



DRUG POLICY Action Group
Re-thinking Drug Policy in Ireland

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CRIMINAL JUSTICE DRUG POLICY IN IRELAND

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Policy Paper 1

CRIMINAL JUSTICE DRUG POLICY IN IRELAND

By
Sean Cassin OFM & Paul O'Mahony

Drug Policy Action Group

The Drug Policy Action Group aims to promote an approach to drug policy that challenges ineffective, unfair and counterproductive laws on drugs, and advocates for positive health and social service responses to drug use in Ireland. It also seeks to progress effective evidence based treatment models that engage drug users, families, and communities in the reversal of the harms associated with problem drug use¹. One of the main objectives is to promote the development of high quality information and education on drug use and drug policy. In doing so, a series of policy papers have been compiled. This paper provides an overview and examination of current criminal drug policy in Ireland.

Introduction

1.1 This paper outlines the need in Ireland for a review of the effectiveness of our present criminal justice drug policy. It will define what constitutes criminal justice drug policy. It proposes key principles and specific recommendations to guide in the development of a more effective criminal justice drug policy.

Setting the Scene

2.1 Identifying Ireland's criminal justice drugs policy involves not only an examination of our drug laws but also the role of public perceptions as contributors to policy about drug use. Criminal drug policy must also examine the nature and extent of police actions and the courts in enforcing these laws. The complexity of Ireland's criminal policy is witnessed in the degree of discretion afforded to both the police and to the courts. The courts are constitutionally independent from the legislature and sentencing practice by judges tends to be more lenient than the laws envisage with only a small proportion of all convictions for drug related offences resulting in a prison sentence.

2.2 Criminal drugs policy is fundamentally concerned with drug crime that has a number of strands.^{2 3}

SYSTEMIC CRIME: This refers to the criminal activity which is required to operate the business of drug acquisition and supply. This constitutes the largest and fastest growing area of drug crime which includes inherent drug crimes such as; possession, supply and importation. Systemic crime also includes financial crimes such as tax evasion, money laundering and crimes associated with gang wars over territory, intimidation, violence and murder.

ECONOMIC COMPULSIVE CRIME: This results from the perceived necessity to acquire the wherewithal to purchase the drugs for consumption. The vast bulk of drug related property

crime, including theft, burglary, fraud and robbery fall into this category. In Ireland, property crime fell dramatically in the four years immediately following 1996. This was in part due to the increased availability of methadone maintenance but also due to increased employment and more importantly a sharp increase of 60% in the numbers held in prison. Recent research suggests that for every 100 persons on methadone maintenance in New South Wales there are 12 fewer robberies, 57 fewer breaking and entering offences, and 56 fewer auto thefts.⁴

PSYCHOPHARMACOLOGICAL CRIME: This type of crime results from the emotional and behavioural states induced by the effects of the drugs taken. Included within this category are the injuries or homicides related to alcohol use but also those relating to drunk driving and the abuse and neglect of children.

2.3 The relevance of these categories is an important basis for planning and effecting drug policy. They make a necessary distinction between the use of drugs, which may or may not be harmful and the criminal actions that cause harm to individuals and communities. Ireland's drug policies make no such distinction when it comes to law enforcement and are largely based on a 'one category fits all' stance. Once the substances are classed as "illegal" similar penalties can apply regardless of the severity of the harm caused by drug use.

Policies that are Proportionate to Harm

3.1 The majority of drug users in Ireland are recreational drug users. The smallest minority are problem drug users who contribute to the majority of the economic compulsive crimes. Yet official policy makes no distinction between the two groups. This has a number of problematic implications for criminal policies on drugs. This results in the expending of immense energy and resources on enforcing drug laws with little or no harmful consequences for the individual or society. Present criminal drug policies in Ireland make no distinction between harms resulting from different kinds of drug use and no distinction between the actions of different user groups. School surveys and treatment surveys indicate, by European comparison, a relatively high exposure to cannabis, ecstasy, cocaine, inhalants, LSD and other psychoactive substances in the general Irish population. While much of this is occasional or experimental it is likely that there are hundreds of thousands of people in Ireland who use such illegal drugs as cannabis, ecstasy and other stimulants. The heroin using group that is present within our criminal justice system is only a small proportion of the illegal drug users nationwide.

3.2 Garda (An Garda Síochána are the Irish police force) and most politicians continue to adhere to policy statements that explicitly minimise distinctions between drugs and forms of use. For example, the Garda Annual Report on Crime (1993) states without qualification that "once again, the major drug of abuse is cannabis resin". While cannabis may be the most widely used

Ireland has the strongest legislation in Europe for countering drugs

¹ A problem drug user is "any person who experiences social, psychological, physical or legal problems related to intoxication and/or regular excessive consumption and dependence, as a consequence of his or her use of drugs or other chemical substances" ACMD (1982) Report of the Advisory Council on the Misuse of Drugs. The Stationery Office. London.

² Goldstein, P (1985) "The Drugs/Violence Nexus: A Tripartite Conceptual Framework" Journal of Drug Issues, 39:143-174.

³ Connolly J (2005) The Illicit Drug Market in Ireland. Overview 2 Health Research Board: Dublin

⁴ Lind, B., Schuling, C., Weatherburn, D and R. Mattick (2005) "The Effectiveness of Methadone Maintenance Treatment in Controlling Crime" British Journal of Criminology, 45:201-211.

drug and a large majority of Garda charges for drug-related crime involve cannabis, this statement ignored the far more devastating effects of opiate drugs or more recent cocaine use on Irish society both in terms of crime, health and general social well-being. Current Garda policy remains wedded to this approach making no distinction in terms of criminality with either the physical and/or psychological effects of specific drugs of abuse. This kind of official blurring of distinctions between drugs and types of drug use has also permeated popular attitudes.

3.3 This continued use of a rigid categorisation, equating what are very different effects of using illegal drugs, results in misperceptions by the public about the inherent dangers of all these drugs that have no basis in fact. These misperceptions in turn create a credibility gap for those who occasionally use drugs like cannabis or ecstasy with low/no ill effect to themselves or their friends. People like this can be led by the prevalent exaggerated claims about the dangers of the less dangerous drugs to dismiss as equally harmless the more problematic drugs like heroin or crack cocaine. There are lessons to be learned from the British drug categorisation system which seeks to apply proportionate penalties for drugs offences based on their differing potentials for harm.

Ireland's Reliance on Criminal Justice Drug Policy

4.1 The Health Research Board has stated that "Ireland has the strongest legislation in Europe for countering drugs".⁵ It can be argued that Ireland's overwhelming reliance on legislation and the criminal justice system as a mechanism for dealing with the country's illegal drug problems is generating more problems than it is solving. In 2000, the greatest expenditure on drug services in 2000 was by the Department of Justice, Equality and Law Reform at €97 million as compared to Health expenditure of just €25 million.⁶ In the relatively short period from 1996 to 1998 eleven pieces of criminal legislation were introduced to the Dáil (Irish parliament) related to the control and misuse of illegal drugs.⁷ The overwhelming response from the criminal system to assume the task to respond to issues of drug use which are deeply embedded in health, social and political structures is neither prudent nor practical.

Ireland has the strongest legislation in Europe for countering drugs. Between the years 1977 and 1995, only four Drug Legislation Acts were passed by the Dáil as compared to six Acts that were passed in the four years 1996 to 2000. With the exception of the criminal assets laws, which target drug suppliers, all the other laws of these six reduce the rights of already disadvantaged drug using groups by the curtailment of rights to silence, longer detention periods for suspect dealers and with 10 year minimum to life sentences for the possession of amounts of illegal drugs valued at €12,700. Drug possession offences account for most drug offences recorded. In 2004, prosecutions for simple possession made up 69 per cent of the total number of prosecutions, while supply offences accounted for 22 per cent of the total.⁸ This means that it is the user who is predominantly targeted and more deeply inserted into a criminal justice system

that can do little to promote personal development or the removal of obstacles to personal growth. This over reliance on the criminal system merely serves to recycle successive generations through criminal processes that become a life norm that perpetrates the criminal and disadvantaged sector.

4.2 Ireland's reliance on supply control measures that use the law and enforcement is driven by the fears and anxieties in society that emerge during periods of 'moral panic'. These measures are at best merely reactive and at worst repressive with largely counterproductive results. There are a number of factors that give rise to this reliance on law and enforcement. Those who champion supply reduction by enforcement believe it is the best way of reducing the harms drugs cause to users, families and communities. There is a clear and common sense attraction in the approach that considers that the removal of the supply of heroin or other drugs must lead to less illegal drug users and so less addiction which in turn means less crime, health and social problems. On the other hand, the harm reduction supporters argue that supply of drugs is increasing despite large scale seizures. Harm reduction advocates are not simply opposed to supply control measures. Some argue strongly that supply control has a valuable role to play in restricting illegal markets. Supply control offers a containment of criminal elements despite their failure at actually reducing supply. In 2005, 100 million euro worth of illegal drugs was intercepted, therefore, assuming, as the Garda and many other commentators do, that seizures amount to about a tenth of all drugs in circulation, this means that the Irish drug trade is worth about one billion euro.

4.3 An over reliance on supply reduction laws and enforcement promotes public attitudes that are themselves anti-drug user as well as anti-drug. Public perceptions have a significant influence on the legislature as it is the public who elects the legislators. These public attitudes are reinforced by media coverage of the drugs issue that invariably inflame public responses during periods of moral panic. Law and public attitudes create and perpetuate a

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culture of marginalised people who are burdened with the identity of criminals because of substances they use. This alienates drug users from the rest of society and from the ordinary support networks. The media avoid any informed examination of the underlying complexities that give

rise to problem drug use and seldom critically examine the ways in which criminal policy and restrictive legislation contributes to increased harms to drug users and their families.

4.4 Most, however, argue that it is demand for drugs that governs the market and should be seen as the primary issue. Accordingly greater resources need to be targeted at providing legal alternatives to illegal drugs e.g. methadone. In addition increasing prevention, education and rehabilitation options focused on attaining drug free status contribute directly to demand reduction. It is a question of the degree and proportions governing the extent to which supply control is balanced with demand reduction approaches. Not enough learning has been gleaned from the findings of reduced economic compulsive crime related to the increased provision of synthetic opiates, such as methadone. While other factors may have also contributed to these reductions there is growing evidence internationally that this kind of alternative prescribing by the state reduces crime.

⁵ Moran et al (2000) Overview of Drugs in Ireland Drug Misuse Research Division, Health Research Board: Dublin pg 36

⁶ Department of Tourism Sport & Recreation (2001) Building on Experience National Drug Strategy 2001-2008. Stationery Office: Dublin pg 63

⁷ Loughran, H (1999) "Drug Policy in Ireland in the 1990's" in Contemporary Irish Social Policy (eds) Quin, S., Kennedy, P., O'Donnell, A., and G. Kiely. University College Dublin: Dublin

⁸ O'Mahony, P (2004) "Drugs, Crime and Punishment: An Overview of the Irish Evidence" in Administration. 52:2 (3-35).

Humanistic and Pragmatic Approaches

5.1 Humanistic approaches to tackling social and personal problems are derived from the core belief that people are capable and willing to develop themselves when the internal and external obstacles to that development are removed or reduced. Problem drug use is merely a symptom of a range of obstacles experienced by individuals and communities. A majority of drug users entering the criminal system have been involved in crime prior to initiation of their drug use. This drug using group are mostly heroin users and they constitute a large proportion of the known property offenders, and of Irish prisoners. They are characterised by such developmental obstacles as poverty, social deprivation, educational failure, family disruption and personal adversity which predispose them to both problem drug use and to crime. These barriers are generational and reinforced by the institutional responses that sustain their exclusion instead of forging new opportunities for change. In addition to these institutional responses the over reliance of communities, legislators and enforcement sectors on the criminal justice system to prevent, contain and redress problem drug use undermines the humanistic approaches of the other sectors. This increases the ambiguities in policies that, on the one hand favour the local residents who want a police presence and the removal of the drug problem from their area against the equal needs and rights of drug users to protect themselves and others against serious lifestyle and other health hazards. It results in the ambiguity of anti social behaviour measures rendering drug users homeless, thereby frequently increasing levels of drug use, nuisance and health risks. There is the persistent disparity in approaches between the Health Services and the Prison Services whereby equal access to services ceases for those beginning a custodial sentence. In addition there are unresolved differences between the harm reduction approaches of health services and the singular drug free approaches of prison services.

5.2 Pragmatic approaches advocate using methods that work in order to overcome the problems associated with drug use. They deal less with the idealistic beliefs about how things should or could be, in favour of dealing with the realistic facts in order to bring about improvement. Pragmatism means facing the fact that present criminal justice drug policy is not working. The two core aims of our criminal justice drug policy; to reduce the supply of illegal drugs and to reduce use, need to be transparently evaluated. The extent to which these aims remain largely unmet is already evidenced in drug use spreading out to the regions and increased quantities of drugs being available to meet the demands despite increasing seizures.

5.3 The prescription of methadone is a pragmatic response to the drug problem. At present, over seven and a half thousand heroin users avail of this alternative opiate with consequent benefits in crime reduction and health improvement. In recognising the reality that drug users for longer or shorter periods will continue to take drugs on a daily basis, methadone maintenance intervenes to reduce the harm associated with unregulated use. This approach deals with the real situation and avoids making the moral issue of whether people should or shouldn't use opiates as the basis for policy and decision making. A good example of where the pragmatic holds sway over the idealistic is in relation to the provision of needle exchange. It is argued that it is a practical response in that they assist in preventing the spread of infections. Opposition to this approach has been on the idealistic grounds that they enable or condone injecting. Many countries have been assisted in developing pragmatic approaches through their

integrated working with drug user organisations. This can result in challenging negative public perceptions about drug users while also contributing to local strategies.

Role of National Drug Strategy in Criminal Policy Development

6.1 The National Drug Strategy (2001-2008) attempts to balance supply and demand policies creating pillars that propose to equally tackle education and prevention, treatment, research as well as supply reduction. A key feature of the National Drug Strategy is that it seeks to adopt a partnership approach to the issue, as it incorporates health care, criminal justice, housing and other sectors. The National Drug Strategy places a particularly strong emphasis on the "cross-cutting" multi-sectoral approach to dealing with the multilayered issue of drug use in Ireland. As a "cross-cutting" area of public policy and service delivery, it represents a significant challenge. There are over 20 statutory agencies involved in delivering the Strategy, as well as multiple service providers and community and voluntary groups.

6.2 Regrettably the National Drug Strategy Team (NDST) avoids assuming that part of its leadership role in policy development which would require a critical examination of the objectives and effectiveness of the policies currently being applied. In addition,

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the partnership approach requires levels of integrated working at local, national and at assistant secretary levels of each relevant Department. It is not clear at this time whether there is adequate understanding or commitment to this

partnership approach at the senior Departmental levels. This need is arising from the recent ambiguities between National Drug Strategy and the role of the key departments of Justice, Health, and Finance. This inadequacy is evidenced by the failure to mainstream pilot projects and provide them with a statutory framework, the lack of projected plans to cover the ongoing developments in service delivery, and failure to apply benchmarking to NGOs. The role of the Interdepartmental Group (IDG) comprised of assistant secretaries of departments was initially intended to be the mechanism for overcoming such obstacles. The National Drug Strategy's own submission to the mid term review in 2005 was itself critical of this inability to operate a partnership approach fully and states;

"The collaborative approach promoted in the NDST-LDTF structure since 1997 needs to be more fully understood and implemented right up through the chain of responsibility within, and between, all organisations in order to plan and deliver programmes in a practical and coordinated way to communities and individuals".

This apparent lack of partnership working at government department level leads to considerable frustration in the system at local, regional and national team levels and especially amongst those who are exceptionally committed to the partnership approaches.

Criminal Drug Laws which Increase Harms

7.1 Many of our drug laws perpetuate and exacerbate the very harms they were intended to curb. Criminal laws on drugs generate very profitable black markets and this creates the strong incentive to traffic drugs. Criminal sanctions have little effect on this behaviour as the removal of one supplier results in the gap being filled with another. Frequently Ireland's drug feuds result from these changes in the supply markets and the usually

temporary instability in supply simply creates greater chaos and poorer quality supply to drug users. While it is the drug user who provides the demand for the market it is the suppliers who dictate price. Some of the serious harms to drug users result from the unpredictability of the quality and content of the drug they purchase illegally. Loss of limbs and septicaemia can be a consequence of dilution of drugs with adulterants. Overdose and death can result from not knowing the true heroin content of the supply. The greater instability in drug markets and the greater risks of being detected while using can have a direct bearing on overdose rates and deaths. The high price of illicit drugs encourages some drug users into providing sex for money or sex for drugs to support their habit, thereby increasing the risk of spreading of such viral infections as HIV and hepatitis.

7.2 Laws prohibiting drugs make users seek more cost efficient ways of using drugs as prices escalate. This leads to injection as a way of achieving the most efficient use of the drug. The legal use of oral methadone in Ireland as an alternative to injecting is achieving reductions in these more harmful behaviours. It is pragmatic to assume that greater availability of oral substitutes and other alternatives to IV use would have increased benefits. The continued criminalisation of the less harmful cannabis users maintains them in the ambience and influence of the illegal drug trader, makes experimenting with other drugs more likely, and sends the false message that all drug use is the same. Another harm experienced by former drug users relates to the criminal convictions collected by drug users. These are a serious impediment to rehabilitation in terms of access to employment, training, travel and re-integration into society. Rehabilitation of offenders legislation needs to allow for certain categories of criminal convictions to effectively become "spent" after a period of time.

An Alternative Model

8.1 Drug policy and law needs to reassert the primacy of the problem drug user as a casualty of social, educational and environmental conditions. The social, economic and psychological strands that cause the complex problems of drug use are best tackled with measures that are humanistic and pragmatic. The recognition that the differing harms resulting from the use of different substances would require the development of policies, laws and enforcement that are proportionate to the harms caused by the drug of use and could adopt the same or a similar classification of drug substances as the British system. People continue to make the choice to use drugs and as far as possible these choices need to be legally controlled and medically supervised. Supports of various kinds need to be provided within a much shorter time frame to those who choose to use drugs so that harm to consumers and society can be substantially reduced.

8.2 Under this model, education and prevention measures which successfully reduce demand would constitute a higher priority than supply reduction measures. Another key priority area would be to change the status of drug laws for relatively harmless drug-related offences so as to rely not on the criminal law but on civil penalties that do not leave people with a criminal record. In doing so, this would ensure that they are not discriminated against when seeking employment. This alternative model would have inbuilt systems of law review that allow for the modification of the law when it is found that the law has unintended negative outcomes for the vulnerable, such as women, those experiencing homelessness and members of minorities. It would also restore the former legal requirement that made assessment and treatment/rehabilitation available to all drug users receiving a custodial sentence.⁹ In addition, it would strive to ensure that the laws in operation clearly allows for the development of a range of harm reduction measures (e.g safer injecting facilities, alternative substitution treatments etc) to be targeted at those at different stages of drug use including appropriate interventions for emerging "at risk" groups.

Conclusions

9.1 The history of strong supply control measures has taught us that there isn't a significant return in the control of illicit drugs markets, with the possible exception of where States resort to the most severe draconian measures. The signs for the foreseeable future are that drug demand will lead to increased prevalence. The challenge to society is to what extent it can engage in humanistic and pragmatic approaches that enable societies to control and contain the nature and extent of drug use in its midst. This control and containment needs to be driven by the desire to reduce the harm both to the users of substances and to the societies in which these users live. There is abundant evidence that our current attempts to eradicate the use of substances are producing rapidly diminishing returns. Our criminal drug policies are in effect generating more harm to the communities they serve than they are alleviating. Such a scenario demands a radical overview and evaluation of how we are tackling our drug problem. While we still have a structure in the National Drug Strategy that has the capacity and mandate to carry out and lead in such a review we should avail of the opportunity. In particular, the NDS needs to assume its hitherto dormant role of initiating and developing policy for the Government. The Drug Strategy Team is comprised of leading experts in each sector but this expertise is under-utilized in its policy development role.

⁹ This was later modified to an option by the Judge which might or might not be applied. The former law meant that a Condition of Residence could apply for registered drug users under the Order of Recognisance (Misuse of Drugs Act, 1997: Section 28, as amended by the Misuse of Drugs Act, 1984).

Key Citations

Connolly, J (2005) The Illicit Drug Market in Ireland. Overview 2 Health Research Board: Dublin

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The Drug Policy Action Group

RECOMMENDATIONS

The DPAG recommends the following in relation to criminal drug policy in Ireland

1. The Drug Policy Action Group advocates the revision of Ireland's Criminal Justice Drug Policy to reflect harm reduction principles by introducing proportionality of penalties to actual harms caused by drugs and by ensuring that current laws do not restrict the development of appropriate drug services.
2. The DPAG recommends that the Cabinet Sub Committee on Social Inclusion should;
 - (a) Request the Law Reform Commission to assist them to review and propose repeals or revisions of drug laws.
 - (b) Address and independently review the capacity of its senior civil servants at Assistant Secretary and Secretary-General levels to understand, facilitate and lead on the delivery of a cohesive partnership approach to its drug strategy.
3. The DPAG recommends that the National Drug Strategy in keeping with its mandate to initiate and develop policy should;
 - (a) Appoint a dedicated policy sub group to review changes in Ireland's criminal justice drug policy (in particular supply control measures) as well as other issues relating to crime in Ireland and recommend appropriate policy proposals. These policy proposals would be for subsequent presentation by the NDST to Government through the IDG for implementation.
 - (b) Address the ambiguities between the National Strategy partners in their responses to disadvantage, to current users, to prison, to housing, education and environment. The present over reliance by communities, legislators and enforcement agencies on the criminal justice system undermines any long term health and educational drug strategies.
4. The DPAG recommends that Ireland's legislature adopts the same or a similar classification of drug substances as the British system where drugs are grouped on the basis of their harmfulness to the individual and to society.
5. The DPAG recommends that the role of public representatives on local and regional drug task forces needs to be more focused on implementing better drug laws, be engaged directly in the harm reduction agenda (i.e. the provision of laws that make a distinction between drug activities that actually cause harm as opposed to drug activities with low or no harmful consequences) and be held accountable on this task as the other sectors are on their respective tasks.
6. The DPAG recommends that the Health Service Executive in responding to drug use should;
 - (a) Develop greater availability and more prescribing alternatives to illegal drug use in order to counter the benefits to criminal markets of illegal drugs and the unreliability of drug quality.
 - (b) Formulate clear policy statements that support greater access to, and development of harm reduction facilities like needle exchanges, safer injection rooms and more widely available alternative prescribing options for longer term users.
7. The DPAG recommends that the Garda Síochána develop more focused programmes of training for Garda recruits in harm reduction approaches for drug users and that the new action identified in the mid-term review of the National Drug Strategy regarding specialist training for members of the judiciary is fulfilled.

AUTHORS

SEAN CASSIN OFM, former director and founder of Merchants Quay Ireland, currently a member of the National Drug Strategy Team (NDST) and chair of the Drug Policy Action Group (DPAG). Works as a psycho-therapist providing supervision to professionals in the drugs field and undertakes various consultancy work to groups and organisations. At present, has a lead role in forming the National Voluntary Drug Sector.

PAUL O' MAHONY is a member of DPAG, a senior lecturer in psychology in the School of Medicine, TCD and author of Crime and Punishment in Ireland and other books on the Irish criminal justice system.

Drug Policy Action Group Members

- **IVANA BACIK** - Trinity College Dublin
- **SEAN CASSIN OFM (DPAG CHAIR)** - NGO Drug Sector
- **PAUL CONLON** - Coolmine Therapeutic Community
- **DR GEMMA COX**
- **TONY DUFFIN** - Ana Liffey Drug Project
- **TONY GEOGHEGAN** - Merchants Quay Ireland Homeless & Drugs Services
- **JANE KENNY** - Voluntary Drug Treatment Network (VDTN)
- **RICK LINES** - Irish Penal Reform Trust (IPRT)
- **DR HILDA LOUGHRAN** - University College Dublin
- **RUAIDHRI MCAULIFFE** - Union of Improved Services Communication & Education (UISCE)
- **FERGUS MCCABE** - ICON
- **BERNIE MCDONNELL** - Community Awareness of Drugs
- **DERMOT MCLOUGHLIN** - Temple Bar Cultural Trust
- **PETER MCVERRY** - Aruppe Society
- **BRIAN MELOUGH**
- **ANN NOLAN** - Dublin AIDS Alliance
- **ANDREW OGLE**
- **DR AUSTIN O'CARROLL**
- **DR AILEEN O'GORMAN** - University College Dublin
- **DR PAUL O'MAHONY** - Trinity College Dublin
- **FEIDLIM O'SEASNAIN** - Drugs Education Workers Forum
- **DR PAUL QUIGLEY**
- **MICK RAFTERY** - ICON
- **NIAMH RANDALL (DPAG CO-ORDINATOR)** - Merchants Quay Ireland

Contact Us

DRUG POLICY ACTION GROUP

c/o Sean Cassin OFM
Gormanston College
Gormanston
Co. Meath

Phone: 087 2669910

Email: seancassin@eircom.net
niamh.randall@mqi.ie

Web: www.drugpolicy.ie