

# FAIR TRIAL FOR JUSTICE PROPOSALS

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## *Drug agency clients could benefit from government criminal justice proposals*

**Implementing the White Paper *Crime, Justice and Protecting the Public* could prevent offenders being sentenced on their record and make courts justify imprisonment. These together with greater use of probation orders requiring treatment could help keep drug users out of prison, as long as some drug agencies cooperate and ensure treatment is ordered only where the offender would otherwise be imprisoned.**

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"FOR MOST OFFENDERS, imprisonment has to be justified in terms of public protection, denunciation and retribution. Otherwise it can be an expensive way of making bad people worse." This extract from the White Paper *Crime, Justice and Protecting the Public* conveys the Government's apparent commitment to reducing the numbers sent to prison for less serious non-violent offences.

The White Paper contains proposals likely to find their way into the Criminal Justice Bill to be published in December. As one might expect, the Government is concerned not to give the impression that it has 'gone soft' on crime; references to just deserts, punishment and reparation abound. But beyond the rhetoric are a number of potentially positive aspects which should not lightly be dismissed.

For the first time there is an attempt to introduce some coherence into the sentencing process. Traditionally sentence has been determined according to a mishmash of factors such as: the seriousness of the offence; the previous record; whether there is a social enquiry report with a realistic recommendation for a community-based sentence; and the prevailing attitude towards that type of offence in the area.

In contrast, the White Paper recommends that sentence be decided simply according to the seriousness of the offence. Specifically excluded is the offender's previous record - which could be good news for those whose drug use regularly brings them before the courts for offences of similar gravity.

Under the new proposals sentencers would have to give their reasons, in open court, for passing a custodial sentence, which would be open to appeal. Such provisions have already helped reduce the number of young offenders sentenced to custody over the last few years.

The Government also proposes to extend to adults the requirement that before passing a custodial sentence the court should consider a social enquiry report from the probation service detailing which commu-

nity-based sentence might be appropriate.

Less welcome are the suggested additions to the range of community penalties, including curfew orders possibly enforced by electronic tagging, and the new 'combined order' enabling courts to construct sentencing packages by combining existing penalties. Recognising that all community-based penalties involve some restrictions on liberty, the Government proposes that the appropriate sentences should be decided by matching the degree of restriction to the seriousness of the offence.

The underlying assumptions are that sentencers under-use community-based sentencing because it is perceived as being insufficiently restrictive, and that too small a range of options currently exists. In fact England and Wales have a wider diversity of non-custodial penalties, yet a higher proportion of the population is imprisoned here than anywhere else in Europe.

Increasing the severity of community-based sentences is intended to reduce the number of non-violent offenders being sent to prison. But without any real restrictions on the court's power to imprison for minor offences, there is a risk that those now receiving non-custodial sentences will simply be subject to greater restrictions, with no net impact on the rate of imprisonment.

## **Treatment orders**

Allusions to the potential for conditions of treatment requiring drug users to undergo a treatment programme as part of the probation order have caused particular controversy in the drugs field. A Home Office press release issued the day after the White Paper highlighted this option, making it seem like something new. In fact, such conditions have been possible for years, but have rarely if ever been imposed, though the attention now given to this possibility is likely to result in increased use.

Involvement in the criminal justice system would not be new to most drug agencies. Work currently undertaken includes: preparing reports on clients who

come before the courts; liaising with the probation service about people on probation who voluntarily attend the drug service; visiting clients in prison; contributing to pre-release courses and prison officer training; providing advice and counselling 'surgeries' in prisons; and, in the case of some residential centres, accepting residents subject to conditions of residence at the project as part of a probation order.

However, use of probation orders with conditions of treatment could involve far more agencies in a more formal relationship with the criminal justice system. Some drug workers seem to see this as entirely negative. Fears have been expressed about working with people whose principal motivation is avoiding prison, and about the increased level of cooperation with authority such conditions may imply.

The question of motivation is important, as someone attending a project simply because they have to may disrupt others who are more highly motivated. But perhaps the more likely scenario is that, rather than attending and causing difficulties, the unmotivated client may simply stop attending, leaving project workers to take the individual back to court, playing a part in his or her eventual imprisonment.

This understandably worries drug workers concerned not to appear authoritarian, but in fact supervision of the probation order is the responsibility of the probation officer, who would have to decide what to do if the client fails to comply with any of the conditions of the order.

If a treatment condition clearly is not working then liaison between the drug agency and the probation officer may enable any difficulties to be overcome, or result in an alternative solution which can be presented to the court.

## Assessment crucial

Fundamental to the whole process is a thorough assessment of the needs of the drug user before sentencing. Cases are usually adjourned for social enquiry reports before a probation order is imposed; under the White Paper proposals the same will apply if the court is considering a custodial sentence.

If a treatment condition is to be considered then the drug agency should have the opportunity to assess the offender at this stage. This would provide a chance for the agency to assess the client's suitability for its programme and for the client to see what is available and whether they are prepared to comply.

Negotiation of the terms on which any drug agency input might occur would be possible at this stage, including agreement on frequency of attendance and levels of information sharing between the agency and the probation officer.

Many drug users on probation now attend drug projects on a voluntary basis and

**No place to get better, but drug agencies could use Government criminal justice changes to keep more drug users out of prison**



it is important that this remains the usual situation. In future if conditions of treatment were added where now 'straight' probation orders were imposed, then obviously the overall effect would be negative. Additional restrictions inevitably increase the chances of the probation order failing.

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### ***Workers should consider whose interests are being served by refusal to cooperate***

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The White Paper recognises this and the problems some may have in complying with a plethora of requirements: "It is important that the courts should be realistic... The lifestyle of many offenders, especially young adults, is often disorganised and impulsive, particularly if they drink too much or are addicted to drugs... Each order should be tailored both to the seriousness of the offence and the characteristics of the offender."

But if those otherwise seriously at risk of going to prison wish to seek help and are assessed as suitable by the drug agency, then a probation order with a condition of treatment may provide a positive opportunity.

Drug agencies would inevitably have to play an important role in refusing to accept treatment conditions on those who would now receive ordinary probation orders. Drug agencies could play a proactive role in limiting the use of treatment conditions similar to that played by intermediate treatment schemes. These schemes have had a major impact in diverting juveniles from custody, and an important component of this has been effective 'gatekeeping' so that most schemes only accept those who would otherwise end up in young offender institutions.

An important element in ensuring that reports and assessments from drug services are influential in court is to improve the court's level of knowledge about drugs, treatment options and local drug agencies.

Many magistrates and judges rely largely on information gleaned in their day-to-day lives rather than any specialist knowledge. It is hardly surprising that sentencing often reflects media stereotypes, where 'drug dealers' on whatever scale are 'evil' and drug problems can only be resolved by becoming entirely drug free.

There are a number of ways in which this can be achieved: by contacting the clerk to the justices to suggest an input into the training of new magistrates; through the probation committee of magistrates which acts as the management committee of the local probation service; by agencies holding 'open days' for magistrates and judges; by providing literature about the service geared towards sentencers; even by inviting a magistrate or judge to join the agency's management committee.

Some drug services will feel that it is inappropriate for them to become more heavily involved in court-based work or to have any part in what is seen by some as compulsory treatment (though the defendant has to consent, inevitably there is pressure to do so). However, workers should consider whose interests are really being served by a refusal to cooperate, and whether the occasional acceptance of treatment conditions would fundamentally alter their service.

Though individual services may not wish to be involved, it is important that some provision is available in each area in the interests of consistency and justice.

ANY DRUG WORKER who has operated in a penal setting can be under no illusion about the damaging effect imprisonment has on every aspect of a prisoner's life. Some drug users convicted of the most serious offences will always be sent to prison. But the provisions in *Crime, Justice and Protecting the Public* may provide an opportunity for drug services to play a vital role in reducing the number of drug users subjected to the harm and degradation of imprisonment. As such these proposals deserve to be given a fair trial. ■