

No big deal

Court-ordered treatment in practice

THE 1991 Criminal Justice Act gave judges and magistrates the option of requiring treatment for drug or alcohol dependence as an add-on to the standard probation order. These 'conditions of treatment' may involve residential or non-residential contact with a drug or alcohol agency up to the length of the probation order. Treatment can be specified or simply to be directed by anyone "having the necessary qualifications or experience". Drug services, medical and non-medical, were in line to receive referrals under the new system.

Not all were enthusiastic. There were concerns over compulsory treatment and that offenders who'd 'failed' the court's treatment programme would end up with harsher sentences than before. These vied with predictions that the provisions would help keep drug users out of prison and stimulate better working links between drug agencies and probation services.

This article assesses what happened as the Act became a reality for probation and drug services in England and Wales. Its basis is research by ISDD¹ plus work done at Leicester University.² ISDD collected statistics from 12 probation services and interviewed probation/drug workers for about half the offenders placed on treatment conditions. The research at Leicester collected information on treatment conditions from 20 probation and 15 drug services.

Expectations unfulfilled

A crucial first question is, was this sentencing option used? Our research suggests the answer is, only rarely. Twelve probation services reported just 61 conditions of treatment for drug dependence in the first six months of the Act, ranging from 20 in the Inner London Probation Service to zero in Cambridge.

For treatment services too, the impact had been minimal. Nine English drug projects surveyed reported 28 referrals under conditions of treatment up to July 1993,³ contrary to warnings before the Act came into force that services might need to prepare for an influx of new clients.^{4,5}

From October 1992 courts have been able to 'sentence' drug and alcohol dependants to treatment. Two researchers pool their results to assess how this controversial power has worked out in practice. What they found was unexpected

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SUMMARY

Two studies have assessed the practical impact of the provision introduced in 1992 allowing courts to make it a condition of a probation order that drug dependants undergo community-based treatment. Courts rarely used this option and it had little impact on the volume or type of work done by drug services. There was evidence that probation services are 'unnecessarily' proposing treatment conditions in less serious cases where the offender would not have been imprisoned.

Nor did things work out as expected in terms of the *type* of treatment the offenders' received. The need to flexibly adapt to the court's schedule meant that in many areas probation officers took the lead as the 'suitably qualified' person directing treatment, rather than drug workers. This accounted for 20 of the 61 treatment orders made by 12 probation areas. When the court was more specific about the treatment to be imposed, the picture was mixed: 18 orders specified residential and 23 non-residential treatment.⁶

In the Leicester research 24 out of 28 treatment order referrals were received by residential projects and just four by non-residential ones.⁷

This mixed picture probably reflects a mixture of forces. Favouring residential conditions is the fact that before the Act working relationships between some residential projects and some probation areas had been established through condition of residence orders,⁸ easing the way for the conditions of treatment to be tacked on to existing practice.

Also residential care needs funding; specifying it in a formal treatment order makes this easier to get. Funding is usually not a requirement for non-residential treatment, so this can be arranged without the need for a formal treatment order. At the time of our research there was no evidence that probation referrals to street agencies had come with funding attached. These factors will tend to mean that residential treatment is specified in probation orders while the bulk of non-residential treatment is arranged less formally.

Alternative to custody?

For many people the key question is whether the Act has kept drug users out of prison – or has restricted the liberty of people who would not have been imprisoned in the first place.

The Advisory Council on the Misuse of Drugs argued that conditions of treatment should be "reserved for people convicted of relatively serious offences and then only when a custodial

sentence would be the alternative outcome".⁹ But targeting serious offenders is not easy. Critics of the Act have warned that to get their recommendations accepted by the court, probation officers might 'play safe' in pre-sentence reports, proposing greater restrictions of liberty than are warranted by the offence.¹⁰

Such concerns may be justified. In both our studies, most drug using offenders placed on conditions of treatment had been convicted of property crimes rather than violence. In 16 cases we had probation's rating of the seriousness of the offence. Five were not thought highly serious or such as would make the offender 'at risk of custody'. Over half – 53 per cent – of 61 conditions of treatment for drug dependence were made in magistrates' courts, which deal with less serious offenses than crown courts.¹¹

One of us recorded the outcome in 94 cases where a condition of treatment for alcohol or drug dependence was proposed by probation, but rejected by the court. Only 57 per cent went on to be given a custodial sentence.¹² The implication is that many probation clients were having a more restrictive order proposed for them than was necessary.

Based on these small-scale findings, it is debatable whether conditions of treatment are only being made in serious cases and as an alternative to custody.

The impact on drug services

Many drugs workers were against the introduction of conditions of treatment. They argued that a choice between treatment and prison was not a real choice, and insisted treatment be a response to need, not a penalty from the court. There were fears that if an offender's drug advice worker liaises with their probation officer, then the drug agency will no longer be seen as safely distanced from the criminal justice system. Clients would lose trust and be less open about their drug use.

The potential to divert drug users from prison seems strictly limited

There were concerns, too, that forcing drug users into treatment risked setting them up to fail. Of 15 treatment agencies surveyed, five out of the six that refused to accept conditions of treatment cited the issue of the client's motivation as their main reason.¹³ But most were prepared to play ball. As the Probation Inspectorate pointed out, many were prepared to accept such conditions if that seemed the only way to keep an offender in the community.¹⁴

How agencies would manage the flow of court referrals was also a concern in the run-up to the Act. Services were advised to negotiate a referral policy with probation and to "decide in advance what type and volume of work [they are] prepared to take on".¹⁵ In practice, the need to respond to the court's schedule, or to other administrative concerns of the criminal justice system (for instance, the backlog of cases), could mean such arrangements were thrown out of the window. Pressure on drug workers to accept a condition of treatment increased if the offender was known to the agency.

In agencies which did accept clients on conditions of treatment, drug workers felt the Act had not made a big difference to their work – either in terms of the number of new clients or how they worked with them. Most orders did not specify the nature and duration of the treatment, providing flexibility for treatment to be varied without having to return to court. As one residential drug worker put it: "There is no difference whether a client is on condition of residence or bail or new

residential treatment ... it should be the same ... We don't want to offer one thing to one type of client and another thing to another, or else there would be complaints from residents of unfair treatment, ie, they need to go through the court to get the right type of treatment."

Some workers in street agencies did make special efforts to do home visits. The aim was to minimise the risk of courts declaring the offender in breach of their probation order because they had failed to attend the agency.

Credibility problem in court

Probation officers have warned that conditions of treatment would not be a 'credible' sentence for courts dealing with serious offenders – not 'punishing' enough or too 'woolly'. This may be one reason why in 57 per cent of cases courts rejected treatment conditions recommended by probation.¹⁶

To make them more credible, probation officers have argued for any additional requirements placed on offenders to be clear-cut and more stringent than a straight probation order. This might explain some probation areas' preference for probation orders to specify activities and group work. These may not involve drug treatment at all and are funded and controlled directly by probation, avoiding the uncertainty of work with new 'partners' in drug services.

As for magistrates and judges, many prefer the 'old style' condition of residence to the condition of treatment, though the rehabilitation programme may be the same. As one drug worker explained:

"We work with all clients under the same therapeutic community model. But the 'condition of residence' is perceived as more punitive than conditional treatment by many judges. The difference exists purely in [their] minds ... In court their emphasis is on restricting these people's liberty."

THE MESSAGE FROM our studies is clear: treatment conditions have changed little for the clients, the courts or drug services. They may have prompted closer links between probation and drug services, but joint work around drugs remains mainly in the form of joint training, secondments, and informal liaison, rather than implementing the new sentencing option.¹⁷ Perhaps training and improved inter-agency relations will in the end benefit drug users in the criminal justice system. But the immediate potential of the Act to meet the welfare needs of drug users or to divert them from prison seems strictly limited. ○

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