

Criminal Justice Committee

8th Meeting, 2021 (Session 6), Wednesday 27 October 2021

Written submissions from witnesses and from other organisations and individuals

1. The Criminal Justice Committee is holding an evidence session on 27 October on the misuse of drugs and the criminal justice system as part of a series of roundtables.
2. Written submissions have been provided by the following organisations and people who will be attending the meeting—
 - Crown Office and Procurator Fiscal Service
 - Peter Kykrant
 - Police Scotland
 - SACRO and Shine
 - Scottish Drug Deaths Taskforce
3. These submissions are attached (**Annex A**).
4. Other organisations and individuals that have made a submission are:
 - Dr Liz Aston, Associate Professor of Criminology, Edinburgh Napier University and Director, Scottish Institute for Policing Research
 - Drug Science
 - Release
 - Scottish Prison Service
 - Scottish Government, Health and Justice Collaboration Board to tackle the misuse of drugs in Scotland
 - Social Work Scotland
 - Transform Drug Policy Foundation
 - Dr Anna Ross, Senior Teaching Fellow Health in Social Sciences, University of Edinburgh
5. These submissions are attached (**Annex B**).
6. The Committee thanks all of those who have taken the time to respond to our call for views.

Crown Office and Procurator Fiscal Service

Summary

Individuals who use drugs problematically may come to the attention of Police Scotland and the Crown Office and Procurator Fiscal Service (COPFS) as accused persons in number of different scenarios; not only for offences under the Misuse of Drugs Act 1971, but also, for example, in relation to offences involving theft or violence.

There is no default response to a charge of possession of drugs. Prosecutors exercise their professional judgment when considering any case. The appropriate response will depend on an assessment of all of the relevant circumstances.

In relation to supply offences, COPFS is committed to disrupting the activities of those who cause the greatest harm to our individuals and communities.

Prosecutorial Guidance

1. The published Scottish Prosecution Code sets out the criteria for decision making by prosecutors and the range of options available to prosecutors dealing with reports of crime. A copy of the Prosecution Code is enclosed at Annex A. Where a report discloses sufficient evidence of a crime, prosecutors will decide what, if any, action is required in the public interest. The principles set out in the Code apply to alleged offences under the Misuse of Drugs Act 1971, including offences of possession, as they apply to other alleged offences.
2. The factors which a prosecutor will consider in determining how the public interest is best served include:
 - the nature and gravity of the offence;
 - the impact of the offence on a victim and other witnesses;
 - the age, background, and personal circumstances of the accused;
 - the effect of prosecution on the accused; and
 - public concern.
3. Prosecutors do not apply a blanket approach to possession of drugs offences. Prosecutors recognise that, as with other offending, the appropriate prosecutorial response in the public interest – including the public interest in addressing the causes of offending behaviour and in reducing the risk of re-offending - depends on the particular circumstances of the offence and offender.
4. This approach involves the appropriate use of:
 - alternatives to prosecution such as written warnings, fiscal fines, or fiscal work orders;
 - diversion from prosecution; and
 - commencing court proceedings.

5. Any decision made by a prosecutor should be outcome-focused and the action taken should be proportionate to the offence, taking account of the range of actions available to prosecutors. Legislation enables Scottish prosecutors to offer certain specific alternatives to prosecution – fiscal fines, fiscal compensation orders, fiscal work orders, and combined orders. These are additional to the prosecutor's power to decide not to take any action, to issue a warning, to offer a diversion from prosecution or to initiate court proceedings. It is appropriate for each of these alternatives to be used where it represents a proportionate response to the circumstances of the individual case.

Police Referral

6. When the police encounter an individual who they know, or suspect, is addicted to drugs, officers are able to direct that person to services which may be able to assist. Police arrest referrals are intended to break the link between substance use and offending by improving uptake of services among those whose offending is linked to drug or alcohol use. Police arrest referral schemes in Scotland are already available.
7. Part of the work of the Drugs Death Taskforce has been the development of a pilot scheme for individuals found in possession of drugs to be referred by police, to peer mentors who immediately and proactively support individuals in accessing services. This proposal received funding from the funds provided through the Drugs Death Taskforce and a pilot program, run by Medics Against Violence has opened in Inverness.
8. The pilot scheme in Inverness offers support to an individual regardless of whether or not they are offered a Recorded Police Warning or subsequently reported to the Procurator Fiscal.

Recorded Police Warnings

9. The Recorded Police Warning scheme was introduced in 2016, replacing Formal Adult Warnings. The purpose of the scheme is to enable police officers to deal with a wide range of lower-level offences by issuing a Recorded Police Warning at the time of the offending, in the form of a formal warning. The scheme complements the discretion a police officer already has to administer an on-the-spot verbal warning for minor offences. The recorded warning system is an alternative to reporting the case to the Procurator Fiscal, not an alternative to verbal warning.
10. Decisions on the scope of the scheme are a matter for the Lord Advocate, as part of the Lord Advocate's constitutional responsibility for the system of the investigation and prosecution of crime. The scope of the scheme is kept under regular review.
11. The Lord Advocate recently confirmed that the scope of the Recorded Police Warning scheme has been extended to include possession only offences of Class A drugs. The scheme previously included possession only offences of Class B and C drugs.

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12. The extension follows an analysis of prosecutorial action in relation to cases involving a single charge of possession of a controlled drug confirmed that the majority of cases involving Class A drugs were dealt with by way of a direct measure, rather than court proceedings.
13. The Recorded Police Warning scheme applies to drug possession offences only. It does not apply to drug supply offences.
14. The amendment to the scheme is intended to facilitate an effective and proportionate response to this type of offending, whilst ensuring that officers retain the ability where wider concerns of criminal behaviour or other considerations exist, either in relation to the accused or the circumstances of the offence, to report the circumstances to the Procurator Fiscal.
15. Recorded Police Warnings do not represent decriminalisation of an offence. Recorded Police Warnings represent a proportionate criminal justice response to a level of offending and are an enforcement of the law.
16. Neither offering nor accepting a Recorded Police Warning is mandatory. Police officers retain the ability to report appropriate cases to the Procurator Fiscal. Accused persons retain the right to reject the offer of a warning.
17. Neither offering a Recorded Police Warning nor reporting a case to the Procurator Fiscal prevents an officer, who comes into contact with someone addicted to drugs, referring that person to support services.
18. A Recorded Police Warning is not a finding of guilt so does not result in a conviction but is an alternative to prosecution and will be recorded on an individual's criminal history for a limited period and may be taken into account should the offender come to the further notice of the police. If a Recorded Police Warning is refused, the offence may be reported to COPFS.

Alternatives to Prosecution

19. As above, in order to respond to a specific case and specific individual appropriately, prosecutors in Scotland are provided with a range of direct measures, otherwise known as alternatives to prosecution including:
 - a warning;
 - financial penalties (the fiscal fine);
 - fiscal work order;
 - compensation orders; and
 - diversion from prosecution.
20. Alternatives to prosecution are an offer made to an accused person. An accused person may choose to reject the offer of an alternative to prosecution, including diversion. The Procurator Fiscal may choose to initiate criminal proceedings as a result.
21. An accused person does not have to make an admission of guilt to accept an alternative to prosecution and acceptance does not result in a criminal conviction,

although a record of the disposal will be kept on their criminal history for a limited period and may be used in disclosure purposes.

Diversion from Prosecution

22. Diversion from prosecution has long existed in Scotland and is offered by the Procurator Fiscal under the direction of the Lord Advocate rather than by the police.
23. The Lord Advocate has confirmed that prosecution policy on diversion is that it should be considered in all appropriate cases where there is an identifiable need which has contributed to offending. Dependency on drugs may be an identifiable need.
24. The [Community Justice Scotland National Guidelines on Diversion from Prosecution in Scotland](#) confirm that the aim of diversion is to:
 - a) provide a disposal which, due to the circumstances of the individual and the circumstances of the alleged offence, provides an appropriate person-centred response; and
 - b) to enable a swift intervention, which can interrupt a cycle of offending and/or prevent further offending
25. The [Community Justice Scotland National Guidelines on Diversion from Prosecution in Scotland](#) describe the benefits of a successful diversion from prosecution as being:
 - a) it allows the individual an opportunity for support to deal with the issues personal to them in the context of the alleged offence (from a desistance perspective;
 - b) avoiding unnecessary contact with the criminal justice system; and
 - c) the individual does not receive a conviction for the alleged offence, which can impact on their longer-term employment opportunities.
26. Where the prosecutor is satisfied that the public interest would be best served by an offer of diversion, they will make a referral to the Local Authority, or other agreed agency, who will then assess the suitability of the individual.
27. Local Authorities are responsible for providing diversion schemes. Current guidance from [Community Justice Scotland National Guidelines on Diversion from Prosecution in Scotland provides that](#) diversion from prosecution should respond to the needs of the individual. Those providing interventions could employ generic responses to the alleged offence in addition to bespoke, tailored interventions that match the circumstances and needs of the individual.
28. Not every case will be suitable for diversion and not all individuals would benefit from, or require, intervention and support. Suitability will depend on the individual facts and circumstances of both the case and the accused. Local Authorities may notify the prosecutor that an individual is not appropriate for diversion. The prosecutor will then decide what action to take in the public interest.

29. Diversion is most frequently offered on a deferred prosecution basis whereby the prosecutor will receive feedback on whether it has been successful completed before making a final decision on prosecution.
30. Prosecution policy recognises that there is no one size fits all definition of success. Preventing reoffending in the long term is the aim, but for some people a one-off intervention will not necessarily be sufficient. To that end, there is no limit on the number of times a diversion might be offered to an individual and rejecting diversion or a lack of engagement on one occasion does not mean that diversion won't be offered in the future.
31. The establishment of Community Justice Scotland has provided significant opportunity to enhance the use of diversion across Scotland and establish a consistent approach to the availability of diversion schemes across the country.

Possession Offences

32. The following table sets out the action taken by prosecutors in relation to the cases reported to them which featured **only** a possession of drugs charge for all classes of drug under section 5(2) of the Misuse of Drugs Act 1971.

Financial Year	2016-17	2017-18	2018-19	2019-20	2020-21
Total number of charges	9,775	7,666	7,459	10,073	10,200
Direct Measures	5,542	4,447	4,343	6,665	6,895
Fiscal Fine	4,085	3,331	3,301	5,232	4,625
Diversion	88	57	324	501	1,000
Work Offer	536	554	242	92	25
Children's Reporter	57	45	43	61	65
Warning	776	459	433	779	1,180
Proceeded in Court	2,818	2,293	1,794	1,631	1,000
No Decision					145

33. There has been an increase in the number of single charge possession cases reported to COPFS but the total number of cases which are being prosecuted in the courts continues to decrease.
34. Two thirds of single charge possession cases reported to COPFS are dealt with by alternatives to prosecution, with the vast majority being offered a financial penalty.
35. In 2020-21, one tenth of single charge possession cases were prosecuted in court, this compares to a quarter in 2018-19, and one third in 2017-18.
36. The reasons that prosecution may be the most appropriate outcome in the public interest are varied. A possession offence may cover a wide range of circumstance and not everyone found in possession of a controlled substances is dependent on drugs. Alternatives to prosecution are an offer made to an accused person. An accused person may choose to reject the offer of an alternative to prosecution, including

diversion. The Procurator Fiscal may choose to initiate criminal proceedings as a result.

Supply Offences

37. COPFS is committed to working with criminal justice partners to tackle those who are involved in organised crime and the supply of controlled drugs, and a robust approach is taken in relation to such cases.
38. COPFS' Serious Organised Crime Unit's is focused on the organised crime groups which present the greatest risk of harm to Scotland's communities, and on the individuals within those crime groups who are assessed as being 'principals', i.e., those who are operating at a senior level: controlling, orchestrating, and directing the activities of those beneath them and of the crime group as a whole.
39. Drug trafficking remains the largest criminal market in Scotland, with 69% of Organised Crime Groups (OCGs) involved in this type of criminality.
40. There are currently 112 known OCGs comprising 2,417 individuals being investigated by law enforcement in Scotland.
41. As of June 2021 (the most recent figures available), there were 173 OCG nominals (then 9% of the total) incarcerated within 14 of the 15 prison estates in Scotland. 13 of the incarcerated nominals were 'principals', namely those deemed to have been directing the activities of organised crime activity in Scotland.
42. In addition to charges under the Misuse of Drugs Act 1971, prosecutors will pursue charges of being involved in, or directing, serious and organised crime (in terms of Sections 28 and 30 of the Criminal Justice and Licensing (Scotland) Act 2010) where this is appropriate and supported by the evidence. The Section 30 (directing) offence may be appropriate in drugs cases where an offender operates at a senior level within the crime group, directing couriers, but not actually having 'hands on' involvement with the drugs himself.
43. The robust prosecutorial response in relation to such cases includes seeking Serious Crime Prevention Orders (SCPOs), where appropriate, in terms of the Serious Crime Act 2007. A SCPO is a civil court order which the Lord Advocate may apply for when a person has been convicted of a serious offence (there is also provision for a 'standalone' application where there has not been a conviction). The purpose of the SCPO is to protect the public by preventing, restricting, or disrupting a person's involvement in serious crime after they have been released from prison. The orders do this by imposing various restrictions or requirements on the person, for example, restricting access to communication devices, restricting associations and travel, or imposing financial reporting requirements. The conditions which are sought will vary from case to case as they are tailored to the circumstances of the particular offence/offender, in order to be as effective as possible.
44. 70 'upon conviction' SCPOs and 1 'standalone' SCPO have been granted in Scotland to date. 13 SCPOs are now live and being monitored by Police

Scotland, the subjects having been released from prison having served their sentences. 3 reports relating to breach of a SCPO have been received by COPFS. All three relate to the same accused and criminal proceedings have been commenced in relation to these breaches.

45. The following cases are illustrative of recent prosecutions by the COPFS Serious Organised Crime Unit:

- **Operation Valance**

This case involved 5 accused concerned in the supply of drugs and in relation to 3 accused was aggravated by a connection with serious organised crime. The accused were involved in the operation of a pill press to produce Etizolam tablets on an industrial scale. All 5 accused pled guilty at the High Court. On 2 November 2020 3 accused were each sentenced to 5 years and 4 months imprisonment and SCPOs imposed in respect of each of them for 2 years. A 4th accused was sentenced to 2 years imprisonment with the 5th accused receiving a 12-month sentence.

- **Operation Stickup**

The accused pled guilty to being concerned in the supply of Heroin and Cocaine, aggravated by a connection with serious organised crime. The van the accused was driving had a hidden compartment used to conceal controlled drugs, and quantities of cocaine and heroin with a 'street value' of over £1.3million were recovered at an address linked to him. The accused pled guilty at the High Court. On 18 August 2020 the accused was sentenced to 8 years imprisonment and a SCPO was imposed.

- **Operation Delfin**

On 5 January 2021 2 accused pled guilty at the High Court to offences of being concerned in the supply of drugs and money laundering, both aggravated by a connection with serious and organised crime. The offences involved the transport and delivery of consignments of cash and Cocaine with a potential 'street' value of over £5 million. On 4 February 2021 each accused was sentenced to 10 years imprisonment and SCPOs were imposed in respect of both accused.

- **Operation Redeem**

This case involved the attempted transportation of Cocaine and Cannabis from Scotland to the Republic of Ireland through the ferry link between Stranraer and Belfast. On 20 April 2021, the two accused were convicted after trial at the High Court of three offences involving being concerned in the supply of drugs. Two of the charges were aggravated by a connection with serious and organised crime. On 8 June 2021, one accused was sentenced to 6.5 years imprisonment and the other accused was sentenced to 5.5 years imprisonment. Consideration of the serious crime prevention order applications has been continued until 29 November 2021.

Proceeds of Crime

46. Prosecutors are committed to removing financial gain achieved by criminal means, using Proceeds of Crime legislation to pursue restraint of criminal's

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assets and confiscation proceedings to recover criminal profits. Funds which are seized as a result of confiscation orders are paid into the Cashback for Communities fund, which invests funds in communities across Scotland.

47. The total amount for all confiscation orders made over the financial year 2020-21 was **£1,745,186.09**.

48. The total amount for orders made relating to drug related charges only, over the same period, was **£1,031,951.17**

Membership of strategic groups

49. COPFS is represented on a number of multiagency groups which promote a whole systems approach and seek to reduce the harm caused by the consumption of drugs - the Drugs Death Taskforce, the Police Scotland Drugs Strategy Board, the Police Scotland Drugs Harm Strategic Taskforce and the Serious and Organised Crime Taskforce.

50. Police Scotland's Drugs Strategy Board is a multi-agency group including representatives from support and recovery groups, academia, and law enforcement. It was established by Police Scotland to reduce the harm caused by substance use while continuing to disrupt illicit supply and to maximise the community safety.

51. The Drug Harm Strategic Taskforce has been established by Police Scotland to tackle harm associated with synthetic drugs, particularly benzodiazepines, across Scotland.

52. COPFS are also members of the Serious Organised Crime Taskforce chaired by the by the Cabinet Secretary for Justice and Veterans. The Taskforce is dedicated to tackling serious organised crime and reducing the harm it causes to communities in Scotland

Drug Consumption Rooms

53. In June 2017 the then Lord Advocate was asked by the Glasgow City Health and Social Care Partnership to confirm (by way of guidelines, letters of comfort, protocols, or a formal policy) that the health board, the council, their staff, partner organisations and their staff and service users of a proposed drug consumption facility would not be prosecuted for a range of potential offences.

54. The then Lord Advocate considered this proposal carefully and reached the conclusion that the public interest objective in a consumption facility was a health rather than justice one. However, in relation to what was asked of him at the time, the then Lord Advocate concluded that it was not possible to grant the request.

55. The potential offences which may be committed in any particular consumption facility will depend on the individual scheme envisaged, the policies and process of the individual scheme, and the actual behaviours of both operators and users.

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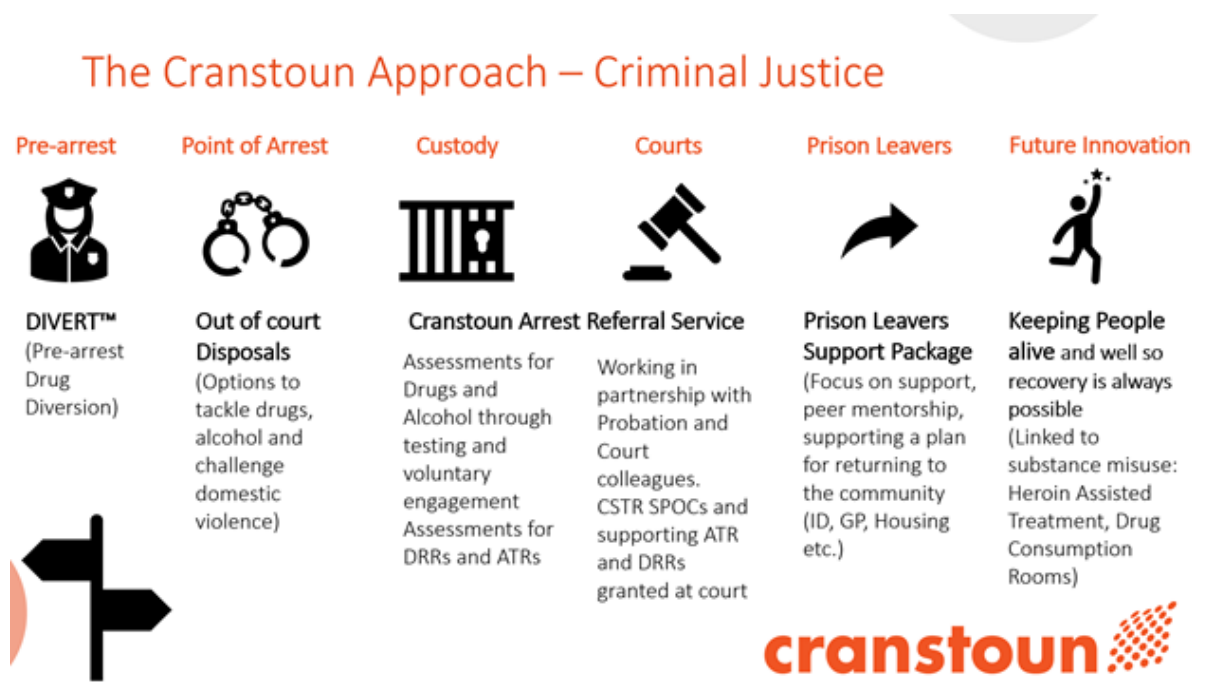
56. The Lord Advocate cannot as a matter of law, whether through prosecution policy or otherwise, decriminalise conduct which is, by law, criminal. Nor can the Lord Advocate grant an immunity from prosecution in advance.

57. In the context of drug consumption rooms, it is not possible for the Lord Advocate to introduce a legal framework which would:

- a) establish an appropriate system for licensing and oversight of the safety of such a facility
- b) address the scope of exemption from the criminal law, both for those operating and working within the facility, and for users, and
- c) deal with questions of civil liability

58. It is possible for the Lord Advocate to issue focused and targeted statements of prosecution policy. Any statement of prosecution policy should not be understood as providing immunity from prosecution. Prosecution policy is a matter solely for the Lord Advocate as the independent public prosecutor.

59. Any proposal in relation to a statement of prosecution policy on drug consumption rooms would have to be considered on its individual merits. It would not be appropriate to comment on hypotheticals.



Discussion points raised by the Committee in red / Cranstoun response in Black.

- The work being done by Police Scotland and the Scottish Government to address Scotland's high drug deaths rate. This might include measures to enable more regular reporting on suspected drug deaths in pursuit of getting more people into treatment quickly; the current pilot project where police officers carry and administer Naloxone; and tackling the illicit supply of drugs into Scotland and the role of serious and organised crime groups.
- The work being done by the Scottish Drugs Death Taskforce to improve the health outcomes for people who use drugs and to reduce the risk of harm and death.
- The role of the Crown Office and Prosecution Service in the prosecution of cases relating to the supply and use of illegal drugs in Scotland.

Cranstoun has been making a difference since 1969. We offer a wide range of services across England, including community-based drug and alcohol treatment services, supported housing, specialist services for young people, families, carers, and domestic abuse services. Not only do we specialise in service delivery but also in system change to improve the whole system for services users and partner agencies.

In recent years Cranstoun Criminal Justice Services have worked closely with the West Midlands Office of the Police and Crime Commissioner and West Midlands Police to achieve the objectives set out within the drug plan and 8 recommendations. <https://www.westmidlands-pcc.gov.uk/drugs-2/>

Cranston delivers a number of Criminal Justice Services across the West Midlands that form part of a whole system approach to drug users within the CJ System. It is important to ensure the relevant interventions are delivered to the right people at the

right time and that services recognise that one approach does not fit all. Our Pre-Arrest Drug Diversion course (DIVERT™) ensures those in contact with the police for possession only offences are given the opportunity to engage with meaningful intervention that avoids a criminal record which could hinder them later in life. We know that for most people the criminal record will do more harm than the drugs themselves as they struggle to navigate travel or career prospects which can result in further involvement in criminal activity.

Whilst the concept of Drug Diversion is still within its infancy more and more police forces are recognising their benefits with West Mercia and Thames Valley also commissioning DIVERT™.

Cranstoun delivers the West Midlands Arrest Referral Service across the whole region which encompasses seven local authorities, four custody suites, 6 criminal courts and a range of partner agencies. This service, based within the custody suites of West Midlands Police gives drug and alcohol using offenders the opportunity to engage with a qualified drug and alcohol worker whilst in custody who can offer harm reduction advice, overdose management, facilitate onward referral and discuss sentencing options around Community Sentence Treatment Requirements.

Cranstoun Arrest Referral Service has shown that the Criminal Justice System is an effective platform to engage with the most vulnerable individuals, many of whom may not be in treatment. Working with the main treatment providers within the West Midlands we have analysed the effectiveness of referrals coming from Cranstoun Arrest Referral Service. We looked at the number of referrals, numbers that engaged, those that remained in structured treatment and successful completions. Using the NTA document: Estimating the Crime Reduction Benefits of Drug Treatment and Recovery we can estimate that over a 12 month period CARS had a cost avoidance impact in excess of £9million within the region.

The ambition of the three main partners (Cranstoun, West Midlands Police and the Office of the Police and Crime Commissioner) has always been to expand the availability of Naloxone and bring this to those most at risk of overdose and not engaged in structured treatment. We have worked tirelessly since the start of the contract to supply Naloxone and Needle Exchange from police custody. In recent weeks Cranstoun have been able to establish this element of the service within the custody suites of West Midlands Police. Not only has this process ensured the most vulnerable individuals are offered Naloxone and clean injecting paraphernalia but it has also raised the profile of both initiatives within the police force with police officers and staff requesting training in how to administer the medication and the theory behind needle exchanges. As a result of this we are witnessing a change in perception of those that use drugs and a more empathetic approach to help deal with the root causes of their offending.

'The use of DIVERT and provision of naloxone and a clean needle from custody has been ground breaking and is helping to shift the focus of addiction towards public health outcomes for those individuals, rather than criminal justice. DIVERT can reduce the unnecessary criminalisation of young people by enabling them to get holistic support for their individual circumstances and continue to access education, training and employment'.

Superintendent Jane Bailey | Deputy Head of Criminal Justice Services | Force lead for Drugs & Psychoactive Substances | West Midlands Police

Many people in contact with criminal justice services have unmet health and social care needs, which may contribute towards their offending behaviour. In 2005, treatment requirements were introduced as a sentencing option and three requirements were made available:

- Alcohol treatment requirement (ATR)
- Drug rehabilitation requirement (DRR)
- Mental health treatment requirement (MHTR)

The use of treatment requirements has, however, been very low. To encourage take-up, in 2017 the CSTR programme was developed and 'tested' in five areas (Sefton, Birmingham and Solihull, Northamptonshire, Milton Keynes and Plymouth). Cranstoun Arrest Referral Service provides suitability assessments to The Probation Service regarding these community sentences as well as providing CSTR SPOCS within the Birmingham and Black Country Criminal Courts within the West Midlands. Our contribution to this element of the system has resulted in the increased use of DRRs and ATRs within the region.

Cranstoun Arrest Referral Service Performance (January 2020 – September 2021):

Contacts (offer of service and awareness of treatment)	15372
Assessments	4196
Onward Referrals to Treatment	1962
DRRs	313
ATRs	205

- Tackling drug use in the prison system, looking at the support provided to prisoners during their time in prison and the arrangements that are made to provide the best support to prisoners who have a drug problem on their release.
- The legal framework that currently criminalises the misuse of certain drugs and the related issue of whether one policy that may assist in tackling drug deaths is the provision of 'safe consumption rooms'.

The recent announcement by the Lord Advocate regarding the issuing of Police Warnings for Class A possession offences is one that has been welcomed by the Drug and Alcohol Treatment sector. We know that for most people the criminal record will do more harm than the drugs themselves as they struggle to navigate travel or career prospects which can result in further involvement in criminal activity.

It is important to ensure the relevant interventions are delivered to the right people at the right time and that services recognise that one approach does not fit all. Cranstoun's approach to diversion gives police officers the opportunity to refer people they have found with small amounts of drugs to meaningful intervention that allow more informed decisions to be made regarding the continuation of their drug use.

Whilst drug diversion schemes are not aimed at problematic drug users who require longer term clinical intervention, we are aware that some problematic drug users do come through. It is important to ensure any drug diversion scheme has robust referral pathways and information sharing agreements in place to allow the facilitators to maximise the opportunity of onward referral and engagement with the relevant agencies. It is for this reason that Cranstoun requires every person referred to DIVERT to undergo an assessment prior to attendance at the DIVERT course. This assessment works through all lifestyle factors and potential safeguarding issues including risk of exploitation to ensure the suitability of the referral and safety within the DIVERT sessions.

West Midlands DIVERT Activity Levels (November 2020 – August 2021)

Referrals	2233
Assessment Attendance	1641
DIVERT Session Attendance	1410

Peter Krykant now Project Lead at Cranstoun is supporting the development of innovation and sharing learning from the Glasgow Safer Injection Facility to inform future services?

Peters comments:

“Tackling drug use in the prison system, looking at the support provided to prisoners during their time in prison and the arrangements that are made to provide the best support to prisoners who have a drug problem on their release.”

As well as diverting people from the criminal justice system we also need to look at the support offered within the prison system, many who received custodial sentences for offences such as possession and crime related to dependency will be people who other forms of treatment have been tried and failed to create any stability, this could include time on methadone, buprenorphine, time in rehabs and abstinence based recovery as well as attendance at mutual aid recovery groups like 12 step fellowships so HAT should be widely available both in and out the prison system. Various studies internationally show that diamorphine assisted treatment is effective in stabilisation and long term movement away from involvement with illicit drug use and associated crime.

<https://harmreductionjournal.biomedcentral.com/articles/10.1186/s12954-020-00412-0>

“The legal framework that currently criminalises the misuse of certain drugs and the related issue of whether one policy that may assist in tackling drug deaths is the provision of ‘safe consumption rooms’.”

Over a ten month period with an operation total time estimated at 500 hours Glasgow Safer Injection Facility supervised well over 800 injections, within the first five months operating for five hours one day per week around one injection every two hours was supervised, when the service upgraded to a decommissioned ambulance and as trust grew and external influences like police interventions and monitoring became less

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frequent the service was supervising up to five injections per hour and was operating over four days per week five hours per day.

No deaths occurred – on-site five overdose events resulted in naloxone being administered – two nearby overdose were responded to with naloxone being administered on both occasions.

Over a ten month period given that seven heroin and one cocaine overdose was successfully managed resulting in no deaths my estimation is that within the same service delivery period being delivered by a full time service that would equate to 7,392 hours over ten months, with enough capacity for the 500+ estimated public injecting drug users in Glasgow that on a conservative estimate that well over 100 overdoses could have been managed with a conservative estimate of 140 over a calendar year. When this is reflected just within one site in the city centre and taking into account that Glasgow City had 291 fatal overdoses there is no doubt that Overdose Prevention Sites could contribute to a reduction in drug related deaths along with various other health and societal benefits as widely discussed from the existing data from both the unsanctioned site in Glasgow and the hundreds of sites around the world.

Police Scotland

Purpose

The purpose of this briefing paper is to highlight current substance harm prevention work being undertaken by Police Scotland in response to Scotland's Drug Related Deaths.

Police Scotland Strategic Approach to Prevention, Intelligence and Enforcement

Police Scotland's **Drug Strategy Board** (DSB) is led by ACC Gary Ritchie, Partnership, Prevention and Community Wellbeing. The Board provides strategic oversight, governance and policy direction in relation to Police Scotland's prevention, intelligence and enforcement activities relative to drug and substance misuse across the country.

The DSB has a defined vision, membership and supporting sub-structure, via a Drug Harm Prevention Sub-Group and an Enforcement Sub-Group. The Board recognised a clear need for the police to focus on these two elements: Enforcement - to disrupt supply and bring offenders to justice and Prevention - to divert users away from the drugs market and towards support/treatment.

The **Drug Harm Prevention Sub-Group** works along side key partners and focuses on understanding the level and type of drug and substance misuse activity at local and national levels. It monitors trends in relation to drug and substance misuse through the creation of local and national intelligence profiles and reports to the Drugs Strategy Board.

The group's main objectives include developing new substance harm prevention approaches, which will support the Drug Harm Taskforce and align to the Scottish Government's Rights, Respect and Recovery: Alcohol and Drug Strategy. This will be achieved through enhancing opportunities for relevant data sharing around drug related harm, to support the wider public health surveillance and allow for early identification of emerging risks and trends.

At the beginning of 2021 a **Scottish Drug Harm Threat Assessment** (DHTA) was commissioned and recognised the correlation between harm prevention and intelligence and criminal investigation and how the two must run in parallel for each to be effective.

The DHTA identified the prevalence of synthetic drugs in drug related deaths and recommended focus shift from Class A drugs, such as Cocaine and Diamorphine, towards synthetic drugs such as benzodiazepines.

In response to this threat assessment, a multi-agency orientated Task Force was established by Police Scotland to examine the harm associated with the illegal consumption of synthetic drugs, particularly benzodiazepines, across Scotland.

The DHTA focussed, and provided recommendations on five key areas:

- Prevalence of Drug Type

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- Partner Contributions
- Intelligence and Criminal Investigation
- Conviction and Reconviction
- Correlation with Deprivation.

The **Drug Harm Task Force** consist of dedicated intelligence staff based within the National Intelligence Bureau. Since implementation, work has been ongoing to capture and evaluate the full circumstances of all drug related deaths, nationally, since the start of 2021. This involves collation and review of each death report submitted to COPF(S), review of productions including 'phones and other electronic devices, witness statements and capturing data in relation to illicit and controlled commodity recovered from the scene, with a particular emphasis on benzodiazepines and synthetic drugs.

The **Substance Harm Prevention Team**, which forms part of Partnerships, Prevention and Community Wellbeing Division lead on Police Scotland's approach at a national level to monitor and reduce drug related deaths and prevent substance harm. They take direction from the DSB and propose, develop and implement new national policy, to address substance harms and align with Police Scotland's own drug strategy and the Scottish Government's Rights, Respect & Recovery: Alcohol and Drug Harms strategy. They record drug related deaths nationally via the Drug Deaths database and work closely with local policing Divisions and external partners including PHS, NHS Scotland, Alcohol and Drug Partnerships and third sector support services, in order to identify any emerging Substance related threats and/or trends.

Police Scotland operates a **County Lines** strategy which is focussed on delivering its strategic objectives in accordance with the NPCC County Lines Strategy and Strategic Assessment. The aim of the Police Scotland strategy is to provide an overarching framework which will support existing procedures and their reporting mechanisms to ensure a coherent reporting, monitoring and governance framework for all county lines activity.

Their strategic objectives include minimising the current threat of county lines activity throughout Scotland and reduce the associated risk of violence and exploitation towards children, young people and vulnerable adults. This will be achieved through engaging with partners to identify those most susceptible and vulnerable to such exploitation and provide an appropriate level of intervention and support.

Substance Harm Prevention

Naloxone Test of Change

The Naloxone Test of Change programme was approved at Senior Leadership Board in November 2020, and was one of the most significant pilots to be carried out in modern Scottish policing.

Three initial test bed areas were identified in Glasgow East, Dundee City and Falkirk and Grangemouth. Training commenced in March 2021 with officers up to and including the rank of Inspector being trained. Whilst training is mandatory, carriage is voluntary. Police Scotland seeks to address stigmas both within and out with policing, whilst at the same time allowing officers greater involvement in change processes.

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Additional training was also provided to officers based in Caithness and Stirling, as well as police officers stationed within Custody areas in the original test bed areas.

To date (6th October 2021) 800 officers have been trained with 648 (81%) volunteering to carry Naloxone. Although no targets were set, uptake by officers has far exceeded expectations. There have been 46 administrations of Naloxone to unresponsive and/or unconscious casualties suspected of having taken an opioid overdose, with administrations in all areas officers have been trained. There have been no issues identified or raised and all persons have recovered sufficiently to receive further medical assistance or be allowed to leave after making the decision not to engage in further medical assistance, having sufficiently recovered.

Public perception to police officers carrying Naloxone has been positive and following significant media interest there appears a growing public awareness. A number of enquiries have been received from partners and businesses who have witnessed officers carrying Naloxone, asking for guidance on how they can train and equip their own staff. Enquiries have also been received from various police forces across the UK and internationally from as far afield as Canada and Australia.

Naloxone Training and Awareness

An appropriate bespoke training package was compiled for the Test of Change, which was delivered by Leadership, Training and Development, in conjunction with the Scottish Drug Forum and relevant key internal partners.

In line with Health and Safety Executive recommendations, all processes and training content associated with the Test of Change, were overseen/reviewed by a Registered Medical Practitioner.

The training package provided officers with: necessary information regarding Naloxone; specific instruction regarding the application process; an increased awareness of the signs and symptoms of a drug overdose and a refresher of basic first aid skills. The inputs were delivered in a 'face-to-face' format by Substance Harm Prevention and were supported and supplemented by Senior Management Teams and key partners, inclusive of NHS, SAS, COPFS and PIRC.

Police Scotland's Training Department requested the Naloxone Co-ordination Unit, along with Scottish Drugs Forum, attend and train Officer Safety Training (OST) instructors in the use of Naloxone. This was to provide guidance and assist in raising awareness for all officers within Police Scotland when they receive their annual OST training. An input of Naloxone awareness forms part of the annual training that all officers in Scotland receive.

Engagement and support has been provided to participating Local Policing Divisions, both in advance of and throughout the Test of Change, with the Safer Communities Substance Harm Prevention team maintaining national responsibility and overview.

Specific internal communications, shift briefings and a Force memo have been published and distributed regarding Take Home Naloxone kits. This is to ensure all police officers, including those out with the test bed areas, are aware of the increased availability and use of Naloxone kits by members of the public.

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The information includes specifics regarding the use of Naloxone, by members of the public, on unconscious and unresponsive persons suspected of having suffered an opioid overdose.

Officers were reminded of the legalities surrounding Naloxone in so far as anyone can administer it in an emergency situation in an attempt to save a life and that police officers should not prevent anyone from administering Naloxone, unless they have reasonable grounds for doing so.

It has been reiterated throughout all training sessions and briefings that Naloxone will have no effect on a person unless they have ingested opioids.

A dedicated Naloxone microsite was launched a year ago on the Police Scotland intranet, where all policies and guidance can be accessed along with training materials and lived experience testimonial videos.

Naloxone Take Home Kits

Scotland was the first country in the world to introduce a national Naloxone programme and since 2015 anyone working in commissioned drug treatment services are authorised to provide Take Home Naloxone kits to members of the public. The aim is to increase the number of kits in general circulation and provide easier access to members of the public requiring to provide initial medical treatment to persons suspected of having suffered an opiate/opioid overdose.

Police Scotland is working in partnership with the charity Scottish Families Affected by Drugs, creating and distributing, Naloxone Awareness Cards. These will be provided to frontline police officers for distribution across the communities they serve, to persons who have suffered non-fatal overdoses, their family or friends, or anyone else likely to come into contact with a drug user.

The distribution of these awareness cards will raise public awareness on how to obtain a potentially lifesaving piece of emergency treatment. This will enhance public perception and highlight Police Scotland's commitment to adopting a public health approach, to ensure the safety and wellbeing of people in Scotland.

Alternative to Criminal Justice Outcome

Police Scotland is committed to working alongside partners through the Criminal Justice and the Law Sub Group of the Drugs Death Task Force to explore opportunities to reduce harm within the existing legislative framework and is piloting a referral service for vulnerable people who use drugs. This service, which commenced on 5th July 2021, will run in parallel with the established Criminal Justice process and will allow officers to refer relevant individuals into support services from the initial point of contact (as opposed to being considered by Procurator Fiscal or Court at a later stage in the process). It will be operated in the Inverness area in the first instance, with a view to expansion into additional areas in 2022.

This service will introduce persons acting as 'pathfinders' to provide guidance, advice and support for persons referred, directing them to appropriate relevant support agencies. This is not an alternative to justice but will run in parallel and allow COPFS to make more informed decisions regarding cases, by taking into account the success or not of engagement with treatment services.

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To date 43 persons have been referred to support services, of which 41 have engaged. Not all persons referred have been charged with criminal charges and some vulnerable persons have been identified and referred, following engagement with 'pathfinders' and police joint patrols.

A number of those referred following criminal charges being preferred, have been granted bail by the courts on the basis that they had engaged with the support services offered.

Partnership Drug Type Analysis

Agreement has been reached between two Scottish Universities to allow Police Scotland to provide them with seized drugs, which are not part of a live case, for analysis. The project which will be for intelligence purposes only, will allow a quick time turn-around in drug analysis, providing a current update on drug types, strengths and trends impacting on our communities across Scotland. The updated intelligence picture will provide greater focus on relevant substance harm prevention and enforcement activity. The information will be shared with partners, to provide them direction in their own substance harm prevention activities. The formal process of implementation is nearing final sign-off, with a 'go-live' date expected in the near future.

Probationer Officer Training

Discussions have taken place between the Substance Harm Prevention Team and the Scottish Police College with a view to enhancing current Probationer training, to focus not solely on enforcement techniques and legislation, but now also on vulnerabilities aligned to substance abuse and the misuse of drug offences.

These inputs will be delivered in partnership with the Scottish Drugs Forum, Scottish Recovery Consortium, Scottish Families Affected by Drugs and the Crown Office and Procurator Fiscals Service. The focus of delivery will be to raise officer awareness on: Public Health approach to justice, the benefits of prevention and early intervention, addressing stigma and the impact of drug related deaths and relevant support services available.

All content delivered will align with the current Annual Police Plan, Police Scotland Drug Strategy and the Scottish Government's Rights, Respect and Recovery: Alcohol and Drug Treatment Strategy.

School Education

In 2019 'Choices for Life' ceased. This was an educational package funded by the Scottish Government and delivered by Police Scotland throughout primary and secondary schools in Scotland. Officers have continued to deliver inputs, however this has been at a local level with no corporate approach.

Discussions have been held with a number of key partners including the Scottish Government, Public Health Scotland and Scottish Education, with a view to securing funding and delivering a national drug awareness programme to all children of secondary school age in Scotland.

This collaborative approach would involve the assistance of partners from various drug treatment services and support groups, as well as young people and persons with

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lived experience, to assist in the creation of a digital package for delivery by teachers and supplemented by police and health inputs.

The inputs could cover topics such as drug types, personal safety, stigma, someone speaking of their lived experiences and potentially persons involved in County Lines exploitation.

This project is in its early stages with scoping underway regarding funding, costing, content and delivery.

Support Services Directory

Police Scotland is committed to working with partners and continues to explore opportunities to reduce harm. To enhance this partnership working and promote support services available to drug users and their families, a support services Directory is being created for use by officers.

The support Directory will be available to access via the Force intranet and will allow officers to signpost persons, often during their most vulnerable time, to an appropriate local support service. This approach will provide an earlier form of intervention, with the aim of diverting drug users into recovery and treatment, prior to them reaching crisis point.

Drug Related Death Dashboard

Police Scotland is part of a Scottish Government led working group set up to improve the availability of information specifically relating to drug related deaths. The group has developed a public-facing dashboard, which will be released on a quarterly basis, providing information on confirmed and suspected drug related deaths. A successful pilot took place in June 2021 and was circulated to police and partners for review and feedback to shape the eventual format.

The first public facing dashboard was released on 14th September and can be accessed via the Scottish Government website. It provides information on Divisional deaths which have occurred, the sex and age group of the deceased and draws comparisons between the previous quarter and also the same quarter for the previous two years.

Summary

Police Scotland continues to work in partnership with statutory, voluntary and third sector organisations to tackle the problem of drug use, reduce associated harm and through early intervention, provide support and diversion at every stage of the criminal justice process to vulnerable persons and those involved in substance use.

SACRO and Shine

Tackling the misuse of Drugs

Sacro works with a range of individuals across all age ranges who present in custody with significant drug dependency problems. Addiction problems can be exacerbated in custody for those on remand and serving short sentences.

There is often a negative impact on mental health, confidence, and other aspects of life, leaving individuals with a sense of hopelessness. If addiction problems are not addressed appropriately then there is a danger of recidivism and the revolving door with the individual returning to custody serving longer sentences.

Sacro is the lead organisation for **Shine** - a women's mentoring service and Public Social Partnership. This service is directed towards women who are:

- Remanded in custody
- Serving a short prison sentence (under four years)
- Subject to a community pay-back order and at risk of breach

The profile of women who access the service includes women presenting with multiple and complex problems, including, trauma, substance misuse (both drugs and alcohol), mental health, victims of domestic abuse and histories of sexual abuse.

The service engages with women between 8-12 weeks prior to release and encourages them to access the mentoring service as a support to empower and enable them as they try to re-integrate back into the community. The support is also used to help women desist from offending, aid relapse prevention and access specialist services.

There are significant numbers of women presenting with drug problems and increasing numbers of women being remanded in custody. From April-September 2021, 63% of all prison referrals in Shine related to women on remand. Women are charged and convicted of a range of different offences, but often relate to acts of dishonesty- theft, fraud, shoplifting. At times historical offences may catch up with women who are making good progress in the community and can result in them returning to custody which can be counter-productive to their recovery.

Concerns focus on some women who are sentenced and remanded in custody with serious drug dependency problems and may also be on a methadone prescription at the point of sentence. In custody, women will be re-assessed before a decision is made about continuing with the prescription. During, their sentence, women's tolerance to drugs changes(reduces), and problems arise if women on release try to use drugs in the same way as they did before serving their sentence. For some women, this results in overdose.

The first 72 hours following release can be critical and this is where the Shine service plays a key role in supporting women with substance and other problems. This includes assisting women getting registered with a GP, securing stable accommodation and welfare benefits. Women with drug problems require to be re-

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assessed again on release to see whether their GP agrees to a methadone prescription.

During the pandemic, there have been additional challenges as face-to-face contact has not been possible and gate pickups on the day of release has not been permitted. Face to face appointments with GPs for women has also been a challenge. Liberation packs were developed which includes mobile phones, key contacts, and basic hygiene products.

Sadly, there have been a small number of women who have overdosed and lost their life within a few days of release from custody.

Example from Shine

Pre-pandemic, 2018/19, Shine worked with 830 women, with 431 disclosing that they had either drugs or alcohol problems. Of those, 248 women had significant issues with drugs or alcohol often complicated with accompanying mental health difficulties. On release, when women make progress in the area of drug dependency, other factors may increase the likelihood that they will return to former habits of drug use- for example, inappropriate accommodation or lack of accommodation, poor access to health or specialist services and chaotic lifestyle. This may make it less likely that women will be able to keep key appointments and make use of appropriate support. It can vary from area to area as to whether they have specialist services available. There can often be waiting lists for mental health services as well as addiction services which makes recovery more challenging for women.

Sharon Stirrat
Director of Justice
Sacro

Scottish Drug Deaths Taskforce

1. INTRODUCTION

The Drug Deaths Taskforce (DDTF) welcomes the opportunity to provide evidence to the Criminal Justice Committee on the role of the Scottish criminal justice sector in tackling the misuse of drugs.

The DDTF was set up in June 2019, in acknowledgment of the rising number of drug-related deaths in Scotland, to identify and advise on an evidence-based strategy and its component parts, that can successfully tackle Scotland's unique challenge: [Taskforce Mission and Terms of Reference | Drug Deaths Taskforce](#)

2. BACKGROUND

Chaired by Professor Catriona Matheson, with Neil Richardson OBE as Vice Chair, the DDTF is made up of individuals selected for their expertise either in a personal capacity, including people with lived experience and family representation or on behalf of the organisations they represent: [Our Members | Drug Deaths Taskforce](#).

The DDTF have now met a total of 17 times since September 2019 and minutes of these meetings are available at the following link: [Meeting Minutes | Drug Deaths Taskforce](#)

The DDTF recognises that the nature of the drug crisis and the challenges we face mean it is not possible to wait for evidence to emerge in a completed, collated form. It has therefore sought to save lives as well as gather evidence via the following:

- Immediate Response: Supporting projects which have potential to save lives as well as inform future strategy to reduce drug related deaths;
- Evidence in Action: Rapid implementation of learning across all relevant agencies whenever these are identified as capable of immediate impact.

The DDTF met with the First Minister and Minister for Drugs Policy in January 2021. It outlined the need for a renewed call for action spearheaded by Scottish Ministers, and both were supportive of the need for a renewed leadership focus nationally and locally. This message along with many of the recommendations highlighted were reflected in the [First Minister's statement to Parliament](#) on 20 January 2021.

3. WORK OF THE TASKFORCE

In December 2020, the DDTF published a high-level [Forward Plan](#) which sets out the aims of the DDTF as well as the approaches and methods it will take.

The plan builds on the six strategies:

- Targeted distribution of naloxone
- Immediate response pathway for non-fatal overdose
- Optimising the use of Medication-Assisted Treatment
- Targeting the people most at risk
- Optimising public health surveillance

- Supporting those in the justice system.

It also includes a 2020-2022 timeline across three focus areas that the evidence highlights where lives can be saved in the short, medium and longer term:

- Emergency Response focuses on preventing an overdose event becoming a fatal overdose;
- Reducing Risk focuses on preventing the risk of an overdose;
- Reducing Vulnerability changing the landscape for those affected by drug use.

In June 2021, the DDTF published an [Interim Report](#) which summarises the progress made and highlights the scope of work the DDTF has been involved in. We have funded over 30 innovative projects, 10 research projects and over 85 interventions through ADP direct funding, to develop the evidence base. The Taskforce has now moved into Phase 2 of its programme of work which focuses on providing recommendations to the Scottish Government for the national roll out of effective interventions identified and for the further exploration of key issues that will assist in the National Mission on drug-related deaths.

A summary of recommendations made by the DDTF to date can be found here - [DDTF - Recommendations | Drug Deaths Taskforce](#).

4. CRIMINAL JUSTICE

Of particular interest to the committee will be DDTF work in the Criminal Justice Sector. The high prevalence of problem drug use amongst those in contact with the criminal justice system provides an opportunity to detect, intervene or signpost those at known risk into treatment and support.

Police Referral Peer Navigator Model

The Criminal Justice and the Law Sub Group, Chaired by Neil Richardson OBE, made three visits to experience first-hand how operational practice could be improved or altered to support better health outcomes and [summarised this evidence](#). This led to a successful funding bid for a police arrest referral pathway through Medics Against Violence that already support the hospital-based violence intervention; [Navigator](#). The [Pathfinder](#) test of change in Inverness aims to support people to access services at the point of first contact with the police, through the support of a peer-navigator. People with lived experience are a key part of the team and can inform decision making in the individuals case by highlighting identifiable needs and providing information on their interaction with services. This helps to break the link between substance use and offending by proactively engaging with those whose offending is linked to drug use. The evidence and learning from this project, that began in July 2021, will be used to roll the service out to other pilot areas in Scotland over two years.

Drug Law Reform

There is a commitment in 2019-20 Programme for Government to consult on drug law reform alongside another commitment in Scotland's [2018 alcohol and drug strategy](#) to set up a group to advise on the contribution and limitations of the Misuse

of Drugs Act (1971) in support of health outcomes in Scotland. The Criminal Justice and the Law Sub Group has progressed this first phase of this work in Scotland by engaging with over 100 stakeholders who work in the intersection between health and justice. This aims to improve our understanding of what barriers to implementing a health based approaches to tackling drug deaths are being experienced under current reserved legislation. The DDTF [Drug Law Reform report](#), including thirty proposals for the UK and Scottish Government and partners, was published on 6 September 2021. These proposals range from what can be done in the shorter term and what require wholesale changes, including a root and branch review of the reserved Misuse of Drugs Act 1971, to support a public health approach.

The report also recognises that a cultural change is required in Scotland. We currently have a large prison population that will have a detrimental impact on outcomes for those affected by drug use in the justice system. We also know that much of the problematic drug use in Scotland is hidden and there continues to be unacceptable and avoidable stigma and discrimination. This is not helped by criminalising people with multiple complex needs who experience serious disadvantage and need our help. There is also a need to tackle the underlying causes of drug use including poverty and inequality.

On the 17 September letters were written to both the [UK](#) and [Scottish Ministers](#) outlining the relevant proposals in the drug law reform report and asked for a response to these.

Naloxone

The DDTF is committed to making naloxone available to all those who might need it as the evidence is clear that wider distribution and training in how and when to administer it saves lives. The DDTF responded to a four nations consultation on expanding access to naloxone highlighting the need to at least replicate the Lord Advocate's current [statement of prosecution policy](#) in relation to the supply of naloxone during Covid-19 and, preferably, go further and reclassify naloxone: [Naloxone Consultation | Drug Deaths Taskforce](#).

It is important to ensure naloxone is available for individuals who are most likely to encounter or witness an overdose especially people who use drugs, first responders and care providers. The committee may be particularly interested in the UK-leading provision through a [Police Scotland pilot project](#), supported by the DDTF, to explore the impact of police officers carrying naloxone. To date, over 800 officers have been trained and 81% chose to carry naloxone afterwards (carrying naloxone is voluntary).

There have been 48 incidents where naloxone was used and in all cases the individual survived. There have been uses in police custody which could have resulted in a death in custody including in a drugs raid, in a public order siege, in the back of a police car and in a custody centre. There has been no evidence of negative effects from naloxone being administered by Police Scotland Officers.

The DDTF is also supporting a pilot peer to peer supply programme in prisons to enable trained peer mentors to supply naloxone to, and train their peers, ahead of liberation that is a known time of high vulnerability to an overdose due to lack of drug tolerance. Mentors operate under a competency framework which allows the supply

of nasal naloxone to people in their cells the evening prior to release. Mentors are fully trained and supported by staff and by involving them we hope to increase the number of kits to those who may be at risk of an overdose or witness an overdose on liberation. Mentors report that their peers are responding well to these conversations and are more likely to engage with them than a prison officer.

Other work connected to the Criminal Justice System

We have also funded a number of other pathways with ADPs which support individuals at key intervention points in the criminal justice system such as on their release from prison, alongside diversions or in police custody suites. Details of all DDTF funded projects can be found here: [Taskforce work and projects | Drug Deaths Taskforce](#).

5. FUTURE WORK PLANS

The DDTF is due to publish its final report in December 2022. In the coming year, work will focus on the following core areas in relation to Criminal Justice (other work will also continue as outlined in the Forward Plan and Interim Report).

The DDTF will continue to support the work on drug law reform that will include engaging with government to progress proposals from the first phase and also to progress the second phase of this work. The DDTF is keen to build an alliance and national conversation around the message that the evidence is clear and now is the time to act. The drug law reform report highlights a number of complex issues that require further engagement and consultation on a wider scale, including:

- The public's perceptions of drug policy and opinions on what our guiding principles should be when developing policy and legislation.
- People's thoughts on relaxing the laws around drug possession offences, such as decriminalisation or legalisation and regulation.
- Gauging public support for the harm reduction measures currently restricted by the reserved Misuse of Drugs Act 1971 or related regulations.
- User engagement to understand how the law impacts people's willingness to access services.

There may be an option to explore these issues through a public consultation in partnership with Scottish Government and other relevant stakeholders. However, we are also aware that the SNP Manifesto committed to running annual Citizens' Assemblies to look at some of the more complex issues we face as a country including the decriminalisation of drugs.

The DDTF will also support the expansion of Police Referral Pathfinder project in Inverness and will continue to explore the use of navigators and peer support workers. We also aim to make a recommendation on the best model for a national navigator service to support individuals to access treatment, including in justice settings.

The DDTF will undertake further work focusing on support in prisons building on the outputs of the current needs assessment by the Scottish Government on substance use in prisons. The focus will be on the need for holistic support addressing multiple

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complex needs, including exploring the reintroduction of throughcare support officers.

The DDTF will further explore options for digital inclusion and solutions. We are partners in a project exploring the potential of digital - via pre-loaded smartphones, tablets and lap-tops - to support people at high risk of overdose and reduce their risk of drug related harm. The project will focus on both the use, practice and distribution of digital devices, and the development of the services the devices will connect to.

Digital inclusion will be applicable in police custody and prison settings as well as in the community, including when people are released from custody.

The DDTF will also build on the work outlined above on the supply of naloxone and further roll out of its provision.

Dr Liz Aston

In this brief submission I will focus mainly on evidence pertinent to the policing and drugs in Scotland but I will also endeavour to begin address some of the key topics which I understand may be discussed at the roundtable. Much of the content below is drawn from a forthcoming book chapter authored with Dr Maria Fotopoulou (University of Stirling) Fotopoulou, M. and Aston, E. (accepted 2021) 'Policing of Drugs in Scotland' in Bacon, M. and Spicer, J. eds. (forthcoming) *Ending the Stalemate: Drug Law Enforcement, Policing and Harm Reduction*. Routledge.

Policing of drugs in Scotland (abridged from Fotopoulou & Aston forthcoming)

Introduction: Scotland is in the midst of a drugs crisis and a drug related death epidemic. In terms of the policing of the drugs problem, the proportion of stop searches conducted on the basis of drugs is very high, at 81% in 2020 (Police Scotland, 2021a), and has been at a similar rate (77-82%) for the last few years. The vast majority of recorded drug crimes (86%) are for possession (Scottish Government, 2020a). Scotland continues to have one of the highest rates of imprisonment in Europe (SCCJR, 2019).

Policing of drugs in Scotland is currently taking place within a context where legislation, policies and practices to address the drug problem and to minimise negative health, social and legal impacts associated with drug use, seem to thus far be ineffective, or even unintentionally harmful. However, it is exactly because of this context that a focus on harm reduction policing¹ is even more urgent. The policy context in Scotland should – in theory – be conducive to fostering a progressive approach. Firstly, the drugs portfolio in the Scottish Government moved from justice to the population health directorate more than a decade ago and the 2018 Drugs Strategy (Scottish Government, 2018) recognises that problem drug use is a public health issue and plans to focus on a human-rights based approach. Secondly, the purpose of policing (enshrined in legislation since 2012) includes improving wellbeing and safety and Police Scotland's new Drug Strategy (launched in 2020) aims to reduce harm and develop a public health approach. However, there is a gap between policy and practice and we also need to be cognisant of the salience of drug legislation, which sits at a UK level.

Macro level context: In the context of prohibitionist approaches, the world's drug problem is largely constructed as a criminal justice rather than health issue. The way the drug problem is constructed shapes the approach taken to tackle it, with intended and unintended consequences. Drug legislation and policy not only impacts on people's lives where contact with the criminal justice system is concerned. **Legislation shapes the policy and practice responses we put in place and defines the context within which harm reduction interventions are introduced and delivered, adding to or taking away the risk associated with drug use** (Rhodes, 2002). The Misuse of Drug Act shapes the environment within which people use drugs, the way environments are policed, and may impede the introduction or delivery of public health interventions. An example of this would be the barriers to the establishment of Safer Consumption Rooms, despite a wealth of evidence on their effectiveness as a drug

death prevention intervention (EMCDDA 2018) and recommendations by the ACMD (2016).

Meso and micro level policy and practice: Policies and practices at a lower level (such as the organisational level of police forces) in various parts of the world have hugely impacted the risk environment for people who use drugs. Street level policing can have negative consequences for public health, for example impacting drug users' willingness to carry injecting equipment (Miller et al. 2008). However, on the other hand the police have also played a pivotal role in the introduction of Safe Consumption Rooms, e.g. in the Netherlands where the majority of cases the initiatives were driven by residents and police with the stated aim of reduction of public nuisance (Hedrich, 2004). **Policing at strategic and street level can actively promote harm reduction principles or reduce peoples' access to health services and safer use of drugs.**

Policing practices: Stop and search is one of the main formal ways in which people who use drugs are policed and come into contact with the CJS. The most common grounds for stopping and searching people is on suspicion of possession of drugs, 81% in 2020 in Scotland (Police Scotland, 2021a). Searches on drugs grounds raise particular questions regarding human rights (e.g. rights to privacy, health and non-discrimination (INPUD, 2015). At the same time, the effectiveness of this police power in protecting the public has long been called into question and its purported crime reduction impact has not been backed up by evidence (Tirattelli et al., 2019). In contrast, we do know that repeated use of enforcement-based policing, including stop and search, has a negative impact on police-community relations (Hail, Aston, O'Neill, 2018). Tirattelli et al. (2019) conclude that stop and search is used as a tool of social control, and concerns have also repeatedly been raised about ethnic disproportionality and associated negative outcomes (Shiner et al., 2018).

When it comes to drugs we also need to consider the impact of stop and search on effectiveness in a broader sense, on access to harm reduction services and the right to a high standard of health. As discussed above, perceived levels of police enforcement impact on the willingness of people who use drugs to access harm reduction services and carry materials such as clean syringes and take home Naloxone, which users may fear will be to perceived as drug paraphernalia and thereby grounds for being taken to a police station for a more intrusive search (McAuley and Aston, 2018). This is in keeping with Rhodes et al.'s (2002) findings that policing strategies are critical to creating environments which may increase risk and undermine harm reduction for people who inject drugs.

With wholesale reform to stop and search in Scotland in recent years, including the requirement of a statutory basis for searches, and the associated dramatic reduction in volume of stop search, the rate of 'positive searches²' where an item was found increased with the more targeted approach (Scott, 2019a). Although there were problems with data quality and comparability at the point when consensual searches were used, the rate of finding an item during searches conducted on drugs grounds was only 12% (in 2013-14, HMICS 2015). The 'positive rate' for drugs searches has been higher at around 36-39% in recent years (36% in 2020, Police Scotland, 2021a), which suggests that **as the volume of searches has reduced, and is based on legislative grounds, the chances of finding drugs has increased.** Nonetheless, it is worth highlighting that this means that **the vast majority of times the power of**

search is used on people drugs are not found. Of the 11,162 searches where drugs were found between April and December 2020 the vast majority (61%) were class B drugs, with 19% being class C and 20% class A (Police Scotland, 2021a). Considering the attention given to stop and search in Scotland in recent years and the high proportion of searches on the basis of drugs grounds, surprisingly little attention has been paid in the various scrutiny documents to the policing of drugs or people who use drugs.

Recorded Police Warnings aim to “have a positive impact on individuals by not criminalising them, minimising police bureaucracy and maximising operational officers’ time” (Police Scotland, 2020c: 4). However, there are restrictions on the circumstances they can be used in and it can be taken into account if the person comes to further notice of the police within two years of the initial warning and we need to clarify here that **RPWs do not constitute a measure of full decriminalisation.** (see below for more re recent announcement).

Diversion from prosecution in Scotland is a COPFS led process where prosecution may be waived or a decision on prosecution deferred e.g. pending successful completion of a social work scheme. Whilst the police role is vital as the starting point for diversion processes the role is limited to appraising and recording antecedent information about an incident and person in the form to be submitted to COPFS. Across other parts of the UK there are examples of police-led diversion schemes e.g. Thames Valley Police’s Drug Diversion scheme provides direct access to drug services without admission of guilt and can be used for possession of any category of drug (Spyt and Kew, forthcoming). Police in Scotland do provide arrest referrals schemes (such as POP and VOW) but it should be noted that **this is at point of arrest, rather than fully diverting people who use drugs from the CJS.** The provision of the DDTF pilot scheme for people found in possession of drugs to be referred to support by police is to be welcomed.

In the interests of space I will not go into our discussion of arrests, criminal proceedings, convictions and custodial sentences as I am sure other submissions will cover these aspects. However, it is worth noting that the vast majority of possession cases involve cannabis.

In conclusion: The proportion of searches conducted on the basis of drugs is very high in Scotland, yet Stevens (2013) calls for a reduction in expensive and potentially counter-productive approaches like large scale stop and search. A different approach will need to be taken if, as per Police Scotland’s Drugs Strategy, enforcement is to be targeted towards suppliers posing the greatest threat. We discussed how Scottish government initiatives (for example, the National Naloxone Programme) and Police Scotland organisational-level policies are being implemented with the aim of reducing harm resulting from involvement with drugs. Although these are positive moves forward, clearly in order to bring significant changes to the policing of people who use drugs **there is a need for fundamental shifts in the ‘field’, including legislation.** We highlighted examples from countries where decisive action and strong messages from leadership have allowed police to begin to push the boundaries and practice ‘outside the lines’ of current restrictive policies, with the aim of protecting the health and wellbeing of people who consume drugs. Although we note the existence of police-led initiatives **we would like to see diversion from the criminal justice system at the earliest possible point.** We also note reticence in taking more resolute

steps that would enable the introduction of life saving interventions such as Safe Consumption Rooms in Scotland. We thus **call for clearer, stronger messages from police leaders and partners in Scotland to pave the way for harm reduction to be firmly recognised as a basic human right and open up possibilities for policing practice that upholds and protects this right.** Some of this is now evident in the Drug Law Reform Report (DDTF, 2021), which makes recommendations for change

There is very little doubt that the punitive approach that has been implemented towards the drug problem – globally, as well as in the UK and Scotland – has failed to address the problem; if anything it has created more harm. In acknowledgment of this, across the globe jurisdictions are decriminalising drug use (Eastwood et al., 2016). **The evidence-base on positive outcomes of alternative to criminalisation approaches in relation to the harm caused by criminal convictions, to rates of recidivism and drug-related health harm is growing** (Stevens et al., 2019). What is thus needed for Scotland is the **political courage to acknowledge the stalemate produced by heavily prohibitionist policies and the will to re-design the chessboard that is the policy landscape.** In doing so, Scotland would move towards **ensuring effective support of people who use drugs, the respect of their human rights and the promotion of social justice for them, their families and their communities.**

Further input (beyond the Fotopoulou & Aston chapter content above)

Police carriage of Naloxone: I have been a member (on behalf of the Scottish Institute for Policing Research) of Police Scotland's Naloxone Delivery Steering Group since its establishment in early 2020. This group has worked constructively to address various hurdles in order to enable a pilot to take place and I have worked with another member, Dr Andy McAuley, to ensure that the pilot was evaluated. *The police carriage of Naloxone pilot is being evaluated by a research team led by Dr Peter Hillen at Edinburgh Napier University.* The research has been funded by SG/DDTF. The team is in the process of analysing all of the data (surveys, focus groups and interviews with police and interviews with key stakeholders and community participants) and writing up a full report. Once complete the Steering Group for the research project will provide feedback on the draft report. The team will be very happy to share the findings and recommendations with the Justice Committee once these become available. For more information please contact p.hillen@napier.ac.uk

Given space limitations (and with the assumption that this will be covered by others) I did not provide evidence regarding a range of initiatives underway via the DDTF. However, it is worth noting that they are funding a project (led by Prof Parkes at Stirling) to pull together the evidence base to prepare for the implementation of drug checking services in Scotland.

Diversion from prosecution: It should be noted that it is to be welcomed that through the work of various partners involved in the DDTF new diversion from prosecution pilots have been introduced. The briefing supplied in relation to the Lord Advocates Statement in September shows that the use of 'diversion' as a disposal has increased from 88 in 2016-17 to 1,000 in 2020-21 and there has been a small increase in the use of warnings over this period as well (from 776 to 1,000). Whilst it is welcome that the number proceeded in court has reduced it is worth noting that

the total number of other direct measures such as fiscal fines have also increased (to 4,625). As these diversions from prosecution are still criminal justice measures it will be **important to monitor the usage of out of court disposals in order to ensure that 'net widening' does not occur and appropriate services are provided to assist people who use drugs.**

Lord Advocate's statement on extension of RPWs to possession of any drug: This is a very important step but it is a criminal justice measure, so it does not amount to decriminalisation but depenalisation as it remains a criminal offence even though it may no longer usually be punished in the same way. This is a positive in terms of providing the opportunity to avoid bringing more people who use drugs further into the criminal justice system. However, officers have discretion and they must do a criminal history check to see if someone is eligible as there are lots of situations where an RPW cannot be issued, including someone being on a supervision order or having a recent conviction in court for a comparable charge. Therefore, **the impact of this on people who are already heavily involved in the criminal justice system is likely to be minimal.**

Legal framework & safe consumption rooms –see above for detailed discussion but in summary the **legal framework (which criminalises the possession of drugs) hampers the provision of and access to crucial harm reduction services. Safe consumption rooms are evidence based and effective harm reduction measures** which form *part of* the solution to drug related deaths, alongside multiple harm reduction measures (including drug checking services, Naloxone, MAT, ORT), drug services, treatment and prevention.

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Drug Science

It is our view that the position taken by the Minister for Crime and Policing, Kit Malthouse, in his exchange with the Scottish Affairs Committee, provides an opening for a strategy to introduce Enhanced Harm Reduction Centres (EHRCs) (often called Drug Consumption Rooms, Safer Injecting Facilities, or Overdose Prevention Sites) in Scotland.

In his [letter](#) to the Committee dated 11 December 2020 the Minister states:

*“A range of crimes would be committed in the course of running such a facility, by service users and staff, such as **possession of a controlled drug, being involved in the supply of a controlled drug, knowingly permitting the supply of a controlled drug on a premises or encouraging or assisting these** and other offences. In addition to these issues of criminal liability there are difficulties around civil liability, were things to go wrong, with those operating DCRs potentially being sued for damages in negligence or other civil causes of action.”*

Supply offences

‘**Being involved in the supply**’ (s4 (3) MDA) is more likely to be engaged in relation to service users of a DCR rather than staff. Whilst ‘**knowingly permitting the supply of a controlled drug on a premises**’ (s8(b) MDA) is an issue, it is one that exists for any service engaging with people who are drug dependent or where there are high levels of drug use, for example, a nightclub.

To reduce the risk of criminal liability, especially the risk of permitting supply on premises, clear enforceable guidance on steps that will be taken if people supply drugs overcomes this risk. Similar policies will already be operational in homeless centres, shelters, drug treatment centres, and are not unique to EHRCs.

‘**Encouraging or assisting**’ refers to **s44 to s46 of the Serious Crime Act 2007**, and these sections do not apply in Scotland. Whilst there will be inchoate offences (aiding and abetting) in Scottish law, these will be devolved to Scotland, and therefore we believe exemptions can be applied to the Scottish law.

Civil liability

As we understand it, this is also not a reserved matter and so is not relevant to considerations made by the UK government and can be managed by the devolved administration.

Possession offences

These offences (s5(2) MDA) *would* be committed in and around a DCR. However, the Home Office recognises the importance of diversion schemes for low-level possession offences and is providing support and funding to these across England and Wales through ADDER. In September 2021, the new Lord Advocate announced an extension to the Recorded Police Warning Scheme to include possession of Class A drugs, stating “**Police officers may therefore choose to issue a Recorded Police Warning for simple possession offences for all classes of drugs**”¹. Diversion from prosecution is already possible in Scotland - we simply propose that a scheme be operated by Police Scotland at an earlier stage, whereby anyone caught in possession of a controlled drug that could be taken in an EHRC is diverted to that facility.

Essentially, if it is confirmed that the above offences are those engaged then the Scottish Parliament can agree that the MDA 1971 is a reserved matter, but also that the offences cited

¹ Lord Advocate, Dorothy Bain QC, statement to Scottish Parliament on Diversion from Prosecution, 11th September 2021

are ones managed in many lawful settings already, except possession offences which can be dealt with via diversion, which are supported by the Home Office.

It should also be noted that the 'illegal' drug consumption van operated by Peter Krykant during 2020 was never subject to the above. Peter was charged once with a non MDA related offence and these charges were dropped. It is unclear (to us) whether he was not charged under the above offences because in reality they are unenforceable, or whether they chose to not charge him under the MDA '71, or enforce any of the above. That is something your committee could explore in more depth.

On diversion.

The recent announcement by the Lord Advocate that more use will be made of diversion away from prosecution is welcome. Criminalisation of the possession and use of drugs is not an effective approach. Reviews by the UK Home Office and others show that rates of drug use and related harms are not related to the severity of punishment (Home Office, 2014). In contrast, diversion away from arrest and punishment can help to reduce crime and improve access to drug treatment, so saving money as well as improving health (Stevens et al., 2019).

There have been two randomised trials of such diversion schemes in England; the Turning Point scheme in Birmingham, and the Checkpoint scheme in Durham. Both were shown to cause reductions in re-offending (Neyroud & Slothower, 2013; Weir et al., 2021). Other English police services, including Avon and Somerset and Thames Valley, have also developed diversion schemes, and the approach is also being tested as part of the UK Home Office's Project ADDER initiative. Internationally, diversion has also been shown to be effective in studies in the USA and Australia (Stevens et al., 2019).

The benefit of diversion depend on making the right decisions about eligibility, triage, diversion destination, and consequences. If the eligibility for diversion is restricted solely to very low level offenders, then diversion will not be available to the people who are most likely to benefit from it (e.g. repeat offenders with a substance use disorder). For example, the Crime and Justice Committee's official statistics show that more than half of drug possession charges are cannabis, take place in a public place, more often than not as a result of being observed or due to suspected behaviour, happen at the weekend and involve men between the ages of 18-35 (Scottish Government 2019). It is clear therefore that the drug laws target a specific community (young men hanging around in parks or homes at the weekend ingesting cannabis and other substances), one that is already subject to increased police surveillance (as seen from the official statistics) and diversion may not appropriate for all such instances. Other approaches, such as simple recorded warnings, may be more appropriate - and less costly. This is why there is a need for triage, or the process of screening who will be sent through diversion, and who will not. This is necessary to avoid swamping treatment processes with people who do not have a need for treatment. The triage process can also include assessment of the appropriate diversion destination for each individual. For some, this may be limited to a short drug education session, as is provided in Avon and Somerset. For others, a fuller assessment and treatment for substance use disorders and other mental health problems may be more appropriate. If people who are diverted to treatment do not comply with the conditions of that diversion, then their punishment should be no more severe than the usual punishment for the offence they originally committed. It is unethical either to force people into treatment, or to punish them if the treatment fails (Stevens, 2012).

On prison

In general, prison sentences are an ineffective and costly way of dealing with repetitive property and low level drug dealing offences, of the type for which people with substance use disorders are often sentenced. A recent meta-analysis of 116 high quality studies showed that

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imprisonment is no more – sometimes less – effective in reducing re-offending than community sentences are (Petrich et al., 2021). They are certainly more expensive.

Prisons are an especially bad place to house people who have substance use disorders, or who are at risk of developing them. People from deprived communities who have been subject to trauma and other adverse childhood experiences – who are the most likely to develop substance use disorders – are exposed in prison to further trauma, isolation, intimidation, violence and the easy availability of illicit drugs, often including illicit opioids and some dangerous and unknown combinations of synthetic cannabinoid receptor agonists (SCRAs, otherwise known as ‘Spice’). Previous studies have shown the harms that imprisonment does, for example, to people who inject drugs, including increased risk of transmission of HIV and viral hepatitis (DeBeck et al., 2017).

There is still more that could be done in Scotland to reduce the use of prison for people with substance use disorders, and to reduce the harms that imprisonment does. More diversion of a wider range of offenders away from prison would reduce its costs and harms, as would provision of the full range of treatment and harm reduction services in prison. This should include needle and syringe programmes and heroin-assisted treatment. People in prison have a right to the same standard of healthcare that is available outside prison. Heroin assisted treatment has been shown to be effective, for example, in prison in Switzerland (Liebrenz et al., 2020).

Release

Release is the national centre of expertise on drugs and drugs law in the UK. The organisation, founded in 1967, is an independent and registered charity. Release provides free non-judgmental, specialist advice and information to the public and professionals on issues related to drug use and to drug laws. The organisation campaigns directly on issues that impact its clients - it is their experiences that drive the policy work that Release does and why Release advocates for evidence-based drug policies that are founded on principles of public health rather than a criminal justice approach. Release believes in a just and fair society where drug policies should reduce the harms associated with drugs, and where those who use drugs are treated based on principles of human rights, dignity and equality.

Release will be responding to issues relating to:

- i. The role of the Crown Office and Prosecution Service in the prosecution of cases relating to the supply and use of illegal drugs in Scotland.*
- ii. Tackling drug use in the prison system, looking at the support provided to prisoners during their time in prison and the arrangements that are made to provide the best support to prisoners who have a drug problem on their release.*
- iii. The legal framework that currently criminalises the misuse of certain drugs and the related issue of whether one policy that may assist in tackling drug deaths is the provision of 'safe consumption rooms'.*

(i) The role of the Crown Office and Prosecution Service in the prosecution of cases relating to the supply and use of illegal drugs in Scotland

In 2020/21 there were 35,410 drug offences recorded by the police in Scotland. The vast majority of these crimes (86% - 30,344 offences) were for simple possession offences. Despite evidence that tough sanctions are ineffective at reducing drug use, and that self-reported illicit drug use has been increasing globally - including in Scotland - over the last decade, the Home Office continues to push the rhetoric that 'drug policy is working, drug use is falling'. Meanwhile, when the Home Office compared the legal framework of 14 countries it concluded that there was not "any obvious relationship between the toughness of a country's enforcement against drug possession, and levels of drug use in that country". Regardless, the central government spend on drug law enforcement and related activities is estimated to be approximately £1.6 billion per annum, with the estimated central government spend on early drug intervention in a comparable year at only £215 million (with an estimated £600 million on treatment and negligible spending on drug education).

The high spend on drug law enforcement continues despite evidence of its inefficacy in terms of drug control and health outcome improvement, evidence of racial inequity in drug law enforcement, and despite evidence from the Government's own 2017 review of the 2010 UK Drug Strategy which concludes that enforcement activity designed to remove drugs from the market, for example, drug seizures, "has little impact on availability", and that enforcement activities impacting the operation of drug markets "is likely to be short lived... given the resilience of markets". Furthermore, we consider that drug-related death rates being at their highest since records began across the UK - with Scotland continuing to have Europe's highest per capita rate of drug deaths - to be a shocking indictment of the current strategy.

The extension of police warnings and possible diversion for those caught in possession of class A controlled drugs in Scotland - announced by the Scottish Lord Advocate on the 22nd September, 2021 - is a welcome move away from the criminalisation of drug use, and one towards the practical, harm-reduction solutions needed to reverse the public health crisis. However, Release have recently published a response to the Lord Advocate's position which outlines concern about the way in which this change has been discussed in the media, and reservations around the way Scottish diversion schemes will work in practice.

Media outlets' framing of this decision as unprecedented in the UK is incorrect given that recorded police warnings, a form of 'depenalisation', already exist for class B and C controlled substances in Scotland. Police-led diversion schemes for low-level offences - including the possession of all illegal drugs - have already been in place in a number of police forces in England and Wales for over half a decade. Furthermore, police in England and Wales can issue a community resolution (essentially a police warning) for possession of drugs. Whilst depenalisation and/or diversion is preferable to immediate prosecution - and is arguably as far as the Lord Advocate is able to go considering drugs legislation is reserved to Westminster - the efficacy of the policy will not be realised unless it is applied equitably, and key concerns remain around the ability of the approach to improve the lives of people with problematic drug use.

Firstly, the decision to issue an individual a warning or to prosecute rests with the police officer's judgement at the point of issue, as guided by the Police Scotland's Standard Operating Procedure. Police discretion has often allowed for racial disparities or overrepresentation of people from deprived communities to be sustained in the criminal justice system. Secondly, the Lord Advocate's statement provided no detail on how warnings will be used for repeat offenders. The decision to either issue another warning or prosecute is based on the similarity of their previous offence, the gravity of their offence and/or the frequency of interactions with law enforcement. While it is important to avoid bringing new people into the criminal justice system, the police warnings may have no positive impact for those already within the system due to past offences or regular drug use. The guidelines must allow for people to receive repeated warnings or to be repeatedly diverted (as is the case with the West Midlands' diversion scheme for example), otherwise Scotland will be simply criminalising those who are drug dependent, which is contrary to the motivations for expanding the scheme.

Whilst the depenalisation of drugs may be the beginning of positive change, Release advocate for full de jure (in law) decriminalisation as the best option for those who use drugs and the society that surrounds them. Specifically, Release support a no punishment model of decriminalisation for drug use and possession - which is the approach taken by Spain, the Netherlands, and Uruguay. It is also the approach we currently have in the UK in relation to the psychoactive substances which fall under the Psychoactive Substances Act, 2016, as opposed to those falling under the Misuse of Drugs Act, 1971.

Research undertaken by Release looked at countries across the world that no longer criminalised use or possession of drugs; none experienced increases in drug consumption linked to policy. Countries such as Australia (which had decriminalised

cannabis possession in a number of states and had diversion schemes for all controlled substances in every state), Portugal, and the Czech Republic reported improved physical and mental health outcomes when compared to individuals who were criminalised. Decriminalisation has also been associated with reduced rates of recidivism, reduced burden on police resources and savings to public spending related to social costs. By decriminalising the possession of controlled drugs for personal use, resources could be diverted from the criminal justice system into health and other services for people who use drugs, as well as wider community programmes, thus ensuring a greater return on investment for communities and criminal justice agencies.

Portugal, for example, decriminalised the use and personal possession of all drugs in 2001, whilst also investing in harm reduction and treatment programmes. The number of annual drug overdose deaths reduced from 318 in 2000 to 40 in 2015. A 2015 study found an 18% reduction in the social costs of drug use in the first ten years of decriminalisation in Portugal. The proportion of the prison population sentenced for drug offences in Portugal has fallen from over 40% to 15%, rates of drug use have remained consistently below the EU average, and Portugal has gone from accounting for over 50% of yearly HIV diagnoses linked to injecting drug use in the EU to 1.7%.

Both the Health and Social Care Select Committee²⁷ and the Scottish Affairs Committee in their inquiries on drugs in 2019 have recommended that the UK government consult on reforming the law to end criminal sanctions for possession offences.

(ii) Tackling drug use in the prison system, looking at the support provided to prisoners during their time in prison and the arrangements that are made to provide the best support to prisoners who have a drug problem on their release

In Release's written submission to phase two of Dame Carol Black's independent review of drugs, we discuss a number of suggestions in terms of supporting people who use drugs in custody. Firstly, we suggest that the Government reconsider whether custody is the most effective resolution – particularly given evidence of diversion programme-success and support. Phase one of Dame Carol Black's review estimated that 42% of men, and 28% of women entering the prison system are dependent on drugs. According to the biennial Scottish Prisoners Survey 2019, which is undertaken in each of the 15 Scottish prisons, 41% of respondents stated that their drug use was a problem for them on the outside, 39% said that they had used illegal drugs whilst in prison, and more than one in ten (12%) stated that they only started using drugs whilst in prison.

Release welcomes the extension of the 'presumption against short sentences' (PASS) to now include sentences of up to 12 months (previously up to 3 months) in Scotland as of June, 2019 as voted by MSPs, in recognition that short sentences often disrupt factors that can help prevent offending, including family relationships, housing, employment and access to healthcare and support. This change - as described by then Justice Secretary Humza Yousaf MSP - is designed to "encourage courts to consider alternatives to custody, which can be more effective in rehabilitating individuals as they pay their debt to society". Evidence to support the

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PASS extension has been outlined by Howard League Scotland, including evidence of the disproportionate harm of custodial sentences (of any length) for women, who are frequently subject to ineffective, short custodial sentences of 12 months or less (the case for 90% of women sent to prison in Scotland in 2017/18).

An area of concern, however, is that the presumption is not a ban, and that courts are still able to impose prison sentences of 12 months or less. The think-tank Reform propose that 'a full ban on short sentences would mean a significant increase in the use of community sentences' and add that 'Probation services would need to be resourced to manage this increase'. Reform also add that 'clearly, one unintended consequence could be that sentencers pass harsher sentences to circumvent a ban' and warn that 'this would need to be monitored and action taken if evidence shows this to be the case'. Sentencers should also be more informed about community alternatives to custody with better training and the increased use of pre-sentence reporting.

Custodial institutions must take responsibility for releasing people into safety and it is vital that we ensure people released from prison are offered Naloxone. Release advocate for the urgent provision of Naloxone in all custody settings. It should be made freely available to those who are leaving police custody at the station, at Magistrates and Crown Courts, and where needed at custodial institutions such as prisons and YOIs. At present, according to the Scottish Prisoners Survey 2019, approximately one fifth of those reporting in the survey (19%) had used naloxone at some point and of these 9% had been supplied naloxone in the last 12 months. Of those who were supplied naloxone in the last year, half (49%) were supplied it in prison and three quarters (77%) in the community.

For those released on completion of their sentence it is suggested that precautions are taken for those known to use substances. In addition to providing Naloxone to reverse overdose, we highlight the dangers of releasing this population on a Friday in terms of accessing stable housing, drug treatment, and job centres; increasing the chances of a relapse, reoffending and death. Despite the Prisoners (Control of Release) (Scotland) Act 2015, whereby prisoners due for release on a Friday can have their release brought forward by one or two days to allow them to access housing or medical services, according to figures obtained by The Herald on Sunday, as of October, 2019, just 15 people had had their release brought forward since the enactment of the law in February 2016, while 17 had been refused early release, and 11,054 had been released on a Friday.

The continued scheduling issues raises numerous difficulties. There is a clear danger that in releasing people who use drugs and are reliant on a prescription on a Friday, they will be faced without a prescription, enter withdrawal, and be unable to enrol with a service until the following week. Faced with days of withdrawal immediately on leaving custody, there is a substantial risk of relapse setting back treatment, recriminalisation, or overdose. Release would advocate that those in receipt of a prescription while in custody be supplied with a quantity of medication to last several days on release; providing them the opportunity to manage their symptoms until they are able to enrol with a treatment service and minimising the risk of illicit substance use, overdose, or immediate offending behaviour.

While a carceral approach remains, actions should be taken to implement the recommendations made by the Advisory Council on the Misuse of Drugs (ACMD) in regards to custody to community transitions for those with problematic substance use. Among the risk factors cited by the ACMD were a high incidence of homelessness, increased risk of death due to a fatal overdose in the weeks immediately after leaving custody, and that using time in custody as an opportunity to reduce problematic substance use was often squandered through a failure to provide support on release. According to the Scottish Prisoners Survey 2019, 47.38% of prisoners reported being assessed for drug use upon admission to prison. A quarter had been given the chance to receive treatment for drug use during their current sentence (25%) and one fifth reported receiving help (21%). As part of its role in preparing prisoners for release, the Scottish Prison Service created a specific role for some of its staff as Throughcare Support Officers. However, in her 2019-20 annual report the Chief Inspector of Prisons for Scotland noted that their role had been suspended to "help address staff resourcing issues elsewhere in Scotland's prisons" (p 26). She went on to praise the role they had performed and called for restoration of that role at the earliest opportunity.

(iii) The legal framework that currently criminalises the misuse of certain drugs and the related issue of whether one policy that may assist in tackling drug deaths is the provision of 'safe consumption rooms'

Seven years ago, the Home Office acknowledged evidence from the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) that supported safe consumption rooms, or Drug Consumption Rooms (DCRs). The EMCDDA's 2013 report reviewed evidence from a range of studies from across Europe, Canada and Australia, and considered there to be sufficient evidence to conclude that DCRs are generally successful in meeting their primary aims of providing an environment for safer drug use, improving the health status of the target group, and reducing public disorder, without incurring serious risk. This report found that DCRs provide a lower-risk, more hygienic environment for drug consumption than public spaces, and do not increase levels of use or risky patterns of consumption. People who use DCRs claim that they engage in risky injecting behaviour less when using a DCR, and DCRs were found to be successful in reaching their target population, principally street drug users and older longterm drug users who have never been in treatment. This engagement is of particular importance in terms of tackling drug deaths as opiate-related death rates are higher among people not in contact with drug treatment services. The EMCDDA report also found a corresponding increase in access to drug treatment services and a reduction in stigma around dependency.

The above evidence was presented within a 2014 Home Office report, and the proposal for drug consumption rooms was included in the ACMD's 2016 recommendations for reducing opioid-related deaths in the UK. The emergence of DCRs across Europe - and the opportunity to disseminate health advice and encourage entry into treatment that they present - were highlighted in the 2017 National (UK) guidelines on clinical management of drug misuse and dependence. Peer-reviewed evidence has also highlighted the demand for DCRs in the UK, including a high willingness to use DCRs among people who inject drugs in Scotland. Calls to introduce a DCR in Glasgow have been supported by the Scottish government, the Advisory Council on the Misuse of Drugs, and Police and Crime

Commissioners. Despite this support, there is yet to be an authorised DCR in Scotland.

It is Release's view that the recent position taken by the Minister for Crime and Policing, Kit Malthouse, in his exchange with the Scottish Affairs Committee, provides an opening for a strategy to introduce Drug Consumption Rooms (also referred to as Safer Injecting Facilities, Overdose Prevention Sites, or Enhanced Harm Reduction Centres) in Scotland. In his letter to the Committee, dated 11th December 2020, the Minister states:

"A range of crimes would be committed in the course of running such a facility, by service users and staff, such as possession of a controlled drug, being involved in the supply of a controlled drug, knowingly permitting the supply of a controlled drug on a premises or encouraging or assisting these and other offences. In addition to these issues of criminal liability there are difficulties around civil liability, were things to go wrong, with those operating DCRs potentially being sued for damages in negligence or other civil causes of action."

Members of Release's legal team present an assessment of the range of offences cited by the Minister below:

- **'Being involved in the supply'** (s4 (3) Misuse of Drugs Act 1971) is more likely to be engaged in relation to service users of a DCR rather than staff. Whilst 'knowingly permitting the supply of a controlled drug on a premises' (s8(b) MDA) is an issue, it is one that exists for any service engaging with people who are drug dependent or where there are high levels of drug use, for example, a nightclub. To reduce the risk of criminal liability, especially the risk of permitting supply on premises, clear enforceable guidance on steps that will be taken if people supply drugs overcomes this risk. Similar policies will already be operational in homeless centres, shelters, drug treatment centres, and are not unique to DCRs.
- **'Encouraging or assisting'** refers to s44 to s46 of the Serious Crime Act 2007, and these sections do not apply in Scotland. Whilst there will be inchoate offences (aiding and abetting) in Scottish law, these will be devolved to Scotland, and therefore we believe exemptions can be applied to the Scottish law.
- **Civil liability** - As we understand it, this is also not a reserved matter and so is not relevant to considerations made by the UK government and can be managed by the devolved administration.
- **Possession offences** - These offences (s5(2) MDA) would be committed in and around a DCR. However, the Home Office recognises the importance of diversion schemes for low-level possession offences and is providing support and funding to these across England and Wales through ADDER. In September 2021, the new Lord Advocate announced an extension to the Recorded Police Warning Scheme to include possession of Class A drugs, stating "Police officers may therefore choose to issue a Recorded Police Warning for simple possession offences for all classes of drugs". Diversion from prosecution is already possible in Scotland -

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Release are simply proposing that a scheme be operated by Police Scotland at an earlier stage, whereby anyone caught in possession of a controlled drug that could be taken in a DCR is diverted to that facility.

In conclusion, if it is confirmed that the above offences are those engaged then the Scottish Parliament can agree that the MDA 1971 is a reserved matter, but also that the offences cited are ones managed in many lawful settings already, except possession offences which can be dealt with via diversion, which are supported by the Home Office.

Scottish Prison Service

1. Introduction

The Scottish Prison Service (SPS) is committed to contributing to Scottish Government's drugs and alcohol strategy to support people by taking a human rights-based, public health approach to ensure we are delivering the best possible care and effectively support access to treatment and responses for individuals in our care.

Since 2011, healthcare services within SPS establishments have been delivered by NHS Scotland. NHS Health Boards are responsible for the provision of drug and alcohol services and treatment within establishments. The SPS has a role in actively supporting those in our care in addressing concerns related to their drug/alcohol use.

Drug misuse in establishments has changed over the last few years, evolving from well-known and readily identifiable controlled substances such as heroin, cocaine, cannabis and prescribed medication(s). Whilst these are still a factor, the emergence of 'novel' psychoactive substances in 2018 has seen a significant shift in what drugs we believe are being used by those in our care.

2. Overview of related Strategy

National Prison Care Network

The National Prison Care Network moved to NHS National Services for Scotland in 2019 and has undergone an extensive restructure. The National Prison Care Network has established a Mental Health and Drug & Alcohol facet to develop a Mental Health and Drug & Alcohol strategy for prisons. The SPS' strategies related to these areas will be aligned to reflect work progressed by the Network.

Development of SPS Health & Wellbeing Strategy

To ensure we fully contribute to Scottish Government outcomes for a healthier Scotland, the SPS is developing a Health & Wellbeing Strategy for those in our care. This strategy will be an overarching framework which will include core components that contribute to a broad wellbeing agenda which will also look to develop a trauma-informed approach across all services for those in our care. The core components of this strategy will include drug and alcohol support.

3. Identifying drug and alcohol use and supporting individuals in SPS' care

There are a wide range of measures that contribute to tackling drug use in our prisons which encompass security and support. It is key that all these strands are aligned and are progressive in order to capitalise both on evolving policy and detection.

On admission to any establishment individuals are interviewed by both SPS and NHS staff. Where concerns are raised about drug/alcohol use, these are identified, managed and referrals made to specialist support. NHS partners will support any immediate medical concerns regarding any ongoing medical treatment required including management of withdrawal.

Each establishment works directly with local NHS, Criminal Justice, Housing and Third Sector partners to co-ordinate care plans for an individual's time in custody and liberation plans for after release. For the duration of the individual's sentence, they will have access to internal and external services and organisations that support their recovery. Specific treatment plans

that are in place are supported by the NHS who have responsibility for aligning these with specialist community based supports.

There is a developing recovery hub/café approach being adopted across the prison estate with a number of SPS staff identified as Recovery/Programme staff. The SPS' work with the Scottish Recovery Consortium and Scottish Drugs Forum has increased access to peer support/mentor work and engagement with lived experience in designing and developing interventions.

4. Managing individuals – MoRS and naloxone

Unfortunately, the risk to health and potential of overdose is present in prisons as it is within the community. The Management of Risk from Substance (MoRS) Policy is a joint policy between SPS and NHS that enhances the safety of those at risk due to illicit substances in custody. A review of the policy is currently underway in partnership with NHS Health Boards, experts in drug and alcohol services and the National Prison Care Network that enhances the safety of those at risk due to illicit substance in custody, and simultaneously provides long term care and treatment pathways for those identified as having repeated related episodes.

It is also important to note that the SPS implemented the administration of intra-muscular naloxone during the nightshift across 14 prisons and a pilot of Intra Nasal Naloxone (Nyxoid) is due to commence shortly within HMP Grampian during night shift and other periods of patrol. The SPS continues to support naloxone awareness training to people in prison and the distribution of naloxone kits on liberation. Both are delivered by NHS teams in prison. SPS also supports initiatives such as the pilot ongoing in HMPs Barlinnie, Greenock and Low Moss where naloxone peer champions are in place, or are in the process of being trained.

5. Related networks, groups and research

SPS National Prison Recovery Network

The SPS National Prison Recovery Network is a multi-agency group that work in partnership with the SPS' Drug and Alcohol Strategy Steering group (DASS) to ensure a consistent approach in supporting individuals in their recovery. The membership of the Recovery Network includes representation from SPS Headquarters; each of the 15 establishments; Drug and Alcohol Partners; Violence Reduction Units, Alcoholics Anonymous and Scottish Families Affected by Alcohol and Drugs. The Network is co-chaired by SPS and the Director of Scottish Recovery Consortium. The Recovery Network provides SPS with the opportunity to share and replicate the best of what's happening in the community and works to develop a prison recovery community and deliver a consistent approach to services across the prison estate.

SPS Drug and Alcohol Strategy Steering (DASS) group

To ensure an aligned approach across the wide ranging policy and tactical activities, the SPS Drug and Alcohol Strategy Steering (DASS) group is in place. This group is multi-agency and responsible for policy guidance to ensure practice reflects the aims and objectives of Scottish Government's National Alcohol and Drug Treatment Strategy - Rights, Respect and Recovery. The DASS group monitor and analyse all management information and intelligence to provide a greater understanding of trends in drug use in prisons in Scotland and this information will inform policy development. The group's focus is on robust security systems to divert, disrupt, detect and deter the supply of illicit substances while creating an environment and culture which supports recovery for those with problematic drug use.

Dundee University – Research

As part of our ongoing work, SPS has agreed a post graduate research project with Dundee University who are testing recoveries of illicit articles within prisons and providing an insight into drug use across the prison estate. In addition, this work is exploring transdermal transfer and the possible impact of secondary psychoactive substance exposure on staff.

6. Tackling the introduction of illicit substances

With regards to tackling the introduction of illicit drugs in our establishments, this remains a key priority for the SPS. Our establishments hold increasingly complex and challenging populations, and we recognise the importance of providing a safe and secure environment for those in custody, as well as for people who work in our establishments.

With this in mind, the SPS has a comprehensive range of robust security measures in place to prevent the introduction of contraband entering our prisons, including the use of Rapiscan machines in every establishment in Scotland. They specifically assist in detecting substances which may have been concealed in items of mail and personal property. The SPS also has a National Tactical Search Unit, supported by trained drug detection dogs, to identify the most current and common components of illicit substances. They are also involved in routine, and intelligence led, local and national searching arrangements.

The developing technology, for example Rapiscan machines, has allowed the SPS to evolve its Addictions Prevalence Testing. We have renamed this Drug Trend Testing to better reflect the purpose of the annual testing process. Along with the testing of those entering and leaving custody in a given month, results from Rapiscans will be analysed. These amendments will allow SPS to test for those controlled drugs we know are being used in prisons. This will give SPS a more accurate picture of the drugs being introduced into the prisons and the drugs being taken. Drug Trend Testing will take place within SPS establishments in early 2022.

Establishments are microcosms of the wider community and, unfortunately, some groups do seek to capitalise on the vulnerabilities of those in our care through the introduction and distribution of illicit substances. Regrettably, despite robust security processes being in place, and the successful identification of many attempts to introduce contraband of this type, some individuals are successful in bypassing these processes.

The SPS and Police Scotland are working collaboratively to share information and intelligence in respect of criminal activity emanating from or impacting upon the prison estate. Both organisations are committed to seeking convictions for those introducing, or attempting to introduce, any unauthorised substances or other contraband material. The SPS has also established a Strategic Risk & Threat Group (SRTG). The STRG provides an ongoing overview of emerging threats and trends across the estate, including those linked to unauthorised substances. The STRG provides a mechanism for decision making, identifying risks, priorities and the deployment of resources/tactical options in response.

7. Throughcare

The SPS carries out multi-disciplinary meetings prior to a person's liberation to ensure where appropriate, support plans are in place; information sharing processes are already in place between SPS and Criminal Justice and Housing colleagues and early discussion is underway to replicate this with NHS. Specific treatment plans that are in place are supported by the NHS prison healthcare teams in each establishment, they have responsibility for aligning these with specialist community based supports. Where people on liberation wish to access voluntary throughcare support, SPS will facilitate access to Public Social Partnerships (Shine & New Routes).

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Scottish Government, Health and Justice Collaboration Board to tackle the misuse of drugs in Scotland

Dear Ms Barr

The role of the Scottish criminal justice sector in tackling the misuse of drugs

I refer to your e-mail of 28 September sent to my colleague and previous secretariat Orlando Heijmer-Mason, asking for details of the work being undertaken by the Health and Justice Collaboration Board to tackle the misuse of drugs in Scotland. The Board was paused in response to the pandemic and Orlando moved on to lead on Shielding work. However, on 23 September 2021 the Board reconvened, with an initial focus on problematic drug use harms and drug-related deaths and I am responding as I've taken on the role of secretariat.

The Board is co-chaired by the Scottish Government Director Generals for Health and Social Care and Education and Justice, with members drawn from Police Scotland, the Scottish Prison Service, Community Justice Scotland, Crown Office and Procurator Fiscal Service, the Scottish Ambulance Service, Healthcare Improvement Scotland and Public Health Scotland. There are also representative leaders from Health Boards and Health and Social Care Partnerships as well as representatives from COSLA and SOLACE.

The Board aims to provide strategic leadership to accelerate progress on issues where health and justice systems intersect, and the remit of the new iteration of the Board is to:

- Provide an authorising environment for delivering outcomes in areas requiring collaborative approaches;
- Identify and address organisational and systemic barriers to working collaboratively;
- Improve front line response to those at risk of drug harms and drug deaths and delivery of the national mission to reduce drug deaths.

The organisations which the members of this Board represent are all involved in the delivery of the [national mission](#) to tackle drug deaths announced by the First Minister in January 2021. Many of these organisations are also represented on the ministerial Implementation Group which oversees delivery of the mission and are also members of some of the bodies which advise the Implementation Group and make recommendations for change and improvement such as the Drug Deaths Taskforce.

The role of the Board in the national mission will be to focus on the areas of intersection between health and justice. As the initial work of the Board will be on improving front line response, the actions already underway discussed at its first meeting on 23 September included:

- Diversion/referrals from justice to health and social care – through Drug Testing and Treatment Orders and increased capacity in treatment and recovery services to allow for more referrals;

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- Improved health and social care provision to people in prison and police custody –consistent liberation policy linked to improved through-care from prison to communities and provision of rehabilitation services in prisons;
- Life-saving interventions: naloxone and non-fatal overdose pathways – widening the availability of naloxone kits, expanding non-fatal overdose pathways and changing restrictions on life-saving interventions, where appropriate.

Members are now considering how best to accelerate actions on these points and will be reporting to the next meeting of the Health and Justice Collaboration Board in early 2022. These and other actions are also being reported regularly to Ministers in the Justice, Health and Drugs portfolios.

I hope this summary of the work being undertaken by the Health and Justice Collaboration Board is helpful to the Committee.

Morris Fraser
Head of Delivery and Support Unit, Drugs Policy Division

Social Work Scotland

Social Work Scotland is the professional body for social work leaders, working closely with our partners to shape policy and practice, and improve the quality and experience of social services. We welcome this opportunity to comment on the role of the Scottish Criminal Justice sector in tackling the harms associated with the use of drugs. The reflections within this written evidence paper are drawn from the experience of our membership of social workers, the lead professionals taking forward duties under the Social Work (Scotland) Act 19681.

National Substance Use Strategy – Rights, Respect & Recovery 2018

In considering the role of Justice Services in addressing drug use and its associated harms in our communities, we would highlight the commitment made within the national substance use strategy, “Rights Respect & Recovery”², 2018, that Scotland would have a “Public Health approach to Justice”. That is, an approach that appreciates and addresses the social determinants of substance use (both alcohol, and drugs) and has the aim of improving health and wellbeing and reducing inequalities, as an approach to reducing offending.

The substance use strategy recognises that people with alcohol and drug problems are far more likely than average to come into contact with the justice system. In, addition, the presence of mental health challenges, socio-economic deprivation, and experience of trauma in individuals’ lives is recognised, as is the fact that, in many instances the criminalisation of this group of people only presents further challenges and risk of harm. Social Work Scotland supports this approach, which is trauma-informed and based on a Human Rights perspective.

Drug Death Taskforce

We note the work of the Drug Death Taskforce in working to reduce drug deaths in Scotland, in particular the emphasis on partnership approaches, as evidenced by the development of non-fatal overdose pathways. This is a good example of an opportunity for colleagues from Police Scotland to work in partnership with Social Workers, and colleagues from the third sector, and health, to engage with individuals who are at risk of harm. The key aspect of this being that the purpose is to offer support and advice that will support an individual to make an informed choice as to which service, or community resources, they would, or would not wish, to work with.

In addition to this pathway work, we appreciate the supportive and proactive responses to overdose evidenced by the Take Home Naloxone campaign being led by Scottish Drugs Forum with support from Scottish Government, and the pilot project of Police Scotland officers carrying and administering naloxone to combat opiate overdose.

Finally, with respect to the broader aims of the DDTF, we support the move towards trauma informed/expert responses for individuals who are affected by the harms associated with substance use, and see this broader reach across Justice Services, which is welcome. An explicit link between the Justice system and the national Trauma Framework being led by the NHS Education for Scotland (NES) would strengthen this.

Whole System & Whole Family Approach

It is clear that much has been achieved in terms of the systemic change in how people who use drugs are responded to. Community Orders such as Drug Treatment & Testing Orders (DTTOs) provide opportunity for effective engagement from workers supervising the DTTOs with the team around the child, thus supporting increased safety for both the parent/s and the child. Likewise, Community Payback Orders offer the opportunity for a person-centred approach to sentencing that utilises existing community supports, and takes account of the particular circumstances of the individual and what will have the most impact on them – i.e., supervision, programme attendance (e.g., substance use) or treatment for mental health, alcohol or drug use. Regular court reviews provide a forum for informing sentencers of the progress of interventions focused on reducing the risk of drug related deaths, improving access to treatment options and developing the psychosocial supports required to support treatment in the community.

We would want to highlight the importance of the Criminal Justice Social Work report in providing sentencers with the context for substance use and proposing justice social work intervention focused on addressing the harms of substance misuse, whether through a Community Payback Order with a Drug Treatment Requirement, a Drug Treatment and Testing Order, or during post-release supervision. Managing compliance with such orders is informed by Social Workers' knowledge of the inequalities faced by those who use substances, the trauma and mental health issues experienced by them, and the risks associated with disruption to treatment.

There are areas where this could be further enhanced, for example; Health and Social Care services in prisons are delegated to Integration Authorities (IAs) for health and social care in many areas of Scotland alongside Health services in custody suites. This is an area of strength; we believe that support in custody could be further augmented by the provision of a dedicated social work service that supports a holistic assessment of individuals that is strengths-based and community focussed. We believe that this would provide active linkage to community-based support upon liberation ensuring risks such as homelessness, lack of engagement in universal service provision and overdose and drug-related deaths are sufficiently mitigated.

This approach could have broader remit to support people in prison on short term sentences where drug or alcohol use is a major driver of their offending and other harms impacting on their lives. This is a current gap and opportunities to respond early and prevent escalation of substance use and associated harms including offending, poor mental and physical health and building recovery potential are all missed.

Additionally, whilst the use of a DTTO should primarily perform an Opiate Replacement Therapy (ORT) prescribing role, cognisant of the MAT Standards, it should also consist of mental health and nurse practitioner function including the ability to care for wounds, test and treat Blood Borne Virus and other physical conditions that are highly prevalent within the care group. DTTOs are finite in nature and yet the need for the support and health care provided by them is not. A transitional approach is required once an order is completed to assess and actively link people (those who need and request it) into "aftercare" and ensure that they

continue to engage and make good progress. This can be provided by creating the capacity for clients to engage voluntarily with existing teams or a handover to be conducted between this team and other services, in some instances, this might need to be a specialised Social Work Substance Use Team dependent on persons' needs and preferences. This should mitigate against the adverse consequence of reoffending solely for the purpose of securing continual support.

We would urge a whole family lens being used when considering this issue; in particular the impact on children of parental imprisonment. Criminalisation and particularly imprisonment, has wider consequences for women – inability to care for their children, or caring for them intermittently with the consequent impact on children's attachment and development, loss of housing, impact of the woman's wellbeing on her children. Substance use impacts on all aspects of a user's life, and in consequence a range of systems come in to play such as child protection processes. A welfare and human rights approach should encompass all of this. It is also important to consider the impact of paternal substance use and involvement in the justice system on children's relationships with their fathers. There is a need to consider ways in which maintenance of these relationships can also be supported by the whole system.

Taking a broader preventative approach that recognises the impact of poverty, social and health inequalities, and experience of trauma has on individuals would support an upstream response to this issue. To achieve this requires an approach that is community based, and relationship focussed, one that Social Workers are well placed to deliver and that would undoubtedly enhance the provision already in place.

Examples of good practice, and challenges

In seeking the views of our members, we were provided with several examples of practice across Scotland that highlight areas of strength, as well as areas that require consideration. These can be themed as per the following;

- Communication
- Risk Assessment and Risk Management
- Treatment
- Partnership working

Members noted "From inspection and case reviews evidence of good communication and partnership working at an operational level, evidence of joint case work, joint meetings, and shared plans and communication between workers. People using services have positively commented of this joint approach and how it has enabled them to engage with services.

However, the communication between services could be better and is hampered by, varying definitions of person-centred services, risk thresholds, a lack of understanding of each agency's role and function, partnership hierarchies a significant movement of staff at present and consequently a lack of capacity, time, skills knowledge and experience across the partnership".

Furthermore, challenges around access to residential rehabilitation, specifically in relation to Statutory Orders were noted by members as a barrier to individuals

accessing support – a lack of flexibility in the system was noted, which does not align with the aspirations of Rights, Respect & Recovery, 2018, or the national Justice Strategy “Justice in Scotland: vision and priorities”, 20173.

There is a lack of consistency with regards to access to associated psychosocial interventions, and counselling alongside Medication Assisted Treatment, this undermines the trauma informed, recovery orientated response required to support individuals to achieve positive and longer lasting outcomes.

The geography of services, particularly in more rural areas requires careful consideration, particularly for those following release from custody – often services are located in the bigger town which means that those people living more rurally and away from these town have the additional barrier to access which is distance and public transport links.

A final challenge identified by members is that, despite the presumption against short-term sentences, there is evidence that these continue to be in use, causing significant disruption to a person’s access to support services both within the prison setting, and in the community.

Addressing the challenge

- A need has been identified of supporting substance use focussed services (statutory and third, health, social work, and social care) regarding understanding legal requirements of Orders a Service User may be subject to through Court. A national approach to learning & workforce development could be useful.
- Opportunities for joint review and case analysis across Justice and Substance use services would support whole system learning and improvement.
- Clarity and a shared understanding of risk assessment and risk management across Substance Use, and Justice Services would assist a more joined up approach to service delivery.
- Several areas in Scotland reported that the provision of dedicated Women Community Justice Services had produced a more tailored approach based on the recognition of adult and childhood trauma and its correlation between substance use and associated problems.
- An example of a successful model of practice was shared by Edinburgh; “recent developments within the City of Edinburgh, East Lothian and Midlothian Justice service include; the provision of separate services for women and men, facilitating the use of buvidal prolonged-release buprenorphine, and participating in the “Community Inclusion Health Huddle”, a multi-agency forum for sharing information and developing outreach strategies amongst some of the most socially-excluded drug users in Edinburgh”.

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- Currently, Fife ADP are considering a Specialised Social Work Team for those with multiple and highly complex needs to provide intensive and frequent support through the adoption of a case management approach and coordinating and sequencing health care and other supports based on the individuals' needs and preferences. Thus, ensuring that the current Recovery Orientated System of Care flexes appropriately to be inclusive and truly person-centred for all especially those at the highest risk. Weekend and out of hours provision must also be considered as standard, to support individuals working with Community Justice Social Work,
- The local Alcohol & Drug Partnership should set out a clear strategic plan, easily communicated and ideally expressed as a Recovery Orientated System of Care (ROSC), to enable partners to engage with the partnership more fully, clarify roles and responsibilities, shared definitions, and joint working opportunities, to deliver the needs of those with lived experience.
- Much of what is in place focusses on responding to opiate use. There is a need to consider how best to support people who use benzodiazepines, and/or psychostimulants, and to ensure workforce development opportunities are available that supports a confident and competent workforce.

For further information, please do not hesitate to contact:

Laura Kerr
Adult Policy & Practice Lead, Social Work Scotland

Transform Drug Policy Foundation

Introduction

Transform Drug Policy Foundationⁱ is a UK based organisation that operates nationally and internationally, advising and supporting governments, national and local bodies, including holding ECOSOC Special Consultative Status at the UN. We seek a world where drug policy promotes health, protects the vulnerable and puts safety first.

Drugs and crime

Investment in treatment and harm reduction is cost effective with substantial savings to the criminal justice system. But the links between drugs and crime are complex. Some crimes are fuelled by intoxication (particularly alcohol), while others are directly linked to the prohibited status of production, supply and possession of certain drugs under the Misuse of Drugs Act (MDA) 1971. Possession of drugs for personal use is the largest proportion of such offences. 13.5% of the Scottish population report illegal drug useⁱⁱ. If lifetime use is considered, around 1 in 4 Scots have committed what remains in law a serious imprisonable offence. There are also less frequently committed, but more severely punishable offences of drug production, trafficking and supply of drugs under the MDA.

There is also a much larger volume of illegal *drug-related* crime. This includes violence and child exploitation associated with the organised crime groups involved in illegal drug markets. There is also a substantial volume of offending associated with people with problematic drug use fundraising to buy drugs - mostly acquisitive property crime or fraud. Yet there is no mass criminalisation of use, and far lower levels of offending related to production and supply or fundraising to buy legal drugs including alcohol and tobacco, or drugs supplied on prescription, emphasising the role of the MDA in fuelling the drug related burden on the criminal justice system. As the evidence pack accompanying Dame Carol Black's reviewⁱⁱⁱ makes clear, this is not a problem enforcement against supply can solve either. In 2003 the Prime Minister's Strategy Unit estimated that removing organised criminals from the drug trade would require consistent seizure rates of 60-80%.^{iv} In Scotland estimated heroin seizures were around 1% of the supply 2000-06.^v Seizures are an affordable cost of business, far less than legal tax rates and product losses (supermarkets waste 2% of food, fresh fish retailers 5% of products^{vi}).

Levels of offending and prison drug use

There were 31,000 drug offences recorded by Police Scotland in 2017-18^{vii}, with 12,000 proceeded against in court^{viii}. Of these ~4000 were supply offences and 27,171 for drug possession - 22% Class A (of which 2700 were for cocaine, and 2200 heroin); 57.5% were Class B (mainly cannabis); 846 people were sent to prison. Transform research shows from 1997- 2019 there were 139,000 convictions for offences under the MDA in Scotland, with 22,000 sentenced to immediate custody.

Research shows 15% of prisoners said they committed their offence to get money for drugs, and 36% said their drug use was a problem before going into prison. 39% of prisoners reported that they had used illegal drugs in prison, 13% of these said they had started using while in prison.^{ix} So it is unsurprising that outcomes for people who use drugs sent to prison are poor. While improved services in prisons, and on release, are desirable, a better approach would be to dramatically reduce or stop sending people with drug problems to prison. Prison is a punitive response to problems created by our punitive drug enforcement model. We need to break this cycle; in the short term, other more cost-effective approaches are available that reduce reoffending and deliver better health and social outcomes. In the longer term we need to reform laws that criminalise people who use drugs and drive them into offending behaviours.

In short, attempting to tackle what is primarily an issue of public health - reducing drugs related harms, and addressing problematic use - using primarily criminal justice tools has proved disastrous, with catastrophic health and criminal justice outcomes. Evidence from the 50 years since the MDA 1971 was passed, and the overwhelming body of expert opinion, point towards a long overdue recalibration of drugs policy away from failed punitive enforcement, towards a public health led approach proven to be cost effective on key health *and* criminal justice metrics. Achieving the much needed changes will require reforms at local, Scottish and UK Government scales. Several key areas are touched on below.

1. Diversion / decriminalisation

“The Checkpoint Diversion Programme in Durham...seems to me a wholly laudable project.” Kit Malthouse, UK Police Minister, 2019

Criminalisation of people who use drugs creates a major resource burden across the criminal justice system, despite a lack of evidence that it achieves its core purpose of deterring use. In 2014 the Home Office compared approaches around the world, concluding there was no ‘obvious relationship between the toughness of a country’s enforcement against drug possession, and levels of drug use in that country’.^x The UK 2016 Drugs Strategy evaluation also noted ‘a lack of robust evidence as to whether capture and punishment serves as a deterrent for drug use’.^{xi} This confirmed research by the Advisory Council on the Misuse of Drugs^{xii}, the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA)^{xiii}, and the World Health Organization, which found ‘countries with stringent user-level illegal drug policies did not have lower levels of use than countries with liberal ones’.^{xiv} There is, however, strong evidence that criminalisation does increase high risk drug using behaviours, creates obstacles to effective health interventions, housing and employment prospects, while disproportionately impacting on the life chances of vulnerable and marginalised individuals, increasing the risk of future problematic drug use.^{xv} That is why reducing the burden of criminalisation for people who use drugs has found increasingly widespread support. For example, drug-offence diversion schemes have been recommended by Dame Carol Black’s review of Drugs for the UK Government,^{xvi} the Advisory Council on the Misuse of Drugs, and UK Parliamentary Scottish Affairs and Health Select Committees to name just a few.

Diversion can guide people to a treatment assessment, drug education courses, support or treatment, without harming life chances with a criminal record. This can

be post-arrest, involving deferred prosecution, or preferably pre-arrest. Some UK police diversion schemes, such as Bristol and Durham, include certain low level supply offences. Evidence from the UK and globally (see [Drug Diversion in the UK^{xvii}](#)) shows that drug offence diversion schemes have a wide range of benefits:

- Preventing crime by reducing reoffending
- Reducing costs to police forces, freeing police to spend more time in communities
- Improving the physical and mental health of those diverted
- Improving the social and employment circumstances of those diverted
- Potentially reducing racial disparities in the criminal justice system
- Reducing some high-risk drug use through engagement with drug services

Despite recent comments from some Ministers with regard to Diversion in Scotland, it already has strong UK Government support. Diversion is a key element (one of the 'D's) in the UK Government's ADDER program^{xviii}, the Durham 'Checkpoint' scheme won plaudits from Policing Minister Kit Malthouse to the Scottish Affairs Committee^{xix} and was referenced in the Scottish Conservatives 2018 Drug Strategy.^{xx} Over a dozen English and Welsh Police Authorities (with Conservative, Labour, and Plaid Police and Crime Commissioners) have diversion schemes with the number growing rapidly.^{xxi}

The operationalisation of diversion schemes, however, remains uneven across the UK, and police discretion to arrest or charge could be exercised in an arbitrary or discriminatory fashion within areas as well. More comprehensive *de jure* decriminalisation - removal of the offence of possession for personal use from the MDA (diversion schemes can at best, be a form of *de-facto* decriminalisation) could address these concerns. This wider approach is backed by the Royal Society for Public Health, Faculty of Public Health, the Royal College of Physicians,^{xxii} and on the international stage all 31 UN agencies, including the World Health Organisation, UN human rights entities, and the UN Office on Drugs and Crime.^{xxiii} Around 30 jurisdictions have decriminalised the possession for personal use of some or all drugs. Transform reviewed the beneficial long term outcomes of the most well-known example - Portugal - for the 20th anniversary of the policy's implementation in May 2021, fact checked by the Portuguese Government's drugs agency.^{xxiv}

Calls for decriminalisation approaches often also stress the need to expunge past criminal records.^{xxv} Some decriminalisation models also include low level production and supply offences - such as not-for-profit supply within peer networks, or cultivation of cannabis or other drug plants for personal use (which can have an additional benefit of eroding illegal market profits).

2. Heroin Assisted Treatment (HAT)

Other submissions will no doubt focus on the well-established health and social benefits of HAT for the 10% of people dependent on heroin for whom other treatments do not work. So we will just note that studies^{xxvi} looking at long term impacts, found that after 6 years, over half of HAT clients were no longer being prescribed heroin. Both those still in the programme, and those who had left it, had maintained their reductions in illegal drugs use, and illegal income, with sustained

improvements in most social variables. These positive outcomes have been widely reproduced, including in all UK trials and reviews by the Cochrane Collaboration^{xxvii} and the European Monitoring Centre for Drugs and Drug Addiction^{xxviii} (EMCDDA). We will briefly address the criminal justice benefits.

Reducing Illegal Heroin Use and Organised Crime Income

In Switzerland, research^{xxix} suggests that the 10-15% of people eligible for HAT were using 30-60% of all illegal heroin. This is in line with other drug use patterns e.g. the 4% heaviest drinkers in the UK provide 23% of alcohol industry revenue, and the 25% heaviest some 68% of revenue.^{xxx} Taking this very high-using segment of their customer base away from organised criminals could significantly reduce their income, and related harms from the drugs market, with commensurate benefits to communities. All HAT projects show substantial reductions in street heroin use with many patients completely or almost abstinent. In the UK RIOTT trials^{xxxi} patients went from spending on average over £300 a week on illegal drugs to under £50 a week at 6 months. For the 40 people on the RIOTT trial being prescribed heroin, total spend fell from £14k a week to £2k per week. So if replicated, 50 people in HAT (the number planned longer term for Glasgow's clinic) could reduce illegal drug revenue by £780k per year. If Scotland introduced HAT at the levels in Switzerland (where ~6% of the heroin-using population is in HAT) the impact on the illegal heroin market, and money flowing to organised crime could be really significant. Take-home HAT (as several hundred people already receive in the UK) should also be expanded where appropriate as a more cost-effective way to expand the programme. The Swiss research cited above concluded: *'It seems likely that users who were admitted to the program accounted for a substantial proportion of consumption of illicit heroin, and that removing them from the illicit market has damaged the market's viability.'*

Reducing Acquisitive Crime

Reducing use of illegal drugs reduces the pressure to commit crime to pay for them. For example, the 40 people prescribed heroin in the RIOTT trials^{xxxii} were committing 1731 self-reported crimes in the 30 days prior to entering treatment. After 6 months, this fell to 547 crimes per month - a two-thirds reduction. A substantial number became 'crime-abstinent'. Evaluation of the Middlesbrough clinic outcomes also suggested pronounced crime reduction effects. A Rand report^{xxxiii} said of one UK project area: *"Initially, the police thought that a whole cohort of criminals had either died or migrated away from the area because there were people they had seen on a very regular basis – apprehending them for crimes – and suddenly they weren't on the police radar at all. Because the heroin-assisted treatment was so effective for them in reducing their criminal activity to fund their habit."*

Reducing initiation of new heroin users

In Swiss trials, 43% of patients entering HAT sold drugs to finance their own use. This fell to 6% after 12 months. *"The [heroin market] workers no longer sold drugs to existing users, and equally important, no longer recruited new users into the market. The heroin prescription market may thus have had a significant impact on heroin markets in Switzerland."* Following a shift to a more health-led approach including HAT, the number of new people using heroin in the Zurich area fell from 850 per

year to 150^{xxxiv}, and the population of problematic heroin users declined by 4% a year.

Reducing Cocaine use

A significant proportion of people who use crack are also dependent on heroin. HAT provides an opportunity to address both their heroin and crack use at the same time. Prior to entering the UK RIOTT trials, around three quarters of clients were using crack, while at 6 months this proportion had reduced, as had the amount used. In Switzerland, research found only 15% of new HAT clients had not used crack/cocaine in the previous six months; but the proportion of non-cocaine users increased progressively to 28% six months after admission, 35% after 12 months, and 41% after 18 months. Middlesbrough's HAT clinic found clients who were using crack reduced their use, with other illegal drug use also falling. Long term studies on HAT^{xxxv} in Germany also found a rapid decline in cocaine use. Dr Thilo Beck, who runs Swiss HAT clinics explains how this works: *'HAT is a very effective way to get a population that is otherwise difficult to reach into regular treatment. Once in treatment...marked psycho-bio-social stabilisation occurs. In this context reduction/better control of use of other substances like cocaine is frequently seen.'*

Cost-effectiveness

Numerous studies have shown HAT to be cost-effective - as the EMCDDA review says - "HAT saves money". Higher costs per client relative to standard opiate substitution therapy are more than matched by savings across health, criminal justice and other services unachievable with other treatments.

3. Overdose Prevention Centres (Supervised Injection Facilities)

There is a substantial body of evidence from across the globe, drawing on decades of experience in 12 countries, and now approaching 200 such facilities that we can provide the Committee with regarding the effectiveness of OPCs. But for concision we will point to two papers. Firstly, the UK Government's own Public Health England March 2019 briefing: "What is the current evidence for the efficacy of drug consumption rooms?"^{xxxvi} which says:

- *"Local police gained a mechanism to address public injection drug use in a way that promotes public safety.*
- *Crime rates have not increased in areas where DCRs operate.*
- *Areas where DCRs are operating have had reductions in public drug consumption and publicly discarded drug-related litter, e.g. syringes.*
- *Ambulance call-outs for overdoses are generally reduced in the vicinity of a DCR.*
- *Research has found consistent evidence of effectiveness of drug consumption rooms (DCRs) in reducing harms associated with drug use, particularly high-risk injection behaviours. Provision of sterile equipment to reduce infection transmission is a core function.*
- *DCRs have contributed to lower rates of fatal overdoses.*
- *DCRs have been used to provide people who use drugs with education on safer drug use, access to medical services and referrals to other health and social care services."*

Secondly, research^{xxxvii} showing that 230 'death events' (range 160-350) were averted in 20 months by Overdose Prevention Centres in British Columbia (facing a similar crisis to Scotland) and more when assessed as part of a coordinated set of interventions including OST, Naloxone provision and HAT.

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Introduction

Thank you for your request to provide written evidence on the impact of criminal justice measures on drug users. I am submitting this based on my own experience: as a professional working within drug policy, as an activist who has been involved in drug using communities for over 20 years, and as an academic. I also include other voices: Scottish patients currently receiving a medical cannabis on private prescription, in order to highlight the impact criminal justice measures have on medical, and non medical, cannabis users. I will be focussing 'the role of the Crown Office and Prosecution Service in the prosecution of cases relating to the supply and use of illegal drugs in Scotland', and the 'the legal framework that currently criminalises the misuse (use) of certain drugs.' For clarity, the framework does not focus on the *misuse* of drugs only, in reality the sector provides a criminal framework for the punishment of psychoactive substance use by individuals, in which many individuals who use drugs for pleasure and non-problematically are punished, quite severely and devastatingly at times.

The impact of criminal sanctions on drug users

Scottish criminal law has always been separate from English criminal law (1707 Act of the Union, Article 21). However, the Misuse of Drugs Act 1971 covers the whole of Scotland, with public health responses to drug consumption being devolved to the Scottish Parliament. Within the existing devolved powers Scotland has been creative and provides alternative options through the drugs courts with piloting heroin assisted treatment (HAT) and work with young people in preventing problematic drug use (c.f. Crew, Scottish Drugs Forum). In addition, the breadth of the sentencing structure allows flexibility: for example possession of a class A drug on summary warrant can be up to 12 months imprisonment **and/or** a £400 fine, on indictment 7 years imprisonment **and/or** a fine. However, this flexibility in itself is wrought with inconsistencies, and dependent on the actions of the prosecutor on deciding summary or indictment, the opinion of the Sheriff or Judge, and the character of the defendant. This makes the implementation of national strategies such as promotion of health based alternatives to imprisonment and de facto decriminalisation such as the cannabis minor offences policy, very difficult to achieve. Having worked in the legal sector I have seen this inconsistency being applied, particularly in the courts.

Furthermore, the policing of drugs is inconsistent. I worked as an expert witness for Crew 2000 for 6 years until 2018. During my time I witness countless pointless possession and intent to supply charges going through the courts. I say pointless because the defendant was often not prosecuted, yet they had anything up to 3 years to wait for that decision. I saw young men (and some women) go from happy and healthy individuals, to mentally unwell and unemployed due to the stress and trauma of a potential prison sentence hanging over them, for what was often very low level dealing or possession charges.

Currently in Scotland, drug offences make up 24% (5126 people) of all recorded crime. Of this approximately 15% received a custodial sentence with an average stay of 2 years. On average a further 24% received a community sentence, and the bulk of

convictions were a financial penalty (Scottish Government, 2020). There has been limited research to date that looks at what impact interaction with the criminal justice system has on drug using patterns (Hayhurst *et al.*, 2017), or the impact that criminal justice sanctions have on drug using populations, and most of that is based in North America. Generally speaking research focuses on whether interventions increase risky drug use such as injecting (for example Strathdee *et al.*, 2015), the impact on HIV prevalence (Altice *et al.*, 2015), or the racial disparities in the US system (Beckett, 2006). The association between drugs and criminal justice interventions often focus on the role drugs play, and whether drug use or recidivism increases/decreases after engagement (for example Jennings *et al.*, 2020, Babor *et al.*, 2018, ch.11). However, the more nuanced understanding of the relationship between drug use and criminal justice interventions is still to be done. For example, my experience as a support worker showed me the huge impact court fines can have on drug dependent individuals. More often than not these individuals have no other income other than state benefits, and this income goes to fund their dependency – be it alcohol or illicit drugs. Fines do not prevent this, and clients would often be in arrears and threatened with custodial sentences as a result. I have witnessed anxiety, panic attacks and extreme drug taking, mental health deterioration, life chances ruined and death that has resulted directly from the stress of being involved with the criminal justice system.

Contrasted with this, approximately 27% of the Scottish population reported ever using illicit drugs in 2018/19 (1,429,650, Scottish Government 2019), with 13.5% reporting that they had used in the last 12 months (Scottish Government 2020). The most common drug was cannabis (58%) closely followed by illegal prescription drugs (38%), cocaine (22%) and ecstasy (12%). These are increases from previous years. Heroin is recorded as being used by between 1-2% of the population, remaining stable in comparison to previous years (Scottish crime survey 2018/19). What this highlights is that there are a lot more people using drugs, than being prosecuted by the courts, and this is supported by previous research that estimated there were 3000 cannabis users for every 1 arrest (Nguyen and Reuter, 2012) and more recently 5,500 users for every arrest (Caulkins *et al.*, 2016). It also highlights that the main drug of use is so called 'recreational' drugs: drugs used to enhance pleasure and rarely result in dependence. The 'problem' drug user represent a very small minority of all drug users. Why is this important? Because when you look at the characteristics of offenders you begin to see a pattern of policing where drug laws are being used to police a certain demographic: problem drug users or young people using drugs socially in places they are likely to be seen and caught.

Impact of criminal justice interventions on cannabis users

Despite the minor offences for possession of cannabis being introduced in 2016, in recognition that most do not end up in the courts, your committee's report in 2018 (Drug Seizures and Offender Characteristics, 2017-18) highlights a troubling narrative:

In 2017-18 (2 years after the policy was introduced) 53% of all possession charges were for cannabis, with 49% taking place outside as a result of the police observing or being suspicious of the behaviour. Added to this most offences take place at the weekend, and national statistics tell us that the median age for drug use offending is between the ages of 18-35, and mainly men. What see here then is a process of targeted policing of a defined community – young men. This targeted policing takes place in known drug using areas, targets young men who are indulging in substances during the weekend, and is effectively low hanging fruit for many police to bump up

their statistics and harass young people that may be causing a nuisance in the neighbourhood. So, despite the commitment to not police low level drug offending, it is clearly taking place in targeted areas. Furthermore 16,000 cannabis plants were seized. And it must be noted that many of these will not be from large cannabis farms, but from small cannabis grows carried out by individuals for themselves and their immediate community.

It is at this point I would like to input a statement from Patient Led Engagement and Advocacy (PLEA) who have a Scottish cannabis patient sub-group. They have compiled a short statement on the impact criminal sanctions have on their lives.

“A patient has previously been prosecuted for possession of a small amount of cannabis resulting in a fine and criminal record and being in the local news, living in a rural area meaning everybody knew about it, the patient now has a prescription but still has to live with a conviction. They were found in possession of what would now be 3 days’ worth of medication.

A lot of patients have expressed they would like the option to grow their own cannabis as many are on low income/ benefits and they feel it would be cheaper for them to grow their own and they could also be able to grow the strains that work best for them. Many patients however have said that they want to be under the care of a doctor and have a prescription for cannabis, many don’t have the space to grow or the knowledge and need a consistent supply to manage their health conditions.

Of those that would like the option to grow their own cannabis the legal implications stop them from doing so as it could cause problems with work or housing if caught, charged and convicted.

Some patients still feel stigma around their medications especially where housing and work are concerned. Some patients' families are very anti drugs and see cannabis as just another drug and won’t accept it as a medicine, there needs to be more education around this.

Things that could improve things for patients in regards to criminal justice would be ending prosecutions for patients for growing or possession of cannabis. Expunging past convictions for patients. Having cannabis medication available through the NHS as many patients cannot afford the cost of private prescriptions giving them no other option than to source illegally to manage their health conditions. Raising awareness and acceptance that cannabis is a medicine.

It is also recognised that many cannabis dealers are supplying people with health conditions, making them unofficial, and illegal, health practitioners, with all the consequences that come with dealing drugs. Furthermore, anecdotal evidence shows us that there is an increase in individuals accessing the black market to purchase cannabis for families and close friends who are suffering from a range of illnesses that have been shown to be alleviated by cannabis – for example fibromyalgia, cancer, chronic pain, epilepsy, and eczema/dermatitis, to name a few.”

I can attest to this. Being increasingly in the public eye in regards cannabis I am consistently approached, online and by friends and families, to give advice on how individuals can access legal and illegal cannabis (obviously I only ever refer them to the legal route). I know many elderly people who are self-medicating with illegal cannabis, and their families are at risk of prosecution should they be arrested and charged while purchasing or transporting the medicine to their loved ones.

Given that cannabis is now such a normalised drug that we have 2 UN countries with fully legalised adult use (Canada and Uruguay), and several more UN signatories including America have bills to legalised cannabis going through their parliaments, and that the UK has a legal medical cannabis route, the targeted policing of cannabis offenders is extremely troubling and something the Crime and Justice Committee should address as a matter of urgency. Furthermore, evidence is gathering around the world countering the myths surrounding cannabis and it's 'danger'. I would be more than happy to work closer with the committee exploring that evidence. You will also read a lot evidence around why criminalising drug using communities does more harm than good, and therefore I do not need to provide this here.

It is fully within the competence of the Scottish Government to develop policies that creatively implement the MDA '71 Act to allow for cannabis possession and cultivation. The following is a suggestion that my organisation the Scottish Cannabis Consortium would be more than am happy to expand on should the committee be interested in.

In Scotland the police have discretion in policing the law. In other countries where this discretion exists there have been positive moves in regards home growing and cannabis social clubs. Cannabis social clubs are private member clubs that take the allocated plant allowance from members and grow for them. Members are then able to get their cannabis back from the social club once it is ready. This method is a successful method, and we already have several underground cannabis social clubs operating in Scotland.

Policing of cannabis falls under the Misuse of Drugs Act 1971. **Schedule 4 of the Misuse of Drugs Act 1971** specifies that the following acts involving a Class B drugs (cannabis) will result in 3 month to 7 years imprisonment **and/or a £400 -£2500 fine** depending on summary/indictment and charge.

1. Cultivation of a cannabis plant
2. Production or being concerned in the production of a controlled drugs
3. Supplying, offering to supply, or being concerned in the doing of either
4. Having possession with intent to supply
5. Being the occupier, or concerned in the management, of premises and permitting or suffering certain activities to take place there.

Given that under the MDA'71 Act possession of cannabis carries prison sentence **and/or** a fine, yet in Scotland consumers who are given a recorded police warning do not get either a fine or prison sentence, and other parts of the UK have various ways in which they police possession of cannabis, the terms of the '71 Act are clearly flexible.

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It is possible that actions set out in sections 1-5 could be subject to a policy created in collaboration between Police Scotland, the Scottish Government and the Crown Office aimed at improving/protecting public health and reducing drug related harm. A policy which allowed consumers to grow up to a 6 (flexible) plants, join social clubs where cannabis can be collectively grown and potentially consumed (as in Spain, the Netherlands and Belgium), and provide a framework in which the 'fine' is applied on a regular basis which is strictly regulated, would not violate the Act.

If Scotland chose to be flexible in its implementation of the Act, there are ways in which low level dealing such as subsistence dealing² and social supply³ could be treated without a prison sentence. To focus only on possession (as the recent Lord Advocate advice sets out) misses out a whole community of individuals that are being currently targeted by Police Scotland, and whose drug use is considered beyond personal. It is clear from your recent statistics that even with a change in policy those most affected by the drug laws are still being impacted, therefore any meaningful change must include consistent policing throughout the country, and clear and transparent understanding of what is possessions/subsistence or social supply, and what is organised crime dealing.

References (please note, for a longer list of references please contact and I can supply, however I am keeping to the 4 page word limit)

Scottish Government (2019) Crime and Justice Survey

Scottish Government (2020) Crime and Justice Survey

Scottish Government (2019) Drug Seizures and Offender Characteristics 2017-2018.

² This term describes dealing that is undertaken in order to supply the dealer with her own drugs, and no more.

³ This term describes James' predicament, being the main contact for several social groups and buying drugs but not making much profit from it.