

Crime and Criminal Justice Research Programme

Establishing Drug Courts in Scotland: Early Experiences of the Pilot Drug Courts in Glasgow and Fife

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Main Findings

- The pilot Drug Courts in Glasgow and Fife have important procedural differences that had been instituted to enable the Drug Court model to be adapted to different local contexts.
- The referral procedures adopted had both strengths and weaknesses. The procedures in Glasgow, for example, had generated fewer referrals but were more effective in 'fast-tracking' offenders into treatment.
- The range of treatment services provided in-house was strongly influenced by the existing services that could be accessed by clients on Drug Court Orders. Professional differences emerged in both pilot sites with respect to aspects of the treatment regime.
- Review hearings - and especially the sheriff-offender dialogues that characterised them - were a critical feature of the Drug Court process and their effectiveness was perceived to be further enhanced by the pre-court review meetings.
- Sheriffs were dissatisfied with the range of sanctions available to the court in the event of non-compliance and welcomed the provisions in the forthcoming Criminal Justice Act to enable the Drug Court to impose short periods of imprisonment.
- There was no evidence that pilot Drug Courts had impacted adversely on the workload of the sheriff courts. However in Glasgow in particular the resource implications for the Supervision and Treatment Team of managing such intensive Orders had not been fully acknowledged.
- Pilot Drug Courts have been successfully established in Glasgow, and in Kirkcaldy and Dunfermline in Fife, suggesting that Drug Courts are likely to be viable in Scotland and may prove to be effective in addressing drug-related crime.

Introduction

Drug Courts were initially established in the USA in the late 1980s by sentencers who were frustrated at the limited range and effectiveness of existing measures for dealing with those whose offending was related to the misuse of drugs. They aim to reduce drug misuse and associated offending by offering treatment based options outwith the traditional court setting and are operational in a range of jurisdictions, including Australia, Canada and Ireland.

Scotland's first Drug Court was established in Glasgow Sheriff Court in October 2001 and a second pilot Drug Court was established in Fife in August 2002, making its first Order on 9th September 2002. The Fife Drug Court sits in Dunfermline and Kirkcaldy Sheriff Courts.

Both Drug Courts are aimed at offenders aged 21 years or older of both sexes, in respect of whom there is an established relationship between a pattern of serious drug misuse and offending. They aim to reduce the level of drug-related offending behaviour, to reduce or eliminate offenders' dependence on or propensity to use drugs and to examine the viability and usefulness of a Drug Court in Scotland, especially, in the case of Fife, in a non-urban centre. All Orders made by the Drug Court are subject to drug testing (urinalysis) and regular (at least monthly) review.

The Drug Court Sheriffs have responsibility for reviewing the Order and responding to non-compliance. In both Drug Courts a Supervision and Treatment Team has been established to support the Drug Court in all aspects of assessment, supervision, treatment, testing and reports to the court.

The Glasgow Drug Court operates on four days a week, with two sheriffs covering it on alternate weeks. In Fife, the Drug Court sits for two days per week in Kirkcaldy and for one day per week in Dunfermline. One sheriff sits in the Fife Drug Court, with a stand-in sheriff to provide back-up during periods of absence.

In many respects there are operational similarities between the two Drug Courts. However there are also important procedural differences, which were instituted to enable the drug court model to be adapted to different local contexts.

A team of researchers at the University of Stirling was commissioned to undertake an evaluation of the pilot Drug Courts, with the evaluation proceeding in two stages. The first stage involved a formative and process evaluation of the Drug Courts' operation in the first six months. The aim was to document the operation of the Drug Courts during this

initial period with a view to identifying any changes that might be required to enhance its operational effectiveness. The six-month evaluation of each drug court was undertaken and published separately. Here, however, we pull together the findings from these two studies to identify broader lessons about the introduction and operation of Drug Courts in Scotland.

Methods

A variety of qualitative and quantitative research methods were employed. They included: interviews with professionals associated with the Drug Court; interviews with Drug Court clients; collection of information from Drug Court records; observation of the Drug Court in action; and the completion of individual client questionnaires by members of the supervision and treatment team.

In addition to these more formal methods, the researchers spent time informally familiarising themselves with the Drug Court and becoming acquainted with the role of the various professionals involved in its operation.

Referral

The Drug Courts differed in the manner in which cases were referred to them. In Glasgow, a decision had been taken to limit the number of potential referrals by restricting the Drug Court in most instances to offenders appearing before the custody court on a summary offence. It was intended, therefore, that the majority of referrals would be initiated by police officers in respect of accused detained overnight in police custody. The Drug Court Procurator Fiscal would review all cases 'flagged up' by the police and sift through all other custody cases to identify further potential Drug Court referrals.

Cases considered potentially suitable for the Drug Court would be referred to a screening group and, if they were considered suitable by the screening group (and were intending to enter a guilty plea), this would be brought to the attention of the sheriff sitting in the custody court. If appropriate, the case would be remitted to the Drug Court to enable a drug court assessment to be carried out.

In practice, however, police referrals only accounted for around one third of referrals in the early stages of the Glasgow pilot. The low number of police referrals appeared to reflect varying levels of knowledge about and interest in the Drug Court in different parts of the city.

In Fife, the route of referrals to the Drug Court was via sentencers sitting summarily in the Sheriff Courts in Kirkcaldy and Dunfermline. Potential referrals were usually identified by sheriffs from a social enquiry report or brought to the court's attention by defence agents. The sheriff requesting the drug assessment would also consider the outcome of that assessment before deciding whether to sentence the offender or refer the case across to the Drug Court.

It appeared that the referral procedures in Fife had been more successful in generating referrals (and Orders) in the first six months' operation of the Drug Court. This may be because referrals were not confined to custody court cases and because sheriffs had more information to draw upon when deciding to request a drug assessment. However the procedure in Glasgow was more effective in ensuring that there was a minimum delay between an individual's arrest and their access to treatment. In Fife, where drug assessments could be requested at any stage in the prosecution process, delays of several months might occur between arrest and assessment. Some professional respondents in Fife believed that there would be some merit in potential Drug Court cases also being identified at an earlier stage in the prosecution process since this would expedite access to treatment.

Sheriffs in Fife expressed concern that the Drug Court was limited to summary cases (a criterion that they understood had originally been imposed to prevent the Drug Court in Glasgow from being overwhelmed with referrals). To surmount this obstacle, in suitable cases on indictment, Drug Treatment and Testing Orders (DTTOs) were imposed in the sheriff court and transferred across to the Drug Court for supervision.

Assessment

The Supervision and Treatment Teams adopted similar approaches to the assessment of offenders for a Drug Court Order. In both courts, sheriffs expressed high levels of satisfaction with the quality of the assessment reports they received.

Offenders were bailed for four weeks for a drug assessment to be carried out. Whilst sheriffs would have preferred this period to be shorter (since they recognised that continued offending was likely until offenders were able to access treatment) they also recognised that this was not feasible in view of the number of appointments required and the workload of the team. One sheriff suggested that residential facilities or the use of electronically monitored Restriction of

Liberty Orders might be useful to enable some offenders to be assessed.

Sentencing

In both Drug Courts greater use was made of DTTOs than probation orders with additional requirements (referred to as enhanced probation orders in Fife). The latter were deemed more appropriate if the offender had other problems that required intervention and support.

Deferred sentences were used in both Drug Courts to deal with concurrent or outstanding charges. In the absence of legislated prison sentences for non-compliance, sentencers perceived them as providing additional sanctions and rewards. For example, good progress on a Drug Court Order could be rewarded by the offender being admonished on a charge for which sentence had been deferred. Conversely, in the event of an offender responding poorly to a Drug Court Order, a short prison sentence might be imposed to bring home the likely consequences of continued non-compliance.

Treatment

Different arrangements existed in the two pilot areas for the provision of treatment services to Drug Court clients, in both cases building upon the arrangements that had originally been established for the supervision and treatment of offenders made subject to DTTOs. The arrangements in Glasgow and Fife had been influenced by the local context in which they were developed. Glasgow, for example, already had a range of existing treatment services for drug users while in Fife such services were poorly developed.

In Glasgow treatment services were provided both in-house and by external service providers. They included counselling, prescribing, access to day programmes and primary medical care. Substitute prescribing (using methadone) constituted the core treatment in practice.

In Fife the Supervision and Treatment Team provided the majority of services to clients on Orders, reflecting the Team's expertise and the availability of in-house resources. The development of in-house services was necessitated by the lack of provision for drug users in some areas of Fife.

The main treatment options that were available to the Drug Court included methadone maintenance and reduction, lofexadine detoxification and naltrexone maintenance and benzodiazepine detoxification, and abstinence.

Multi-professional and multi-agency working were key characteristics of the Drug Court approach. Although this creates the potential for difficulties, in Fife mechanisms had been put in place to overcome issues as they arose and any emerging problems were quickly addressed.

In Glasgow the management arrangements were said by staff to be unnecessarily complex, the premises were inadequate and the staffing levels were too low, resulting in unrealistic workloads. These factors appeared to have undermined opportunities for a genuinely collaborative, multi-disciplinary approach, though active attempts were being made to increase role clarity and enhance teamwork.

Issues around treatment regimes were raised in both Drug Court locations. In Glasgow, for example, members of the Supervision and Treatment Team and clients expressed some concern that the treatment regime lacked flexibility and that levels of medication provided did not always take account of the wishes of individual clients. While prescribing was clearly a matter for the medical profession, increased dialogue in monitoring and reviewing patterns of prescribing would have been beneficial.

In Fife, concern was expressed that clients were sometimes taken off their methadone prescription for up to 28 days as a result of continued drug use. This was perceived by staff as unnecessarily coercive and punitive and by clients as undermining their attempts to stabilise themselves on methadone.

Drug Testing

In Glasgow drug testing was conducted at the Supervision and Treatment Team premises, with some tests sent out for external analysis. Some practical issues relating to the testing procedure were identified. These included the lack of waiting room space and other facilities (including drinking water) and delays in obtaining test results for samples sent for external analysis. However, the subsequent relocation of the Supervision and Treatment Team to more spacious and better-equipped premises adjacent to the Sheriff Court ameliorated the difficulties created by their accommodation during the early phase of the pilot.

In Fife, where most testing was also conducted on-site, staff and clients were generally satisfied with procedures for drug testing. In a small number of cases, however, on-site test results for benzodiazepine had been successfully contested, leading to questions being raised about the accuracy of the test with respect to this substance. Staff were also concerned that the tests undertaken were incapable of

indicating whether or not there had been a reduction in usage. Finally, in a small number of cases clients had been physically unable to provide urine samples and were at risk of having their Orders revoked as a result.

Reviews

The Drug Court Sheriffs reviewed offenders at least monthly in the initial stages of their Orders. Pre-court review meetings attended by the sheriff, procurator fiscal, defence agents (more often in Fife than in Glasgow) and members of the Supervision and Treatment Team preceded court reviews. In both locations they were perceived to be a positive feature of the review process.

The thorough private exchanges of information informed and shaped the nature of the dialogue between sheriff and client in the subsequent review. While some offenders wished they were able to attend pre-court review meetings, all were confident that their progress was discussed in a fair and appropriate manner.

Sheriff-client dialogues were at the heart of reviews. In both courts sentencers generally offered words of encouragement and the clients were – especially so in Glasgow - generally open, responsive and co-operative. The concept of drug use as a relapsing condition was recognised by sheriffs and emphasised in shrieval dialogue.

Review meetings were held in open court, offering a degree of transparency that was perceived by the Drug Court Sheriffs as necessary for maintaining public confidence in the Drug Court in its pilot phase. In Fife, however, this represented a significant shift in practice for both professionals and clients. Under the Drug Treatment and Testing Order pilot, sheriffs usually conducted review hearings in chambers. The Drug Court review process was, therefore, more formalised and this may have impacted upon the quality of sheriff-client dialogues. For example, clients were often unable to respond to the sheriff's questions and reported feeling awkward about the public nature of the exchanges.

Drug Court clients reported that reviews helped to maintain their motivation and were sanguine about having to regularly attend court. The existing legislation enables DTTOs to be reviewed at most once per month. Whilst this was considered by sheriffs to be adequate in some cases, on others it was not. In order that clients might be brought before the court more frequently, the sheriffs in Glasgow imposed probation orders for concurrent

charges, which they also reviewed monthly between the DTTO reviews. In Fife, the approach adopted by the Drug Court Sheriff was to continue reviews for a fortnight if it was felt that more frequent court appearances were required.

Enforcement

In both Glasgow and Fife members of the Supervision and Treatment Team took active steps to respond to instances of non-compliance. The Drug Court Sheriffs had a limited range of sanctions available to them, short of revoking the Order and re-sentencing the offender for the original offence, and would have welcomed having the option to impose short prison sentences for non-compliance without prejudice to the continuation of the Order. They would also have welcomed a more sophisticated system of rewards to enable good progress to be recognised.

During the first six months of the pilot, only one Order had been breached in Glasgow and few amendments had been made to Orders to encourage compliance. In Fife several applications for breach proceedings had been submitted, though no Orders had thus far been revoked.

Effectiveness of the Drug Court

In Glasgow and in Fife most professionals and clients were reasonably confident that the Drug Court would be capable of bringing about reductions in drug use, offending and associated problems, though the challenges involved in achieving and maintaining an abstinent lifestyle were not underestimated.

In Glasgow the main strengths of the Drug Court were perceived to be the 'fast-tracking' of offenders, the existence of a trained and dedicated multidisciplinary team in regular contact with each other and the system of pre-court review meetings and reviews.

Factors that were perceived to enhance the effectiveness of the Drug Court in Fife included the monitoring of behaviour and drug use, the regular reviewing of offenders by a dedicated bench, and the nature and intensity of the treatments and services provided.

In Glasgow intrusive media attention characterised the early months of the Drug Court's operation. In both pilot areas there was, however, broad professional support for a dedicated Drug Court, which was perceived to represent an improvement over previous arrangements for dealing with drug-misusing offenders.

Resourcing and Capacity

In Glasgow, sheriffs sitting in the sheriff court were able to make and supervise DTTOs after the Drug Court was introduced, with these Orders managed by the Drug Court Supervision and Treatment Team. An unanticipated by-product of the establishment of the Drug Court had been an increase in the number of DTTOs made in the sheriff court, possibly as a result of heightened awareness of drug-related crime occasioned by the Drug Court. This had implications for the workload of the Supervision and Treatment Team who felt under-resourced even though the Drug Court was operating below capacity by the end of the first six months. The Drug Court Sheriffs acknowledged that they could manage an increased workload but suggested that this would not be possible without further resources being invested in the Supervision and Treatment Team. There was a general perception that the resource implications of Drug Court Orders had not been fully acknowledged at the planning stage and that this had resulted in unrealistic workloads for members of the Supervision and Treatment Team.

In Fife it was decided that all existing and new DTTOs would be transferred to the Drug Court Sheriff. As a consequence of this and the high number of subsequent referrals, the Fife Drug Court was operating at full capacity within a few months. The staffing levels within the Supervision and Treatment Team were more generous, and more appropriate, than were those in Glasgow. Even here, however, the team was fully stretched, particularly since two social worker posts had remained unfilled.

In neither location was the Drug Court thought to have impacted either positively or adversely upon workloads in the sheriff court. In a sense, the resource implications – in terms of sheriffs' time – could be more easily absorbed in Glasgow where there is a large bench. In Fife too the impact of the Drug Court was thought to have been minimal since the Drug Court Sheriff was replaced by visiting sheriffs, though this had resulted in some lack of continuity in the handling of cases over time.

Conclusions

The establishment and early operation of the Drug Courts in both Glasgow and Fife were largely successful. Procedures had been established that were, on the whole, operating smoothly and professionals and clients alike were optimistic that the Drug Courts would have a positive impact upon drug use and drug-related crime. The combination of treatment, testing and supervision and the role of the Drug Court Sheriffs appear to have been critical in this respect.

The enthusiasm and commitment of those involved in the operation of the pilot Drug Courts was apparent. In both

locations staff were committed to addressing practical issues that arose and to taking active steps to address the operational issues identified by themselves and by the research.

Whilst the effectiveness of the Drug Court in reducing drug use and associated offending remains to be established, these initial findings provide cause for some optimism that Drug Courts are a viable option in the Scottish context and may prove to be a valuable resource for responding to drug-related crime.

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