

## **“Community or Custody – which works best?”**

### **A Make Justice Work National Enquiry**

### **Third Session, Leicester 5<sup>th</sup> April 2011**

In 2010, Make Justice Work launched a major criminal justice National Enquiry entitled “Community or Custody: Which Works Best?”. The enquiry consists of at least four investigatory meetings around the country at which experts and the public are being given the opportunity to offer evidence and opinions to the panel about local responses to short-term prison sentences and community based alternatives.

The third session of the enquiry focused on the work of the Criminal Justice Drugs Team (CJDT) in Leicester. The CJDT provides drug treatment to service-users who have had recent contact with the criminal justice system, and alcohol treatment for those who have been given an Alcohol Treatment Requirement at sentencing. The team works as a partnership between the Leicestershire and Rutland Probation Trust, the Police, and Addaction – one of the highest profile drugs charities in the UK.

The CJDT has been involved in the System Change Project, led by the local Drug and Alcohol Action Team, which is one of only seven projects nationally to look at new approaches to drug and alcohol treatment within the criminal justice system. As part of this project an ‘end-to-end’ treatment model has been established, which works with offenders from their first contact with police through to the end of their sentence. The team is responsible for delivering all criminal justice drug and alcohol treatment across Leicester, Leicestershire and Rutland.

In Leicester the panel was chaired by Peter Osborne, author, broadcaster and commentator for the Daily Telegraph, and included:

- Lord Blair, former Commissioner of the Metropolitan Police
- Roma Hooper, Director of Make Justice Work
- Javed Khan, Chief Executive of Victim Support
- Dame Anne Owers, former Chief Inspector of Prisons
- John Thornhill, Chair of the Magistrates Association

Seven evidence-givers from the local criminal justice system gave testimony:

- Inspector David Beaumont, Central Drugs Testing Team, Leicestershire Constabulary
- Gillian Kelly, former bench chairman for Loughborough and member of the Drug Rehabilitation Requirement Panel
- Kieran Simmonds and Leroy Gatwood, Criminal Justice Drug and Alcohol Team peer mentors
- Sarah Smith, Team Manager of the Criminal Justice Drugs Team, Leicester

- Bernadette Wharton, Criminal Justice Lead for the Leicester, Leicestershire and Rutland Drug and Alcohol Action Teams
- Peter Wright, Governor, HMP Nottingham

### **Drugs, alcohol and low-level offending**

According to Inspector Beaumont, the links between drugs, alcohol and low-level offending are strong. "In Leicestershire we believe that seventy to eighty per cent of crime is low-level. A large proportion of that is drug and alcohol related." Dame Anne Owers and other panellists, together with evidence-givers like Sarah Smith agreed that "criminal justice should not stand alone...in isolation of the wider treatment system but should be integrated with and complement generic substance misuse treatment."

According to Bernadette Wharton, the links between drugs, alcohol and crime made it harder to deal with these offenders and their criminal behaviour. She argued that at the level of commissioning services it is essential to bear in mind that programmes "must meet the objectives of both the health-based treatment agenda and also of the criminal justice system agenda, reducing reoffending and risk to the public."

For the vast majority of those in the room, the interconnection between offending and substance misuse meant that it was worthwhile tackling the latter properly as a means to address the former, thereby reducing the number of victims, managing long-term health costs and reducing short-term prison numbers. Inspector Beaumont called on the courts to order more drug and alcohol disposals, such as a Drug Rehabilitation Requirement (DRR) and Alcohol Rehabilitation Requirement (ARR) and to direct offenders to engage with projects such as CJDT.

### **Community or custody**

Evidence-givers like Justice of the Peace Gillian Kelly felt that the link between drugs, alcohol and low-level offending has particular implications for the debate over community or custody. She argued that prison was not suitable for the type of low-level but prolific offender she encountered in Leicester and that Drug Rehabilitation Requirements were a more appropriate way of addressing the causes of such prolific criminal behaviour. This view was supported by Dame Anne Owers.

Dame Anne Owers and Gillian Kelly agreed that interventions for drug and alcohol offenders showed how tough and difficult community sentences are compared to prison. Kelly claimed that "people [on community orders] have to learn how to manage problems in the real world. They know where the dealers are, where they can get drugs, where the pubs are. They have to learn to say no. In prison this is largely not the case."

Roma Hooper argued that short-term prison sentences presented a further problem. Drug and alcohol offenders finishing their stay in custody were released from prison with no Probation requirements or further oversight. This meant no one on the outside was available to pick them up and direct them to the support and recovery programmes they might need. Often they were not even registered with a GP.

The experience of Kieran, one of the offenders who had been through the project, particularly impressed many participants. He argued that his experience of short-term prison sentences was that they didn't work. "They did nothing with you in the prison. I came out with the same problem which was driving my offending, which was being on heroin."

According to Inspector Beaumont "we have tried custody for drug and alcohol offenders but the 'lock 'em up and throw away the key' approach did not work". He cited statistics from a local cohort of fifty offenders who tested positive during their drugs test, between 1<sup>st</sup> April 2009 and 31<sup>st</sup> March 2010 and then underwent individually tailored treatment for their drug problems. The statistics showed a reduction in offending and the costs of their offending, which he attributed to the new

'end-to-end' intervention treatment programme in Leicester. In twelve months prior to their positive drug test this cohort of fifty offenders committed 89 offences at a cost of £106,000. This compared to the twelve months after taking the test, when they committed fifty offences costing £47,000. This represents a reduction in offending of 44% and a reduction in the costs of their crime of 48%.

However Lord Blair cautioned that statistics showing the effectiveness of this project and other community alternatives might provoke certain constituencies to point out that "crimes were still committed by these offenders. If they were in prison, certain people would argue, no crimes would have been committed, at zero cost." Panellists and evidence-givers broadly argued that this kind of reasoning was false, because short-term sentences were not cost-free and also failed to address the causes of offending. For Inspector Beaumont, community sentences were preferable for the very reason that they are rehabilitative and not simply punitive. He claimed offenders have greater access to drug and alcohol services in the community to help them overcome addiction and reduce their criminal behaviour over the longer term.

With some exceptions, it was agreed by the majority of participants that where possible, drug and alcohol offenders should be treated in the community rather than sent to prison. Nevertheless, a consensus emerged between many of those giving evidence and on the panel that there should be a role for custody. According to Gillian Kelly, those who show no propensity for change should soon find themselves in custody if they do not comply with community orders, mainly because "the public expect prolific offenders to go into custody." Lord Blair commented that offenders who are dangerous to the public should be in custody: "Clearly this is not *all* those in the prison estate at the moment and arguably this group is not necessarily them."

## **Sentencing and punishment**

Peter Osborne asked what role punishment should play in sentencing. The discussion quickly shifted to a debate about whether punishment was best provided by community or custodial sentences. Roma Hooper insisted that the former, when they were robust and effective, were more onerous than prison. Kieran, one of the participants who had been through the project agreed. "Prison for me was a place to rest, to watch TV, get well and fit, then I would be back into the same circles when I came out. But in this project it was different; I had to open up, to engage with strangers, to talk to people about issues that I had kept buried for years. I had to keep appointments, have courses, and understand the impact of my crimes on victims. I was bored in prison, it was so much easier."

For both of the project participants, a large part of the success in turning their lives around was due to the project's emphasis on understanding the crime from the perspective of the victim. This, it was claimed, was not a requirement in prison. "I have to carry what I did with me for the rest of my life" one said. Panellists such as Roma Hooper agreed with Kieran and Leroy when they claimed that this was a vital part of moving forward for many offenders.

Javed Khan agreed that it is essential to understand how victims perceive the debate about community or custody. Khan highlighted Victim Support research which shows that victims want a fair punishment but also assurance that the criminal will not commit the crime again. "We have heard today that these programmes have more chance at reducing reoffending...there is therefore a strong rationale to suggest victims would be supportive of these measures."

For Sarah Smith, arguments about making the system more punitive are wrong. It would be more productive to focus on motivating offenders to give up their life of crime. Agreeing with the principle of this idea, John Thornhill welcomed new National Offender Management Service proposals which give probation officers greater discretion when managing offenders, all with a keener eye on outcomes rather than box ticking and processes. "Does it really matter" he argued "if an offender turns up one hundred per cent of the time if they haven't actually engaged?" Likewise, "what if an offender fails to turn up to court but is complying with the order? Perhaps we need a move to incentive-sentencing, so an offender might be sentenced to a nine month order but they would be

told that if they comply in the early stages, this will be automatically reduced...or indeed increased if they do not comply.”

### **Can drug and alcohol community orders be improved?**

A wide range of suggestions were made throughout the evidence-giving session about ways to increase the robustness of community orders. John Thornhill, who asked “How do I deal with those people who don’t want to be helped, or those who won’t comply?”, thought the key point had been made by Inspector Beaumont about only being able to help those who want to be helped. Sarah Smith argued that you “just keep going back to them, keep testing. Eventually they want to comply and we are there at that point to help them.”

Roma Hooper argued for a greater appreciation of the links between alcohol and crime and a concentration on treatment to address alcohol abuse. “Alcohol remains the poor relation to drug abuse, but it can be just as damaging, particularly with violent crime. It must be pushed up the agenda, which might not happen unless it receives national funding like Drug Intervention Programmes.” Gillian Kelly agreed, claiming that magistrates would like similar support arrangements “to be in place for those who abuse alcohol – a very high proportion of those who appear before us abuse alcohol and that abuse results in their reoffending.” These might be review hearings, where the court imposes requirements which involve an ongoing commitment by the offender to address issues in their lives.

The benefits of residential drug centres were also raised by members of the audience. “We have some fantastic residential centres which are effective and are not being used at all for the rehabilitation of offenders.” There was broad agreement from the evidence-givers on this topic. In response to a question from the audience about what changes they would make to the system if funding was no object, most answered that they would call for more residential facilities. Roma Hooper agreed, referring to research by Matrix that had been commissioned by Make Justice Work, which found residential drug treatment to be more effective and less costly than short-term prison sentences.

Gillian Kelly and John Thornhill suggested it would be beneficial if magistrates could be empowered to send people to residential or community-based facilities at an earlier stage. This would be one way to expand the range of tools at magistrates’ disposal, which would allow them to tailor sentencing to the individual needs of the offender. “Sometimes our hands are tied,” John said, “for example take a first or second time shoplifter, probably a drug and alcohol offender, I would want to give them a voluntary discharge on the condition that they went to a third sector provider to tackle the issue at an early stage and stop them going further down the path of crime.”

For Sarah Smith and many others, the CJDT project had a number of lessons for other community orders throughout the country. Three in particular were discussed at length. The first was that orders should have a clear focus on recovery and elimination of dependency on drugs or alcohol. “Whilst a common approach within treatment settings, this is less common in criminal justice settings” she argued. She highlighted how CJDT takes a holistic approach to treatment and recovery, focusing not only on the taking of substances but also on the person and the issues behind the substance abuse.

Secondly, genuine (rather than tokenistic) service-user involvement, through mechanisms such as the peer mentoring system, was considered a key success factor. “If service users have something to aspire to then so much the better” said Sarah Smith. “Whilst some treatment at CJDT is enforceable, our aim is to make treatment attractive and something service-users want to engage in. Many of the people we see want to be a peer mentor and will be motivated by that to do well on their order.” Both Javed Khan and Dame Anne Owers applauded the peer mentor system, as did Leroy, who argued that it was seeing the peer mentors and how well they were doing with their lives that changed his views on drugs and offending. “I wanted what they had” he said.

Despite a great deal of support amongst the evidence-givers for the peer mentoring system, two concerns were raised by the panellists. John Thornhill asked what measures were needed to

ensure peer mentors who leave the system did not regress. Family relationships and stable employment were enough for most people, claimed Sarah Smith, but for others it might be necessary to include recovery support as well, such as Alcoholics or Narcotics Anonymous. Javed Khan's concern focused on whether the system encourages dependency, swapping a reliance on drugs and alcohol for a reliance on the project. This was considered a justifiable risk, but the panel learned that measures such as work placements outside of the project had been implemented to limit problems.

Lastly, representatives from the project, police and other agencies at the session agreed that strong partnership work was essential. For Inspector Beaumont, breaking down the barriers between treatment services, the project, the wider probation service and the police had been one of the major challenges of the past several years. A fully integrated model to reduce substance misuse and reoffending had been implemented in Leicester as a result of successful relationships between agencies. According to Sarah Smith "this approach places the service-user at the centre and provides continuity of treatment, whatever stage of the criminal justice system the service user is at." In other areas of the country, she claimed, the service user might repeatedly have to change workers and tell their story again and again at each different stage of the justice system, undermining progress towards rehabilitation.

These links between agencies must be considered at every stage of the process, in Bernadette Wharton's opinion, starting with commissioning. "Historically across Leicester, Leicestershire and Rutland, commissioning of drug services delivered within the Criminal Justice system has been disjointed with multiple partners and agencies responsible for commissioning separate elements of the pathway." The panel were told that this had previously led to problems, for example multiple, complex and often duplicate reporting arrangements, at both a local and regional level, which impacted on the effectiveness of treatment.

According to Sarah Smith, these lessons make the project unique. Other projects across the UK might be delivering parts of what CJDT did, but no one had joined up the lessons in this way, completely merging all community-based drug and alcohol treatments with custodial and post-release interventions. For Dame Anne Owers and Javed Khan, the next question was how replicable such a model might be.

### **Funding – the elephant in the room?**

Despite widespread agreement that there is best practice which could be shared across the UK to improve the efficacy of community alternatives to custody, shortage of funds was an issue to which everyone returned. For Anne Owers, the battle over ideas about community or custody had largely been won with Ken Clarke suggesting some sensible proposals for how to reduce the prison population. "But the battle for money is far from over" she argued. "Leicester prison will still be there in three years' time, but will the project we saw today?"

Many, if not all of the evidence-givers and panellists agreed that shortage of funding was the biggest barrier to the successful reduction of drug and alcohol offending, either through the continuation of current programmes or the roll out of best practice to other areas of the UK. Specifically, Bernadette Wharton highlighted how no part of the system in Leicestershire works without drug testing, "however those tests are funded separately by the police". Inspector Beaumont expressed the fear that the current approach would have to cease if there were no funding. "Despite the success of these Drug Intervention Programmes, without funding we cannot continue. This puts our aims of reducing reoffending and treating drug offenders in jeopardy." Did this mean that drug and alcohol offending was not a local priority, the Inspector was asked? "Absolutely not, it's a national and local priority."

Javed Khan, Inspector Beaumont and Governor White, all argued that local priorities should determine local spending. Anne Owers asked the room whether any progress would be made until "there is a local cost of prisons, either for the local authority or the local community, because at the moment it is a free good to them that frees up local budgets. Will we move the argument only when we move the money?"

Although people such as Roma Hooper appreciated the need for everyone to make cuts, John Thornhill capped this discussion by highlighting the cost benefits of early intervention. "If we act early and turn around people's lives quickly, before they travel further down the path of criminality, then we will save more money. People want a quick turnaround but we need to bite the bullet of early intervention." Convincing the public and politicians of this, it was agreed, should be a core concern of those in the criminal justice system.

### **Media and communications**

Many on the panel, such as Lord Blair and Roma Hooper agreed with the audience members who claimed that the public was not yet on the side of community alternatives and these type of early interventions John Thornhill spoke about, arguing that it was essential "to win their hearts and minds." Gillian Kelly used an interesting example to illustrate the problem, referring to magistrates who are required to go out into the community to explain what they do and how they do it. "Most ask why we don't send more people to prison for particular offences" she said, "but after explaining to them, they often go away with a different attitude." For Dame Anne Owers therefore, there is no other option but to keep saying it.

The role of the media in shaping the public debate about short-term sentences and community punishments was repeatedly raised during the session. A member of the audience argued that the media did not base their commentary on evidence of what works to reduce reoffending but on false perceptions. Lord Blair commented that we need to challenge politicians and certain sections of the media, "who only work in a world of soundbites." "Bobbies on the beat" he argued, was a phrase that haunted Chief Constables. "Prison works because it locks up criminals and they cannot commit crime" was a similarly simplistic answer that wrongly focused on inputs not outputs.

The consensus view, from members of the audience and the panel, was that it is essential that those who understand the complexity of the issues must have a greater say - both in political and public debates over criminal justice.

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