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Cannabis: A look at sweeping global change

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by a working party led by Simon Randall and Ashley Blood-Halvorsen

FOREWORD

The question of whether or not cannabis should be legalised has been much discussed, not least during the recent leadership election. The debate has raged around the recent legalisation of cannabis in Canada, distressing stories about young people suffering epileptic seizures where cannabis oil seems the most appropriate treatment and the growing interest among investors in promoting farming of cannabis-based products.

This pamphlet is the fruit of considerable research by a working party of the Society. They have examined in some detail the most recent policies of a range of countries in their attitude to cannabis, including Canada, a number of states within the US, the Netherlands and the UK. The academic material which has been studied has ranged over the fields of medicine, pharmacology and criminology as well as law.

The recommendations in the pamphlet will stimulate discussion as to the way forward. In particular, the working party recommends that the UK learns lessons from other comparable jurisdictions. The key recommendations are policies of:

- Consideration of the de-criminalisation of possession of small amounts of cannabis for personal use to protect the future prospects of youthful users, particularly in regard to employment and training
- Incorporating non-criminal sanctions for those caught with cannabis for treatment and/or suspension of driving licence to prevent a cycle of criminal behaviour
- Shifting discourse towards a public health initiative to reduce addiction and raise awareness of the dangers through guidance
- Permitting medical cannabis for therapeutic use when recommended by a physician and the speeding up of the current review

The major theme running throughout this paper is a desire to protect young adults from the adverse health effects of cannabis use in a real and practical way.

Not all members of the Party or the Society will support these policies. But for any serious student of the politics of cannabis, whatever his or her individual views, this paper brings together a wealth of contemporary learning and information which will be useful.

I am immensely grateful to Simon Randall, who chaired the working party, and to its rapporteur, Ashley Blood-Halvorsen, a young barrister of dual Canadian and British nationality. The other working party members were Dr Dan Taylor, Timothy Foot, Henry Russell and Georgina Orde, who undertook research on English case law. I should also like to thank members of Conservative Health, particularly Dr Liam Gilgar, for their input to the

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Lastly, I would like to thank Anthony Speaight QC, Chairman of our Research Committee, for his helpful advice on, and support for, this research.

Victoria Prentis MP
Chairman of the Executive Committee, Society of Conservative Lawyers

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Introduction

In 1971, the phrase "war on drugs" was first used by then President Richard Nixon. But, it was in 1982 that the "war on drugs" was formally declared by President Ronald Reagan. Some 36 years since war was declared many are questioning if it has been lost or when it will end. Billions of pounds have been invested in the effort and the return on the investment is minimal at best. In England admitted cannabis use amongst those 16-24 declined during the period of 1996 to 2016 (25.8% to 16.4%).[1] Whilst this may be viewed by some as a victory it has come at a considerable cost.

One only needs to take a stroll down their local high street to see the war well and truly still raging. It is common to observe people down on their luck completely still, paralysed in awkward positions effectively turned into zombies. This phenomenon is the result of 'Spice' a former legal high which was banned under the Psychoactive Substances Act 2016. Spice was previously viewed as the legal alternative to cannabis and was widely available in corner shops. It has ravaged the homeless and has been linked with serious violence within the community, and also prisons.[2]

If drugs are blatantly used in public then it is certain that there is considerable use behind closed doors. Despite 37 years of concerted effort to stamp out the scourge of drug abuse the problem is still very much with us. The drug trade is as profitable as ever with many viewing cannabis as a key gateway drug to problematic substance abuse and harder drugs.

The strength of cannabis has also increased considerably since it attracted initial research attention in the 1960s when it was eventually deemed to be relatively harmless.[3] Indeed, it is still a commonly held belief that cannabis use attracts little risk.[4] That position is no longer tenable.[5] It is known that the potency of cannabis has been rising since around 1996. The European Monitoring Centre for Drugs and Drug addiction found that the potency had doubled from 2006 to 2016.[6] There is also evidence to suggest that cannabis contributes to satellite criminal activity such as gang wars and knife crime.[7]

Cannabis is currently the most popular illicit substance globally with an estimated 183 million users worldwide in 2014.[8] It is also the most trafficked drug in the world. Before 2000, the legal use of cannabis was largely restricted to scientific purposes. Since 2000, the use of cannabis has grown considerably for both scientific purposes and medicinal uses. For example, in 2000 licit production of cannabis was measured at 1.4 tons and in 2016 it was measured

1 Marco Colizzi and Robin Murray, 'Cannabis and psychosis: what do we know and what should we do?' (2018) Br J Psychiatry 212, 195-196.

2 Home Office, 'Serious Violence Strategy' (April 2018), 22 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/698009/serious-violence-strategy.pdf>.

3 Alice G Walton: Potency – a new study conducted by Charas Scientific – (2015) Forbes.com.

4 Marco Colizzi and Robin Murray, 'Cannabis and psychosis: what do we know and what should we do?' (2018) Br J Psychiatry 212, 195-196.

5 The National Academies of Sciences, Engineering, and Medicine, *The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and Recommendations for Research* (The National Academies Press, 2017) <https://www.nap.edu/catalog/24625/the-health-effects-of-cannabis-and-cannabinoids-the-current-state>; Robbin Murray et al., 'Cannabis-associated psychosis: Neural substrate and clinical impact' (2017) Neuropharmacology vol 124, 89-104; Marco Colizzi and Robin Murray, 'Cannabis and psychosis: what do we know and what should we do?' (2018) Br J Psychiatry 212, 195-196.

6 'Cannabis has doubled in potency' (*The Times* 30 December 2018).

7 Home Office, "Serious Violence Strategy (April 2018), 22 as above

8 James McClure, 'Here's How Many People in The World Consume Cannabis' (*Civilized*, 27 June 2017) <https://www.civilized.life/articles/heres-how-many-people-use-cannabis-worldwide>

at 211.3 tons[9] In 2016, the leading producer of cannabis was the United Kingdom (44.95%) at 95 tons followed by Canada. Of what it produced, the United Kingdom exported 2.1 tons accounting for roughly 70% of the world's total.[10] One of the biggest producers in the United Kingdom is British Sugar. It has a contract with GW Pharmaceuticals to produce Cannabidiol which is an active ingredient in Epidiolex which is a medicine for Dravet syndrome a serious form of epilepsy in children.[11]

Illicit substances are big business and they cause even bigger problems in society. Each year in the United Kingdom drugs cost society £10.7 billion in policing, healthcare and crime, with drug-fuelled theft alone accounting for £6 billion. It is estimated that those using heroin, cocaine or crack cocaine commit between a third and a half of all acquisitive crime.

The criminal black market for the distribution and sale of drugs is worth an estimated £4.6 billion per year in the United Kingdom and the UN Office on Drugs and Crime estimates that the global market is worth $435 billion USD a year. Between 2006 and 2013, 111,000 people died in the Mexican drug war alone; this figure does not include deaths from the drugs themselves.

In recent years there has been sweeping global reform of cannabis policy. This reform involves both the legal status of the drug and societal attitudes towards it. The push for legal reform has also come from investors seeking profit in emerging companies such as Canopy Growth Corporation.

This pamphlet is primarily focused on cannabis; it would be too ambitious to try and cover the whole of the "war on drugs". Indeed, even within the topic of cannabis, considering the global reforms currently being witnessed, this report could be much longer and maybe in time, additional publications will be produced.

The first section will examine our general recommendations with the rest of the report covering how we came to those conclusions. There are sections examining what cannabis is, the international legal framework underpinning the prohibitionist position, how jurisdictions such as the United States simultaneously forbid and allow cannabis, the commercial expansion of the cannabis industry and the social consequences of the liberalisation of cannabis laws including the effect on the black market.

When we embarked on this ambitious research project we did not have a defined view on the matter. Indeed, the entire aim of the exercise was to see where our research took us. It is through extensive literature review and speaking to experts in various disciplines that we have formed our opinions. There is no simple answer to the dilemma but we believe that there are better strategies for winning the war on drugs in line with our conservative values.

9 International Narcotics Control Board, *The Technical publication on Narcotic Drugs 2017*, (United Nations, 02 April 2018) <http://www.incb.org/documents/Narcotic-Drugs/Technical-Publications/2017/7_Part_2_comments_E.pdf> 21 and 43.

10 Ibid. 43-44.

11 British Sugar plc, 'Wissington glasshouse to grow plants for epilepsy medicine' 25 October 2016) <https://www.britishsugar.co.uk/media/news/2016-10-25-wissington-glasshouse-to-grow-plants-for-epilepsy-medicine>.

Summary of Recommendations

We believe that the cannabis laws in this country require a robust examination and subsequent reform. At all times, the position must be kept under review whilst taking into account scientific evidence about cannabis, statistics regarding trends and dangers combined with lessons learned from other jurisdictions.

We do not support the legalisation of all drugs and nor do we support the legalisation of recreational cannabis use at this particular time. In summary, we believe in:

- de-criminalising possession of small amounts of cannabis for personal use to protect future prospects of youthful users particularly in regards to employment and training;
- incorporating non-criminal sanctions for those caught with cannabis such as treatment and/or suspension of driving licence to prevent a cycle of criminal behaviour;
- protecting adolescents and young adults from the dangerous effects of cannabis;
- learning lessons from other comparable jurisdictions such as Canada and the United States;
- shifting cannabis discourse towards a public health initiative to reduce affliction and raise awareness of the dangers through guidance; and
- permitting medical cannabis for therapeutic use when recommended by a physician and speeding up current review.

The main theme of our recommendations is harm reduction. It is important to protect adolescents and young adults from the adverse health effects of cannabis use. In addition as will be discussed below, harm reduction includes preventing a lifetime of criminal activity and ensuring users are not barred from contributing to society through education and employment, including in particular entry into the professions.

A cornerstone of harm reduction begins with informing children of the risks of cannabis. The myth that cannabis is low risk must be stopped. However, previous endeavours show that children and adolescents do not always take on board anti-drug messages taught within schools. As such, it is recommended that more resources are made available to parents to equip and give them confidence to have conversations with their children. In particular, initiatives from Canadian organisations such as Drug Free Kids in using YouTube is commended.

There are drawbacks to these recommendations as there is no perfect solution. These drawbacks include the perception of potentially undermining enforcement of law and lack of ability to control the quality of cannabis on the streets. Despite these flaws, we believe our recommendations are a step in the right direction until further evidence suggests otherwise.

Cannabis: What is it?

Cannabis is a type of flowering plant, part of the family *Cannabaceae*, indigenous to central Asia and the Indian subcontinent.[12] In international law, the cannabis plant has been defined as *"any plant of the genus Cannabis"*.[13] Cannabis may be used as a recreational drug often referred to as marijuana, skunk, kush or weed.

Cannabis, when used for recreational purposes, is a psychoactive drug and has 483 known compounds.[14] Of these compounds it is delta-9-tetrahydrocannabinol, chemical name (−)-trans-Δ^9-, that is the primary psychoactive ingredient.

Delta-9-tetrahydrocannabinol ("THC") is listed in Schedule II of The Convention on Psychotropic Substances of 1971 ("the 1971 Convention"). As the international definition of cannabis has been widely drafted, the whole plant must be controlled under domestic law.

The effects of cannabis consumption vary depending on the dosage and characteristics of the user and could include *"… euphoria, perceptual alterations, and relaxation at a low dose to depersonalization, pressure speech paranoia, and manic psychosis at a high dose."*[15]

Another relevant compound is cannabidiol ("CBD"). CBD does not appear to have psychoactive effects such as those caused by THC. Indeed, there is research to suggest that CBD reduces anxiety.[16] Effectively, THC is what enables the consumer to "get high" and CBD curtails feelings of anxiety.[17] When the plant is grown in its natural environment, in other words not cultivated for drug use, the THC and CBD work together; the CBD to a degree counteracts the danger of THC on the brain.[18] It is when the plant is grown for illicit use that the relationship between THC and CBD is purposely altered to increase the levels of THC.

Cannabis, as a recreational drug, is consumed in numerous ways such as smoking and eating it. European smokers (including the British) frequently mix cannabis and tobacco in the same "joint" (a rolled cigarette usually constructed with rolling papers) which leaves the user vulnerable to the dangers of tobacco.[19] North American users tend to create joints purely from cannabis. Cannabis can be baked into foodstuffs or used with bongs to facilitate inhaling of the smoke.

12 Mahmoud A. ElSohly (ed), *Marijuana and the Cannabinoids* (Humana Press 2007), 8.

13 The Single Convention on Narcotic Drugs [1961] (United Nations), art 1(c).

14 Ethan Russo (ed), *Cannabis and Cannabinoids: Pharmacology, Toxicology, and Therapeutic Potential* (Routledge 2013), 28.

15 Donald G Barceloux, *Medical Toxicology of Drugs Abuse: Synthesized Chemicals and Psychoactive Plants* (John Wiley & Sons 2012), 892; Marco Colizzi and Robin Murray, 'Cannabis and psychosis: what do we know and what should we do?' (2018) Br J Psychiatry 212, 195-196.

16 Tabitha A Iseger and Matthijs G Bossong, 'A systematic review of the antipsychotic properties of cannabidiol in humans' (Schizophrenia Research [2015] vol. 162 (1–3) 153–61),157.

17 Boris Starling, 'The Tide Effect: How the word is changing its mind on cannabis legalisation' (The Adam Smith Institute, 2016), 14 <https://static1.squarespace.com/static/56eddde762cd9413e151ac92/t/582eecc6e3df2844237ca6dc/1479470281332/The+Tide+Effect+WEB+VERSION.pdf >.

18 J Manzanares, MD Julian and A Carrascose "Note of the Cannaboid System in Pain Control" (Current Newpharmacology 2006), Jul; 239-257.

19 Starling, op. cit., 21.

Affliction associated with Cannabis

It is well known that Cannabis is harmful to human health and in particular mental health. This is particularly true of modern day versions of the plant commonly referred to as 'skunk'. There is some very good research on this topic particularly from the United States, Ireland and the World Health Organization.

In particular, there is a recent report from the United States National Academies of Sciences, Engineering and Medicine (NASEM) which examined statistical evidence of cannabis use, associated dangers and potential benefits. NASEM is a government-recognised but fully independent body of the most eminent scientists, including medical scientists, in the United States country. NASEM has an international reputation as one of the leading scientific academies in the world.[20] The NASEM report is, in essence, a review of scientific literature and evidence regarding the potential medical benefits and risks of cannabis use.

Therefore, it is an excellent source to summarise the harms of cannabis. The potential health benefits will be addressed further below when discussing cannabis for medical use.

The NASEM report utilized standardized language encompassing the following terms:

- Conclusive evidence – strong evidence from randomised control trials to support the conclusion that cannabis or cannabinoids are/are not an effective treatment; and
- Substantial evidence – several supportive findings from good quality studies with very few or no credible opposing findings.

In terms of the dangers of cannabis, there is conclusive and/or substantial evidence of:

- increased risk of schizophrenia or other psychoses, with the highest risk among the most frequent users;
- increased risk of respiratory symptoms and more frequent chronic bronchitis episodes;
- initiating cannabis use at an earlier age is a risk factor for the development of problematic cannabis use;
- use during pregnancy causing lower birth weight of the child;
- increased risk of road traffic accidents; and
- a heightened probability of substance abuse.

The above list is not exhaustive.[21] There are also various other afflictions such as an increased heart rate, disrupting blood pressure control, panic attacks, paranoia and impairment of motor control.[22] Other satellite dangers include drug dependence and withdrawal symptoms both physical and psychological.[23]

20 Professor Dames Davies, 'Cannabis Scheduling Review Part 1: The therapeutic and medicinal benefits of Cannabis based products – a review of recent evidence' (Department of Health and Social Care 3 July 2018), 7 <https://www.gov.uk/government/publications/cannabis-scheduling-review-part-1>.

21 The above list is taken from some of the conclusions in The National Academies of Sciences, Engineering, and Medicine, *The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and Recommendations for Research* (*The National Academies Press* 2017) <https://www.nap.edu/catalog/24625/the-health-effects-of-cannabis-and-cannabinoids-the-current-state>.

22 Advisory Council on the Misuse of Drugs, 'The Classification of cannabis under the Misuse of Drugs Act 1971' (*Home Office* March 2002), 7 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/119126/cannabis-class-misuse-drugs-act.pdf>.

23 Ibid., 8.

However, cannabis differs from the behavioural harms caused by alcohol. There is little evidence to suggest that cannabis increases risk-taking behaviour. As cannabis often produces relaxation and social withdrawal, it rarely contributes to violent or aggressive behaviour.[24] Further, the risk of a fatal cannabis overdose is small in comparison to alcohol poisoning or an overdose from opioids.[25]

One of the unquestionable dangers of cannabis is its effect on mental health. Whilst there is an ongoing debate about whether cannabis *can cause the onset* of schizophrenia there is no doubt that it makes schizophrenia worse and may lead to relapse in some patients.[26] However, there is evidence of an odds ratio (up to 3.9 in a recent study among heaviest users)[27] for developing psychotic symptoms or a psychotic disorder in individuals who had used cannabis over non-users. It is accepted that association does not prove causation and the vast majority of cannabis users do not develop a psychotic disorder.

In particular, the dangers of cannabis are more predominant amongst youths and young adults. Indeed, cannabis is notably harmful when it is exposed to a brain that is still developing. There is compelling evidence linking cannabis use during adolescence to psychotic episodes later in life.[28] People with paranoid or 'psychosis-prone' personality along with other risk factors for psychosis such as childhood trauma.[29]

A study published in March 2019 linked daily cannabis use with a significantly higher risk of developing mental health troubles such as psychosis.[30] Cannabis with more than 10% THC was linked with five times greater risk. Dr Di Forti estimated that one in five new cases of psychosis across the sites studied could be linked to daily cannabis use, and more than one in 10 linked to use of high-potency cannabis.[31] Sir Robin Murray, who also worked on the study, stated "*fifteen years ago, nobody thought that cannabis increased the risk of psychosis*," and *"but now the evidence is pretty clear."*

The evidence of long-term health consequences of cannabis use is largely limited; this is likely due to the status of the drug limiting research opportunities.[32] However, there is evidence of the long-term use of cannabis on social indicators. Longitudinal studies since the 1990s have found that those who start using cannabis before 15 are more likely to leave school early. A meta-analysis of three Australian and New Zealand studies support this finding. Further, the commencing of heavy cannabis use at an early age is associated with: lower income, lower

24 Ibid., 7.

25 Health Products Regulation Authority, 'Cannabis for Medical Use -A Scientific Review' (31 January 2017), 48 <https://health.gov.ie/wp-content/uploads/2017/02/HPRA-Report-FINAL.pdf>.

26 Advisory Council on the Misuse of Drugs, 'The Classification of cannabis under the Misuse of Drugs Act 1971' (Home Office, March 2002), 8 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/119126/cannabis-class-misuse-drugs-act.pdf>; National Academies of Sciences, Engineering and Medicine, *The Current State of Evidence and recommendations for Research Committee on the Health Effects of Marijuana: An Evidence Review and Research Agenda* (*The National Academies Press* 2017) <https://www.nap.edu/read/24625/chapter/2#9>.

27 Arianna Marconi, Marta Di Forti, Cathryn Lewis, Robin Murray, Evangelos Vassos, 'Meta-analysis of the association between the level of cannabis use and risk of psychosis' (2016) Schizophr Bull 42, 1262–9.

28 Health Products Regulation Authority, 'Cannabis for Medical Use -A Scientific Review' (31 January 2017), 21 <https://health.gov.ie/wp-content/uploads/2017/02/HPRA-Report-FINAL.pdf>.

29 Marco Colizzi and Robin Murray, 'Cannabis and psychosis: what do we know and what should we do?' (2018) Br J Psychiatry 212, 195-196.

30 Marta Di Forti et al., 'The contribution of cannabis use to variation in the incidence of psychotic disorder across Europe (EU-GEI): a multicentre case-control study' (19 March 2019) The Lancet Psychiatry 6(5), 427–436.

31 Kate Kelland, 'Daily cannabis and skunk users run higher psychosis risk' (*Reuters* 19 March 2019) <http://news.trust.org//item/20190319231818-l4stn/>.

32 Bertha K Madras, 'Update of Cannabis and its medical use' (*World Health Organization* 2015), 9 <https://www.who.int/medicines/access/controlled-substances/6_2_cannabis_update.pdf>.

completion of higher education, a greater need for economic assistance; use of other controlled substances; and unemployment.[33]

Scientific studies also show a link between starting cannabis before 17 and a lower verbal IQ score in long term cannabis users. There have also been links established between daily cannabis use before the age of 17 with clear reductions in the likelihood of completing secondary school and obtaining a university degree.[34] As such, it can be reasonably inferred that starting heavy cannabis use at a young age affects qualifications and likely employment prospects.

There are numerous social afflictions associated with cannabis such as impaired driving, which will be addressed further below as it warrants its own section.

Medical benefits of Cannabis

It is only fair that if the harms of cannabis are discussed so are the potential benefits. There is a broad consensus that cannabis is generally harmful. However, the benefits are far less understood especially when considering chronic conditions. This absence of knowledge, coupled with a lack of cannabis products meeting pharmaceutical quality requirements, means that there are few products capable of being authorised as medicine.[35]

In recent years there has been an increased appetite for research concerning potential medicinal and therapeutic uses of cannabis and or its derivatives. In 2017 Ireland's Health Products Regulatory Authority (HPRA) published a scientific review of cannabis for medical use at the request of the Minister of Health. Largely, the report found that there was at best a moderate benefit of cannabis use for a small number of conditions and no evidence or conflicting evidence for a large number of medical conditions. The HPRA report points to a significant gap between the public perception of the effectiveness of cannabis for therapeutic purposes and proper scientific evidence to support that perception.

In its report, the HPRA specified the following conditions in which there was moderate evidence that cannabis may be effective at treating:

- spasticity associated with multiple sclerosis;
- intractable nausea and vomiting associated with chemotherapy; and
- severe refractory epilepsy.[36]

The HPRA at the time of its report did not believe that there was sufficient evidence to support the use of cannabis in other conditions including chronic pain. This position is largely reflected in the Australian Government Department of Health – Medicinal Cannabis Review published in 2018. However, the Australian review concluded that there was some moderate evidence supporting cannabis use for chronic multiple sclerosis pain. The Australian review also pointed

33 World Health Organization, *The Health and social effects of nonmedical cannabis use* (2016), 25 <https://www.who.int/substance_abuse/publications/cannabis_report/en/>.

34 Alexander Stivy et al. 'Adolescent cannabis and tobacco use and educational outcomes at age 16: birth cohort study' (2015) Addiction 110(4), 658-68.

35 Health Products Regulation Authority, 'Cannabis for Medical Use -A Scientific Review' (31 January 2017), 1 <https://health.gov.ie/wp-content/uploads/2017/02/HPRA-Report-FINAL.pdf>

36 Ibid, 4.

to some limited evidence of medical cannabis for palliative care but highlighted that the associated studies were poor quality.

The other significant report considering the medical benefits of cannabis is from the NASEM report which was discussed above. That report deemed that there was conclusive or substantial evidence that cannabis-derived medicine was effective for the treatment of chronic pain, as a treatment for chemotherapy-induced nausea and vomiting and the symptoms of multiple sclerosis. The NASEM report determined that there was moderate evidence that medical cannabis was effective for improving short-term sleep outcomes for those with sleep disturbance.

Interestingly, the NASEM report found that there was no or insufficient evidence to support or refute the claim that cannabis would be an effective treatment for epilepsy which contradicts the HPRA and Australian review.

It is clear that, as this report reiterates, further research is required to fully understand the potential benefit and risks of cannabis for medical use. The three main reviews appear to share commonalities but there are differences between them particularly in regards to epilepsy and chronic pain. Professor Dame Sally Davies in her review (discussed further below) recommended that cannabis-based medicine is moved out of Schedule 1 of the Misuse of Drugs Act 1971 ("MDA 1971"). To retain cannabis in Schedule 1 would suggest that there is little to no recognised therapeutic benefit; that position is not tenable with current evidence. However, that is not to say that cannabis should be used widely or for most conditions.

On 01 November 2018 the Misuse of Drugs (Amendments) (Cannabis and Licence Fees) (England, Wales and Scotland) Regulations 2018/1055 came into force which amended Schedule 1 MDA 1971. These regulations were a direct result of Professor Dame Davies' review.

Difference between legalisation and decriminalising

It is important to clarify the distinction between legalising and decriminalising. Unhelpfully, there is no unified globally accepted definition of the terms or an objective test.[37] There is also a further difference between legalising and regulating.

Decriminalising and legalising serve separate purposes. Decriminalising does what it says on the tin. It commonly means that there are no criminal sanctions for possession (or whatever the decriminalisation extends to).

However, decriminalisation does not mean that cannabis can be used with impunity.[38] It only means that the user will not earn a criminal record for that use but may still be subjected to other consequences. In Italy, those found with cannabis may have their driving licence confiscated.[39] In Portugal, users can be compelled to attend a commission for dissuasion of drug addiction, which is tasked with identifying the reason for drug-taking and deciding on the most appropriate sanction to stop it.[40]

37 European Monitoring Centre for Drugs and Drug Addiction, *Cannabis legislation in Europe: an Overview*, (Lisbon 2017), 13 <http://www.emcdda.europa.eu/publications/adhoc/cannabis-legislation-europe_en>.

38 Ibid.

39 Ibid, 22

40 Ibid, 19

These alternative approaches begin to shift cannabis use from a criminal problem to a public health issue akin to tobacco or alcohol. Importantly, decriminalisation is typically interpreted as referring to the consumer only. The production, transport and supply chain of cannabis remains illegal.

Legalisation is where users face no action for possession (or whatever the legalisation extends to) of cannabis. Further, the supply chain for cannabis is legal, regulated and revenue collected. This includes the cultivation, distribution, retailing and consumption of cannabis leading to legitimate industry and employment. Uruguay has adopted this model as have some jurisdictions in the United States and Canada nationwide in October 2018.

Decriminalisation may appear to be a logical first step before legalisation, however, decriminalisation will only stop the criminal punishment of users and not address the criminal gangs generating billions of pounds from the supply chain.[41] Therefore, this would be an inefficient route to legalisation if that was the known final destination from the start. However, decriminalisation may make sense for a jurisdiction looking to take things slowly and in incremental steps such as the United Kingdom. It is arguable that the United Kingdom has already 'decriminalised' (or 'depenalised') cannabis in some areas, which is discussed below, but this has been unofficial and problematic.

The position in international law: The United Nations Conventions

There are three UN treaties which form the largely unified global attitude to drug control. They are:

a. The 1961 Single Convention on Narcotic Drugs as amended by the 1972 protocol ("the 1961 Convention");

b. The 1971 Convention on Psychotropic Substances; and

c. The 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances ("the 1988 Convention").

The international attitude towards cannabis and other drugs is based on a prohibitionist model enshrined by the 1961, 1971 and 1988 Conventions (together referred to as the UN drug treaties). The UN drug treaties were enacted on a belief that prohibition and law enforcement would reduce the supply of harmful drugs and therefore the adverse effects they have on humanity.[42] Signatory countries are required to control cannabis in the exercise of their obligations.

In the preamble to the 1961 Convention, it is stated that the parties:

41 United Nations Office on Drugs and Crime, *World Drugs Report* (*United Nations* 2010) <https://www.unodc.org/documents/wdr/WDR_2010/World_Drug_Report_2010_lo-res.pdf>.

42 Mike Trace, 'Impasse or turning point for the 'war on drugs'? UNGASS 2016, explained,' (*openDemocracy*, 16 May 2016) <https://www.opendemocracy.net/drugpolicy/mike-trace/impasse-turning-point-for-war-on-drugs-un-general-assembly-special-session>.

Concerned with the health and welfare of mankind, ***Desiring***[43] *to conclude a generally acceptable international convention replacing existing treaties on narcotic drugs, limiting such drugs to medical and scientific use, and providing for continuous international co-operation and control for the achievement of such aims and objectives,*

The preamble states that the focus is on the *"health and welfare of mankind"*. Article 4(c) state that all controlled drugs must be limited to medical and scientific purposes only;[44] this includes cannabis.

Article 36 covers penal provisions:

subject to its constitutional limitations, each Party shall adopt such measures as will ensure that cultivation, production, manufacture, extraction, preparation, possession … of drugs contrary to the provisions of this Convention … shall be punishable offences when committed intentionally, and that serious offences shall be liable to adequate punishment particularly by imprisonment or other penalties of deprivation of liberty.

As such, possession, distribution or selling of controlled drugs must be punishable offences and serious offences ought to involve the deprivation of liberty.[45] Article 3(2) of the 1988 Convention specifically states that the possession of drugs, even for personal consumption, is criminal behaviour.

Thus, the cumulative effect of all three conventions when read together[46] is requiring each signatory party to:

a. limit the scheduled substances to medical and scientific purposes by measures that are appropriate;

b. adopt the necessary measures to criminalise possession, purchase or cultivation of scheduled substances subject to constitutional rights;

c. include as punishment the deprivation of liberty or other pecuniary sanctions for drug offences; and

d. adopt measures to reduce or eliminate demand for illicit drugs for the purposes of reducing human suffering and the financial gains for illicit trade.

The requirements above are the minimum standards expected by the UN drug treaties. Indeed, there is nothing to prevent signatory parties from adopting stricter provisions or additional measures complimenting penal punishment. Some signatory countries utilise capital punishment as a form of implementing the UN drug treaties.[47]

43 Emphasis added.

44 European Monitoring Centre for Drugs and Drug Addiction, *Cannabis legislation in Europe: an Overview*, (Lisbon 2017), 9 <http://www.emcdda.europa.eu/publications/adhoc/cannabis-legislation-europe_en>.

45 Ibid.

46 Robin MacKay and Karin Philips, 'The Legal Regulation of Marijuana in Canada and Selected Other Countries' (Parliamentary information and Research Service, Publication No 2016-94-E, 6 Sept 2016) <https://lop.parl.ca/staticfiles/PublicWebsite/Home/ResearchPublications/BackgroundPapers/PDF/2016-94-e.pdf>.

47 Singapore has a mandatory death penalty for possession of cannabis or a cannabis mix in excess of 500 grams pursuant to the Misuse of Drugs Act 1978 (Revised 1998 edition); Malaysia has a mandatory death penalty for drug traffickers which is in law defined as possession over 200 grams pursuant to section 37(da)(viii) and section 39B of The Dangerous Drugs Act 1952 (Akta Dadah Berbahaya 1952); In China cannabis is not specifically referred to as punishable by the death penalty but in the Criminal Law of the People's Republic of China the death penalty is listed as a "principle punishment" and therefore is a technical option.

However, signatory countries have flexibility in the implementation of the conventions according to their *"constitutional limitations"*. In 2009 The Plurinational State of Bolivia ("Bolivia"), a signatory country, amended its constitution to give its citizens the explicit right to use, possess and sell the coca leaf.[48] The amendment to its constitution recognises the rights of indigenous people to use the coca leaf in its natural state as part of their heritage.

Previously, Bolivia had proposed an amendment to Article 49 paragraphs 1(c) and 2(e) of the 1961 Convention which would have deleted the obligation to abolish coca leaf chewing. The amendment would have maintained the global control system for coca cultivation and cocaine.

The move by Bolivia was in effect a balancing exercise between international obligations and an obligation to protect its cultural and indigenous traditions.[49] The amendment was rejected by other signatory countries. Bolivia proceeded to denounce the 1961 Convention on 29 June 2011,[50] amend its constitution and re-access with reservation to specific provisions by way of Article 50(3).

Whilst Bolivia was able technically to amend its constitution in this fashion, the International Narcotics Control Board (an independent quasi-judicial expert body) was less than impressed. Indeed, in the forward of its 2011 report[51] the International Narcotics Control Board ("INCB") took note of Bolivia's manoeuvring. INCB stated that it whilst *"the denunciation itself may be technically permitted under the* [1961] *Convention, it is contrary to the fundamental object and spirit of the* [1961] *Convention"*.

INCB called on the international community to condemn the technical mechanism of denunciation and then re-accession with reservations as a means of avoiding convention obligations. It is worth noting that INCB is not a police force tasked with enforcing adherence to the UN drug treaties. Indeed, the INCB's powers are effectively quiet diplomacy or blaming and shaming.[52]

By the Special Session of the United Nations General Assembly on the World Drug Program (UNGASS), which took place in April 2016, the INCB had changed its tune. The INCB stated that signatory parties had significant flexibility within the UN drug treaties to create a health-orientated approach to drug abuse whilst having proportionate criminal sanctions for offenders, mainly those suffering from drug dependency.[53]

Regardless, signatory countries to the UN drug treaties are left with three options if they wish to relax their cannabis laws:

48 Artículo 384 of the Nueva Constitución Política del Estado (2009) <https://bolivia.justia.com/nacionales/nueva-constitucion-politica-del-estado/>.

49 International Drug Policy Consortium, 'IDPC Advocacy Note: Bolivia's legal reconciliation with the UN Single Convention on Narcotic Drugs' (July 2011) <http://www.undrugcontrol.info/images/stories/documents/IDPC-advocacy-bolivia-july2011.pdf>.

50 The Secretary-General, 'Bolivia (Plurinational State Of): Denunciation' (*United Nations* 29 June 2011) <https://treaties.un.org/doc/Publication/CN/2011/CN.421.2011-Eng.pdf>.

51 International Narcotics Control Board, *The Report of the International Narcotics Control Board for 2011* (United Nations (E/INCB/2011/1) 28 February 2012) <https://www.incb.org/documents/Publications/AnnualReports/AR2011/AR_2011_English.pdf>.

52 Committee on Drugs & the Law, 'The International Drug Control Treaties: How Important Are They to US Drug Reform?' (*New York City Bar*, August 2012) <https://www2.nycbar.org/pdf/report/uploads/3_20072283-InternationalDrugControlTreaties.pdf>.

53 International Narcotics Control Board, 'Statement by Mr Werner Sipp, President, International Narcotics Control Board' (*United Nations*, Special Session of the General Assembly on the World Drug Problem, 19 April 2016) <https://www.citywide.ie/download/pdf/incb_speech_ungass_plenary_opening.pdf>.

a. by way of technical amendment to its constitution;

b. convincing the other signatory countries to allow a reservation;

c. convincing the other signatory countries to amend the UN drug conventions; or

d. withdrawing from the UN drug conventions.

Legal Position in the United Kingdom: Overview

Cannabis is a prohibited substance in the United Kingdom; the relevant policy is patchy and open to criticism.[54] It is included as a Class B substance in Schedule 2 of the Misuse of Drugs Act 1971 ("MDA 1971"). It was previously a Class C (therefore of a lesser seriousness) for a 5-year period until January 2009 when The Misuse of Drugs Act 1971 (Amendment) Order 2008 came into force.

The language of MDA 1971 includes *"Cannabis and cannabis resin"* and *"Cannabinol derivatives"*; it does not specifically refer to THC by itself. Indeed section 6 of MDA 1971 makes it a specific offence to cultivate any plant of the genus Cannabis. This, in compliance with international law, requires the whole of the plant to be controlled under domestic legislation.

Domestic law makes it a criminal offence for an occupier knowingly to permit certain activities within premises such as producing or attempting to produce a controlled drug, smoking cannabis or preparing opium for smoking.[55]

During 2018 several children ill with epilepsy were covered by news outlets; these included Alfie Dingley, Billy Caldwell and Alfie Evans. There was a public outcry over the confiscation of Alfie Dingley's prescribed cannabis-derived medicine which was being brought in by his mother from the Kingdom of the Netherlands ("Netherlands"). In response to the increased news coverage and public debate, Home Secretary The Rt Hon Sajid Javid MP announced that there would be a review into the scheduling of cannabis and its use for medical purposes.[56] However, he emphasised that this review was not the first step to legalising cannabis for recreational use.

The government review would be done in two parts. Part one of the commission considered the evidence available for the medicinal and therapeutic benefits of cannabis-derived medicines. The outcome of this review would then determine if the commission would proceed to part two. Part 2 was led by the Advisory Council on the Misuse of Drugs (ACMD).

The AMCD will not revisit the evidence examined during part one but will provide an assessment, based on the balance of harms and public health needs, of what, if anything, should be rescheduled. Part one of the commission has been completed and a report authored by Professor Dame Sally Davies[57] published on 3 July 2018. That same day, part two of the commission was ordered.

54 Starling, op. cit., 27.

55 Section 8 of the MDA 1971.

56 The Rt Hon Sajid Javid MP, 'Home Secretary statement on medical use of cannabis' (*Home Office* 19 June 2018) <https://www.gov.uk/government/speeches/home-secretary-statement-on-medical-use-of-cannabis>.

57 Chief Medical Officer and Chief Medical Advisor for the United Kingdom government.

Professor Dame Davies' report strictly reviewed the evidence concerning cannabis-derived medicine on prescription; it did not address the recreational use of medicinal cannabis. In summary, Professor Dame Davies recommended that the whole class of cannabis-based medicines (including synthetic cannabinoids) be moved out of Schedule 1.

Subsequently, the AMCD concluded the first aspect of part 2 of the review. It recommended that cannabis-derived medicinal products of the appropriate standard be moved out of Schedule 1 and, subject to further refinement of the definition of cannabis-based products for medicinal use, into Schedule 2. Synthetic cannabinoids were specifically excluded from this and reserved for further consideration.

On 1 November 2018 these recommendations came into force. The explanatory memorandum states that the purpose of the instrument was to make cannabis-based products available to be prescribed for medicinal use where there is an unmet clinical need.

The United Kingdom has a registered cannabis-derived drug with the trade name Sativex® which is used for multiple sclerosis patients and is currently controlled under Schedule 4 of MDA 1971. All cannabis-derived products for medical use apart from Sativex® are unlicensed medicines.

As a result of the Misuse of Drugs (Amendments) 2018 Regulations only a limited category of medical professional may prescribe cannabis-based products for medicinal use. Only clinicians listed on the Specialist Register of the General Medical Council are permitted.

At the time of writing this report, there is a Private Members' Bill (under the Ten Minute Rule) before Parliament called the Legalisation of Cannabis (Medicinal Purposes) Bill 2017-19 ("Cannabis Bill"). The first reading of the Cannabis Bill was held on 10 October 2017 and the second was scheduled for 06 July 2018 but did not go ahead. The second reading of the Bill has yet to be announced. The Cannabis Bill is a bill to *"allow the production, supply, possession and use of cannabis and cannabis resin for medicinal purposes; and for connected purposes."* It is possible that in light of the recent amendments that came into force on 1 November 2018 that this Bill may be redundant.

The National Institute of Health and Clinical Excellence is drafting formal guidance on the prescribing of medicinal cannabis with publication expected in October 2019. The British Paediatric Neurology Association has drawn up interim guidance concerning epilepsy on behalf of NHS England. In summary, the current best evidence for medicinal cannabis is CBD oil which has been licensed in the United States and is currently being considered by the European Medicines Agency. Critically, CBD does not contain a significant amount of THC which is known to harm brain development and cognitive functions in adolescents.

Our working party welcomes this development and the cautious approach taken by the Government to date. Cannabis-based medicines ought to be more widely available to those who need them but not as a preference to already available clinically proven medicines. It is perhaps regrettable that there has been a delay in rolling out wider presentation of these medicines.

Legal Position in England and Wales: Current Police Enforcement

Problematically, cannabis has been in practice decriminalised, or depenalised, in most parts of the United Kingdom.[58] This is partly because of a lack of resourcing and a common belief amongst the public that police should spend what resources they have investigating 'proper criminals'; in other words, cannabis use is less worthy of police attention than other crimes.

This view is also perpetuated by those tasked with enforcing cannabis prohibition. The North Wales Police Commissioner, Afron Jones, has urged the United Kingdom to legalise cannabis stating that *"rather than overload an already creaking criminal justice system, we need a more enlightened and more effective approach."*[59]

In the same press release, Mr Jones also announced that in autumn 2019 a new scheme called Checkpoint will be launched in North Wales. Checkpoint was developed by the University of Cambridge and had been trialled in Durham. It is designed to *"divert low level offenders away from criminality"*.[60]

The Durham Constabulary website states that Checkpoint offers eligible offenders a 4-month contract as an alternative to prosecution. The 'contract' offers interventions to address the reasons behind the criminality and to prevent it from happening again; not all offenders are eligible (murder, rape, robbery etc).[61] This echoes the approach used in Portugal. Durham Constabulary asserts that Checkpoint is not a 'soft option' because it is harder to complete in comparison to traditional sanctions such as a caution or a fixed penalty notice.

However, whilst this approach may be applauded by reformers, it suggests that police are taking it upon themselves to decriminalise cannabis in practice; this cannot be right or proper. It is for those that make the law to alter it to permit decriminalisation.

Gang Activity and Knife Crime

In 2018 knife crime offences were at record levels in England and Wales up 6% on 2017 levels.[62] During that period 31 out of 43 police forces reporting saw an increase in knife offences. Between 2013-2017 police recorded knife crime rose by 36%.[63] Across the same period, hospital admissions for assault by sharp objects rose by 18%. Since 2014 almost all police forces have seen an increase in knife crime.[64] It has reached such levels that HRH The Prince of Wales called for an end to the "pervasive horror of knife crime" in an article for

58 Marco Colizzi and Robin Murray, 'Cannabis and psychosis: what do we know and what should we do?' (2018) Br J Psychiatry 212, 195-196.

59 North Wales Police and Crime Commission, 'Regulate Cannabis to cut out drug gangs and allow people to grow their own' (19 April 2019) <https://www.northwales-pcc.gov.uk/en/News/Latest-News/2019/Regulate-cannabis-to-cut-out-drugs-gangs-and-allow-people-to-grow-their-own.aspx>.

60 Ibid.

61 Durham Constabulary, 'Checkpoint – Critical Pathways' <https://www.durham.police.uk/information-and-advice/pages/checkpoint.aspx>.

62 BBC News, 'Knife crime offences at record level in 2018, police crime data shows' (25 April 2019) <https://www.bbc.co.uk/news/uk-48050426>.

63 Home Office, 'Serious Violence Strategy' (April 2018), 18 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/698009/serious-violence-strategy.pdf>.

64 Ibid, 20.

the Daily Telegraph.[65] On a more local level it has been reported that takeaway shops in south London are distributing leaflets telling true stories about those who have been linked to knife violence with their orders, as a means of addressing the violence.[66]

Unsurprisingly, there are numerous causes of knife crime and this paper does not seek to downplay the complexity of the crises. However, one factor is gang activity and control over the supply of drugs. Of those drugs, one of the most in demand is cannabis. Of particular concern to our working party is the use of children and knives in criminal activity linked with cannabis.

One of the drivers of the increase in serious violence is the phenomenon known as "running county lines" or "cuckooing".[67] In essence, drug trafficking is no longer centred on the major metropolitan areas such as London, Birmingham and so forth. Gangs have sought to expand to markets in other towns and areas. Whilst cannabis is distributed there is an emphasis on selling heroin and cocaine in these new markets.[68]

Evidence shows that county line dealers are generally more violent than the local dealers who were there before with knife crime being a significant feature.[69] There is also a strong emphasis on using youths or children as young as 12 in the distributing and transport of drugs. What drives child exploitation ranges from addicts working off drug debts, orchestrated 'debt bondage' (where they are robbed of the drugs they are holding so placed into debt) to cases of young children seeking financial gain.[70] Those who are recruited are controlled 24 hours a day with a system dubbed 'remote mothering'. These children store drugs, money and weapons.

When police encounter vulnerable people in this situation they will consider whether the offences are caught by the MDA 1971, or if the individuals are victims for the purposes of the Modern Slavery Act 2015.

Cannabis in Criminal Case Law (England and Wales)

Criminals are using sophisticated methods to avoid detection. In *R v Kelly (Lee)* [2018] EWCA Crim 1893 the defendant used expensive encryption software on his BlackBerry phone called PGP which stands for Pretty Good Protection. The software is known to be used amongst high-level drug dealing. Two experts initially instructed by both the Defence and the CPS were unable to get passed the encryption software to read critical emails. A third expert was instructed who was more successful than the first two. The third expert was able to read and take screenshots of 23 emails. Officers with extensive experience of terminology used amongst

65 His Royal Highness Prince of Wales, 'At Easter, it is inspiring to see how people can find light even in the midst of terrible darkness' (*The Telegraph* 18 April 2019) <https://www.telegraph.co.uk/news/2019/04/18/easter-inspiring-see-people-can-find-light-even-midst-terrible/>.

66 'F' @fhmtweets, 'Surreal that my chicken burger in South London now comes like this' (*Twitter* 3 May 2019) <https://twitter.com/fhmtweets/status/1124434142052196354>. This appears to be an initiative of The Home Office under the brand of #knifefree <www.knifefree.co.uk>.

67 National Crime Agency, 'National Strategic Assessment of Serious and Organised Crime 2017' (*Home Office* 2017) <https://nationalcrimeagency.gov.uk/who-we-are/publications/32-national-strategic-assessment-of-serious-and-organised-crime-2017/file>; *R v Ajayi (Richard)* [2018] 4 WLR 42 may also be of interest.

68 National Crime Agency, 'National Strategic Assessment of Serious and Organised Crime 2019' (*Home Office* 9 September 2016) <https://www.propertymark.co.uk/media/1045038/nca-national-strategic-assessment-2016.pdf>.

69 Ross Coomber and Leah Moyle, 'The changing shape of street-level heroin and crack supply in England: Commuting, holidaying and cuckooing drug dealers across 'County lines'' (2017) The British Journal of Criminology 58(6), 1323-1342; National Crime Agency, 'National Strategic Assessment of Serious and Organised Crime 2017' (*Home Office* 2017), 33 <https://nationalcrimeagency.gov.uk/who-we-are/publications/32-national-strategic-assessment-of-serious-and-organised-crime-2017/file>.

70 Grace Robinson, Robert McLean and James Deansley, 'Working County Lines: Child Criminal Exploitation and Illicit Drug Dealing in Glasgow and Merseyside' (2018) International Journal of Offender Therapy and Comparative Criminology 63(5), 694-711.

drug dealers were required to identify the drugs referred to in the emails, such as a "bar" which meant a block of cannabis resin.

The defence made an application for disclosure of certain material including the precise processes which were followed by the third expert who retrieved the emails. This request included a step by step description of each stage and the names of programmes used. The rationale for this request being that the information was required so the defence expert could properly advise the defendant. In response the prosecution made an application to withhold that material from disclosure on the ground of public interest immunity.

This case highlights the level of technology and sophistication available to and used by drug dealing. This technology, whilst having its legitimate uses, creates serious obstacles for the investigation of criminal activity. The lengths drug dealers will go to when concealing their activities are infinite.

R v Markie (Steven) (unreported) 23 October 2018 concerned a case where the defendant was growing cannabis at home. He had a personality disorder and a history of not engaging with psychiatric services but he was not psychotic. One night he went onto the street brandishing two firearms. The police were unable to tell if the larger gun was a prohibited firearm or an air rifle. The defendant had ceased taking medication on the night of the offence. He had contended that he was trying to commit suicide by cop which the trial judge rejected.

The defendant pleaded guilty to two counts of possession of a firearm with intent to endanger life, contrary to section 16 of the Firearms Act 1968 and was sentenced to ten years' imprisonment. He appealed against sentence on the grounds that insufficient weight had been given to the psychiatric report which said he was undergoing a mental health crisis. He contended that his non-compliance with treatment was not wilful but attributable to his mental ill-health. The Court of Appeal said there had been no suggestion that the non-compliance had been due to mental illness. The doctor's report made no reference to a mental health crisis but said the defendant's actions were exacerbated by drink and drugs and he had been under the influence of cannabis at the time. The defendant had not been attempting suicide by cop but instead had targeted the officers. The appeal was dismissed.

This case reinforces that cannabis can have a detrimental effect on someone with mental health conditions even if they are not psychotic. Being under the influence of cannabis and alcohol coupled with not taking medication for his mental health conditions created a dangerous situation.

Legal Position in the United Kingdom: Prisons

Cannabis abuse is a particular problem in Her Majesty's Prison Service. If the cannabis laws in the United Kingdom were to be relaxed cannabis (even to the extent of permitting recreational use) it would likely still be a problem as it would remain a prohibited item like tobacco. However, it is worth a brief examination to understand the difficulties and problems cannabis causes in prisons.

In recent years these problems have spread to include Spice. Synthetic cannabis replacements were designed to mimic cannabis but can be significantly more potent. Since 2012 they have

gained a foothold in British prisons. Spice is popular because it stays in the system for a shorter period and thus a prisoner is more likely to pass a drug test.

Prisoners have been known to kill themselves after accruing large drug debts. Drugs are significantly more expensive inside prison than on the streets because of the effort/risks taken to supply them. As such, an addict can quickly accumulate an oppressive debt with family members becoming targets for repayment. Prisoners can become desperate, trapped in a vicious circle and as a consequence take their own lives.[71] This is a tragedy not only for the obvious loss of life but also the loss of opportunity for rehabilitation and eventual release.

Another problem is those who work in prisons are particularly vulnerable to being manipulated or persuaded into smuggling cannabis or Spice into prisons. This may be due to low pay, attempts to supplement income further or coercion. An anonymous prison officer said during his 9 years of working in a category B men's prison in England, prison officers would sometimes smuggle drugs.[72] Criminal cases involving prison officers smuggling prohibited items include: *R v Johnson (Wayne)* [2018] 1 WLR 19; and *R v Bridger* [2018] 2 Cr App R (S) 44 (which concerned Spice specifically).

Rory Stewart MP, when prisons minister, introduced steps to reduce drug supplies in most prisons following publication of HM Prison & Probation Service's Prison Drug Strategy. The relaxation of drug laws, of any degree, would not eliminate this problem as they would likely be prohibited items regardless.

Legal status in The Kingdom of the Netherlands

Arguably the most famous example of cannabis relaxation is from the Netherlands. The Dutch have enacted a *de facto* decriminalisation of cannabis by their coffee-shop model introduced in the 1970s despite being a signatory to the UN drug treaties.

The Netherlands has entered understandings upon signing the 1988 Convention and a reservation upon acceptance. Several of the understandings relate to using clearer language in the 1988 convention but the reservation is as follows:

The Government of the Kingdom of the Netherlands accepts the provisions of article 3, paragraphs 6, 7, and 8, only in so far as the obligations under provisions are in accordance with Dutch criminal legislation and Dutch policy on criminal matters.

In 1976, the Opiumwet[73] ("Opium Law") was amended to distinguish between drugs with unacceptable risk, commonly referred to as hard drugs, and drugs like cannabis referred to as soft drugs. The "hard drugs" are contained in List 1 and the "soft drugs" are found in List 2. Some examples of each are as follows:

71 Paul North, Volteface, https://volteface.me/warehoused-prisoners-killing:huge-drug-debts (accessed September 2018).

72 Hilary Mitchell, 'This is what it's actually like to be a UK prison guard' (*iNews* 31 May 2018) <https://inews.co.uk/opinion/this-is-what-its-actually-like-to-be-a-uk-prison-guard>.

73 Government of the Netherlands, Wet van 12 mei 1928, tot vaststelling van bepalingen betreffende het opium en andere verdoovende middelen <http://wetten.overheid.nl/BWBR0001941/2017-05-25>.

List 1 (Hard Drugs)	List 2 (Soft Drugs)
Heroin	Delorazepam
Cocaine	Estazolam
Methadone	Halazepam
Ritalin	Hashish
Fentanyl	Hemp (all parts of the Cannabis species)

A natural question then is: on what basis does the Netherlands distinguish between hard and soft drugs? The answer is simple: soft drugs are less hazardous to health than hard drugs.[74] The official stance clarifies that soft drugs are not harmless substances but the risks are less serious than those associated with hard drugs. This is a common sense approach. However, it is not entirely clear how the Netherlands makes that distinction, and how, if a particular substance is borderline, it decides which side it comes down on?

The Opium Law does not legalise cannabis; possession, commercial distribution, production and importing/exporting are still illegal. However, the penalties for possession of cannabis, up to 5 grams or up to 5 plants, will not result in prosecution. In other words, possession is not legal but it carries little personal risk.

Therefore, whilst the famous coffee shops themselves are legal, the supply chain behind them is contrary to the Opium Law. The coffee shops are subject to regulations and criteria.[75] Proprietors:

1. must not cause any nuisance;
2. are not permitted to sell hard drugs included in Schedule I;
3. are not permitted to sell cannabis to minors;
4. must not advertise drugs;
5. are prohibited from stocking more than 500 grams of cannabis; and
6. are not permitted to sell more than 5 grams in a single transaction.

The Government of the Netherlands states that:

Soft drugs are less damaging to health than hard drugs. In the Netherlands, coffee shops are permitted to sell cannabis under certain strict conditions. A coffee shop is an establishment where cannabis may be sold but no alcoholic drinks may be sold or consumed. This is part of the Dutch policy of toleration.[76]

74 Government of the Netherlands, 'How does the law distinguish between soft and hard drugs?' <https://www.government.nl/topics/drugs/how-does-the-law-distinguish-between-soft-and-hard-drugs>

75 Government of the Netherlands, 'Toleration policy regarding soft drugs and coffee shops' <https://www.government.nl/topics/drugs/toleration-policy-regarding-soft-drugs-and-coffee-shops>.

76 Ibid.

In February 2017 the lower house of parliament of the Netherlands narrowly approved Bill 34165-6[77] which amends the current law and permits the cultivation of cannabis for non-medical purposes. The bill, submitted by Ms Vera Bergkamp, passed by five votes.

The Netherlands government is currently undergoing an experiment. Its official Dutch name is the experiment gesloten coffeeshopketen; in English this is translated as 'controlled cannabis supply chain experiment'.

Municipalities have expressed concerns about current coffee shop policy, complaining that it causes problems relating to public order and safety, public health and efforts to combat crime. The aim of the experiment is to investigate whether and how quality-controlled cannabis can be delivered to the coffee shops. The experiment is currently ongoing.

Legal position in the United States of America: Federalism and the Federal Position

At the time of writing this report, numerous states have relaxed controls on cannabis to different degrees. Some states have legalised cannabis for recreational use, some for medical use and others have decriminalised or adopted a "turning a blind eye" policy.

The Obama administration asserted that state legalisation complied with the UN drug treaties because the door was left open for prosecutorial discretion and flexibility of enforcement. Whilst this policy may be appropriate on a short-term basis, it is hard to sustain in the long term.

In 2012 the voters in Colorado and Washington approved initiatives to legalise, distribute and regulate cannabis for recreational purposes. The results of the ballot were clear with 55.3% of the vote in favour of reform in Colorado and 55.7% in Washington.

This was unprecedented as at the federal level, cannabis remains illegal pursuant to the Controlled Substances Act 1973 ("CSA 1973"). The CSA 1973 strictly prohibits the cultivation, possession and distribution of cannabis throughout the United States. As such, the CSA 1973 implements the UN drug treaties into domestic law.

In 2013 the Deputy Attorney General issued a memorandum ("the Cole Memo") on guidance for enforcing marijuana compliance. The Cole Memo was an update on guidance for federal prosecutors concerning cannabis enforcement pursuant to CSA 1973.

The Cole Memo reiterates that:

... Congress has determined that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs and cartels. The Department [of Justice] *is also committed to using its limited investigative and prosecutorial resources to address the most significant threats in the most effective, consistent, and rational way.*

77 Tweede Jamer, 'Voorstel van wet van het lid Bergkamp tot wijziging van de Opiumwet teneinde de teelt en verkoop van hennep en hasjiesj via een gesloten coffeeshopketen te gedogen (Wet gesloten coffeeshopketen) (34165-6, 23 September 2016) <https://www.tweedekamer.nl/kamerstukken/detail?id=2016D35566>.

It has been asserted that the posture in the Cole Memo is consistent with the UN drug treaties. U.S. officials have pointed to the United States decade's long commitment to the UN drug treaties broader objectives and in the same breath highlighting the flexibility afforded by said treaties.

The Cole Memo states that historically lower-level or localised offending has been left to state and local law enforcement agencies. As such, the federal level focuses its *"enforcement resources and efforts, including prosecution, on persons or organizations whose conduct interferes with any one or more of these priorities, regardless of state law."*

Some of the priorities that the Cole Memo refers to are summarised below:

1. preventing the distribution of cannabis to minors;
2. preventing the revenue from the sale of cannabis from going to criminal enterprises, gangs and cartels;
3. preventing the diversion of cannabis from states where it is legal under state law in some form to other states;
4. preventing state-authorised cannabis activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
5. preventing violence and the use of firearms in the cultivation and distribution of cannabis; and
6. preventing drug driving and the exacerbation of other adverse public health consequences associated with cannabis use.

In other words, the official position of the United States government was that cannabis is a dangerous drug and the revenues generated from the supply chain constitute criminal activity. However, it also appears that the Obama government was willing to turn a quasi-blind eye to lower level criminal activity. This may be as a result of taking a view that lower level crime is either less of a threat or not a proportionate threat to the resources afforded to the Department of Justice.

This approach at first glance is surprising. The preemption doctrine, based on the United States Constitution's Supremacy Clause, makes federal law the "supreme law of the land" trumping over conflicting state laws. As such, it would be natural to think that the CSA 1973 conflicts with laws in states where there is a relaxed approach to cannabis official or not.

Any action on the basis of the preemption doctrine would have to show that state level laws permitting the cultivation, sale and possession of limited amounts of cannabis creates an irreconcilable conflict with CSA 1973. The conflict appears to be obvious and specific scenarios have been highlighted such as plans to tax and regulate cannabis would be a direct conflict with federal law.

Surprisingly, no federal court has addressed the preemption argument. However, this is not entirely unexpected as there is a formidable constitutional counterweight to the pre-emption argument: the Tenth amendment. The Tenth amendment to the United States Constitution

reads: *The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people*.

The Tenth amendment is known as the "anticommandeering doctrine". The Tenth amendment was included in the Bill of Rights and further defines the balance of power between the federal government and state. The powers granted by the constitution include the ability to collect taxes, declare war and regulate interstate business and so forth. Most other matters are left to the states.

As such, the Supreme Court has ruled that matters affecting family life, commerce within the state and local law enforcement fall within state powers. States are not required to enforce the will of Congress or federal law. The constitution has not been interpreted as requiring states to be governed by Congress's instructions.

But the United States Supreme Court has confirmed that the federal government can enforce compliance with CSA 1973 with their own resources. Practically speaking though, the federal government lacks resource to enforce its own ban satisfactorily. Only 1% of the 800,000 cannabis cases each year are handled by the federal authorities.[78] As such, despite the unequivocal ban at federal law, coupled with stiff penalties, without the flexing of state level law enforcement the federal ban amounts to little risk for the private user.

The decision in *Gonzales v Raich* 545 U.S. 1 (2005) was predicted by experts to end the battle between the federal government and states over medical cannabis: apparently the states lost. However, this was not what happened in reality. Since *Raich*, states have continued to legalise both medical and recreational cannabis.

As summarised in *New York v United States* [1992] *"no matter how powerful the federal interest involved, the Constitution simply does not give Congress the authority to require the States to regulate."* States are able to legalise cannabis to varying degrees because Congress has not, and may not, preempt state law that refuses to punish activity that the federal government has deemed to be illegal.

The reach of the CSA 1973 is modest at best despite being federal legislation. This legal reality is reflected in the Department of Justice's decision not to challenge the Colorado and Washington ballot initiatives which flew in the face of CSA 1973.

Taken together, the preemptive doctrine and the Tenth amendment reflect the unique legal relationship between federal and state law. This is how cannabis cultivation, sale and possession are forbidden at the federal level but in some states, pursuant to state level provisions, cannabis is legalised and regulated lawfully.

However, the Cole Memo is no more. In January 2018 Attorney General Jeff Sessions rescinded a trio of memos ("Sessions Memo") from the Obama administration including the Cole Memo. The written statement reiterated *"… Congress's determination that marijuana is a dangerous drug and that marijuana activity is a serious crime."* In summary, the Sessions Memo effectively heralds a return to pre-Cole Memo federal policy.

78 Hope M. Babcock, "Illegal Marijuana Cultivation on Public Lands : Our Federalism on a Very Bad Trip" (2017) Ecology Law Quarterly Vol 43Q.723.

The written statement did not indicate that there would be a purposeful increase in prosecutions relating to cannabis use. However, it does state that *"… prosecutors should follow the well-established principles that govern all federal prosecutions."* Mr Sessions described the policy change as a return to the rule of law which was not surprising considering that in April 2015 Mr Sessions famously said *"good people don't smoke marijuana"* during a hearing on the impact of recreational cannabis use.

On 13 April 2018, Republican Senator Cory Gardner of Colorado said that United States President Donald Trump had made a pledge to him during a conversation earlier that week. Mr Gardner said in a statement that: *"President Trump has assured me that he will support a federalism-based legislative solution to fix this state's rights issue once and for all"*.

White House Press Secretary Sarah Huckabee Sanders confirmed that Trump supports states' rights in deciding whether to legalise cannabis or not. This of course is in tension with the Sessions Memo which was released earlier in 2018.

Mr Sessions left office on 7 November 2018 and was replaced with Mr Whitaker as acting Attorney General. His permanent replacement was Mr William Bar. He testified during a Senate Appropriations sub-committee on 10 April 2019 that he favours a more lenient, albeit federalist, approach to marijuana laws. He prefers cannabis to be legalized nationwide rather than let states continue to fly in the face of federal prohibition.

It is safe to say that the positions of the Cole Memo, Sessions Memo and CSA 1973 have muddled the waters. At the time of writing, it is not particularly clear what the official enforcement position is regarding CSA 1973 or where Mr Whitaker really stands on the issue.

It is apparent that there is uncertainty on the ground in states where there are measures moving from prohibition to legalisation in some form. This uncertainty reaches far beyond that of the legal status of cannabis enforcement.

Indeed, industry in legalised states may find it difficult, or even impossible, to locate the resources such as advice, banking, insurance all of which may be regulated at the federal level. The enduring federal prohibition undermines the functionality of the state laws in practice.

Mexico: Decriminalisation and Recreational Use

At the date of writing, Mexico is undergoing rapid change to its drug laws. Long known for its powerful criminal organisations such as the Sinaloa Cartel, Juarez Cartel and Gulf Cartel, this is a significant development for the country.

The law prohibiting recreational use of cannabis was declared unconstitutional by the Supreme Court of Mexico on 31 October 2018.[79] The court issued two rulings which followed three similar rulings since 4 November 2015. Pursuant to Mexican law, five such decisions set a binding precedent which results in the offending law being declared unconstitutional. A similar route was taken to establish a precedent permitting same-sex couples to wed even though this has not materialised into statute.

79 Suprema Corte de Justicia de la Nación, 'Reitera Primera Sala Inconstitucionalidad De La Prohibición Absoluta Del Consumo Recreativo De Marihuana E Integra Jurisprudencia' (31 October 2018) <http://www.internet2.scjn.gob.mx/red2/comunicados/noticia.asp?id=5785>.

As a result of the ruling, the law prohibiting cannabis is largely unenforceable and the Government of Mexico has been given a deadline to make changes. This responsibility falls on the Mexican Congress to reform the law that the Supreme Court declared unconstitutional. The scope of the reform is not clear though; the rulings related to personal possession and private use only. If Congress fails to act then the same avenue of appealing to the Supreme Court is open to every person prosecuted for using cannabis.

The Supreme Court found that adults have a fundamental right to personal development which lets them decide their recreational activities without interference from the state. However, the court determined that the right was not absolute stating that *"the consumption of certain substances may be regulated, but the effects provoked by marijuana do not justify an absolute prohibition of its consumption."*[80]

Not long after the declaration by the Supreme Court, a newly elected government came into power (Morena Party). In November Senator Olga Sánchez Cordero, Secretary of the Interior announced the new government's strategy for combating drug crime and the regulation of cannabis.[81] In an announcement she explained that the prohibitionist policy which Mexico adopted previously has materialised in armed conflict and the criminalisation of vulnerable sectors of society due to activities relating to cannabis.

On 25 February 2019, after a total of eight precedents on the recreational use of cannabis by the Supreme Court, it is now mandatory for all federal judges to grant amparos (injunctions) to people who wish to use cannabis recreationally and seek legal protection to do so.[82]

Recreational Legalisation in Canada: the Act

On 19 October 2015 Justin Trudeau and his Liberal Party of Canada ("Liberals") won the federal election and formed a majority government. The Liberals ran on a platform which promised to *"legalize, regulate, and restrict access to marijuana."*

After election, Mr Trudeau organised a team to discuss the process for legalising cannabis for recreational use. On 13 December 2016 the Task Force on Marijuana Legalization and Regulation published its 106 page report featuring various recommendations. That report formed the basis of Bill C-45 which eventually became the Cannabis Control Act 2017 ("Cannabis Act"). Cannabis for recreational use became legal on 17 October 2018.

The pre-amble states that the Cannabis Act is *"an Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts"*. This is a rather curious choice of wording but it signals the profound shift in official policy. The Cannabis Act states its purpose is to:

80 Christopher Ingraham, 'Mexico's Supreme Court overturns country's ban on recreational marijuana' (*The Washington Post* 1 November 2018) <https://www.washingtonpost.com/business/2018/11/01/mexicos-supreme-court-overturns-countrys-recreational-marijuana-ban/?utm_term=.fc3d68d87c68>.

81 Grupo Parlamentario Morena, 'Exposición de motivos' (*Senadores Legislatura* 08 November 2018) <http://infosen.senado.gob.mx/sgsp/gaceta/64/1/2018-11-08-1/assets/documentos/Inic_Morena_Control-Cannabis_081118.pdf>.

82 Mexico News Daily, '5 injunctions trigger court ruling that marijuana ban is unconstitutional' (23 February 2019) <https://mexiconewsdaily.com/news/marijuana-ban-is-unconstitutional/>.

a. protect the health of young persons by restricting their access to cannabis;

b. protect young persons and others from inducements to use cannabis;

c. provide for the licit production of cannabis to reduce illicit activities in relation to cannabis;

d. deter illicit activities in relation to cannabis through appropriate sanctions and enforcement measures;

e. reduce the burden on the criminal justice system in relation to cannabis;

f. provide access to a qualitycontrolled supply of cannabis; and

g. enhance public awareness of the health risks associated with cannabis use.

The Cannabis Act in effect creates a state monopoly where any activity that falls within its jurisdiction, but does not obtain the required permission, amounts to criminal behaviour. Part 1 Division 1 Paragraph 8 states that unless authorised under this Act, it is prohibited:

a. for an individual who is 18 years of age or older to possess, in a public place, cannabis of one or more classes of cannabis the total amount of which, as determined in accordance with Schedule 3, is equivalent to more than 30 gram of dried cannabis;

b. for an individual who is 18 years of age or older to possess any cannabis that they know is illicit cannabis;

c. for a young person to possess cannabis of one or more classes of cannabis the total amount of which, as determined in accordance with Schedule 3, is equivalent to more than 5 gram of dried cannabis;

d. for an individual to possess, in a public place, one or more cannabis plants that are budding or flowering;

e. for an individual to possess more than four cannabis plants that are not budding or flowering; or

f. for an organisation to possess cannabis.

It also prohibits the promotion and packaging of cannabis which may appeal to young people and/or encourage its consumption; this is often referred to as lifestyle marketing. However, packaging will contain facts about the product within it so they can make informed decisions about its use.

There are other powers such as those reserved for inspection, imposing monetary penalties, issuing a ticket for some offences and mechanisms to deal with seized cannabis. Like consumer products, there are provisions for recalling products, conducting studies or tests and ensuring regulatory control of products.

Part 1 Division 1 Paragraph 8.1(2) prioritises public health over criminal enforcement. It contains a “medical exemption” to prosecution which states:

No person who seeks emergency medical or law enforcement assistance because that person, or another person, is suffering from a medical emergency is to be charged or convicted of an offence under subsection 8(1) if the evidence in support of that offence was obtained or discovered as a result of that person having sought assistance or having remained at the scene.

Paragraph 8.1(2) had its origin in a private member's bill which became the Good Samaritan Drug Overdose Act ("Good Samaritan Act"). The Good Samaritan Act amended the Controlled Drugs and Substances Act to exempt from charges for simple possession, certain breaches of condition for people who seek emergency medical assistance for themselves or another person in the event of an overdose.

If the Cannabis Act had been given royal assent without the amendment, there would have been an anomaly in the law. The Good Samaritan Act would have prevented the prosecution for those seeking emergency medical assistance for the relevant prohibited drugs but for cannabis obtained outside of the Cannabis Act. Therefore, the Good Samaritan Act would apply to drugs which were prohibited in all circumstances but not cannabis which is prohibited only if obtained outside the Cannabis Act provisions.

Those who are found guilty of an offence pursuant to the Cannabis Act potentially face either a summary or indictable charge depending on the facts. If an adult is convicted on an indictable offence they are liable to imprisonment for a term not more than five years less a day. If guilt is found in relation to a summary offence then a term of imprisonment of not more than 6 months and/or a fine not exceeding $5,000 CAD may be imposed. Organisations are liable to be fined up to $100,000 CAD.

It is not clear why 30 grams of cannabis was selected as being contrary to the law even though this was for those over 18 years of age and 5 grams was the amount for those under that age. The former could enable the user to roll as many as 30 to 40 reasonably sized joints.

Canada: the Early Reports and Public Health Efforts

Once cannabis was legalised the federal government began an $83 million CAD public education campaign, much of it targeting youth to warn of the danger of cannabis.[83] Part of this is endeavour can be found on official government websites such as 'Cannabis in Canada: Get the facts'. Part of the campaign includes short videos (which can be accessed on YouTube). Problematically though, historically speaking past anti-drug efforts have had limited results.[84]

83 Catherine Porter, 'Canada's message to teenagers: marijuana is legal now, but please don't smoke it', (*The Toronto Star* 11 November 2018) <https://www.thestar.com/news/cannabis/2018/11/11/canadas-message-to-teenagers-marijuana-is-legal-now-but-please-dont-smoke-it.html>.

84 Ibid.

Cannabis & Your Health

10 WAYS to Reduce Risks When Using

Cannabis use is now legal for adults, but it does have health risks.
If you use non-medically, you can make informed choices for safer use.

Delay using cannabis as late as possible in life, ideally not before adulthood.

Avoid using if you're pregnant, or if you or family members have a history of psychosis or substance use problems.

Choose low-potency products — those with low THC and/or high CBD content.

Use cannabis in ways that don't involve smoking — choose less risky methods of using like vaping or ingesting.

Stay away from synthetic cannabis products, such as K2 or Spice.

If you do smoke, avoid deep inhalation or breath-holding.

Occasional use, such as one day per week or less, is better than regular use.

Your actions add up. The more risks you take, the more likely you are to harm your health.

Don't operate a vehicle or machinery while impaired by cannabis. Wait at least 6 hours after using. Remember that combining alcohol and cannabis makes you more impaired.

Not using cannabis at all is still the best way to protect your health (unless you use with a medical recommendation).

When using cannabis, be considerate of the health and safety concerns of those around you. Don't hesitate to seek support from a health professional if you need help controlling your cannabis use, if you have withdrawal symptoms or if your use is affecting your life.

Public Health Agency of Canada | Agence de la santé publique du Canada

camh

CANADIAN RESEARCH INITIATIVE IN SUBSTANCE MISUSE

Official Government of Canada guidance includes 'talking with teenagers about drugs'.[85] The guidance includes information about:

- Talking with teens
- Tips for talking about drugs
- Points about cannabis
- Slang terms for cannabis
- Points about prescription drugs
- Talking about other drugs
- Get help for problematic substance use

There are further initiatives including a government backed organisation called Drug Free Kids Canada.[86] Its corporate donors include various organisations such as a cannabis producer, major national bank, automotive recovery and a major national chemist. Drug Free Kids provides online resources to parents for talking to their children about drugs and specifically cannabis.

In particular, they have created a series of YouTube videos which are designed for parents. The videos feature adolescents 'reacting' to parental talks about drugs. In essence, the actors recreate common objections, including the associated body language, that a parent may encounter when trying to discuss the dangers of cannabis.

The scheme is innovative in preparing parents for not only the verbal responses but the body language as well. Titles include:

- Teen answer – Again?
- Teen answer – Complete silence
- Teen answer – I hardly ever do it
- Teen answer – It's better than drinking
- Teen answer – But it's legal
- Teen answer – I can't just say no
- Teen answer – You used to do it

This approach is well thought of and supports parents in dealing with the issue and their children. It is a good start for preparing those who wish to have 'the talk' and fosters better outcomes hopefully reducing the instances of cannabis use amongst adolescents. It is certainly a shift from the abstinence message that was previously used when addressing teenagers.

In addition, research from Canada suggests that harm reduction messages resonate more with teenagers than the 'don't do drugs' mandate.[87] This is because abstinence-only or zero-tolerance does not reflect the realities of their life.[88] One of the authors of the study, Emily Jenkins said:

85 Government of Canada, 'Talking with teenagers about drugs' (11 January 2019) <https://www.canada.ca/en/health-canada/services/substance-use/talking-about-drugs/talking-with-teenagers-about-drugs.html>.

86 Drug Free Kids Canada <www.drugfreekidscanada.org>.

87 Allie Slemon, Emily K Jenkins, Rebecca J Haines-Saah, Zacgary Daly, Sunny Jiao, '"You can't chain a dog to a porch": a multisite qualitative analysis of youth narratives of parental approaches to substance use' (2019) Harm Reduct Journal 16(26).

88 The University of British Columbia 'Teens prefer harm reduction messaging on substance use' (*UBC News* 25 April 2019) <https://news.ubc.ca/2019/04/25/teens-prefer-harm-reduction-messaging-on-substance-use/>.

"Youth were more receptive when their parents talked – in a non-judgmental way – about substance use or could point to resources or strategies to help minimize the harms of use. This approach seemed to work better in preserving family relationships and youth health."

Official Government of Canada guidance on 'Cannabis and mental health' acknowledges that the human brain is not fully developed until around age 25.[89] As such, the Government recognizes that youth are especially vulnerable to the effects of cannabis on brain development and function.

The Centre for Addiction and Mental Health (CAMH) is Canada's largest mental health teaching hospital. It has produced significant literature on cannabis and mental health. In particular it is committed to informing the public about the risks involved with cannabis use and how to reduce them.[90]

In particular CAMH is conducting studies one of which is entitled 'cannabis abstinence in major depressive disorder'.[91] The study will explore if quitting cannabis for 28 days may improve symptoms of depression. If a participant is successful in quitting cannabis for 28 days they will receive a monetary bonus in addition to compensation for their time. The results of studies such as these will be of interest to the global scientific community but also to policy makers in the United Kingdom.

CAMH has produced a poster (see page 29) based on the Lower-Risk Cannabis Use Guidelines, outlining 10 ways to reduce health risks from cannabis use. The poster states "Cannabis use is now legal for adults, but it does have health risks". Other statements include:

- Delay using cannabis as late as possible in life, ideally not before adulthood.
- Choose low-potency products – those with low THC and/or high CBD content.
- Your actions add up. The more risks you take, the more likely you are to harm your health.
- Don't operate a vehicle or machinery while impaired by cannabis. Wait at least 6 hours after using. Remember that combining alcohol and cannabis makes you more impaired.
- Not using cannabis at all is still the best way to protect your health (unless you use with a medical recommendation).

The majority of the points made on the poster are sensible. However, it is not clear where the "wait at least 6 hours" rule has come from. This is particularly concerning as cannabis impairment cannot be measured in the same way as alcohol impairment as the substances are metabolised differently.

Further, it is disappointing that the poster references not using cannabis before adulthood. That is a vague term and it is possible that adolescents may consider themselves 'adults', at least physically speaking, well before their brain has finished developing. It would have been better to put in an actual age based on generally accepted research of when brain development is typically completed.

89 Government of Canada "Cannabis and Mental Health" (6 March 2018) and "Cannabis in Canada" (18 April 2019).

90 CAMH, 'CAMH Statement on the Legalization of Cannabis' (17 October 2018) <https://www.camh.ca/en/camh-news-and-stories/camh-statement-on-the-legalization-of-cannabis>.

91 CAMH, 'Cannabis abstinence in major depressive disorder' (08 March 2019) <https://www.camh.ca/en/science-and-research/research-connect/study-cannabis-abstinence-in-major-depressive-disorder>.

The public health message in Canada is not just reserved for the government. Indeed, a well-known anti-drink driving charity in Canada called Mothers Against Drunk Driving (MADD Canada)[92] has adapted its message to include drugs and specifically cannabis.

Statistics Canada in its latest National Cannabis Survey, for the fourth quarter 2018 which includes the post legalisation period,[93] summarised the following key points:

- About 4.6 million or 15% of Canadians aged 15 and older reported using cannabis in the last three months. That was a similar percentage to what was reported before legalisation.
- A person's use for medical or non-medical reasons had wide ranging impacts on consumption behaviours. For example, people who consumed cannabis for medical reasons were more likely to use it daily or almost daily, and less likely to choose smoking as their method of consumption. Medical users were also more likely to report spending on cannabis than those who reported using for non-medical reasons.
- Canadians pointed to a number of factors when deciding where they purchase cannabis. The main consideration reported by more than three-quarters of all cannabis users was quality and safety (76%), followed by lowest price (38%) and accessibility (33%).

It is early days but it is encouraging to see that consumption did not jump immediately. A study in 2015 from the University of California San Diego found that cannabis liberalisation with depenalisation and partial prohibition policies were associated with higher levels of regular cannabis use amongst adolescents.[94]

A recent scientific study from the University of Kent was designed to test the University of California conclusions.[95] It examined data from more than 100,000 adolescents cannabis users from 38 countries including the United Kingdom, United States, Canada and Germany. The University of Kent, having replicated and re-analysed the same pooled data, concluded that the University of California study findings were not supported. The effect of cannabis liberalisation remains unclear which supports a cautious and measured approach to any reforms in the law.

It is clear from the Canadian National Cannabis Survey that the number one factor is the quality of the product and its safety. That is encouraging and the importance of safety over all other factors ought to be emphasised particularly in light of the research considering if cannabis liberalisation increases adolescent use.

There have been criminals setting up unauthorised cannabis dispensaries seeking to profit from the supply chain issues. This is a criminal offence but it also raises issues of consumer protection and potential civil liability. One of the arguments for the relaxation in cannabis law is that it is a means of reducing the grip of criminal activity on the supply of cannabis. This evidences that where there are opportunities to profit people will take chances.

92 Mothers Against Drunk Driving (MADD Canada) <madd.ca>.

93 Statistics Canada, 'National Cannabis Survey, fourth quarter 2018' (*Government of Canada* 07 February 2019) <https://www150.statcan.gc.ca/n1/daily-quotidien/190207/dq190207b-eng.htm>.

94 Yuyan Shi, michela Lenzi, Ruopeng An, 'Cannabis Liberalization and Adolescent Cannabis Use: A Cross-National Study in 38 Countries' (2015) PLoS ONE 10(11)

95 Alex Stevens, 'Is policy 'liberalization' associated with higher odds of adolescent cannabis use? A re-analysis of data from 38 countries' (2019) International Journal of Drug Policy 66, 94-99.

The legalisation of cannabis only stretches as far as to fresh and dried cannabis. As such there is still a ban on cannabis edibles which is providing further opportunistic illegal activity.[96] This is clearly a glaring hole which reflects the complicated nature of legalising cannabis. For example, police have confiscated nearly £1,000,000 worth of illegal cannabis and cannabis-related products that resemble lollies, gummy bears, chocolate bars and candy floss.[97] This particular confiscation occurred in the Toronto area and it can readily be assumed that there are such operations elsewhere in the country.

There are plans to extend legalisation to edibles with effect from 17 October 2019 which presents a whole raft of new regulatory challenges.

Since legalisation there have been chronic shortages of cannabis. This is unsurprising because judging the size and demand of a black market is a tenuous endeavour[98]. The shortages resulted in new illegal activity in the form of unauthorised sellers setting up to service the demand. Store fronts selling cannabis are regularly being shut down. In addition, both legitimate and illegal storefronts are susceptible to robbery and theft of both money and cannabis.[99]

There have been news reports that 'business' has been steady for low level drug dealers (in one instance being described as a 'side hustle'). For example, in a news report, an anonymous drug dealer from the province of Saskatchewan claims that business has been steady because the legal cannabis prices are too high and that the THC levels are too low.[100] From the National Cannabis Survey the second most important factor that consumers take into account when sourcing cannabis is the price. This is also the experience in Colorado where cannabis on the street is less expensive than legitimate cannabis.[101]

Whilst this is disappointing it would be rash to conclude legalisation has been a failure in terms of eliminating the black market. In essence, it is early days and the rollout of the regulatory framework has been slower than anticipated. This has resulted in teething issues of which are unsurprising but whether they are resolved or are in fact deficiencies in the relaxation of cannabis laws is yet to be determined.

There is little current evidence that there has been a significant increase in cannabis impaired driving after the legalisation of cannabis. This may simply be because not enough data has been collected and/or the statistics have not been compiled.[102] Further, it is possible that police officers have not been suitably trained and are not spotting drug impaired driving properly.

96 Kristy Kirkup, 'Black market sets sights on cannabis edibles, tablets, ointments' (*CTV News* 18 October 2018) <https://www.ctvnews.ca/canada/black-market-sets-sights-on-cannabis-edibles-tablets-ointments-1.4140235>

97 Doha Hanno, 'Police issue warning after seizing $1.7M of cannabis edibles that look like candy'(*CTV News* 8 March 2019) <https://www.ctvnews.ca/canada/police-issue-warning-after-seizing-1-7m-of-cannabis-edibles-that-look-like-candy-1.4327979>.

98 Nick Miroff, 'Losing marijuana business, Mexican cartels push heroin and meth' (*The Washington Post* 11 January 2015) <https://www.washingtonpost.com/world/the_americas/losing-marijuana-business-mexican-cartels-push-heroin-and-meth/2015/01/11/91fe44ce-8532-11e4-abcf-5a3d7b3b20b8_story.html?utm_term=.c6b514fd71f6>.

99 Doyle Potenteau 'Armed suspects rob cannabis dispensary in Kamloops' (*Global News* 9 March 2019) <https://globalnews.ca/news/5039300/cannabis-dispensary-armed-robbery-kamloops/>.

100 CTV News, 'Sask. pot dealer sees boost in sales after legalization' <https://www.ctvnews.ca/video?playlistId=1.4340846>.

101 Nick Miroff, 'Losing marijuana business, Mexican cartels push heroin and meth' (*The Washington Post* 11 January 2015) <https://www.washingtonpost.com/world/the_americas/losing-marijuana-business-mexican-cartels-push-heroin-and-meth/2015/01/11/91fe44ce-8532-11e4-abcf-5a3d7b3b20b8_story.html?utm_term=.c6b514fd71f6>.

102 Laura Kane, 'Early data suggest no spike in pot-impaired driving after legalization, police say', (C*BC News* 15 November 2018) <https://www.cbc.ca/news/politics/pot-impaired-driving-no-spike-1.4906550>.

Whilst the general Canadian population may be exceptionally well behaved and not driving under the influence of cannabis that does not reconcile with the experience south of the border in the United States.[103]

Recreational Legalisation: the Boom

It is hard with any certainty to predict the potential growth of the cannabis market. In particular there is the sale of cannabis itself but the associated merchandise, accessories and edibles which incorporate cannabis such as baked goods.

Jefferies Group LLC, an American investment bank headquartered in New York City, initiated coverage of publicly listed companies who are in the cannabis industries. These sorts of listed companies are often referred to as "pot stocks". According to Jefferies, if legalisation continues and spreads to the rest of the United States, South America and Europe the global cannabis industry could be worth as much as £99 billion a decade from now.[104]

It is hard to ignore the significant potential of the industry to raise revenue without raising taxes elsewhere. Further, it is an industry which may employ a significant number of people including those who, due to previous criminal convictions related to cannabis, may find themselves with in demand skills and knowledge. This has the potential of making certain populations more employable than they would be but for a legitimate cannabis industry.

However, the growth of the cannabis industry is not limited to the sale of cannabis itself. It will include satellite products and services such as industry consulting, marketing, supply of specialist equipment and packaging, financial services and recruitment of skilled individuals. The growth of an industry, job creation, revenue collection and associated economic benefits must be considered. Whilst this would be more acute for jurisdictions which have recreational legalisation there will likely be an economic benefit for any relaxation in cannabis law including sparing low level users from criminal records.

In addition to the satellite products and services there is also the culture of cannabis. This varies from established religious traditions such as Rastafari to pop culture icons such as the rapper Calvin Cordozar Broadus Jr known professionally as 'Snoop Dogg'. Snoop Dogg's influence is such that a cannabis brand called Leafs by Snoop was launched in November 2015 and was ready for distribution in 2018.

However, it is not just rap stars like Snoop Dogg who are a natural fit for this industry. Other household names such as Martha Stewart, loosely America's equivalent to Mary Berry, have announced business partnership with a large Canadian cannabis producer in assisting them developing a line of CBD-based animal health products.[105] This partnership evidences that cannabis and its related products appeals to a diverse demographic in Canada and potentially globally.

103 CTV News, 'Cannabis legalization could result in more car crashes: reports' (18 October 2018) <https://www.ctvnews.ca/autos/cannabis-legalization-could-result-in-more-car-crashes-reports-1.4139491>.

104 David George-Cosh, 'Global cannabis market could be worth up to US$130B by 2029: Jefferies' (BNN Bloomberg 25 February 2019) <https://www.bnnbloomberg.ca/global-cannabis-market-could-be-worth-up-to-us-130b-by-2029-jefferies-1.1219522>.

105 Thomas Franck, 'Canopy Growth announces business partnership with Martha Stewart' (*Stocknews* 28 Feb 2019) <https://stocknews.com/news/cgc-canopy-growth-announces-business-partnership-with-martha-stewart>.

Currently, one of the market leading companies is called Canopy Growth Corporation based in Smith Falls, Ontario, Canada. It is also the producer of Leafs by Snoop. In August 2018 it received a significant investment from Constellation Brands (the makers of Corona) giving it a 38% interest in Canopy. This is a significant investment and from an investment point of view, helped to legitimise the industry in the eyes of investors.

However, there are suggestions that investor enthusiasm may have been overextended and share prices have become overpriced. Cannabis has been legalised long enough for financial results to be reported which have largely been underwhelming.[106] Legal sales to date are well below previously forecasted amounts. One significant factor is problems in the supply chain, Health Canada licensing delays and the struggles many producers are facing to expand operations. Whilst this is expected of a developing industry there was a clear discrepancy between expectation and reality.

It is difficult to predict the value of the cannabis market in Canada or anywhere else. However, some reports have projected that it could be worth nearly £7 billion. But with the disappointing revenue results and the shifting priorities from growth to profitability the projections have been revised. In early April 2019 cannabis industry research firm BDS analytics cut its forecast on the expected growth of Canada's market whilst extending the amount of time expected to achieve it.

In January 2019 BDS Analytics had predicted that the Canadian cannabis industry would be worth £4.61 billion by 2022. It now forecasts that the industry will grow to £4.06 billion by 2024. Investors are taking notice of the slow start; the Canadian Marijuana Index, which tracks the performance of the top 20 cannabis companies has declined just over 10% since earnings started to be reported.[107]

To put this into perspective, Planet 13 Holdings' Las Vegas store sold more cannabis than Cronos Group Inc did across the whole of Canada; Cronos Group's market value is roughly 21 times that of Planet 13 Holdings.[108]

Despite the disappointing earnings, Canada has given itself a commercial advantage by legalising cannabis on a federal level. In effect, it will be able to position itself as a global leader and give itself a commercial edge by allowing the industry to mature sooner. An advantage of legalising at the federal level is that it permits legitimate banking facilities and investment something which has been a struggle in the United States. These industries have been given a substantial lead in terms of maturing and developing best practices.[109]

There is considerable scope to argue that this commercial advantage has started to crumble. Mr Selfe, Chief Executive Officer for Infor Financial Group Inc (a major investor to the cannabis industry) said *"on a whole bunch of fronts, the head start that we had is rapidly eroding . . . in many ways, the U.S. multi-state operators have a significant competitive*

106 Vanmala Subramaniam, ''Absolutely horrible': Cannabis industry expectations sliding after slow start to legal era' (*The National Post* 10 April 2019) <https://business.financialpost.com/cannabis/cannabis-business/cannabis-investing/absolutely-horrible-cannabis-industry-expectations-being-tempered-after-slow-start-to-legal-era>.

107 Ibid.

108 Kristine Owram, 'U.S. Gains Ground on Struggling Canada in Race for Pot Revenue' (*Bloomberg* 10 April 2019) <https://www.bloomberg.com/news/articles/2019-04-10/pot-revenue-race-is-on-as-u-s-gains-ground-on-struggling-canada>.

109 Rob Gillies, Gene Johnson and Tracey Lindeman, 'Canada's cannabis industry eyes rest of the world' (*CTV News* 18 October 2018) <https://www.ctvnews.ca/business/canada-s-cannabis-industry-eyes-rest-of-the-world-1.4139276>.

advantage now over the Canadian companies."[110] That's not to say Canada has lost its pioneer advantage but according to a recent analysis by DBS Analytics *"whatever happens in their domestic market, the race for world domination is theirs to lose."*

The data on tax collections is not representative of the true economic picture. The revenue received by the provinces is lower than projected but this has been attributed to the delays in the process of legalising cannabis. British Columbia's first round of tax revenues were lower than were written into last year's budget. The province had estimated it would receive the equivalent of £113.5 million over the next three years but instead will only recover just under £39 million.[111] This is a noticeable difference. The downgrade in forecast has also been linked with the delay in opening of cannabis stores throughout the province which is likely true of other provinces.

There is a natural tension between the economic benefits of a healthy and profitable industry generating reliable and valuable tax revenue with public health. Naturally, investors and special interest groups will want to see increased profits and that usually indicates growing consumption. However, in this scenario, growing consumption likely means increased health risks. A careful balance needs to be struck between carefully cultivating a legitimate industry offering employment and protecting the public at large.

Colorado is an example where the free market and profit have taken priority over public health. There is significant cannabis advertising and Professor Robin Murray describes the state as having *" ... more dispensaries than Starbucks ... It is a bit like the Wild West out there ..."*[112] Indeed, there is cannabis with potency levels of over 80% on offer to consumers.[113] This model should not be followed and frankly puts too much priority on profits within a free market with little regard to the consequence in plain sight. The effects though of this free market ought to be monitored as long term evidence starts to be collated.

Legalisation and the Black Market

One of the most persuasive arguments in favour of legalising cannabis is that it will put criminals out of business. The theory is that if cannabis is legalised, that will take the profits from drug dealers and create a legitimate industry generating taxable income. This solves a few problems in one go: lower crime, increased revenue and the redistribution of police forces to 'more serious' criminality.[114]

This paper has already stated that it did not expect criminals to renounce their way of life and become model citizens. In fact, it was suggested that they would modify their 'business plan' and shift their illegal activities; this is what appears to be happening.

110 Kristine Owram, 'U.S. Gains Ground on Struggling Canada in Race for Pot Revenue' (*Bloomberg* 10 April 2019) <https://www.bloomberg.com/news/articles/2019-04-10/pot-revenue-race-is-on-as-u-s-gains-ground-on-struggling-canada>.

111 Richard Vogel, 'B.C tax revenue from legal cannabis lower than expected' (*CBC News* 06 March 2019) <https://www.cbc.ca/news/canada/british-columbia/b-c-tax-revenue-from-legal-cannabis-lower-than-expected-1.5046380>.

112 Andrew Ellson and Chris Smyth, 'Decriminalise cannabis, urges psychosis expert Sir Robin Murray' (*The Times* 11 October 2018) <https://www.thetimes.co.uk/article/decriminalise-cannabis-urges-psychosis-expert-sir-robin-murray-z6zjrcsqm>.

113 Suzanne Blumsom, Katie Martin, Clive Cookson, Robin Murray (eds) 'Strong Cannabis linked to psychosis' (*The Financial Times* 21 March 2019) <https://www.ft.com/content/ebe84783-e0f7-4ea0-ab34-54695bb3e70d>.

114 Tom James, 'The failed Promise of Legal Pot' (*The Atlantic* 9 May 2016) <https://www.theatlantic.com/politics/archive/2016/05/legal-pot-and-the-black-market/481506/>.

Central American cartels are losing cannabis business so are starting to push heroin and methamphetamine. Legalisation has increased the quality of cannabis in the United States because it is grown domestically using genetically improved strains and greenhouses. Cartels are still sending cannabis across the border into the United States but the profit margins have been squeezed considerably.[115] The amount of cannabis seized by federal, state and local officer along the border with Mexico fell 37% between 2011-2015.

The Canadian experience shows that gangs will still continue to operate where there are opportunities. Drug dealers in Canada can be roughly split into two groups; those who operate 'traditional' gang activity and those who sell cannabis from unauthorised store fronts. In terms of the 'traditional' gang activity, recreational legalisation has shown that they still operate providing a much higher THC product then law will permit. This is also the experience in other legal jurisdictions such as Washington.

Legalisation presents unique challenges in that a legitimate industry has to compete with a mature illegitimate industry. As well, with legitimacy comes regulation, overheads and tax – one of the key reasons to legalise. What this means is that some users cannot afford legitimate cannabis and resort to the black market.[116] Strictly speaking, this is a criminal offence, but once the cannabis is purchased it is hard to envisage how police enforcement would know the cannabis was illegitimate. A report from Scotiabank found that the black market will still control 71% of the cannabis trade in Canada during 2019.[117]

Relaxation in cannabis laws: the social dangers

Our working party is particularly concerned about what, if any, social harms arise from the relaxation of cannabis laws. There is existing mischief such as impaired driving and criminality relating to cannabis such as knife crime and gang activity.

The relaxation of the laws surrounding cannabis in some jurisdictions provides evidence regarding the potential social impact of the reforms. The jurisdictions covered though have taken various approaches to that relaxation be it full legal recreational use to *defacto* decriminalisation. This section will review what evidence has been released at the time of its creation.

115 Nick Miroff, 'Losing marijuana business, Mexican cartels push heroin and meth' (*The Washington Post* 11 January 2015) <https://www.washingtonpost.com/world/the_americas/losing-marijuana-business-mexican-cartels-push-heroin-and-meth/2015/01/11/91fe44ce-8532-11e4-abcf-5a3d7b3b20b8_story.html?utm_term=.50e82ea40ca6>.

116 Stephanie Villella, ''If anything there's probably more drug dealers now': Pot dealer sees boost in sales after legalization' (*CTV News* 1 March 2019) <https://saskatoon.ctvnews.ca/if-anything-there-s-probably-more-drug-dealers-now-pot-dealer-sees-boost-in-sales-after-legalization-1.4318603>.

117 Sean Williams, 'Canada's Black Market to Control 71% of Marijuana Sales in 2019' (*The Motley Fool* 9 February 2019) <https://www.fool.com/investing/2019/02/09/canadas-black-market-to-control-71-of-marijuana-sa.aspx>.

Impaired Driving

Impaired driving has historically focused on the effects of alcohol. Starting largely in the 1950s, there have been decades of intense research surrounding the effects of alcohol on driving.[118] Research has included simulated crashes, laboratory studies with subjects dosed with alcohol, epidemiological studies and so forth.

From the persuasive research came stricter laws, better detection methods and ultimately a reduction in alcohol related crashes and death. In the United States, alcohol was a factor in 50% of fatal crashes in the 1950s which has been reduced to 30% in recent years.

The absorption of alcohol is relatively straight forward and impairment correlates well with the concentration of alcohol in blood or breath. In other words, the higher the concentration of alcohol the more impaired the person is likely to be. Cannabis is fundamentally a different substance to alcohol and as such the effects of alcohol cannot be applied to those of cannabis.[119] Thus, understanding the effects of cannabis, and other drugs, on driving is critical for public health and safety.

Studies have shown that cannabis affects several critical safe driving skills. For example: it slows reaction time to unexpected events, impairs cognitive performance, causes problems with road and lane positioning; and impairs general risk judgment. Studies in driving simulators suggest that cannabis-impaired drivers were aware of their condition and compensated by taking fewer risks. However, in some of these studies the same drivers reacted poorly to simulated emergencies compared to control drivers.[120]

However, there have been studies which do not report impairment on the driver but this could be caused by differing methodology between studies. Despite the inconsistencies, there is clear potential for cannabis to impair driver functions.

The research conducted so far does not show a relationship between THC levels and driver impairment levels. In other words, impairment levels do not necessarily increase with increased levels of THC in the driver.[121]

Currently, most of the data relating to cannabis use and impaired driving is sourced from the United States. The scope and magnitude of cannabis impaired driving cannot be clearly specified yet but there are strong indications that there is a problem.[122] This is not entirely surprising considering the ease of access (such as decriminalisation and recreational use) and changing public attitudes towards cannabis use.

There have been a series of national studies of driver use of alcohol and cannabis by the National Highway Traffic Safety Administration ("NHTSA"). These studies have found that there has been an increased use of cannabis by drivers and are currently the best sources of

118 National Highway Traffic Safety Administration, 'Marijuana-Impaired Driving: A Report to Congress' (*NHTSA* July 2017), 2 <https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/812440-marijuana-impaired-driving-report-to-congress.pdf>.

119 Ibid., 4.

120 World Health Organization, *The Health and social effects of nonmedical cannabis use* (2016), 20 <https://www.who.int/substance_abuse/publications/cannabis_report/en/>.

121 American Association for Clinical Chemistry journal "Current legal cannabis driving limits in US and Europe are ineffective" (March 2019)

122 National Highway Traffic Safety Administration, 'Marijuana-Impaired Driving: A Report to Congress' (*NHTSA* July 2017), 20 <https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/812440-marijuana-impaired-driving-report-to-congress.pdf>.

empirical evidence. In 2007, 8.6% of tested drivers were found to be positive for THC and in 2013-14 that number rose to 12.6%.[123] This is a sharp increase in just 7 years. By way of comparison, during the same time the percentage of drivers testing positive for alcohol declined from 12.4% to 8.3% in 2013-14.

Since Washington and Colorado legalised recreational cannabis use amongst adults there has been an increase in the number of drivers caught driving impaired. In Colorado since legalising in 2013 there has been a 48% increase in cannabis related traffic deaths during 2013-2015 compared to the period of 2010-2012. During the same comparative periods, all traffic deaths increased 11%. Since 2013 there has been a 67% increase in operators involved in fatal road traffic collisions testing positive for cannabis.

Equally though, there has also been an increased effort to catch such drivers.[124] However, one report states that since recreational cannabis was legalised, traffic deaths where drivers tested positive for cannabis more than doubled from 55 in 2013 to 138 in 2017. The percentage of all Colorado traffic deaths that were cannabis related increased from 11.43% in 2013 to 21.3% in 2017. This is worrying.

The report "Legalization of Marijuana in Colorado: The Impact Volume 5" provides excellent data regarding impaired driving since the legalisation of cannabis. It is important to note that this report covers the period from when medical marijuana was introduced to full recreational marijuana use starting in 2013.

The risk of drug driving is concerning. Primarily this is because there is no sophisticated reliable way to measure the level of impairment compared to alcohol use. Secondly, the way cannabis is processed in the body means that there can be impairment well after use. Thirdly, because of the illegal nature of cannabis there have been relatively few anti-drug driving campaigns. As such, there is a possibility that the general public may not appreciate the danger of driving under the influence of cannabis and the public health guidance needs to emphasise these risks.

123 Ibid.

124 European Monitoring Centre for Drugs and Drug Addiction, *Cannabis and Driving* (Luxembourg May 2018), 11 <http://www.emcdda.europa.eu/system/files/publications/8805/20181120_TD0418132ENN_PDFA.pdf>.

Recommendations

The dangers of cannabis are generally well known amongst the scientific community but the same cannot be said of the potential benefits at this point. The definition of a Schedule 1 MDA 1971 drug is that it has little or no therapeutic value. Having reviewed the scientific evidence, that position is difficult to defend.[125] Professor Sally Davies wrote, if they are moved out of Schedule 1, then they can be prescribed as medicine by registered medical professionals.

Having now been moved out of Schedule 1 opportunities for researching cannabis will be more plentiful and this is something which is sorely lacking. Mr O'Hagan,[126] one of the experts we spoke to, pointed out that there is a lack of quality research regarding cannabis because it is a controlled substance. In other words, if something is tightly controlled, it is difficult to study let alone produce quality research and fill gaps in knowledge which are desperately needed.[127] If cannabis can be proven to be an effective medical treatment for patients then it is an obligation of society to permit safe and proven treatment.

If cannabis prohibition is loosened so as to permit its medical use, careful consideration of the regulatory implications must be examined. Patient protection and regulatory standards must not be compromised in the name of progress or profits. It is clear from the evidence, including the Ireland HPRA report that cannabis has the potential for therapeutic benefits but these potential benefits need to be explored further through peer-reviewed research. The benefits of any cannabis-derived medicine must outweigh its risks.

Professor Sally Davies told the House of Commons Health and Social Care Select Committee that randomised controlled trials are the only way to get medical cannabis products to license and the pharmaceutical industry ought to fund this.[128]

Medical treatment for children and adolescents with cannabis-derived medicine must be done only after considering the risks on the developing brain. There is compelling evidence linking the early use of cannabis with developing psychosis later in life. As such, monitoring the side-effects of cannabis, like any other medication, is paramount to patient safety and product quality.

Quality research is needed as to ensure public health campaigns are effective in reducing the harms of cannabis to the public in general but especially for those most at risk.[129] It is recommended that the discussion concerning cannabis is neither avoided nor ignored and handled appropriately in campaigns. If the conversation is avoided or ignored then the opportunity to control the discourse is lost.

125 Professor Dames Davies, 'Cannabis Scheduling Review Part 1: The therapeutic and medicinal benefits of Cannabis based products – a review of recent evidence' (*Department of Health and Social Care* 3 July 2018) <https://www.gov.uk/government/publications/cannabis-scheduling-review-part-1>.

126 A&N Drugs Expert Witness Service <www.drugexpertwitness.co.uk>.

127 National Academies of Sciences, Engineering and Medicine, *The Current State of Evidence and recommendations for Research Committee on the Health Effects of Marijuana: An Evidence Review and Research Agenda* (*The National Academies Press* 2017) <https://www.nap.edu/read/24625/chapter/2#9>.

128 The Pharmaceutical Journal, 'Pharma industry should fund trials for medical cannabis, chief medical officer tells MPs' (21 March 2019) <https://www.pharmaceutical-journal.com/news-and-analysis/news/pharma-industry-should-fund-trials-for-medical-cannabis-chief-medical-officer-tells-mps/20206322.article>.

129 A recommendation also suggested in Marco Colizzi and Robin Murray, 'Cannabis and psychosis: what do we know and what should we do?' (2018) Br J Psychiatry 212, 195-196.

It is wise to monitor the effects of recreational cannabis use in other countries and in particular Canada in light of its regulatory regime. This is particularly true in jurisdictions where cannabis for medical use has been approved. Medical professionals in those countries may be pressured to prescribe cannabis-derived treatment in scenarios where the benefits and risks are not fully understood due to the absence of research.

This worry is not far-fetched. Having moved cannabis from Schedule 1 to Schedule 2 there are reports that patients have been pressuring medical professional for access. Helen Cross, head of developmental neuroscience at Great Ormond Street Hospital, who works with patients with complex epilepsy, said that *"patient expectation had meant that "probably 70% to 80%, if not more, of my clinics now are taken with explaining the position", and said that it in a minority of cases it had made relationships with patients 'quite difficult'"*.[130]

There are also concerns from medical professionals that those who are prescribed legitimate medical cannabis may be pressured or tempted into diverting that medicine into the hands of others thus creating a new black market for prescription grade cannabis. Professionals point to the origin of the opioid crises with prescription painkillers (particularly in the United States) as a warning that medical cannabis may suffer a similar experience.[131]

The Faculty of Pain Medicine, the professional body for specialist doctors, has supported the concerns of those who signed a letter dated 26 October 2018. Dr Munglani, a pain consultant in London, has stressed that the feeling amongst his colleagues is the relaxation in cannabis law is a bad move. He has said:

"Patients are already demanding they are given medical cannabis. People are coming in and saying, 'I'm not interested in any other technique or drugs I just want the cannabis'. We may end up becoming drug dealers inadvertently."[132]

It is right that the current position is that cannabis-based medicine can only be prescribed by specialist doctors where there is a clinical need which cannot be met by a licensed medicine. At this stage, and until there is further convincing evidence, it is not recommended that the scope is widened any further.

Once quality data and research covering the impact of liberating cannabis restrictions has been produced the United Kingdom can make an informed decision. There is no sense in experimenting on the minds of our young people if other countries are willing to do it on their own. Following the production of quality evidence any cannabis liberalisation must happen by means of debate and not stealth. There are serious concerns that cannabis is being forced through without much care about the serious effects it has on people. In particular, policymakers must take this into account when deciding to relax legal restrictions on the drug.[133]

130 The Pharmaceutical Journal, 'Pharma industry should fund trials for medical cannabis, chief medical officer tells MPs' (21 March 2019) <https://www.pharmaceutical-journal.com/news-and-analysis/news/pharma-industry-should-fund-trials-for-medical-cannabis-chief-medical-officer-tells-mps/20206322.article>.

131 Dr Rajesh Munglani and Dr Andrew Baranowski, University College London Hospitals NHS Trusts (*The Times* 26 October 2018).

132 Chris Smyth, 'Medical cannabis will fuel addiction crisis, say doctors' (*The Times* 26 October 2018).

133 The editorial board, 'Beware of the health costs of legalising cannabis' (*The Financial Times* 22 March 2019) <https://www.ft.com/content/5942f306-4bcf-11e9-8b7f-d49067e0f50d>.

Professor Robin Murray has been rightfully vocal for some time of the dangers of cannabis and pointing out that the general population is unaware of the true harms it poses.[134] For too long the effects of cannabis have been downplayed without an appreciation of increasing afflictions epitomised in what is known as Skunk today. Cannabis by itself is harmful but the particular harm that is feared is most often a result of what has become Skunk. The introduction highlighted that cannabis has doubled in potency from 2006 to 2016. What is also happening is the CBD levels have stabilised or decreased which makes cannabis more harmful.[135]

There is significant evidence to warrant a public health message that cannabis use can increase the risk of psychotic disorders.[136] There is ample public health awareness work to be done and in particular, research will need to be conducted to identify who is more at risk and how best to get the message through to them. In particular, more research needs to be done to ascertain the extent to which individuals with pre-existing mental health problems or who have a history of them in their families are more susceptible to the ill effects of cannabis use. It will be worth monitoring the Canadian campaigns, particularly the efforts to equip parents with the tools and confidence to protect their children from the dangers of cannabis, and adopting any lessons learned. Further, it will be important to keep the public health message separate from the debate of legalisation.[137] Whether cannabis is criminalised, decriminalised or legalised the risks remain.

The legalisation of cannabis will not turn criminal organisations into model citizens. Indeed, criminals have been using policy grey zones and 'loop holes' to profit. Smaller drug dealers, those with a 'side hustle', focus on providing cannabis with higher THC levels and undercutting prices of legitimate cannabis. It would be foolish to think that the legalisation of cannabis would defeat powerful criminal gangs entirely.

There is evidence that as cannabis is being legalised in the United States, gangs are focusing on more deadly products.[138] However, various drugs attract differing personalities, lifestyles and social groups.[139] We are uncertain if decriminalising cannabis in small quantities will have any real effect on gang activity. However, for the casual user, it may protect their future employment and training prospects in the sense that they will not earn a criminal record possibly hindering advancement.

It is true that drug laws as they stand are not working and the War on Drugs has yielded questionable victory. Professor Robin Murray has called it 'foolish' to use the criminal justice system to punish users. Specifically whilst speaking to *The Times* he said:

134 Robin Murray, 'A clear danger from cannabis replying to David Nutt The cannabis conundrum' (*The Guardian* 29 October 2009) <https://www.theguardian.com/commentisfree/2009/oct/29/cannabis-schizophrenia-classification>.

135 The Times, 'Cannabis has doubled in potency' (30 December 2018).

136 Suzanne H Gage, Matthew Hickman and Stanley Zammit, 'Association between cannabis and psychosis: epidemiologic evidence' (2016) Biol Psychiatry 79, 549-56; Robin Murray, Harriet Quigley, Englund Quattrone et al. 'Traditional marijuana, high-potency cannabis and synthetic cannabinoids: increasing risk for psychosis' (2016) World Psychiatry 15, 195-204.

137 Matthew Large, 'The need for health warnings about cannabis and psychosis' (2016) Lancet Psychiatry 3, 188-9.

138 Ambassador Roger F. Noriega, 'Mexico's 'Narco' Crisis: Transnational Organized Crime on Our Doorstep' (*American Enterprise* Institute 12 December 2018), 1 <https://www.judiciary.senate.gov/imo/media/doc/12-12-18%20Noriega%20Testimony.pdf>.

139 Vincenzo Ruggiero, *Crime and Markets: Essays in Anti-Criminology* (*Oxford University Press* 2001).

There is no doubt that criminalisation is foolish. Should we decriminalise? Yes. Should we legalise? It is unclear. I am cautious. I would like to see a system that works before we copy systems that look as if they are doing harm.[140]

This quote in essence sums up our position: let a system prove itself. As such, we advocate a cautious approach to cannabis taking lessons from the Canadian experiment whilst applying Dutch practicality. The free market approach in the United States is not recommended at this stage.

140 Andrew Ellson and Chris Smyth, 'Decriminalise cannabis, urges psychosis expert Sir Robin Murray' (The Times 11 October 2018) <https://www.thetimes.co.uk/article/decriminalise-cannabis-urges-psychosis-expert-sir-robin-murray-z6zjrcsqm>.

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