Policy forum

The role of drug testing in the criminal justice system

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Abstract

Despite a considerable increase in drug testing within the criminal justice system (CJS) through schemes such as the drug interventions programme, research is equivocal about its added value, as a recent series of reports from the UK Drug Policy Commission highlighted. The role of drug testing needs to be clarified and its cost-effectiveness confirmed through studies with comparative regimes. Any further expansion of drug testing within the CJS should be undertaken with caution.

Key words

drug testing, criminal justice system, drug treatment and testing orders (DTTOs), drug rehabilitation requirements (DRRs), mandatory drug testing, addictions testing measure

The UK Drug Policy Commission (UKDPC) recently published a series of reports that looked at interventions within the criminal justice system (CJS) for problem drug-using offenders, including a review of the evidence by King's College London and findings from consultations with policy makers, practitioners and service users (UKDPC, 2008a/b; McSweeney *et al*, 2008).

One striking finding that has implications for a number of areas within the CJS was that contemporary research is equivocal about the 'added-value' of drug testing. This is despite a significant growth in testing regimes in the CJS in the last decade, to identify problem drug-using offenders and monitor compliance with drug rehabilitation orders. A systematic review of the international literature on programmes aimed at reducing drug-related crime found no conclusive research evidence on the effectiveness of testing either as a stand-alone form of routine monitoring or in providing added value when used in combination with treatment interventions (Holloway *et al*, 2005). A Home Office evaluation of their drug testing pilot programmes (Matrix Research and Consultancy and NACRO, 2004) suggested that there might be benefits with respect to engagement with programmes but the research design limited the conclusions that could be drawn. Given that drug testing is not without cost (Home Office drug interventions programme guidance suggests costs of about £10–£14 per test using oral fluids, while urine testing is more costly) and there will be in excess of 250,000 tests a year in police custody suites and prisons in England and Wales alone[1], the role and cost-effectiveness of drug testing within the CJS should be carefully

[1] Based on over 200,000 tests a year within DIP (Home Office, 2007) and over 50,000 tests under mandatory drug testing (MDT) in prisons (HM Prison Service, 2007). In addition to these, there are also tests associated with the voluntary testing regimes within prisons and associated with DRRs.

scrutinised and until then we should be cautious about further expanding drug testing programmes.

Testing on arrest and charge

Within the drug interventions programme (DIP) in England and Wales, mandatory drug testing in custody suites using oral swabs is used to identify heroin, crack and cocaine users in order to encourage them to enter treatment. When DIP was first introduced in 2003, drug testing became mandatory for those charged with certain 'trigger' offences, mostly acquisitive crimes such as burglary, which are known to have a strong relationship with problem drug use, in certain 'intensive' (high crime) areas. The Drugs Act (2005) provided for testing on arrest as a (preferred) alternative to testing on charge, and was introduced across all DIP intensive areas in England in 2006. Figures for 2007/08 show that 175 custody suites in England and Wales were testing either on arrest or on charge and this is set to expand under self-funded initiatives. In 2006/07, 39,903 arrestees entered treatment in England and Wales in 2006/07 via DIP (Hansard, 2008).

Testing on arrest, as opposed to on charge, has successfully increased the numbers being tested and engaging in treatment (Skodbo *et al*, 2007). However, it led to a decrease in the proportion of those who tested positive and the proportion of those who were high-rate offenders. There was also an increase in the proportion being assessed as not requiring an intervention and an increase in the proportion being referred to receive non-specialist (tier 2) treatment interventions. Thus, the costs of identifying offenders for treatment in this way have gone up, as more tests and assessments are 'wasted' for every offender actually referred for treatment. There is as yet no evidence as to whether the programme is able to deal with these less problematic users effectively.

There is some evidence to suggest that the effectiveness of drug testing on arrest as a mechanism for identifying problem drug-using offenders who are not in contact with services, may be eroded over time. The *2005/06 Arrestee Survey* (Boreham *et al*, 2007) showed that of those arrestees who used heroin and/or crack (HC) at least weekly:

- 79% had been arrested at least once before in the past year
- 57% of these had been drug tested before at a police station (by comparison, in the 2003/04 survey, 27% of frequent HC-using arrestees who had been arrested previously, reported having been tested at charge before)
- the proportion of heroin-using arrestees who were already in treatment had increased between 2003/04 and 2005/06.

The Arrestee Survey also showed that the proportion of those arrested for trigger offences who reported taking heroin and crack at least weekly decreased from 35% in the 2003/04 survey to 24% in the 2005/06 survey. The reason for this is not clear, for instance, it might be a result of the efforts made to reduce drug-related crime or of changes in policing practice, but this also suggests that efficiency of the drug testing programme may reduce over time since the number of tests that will be required for each problem drug user identified will increase.

Net-widening

There have been calls to further extend the use of mandatory drug testing in the custody suite by expanding the range of trigger offences or testing for a wider range of drugs. The UK strategy states that drug testing powers will be kept under review, '*for example by considering the range of substances for which an offender is tested, where emerging new drugs pose a threat to continued reductions in offending*' (HM Government, 2008). However, as the data indicate, any such expansion is likely to suffer from diminishing returns in terms of even greater costs for every additional drug user identified and smaller gains made by reducing re-offending.

The Arrestee Survey (Boreham *et al*, 2007) shows that users of other drugs have much lower rates of offending than those who use heroin and crack and are less likely to have committed a crime to get drugs or when under the influence of drugs. They also use drugs less frequently. Therefore, while 'net-widening' to include less problematic users (perhaps earlier in their offending and drug careers) in CJS-based interventions may be intuitively appealing, the evidence suggests this is not appropriate and may have a range of negative consequences. Current government guidance states that the principle should be that '*drug-related crime should be dealt with by drug-related punishment*' (NOMS, 2005). There is a danger that less problematic drug users, whose offending is not related to drug use, might face additional sanctions as a result of failing to complete drug treatment associated with, for example, a DTTO or DRR, leading to the further criminalisation of these, mainly younger, drug users. The recently announced pilot of DTTOs for lower level offenders in Scotland appears to recognise these

dangers and it is important that this issue is addressed in the evaluation. Interventions to prevent the escalation of drug problems among recreational drug users require a completely different approach to those for drug-dependent offenders. In addition, the need for such interventions should be considered alongside those for alcohol misuse and other factors, which may underlie both the drug use and the offending. This is not to suggest that intervening with 'recreational' and less problematic drug users is not valuable, rather that for the CJS the priority for drug-specific interventions should be with those whose drug problems are most severe and whose offending is more likely to be directly drug-related.

Expanding the range of trigger offences will have a similar effect, as the offences most likely to be committed by heroin and crack users were included in the original list. On top of the additional costs associated with testing and assessment, there may be an impact on quality from any extension of testing. Even if those who do not need treatment are filtered out at the assessment stage, there is a danger that the sheer volume of assessments and subsequent interventions will impact on their quality and might have wider implications for mainstream provision (eg. capacity to cope, or diversion from dealing with more severely affected clients). There has also been no comparative study of the impact of the work of criminal justice integrated teams (CJITs) in non-intensive areas, where more traditional arrest referral approaches rather than drug testing are used to identify problem drug-using offenders, which anecdotal evidence suggests can also be effective. These non-intensive areas could provide valuable comparisons for intensive areas (despite inevitable differences between the populations). The piloting of drug testing at charge in Scotland could provide a similar opportunity for comparative research.

Drug treatment and testing orders (DTTOs) and drug rehabilitation requirements (DRRs)

Unlike previous community sentences, the DTTO introduced in 2000 made regular use of drug testing and court reviews in an effort to promote compliance and behaviour change. There were 15,799 DTTO/DRR[2] starts and 5,939 completions in 2006/07 (National Probation Service, 2007).

The apparent clarity of a positive or negative test result in a criminal justice setting is, of course, particularly appealing (although it should be noted that the tests are not infallible and there are issues, for example, false positives associated with prescribed medication and varying ability to detect different drugs (Paterson, 2008), that need to be considered). However, it is not clear that drug testing offers additional value on top of the treatment regime itself. Many professionals involved in DTTOs and DRRs recognise that testing can have a role to play in motivating and reinforcing good progress for those engaging with criminal justice interventions. However, excessive testing was considered expensive and potentially destructive to the motivation of those reducing their levels of drug use and often of limited value to practitioners as it fails to accurately detect different patterns of use (such as reductions in the quantity or frequency of use, or changes to patterns of injecting behaviour) (UKDPC, 2008b).

Users and practitioners also felt that in many cases little use was made of the results of the tests. It is important that failed drug tests do not necessarily result in a negative sanction, since the relapsing nature of drug dependence and the severe drug problems of some offenders may make abstinence extremely difficult. Furthermore, a failed test might simply indicate a need to review the level of substitute medication or the need for alternative or additional interventions. However, there was a strong feeling from both users and practitioners we spoke to that testing should only be done if it has a specific purpose and that, if and when repeated failed drug tests do occur, they should have clear consequences. While this is simply good practice, it appears that at present this is not always being followed, and that resources and opportunities for reinforcement are wasted as a result (UKDPC, 2008b).

Emerging findings from Project HOPE in Hawaii, suggest that where positive tests or missed appointments are met with clear and rapid sanctions then this can have a positive effect on behaviour (Alm, 2008). Similarly, reinforcing positive behaviour through so-called 'contingency management' or incentives has also been shown to impact well on behaviour and outcomes (NICE, 2007).

Drug testing in prisons

In England and Wales, a programme of mandatory drug testing (MDT) is carried out within prisons to detect and deter drug use within prisons. In some cases this is also used to identify prisoners who might benefit from drug interventions. In 2006/07, 8.6% of mandatory drug tests in prisons were

[2] DTTOs have now largely been replaced by DRRs in England and Wales but have remained in Scotland.

positive compared with 24.4% in 1996/97 (HM Prison Service, 2007). An evaluation of the programme conducted in 2001 identified many limitations (Singleton *et al*, 2005). It indicated that MDT probably provided only a minor deterrent effect: fear of detection by random drug testing was just one of many factors affecting drug-using behaviour in prisons. MDT also underestimates use, and may in a very few cases have encouraged initiation of heroin use (because heroin use is detectable for a much shorter time than cannabis use) and rarely resulted in referral to treatment.

In Scotland, there is recent experience of three different types of drug testing regimes in prisons, demonstrating different approaches for different aims. MDT, where results were attributable to individual prisoners, ran until 2005. The 2008 Scottish Drug Strategy states that,

> *'Punitive responses to drug use, as happened under mandatory drug testing, have been found not to be a deterrent to drug users, had limited success as a trends and prevalence measure and did little to encourage problem drug users into treatment'* (Scottish Government, 2008).

Therefore, MDT was replaced by the addictions testing measure (ATM), which involved voluntary anonymised testing on a sample of the prison population to encourage compliance and avoid the necessity for cheating, which might affect the accuracy of the results. ATM aimed to better inform decisions about the type and range of interventions required in the general prison population but could not be used to identify individuals for either sanctions or drug treatment and there was a high refusal rate. In 2007, addictions prevalence testing (APT) was introduced, replacing ATM. Under APT there are still no sanctions for a positive test but there are sanctions for non-participation. The data will be used as a performance indicator against a target of a reduction of positive tests on release compared to on admission.

Consideration and conclusions

Clearly drug testing within the CJS has become an important and established tool both for the identification of problem drug users and for encouraging and monitoring compliance with drug rehabilitation orders. However, there is still much that is not known or understood about the added value of drug testing and its relative cost effectiveness. For instance, while testing in custody suites is popular, there is evidence that traditional arrest referral approaches may also be successful in identifying and engaging drug users in treatment. However, there have as yet been no evaluations that would allow comparison of outcomes or value for money with drug testing in custody suites.

There also needs to be more clarity of the role of drug testing to ensure that it remains purposeful and effective. For instance, it is important to determine whether the principal role of drug testing within DTTOs/DRRs and within prisons is to monitor use, to deter use, to encourage engagement or compliance with orders or interventions, to allow services to adapt to need, or to motivate behaviour change. This would affect the approach taken and the criteria on which drug testing should be judged.

This suggests that research is needed to cast light on these issues and that further expansion of drug testing within the CJS should only be undertaken with caution. It is also important that the use of drug testing within programmes is reviewed regularly to see whether it remains effective and necessary.

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