

**WORKING GROUP TO CONSIDER ALTERNATIVE APPROACHES TO
THE POSSESSION OF DRUGS FOR PERSONAL USE**

Minority Report of:-

GARRETT SHEEHAN, Chairperson of The Working Group

To:-

The Minister for Justice & Equality, CHARLES FLANAGAN TD

The Minister for Health, SIMON HARRIS TD

**The Minister of State for Health Promotion and National Drugs Strategy, CATHERINE
BYRNE TD**

On the 30th November 2017, the Minister for Health Promotion and the National Drugs Strategy, Catherine Byrne TD, announced the establishment of a Working Group to examine alternative approaches to the possession of controlled drugs for personal use. While the list of controlled drugs is regularly added to, and presently comprises, 240, or so different substances the Working Group deliberations concentrated on those drugs most often associated with the illicit drug market such as cocaine, cannabis, heroin, prescription drugs, and amphetamines to name some of the principal ones.

It was my privilege to be appointed Chairperson of this Group, which was requested to report its findings and make recommendations within twelve months.

As I find myself in disagreement with a number of the conclusions of the majority of the Members of the Working Group, as expressed in their report, I present this Minority Report.

In particular, I am opposed to leaving any form of decriminalisation on the table as an option for government. I am also opposed to making any changes to our drug laws which might be seen as tending towards the normalization of drug use.

The context in which the deliberations of the Working Group took place point to serious problems which need to be urgently addressed before there is any talk of changing these laws.

At the outset, it is important to set out this context. Ireland, and particularly Dublin, is experiencing an unprecedented level of violence linked to the illicit drug market. In what the media has described as a major feud between two criminal organisations in Ireland, 20 people have been murdered since 2015. The media has also reported that many of these murders have been directed from outside Ireland.

Our work also took place against a background of increasing violence being used to enforce drug debts. The extent of this problem has been set out in a report by City Wide Drug Crisis Campaign published in 2016 and entitled “Demanding Money With Menace: Drug Related Intimidation and Community Violence in Ireland”. More recently, Maeve Sheehan in the Independent on the 18th November 2018 wrote:

“The feuding drug gangs that caused lockdown and terror in the bustling town of Drogheda County Louth grabbed headlines last week. But behind those headlines is an arguably more insidious story trying to get out - families being subjected to extortion and intimidation over the manufactured drug debts of their children.”

On the 9th February 2019, in the Irish Times, Conor Gallagher wrote a lengthy article on this problem of violent drug debt enforcement.

On the 7th March 2019 the Health Research Board published the National Drug Related Deaths Index for 2016, which led to a front page headline article in the Irish Examiner by Cormac O’Keeffe the following day entitled “More than 730 drug deaths a year - alcohol, prescription overdoses and hangings fuel drug fatalities.”

While it may be that less than half of these reported deaths relate solely to drug misuse, there is a danger that these figures no longer shock us. We need to pause and consider the suffering, devastation and loss that lie behind each drug related death.

The Ireland Country Drug report for 2018 noted that we now have 18,988 high risk opioid users, of whom 10,087 are opioid substitution treatment clients. These are mainly people addicted to heroin and the vast majority of those in treatment are on methadone programmes. The figures in respect of this particular group have stabilised and the Working Group was told that many people on methadone are in employment. The successes achieved by the methadone programme need to be acknowledged.

The Working Group was told that there are now at least 35,000 problematic cannabis users in need of treatment. In other words, 35,000 people whose lives are dominated by cannabis. We were also told that, in the recent past, there has been a significant increase in the consumption of cocaine, prescription drugs and other illegal substances.

It is of course difficult to estimate the value of the illicit drug market in Ireland. On the 22nd November 2005, the Irish Times estimated that it was €650 million in 2003. During its deliberations, the Working Group was told it was not unusual for a person addicted to cannabis to spend €200.00 per week on the drug. How many recreational users are there, in addition to the 35,000 or so problematic users? It may be that the recreational users spend the same again.

And then what is spent on cocaine? The Irish Times reported that it was estimated to be €75 million in 2003. As recently as the 5th February 2019, there was widespread media reporting that the EU funded Maritime Analysis and Operations Centre (MAOC) was responsible for the seizure of 9.5 tonnes of high purity cocaine on its way to Europe. The estimated street value was given at €800 million. An EU Commission-funded research report coordinated by Transcrime and published in 2015 estimated that the revenues then generated by illicit drug markets in Ireland amounted to €806 million. When one takes these matters into account, it is not unreasonable to place a value of €1 billion on the Irish market today.

While illegal drug use is spread across all sections of society, those most affected by problematic drug use live in the most vulnerable, low income areas. When pressed, those working with problematic drug users (and particularly high risk opioid users) say that the source of much addiction is to be found in deeply troubled, painful and anguished childhood experiences. If this is the case, and there is little reason to doubt it, then the question arises as to whether or not the appropriate treatment that these people need is available to them. A matter of some relevance here is the availability of suboxone, a drug which is said to improve one's chances of withdrawing from opiate abuse. The Working Group was told that there is a cost issue with this drug, which perhaps explains why only 200 of the high risk opioid users have it prescribed for them.

The background to the establishment of the Working Group is set out in the Majority Report.

Having read the report of the Joint Oireachtas Committee, the written submissions made to that Committee and having considered the oral and written submissions made to the Working Group, it became clear that the principal question to be addressed by us was whether or not to recommend the decriminalisation of illegal drugs as the way forward for Ireland.

With some notable exceptions, a substantial majority of submissions advocated decriminalisation along Portuguese lines. Unlike the majority of my colleagues on the Working Group, I concluded that it would be unwise for Ireland to go in this direction, or to do anything that might seem to normalise the possession of illegal drugs.

Before addressing the arguments for decriminalisation I propose to make some observations about the research commissioned by the Department of Health to assist the Working Group in its deliberations and also to address the research conducted by the University of New South Wales and the University of Kent on behalf of the Working Group.

In the first place, I consider that very little weight should be attached to the research commissioned by the Department of Health.

For example, 82% of those who responded to the online poll admitted to having previously taken drugs. It is hardly surprising that such a group is in favour of changing the law which prohibits possession.

The results of the Focus Group, and of the Open Policy Discussions, are also of limited value. The Focus Group consisted of 15 people who had a previous conviction for possession for personal use and the Open Policy Discussions could not be described as representative of the wider community.

I am unable to recommend that the policy options presented by the University of New South Wales and the University of Kent be considered.

Firstly, the researchers themselves entered an important qualification to the usefulness of their conclusions when they stated: “any alternative approach to dealing with the offence of possession comes with risks.” They went on to say that any research in this area is complex, incomplete and not capable of providing definitive answers about what the outcome of any given approach would be in the Irish context. It is also necessary to point out that this research was not correlated with the level of violence associated with the illicit drug market in Ireland today. Accordingly, it would be unwise to rely on this research as a basis for policy change.

The Working Group discussed decriminalisation in Portugal at length. Dr João Goulão, Director of the General Directorate for Intervention on Addictive Behaviours and Dependencies in Portugal attended the third meeting of the Working Group, which had an opportunity to engage fully with him.

In trying to gain a more complete understanding of the Portuguese statistics, Dr Goulão was asked how Portugal had 100,000 problematic heroin abusers at the time of decriminalisation in 2001 and only 25,000 in 2015. He sought to explain this by reference to a special Employment Programme which Portugal had put in place for drug users undergoing rehabilitation. However, on further examination the number of people who benefitted from this Employment Scheme was less than 5,000 over that period.

It is also hard to understand this figure when Dr Goulão told the Working Group that, in the 17 year period since decriminalisation in 2001, approximately 100,000 people had come before dissuasion committees and about 10,000 of those had been assessed as addicted.

One possible explanation which arose was that those classified as being problematic drug users in 2001 were not as entrenched in their addiction as those known to treatment services in Ireland. As Dr Goulão was not in a position to answer questions about the effect of decriminalisation on policing in Portugal, the Working Group engaged by Skype with the Police Officer in charge of drug crime in Portugal. He told the Group that there was little or no violence between criminal groups who supplied drugs and further that he was unaware of any violence associated with the enforcement of drug debts.

When asked further about this lack of violence, he offered the view that it was due to the Portuguese temperament - the way Portuguese people relate to each other.

The Working Group also had the benefit of engaging with Captain Joseph Shellhammer of the Northern Colorado Drug Force who told us that originally he had supported the legalisation of cannabis. He told us that, since legalisation, the black market had increased 3 times. He said the number of drug gangs operating in the State had increased, as had road traffic drug deaths. It so happened that number of recorded suicides had increased, but he was not able to say whether or not there was a correlation.

He told the Group that he was among a growing group of people who deeply regretted the decision to legalise cannabis.

None of those who advocated decriminalisation engaged adequately with how such a policy change might affect the level of violence associated with the drug market. While efforts were made by some to distinguish between decriminalisation and legalisation, the reality is that both are connected. A necessary implication of ending prosecutions for possession of a controlled drug for personal use is the amendment of S.3 of the Misuse of Drugs Act 1977 so that possession for personal use is no longer a crime.

It is difficult to see what benefits decriminalisation would bring to the 55,000 or so people who are classified as problematic users in need of treatment. Decriminalisation would however bring a degree of comfort to the recreational users. It should be clarified here that people previously described as addicts are now referred to as problematic users.

By and large, the submissions did not address the unfortunate and inescapable reality that most problematic drug users would at some point not only have seriously disturbed and troubled their own families, but would also have committed crime (sometimes serious crime) to fund their addiction.

The question also arises as to whether decriminalisation would lead to greater consumption. If possession for personal use leaves a person safe from prosecution, will it be easier to obtain and supply drugs? Would decriminalisation normalise drug use in Ireland? Is this in fact the aim of those who advocate decriminalisation? How would such a policy impact on children? Would it make it even more difficult for parents trying to persuade their children that “doing drugs” is not in their best interest. Would more students take drugs if there was no risk of prosecution, visa refusal or limited job prospects?

During the course of our deliberations the Working Group was informed that, when the so called “head” shops were open, people formed lengthy queues to purchase ‘legal highs’. The Group was also informed that, at the same time, there was a significant increase in Public Order Offences and an increase in disturbances at the A&E Units of city hospitals.

While this is anecdotal evidence, it does suggest that removing simple possession as an offence would lead to increased demand.

Some of those in favour of decriminalisation argued that criminalising people for drug use stigmatises them.

While a criminal conviction may stigmatise to a greater or lesser degree, this may be a price that has to be paid for the overall good of society and particularly for the promotion of Public Health.

The argument that people’s employment prospects can be weakened by a conviction is undoubtedly correct. But then it is also the case that most employers would be reluctant to employ a problematic drug user, whether or not he or she has a criminal conviction. What also has to be taken in to account here is that the Working Group was told that many people on methadone maintenance programmes are in gainful employment. This last fact, as well as the fact that the number of problematic opiate users has stabilised, needs to be acknowledged. How can the achievements in this area be built on?

It has also been suggested by some that the criminal law does not deter drug consumption. This assertion may not be true in the Irish context. Surveys have shown that about 75% of the population have never tried an illegal drug.

Also, some people acknowledge that if they were to participate in the illicit drug market they would be colluding in the death, destruction and murder that are some of the consequences of this market.

It may also be the case that, if there was a greater risk of being caught, there would be less recreational use. At present, policing of recreational drug use is at a low level. Few people go to prison for simple possession and frequently those who do are people whose health is so at risk that prison provides the only realistic opportunity to get some respite from their addiction. For some, prison is an opportunity to undergo a detoxification programme. For others, it is a chance to reduce their methadone intake.

For some, the threat of imprisonment can be the catalyst for undergoing treatment.

Another argument advanced in favour of decriminalisation is that a person should be free to take drugs if they want to. If a person wants to risk harming their own health then that is their business. Sometimes the promoters of these arguments qualify them by saying that people should only be free to take drugs if they do no harm to anyone else. While this argument seems attractive at first sight, the problem remains that many who take drugs and who may initially do little or no harm to others, go on to become problematic drug users causing harm to their families and to the society of which they are part. As we know only too well in Ireland, some people who become problematic drug users commit serious crime.

Another matter only partially dealt with in the submissions was whether or not we in Ireland now have comparable services for problematic drug users to those which Portugal had in place prior to decriminalisation. The CEO of Merchants Quay Ireland has recently stated that there is a serious shortage of detoxification beds. One drug and alcohol rehabilitation facility which I visited in March 2019 had at that time a waiting list of 250 people.

During our deliberations, we were informed that a Working Group on Prosecutions is actively considering that the Adult Caution Scheme be extended to include first time simple possession offenders. If this is introduced, it would mean that everyone would get a second chance to avoid a conviction. This would be a significant policy change and it is important that if introduced, its impact on harm reduction be closely monitored.

While the Dáil debates prior to the introduction of the Misuse of Drugs Act 1977 show that politicians recognised the health problems which drug users developed and the need for rehabilitation programmes, it was a very different time. There was no inkling then of the devastation and destruction that was to follow and which has now spread throughout Ireland.

Certainly, at that time there was insufficient understanding as to how dangerous a drug cannabis could be and this was reflected in the legislation providing lesser penalties for first and second offences for the possession of cannabis for personal use.

In January of this year, in an interview in the Medicalindependent.ie, Child and Adolescent Psychiatrist Dr Bobby Smyth warned of the need for greater awareness of the dangers of cannabis use. In the course of this interview, he pointed out how the chemical make-up of modern cannabis is completely different, and much more dangerous, than it was 15 years ago.

He said that, despite the all consuming effects of modern cannabis, attitudes towards the drug are relaxing rather than hardening. He criticised the Department of Health and policy makers for failing to respond adequately to the problem and said:

“Highlighting the reality that lives are being destroyed by cannabis is inconvenient for those pushing the sort of prevailing drug liberalisation agenda, which is the dominant dialogue at the moment in the Department of Health.”

He further stated that a Public Information Campaign is urgently needed, to inform people of the incredibly harmful effects of cannabis use and noted that such a campaign has been called for by the Irish College of Psychiatrists.

A recent article by Cormac O’Keefe in the Examiner highlighted a report by the Blanchardstown Local Drug and Alcohol Task Force in which research had established that in their area the average age of a drug runner was now 13 and the average age of a drug dealer is now 14. To what extent are children being put at risk by their involvement in the drug trade? Do we close our eyes to this report, or do we treat it as a wake-up call? Do we close our eyes to the fact that there are families living in terror because of a child’s drug debts?

It is also necessary to remember that a lot of able and decent young people get caught up in the drug trade and very quickly it becomes almost impossible for them to disengage. We need to address these problems before they overwhelm us.

I indicated at the beginning of this Report that I disagreed with the majority of the members of the Working Group. I regard any form of decriminalisation or normalisation of drug use as being inimical to the best interests of our Country. While it would be naïve to think that drug use could be eliminated among young people, it may be possible to reduce their drug use through a major education programme. Such an education programme would aim to make drug taking socially unacceptable in the same way that previous Governments have made smoking in public places unacceptable.

We need also to realise that drug consumption promotes inequality. Those who choose to smoke cannabis regularly fail to achieve their true potential. Many become unemployed and unemployable. Social mobility goes one way only. Some become ill. Some become psychotic. Some commit crime.

Having visited a number of rehabilitation programmes and spoken to some people involved in their delivery, I ask myself whether or not we have made sufficient effort with people who are now described as problematic drug users. Have we made sufficient effort to bring all those methadone users a further step on the way to improved health and personal freedom? It is therefore critical that all drug rehabilitation programmes are independently evaluated. A proper audit would help us to identify the most effective programmes and ensure that state-funding is properly targeted.

We need to realise that the illicit drug trade threatens the democratic fabric of our society and contributes significantly to inequality. This challenge to our society is unlikely to subside, unless it is met by serious and sustained work to deal with each of these problems.

To adopt a policy of decriminalisation, or to take steps in that direction, is to throw in the towel on the potential of young people. It would send a dispiriting and demoralising message to parents, teachers and all those who demonstrate their faith in this potential, not least sports coaches up and down the country. Decriminalisation would put at risk the physical health and mental wellbeing of young people.

Accordingly, I recommend that all relevant Government Departments strongly resist and reject all calls for decriminalisation of controlled drugs and immediately set about the daunting task of restoring the rule of law to every community in Ireland.

Secondly, I recommend that all publicly funded drug rehabilitation programmes be urgently audited and evaluated.

Thirdly, I recommend the delivery of an appropriate education programme to every community in Ireland, ensuring that no one can be in any doubt about the grave dangers of cannabis use. This recommendation simply echoes that of the Irish College of Psychiatrists.

Fourthly, I recommend the delivery of an education programme to young people encouraging them to adopt a drug free life. Such a programme would also support parents in their efforts to rear drug free families.

Finally, I recommend a review of the present policy of low-key policing of recreational drug use. If the adult caution scheme is extended to include simple drug possession offences then everyone will get a second chance. The extension of the Adult Caution Scheme will now ensure that everyone gets one chance. If this Caution is also intended as a health warning, then it is better that users receive this at an early stage in their decision to take illegal drugs, rather than at a time when they have developed a problem. Further, if there was a greater likelihood of being stopped, searched and prosecuted then this also might help to reduce the amount of recreational drug use.

29th March 2019
Garrett Sheehan