



CONSULTATION ON DRUG LAW REFORM RESPONSE FROM THE FAMILY REFERENCE GROUP

Submitted by Justina Murray, CEO, Scottish Families,
On Behalf of the Family Reference Group, March 2021

ABOUT THIS RESPONSE

This response is being submitted outwith the online Drug Law Reform consultation survey. It is based on discussions at a Drug Law Reform Workshop for Families hosted by the Drug Deaths Task Force (DDTF) Family Reference Group.

The **Family Reference Group** is a national group established in October 2019 to support Colin Hutcheon in his role as the sole family representative on the national DDTF. The Family Reference Group is made up of seven family members with lived experience of a loved one's drug use. The members represent areas from the Borders to the Highlands, and include those with experience as parents, guardians and partners, including those who have lost a loved one to drugs. One of the Group members, Kaye Forsyth, is the family representative on the DDTF Drug Law Reform subgroup.

The Family Reference Group organised a **dedicated workshop for families** on Drug Law Reform on 12 March 2021. This session was opened up to other family members in our collective networks, but it was a closed event for family members only. There were 15 attendees on the day, including ten family members (three from the Family Reference Group and seven from other Scottish Families networks), and five staff (three from Scottish Families, one Scottish Government and one Crew). A further family member who was unable to attend on the day fed in views and experiences after the event.

The family members represented various **different areas of Scotland and family situations**. They included family members whose loved ones were still heavily involved in substance use as well as some in recovery. The group included family members who had lost a loved one to drug use, including in recent weeks. Most were parents concerned about their adult children, but there were also those concerned about a partner or a young person in their care. The family members were mainly affected by drug use, and a smaller number were affected by alcohol use.

The workshop included an input from Henry Acres from the Scottish Government on the **background and context** to this work, and a presentation by Kira Weir from Crew on their recent **'Drugs, the Law and You' national survey**. There was then an opportunity for **questions and an open discussion**. We'd like to note our thanks to both Henry and Kira for their input to the workshop, which provided useful background information and themes for the family members' discussion.

WHAT DID FAMILY MEMBERS SAY?

Perhaps unsurprisingly given their attendance, the family members described themselves as *“very interested in drug reform”* and having *“a passion for drug law reform”*.

All had **personal experience** of their loved one being involved in crime, criminality and the justice system through substance use. For example they described their loved ones being in custody on multiple occasions (including the young offenders institution and adult prisons), frequent police engagement, experiences of community sentencing (including the stress of their loved one breaching this), and generally a life *“in and out of the criminal justice system”* and with *“lots of brushes with the law”*.

This had wider impacts on them and other family members. It was this **personal experience (rather than any political or philosophical position)** which meant they were *“hoping to see movement”* in the drug law and justice system. There was a sense that to date the criminal justice system had not moved on, and *“Nothing seems to have evolved”*.

None of the family members thought that their loved ones’ engagement with the justice system had resulted in any positive outcomes. Indeed in their experience, **justice interventions had worsened existing addiction (and mental health) issues**, rather than supporting rehabilitation and recovery. They had seen at first hand that *“help”* was actually *“punishment”*, felt *“the criminal justice system sets people up to fail”* and had witnessed *“the damage of incarceration”*:

“My son was in prison on a number of occasions, but I never felt that prison did anything other than help him mix with other addicts. I don’t think it helped him at all. I really don’t think that prison is the answer.”

“If they go to young offenders, rather than adult prison, it’s just about the worst place you could send somebody who has been getting involved in, and maybe developed a problem with, substances. Because it’s young people, the behaviour there is very, very difficult. There’s a lot of bullying, there’s a lot of violence, there’s a lot of drugs. So as I say it’s the worst place you could send somebody who’s struggling with substance use. They are very likely to come out with a bigger problem than they went in with. The justice system needs to be aware of that.”

“I had many, many years of my son being in and out of young offenders and then adult prison. You know it’s sad to think that because my son was taken away from us and needed ‘help’ in inverted commas, that this ‘help’ turned out to be punishment rather than any help whatsoever. He went in there and came out a completely different boy into adulthood. This is the thing that needs to be addressed now... the damage that is done to these kids by being incarcerated in these places. ... They are absolutely the worst places.”

The Scottish Government background paper and the presentation by Crew included information about different classes of drugs and the different penalties involved, and the

fact that a young person saying they just had drugs ‘for me and my friend’ would be classed as ‘intent to supply’. One family member noted what *“really scared me”* was that for intent to supply Class A drugs the maximum sentence is life, but even a lesser sentence **would create trauma**:

“But actually even twelve months or whatever is traumatic and it changes people. For some people it might not be big change, but for others it can be a life-changing experience and a traumatic experience. So they then have a trauma to deal with that they might not have had before.”

It was suggested that **courts should offer rehabilitation options** to *“reach more people”*, (and of course greater provision of rehabilitation options in the first place would reduce the risk of criminal justice involvement at all). This could be extended to other treatment, support and recovery options. All would have to be voluntary, as it is recognised that people cannot be mandated to recover from substance use. One family member talked about the transformative impact of River Garden (residential recovery community in South Ayrshire) on her son’s (and her family’s wellbeing) – *“He’s turned his life around”*. Her experience is that at River Garden work is the therapy, they live in a community with others who understand them, and they develop self respect. This intervention had had a positive impact on his life, unlike multiple prison sentences.

This led to a more general discussion about the **need for change across treatment services**, and a concern about the ability of services to achieve the required changes. A number of the family members talked about their experiences as professionals working within ‘the system’, for example in the health service, and how this creates additional insight and challenge:

“I tread the line between knowing what I think should happen and experiencing a completely different side of that. ... I see there is an absolute interface between criminal justice and health because of the injustice that happens. And I think that’s where conversations have to change. ... Sadly services just weren’t prepared to listen. They are slightly better now but we fall far short of what we need to be doing in order to address these complex issues.”

Families’ experiences of being excluded from their loved one’s treatment and care were echoed in their **experiences of being excluded by the justice system**, with decisions made without any recognition of the impact on the family. One person shared a story from another family member in their local support group. The impact of their son’s substance use on the family had led them to make arrangements for him to live elsewhere, outwith the family home. This had been a long, hard (and not straightforward) process. The son was then arrested and appeared at court. The family members attended the court hearing. The sheriff announced from the bench that their son would only be spared jail if the parents agreed to take him home with them – with no consultation with them about any impact this may have. They tried to approach the lawyer in court to raise their concerns and were threatened with being removed from the court for doing so. They consequently had to take their son back into the family home, despite the potential harm to their own family recovery, and didn’t feel they could have any influence on this decision.

There were also stories about individuals being arrested and **family members not being informed** of their whereabouts. One family member talked about spending hours driving around her local area trying to find a vulnerable young person. She checked the local hospital and police stations before finding her loved one had been arrested and was being held in police custody in another town. Stories were also shared about people in prison being “*ghosted*” (moved to another prison) without the family members being informed, so they would turn up for a visit to discover they were no longer there:

*“Families are excluded at every point of the criminal justice system.
Families are still sitting on the outside”.*

The family members were clear that **current laws do not act as a deterrent** to drug use. This is due to a lack of understanding of the law, but also the nature of addiction:

“I think once they’re an addict, and once they are desperate, they don’t care – they’re not bothered if they go to prison or not.”

In addition, in some instances it was **not drug laws in themselves, but the impact of drug use** (e.g. needing funds to purchase drugs, violent behaviour due to drug use, mental health issues co-existing with drug use etc) which had caused their interaction with the justice system.

Family members also felt the vicious cycle of people **having to supply drugs to fund their own drug use** is not recognised or addressed through a justice-based approach. In many cases, getting involved in the justice system (particularly prison) had simply opened up new drug routes, knowledge and markets, and created a progression to more serious drug use and harm.

The **link with mental health issues** was a strong theme. Despite widespread awareness of Adverse Childhood Experiences (ACEs); the impact of trauma; and the relationship between poor mental health, substance using behaviour and violent, chaotic, threatening or unpredictable behaviour, the justice system response did not seem to take account of this. One parent talked of her teenage son who was at high risk of custody due to a breach of his community sentence conditions, saying;

*“As it is, he’s hanging on by a thread to his future. ... He’s wanting to get better.
His mental health is really poor just now, it’s really bad. ... For him to end up in
jail would be the worst thing.”*

Family members felt a **‘distress’ response** would be a far more proportionate, effective and humane response than a **‘crime’ response** in such cases. Police officers, as first responders, were seen as in an ideal position to link people in distress into appropriate support (and our understanding is that they are now trained in trauma responses to risky behaviour etc). However examples were shared of heavy-handed and judgemental responses where loved ones were simply arrested rather than supported. This included one case where the police planned to release a vulnerable young person from police custody onto the streets even though they had no coat and no shoes at the time of their arrest.

Families talked about **facing a dilemma** at times when their home and family were at risk due to their loved one becoming violent or threatening, and times when their loved one was a risk to themselves:

“There have been times when we have to phone the police ourselves, which is terrible, ... but he’s so unmanageable when he’s in that position, and the only people we can phone for help is the police. And again we’re at the mercy of whether the police are going to see it as a hospital thing because he’s suicidal at the time, and take him to hospital, which they sometimes do and they’re sympathetic, and sometimes they’re just pushing him down on the couch and telling him to ‘Shut up’ and then handcuffing him. We’re at the mercy of these inconsistent approaches.”

Several family members had experienced such **inconsistent responses** from the police, including in the same area (so not a postcode lottery, more a police officer lottery). In some cases they were *“very supportive, trying to get help”*, but not in all cases. This was the same with experiences of the judiciary in court, *“We’re basically at the mercy of the judge on the day if it’s his whim to come down harsh.”*

“You are at the mercy of individuals that have got no understanding whatsoever of addiction. ... You phone the police on them as you don’t know what else to do. ... If you get the right person, they might understand, ... but you’re at the mercy of people.”

Family members shared their own experiences of **getting involved in criminal behaviour**, sometimes to protect their loved ones. For example one family member said she had lied to the police about her son’s whereabouts at a time when he was doing really well, and the police were acting on a historic warrant and looking for him:

“That was the first time I’d ever told lies to the police, ... but I thought no, I’ve done the right thing, because they would have arrested him, put him in prison and he wouldn’t have got [into recovery]. It’s dreadful that parents and people are put in the position they are put in.”

Another shared her experience of coming home to find six police officers outside her front door. They didn’t have a warrant and wouldn’t tell her why they wanted to speak to her son, who was inside the house. They were waiting for a locksmith to enable them to enter the property. In her view this action (of six police officers bursting into her house) would have quickly escalated and she felt her son would have reacted badly due to his mental health and substance use. She made clear she would decide when they could enter the house. She then found out they actually had the wrong information and did not need to speak to her son.

Another told of being threatened with the police when she challenged a treatment service about their lack of support for her son. Having written a number of letters with no response, she went to the clinic and refused to leave until the clinician was available. She was

threatened by staff with being charged with breach of the peace, even though she had done nothing more than stand up for her son's right to treatment. She said, *"I could see how someone could be pushed!"*

Several family members said they had taken their loved ones to buy drugs as then *"at least I know what he's doing"*. They noted the contrast between alcohol and drugs here, as family members affected by alcohol often purchase this for their loved ones, and this is not breaking the law.

There was a suggestion that some **police officers "go looking for drugs cases"** as this improved their own performance statistics and chances of promotion. Examples were shared to illustrate this where family members were given criminal charges themselves under the Misuse of Drugs Act due to their loved one's drug use. This included one mum who was charged when she went to a drug dealer's door to look for their son when police were carrying out a raid, and another mum who was charged when police raided the family home and found drugs in her son's room.

Their experiences of police and wider justice engagement had left both family members and their loved ones with an ongoing fear of any future contact (*"She's terrified of the police"*), causing ongoing harm and a total breakdown in trust and respect.

The issue of **stigma** is often raised by family members, and in this case many family members had experienced stigmatising attitudes and *"derogatory comments"* from police officers. Although there were also experiences of *"good and helpful"* police officers, and several comments about things *"getting better"*, there was agreement that *"police don't see families as an asset"*.

Examples were shared where family members had diffused an escalating (or potentially escalating) situation where their loved one was in distress, as well as examples where family members were not contacted by police and so the situation had escalated unnecessarily (*"She kicked off in the ambulance and was arrested"*). Just as families should be included as partners in treatment and care, there is significant **potential for a more collaborative approach between justice agencies and family members**, including situations where *"families can be the advocate or go-between"* between their loved one and justice agencies.

We are conscious that many of the examples given by families related to **police rather than other justice partners**. This is partly due to the fact that they are the first responders and the most likely partners to interact with family members. And as was illustrated in the Scottish Government's background paper, only 16% of Misuse of Drugs Act possession charges in 2019/20 led to court action (and only a proportion within this would receive a custodial sentence), so interaction with courts, criminal justice social work and prisons is significantly smaller than police interaction.

The family members were aware of the **barriers to changing UK drugs law**, including resistance from some Westminster politicians. One of the participants was part of a delegation which gave evidence to the Scottish Affairs Committee inquiry into problem drug

use at Westminster in 2019. They were clear that we also needed to look at other ways to improve outcomes for individuals and families.

There is an **inconsistency in Scotland between the public health approach to substance use and harms, and the impact of drug laws**. The latter means that the aim of the former (to keep people well) is hindered:

“Most of the tripwires that affect the people that we’re talking about is when the utter chaos of their day to day life becomes problematic. Now there isn’t a medication for that, it’s compassion, it’s reaching out to people. ... We have a cultural problem in Scotland that we are trying to fix with a medical and legal response, and it’s just not working”.

In summary this was a workshop full of distressing and tragic stories from family members, who concluded *“We’ll just keep on fighting for change.”*

Many of the examples given by families suggest they support the reform of the Misuse of Drugs Act regarding personal possession, as this would significantly reduce the impact of crime, criminality and the justice system on their loved ones and their families. However the Act in itself, and the technicalities of reform, were less of a discussion point than many **procedural, attitudinal and cultural changes** that can happen **within** the existing laws and within existing resources. As one family member noted *“What we’re asking for is not rocket science”* and there are many changes that can be made without (or alongside) legislative reform. A more compassionate, trauma-informed, consistent and evidence-based justice system is key to the changes they want to see.

FAMILY MEMBER RECOMMENDATIONS ON DRUG LAW REFORM

1. Although substance use and harm sit within a public health framework in Scotland, this has not fed through to justice responses to substance harm. This is inconsistent, and the potential of the former (a public health framework) will always be limited by the latter (a justice framework). We need a **public health approach to be embedded in the justice system** for all substance-related cases.
2. At every stage of the justice system (police, COPFS, court, community sentence and prison) individuals should be offered **options for treatment, support and recovery as an alternative measure or disposal**. This must be voluntary, as people cannot be mandated to recover from substance use, but could be built in via e.g. arrest referral, diversion, supervised bail, structured deferred sentence schemes etc.
3. Decision-making throughout the justice system should be trauma-informed, including **the risks and impact of system-generated trauma** on people using substances (and their families) being taken into account. This is particularly the case where decisions are being made about custodial sentences.

4. **All justice professionals should be trained** (including regular refresher training) in substance use and mental health issues, family inclusive practice, distress identification and response.
5. Police as the first responders should take a **'distress' not 'crime' approach** where substance use is a factor. This is particularly important where there are both substance use and mental health issues. This would achieve better consistency between officers' individual responses, and reduce the dilemma faced by families when they need to contact police officers to intervene where they or their loved one are at risk.
6. **Family inclusive practice** should be standard in justice settings, just as it should be standard in treatment and care settings. This also means involving family members in all decisions which affect them. This means a 'presumption of family involvement' in all cases.
7. Implementation of the national **Stigma Strategy** published by the Drug Deaths Task Force in 2020 should identify particular actions in relation to all justice partners to address stigmatising attitudes towards individuals using substances and their families.

Thank you for the opportunity to feed into this consultation on Drug Law Reform.

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