

9 July 2010

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Professor Leslie Iversen
Advisory Council on the Misuse of Drugs
6th Floor, Peel Building
2 Marsham Street
London SW1H 4DF

Re: Advisory Council remit & Legal Advice

Dear Professor Iversen,

I received your letter of 18 June 2010 on 7 July 2010. Internal mail is very slow. Please return your response to this letter by the enclosed stamped envelope.

I must say that I am extremely disappointed with your response to my request for the Council to procure independent legal advice. Your response is both legally and scientifically inconsistent; I have difficulty believing you even read my letter or listened to yourself as you wrote your response

For example, you state at paragraph 3 of your letter:

“The ACMD interprets the legislation as including alcohol and tobacco issues, whilst retaining a focus on illicit drugs”. (Emphasis added)

Even the Home Office itself admits in their response to Recommendation 1 of ACMD’s Pathways to Problems, (see enclosed) that the Council’s:

“terms of reference are sufficiently wide to include alcohol and tobacco. [...] the 1971 Act does not define “drugs” (it only defines controlled drugs)”

Hence, your “focus on illicit drugs”, whatever definition of “illicit” you mean, is arbitrary, capricious, illogical and disregards the Council’s legal duty as stated in s1(2) of the Misuse of Drugs Act 1971, (“the Act”):

“It shall be the 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”

This means the Council must consider all drugs, old or new, irrespective of their chemical structure, delivery method, legal status and/or purpose of use. Thus, the Council must “keep under review” the possibility of alcohol and tobacco control under s2 of the Act; not just alcohol and tobacco “issues”.

Compounding this, in paragraph 5 of your letter, you state:

“Wherever drugs are used outside of medical and scientific use, and may have or appear capable of having harmful effects sufficient to constitute a social problem, they are regarded as ‘dangerous or otherwise harmful’ drugs for which prohibitive controls are in place” (Emphasis added)

A question of logic arises – as alcohol and tobacco are used “outside of medical and scientific use, and may have or appear capable of having harmful effects sufficient to constitute a social problem”, why are “prohibitive” controls not in place?

Has the Council made an unwritten agreement with the Home Office not to even broach the subject? Does the Council, like the Secretary of State, think (wrongly) that the Act mandates prohibition as the only regulatory option?

I find your contortions at not tackling this logical inconsistency at the heart of the Government’s response to “dangerous or otherwise harmful drugs” head on embarrassing to the scientific community of which I am a member. How can such a respected scientist as you not understand that, with respect to the Council’s remit, the two jurisdictional facts necessary for the Council to recommend the control of alcohol and tobacco under the Act exist, right now?

- 1) Alcohol and tobacco are harmful drugs within the Act’s scope as the term “drug”, s1(2), is not synonymous with the phrase “controlled drug”, s2(1)(a).
- 2) Alcohol and tobacco misuse is “having harmful effects sufficient to constitute a social problem”, s(1)2.

This is why I find the Council’s current refusal to consider the control of alcohol and tobacco under the generally applicable and neutral Act unacceptable. It also creates the two inequalities of treatment under criminal law I stated in the ‘Open Letter’:

- 1) a failure to treat like cases alike, *viz* the unequal application of the Act to persons concerned with equally harmful drugs without a rational and objective basis; and
- 2) a failure to treat unlike cases differently, *viz* the failure to regulate persons concerned in peaceful activities re controlled drugs differently from persons causing harm.

These inequalities of treatment constitute unequal deprivations of liberty. Annually, ten percent of the UK populace face severe criminal penalties by HM Government’s “policy of prohibition”,¹ whilst alcohol and tobacco *kill* 120,000. And you apparently don’t give a damn.

You then have the audacity to state in paragraph 2 of your letter:

“the ACMD does correctly discharge its legal duties under that Act”

¹ Home Office (2007) *Response to Better Regulation Executive re MDA*, 27 September 2007, www.betterregulation.gov.uk

This is patently untrue with respect to alcohol and tobacco. In the Debate on the 1969 Queen's Speech introducing the Misuse of Drugs Bill, the Prime Minister said:

“My Rt Hon Friend's new bill will not only bring all the existing powers under one Act, but will give him powers on advice from ... experts in this country to devise appropriate regimes of control for any drug, new or old, according to its legitimate use, its dangers and its social effects”. (*Hansard*, HC Deb, 28 Oct 1969, Vol. 790 Col. 37, emphasis added)

So, its clear, Parliament intended from the get go that all drugs, “any drug, new or old” is to be subject to the Misuse of Drugs Act 1971, “according to its legitimate use, its dangers and its social effects”. Further, appropriate regulatory regimes were to be devised on advice by experts, presumably because in this area of public health it was not possible for the Home Secretary to consider all the intricacies and immediacies.

Yet the Council have not been willing to consider, even ponder, alternative regulatory options for drugs the Council recommend the Home Secretary control under s2, even though the powers exist in the Act: see ss7(1)-(2), 22(a)(i) & 31(1)(a). Every one of the Council's recommendations to the Home Secretary throughout is 38 years have been fettered to HM Government's preferred “policy of prohibition”.

As long as the Council keeps itself fettered to the belief that the control of a drug under the Act means prohibition, the Council cannot possibly be discharging its remit under the Act properly. The Council's remit gives it full scope for making recommendations:

“whether or not involving alteration of the law”

So Professor Iversen, I beg of thee: declare that the Council is undertaking a review of the situation in the United Kingdom with respect to alcohol and tobacco misuse and that the Council will be informing the Home Secretary of the Council's recommendations before the end of this year.

I request that the Council advise the Home Secretary about the feasibility of creating under the Act via ss7(1)-(2), 22(a)(i) & 31(1)(a) a coherent regulatory structure for alcohol and tobacco production and commerce allowing for, at minimum:

- 1) Regulating and licensing under s7(1)-(2) the import and export of alcohol and tobacco;
- 2) Regulating and licensing under s7(1)-(2) the production and supply of alcohol and tobacco;
- 3) Regulating and licensing under s7(1)-(2) premises and persons for the safe supply and consumption of alcohol and tobacco;
- 4) Excluding the operation of s5 re alcohol and tobacco under s22(a)(i) for all persons over the age of 18;

This is the first step on the path to the “fully integrated approach” the Council requested in *Pathways to Problems: hazardous use of tobacco, alcohol and other drugs by young people in the UK and its implications for policy*.

Finally, as we face a crisis of public health, I request again: please procure independent legal advice as to the Council’s remit.

The lives of our children depend on it!

I eagerly await your response.

– fiat lux!

Casey William Hardison – POWd (Civ)