

TRANSFORM

DRUG POLICY FOUNDATION

Submission to the Advisory Council on the Misuse of Drugs Ecstasy review. September 2008

1. Introduction and summary

Transform Drug Policy Foundation is the UK's leading centre of expertise on drug policy and law reform. For more information please visit www.tdpf.org.uk. As a registered charity and campaigning policy think-tank our mission is to "promote sustainable health and wellbeing by bringing about a just, effective and humane system to regulate and control drugs at local, national and international levels".

Transform's response to the ACMD's review of ecstasy operates at two levels. At one level, in the short term at least, we welcome the review as a long overdue response to the many calls¹ for the seemingly anomalous classification of ecstasy to be reviewed. From Transform's perspective any reduction in unjust criminal penalties for consenting drug users is a positive step. At a more profound level, however, we remain deeply concerned that regardless of alphabetic classification, ecstasy will remain illegal, its users will still be subject to serious criminal sanctions, and the control of its production and supply will remain in the hands of unregulated criminal profiteers.

Over the past ten years Transform has argued that the absolute prohibition of drugs in the face of sustained demand inevitably leads to the creation of illicit markets that not only maximise the dangers of drugs for their users but also create a raft of secondary harms to society relating to the organized criminal networks and unregulated dealers who control the trade. There is no evidence that punitive law and its enforcement has anything other than, at best, a marginal impact on levels of drug use or misuse² despite the fact that the deterrent effect of the laws' enforcement is nominally at the heart of the entire prohibitionist model. The model is unique in the public health field in deploying criminal sanctions to reduce social and health harms. It is also uniquely ineffective.

Ecstasy provides an instructive example, its use exploding in the late 80's from almost zero in 1985 to around 2 million pills being consumed every weekend by the end of the decade, peaking in the 90's and then falling gradually since the turn of the millennium. During this entire period ecstasy use was Class A and enforcement has not changed significantly. The recent decline in ecstasy use appears to be due to shifting youth culture, with the rise in cocaine use (also Class A for the entire period) evidently filling the void. How ecstasy is classified has been largely irrelevant but, Transform argues, the fact that it is classified within the MDA at all has had profound and dangerous

¹ Including, notably the Police Foundation Inquiry 2000 and the Home Affairs Select Committee 2002

² For further discussion on the deterrent effect see; 'Classification and Deterrence; where's the evidence?' Transform 2006 <http://transform-drugs.blogspot.com/2006/10/classification-and-deterrence-wheres.html>

implications. It is hard to imagine any scenario under which harms could be maximised further, and as such any recommendation for ecstasy's classification maintains its absolute prohibition within the MDA and effectively perpetuates prohibition's role in maximizing the harms associated with its production, supply and use.

This briefing explores the problems evaluating the harms of illicit ecstasy use, as well as the opportunity such a review presents to compare harms associated with illicit and licit use. It also considers the extraordinary political environment in which policy responses to ecstasy have emerged, and the Government's unashamed anti-science posturing on the issue.

It concludes that any review of the harm of ecstasy, or indeed any illegal drug, is essentially pointless if no distinction is made between harms caused by the drug and those created and or exacerbated by its illegality. Transform has been calling for the ACMD to work at disaggregating policy harms from drug harms for some years now, maintaining that the ACMD's continued explicit support for the criminalisation of drug production, supply and use (and failure to explore alternative regulatory options) makes them part of the problem instead of being part of the solution. Given the dramatic failure of the existing system and its appalling negative consequences (in both public health and criminal justice arenas) it is absolutely imperative that the ABC classification system, and the legislative framework of the MDA 1971 in which it sits, is the subject of the Advisory Council's expert scrutiny.

2. Considering 'ecstasy' harms

Transform has no doubt that the ACMD review of Ecstasy/MDMA harms will be of the highest standard and the report will be a thorough and authoritative review of existing evidence. Transform defer to the ACMD's expertise on these technical findings, but feel it is worth highlighting some of some of the specific issues and difficulties that are raised by the current harm evaluation:

- What is consumed under the generic name as 'ecstasy' is not always pure MDMA³, indeed testing suggests it rarely is⁴ - with pill contents frequently containing a range of other psychoactive substances, individually or in combination with MDMA. Doses of MDMA and other substances in pills sold as 'ecstasy' also vary enormously. Reflecting this perhaps, what used to be referred to as 'ecstasy' or 'e' by both sellers and users are now frequently referred to merely as '*pills*'. Transform staff have been involved pill-testing at parties (using the marquis reagent⁵) when *none* of the pills tested contained any MDMA at all. This raises serious questions about what harms are being evaluated and the limits of any conclusions that can be drawn. The significant differences between pharmaceutical grade MDMA, and the generic street 'ecstasy' or 'pill' needs to be clearly defined.
- This seemingly unfortunate situation, however, also presents a potentially instructive opportunity. A comparison can be made between the literature describing risks/harms associated with legal pharmaceutical MDMA used under controlled

³ 3,4-methylenedioxymethamphetamine

⁴ See for example; <http://www.ecstasydata.org/>

⁵ <http://drugs.greenparty.org.uk/kits/howwork.php>

medical supervision, and literature considering the evidently far wider spectrum of risks/harms associated with use of illicitly produced, supplied and consumed 'ecstasy' pills⁶. **The contrast between these two bodies of literature will give a specific indication of the impact of illegality on 'ecstasy' harms.** Drug harms are directly impacted by legal status. Pills and powders of unknown strength, purity and often containing unknown drugs are (unless they contain no drugs at all, which is not uncommon) intrinsically more risky than pharmaceutical grade drugs from legally regulated sources with dose, purity and safety information on the packaging.

- Transform note that such an opportunity was missed in the Nutt et al 2007 Lancet paper⁷ regarding heroin. The Lancet paper only reviewed harms associated with illicit heroin use despite the fact that there is a substantial parallel body of evidence on licit prescribed heroin that would have provided an informative control group with obvious and important policy implications.
- It is important to note illicit 'ecstasy' pills are rarely used in isolation. Poly-drug use with one or more of alcohol, tobacco, caffeine, cannabis, cocaine, ketamine and amphetamines is very much the norm amongst most 'ecstasy' users. Teasing out which harms are associated with MDMA alone is therefore even more problematic. An ABC classification system is woefully inadequate for describing or tackling such complex interactions of variables and behaviours.
- 'Ecstasy' death statistics are an epidemiological minefield. What is recorded on death certificates does not imply the direct causality with ecstasy use that raw death stats commonly reported in the media suggest. As the Leah Betts case demonstrated, related behaviors (over or under-hydration, over heating etc) can cause or contribute to deaths, as can poly-drug use or other individual predispositions. A recent study suggested that 60% of recorded 'ecstasy deaths' are of people already 'known to drug services'.
- The content of the 'ecstasy' pills, and patterns of use has changed dramatically in the last 20 years. They have become far cheaper and (generally) weaker (consequently used in much greater volume) as well as less often containing MDMA. Older research being considered may not still be relevant to today's patterns of use.
- There is also an emerging split in the market between the comparatively cheap 'ecstasy' pills and more expensive 'up market' MDMA powder (usually referred to as 'MDMA', and thought to be more reliably pure MDMA, although this is by no means guaranteed). Again, patterns of use of each are very different and over-generalised conclusions about harms from 'ecstasy' will not be useful for determining more nuanced policy decisions and the necessary spectrum of public health responses.

⁶ Appreciating that neither set of literature are as extensive as might be hoped

⁷ Nutt D, King LA, Saulsbury W & Blakemore C (2007) Development of a rational scale to assess the harm of drugs of potential misuse. The Lancet 369 (9566) 1047–1053.

3. Political context of the ecstasy issue

If it was possible to find a drug that works tabloids and politicians into more of an irrational lather than cannabis, then that drug is ecstasy. The evolution of the Government's policy response to the explosion of ecstasy use in the late 80's has been defined by a series of knee jerk reactions to a series of well documented media-led moral-panics, usually constructed around individual tragedies and anecdotes, rather than rational analysis of evidence and pragmatic public health based responses. Tough talk and political posturing has invariably triumphed over common sense – the nadir of this phenomenon being the extraordinary legislative effort (the Criminal Justice Act 1994) to ban 'raves', bizarrely defined as:

a gathering on land in the open air of 100 or more persons.....during which ..amplified music is played at night (with or without intermissions)

featuring:

"music" wholly or predominantly characterised by the emission of a succession of repetitive beats.⁸

With the exception of occasional forays into pragmatic harm reduction education for which some credit is due, this politically driven policy thinking has continued, largely unabated, for nearly two decades. The Government has made it obvious that they have no intention of reclassifying ecstasy regardless of evidence of harm or advice from the ACMD. The two excerpts appended below from Vernon Coaker's (Minister with the drugs brief) oral evidence to the Science and Technology Select committee follow up session, illustrate with startling clarity where the Government have chosen to publicly position themselves on this issue. Creationism gets a mention in reference to the Minister's responses; it seems an appropriate analogy in the context of a scientific review.

The Government, therefore, are openly acknowledging that their policy on ecstasy, indeed the classification system's deterrent effect generally, is based on 'belief', not evidence. Not only have they been unable to produce a single piece of evidence to justify their position on classification, despite repeated requests from two Select Committees⁹, they appear to now be saying that they will ignore the ACMD whatever they recommend on the ecstasy issue.

If we were in any doubt about this troubling direction in which drug policy is heading we need only consider the embarrassing farrago with cannabis classification during the past 6 years, which culminated in the third ACMD investigation and recommendation for cannabis to be class in Class C being overruled and a move to B ordered by the Prime Minister. Whether we regard this as 'faith based policy making' or consider it pure political cynicism, it is offensive to the concepts of rational scientific analysis and evidence based policy to which the ACMD is supposed to be committed.

⁸ http://www.opsi.gov.uk/acts/acts1994/ukpga_19940033_en_8#pt5-pb2-11g63

⁹ Evidence for a deterrent effect from classification was also requested by the Home Affairs Select Committee in 2001. None was forthcoming. The deterrent effect and the classification system is discussed in more detail here: <http://transform-drugs.blogspot.com/2006/10/classification-and-deterrence-where.html>

4. Broader concerns about the Classification system

Transform have long argued that there are far more fundamental flaws with the classification system than the fact that some drugs may be misclassified by one or two alphabetical increments. These are outlined in the paper published in *Drugs and Alcohol Today* in October 2007 which is appended below. In summary it argues that the system is not fit for purpose on the basis that:

- **There is no evaluation or review of the classification system against meaningful indicators.**
- **The system is based on the un-evidenced assumption that criminal penalties are an effective deterrent and that stronger penalties are a stronger deterrent.**
- **Alcohol and tobacco are not included in the classification system.**
- **Drug harms are mediated by the nature of the user, the dose of drug consumed and the method of consumption – making a system based upon broad sweep single classifications for each drug is fundamentally unscientific and meaningless in most practical terms.**
- **Translating generalizations about harms/risks to an entire population into penalties for individuals is both unscientific and unjust.**

The paper concludes that;

*“To the objective observer the intellectual problems with the classification system are as obvious as its abject and ongoing failure on all meaningful indicators. The Government's response to its critics, which now includes detailed and thoughtful work from the Police Foundation (2000), the Home Affairs Select Committee (2002), The Science and Technology Select Committee (2006), the RSA (2007), and even the ACMD (2006) and its technical advisers writing in *The Lancet* (Nutt et al, 2007), has been nothing more than contemptuous and is entirely lacking in intellectual or empirical credibility.*

*The Science and Technology Committee's conclusion that the system was 'not fit for purpose' was altogether too diplomatic. There is certainly potential for ranking different drugs along the various vectors of drug harm that might usefully include toxicity, addictive potential, particular risks for specific populations (e.g. sex, age group, mental health) safety critical activities (e.g. driving) or behaviours (e.g. injecting, polydrug use, pregnancy). However, this sort of information does not lend itself to the broad generalisations of a simplistic ABC system, however well thought out the placing of individual drugs may be. People need honest and accurate information about drug risks so they can make informed decisions; the ABC system singularly fails to deliver. More significantly, **the debate over which drugs should be in which class is a distraction from the more profound problem that the ABC system exists primarily to determine a hierarchy of criminal penalties, and there is no evidence whatsoever to demonstrate that this approach has either criminal justice or public health benefits.***

The Government's refusal to honour the promise the Home Secretary (before last) made to the House of Commons in January 2006, to hold a review of the classification system

is transparently a politically motivated one. Their 'belief' that the system is effective, when the opposite is demonstrably the case is simply not acceptable and should be a profound concern to everyone in policy making, law and the wider drugs field.

4. Conclusions and recommendations

- In the short term, if the current review finds, as widely expected, that ecstasy is inappropriately classified in Class A then, in the context of the existing system, a recommendation for reclassification to B or C should be made.
- The ACMD's report should also take the opportunity to make a clear recommendation for adequate resources to be put into targeted education about MDMA/ecstasy risks/harms and how they can be minimised/avoided.
- It is vital that the review report takes the opportunity to make a clear distinction between harms relating to MDMA toxicity specifically, and harms relating to use of 'ecstasy' when it is produced, supplied and consumed illicitly.
- Highlighting this important distinction between drug harms and harms created or exacerbated by policy will inevitably prompt a discussion of whether legally regulated production and availability of MDMA (obviously combined with the removal of all criminal sanctions for consenting adult users) would deliver better criminal justice and public health outcomes. The ACMD, as an independent voice of expertise should not shy away from such a discussion, however hysteria-inducing it may be in certain sections of Whitehall or the tabloid media. Indeed it is absolutely appropriate that the ACMD consider such matters in line with their remit to consider *"restricting the availability of such drugs or supervising arrangements for their supply"*, and the ACMD's recent recommendation that *"the current arrangements to control the supply of illegal drugs should be reviewed to determine whether any cost-effective and politically acceptable measures can be taken to reduce their availability to young people"*¹⁰.
- The ecstasy review, however, is a distraction from the fundamental flaws with the classification system outlined above (and in more detail in the appended paper). It is unconscionable for the ACMD to simply proceed with a systematic review of classification of all drugs covered under the MDA (which, at the current rate will take many years to complete) when there is simply no evidence that an ABC system for determining a hierarchy of criminal penalties produces positive public health outcomes, and a substantial amount to demonstrate it is actively counterproductive and harmful.
- It is of paramount importance that the ACMD assert the primacy of a scientific approach not only in terms of producing first class reviews of individual drug harms but also in terms of evaluating the policy impacts of ACMD recommendations, their implementation, and the system within which they

¹⁰ Pathways to Problems 2006 <http://drugs.homeoffice.gov.uk/publication-search/acmd/pathways-to-problems/Pathwaystoproblems.pdf>

operate. This is specifically in reference to the evidential and ethical basis for an ABC drug harm ranking system rooted within punitive criminal justice legislation.

- Transform, therefore, hope that the appointment of a new ACMD chair will provide a fresh opportunity for the ACMD to instigate the long overdue root and branch review of the entire classification system; its aims and objectives, its outcomes on key indicators, and the legislative and institutional structures within which it operates.
- Such a review was promised by the Home Secretary in the House of Commons in 2006¹¹, but despite a review consultation paper being fully drafted and ready for dissemination, the review was abruptly cancelled when a new Home Secretary was appointed. Such a review was supported by the Science and Technology Select Committee, the ACMD itself and, to the best of our knowledge, everyone in the drugs field. The absurd reason given by the Home Office for this review being cancelled was that *'The Government believes that the classification system discharges its function fully and effectively and has stood the test of time'*¹².
- The ACMD cannot stand idly by whilst the Government so blatantly prioritises its own political posturing over rational policy evaluation and review, and dismisses a scientific approach on the basis of entirely un-evidenced 'beliefs'. That such political games interfere with reclassification recommendations is beside the point (there is no evidence classification changes have any impact anyway). The more significant danger is that a policy infrastructure that has been such a manifest failure for over three decades remains unchallenged, perpetuating systemic failure and in a very real sense, costing lives.
- The ACMD should demand of the Government that the classification review process be re-instigated with some urgency, and failing this undertake or commission such a review themselves.

¹¹ <http://www.theyworkforyou.com/debates/?id=2006-01-19b.982.0#g982.1>

¹² <http://drugs.homeoffice.gov.uk/publication-search/drug-strategy/drugclassification?view=Binary>

Appendix 1

See attached article from 'Drugs and Alcohol Today': ['The ABC of Drug Classification – not fit for purpose' October 2007.](#)

Appendix 2

Two quotes from transcripts¹³ from the Science and Technology Select Committee follow up sessions to their 2006 report 'Drug classification: making a hash of it'¹⁴

First section:

Q109 Mr Newmark: *If the ACMD discovered new evidence when it undertook the review, would you consider reclassifying ecstasy?*

Mr Coaker: *We would consider their evidence. As I say, we have no plans to reclassify ecstasy. The ACMD is independent of government, we obviously respect what they say, and they will bring their report forward, but the Government has no plans and no intention of reclassifying ecstasy.*

Q110 Dr Harris: *You say that you do not propose to move ecstasy and it will remain a Class A drug. Is that an evidence-based policy?*

Mr Coaker: *That is a judgment the Government makes on the basis of what we believe to be something that is in the interests of the public at large to keep ecstasy as a Class A drug.*

Q111 Dr Harris: *Is it an evidence-based view?*

Mr Coaker: *It is a judgment that we make based on all the evidence we have had no recommendation from anybody to reclassify ecstasy from an A to a B. We think it is a drug which is harmful. There is no safe dose of it. We were talking about alcohol earlier on and one of the problems you have with alcohol is there probably is a safe dose. Like many here, I have a drink now and again, but there is no safe dose of ecstasy, we think it would send out totally the wrong messages and, as I say, we have no intention of reclassifying ecstasy.*

Q112 Mr Newmark: *Because it kills unpredictably?*

Mr Coaker: *As I say, there is no safe dose. This is the point, just half a minute—*

Q113 Dr Harris: *There is no safe dose of tobacco.*

Mr Coaker: *It just does make the point very well, the exchange that we have just had between two members of the Committee, quite rightly, about the difficulties that there are in this area and the different views and opinions that people have. I think what we all wrestle with is using evidence and using science and also trying*

¹³ <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmsctech/65/6112201.htm>

¹⁴ <http://www.publications.parliament.uk/pa/cm200506/cmselect/cmsctech/1031/103102.htm>

to think about it from a non-scientific point of view in the social judgments and the individual judgments and the community judgments that we make. We wrestle with that and, as I say, as a Government we have no intention of doing anything with respect to ecstasy because we do not believe there is a safe dose, it is harmful, it kills unpredictably, as Brooks has said, and we just think that it is a very important way to use the classification system.

Q114 Dr Harris: *If the ACMD reviewed the evidence and that review made recommendations to you, are you saying now it is not worth them doing it because your decision on this will not be evidence based, it will just be a reassertion of your "no intention to reclassify ecstasy"? Even if they said there will be fewer deaths, for whatever reason, if it is reclassified, are you saying that you will never consider an evidence-based decision on this drug?*

Mr Coaker: *I am not saying that at all. What I am saying is the ACMD, of course, can conduct research and look at whatever they wish to with respect to drugs and make recommendations to the Government. What I am saying quite clearly is that we have no intention of reclassifying ecstasy.*

Q115 Dr Harris: *I am keen to pursue this one. I understand you have no intention and I assume that is current because I do not think you could bind your successors if the evidence changed. Is it your view that all drugs for which there is no safe dose should be in Class A or is there something special about ecstasy which means it is one of the drugs for which you say there is no safe dose which means it must be in A?*

Mr Coaker: *In talking about ecstasy, it kills unpredictably, we do not believe that there is a safe dose; we will not reclassify ecstasy.*

Q116 Dr Harris: *Does that apply to all drugs that meet those criteria?*

Mr Coaker: *What we try to do where we have evidence and where people come to us with recommendations is make individual judgments, as we will do whenever people come to us. All I am saying with respect to ecstasy is that we have no plans and no intention of doing so.*

Q117 Dr Harris: *So do you think you are wasting your time, Professor Rawlins, if you end up doing a review in this area?*

Professor Sir Michael Rawlins: *No, I think we will give advice on whatever we feel is appropriate but perhaps in a way more importantly we will also be able to, I hope, give better advice on harm reduction, which is actually rather important, and on what further research is needed in order to understand the dangers of it.*

Q118 Dr Harris: *Will the fact that the Minister has said quite categorically that he is not going to change the classification have any bearing on whether you follow through and do a report?*

Professor Sir Michael Rawlins: *None at all because we are going to do it*

Second section:

Q45 Chairman: *Vernon, in response to us, you said that the Government "fundamentally believes that illegality is an important factor when people are considering engaging in risk-taking behaviour . . . It believes that the illegality of certain drugs, and by association their classification, will impact on drug-use choices". Where is the evidence for that?*

Mr Coaker: *That is the belief and the judgment that the Government have.*

Q46 Chairman: *I did not ask you that. People believe in creationism and they are entitled to do that, though I do not agree with that, but I am asking you, where is the evidence?*

Mr Coaker: *To be fair to the response that we tried to make in response to the Committee where the Committee has challenged us, we have ourselves said that we need to do more research into the deterrent effect, that we need to establish a better evidence and research base for that, so we have accepted the point of the need to actually do something about it, but we do believe, and strongly believe, that the classification of drugs in the current system, A, B and C, with respect to Class A does act as a deterrent system. That is a judgment we make, it is a belief that we have and we have accepted that there is more to do with respect to that.*

Q47 Adam Afriyie: *If when you carry out and conduct this research the evidence shows that you are completely mistaken in that view, will change your view?*

Mr Coaker: *I cannot prejudge what any research is going to tell us. Clearly you make judgments about the research that you receive and that is obviously the point.*

Q48 Chairman: *Vernon, you have not commissioned any research and nor have the ACMD.*

Mr Coaker: *No, but what we have said in response to where the Committee challenged us and said, "Where is your evidence base for that?", as we have done with a number of other things, we said that we understand that point, we accept that point and we need to look at establishing a better evidence base for that, but it does not alter the fact or change the fact that the Government believes that the tripartite system, the classification system, does send out a strong message and does impact on, and affect, behaviour.*

Transform Drug policy Foundation. September 2008