

**THE MAGISTRATES' ASSOCIATION**  
**SENTENCING POLICY & PRACTICE COMMITTEE**

**Drug Offences – Policy**

**Background**

The range of offences under the Misuse of Drugs Act 1971 extends from producing, importing and supplying drugs, carrying maximum penalties on indictment of 14 years imprisonment, through permitting premises to be used for drug related activities and down to possession of small quantities of drugs for personal consumption for which a fine is a typical sentence, or even an out of court disposal (eg a cannabis warning letter) for a first time offender.

The Drugs Act 2005 covers other matters connected with the testing and assessment of offenders under the Drugs Intervention Programme (DIP).

Magistrates' powers allow them routinely to sentence those who use drugs or supply them in a very small way. For bigger quantities and anything which suggests the supply to others, magistrates will normally send to the Crown Court in line with the Magistrates' Court Sentencing Guidelines (MCSG).

However, many drug users appear in magistrates' courts charged not with drug offences but with the acquisitive crime (mostly theft, occasionally low level burglary) which funds drug taking, and sentencing them requires knowledge of the drugs trade and drug treatment programmes designed to reduce reoffending.

**Issues**

- Are magistrates sufficiently well informed and trained to participate properly in the multi-agency approach which is essential for success in the treatment of drug users and their rehabilitation?
- What are the implications of the recently published advice of the Sentencing Advisory panel on sentencing drugs offences?

**Arguments**

**Drug Interventions Programme**

The following text in italics is taken from the Home Office website:

*The Drug Interventions Programme (DIP) is a key part of the government's strategy for tackling drugs and reducing crime. And it's working: acquisitive crime - to which drug-related crime makes a substantial contribution - has fallen by almost a third since the programme started and record numbers of people are being helped with their drug misuse.*

*The programme, often known as DIP, involves identifying Class A drug misusing offenders as they go through the criminal justice system and putting into action a range of interventions to deal with their behaviour, getting them out of crime and into treatment and other support. This begins at an offenders first point of contact with the criminal justice system and continues through the journey that can include custody, court, sentence, treatment and beyond into resettlement.*

*These webpages about the programme are primarily aimed at stakeholders who help deliver, or come into contact with DIP. They describe the interventions, how things fit together and what impact DIP is having. There is also an extensive range of publications and other documents to aid understanding of the various parts of the work.*

*Key things to note about the Drug Interventions Programme are:*

- *the programme is successful in helping reduce drug-related crime in England and Wales (since it began, acquisitive crime - to which drug-related crime makes a substantial contribution - has fallen by 32 per cent)*
- *it is a key component for delivering against a range of cross-government targets and indicators concerned with reducing offending and drug misuse, improving health and fighting social exclusion (it also sits at the heart of the national drug strategy)*
- *it offers a win-win solution: drug-misusing offenders get help through treatment and support; communities suffer less crime and criminal justice costs are reduced*
- *more than 4,500 habitual drug misusers are entering treatment and rehabilitation programmes through DIP every month and many are now back in the mainstream of society*
- *many DIP clients are among the hardest-to-reach and most problematic drug misusers and have not previously engaged with treatment in any meaningful way*

Not all magistrates will be familiar with DIP. It operates in London, the large metropolitan areas in the Midlands and the North and some other towns and cities, such as Bristol, Peterborough, Reading, Oxford, Cardiff and Swansea. 174 police custody suites conduct drug testing of those arrested or charged with “trigger” offences associated with drug taking, mainly acquisitive crime. 240,000 tests a year, involving a swab under the tongue, are administered by trained police staff and the results are available in a few minutes. One third of results are positive for heroin or crack/cocaine.

The impacts on the courts are these:

- Positive drug tests should be communicated to the court at first hearing but there is no reliable information which can confirm that this always happens. In fact there are concerns that information is not shared routinely between police, CPS, courts and probation.
- Once the court knows about the positive drug test, (see Magistrates’ Court Bench Book 1-26) the defendant cannot be granted bail if he is unwilling to participate in any proposed further drugs assessments, unless the court is satisfied that there is no significant risk of an offence being committed on bail. This is known as the Restriction on Bail (RoB). However for some 20% of defendants no further assessments are proposed so there is no Restriction on Bail and the reasons for this are not understood.

- The whole point of the DIP is that drug users should be treated appropriately through the entire Criminal Justice System and beyond, including sentencing, accommodation, access to benefits, treatment, access to drug substitutes, etc. However it is not known if those identified under DIP at the outset are more likely to be sentenced to a Community Order with Drug Rehabilitation Requirement or not.
- There are also concerns that not all magistrates and legal advisers are well enough informed about DIP and their powers. The Judicial Studies Board is preparing more information for the Bench Book, particularly more guidance about the Restriction on Bail.
- There are some dedicated drug courts (See Magistrate, February 2010, page 29). Carole Wurr JP, chairman of the drug court panel of the Leeds Bench was quoted: *“I am a strong advocate of dedicated drugs courts because they work. These are problem-solving courts, and the key to this is that the magistrates who sentence an offender will follow up with them every month until the end of their DRR. This helps them to achieve a stable and drugs-free lifestyle and cease offending.”*

### **Future changes to sentencing guidelines**

Just before it was abolished the Sentencing Advisory Panel (SAP) published updated advice on the sentencing of drugs offences. On the assumption that this advice will be accepted by the new Sentencing Council, the implications for Magistrates’ Courts are these:

- Possession – no change from the guidelines published in August 2008.
- Production, particularly of cannabis, attracts increased penalties but mainly because it has been reclassified as class B since the MCSG were published in August 2008, but see below in connection with identifying the defendant's role in the operation.
- Permitting premises to be used – this is a new guideline. Magistrates’ Courts will sentence cases where the drug-related activity was incidental, eg drug dealing in an otherwise legitimate public house. Cases where the premises were used primarily for drug activities are considered more suitable for the Crown Court.
- Supply (and importation is sentenced in the same way) - there are some significant changes for the magistrates' courts. Courts will need to identify whether the defendant has played a leading, significant or subordinate role in the drugs operation.
- If the role is subordinate, magistrates may keep a case which would previously have gone to the Crown Court (subordinate role in the supply of class A).
- If the role is leading, magistrates may send up a case which would previously have been kept (leading role in small scale supply of class B)
- There should be no great difficulty, based on the advice and role descriptions provided by the SAP to decide what is a subordinate role but it is possible that the police and CPS may not have clear cut information.
- Magistrates may need to work out where the defendant fits into the hierarchy of a drugs operation from listening to the circumstances of the arrest. Previous convictions may also indicate the depth of an individual's involvement in the drugs trade.
- An offender who is a foreign national and plays a subordinate role in importing drugs could receive a sentence of less than 12 months custody and therefore not be liable to deportation on release.

The SAP also advises that those who mastermind big drugs operations are more likely to be deterred by confiscation of their assets than by very long prison sentences (i.e. sentences extended beyond what is required for punishment alone). It advocates more effective use of confiscation orders under the Proceeds of Crime Act, which are restricted to the Crown Court, although Magistrates' Courts can seize and detain assets ahead of final confiscation. The SAP has also rightly identified the role of "mule" or courier - often vulnerable, poorly educated and exploited individuals, a quarter of them women, who do not understand the implications of agreeing to import drugs into the UK.

**The SPPC is concerned that by identifying "mules" as playing a subordinate role and sentencing them more leniently, it may encourage more such individuals to run the risk of importing drugs.**

Magistrates recognise another subordinate role – that of "gardener" – vulnerable individuals, most usually from Vietnam or elsewhere in SE Asia who have probably been trafficked into the UK and then "imprisoned" in, usually, rented domestic properties, illicitly converted into cannabis factories. These "gardeners" tend the plants, seeing to watering, light and heat inputs and normally appear in court with no knowledge of English and bewildered by their circumstances. Magistrates follow their guidelines by sending them to the Crown Court and there is no proposed change in the SAP advice.

### **Trends and research findings**

The Home Office published Research Report 23 in December 2009 "Key Findings from the Drug Treatment Outcomes Research Study" which concluded:

- The drug scene is not static. Between 1996 and 2006 the use of crack or cocaine increased from 14% of drug users to 44%. Concurrently increasing referrals by CJS agencies has increased the proportion of drug-misusing offenders seeking treatment.
- Drug treatment is estimated to be cost effective. For every £1 spent, savings of £2.50 are achieved (not including savings from reduced offending)
- Treatment is equally effective whether it is received following CJS referrals (DRR as part of sentence; DIP following arrest; prison; probation) or whether it is received following referrals from agencies not connected with the criminal justice system.
- Use of drugs reduces during treatment even if it does not stop. Criminal activity reduces during treatment even if it does not stop.

### **Closure Orders**

Closure Orders are a part of the Anti-Social Behaviour Act 2004. Police can apply for one at a magistrates' court if they believe that the premises are associated with Class A drug activity (such as heroin or crack) **and** are associated with disorder or serious nuisance – like local crime, noise, or dealing, or drug use which is upsetting neighbours.

If such an order is granted in respect of a private house the residents can continue to live there but no visitors are permitted to enter the property.

**Although anecdotal evidence makes the SPPC believe that the use of closure orders has limited effect and that they lead to other nearby premises, perhaps in the next street or road, opening very shortly after a closure order is made, they do give some respite to the immediate neighbours of the property and we assume they find that to be beneficial.**

**Recommendations:**

- **The SPPC recommends that it should continue to monitor the wide gulf between the experiences of magistrates who sit in dedicated drug courts and those in rural areas and small towns where the DIP does not exist but who still sentence drug offences.**
- **The SPPC recommends that the power to impose confiscation orders should be extended to Magistrates' Courts so that assets can be confiscated in lower level drugs supply cases.**
- **The SPPC recommends that all foreign national offenders convicted of importing drugs or cultivating cannabis should be liable for deportation, even if their subordinate role means a sentence of less than 12 months.**

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