Portugal – a drug policy reform case study.

Introduction: our interest and beliefs

We have a long standing interest in the UK policy framework regarding the use, production and sale of drugs. We have both spent a good part of our working life in the development and management of drugs services. For us, the long- standing key issue is the relationship of the drugs policy adopted by the UK to the totality of drug related harm. We have come to the conclusion, based on a range of evidence from credible sources, that the way our society thinks about drug use and the policies and practices that arise from this, are at best ineffective and at worst harmful.

We have been particularly been heartened by the views of the All Party Parliamentary Group for Drug Policy Reform[1] and those expressed by the UN Office for Drugs and Criminal Justice[2]. The All Party Parliamentary Group for Drug Policy Reform reporting in 2013, provides what might be considered to be a measured appraisal of current drug policy. The report concludes that, in aiming to reduce the harms associated with illicit drugs, criminalisation is not only ineffective but also causes additional harms. The United Nations Office for Drugs and Criminal Justice in "From Coercion to Cohesion" calls, on the basis of extensive evidence, for health based treatment for illegal drug users instead of punitive criminal justice measures. The All Party Parliamentary Group for Drug Policy Reform report pinpoints policy changes, which it deems beneficial, in several European Countries including Portugal. The Czech Republic, Spain, Estonia, together with Portugal, have decriminalised the possession and use of small quantities of drugs.

At the same time as bringing positive results and savings to the taxpayer, the All Party Parliamentary Group for Drug Policy Reform report concludes that decriminalisation has not significantly caused the overall levels of drug use to rise.

On a recent holiday visit to Lisbon we took the opportunity to find out first hand exactly what the Portuguese system is and how it works in practice. We met with Nuno Capaz, Vice-President, Lisbon Dissuasion Commission and M.D. Joao Goulao, General-Director of

[1] APPGDPR (2013) ;

[2] United Nations Office on Drugs and Crime (2010) *From Coercion to Cohesion: Treating Drug Dependence Through Health Care, Not Punishment*

Intervention on Addictive Behaviours and Dependencies, Portugal, who generously made themselves available to answer our questions. We were interested to compare the UK and Portuguese systems and so felt that it was important to understand the administrative and legal processes in Portugal.

We had four overarching questions in mind. Firstly, why and how did Portugal decriminalise the personal use of drugs? Secondly, how does the decriminalised system work in practice? Thirdly, the intuitive question that many people ask, has decriminalisation led to any change in the overall level of drug use? Finally we wanted to know what, if any, had been the gains from decriminalisation in Portugal?

Why and how did Portugal decriminalise the personal use of drugs?

The context in which the changes to Portuguese drug policy arose are briefly as follows. From 1932 to 1974 Portugal was ruled by the Salazar dictatorship. One consequence of this were tightly controlled borders and restrictions on foreign travel. Following the Portuguese revolution in 1974 and the fall of the dictatorship, Portugal's borders were reopened. For a population with little or no history of illicit drug use and with little information about risks and harms, the sudden availability of especially heroin resulted in widespread harm. The highly visible street use of heroin in Lisbon bought the issue suddenly and dramatically to public and political attention. In 1998 The Government responded by setting up a panel of experts including leading academics and medical professionals to advise on how the problem might be best tackled. The panel's report started from the position that "there exist many pre-conceived notions about the use of drugs, many of which are false and result from uninformed emotional reactions" [3]. The panel concluded that a paradigm change was needed in the way that the problem should be approached. The panel made 83 recommendations which crystallised the paradigm change. The vast majority (80) of these recommendations were adopted without alteration by the Portuguese Parliament. The decriminalised approach operated from 2001 onwards, the same framework having remained in place since that time.

[3] Quoted in Laurence Allen, Mike Trace, Axel Klein
Decriminalisation of drugs in Portugal : a current overview
The Beckley Foundation 2004

The key principles of the paradigm shift are as follows. The addicted drug user is considered to be a sick person in need of health care Personal drug use is no longer a criminal offence, but remains an administrative offence. Importantly, drug use therefore remains an illegal activity in compliance with the international drug law frameworks. . Because this is a health issue the criminal justice system is therefore not considered to be the right place to deal with drug use. 'Dissuasion' rather than coercion is the overarching intervention method within a framework based on prevention, harm reduction and the reintegration of drug users into society. Resources within the criminal justice system can now focus on drug trafficking and supply, as they no longer have to be concerned with personal drug use. Production, supply and trafficking remain subject to the criminal law and its penalties.

Alongside the paradigm shift, Portugal has invested heavily, both before and after 2001, in a modern and efficient treatment system, sufficient in scale to meet need. There has also been large scale investment in harm reduction services for drug users.

How does the decriminalised system work in practice?

The process is as follows

- The Police find a person in a public place in possession of or using drugs.
- The substance is seized, identified and weighed. If the weight is less a than that deemed reasonable for 10 day's personal use (the weights for each substance are precisely defined in the legislation) they are referred by the police to the Dissuasion Commission for the area in which the person lives. The full title of the Dissuasion Commission is the Commission for the Dissuasion of Drug Addiction. There are 18 locally based Dissuasion Commissions across all of the regions of Portugal. If the substance weighs more than the specified amount, the police refer this to the Courts as a criminal justice matter. The judge may at his / her discretion refer the person back to the Dissuasion Commission in order to access treatment.
- The professional staff team at the Dissuasion Commission (social workers, psychologists, drugs workers) carries out an evaluation hearing with the referred drug user. This assesses whether the person's use is problematic (addicted) or likely to become problematic given risk factors in the person's life such as dropping out from

education, unemployment or family difficulties. The purpose of the hearing is to explore the need for treatment and support and to promote a healthy recovery.

- Following shortly after the evaluation hearing, the drug user appears before the 3-person Dissuasion Commission. In the case of the Lisbon Dissuasion Commission, which we visited, this consists of a lawyer, a psychologist and a sociologist who thoroughly discuss the issues with the drug user. If the person is addicted and treatment is appropriate, the arrangements for this are made immediately.

- People who are addicted are referred to treatment which is immediately available. A wide range of treatment, facilities are available in Portugal. Immediate access was considered to be essential for an effective treatment system.

- The Dissuasion Commission has the power and discretion to impose penalties if they believe this to be constructive. Penalties include warnings, community service, and mandatory periodic attendance at a designated place such as an unemployment centre or a college, ban on being at certain places, restriction of foreign travel. Additionally the Dissuasion Commission can charge a monetary fee which can be in the form of charitable donation. Importantly, a monetary fee cannot be imposed on an addicted person.

- If the person accepts the treatment or support that is offered the penalties are suspended for 2 years. If they choose not to enter treatment the penalties may then be imposed.

- Support interventions are offered for those non-problematic drug users (who constitute the majority of those referred by the police to the Dissuasion Commissions) but who are seen to have health and social care needs such as unemployment, family problems and psychological problems which may be risk factors that increase the likelihood of the person's drug use becoming problematic at some time in the future.

<u>Has decriminalisation led to a change in the overall level of drug use?</u>

One of the most keenly disputed outcomes of Portugal's reforms is their impact on levels of drug use.

Measuring the prevalence of drug use is by no means straightforward. This is especially true when one attempts to track changes over time or to compare drug use prevalence between

different countries. Despite attempts at standardisation, different definitions may be used from place to place and may change over time.

A range of international studies show that overall there is little or no relationship between the legal status of drug use of a country and the rate of drug use. Instead, drug use tends to rise and fall in line with broader cultural, social or economic trends. Removing criminal penalties for drug use does not therefore result in an increase of drug use. The European Monitoring Centre for Drugs and Drug Addiction (EMCDDA)[4] looked at levels of drug use in countries which had increased or decreased penalties for cannabis possession. It found no evidence that increasing penalties reduces use, or that reducing penalties increases it. Alex Stevens[5] similarly suggests there is little correlation between the level of punishment for drug offences and the rate of drug use or drug problems.

Hughes and Stevens[6] show how contrasting evaluations of Portuguese policy, each selectively using (or misusing) different data sets, conclude that the results are can be seen as either a 'resounding success' or a 'disastrous failure'. Several measures of 'prevalence' are commonly used: ever in lifetime use, use in the last 12 months, use within the last 30 days.

The latter of these - use within the last 30 days – is generally held to be the most useful measures as it focusses on those who use regularly and who it might be assumed are most prone to harm. The United Nations Office on Drugs and Crime, the World Health Organization and the EMCDDA all hold that the best indicators for examining trends in the general population are recent (last 12 months) or current (last 30 days) use.

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[4] European Monitoring Centre for Drugs and Drug Addiction (2011b) 'Looking for a relationship between penalties and cannabis use'

[5] Alex Stevens Drugs, Crime and Public Health' Routledge, 2011,

[6] Caitlin E Hughes and Alex Stevens A resounding success or a disastrous failure: Re-examining the interpretation of evidence on the Portuguese decriminalisation of illicit drugs. *Drug and Alcohol Review* (January 2012), 31, 101–113

George Murkin[7] in "Drug decriminalisation in Portugal: setting the record straight" looks in some depth at the detail of the prevalence data and concludes that overall there has not been an increase in drug use since the introduction of the reforms in 2001.

We in turn have extracted a very simple prevalence data set from the EMCDDA online data resources. This measures prevalence by the percentage of the population who have used drugs in the last 30 days. We have looked at the prevalence of the use in England & Wales compared to Portugal of certain drugs for which comparable figures are available over the period 2001 to 2012 in both countries (cannabis, cocaine, amphetamine, ecstasy, LSD) in adults (16-59 years in England and Wales, 15-64 years in Portugal).

In England & Wales cannabis use dropped from 6.6% to 4.1% over that time period. Cocaine use increased slightly from 0.9% to 1%. Amphetamine use decreased from 0.7% to 0.3%. Ecstasy use decreased from 1.1% to 0.5%. LSD use remained constant over the time period at 0.1%.

In Portugal cannabis use dropped from 2.4% to 1.7%. Cocaine use remained constant at 0.1%. Amphetamine use decreased from 0.1% to zero. Ecstasy use remained constant at 0.2%. LSD increased from zero to 0.1%.

In summary, both countries show differences over time in the levels of drug use. For most substances both countries show overall decreases in the prevalence of use. Cocaine use increased slightly in England and Wales. LSD use increased slightly in Portugal.

<u>What are the gains from decriminalisation in Portugal?</u>

Health gains

The number of newly diagnosed HIV cases among people who inject drugs has declined substantially, falling from 1,016 to 56 between 2001 and 2012. A similar, downward trend has been observed for cases of Hepatitis C and B among clients of drug treatment. Deaths due

[7] George Murkin Drug decriminalisation in Portugal: setting the record straight. www.tdpf.org.uk/blog/drug-decriminalisation-portugal-setting-record-straight (last accessed 11th April 2015)

to drug use have decreased significantly – from approximately 80 in 2001, to 16 in 2012.[8] It is important to note that these substantial health gains do not arise solely from decriminalisation – they are also the result of investment in health and welfare services. The Dissuasion Commissions, themselves a product of the decriminalisation policy, play a vital part in forming the entry point into treatment and support services.

Gains in the criminal justice system

the police are able to focus their limited resources on drug trafficking and supply, rather than on individual drug users.

The other major gain which should not be underestimated is the fact that **drug users no longer attract a criminal record**. The damage to a person's employment prospect, their education and their general wellbeing has been thoroughly evidenced in the UK and the USA. Decriminalisation removes the possibility of this damage at a stroke. Furthermore in both the UK and USA it has been conclusively shown that criminal justice sanctions are used disproportionately against minority ethnic communities. Criminalisation reinforces and amplifies the social disadvantage associated with race.

A less tangible benefit is that drug use becomes less stigmatised and that drug policy issues can be discussed publicly. Perhaps the final word should go to Dr. Joao Goulao, the architect of Portugal's decriminalisation policy. *"It's very difficult to establish a causal link between decriminalisation and the positive tendencies we've seen….it's a total package. The biggest effect has been to allow the stigma of drug addiction to fall, to let people speak clearly and to pursue professional help without fear."*

Tony Faragher and Voirrey Faragher
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[8] George Murkin Drug decriminalisation in Portugal: setting the record straight. www.tdpf.org.uk/blog/drug-decriminalisation-portugal-setting-record-straight (last accessed 11th April 2015)