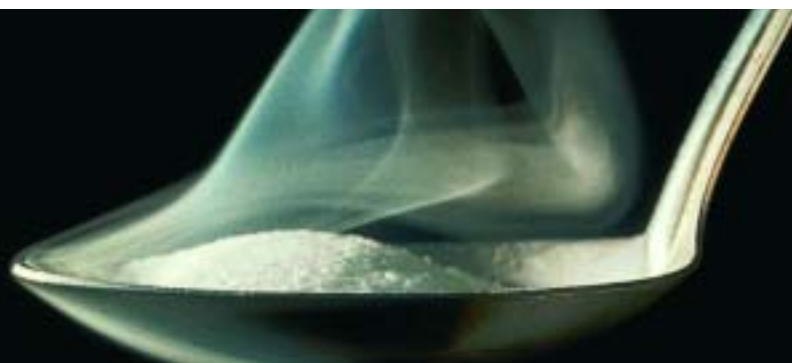


The Drug Treatment and Testing Order: early lessons



REPORT BY THE COMPTROLLER AND AUDITOR GENERAL
HC 366 Session 2003-2004: 26 March 2004

executive summary

- 1 Drug misusers commit a high proportion of acquisitive crimes. In nine areas where there has been mandatory drug testing of people charged with offences such as shoplifting, burglary and drug offences, between 36 and 66 per cent have tested positive for use of heroin, other opiates or cocaine¹. Criminal activity can introduce offenders to drugs, and whatever the cause of the initial addiction, once addicted to illegal drugs, a serious habit can cost some £400 a week, with many misusers offending to fund their drugs. The Government's ten year strategy for tackling drugs misuse, published in 1998², set out to increase the number of drug-misusers in treatment. By increasing the capacity to identify and treat drug misusing offenders, from the point of arrest through to community sentences or custody and release, the Government's aim is to break the link between drug misuse and crime.
- 2 The Drug Treatment and Testing Order, a community sentence for offenders who misuse drugs, was introduced within the Crime and Disorder Act 1998. The Order requires offenders to submit to regular drug testing, to attend an intensive treatment and rehabilitation programme, which is expected initially to be for 20 hours a week, and to have their progress reviewed regularly by the courts. Following a limited introduction in 2003-04, from April 2004 the Order will also be available in all areas with a less intensive treatment and rehabilitation programme for offenders with less serious drug misuse and offending. Offenders on a Drug Treatment and Testing Order are supervised by the Probation Service; and attend drug treatment and offending behaviour programmes provided by the Probation Service, other statutory providers or the voluntary sector. The Order is for a minimum period of 6 months up to a maximum of 3 years. The Drug Treatment and Testing Order is intended to complement other interventions which target treatment at drug misusers within the criminal justice system, including mandatory drug testing of individuals charged with certain offences, voluntary referral into treatment following arrest, and drug treatment initiatives within prison.
- 3 The Drug Treatment and Testing Order was piloted in three areas in England from October 1998. In May 2000, the Home Secretary decided to make the Order available to all courts in England and Wales from October 2000. By December 2003, 18,414 Orders had been made. In 2003-04, the Home Office allocated £53.7 million to probation areas and treatment services in support of the Order in England and Wales. The National Probation Directorate and National Treatment Agency for Substance Misuse have joint responsibility for overseeing delivery of the Drug Treatment and Testing Order in England. In Wales, the National Probation Directorate works with the National Assembly to oversee the Order. The Government has announced that from June 2004 the National Probation Service, including the National Probation Directorate, will form part of the new National Offender Management Service.

¹ *Evaluation of drug testing in the criminal justice system in nine pilot areas, Home Office Research Findings 180, 2003.*

² *"Tackling drugs to build a better Britain" 1998. Updated in the Government's "Updated Drug Strategy 2002".*

- 4 We examined the progress made in implementing the Order in England and early evidence of its impact. The first phase of the audit was carried out in collaboration with Her Majesty's Inspectorate of Probation, which carried out a thematic inspection of the implementation of the Drug Treatment and Testing Order in England and Wales published in March 2003. The second phase of our audit took place in August and September 2003.

Overall conclusion

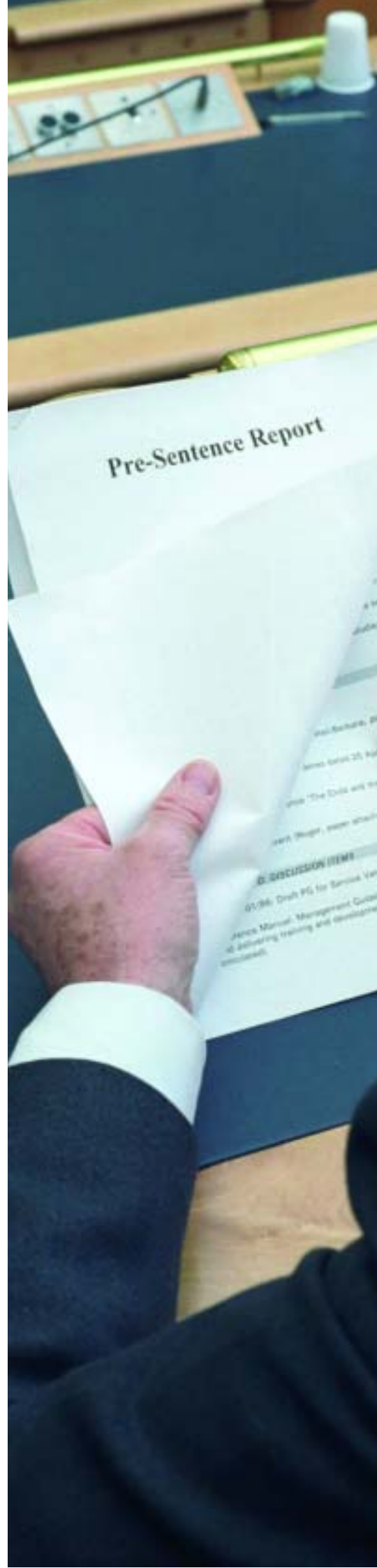
- 5 Probation areas and drug treatment services have made rapid progress in getting offenders onto the Order and delivering the programmes across the country. In the first three years of the Order there has been success with some misusers, for example in terms of reduced drug misuse and lower reconviction rates. But evidence also points to a low completion rate, reflecting the challenges faced by local services in keeping chaotic drug misusers on an intensive and highly structured programme.
- 6 To make best use of resources, there is a need for the new National Offender Management Service to strengthen management of the Order, for example, to ensure that standards governing contact hours and frequency of testing are met and to reduce the cost of the existing enforcement procedures whilst meeting the requirements of the law.
- 7 Now that the Order has become established, the focus of performance management for the new National Offender Management Service should shift its emphasis from achieving commencements towards improving the effectiveness of the Order in delivering positive outcomes. The National Probation Directorate's new requirement for probation areas to monitor successful completions from April 2004 should help work towards this. But the Directorate also needs to measure, on a routine basis, achievement in terms of reduced drug misuse and reoffending.


Our detailed findings and conclusions:

- i Around 28 per cent of Drug Treatment and Testing Orders terminated in the latest full year, 2003, were completed in full or terminated early for good progress. However, data from one of the areas we visited, and experience reported to us in the other areas visited, suggests that a high proportion of offenders do not remain on their Order for long. Also some of those recorded as having completed their Order will have been in breach of the conditions of the Order but not had the Order formally revoked, for example where a warrant for the offender to attend court is outstanding. The Orders are targeted at a highly problematic group of drug misusers, often leading chaotic lives and for whom several attempts at coming off drugs may be needed before some success may be achieved. In 2003, 44 per cent of terminated cases were revoked due to non-compliance and a further 22 per cent were revoked for conviction of an offence - either an offence committed before the start of the Order or one committed while on the Order³.

³ The remaining 6 per cent of terminated cases were terminated for other reasons, including ill-health or death.

- ii Whilst an Order is often terminated early, probation staff reported that it can still have some benefit in helping to reduce the level of drug misuse. In all the areas we visited, probation staff and drug workers believed the Order was having a positive impact on offenders. Offenders on the Order who we interviewed believed that the intensity of the support offered was key to helping them address their addiction. However, to date, information on the impact of the Order, for example in terms of the proportion of negative tests for illegal drugs or levels of reoffending, has in many areas yet to be routinely collected. And, monitoring of cases by probation areas between July and October 2003, has found only 13 per cent of cases showed evidence that in the first 13 weeks two or more drug tests a week had been undertaken. Twenty-nine per cent of cases had had one drug test or more in subsequent weeks as required by the National Standard. In one area we visited, where information from drug tests had been collected, there had been an increase in the number of offenders generally testing negative for illegal drugs. However, after 12 months on the Order, nearly 70 per cent were testing positive for opiates. Research into the effectiveness of treatment more generally suggests that some misusers will continue to misuse drugs. The National Treatment Outcome Research study, commissioned by the Department of Health, found for example that about 40 per cent of people treated in residential or community methadone programmes in 1995 were still using heroin at least once a week four to five years later.
- iii In 2003 there was considerable variation in the proportion of Orders completed between probation areas, from 71 per cent in Dorset to 8 per cent in Kent. Whilst it is too early to attribute this solely to the effectiveness of local programmes, this variation in completion rates could reflect local practice in selection of drug misusers placed on the Order, local enforcement practice and the length of Orders made locally. When selecting offenders to place on the Order, all the areas we visited reported difficulty assessing an offender's commitment and ability to comply with an Order. Some offenders were dropping out of the treatment and testing programme at an early stage, with the risk that they will not re-present themselves at court for re-sentencing and where they do, incurring the taxpayer the additional cost of re-sentencing. However, some areas were focusing greater attention on improving offenders' motivation at the start of the Order to help improve retention. The Lambeth, Southwark and Lewisham team were, for example, running special groups for those new to the Order specifically to raise offenders' motivation. As more drug-misusing defendants are brought into treatment before trial, there should be further opportunity to undertake early work on motivation and to identify better those committed to treatment following sentence, in addition to work to build motivation through the Order. In January 2004 the National Probation Directorate introduced a new target for probation areas for 2004-05 to achieve 35 per cent successful completions.



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- A photograph showing a person from the back, wearing glasses and a dark jacket, looking down at a document held in their hands. The document has some text and a logo, but it is mostly illegible. The background is a blurred office setting.
- iv We also found a considerable variation between areas in the level of contact with offenders and the type of non-clinical interventions available alongside treatment, ranging from attendance on offending behaviour programmes to the development of life skills. In cases examined by probation areas for compliance with the National Standard in the period July to October 2003, 44 per cent showed evidence that the minimum contact hours had been arranged in the first 13 weeks and 69 per cent after the first 13 weeks. Some offenders we spoke to, who were on the Order, felt that a lack of help in finding accommodation away from their drug-using peer group was a key weakness. Probation areas and Drug Action Teams had, in most instances, yet to examine the success of the different components of the Order provided locally in delivering positive outcomes.
 - v The Home Office initially set the probation service a target to achieve 6,000 commencements a year with effect from April 2001. In December 2002 it announced a new target to achieve 12,000 commencements a year on high intensity Orders by the end of March 2005. The national and local targets have provided an important incentive to establish the Order quickly across England and Wales. To achieve the increased target some areas we visited were widening the entry criteria to bring offenders convicted of less serious but persistent crime onto the programme. Probation staff and drug workers we interviewed suggested that for lesser crimes and less serious misuse of drugs a less intensive form of intervention requiring a lower level of contact each week over a longer period could lead to better use of resources. In December 2003 the Home Office issued a new National Standard and guidance for the implementation of the Order with a lower intensity treatment plan. These are subject to a separate target to achieve 1000 commencements in 2004-05, rising to 4,000 in 2005-06. Following the introduction of the Community Order and other new sentences under the Criminal Justice Act 2003, the probation service will in 2004 and thereafter need to assess drug-misusing offenders' suitability for a wider range of sentencing options.
 - vi The type of drug misuser placed on an Order does not necessarily reflect the make-up of the wider drug using population, in part a reflection of the type of drugs used, the type of crimes committed and the availability of suitable treatment services in the community. We found evidence to suggest that younger people, aged 18 to 21, amongst others, may be less likely to be placed on the Order. Some probation and drug treatment staff we spoke to believed that older users were more likely to be motivated to stick with the treatment and that the type of programmes available on the Order, designed to meet the needs of problematic drug misusers, were not currently appropriate for the younger age group. However, if successful, the impact of reducing an offender's habit at an early stage of a criminal career and the impact on an individual's health could be proportionately greater. We found probation areas also considered drug-misusing offenders with mental health problems to be unsuitable for the Order. Areas we visited were beginning to consider the accessibility of services to a wider range of drug misusers but, in some instances, lacked information on the characteristics of offenders currently on the Order and comparative information on those in treatment in the community.

- vii** Our interviews with probation staff and drug workers suggested differing views on how Orders should be enforced. Offenders placed on a Drug Treatment and Testing Order are expected to comply with the National Standard governing attendance and submission to drug testing. All staff we interviewed recognised the importance of upholding the National Standard and treating offenders fairly and consistently. Some expressed concern that some of the requirements, for example that failure to attend two appointments without reasonable excuse should lead to breach action, may be unrealistic for such a chaotic group of offenders with a relapsing condition. In 2003 there were 86 breaches for every 100 starts on the Order, a figure which will include more than one breach for some offenders. Whilst breach hearings do not necessarily lead to revocation of the Order they do tie up court and probation service resources, in addition to the court review hearings which are a feature of the Order. Our work suggested the most convincing local enforcement arrangements set clear expectations upon the offender, had robust monitoring arrangements, and a shared understanding between drug treatment workers, probation officers and the local courts on how potential breaches should be handled.
- viii** The supervision and treatment costs of the Order in 2002-03 in the areas we visited varied between £5,200 and £7,600 per Order, which we estimate equates to some £25 to £37 a day, compared with a cost of custody of £100 a day. Other costs not included, some of which are associated with being on a community sentence rather than in custody, include residential treatment, housing and benefit costs for the offender and the wider cost to society if new offences are committed. As greater numbers of Orders begin to be completed, further research will be needed on the costs and benefits of the variety of sentences and Community Order options available following the introduction of the Criminal Justice Act 2003, taking account of the sustainability of any reduction in drug taking and reduction in criminal activity. A recently published evaluation commissioned by the Home Office following up offenders who had been put on the Order during the initial pilots found that 80 per cent of those who could be traced had been reconvicted for at least some offence in the subsequent two year period. For those who had completed their Order, the reconviction rate was significantly better at 53 per cent⁴. This sample was not big enough to confirm whether the seriousness of the offences committed also reduced. There is, as yet, no evidence as to whether reductions in drug taking are sustained when Orders are completed or revoked. Our fieldwork suggested that treatment continued to be available to offenders beyond the end of their Order but often not at the same intensity, an issue that was of concern to some offenders making progress on the Order. The Criminal Justice Interventions Programme, introduced in 2003-04 in the police Basic Command Units with the highest levels of acquisitive crime, is expected to involve community drugs teams planning and coordinating care for offenders and is intended to help address potential weaknesses in the continuity of treatment. In general, as more Orders are completed, probation areas and their successors in the National Offender Management Service, and Drug Action Teams need to have in place agreed protocols for allowing continued access to treatment for those coming off criminal justice programmes.

⁴ "The impact of Drug Treatment and Testing Orders on offending: two-year reconviction results" Home Office Research Findings 184, 2003.

RECOMMENDATIONS

8 We make the following recommendations:

On the selection of offenders:

- i The National Probation Directorate and National Treatment Agency should reduce the rate of early revocation for failure on the Order. Better use might be made, for example, of time between arrest and sentence to help assess suitability for the Order. This time could also be used to build and sustain an offender's motivation for the Order.
- ii Probation areas need to collect data on the age, sex and ethnicity of drug misusers sentenced to the Order, and their completion of the Order. This information should be used by probation areas and Drug Action Teams to monitor the performance of treatment interventions in meeting the needs of different groups, review the content of the services delivered and inform future commissioning.
- iii Taking account of the introduction of arrest referral schemes and other initiatives, the criminal justice system now accounts for a large number of drug misusers in treatment. The Home Office and National Treatment Agency should determine whether, taken together, the various initiatives allow all drug misusing groups fair access to treatment services, including through the Drug Treatment and Testing Order, for example for people in the 18 to 25 age group, women, ethnic minorities and those who are homeless.
- iv Where drug-misusing offenders are considered not suitable for the Order due to mental health problems, probation areas should recommend to the courts that appropriate health assessments are undertaken to consider offenders' suitability for alternative disposals.
- v To ensure that benefits from the Order are not wasted, probation areas and Drug Action Teams should have effective arrangements to allow drug misusers coming off the Order, for whatever reason, to continue their treatment and receive appropriate support if necessary.

On the enforcement of the National Standard:

- vi The Home Office should examine ways of reducing the cost of enforcing the terms of the Order. Clearer guidance, for example, could be issued regarding what might be a "reasonable" explanation for failing to comply with the Order, leaving the full-formality, and cost, of the breach process for incidents of non-compliance without reasonable excuse.
- vii To improve the consistency of performance reporting between probation areas, the National Probation Directorate should specify clearly what activities can be counted towards the required number of contact hours set out in the National Standard.

On measuring success:

- viii Probation areas and Drug Action Teams should routinely monitor and review information on outcomes achieved, in particular the level of abstinence achieved or reduced drug use at the time of termination of the Order; and the Home Office should routinely monitor and review reconviction rates.
- ix The Home Office should review the costs and outcomes achieved on the new sentencing and treatment options available following the implementation of the Criminal Justice Act 2003 and provide feedback to the courts on their best use.
- x Once outcome monitoring is in place, the Home Office should consider the continuing need for commencement targets.