

Written evidence from Transform Drug Policy Foundation (ppp0055)

Submission from Transform Drug Policy Foundation (*updated July 2018*)

1. *"A substantial segment of the prison population have been convicted of low-level acquisitive crimes simply to fund addiction."*

"The current war on drugs is successful in creating further victims of acquisitive crime, increasing cost to the taxpayer to accommodate a higher prison population and allowing criminals to control and profit from the sale and distribution of Class A drugs."

[President of the Prison Governors Association, Eoin McLennan-Murray, 25 April 2013](#)

Recommendation 24: We recommend that the Government initiates a discussion within the Commission on Narcotic Drugs of alternative ways - including the possibility of legalisation and regulation - to tackle the global drugs dilemma
[Home Affairs Select Committee - The Government's Drug Policy: Is it working? May 2002 \(HASC Dec 2012 inquiry repeated this call, Recommendation 46\)](#)

"Countries should work towards developing policies and laws that decriminalize the injection and other use of drugs, and, thereby, reduce incarceration."

[World Health Organisation \(2014\) Consolidated guidelines on HIV prevention, diagnosis, treatment and care for key populations.](#)

2. Executive Summary

- The UK prison population is significantly higher than in other comparable countries and is fundamentally unsustainable
- The economics of drug prohibition inflame the situation by creating crime and criminality on a vast scale at all levels, including the empowerment of organised crime groups
- Prohibition drives people with drug problems - a population with the most complex and challenging needs - into prison, the place least able to meet those needs, leading to very high reoffending rates
- Prison concentrates a population of problematic users and dealers in the same space, creating a recipe for disaster
- In order to achieve sustainability we must shift from a criminal justice-based approach to drugs, to a health and regulation-based approach
- The UK government can immediately end the expensive and counterproductive criminalisation of people who use drugs, and begin to explore options for a phased process of bringing drugs under legal control and regulation through doctors, pharmacists and licensed vendors

- Pragmatic drug policy and law reform is one of the simpler ways that government can reduce the pressure on the criminal justice system as a whole, and on the prison population specifically

3. Transform Drug Policy Foundation

Transform is an independent think tank, and registered charity that operates internationally and works with partners from all sectors to further our vision and mission.

Our Vision:

- A global system of drug regulation and control that protects people, and promotes peace and security, sustainable development, health and human rights.

Our Mission:

- Educate and inspire policymakers to explore and implement the effective legal regulation of drug markets.
- Research and build a strong evidence base to support our mission and vision
- Advise and inspire policymakers worldwide to advocate for and implement drug policy review and reform
- Educate and inform the public about drug markets and options for their control

Transform regularly gives evidence to UK and international inquiries into drugs and drug policy. Transform has advised the Uruguayan and Canadian Governments on their plans to legally regulate cannabis, and holds ECOSOC special consultative status at the United Nations.

Sustainability

4. UK has an unusually high rate of imprisonment compared to other EU countries. The system is buckling under the strain of over incarceration and underfunding. Sustainability has to be built upon a dramatically reduced incarceration. The underlying structural problems that lead to the UK having such a high prison population are complex. However, reforming the UK's punitive enforcement response to drugs - as a driver for over incarceration - is relatively simple. A significantly reduced and more sustainable level of incarceration can be achieved by ending the criminalisation of people who use drugs, realigning policy from a punitive enforcement approach to a health-led approach, and beginning a process of bringing currently illegal drugs markets under legal Government regulation, dramatically reducing the crime and criminality associated with problematic drug use and the drugs market.

The economics of drug prohibition drives criminality

5. Drug prohibition is fuelling vast amounts of crime in the UK, creating an enormous burden on prisons and across the wider criminal justice system. Where there is

demand for drugs, but no legally regulated supply, a huge profit opportunity is created for criminal profiteers. In the UK, growing demand for drugs has fuelled an exclusively criminal controlled drugs market that now turns over between 6 and 9 billion pounds a year. In the absence of formal legal regulation, violence and intimidation often become the default regulatory tool to settle disputes, or establish, secure and expand market share between rival organisations. Drug profits are also used to expand into other forms of organised criminality. In a separate dynamic the inflated price of illegal drugs also fuels high levels of acquisitive property crime amongst lower income individuals with drug dependencies.

6. The high risk environment of a prison, intensifies this price inflation dynamic still further within its walls, often by an additional several hundred percent. For heroin and cocaine, prices are already inflated by several thousand percent by the time they reach Britain's streets. So a gram that costs pennies to produce in Afghanistan or Colombia can sell for several hundred pounds inside a prison. It is these extraordinary profit margins that incentivise the kind of entrepreneurial activity that can get literally tonnes of Class A drugs into high security prisons, year after year, crackdown after crackdown. It would be hard to imagine how we could have engineered a worse scenario.

Prohibition drives people with drug dependencies and the most complex needs into prisons, together with sometimes violent dealers

7. Firstly we fill prisons with people with drug dependencies: in 2002, research conducted by The Social Exclusion Unit (SEU) found that up to 70% of prisoners were using drugs prior to incarceration¹, and 13 years on, the proportion remains largely unchanged; in 2015 -16, 66% of adult prisoners across the prison estate, reported using drugs problematically upon arrival² including 41% of women³. More than 10% of prisoners are inside for specific drug offences, and estimates suggest many more are people whose offending is directly related to their use, or fundraising to support it (the Home Office does not publish data on 'drug-related' crime). A significant minority have mental health and emotional or psychological problems. This contributes to demand for drugs that can offer some temporary relief from the tedium, trauma and misery of life in prison. In 2016-17 only 14% of prisoners across the estate remain unlocked for the recommended amount of time⁴. Indeed, life inside can be so grim, and drugs so available that many prisoners who arrive without a drug problem have developed one by the time they leave. 47% of adult male prisoners and 31% of female stated that it is easy or very easy to get hold of illicit drugs in prison⁵.

¹ SEU (2002) Reducing re-offending by ex-prisoners

<https://www.bristol.ac.uk/poverty/downloads/keyofficialdocuments/Reducing%20Reoffending.pdf>

² HM Chief Inspector of Prisons for England and Wales Annual Report 2015 - 16

https://www.justiceinspectors.gov.uk/hmiprisoners/wp-content/uploads/sites/4/2016/07/HMIP-AR_2015-16_web.pdf

³ ibid

⁴ ibid

⁵ ibid

In 2010, 6% said they had developed a drug problem since their arrival, rising to 17% in certain prisons⁶. 16% of adult men who consider themselves to have a disability stated that they started using drugs problematically since arriving in prison⁷. Many prisoners who use drugs - to self medicate their dependence, pain or trauma - will then have their stay extended, often significantly, either through acquiring additional sentences for drug offences committed while in prison, or forfeiting time off for good behaviour due to drug use. We would encourage the committee to request data on these phenomena from the Ministry of Justice

8. In 2017, the Chief Inspector of Prisons for England and Wales annual report stated that the prison environment is becoming increasingly violent and dangerous⁸. Since 2013, the number of suicides has more than doubled⁹. 2016-17 witnessed three drug-related deaths of people held within immigration detention centres¹⁰. The use of novel psychoactive substances (NPS) has increased dramatically within the prison population, with spice induced seizures reaching an estimated 737 in 2014¹¹. In 2016, the number of deaths attributable to the use of NPS, reached 39¹².
9. The often heard suggestion that prison is a good environment for addressing drug problems is, in the majority of cases, absurd. If treatment specialists were presented with a series of treatment/recovery options for any given patient, it is hard to imagine *any* opting for prison. Not only is prison more expensive than other treatment options, even residential rehab (it is actually more expensive than staying at many 5 star hotels, on average, costing in excess of £35,000 a year¹³), but prison's brutal reality is far more likely to be damaging and traumatic than healing and rehabilitative. When drug problems are left unaddressed in the prison environment, they inevitably deteriorate and set up an individual for failure, relapse and reconviction upon release.
10. Into this population of people with drug dependencies and complex needs we mix a significant number of criminal profiteers, many of whom are involved with or actually in prison for drug supply, and most of whom are well connected to the illegal drugs underworld. No one can be surprised at the outcome of this volatile cocktail. The

⁶ HM Chief Inspector of Prisons for England and Wales Annual Report 2011– 12
<http://www.justice.gov.uk/downloads/publications/corporate-reports/hmi-prisons/hm-inspectorate-prisons-annual-report-2011-12.pdf>

⁷ HM Chief Inspector of Prisons for England and Wales Annual Report 2016-17
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/629719/hmip-annual-report-2016-17.pdf

⁸ *ibid*

⁹ *ibid*

¹⁰ *ibid*

¹¹ Users Voice.(2016) Spice: The Bird Killer <http://www.uservoice.org/wp-content/uploads/2016/05/User-Voice-Spice-The-Bird-Killer-Report-Low-Res.pdf>

¹² *ibid*

¹³ Ministry of Justice - Costs per place per prisoner 2016 - 17
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/653972/costs-per-place-per-prisoner-2016-2017-summary.pdf

demand for drugs in prison is so great and the profits so lucrative that a situation exists where a supply route will *always* be found. As successive inquiries and commissions have noted, shut down one supply route into prisons and the economic incentives immediately make securing alternative routes worthwhile, and inevitable. At some point the opportunities created even start to entice some prison staff into the market, especially when underpaid and demoralised. At this point any vague hope of preventing drugs in the prisons is effectively lost, and it is a point long since passed.

11. This is exactly the same phenomenon we see on the national and international stage with the hopeless futility of decades of drug eradication, interdiction, and populist rhetoric about 'securing our borders' that bears a non-coincidental resemblance to the political rhetoric we often hear about securing the prison estate. Despite the billions spent on supply side drug enforcement each year, the criminal trade thrives, drugs are more available and cheaper than ever before, and the violent criminals controlling the market get richer and more powerful. Not only is the analysis of supply and demand economics in an unregulated criminal drug trade the same at prison, national and international level, so evidently are the responses: announce a 'crackdown', unveil some new technology, produce a new strategy, create a new agency (or rename an old one).....then announce these process measures to show 'something is being done' whilst conveniently avoiding assessing effectiveness against troublesome 'outcome' measures. Regardless of scale, all such efforts that attempt to defy economic reality are equally futile. It is counterintuitive, but nonetheless demonstrably true that punitive supply side drug enforcement is fuelling the prisons crisis, not reducing it.

Reorienting our drug policy from a punitive enforcement model to a health and regulation-based approach will reduce crime and reduce the prison population

12. To address the link between drug policy and over incarceration, firstly, policy makers need to think beyond the entrenched punitive drug enforcement status quo. There is an urgent need to understand and respond to the problem's deeper structural causes, rather than merely deploying yet another doomed (even if well intentioned) attempt to deal with the symptoms. These causes of the problem lie at the heart of what is wrong with the UK drug policy:
 - The punitive culture and prevailing discourse that defaults to punishing, criminalising and imprisoning people whose offending is catalysed by problematic drug use in the context of drug prohibition. In Switzerland, where heroin-assisted treatment (HAT) is widely available, there has been a large reduction in fundraising-related criminal activity among HAT participants. (This benefit alone exceeded the cost of the treatment¹⁴). In addition, initiation of new heroin use has fallen (the medicalisation of heroin making it less attractive) and street dealing and recruitment by 'user-dealers' has also reduced¹⁵.

¹⁴ Killias, M. and Aebi, M. (2000) 'The impact of heroin prescription on heroin markets in Switzerland', *Crime Prevention Studies*, vol. 11, pp. 83-99.

http://www.popcenter.org/library/crimeprevention/volume_11/04-Killias.pdf

¹⁵ Reuter, P. and Schnoz, D. (2009) 'Assessing drug problems and policies in Switzerland, 1998–2007', Swiss Federal Office of Public Health

- The ideological commitment to the use of prison more generally; pandering to populist media and prioritising the political need to be ‘tough on drugs and crime’, rather than look at evidence of what works in delivering the shared goals of improved health and community safety.
 - The symptomatic knee-jerk responses and the inability to engage with the problems that underlie most problematic drug use that include: inconsistent parental engagement, difficult family background and drug abuse by parents, social and emotional deprivation, social exclusion and the failings of the education and welfare systems, failings of mental health services, failings of the care system, problems in the labour market for key populations, failure of social provision and the lack of investment in social capital for young people. These environmental factors which increase the risk of a person using drugs problematically are well documented and understood¹⁶.
 - The prevailing system of criminalisation of people who use drugs and absolute-prohibition that creates the illegal drug markets, the criminal entrepreneurs, and the financial pressures that drive dependent drug users into offending in the first place.
13. Some innovations and symptomatic responses may, of course, produce some improved outcomes on some measures. For example, more investment in prison treatment is better than none at all - and if it can improve health and successfully reduce demand for drugs in prisons then that is a positive step. But such successes will be marginal, and will only constitute 'success' relative to the catastrophic failings of the past, and will essentially be reducing problems created by the wider failings of the prohibition-prison drug management model in the first place.
14. In 2017, the ACMD noted that funding for (non-prison) substance misuse services across the UK has been significantly reduced in recent years but that without investment in such services, the aims of reducing unnecessary drug-related deaths and acquisitive crime rates will be largely unachievable¹⁷. The ACMD claims the current under-resourcing is compromising the effectiveness of treatment generally across the UK. The commissioners survey in 2015, suggested that as much as 37% of local commissioning teams were considered under-resourced and a further 8% very under-resourced¹⁸ (note: drug treatment services are funded via local authorities - whose Public Health budgets have been subject to central government cuts)

<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.177.5241&rep=rep1&type=pdf> and European Monitoring Centre for Drugs and Drug Addiction (2012) 'New heroin-assisted treatment: Recent evidence and current practices of supervised injectable heroin treatment in Europe and beyond' http://www.emcdda.europa.eu/system/files/publications/690/Heroin_Insight_335259.pdf

¹⁶ ACMD Pathways to Problems (2006)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/119053/Pathwaystoproblems.pdf

¹⁷ ACMD Commissioning impact of drug treatment (2017)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/642811/Final_Commissioning_report_5.15_6th_Sept.pdf

Recommendations

15. An immediate first step is to end the criminalisation of people who use drugs - removing all criminal sanctions for possession of small quantities of any drugs for personal use, even if some form of civil or administrative sanction remains in place - such as diversion into appropriate health or education programmes. This is a policy approach that, as part of a wider reorientation from a punitive model to a health led approach, has been successfully adopted – and helped reduce prison populations and improve public health - in numerous jurisdictions across the world, and is endorsed by the Royal Society for Public Health and The Royal College of Physicians (who have additionally recommended moving the drugs brief from the Home Office to the Department of Health), The Advisory Council for the Misuse of Drugs, the World Health Organisation, and the UN Office of the High Commissioner for Human Rights, amongst many others.

- In Portugal, possession of all drugs for personal use was decriminalised in 2001. This move from a punitive to health-led approach has impacted the Portuguese prison population. The proportion of drug-related offenders (defined as those who committed offences under the influence of drugs and/or to fund drug consumption) in the Portuguese system declined from 44% in 1999 to just under 21% in 2012¹⁹. There has also been an increase in the number of people seeking treatment²⁰ and the number of newly diagnosed HIV cases among people who use drugs intravenously has fallen from 1,016 in 2001 to 56 in 2012²¹.
- The punitive approach in the UK resulted in 330,445 high risk opioid users being identified and an accompanying 182 cases of HIV diagnoses attributed to drug use²² in 2015. This is in stark contrast to the Netherlands which has adopted a health orientated approach; resulting in there being 14,000 high-risk

¹⁸ ibid

¹⁹ Data for 1999 taken from Instituto da Droga e da Toxicodependência (2004) 'Relatório Anual 2003 - A Situação do País em Matéria de Drogas e Toxicodependências', p. 141.

http://www.sicad.pt/PT/Publicacoes/Paginas/detalhe.aspx?itemId=11&lista=SICAD_PUBLICACOES&bkUrl=BK/Publicacoes/ Data for year 2012 taken from Instituto da Droga e da Toxicodependência (2013) Relatório Anual 2012 - A Situação do País em Matéria de Drogas e Toxicodependências, p.105.

http://www.sicad.pt/BK/Publicacoes/Lists/SICAD_PUBLICACOES/Attachments/59/Relatorio_Anual_2012.pdf

²⁰ What Can We Learn From The Portuguese Decriminalization of Illicit Drugs? (2010) <https://doi.org/10.1093/bjc/azq038>

²¹ European Monitoring Centre for Drugs and Drug Addiction (2014) <http://www.emcdda.europa.eu/data/2014>

²² European Monitoring Centre for Drugs and Drug Addiction - United Kingdom Country Drug Report (2017) <http://www.emcdda.europa.eu/system/files/publications/4529/TD0116925ENN.pdf>

opioid users identified and only 1 HIV diagnosis attributable to intravenous drug use²³.

- In the Netherlands, prolific and persistent offenders for whom substance misuse is a driver for offending related behaviour, treatment and psychosocial interventions are extended. These programmes are delivered within specific support and treatment institutions, not in prison²⁴. To that end, the number of people incarcerated for drug-related offences is significantly lower in the Netherlands than in the UK.

16. In the medium term we must completely move away from using prison as a sanction for people who commit minor non-violent drug (or drug-related) offences of any kind. In fact, punishing and branding anyone with the stigma of a criminal record for a drug offence only serves to diminish their life chances and make reoffending more likely. So even where a minor drug offence on its own might not lead to a custodial sentence, bringing people into the criminal justice system in this way increases the likelihood that they will ultimately end up incarcerated. So we should develop and explore alternatives to custody that are consistently demonstrated to be not only cheaper, but far more effective on key indicators - not least re-offending. And we must help those people who use drugs problematically to rebuild their lives with appropriate tailored treatment, harm reduction and holistic support (including employment and housing support). The public have repeatedly been shown to support such cost effective alternatives to custody, and so it is particularly mystifying why policy-makers have been so reluctant to embrace and show leadership on this idea.

- According to the NHS, in 2010 - 11, drug treatment prevented 4.9m offences occurring and for every £100 spent on treatment, a crime is prevented²⁵.
- Durham Constabulary are running a diversion programme called Checkpoint²⁶. This programme offers offenders the opportunity to engage in a 4 month long contract as an alternative to prosecution; during which environmental factors related to their offending are addressed, such as issues with drug and alcohol misuse, housing and poor mental health. The programme is proving successful in reducing reoffending rates among the cohort involved in the study. Initial results suggest that only 4% of Checkpoint participants reoffend within 18 months of completing the programme, compared with 19% of those who don't²⁷

²³ European Monitoring Centre for Drugs and Drug Addiction - Netherlands Country Drug Report (2017)

<http://www.emcdda.europa.eu/system/files/publications/4512/TD0616155ENN.pdf>

²⁴ *ibid*

²⁵ National Treatment Agency for Substance Misuse - Treat addiction, cut crime (2012)

<https://pdfs.semanticscholar.org/presentation/3743/2fe7371293cc269e6ceed641ca0d0f5a0f42.pdf>

²⁶ Durham Constabulary - Checkpoint

<https://www.durham.police.uk/Information-and-advice/Pages/Checkpoint.aspx>

²⁷ However, people who engage on such a programme are likely to be the ones more able to and

- Avon and Somerset Constabulary have piloted (and are now rolling out force-wide) a diversion scheme - the Drug Education Programme DEP - where those caught in possession of any drug are given the choice of following the normal criminal justice route, or attending a drug education course, so avoiding a criminal record. This course includes a group session, and a one-to-one with a drug worker during which participants can be referred to treatment if appropriate. The DEP aims to reduce criminal behaviours through addressing various contributory factors, including substance misuse²⁸, again - outside the criminal justice system. Evaluation by Avon and Somerset Police recognised that some 20% of offenders referred to the scheme did not complete it (and were referred back into the criminal justice system). However, 84% of those who did, felt that the intervention was relevant to their needs, and the drug use of these participants was reduced through engagement. Furthermore, the DEP has seen a step change reduction in offending among participants, with most not reoffending, and almost all those monitored (129 out 133) showing a reducing harm score, including in terms of the type of offences committed. Important to note is the cost-effectiveness of an initiative such as this, dramatically reducing the amount of police time taken to process each individual.

17. In the longer term we need a long overdue review of UK drugs policy, the regime of prohibition, its generational failure and its central role in crime creation, and the crisis in the criminal justice system. Key to such a review is a meaningful exploration of regulatory alternatives to illegal drug markets²⁹, where the trade is controlled by the state rather than by organised crime, and that sits within a broader policy framework predicated on public health, human rights and harm reduction principles, rather than knee-jerk punitive populism and mass incarceration.

Additional information:

- The estimated cost of drug-related arrests is £535 million annually in England and Wales³⁰.
- According to the Home Office, the social and economic costs of class A drug-related crime is £13.9bn annually in England and Wales³¹.

further research is needed to determine if results could be generalised to a more chaotic sample.

²⁸Avon and Somerset Constabulary - Drug Education Programme Pilot (2017)

Full information is available upon request

²⁹ Rolles, S. (2009) After the War on Drugs; Blueprint for Regulation. Transform

<https://www.tdpf.org.uk/resources/publications/after-war-drugs-blueprint-regulation>

³⁰ Durham Police - Towards a Safer Drug Policy (2017)

<https://www.durham-pcc.gov.uk/Document-Library/Policing-Priorities/Drugs/Towards-a-Safer-UK-Drug-Policy.pdf>

³¹ Home Office - Understanding organised crime: estimating the scale and the social and economic

- Between 2008 - 2011, the ACMD found that drug treatment funding has been reduced by 12%³². However, the body found it difficult to determine the current situation because comparable published financial information is unavailable and also due to the recent changes made to the process of financial reporting³³.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/246390/horr73.pdf

³² ACMD Commissioning Impact on Drug Treatment (2017)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/642811/Final_Commissioning_report_5.15_6th_Sept.pdf

³³ *ibid*