



Swift Certain Tough White Paper

Response from the Faculty of Public Health and Association of Directors of Public Health

Section 1 - Background

1. Are you responding to this survey as an individual or as a representative of an organisation?
Please select one option.

- a. Individual
- b. **Organisation**
- c. Other

If you selected a. Individual, please go to question 2. If you selected b. Organisation, please go to question 5. If you selected c. Other, please go to question 12.

5. Where are you or your organisation located? Please select one option.

- a. England,
- b. Scotland,
- c. Wales,
- d. Northern Ireland,
- e. **Other, please specify**
- f. Don't know,
- g. Prefer not to say

Across the UK, with international membership

6. What type of organisation are you responding on behalf of?

- a. Academia
- b. Business/Industry
- c. Central Government/Civil Service
- d. Law Enforcement
- e. Legal
- f. Local Authority
- g. Third Sector/Voluntary
- h. Other Public Service/Public Body
- i. **Other, please specify**
- j. Prefer not to say



The Faculty of Public Health is the professional body for public health professionals with UK and international membership. The Association of Directors of Public Health is the membership organisation for Directors of Public Health in the UK. Please note we have indicated that our organisation has >250 employees, given the large membership of both organisations, however the number of directly employed staff is less than this.

7. Tell us more about your organisation. How many employees does your organisation have?

Please select one.

- a. <10
- b. 10-19
- c. 20-49
- d. 50-99
- e. 100-249
- f. **250+**
- k. Don't know

8. If you're happy to share, what is the name of your organisation? Please note by providing this information your response is no longer anonymous and will be held and processed in line with the consultation Privacy Notice.

The Faculty of Public Health and Association of Directors of Public Health

9. Does your organisation offer/work with any of the following? Please select all that apply.

- a. Drug awareness courses
- b. Unpaid work for offenders
- c. Drug testing
- d. Drug tagging
- e. **None of the above**
- f. Prefer not to say

If you answered a. Drug awareness courses for question 9, please go to question 10. If you answered b. Unpaid work for offenders, c. Drug testing or d. Drug tagging for question 9, please go to question 11. If you answered e. None of the above or f. Prefer not to say for question 10, please go to section 2.



Section 2 – Tier 1

This section will ask your views on Tier 1 of the proposed new three-tier framework for tackling adult drug possession offences. In Tier 1, as an alternative to prosecution for the offence of possession of a controlled drug, a person would be required to attend a drugs awareness course and encouraged to both understand the impact of their drug use on themselves, their loved ones and on society, and to change their behaviour. We propose that this course would be paid for by the individual. Should an individual not engage with this requirement, they would be liable for a financial penalty of a greater value than the cost of an awareness course as an alternative to prosecution of the offence.

13. Do you agree with our proposals that for a first offence of possession of a controlled drug an individual should be required to attend a drug awareness course designed to make them consider their behaviour? Please select one option.

- a. Strongly agree
- b. Agree
- c. Neither agree nor disagree
- d. Disagree
- e. **Strongly disagree**
- f. Don't know

Please provide any additional comments

The consultation questions are predicated on the proposed system going forward, as opposed to allowing for meaningful engagement with, and critique of the overall approach. Whilst a drug awareness course would be preferable to criminal sanctions, the courses proposed in the context of the tiered system are problematic for numerous reasons.

- It is not clear what form the drug awareness courses will take. There is limited evidence for the effectiveness of education programmes to prevent drug use. Evidence from school-based programmes does not indicate that courses highlighting the risks of drug use are effective (EMCDDA, 2022).
- If the courses were framed in terms of secondary prevention – that is, aiming to reduce the likelihood that people who use drugs go on to develop dependence or more harmful patterns of use – we would suggest they should be non-judgemental and include harm reduction advice. It is not clear that this will be the case given the ethos and punitive nature of the wider proposals.
- Aiming to deter drug use by bringing more people into a system of punitive sanctions will 'widen the net'. More people will receive punishments, and potentially criminal sanctions. This will be expensive and cause significant harm, without evidence of effectiveness.



- The system will come with significant expense, which in the NHS or public health policy would not be supported without clear evidence that the interventions were cost-effective and beneficial. There is no evidence demonstrating effects that would justify either the costs to public agencies that would oversee the system, or the individuals who were required to pay for the courses.
- The White Paper suggests that people with drug dependence will not be subject to the measures. It is not clear how dependence will be ascertained. In the Portuguese system, for example, people caught in the possession of drugs attend a 'Dissuasion Commission', when an assessment of the issues the person faces because of their drug use is undertaken by a panel of experts (Transform, 2021). Police are unlikely to have the training or capacity to be able to make this assessment.
- Existing enforcement approaches disproportionately impact people who are black (Shiner et al., 2019). This is likely related to both the number of patrols in particular areas, and officer bias (Vomfell and Stewart, 2021). Increased enforcement will likely exacerbate this issue. Furthermore, Point 36 of the Consultation suggests that "[t]he police would also retain the discretion to arrest and charge an individual for the original offence". The allowance for police discretion may lead to the inequitable exercise of more severe sanctions, disproportionately applied depending on characteristics including race and socioeconomic status.
- Whilst drug use reaches all social strata, the most harmful patterns of use are strongly associated with factors including socioeconomic deprivation (Marmot, 2010), adverse childhood experiences (PHW, 2015) and mental ill health (ONS, 2022). Punitive measures are likely to exacerbate these issues. It is necessary to consider the 'causes of the causes', rather than punishing people for downstream outcomes, exacerbating the context in which the outcomes materialised.
- Point 38 indicates that the Drug Enforcement Notice related to the mandatory course will be associated with a recordable offence, which may be disclosed as part of an enhanced Disclosure and Barring Service check. This would have additional deleterious impacts, particularly on those from socioeconomically deprived backgrounds whose job prospects would be negatively impacted by a criminal record.
- Evidence suggests that increasing stigma towards people who use drugs (likely exacerbated with increasingly punitive sanctions) decreases the likelihood that people with issues related to drugs will seek support, including from healthcare, social, and drug treatment services (Lancaster et al., 2017). When they do access healthcare and social services, they may be less likely to disclose their drug use, making it more difficult to provide appropriate care and support.



References

European Monitoring Centre for Drugs and Drug Addiction. Schools and drugs: health and social responses. https://www.emcdda.europa.eu/publications/mini-guides/schools-and-drugs-health-and-social-responses_en#section5 (accessed 22 Sept 2022).

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Shiner M, Carre Z, Delsol R, Eastwood N. The Colour of Injustice: 'Race', drugs and law enforcement in England and Wales. 2018. <https://www.release.org.uk/sites/default/files/pdf/publications/The%20Colour%20of%20Injustice.pdf> (accessed 15 Mar 2022).

Transform Drug Policy Foundation. Drug decriminalisation in Portugal: Setting the record straight. 2021. <https://transformdrugs.org/blog/drug-decriminalisation-in-portugal-setting-the-record-straight> (accessed 22 Sept 2022).

Vomfell L and Stewart N. Officer bias, over-patrolling, and ethnic disparities in stop and search. *Nature Human Behaviour* 2021;5:566-575.

14. Do you agree that the individual should pay for the cost of the drug awareness course? Please select one option.

- a. Strongly agree
- b. Agree
- c. Neither agree nor disagree
- d. Disagree
- e. **Strongly disagree**
- f. Don't know

Please provide any additional comments

Measures that increase financial burdens may exacerbate socioeconomic deprivation and inequalities. Socioeconomic deprivation is associated with more harmful patterns of drug use (Marmot, 2010), and people from socioeconomically deprived backgrounds may be more likely to suffer the impacts of drug enforcement. Measures that disproportionately impact people from socioeconomically deprived backgrounds are inconsistent with the Government's 'Levelling Up' agenda, and the stated goal of reducing inequalities in drug enforcement. There is no justification for charging individuals for interventions that have not been shown to be beneficial.

References

Marmot M. Fair Society, Healthy Lives - The Marmot Review. Institute of Health Equity. 2010. <http://www.instituteofhealthequity.org/resources-reports/fair-society-healthy-lives-the-marmot-review/fair-society-healthy-lives-full-report-pdf.pdf> (accessed 21 Sept 2022).



15. Do you agree that there should be a consequence in the form of a financial penalty for those who refuse to attend the drug awareness course? Please select one option.

- a. Strongly agree
- b. Agree
- c. Neither agree nor disagree
- d. Disagree
- e. **Strongly disagree**
- f. Don't know

Please provide any additional comments

As per our response to Question 14:

Measures that increase financial burdens may exacerbate socioeconomic deprivation and inequalities. Socioeconomic deprivation is associated with more harmful patterns of drug use (Marmot, 2010), and people from socioeconomically deprived backgrounds may be more likely to suffer the impacts of drug enforcement. Measures that disproportionately impact people from socioeconomically deprived backgrounds are inconsistent with the Government's 'Levelling Up' agenda, and the stated goal of reducing inequalities in drug enforcement. There is no justification for charging individuals for interventions that have not been shown to be beneficial.

References

Marmot M. Fair Society, Healthy Lives - The Marmot Review. Institute of Health Equity. 2010.
<http://www.instituteofhealthequity.org/resources-reports/fair-society-healthy-lives-the-marmot-review/fair-society-healthy-lives-full-report-pdf.pdf> (accessed 21 Sept 2022).

16. Do you think that current police-referred drug awareness courses have a positive, negative or no impact on illicit drug use and re-offending rates? Please select one option for each answer.

Illicit drug use

- a. Positive (reduces drug use)
- b. Negative (increases drug use)
- c. No impact,
- d. **Don't know**

Re-offending

- a. Positive (reduces re-offending)
- b. Negative (increases re-offending)
- c. No impact
- d. **Don't know**

We would be interested to examine any emerging evidence coming from current police-referred drug awareness courses and would be pleased to offer advice interpreting these studies, drawing on the expertise of leading academics within our memberships.



17. Do you know of available evidence on police-referred drug awareness courses (not educational settings) and their effectiveness in reducing drug use and re-offending? If yes, please share any evidence.

- a. Yes, please share any evidence
- b. **No**

18. Do you think that the drug awareness course should be a standardised national offer across all police forces? Please select one option.

- a. Yes
- b. No
- c. **Don't know**

19. To the best of your knowledge, how many providers operate drug awareness courses in your administration? By administration we mean England, Northern Ireland, Wales or Scotland.

- a. **Please specify the number of providers**

Unknown

If you did not answer question 6 OR answered a. Academia, b. Business/Industry, c. Central Government/Civil Service, e. Legal, f. Local Authority, g. Third Sector/Voluntary, h. Other Public Service/Public Body, i. Other or j. Prefer not to say for question 6, please go to section 3. If you answered d. Law enforcement for question 6, please continue to question 20.



Section 3 – Tier 2

This section will ask you about your thoughts on Tier 2 of the proposed new three-tier framework for tackling adult drug possession. In Tier 2, as an alternative to prosecution for the offence of possession of a controlled drug, a person would be offered a caution which would include as a condition attendance at a further, more extensive drug awareness course, which will reflect that a repeat offence has been committed. Alongside this an individual would, where proportionate, be expected to comply with a period of mandatory drug testing.

23. Do you agree that those who are caught in possession of drugs for a second time should be offered a caution with rehabilitative conditions, (where their alternative option is to face arrest and charge)? Please select one option.

- a. Strongly agree
- b. **Agree**
- c. Neither agree nor disagree
- d. Disagree
- e. Strongly disagree
- f. Don't know

Please provide any additional comments

We would strongly disagree that someone caught in possession of drugs for a second time should be offered a caution, however we would also strongly disagree that someone caught in possession of drugs for a second time should face arrest and charge, which is provided as the alternative.

A caution would create a criminal record. There is no clear evidence that criminal sanctions reduce drug use, and no clear relationship between the stringency of drug laws and drug use prevalence (Gabri et al., 2022; Stevens, 2019; Hughes et al., 2018; Scheim et al., 2020; Eastwood et al., 2016). Criminalisation may counterintuitively increase levels of drug-related harm, as it makes people less likely to seek support, disclose their drug use, or access harm reduction advice (RSPH and FPH, 2016). Furthermore, it directly causes harm. A criminal record has significant deleterious impacts, particularly on those from socioeconomically deprived backgrounds due to impacts on their employment and income, and it may exacerbate issues, such as adverse childhood experiences and mental ill health that may pre-dispose to more harmful patterns of use.

People who are under 30 account for 61% of those reporting the use of recreational drugs in the last year (Black, 2020), making it more likely people who are younger will be subject to the proposed sanctions. Cautions and other criminal sanctions will have a long-lasting impact on this group, negatively impacting life chances and opportunities.



References

- Black C. Review of Drugs – evidence relating to drug use, supply and effects, including current trends and future risks. 2020. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/882953/Review_of_Drugs_Evidence_Pack.pdf (accessed 14 Sept 2022).
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- Gabri A, et al. Changes in cannabis policy and prevalence of recreational cannabis use among adolescents and young adults in Europe—An interrupted time-series analysis. *PLOS ONE* 2022;17(1).
- Hughes B, et al. Inconsistencies in the assumptions linking punitive sanctions and use of cannabis and new psychoactive substances in Europe. *Addiction* 2018;113(12).
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- Stevens A. Is policy 'liberalization' associated with higher odds of adolescent cannabis use? A re-analysis of data from 38 countries. *International Journal of Drug Policy* 2019;66:94-99.

24. Do you agree that, where proportionate, the Tier 2 conditions should include:

i. A mandatory drug testing requirement?

- a. Strongly agree
- b. Agree
- c. Neither agree nor disagree
- d. Disagree
- e. **Strongly disagree**
- f. Don't know

Please provide any additional comments

This is problematic for numerous reasons:

- Mandatory drug testing may identify additional drug use. However, further punishment for drug use is likely to be deleterious, with no evidence this will reduce use or harms.
- The accuracy of drug tests, like any tests, is limited, and there is a risk of false positives (Saitman et al., 2014). This risk may increase when some non-illicit substances (including foodstuffs and medications) are consumed (Wolff et al., 1999; Richter et al., 2001). There is limited real world evidence to ascertain the accuracy of tests or the likelihood of false positives in practice, as opposed to studies undertaken in laboratory settings with drug metabolites. The risk of false positives could lead to inappropriate additional sanctions for people who have not used illicit drugs.
- Point 48 indicates that only a 24-hour period of notice would be given prior to tests. This is likely to significantly interfere with work and family life.



- This could lead to the use of alternative substances, which are less reliably picked up with existing testing procedures, for example, synthetic cannabinoid receptor agonists (spice), which are more harmful than the drugs the individuals might otherwise be taking.
- We are not aware of convincing evidence that mandatory drug testing will reduce levels of drug use or harm (See response to Question 29).

References

Richter L and Johnson P. Current methods of assessing substance use: a review of strengths, problems, and developments. *Journal of Drug Issues* 2001;31(4):809-832.

Saitman A, Park H-D, Fitzgerald RL. False-Positive Interferences of Common Urine Drug Screen immunoassays: A Review. *Journal of Analytical Toxicology* 2-14;38(7):387-396.

Wolff K, et al. A review of biological indicators of illicit drug use, practical considerations and clinical usefulness. *Addiction* 1999;94(9):1279-1298.

ii. Attendance at a further drug awareness course?

- a. Strongly agree**
- b. Agree**
- c. Neither agree nor disagree**
- d. Disagree**
- e. Strongly disagree**
- f. Don't know**

Please provide any additional comments

As per our response to Question 13, a drug awareness course would be preferable to other sanctions. However, the form of the proposed courses is not clear. We are not aware of evidence supporting courses that focus on the legal implications of drug use. If a first course did not lead to a change in behaviour, it is possible a second course may be less likely to be effective.

25. Do you agree that drug awareness courses should be different for first time offenders and repeat offenders? Please select one option

- a. Strongly agree**
- b. Agree**
- c. Neither agree nor disagree**
- d. Disagree**
- e. Strongly disagree**
- f. Don't know**

Please provide any additional comments



As per our response to Question 13, a drug awareness course would be preferable to other sanctions. However, the form of the proposed courses is not clear. We are not aware of evidence supporting courses that focus on the legal implications of drug use. If a first course did not lead to a change in behaviour, it is possible a second course may be less likely to be effective.

If you answered b. Organisation to question 1, please continue to question 26. If you answered a. Individual or c. Other to question 1, please go to question 28.

26. Will your organisation be impacted by the proposals on drug awareness courses in Tiers 1 and 2?

- a. **Yes, please explain why and how**
- b. No
- c. Don't know

The memberships of the Faculty of Public Health and Association of Directors of Public Health work closely with local authorities in efforts to reduce levels of drug-related harm. The proposed courses and the wider tiered system are likely to have significant financial and capacity implications for local public health teams. As per our previous responses, we are not aware of evidence that indicates the system as proposed would pose benefits to justify these impacts. Additionally, the costs of the courses, and the wider negative impacts of the tiered system will negatively impact people who use drugs, exacerbating socioeconomic inequalities, and potentially levels of drug-related harm. This will have ongoing deleterious impacts on the efforts of public health teams to reduce levels of harm.

27. Do you think your organisation will need any support to be able to increase its offer of drug awareness courses under Tiers 1 and 2?

- a. Yes, please explain
- b. No, my organisation will not need any support
- c. **No, my organisation does not offer drug awareness courses**
- d. Don't know

28. Do you think that mandatory drug testing could have a positive, negative or no impact on reducing illicit drug use and re-offending?

Drug Use

- a. Positive (a reduction in drug use),
- b. Negative (an increase in drug use)
- c. No impact
- d. **Don't Know**



There is insufficient evidence suggesting that mandatory drug testing reduces drug use to warrant its introduction, costs, and impacts from subsequent sanctions that will negatively impact people who use drugs. The Consultation references literature that explicitly calls into question the benefits of mandatory drug testing. An EMCDDA review, for example, found that mandatory drug testing in schools had little or no effect on levels of use (EMCDDA, 2017).

It is, in any case, extremely important to disentangle impacts on drug use and impacts on drug-related harm. From a health perspective, all drug use is not equivalent. We believe it is much more important to reduce more harmful patterns of use, and levels of drug-related harm, than to reduce drug use as an end in and of itself. Any enforcement-based, punitive approaches to reduce levels of drug use can have unintended negative consequences on levels of harm, as well as potential impacts on levels of use. I.e., even if levels of drug use decrease, the proportion of harmful drug use may increase, for example, as people use alternative substances to avoid detection, or are deterred from seeking support.

References

EMCDDA. Drug testing in schools. <https://www.emcdda.europa.eu/system/files/publications/6575/tdau17003enn.pdf> (accessed 6 October 2022).

Re-offending

- a. Positive (a reduction in re-offending),**
- b. Negative (an increase in drug use)**
- c. No impact**
- d. Don't Know**

Currently, this question is unclear (option b indicates a negative impact in drug use, rather than re-offending). On balance, we believe it is likely that mandatory drug testing will lead to an increase in identified re-offending. A larger proportion of subsequent drug use may be detected through testing (which, in the language of the White Paper, would constitute re-offending). There would need to be a significant decrease in levels of drug use caused by the mandatory drug testing to outweigh this impact of increased detection. It is not clear that this would be achievable.

29. Do you know of available evidence on mandatory drug testing and its ability to reduce illicit drug use or re-offending? If yes, please share any evidence.

- a. No**
- b. Yes, please share any evidence**

The references provided by the Consultation do not warrant the introduction of mandatory drug testing.



- Several of these studies refer to other outcomes and specific populations - alcohol testing drivers and its impacts on fatal collisions (Brady et al., 2009; Snowden et al., 2007) and alcohol and drug testing workers and its impacts on occupational risk (Marques et al., 2014).
- Barnett et al. (2018) refer to drug testing as a stand-alone strategy as ineffective.
- Bennett (2005) highlights social circumstances are more important than judicial interventions to reduce offending.
- The EMCDDA (2017) highlight mandatory drug testing in schools has had little or no effect on levels of drug use.
- Gerada and Gilvarry (2005) conclude “the ethical, practical and economic risks of testing do not outweigh the potential benefits” of mandatory testing in schools.
- Hawken and Kleiman (2009) and Hawken et al. (2016) evaluate Hawaii’s HOPE scheme, which combines regular drug testing and punishments for positive drug tests for people on probation. Whilst these studies indicated reductions in re-offending and positive drug tests, they have limited relevance for the White Papers proposals. The HOPE scheme includes people on probation charged with a variety of crimes, rather than specifically seeking to involve people who use drugs infrequently. The scheme includes mandatory referrals to drug treatment, with punishments for non-attendance. Mandatory treatment is not relevant for the White Paper’s proposals, which specifically focus on people who are not dependent on drugs. Furthermore, mandatory medical treatment is inconsistent with widely accepted human rights and medical ethics norms (Stevens, 2012).
- Koehler et al. (2013) undertook a systematic review of the impacts of drug treatment programmes more broadly on re-offending, rather than specifically the impacts of drug testing.
- McSweeney et al. (2016) explore the association between compliance with compulsory testing and subsequent engagement in treatment, which is not relevant for ‘recreational’ drug use. In any case, they found no association, and highlighted this called into question arguments to expand testing requirements.
- The Social Exclusion unit (2002) report does not include an evaluation of mandatory drug testing.
- Sznitman et al. (2014) suggest there was no association between perceived drug testing and drug use in schools.
- The UK Drug Policy Commission (2008) highlight there is mixed evidence on the added value of drug testing as part of a community order.

As far as we are aware, there is no evidence that demonstrates beneficial impacts of mandatory drug testing that would outweigh its costs and negative impacts on people who use drugs.

References

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Brady JE, Baker SP, DiMaggio C, McCarthy ML, Rebok GW, Li G. Effectiveness of mandatory alcohol testing programs in reducing alcohol involvement in fatal motor carrier crashes. *American Journal of Epidemiology* 2009;170(6):775-82.

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McSweeney T, Hughes C, Ritter A.. The impact of compliance with a compulsory model of drug diversion on treatment engagement and reoffending. *Drugs: Education, Prevention and Policy* 2018;25(1):56-66.

Snowden CB, Miller TR, Waehrer GM, Spicer RS. Random alcohol testing reduced alcohol-involved fatal crashes of drivers of large trucks. *Journal of studies on alcohol and drugs* 2007;68(5):634-640.

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Stevens A. The Ethics and Effectiveness of Coerced Treatment of People Who Use Drugs. *Human Rights and Drugs* 2012;2(1).

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UK Drug Policy Commission. Reducing Drug Use, Reducing Reoffending: Are programmes for problem drug-using offenders in the UK supported by the evidence. 2008.



Section 4 – Tier 3

This section will ask you about your thoughts on Tier 3 of the proposed new three-tier framework for tackling adult drug possession. In Tier 3, we would expect a third offence of possession of a controlled drug to be charged where appropriate. We also propose the introduction of a new Drug Court Order which could be applied for upon conviction of the offence. This new court order would compel an offender to again attend a drug awareness course. In addition, we envisage one of the following four interventions would be attached to the Drug Court Order: (i) exclusion order; (ii) drug tagging; (iii) passport confiscation; or (iv) driving licence disqualification.

30. Do you agree that those caught in possession of drugs for a third time should attend a drug awareness course? Please select one option.

- a. Strongly agree
- b. Agree
- c. Neither agree nor disagree
- d. Disagree
- e. **Strongly disagree**
- f. Don't know

Please provide any additional comments

See our response to Question 24, sub-question ii; and Question 13. Whilst drug awareness courses would be preferable to other sanctions the form of the proposed courses is not clear. We are not aware of evidence supporting courses that focus on the legal implications of drug use. If a first course did not lead to a change in behaviour, it is possible subsequent courses may be less likely to be effective.

31. Do you agree with the proposal to include a drug awareness course in each tier? Please select one option.

- a. Strongly agree
- b. Agree
- c. Neither agree nor disagree
- d. Disagree
- e. **Strongly disagree**
- f. Don't know

Please provide any additional comments

See our response to Question 24, sub-question ii; and Question 13. Whilst drug awareness courses would be preferable to other sanctions the form of the proposed courses is not clear. We are not aware of evidence supporting courses that focus on the legal implications of drug use. If a first



course did not lead to a change in behaviour, it is possible subsequent courses may be less likely to be effective.

32. Do you agree that those caught in possession of drugs for a third time should receive a Drug Court Order, which includes one of the following interventions:

an exclusion order, which prohibits a person from entering a defined area for a set period of time,

- a. Strongly agree
- b. Agree
- c. Neither agree nor disagree
- d. Disagree
- e. **Strongly disagree**
- f. Don't know

or a drug tag, a monitor which the individual would be required to wear, and which checks whether the individual has taken drugs

- a. Strongly agree
- b. Agree
- c. Neither agree nor disagree
- d. Disagree
- e. **Strongly disagree**
- f. Don't know

or passport confiscation

- a. Strongly agree
- b. Agree
- c. Neither agree nor disagree
- d. Disagree
- e. **Strongly disagree**
- f. Don't know

or driving license disqualification

- a. Strongly agree
- b. Agree
- c. Neither agree nor disagree
- d. Disagree
- e. **Strongly disagree**
- f. Don't know

Please provide any additional comments



Exclusion order

Knowing where drug use is more likely to happen allows the provision of harm reduction interventions and medical support to reduce levels of drug-related harm. Banning people from places where they take drugs with other people may increase the risk that drugs are used in other unregulated places – potentially at home, alone – which attracts a much greater risk of fatal overdose with nobody on hand to intervene.

Drug tag

Drug tag technologies are still under development. Whilst the White Paper recognises the need to build the evidence base, it is inappropriate to build this evidence base when people are subject to punishment based on the performance of unvalidated technology. Studies of this type will not be approved by a research ethics committee. Whilst it is clear that much more evidence would be required in order to apply these technologies in national drug policy, it is not clear that this would be beneficial, even if they were evidenced to reliably detect drug use. As per our previous responses, this would likely increase the punishments people receive, with significant negative impacts and no evidence of simultaneous benefit.

Passport confiscation

Confiscating an individual's passport has significant rights implications. Under Theresa May's Government, it was highlighted that the decision to confiscate passports 'will be used only sparingly' (HM Government, 2013). Examples for when this might be indicated included when there was suspicion an individual was going to engage in terrorist activities, or under the Mental Capacity Act to protect their or others' wellbeing. Confiscating an individual's passport because of a drug possession offence, compared to these reasons, would be highly disproportionate.

Driving license disqualification

Similarly, removing someone's driving license for a drug possession offence is not a proportionate response. As previously highlighted, more harmful patterns of drug use are associated with socioeconomic deprivation. A driving license disqualification is likely to have significant impacts on an individual's employment prospects, potentially making it impossible for them to continue their current job. There are existing mechanisms to deal with drug driving offences and risks from intoxicated drivers.

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33. Should there be circumstances where an offender receives a Drug Court Order without having first received a Tier 1 and Tier 2 intervention? (in essence, skipping to Tier 3 straight away) If yes, please outline what you think those circumstances should be.

- a. Yes, please provide further details
- b. **No**
- c. **Don't Know**

As per our previous responses, we disagree with the ethos and structure of the Tier system. However, if it were instituted, we believe it would be inappropriate to allow circumvention of the linear system. If this were undertaken with discretion, this could allow for inequitable application, based on the biases of decision makers, potentially exacerbating the inequitable application of sanctions.

34. Do you think the minimum and maximum periods proposed for each Drug Court Order intervention are appropriate? Please select one for each answer.

i. Exclusion order for a maximum period of 12 months

- a. Yes
- b. No, too short
- c. **No, too long**
- d. Don't know

ii. Drug tagging for a maximum period of 12 months

- a. Yes
- b. No, too short
- c. **No, too long**
- d. Don't know

iii. Passport confiscation for a minimum period of 3 months

- a. Yes
- b. No, too short
- c. **No, too long**
- d. Don't know

iv. Passport confiscation for a maximum period of 24 months

- a. Yes
- b. No, too short
- c. **No, too long**
- d. Don't know

v. Driving licence disqualification for a minimum period of 3 months

- a. Yes



- b. No, too short
- c. **No, too long**
- d. Don't know

vi. Driving licence disqualification for a maximum period of 24 months

- a. Yes
- b. No, too short
- c. **No, too long**
- d. Don't know

35. Do you think there are other conditions that should be available to the court to include as part of a Drug Court Order? If yes, please provide details

- a. Yes, please provide details
- b. **No**
- c. Don't Know

36. Do you agree that the consequences for breaching a Drug Court Order are appropriate? The consequences we propose are considering the breach as a separate criminal offence which may attract a custodial sentence.

- a. Strongly agree
- b. Agree
- c. Neither agree nor disagree
- d. Disagree
- e. **Strongly disagree**
- f. Don't know

Please provide any additional comments

Incarceration for drug offences is counterproductive. Drug use remains a significant issue in prisons (HM Prison & Probation Service, 2019) with imprisonment seemingly unlikely to deter ongoing use. Imprisonment comes with huge expense and causes enormous harm to those who are imprisoned, which is not justifiable, particularly given the lack of evidence that it reduces levels of drug use and harm. There is no evidence we are aware of that criminal sanctions deter wider drug use with no clear relationship between the stringency of drug laws and drug use prevalence (Gabri et al., 2022; Stevens, 2019; Hughes et al., 2018; Scheim et al., 2020; Eastwood et al., 2016). Additionally, it may increase levels of drug-related harm by encouraging riskier practices to avoid drug use detection and deterring people from seeking support (RSPH and FPH, 2016).



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Section 5 – Wider impacts

This section asks for your views on the wider impacts of introducing a tiered regime to tackle adult drug possession offences.

37. Do you think the proposed changes will impact on you/your organisation?

- a. **Yes**
- b. **No**
- c. **Don't know**

38. How significant do you think the impact of the proposed changes will be on you/your organisation? Please provide details and if possible, indicate if these refer to a particular Tier or sanction.

- a. **Significant**
- b. **Modest**
- c. **No Impact**
- d. **Don't know**

Please provide details

As per our response to Question 26, as public health professionals we oversee local efforts to reduce levels of drug-related harm and its consequences. We believe the proposed changes may exacerbate levels of drug-related harm, as well as causing significant harm in themselves, in terms of the punishments that are applied to people who use drugs. This will jeopardise public health efforts to reduce drug-related harm and manage health and social inequalities. Furthermore, there will be significant capacity and financial implications for local authority public health teams, which are not justifiable given the lack of evidence that the proposals will be beneficial.

39. What impacts, if any, do you think this new regime will have on:

- a. **Police**
- b. **Courts**
- c. **Employers**
- d. **Third sector**
- e. **Other**
- f. **Don't know**
- g. **No impacts**

Please describe these impacts

Police



In principle, the power of the police comes from the common consent of the public. The police have faced increasing challenges in regard to public perception and community relations in recent years. Requiring the police to apply more onerous punishments to people who use drugs, likely to exacerbate existing inequalities in enforcement, is unlikely to improve this relationship, with potentially far-reaching negative impacts on the ability of the police to effectively do their job. The police, like most public services, are overstretched. By 'widening the net' and applying more unevicenced sanctions to people who use drugs, the proposed measures will have significant impacts on the police workload, limiting their capacity to attend to other issues.

Courts

The courts, similarly, are overstretched. The Law Society highlighted that in April 2022, there were 58,271 outstanding cases in the Crown Court, compared to 57,870 in March (The Law Society, 2022). The proposed measures are likely to significantly increase the work of the courts, limiting their ability to deal with more serious cases, and causing further delays. Given the risk of incarceration, which the White Paper proposes, there may be greater requirements for legal aid (which is more commonly available if imprisonment is a risk). This comes with further resource and capacity implications.

Employers

The proposals will lead to more criminal records, which, for many employers, will prevent recruitment of the individuals, or may lead to the termination of contracts. As well as the obvious deleterious impacts on employees, exacerbating socioeconomic inequalities, this will have negative impacts on employers and businesses who will have a smaller pool of potential recruits. If an individual continues their employment, short notice requirements for mandatory random drug testing may negatively impact the running of businesses; and confiscations of driving licenses may limit the ability of workers to attend workplaces and do their jobs.

Third sector

Any measures which negatively impact individuals socioeconomically will likely increase reliance on charitable organisations, for example, food banks. This is in the context of changing patterns of socioeconomic deprivation when these services are already over-stretched.

Other

Healthcare services – Enforcement-based and punitive approaches to drug use can exacerbate the stigma faced by people who use drugs. This can deter them from seeking healthcare when it is required if issues are related to their drug use, leading to late presentations when conditions are more severe, resulting in more expensive and difficult care, and a greater risk of serious illness (Lancaster et al., 2017). It could also deter people from giving honest information about their drug use when they require healthcare, limiting the ability of healthcare professionals to effectively provide care.

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The Law Society. Crown Court backlog increases. 2022. <https://www.lawsociety.org.uk/contact-or-visit-us/press-office/press-releases/crown-court-backlog-increases> (accessed 14 Sept 2022).

40. Do you believe that our proposals to create a tiered drug possession regime will have an impact (both positive or negative) on individuals with a protected characteristic under the Equality Act 2010? If yes, please describe the potential impact. Protected characteristics under the Act are disability, gender reassignment, age, pregnancy and maternity, race, marriage and civil partnership, sex, sexual orientation and religion or belief.

- a. **Yes, please describe the potential impact**
- b. No
- c. Don't know

Current enforcement disproportionately impacts people from certain ethnic communities. People who are black are nine times more likely to be stopped and searched for drugs than people who are white and are more likely to be arrested, prosecuted, and sentenced to immediate custody (Shiner et al., 2018). It is likely that inequalities in involvement with the criminal justice system will be exacerbated, given this requires initial contact with and suspicion from the police. This is likely related both to the levels of policing in certain areas, and officer biases (Vomfell et al., 2021). Where the proposals allow discretion in terms of the severity of the punishment, or immediate escalation to other tiers, these biases may influence decision making.

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If you answered a. Yes to question 40, please continue to question 41. If you answered b. No or c. Don't know to question 40, please go to section 6.

41. Where you have identified potential negative impacts, could you suggest ways to mitigate them?

- a. **Yes, please suggest potential mitigations**
- b. No
- c. Don't know
- d. **Not applicable (no negative impacts identified)**



We do not believe the tiered drug possession regime will provide benefits and may exacerbate inequalities in enforcement-related and drug-related harm. As such, we do not believe the proposals should be taken forward. Whereas the proposed schemes currently focus on punishment, we believe diversion should focus on providing support. More importantly, it is imperative to address the factors that may predispose to more harmful patterns of drug use, such as socioeconomic deprivation, adverse childhood experiences, and mental ill health. Beyond diversion, in line with calls from the 2018 UN Common Position on Drugs (endorsed by the Executive Heads of UN organisations including the World Health Organisation and the UN Office on Drugs and Crime), the 2019 Health and Social Care Committee on drugs policy, the Royal Society for Public Health, and the Royal College of Physicians, we strongly advocate for the possession of drugs to be decriminalised (House of Commons Health and Social Care Committee on Drugs Policy, 2019; RCP, 2018; RSPH and FPH, 2016; UNCEBC, 2019).

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Section 6 – Operational best practice and new reforms for Drug Testing on Arrest

This section will ask for your thoughts on proposals to change Drug Testing on Arrest powers to allow the police to drug test a wider variety of individuals than today. This includes expanding the range of illicit drugs which can be tested for and expanding the range of offences that the police can drug test for under Drug Testing on Arrest (“trigger offences”).

42. Do you agree with our proposal to expand the range of illicit drugs which can be tested for under Drug Testing on Arrest legislation? Please select one option.

- a. Strongly agree
- b. Agree
- c. Neither agree nor disagree
- d. Disagree
- e. **Strongly disagree**
- f. Don't know

Please provide any additional comments

It is likely that additional testing will identify additional drug use. This will ‘widen the net’. More people will be embroiled in the tiered consequences regime, without a convincing justification for its impacts on the wellbeing of individuals, requisite costs, or burdens on the police and courts. The Consultation references studies that explicitly highlight pilot test on arrest schemes did not have sufficient beneficial impacts to justify their expansion (McSweeney, 2015; Skellington et al, 2009)

The Consultation suggests that expanding drug testing on arrest will increase knowledge of how far drugs drive other offences. However, the fact that a drug has been consumed at some point prior to arrest is not evidence that the offence was caused, or driven, by the drug in question. The policy, therefore, risks encouraging misperceptions as to the relationship between substance use and crime, which could have significant implications for subsequent prevention activities.

Additionally, as per our response to Question 24:

- Mandatory drug testing may identify additional drug use. However, further punishment for drug use is likely to be deleterious, with no evidence this will reduce use or harms.
- The accuracy of drug tests, like any tests, is limited, and there is a risk of false positives (Saitman et al., 2014). This risk may increase when some non-illicit substances (including foodstuffs and medications) are consumed (Wolff et al., 1999; Richter et al., 2001). There is limited real world evidence to ascertain the accuracy of tests or the likelihood of false positives in practice, as opposed to studies undertaken in laboratory settings with drug metabolites. The risk of false positives could lead to inappropriate additional sanctions for people who have not used illicit drugs.

References

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**43. Which drugs do you think are important to be able to test for under Drug Testing on Arrest?
You can select more than one option.**

- a. Cannabis
- b. Cocaine
- c. Heroin
- d. Ecstasy
- e. GHB
- f. Prescription drugs, please specify
- g. **Other, please specify**
- h. Don't know

Please provide any additional comments

In line with our previous response, we do not support the expansion of drug testing on arrest.

44. Do you agree with our proposal to expand the range of offences which police can drug test for under Drug Testing on Arrest legislation ("trigger offences")?

- a. Strongly agree
- b. Agree
- c. Neither agree nor disagree
- d. **Strongly disagree**
- e. Don't know

In line with our previous response, we do not support the expansion of drug testing on arrest.

45. The current trigger offences are: theft and attempted theft, robbery and attempted robbery, burglary, attempted and aggravated burglary, handling stolen goods and attempting to do so, taking a conveyance without owner's consent/authority and aggravated taking conveyance without the owner's consent authority, going equipped for burglary or theft, fraud and attempted fraud, possession of articles for use in frauds, begging and persistent begging, possession of a specified class A controlled drug, production or supply or possession with intent to supply of a



specified class A controlled drug. Are there any other offences you think should be included as a trigger offence?

- a. Yes, please specify
- b. **No**
- c. Don't know

46. Do you believe that our proposals to expand the Drug Testing on Arrest programme will have an impact (both positive or negative) on individuals with a protected characteristic under the Equality Act 2010? If yes, please describe the potential impact. Protected characteristics under the Act are disability, gender reassignment, age, pregnancy and maternity, race, marriage and civil partnership, sex, sexual orientation and religion or belief.

- a. **Yes, please describe the potential impact**
- b. No
- c. Don't know

People from certain ethnic backgrounds are over-represented across the criminal justice system (Ministry of Justice, 2021). By expanding drug testing on arrest – given there are inequalities in those who are arrested – it will not be possible for this to not disproportionately impact these communities.

References

Ministry of Justice. Statistics on Ethnicity and the Criminal Justice System 2020.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1037903/Statistics_on_Ethnicity_and_the_Criminal_Justice_System_2020.pdf (accessed 14 Sept 2022).

If you answered a. Yes to question 46, please continue to question 47. If you answered c. No or c. Don't know to question 46, please go to question 48.

47. Where you have identified potential negative impacts, can you propose ways to mitigate these?

- a. **Yes, please suggest potential mitigations**
- b. No
- c. Don't know
- d. **Not applicable (no negative impacts identified)**

We do not believe expanding drug testing on arrest will provide benefits and may exacerbate inequalities. As such, we do not believe this proposal should be taken forwards.



48. Do you have any other comments on our proposed changes to Drug Testing on Arrest?

- a. Yes, please provide any additional comments
- b. **No**
- c. Don't know

Final question

49. Do you have any further comments on the white paper you would like to share with us?

- a. **Yes, please provide any additional comments**
- b. No
- c. Don't know

We would like to reiterate that we do not believe the proposed tiered system should be taken forward. Efforts to reduce drug-related harm should not focus on enforcement and criminalisation. Drug-related deaths in the UK are at the highest levels on record, increasing over the last decade in the context of ongoing enforcement (NRS, 2022; NISRA, 2022; ONS, 2022) and there is no reason to believe increasing enforcement will be beneficial.

There is no clear evidence that enforcement and sanctions reduce drug use prevalence, and no clear relationship between the stringency of drug laws and drug use prevalence (Gabri et al., 2022; Stevens, 2019; Hughes et al., 2018; Scheim et al., 2020; Eastwood et al., 2016). Regardless, drug use and drug-related harm are not equivalent. The risks of drug use depend on the type of substance, and the context in which drugs are being used. Enforcement based approaches, even if they decreased drug use, may increase drug-related harm, by encouraging riskier behaviours and preventing people from seeking support when it is required (RSPH and FPH, 2016). For most people, the risks of harm from infrequent drug use are outweighed by the harms of criminal sanctions.

A dramatic reorientation in the UK's approach to drugs is urgently required (Rae et al., 2022). The United Nations Common Position on drugs calls for public health approaches to drugs, putting 'people, health and human rights at the centre', including the decriminalisation of drugs for personal possession (UNCEBC, 2018). The proposals in the White Paper, and what they will achieve, fall far from this aim, as the UK becomes more out of step with the international community.

Diversion schemes, which focus on diverting people from the criminal justice system and providing support when it is required are a welcome development in the UK's response to drugs. In our view, the proposals in the White Paper should not be considered in the same terms as other diversion schemes instituted in the UK. Rather than diverting people from the criminal justice system, the proposals are likely to increase criminal sanctions for the possession of drugs, whilst promoting additional punishments that disproportionately impact the very populations we should be seeking to support.



Beyond diversion, in line with the UN Common Position, and calls from the 2019 Health and Social Care Committee on drugs policy, the Royal Society for Public Health, and the Royal College of Physicians, we strongly advocate for the possession of drugs to be decriminalised (House of Commons Health and Social Care Committee on drugs policy, 2019; RCP, 2018; RSPH and FPH, 2016; UNCEBC, 2019). People with issues related to substance use should be treated with the same level of compassion with which we would treat those with other health and social disadvantages. The ongoing criminalisation of this group is inconsistent with our management of every other public health issue.

How to respond to drug use is both an empirical and an ethical question. The Nuffield Council on Bioethics developed guidelines to govern the application of public health interventions which impact the liberties of individuals (Nuffield Council on Bioethics, 2007). Any public health intervention that imposes restrictions (most severely, the threat of incarceration) has to be considered both in terms of its likely public health benefits and its negative consequences (including infringements on individual liberty). The Nuffield Council's 'intervention ladder' characterises the potential approaches to reduce behaviours that attract risks, ranging from doing nothing to eliminating an individual's choice (by depriving them of their liberty to do otherwise). An intervention at a higher rung of the ladder (with more onerous impacts) requires greater justification to ensure it is proportionate. There are two particularly important criteria to consider. First, public health objectives need to be sufficiently important to warrant infringements on individual liberty. And second, the means chosen must be the least intrusive and costly whilst still achieving their ends. Whilst reducing drug-related harm is of the utmost important, arguably meeting the first criterion, the means in the case of contemporary drug policy (enforcement, arrest, and potential incarceration), are by no means the least intrusive and costly. Whilst punitive drug policies are not evidenced to reduce levels of drug use, they likely exacerbate drug-related harm and directly cause significant harm to people who use drugs. The measures proposed in the White Paper are not ethically or empirically justifiable.

The focus on treating drug use as a matter of criminality is framed in terms of reducing the profits of drug trafficking organisations. Focusing on 'recreational drug use' is not an effective way of minimising these profits. As Dame Carol Black's review highlighted, only 9% of expenditure on drugs is from people who use drugs infrequently (Black, 2020). The capacity for criminal organisations to profit from drugs is a consequence of the fact that drug markets are illegal under current law, rather than being an intrinsic property of the drugs in question. However, in the context of existing legislation, it would be more effective and cost-effective to prioritise mitigating the factors that are associated with more harmful patterns of drug use, including socioeconomic deprivation (Marmot, 2010), adverse childhood experiences (PHW, 2015) and mental ill health (OHID, 2022). Addressing these issues would have far reaching effects, not just on levels of drug-related harm but on many other risk behaviours and negative health and social outcomes. Structured drug treatment for people with drug dependence, again, would more effectively and cost-effectively impact demand for drugs. Unlike enforcement-based approaches to reduce drug use, opioid agonist therapy has a strong evidence base in its favour (Santo et al, 2021). Focusing on punishing people who use drugs infrequently, who account for a small proportion of the drug market, even if it were ethically and empirically justified, is not a cost-effective way of reducing the profits of drug traffickers.



Thank you for the opportunity to respond to this consultation. We would value the opportunity to discuss and contribute to subsequent future plans intended to reduce drug-related harm.

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