

Searching for the Next Techno-Fix: drug testing in the criminal justice system

Toby Seddon examines the introduction of drug testing technology into the criminal justice system.

Tackling the problem of drug-related crime has in recent years come to the forefront of Government policy. Since 1998 there has been a major programme of action, underpinned by significant investments of public money and genuine political commitment. The centrepiece of policy is the Drug Interventions Programme (DIP). Its overarching aim is to maximise the opportunities provided by the criminal justice system to channel drug-using offenders into treatment. A novel feature of DIP is the idea of joining-up interventions across the system to ensure continuity of care for individuals right from their first point of contact at the police station. Local multi-agency teams have been set up to deliver this 'end to end' service by case managing individuals through the system.

Drug testing plays an important part within DIP at several stages. At the police station, the testing of all detainees charged with 'trigger offences' (possession/supply of heroin/cocaine and acquisitive offences) aims to identify problem drug users at an early point in their contact with the criminal justice system. The test result, which covers opiates and cocaine only, should then feed in to court decisions about bail and sentencing. Testing can also form part of a community sentence or of a condition of release from prison on licence. Within prisons, the Mandatory Drug Testing (MDT) programme, which tests for a wider range of drugs, is longer established, being introduced in 1994.

This article focuses primarily on drug testing after charge in the police station. It draws on the evaluation of the piloting of drug testing in the criminal justice system (in which I was involved) and those interested in further details of the evaluation findings are referred to four publications now in the public domain (Mallender *et al*, 2002; Matrix & Nacro, 2003, 2004; Deaton, 2004).

Drug testing as a basis for criminal justice action

As described above, drug testing is a key component of DIP. The starting point in the process is the drug test at the police station. The subsequent progress of individuals through the system is then based in part on this information, the test result potentially informing bail and sentencing decisions. Testing conducted at later stages may also inform criminal justice decision-making (e.g. within a Drug Treatment and Testing Order). Drug testing can thus

form the basis for some significant criminal justice actions.

Technology v. policy

Given this important function within the system, the accuracy of testing is a key issue. A strong theme running through the evaluation of the drug testing pilots was the view that it was not always accurate. This was expressed by both criminal justice professionals and detainees and offenders. For a variety of reasons, some individuals who tested negative were in fact problem drug users and, conversely, some of those testing positive were not (Matrix & Nacro, 2004:12-13). Reporting this finding caused irritation to some within the Home Office who understandably pointed to the impressive performance of the testing equipment in laboratory trials.

The source of this tension lies in the distinction between technological effectiveness and policy effectiveness. Measured by technical laboratory yardsticks, the testing equipment was very effective as a piece of technology. However, measured by the policy yardstick of its ability to identify problem drug users, it seemed to be a much blunter and less precise instrument. The gap between these two sets of evaluative criteria created a distortion which rendered the rather narrow question of 'effectiveness' difficult to answer. The significance of this for DIP could hardly be greater. If the meaning that can be inferred from a drug test result is actually less stable than it appears, then its suitability as a basis for criminal justice action must be open to doubt.

Questioning the 'techno-fix'

As Haggerty (2004) has observed, the appeal of the 'techno-fix' to social problems is strong and appears to be growing. The basis of the appeal tends to be rooted in claims that the use of technology will lead to greater effectiveness and cost savings. For drug testing in the police station, unqualified assertions about enhanced effectiveness can only be sustained by eliding the distinction I have drawn above between technological and policy effectiveness. In terms of costs, the average monthly running cost per site of testing at the police station was over £8,000 in the pilots (Matrix and Nacro, 2004), making an annual figure of nearly £100,000. Arguments can be made about the benefits that may result from this but these are currently far from established by the research evidence (Matrix and Nacro, 2004). What is



indisputable is that drug testing technology has become another item of criminal justice expenditure and one of considerable magnitude. The critical question, of course, is not really about the cost-benefit ratio of testing but rather about the broader issue of whether this represents the 'best use of public funds to achieve the goals of crime reduction or social justice' (Haggerty, 2004). Again, there are arguments on both sides here but the debate can hardly be said to have been decisively settled yet in favour of drug testing. Further expansion of testing at the police station – as in recent proposals to test on arrest – would seem premature at this stage.

Human rights and the changing context of policing

Issues of effectiveness and value-for-money are undoubtedly important but some wider questions are also raised by the use of drug testing technology within the criminal justice system. The first of these concerns human rights and whether drug testing after charge constitutes an unwarranted invasion of privacy. Consumption of opiates and/or cocaine is not in itself a criminal offence and at the point at which detainees are tested in the police station they are still legally innocent. Under Article 8 of the *European Convention on Human Rights* (enforceable in domestic courts by virtue of the *Human Rights Act 1998*), the extent to which testing can be justified as a necessary and proportionate interference with detainees' right to privacy therefore arguably hinges on whether it can be shown to have a significant crime prevention or health protection impact. The evaluation of the pilots, however, found little clear evidence for either impact (Matrix and Nacro, 2004).

The second question concerns wider developments in policing and how these have shaped the implementation of drug testing within the police station. Testing at this stage has largely

been carried out in practice by Civilian Detention Officers (CDOs). One of the features of the pilots was how the use of civilians in police custody suites received an enormous boost from the funding for drug testing. Indeed, in the pilots, on average CDOs spent only five per cent of their time on drug testing activities and the rest on more general 'jailer' duties (Matrix and Nacro, 2004). This was viewed positively by many stakeholders as it was seen as 'freeing up' the time of police officers who would otherwise have been required in the custody suite. However, this begs the normative question of the appropriateness of civilians carrying out 'jailer' duties and conducting drug tests in the police station and this, in turn, relates to broader debates about the pluralisation of policing (Crawford and Lister, 2004).

The observations in this short article have merely highlighted some issues associated with the introduction of drug testing technology into the criminal justice sphere. More questions have been raised than answers given. Two points, however, are clear and can serve as a conclusion. Firstly, the evidence base to support drug testing in the police station is currently rather weaker than might be supposed given its rapid expansion over the last three years. Secondly, the use of testing technology in the criminal justice system brings to the fore some wider social and political issues, providing a useful focus for transforming our thinking about criminal justice.

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