood, N. (2018) The Colour of Injustice: 'Race', drugs and law enforcement in England and Wales. Available at: <https://www.release.org.uk/sites/default/files/pdf/publications/The%20Colour%20of%20Injustice.pdf>

⁷ Pratt, T. C., Cullen, F. T., Blevins, K. R., Daigle, L. E., & Madensen, T. D. (2006). The Empirical Status of Deterrence Theory: A Meta-Analysis. In F. T. Cullen, J. P. Wright, & K. R. Blevins (Eds.), Taking Stock: The Status of Criminological Theory (p. 367-395). New Brunswick, NJ: Transaction Publishers.

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⁹ Paternoster, R., Saltzman, L. E., Waldo, G. P., & Chiricos, T. G. (1983). Estimating Perceptual Stability and Deterrent Effects: The Role of Perceived Legal Punishment in the Inhibition of Criminal Involvement. The Journal of Criminal Law and Criminology, 74, 270-297

¹⁰ Paternoster, R. (1987). The Deterrent Effect of the Perceived Certainty and Severity of Punishment: A Review of the Evidence and Issues. Justice Quarterly, 4, 173-217.

¹¹ MacCoun, R. J. & Reuter, P. (2001). Drug War Heresies: Learning from Other Vices, Times, & Places. New York, NY: Cambridge University Press.

¹² International Centre for Prison Studies (ICPS) (2015). World Prison Brief. Available at: <http://www.prisonstudies.org/world-prison-brief-data>

¹³ Carson, E. A. (2017). Prisoners in 2016. U.S. Department of Justice, Bureau of Justice Statistics, 2017. Washington, DC.

¹⁴ Dynia, P. & Sung, H. (2000). The Safety and Effectiveness of Diverting Felony Drug Offenders to Residential Treatment as Measured by Recidivism. Criminal Justice Policy Review, 11, 299-311.

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