

# CANNABIS

The case against legalisation

December 2018



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Cannabis took over my life, it got to me to a point where I put it before my children, myself, my bills, I wish I never touched it.

M, from Bradford

Cannabis  
The case against legalisation  
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Published by the Centre for Social Justice,  
The Centre for Social Justice, 10 Greycoat Place, Westminster,  
London SW1P 1SB  
[www.centreforsocialjustice.org.uk](http://www.centreforsocialjustice.org.uk)  
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Designed by Soapbox, [www.soapbox.co.uk](http://www.soapbox.co.uk)

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# CEO's Foreword

When I co-founded the charity TwentyTwenty, its focus was on supporting disadvantaged 16–21-year-olds who were not in education, employment or training. These were kids with learning difficulties, crumbling home environments, disabilities, personal trauma, caring responsibilities, you name it.

It was a difficult job. But when those kids turned up stoned, it was an impossible job.

The debate around cannabis use and legalisation is often debated in theory. At TwentyTwenty we lived it every single day and saw the enormous harm it could do, both in the disruption to the daily slog and the long term damage to kids' brains.

The new research in this report shows that legalisation would mean more than a million new users under 25, a sharp uptick in frequency of existing users, and hundreds of thousands of people gripped by addiction.

The report shows that legalisation would greatly increase use, that arguments around a regulated market are at best a hope, and that the idea of it ending criminal networks are a pipe dream.

The expectation that drug dealers will simply see the error in their ways and become estate agents is neither based in reality nor in the evidence slowly emerging from other countries, where criminals have simply diversified.

Instead we must refocus the cannabis debate on educating about the harms and investing in treatment.

Our recommendation of a drug awareness day, akin to the existing speed awareness course, would serve as a meaningful alternative to imposing a fine or issuing a caution.

While for some cannabis users, it may never become an addiction, it would offer the chance for early intervention in those for whom it is a problem and simultaneously raise much needed funds for the struggling addiction treatment sector.

But when you meet the people whose lives have been devastated by it, when you spend time in the UK's addiction clinics and Pupil Referral Units, the prisons and police cells, it's hard to reach any other conclusion than any increased use is a risk too great to take.

**Andy Cook**  
CEO

# Executive summary

Cannabis can be both addictive and harmful.

Our understanding of the precise extent and nature of the health implications of recreational cannabis use is developing but, at this stage, there is a great deal of uncertainty. On the eve of the first legal retail sales of recreational cannabis in Canada, the Canadian Medical Association Journal published an editorial which referred to legalisation as:

a national, uncontrolled experiment in which the profits of cannabis producers and tax revenues are squarely pitched against the health of Canadians.<sup>1</sup>

The World Health Organisation recognises addiction rates of 1 in every 9 adults that uses cannabis. This rate of addiction is significantly higher in teenagers, the very age group most susceptible to its harmful effects. Currently, there is scientific uncertainty regarding the causality between cannabis use and the onset of conditions such as psychosis or diminished cognitive function. Nevertheless, there is a compelling body of correlational evidence, spanning 20 years and multiple jurisdictions, that heavily suggests that there is a such relationship. This is particularly pronounced in frequent and younger users.

The existing law does mitigate the risk that cannabis poses. Although there has been a slight up-lift in recent years, cannabis consumption has been falling for nearly 20 years in the UK. A great many people do take the law seriously and, to many, the law continues to deter them from using a harmful substance. The CSJ has taken care to consult charities across the UK in researching this paper, many of which work with cannabis and associated drug issues every day. While there is growing support for legalisation, equally, many with a great deal of experience in, and concern for, public health strongly oppose the case for legalisation.

A YouGov poll, commissioned by the CSJ in September of 2018, revealed that 73 per cent of those polled had never used cannabis. Of those that stated that they had never used cannabis, 26 percent of 18–24-year-olds stated that they would definitely or would probably try if it was legalised. Using ONS population figures, this translates to over 1 million new users of cannabis aged under 25 that might now try cannabis if it was legalised, all before a single marketing campaign is launched or advertisement published. With falling consumption under the current system and a clear indication that for over a million young people the law is preventing initiation of use, it is difficult to conclude that the current approach, although far from perfect, has ‘failed’ to mitigate consumption.

Those that advocate legalisation make the case that there is a need to regulate and control the market. The principle arguments are that regulation will deliver quality

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1 Canadian Medical Association Journal editorial [accessed via: [www.cmaj.ca/content/190/41/E1218](http://www.cmaj.ca/content/190/41/E1218)]

control, undermine crime, raise revenue for the state, and will reduce the prospect of predominantly young people being criminalised.

## Quality

It is likely that a UK government authorised producer would provide a safer product than any criminal organisation. However, there is strong evidence that users develop a tolerance to THC and this can lead to progression, in frequent users, to higher potency cannabis with an associated increase in risk to health. When we speak of quality control much of the debate surrounds potency, this is usually a reference to the THC content. It is accepted that many would benefit from increased consumer access to lower potency cannabis. However, there is a very real risk that the rate of frequent consumption would increase with users having a more pleasant initial experience and, consequently, being more likely to repeat it. Home grows, permitted in most post-legalisation jurisdictions, substantially undermine any real prospect of effective quality control.

Overseas web-sites that deliver to the UK already offer the sale of cannabis seeds which promise a crop of high potency cannabis, with THC levels which can far exceed 20 per cent. Beyond the issue of quality, growing cannabis in the home offers new risks in terms of child access to the drug.

## Crime

Legalisation may be detrimental to the illicit cannabis trade. However, the extent to which the illicit market will be affected, the permanence of this depletion in revenue and the likely reaction of the criminal elements that currently provide this drug are all far from certain. In the US, legalisation States such as Colorado and Oregon, have seen the illicit drugs trade adapt rather than disappear.

## Revenue

Evidence from the US would support the position that selling cannabis to the UK population would likely provide a stream of revenue. Indeed, the poll commissioned by the CSJ also appears to support the assertion that cannabis sales are likely to be substantial. The potential benefit to the UK Treasury has been estimated to be as high as £1 billion. However, the overriding objective must be to achieve the best outcome for our society, this may include a financial advantage but it need not. No enticing figure in the form of a saving or a new stream of revenue will counterbalance a poor decision that is to the detriment of public health and the wider community. Those on either side of this debate ought to be, and in the most part are, more concerned with public health and social equity.

It is however, important to recognise the serious repercussions for individuals facing criminal sanction for possession. For those that have been caught in possession of cannabis, there is a need to act with more compassion and to offer something more constructive than to simply punish and damage reputation. The rationale behind the law is a real concern about public health and so more must be done to reach out to users and inform them of the potential risks involved in using cannabis.

The CSJ recommends that:

1. A drug awareness day, akin to a speed awareness course, would serve as a worthwhile means of diversion from traditional criminal disposals, such as imposing a fine or issuing a caution at a Police Station.
2. Recreational cannabis remains unlawful and the Misuse of Drugs Act 1971 continues to prohibit the possession, supply or cultivation of cannabis.

# Should the UK legalise cannabis for medicinal or recreational use?

## Introduction

Since the turn of the century, multiple jurisdictions have reviewed their position on the legal status of both recreational and medicinal cannabis. Uruguay and Canada have legalised recreational cannabis on a national level.<sup>2</sup> These countries are far from alone in their new approach. While in the US the possession of recreational cannabis remains unlawful at a federal level, many states, including California, Alaska and Colorado, have legalised recreational possession.<sup>3</sup>

Those advocating legalisation point to the benefits of undermining and disrupting the criminal market by bringing the product under state regulation and imposing taxation. The resulting reduction in the harmful effects of the product, through responsible production, is advanced as a benefit to public health. Quite aside from these arguments, many in the UK now feel that criminalisation of cannabis possession is inherently disproportionate. There is some evidence to suggest that the majority<sup>4</sup> of the British public would support a 'softer stance', meaning either legalisation or de-criminalisation<sup>5</sup> of cannabis.

Whatever one's position, an essential starting point is to acknowledge that the question over the current laws continued legitimacy is rightly asked and must be answered to the public's satisfaction. Putting aside for a moment our international treaty obligations, which are consistent with our current prohibitive approach,<sup>6</sup> it should be acknowledged that society has changed since recreational cannabis was first made unlawful some 90 years

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2 The Cannabis Act, Government of Canada, Justice Laws Website [accessed via: [www.canada.ca/en/health-canada/services/drugs-medication/cannabis/laws-regulations/regulations-support-cannabis-act.html?\\_ga=2.125437902.552142033.1536603972-1106361044.1536603972#a2](http://www.canada.ca/en/health-canada/services/drugs-medication/cannabis/laws-regulations/regulations-support-cannabis-act.html?_ga=2.125437902.552142033.1536603972-1106361044.1536603972#a2)]

3 9 states (Alaska, California, Colorado, Maine, Massachusetts, Nevada, Oregon, Vermont and Washington) as well as The District of Columbia and the Northern Mariana Islands.

4 Majority support liberalising policy towards cannabis (May 2013) [accessed via: <https://yougov.co.uk/news/2018/05/30/majority-now-support-liberalising-policy-towards-c/>]. These figure do not support an overall support for legalisation. 40 per cent supported criminalisation, 24 per cent supported de-criminalisation, 27 per cent supported legalisation (9 per cent don't know). Together, de-criminalisation and legalisation answers made up 51 per cent of the responses.

5 'Legalisation' is simply the removal of any criminal or civil sanction for, in this instance, possession of cannabis. 'De-criminalisation' is only the removal of the criminal laws jurisdiction over what remains prohibited within civil law. Legalisation of drugs, as seen in in Uruguay, is often coupled with the states adoption and regulation of supply and distribution. Simple de-criminalisation, as seen in Portugal, typically involves no such regulatory intervention.

6 International law, UN Drug Control Conventions 1961, 1971 and 1988 [accessed via: [www.unodc.org/documents/commissions/CND/Int\\_Drug\\_Control\\_Conventions/Ebook/The\\_International\\_Drug\\_Control\\_Conventions\\_E.pdf](http://www.unodc.org/documents/commissions/CND/Int_Drug_Control_Conventions/Ebook/The_International_Drug_Control_Conventions_E.pdf)]



ago. This position was then affirmed and medicinal cannabis was prohibited in the Misuse of Drugs Act 1971.<sup>7</sup> It is reasonable to accept that good law can, over time, become bad law as societal values change and scientific understanding develops.

This issue has at least some complexity. To many people, this is a question of law and order to others a matter of economic sense or public health. The CSJ acknowledges that while some of these issues are likely to be more influential than others, the central question is how this proposed change in the law might affect our community's most vulnerable people.

### What is cannabis?

There are a number of psychoactive compounds in cannabis, including; delta-8-tetrahydrocannabinol and delta-9-tetrahydrocannabinol (hereafter, delta-9-tetrahydrocannabinol is referred to as 'THC'). THC is predominantly responsible for the 'high' felt by the user but it is also identified as having addictive qualities as well as potentially being responsible for harmful effects on the user's mental health. Another noteworthy compound is Cannabidiol (hereafter 'CBD'), this has no psychoactive effect, although it may have anxiolytic, anxiety relieving, effects. There is evidence that heavily suggests that CBD has anti-psychotic properties.<sup>8</sup> Of these compounds, only two warrant further discussion in this paper, namely THC and CBD. THC and CBD levels in cannabis vary from product to product. It is widely believed that CBD may counteract much of the harmful effects of THC, although exact ratios and scientific certainty as to how this occurs is not yet established.

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7 Restriction of Possession of controlled drugs, Section 5 Misuse of Drugs Act 1971 [accessed via: [www.legislation.gov.uk/ukpga/1971/38/contents](http://www.legislation.gov.uk/ukpga/1971/38/contents)]

8 Cannabidiol (CBD) as an Adjunctive Therapy in Schizophrenia: A Multicenter Randomized Controlled Trial [accessed via: <https://ajp.psychiatryonline.org/doi/abs/10.1176/appi.ajp.2017.17030325>]

# chapter one

## Medicinal cannabis

### The Misuse of Drugs Act 1971

It is an offence, contrary to s.5 (1) and (2) of the Misuse of Drugs Act 1971, to be in possession of a controlled drug.<sup>9</sup> Cannabis is deemed to be a controlled drug by virtue of its inclusion in Sch 2, Part II of the same Act.<sup>10</sup>

### The Misuse of Drugs Regulations 2001

The Misuse of Drugs Regulations allow for the lawful use of some controlled drugs. The Schedules differentiate between those drugs that have a therapeutic value and those that do not. Controlled substances with no therapeutic value cannot be prescribed by medical practitioners, except in the event of a specific Home Office licence being issued. Those drugs that have been deemed to have no therapeutic value are listed in Schedule 1 and, as the legislation stands at the time of writing, cannabis based products are listed in this schedule.<sup>11</sup> Schedule 2 sets out those drugs that do have a recognised therapeutic value but are addictive.<sup>12,13</sup>

### Recent developments

In June of 2018 the longstanding issue regarding the status of cannabis based substances as a medicine came to the forefront of the national and Parliamentary debate. Billy Caldwell, a child that suffers from epilepsy, was hospitalised shortly after his return to the UK. The confiscation of his cannabis based oil, which had been obtained in Canada for medicinal purposes, was purported by his mother to be responsible for the hospitalisation of the young boy. The subsequent concern for the health of the child and the strong public support for his plight, prompted an urgent review of his case by the Home Secretary. A licence was issued and the child was provided with the medicine. He was subsequently deemed fit for discharge from hospital. On the 19th of June the Home Secretary announced that there would be a review of the government's position on the status of cannabis based substances as a medicine.

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9 Misuse of Drugs Act 1971, Section 5 [accessed via: [www.legislation.gov.uk/ukpga/1971/38/section/5](http://www.legislation.gov.uk/ukpga/1971/38/section/5)]

10 Misuse of Drugs Act 1971, Sch 2, Part II [accessed via: [www.legislation.gov.uk/ukpga/1971/38/schedule/2](http://www.legislation.gov.uk/ukpga/1971/38/schedule/2)]

11 Misuse of Drugs Act 1971, Schedule 1 [accessed via: [www.legislation.gov.uk/uksi/2001/3998/schedule/1/made](http://www.legislation.gov.uk/uksi/2001/3998/schedule/1/made)]

12 Ibid

13 It is noted here for completeness that Sativex, a cannabis based medicine, is technically available as it has been licensed by the MHRA. However, the NICE guidelines simply state that this should not be prescribed as it is not cost effective [accessed via: [www.nice.org.uk/donotdo/do-not-offer-sativex-to-treat-spasticity-in-people-with-ms-because-it-is-not-a-cost-effective-treatment](http://www.nice.org.uk/donotdo/do-not-offer-sativex-to-treat-spasticity-in-people-with-ms-because-it-is-not-a-cost-effective-treatment)]

## The review process

The Home Secretary has indicated that the review will take place in two parts. Part 1 required the view of the Chief Medical Officer on the question of the therapeutic value of cannabis. Part 2 is to be conducted by the Advisory Council on the Misuse of Drugs (the ACMD). An assessment will be made of what cannabis products should be rescheduled.

At the time of writing, Part 1 of this process has been completed and Professor Sally Davies published a report on the 3rd July 2018 in which she explicitly indicated that:

There is now [...] conclusive evidence of the therapeutic benefit of cannabis based medicinal products for certain medical conditions and reasonable evidence of therapeutic benefit in several other medical conditions.<sup>14</sup>

The Chief Medical Officer recommended that the whole class of cannabis based medicinal products ought to be removed from the schedule 1 list. On the same day as the report was published, the Home Secretary commissioned the ACMD to proceed to the second part of the process. The ACMD responded to the Home Secretary's request for a short term review. This review addressed the central question of whether cannabis and cannabis derived substances ought to be re-scheduled. The ACMD indicated in a letter dated the 19th July 2018, that the relevant substances ought to be re-scheduled. The government now intends to re-schedule cannabis based products. The ACMD were also tasked with a more thorough 12-month review which, at the time of writing, is on-going. However, it is expected that a number of prescriptions under interim measures will follow before the end of 2018.

This paper does not oppose the re-scheduling of cannabis from schedule 1 to schedule 2, given the very clear position of the Chief Medical Officer and the ACMD. The questions that follow necessarily relate to the extent, nature and practicalities of administration. The prescription of cannabis in the form of oils or pills, should go some way to assist law enforcement, in the vast majority of cases, to quickly distinguish between illicit and medicinal cannabis. The the precise nature of the long-term prescribing guidelines are yet to be determined at the time of writing.

The majority of public opinion is behind legalisation of medicinal cannabis.<sup>15</sup> The strength of conviction of those effected, by conditions deemed treatable by cannabis based products, either as direct sufferers or as family or friends of those affected, can be a powerful and emotive voice, rightly attracting public and political good will.

Some groups such as *End Our Pain* have indicated that:

Ending up with only a limited range of derived cannabis products that are all required to have been through full pharma level trials will be a huge disappointment and be a missed opportunity. The best outcome for UK patients would be the introduction of a special category for medical cannabis.<sup>16</sup>

14 Professor Dame Sally Davies, Cannabis Scheduling Review Part 1: The therapeutic and medicinal benefits of Cannabis based products – a review of recent evidence, June 2018 [accessed via: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/722010/CMO\\_Report\\_Cannabis\\_Products\\_Web\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/722010/CMO_Report_Cannabis_Products_Web_Accessible.pdf)] pp2, para 1.4

15 A YouGov poll dated 30.05.18 found 75 per cent of UK citizens asked were in support of cannabis being prescribed and used medicinally [accessed via: <https://yougov.co.uk/news/2018/05/30/majority-now-support-liberalising-policy-towards-c/>]

16 End our Pain website, Government announces cannabis-derived medicinal products to be made available on prescription [accessed via: <https://endourpain.org/2018/07/26/government-announces-cannabis-derived-medicinal-products-to-be-made-available-by-perscription/>]

There may be legitimate challenges made regarding the speed with which licences are granted in the interim and the fairness of the criteria by which decisions are made. However, beyond this, there is a need to moderate the pressure put upon those trusted with making objective, clinical decisions in the interests of public health. At this stage, the extent to which various cannabis-based products are deemed to be safe is a matter for the ACMD, the Department of Health and Social Care (DHSC) and the Medicines and Healthcare products Regulatory Agency (MHRA). Almost all medicines come with some risk and while this is not necessarily a reason to obstruct a drug's clinical use, it is worth acknowledging that the potential for a substance to cause harm needs to be understood, measured and controlled. Substantial pressure from interested parties, to arrive at very precise conclusions, or insistence upon any significant departure from normal practices or processes used to determine the safety of a drug, is not necessarily in the country's best interests.

## chapter two

# Recreational cannabis

### Is cannabis addictive?

The NHS advises that about 10 per cent of regular cannabis users become addicted to the drug, with an increase in the risk for those that start using in their teens.<sup>17</sup> The World Health Organisation (WHO) advice relies upon a study in the USA, from the 1990's, in which it was estimated that 9 per cent of those who have used cannabis developed a dependence.<sup>18</sup> Cannabis is not unique in this respect and it must be noted, for context, that the same report identified the rate of addiction was 32 per cent for nicotine and 15 per cent for alcohol.

The World Health Organisation also reports that:

According to WHO data, 16 per cent of countries included in the recent ATLAS reported cannabis use as the main reason for people seeking substance abuse treatment. This puts cannabis second only to alcohol as a reason for treatment entry.<sup>19</sup>

According to the European Monitoring Centre for Drugs and Drug Addiction's (EMCDDA) 2017 report on the UK, 25 per cent of treatment entrants cited cannabis as their primary drug for which they required help, this is the second highest ranking substance, behind Heroin.<sup>20</sup> In France, the proportion of treatment entrants citing cannabis as their primary drug for which they need help is 60 per cent, three times the number of those presenting for heroin.<sup>21</sup> The rate of addiction is yet more prevalent in adolescent and frequent users, according to the WHO:

Regular cannabis users can develop dependence on the drug. The risk may be around 1 in 10 among those who ever use cannabis, 1 in 6 among adolescent users, and 1 in 3 among daily users.<sup>22</sup>

It can be established with a high degree of certainty, whether through internationally recognised studies or through the telling reaction of cannabis users themselves in their pursuit of treatment, that cannabis can be addictive.

17 NHS website: Cannabis the Facts [accessed via: [www.nhs.uk/live-well/healthy-body/cannabis-the-facts/](http://www.nhs.uk/live-well/healthy-body/cannabis-the-facts/)]

18 The World Health Organisation: The health and social effects of non-medical cannabis use pp11, para 3.1.2 [accessed via <http://apps.who.int/iris/bitstream/10665/251056/1/9789241510240-eng.pdf?ua=1>]

19 The World Health Organisation: The health and social effects of non-medical cannabis use pp12, para 3.1.3 [accessed via <http://apps.who.int/iris/bitstream/10665/251056/1/9789241510240-eng.pdf?ua=1>]

20 The United Kingdom: Country Drug Report 2017 [accessed via: [www.emcdda.europa.eu/system/files/publications/4529/TD0116925ENN.pdf](http://www.emcdda.europa.eu/system/files/publications/4529/TD0116925ENN.pdf) (pp 1, also note that: Heroin 42 per cent, Cocaine 14 per cent and Amphetamines 3 per cent)]

21 France: Country Drug Report 2017 [accessed via: [www.emcdda.europa.eu/system/files/publications/4523/TD0416916ENN.pdf](http://www.emcdda.europa.eu/system/files/publications/4523/TD0416916ENN.pdf)]

22 The World Health Organisation: The health and social effects of non-medical cannabis use pp40, para 9.1.4 [accessed via <http://apps.who.int/iris/bitstream/10665/251056/1/9789241510240-eng.pdf?ua=1>]

### Can a user develop a tolerance?

Tolerance is a term used to describe the phenomenon by which a user will have to take more of a drug in order to have the same desired effect or to experience a diminished effect from the same amount of the drug. Tolerance is a hallmark symptom of addiction. Dr Tom Freeman from the Department of Psychology at the University of Bath explains to the CSJ that there is evidence<sup>23</sup> that frequent users of cannabis can develop a tolerance to its acute effects.

### Physical effects of cannabis use

This paper will not examine in any detail the physical harms that cannabis can cause. It is only acknowledged here that the NHS guidance makes clear that cannabis can cause a range of physical harms. Cannabis can be harmful to a person's lungs, it can be detrimental to a pregnancy and its frequent use through smoking can increase the risk of cardiovascular disease and stroke.<sup>24</sup>

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23 PubMed, US National Library of Medicine National Institute of Health, 'Blunted psychomimetic and amnesic effects of delta-9-tetrahydrocannabinol in frequent users of cannabis. Randomized controlled trial', D'Souza DC, et al. *Neuropsychopharmacology*. 2008 [accessed via: [www.ncbi.nlm.nih.gov/pubmed/18185500/](http://www.ncbi.nlm.nih.gov/pubmed/18185500/)]

24 NHS Guidance [accessed via: <https://www.nhs.uk/live-well/healthy-body/cannabis-the-facts/>]

## chapter three

# Mental health

Although The Royal College of Psychiatrists also warns that cannabis can cause feelings of paranoia and depression in users, it is the debate surrounding the role of cannabis in the development of psychosis that has dominated much of the public policy debate.<sup>25</sup> There is a need for some moderation in the discussion that surrounds the potential effects of cannabis on the user's mental health and this is especially so in the examination of whether or not cannabis is responsible for the onset of psychosis. This element of the debate has been both exaggerated and underplayed in equal measure.

It is a useful starting point to acknowledge that our own biology is a significant factor in determining our individual susceptibility to the harm that cannabis can cause. Dr Tom Freeman, explains to the CSJ that there are several factors associated with vulnerability or resilience to the harmful effects of cannabis. One of these is genetics. For example, variation in the AKT1 genotype predicts the strength of association between cannabis and psychosis.

The Royal College of Psychiatrists has also identified a further variable in assessing a person's vulnerability to the potential harms of cannabis use. It explains that:

Research has shown that people who are already at risk of developing mental health problems are more likely to start showing symptoms of mental illness if they use cannabis regularly. For example, if someone in your family has depression or schizophrenia, you are at higher risk of getting these illnesses when you use cannabis.<sup>26</sup>

A further variable is the age, or rather the state of development, of the user. Development in adolescence is influenced by the endocannabinoid system, a naturally occurring process in the body and brain. This development from an adolescent to an adult brain is thought to end at around 25 years old. The potential for harm caused by cannabis use may be greater whilst the user's brain is in adolescence.<sup>27</sup>

25 The Royal College of Psychiatrists, 'Cannabis and mental health: for young people.' [accessed via: [www.rcpsych.ac.uk/mental-health/parents-and-young-people/young-people/cannabis-and-mental-health-information-for-young-people](http://www.rcpsych.ac.uk/mental-health/parents-and-young-people/young-people/cannabis-and-mental-health-information-for-young-people)]

26 The Royal College of Psychiatrists, 'Cannabis and mental health: for young people.' [accessed via: [www.rcpsych.ac.uk/mental-health/parents-and-young-people/young-people/cannabis-and-mental-health-information-for-young-people](http://www.rcpsych.ac.uk/mental-health/parents-and-young-people/young-people/cannabis-and-mental-health-information-for-young-people)]

27 *Persistent Cannabis Users Show Neuropsychological Decline from Childhood to Midlife*, PNAS (Proceedings of the National Academy of Sciences of the USA), 2012, 109(109), E2657–64 [accessed via: <https://dunedinstudy.otago.ac.nz/publications?keyword=&year=&pg=2>]

## Psychosis

Psychosis is often used as a generic term to describe a range of mental health illnesses which typically involve hallucinations and or delusions. Schizophrenia is an example of a psychotic disorder. The NHS advice is that about half of sufferers of a psychotic episode can expect to be on '*long term medication to prevent symptoms from recurring*'.<sup>28</sup> Those that suffer from psychosis are more likely to self-harm.<sup>29</sup>

### Cannabis and psychosis

A correlation between cannabis use and psychosis has been recognised for nearly 20 years and studies evidencing the same have been widely replicated. However, there is still an active debate about whether cannabis plays a causal role in the development of the illness. This is an area in which significant scientific research is still on-going.

In 1987, a longitudinal study which followed over 45,000 Swedish conscripts, with a 15-year follow up, found that those that had used cannabis in excess of 50 times had an elevated risk of developing schizophrenia.<sup>30</sup> This study accounted for other mental health illness in subjects and for their social background before identifying cannabis as an '*independent risk factor for schizophrenia*'.

A more recent report; *Proportion of patients in South London with first-episode psychosis attributable to use of high potency cannabis: a case control*<sup>31</sup> was published in the Lancet in 2015. This study was conducted between May of 2005 and May of 2011 and data was obtained from 410 patients with '*first-episode psychosis*'. The study identified an approximate three-fold increase in risk of individuals having a psychotic disorder amongst users of skunk-like cannabis when compared to those that had never used cannabis.

Because the link is correlational there are, theoretically, potential alternative explanations, such as reverse causation or the influence of confounding factors. The reverse causation theory is that sufferers of psychosis often attain some relief through cannabis use, therefore many sufferers are also cannabis users, it's the psychosis driving the use rather than the use causing the psychosis. This was examined in a longitudinal study in 2005 by Professor David Fergusson. That study, *Tests of causal linkages between cannabis use and psychotic symptoms*<sup>32</sup> relied on data from 1055 participants over 25 years. Participants were examined at 16, 21 and 25. People found to have psychotic symptoms at 18 smoked less cannabis at 21 and 25. However, those that smoked cannabis at 18 had more psychotic symptoms at 21 and 25. The study concluded:

The results of the present study add to a growing body of evidence suggesting that regular cannabis use may increase risks of psychosis. The present study suggests that: (a) the association between cannabis use and psychotic symptoms is unlikely to be due to confounding factors; and (b) the direction of causality is from cannabis use to psychotic symptoms.

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28 NHS web site: Overview Psychosis [accessed via: [www.nhs.uk/conditions/psychosis/](http://www.nhs.uk/conditions/psychosis/)]

29 Ibid

30 Cannabis and Schizophrenia: A Longitudinal Study of Swedish Conscripts, Published 26th December 1987 in *The Lancet* [accessed via: [www.thelancet.com/journals/lancet/article/PIIS0140-6736\(87\)92620-1/fulltext](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(87)92620-1/fulltext)]

31 *Proportion of patients in South London with first-episode psychosis attributable to use of high potency cannabis: a case control* [accessed via: [www.thelancet.com/action/showPdf?pii=S2215-0366%2814%2900117-5](http://www.thelancet.com/action/showPdf?pii=S2215-0366%2814%2900117-5)]

32 Adolescent cannabis use, baseline prodromal symptoms and the risk of psychosis, Published on Wiley Online Library, 12th October 2005 [accessed via: <https://onlinelibrary.wiley.com/doi/pdf/10.1111/j.1360-0443.2005.01001.x>]



Equally, because psychosis can be onset by severe stress and anxiety, the confounding variable has continued to be offered as an explanation for the correlation. This hypothesis simply acknowledges that a common cause, for example stress and anxiety in a person's environment or circumstance, may itself quite independently lead to psychosis. The sufferer may also seek to relieve this same stress through cannabis use. In an effort to address this issue, recent studies have employed a methodology known as Mendelian randomisation used in epidemiology to control for both reverse causation and confounding factors. A 2018 study, *Cannabis use and risk of schizophrenia: A Mendelian Randomization Study*,<sup>33</sup> used 10 independent genetic variants already identified with cannabis use.

Our findings strongly support the large body of evidence from observational studies that exposure to cannabis plays a causal role in the development of schizophrenia.

However, a 2017 study, *Assessing causality in associations between cannabis use and schizophrenia risk: a two-sample Mendelian randomization study*,<sup>34</sup> came to a very different conclusion:

Our results provide some [sic] that cannabis initiation increases the risk of schizophrenia, although the size of the causal estimate is small. We find stronger evidence that schizophrenia risk predicts cannabis initiation, possibly as genetic instruments for schizophrenia are stronger than for cannabis initiation.

Recent attempts to answer the question with the Mendelian Randomization methodology have, so far, not brought clarity to the issue. The correlational evidence, now spanning well over 20 years across multiple jurisdictions, does appear to establish a consistent and significant link between regular cannabis use and psychosis. Reverse causation and confounding factors have been accounted for in multiple studies that continue to point to a link but nevertheless fall short of establishing certain causality.

### Cognitive impairment

In 1971 the Dunedin Multidisciplinary Health & Development Study began in New Zealand. The study involved 1037 participants, followed from infancy through their adolescent and adult lives. Today, 90 per cent are still participating. Using this cohort, a study<sup>35</sup> was completed to assess whether cannabis has an effect on cognitive function. Neuropsychological testing was conducted on the participants at 13 years old. The participants were then interviewed to ascertain whether they had used cannabis at ages 18, 21, 26, 32 and 38 years old. The study found that:

Persistent cannabis use was associated with neuropsychological decline broadly across domains of functioning, even after controlling for years of education. Informants also reported noticing more cognitive problems for persistent cannabis users. Impairment was concentrated among adolescent-onset cannabis users, with more persistent use associated with greater decline. Further, cessation of cannabis use did not fully restore

33 Cannabis use and risk of schizophrenia: a Mendelian randomization study, pp 1291 [accessed via: [www.nature.com/articles/mp2016252.pdf](http://www.nature.com/articles/mp2016252.pdf)]

34 Assessing causality in associations between cannabis use and schizophrenia risk: a two-sample Mendelian randomization study, published April 2018 in PubMed, US National Library of Medicine National Institute of Health [accessed via: [www.ncbi.nlm.nih.gov/pubmed/27928975](http://www.ncbi.nlm.nih.gov/pubmed/27928975)]

35 'Persistent Cannabis Users Show Neuropsychological Decline from Childhood to Midlife', PNAS (Proceedings of the National Academy of Sciences of the USA), 2012, 109(109), E2657–64 [accessed via: <https://dunedinstudy.otago.ac.nz/publications?keyword=&year=&pg=2>]

neuropsychological functioning among adolescent-onset cannabis users. Findings are suggestive of a neurotoxic effect of cannabis on the adolescent brain and highlight the importance of prevention and policy efforts targeting adolescents.

It has been observed that this study does not properly account for socio-economic factors which could explain these results. However, in 2011, in the city of Maastricht a study of university students appeared to disprove the socio-economic variable as the confounder. The local authorities in Maastricht had lost patience with drug tourism and had identified those students or tourists from France and Luxembourg as the most disruptive. Following pressure from the local authorities, the Maastricht Association of Cannabis Shop Owners prohibited anyone from Luxembourg or France from accessing cannabis legally.

The authors of the study *'High' Achievers?*<sup>36</sup> explained that this gave them an opportunity to *'exploit a unique natural experiment to obtain causal estimates of the effect of a change in legal cannabis access on college student performance'*.

The study relied upon the academic results of the students, comparing those that were allowed access to legal cannabis (the Belgian, German and Dutch students) and those that were denied access to legal cannabis. It is of particular importance to note that the study itself acknowledges that access to illicit cannabis was unchanged. The study relied upon 54,000 course results and indicated that:

Our main finding is that the temporary restriction of legal cannabis access had a strong positive effect on course grades of the affected students. These individuals performed, on average, 9 percent of a standard deviation better and were 5.4 percent more likely to pass courses when they were banned from entering cannabis-shops.<sup>37</sup>

The study also confirmed that effort or motivation variants could not explain the results, the differential in attainment between the two groups related to understanding of the course material.<sup>38</sup>

A more recent study published in the Journal of the American Medical Association in 2018, *Association of Cannabis with Cognitive Functioning in Adolescents and Young Adults A Systematic Review and Meta-analysis*<sup>39</sup> tried to answer the question as to whether cannabis consumption by adolescents is associated with cognitive dysfunction. The study found that:

This systematic review and meta-analysis of 69 cross-sectional studies of 2,152 cannabis users and 6,575 comparison participants showed a small but significant overall effect size for reduced cognitive functioning in adolescents and young adults who reported frequent cannabis use. However, studies requiring abstinence from cannabis for longer than 72 hours had a very small, nonsignificant effect size.

The study recommended that *'future studies should examine individual differences in susceptibility to cannabis-associated cognitive dysfunction'*. In considering the effect

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36 *'High' Achievers? Cannabis Access and Academic Performance* IZA DP No. 8900 March 2015, Olivier Marie, Ulf Zölitz [accessed via: <http://ftp.iza.org/dp8900.pdf>]

37 *'High' Achievers? Cannabis Access and Academic Performance*, March 2015, Olivier Marie, Ulf Zölitz, pp 3 [accessed via: <http://ftp.iza.org/dp8900.pdf>]

38 Ibid

39 *Association of Cannabis With Cognitive Functioning in Adolescents and Young Adults A Systematic Review and Meta-analysis, Published in JAMA* [accessed via: <https://jamanetwork.com/journals/jamapsychiatry/article-abstract/2678214>]

of cannabis use on the adolescent brain, the WHO has stated that *'there is need for large-scale longitudinal research on adolescents, beginning prior to drug initiation and continuing long into adulthood.'*<sup>40</sup> Currently, such a study is underway in the form of the Adolescent Brain Cognition Development (ABCD) Study in the USA. The reason this study was commissioned was precisely because of the gaps in our understanding and the very recent developments in technology and science that allow a longitudinal study to be more effective. The ABCD study will take advantage of developments in non-invasive neuroimaging. This study will follow 10,000 children for a decade using these recently developed scientific techniques.<sup>41</sup> This paper takes the same stance as the WHO and recognises both the need for the study and the potential additional value offered by the ABCD study.

## What conclusions can be drawn by public policy makers considering the scientific evidence?

There will necessarily come a point where a judgement is required to formulate policy with the data available, even if it is currently inconclusive. The UK, like many other countries, has been through this process before when considering the impact of tobacco on public health. In the early stages of the tobacco debate, there may well have been genuine doubt about the causal link between smoking and lung disease and yet a public policy question remained, whether or not tobacco ought to be treated with greater caution. In the present case there is a parallel. While there is no established causal link there this good reason for concern, within the context of strong correlational evidence, that there is a relationship between cannabis use and harm. Those that push for legalisation of cannabis make arguable points with unquestioned integrity. However, today's government ought to recognise, if not simply recall, the risks associated with ignoring strong correlational evidence that points to a hazard to public health. We may take the regulation of food as a good example of the level of care that needs to be taken when authorising something for public consumption. EU legislation that regulates the food industry works on the basis of the *'precaution principle'*,<sup>42</sup> namely *'when human activities may lead to morally unacceptable harm that is scientifically plausible but uncertain, actions shall be taken to avoid or diminish that harm'*. It is relevant that, with this uncertainty in mind, we are weighing the dangers of an as yet unquantifiable risk to our populations health against a lost recreation opportunity. In these circumstances, missing information or inconclusive scientific evidence regarding the risk posed by a substance should be treated as a factor that weighs heavily against, not for, greater access to the drug.

There may however be reasons beyond the nature and effect of the substance that influence the public policy position.

40 The World Health Organisation: The health and social effects of non-medical cannabis use pp18, para 4.1.6 [accessed via: <http://apps.who.int/iris/bitstream/10665/251056/1/9789241510240-eng.pdf?ua=1>]

41 Adolescent Brain Cognition Development (ABCD) Study, [accessed via: [www.addictionresearch.nih.gov/abcd-study](http://www.addictionresearch.nih.gov/abcd-study)]

42 The judgement of plausibility should be grounded in scientific analysis. Analysis should be ongoing so that chosen actions are subject to review. Uncertainty may apply to, but need not be limited to, causality or the bounds of the possible harm. Actions are interventions that are undertaken before harm occurs that seek to avoid or diminish the harm. Actions should be chosen that are proportional to the seriousness of the potential harm, with consideration of their positive and negative consequences, and with an assessment of the moral implications of both action and inaction. The choice of action should be the result of a participatory process [accessed via: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3A132042>].

## Beyond the science

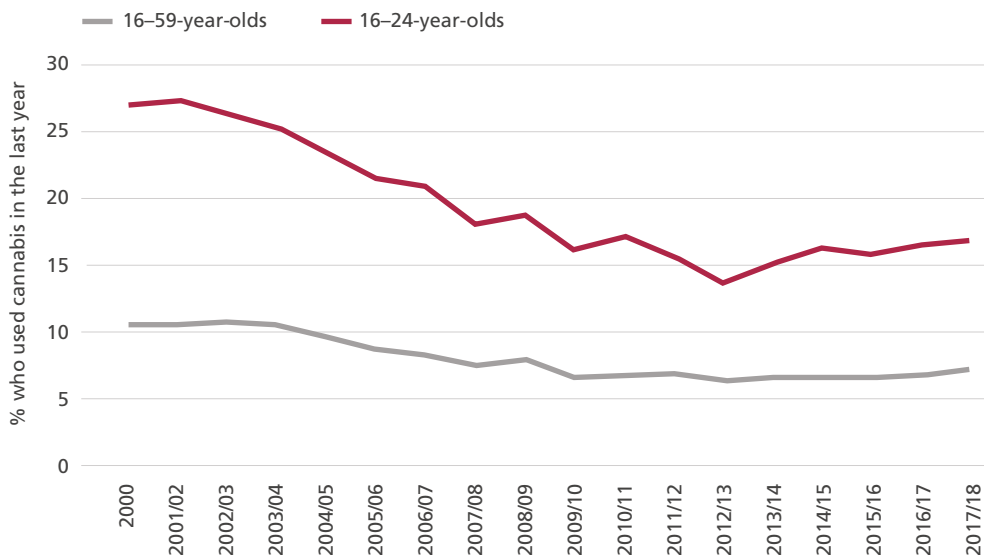
There is then a concerning, but scientifically inconclusive, body of evidence that suggests that cannabis use can lead to psychosis and negatively affect cognitive function. The accepted position of many advocates of legalisation is that cannabis has the potential to be harmful, although there is substantial disagreement about the extent and nature of that risk. The question that follows is how best to mitigate that harm. The UK currently adopts the position that prohibiting the possession, supply, importation and production of cannabis mitigates the distribution and use of cannabis. This paper will go on to explore the nature of the current approach, its consequences and the rationale behind the alternative of legalisation.

## chapter four

# What is the current rate of consumption?

The precise extent to which the prohibition of a drug has a moderating effect upon consumption within any specific jurisdiction is unclear because of the number of other variables that influence consumption. However, we can say that cannabis use in the UK has been steadily declining for nearly 20 years although, as seen below, there has been a very slight upturn in recent years.<sup>43</sup>

Figure 1: Proportion of adults reporting use of cannabis in the last year, 16–24 and 16–59-year-olds (2000 to 2017/18)



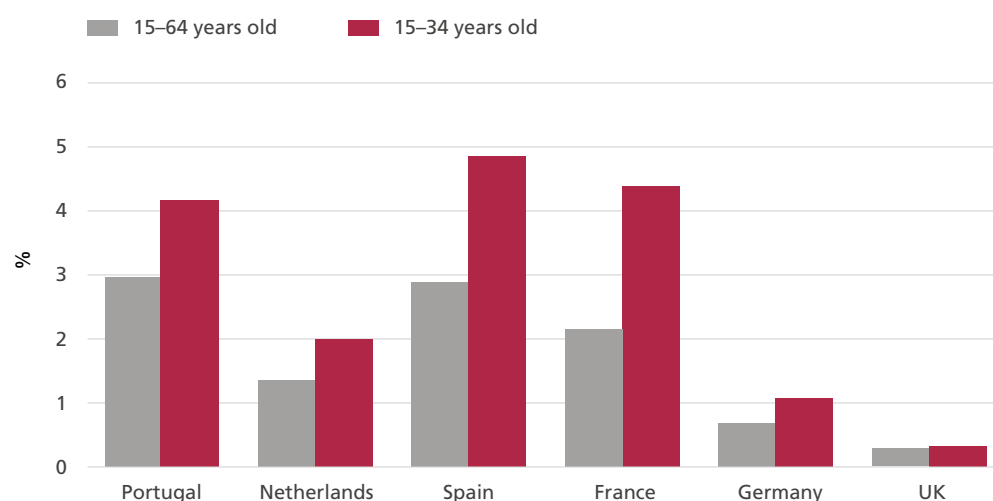
Drug Misuse Findings from the 2017/2018 Crime Survey for England and Wales

43 Home Office Report Drug Misuse: Findings from the 2017/18 Crime Survey for England and Wales (pp 5) [accessed via: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/729249/drug-misuse-2018-hosb1418.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/729249/drug-misuse-2018-hosb1418.pdf)]

## The relationship between consumption and the legal status of cannabis

For a moment we will ignore the deterrent effect of a conviction. There is insufficient evidence to conclude that the *severity of sentence*, or other disposal, has a determinative effect upon any given jurisdiction's drug use. Portugal has de-criminalised cannabis possession and the Netherlands<sup>44</sup> have substantially relaxed their approach to possession of cannabis but some measures of cannabis use, such as frequency of use, are heavier in such jurisdictions than in the UK, irrespective of whether a soft or hard approach is taken.

Figure 2: Prevalence in % of the population of daily or almost daily use of cannabis (20 days or more in the month)



Taken from EMCDDA *Statistical Bulletin – Prevalence of drug use*<sup>45</sup>

Consequently, whether the evidence from abroad supports or undermines any particular case, there is a need for caution when drawing conclusions from direct international comparisons. Examining the UK population's own consumption trends and public opinion is a more prudent approach to assessing the likely effect of legalisation. This view, in part, is shared by the European Monitoring Centre for Drugs and Drug Addiction. The EMCDDA looked at 8 European countries and examined the rates of consumption for the most prevalent user group, identified in this study as those aged between 15–34 years, both before and then after a material change in the law took place. The report states that:

44 The Opium Act Directive, amended in 1976 allows outlets, often referred to as 'coffee shops' to sell cannabis on site. Possession in public is not strictly legal, in 2012 the Opium Act Directive was amended to read 'in principle a police dismissal will follow if a person is carrying less than 5 grams of cannabis' [accessed via: [www.emcdda.europa.eu/countries/drug-reports/2017/netherlands/drug-laws-and-offences\\_en](http://www.emcdda.europa.eu/countries/drug-reports/2017/netherlands/drug-laws-and-offences_en)]

45 EMCDDA Prevalence of drug use, frequency of cannabis use, all adults (aged 15–64) [accessed via: [www.emcdda.europa.eu/modules/sbdata/SBDataService2018.cfc?method=fetchxlsx&tableid=GPS-552-1](http://www.emcdda.europa.eu/modules/sbdata/SBDataService2018.cfc?method=fetchxlsx&tableid=GPS-552-1)]

The legal impact hypothesis, in its simplest form, predicts that increased penalties will decrease drug use and reduced penalties will increase drug use. However, in the original analysis, and an updated version, no simple association can be found between legal changes and the prevalence of cannabis use.<sup>46</sup>

There has been a steady reduction of reported cannabis use in the UK for nearly 20 years. It is therefore difficult to suggest with any degree of force that the law has manifestly failed to have any moderating effect upon cannabis consumption. The above observation from the EMCDDA focuses on the issue of reduced or increased *penalties*, perhaps the issue as to whether one wishes to break the law at all can and should be meaningfully distinguished from a consideration of the penalty such a breach might incur. As with all laws, it is likely that it will have had a substantial impact on the behaviour of some, encouraging compliance and very little, if any, effect on others.

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46 Cannabis legalisation in Europe, An Overview. (pp 22) EMCDDA [accessed via: [www.emcdda.europa.eu/system/files/publications/4135/TD0217210ENN.pdf](http://www.emcdda.europa.eu/system/files/publications/4135/TD0217210ENN.pdf)]

## chapter five

# De-criminalisation as an alternative

One option for change is to remove the criminal sanction attached to possession of cannabis. This means that the act would remain unlawful. Portugal currently employs this model.

### Case study: The Portuguese model explained

The explosion of drug use in Portugal was itself arguably, and in part, a reaction to new found liberty. After decades of life under a dictatorship<sup>47</sup> the revolution, although liberating, led to years of significant social, economic, and political upheaval in Portugal. There was a substantial relaxation or loss of capacity in policing on all things and the massive influx of drugs in the 1980's, mostly heroin and cocaine, was barely challenged at all. As Joao Goulo, chairman of the Portuguese Institute on Drugs and Drug Addiction and the architect of the Portuguese model explains,

we were completely naïve about drugs... everyone was trying stuff without risk of consequences, drug and alcohol abuse was tolerated or even incentivized.

This turmoil led to a heroin epidemic. It is important to understand that the Portuguese legislature had, by 2001, merely codified the already well-established practice on the streets, unofficial state tolerance of widespread drug use. Today, Portugal's more holistic model makes use of '*dissuasion panels*' to challenge drug use. The '*Dissuasion Panels*' are usually made up of a legal professional and clinicians, their function is to help the person out of drug use. Joao Goulo explained to the British Medical Journal:

It's very difficult to identify a causal link between de-criminalisation by itself 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.<sup>48</sup>

It was not only the change in the law<sup>49</sup> that made 2001 a turning point, it was the provision of adequate social care and the extension of compassion towards users of addictive substances. If there is anything to be learnt from the Portuguese model, and there undoubtedly is, it is the potential benefit that comes from re-aligning a community's perspective of addiction and to

47 Preceding the Carnation Revolution of 1974

48 Comments made by Joao Goulo, chairman of the Portuguese Institute on Drugs and Drug Addiction reported by the British Medical Journal [accessed via: [www.bmj.com/content/343/bmj.d6881.full](http://www.bmj.com/content/343/bmj.d6881.full)]

49 Decree 30/2000 decriminalised consumption, acquisition and possession for personal consumption of drugs [accessed via: [www.emcdda.europa.eu/countries/drug-reports/2018/portugal/drug-laws-and-drug-law-offences\\_en](http://www.emcdda.europa.eu/countries/drug-reports/2018/portugal/drug-laws-and-drug-law-offences_en)]



act by extending medical and social care to people who want a way out of addiction. The real lesson to be learnt from the Portuguese model is that there must be at least an offer of help for those found in possession and this should be offered at the earliest stage. There must be some effort that transcends mere condemnation.

Leaving aside the efforts made by the Portuguese authorities in combating heroin and cocaine, the use of cannabis has in recent years not been an unequivocal success story. In 2012, within the category of 'last year' cannabis use among young adults (15–34) in Portugal consumption stood at 5.1 per cent. By 2016 it had risen to 8 per cent, having risen consistently year on year, since its lowest point in a decade.<sup>50</sup> This 56 per cent increase in cannabis use amongst this age group took place over just 4 years. Using this common data source, age group and timeframe, the UK records show 11.5 per cent used cannabis within the last year in 2016<sup>51</sup> and had risen from 10.5 per cent in 2012, a relatively modest increase of just under 10 per cent in the rate of consumption.<sup>52</sup>

## Portuguese model as an option for the UK

Nothing in this reports assessment of the Portuguese model establishes that it has failed. A model that works with drug users and builds on education, sign-posts people to available help and provides support is commendable in many respects. Portugal is however, susceptible to fluctuations in drug use just like any other country. The inadequacy of de-criminalisation is revealed when these upward trends appear because the state has retained neither the recourse to dissuade drug use through sanction nor has it gained any control of the products quality.

50 Portugal Country Drug Report 2018, EMCDDA [accessed via: [www.emcdda.europa.eu/countries/drug-reports/2018/portugal/drug-use\\_en](http://www.emcdda.europa.eu/countries/drug-reports/2018/portugal/drug-use_en)]

51 UK Country Drug Report 2018, EMCDDA [accessed via: [www.emcdda.europa.eu/countries/drug-reports/2018/united-kingdom/drug-use\\_en](http://www.emcdda.europa.eu/countries/drug-reports/2018/united-kingdom/drug-use_en)]

52 Ibid

## chapter six

# Legalisation as an alternative

### What would a post legalisation regulated market look like?

The Liberal Democrats commissioned a panel to make recommendations regarding the proposed '*Framework for a Regulated Market for Cannabis in the UK*'<sup>53</sup> (hereafter '*the proposed framework*'). This thorough document sets out, sometimes in detail and sometimes in understandably broad terms, what regulation of the UK cannabis industry ought to look like. The proposed regulations draw heavily from the Uruguay model which is identified by the panel as transferrable and worthwhile. It is not the only document of its type but it is recent and the product of considered expert advice on UK specific concerns. It therefore serves as a useful frame of reference in this paper. For convenience, the main policy proposals of that panel may be summarised in this way:

#### The main goal

- Protect and enhance public health and community safety – with particular focus on the health and well-being of vulnerable and marginalised populations.

#### Key elements of the proposed model

- Establish a Cannabis Regulatory Agency (CRA).
- Create a system of licencing. The granting of licences will be largely dependent upon the extent and nature of the production. This would include Cannabis Social Clubs, as licenced and regulated by the CRA.
- Allow small scale cultivation by citizens (4 Plants) without a licence.
- Establish controls over access to retail sales (e.g. minimum purchase age controls) and regulate consumption (e.g. a ban on street consumption).

#### Potency

The proposed framework recommended that THC and CBD levels be controlled. The moderating effects of CBD might be secured within the product by setting a minimum CBD level of 4 per cent. Potency will be controlled by the granting of licence for a minimum of three different strains. These products may fall within thresholds of 5 per cent,

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53 *A framework for a regulated market for cannabis in the UK: Recommendations from an expert panel* (pp 11) [accessed via: [www.tdpf.org.uk/sites/default/files/A\\_framework\\_for\\_a\\_regulated\\_market\\_for\\_cannabis\\_in\\_the\\_UK.pdf](http://www.tdpf.org.uk/sites/default/files/A_framework_for_a_regulated_market_for_cannabis_in_the_UK.pdf)]

10 per cent and a maximum of 15 per cent THC levels.<sup>54</sup> The proposed framework also advocates a cautious initial approach to potency, starting at the lower end and moving up if appropriate.

### Price

The panel acknowledged the careful balance required between setting prices low enough to undercut and therefore damage the illicit trade against the danger of setting prices too low and thereby unintentionally encouraging increased use. The recommendation is that prices are initially set by the state and linked to the current market value of the illicit trade. The proposed framework recommends that pricing should be linked to THC levels so that cannabis with 15 per cent THC should cost about three times that which contains just 5 per cent THC.<sup>55</sup>

### Case study: The USA

The USA is a recent example of a jurisdiction that has seen legalisation take place, albeit at state level, and provides us with some insight into the laws effect on consumption rates.

#### Federal

The Controlled Substances Act 1970 makes cannabis possession unlawful under US Federal law. Those that live in States that allow the use of medicinal cannabis enjoy protection from federal prosecution, by virtue of the *Rohrabacher–Blumenauer*<sup>56</sup> amendment. This amendment simply prohibits the Department of Justice using resources to interfere with the State's right to enforce its own laws relating to medicinal cannabis, effectively creating a practical obstacle to Federal prosecution.

The legal status of recreational use is not settled in the same way, while State law and Federal law similarly conflict, the Federal law may still be enforced. The '*Cole Memorandum*<sup>57</sup> had previously afforded similar protection to those in possession of recreational cannabis as the *Rohrabacher-Farr* amendment had for medicinal users. This issue was specifically addressed by the Attorney General Jeff Sessions, and the *Cole Memorandum* was formally rescinded<sup>58</sup> in a '*return to the rule of law*'. There is, however, guidance given to Federal Prosecutors not to pursue cannabis possession cases.

This conflict between Federal and State law is not an academic discussion, it has real world consequences on the US cannabis market and, arguably, the global cannabis market. As a consequence of the legal status of cannabis under US Federal law, the banking sector has been slow to allow entrepreneurs and retailers to use its banking facilities. This in turn has led to a cash reliant model with even relatively small businesses reluctantly holding large volumes of cash and unable to access the same capital resources for growth. US banks are heavily relied upon by South America and this issue has similarly affected the cannabis market in Uruguay.

54 Ibid (pp 17)

55 Ibid (pp 18)

56 (formally *Rohrabacher-Farr*) H.Amdt.332 to H.R.2578 114th Congress (2015–2016) congress.gov [accessed via: [www.congress.gov/amendment/114th-congress/house-amendment/332](http://www.congress.gov/amendment/114th-congress/house-amendment/332)]

57 US Department of Justice, copy of memorandum [accessed via: [www.justice.gov/iso/opa/resources/3052013829132756857467.pdf](http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf)]

58 Department of Justice, Office of Public Affairs, Justice Department Issues Memo on Marijuana Enforcement, Thursday January 4, 2018 [accessed via: [www.justice.gov/opa/pr/justice-department-issues-memo-marijuana-enforcement](http://www.justice.gov/opa/pr/justice-department-issues-memo-marijuana-enforcement)]

Facebook<sup>59</sup> and Google<sup>60</sup> will not allow adverts for illicit drugs and as things stand in the US, cannabis remains Federally prohibited. The current rate of consumption is happening within the context of restricted social media advertising and restricted investment capital. There is room for growth and we may not be witnessing the levels of consumption that will eventually be reached.

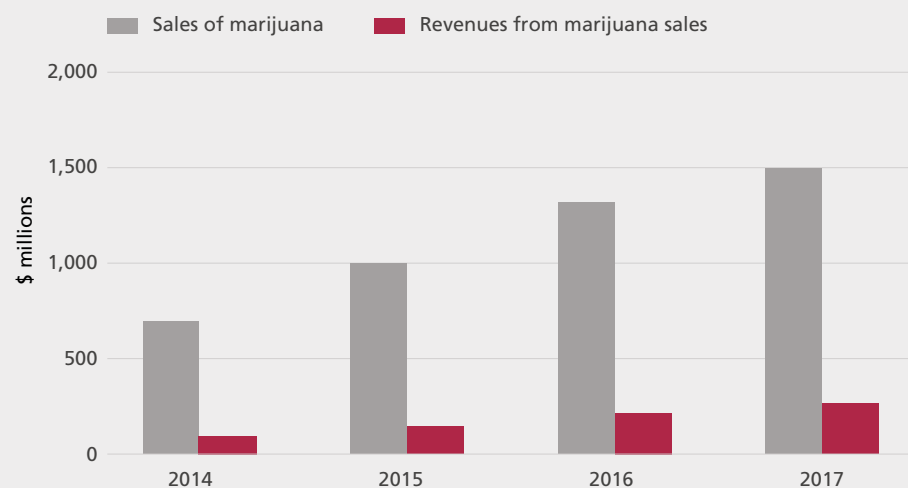
### State

There is no typical State, such is the divergence in market regulation and the disparity in approaches taken between State legislatures. However, Colorado is examined here because it illustrates some of the benefits and, at the same time, the potential pitfalls of legalisation.

### Revenue

Colorado does draw a significant revenue from the sale of cannabis. In December of 2014, Colorado sales figures<sup>61</sup> for recreational cannabis amounted to just over \$683,500,000. By December 2017, that figure had risen to over \$1,507,000,000, a rise of approximately 120 per cent in just three years. Over the same period, the associated annual tax revenue rose from just over \$130,000,000 in December 2015 to \$247,368,000 in Dec of 2017, an increase of approximately 90 per cent in just three years.<sup>62</sup>

**Figure 3: Annual marijuana sales and revenues (taxes, license, and fees) for the state of Colorado in million \$**



Taken from Colorado department of Revenue<sup>63</sup>

This increase in sales and associated state revenue is clearly associated with an increase in consumption. In a Colorado State report,<sup>64</sup> completed for the Colorado Department of Revenue, the prevalence of consumption was examined and the report indicated that:

59 Facebook Community Policy Guidelines, Section 5 [accessed via: [www.facebook.com/policies/ads/prohibited\\_content/drugs](https://www.facebook.com/policies/ads/prohibited_content/drugs)]  
 60 Google Policy, Dangerous Products or Services, Recreational Drugs, [accessed via: <https://support.google.com/adspolicy/answer/6014299?hl=en>]  
 61 [www.colorado.gov/pacific/revenue/colorado-marijuana-sales-reports](http://www.colorado.gov/pacific/revenue/colorado-marijuana-sales-reports) and [www.colorado.gov/pacific/sites/default/files/0718\\_MJSalesCalendarReport\\_per\\_cent20PUBLISH.xlsx](http://www.colorado.gov/pacific/sites/default/files/0718_MJSalesCalendarReport_per_cent20PUBLISH.xlsx)  
 62 [www.colorado.gov/pacific/sites/default/files/0818\\_per\\_cent20CalendarReport\\_per\\_cent20PUBLISH.xlsx](http://www.colorado.gov/pacific/sites/default/files/0818_per_cent20CalendarReport_per_cent20PUBLISH.xlsx)  
 63 Colorado Department of Revenue, using end of calendar year figures for each year [accessed via: [www.colorado.gov/pacific/revenue/colorado-marijuana-tax-data](http://www.colorado.gov/pacific/revenue/colorado-marijuana-tax-data)]  
 64 Market size and demand for Marijuana in Colorado 2017 Market Update, Prepared for the Colorado Department of Revenue (pp 35) [accessed via: [www.colorado.gov/pacific/sites/default/files/MED%20Demand%20and%20Market%20%20Study%20%20082018.pdf](http://www.colorado.gov/pacific/sites/default/files/MED%20Demand%20and%20Market%20%20Study%20%20082018.pdf)]

Colorado has a much higher share of 'heavy' marijuana consumers compared to the national average. Between 20.3–26.2 percent of the state's marijuana consumers report near-daily use of marijuana (26 and over days), compared to just 15.5 percent nationwide.

### **The social impact**

A report published by the US Insurance Institute for Highway Safety Highway Loss Data Institute<sup>65</sup> assessed whether there was any increase in road traffic collisions following legalisation of cannabis in Colorado, Washington or Oregon.

Results from single state analyses as well as the combination of the three states indicate that collision claim frequencies increased significantly when retail sales commenced. When states are examined individually, the frequency of collision claims increases between 4.5 and 13.9 percent. A single analysis that combined the three states with legal recreational use found a smaller yet significant increase of 2.7 percent.

The US model provides an example of a commercial approach which has seen a significant growth in year on year product sales. The law then is just one factor in determining the rate of consumption. Perhaps the figures above reflect an increase in consumption by virtue of legalisation, alternatively, perhaps an overly commercial approach to regulation is largely responsible. The influence of law change, of itself, needs to be examined within the domestic context of each jurisdiction and even the proposed regulation. Only by examining domestic patterns of behaviour are we likely to better understand whether prohibition has any moderating effect upon consumption.

65 Recreational marijuana and collision claim frequencies (pp 6) [accessed via: [www.iihs.org/media/806f7c38-4594-4bbe-82ff-df4a749f5153/9fJfcw/HLDI\\_per\\_cent20Research/Bulletins/hldi\\_bulletin\\_34-14.pdf](http://www.iihs.org/media/806f7c38-4594-4bbe-82ff-df4a749f5153/9fJfcw/HLDI_per_cent20Research/Bulletins/hldi_bulletin_34-14.pdf)]

## chapter seven

# Indicators of the likely reaction to legalisation in the UK

As discussed, international comparisons have some but limited use because beyond simple legislation, cultural attitudes and domestic trends are influential variables. There is a need for a greater understanding of domestic attitudes to assist in predicting, as far as is reasonable, the likely reaction to legalisation in the UK.

A poll completed in 2012, found that just 4 per cent of people who had never used cannabis would consider doing so in the future. However, when asked whether they would use cannabis if it were legalised, the number of people who said that they would increased four-fold.<sup>66</sup>

In September of 2018, the CSJ commissioned a poll, conducted by YouGov. Of the 1,646 people asked, 73 per cent said they had never used cannabis and 24 per cent stated that they had used cannabis. Taking as a base line all those that stated that they had never used cannabis, 10 per cent stated they would definitely, or would probably try it, if it was legalised.

**Of those aged 18–24, the proportion that said they would definitely or probably would try cannabis if it was legalised was 26 per cent.**

Most notably, of those aged 18–24, the proportion that said they would definitely or probably would try cannabis if it was legalised was 26 per cent. Translated into actual numbers of people, acknowledging that there are 5,627,000 people in this age group in the UK,<sup>67</sup> this equates to over 1,068,000 people aged 18–24 who had never tried cannabis but would for the first time as a direct result of its legalisation.

The size of this group is comparable to the number of people in the same age range who have already used cannabis under the present system, using the same ONS figures that number is approximately 1,350,000. These numbers are particularly concerning as the

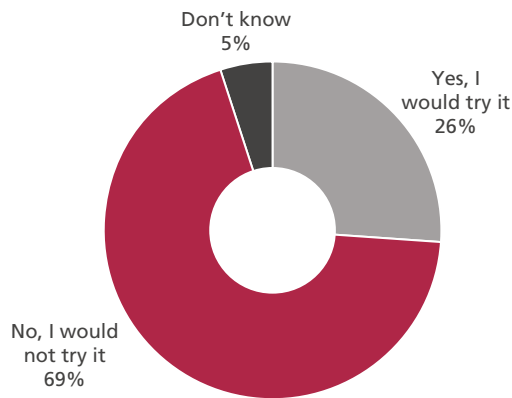
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<sup>66</sup> These figures are taken from a Poll that took place on between the 8th and 14th July 2014. The poll was conducted on-line and 1,080 UK adults took part. The data was published in The Guardian [accessed via: [www.theguardian.com/society/2014/oct/05/-sp-drug-use-is-rising-in-the-uk-but-were-not-addicted](http://www.theguardian.com/society/2014/oct/05/-sp-drug-use-is-rising-in-the-uk-but-were-not-addicted)]

<sup>67</sup> 18–24-year-old population: All persons, Office for National Statistics [accessed via: [www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/timeseries/jn5q/lms](http://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/timeseries/jn5q/lms)]

NHS and the WHO regard the rate of addiction for those that have used cannabis to be about 9 per cent in adults, although, as previously explored, the addiction rates amongst under those under 25 could be as high as 1 in 6 users.<sup>68</sup>

Figure 4: If recreational use of cannabis was legalised, do you think you would try it? 18–24-year-olds



Of those that indicated that they had used cannabis in the past, 14 per cent stated that they would smoke cannabis more often if the drug was legalised. Of the 18–24 year-olds asked, 36 per cent stated they would use cannabis more often if it was legalised. This tells us that the issue is not a simple binary one in which we examine whether a person is more likely to start smoking cannabis or not, the issue of legalisation is likely to influence the rates of consumption of current cannabis users as well. Increased frequency of use will predict addiction and increased prospects of harm. Although we must take care when drawing international comparisons, this UK polling result is far from an anomaly. Deloitte commissioned research in Canada and published their findings in a report named; *A society in transition an industry ready to bloom*, 2018 cannabis report.<sup>69</sup> This report found that:

After legalization, current frequent cannabis consumers expect to buy more often than they do today. Current but less frequent consumers also expect to purchase products more often, and spend significantly more when they do—up to 68 percent more.

There are serious concerns regarding the extent and immediacy with which the level of consumption may change and the impact that would have on society. We must acknowledge the realities of the current state of the addiction treatment sector in the UK. In 2016, £10.7 Billion<sup>70</sup> was raised in alcohol revenue yet the national estimated budget expenditure on drug and alcohol treatment<sup>71</sup> in 2016/2017 was just over £600 million. The rate of consumption is likely to increase rapidly in circumstances where the UK is already dangerously ill-equipped to deal with addiction. Beyond the severity of addiction, frequent use amongst those aged 18–24 will likely effect educational prospects and skill learning.

68 The World Health Organisation: The health and social effects of non-medical cannabis use pp40, para 9.1.4 [accessed via: <http://apps.who.int/iris/bitstream/10665/251056/1/9789241510240-eng.pdf?ua=1>]

69 *A society in transition and industry ready to bloom*, 2018 cannabis report [accessed via: [www2.deloitte.com/content/dam/Deloitte/ca/Documents/consulting/ca-cannabis-2018-report-en.PDF](http://www2.deloitte.com/content/dam/Deloitte/ca/Documents/consulting/ca-cannabis-2018-report-en.PDF)]

70 Institute of Alcohol Studies [accessed via: [www.ias.org.uk/Alcohol-knowledge-centre/Price/Factsheets/How-important-is-the-revenue-from-alcohol-duty-to-the-government.aspx](http://www.ias.org.uk/Alcohol-knowledge-centre/Price/Factsheets/How-important-is-the-revenue-from-alcohol-duty-to-the-government.aspx)]

71 Public Health England, 2016–17 Alcohol and Drugs Treatment Commissioning Tool: Guidance document (pp 4) [accessed via: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/670959/Alcohol-and-drugs-treatment-commissioning\\_tool-guidance-document.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/670959/Alcohol-and-drugs-treatment-commissioning_tool-guidance-document.pdf)]

## chapter eight

# The proportionality of a criminal sanction

### The current law

Regardless of whether or not the current law can be recognised as a moderating influence on consumption, there remains the question over the proportionality of criminal sanction, namely the effect on the individual caught in possession against the need to deter use. Of course, reference to the act of ‘possession’ of cannabis should be read to mean only simple possession, as set out section 5 (1) and (2) of the Misuse of Drugs Act 1971.<sup>72</sup> The offence of possession of cannabis is imprisonable with up to 3 months in custody on summary conviction, or five years on indictment.<sup>73</sup>

The current procedure for dealing with a person caught in possession of cannabis is set out in the National Police Chiefs’ Council (NPCC)<sup>74</sup> national guidelines.<sup>75</sup> Essentially, there are three stages to the process.

Figure 6:



At every stage from warning through Fixed Penalty Notice to arrest and charge the officer retains discretion as to how the offender is dealt with and some stages may simply be skipped if deemed appropriate. The CSJ makes no criticism of the broader principle of allowing officer discretion but observes only that this guidance does not serve as an enforceable civic right or guarantee. However, barring any special features to the stop, any aggravating factors or additional offences, a person caught in possession of cannabis

<sup>72</sup> Section 5 of the Misuse of Drugs Act reads: (1) Subject to any regulations under section 7 of this Act for the time being in force, it shall not be lawful for a person to have a controlled drug in his possession. (2) Subject to section 28 of this Act and to subsection (4) below, it is an offence for a person to have a controlled drug in his possession in contravention of subsection (1) above.

<sup>73</sup> Misuse of Drugs Act 1971, Schedule 4 – Protection and Punishment of Offences [Blackstone Criminal Practice 2018 B19.142]

<sup>74</sup> Formerly the Association of Chief Police Officers (ACPO)

<sup>75</sup> Crown Prosecution Service, Prosecution of Drugs Offences: ACPO Guidelines Summary [www.cps.gov.uk/legal-guidance/drug-offences](http://www.cps.gov.uk/legal-guidance/drug-offences)



can generally expect to be given a warning in the first instance. There are no financial consequences to a warning, there is no deprivation of liberty, other than the time it takes for the officer to give the warning and retain and record the evidence. The second stop could then result in the issuing of a Penalty Notice. Lastly, a third stop will usually result in a caution or, barring an acquittal at trial, a conviction at Court. Youths are dealt with by a different system. Youths are instead dealt with under the provisions of the Crime and Disorder Act 1998, broadly speaking this procedure is also designed to divert the offender from an appearance at Court for the initial offences of, in this case, possession.

### The sentence

For those that do attend Court and either plead guilty or are convicted after trial, they can expect to be sentenced in line with statute and the sentencing guidelines council guidance. Statute alone is of little assistance in understanding the reality of sentencing. The Sentencing Guidelines Counsel<sup>76</sup> provides for a range of a 'Discharge' up to 26 weeks' custody for the offence of possession of cannabis. Custody is treated as a last resort and in reality is applied in exceptional circumstances, barring any concurrent sentencing or breach of court order. The guidelines require the Judge or Bench of Magistrates to pass through a process designed to ensure there is no alternative disposal other than immediate custody before arriving at such a sentence.<sup>77</sup> Additionally, an offender pleading guilty at an early stage may expect to receive a reduction in sentence<sup>78</sup> of up to 1/3. The imposition of a conditional discharge or a fine is open to the Court in the first instance but a repeat offender may find that a community order is imposed. This could result in 'Supervision,' a form of one-to-one guidance with a Probation Officer, or punishment, in the form of 'unpaid work'. The sentencing guidelines council identifies a number of aggravating factors which include:

1. Possession of drug in prison
2. Presence of others, especially children
3. Possession of drug in a school or licensed premises
4. Established evidence of community impact

Given the current NPCC (previously ACPO) guidelines, it is clear that attendance at Court may not be necessary before the fourth stop for cannabis possession. The state response moves incrementally towards increasingly serious sanction. The current system provides individuals with significant opportunity to avoid more robust prosecution. The statistics reflect this position, research conducted by CIVITAS<sup>79</sup> indicates that in 2016, only 421 of the 9,000 people who went to prison for drug offences were sentenced for possession of Class B. Assuming, for the purposes of this discussion, that all offences involved cannabis, the figure must be understood as one which does not reveal the details of the relevant

76 Sentencing Guidelines, Possession of a controlled drug [accessed via: [www.sentencingcouncil.org.uk/offences/item/possession-of-a-controlled-drug/](http://www.sentencingcouncil.org.uk/offences/item/possession-of-a-controlled-drug/)]

77 Sentencing Guidelines, Possession of a controlled drug, see Custodial Sentences [accessed via: [www.sentencingcouncil.org.uk/offences/item/possession-of-a-controlled-drug/](http://www.sentencingcouncil.org.uk/offences/item/possession-of-a-controlled-drug/)] 1) Has the custody threshold been passed? 2) Is it unavoidable that a sentence of imprisonment be imposed? 3) What is the shortest term commensurate with the seriousness of the offence? 4) Can the sentence be suspended?

78 Section 144 of the Criminal Justice Act 2003 [accessed via: [www.legislation.gov.uk/ukpga/2003/44/section/144](http://www.legislation.gov.uk/ukpga/2003/44/section/144)]

79 CIVITAS *Who goes to prison? An overview of the prison population of England and Wales*, Peter Cuthbertson, December 2017 [accessed via: [www.civitas.org.uk/content/files/whogoestoprison.pdf](http://www.civitas.org.uk/content/files/whogoestoprison.pdf)]

antecedent records or the impact other offences sentenced on the same occasion had on the final disposal. The activation of a suspended sentence, or even a resentencing following a breached conditional discharge, as well as aggravating circumstances particular to the case or additional but lesser offences charged are all very likely to have a significant impact on the eventual disposal.

In reality, the prospect of custody for someone found in possession even beyond half a dozen times is extremely remote.

### The repercussions beyond the sentence

The CSJ is concerned about the effect that a criminal record could have on a young person's future, this issue is a substantial one and requires a review of the current approach. The Rehabilitation of Offenders Act 1974, as amended, places time limits on the period of mandatory disclosure of a previous conviction, or even cautions, which are largely dependent upon the sentence. In some circumstances, even out-of-court disposals for offences such as cannabis possession might be deemed disclosable and this is especially the case when checks are conducted under the ECRC (the Enhanced Criminal Record Checks). Recent attempts to reform this legislation in 2017 came to nothing. The CSJ sees merit in a further review of the Rehabilitation of Offenders Act 1974.

### An assessment of proportionality

Whether or not these disposals can be said to be proportionate is an entirely subjective question. However, it might be difficult to arrive at the conclusion that this approach is obviously draconian. Its weakness as an approach lies in the lack of value added by the initial interactions, currently a warning and the simple fixed penalty notice. Whatever criticism can be laid at the Portuguese model, at least there is a commendable and compassionate effort to engage and reduce the prospect of future use. Practically speaking, the current disposals of giving a warning and then a fine both serve a very similar, if not the same, purpose. Returning to the central question of how this issue affects the most vulnerable, we should identify in this contact between the Police and the often young person in possession, a real opportunity to offer help and expert advice which might otherwise never be offered to some. For the young person addicted to cannabis and without the means or relations to be directed and encouraged into treatment, this might be the only opportunity for assistance he has.

Building on recent efforts to divert those found in possession of cannabis away from the criminal justice system, we recommend a procedure that replaces a relatively ineffectual warning or punitive fine with attendance at a drugs awareness day. This would have a greater impact on those that are in need of help. In addition to expert advice, local treatment centres would invite ex-drug users to relate their experience and the group would provide an alternative perspective, sign-posting local treatment options where appropriate.

### **Recommendation one: The warning and fixed penalty stages must be removed from this process.**

Those found in possession of cannabis will face arrest and charge. However, any person in these circumstances not in breach of a court order will be given an opportunity to attend a drugs awareness day at their own cost. Completion of this course will result in the Police withdrawing the Prosecution or disposing of the case with a Community Resolution. Those unwilling to attend, or those that do not complete the course in a satisfactory way, will be cautioned or issued with their Court date for their first appearance.

Those found in possession subsequently will be prosecuted where a caution is not deemed appropriate.

Efforts should be made to emancipate youth offenders into this fairer system whilst ensuring risk assessment and child protection concerns are properly accommodated.

This should be implemented nationally.

## The need and the practical application

The CSJ has interviewed leaders in the treatment sector. This proposal has strong support and experts have highlighted the need for a solution such as this because it provides a constructive and informative early intervention which is proportionate to the offence.

This proposal would provide an incredibly valuable opportunity to educate cannabis users on the reality of their substance use and empower any individuals at risk of developing an addictive disorder to make informed choices and seek appropriate help. The current system is not treatment focused and does not provide a framework for such discussion, leaving many psychologically addicted cannabis users struggling; without awareness, understanding, or hope.

**Chula Goonewardene MBACP, CM Therapy – Psychotherapist & Clinical Consultant, Steps2Recovery**

Further, many in the sector have advised the CSJ that the treatment infrastructure currently in place could facilitate such a course to be delivered with negligible, if any, cost to the provider. Indeed, as the £90 penalty fee<sup>80</sup> will be replaced with anything up to a £90 course fee,<sup>81</sup> this approach is likely to provide an urgently needed source of revenue to the sector. Replacing the ‘detect and punish’ model with an initial ‘intervene and educate’ model allows the state to use the decisiveness that criminal law provides but directs its force in a more compassionate and helpful direction. This more straightforward approach will also encourage greater national consistency in enforcement.

<sup>80</sup> Penalty notice amount taken from ‘Drugs Penalties’ [www.gov.uk](http://www.gov.uk) [[www.gov.uk/penalties-drug-possession-dealing](http://www.gov.uk/penalties-drug-possession-dealing)]

<sup>81</sup> Options including means testing or staged payment options should be explored to ensure everything is done to make impossible economic exclusion from this disposal.

**Replacing the 'detect and punish' model with an initial 'intervene and educate' model allows the state to use the decisiveness that criminal law provides but directs its force in a more compassionate and helpful direction.**

In formulating this policy, the CSJ has consulted with the offices of Police and Crime Commissioners that have conducted similar projects. Avon and Somerset Constabulary have been piloting a scheme in which those found in possession are diverted away from criminal justice and into a 'drugs education' day. This scheme rightly acknowledges that a more holistic approach is needed to drive down demand and by doing so reduce not only drug consumption but also associated acquisitive crime. The offices of the PCC Stephen Mold, of Northamptonshire Constabulary, has also enjoyed success in implementing a diversionary policy by using local treatment providers and is supportive of the CSJ recommendation.

## chapter nine

# The effect of state controlled supply

The debate around legalisation is not restricted to rates of consumption or the impact on the individual found in possession, there is a legitimate qualitative question to be addressed. It is likely that a UK regulatory framework would see production of cannabis that would be objectively safer than that currently available on the illicit UK market.<sup>82</sup> It is assumed that the UK regulatory framework would be more akin to the more prudent approach proposed by the Liberal Democrat's expert panel rather than the more commercially incentivised US market.

There is a clear proposal in the proposed framework that CBD levels be set at a minimum, 'ideally at 4 per cent'.<sup>83</sup> That would arguably negate some of the more harmful effects of the THC. The proposals suggest providing consumer choice in potency and clearly marked THC levels on the product. The consumer would have access to a product with a guaranteed level of potency and could accommodate for their initial lack of tolerance by choosing a milder form of the drug.

There is now evidence that a significant number of people who might otherwise abstain would try cannabis if it were legalised. This proposal runs the very real risk of 'on-boarding' a greater number of first-time users into more frequent use. The WHO identifies '*positive initial experiences*' with cannabis as prevalent amongst now frequent users.<sup>84</sup> Exposure to illicit cannabis of unknown and likely high potency is far from attractive and is not advocated as a benefit here but there are also risks associated with engineering a more pleasurable initial experience. We know that frequent cannabis use can result in the development of a tolerance to its effects and, for those regular users, the same amount of THC will, over time, provide a lesser high. If THC is set at an accessible level to novel users and that user develops a tolerance, then it is not unreasonable to expect to see people, encouraged by positive initial experiences, moving through potency levels into health risk.

82 Potency of  $\Delta^9$ -tetrahydrocannabinol and other cannabinoids in cannabis in England in 2016: Implications for public health and pharmacology Published April 2018 in PubMed, US National Library of Medicine National Institute of Health [accessed via: [www.ncbi.nlm.nih.gov/pubmed/29441730](http://www.ncbi.nlm.nih.gov/pubmed/29441730)]

83 *A framework for a regulated market for cannabis in the UK: Recommendations from an expert panel* (pp 17) [accessed via: [www.tdpf.org.uk/sites/default/files/A\\_framework\\_for\\_a\\_regulated\\_market\\_for\\_cannabis\\_in\\_the\\_UK.pdf](http://www.tdpf.org.uk/sites/default/files/A_framework_for_a_regulated_market_for_cannabis_in_the_UK.pdf)]

84 World Health Organisation, 'The health and social effects of nonmedical cannabis use' 2017 (pp 5) [<http://apps.who.int/iris/bitstream/10665/251056/1/9789241510240-eng.pdf?ua=1>]

## Home grows

The proposed regulations allow people to grow four plants at home without a licence, this is far from unusual as a recommendation in a post legalisation regulatory landscape. Home grows, and even relatively sophisticated collective grows in the form of cannabis clubs, are a common feature in jurisdictions that have legalised possession. The CSJ visited sellers of cannabis seeds in the Netherlands. The seeds for products named ‘*Super Skunk*’ and ‘*Amnesia Haze*’ were readily on sale in local shops.

Currently, websites accessible in the UK, such as [gorilla-cannabis-seeds.co.uk](http://gorilla-cannabis-seeds.co.uk), offer seeds priced in sterling, with 3 seeds costing £16.21. One website promotes products such as ‘AK49’, on-line<sup>85</sup> in this way:

If you love original AK-47, get ready to go certifiably insane over Vision Seeds AK-49. This super-potent feminized seed reaches all the way to 20 per cent THC for full-bodied Sativa effects that’ll permanently unglue your ass from the couch. Never try extra-strong AK-49 during the working day unless you’re extremely tolerant. She’s a Killer.

If the recommended approach is adopted and cannabis is taxed in line with THC levels, there is every incentive to cultivate at home, or in a co-operative, such as a cannabis club. This practice would, to some extent, deplete the consumption of the taxable products and therefore the revenue to the treasury. Additionally, arguments relating to worthwhile quality control become very difficult to advance with such a significant surrender of control over production. That is not to say that no control will be attained, many will purchase from reputable state run retailers, however the extent to which this occurs is dependent on a great many variables, most notably; price, the efficacy of state production and distribution as well as potency.

The allowance of cannabis social clubs, co-operatives that allow communal pooling of funds and other resources, leaves open the possibility of yet more sophisticated grows that would need to be meaningfully policed if regulations are to have any force at all.

## Policing home grows or cannabis clubs

On a very practical level, the policing of these new regulations would bring with them similar if not greater challenges to the Police. Currently, an officer can stop and search a person if he believes he is carrying an illicit substance, which currently includes cannabis.<sup>86</sup> In an attempt to detect illicit substances, the officer need not satisfy himself of the exact source or purity level of the cannabis before the arrest, only that it is in fact cannabis. Officers are allowed to use their knowledge and experience to provisionally determine this point. In the event that the officer finds cannabis, he can make a fairly straightforward decision in which he will either arrest or use an alternative disposal. In the event of legalisation of possession and low-level home cultivation, the officer finding

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85 Gorilla Seed Band e-commerce website [accessed via: [www.gorilla-cannabis-seeds.co.uk/visionseeds/feminized/ak-49.html](http://www.gorilla-cannabis-seeds.co.uk/visionseeds/feminized/ak-49.html) 20.09.18] This web page was used to illustrate the general availability of these seed products. This site is not unusual or unique in terms of the product provided. Other sites offer similar products, Seedsman offers a product called Larry’s lemon feminized seeds and boasts that: *It has a THC level of 25 per cent with a mere 0.3 per cent CBD. Its overall effect is very powerful, both in terms of the physical and the cerebral. It bhas [sic] healing properties that are useful in a very wide range of conditions and is also a great recreational strain* [accessed via: [www.seedsman.com/en/larry-s-lemon-og-feminised-seeds](http://www.seedsman.com/en/larry-s-lemon-og-feminised-seeds). Also similar products found at [www.cannabis-seeds.co.uk/high-strength-cannabis-seeds.html](http://www.cannabis-seeds.co.uk/high-strength-cannabis-seeds.html)

86 s.23 Misuse of Drugs Act 1971 [accessed via: [www.legislation.gov.uk/ukpga/1971/38/section/23](http://www.legislation.gov.uk/ukpga/1971/38/section/23)] and potentially s.1 Police and Criminal Evidence Act 1984 [accessed via: [www.legislation.gov.uk/ukpga/1984/60/section/1](http://www.legislation.gov.uk/ukpga/1984/60/section/1)]

a person in a public place in possession will be unlikely to have reasonable grounds to believe the substance is anything other than legally purchased or home grown cannabis. Illicit cannabis, carried in small enough quantities, may be moved freely and the state's ability to disrupt criminal grows and suppliers will be heavily compromised.

## The illicit market

The illicit market and all its machinery is well established and even proponents of regulation do not envisage its disappearance. The introduction of a legalised market place would certainly threaten the revenue of any relevant criminal enterprise. A legal market, as set out in the proposed framework, or in any other realistic form, would not cater for the needs of under 18's. The likely regulations would also fail to cater for those seeking the higher THC potency levels beyond those deemed safe by the state. Under the proposed framework, only those that are under the required age to purchase cannabis and those requiring higher THC content remain unserved by the state, if not the illicit market.

## Under-age consumption

One of the primary motivations behind legalisation is the reduction in underage consumption. The legitimate argument is made that drug dealers do not ask for verification of age. However, it is anticipated that the practice of selling or social supply of drugs to children is unlikely to end or even be meaningfully effected by legalisation. Underage drinking and smoking is not uncommon in the UK. There is no dispute about the motivation but some doubt over the plausibility of the assertion that adding a further, albeit state run source of supply, will make a child's access to the product more difficult. The charity Drink Aware published data which indicated that in 2016, 44 per cent of 11–15-year-olds had drunk alcohol at least once and 1 in 10 of the same age group reported drinking in just the last week.<sup>87</sup> Regulations are no less likely to be breached than the Misuse of Drugs Act.

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87 Drink Aware Published data [accessed via: [www.drinkaware.co.uk/research/data/uk-underage-consumption/](http://www.drinkaware.co.uk/research/data/uk-underage-consumption/)]

## chapter ten

# The costs

It is almost inevitable that legalisation will eventually reduce the income stream of criminal enterprises in the UK. The argument for legalisation has some force in this respect. The extent to which the illicit cannabis market will be effected, the permanence of this depletion in revenue and the nature of the likely reaction are all far less certain.

The price point of the product is likely to have some influence on whether the consumer chooses the illicit or the legal market. The proposed framework recommends that legal cannabis is initially priced at or around the illicit market price.<sup>88</sup> It should also be acknowledged that the proposed framework also recommends a fluid approach, whereby a regulatory body would monitor the price and make relevant adjustments as necessary. Like any other commodity its value will move in reaction to normal market forces, supply being a critical factor. This paper makes no forecast but simply questions the stability of the price of a commodity that everyone in the UK would be able to grow in their own home, without a licence, and for the cost of cannabis seeds and already easily accessible equipment.

Current consumer trends in the UK indicate that many would remain with, or return to, the illicit market if state produced cannabis prices are undercut. According to a poll commissioned in 2017 by the Tobacco Manufacturers Association (TMA), just over 72 per cent of smokers reported that they had purchased tobacco from a non-UK duty paid source.<sup>89</sup> In the same TMA report, 48 per cent of smokers with the lowest incomes reported to have bought tobacco from illicit sources.<sup>90</sup> This illicit trade must be either tolerated or policed. In Canada, the Cannabis Act, has specifically indicated in its provisions<sup>91</sup> that the possession of illicit cannabis is *prohibited for those aged 18 years or older if they know it is illicit*, a clear indication that policing this trade in Canada will not end with regulation.

A report published by the Institute for Social and Economic Research, *Licensing and regulation of the cannabis market in England and Wales: Towards a cost benefit analysis*<sup>92</sup> provides policy makers with guidance on the possible effects of legalisation. This report indicated that the national debate was far too narrow and identified 17 areas including tax revenue, the possibility of drug tourism and the potential benefits to product regulation. The report also highlighted some concern about the lack of available data available

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88 *A framework for a regulated market for cannabis in the UK: Recommendations from an expert panel* (pp 18–19) [accessed via: [www.tdpf.org.uk/sites/default/files/A\\_framework\\_for\\_a\\_regulated\\_market\\_for\\_cannabis\\_in\\_the\\_UK.pdf](http://www.tdpf.org.uk/sites/default/files/A_framework_for_a_regulated_market_for_cannabis_in_the_UK.pdf)]

89 [http://the-tma.org.uk/wp-content/uploads/2017/09/UK-AIT-REPORT\\_PRINT-2017\\_v3.pdf](http://the-tma.org.uk/wp-content/uploads/2017/09/UK-AIT-REPORT_PRINT-2017_v3.pdf) (pp 1)

90 *Ibid*

91 Cannabis Act 2018, Part 1, Division 1, s.8 (1)(b) [accessed via: <http://laws-lois.justice.gc.ca/eng/acts/C-24.5/page-2.html#h-7>]

92 *Licensing and regulation of the cannabis market in England and Wales: Towards a cost benefit analysis* (p iii, para 6)



to policy makers and, of the 17 areas recognised, only 14 were deemed sufficiently measurable. However, this report did provide estimates relating to the likely costs and benefits of regulation.

Tax revenues are a transfer of resources within society rather than a net benefit to society, but they are an important aspect of policy outcomes. We estimate that tax revenue from licensed cannabis supply in England and Wales would fall somewhere between £04.–09.bn, which is far less than some of the assumptions that have appeared in the policy debate. We expect tax revenue to be lower in the case of strong demand response to reform, because of the large residual illicit market for high-potency cannabis that could exist in that case. Overall, the contribution of cannabis licencing in England and Wales to reduction of the government deficit is expected to lie in the range of £0.5–1.25bn.<sup>93</sup>

It must be acknowledged that these figures were calculated in a report published in 2013 and an upward adjustment to account for inflation has not been made here. The report authors are very clear that these are not exacts figures because there was a great deal of missing data and some uncertainty about the form regulation might take. Consequently, the report understandably provides estimates. Another variable, identified as highly influential, is the extent to which cannabis is consumed following legalisation. For the purposes of this paper, at least some reliance is put upon the figures provided in the 2013 report as a useful starting point taken from a considered paper.

There is some merit to the position that legalisation will reduce the burden on criminal justice and raise revenue through duties. However, society's objective should be to draw sensible and enforceable rules for the public good, for the protection of our community and its people, vulnerable or otherwise. To argue that there is money to be saved if we do things differently is valid. However, almost all would agree that it is not acceptable to tolerate an otherwise unacceptable compromise to public health merely to achieve the benefit of either a saving of over £300 million or a boost in revenue to the treasury of over a £1 billion.

Therefore, the only relevant question is whether the law as it stands is necessary, effective, fair and proportionate. If it is, it is merited.

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93 Licensing and regulation of the cannabis market in England and Wales: Towards a cost benefit analysis (pp 115–116)

# Conclusion

**Recommendation two: The Misuse of Drugs Act 1971 ought to remain in its current form.**

For the majority of those that use cannabis there will likely be no mental health consequences. Not all users become addicts, in fact the great majority do not. In deciding whether cannabis should be legalised, weighing in the balance its worth against its harm, we should not put its worth at zero. For many it is a pleasurable experience. The benefit of its enjoyment must be weighed against the harm that it causes.

This paper has purposefully avoided predicting the impact on road safety, the effect on productivity or safety at work or indeed the likely shape and associated consequences of drug tourism in the UK. Similarly, this report has avoided any attempt to examine the probability that a legal cannabis market will drive down prices of alcohol products seeking to compete. None of these can attract anything much more than speculation. It is however, worth acknowledging that there are unknowns involved in such a significant shift in the law.

Further, this paper does not purport to be an exhaustive exploration of all the relevant science in this field but, necessarily, some important aspects of the scientific research have been briefly referenced to bring context and balance to the discussion. It is also important to acknowledge that our understanding of the precise nature and degree of the risks of legalisation are likely to develop over the next decade as we see the socio-economic repercussions of recent changes in the law in US and Canada unfold. Perhaps more significantly, recent advances in epidemiological methodology will aid more accurate scientific research and our understanding of the physiological effects of cannabis is likely to develop. Much has yet to be learnt about the long-term effects of cannabis use, this alone ought to be a factor weighing heavily against any course of action that would increase consumption.

Whatever one's view on the evidence as it stands today and the risk of harm posed, most agree that cannabis is not a harmless substance. There are strong grounds to believe it is responsible for serious harm to many young people. This risk may be as serious and as long lasting as psychosis but it could also take the form of cannabis dependence and missed life opportunities. Beyond the dangers of causing depression in young people, there is strong evidence to support the position that cannabis use can materially affect cognitive learning and educational achievement. Arguably the younger users, those in most need of educational attainment or development of skills, are hindered by the potential effects disproportionately. This effect is only compounded for those in situations where problem use or associated health effects are not diagnosed in the absence of a support network. In

an effort to better understand this issue, the CSJ has interviewed cannabis addicts across the UK. To many of those people who have been caught in addiction or dependence the life effects can be severe and long lasting.

Cannabis took over my life, it got to me to a point where I put it before my children, myself, my bills, I wish I never touched it.

**M, from Bradford**

Public policy decisions are necessarily distinct from the task of reaching absolute scientific conclusions. There is a judgement call to be made on the evidence as it stands today. We need only look up from the now numerous studies and recognise what is in front of us. In the UK 25 per cent of treatment entrants report cannabis as their primary drug for which they need help. While there has been a slight upturn in recent years, there has been a steady decline in cannabis use for almost two decades. Despite the increasingly robust campaigns for legalisation in the UK, it may be surprising to many that just 7.2 per cent of the British population aged 16–59 that have smoked cannabis in the last year.

A YouGov poll, commissioned by the CSJ, indicates that legalisation could significantly disturb this overall downward trend. Over a quarter of people under 25 who had never tried cannabis before indicated they would definitely or probably try if it was legalised. This is the age group that is simultaneously the most vulnerable to addiction and harm as well as, arguably, the most likely to be in the process of education or skill based learning. Of those that had used cannabis, well over 1/3 of 18–24-year-olds said they would smoke it more regularly if it were legalised. This would heavily suggest that, for many in UK, the law does have a moderating effect on the initiation and frequency of consumption.

Any regulatory framework that allows home cultivation does not adequately regulate quality or product access and would be very difficult to police. Regulation, as with criminal law, is effective if enforceable. Current consumer trends in the UK heavily suggest that age limits that apply to substance access are not effective, as illustrated by childhood drinking statistics. Additionally, consumers, such as smokers, will readily revert to illicit products if there is a financial benefit.

There must be every effort to divert offenders from immediate criminal sanction as the effects of a record on a young life can be very damaging. If our true objective is to protect citizens from exposure to harm, more must be done to offer education that exposes the potential harms of cannabis. This should be offered as a direct replacement to the warning and fixed penalty notice. However, this more compassionate initial approach is not an alternative to a system that retains the tools to enforce the rule of law.

For many, the law is the only thing that stands between them and the use of a potentially addictive and harmful drug. The current law is an imperfect solution which, nevertheless, substantially mitigates the consumption of cannabis and consequently the serious harm that it can cause.

The continuance of the Misuse of Drugs Act benefits society.



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