

TRANSFORM

DRUG POLICY FOUNDATION

Submission to the ministerial review of the ACMD and APC, November 2009¹

About Transform Drug Policy Foundation

- Transform's vision is a world in which the War on Drugs is over, and effective and humane systems of drug regulation have been established.
- Transform has UN ECOSOC consultative status, is a registered charity (no.1100518) and company limited by guarantee (company no. 4882177). For more information please visit www.tdpf.org.uk or call 0117 941 5810.
- Transform has given written and oral evidence to the 2001 Home Affairs Committee Inquiry into illegal drugs (and the current inquiry into the cocaine trade), and the 2006 Science and Technology Committee inquiry into the drug classification system. Transform has made written submissions to a number of ACMD reviews² over the past ten years, and been invited to give oral evidence at two of the three cannabis reviews.

Introductory comments

Note: *This submission only addresses issues relating to the ACMD, and makes no comment on the APC (also covered in the review).*

Transform is supportive of the concept of an independent expert Government advisory body on drugs and drug policy. In such a highly emotive and politicised policy area as drugs, the existence and independent functioning of such an entity becomes all the more critical; able to objectively review and speak to the evidence and make pragmatic recommendations on key questions based on science and rational analysis, rather than politics or ideology.

Whilst Transform have been impressed by the consistent level of expertise, thoroughness and rigor of the ACMD's outputs, we have also been critical of them on a number of fronts, both analytical and procedural. Some of these criticisms are outlined – with proposed solutions – in this submission.

However, it has become clear that the ability of the Council to function properly is critically undermined by the nature of its constitution within the Misuse of Drugs Act (MDA), and its corresponding operation within the ambit of the Home Office. The discussion and proposals

¹ Details and review remit here: <http://drugs.homeoffice.gov.uk/publication-search/acmd/ACMDReview?view=Binary>

² All available here: http://www.tdpf.org.uk/Policy_Briefings.htm

made in response to the questions posed by this review can hopefully offer some short term improvements, but are essentially band-aids for the wider malfunctioning of a system in urgent need of root and branch reform.

We have touched upon the more profound systemic problems with the ACMD, the classification system and the MDA throughout the following discussion as they inevitably frame other responses – but have not explored them in the depth they deserve as they are clearly beyond the remit of this narrowly defined review.

We would, however, hope that one of the recommendations to emerge from this process is for the review of the classification system, promised to Parliament by the then Home Secretary in January 2006³ and then dropped by his successor, be revisited and undertaken with some urgency. The proposed review enjoyed, as far as Transform is aware, universal support in the drugs field, as well as from two Select Committees, and indeed the ACMD itself. The reasoning given by Government for abandoning the review - that it '*believes that the classification system discharges its function fully and effectively and has stood the test of time*' - is entirely unacceptable given the widespread consensus beyond Government that the system is not fit for purpose⁴.

The Wiles review document states that this review will '*focus on the process and function of the committees and not their Terms of Reference, which are set out in legislation*'. However, the two are intimately linked and cannot be considered in isolation given the questions being addressed.

The full Terms of Reference for the Council as outlined in the Misuse of Drugs Act⁵ are as follows:

It shall be the duty of the Advisory Council to keep under review the situation in the United Kingdom with respect to drugs which are being or appear to them likely to be misused and of which the misuse is having or appears to them capable of having harmful effects sufficient to constitute a social problem, and to give to any one or more of the Ministers, where either the Council consider it expedient to do so or they are consulted by the Minister or Ministers in question, advice on measures (whether or not involving alteration of the law) which in the opinion of the Council ought to be taken for preventing the misuse of such drugs or dealing with social problems connected with their misuse, and in particular on measures which in the opinion of the Council ought to be taken—

(a) for restricting the availability of such drugs or supervising the arrangements for their supply;

(b) for enabling persons affected by the misuse of such drugs to obtain proper advice, and for securing the provision of proper facilities and services for the treatment, rehabilitation and after-care of such persons;

(c) for promoting co-operation between the various professional and community services which in the opinion of the Council have a part to play in dealing with social problems connected with the misuse of such drugs;

(d) for educating the public (and in particular the young) in the dangers of misusing such drugs, and for giving publicity to those dangers; and

³ <http://www.theyworkforyou.com/debates/?id=2006-01-19b.982.0#g982.1>

⁴ Of particular note was the critique of the system laid out by the Science and Technology Select Committee in 2006

⁵

<http://www.statutelaw.gov.uk/content.aspx?LegType=All+Primary&PageNumber=6&BrowseLetter=M&NavFrom=1&parentActiveTextDocId=1367412&ActiveTextDocId=1367415&filesize=5871>

(e) for promoting research into, or otherwise obtaining information about, any matter which in the opinion of the Council is of relevance for the purpose of preventing the misuse of such drugs or dealing with any social problem connected with their misuse.

(3) It shall also be the duty of the Advisory Council to consider any matter relating to drug dependence or the misuse of drugs which may be referred to them by any one or more of the Ministers and to advise the Minister or Ministers in question thereon, and in particular to consider and advise the Secretary of State with respect to any communication referred by him to the Council, being a communication relating to the control of any dangerous or otherwise harmful drug made to Her Majesty's Government in the United Kingdom by any organisation or authority established by or under any treaty, convention or other agreement or arrangement to which that Government is for the time being a party"

The lettered bullet sections seem particularly relevant to the activities of the Council and it is disappointing to see that they are omitted from both the Home Office website (ACMD terms of reference page) and Wiles review document descriptions of the ACMD's terms of reference.

We shall now address the issues flagged up in the review document for consideration in turn.

- ***The composition of the bodies and the roles of members, secretariat and officials***

Views on the make-up of the Council tend to reflect the interests and policy views of the person being asked⁶, so there is perhaps not too much to be gained in a straw poll. That said, it would appear that the guidelines on the makeup of the Council are rather dated and its composition in need of review to reflect the policy challenges of the modern world, rather than the late 60's when the MDA and the ACMD structure were being drawn up.

Obviously the makeup of the Council should include an appropriate level of technical, scientific and policy expertise to fulfil the relevant duties as outlined below (re harm evaluations and policy impact assessments), and other outputs.

There is also a good case for a broader base of scientific and policy expertise from across the drugs field. In general we would argue that there should be greater representation of public health and harm reduction expertise, that there should be a greater role for dedicated drug policy academics (particularly with expertise in policy evaluation and monitoring), and that there should additionally be representation of expertise in international drug policy/law, and human rights. We can see no obvious reason to have veterinary technical expertise mandated (should it – on occasion - be required, it could easily be co-opted on a consultative basis via the established mechanisms), and suggest that the pharmaceutical industry is probably over represented. We have some concerns about potential financial conflicts of interest of

⁶ We would, for example, naturally welcome the opportunity for a Transform staff member to sit on the Council as we represent a sizeable body of opinion and expertise in the field

shareholders in pharmaceutical, tobacco and alcohol companies who sit on the Council – and suggest some clearer guidelines on this are produced and made publicly available.

We have no comment on the officials and secretariat other than the issues discussed below relating to the fact that the Council operates within the ambit of the Home Office, and their staff are Home Office employees.

- ***The resources available to the bodies and the costs in undertaking their duties***

The existing budget for the Council is relatively small and represents good value for money given their multiple functions and outputs. It is worth reminding both public and politicians that the services of Council members are given voluntarily.

We would suggest that the Council need substantially *more* funding to bring on board the relevant resources to accelerate the painfully slow ongoing process of working through the drugs covered by the MDA (alongside their other duties and outputs). Whilst this process is akin to the painting of the Forth Bridge, it is evident that with other demands on the Council (reviewing emerging drugs, and repeatedly having to undertake cannabis reviews demanded by ministers for example) the current process is operating at a rate of barely two drugs a year. To work through all the drugs covered by the MDA would take over a century at this rate, and even to cover all the major drugs of concern will take a decade. Without significant additional research resources at their disposal this unacceptably slow progress will continue. It is likely that demands on the Council will increase in the coming years – and resources will need to reflect this.

We would therefore suggest including a salaried research team operating under the direction of the Chair to support the Council's work. The ability of the Council to commission original external research at present is extremely limited and also needs to be expanded significantly, with appropriate budgets provided.

Arguably the most useful and important work produced by the Council is not specifically related to classification decisions, but is the more detailed policy reports they produce, including *'Drugs and the Environment'* (1998) *'Hidden Harms'* (2003) and *'Pathways to Problems'* (2006). Additional research capacity would clearly facilitate the production of more outputs of this nature, on key outstanding policy questions.

- ***The process by which the agenda of the bodies agenda are set, and how decisions on what to investigate are made;***

Broadly speaking we see no significant problems with the existing structure as outlined in the ACMD's terms of reference under which they are obliged to respond to requests from Ministers, but also tasked to *'keep under review the situation in the United Kingdom'* and, on the basis of

that review process, additionally undertake investigations where they deem *'it expedient to do so'*. We would add that the rationale for their upcoming work program should be given in their annual reports and there should also be clear mechanisms for stakeholders to respond to it and make suggestions for future work.

That said, Transform has been, and continues to be critical of the limits that the Council has historically placed around itself in terms of engaging with the wider systemic problems of the classification system and the legislative structures in which it sits. We argue that these limits are essentially political in nature, rather than rationally or pragmatically informed.

There is nothing in the Council's terms of reference that says it cannot undertake investigations of the evidence base for emerging or alternative policy approaches, including decriminalisation of possession for personal use (as adopted in many countries in Europe, Latin America and elsewhere), or legal regulation of the production and availability of certain drugs as outlined in Transform's recent publication *'After the War on Drugs; Blueprint for Regulation'*⁷.

Indeed the terms of reference of the MDA specifically state that the Council is tasked to investigate and give *'advice on measures (whether or not involving alteration of the law)'*, and that they are tasked to give advice *'in particular on measures which in the opinion of the Council ought to be taken (a) for restricting the availability of such drugs or supervising the arrangements for their supply'*. The MDA, for all its faults, does at least include mechanisms for the ACMD to review and call for its reform as they see fit.

In view of the long term failure of UK illicit drug policy to deliver on its stated goals (i.e. steadily rising illicit production, availability and use), and the additional catastrophic secondary consequences of the ever expanding criminal-controlled drug market, Transform view the failure of the Council to systematically explore the evidence for decriminalisation of personal use or alternative approaches for *'restricting the availability of such drugs or supervising the arrangements for their supply'* as a major failing and dereliction of their duties, both under the MDA and as scientists and policy experts tasked with serving the public good. It is not merely that no recommendations have been made or publications produced in these areas, they are issues that have never featured on the agenda for serious investigation.

We would, however, suggest that this failing of the Council is in substantial part due to the political environment in which they function, one that makes it almost impossible for it to act with genuine independence or to challenge a deeply entrenched status quo:

- The Council is established within a piece of legislation that is very specifically prohibitionist in nature (and informed by the 1961 UN single convention on drugs which is even more unabashedly and ideologically so). It is understandably problematic for the Council to question the underlying tenets of the primary legislation in which it sits, and the broad

⁷ http://www.tdpf.org.uk/Transform_Drugs_Blueprint.pdf

policy paradigm (prohibition) under which it is constituted – even when that legislation has remained essentially unchanged for 38 years⁸

- The Council operates within the ambit of the Home Office, is funded by the Home Office, and has its appointments overseen by the Home Office⁹. This naturally makes challenging views, laws and policies espoused by the Home Office politically difficult, and there are various ways in which the Home Office can express its displeasure and put pressure on the ACMD if certain lines in the sand are crossed, or threaten to be crossed.
- The recent controversy over the sacking of the Council Chair demonstrated very clearly that the Home Office will not tolerate even fairly minor criticism, from the Council or Council members, of the legislative status quo or the political processes and rhetoric used to maintain it. This would appear to be especially the case when such criticism receives substantial media attention¹⁰ - highlighting the political potency of the drugs issue more generally.
- The recent sacking of the Council Chair was only the most recent manifestation of a wider pattern in which the Council has been treated rather contemptuously by the Government when their outputs are perceived as threatening to the Government's political programme. This pattern has included, for example, Vernon Coaker¹¹ making it very clear that the Government would not reclassify ecstasy regardless of the Council's findings and recommendations, in public and *before* the Council's evaluation (undertaken at the urging of the Science and Technology Select Committee) had even begun¹². Similarly, the Prime Minister was making unambiguous public statements that he intended to reclassify cannabis from C back to B, *before* he had received the evaluation back from the Council that he himself had ordered¹³. The Government's treatment of the Council and its work may not be under consideration in this review process but it cannot be ignored as it clearly has a direct role in framing the public and private activities of the Council.

In such an environment it is impossible to see how the ACMD's non-ministerial agenda could ever be determined truly independently. This calls into serious question the positioning of the Government's expert advisory body on drugs within the Home Office, and indeed within the

⁸ Meanwhile the drug using environment, and challenges posed, have changed beyond recognition during this period

⁹ This is itself rather peculiar (and a reflection of the historical roots of the MDA) as drugs are primarily a public health issue. It is notable for example that the drugs brief in Spain recently moved from the Home Office to Department of Health (equivalents).

¹⁰ Highly critical reporting on Government policies by the ACMD in the 2006 'Pathways to Problems' report did not get significant media coverage and correspondingly failed to provoke ministerial ire.

¹¹ At the time the minister with the drugs brief

¹² Oral evidence to the Science and Technology Select Committee 22.11.06

<http://www.publications.parliament.uk/pa/cm200607/cmselect/cmsctech/65/6112201.htm>

¹³ See here for details and discussion: <http://transform-drugs.blogspot.com/2007/09/brown-on-cannabis-it-gets-worse.html>

MDA. We argue that to function independently the current situation is untenable and needs to be urgently reconsidered.

- ***How the bodies arrive at their decisions and general working practices; and, how the bodies advice is provided, including issues relating to transparency and communication.***

There remains a considerable lack of clarity at all levels (amongst ministers, the Home office, Council members, the wider drugs field, and the public) as to the ACMD's precise formulation, function and remit. This is reflected in the somewhat ambiguous terms under which the committee is constituted in the MDA, which are open to broad interpretation, but also in the lack of consistency in the Council's recommendations on classification regarding distinctions between policy impact assessments and purely technical harm ranking assessments. This inconsistency is explored below using two recent examples:

- *Example 1: the 2005 khat review¹⁴:*

It is unclear from the 2005 ACMD khat report (whilst of high quality and undoubtedly thorough), whether the recommendation not to classify khat within the MDA is based on a scientific ranking of the drugs' risks, or in part on a consideration of the possible negative impacts of its classification/prohibition. The report notes, for example, that:

"If khat becomes more expensive due to criminalisation there is the potential for exploitation by organised criminal gangs already involved in the trade of illegal drug" (p15)

"Khat users do not appear to use other drugs of abuse, a situation possibly helped by its legal status. Users are not criminalised and do not have to come into contact with dealers who sell a range of illicit drugs." (p19)

The recommendation in this report is that:

"The ACMD believes that it would be inappropriate to classify khat under the Misuse of Drugs Act 1971.", specifically not that the relative risk of the drug does not merit its classification (even though these risks are viewed as relatively low). In part the recommendation not to prohibit is also based on the fact that: 'The prevalence of khat in the UK is relatively low and isolated to the Somali and Yemeni communities.' Whether a risk assessment would alone warrant classification is not clear.

So in this example, at least partly on the basis that prevalence is low and criminalisation could cause unintended negative impacts, the committee is making a recommendation not to classify it within the MDA. Indeed they instead make specific recommendations for legal khat import and availability to be better regulated in terms of safer venues and age controls, so as to reduce its associated risks/harms. The point here is that they are going beyond a narrow remit of risk

¹⁴ http://drugs.homeoffice.gov.uk/publication-search/acmd/khat-report-2005/Khat_Report_.pdf?view=Binary

assessments determining classification decisions, and venturing into modelling potential impacts of classification – which then inform their recommendations re legality/classification.

- *Example 2 Methamphetamine reviews 2005/2006*

Similarly, in 2005, the committee reviewed Methamphetamine, recommending it stay in Class B, then re-visited that decision in 2006 and recommended it move to Class A. What had changed was not the assessment of the drugs' risk, as the 2006 letter to the Home Secretary recommending the upgrading explains:

“After considerable discussion [in 2005] the Council decided against giving such a move [to Class A] for two key reasons: first, that there was little evidence that there was significant use of methylamphetamine in the UK; and, secondly, it was concerned that re-classification might draw unwanted attention to methylamphetamine's potent properties. Your predecessor accepted the Council's advice. When the Council re-considered the position at its May meeting, evidence was presented to show that:

1) there are indications that the use of methylamphetamine is now starting to become more widespread; and

2) the police have become aware of the existence of a small number of illicit laboratories synthesising the substance.

In addition, over the past 6 to 9 months, there has been considerable media interest in the properties and use of methylamphetamine. Furthermore, as a Class A drug, the police would have powers to close down “ice houses” as they currently do with “crack houses”.”¹⁵

So again we have a situation where a specific recommendation on classification is based *not* solely on an assessment of risks/harms associated with use – which in this case are notably unchanged - but total harms (i.e. risks/harms multiplied by prevalence), combined with a series of other considerations, that include; media interest, policing enforcement needs, and impact on prevalence; in this case an apparent concern that increasing classification might actually *increase* use.

Other evaluations, such as the recent ecstasy and cannabis evaluations for example, quite rightly make policy recommendations in addition to the classification recommendations, but specifically do not discuss or incorporate any anticipated impacts of classification changes in the classification recommendation itself.

The picture is confused by the 2005 Nutt *et al* Lancet paper¹⁶ that nominally outlines the methodology used by the ACMD to come to classification determinations and very specifically focuses on drug use related harms (including secondary social harms associated with use – such as crime) but does not explore policy impacts of recommendations of the sort clearly evident in the khat and methamphetamine examples above. By the Lancet paper analysis, drug harm evaluation and ranking should be an essentially technical process – indeed this would generally appear to be the impression given by the Council in most of its public statements. But, as has been demonstrated, potential policy impacts of classification changes are incorporated in some

¹⁵ <http://drugs.homeoffice.gov.uk/publication-search/acmd/ACMDFurtherMethylamphetamine?view=Binary>

¹⁶ Lancet 2005 ‘Development of a rational scale to assess the harm of drugs of potential misuse’ by David Nutt, Leslie A King, William Saulsbury, Colin Blakemore

classification recommendations¹⁷, but not all. This raises fundamental issues about the nature of the ABC classification ranking system: Is it a harm based ranking, or some other form of policy tool, and if the latter what are the practical implications of that?¹⁸

There is an additional problem in that the impacts of changes in a drug's classification are not systematically evaluated. We are aware of no publications produced or commissioned by the Home Office or ACMD that study the impact of classification and classification changes on patterns of use or levels of harm¹⁹. The absence of such research rather makes a mockery of the entire system; no matter how good the science behind the harm rankings may be, translating those rankings into policy via the MDA takes still place in an evidential vacuum. We have first rate science at one end of this policy equation, and none whatsoever at the other.

Currently, however, the incorporation of potential policy impacts of classification changes into classification recommendations appears to take place on an inconsistent and rather ad hoc basis and does not follow any established guidelines or methodology that we are aware of²⁰.

In the short term (pending a more substantive review of the entire system) to make this process more consistent, logical and transparent we would therefore suggest:

1. The technical evaluations of drug risks/harms and the relative rankings of drug risks/harms should be the specific remit of the appropriate technical sub-committee, that should contain (or co-opt as necessary) the relevant scientific expertise²¹.
2. These evaluations from the technical sub-committee should be based on a clear, consistent and publicly available methodology²², and be published separately (or as an appendix) to any final reports/recommendations of the full council that it informs.
3. Either the full council, or a newly established policy impacts sub-committee (containing the relevant expertise), should consider the potential impacts of classification decisions/changes, or any other relevant policy interventions/approaches under consideration. This work should – like the technical harm evaluations/rankings - be undertaken on the basis of clearly established and publicly available methodology, and be published separately (or as an appendix) to any final reports/recommendations of the full council.

¹⁷ In the case of khat, including whether a drug should be illegal or not

¹⁸ Precisely the sort of question we would hope the promised, then dropped, classification system review to consider

¹⁹ We have asked questions on this point to both ACMD and Home Office and not received useful answers.

²⁰ The same can, of course, be said of the Government's treatment of the ACMDs recommendations, but this is not the issue under consideration – although we would argue it clearly should be

²¹ Whilst Transform has been highly critical of the ACMD on a number of fronts, their competence and track record on producing technical harm/risk evaluations is not questioned

²² Whether or not this remains the Nutt et al harm matrix in its current form is a separate question for the council, that should be revisited

4. The established model for this sort of policy evaluation is the Impact Assessment; the existing Government methodology for considering the impacts of a given proposal compared to a range of alternatives (see attached). Impact Assessments of changes in classification have been done (e.g. magic mushrooms 2005²³, Cannabis 2007²⁴) but we suggest that the methodology would need adapting to be more appropriate for the task in hand, and the assessments should also be undertaken (or at the very least independently commissioned) by the Council itself, rather than the Home Office (to avoid the politicisation – see below - which has critically undermined previous efforts). Contrary to much recent debate, scientific evidence and method is not just for evaluating drug risks/harms, it is also for evaluating (or speculatively modelling) policy efficacy and outcomes. This is an entirely appropriate responsibility for an expert advisory body such as the ACMD, and is also very clearly mandated in the ACMD's terms of reference under the MDA.

5. The full Council should then use the technical and policy impact assessments to inform its discussion around the options for classification and/or other relevant policy interventions under consideration. These discussions will then lead to a final published document in which the agreed recommendations are made to ministers, alongside the rationale behind them supported by the relevant technical reports and policy impact assessments.

It is proposed that a research and reporting structure formulated in this way could help avoid much of the public and political confusion that has plagued recent classification controversies.

• *how the bodies advice is provided, including issues relating to transparency and communication.*

Following the Science and Technology Select Committee's criticisms of the Council's transparency and communications the situation has improved significantly. We welcome the opening of the ACMD meetings to the public, and improved publication of minutes and reports. Indeed ACMD transparency and provision of evidence and rationale behind their recommendations far outstrips that of the Government, who, by contrast have a long history of obfuscation, suppressed research, and failing to provide evidence and rationale in support of obviously political decisions.

Transform Drug Policy Foundation, November 2009

²³ <http://www.homeoffice.gov.uk/documents/ria-drugs-bill-1204?view=Binary>

²⁴ <http://drugs.homeoffice.gov.uk/publication-search/cannabis/impactassessment2>