

## CHAPTER 7: DRUG COURTS – LESSONS FROM THE UK AND BEYOND

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### THE INTERNATIONAL DEVELOPMENT OF DRUG COURTS

Drug courts were established initially in the United States in the late 1980s, initiated by sentencers who were frustrated at the limited range and effectiveness of existing criminal justice measures for dealing with drug-related crime. The first drug court was introduced in Dade County, Florida in 1989. The impetus for the establishment of drug courts in North America came from a growing acknowledgement of the link between drug misuse and crime along with increasing evidence of the efficacy of drug treatment, including treatment that is compelled rather than undertaken on a voluntary basis (for example, Farabee et al., 1998; Hough, 1996; Gebelein, 2000; and, more recently, McSweeney et al., 2007). Operationally, drug courts vary across jurisdictions, but all are designed to reduce drug use and drug-related offending by combining drug treatment with ongoing supervision and court-based review. Drug courts – and other ‘problem-solving’ courts – represent an approach to criminal justice processing that has been termed ‘therapeutic jurisprudence’ (Wexler and Winick, 1992)<sup>1</sup> which refers to capacity of legal processes and procedures (including the actions and approaches of criminal justice professionals) to have therapeutic or anti-therapeutic outcomes. Under traditional court models, rehabilitation may be an *aim* of criminal justice processing but within a model of therapeutic jurisprudence it is *intrinsic* to the process.

This chapter examines the introduction and expansion of drug courts and the key features of their structure and operation, locating the more recent development of drug courts in the United Kingdom in an international context. Drawing upon process and outcome evaluations, the operation of drug courts in England and Wales and in Scotland is compared and contrasted and emerging findings related to the wider international literature, with a particular emphasis upon operational barriers and concerns (including the development of multi-professional teamwork and the capacity of drug courts to accommodate diversity). The chapter also examines the evidence regarding the capacity of drug courts to impact upon drug use and drug-related crime and identifies the features of drug courts that appear to be important in this respect.

Although there are wide differences in the manner in which they operate, drug courts are characterised by a number of key features including: the use of a non-adversarial approach; the ‘fast-tracking’ of participants into treatment; the provision of a continuum of treatment, rehabilitation and related services; frequent testing for illicit drugs (and usually, in the USA, alcohol); effective teamwork between judge, prosecution, defence and treatment providers to secure compliance; the application of rewards and sanctions (‘smart punishment’) to provide external motivation; ongoing judicial review of progress in individual cases; and partnerships with public agencies and community-based organisations (Gebelein, 2000; Freiberg, 2002a). Longshore et al (2001) have developed a conceptual framework for the classification of drug courts, which they suggest may vary in terms of: *leverage* (where they are located in the criminal justice process and the available system of sanctions and rewards); *population severity* (the nature of the targeted population in terms of drug use and offending history); *programme intensity*: the frequency of testing, supervision

meetings and review and types of treatment available (for example, residential versus non-residential); *predictability* (the consistency and certainty of judicially imposed rewards and sanctions and their compliance with the drug court protocol); and *rehabilitative emphasis* (the degree of collaborative decision-making, attention to offenders' needs and flexibility with respect to procedures).

From modest beginnings the drug court 'movement' (Nolan, 2001) in the United States had grown exponentially. By 1999 there were 472 drug court programmes in operation in the USA and by 2007 this had increased to 2,147 (Huddleston et al., 2008). The impetus to the expansion of drug courts in the mid-1990s came from the provision of federal funding through the Violent Crime Control and Law Enforcement Act 1994. Federal funding was intended to have a pump-priming function after which drug courts were required to compete for local and state funding for their continued survival. Between 1989 and 1997, drug courts were provided with around \$80 million of federal funding and \$45 million funding from state and local governmental and non-governmental sources (Wilson et al., 2006). Increasingly drug courts are becoming integrated as part of the mainstream judicial function (Goldkamp, 2003).

The numerical increase in drug treatment courts is also matched by their growing specialisation and diversity. A national survey conducted in 2007 revealed that 'traditional' adult drug treatment courts remained most common, comprising 1174 of the 2,147 drug courts in operation. However the United States also had 435 juvenile drug courts (dealing with delinquency and status offending linked to drug or alcohol use)<sup>1</sup>; 301 family drug courts (focusing upon parental substance misuse); 110 designated Driving While Impaired (DWI) courts; 72 tribal drug courts; 24 re-entry courts (facilitating release from local or state correctional facilities); six campus courts (targeting students involved in excessive substance misuse); and five federal district courts (based on early discharge from prison under intensive drug treatment and supervision) (Huddleston et al., 2008). There has also been a trend towards drug courts dealing with more serious offences and offenders. The early drug courts tended to focus on pre-plea diversion from prosecution of offenders charged with minor drug offences (such as possession of cannabis) but there is now a greater emphasis upon post-plea procedures, with 78 per cent of drug courts estimated to operate in this way (Huddleston et al., 2008).

Internationally, drug courts have been introduced in a number of jurisdictions including Canada, Australia, Ireland, Brazil, Jamaica and Bermuda. The first drug Canadian drug court was introduced in Toronto in 1998 followed by a second court in Vancouver in 2001 (Fischer, 2003). More recently, drug treatment courts have been established in Edmonton, Regina, Winnipeg and Ottawa (Werb et al., 2007). The first Australian drug court was set up in New South Wales in 1998 and by 2003, drug courts were also operational in Western Australia, South Australia, Victoria and Queensland (Indermaur and Roberts, 2003). A further drug court pilot was introduced in Tasmania in 2007.

### **The introduction of drug courts in the UK**

The United Kingdom, in common with other western jurisdictions, has sought to develop more effective ways of responding to drug-related crime. Although the link

between drug use and crime is complex, it is recognised that much acquisitive crime occurs through the need for individuals with drug problems to obtain the financial resources necessary to maintain a regular supply of drugs. In the 1990s policy attention shifted towards demand reduction through the provision of drug treatment to individuals whose offending was related to the misuse of drugs. The criminal justice system was perceived as a suitable route into treatment for individuals with drug problems in view of emerging research findings that indicated that mandated treatment could be as effective as treatment accessed voluntarily (Hough, 1996). As a result, as Stevens (2007: 90) has argued, ‘the emphasis in drug policy has been strongly in favour of an increased role for the criminal justice system’ as indicated in the White Paper ‘Tackling Drugs Together’ (HM Government, 1995), the subsequent 10-year drug strategy (HM Government, 1998) and the latest drug strategy (HM Government, 2008a).

The introduction of drug courts in the UK has followed a slightly different trajectory to other jurisdictions, where drug courts filled an important gap in the range of community-based sanctions available to the courts to deal with drug-related crime. In the UK some of the key features of drug courts (such as regular testing and judicial review) were incorporated into Drug Treatment and Testing Orders (DTTOs), introduced through the Crime and Disorder Act 1998 (see Stevens, this volume).

Pilot DTTO schemes were introduced in England in 1998 in three pilot sites, with varying degrees of success (Turnbull et al., 2000) and in two pilot sites in Scotland in 1999/2000 (Eley, Gallop et al, 2002) prior to wider national roll-out.<sup>2</sup> Although DTTOs represented an innovative criminal justice response to drug-related offending, they attracted some criticism. Bean (2002), in particular, described them as ‘watered down’ versions of drug courts because they contained some of their elements but not the co-ordinated multi-professional team approach that characterised drug courts in other jurisdictions.

Shortly after the introduction of DTTOs in Scotland, and following a review of international developments in drug courts (Walker, 2001), the Scottish Government agreed to fund pilot drug courts in the same location as the earlier DTTO pilots (Glasgow and Fife). The Glasgow drug court became operational in November 2001 and the Fife drug court made its first orders in September 2002. Initial funding of the pilot drug courts was extended following a broadly positive evaluation (McIvor et al, 2006) though there appear to be no immediate plans by the government to introduce further drug court pilots in Scotland, with the most recent strategy document from the Scottish Government indicating that the success and effectiveness of the pilot Drug Courts would be reviewed in 2009 (Scottish Government, 2008).

Pilot drug courts (referred to as Dedicated Drug Courts (DDCs)) were introduced in England and Wales in 2005. West London and Leeds magistrates’ courts were selected by the Home Office as the pilot sites, though a drug court model had already been operational in Leeds for a number of years. A process evaluation of the pilots in London and Leeds provides some early data on the implementation and operation of the pilot drug courts (Matrix Knowledge Group, 2008) but very limited information about treatment, testing and outcomes. Nonetheless, the Secretary of State for Justice announced on 1 April 2008 that further drug court pilots would be introduced in four more sites, the location of which would be decided following consultation with the

judiciary, court staff and other key parties. The expansion of drug courts (subject to evaluation of the pilots) was identified as a key action in the most recent government strategy on drugs (HM Government, 2008a) aimed, along with a number of other proposals at 'proactively targeting and managing drug misusing offenders' (HM Government, 2008b).

## **THE CHARACTERISTICS AND OPERATION OF THE UK DRUG COURTS**

### **The Scottish drug court pilots**

The Scottish drug court pilots shared many features with similar courts in other jurisdictions. It was agreed from the outset, however, that they would target repeat offenders whose offending was assessed as being directly related to their misuse of drugs and who were at immediate risk of receiving a custodial sentence. They were, therefore, located within the Sheriff Summary Courts - the middle level court in Scotland with sentencing powers of up to six months imprisonment for individual offences.

The sentencing options available to the drug courts were the same as those available to any Sheriff Court operating under summary proceedings. In practice, however, the majority of orders made in the first two years were DTTOs (78 per cent of cases in both Glasgow and Fife) (McIvor et al., 2006). Probation orders were likely to be imposed where offenders were identified as having additional problems that required additional intervention and support or where the Sheriff wanted to review offenders' progress more than once a month. Deferred sentences were often used in respect of additional or further offences to provide sheriffs with a means of rewarding good progress or sanctioning offenders who were not responding well.

Assessments of offenders' suitability for the drug courts were undertaken by a supervision and treatment team and offenders were bailed for one month for this purpose. If a drug court order was recommended by the team and the court agreed with the recommendation, a DTTO and/or probation order would be imposed for between six months and three years, during which time offenders would be linked into a treatment service (usually methadone), seen regularly by their supervising social worker and addiction worker, subjected to regular drug testing (typically three times per week in the early stages of the order) and brought back to court regularly (at least once a month) to have their progress reviewed by the drug court Sheriff. Subject to progress, offenders could have specific requirements of their orders amended such as the frequency of testing and reviews increased or decreased.

A central tenet of the drug courts was the recognition that drug misuse is a relapsing condition and for this reason concerted efforts were made to retain offenders on their orders. In the event of non-compliance the court could impose sanctions such as varying the frequency of reporting and/or testing. If good progress was made on an order (as indicated by negative drug tests and co-operation with other requirements) it would run to the termination date or could be discharged early if a stage was reached where no further progress was deemed to be required. When the drug courts were initially introduced, there were no legislated sanctions available to deal with serious or persistent non-compliance, other than to terminate the order and impose an

alternative (usually custodial) sentence. Since July 2003, however, the drug courts have had the power to impose short prison sentences (of up to 31 days cumulatively) or short periods of community service while allowing a drug court order to continue. Although the Scottish drug court Sheriffs were not operating *explicitly* within a model of therapeutic jurisprudence (Wexler and Winick, 1992), it is clear that a central concern was in creating the conditions through which the drug court process could encourage and support participants in their efforts to become drug free. The vehicle for ongoing contact between sentencers and participants was the regular court-based review. Although reviews are also a feature of non-drug court DTTOs, in the drug court they were preceded by multi-professional pre-review meetings aimed at furnishing the sheriff with an improved quality and range of information to facilitate decision-making.

While both drug courts operated in broadly similar ways, there were important organisational and operational differences across the two pilot sites (McIvor et al., 2006). In Glasgow, the drug court team comprised two Sheriffs who sat in the court on alternative weeks, a dedicated Procurator Fiscal (prosecutor), a dedicated clerk and court officer and the drug court Supervision and Treatment team. The latter consisted of a team leader, supervising social workers, addiction workers, treatment providers and medical staff who were located together in shared premises. A drug court co-ordinator – who was seconded from the Procurator Fiscal Service - facilitated the work of the drug court team.

Glasgow Sheriff Court is the largest court of its level in Europe and it was not considered feasible for the drug court to deal with the anticipated volume of cases that might be referred to it. Instead, when initially established the drug court targeted accused persons who had been detained in police custody and who were prepared to tender a guilty plea to the offences with which they had been charged. This process was meant to ensure that offenders could be ‘fast tracked’ into treatment. The other Sheriffs in Glasgow retained the capacity to make DTTOs in respect of offenders who came into the court system through other routes. Two hundred and seventy-one cases were referred for a drug court assessment during the first two years of the Glasgow pilot, 150 of which resulted in a drug court order (McIvor et al., 2006).

In Fife the drug court was presided over by one Sheriff (with backup) who sat in one court for two days per week and in a second court for one day per week. A designated Sheriff Clerk provided the appropriate administrative support. The drug court Supervision and Treatment team consisted of a team leader, social workers and assistants, addiction workers, medical officers, ten nurses and two project workers from a local drug and alcohol project. They were organised into three multi-professional sub-teams which covered different geographical areas served by the drug court. There was no dedicated prosecutor and no drug court co-ordinator in Fife.

All potential drug court cases in Fife were identified by Sheriffs presiding over other summary courts (sometimes brought to their attention by defence agents or, less usually, social workers). Offenders were referred across to the drug court at the sentencing stage if the adjudicating Sheriff thought that a drug court disposal might be appropriate. Sheriffs in Fife had agreed that from its inception only the drug court would impose DTTOs and all *existing* DTTOs were transferred in to the drug court when it became operational in September 2002. In the first two years of operation 872

referrals were made to the drug court, involving 382 offenders, 205 of which resulted in a drug court order being made (McIvor et al., 2006).

### **The English Dedicated drug court pilots**

Dedicated drug courts (DDCs) were introduced in two pilot sites in England in 2005. As in Scotland, the DDC model was intended to provide a framework to facilitate partnership working between criminal justice and drug treatment agencies. The objectives of the pilots were to: reduce re-offending and drug use; introduce improved processes to support inter-agency working and a holistic approach to drug misuse; be cost neutral; and capable of replication (Martix Knowledge Group, 2008).

The two sites chosen for the pilot were high crime areas characterised by high levels of acquisitive and potentially drug-related crime. The Leeds magistrates' court DDC built upon an existing model that had been operating for a number of years, using a model that was almost identical to the proposed pilot. West London magistrates' court was the second pilot site. Here the judiciary and court staff were enthusiastic about the drug court concept and had already begun working towards the creation of a drug court.

As the evaluation of the pilot DDCs indicates (Matrix Knowledge Group, 2008), the underpinning framework consisted of a number of central elements: specialist court sessions (with the DDCs handling cases to completion or breach); continuity of sentencers across hearings; the provision of additional training for sentencers and other court staff; improved processes facilitate the flow of information between key parties; and an emphasis upon partnership characterised by multi-disciplinary work with other criminal justice agencies and professionals.

The DDCs in each area were supported by professionals responsible for treatment and the supervision of court orders. The composition of the bench differed across the two sites, though in both the intention was to maximise sentencer continuity throughout an offender's order. In Leeds, where 40 magistrates had volunteered to sit in the DDC, panels of four or five magistrates were formed from which panels of three magistrates were drawn for any one hearing. The intention was that at least one of the panel of three magistrates (and ideally more) would have sat on the panel when the offender previously appeared in court. The sentencers in West London comprised three District Judges (magistrates' courts) and three benches of three magistrates each of whom presided over the drug court every six weeks (Matrix Knowledge Group, 2008).

Offenders who were considered eligible for the drug courts were those deemed eligible for a Drug Rehabilitation Requirement (DRR) as part of a community order or suspended sentence order. In Leeds potentially eligible cases were referred to the DCC for a DRR assessment by a probation officer. In West London, a slightly more complex assessment process was initiated by the magistrates' court, with cases only remitted to the DDC if, following an initial and full assessment, the offender was considered suitable for a DDR (Matrix Knowledge Group, 2008). It is worth noting that in the English pilots offenders were remanded in custody while assessments of suitability for the drug courts were carried out. In Scotland, by contrast, potential drug court participants were assessed in the community since this was believed to provide a more accurate assessment of their motivation to change. Any early concerns by

sentencers about the attendant risk of re-offending were soon offset by the perceived increase in the quality of the resulting assessments (Eley, Malloch et al., 2002; McIvor et al., 2006).

Although the DDCs could, technically, make use of any available court disposal, those sentenced in the DCCs were made subject to community orders with drug rehabilitation requirements (DRRs). Under these orders offenders were required to attend treatment, undergo regular testing for drug use and attend court-based reviews. Little detail is provided by the process evaluation on the types of orders made (such as the use and nature of other requirements attached and the relative use of community orders and suspended sentence orders), though it was noted that the average sentence length was ten months and the average length of participation in the DDC was six months. The level and intensity of orders made was intended to be informed by the offence seriousness and by the offender's history of drug use. Community orders most commonly consisted of supervision for a period of between nine and twelve months and a six month DRR (Matrix Knowledge Group, 2008).

The number of orders made in the pilot courts, especially in West London, was reported to be lower than expected: 276 new cases per annum in Leeds and 60 in London. For this reason little quantitative data is presented in the process evaluation and that which is relates to Leeds. In this pilot site the average age of participants was 30 years, 74 per cent were male and 87 per cent were white. They had an average of more than 14 previous convictions and 85 per cent reported heroin as their main drug of choice. (Matrix Knowledge Group, 2008). In terms of age, sex, criminal history and type of drug use, the profile of the Leeds DDC participants was very similar to those given drug court orders in Glasgow and Fife (McIvor et al., 2006).

### **Key operational differences**

While drug courts across jurisdictions share a common aim of reducing drug use and drug-related crime, a distinctive feature of the drug court 'movement' has been the development of diverse procedures and practices. Even within a single jurisdiction, these are likely to vary across courts. For example, the nature and range of locally available drug treatment services will have a bearing on whether a single treatment provider or multiple treatment providers are engaged in providing services to drug court clients. In Scotland, the geographical location of the drug courts (one in the largest city and the other in a predominantly rural area) had important implications for potential capacity and throughput of cases which, in turn, was reflected in different routes of referral. However, even greater procedural differences can be found between the drug courts north and south of the border.

A central feature of drug courts in the UK and in other jurisdictions is the role of the sentencer in overseeing progress of offenders. In the English pilots, offenders in Leeds were reviewed in court every four weeks while in West London, reviews took place every six weeks (Matrix Knowledge Group, 2008). By contrast, court based reviews of drug court orders in Scotland were usually conducted at least every month, and often fortnightly, especially in the early stages when frequent court reviews were considered necessary by sentencers and by supervision and treatment staff as a means of encouraging and sustaining offenders' motivation to change. Although such a high frequency of reviews was not permissible under DTTO legislation, Sheriffs made

creative use of probation orders and deferred sentences to bring offenders back to court as often as was deemed to be required (McIvor et al., 2006).

The review process in the English and Scottish pilot drug courts differed in other important ways. In particular, an important feature of the review process in the Scottish pilots (and in drug courts on other jurisdictions) was the pre-review meetings that were held in court each morning to discuss the progress of offenders who were appearing before the Sheriff for a review hearing in the afternoon. These meetings brought the Sheriff together with the key professionals involved in offenders' supervision and treatment: criminal justice social workers, medical officers, nurses and addiction workers. Although convened in the courtroom, they were relatively informal in nature, being characterised by open sharing of information and discussion. In this regard, the Scottish drug court pilots – despite some resolved and some going inter-professional tensions – operated very much as a multi-disciplinary team convened by the Sheriff. Sheriffs valued highly the direct input from different professionals involved with a case and regarded these meetings as invaluable for providing 'an overall picture' of each participant and in so doing helping the sheriff to decide 'which buttons to push' in their subsequent dialogue with offenders in court (McIvor et al., 2006; McIvor, 2009).

In the English pilots, however, court reviews were dependent upon written reports prepared by the supervising probation officer and presented to the magistrates or judge in court. These reports were compiled by the probation officer using information provided by the different professionals contributing to the supervision and treatment of offenders, but it appears that sentencers had little time to digest the content of reports and to respond to offenders accordingly, and that only the probation officer was present in court to speak to issues or concerns (Matrix Knowledge Group, 2008). It seems that there was little – other than enhanced continuity of bench and, perhaps, the frequency of reviews - to differentiate the approach of the DDCs from the earlier DTTOs. Although multi-professional teamwork may have been good (despite some communication difficulties between different professional groups in the two sites) it is unlikely that the regular meetings of the multi-professional steering group would have been sufficient to engender the shared understanding, commitment and purpose that characterised the drug court pilots in Scotland (McIvor et al., 2006).

The English and Scottish pilots also differed in terms of the options open to sentencers in the event of offenders' non-compliance with the requirements of their orders. In the DDCs sentencers had a rather limited range of options available to sanction participants who were failing to comply: they could vary the requirements of orders upon an application for breach or revoke the order and re-sentence offenders for the original offence (Matrix Knowledge Group, 2008). In Scotland, sheriffs were reluctant to resort to revocation of a drug court order and endeavoured to retain offenders on orders if possible. They therefore welcomed the introduction, through the Criminal Justice (Scotland) Act 2003, of legislated intermediate sanctions to deal with non-compliance.

## **OPERATIONAL AND PROCEDURAL CONCERNS**

Processes evaluations of drug courts in the UK and elsewhere have highlighted the importance of effective structures and processes to facilitate inter-agency working and

the promotion of a shared agenda with common goals (McIvor et al., 2006; Matrix Knowledge Group, 2008). For example one of the perceived strengths of the drug court in New South Wales was the multi-professional approach (Taplin, 2002). The scale of the challenge presented by the multi-disciplinary approach was highlighted by Wager (2002: 2) who observed that drug courts are “created from one of the most mismatched partnerships ... a marriage between health and justice”. While some studies have identified philosophical and professional differences between treatment providers and the court, these generally appear to lessen over time (Taplin, 2002; McIvor et al., 2006). Research has also, however, highlighted a number of procedural issues that have the potential to undermine drug court effectiveness.

### **Attrition**

High levels of attrition are common in drug courts as a result of non-compliance with testing and failure to appear for treatment and other appointments, linked to the vulnerability of drug court clients and the complexity of their problems. Studies of US drug courts generally report relatively high rates of retention and low rates of recidivism (Sanford and Arrigo, 2005) no doubt reflecting the drug and offending histories of participants (Freiberg, 2002b). By comparison, completion rates in the Canadian drug courts – which target more ‘serious’ offenders – were found to be low: 14 per cent in Vancouver and 16 per cent in Toronto (Public Safety Canada (2007, 2008). Attrition rates in Australian drug courts have also been high: for example, in New South Wales 42 per cent of drug court programmes had been terminated for non-compliance (Briscoe and Coumarelos, 2000). Taplin (2002) identified a concern among some professionals that criteria for graduation were overly onerous, making it likely that few participants would graduate from the programme. Furthermore, Indermaur and Roberts (2003) have suggested that the range of demands placed upon participants in the South Queensland drug court may have resulted in participants being ‘set up to fail’. High levels of programme failure could have an overall net widening effect by drawing more offenders into the prison system for longer periods than would have been warranted by their original offence.

Werb et al. (2007) have argued that the emphasis placed on abstinence and the limited tolerance of relapse in North America drug courts make it more likely that those with severe drug dependence will fail. In Scotland, where ‘high risk’ offenders were targeted, but where relapse was recognised by Sheriffs as likely and some allowance made accordingly, relatively high completion rates (47% and 30% in Glasgow and Fife respectively) were obtained (McIvor et al., 2006).

### **Drug testing**

Random testing is a feature of drug courts. Testing usually occurs more frequently at the beginning of orders and decreases in frequency as participants make progress. Amendments to the frequency of testing can be made to reward progress or sanction non-compliance. A reduction in the number of tests may also be offset by an increased proportion of random tests.

UK research into criminal justice drug interventions in which drug testing is a component have suggested that for some offenders regular drug testing can serve as a carrot or a stick, encouraging continued compliance or deterring further drug use (for

example, Turnbull et al., 2000; Eley, Gallop et al., 2002). However, drug testing of itself is unlikely to serve as an incentive to reduce drug use, particularly if testing is used primarily to monitor compliance rather than for therapeutic ends (McSweeney et al., 2008). Concerns have been expressed, for example, that drug testing fails to detect and reflect *reductions* in drug use thereby limiting its potential to accurately reflect progress made by offenders on their court orders (Eley, Gallop et al., 2002; McSweeney et al., 2008).

Makkai (2002) identified a number of issues that arose in relation to drug testing in the Australian drug courts. These included concerns that drug testing was often not random and reluctance on the part of health workers to pass on negative test results to the court due to uncertainty about how sentencers might interpret and respond to this information. Access to supervised testing facilities has proved problematic in some jurisdictions due to the wide geographical areas covered by the drug court.

### **Dealing with diversity**

The ability of drug courts to deal effectively with diverse populations has also arisen as a concern. In the USA this provided the impetus for the creation of drug courts aimed at specific populations, with the first female drug court being established in 1992 in Kalamazoo, Michigan and tribal drug courts subsequently being introduced to deal with indigenous offenders (Huddleston et al., 2008). In other jurisdictions the ability of drug courts to engage effectively with female and indigenous or offenders from minority ethnic groups has been questioned. For example, professionals in Scotland expressed concern at the absence of treatment and other services that were suited to female offenders and sentencers identified compliance as a particular problem for women (McIvor et al., 2006). In New South Wales, the perceived lack of suitable treatment options for female drug court participants was considered to be a barrier to participation and the percentage of women entering the drug court would have been higher if it reflected the real level of need. For example, few residential rehabilitation facilities were said to be willing to accept women with their children at short notice and the high level of commitment required by the drug court regime may have disadvantaged those with parenting commitments who found it more difficult to comply (Taplin, 2002).

Internationally, evidence regarding completion rates and outcomes for women is somewhat mixed, with some studies suggesting lower retention rates for women (for example, McIvor et al., 2006) and others indicating higher rates of drug court programme completion (for example, Dannerbeck et al., 2002). A qualitative study of female drug court participants in Northern California suggested that women welcomed the support, concern and understanding offered by sentencers and drug court staff and valued individualised treatment, services that accepted children, female counsellors (given their previous experiences of trauma and abuse) and the opportunity to participate in work or education (Fischer et al., 2007).

With respect to ethnicity, Taplin (2002) suggests that the number of aboriginal clients accepted onto the drug court in New South Wales programme was low because most had previous convictions for alcohol-related violence, and violence offenders were explicitly excluded from the drug court. In addition, some South-east Asian offenders who might otherwise have been eligible were excluded because they or their parents could not speak English. The Perth drug court was also found not to have engaged

with many indigenous offenders because the drug court model – with its onerous requirements – was not well suited to them and because of the absence of appropriate community-based treatment facilities for this group of offenders (Crime Research Centre, 2003).

### **Other practical and procedural issues**

In some jurisdictions resource constraints have made it difficult for treatment agencies to incorporate ‘high demand’ clients. The resource intensive nature of drug courts is often underestimated, resulting in under-staffing (Eley, Malloch et al., 2002). As Makkai (2002) has observed, caseloads that might be considered ‘normal’ for other court disposals (such as probation) may need to be adjusted down to accommodate the needs of drug court participants. Equally, it is becoming clear that there needs to be sufficient follow-up support for participants once they have ‘graduated’ from a drug court programme, highlighting the importance of services and supports aimed at enhancing participants’ social inclusion and integration (Taplin, 2002; McIvor et al., 2006).

The identification of culturally appropriate sanctions and rewards has also proved challenging for drug courts outside the USA. The applauding in court of participants’ achievements is a feature of most of the drug courts in Australia but would not be regarded as fitting easily with the court culture in the UK. Observation of courts in which magistrates and others reward participants with a round of applause corroborates that this can constitute a powerful source of positive reinforcement for participants, confirming their sense of achievement and boosting their self esteem. Beyond this, however, rewards most commonly take the form of progress from one stage of a programme to another or (as in Scotland) the varying of specific drug court requirements. As Lawrence and Freeman (2002, p.74) observed, ‘the NSW Drug Court Team were not comfortable with replicating the razzmatazz of buttons, t-shirts, hugs, cheering and tears, which is evident in some US drug courts’.

In the Scottish pilots there was a broad consensus among relevant professionals regarding the eligibility criteria for the drug courts, though some believed that younger offenders should have the opportunity to be given orders. It was agreed that a pattern of relatively minor but persistent offending linked to drug use would signal potential suitability for orders, but reservations were expressed regarding the appropriateness of the drug court for offenders with co-existing mental health problems or convictions for violence (Eley, Malloch et al., 2002; McIvor et al, 2006). Elsewhere, professionals have also expressed concern about the incidence of mental health problems among drug courts participants and their implications for offender management and about the lack of clarity regarding the definition of ‘violent conduct’ with respect to eligibility for a drug court order and the potential consequences for staff and public safety (Taplin, 2002).

A further challenge for the Scottish drug court pilots was the increasing incidence of cocaine use (especially in Glasgow) and lack of existing treatment resources. It was envisaged by professionals that a wider range of resources, including residential rehabilitation, would be required and recognised that this would have important resource implications (McIvor et al., 2006). Similar issues have arisen with respect to methamphetamine and cocaine use in Australia (Weatherburn et al., 2001) and the USA (Huddleston et al., 2008).

Finally, as Freiberg (2002) and Nolan (2001) have commented, concerns have been expressed that drug court models place too much power in the hands of individual judges with the result that they may become less legal and more personalised. This may result in inconsistencies between sentencers and, where there is little or no limit on court intervention, sanctions may be overly onerous and the length of order imposed disproportionate to the offence. Freiberg (2002) has further cautioned that that drug courts may compromise the adversarial system and undermine the role of the prosecution and defence by rendering them too ambiguous. However, the relative informality and absence of an adversarial approach appear to be important elements of the drug court process. The challenge, it seems, lies in ensuring that sufficient checks and balances are in place to foster a problem-solving orientation while at the same time safeguarding the interests and rights of the offenders concerned.

### **ARE DRUG COURTS EFFECTIVE?**

It is still too early to say whether and to what extent drug courts in the UK will have a measurable impact upon drug use and drug-related offending though initial findings are encouraging. In the Scottish pilots there was a steady decline in the proportions of participants testing positive drug for opiates and benzodiazepines over the course of drug court orders and most offenders reported marked reductions in drug use and drug-related crime. Fifty per cent of offenders were reconvicted within 12 months and 71% within two years, though the reconviction rate was lower among completers than (67% after 24 months) than among those whose orders had been breached (76%). There was a significant reduction in the frequency of convictions among those who successfully completed a drug court order (McIvor et al., 2006).

A robust quantitative analysis of the impact of the English pilot DDCs has not yet been possible. However, interviews with offenders in the Leeds and West London DDCs revealed confidence among them that participation in the DDC could reduce their drug use and impact positively upon their lives over time, with the encouragement shown by those involved in the operation of the drug court being a significant factor in this respect. If levels of motivation were not particularly high when offenders entered the drug court, they appeared to increase over time: offenders in Leeds reported that their compliance with treatment and review increased as their order progressed (Matrix Knowledge Group, 2008).

Despite frequent methodological limitations, local and national evaluations of drug courts in the USA have been generally encouraging. There is accumulating evidence that participation in drug courts can contribute to reductions in drug use and drug-related offending and improvements in health and well-being (for example, Freeman, 2002; Gebelein, 2000; Goldkamp et al., 2001; Lind et al., 2002; Makkai and Veraar, 2003; Wilson et al., 2006). For example, Belenko (1998, 2001) concluded that drug courts achieved better completion rates than traditional courts and brought about reductions in drug use and recidivism while offenders were participating in the programme. Latimer et al.'s (2006) meta-analysis suggests that, if anything, the benefits of drug court may actually *increase* over time.

Recent meta-analyses<sup>3</sup> have suggested that drug courts are associated with clear and significant reductions in recidivism (for example, Lowenkamp et al., 2005; Latimer et

al., 2006; Shaffer, 2006; Wilson et al., 2006). Latimer et al. (2006) estimated that drug treatment courts reduced the recidivism rate of participants by 14 per cent compared with offenders in control or comparison groups. Similarly, Wilson et al. (2006) concluded that the reduction in offending attributable to drug court participation (in comparison to 'traditional' processing) was 26 per cent across all studies and 14 per cent for the two studies that employed randomised controls.

According to Sanford and Arrigo (2005) recidivism rates for drug court graduates are usually lower than for non-graduates and those for drop-outs are usually higher than for comparison cases. Roman et al.'s (2003) survey of 2,020 graduates from 95 drug courts identified re-arrest rates of 16.4 per cent and 27.5 per cent respectively after 12 and 24 months. They also found, however, that re-arrest rates varied across courts and appeared to be related to the targeted population: for example, courts with higher re-arrest rates tended to accept offenders who were cocaine and heroin users and who were classified by drug court staff as having moderate or severe drug problems.

Generally encouraging results have also been reported from evaluations of drug courts in Australia (Makkai and Veraar, 2003; Payne, 2008; Wundersitz, 2007; but see Crime Justice Centre, 2003 for a less positive conclusion). For example in New South Wales there were lower levels of recidivism among 'successful' drug court participants than among those whose programmes were terminated and among randomised controls. Non-terminated participants remained offence-free for longer and had fewer new offences involving shoplifting, other theft, house breaking and possession of drugs (Lind et al., 2002). Spending on illicit drugs reduced significantly when offenders participated in the programme, with this lower rate of spending maintained at eight and twelve months. Significant improvements were also found in participants' health and social functioning as assessed by standardised questionnaires (Freeman, 2002). However these benefits were somewhat offset by the high rate of attrition, leading Freeman (2002) to recommend that the court should target offenders who were facing lengthy prison sentences and who would therefore be more likely to comply with the programme.

### **Identifying effective features of drug courts**

Given the multi-faceted nature of drug court programmes, there is growing interest in which features of drug courts are associated with success. For instance, Wilson et al (2006) have argued that there is a need for more rigorous evaluations and a clearer focus upon the 'black box' of drug treatment courts (Goldkamp, 2004). While a review of drug court evaluations by the US Government Accountability Office (2005) was unable to find evidence that any specific drug court components (such as the behaviour of the judge or the amount of treatment received) were associated with reduced recidivism, other analyses have identified particular aspects of the drug court approach that appear to be instrumental in bringing about change. These include effective participant screening (Sanford and Arrigo, 2005), the use of graduated sanctions (Goldkamp et al, 2001; Goldkamp, 2004; Sanford and Arrigo, 2005); programme duration (Latimer et al. (2006); the creation of a multi-professional team that interacts with the judge to inform decision-making (Olson et al., 2001); and the use of a single treatment provider (Wilson et al., 2006). Sanford and Arrigo (2005) highlight the need for further research on the role of *treatment* in drug courts. While researchers agree that this is likely to be a key component (Goldkamp, 2004), there

has been little research into its significance in relation to other elements of the drug court programme (Banks and Gottfredson, 2003; Wilson et al., 2006).

Makkai (2002) has suggested that the most significant change brought about by drug courts has been the linking of treatment directly with the judge whereby 'the notion of an impartial arbitrator is replaced with a caring, but authoritarian, guardian' (Payne, 2005, p.74). Evidence that sentencers may have a key role to play in determining drug court outcomes is provided by a long-term study of a drug court in Oregon. Recidivism rates differed widely among judges, with reductions of recidivism varying from 4 per cent to 42 per cent (Finigan et al., 2007). Although Sanford and Arrigo (2005) found no consistent evidence that the *frequency* of judicial reviews was associated with improved drug court outcomes, Marlowe et al. (2004; 2005) found that the more frequent reviews resulted in improved outcomes for higher risk offenders.

*Consistency* of sentencers appears, however, to be linked to drug court success. For example, Goldkamp (2004) found that higher levels of contact with the same judge resulted in lower levels of recidivism while the process evaluation of the DDCs in England found that continuity of sentencer across court appearances was associated with enhanced compliance with court hearings, lower levels of positive drug tests for heroin, an increased rate of completion of orders and a reduced frequency of reconviction (Matrix Knowledge Group, 2008). A review of specialist courts in different jurisdictions commissioned by the then Department of Constitutional Affairs concluded that judicial monitoring offenders to be related to their success (Plotnikoff and Woolfson, 2005).

Wexler (2001) has suggested that judicial involvement in specialist courts can promote rehabilitation by contributing to the 'desistance narratives' (Maruna, 2001) that help to facilitate and sustain desistance from crime. McIvor (2009) has argued that the exchanges that take place between sentencers and offenders in drug court can enhance procedural justice<sup>4</sup> (Tyler, 1990) which confers greater legitimacy upon judges and increases the responsiveness of participants to exhortations that they should change. Support for such an argument can be found in Gottfredson et al.'s (2007) finding that judicial review directly reduced drug use and indirectly reduced criminal behaviour by increasing participants' perceptions of procedural fairness.

### **Differences in effectiveness across different groups**

There is also some evidence that drug courts may be differentially effective with different groups of offenders. The low number of women on drug court orders in the UK pilots has thus far precluded a gendered analysis of outcomes. However, Roman et al. (2003) found that female drug court graduates did better, in terms of subsequent re-arrest, than male graduates. In a study of the Brooklyn Treatment Court in New York (Harrell et al., 2001) women who participated in the drug court programme were found to have lower levels of self-reported drug use and recidivism than women in a comparison group who were eligible for the drug court but who lived outside its catchment area. No other benefits in terms of financial status and health were, however, observed.

Roman et al (2003) found that re-arrest rates among drug court graduates were lowest among white, highest among black and intermediate among Hispanic offenders. These differences in recidivism by ethnicity appear to be closely linked to the types of drugs favoured by different groups and associated differences in drug-related offending. Overall, there is some tentative evidence that drug courts do better with more drug dependent offenders with longer criminal histories (for example, Marlowe et al., 2006). This would be consistent with the finding that younger offenders appear not to benefit from drug court involvement (Eardley, et al., 2004; Latimer et al., 2006) and would echo the views of practitioners in Scotland that younger offenders (i.e. those under 21 years of age) were unlikely to be sufficiently motivated to meet the rigorous demands of a drug court regime (McIvor et al., 2006).

### **Cost effectiveness**

Given that a central feature of drug courts is their high levels of supervision, treatment and support (including regular court-based reviews) it is not surprising that they are resource intensive compared to other community sanctions. The process evaluation of in Leeds estimated that DDC DRRs were associated with additional costs of £4,633 for a 12 month order and £6,792 for a 24 month order compared to non DCC DRRs (Matrix Knowledge Group, 2008). In Scotland, the cost of a drug court order across the two pilot sites was, on average, £4,401 more than a non-drug court DTTO, though this unit cost difference could have been reduced through an increase in the number of referrals in Glasgow and the introduction of a more efficient assessment process in Fife (McIvor et al., 2006). The costs of drug court orders (£18,486 in Scotland based on data for 2001-4) also need to be set alongside the cost of alternative sentences and the cost savings from possible reductions in drug use and crime. The Scottish Prison Service estimated that in 2003-4 the cost of six months in prison was £15,336 while 12 months in prison cost £30,672 (Scottish Executive, 2005). It was also found that self-reported expenditure on drugs among drug court participants in Scotland reduced, on average, by £402 per week resulting, it was estimated, in reductions in property crime to the value of approximately £1,200 per participant per week (McIvor et al., 2006).

A break-even analysis of the Leeds DDC suggested that between 8 per cent and 14 per cent of participating offenders would need to stop taking drugs for five years from completion of the sentence for DDCs to provide a net economic benefit to society (Matrix Knowledge Group, 2008). Recidivism data are not yet available for the English DDC pilots, however, as we have seen, the Scottish evaluation found that 29 per cent of drug court participants remained free of further convictions in the two year period after drug court orders was imposed. Although it is likely that the rate of reconviction will increase in subsequent years, it is also well-established that most offenders who are going to be reconvicted following a community sentence or imprisonment will be reconvicted within two years. That being so (and assuming that the reconviction rates achieved in Scotland are also achieved by the English pilots) it can be assumed that drug courts in the UK are likely to prove at least cost neutral and probably cost beneficial in the longer term.

There is also international evidence to suggest that drug courts may be cost effective: although they are more expensive than traditional court processing, when the costs of alternative sentences are taken into account the benefits of US drug courts have often

been assessed to outweigh the costs (for example, Belenko, 2001; Finigan, 1999). In Australia the economic evaluation of the New South Wales drug court suggested that it was cost-effective in comparison with the sentences that it replaced. Although the cost per day for an individual placed on a drug court programme was slightly higher than the per diem cost for the control group, it was estimated to cost more to avert further shoplifting and drug possession offences using alternative sanctions (Lind et al., 2002).

## CONCLUSIONS

Although drug courts are a relatively new phenomenon in the UK they are now well established in other jurisdictions and the international evidence in support of drug courts' effectiveness, in terms of their ability to bring about reductions in offending, is increasingly persuasive. The findings from meta-analyses and narrative reviews of drug court evaluations generally support the conclusion that drug courts can be effective in reducing drug use and drug-related crime. Attention is now turning to the identification of aspects of the drug court model that appear critical to its success.

However the wide range of contexts in which drug courts have been introduced and the wide variations in who they target and how they operate mean that detailed and rigorous local evaluations are necessary to determine whether and how, in a particular jurisdiction, drug courts are a viable and effective means of supporting offenders in drug treatment and breaking the link between drug use and crime. Changes from outside the drug court can have a strong effect upon drug court operation and effectiveness (Sanford and Arrigo, 2005). Often, however, decisions about drug court expansion appear to have been made in the absence of a sufficiently solid empirical base (Werb et al, 2007).

In the UK, while the initial results of process and outcome evaluations are broadly encouraging, rigorous analyses of recidivism, drug use and costs with large enough samples of offenders over a sufficient follow-up period are still required to determine the added economic and social value that drug courts can provide. It is envisaged, however, that the resource intensiveness and high unit costs associated with drug courts will mean that they are only viable in high crime areas where a throughput of cases can be guaranteed, where there is commitment and enthusiasm among sentencers and where there is existing capacity to provide the treatment and other services that are necessary to support those whose offending is related to their misuse of drugs.

Even if they are unlikely for pragmatic reasons to constitute a universal response to drug-related offending, the wider impact of drug courts on criminal justice processes needs to be acknowledged. An important impact of the drug court 'movement' in the USA, UK and elsewhere has been the impetus that drug courts have provided to the development of other forms of specialist, problem-solving courts. These include domestic abuse courts, mental health courts, disability courts (for offenders with learning difficulties or 'cognitive disabilities') and community courts (which adopt a community-focused problem-solving approach to local crime). As Goldkamp (2003, p.203) has argued, through 'method and substance, its philosophy and values' and through its transformation to a more generalised problem solving-approach, the drug court model has served in various jurisdictions as a major catalyst for judicial change.

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<sup>1</sup> Juvenile drug courts were introduced in the United States 1990. Compared to adult drug courts, they involve the co-operation of a wider range of community agencies (for example, child protection, education etc.) and require the development of a more collaborative relationship between the court and the offender's family. Sanford and Arrigo (2005) suggest that juvenile drug courts face additional challenges posed by young people's indifferent attitudes towards drug treatment programmes, the influence of gang membership or delinquent peers and young people's lack of maturity.

<sup>2</sup> In England and Wales (but not Scotland) DTTOs have been replaced by community orders with drug rehabilitation requirements.

<sup>3</sup> A meta-analysis is a statistical technique for combining the results from a number of separate studies to assess the size of effect produced by an intervention.

<sup>4</sup> Procedural justice refers to the fairness and transparency with which legal proceedings are conducted (see Tyler, 1990).