

INDEPENDENT INQUIRY INTO ALTERNATIVES TO CUSTODY

Inquiry being conducted by Lord Coulsfield

For the Police Foundation

Sponsored by the esmee fairbairn foundation

**Response from DrugScope
The UK's leading centre of expertise on drugs**

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DrugScope is the UK's leading centre of expertise on drugs. Our aim is to inform policy and reduce drug-related risk. We provide quality information, promote effective responses to drug-taking, undertake research at local, national and international levels, advise on policy-making, encourage informed debate and provide a voice for our member bodies working on the ground. DrugScope is unique in the breadth of its 1,200 plus member bodies. They embrace those working in treatment, education and prevention, police, prisons and probation, as well as academics, researchers and trainers. DrugScope was formed by the merger, in April 2000, of the Institute for the Study of Drug Dependence (ISDD) and the Standing Conference on Drug Abuse (SCODA), each with 30 years of knowledge and experience.

As the UK's leading centre of expertise on drugs, DrugScope's particular concern is with drug offences and drug related crime. DrugScope believes that far too many people are ending up in Britain's prison for these kinds of offences who pose little or no risk to the public and with sentences that are too often disproportionate to the offences that they have committed. While prison is the right place for some of these offenders, many could be more effectively dealt with in the community.

Against this background, DrugScope would like to draw the Inquiry's attention to the following key points.

Drugs and prisons

1. Drug offences, drug-related crime and the prison population.

The increase in the numbers of people going to prison for drug offences and drug-related crimes has contributed to the sharp increase in the prison population over the past decade. In 2001, nearly one fifth of all adult male sentenced prisoners (18%) were serving sentences for drug offences. In addition, over two fifths of sentenced women prisoners (43%) – and more than half of black women prisoners (56%) - were inside for drug offences (as many as were serving sentences for theft, fraud, burglary, robbery, violence and sexual offences combined).¹ Furthermore, on 30 June 2001, 6% of male sentenced young offenders and 22% of females were in the custodial estate for drug related offences (Home Office, 2002a).

¹ A total of 9,050 male and female prisoners were under sentence for drug offences on 30 June 2001: 3000 were serving sentences for unlawful supply; 2,450 for possession with intent to supply; 600 for possession; 2,700 for unlawful import/export and 300 for other drug offences. Between 1991 and 2001, the number of prisoners sentenced for drug offences increased more than threefold, from 2,850 on 30 June 1991 to 9,050 on 30 June 2001.

Many more prisoners will be serving sentences for crimes that are ‘drug-related’.

A recent survey by HM Chief Inspectorates of Prisons and Probation concludes that half of the prisoners interviewed believed that their current offence was drug-related. In addition, 41% of prisoners with a drug problem had been in prison 10 times or more compared with 24% of those without a drug problem (HM Inspectorates of Prisons and Probation, 2002). Similarly, a Social Exclusion Unit report concludes that ‘most prisoners enter custody with a history of drug and alcohol misuse. Many of their convictions will be for drug offences, others will have committed often very large numbers of property offences to get money for drugs.’ (Social Exclusion Unit, 2002).

2. Drugs in prisons

In a recent Parliamentary debate, Claire Ward MP commented on a meeting with a prisoner during a visit to HMP Bullwood Hall in Essex: ‘Miss B described here daily routine ... her most striking observations of prison life were about what she had witnessed – girls of her own age on hard drugs such as crack cocaine and heroin, which she had never seen before. She gained a new knowledge of drugs and other crimes’ (Hansard HC Col 245WH, 10 July 2002). **It is well-known that illicit drugs are widely available in prison, that drug use can seem attractive to prisoners as an escape from the boredoms and deprivations of prison life and that the supply of drugs within prison is a source of other problems, including debt and bullying.** The Prison Service appears to have made progress since it introduced a new drug strategy in 1998. The number of prisoners testing positive for drugs has fallen from 24.4% in 1996-97 to 12.4% in 2000-01 (Social Exclusion Unit, 2002). This fall in positive tests may partly reflect the fact that prisoners are now better than in the past at avoiding detection - and, worryingly, may be doing so by switching from cannabis use to heroin use². But even if the reduction is taken at face value, it still means that in 2000-01 more than one in every ten drug tests on prisoners in custody are positive.

Proportionality and the broader context

Increasingly, the debate about prison numbers and sentencing has focused on effectiveness in reducing re-offending. This is a core issue, and is discussed below. But it is not the *only* issue. There is also the question of the **proportionality of laws** and the **sentencing decisions** of the courts to particular offences.

² Thus Peter Harris, a prisoner at HMP Maidstone, and editor of the magazine *Insider*, comments: ‘to an objective observer, the implementation of drug testing should act as a deterrent and slow down drug use. Were cannabis the only drug available, there would at least have been some merit in testing, as cannabis is detectable in the system for around 28 days, with the subsequent risk of detection being relatively high. Waiting in the wings, however, was a perceived solution to the problem of drug testing. It came in the form of heroin ... The selling point of heroin for prisoners ... [is that it] ... only remains in the system for up to 72 hours. Consequently, cannabis is now only used by the very brave or foolhardy. Heroin has taken over as the most widely used drug, not necessarily by choice, but by necessity and is flooding Britain’s prisons’ (Harris P, 2002). Obviously, this claim is difficult to verify, but it is certainly a cause for concern, and suggests that the introduction of mandatory drug testing may be having some perverse and unintended consequences.

A custodial sentence will be the only just and appropriate response for significant numbers of people found guilty of serious drug offences. But far too many people are being sent to prison for drug offences who pose little or no threat to the public.³

1. Changes to sentencing

DrugScope would welcome an independent review of the drug laws by a Royal Commission or similar body with cross-party support. More specifically, DrugScope would like to see four key changes to the way that drug and drug-related offences are dealt with by the criminal justice system.

- (1) **Criminal proceedings should not normally be initiated for possession of small quantities of any scheduled drug for personal use.** It is difficult to think of circumstances in which a prison sentence will be a just or proportionate response to a charge of possession for personal use. Yet on 30 June 2001 there were 600 prisoners in England and Wales serving sentences for possession. Under the *Misuse of Drugs Act 1971*, the maximum penalty for possession of Class A drugs is 7 years. Nearly three quarters (67%) of DrugScope members who responded to a recent survey said that they would support reducing the maximum penalty for possession of 'small' quantities of Class A drugs from 7 years to 1 year (DrugScope, 2001).
- (2) **Criminal proceedings should not normally be initiated for the production of small quantities of cannabis for personal use.** There is a clear difference between organised crime gangs producing drugs for profit and the teenager growing cannabis plants in a back bedroom. This should be reflected in the law.⁴
- (3) **The law should distinguish between the 'social supply' of drugs and supply for profit.** This was one of the principal recommendations of the Runciman Report (Runciman R, 2000). Often individuals will buy drugs on behalf of groups of users, and subsequently distribute them within that group. The Runciman report recommended, therefore, that it should be a defence in law for a person accused of supply or possession with intent to supply a

³ There is a perception that the drug laws are becoming more liberal. But DrugScope still has serious concerns about the excessively punitive nature of some of these laws. For example, the *Criminal Justice Bill* proposes to raise the maximum penalties for the offences of possession with intent to supply, supply and production of a Class C drug from five to 14 years. These are exceptionally harsh maximum penalty for many of these offences, particularly when account is taken of other areas of the law. Fourteen years is also the maximum penalty for making or possessing an explosive substance (*Explosive Substance Act*); the most you can get for possession of a shortened gun is 7 years (*Firearms Act 1968*); while the maximum penalty under the *Protection of Children Act 1978* for taking, distributing, possessing, publishing indecent photograph of a child is 10 years.

⁴ As Mike Hough and colleagues have argued a different approach would also help to undermine criminal markets. If small scale home cultivation was treated more leniently, then 'many cannabis users would choose to cultivate in preference to using a distribution system populated by criminal entrepreneurs ... [and] ... the low cost of home growing would destabilise this criminalised distribution system' (Hough M *et al*, 2003).

scheduled drug to prove that he or she was acting as a member of a group with 'a common intention to use drugs for personal consumption'.⁵

- (4) **DrugScope would like to see more people who are convicted of both drug offences and drug-related offences diverted from the courts altogether and onto treatment services.** A substantial number of problem drug users who commit minor offences pose little or no serious threat to the public. DrugScope would like to see more of these offenders diverted from the criminal court system in the first instance. Following a referral to a drug treatment programme, and evidence of successful placement and participation, the Crown Prosecution Service could suspend further action or discontinue prosecution on the grounds that it was no longer in the public interest. This addresses the problem of 'up-tariffing' and provides offenders with a powerful incentive to commit to treatment.⁶

2. Dependence on criminal markets

A minority of problem drug users commit huge volumes of acquisitive crime – and resort to other offences (such as drug dealing and prostitution) - because drugs like heroin and cocaine are expensive, and they cannot support drug habits costing tens of thousands of pounds every year out of their legitimate incomes.

Reducing the reliance of problem drug users on illicit markets weakens the incentive to steal and burgle, reduces the harm to the public and reduces the pressure drug-related offending places on the criminal justice system. DrugScope has supported the appropriate and controlled use of substitutes such as methadone in the past, and has welcomed the Government's announcement that it is increasing the availability of heroin on prescription through the NHS for problem users who have a clinical dependence on the drug. This also provides opportunities to engage with problematic and chaotic drug users and to encourage them to access treatment services, as well as to identify and start to address any other problems that they may have.

Causes and contexts

Tackling problem drug use and drug-related crime also requires sentencing policies that are aware of, and responsive to, the wider causes and contexts of problem drug use.

⁵ Runciman concluded that this defence should not be available for suppliers of Class A drugs because of the level of harm that these substances cause (Runciman R, 2000). This issue should be looked at in any review of the law, but it is not obvious that Class A drugs should be excluded from any reform.

⁶ The Association of Chief Police Officers (ACPO) has recommended that, wherever possible, heroin and cocaine users should be referred for treatment rather than prosecuted in the courts. Andy Hayman of ACPO's drugs sub-committee has summarised the position, as follows: 'we are saying it [drug misuse] is a health problem, so why put them [i.e. offenders] in front of a court, or a jury or a magistrate?' (see ACPO, 2002).

1. Drugs, crime and social exclusion

In 1998, the Government's Advisory Council on the Misuse of Drugs (ACMD) concluded that 'on a strong balance of probability, deprivation is today in Britain likely to make a significant causal contribution to the cause, complication and intractability of certain kinds of damaging drug misuse' (ACMD, 1998). The 'causes of crime' and the contexts for problem drug use are often identical. Too many people get trapped in – mutually reinforcing – cycles of disadvantage, delinquency and drug dependency while still in their late teens and early 20s. The safer communities that we all aspire to will not be achieved so long as we continue to marginalise a swathe of young people (and adults), who need access to education, training, jobs, housing and better leisure and recreational facilities in their communities. **If we are to reduce the numbers of people committing drug offences and drug-related crime, then it is important that the sentences of the courts contribute to breaking cycles of deprivation and dependency and do not – inadvertently – exacerbate these problems.**

2. A note on Using Women

DrugScope is particularly concerned with the plight of women prisoners, which we are highlighting in our *Using Women* campaign. There is a clear link between drug use, crime and social exclusion amongst the female prison population. In addition, substantial numbers of women who are in prison for drug and drug-related offences have been victims – and often repeat victims – of violence and abuse. Half of women prisoners say they have been abused – physically, sexually and or emotionally. Of these women, two thirds say that they have been sexually abused and two-thirds that they were abused as children (SEU, 2002). Women are often recruited into the drugs trade against a background of violent, abusive and exploitative relationships. This is particularly true of many foreign national women acting as 'drug couriers' who are intercepted at British ports and airports. Imprisoning women also tends to perpetrate cycles of deprivation, dependency and delinquency across the generations. Over half of women prisoners (55%) have at least one child under the age of 16. **DrugScope would like to see something like a defence of duress being introduced in law for women (and other vulnerable people) who have been involved in the drug trade against a background of abuse, violence and exploitation (including foreign national drug traffickers).**

Tackling drug problems in prison

Alongside of proportionality, a key factor in determining the acceptability of sentencing is the effectiveness of different disposals in addressing drug problems and thereby reducing re-offending. **There are some serious and difficult issues that will need to be addressed by this Inquiry around the question of how treatment need considerations are to be balanced against the requirement that sentences should be proportionate.** This point is developed below. First, some general background on the effectiveness of prison and of community sentences in addressing problematic drug use.

A new Prison Service Drug Strategy was introduced in 1998. It has the dual objectives of (i) reducing rates of drug misuse during and after custody; and (ii) reducing the likelihood of drug-related offending.

The Prison Service is to be congratulated on some of the work it has done in the past five or so years, despite the strain it has been placed under by the continuing rise in the prison population. **But the demand for treatment in prison continues to outstrip supply; the availability and quality of provision varies from prison to prison; many prisoners are serving short sentences that prevent them from participating in treatment programmes; a prison sentence can exacerbate the wider causes and contexts of drug misuse; and resettlement provision is often patchy.**

1. Detox

The Prison Service's objective is to ensure that all prisoners are assessed on arrival in prison for drug and alcohol dependency and are helped to manage the process of withdrawal. The Prison Service exceeded its targets for providing detoxification services in 2000-01, when there were 32,000 new entrants into detox programmes. But there are concerns about the quality of these services. The joint HM Inspectorates of Prisons and Probation survey found that 'the most common concern raised by prisoners about the treatment they received related to the quality of detoxification and the fact that, in isolation, it was insufficient' (HM Inspectorates of Prisons and Probation, 2002). **Simply detoxing prisoners will rarely provide a satisfactory long-term solution to drug dependency problems and to the offending that is sometimes associated with them.**

2. Drug treatment in prison

According to the Prison Service's latest annual report, 4,386 problem drug users entered treatment last year, against a Government target of 5,000. This still leaves at least 14,000 untreated problem drug users in prisons in England and Wales at any given time.

There is a particular problem for prisoners serving short sentences. The Social Exclusion Unit has noted that 'one of the key criteria for drug treatment programmes is available sentence length. At least three months is usually needed and the more intensive programmes are reserved for prisoners ... who have a minimum of 12 to 15 months left in prison' (SEU, 2002). Similarly, HM Inspectorates of Prison and Probation concludes, on the basis of its survey, that 'shorter-term prisoners were more likely to receive prescriptions or detoxification and longer-term prisoners were more likely to receive additional treatment such as group work, counselling or rehab. This was understandable given the length of the sentence but was not commensurate with treatment need' (HM Inspectorates of Prisons and Probation, 2002). **When sentencing defendants with drug problems, the courts should be aware that short custodial sentences will very rarely provide offenders with opportunities to participate in drug treatment programmes while they are inside, but that such sentences will often exacerbate the**

poverty and social exclusion that is associated with serious drug dependency problems

3. Throughcare and aftercare

A recent Home Office report on drug treatment in prison concludes that 'treatment can help to reduce drug use and re-offending on release from custody'. But, it continues, 'good quality aftercare is vital to the success of any drug treatment programme delivered to prisoners. Aftercare needs to cover both any residual time in prison and a significant period of time following re-entry into the community' (Ramsay M, 2003).

Throughcare has been a primary responsibility of CARATs services. But there is concern in the field about the adequacy of current provision.⁷

The Social Exclusion Unit has concluded that 'Although all CARATs teams are on a standard contract, some maintain that they are not required to provide this aftercare, and others say that they are so overwhelmed by demand inside, that they lack the resources to provide care post-release ... In one study, only 7% of those involved in one-to-one or group drug misuse sessions in prison said that they had been in contact with their CARATs worker since release ... Above all, because prison and community drug works are viewed and funded as separate services, prisoners are often viewed as "new cases" when they are released and have to join the back of the queue' (SEU, 2002).

One of the main problems is that there is a shortage of suitably trained and experienced CARAT staff (this is about the need for more far-sighted training and recruitment strategies for drug services more generally). There is a shortage of appropriate treatment facilities in the community to refer people to. There has been a failure to provide designated resources for follow up work on release for prisoners who have accessed CARAT services while in custody.⁸

There is also the problem of general resettlement support. Imprisonment can exacerbate the wider causes of crime – for example, lack of secure housing, unemployment, debt and family breakdown. Where prisoners who have successfully completed drug treatment programmes and leave prison determined to stay away from drugs, it is not altogether surprising that many of them drift back to problem drug use where they are released with nowhere

⁷ This again raises questions about the appropriateness of Prison Service and Government targets. The CARATs service was set the target of completing 25,000 assessments of prisoners each year. In fact it completed 37,000 assessments in 2000-01. But what does this really tell us? Often the services that prisoners are assessed as needing will not be available to them. The evidence suggests that only a small proportion of CARATs referrals actually make contact with the relevant community drug services following their release (see Roberts M, 2003).

⁸ A recent report on throughcare services suggests that any such investment would more than pay for itself: 'it can be estimated that 8,000 sentenced offenders might be released from prison in England and Wales each year without a significant drug dependency problem – if no action has been taken to break drug habits. However, if drug throughcare could effect a 40% reduction in drug dependency among ex-prisoners, the numbers of crimes expected to be committed by these individuals each year would fall from some five million to three million. The costs incurred by victims of crime might reduce from some £250 million to about £150 million. There would, in addition, by many other savings realised by the criminal justice system, health service and elsewhere' (Burrows J et al, 2001) .

to go, nothing to do and little support in the community. **Again, it is important that all sentencers recognise that even short custodial sentences can be extremely damaging - in terms, for example, of employment, housing and family relationships – in a way that community sentences generally are not.**

DrugScope welcomes the commitment in the Government's up-dated drug strategy to 'providing comprehensive programmes of throughcare and aftercare for treated drug misusers returning to the community from prison, including post release hostels, and for those leaving treatment programmes who have not been in prison. We would stress, however, that **substantial investment will be required to remedy the current shortfalls and deficiencies in throughcare and aftercare provision.**

4. Custody plus

DrugScope notes that the Criminal Justice Bill will introduce a new 'Custody Plus' sentence, which will ensure that prisoners receiving short sentences have a statutory entitlement to support from the probation service following their release. **DrugScope is aware that there is concern among penal reform agencies that if this change is not implemented with care it may increase the attractiveness of short custodial sentences to the courts, with the consequence that yet more offenders end up in prison who could be more effectively dealt with in the community.** It is important that the courts recognise that short prison services will continue to be damaging in terms of social exclusion, even with these – welcome – new provisions for resettlement and support. It is also unclear – as the Prison Reform Trust has argued - how the probation service will manage this work without substantial new investment. This is symptomatic of a tendency to announce good initiatives without adequate thought to the long-term strategic issues. Similarly, **while an expansion of drug treatment in recent years is a welcome development, it has not always been matched by a commitment to provide enough training of sufficient quality to provide the necessary workforce to deliver these services.**

5. Unintended and perverse consequences

DrugScope wants to see more problem drug users getting the treatment that they need to reduce the harmful consequences of drug dependency for users, families, neighbourhoods, communities and society as a whole. It follows that DrugScope would like to see more investment in treatment within prisons, as well as better pathways to ensure that prisoners can access appropriate drug services in the community on release. However, **DrugScope is concerned that investment in treatment provision within the criminal justice system could divert money from drug treatment services more generally. There is a danger that a prison sentence could come to be seen as the best treatment option for some chaotic drug users.** The Conservative Peer Lord Mancroft claimed in a recent radio interview that 80% of treatment can only be accessed through the criminal justice system. In these circumstances, the courts may lose sight of proportionality in their sentencing decisions, and come to see their role as providing a gateway to get offenders into the only treatment programmes that are available for them. **The trend towards**

sentences that seek to address the wider causes and contexts of offending behaviour (including drug misuse) is a welcome development, but there is a danger that the requirements of justice and proportionality will be compromised.

6. A note on remand

DrugScope has particular concerns about the numbers of offenders who are being remanded to custody while awaiting trial for drug offences. This has emerged as a key issue for our *Using Women* campaign. In May 2003, almost a quarter of the total female prison population (1,046) were being held on remand. Only a small minority of these women were a potential threat to the public. One in five were subsequently found to be innocent by the courts. Less than half received a custodial sentence (58%) (Home Office 2002a). This Inquiry should address the issue of why so many non-dangerous defendants are being remanded to prison custody rather than bailed by the courts, including large numbers of those awaiting trial for drug and drug-related offences. Remand prisoners get a particularly raw deal from the prison system, and, where they have drug problems, will generally not have access to the treatment programmes that are available to sentenced prisoners. Against this background, **DrugScope has concerns about the proposal in the up-dated drug strategy to pilot the introduction of a presumption against bail where offenders test positive for drugs but refuse treatment.**

Alternatives to prison

A number of community sentences have been developed for drug dependent offenders. In particular, the Drug Treatment and Testing Order (DTTO) was introduced by the *Crime and Disorder Act 1998*. This order is 'designed to help problematic drug users address their problem through intensive programmes of treatment and testing. A DTTO requires convicted offenders to participate in treatment, and to undertake regular testing for use of drugs' (Home Office website). In addition, Drug Abstinence Orders (DAOs) and Drug Abstinence Requirements (DARs) are being piloted in three court areas (Hackney, Staffordshire and Nottingham). DAOs are free-standing orders that require the offender to abstain from misusing heroin and crack and undergo regular drug testing; DARs place the same obligation on the offender, but are attached to a community sentence.

The *Criminal Justice Bill* will replace the various kinds of community sentence for adults with a single community order to which a range of possible requirements can be attached as selected by the court – these will include drug treatment and testing. Similar proposals for the youth justice system are contained in the Green Paper *Every Child Matters*, where plans are announced for 'rationalising the number of community sentences to create a new simplified 'menu' community sentence. Simplification would make the youth justice process easier to understand for those sentencing, for lawyers and for defendants. It would allow magistrates the flexibility to select a package of interventions individually tailored to the needs of each young person. The menu will include provision for drugs treatment'. DrugScope has welcomed the Government's efforts to divert offenders from custody and to

require them to address their drug dependency problems in the community. However, the development of these new community disposals is not without difficulties, which raise some important issues about sentencing practice.

1. How well is the DTTO working?

DrugScope believes that the criminal justice system can be a suitable vehicle for engaging with chaotic and problematic drug users. In the past, conventional punishments have failed to stop offenders from using drugs, and have often perpetuated vicious cycles of drug dependency, crime and imprisonment. As noted above, a recent survey concluded that 41% of prisoners with drug problems had been to prison on at least 10 separate occasions (HM Chief Inspectorates of Prisons and Probation, 2002). The DTTO has offered a way out of this tragic cycle of drug dependency, offending, imprisonment and a rapid return to drug use.⁹

But there have been problems with implementation. Earlier this year, a report from HM Inspectorate of Probation expressed concern about the quality and consistency of DTTO programmes.¹⁰ More recently, the Home Office has published *The impact of Drug Treatment and Testing on offending: two year reconviction results*, which looks at the impact of the DTTO on re-offending rates in the three pilot sites (Croydon, Gloucestershire and Liverpool). The two year reconviction rates for offenders who *completed* DTTOs was 53%, lower than that for prisoners, which was most recently measured at 59%. But the overall picture is less encouraging. Only 30% of offenders placed on DTTOs in the pilot areas completed them. Among *all* offenders who *commenced* DTTOs in the pilot areas, the two-year reconviction rate was as high as 80% (Hough M et al 2003a).

The authors of these findings conclude: ‘the first DTTO report concluded that the orders were “promising but not yet proven”. These findings are less encouraging. Revocation rates were high, and reconviction rates were higher still. As implemented, it is clear that all three pilot schemes struggled to retain offenders on the programme and the large proportion of drop-outs continued to use drugs of dependence and to commit crimes to support their habit. However, those who completed their orders showed considerable reductions in convictions’.

2. Sentencing issues

DrugScope believes that the lesson from the pilot findings is that DTTOs and similar orders can be effective in preventing re-offending, but only where the right offenders are being placed on the right programmes. This is partly about commissioning and delivery. As the authors of the Home Office research

⁹ Mike Hough concluded in a review of the literature some years ago that the available research shows that ‘coerced treatment appears to be no less successful than voluntary treatment; the criminal justice system can effectively coerce people into treatment; it can also help to keep them there; and drug testing provides a technology to make this coercion meaningful’ (Hough M, 1996).

¹⁰ Its authors commented that ‘insufficient attention had been given to compliance with the DTTO National Standards in most areas visited, and there was little information to measure performance ... no results in terms of outcomes had as yet been set nationally, although there were plans to do so, and, with only a few exceptions, little evidence was being collected ... to measure what outcomes DTTOs were achieving’ (HM Inspectorate of Probation, 2003).

conclude 'if teams struggle to establish their programmes, and lack the resources to deliver rapid and appropriate responses, then DTTOs could become expensive precursors to imprisonment' (ibid). Also important are the conditions imposed by the terms of these orders, the way that the courts exercise their powers of review and deal with offenders who breach these conditions and, obviously, the decisions of the courts about which offenders are suitable for DTTOs. In this context, DrugScope would like to draw the Inquiry's attention to three issues in particular.

1. **Treatment and punishment: the integrity of treatment.** Offenders come before the courts because they have committed offences, and the public expects people who commit criminal offences to be punished. The courts are concerned with public acceptability and proportionality. But **drug treatment is – in and of itself - a therapeutic and not a punitive intervention.** The elements of DTTOs and other community orders that may satisfy the legitimate demand for punishment will often be unhelpful and unrealistic from a treatment perspective. For example, abstinence and strict and inflexible attendance requirements may help to make DTTOs 'tough' and 'demanding', but they may be quite unrealistic when dealing with the most problematic and chaotic drug user. The result will be low completion rates, with many offenders breaching the conditions of their orders. **DrugScope believes that drug treatment programmes for offenders must be based on the best evidence of what works from the point of view of treatment – so, for example, a rigid abstinence requirement will often not be realistic or helpful. If the courts feel that it is necessary to ensure a community sentence is sufficiently punitive, then they should look at imposing additional conditions that do not interfere directly with the therapeutic integrity of the drug treatment programmes themselves.**
2. **Treatment and punishment: up-tariffing.** The courts are increasingly required to pass sentences that address the causes of crime and prevent re-offending. This is a positive development. But it is important not to lose sight of desert and proportionality. For example, where sentencers are presented with a defendant who has committed a minor crime in order to support a serious drug dependency problem, the court could place him or her on a DTTO in order to address the drug habit, where this is a higher tariff sentence than the offence would otherwise merit. As the Howard League has argued 'the DTTO should not become a 'catch all' for drug misusing offenders. The DTTO is a high tariff and demanding penalty and the results of breaching the order is likely to be custody. **There is a danger that sentencers, with the best intentions, may up tariff someone to a DTTO as a means of accessing treatment' (Howard League, 2000). DrugScope believes that the DTTO should not be the only or best way of accessing treatment, thus helping to avoid this dilemma for the courts. There should be a range of drug treatment interventions at different stages of the criminal justice process, including lower tariff sentences, as well as an expansion of drug services throughout**

the country. DrugScope welcomes the Government's pledge in the Update Drug Strategy to provide a range of interventions across the whole criminal justice system. If this is to become a reality, however, substantial additional resources will be needed – including much more investment in training, etc – and quality of service will count for as much as quantity of service.

3. **Dealing with breach. Relapse and missed appointments are a routine feature of work with chaotic and problematic drug users, including those users who will eventually respond successfully to treatment. The courts should be aware of this in determining conditions and dealing with offenders who have breached DTTOs and other orders including drug testing and treatment requirements.** In particular, a failure to remain abstinent or a missed appointment should not generally trigger a custodial sentence where there is evidence that the offenders is committed to addressing his or her drug problem and is making a serious effort to comply with the terms of the order. The Sentencing Guidelines Council should provide clear guidance to the courts on dealing appropriately with offenders who breach drug treatment and testing requirements. DrugScope agrees with the Prison Reform Trust that there is a more general issue here, that will apply to 'custody plus' and 'custody minus' sentences as well as to community orders. **If unrealistic conditions are imposed on offenders, then this will damage their relationship with treatment services and increase the chances of re-offending.** The introduction of the new generic Community Order under the Criminal Justice Bill provides a good opportunity to develop official guidance to ensure that the requirements of Community Orders and licences are not unrealistic and self-defeating.

3. A note about targets

DrugScope is concerned about the appropriateness of many of the targets that have been adopted for the expansion of drug treatment provision in the criminal justice system. The Government's Up-Dated Drug Strategy includes a target to double the number of DrugTreatment and Testing Orders by March 2005. It is doubtful that such targets will help to ensure that the right offenders are directed to the right programmes, and they would seem to represent a significant intrusion on the autonomy of the courts to make sentencing decisions on the merits of each case and after a proper consideration of the needs and circumstances of individual defendants. DrugScope would like to see research work commissioned that looks critically at the appropriateness of existing targets in this area and develops proposals for alternative performance indicators that would focus on outcomes, not processes.¹¹ When

¹¹ Since Labour first came to office in 1997, there has been an explosion of policy initiatives involving myriad and distinctive ring fenced funding streams to tackle drugs, crime and other problem areas. This has been accompanied by a growth in bureaucracy, often meaningless targets and excessive monitoring and reporting requirements. While we accept the need to monitor performance, our experience of working closely with service commissioners and providers reveals that an overly bureaucratic approach is beginning to stifle collaborative working and innovative responses. If drug treatment provision is to be improved, then sustained programmes and funding must be coupled with devolved responsibilities and fewer centrally determined - and often short lived - initiatives.

polled, 61% of DrugScope members who responded said that the drug strategy targets were not useful, as they were unrealistic or unworkable and too often politically motivated and not evidence-based (DrugScope, 2001). This is of particular concern where targets are requiring the courts to pass a particular sentence on a numbers of defendants that has been determined by a more or less arbitrary target.

4. An issue of principle

We are concerned that the proposed Drug Abstinence Orders (DAOs) and Drug Abstinence Requirements (DARs) place an obligation on offenders to abstain from heroin and crack, but no corresponding statutory obligation for the courts to ensure that these offenders have access to appropriate treatment services. DrugScope also has concerns about the imposition of abstinence requirements, which will often be unrealistic and unhelpful. Some reassurance is provided by a probation service circular that clearly states that the National Probation Service has a discretionary power *not* to initiate breach procedures simply because an offender on a DAO or DAR has tested positive.

It is important, also, to make appropriate use of lower tariff sentences, such as fines. These will often be suitable for offenders convicted of less serious drug offences, where there is no evidence that they have a serious drug dependency problem.

Conclusion

Finally, DrugScope would like to highlight a more general concern about the current policy trajectory. The debate about problem drug use is increasingly focused on community safety and crime reduction, with drug policy now led by the Home Office. A small minority of people with serious drug dependency problems are responsible for a large quantity of acquisitive crime and drug markets have a negative impact on society, and particularly on some of the most disadvantaged communities. This is a matter for serious concern, but it is important to keep it in perspective.

Most drug users will not commit (other) offences. Large numbers continue to be unnecessarily criminalised for their drug use or drug dependency.

There is a danger of creating a situation in which the easiest way to access drug treatment is via the courts, and an impression that all problem drug users are criminals, rather than people who are typically experiencing complex health, mental health and/or social problems. As already argued, the courts may pay less attention to proportionality in sentencing than to treatment need, with the consequence that offenders who commit comparatively minor crimes but have major drug problems are up-tariffed as a way of getting them access to the treatment they need. An unintended consequence of this well-intentioned intervention may be to drive up prison numbers, as offenders are up-tariffed onto excessively demanding sentences, which significant numbers will subsequently breach.

When DrugScope surveyed its membership in 2001, they told us that the criminal justice aspects of substance use had come to dominate policy at the expense of the health agenda, with detrimental effects for drug treatment and harm reduction efforts (DrugScope 2002). This point has been developed here, for example, in the discussion of the tensions between the imperatives of treatment and the demands for punishment and proportionality in imposing conditions for DTTOs. DrugScope members were also concerned, incidentally, that offenders were being given priority over non-offending users. It was felt that drug users who were not involved in crime (apart from their drug use) were being ignored in a two-tiered and discriminatory system, which could lead some to commit crime to get treatment.

Paradoxically, an obsessive focus on crime reduction may not be the most effective way of reducing crime, given this issue's complexity, and the need for a properly joined-up and genuinely holistic approach. The evidence suggests that if drug treatment and other support services were more widely available in the community – including more targeted services for young people, women and BME communities - then there would be fewer people ending up before the courts for sentencing. This would provide the best possible 'alternative to custody'.

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