

Enhancing the Criminal Court Response to Substance Misuse: an Evidence and Practice Briefing

Briefing

Summary

There are well-established links between substance misuse (both illicit drug use, especially opiates and crack, and problematic alcohol consumption) and crime. Summaries of the evidence on reducing reoffending from both the Ministry of Justice and the Scottish Government highlight that drug treatment programmes generally have a positive impact on reoffending and offer value for money, and they identify that there is good evidence that alcohol-related interventions can help reduce hazardous drinking.

Recognising this, the criminal courts in the UK have long had the ability to order individuals convicted of a crime to undertake testing and treatment as part of a community sentence. As part of our work to map innovative practice across the UK, we have identified four projects seeking to enhance these standard treatment and testing offers, through the adoption of evidence based ‘problem-solving’ practice. In our discussions with the four sites, we identified a number of enhanced features common to these four projects, including:

- **Effective judicial monitoring:** Practitioners repeatedly highlighted the importance of judicial monitoring, where judges monitor the progress of those who have offended. The sites stressed the importance of the consistency of the same judge appearing at each review hearing, to ensure there is continuity and consistency of approach. In addition to consistency, practitioners in the four sites also highlighted the importance of the skills of the judges to offer regular feedback directly to individuals, to motivate and inspire them to do better than they thought they were capable of.
- **Fast-tracked access to treatment:** Acceptance onto one of these community treatment programmes means quicker assessments and speedier access to interventions. For people with chaotic lifestyles and insecure accommodation, sending appointment letters for a couple of weeks’ time can lead to missed appointments and missed opportunities.
- **Customised support:** Once accepted onto a programme, participants receive a comprehensive and tailored treatment plan. They must agree to engage in treatment, regular drug and alcohol testing, but also receive additional support from third sector agencies for needs such as mental health.
- **Recognition of success.** A number of the practitioners we spoke with emphasised the value of holding ‘graduations’ to acknowledge the participants’ progress and achievements.

Advice for new schemes

In our discussions with the four sites, we asked practitioners what advice they would give to others wishing to enhance their court’s

Key points

- **Evidence suggests substance misuse courts are effective at reducing reoffending and drug and alcohol misuse.**
- **Practitioners identify key problem-solving features including judicial engagement, fast-tracked treatment, tailored support, and multi-agency collaboration.**
- **“Such a process can motivate and inspire individuals to do better than they thought they were capable of” Sheriff Lindsay Wood, Glasgow Drug Court.**

response to substance misuse:

- **Establish clarity of aims and expectations at the start:** Practitioners were clear that schemes of this kind need to have a clear and shared understanding of the programme's aim and what is expected of staff and participants.
- **Partnership working rests on open and honest communication:** Practitioners highlighted that the partnership working that was needed to make these schemes work required open, honest communication between partners.
- **Raising awareness of realities of substance misuse and treatment across the workforce:** Across the four projects, practitioners were keen to highlight the importance of specialist drug training for staff to ensure a greater understanding of the clients' treatment needs and the process involved.

The Centre for Justice Innovation, in the coming months, is keen to act as the bridge between projects of this kind to share and learn from the challenges and successes that each site has faced when designing, delivering and evaluating their approach. If you are interested in sharing your experiences as a practitioner or learning more about how courts are enhancing their problem-solving approaches, please get in contact with Suzanne Smith, Innovative Practice Officer, at ssmith@justiceinnovation.org

Purpose of this briefing

This briefing aims to support practitioners seeking to enhance their court-based response to substance misuse by providing:

- The evidence on the link between substance misuse and offending;
- A summary of the evidence base on what works to reduce reoffending for individuals coming to court with substance misuse issues, both internationally and in the UK;
- A snapshot of the innovative 'problem-solving' court practice we have identified which is seeking to enhance the court response to substance misuse in the UK today;
- Lessons for practitioners who are seeking to enhance their response to substance misuse as part of a community sentence or as an alternative to custody.

In writing this briefing, we are aware of the evidence that for some individuals with substance misuse issues, diversion prior to court, and indeed diversion out of the criminal justice system altogether, can be a more effective way of both reducing their substance misuse and their re-offending. For example, our recent publication, *Pre-court diversion for adults: an evidence briefing*, highlights the strong evidence internationally, and moderate evidence from the UK, that pre-court diversion reduces reoffending. Nevertheless, we recognise the reality that our criminal courts are called upon to preside over cases in which individuals with substance misuse issues are in court due to the seriousness and repeat nature of their offending. This briefing examines effective court responses to those individuals.

Substance misuse and offending

There are well-established links between substance misuse and offending.¹ There is a particularly strong link between the use of opiates and crack and acquisitive offending and problematic alcohol consumption is associated with offending, particularly heavy or binge drinking and violent offending.² Unsurprisingly therefore, research consistently finds that substance misuse is a key risk factor in reoffending: for example, evidence shows that prisoners who use drugs or who had problematic alcohol use prior to entering prison have higher reconviction rates compared with those who did not.³ Gender differences have also been noted: longitudinal data indicated women sentenced to prison were more likely to report their offending was to support their own or another individual's drug use.⁴

Research by the Ministry of Justice and Public Health England has found that the most prevalent types of offences for individuals commencing substance misuse treatment in England included: summary offences excluding motoring (27% of offences), shop thefts (18% of offences), court order breaches (13% of offences) and drug offences (11% of offences).⁵ This evidence also highlighted differences in offending behaviour in relation to the substance misused. Summary offences excluding motoring were the most common alcohol-related offence and shop thefts most prevalent for opiate users.⁶

Looking at the population of individuals who come to court and receive community sentences, Ministry of Justice analysis finds⁷ that, of the probationers on community sentences in England and Wales, 20% were assessed as misusing Class A drugs at the time of the assessment and 45% had problems with alcohol misuse. Within Northern Ireland, it is estimated that 76% of people who are on probation supervision are assessed as having an alcohol or drug offending related problem (although these figures do include individuals on licence).⁸ In Scotland, while we were unable to find data on the prevalence of substance misuse in the community sentence population, research suggests that a third of people in police custody in Scotland have hazardous alcohol intake or are alcohol dependent, with between 11% and 35% dependent on a range of substances including cannabis and heroin.⁹

Court-based interventions for substance misuse

Court-ordered treatment and testing

Internationally, many jurisdictions have created court ordered treatment and testing sentences/ pathways for individuals who receive community sentences. In general, these sentences involve individuals participating in mandatory drug treatment and testing overseen by community supervision/ probation agencies.

Treatment tends to be focused on substitute prescribing and therapeutic/ psychosocial approaches/ community-based cognitive behavioural programmes for illicit substance misuse and psychosocial therapies and support, interventions for assisted alcohol withdrawal 'detoxification' and cognitive based treatment to address alcohol misuse or residential/inpatient care-planned treatment.

There is substantial evidence that court ordered treatment (including substitute prescribing and therapeutic/ psychosocial approaches/ community-based cognitive behavioural programmes) and testing for substance misuse issues can be effective at reducing re-offending. For drugs, this treatment has tended to focus on methadone treatment and heroin treatment.

For low to medium severity alcohol misuse, there is emerging evidence from the health literature that alcohol-brief interventions— short, evidence based, structured conversations about alcohol consumption based on motivational interviewing techniques— can be effective. For more problematic alcohol consumption, including alcohol dependency, there is as yet no evidence to show a direct effect of alcohol treatment on reduced reoffending, although alcohol interventions can reduce alcohol problems more generally.¹⁰

In England and Wales, this type of treatment and testing order can be made order by the courts via community sentences through the Drug Rehabilitation Requirement and the Alcohol Treatment Requirement (both introduced in 2005 as part of the implementation of the Criminal Justice Act 2003, replacing similar predecessor orders.) Brief interventions for alcohol misuse are also often delivered as part of supervision. Since 2017, the Ministry of Justice has invested in the Community Sentence Treatment Requirement programme, developing test beds that have aimed to improve the services

available where the individual has consented to complete treatment for mental health problems, drug and/or alcohol misuse problems.

In Northern Ireland, individuals with low to medium level illicit drug misuse issues and alcohol misuse issues will often have interventions delivered as part of their probation orders, including via substance misuse brief interventions. Individuals can also be required to participate in treatment and testing, as part of their community sentences.

In Scotland, individuals with low to medium level illicit drug misuse issues and alcohol misuse issues will often have interventions delivered as part of their community payback orders. In addition, the Drug Testing and Treatment Order (DTTO) is aimed at people who have a significant drug misuse issue, and whose offending is linked to their drug misuse.

Substance misuse courts

In addition to court-ordered treatment and testing, many jurisdictions have created substance misuse courts (sometimes known as drug courts). Substance misuse courts are specially designed court calendars or dockets, which use regular and consistent judicial monitoring, and the use of appropriate and graduated sanctions and incentives schemes to motivate compliance, in addition to the treatment and testing. Substance misuse court hearings are held in existing courthouses as a separate set of court listings, where all the relevant substance misuse hearings are listed together. In general, these substance misuse courts are reserved as an alternative to custody and/or targeted at more complex, repeat offending. Substance misuse courts fit into a wider set of enhanced court responses, sometimes known as problem-solving courts.¹¹

There is a robust and extensive international evidence base that substance misuse courts are effective at reducing reoffending and drug and alcohol misuse. There have been several meta-analyses on the efficacy of substance misuse courts for adults in the United States.¹² These meta-analyses consistently show better re-arrest or reoffending rates compared to randomized or matched comparison samples of substance misusing individuals who were on other forms of probation or who had had their cases heard in traditional courts. These studies also show a marked decrease in drug use and other outcomes. There is little direct evidence on courts which target problematic alcohol use but drug court studies do show improvements in levels of alcohol misuse. Components of substance misuse courts that have been suggested as being associated with reduced reoffending include the judge's level of experience, the amount of time a person spends in front of the judge during the status review hearing, collaboration between different agencies, and a programme length of at least one year.

In the UK, the use of judicial monitoring, a common UK component of the substance misuse court model, have been incorporated into sentencing options. For example, the DRR and ATR include the option of court reviews, though its deployment is restricted to certain circumstances, and these reviews do not include many of the other features of the substance misuse court model, such as consistency of judge conducting the monitoring¹³ or the use of appropriate and graduated sanctions and incentives schemes. In Scotland, two dedicated substance misuse courts were opened in the early 2000s, of which the court in Glasgow remains open and the court in Fife was closed in 2013.

Enhancing the criminal court response to substance misuse in the UK

As part of our work to map innovative practice across the UK, we have identified four projects seeking to enhance the standard testing and treatment court offers. All four have done so via the adoption of problem-solving practice, applying many of the enhanced features of substance misuse courts. These projects are:

- **Belfast Substance Misuse Court:** The Substance Misuse Court (SMC) has been running at Belfast Magistrates Court since April 2018, with Judge Fiona Bagnall presiding. The SMC takes an alternative approach to help individuals who have offended when substance abuse is an underlying problem.
- **C3 – Birmingham Problem Solving Approach:** C3 refers to the Crime Free Community Desistance Programme which is offered jointly by West Midlands Police (WMP), National Probation Service (NPS), Staffordshire and West Midlands CRC (SWM CRC) and other partnership agencies. This intensive rehabilitation programme targets those involved in prolific, non-violent adult residential

burglary offending who are trapped in a cycle of addictions, crime and prison.

- **The Edinburgh Alcohol Court:** The Alcohol Problem-Solving Court (APSC) was established in Edinburgh in February 2016 and headed up by Sheriff Frank Crowe. The court, which has now been taken over by Sheriff John Cook, helps adult men who have a pattern of alcohol-related offending.
- **The Glasgow Drug Court:** The aim of the Glasgow Drug Court is to reduce drug misuse and the offending that is driven by that misuse, and targets individuals engaged in a pattern of repeat offending with longstanding drug addiction issues. Those who are eligible for the programme are given the opportunity to change their lives after years of addiction. Sheriff Lindsay Wood presides over the Glasgow Drug Court.

In discussions with four schemes specialising in substance misuse, we asked practitioners about their problem-solving approaches, as well as their thoughts on what makes their scheme a success and the challenges they have encountered when working with individuals with entrenched addiction issues. We have compiled case studies detailing the central features of the problem-solving approaches adopted in Belfast, Edinburgh, Glasgow and Birmingham, which can be found on our [Map of Innovation](#) on our website.

Enhancing the response to substance misuse

In our discussions with the four sites, we identified a number of enhanced features common to these four projects, which practitioners believed enhanced the court's existing response to substance misuse:

- **Processes to assess an individual's motivation to comply:** Practitioners highlighted that they had to learn to give time to fully assess potential participants' motivation before officially accepting them on the programme. Following a number of early drop-outs on the programme, the team at the Belfast SMC have now implemented this in their assessment process to ensure that only those who are committed, motivated and willing to engage will be accepted. C3 employs the innovative use of deferred sentencing as a method of measuring motivation and participants must comply with 'bail' conditions for six months before a community sentence is recommended.
- **Fast-tracked access to treatment:** Acceptance onto one of these community treatment programmes means quicker assessments and speedier access to interventions. One of the key elements to the effectiveness of the APSC, according to Sheriff Cook, is its immediacy. Once an individual is accepted onto the scheme, they are sent immediately to meet with the Criminal Justice Social Worker (CJSW), and are given an appointment to meet with the addiction service. For people with chaotic lifestyles and insecure accommodation, sending appointment letters for a couple of weeks' time can lead to missed appointments and missed opportunities.
- **Collaboration through pre-court hearings:** A key feature of some of these courts projects was the pre-court meeting. At the pre-court meeting at the Glasgow Drug Court for example the Sheriff and the drug court team have an in-depth discussion about all offenders currently on the programme to plan for the upcoming review hearing.
- **The consistency of the same judge in judicial monitoring reviews:** Practitioners repeatedly highlighted the importance of judicial review meetings, which provide opportunities for judges to monitor progress and offer regular feedback directly to the individuals participating in the programme. Sheriff Lindsay Wood of the Glasgow Drug Court stresses the importance of the consistency of the same judge appearing at each review hearing, to ensure there is continuity and consistency of approach.
- **Effective engagement from the bench:** In addition to consistency, practitioners in the four sites also highlighted the importance of the skills of the judges to offer regular feedback directly to individuals appearing before them. Sheriff Lindsay Wood of the Glasgow Drug Court and practitioners from the SM court in Belfast stressed the importance of this engagement from the bench, stating that such a process can motivate and inspire those appearing in court to do better than they thought they were capable of.
- **Community resources and partnership working:** Practitioners stressed the extent to which they relied on local support services to provide treatment and additional support to programme participants. Sheriff John Cook, who presides over the Edinburgh Alcohol Problem-Solving Court (APSC), highlights the community aspect of the scheme as an essential component supporting the programme's success while DS Sandy Thompson credits the success of the C3 programme in Birmingham to a strong community

support network including police, probation and a number of partner agencies, including Change Grow Live who deliver drug/alcohol treatment and counselling. The need for effective multi-agency collaboration is frequently mentioned in discussions with practitioners and is a crucial factor in the success of a problem-solving scheme. DS Sandy Thompson states that a key element to the success of the C3 programme is its simplicity, which comes from open communication between the various agencies.

- **Customised support:** Once accepted onto a programme, participants receive a comprehensive and tailored treatment plan. They must agree to engage in treatment, regular drug and alcohol testing, but also receive additional support from third sector agencies for needs such as mental health. Belfast SMC has been praised for its flexible approach to support, while the C3 programme offers a bespoke programme that includes offending behaviour programmes, psychological treatment, education and employment support and restorative justice.
- **Recognition of success:** A number of the practitioners we spoke with emphasised the value of holding ‘graduations’ to acknowledge the individual’s progress and achievements. The Belfast SMC organises a small ceremony where the Judge presents each participant with a certificate of completion. Participants can invite their families to this celebration, which encourages a sense of achievement and pride. The APSC holds a final review for those who complete the programme. Sheriff Cook speaks positively about this meeting as a final opportunity to congratulate the individual on his achievements and encourage continued progress once the programme finishes. The graduation ceremony was a later addition to the Glasgow Drug Court, but Sheriff Wood feels it is an integral and powerful component, particularly for the graduates who may have had few formal celebrations in their lives.

Advice for new schemes

In our discussions with the four sites, we asked practitioners what advice they would give to others wishing to enhance their court’s response to substance misuse:

- **Establish clarity of aims and expectations at the start:** Practitioners were clear that schemes of this kind need to have a clear and shared understanding of the programme’s aim and what is expected of staff and participants. Staff at Belfast’s SMC felt that in order to effectively support clients they needed greater clarity on whether the focus should be on the achievement of abstinence or the reduction of risk to society, while Sheriff Cook of the APSC also highlighted the importance of having clear communication about what is required of the participants from the outset.
- **Partnership working rests on open and honest communication:** Practitioners highlighted that the partnership working that was needed to make these schemes work required open, honest communication between partners. This type of communication helped to ensure a joined-up approach between court and probation staff and local agencies delivering treatment and support services. DS Sandy Thompson emphasises the importance that each team is clear and upfront about their customised support strategy with each participant from the outset.
- **Raising awareness of realities of substance misuse and treatment across the workforce:** Across the four projects, practitioners were keen to highlight the importance of specialist drug training for staff to ensure a greater understanding of the participants’ treatment needs and the process involved. This was emphasised by probation staff at Belfast’s SMC who stated that this training is need for all staff involved, not just the addiction workers.

Concluding thoughts

There is a great deal to be learned from discussions with practitioners about their experiences working in these projects. In the four sites, they have all attempted to follow the evidence base on substance misuse courts and enhance their courts' ability to reduce re-offending. While many of the practices highlighted above do fit clearly within the overall framework of enhanced evidence based problem-solving practice, more research is needed to examine whether these enhancements deliver better outcomes. A more coordinated and comprehensive approach to data collection and clarity around project aims may aid evaluation, giving us a clearer indication of the evidence for substance misuse courts in the UK. There is also a need for better information sharing among problem-solving sites of this type.

The Centre for Justice Innovation, in the coming months, is keen to act as the bridge between projects of this kind to share and learn from the challenges and successes that each site has faced when designing, delivering and evaluating their approach. If you are interested in sharing your experiences as a practitioner or learning more about how courts are enhancing their problem-solving approaches, please get in contact with Suzanne Smith, Innovative Practice Officer, at ssmith@justiceinnovation.org

Endnotes

1. See: Ministry of Justice. (2013). *Transforming Rehabilitation: a summary of evidence on reducing reoffending* and Sapouna et al. (2015). *What Works to Reduce Reoffending: A Summary of the Evidence*. Justice Analytical Services, Scottish Government.
2. Ibid
3. Miriam Light, Eli Grant, and Kathryn Hopkins (2013) *Gender differences in substance misuse and mental health amongst prisoners Results from the Surveying Prisoner Crime Reduction (SPCR) longitudinal cohort study of prisoners*, Ministry of Justice Analytical Services
4. Ibid
5. Ministry of Justice and Public Health England. (2017). *The impact of community-based drug and alcohol treatment on re-offending: Joint experimental statistical report from the Ministry of Justice and Public Health England*.
6. Ibid
7. See: Ministry of Justice. (2013). *Transforming Rehabilitation: a summary of evidence on reducing reoffending*
8. PBNI. (2018). *Probation's Intensive Programme Challenges Criminal Behaviour related to Drugs And Alcohol*
9. Scottish Government. (2018). *Rights, respect and recovery: alcohol and drug treatment strategy*
- Douglas Anglin, M., Prendergast, M. & Farabee, D. (1998). *The effectiveness of coerced treatment for drug abusing offenders*. UCLA Drug Abuse Research Center, Paper presented at the Office of National Drug Control Policy's Conference of Scholars and Policy Makers, Washington, DC. 23–25 March
10. Ministry of Justice. (2013). *Transforming Rehabilitation: a summary of evidence on reducing reoffending* and Sapouna et al. (2015). *What Works to Reduce Reoffending: A Summary of the Evidence*. Justice Analytical Services, Scottish Government.
11. Bowen & Whitehead. (2016). *Problem-solving courts: An evidence review*. Centre for Justice Innovation.
12. See: Downey, P. M., & Roman, J. K. (2010). *A Bayesian meta-analysis of drug court cost-effectiveness*. Washington, DC: Urban Institute.; Latimer, J., Morton-Bourgon, K., & Chrétien, J. A. (2006). *A meta-analytic examination of drug treatment courts: Do they reduce recidivism?*. Ottawa, Canada: Department of Justice Canada; Lowenkamp, C. T., Holsinger, A. M., & Latessa, E. J. (2005). *Are drug courts effective: A meta-analytic review*. *Journal of Community Corrections*, 1, 5–28; Mitchell, O., Wilson, D. B., Eggers, A., & MacKenzie, D. L. (2012). *Assessing the effectiveness of drug courts on recidivism: A meta-analytic review of traditional and nontraditional drug courts*. *Journal of Criminal Justice*, 40, 60–71; Sevigny, E. L., Fuleihan, B. K., & Ferdik, F. V. (2013). *Do drug courts reduce the use of Incarceration?: A meta-analysis*. *Journal of Criminal Justice*, 41, 416–425; Shaffer, D. K. (2011). *Looking inside the black box of drug courts: A meta-analytic review*. *Justice Quarterly*, 28, 493–521.
13. The Home Office piloted dedicated drug courts as an enhanced offer around the DRR. Though process evaluations in 2008 and 2011 suggested that both courts delivered some positive practices, no evaluation of impact has been undertaken. See: Kerr, J., Tompkins, C., Tomaszewski, W., Dickens, S., Grimshaw, R., Wright, N. & Barnard, B. (2011). *The Dedicated Drug Courts Pilot Evaluation Process Study*. Ministry of Justice Research Series 1/11. London: Ministry of Justice

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