

# WRONG ARM OF THE LAW

The evidence from abroad, especially Portugal, suggests that scaling back on criminalising drug users in the UK could be a smart move, says **Jessica Magson**.

Despite major advances in drug treatment support over the past 20 years, punitive approaches to tackling illicit drug use remain a central feature of UK policy. Current sentencing guidelines still impose a maximum penalty of seven years in prison for drug possession offences, and figures from 2010 suggest 43,406 individuals were found guilty of drug possession in the courts that year, primarily in relation to cannabis.

While numbers have stabilised over the past two years, we have witnessed decades of increases in the incarceration of drug offenders, with the total in 2011 166 per cent higher than in 1993, according to Ministry of Justice figures.

I recently returned from visiting Portugal, the Czech Republic and Uruguay as part of a Winston Churchill Memorial Trust Fellowship. Drawing on meetings with politicians, state officials and frontline staff in the three countries, my aim was to understand how other states have conceptualised and implemented a shift away from criminal sanctions and towards health-based support for problematic users.

During my visits, I found that a move to civil rather than criminal possession penalties was fairly simple to enact, could generate a range of efficiencies for the criminal justice system and allowed for the more effective targeting and prioritisation of treatment and social support.

My final report argues that, in what is a fast shifting international environment, the UK urgently needs to iron out the contradictions in its current policy approach and to objectively consider the arguments for reform set out by practitioners across the health, welfare and criminal justice sectors.

Over recent decades, two strands of closely related UK policy have developed at divergent tangents. On the one hand, a growth in police capacity, resourcing and legal powers has helped to fuel a substantial rise in the numbers prosecuted and incarcerated for drug possession in the UK. Sentences for all drug offences have risen to an average of 31.3 months in jail, followed by mandatory supervision and a criminal record that will hinder your chances of legitimate employment in the future.

For individuals lucky enough to have their addiction identified by staff in the health and social services however, the story can be very different.

The UK has developed a well-functioning system of drug treatment support that is internationally renowned and used as a model in other countries. There are options for residential or community support, substitution therapy, needle exchange and social services stretching into housing, employment, education and debt management. Financial constraints may be putting pressure on these resources and we know that many more individuals remain in need of help. But, in the main, service provision for drug users is strong in the UK when compared to many other countries.

The fact that some of these treatment facilities are made available to offenders within the criminal justice system misses the point. Why is one strand of the state punishing individuals which another part of government would be working to treat and support?

Both the Home Office and the Department of Health are looking to reduce the demand for and damage caused by drugs, but these contradictory

approaches are arguably working to undermine common objectives.

Enforcement is meanwhile generating tensions between the police and local communities and putting unsustainable pressure on a criminal justice system undergoing major cuts. In the UK we don't see the levels of chronic prison overcrowding or court backlog that encumber many other administrations, but the concept of 'overcriminalisation' remains pertinent. We may have sufficient capacity to be able to process and incarcerate a large number of people, but the cost to the taxpayer is vast.

Growing numbers within the justice system itself are arguing that the criminalisation of users is undermining rehabilitation and generating significant barriers for individual recovery. Leading experts from a wide variety of fields are adding their voices to groups like the Home Affairs Committee, UK Drug Policy Commission and National Association of Probation Officers, in calling for reform.

With this context in mind I wanted to analyse and compare countries where a process of decriminalisation has been designed and implemented. Portugal and the Czech Republic have mutually shifted to civil rather than criminal penalties for drug possession offences, while the authorities in Uruguay revised their possession laws in 1979 and are now on the cusp of implementing a regulatory model for cannabis supply.

The Portuguese strategy was premised around the principle of the drug addict as a diseased citizen with a constitutional right to health and a recognition of the limitations of rehabilitation within the custodial estate. The Czech administration also

sought to refocus attention towards harm reduction and, as in Portugal, appointed a health expert to oversee policy development and delivery. In Uruguay treatment provision remains under-resourced and it is hoped that the regulation of cannabis will cut the link between cannabis users and the suppliers of stronger illicit substances and lead to stronger support for problematic users funded through taxation revenues.

In each of these countries, I interviewed staff working in policy, enforcement and frontline service provision to understand what the impact of legislative changes had meant for them and the individuals they work to support.

Each administration is tackling nuanced domestic problems and their approaches to drug abuse vary, but there are common lessons which can be drawn from their experiences. And while there are examples of good practice in both the Czech Republic and Uruguay, it is the Portuguese dissuasion commissions that really stand out as a potential model for the UK.

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These quasi-judicial bodies blend the authority of the courts with a focus on individual rehabilitation and treatment support. The commission panels combine judicial, health and social service expertise, to work with individuals referred by the police, identifying any problems early and directing users to a National Network of Harm and Risk Reduction, a body set up alongside changes to the law.

A number of sanctions are available to the commissions but the focus lies in supporting the individual away from problematic use. Tens of thousands of people have attended these sessions and officials point to a variety of successes including a rapid decline in public concern around drug abuse, identified in Eurobarometer surveys.

While many of those interviewed in Portugal have noted how the judicial system continues to suffer from

resourcing and capacity constraints, nobody was in favour of returning to a prohibitionist model. There was consensus that their innovative reforms, built on the back of expert evidence, have been central to helping them overcome a severe HIV epidemic in the late 1990s and widespread intravenous heroin use.

Their policies were targeted to address the specific problems of the Portuguese context, but it is nonetheless clear that conceptualising drug abuse in a framework of disease and addiction gives space to policy development that is more firmly rooted in applying the evidence of what works for long-term recovery.

We can also now prove that decriminalisation policies do not need to result in a surge in drug consumption rates or acquisitive crime. Contrary to the expectations of critics, initial rises in use in the immediate aftermath of reform quickly calm down again. Over time the benefits of enhanced trust between individuals and state authorities has filtered down, creating a more open environment where individuals are better supported and untainted by a criminal record.

Each section of the justice system is likely to see efficiencies. Police processing time can be substantially cut, allowing them to concentrate more on the investigation of other crimes. Referral tools provide officers with the ability to help the addicts they encounter, while probation officers and charity workers in Portugal and the Czech Republic noted how they are able to have a more honest dialogue with clients who are no longer fearful of the consequences of admitting an addiction.

If a country like Portugal, with limited economic resources, is able to set up an effective diversion model to deal with possession only offenders, could the UK follow suit?

A final report, accessible here <http://goo.gl/KUDNT9> argues that the piloting of comparable schemes is both feasible and necessary. The idea fits well with UK principles of rehabilitation and community policing and there already exists a strong network of practitioners available to provide support. The formation of dissuasion commissions, tailored to the UK context, could generate a range of benefits, particularly at a time when resentment towards police stop and search techniques is mounting.

Ultimately, these changes have worked best elsewhere when they are



framed in a broader strategic shift at the executive level, giving precedence to health-based solutions for overcoming addiction and applying this to decisions in relation to oversight and resource allocation.

Contrary to the views of some commentators, the need for reform in the UK remains acute. Decriminalisation in other states may soon make a prohibitionist UK position unsustainable.

When domestic public services continue to document the wide-ranging social and individual harms arising from drug addiction we cannot complacently point to a slight downward shift in consumption patterns as testimony to an effective policy approach. Instead we should consider the thousands who continue to die from overdose each year, the rise in untested new substances and sustained numbers seeking treatment support as signs of a continued failure to adequately prioritise health and welfare provision over the partial by-product of drug abuse which is, sometimes, crime.

**Before starting the Churchill Fellowship Jessica Magson worked at the International Directorate of the UK Ministry of Justice for five years, analysing the effectiveness of criminal justice systems in other countries and managing projects to support the development of court, prison and probation services abroad.**

**Further information about the fellowship can be found at [jmagson2013wcmf.wordpress.com](http://jmagson2013wcmf.wordpress.com)**