

THE UNSPOKEN SENTENCE?

Treatment conditions for drug using offenders under the 1991 Criminal Justice Act

The treatment option

The 1991 Criminal Justice Act, which came into operation in October 1992, has provided one of the two focal points for the discussion of multi-agency work with drug users within the community (the other being Community Care). Whilst it is still early days, in neither of these areas have developments been very encouraging so far.

Up until October 1992, courts wishing to include some form of 'treatment' as part of a sentencing package had three options: to make a probation order with a condition of treatment by a named psychiatrist; to make a probation order with a condition of residence in a residential drug rehabilitation agency; or to make a probation order with a condition that the probationer reside as directed by the probation officer (which in effect is similar to, but more flexible than, the second option). These sentencing options (with their emphasis on psychiatric intervention and/or residential requirements) still remain. But under the 1991 Criminal Justice Act, sentences can now attach to a standard probation order an additional requirement that the offender should undergo treatment for drug or alcohol dependency (for the criteria, see Schedule 1 Part II, 1991 CJA).

Under the Act, conditions of treatment for problem drug use can be specified, following assessment either by a medical practitioner or a suitably experienced non-medical drug worker. These new conditions of treatment may involve a residential or non-residential period of contact with a drug agency, and may be made for a shorter period of time than the full length of the probation order.

It had been expected that these special provisions would give the impetus for closer or more formalised working links between the probation service and drug services in the various stages of criminal justice work. Indeed, one of the underlying assumptions of the 1991 CJA - and the concurrent report of the Advisory Council on the Misuse of Drugs - is that multi-agency work can best meet the special needs of those drug users caught in the criminal justice system. This, in short, is an aspect of the application of the welfarist approach in criminal justice matters. But the welfarist concern shades off into a concern with crime control.

Drugs and crime debate

Implicit in most discussions on drug use and the 1991 CJA is a perceived causal link between drug use and crime. It is almost commonplace argument that 'addicts' are driven to commit property crimes in order to finance their drug use. Treatment is, therefore, needed to cure their addiction and to turn them into responsible, law-abiding citizens. From a crime control per-

spective, drug-using offenders are categorised not so much in terms of the nature or extent of their drug problem as in terms of risk factor, i.e. the risk of reoffending.

Prior to the implementation of the Act, the expectation was that the new condition of drug treatment would become an important community sentencing option for a particular group of drug using offenders. Drug services have been advised to develop a 'proactive' or strategic alternative; to be prepared for a large influx of new clients or the potentially exciting changes of working with a new client group.

So far, however, the impact of the Act may have been more marked upon expectations than upon sentencing practice. Work in progress at ISDD, based on telephone interviews and site visits to probation services and drug agencies, suggests that very few conditions of treatment at drug agencies have been made under the Act in the first six months of its operation since October 1992.

'Credibility' in sentences

Under section 29 of the 1991 CJA, the seriousness of the current offence (or two of the various offences that a person stands convicted of) establishes a kind of 'ceiling' beyond which the sentence may not go. The Government's thinking behind this seems to be to restrain courts from imposing severe sentences on repeat small-time offenders. But this attempt to operationalise the principle of proportionality is precisely what many sentencers (and the police) find artificial and unacceptable. From a crime control point of view, the uppermost concern of the court is not just to distinguish between the 'soft end' drug users (for instance, Class B drug users) and the drug dealers/suppliers, but also to punish the recalcitrant recidivist. Given the current emphasis on developing credible community sentences, many probation officers are concerned that conditions of drug treatment under the CJA do not constitute a structured sentencing package for their 'high-tariff' clients.

Indeed many magistrates and judges may prefer the 'old-style' condition of residence to the new condition of treatment under the 1991 CJA (though in the case of residential treatment, the nature of the rehabilitation programme can be virtually the same). As one drug worker at a residential rehabilitation centre explained:

From our point of view, we work with all our clients under the therapeutic community model. But the pre-CJA 'condition of residence' is perceived as more punitive than conditional treatment by many judges. In court, their emphasis is on restricting these people's liberty. They want these drug-using offenders to be kept secure, and their main concern is 'How long will they actually be kept from the streets?'

Doing the business

There is also a further consideration which relates to market forces within the criminal justice system. Home Office Ministers have described the probation service as moving to occupy a 'centre-stage' position in the

criminal justice system. In practice, this has meant shifting from the supervision of petty or first-time offenders towards a 'a case-load increasing in difficulty and reducing in size'.

In this era of market economy, however, the cost-effectiveness of criminal justice agencies is inextricably tied up with client throughputs. Already, the courts in London are complaining of a lack of business as a result of a decline in the police arrest rate and this might have a knock-on effect on other criminal justice agencies. Against a background of reduction in the number of clients placed on standard probation, 'sharing' clients with other drug agencies under the terms of formal conditions of treatment and possibly paying for their services may be financially unjustifiable in the long run. Instead, it may make better business sense for sentencing packages with an element of drug treatment to be designed and organised within the existing framework of probation practice (for instance, Probation Orders with specified activities).

The welfarist objection to conditions of treatment

Finally, some probation service practitioners hold to a concept of casework in the criminal justice system in which the probation officers themselves are the guarantors of a liberal ideal of 'advising, assisting, befriending' the client. Insofar as the 'anti-conditions' culture is still strong in some probation service areas, only a probation order - capable of being applied and monitored by probation officers themselves - approaches the welfare ideal of criminal justice work. From such a position, bringing the drug agencies in on a formal basis can be a form of net-widening or labelling clients.

Such reasoning suggests that, if drug agencies are looking toward the Act to provide clients and income from the criminal justice system, they may be somewhat disappointed.

Conclusion

When the 1991 CJA was being debated, some observers doubted that its treatment conditions for drug using offenders would be much applied on the grounds that drug workers in street agencies may be reluctant to be turned into 'soft cops'. In the event, these treatment conditions seem to be little implemented but for quite different reasons. The point is that the 1991 CJA reflects countervailing forces at work around the intersection of community sentencing and treatment of drug using offenders: crime control and business sense. Nevertheless, there may still be some room for manoeuvre in pursuit of the welfarist potential in the Act. Perhaps training and improved inter-agency relations can contribute to this process. But to my mind, the immediate potential is strictly limited and the issues involved are much more fundamental.

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