


# Court in two minds



**A** YEAR and a half ago we took a trip to New York to examine how an American drug court functioned in comparison with our own DTTO system. We spent a week at the South Bronx Drug Treatment Court, as well as one of its local treatment facilities, the Lincoln Recovery Center. We were given full access to both facilities, a large amount of data and granted individual time with the court's sole judge and head of the treatment centre.

## CONTRAST

Our findings reveal a marked difference in the way the US and UK deals with offenders who misuse drugs. They expose the basic failings and endemic confusion within a UK system that manages to fall between the two stools of helping offenders off drugs and reducing crime. At the heart of this contrast is the pivotal role of the US judges, but there are also basic differences in the legal processes and treatment aims of the two systems.

In the Bronx, people working at the court and treatment centre told us that having a one to three year jail sentence as a direct alternative to treatment worked to everyone's advantage. They said a sentence of this length was "a big enough stick" to motivate most to comply with their treatment and remain abstinent long enough to complete the order.

Offenders on US treatment orders have to achieve complete abstinence from all drugs including cannabis and alcohol as well as the drugs that prompted the original charges (usually heroin or cocaine). The American drug courts in the main take on first time offenders only and are prevented from taking recidivists by the mandatory sentencing tariffs in most states.

## PUNISH NOT TREAT

In contrast, DTTOs are aimed at long term heroin and cocaine users with an established pattern of offending to support their habit. They invariably have lengthy records and have received many previous sentences including community rehabilitation and punishment orders, custodial sentences, curfew orders, fines, conditional discharges and cautions. The central objective of DTTOs is one of reducing crime. As Paul Hayes, now chief executive of the National Treatment Agency, said at the National DTTO conference in 1999, "DTTOs are not treatment, they are punishment". This view is supported by subsequent Home Office guidance on levels of contact in breaching orders, which require offenders to keep four to five times as many appointments as those on any other probation orders.

We found a stark contrast between the British breach system, in the main laboriously slow and complex, and the immediacy of the US drug court sanctions, which allow a failing offender to be "put back in touch with their motivation".

In the UK, if the offender is failing at the regular

Our system of dealing with offenders with drug problems is disjointed, say **Dr John Crichton** and **Simon Fidler**, who visited the Bronx to see how it could be done

judicial review, the only sanction a judge can impose is a fine or further community punishment. If the offender is failing in treatment and providing positive urine drug tests, but is attending the required appointments and not re-offending, then there is nothing a judge can do to intervene and help the treatment process: a sharp contrast to the active, central role of the American judges with offenders passing through their courts.

## JUDGES PIVOTAL

In the US, progress in treatment was clearly given a high priority, in the UK it seems almost incidental. This is reflected in the central difference between the two systems: the role of the judge. As with many US drug courts, South Bronx is presided over by a lone judge five days a week. These "specialist" treatment court judges deliver highly consistent decisions both on delivering treatment and punishing the non-compliant. Inevitably this produces judges who are familiar with treatment options and issues.

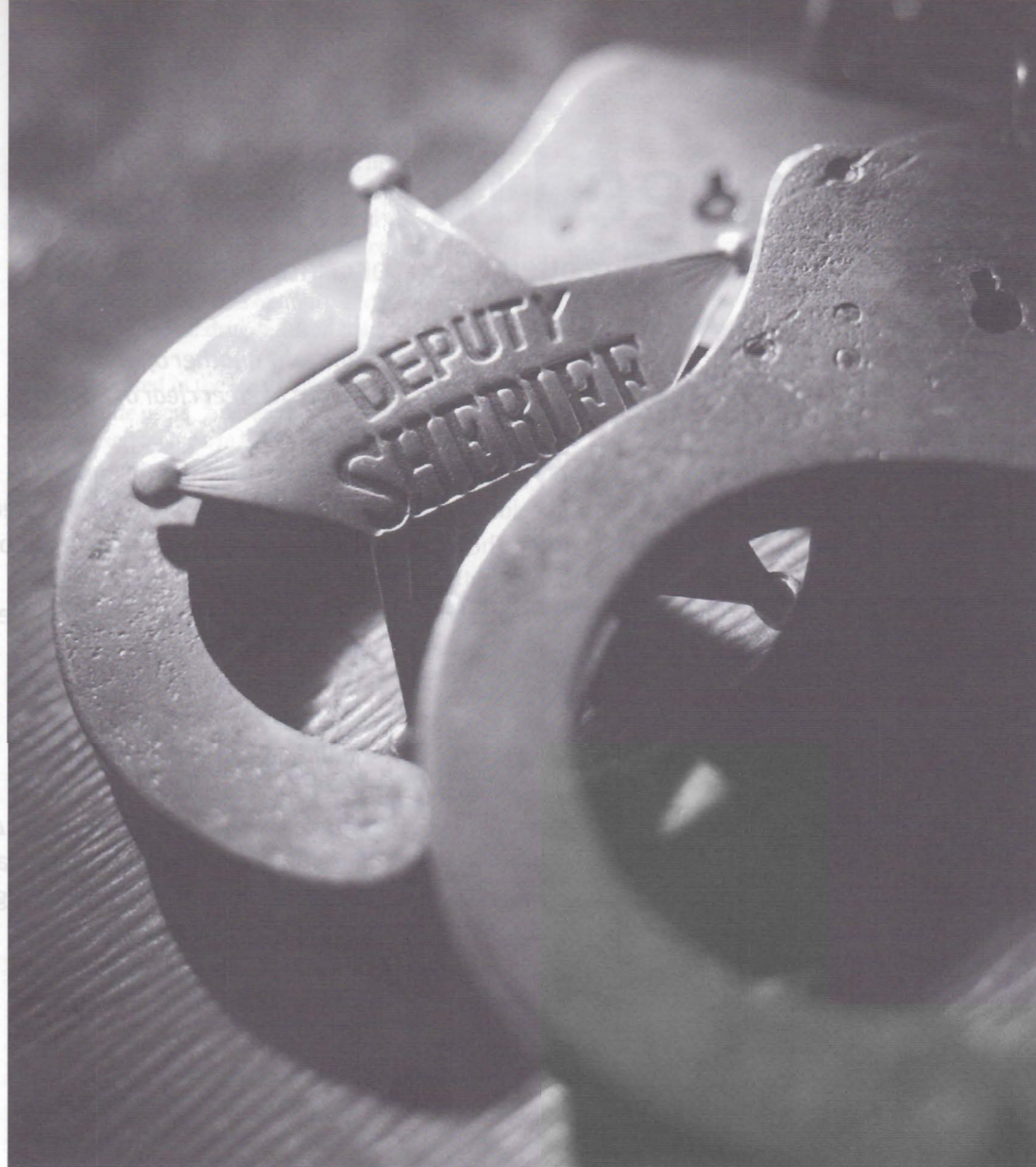
The judge is well supported by care managers and with regular input and updates from treatment providers and rapid access to all their programmes, is able to make decisions regarding treatment, placement and progress throughout the programme. This is supported by the judge's ability to impose immediate sanctions on the non-compliant, backed up by the court's "stick" of a one to three year jail sentence.

## BYSTANDER

In the UK, regular contact with the same sentencer is less common. In Southampton, we are fortunate to have one particular district judge prepared to take on the supervision of all the DTTO cases at her court. But with the three or four other magistrates courts and two crown courts that we work with, the various judges and ever-changing benches of JP's bring unpredictability and varying levels of understanding of drug treatment and of DTTOs. This can cause confusion to offenders. Treatment is provided externally and so breach hearings are most likely to be about failure to comply with the Home Office's stringent programme of appointments. The courts' lack of control over treatment facilities and budgets often reduces their role to one of well-wishing bystander, watching the gradual decline of the client

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into chaotic drug use and crime while waiting for a housing, detox or rehab placement. When treatment is failing, there is little the judge can offer but encouragement. More often than not the outcome of the breach hearing is no action. This would seem unlikely to increase the client's motivation, particularly when they have shown ongoing drug use.

The differences between the American drug courts and the British DTTO system highlights the tensions between the criminal justice arm and the treatment arm of the present DTTO arrangement. Home Office guidance on levels of contact and the breaching of orders reinforces this. The initial requirement is for 15-20 hours contact time each week. Failure to attend two appointments usually results in a breach. But it can take as long as two to three months for a breach hearing to be set. This delay usually results in one of two judicial outcomes: "So you lapsed several weeks ago, missed some appointments but have since got back on track. Well done keep it up" or "As this client completely detached from treatment over two months ago I am issuing a warrant for their arrest".

DTTOs have become very difficult to complete without at some point being breached for failing to attend. Forty nine percent of our clients are already in breach of community rehabilitation or punishment orders, have numerous previous convictions and a poor record of compliance with treatment. It is hardly surprising that this population, faced with an unclear

attitude towards ongoing drug use and inability to intervene meaningfully in any lapse, fail to complete the order. Many return to drug use and crime.

#### OVER-ARCHING ROLE

In our view the emphasis of the DTTO on crime reduction and complying with the structure of the order without an equal emphasis on the treatment element is counter-productive. Failing to address an offender's addiction makes it more likely they will resort to criminal activity to fund future drug use. We need to untie the hands of the treatment providers regarding the mandatory attendance times and allow treatment services to provide sophisticated treatment plans pertinent to the client rather than simply the sticking to the Home Office dictat.

It would be helpful for the judge who is making and supervising the order to have a more over-arching role and become more involved in the treatment aspect. The judge must be able to "re-motivate" those clients who are failing by the use of a range of sanctions similar to those available to the American judges and which can be used with immediate effect, rather than waiting for months before a breach hearing can be heard. We believe in the setting of a more tailored treatment approach, placed in the hands of a limited number of specialist US-style judges, if DTTOs are to do what they set out to – reduce crime and the prison population. ■