Sentencing drug users

Destonian/Fotolia.com

Earlier this year the UK Drug Policy Commission, an independent charitable body which analyses the evidence to support drug policies, published its report *Reducing Drug Use, Reducing Reoffending*. We considered whether interventions within the criminal justice system (CJS) aimed at problem drug users are effective at reducing drug use and offending, and whether they offer value for money. Our three main findings were, in short:

1. We know little about the effectiveness of many CJS-based drug interventions, especially those in prisons, despite the considerable public expenditure.
2. Prison drug treatment provision often falls short of even minimum standards.
3. We risk causing more harm than good by sending a significant and growing number of problem drug users to prison, especially for relatively short sentences.

The case for community sentences over short prison sentences is well rehearsed, but when considering problem drug users there are additional factors to take into account. Typically (though not always) their offending is closely linked to their drug use and tends to involve less serious acquisitive crimes such as shoplifting. Therefore they are likely to experience only short spells in custody which can have a serious, negative effect on their rehabilitation through:

- loss of stable accommodation and employment;
- disruption to family relationships and other sources of personal support;
- disruption to any community drug treatment with little prospect of 'equivalence of care' in prison due to variable standards and limited treatment options;
- increased risk to health (particularly if injecting drugs) whilst in custody;
- increased risk of overdose and death upon release if tolerance has dropped (following a period of abstinence or reduced dosage); and
- temporary loss of benefits following release while new claimants are processed (having been automatically dropped from the books when entering prison).

Despite this, 80% of new receptions to prison have a history of substance abuse and between one third and one half are estimated to be current problem users. Of course, evidence of drug problems should not automatically preclude someone from serving a prison sentence, but as the World Health Organisation (WHO) has said:

People with substance dependence are among the most marginalized in societies and are in need of treatment and care. To incarcerate offenders for drug use and dependence is not an effective prevention or treatment strategy.

There is a lack of robust comparative studies, but the available evidence suggests community sentences are likely to be just as good as custodial sentences at reducing reoffending and drug use and, given the high costs of prison, they are likely to offer better value for money.

THE PROBLEM FOR THE COURTS

However, for the judiciary there remains a significant dilemma. Most acquisitive crimes attract a community sentence in the first instance and, if drug use has been identified as an issue, a drug rehabilitation requirement may be attached. However, just 43% of drug rehabilitation requirements (DRRs) were successfully completed in 2007/08 in England and Wales. When magistrates and others are faced with multiple breaches, short prison sentences might seem like the only option. The Criminal Justice Act 2003, which requires that breach sentences are more onerous than the sentence breached, has increased the likelihood of custody.

Therefore the big question is whether we can ensure that appropriate and effective alternatives to custody for those with drug problems are available, utilised, and delivered in a way that will preserve the authority of the courts.

Part of the problem is that, as a recent Ministry of Justice study showed, there is wide regional variation in the use of custody which is not at all linked to levels of overall crime and only weakly related to levels of acquisitive crime. There may be many reasons for these variations, but the effective use of community sentences will be hampered if some regions feel less willing to use them than others. An early review of drug treatment and testing orders (DTTOs) also found considerable regional variation in completion rates, from 71% in Dorset to just 8% in Kent. Again, there may be many reasons for this variation, but in our report we suggest that an early focus on *quantity* (ie getting increasing numbers into treatment), whilst welcome, may have led to an insufficient focus on the *quality*

Dame Ruth Runciman suggests that the criminal justice system could find more effective outcomes – both for the users and for society

of provision and thus on outcomes. For instance, some probation areas have tended to offer a narrow range of services which may not always meet the differing needs of drug-using offenders. In particular, there can be inadequate provision of residential treatment, and services for stimulant (eg crack) users.

As well as being a conduit to drug treatment, some courts also link to services which address the many other issues which can impede recovery (eg unemployment, debt, homelessness, mental health and relationship problems). Specialist drug courts sometimes come close to resembling 'one-stop shops' for offenders with drug problems, not least because members of the judiciary can have influence over services where these are locally available. There are likely to be many benefits of a one-stop shop for substance abuse, but perhaps it would be preferable if these existed outside the courthouse and were open to offenders and non-offenders alike, with the court one of many services available, as is sometimes the case in the USA.

A MORE FLEXIBLE APPROACH

Drug courts are not cheap when compared with non-specialist courts, but there is good evidence, mostly from the US, to support their flexible, problem-solving approach. There will soon be four new drug courts to add to Leeds and West London but if the approach is rolled out nationally then, realistically, the underlying principles will need to be integrated into general community sentencing practice. This will present challenges, such as the logistics involved in providing continuity of judiciary. However, magistrates have proved that this can be done in Leeds and elsewhere albeit with extra training, special rota arrangements and, crucially, magisterial commitment.

An evaluation of the Leeds and West London drug court pilots found that training the judiciary in, among other things, the nature of addiction was essential for success. An understanding of addiction has two key benefits for sentencers. First, it can help them identify offenders who are committed and able to comply with a DRR and match them to the appropriate services, ideally involving the offender in this process to improve their motivation and 'ownership' of recovery. Secondly, it can help them react appropriately when there are breaches, as relapse is not simply an unwillingness to comply. Again, to quote the WHO:

Substance dependence is not a failure of will or strength of character but a medical disorder that could affect any human being. Dependence is a chronic and relapsing disorder, often co-occurring with other physical and mental conditions.

Drug courts find a balance between creating certain boundaries that drug users know must not be crossed and allowing some flexibility in the review process to deal with inevitable setbacks. Sentencers with an understanding of addiction appreciate that sanctioning problem drug users may not always yield the anticipated results. Research has shown that sanctions have less potential to influence behaviour when non-compliance is linked to difficult personal issues including problematic substance use. Furthermore, studies of brain patterns of long-term drug users show they are more likely than others to favour impulsive, short-term rewards even when these conflict with longer-term goals. Exploiting this, an approach known as 'contingency management' incentivises progress through drug treatment (eg through the promise of vouchers). Although in the UK this approach is in its infancy and is being formally piloted, one court-based example involves promising a laptop computer, clothes or furniture (purchased using a trust fund) in exchange for a series of negative drug tests. This is not to suggest that for problem drug users it should be 'all carrot and no stick', but evidence suggests both sanctions and incentives need to be carefully deployed to maximise motivation and behaviour change.

Although potentially controversial, alternative options that divert drug-using offenders into helping services early on in their offending and drug-using careers and 'down-tariff' those who engage successfully might also be explored. Scotland is piloting structured deferred sentencing whereby persistent young offenders, many of whom have drug problems, are subject to structured social work intervention following conviction but prior to sentencing. An evaluation found that compliance was higher than for community service or probation, and a lesser sentence (or admonishment) was then considered appropriate in many cases. The pilots have since been extended to two more areas. This is an interesting approach as treatment is not linked with punishment and incentives for progress are perhaps clearer and potentially more motivational than the threat of sanctions under DRRs. To some extent, deferred sentencing is already practised in England, albeit on a more discretionary basis. For example, courts may offer an offender a 'last chance' if they reoffend during the early stages of a sentence, with the expectation that they will be suitably motivated to remain compliant for the duration of their sentence. However, programmes such as structured deferred sentencing would give the courts more options.

In our review, the UK Drug Policy Commission recognised the benefits of focusing on problem drug users through the criminal justice system – it can and does work to reduce offending and drug use. However, it is clear that following a period of expansion, attention must now focus on quality – of sentencing, services and supervision – to improve outcomes.

Dame Ruth Runciman is Chair of the UK Drug Policy Commission. The report *Reducing Drug Use, Reducing Reoffending* can be downloaded from: www.ukdpc.org.uk/reports.shtml