# The Return of Drugs Courts: Some Important Considerations

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## Introduction

The inclusion of problem-solving drugs courts in the UK government policy paper *'A Smarter Approach to Sentencing'* (Ministry of Justice, 2020) and subsequent *Police, Crime, Sentencing and Courts Act* 2022 (PCSC) (H. M. Government, 2022) signalled a renewed interest in this style of courts justice. Drugs courts can be praised for the rehabilitative health-treatment response they deliver to people with drugs dependence problems. This is when contrasted with the traditional courts that operate on adversarial and retributive justice principles and do little to alleviate cycles of repeat drugs offending. Whilst drugs courts have been met with success and embraced in several jurisdictions worldwide, fundamental points need to be raised on the drugs court model that is re-emerging in England and Wales. Indications are it will involve expanded drugs testing and a 'graduated sanctions and incentives' scheme that comprises short custodial sentences for non-compliance. This borrows from the US model and is a radical step in the context of UK justice. It ushers in a system that combines drugs user rehabilitation with punitive threats for failure and is vulnerable to criticisms of coercive drugs treatment styles. Moreover, it misses a central point of problem-solving justice. This is situated within theories of 'therapeutic jurisprudence' and utilisation of the law and legal processes for the capacity to help. Conceived within psychology and mental health law, therapeutic jurisprudence as Wexler and Winick (1996) state is 'the therapeutic and anti-therapeutic consequences of laws, legal rules, and legal actions' (*ibid.* xvii). Drugs treatment courts are commonly interpreted within this framework (*cf.* Kawalek, 2021).

This essay is a critical review of the newly emerging drugs courts in England and Wales as signposted within the key government policy and legislative documents shaping their implementation. It raises questions relating to the precise model the drugs courts will take, whether they will prioritise harm reduction approaches or if 'abstinence' and drugs 'recovery' goals will predominate. We question whether people with drugs dependence problems should be sanctioned to short custodial sentences if in breach of a treatment order. And perhaps more fundamentally: do we need drugs courts in the English and Welsh justice system[1]?

[1] Reference is made throughout the essay to UK drugs policy, though three separate justice systems operate- England and Wales, Scotland and Northern Ireland. The drugs courts referred to relate to those proposed in the English and Welsh context.

## Methods

The essay draws on key policy and legislative documents from the intersecting areas of drugs law enforcement, drugs sentencing and drugs health treatment, all of which carry a joint aim of reducing drugs-related offending and its underlying causes. The documents used are the sentencing strategy set out in '*A Smarter Approach to Sentencing'* (Ministry of Justice, 2020), the 2022 *Police, Crime, Sentencing and Courts Act* (H. M. Government, 2022) and the 2021 drugs strategy '*From Harm to Hope'* (H.M. Government, 2021). Empirical evidence drawn from the first author's earlier courts research is also used. This research focused on 'modernising' transformations occurring within lower court justice and whether 'procedural due process' was being undermined. The experiences and motivations of serving magistrates were examined[2]. In person, one-to-one and focus group interviews were conducted with 33 magistrates working across three different court areas of England (see Ward, 2016), including one operating a specialist drugs court. Two magistrates employed in the drugs court were interviewed for their insights into this treatment court model and from a judging perspective.

In the first section of this critical review essay, we set out the different theoretical positions taken to drugs treatment in the UK and internationally.

## Harm reduction and stabilisation versus abstinence drugs recovery

Drugs treatment debates can be differentiated by two philosophical positions – either drugs harm reduction and stabilisation approaches or abstinence, recovery models that adopt two quite separate logics. Indeed, scholars chart shifts in UK drugs policy and ideologies overtime, highlighting the emergence of harm reduction and stabilisation approaches from the 1990s. These it is noted, largely corresponded with the emergence of epidemiological knowledge on disease and infection transmission (*e.g.* HIV/Aids and Hepatitis C.) and other health harms that accompany 'problem' and intravenous drug use. Substitution opioid prescriptions (*e.g.* methadone and buprenorphine), needle exchange schemes, safe injecting sites and naloxone antidote treatments are harm reduction tools deployed as responses. Yet, key turning points in drugs policy are highlighted, suggesting changes in the UK government's narrative towards an ideology of individual health behaviour choice and the veering towards abstinence' and drugs 'recovery' models. Those tracing UK drugs policy point to the language used in successive drug strategy reports noting the prominence of 'recovery' priorities over time (Stevens, 2022; Duke, 2013). Indeed, references associated with abstinence are peppered throughout the 2021 drug strategy *From Harm to Hope* (H. M. Government, 2021). Moreover, enhanced drugs testing and the use of short custodial sentences is in the new England and Wales drug court policy documentation and is indication abstinence and sobriety approaches will be utilised in the drugs courts.

Our critique is examined through the lenses of a harm reduction approach and is firmly rooted in one that accepts 'drug use disorders' are health problems that require individualised treatment, involve periods of relapse and are more easily achievable, or even desirable for some 'users' than others (McSweeney *et al*, 2010; Kellog, 2003). We return to these points later.

Before explaining the drug court model as indicated in the UK legislation, a brief overview on the growth of drugs courts internationally is provided.

## Problem-solving drugs courts internationally

[2] Magistrate interviews were carried out between November 2014 and June 2016. Ethical approval was received from the Middlesex University School of Law Research Ethics Committee.

Drugs courts are established across a number of jurisdictions - the USA, Canada (National Crime Prevention Centre, 2018), Australia (KMPG, 2014), New Zealand (NZ Ministry of Justice, 2019), Scotland (McIvor, 2009), Ireland (Gavin & Kawalek, 2020), Belgium (Dekkers *et al*, 2016) with intermittent development in England and Wales (Kawalek, 2021). Most closely associated with the US drugs court movement, they trace back to Miami in the late 1980s at the height of the 'crack' cocaine epidemic. Drugs courts have since expanded widely across the US with newer introductions targeting opioid and prescription drugs use problems. At the end of 2021, the US National Drug Court Resource Centre (2022) reported 1,834 'adult drugs courts' were in operation rising to 4,008 when other adult and juvenile treatment programmes were added. The problem-solving approach central to the drugs court model has become an umbrella term and gained popularity across a range of health and welfare domains that see cross-overs with offending, for instance: mental disorder, homelessness, 'prostitution' and veterans' needs.

Problem-solving courts operate on a model that attends to the underlying health and welfare issues linked to a person's offending. The central premise is that by tackling these 'drivers', longer-term decreases in offending can be achieved. In respect to drugs courts, the core components are a tailored treatment programme supported through multi-disciplinary teamwork that bridges health and social services provision (*i.e.* housing, mental health, children's services) with regular progress reviews carried out by specially trained judges (Nolan, 2009). The 'judicial monitoring' embedded within the review process is found powerful in terms of consistency of oversight and the personal interest shown in an individual's circumstances and progress over time (Kawalek, 2021). It is frequently cited as the first time anyone of authority has taken an interest in the person (Logan and Link, 2019).

National and international outcome evaluations and meta-analyses of drugs courts report reduced rates of re-offending, lower levels of individual drug use and improved social relationships (Logan & Link, 2019; Kerr *et al*, 2011). The US multi-site evaluation by Rossman *et al*, (2011) involving 1,156 drugs courts participants and 652 clients of traditional courts as a comparison sample, found significant reductions in drug relapse among the drugs court sample. The reporting of 'any drug use' in the year prior to interview was much less likely than in the comparison group (56% versus 76%) and drugs court participants reported committing crimes at a lower rate than the traditional court sample (40 versus 53 percent).

However, commentators on drugs court effectiveness point to the limitations of evaluation results due to range of models that operate and the different methodological approaches employed to measure their success, making it difficult to arrive at definitive claims. Further, there is extensive commentary and evidence that points to negative features of drugs courts, in particular US models (Comstock, 2023; Fulkerson *et al*, 2022 among others). These highlight the sweeping inclusion of low-risk drug offenders, such as those on marijuana possession charges and the exclusion of people on more serious 'felony offences' and entrenched drugs users, who are regarded would benefit most from this type of intervention (Logan & Link, 2019). Comstock's article (2023) emphasises high non-completion rates among drugs court entrants; a heightened rate of drug arrests in areas that have drugs courts and that overall more punitive sentences are received than the initial 'index offence' would have attracted due to the stacking of sanctions for repeat failure. He argued, to curb the potential for these negative outcomes, incarceration should be removed as a sanction for treatment failure and that there should be greater funding for community programmes outside of drugs courts (*ibid.*: 21). Moreover, the espoused cost benefits of drugs courts reducing incarceration are noted as outweighed by this anomaly. The Federal funding structure of the US drugs courts is also pointed out, whereby continued revenue streams are dependent on the demonstration of success. This, it is stated,

leads to the tendency for 'cherry picking' 'easy cases' and those considered most likely to graduate, which in turn has the effect of skewing positive evaluation results (Comstock, 2023).

In contrast to the vast number of quantitative drugs courts research, there are far fewer studies that include the voices and experiences of court users. However, there are some that report helpful features and improvements to personal circumstances among samples of male and female participants. Gallagher *et al's* (2022) meta-synthesis of qualitative studies examining women's experiences found positive ratings and effects, such as the style of encouragement and praise provided by the judge, being supported in their role as mothers, reunification of family and parenting life and overall improved health and well-being of their children. Having trauma issues addressed within individual counselling sessions is also mentioned as a benefit. Liang *et al's* (2016) research drawn from 229 client letters note some bias with the method, but that the drugs court had helped them 'stay sober and clean', 'turn their lives around' along with other attributes such as 'making better decisions' and 'realising their potential' (*ibid*.: 275). Some features of drugs courts though draw disdain, for instance Fulkerson *et al's* (2022) research among people who had succeeded with a drugs court programme and those who had not, mentioned the public admonishment that occurs in the US open court style with sessions referred to as 'degrading' and 'humiliating'. Some respondents said they felt stigmatised and open court was not appropriate for the discussion of private personal information. Other negative appraisals were based on the interference regular court attendance has on employment schedules and the ability to earn an income (*ibid*.: 1307). The US drugs court context is different to that of England and Wales (Nolan, 2009), however these studies highlight various and nuanced aspects that are necessary for consideration.

**Drugs courts in the English and Welsh justice system**

Drugs courts in the English and Welsh system are not a new innovation. Variations of practice date back to the 1990s when the 'drugs treatment and testing' order (DTTO) was introduced under the 1998 *Crime and Disorder Act* (McSweeney *et al*, 2010). The 'dedicated drugs court' (DDC) pilot followed in 2005 with specialist courts established in Leeds and West London and Salford, Bristol, Cardiff and Barnsley later in 2009. The DDCs were stated as 'a new framework for dealing with drug-misusing offenders who committed low-level 'acquisitive' crime to fund their addiction' (Kerr *et al*, 2011: ii).

The earlier DDC did not adopt the US drugs courts style that encourages 'abstinence' through the influence of a 'carrot and stick' or 'reward' and 'reprimand' approach. Donoghue (2014), in her book on courts specialisation, claimed the absence of the reprimand element undermined the success of the DDCs. Yet, the DDC pilot evaluation (Kerr *et al*, 2011) argued there are limitations to the impact drugs courts alone can have on the patterns of entrenched users. Following the DDC pilot, drugs courts were not rolled out nationally in England and Wales. However, collaborative practice across local court areas, probation teams and statutory drug services is a long-standing partnership arrangement under which people on court mandated drugs treatment in the community are managed. Probation hold a central monitoring and oversight role.

A renewed interest in drugs courts re-emerged in 2016 under Michael Gove, then Secretary of State for Justice who visited one in Texas, meeting with judicial members involved in their delivery (Bowcott, 2016) and establishing the 'Problem-solving Courts Working Group' on return (Ministry of Justice, 2016). A period of political turbulence in the UK with a series of leadership changes and quick succession General Elections hampered the direction of justice reform with momentum for drugs courts was lost at this time.

However, they are now firmly back on the policy agenda with aims for their advance set out in the overlapping policy documents, along with the launch in 2023 of two pilot drugs courts[3] in Teeside and Liverpool and a 'women offender' court in Birmingham (Ministry of Justice, 2024). This drugs court pilot mirrors the previous DDC program aligning with the argument that facilitating entry into health treatment is an effective way to reduce high levels of drugs-related offending. However, this time they appear to be much more in line with the international drug courts and specifically the US, including the implementation of the 'carrot and stick' 'graduated sanctions and incentives' scheme.

**'Problem drug users' in the criminal justice system**

The 2023 drugs courts pilot can be set within the context of growing health-related drugs harms in UK society. It is difficult to quantify the size of the 'problem drug user population'. Though techniques using the capture/recapture and 'multiple indicator method' consistently calculate around 300,000 'problem drug users' in the English population (Hay *et al*, 2019). Results from the 2016/17 data estimated the number of 'opiate and/or crack cocaine' users was 313,971 (Hay *et al*, 2019) and is a drug user group typically living with multiple health and welfare needs (*i.e.* infections, poor diet, homelessness and street sleeping) with a reliance on acquisitive crime to fund drug costs (*e.g.* shoplifting, theft, sex work, drug selling) (Bennett*,* 2000). Across Europe and the UK health harms associated with problem drug use, specifically drugs-related deaths, are increasing (Alho *et al*, 2020). In 2021, the Office for National Statistics of England and Wales (2022) reported deaths from 'drugs poisoning' were at an all-time high at 4,859 people (84.4 deaths per million people) and 6.2% higher than the previous year of 2020 at 4,561 (79.5 deaths per million people).

The scale and size of the problem drug user population is relevant to this essay's discussion due to the large number of this group in the criminal justice system. The 2019-20 Prisons Inspectorate report (HMI Prison, 2019) included results from a survey with 6,308 men and 694 women in prison. Twenty-eight percent of male and 42% of female respondents registered 'a drug problem when coming to this prison' (including 'illicit drugs and medication not prescribed to you' (*ibid.* 119).

The 2024 'Prison Reform Trust Factfile' reported 17% of men and 14% of women in prison were serving sentences for 'drug offences' and the 2019 'offence outcome' statistics (Ministry of Justice, 2019) showed 489 people sentenced to immediate custody for 'Class A drug possession' in that year (*i.e.* heroin, crack cocaine, ecstasy).

Probation caseloads are also dominated by people experiencing drugs problems. An inspection carried out into community-based drugs treatment and recovery work with people on probation, cited figures from 4,548 individual cases (HMI Probation, 2021). Factors associated with re-offending including 'drugs and alcohol misuse', unstable accommodation and weak family support were examined. Almost half (48%) were found to have drugs problems with it stated insufficient numbers of 'those known to have drugs dependence problems are assigned to the treatment, monitoring and review support they needed through the current probation teams' (*ibid.*:5).

[3] The 2023 pilot courts are referred to as 'Intensive Supervision Courts' and jointly as 'drugs and alcohol' courts (Ministry of Justice, 2024). This critical review is centred on the implementation of drugs courts approaches and focuses solely on this feature.

These figures illustrate the criminal justice system is a main route through which problem drug use issues are managed. Unlike countries, such as Portugal who implemented drugs decriminalisation laws to reduce health harms (*e.g.* dependence, HIV, hepatitis, overdose *etc.*), the UK uses the drugs control system (*Drugs Misuse Act* 1971) to deter individual drug use. Reform in the direction of decriminalisation is usually met with strong political resistance from all main parties. Although the Scottish Government (2023) has called for drugs law reform arguing in favour of decriminalisation so the scale of health problems and the high levels of drugs-related death in Scotland can be better managed.

The issue of the criminal justice system being a main route into drugs health treatment can be linked to the attention Dame Carol Black paid to the inadequate funding and commissioning of drugs services in England and Wales (2020). Black in a *Lancet* article (2021) highlighted a 17% decrease in spending on adult drugs treatment between 2015 and 2019 and a 30% reduction in the funding of young people's provision. She noted inpatient detoxification and residential rehabilitation had markedly diminished and that there was an insufficient level of accessible, low-threshold treatment services in the community. Black concluded 'the public provision of these services is not fit for purpose' (*ibid.*:475) and the 'UK government faced an unavoidable choice: invest in tackling drug use or keep paying for the consequences' (*ibid.*: 475). Black's systematic review (2020) informed the 2021 government drug strategy triggering £780 million ringfenced funding for improvements to the 'treatment and recovery system' between 2022-25 (H. M. Government, 2021). It is our argument that low-threshold community-based drugs treatment is the preferred route for people with dependence problems in England and Wales rather than the criminal court one, even if the drugs courts model provides a rehabilitative health-oriented response.

A drugs court magistrate interviewed in the earlier courts research emphasised the issue of inadequate help available in the community and how people with dependence problems are often unaware of where and how to get help:

> It's sad sometimes when I think about the people who haven't committed a crime that are on drugs, they don't know where to go to get help. …Sometimes it takes them to offend before being signposted to where the help is …(Magistrate 2.)

The following section critically discusses the drugs court model indicated for the English and Welsh justice system.

**The drugs court model**

At the time of writing the drugs courts pilot was not long underway with a commissioned process and impact evaluation report expected in 2025 (Revolving Doors, 2023). Though, information available in the public policy documentation (H. M. Government, 2022, 2021; Ministry of Justice, 2020) and 'Expression of Interest' (EOI) document targeted at court managers bidding to run a pilot drugs court (Ministry of Justice, 2021) enable a critique of the intended operating model.

Three key changes are focused on. These are the expansion of drugs testing beyond the drugs treatment order (*i.e.* 'Drugs Rehabilitation Requirement' DRR) that urinalysis testing had previously been restricted to; the introduction of short custodial sentences (28 days) when the conditions of a drugs treatment order are contravened and simplified 'breach' proceedings for quicker decisions on non-compliance. Overall, this indicates the introduction of a 'graduated sanctions and incentives' approach which the previous English and Welsh drug courts omitted.

Whilst this is in keeping with the more authentic and often argued successful models, particularly from the US, it may fail to capture the health approach to drugs recovery which sees this as a non-linear process (Kougiali *et al*, 2017). These three main changes are addressed in turn, in terms of how they relate to the drugs court design of the English and Welsh justice system.

Firstly, we can assume the drugs courts will operate in a similar form to the previous DDCs wherein those eligible for inclusion have pleaded guilty to an offence that meets the threshold gravity for a drugs treatment order and through the standardised drugs assessment measure a person is found to have a drugs dependence problem.

The EOI documentation stated the target group are those 'facing a community order, a suspended sentence order or who would otherwise be facing up to 24 month's custody' (Ministry of Justice, 2021: 5). This indicates the new drugs courts are designed to select people whose 'index offence' lies within the more serious community sentence range and on the custody threshold. Although, we go onto point out that it is important the new drugs courts have a clear vision of their aims and objectives and that a tightly defined selection and eligibility criteria is fundamental to their success.

Specific detail on the treatment modalities available through the new drugs courts was not set out in the official documentation. The long-established harm reduction and stabilisation methods embedded within UK drugs treatment policy (*e.g.* methadone and buprenorphine prescription) are most likely. But, cross-referencing between the sentencing and policy statements show 'abstinence' is also an indicated aim. The EOI document stated drugs testing requirements 'will help monitor the offender's abstinence' (Ministry of Justice, 2021: 14). This raises fundamental questions linked to the occurrence of relapse during individual drugs stabilisation and recovery journeys (McSweeney, 2010) that require medical understanding and a degree of flexibility within legal and penal decision-making.

The three main features of the 'graduated sanctions and incentives' approach are now addressed in turn.

**Expanded drugs testing**

The *Police, Crime, Sentencing and Courts* 2022 (PCSC) legislation provides the framework for a drug testing system that goes beyond the DRR treatment order to which it has previously been restricted. The threshold for a DRR was set up under Section 209 of the *Criminal Justice Act* 2003 to establish a supervised drugs health treatment sentence. Threshold changes were made under the *Legal Aid Sentencing and Punishment of Offenders Act* 2012 removing the need for a DRR to be imposed on sentences of at least six months or longer. The latest shift introduced under the *PCSC Act* 2022 expands testing further, allowing it to be implemented outside of a DRR and within a wider range of community sentence orders. This potentially imposes testing on people who are not dependent users, but whose offence indicates involvement with drugs, such as 'possession' charges. If applied in this way, it widens the scope of court sanctioned drugs treatment. Importantly, it establishes consequences for failed drugs tests and is demonstration of the UK government's interest in controlling the availability and use of drugs through a variety of penal system responses (H.M. Government, 2021).

**Graduated sanctions and 28-day prison custody**

The graduated sanctions and incentives scheme that is a feature of the new drugs court model includes the imposition of short custodial sentences 'for non-compliance' (*e.g.* a positive drug test) and goes hand in hand with the drugs testing just discussed. It mirrors the US drugs court model that advocates drugs abstinence and uses the threat of 'jail time' as a deterrent to drugs

use continuation. As noted, the 'reprimand' feature of the US drugs courts is criticised by a number of commentators as overly punitive (Comstock, 2023; Kawalek, 2021; Goldkamp *et al*, 2002). Moreover, there is ample evidence that shows time in prison custody however brief severs employment, housing and family relations, has negative impacts on children and makes homelessness more likely on release (Gust, 2012). Thus, it is somewhat of an irony within the rationale of drugs courts given there is recognition by the UK government that short-term prison sentences fail to break down recidivist cycles (Ministry of Justice, 2023), yet they are present within the drugs court model itself.

**Judge review of breach**

The other main change as set out in the *PCSC* legislation and tied to the new drugs court model is that which enables a monitoring judge to initiate breach decisions. Schedule 15 of the legislation makes provision within the courts' powers to review community and 'suspended sentence orders' and to commit a defendant to custody for breach (H.M. Government, 2022). Wherein, having a regular judge who oversees the caseload is a strength of the drugs court model, a concern can be raised. Reviewing court order breaches for those on community sentences is currently performed by probation in their role as offender managers. Cases are brought back before the courts for special breach hearings with legal representation available to assist defence mitigation. The change under the *PCSC* legislation empowers judges to rule in a progress review hearing whether breach of an order has occurred, with re-sentencing and a possible short custodial sentence justified at this point.

Aligned to these potential changes, a position paper by the Centre for Justice Innovation (CJI) promoted a central role for probation in the new drugs courts, stating the model's focus on outcomes lends 'itself more to professionals with experience of offender behaviour' and favoured probation in a key 'co-ordinating and resourcing' position (Bowen, 2020:6). Further, the CJI argued custodial time for breach of an order should be used 'sparingly' and 'only as a much wider set of incentives and sanctions' (*ibid.* 5.). The CJI essentially rejected the new sentencing powers stating they 'should only fully extend to the substance misuse pilots' (*ibid.*: 5) and not through a blanket introduction.

**The role of probation in drugs courts**

The valued role of probation in a drugs court model was highlighted by one of the magistrates in the earlier courts research who emphasised probation's assistance in assessing participant suitability and a person's ability to manage the multiple requirements of a drugs order was critical:

> …….. in many cases their lives are very chaotic, ….the fact that they've got to be drug tested twice a week, they've got to be in a particular place at a particular time twice a week, that they've got to work with probation and so they've got to turn up for appointments. They've got to turn up for follow-up court appearances before us, in some cases to give a drugs order is actually setting somebody up to fail. So in those cases, we can see it's unlikely to work, but perhaps more importantly, we'll ask probation for a pre-sentence report and the people in probation are very knowledgeable and experienced and so they will understand the tough requirements of the order and will say well actually this person isn't really ready for that sort of commitment. (Magistrate 1.)

These issues are at the fore of some criticisms of the US drugs courts model. Results from research analysing differences between graduates of a drugs court programme and non-

completers, showed those who received sanctions within the first 30 days of a programme were more likely not to graduate, with it considered early accrual of sanctions may be indicative of 'low motivation' and the need for more intervention (McRee & Drapela, 2012: 915). Conversely, other studies show being employed is positively correlated with completion (Gallagher *et al*, 2022). Thus, issues of participant selection are paramount especially where a feature of the model is the use of graduated sanctions and 'jail time' for failure as the new drugs courts of England and Wales imply.

Another critical consideration for the news drugs courts is the already established partnership work between probation and substance use services. This is for the medical effects of drugs dependence to be well understood by court judges and expert knowledge to be applied when decisions of breach might not be warranted. Such issues are highlighted by the same magistrate as above who underlines these boundaries in their court judging role. He stresses the need for medical expertise when it comes to decision-making surrounding drugs use stabilisation and dosage of substitution medications:

> One thing we must never do as a drug panel is to say to them "oh I see you're on 100mls of methadone, by the time you come next time we want to see you down to 50" [mls]. We are not medical, it is not us, we can do more harm than good .., because we are not there as medical people, we are there to give support. (Magistrate 1.)

**Drug courts effectiveness and success**

As noted, a range of differing views exist on the effectiveness of drugs courts with some studies reporting positive participant experiences and others pointing to a range of injustices that can be levelled in particular, at US drugs court models. Logan and Link (2019) conclude drugs courts are 'generally succeeding in their goals to process those with substance abuse issues in ways that may disrupt the cycle of relapse, crime and reincarceration' (*ibid.* 284). Yet, they highlight problems with a model that includes low-risk offenders and the potential for more harm to be caused by mixing with higher risk drugs users. They state how 'programs that are successful in selecting high-risk individuals are more effective and that 'getting the initial selection process "right" is integral to the program's success' (*ibid.* 286). A 2018 UNODC & WHO report similarly argues drugs courts are 'most effective when they target higher risk and higher need offenders' and that 'drugs courts that serve first time or low-risk offenders are not likely to be cost effective' (*ibid.* 49).

Logan and Link (2019) additionally argue the limited success of US drugs courts is linked to the lack of a theory-informed practice and what is known within criminology and desistance studies. They highlight the way reductions in reoffending are achieved when individual factors of socialisation, family support and social inclusion are addressed alongside the focus on drug use reduction, compliance and conditionality. Best *et al*, (2017) writing on 'recovery' and drugs use cessation also draw on understandings within desistance processes. Relational and life-course factors, stable partnerships, aging and maturation and social identity and 'identity change' approaches were found correlated with the termination of crime and offending. These should be key messages for the new drugs courts of England and Wales.

Points connected to the way drugs courts are deemed successful is also a necessary consideration. Government-funded pilot interventions are usually only considered for continuation if 'outcome effectiveness' is demonstrated. How success is to be evaluated in the new pilot drugs courts is not made explicit, but the underpinning goal of reducing drugs offending shows breaking recidivist cycles is paramount. The interviews with the drugs court

magistrates included their views on what success for participants should be judged on. Allowing 'time' and it not realistic to expect someone to be completely drug free after a six-month period was emphasised:

> .. success is to get to the end of the sentence, so it's normally six months, occasionally nine months, and at that point to not have reoffended and to be on a sustainable path to being drug free. It's not really realistic to say you must be completely drug free after a six-month period, but if they're working with the various agencies and they're on a sustainable path, then that's a definition of success. (Magistrate 1.)

In an associated manner, Verberk (2011) from her research on US drugs courts and its application in the Dutch context touches on this, commenting 'abstinence is not necessarily the final goal; making addiction problems manageable can be a suitable alternative for the most problematic users' (*ibid*.: 132). It is these alternative visions that require consideration in the new drugs courts of England and Wales.

**Discussion and conclusion**

This essay has critically examined the likely model of drugs courts as indicated in the various legislative and policy documents and asks the fundamental question of whether drugs courts are needed in the English and Welsh justice system? We argue in the absence of well-funded, comprehensive and accessible community-based drugs treatment services, drugs courts can be seen as a rational response to the volume of people with drugs dependence problems appearing in courts and faced with criminal prosecution. But, it is a model that assigns the courts and the criminal law to address what are complex health and welfare issues. We worry that the revised legislation and implied use of short custodial sentences for breach goes against the therapeutic underpinnings of these treatment courts.

We argue it is vital that effective avenues into low-threshold specialist drugs treatment in the community is sufficiently resourced. It should not be through efficient processes of police arrest and drugs prosecution in court. Swift advances need to be made with the ringfenced funding so that people with drugs dependence issues can receive assistance without stigmatisation before problems escalate to that where forms of coerced drugs treatment surpass the more effective voluntary take-up of community support services (Stevens, 2012; Seddon, 2007).

It is critical the implementation of a drugs courts model that extends the powers of the courts and the judiciary and enables sanctioning of people with drugs health problems to 'jail time' for perceived failure is implemented carefully and exercised with caution. Trying to achieve drugs abstinence through a deterrence strategy of prison time misses the point. Drugs courts must not set people up to fail and they must not become a 'net-widening' apparatus in which people are assigned to a drugs court to address a range of drugs use styles. They should not become proxy courts that draw in marginal users who happen to become caught up within the criminal court system as a result of drugs law policing and prosecution.

Any model of drugs court implemented in the English and Welsh justice system must concentrate on a carefully considered operational design that includes a tightly defined selection and eligibility criteria. If 'jail time' is to be enacted for non-compliance, the 'index offence' should meet the custody threshold, thereby providing some justification if indeed non-conformity does lead in this direction.

We have concerns that given the lack of successes previously in England and Wales, policymakers are ill- informed of the therapeutic theoretical models the courts were premised upon and thus we risk another series of failures if implemented with only a cursory understanding. A 'graduated sanctions and incentives' approach can be acceptable, but only when situated within a theoretical framework that recognises the complexity and longevity of desistance and recovery narratives. It is a model that must be exercised proportionately and reasonably, and staff and policymakers must be well informed and educated around the health model and by the medical sciences on the complex nature of drugs dependence. Moreover, the proven medicines for drug use disorder need to be understood as 'recovery' in the same way as non-medication-assisted abstinence might be.

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