Briefing

Centre for Justice Innovation

Delivering a smarter approach:

Community Sentence Treatment Requirements (CSTRs)

Commitment in the white paper

A Smarter Approach to Sentencing' states:

"We are expanding the availability and usage of Community Sentence Treatment Requirements (CSTRs), to deliver tailored interventions to help support rehabilitation of those with a range of treatment needs so that we are addressing the underlying causes of the offending behaviour...We will achieve 50% coverage of mental health provision by 2023/24 and want to go further with drug and alcohol treatment too."

Purpose of this paper

It is clear that drug misuse, alcohol misuse and mental health ill health play a significant role in offending. Moreover, there is clear evidence that ensuring that offenders have access to high quality treatment can play a vital role in reducing re-offending. Community Sentence Treatment Requirements (CSTRs) is an umbrella term that brings together the three different requirements that courts can use to place an offender on a community sentence into treatment: the Mental Health Treatment Requirement (MHTR), Drug Rehabilitation Requirement (DRR) and Alcohol Treatment Requirement (ATR).

However, despite the compelling evidence base on the use of treatment to reduce re-offending, the use of CSTRs has been low. This is because of a lack of treatment provision for offenders in the community, the impact of court and probation reforms, and a lack of judicial confidence in and awareness of CSTRs.

This paper argues that the expansion of the CSTR programme outlined in the White Paper is welcome, but we believe that there is an opportunity in the forthcoming Spending Review to be more ambitious: the availability of high quality CSTRs across England and Wales by the end of this Parliament. To achieve this, the Government should increase the overall level of funding available for drug, alcohol and mental health treatment for probationers in the community, and should consider ring-fencing this funding.

Moreover, to deliver against this ambitious agenda, the lessons learnt during the first few years of piloting the CSTR programme should be built on, in particular, promoting good multi-agency working, investing in administrative capacity, facilitating the exchange of best practice and learning, and judicial awareness training.

Background

The prevalence of mental health, alcohol and drug misuse problems for offenders

Substance misuse and mental health issues are widespread among the offending population.[1] Research from the Ministry of Justice found an estimated 29% of adults serving community sentences with a mental health disorder.[2] An estimated 12% of people serving community sentences are at high risk of suicide,[3] and NICE report that an estimated 12% of adults serving community sentences have substantial or severe levels of drug misuse, and 52% are hazardous drinkers. A 2008 Centre for Crime and Justice Studies briefing reported that 46% of offenders on community sentences had an alcohol problem, and nearly a quarter had a drug misuse problem.[4] There are also links between mental health and drug and alcohol problems: among adults with mental health problems serving community sentences, an estimated 72% also screened positive for either an alcohol or drug problem.[5]

Although looking at a different cohort, HMI Prisons survey data is suggestive of the order of magnitude of the mental health, alcohol and drug misuse problems of those who could benefit from a CSTR: in their recent survey of prisoners, 17% of men and 28% of women identified as having a drug problem on entering prison, and 27% and 46% respectively identified as having a drug problem on entering prison. In addition, 47% of men and 71% of women survey respondents identified as having a mental health problem.[6]

A Ministry of Justice's report highlights that there are "well-established links between drug misuse and offending," and that "[d]rug misuse is also associated with reoffending". The same report notes that problematic alcohol consumption is associated with crime (especially heavy/binge drinking and violent crime), although the link between alcohol, crime and reoffending is complex and mediated by factors such as childhood experiences of violence, cultural norms and personality disorders.[7]

The effectiveness of treatment for offenders

A 2012 re-offending evidence review produced for the Scottish Government concluded that for offenders with drug misuse problems, "drug treatment programmes generally have a positive impact on reoffending and offer value for money".[8] A similar review for the Ministry of Justice in 2013 concluded that "[t]here is good evidence that a wide range of drug interventions have a positive impact on reducing reoffending" and that there was "mixed/promising" evidence that treatment and testing requirements can achieve reduced levels of reoffending and drug misuse.

The same review concluded that while there was "currently insufficient evidence to determine the impact on reoffending of alcohol treatment for offenders," there is good evidence that "alcohol-related interventions can reduce hazardous drinking".[9] Moreover, recent research for the Ministry of Justice and Public Health England, suggests that drug and alcohol treatment lead to a 33% reduction in reoffending in a two-year period (49% for individuals with alcohol misuse problems).[10]

Recent research into the Mental Health Treatment Requirement found a clear positive impact on anxiety and depression, social problem solving, emotional regulation and self-efficacy. It also found improvements in work and social adjustment, as well in criminogenic risk factors.[11]

Treatment and community sentences in England and Wales

Community Sentence Treatment Requirements (CSTRs) is an umbrella term that brings together the three different requirements, created in the Criminal Justice Act 2003, that courts can use to place an offender, aged 18 and over and on a community sentence, into treatment. The three types of CSTR are: Mental Health Treatment Requirements (MHTR), Drug

Rehabilitation Requirements (DRR) and Alcohol Treatment Requirements (ATR).[12] They consist of individualised treatment and interventions that can be combined to tackle dual diagnosis (those with both drug/alcohol and mental health issues). The CSTRs will be included within the order as part of the sentence and can last a maximum of three years as part of a Community Order and two years as part of a Suspended Sentence Order.[1314]

Related to CSTRS, Rehabilitation Activity Requirements were introduced in 2015 and are intended to address non-dependent alcohol misuse, and emotional/mental health needs that do not involve a diagnosis or treatment.[15] RARs have seen significant uptake but are distinct from CSTRs because they involve a lower level of need and intensity of intervention.

In addition, and while not treatment, Alcohol Abstinence Monitoring Requirements (AAMRs) are a related sentencing requirement.[16] AAMRs require a period of mandated sobriety and may be imposed on individuals who commit alcohol-related crimes. Compliance with AAMRs is monitored via a "sobriety tag", relying on transdermal ("through the skin") science to test for the presence of alcohol found in perspiration after a drinking event. AAMRs are targeted at individuals whose offending is alcohol-related but not those who are known to be alcohol dependent.

The use of treatment requirements in community sentences in England and Wales

Despite the evidence around the effectiveness of, and the widespread need for, treatment for offenders, the three treatment requirements are rarely used as part of community sentences. The latest available statistics show that alcohol treatment, drug treatment and mental health treatment requirements were part of only 3%, 4% and 0.5% of orders respectively.[17]

There are a number of factors driving the low levels of use of CSTRs, perhaps most notably the lack of treatment provision. Dame Carol Black's review of drugs concluded that "the amount of unmet need is growing, some treatment services are disappearing, and the treatment workforce is declining in number and quality."[18] The funding for drug treatment in the community has declined in recent years,[19] driven by increased pressure on Local Authority budgets and a falling away of central Government funding and impetus. Overall funding for treatment has fallen by 17% since 2014-15, with numbers in treatment falling at a similar rate. There is also significant variation from area to area, with some local authorities having reduced treatment expenditure by 40%.[2021] There are, in addition, significant concerns about the provision of mental health treatment services. In the evaluation of the CSTR programme, stakeholders identified that there was a gap in mental health services for offenders before the pilot was introduced,[22] and a 2016 report by the Centre for Mental Health concluded that the biggest barrier to the use of Mental Health Treatment Requirements was "the lack of mainstream community mental health care available at the point of sentencing."[23] In their recent annual report, HMI Probation singled out mental health service provision as a particular area of concern, and committed to conduct a joint thematic inspection with the other criminal justice inspectorates in 2021 to look at the adequacy of services in more detail.[2425]

In addition, there is evidence that the use of the Rehabilitation Activity Requirements has displaced the possible use of CSTRs. It has been found that Rehabilitation Activity Requirements are sometimes used inappropriately instead of CSTRs,[26] which may be driven in part by time-pressured report writers being attracted by the fact that it has lower assessment requirements than CSTRs and does not require consent. Relatedly, difficulties obtaining the necessary assessments and consent have also been suggested to contribute to the lower levels of use of CSTRs.[27]

Expanding the use of treatment

Piloting ways to expand the use of CSTRs

In recognition of the low use of treatment requirements, the CSTR programme initiative was set up in five testbed sites in 2017.[28] This initiative seeks to increase the use of CSTRs, reduce reoffending and the use of short term sentencing, support offenders' access to mental health and substance misuse treatment in the community, promote 'on the day' sentencing, and increase judicial awareness of mental health and associated vulnerabilities. Individuals are routed into the CSTR programme through a number of different channels including Liaison and Diversion Services, probation, defence solicitors, and in court link workers. The initiative is jointly overseen by the Ministry of Justice, Department of Health and Social Care, NHS England and Improvement and Public Health England.

The CSTR programme has developed a Mental Health Treatment Requirement clinical model, focusing on individuals who do not reach the threshold of secondary care services, but have multiple and complex issues. New funding has been provided to develop this model through NHSE/I and the NHS Long Term Plan. This has enabled a psychologically informed treatment and intervention delivered by new clinical staff, for those sentenced to a Mental Health Treatment Requirement and/or combined with Alcohol or Drug Rehabilitation Requirements. A key component of the programme was increasing judicial awareness of mental health, substance misuse and associated vulnerabilities. This was achieved through ongoing information and awareness sessions for members of the judiciary.

A recent evaluation of the CSTR programme reported a range of positive findings.[29] Crucially, stakeholders reported that it improved sentencing options (in particular, use of mental health treatment requirements); and that it improved access to mental health treatments, for instance by filling in gaps in services for offenders who did not meet the criteria for secondary care mental health services. The quality and consistency of pre-sentencing reporting was also improved. Although the evaluation data was too limited to definitively conclude that the programme increased use of ATRs and DRRs, the evaluation suggests that the programme led to an increase in the use of MHTRs (increasing from 10 to 128 over an 18-month period across the four areas).[30]

A Smarter Approach to CSTRs

Nationwide rollout of the CSTR programme

Government has already committed to the expansion of the CSTR approach. The Government's 2017 Drug Strategy committed to increase "the use of treatment as part of a community sentence."[31] The NHS Long Term Plan commits to build on the work of CSTR sites by expanding provision[32]; and the Five Year Forward View for Mental Health recommends that Mental Health Treatment Requirements are more widely accessed "as part of community sentences for everyone who can benefit from them."[33] In September 2020, these commitments were crystallised in the Sentencing White Paper, which commits to an expansion of the CSTR programme, achieving "50% coverage of mental health provision by 2023/24", and to going "further with drug and alcohol treatment too".[34] Alongside this expansion of CSTRs, the Government recently announced £148 million to cut drug crime through Project ADDER, which has a number of strands including enhanced treatment and recovery services, and an investment in drug treatment services for prison leavers and people on community sentences.[35]

However, with a forthcoming spending review and the anticipated second and final report Dame Carol Black's review of drugs policy, we think the time is ripe to go further. The mental

health and substance misuse needs of the population in contact with the justice system are well evidenced, as are the opportunities for timely treatment to reduce reoffending and help people get their lives back on track. In addition, the effect of limited treatment capacity on the ability of sentencers to make use of CSTRs is stark. The compelling reasons that exist for extending the CSTR programme to cover 50% of the country also apply to extending it to the other 50%. In calling for national rollout by the end of this Parliament, we are joined by the Independent Advisory Panel on Deaths in Custody and the Magistrates Association, who have called for a national rollout of CSTRs in a recent report.[36]

The Government should commit to making CSTRs, and the treatment provision required, available across every court in England and Wales by 2023/24

As set out above, a national rollout of the CSTR programme by the end of this Parliament would have to take place against a challenging landscape of treatment provision. Rebuilding this capacity and ensuring that sentencers have meaningful treatment services to call on will take time and sustained investment. The removal of the ring-fence on treatment spending has been associated with a decrease in the level of spending in this area. The Government should take clear steps to reverse this trend and prioritise the provision of treatment. A ring-fence for treatment funding would play an important role in protecting the redevelopment of this capacity, and allowing for more sustained, secure, and long-term planning as part of this.

The Government should consider ring fencing funding for drug, alcohol and mental health treatment for probationers in the community to support this rollout.

Effective implementation

Alongside investment, there is a need to capitalize on the wealth of knowledge gathered in piloting the CSTR.[37] The recent evaluation found that good multi-agency working, improving partnership, joint working and data sharing, was vital to its success. A number of factors were involved in this, including: achieving clarity among various partner organisations about each other's finances and roles and responsibilities including budget; holding operational as well as strategic steering group meetings; and having a dedicated team to identify and work on CSTRs. Relatedly, the evaluation highlighted the ability to share and learn from the best practice and challenges of other areas implementing the programme as a key success factor.

Expansion of the CSTR programme needs to focus on continued promotion of good multi-agency working through replicating the successful structures of the programme to date, and by facilitating the exchange of best practice and learning among different areas.

The evaluation noted areas where additional guidance and clarity would be beneficial. These included: expectations of the programme and its main criteria for success; organisational and operational reporting lines; and clarity over ATR and DRR requirements. At the same time, stakeholders in the evaluation were clear that there would need to be an effective balance between clear guidelines and sufficient flexibility to fit with different service models in different areas.

Government should support the rollout of CSTRs by building on guidance to provide further clarity in connection to the expectations of the programme, responsibilities, and ATR and DRR requirements.

Implementation of the CSTR programme requires sufficient resourcing and not just in treatment. The evaluation showed that resource was needed in a number of areas including additional administrative capacity, additional clinical capacity, and for judicial training. Judicial confidence in and awareness of CSTRs is vital to their being used. This was borne out in the evaluation, which found that confidence in other services involved in delivering CSTRs (particularly regarding assessment and delivery) was particularly important. Judicial awareness and training was found to increase awareness of and use of MHTRs, but it was noted that this required adequate resourcing on an ongoing basis.

The Government should ensure that the CSTR rollout is associated with dedicated resource for judicial training, and to cover the other additional demands imposed by the programme, such as on administrative and clinical capacity.

Additionally, the evaluation of the CSTR programme emphasised that it needed time to get set up and bed in - for instance, to recruit mental health practitioners and to establish the relationships that were found to be so important to the success of the programme. It is important to recognise that the work of increasing treatment capacity will require the use and development of significant knowledge of each local area along with its population and treatment provision. Building the necessary relationships and ways of working, creating capacity and training/recruiting staff all take a certain amount of time

The Government should ensure that their CSTR rollout plans build in sufficient time to allow for recruitment of key members of staff, establishment of crucial working relationships, and development of treatment capacity.

Mid-sentence reviews were identified during the evaluation as an important way for the judiciary to have additional confidence in and knowledge of the CSTR progress. Judicial stakeholders in the evaluation noted that mid-sentence reviews could be a potentially valuable way to prevent breach, as well as providing additional support to and motivation for service users. (Their use also ensured that breach did not end up being employed as a de-facto review process). The White Paper notes that regular court review hearings for CSTRs could be explored as a part of forthcoming pilot work.[38]

We welcome the proposals to develop pilots of regular court reviews involving CSTRs.

Conclusion

There is a compelling evidence base in favour of expanding CSTRs, and there is a clear consensus in favour of their expansion. The mental health and substance misuse needs of the population in contact with the justice system are well evidenced, as are the opportunities for timely treatment to reduce reoffending and help people get their lives back on track.

To date, CSTRs have been underused and treatment capacity has degraded in recent years. However, there are encouraging signs that the political will exists to meet the problems of substance misuse and mental ill health driving criminal behaviour with energy and ambition. This year sees Dame Black's review of drugs publish its second and final report, setting out how to improve treatment. The Government's response to this review, as well as the forthcoming Addictions Strategy, and ongoing work to implement the Sentencing White Paper, provide natural opportunities to crystalise the ambition to roll out CSTRs. The CSTR programme and its evaluation provide the practical knowledge required to make a success of this rollout. Now is an ideal time to make use of what has been learned, and to make sure that in every part of the country, CSTRs can be used to help people with alcohol and substance misuse challenges, and to better protect our communities from crime.

Endnotes

1. NICE, (2017) Guideline Mental health of adults in contact with the criminal justice system, available at https://www.nice.org.uk/guidance/ng66/evidence/full-guideline-pdf-4419120205

2. Ministry of Justice (2013) Results from the Offender Management Community Cohort Study (OMCCS): Assessment and sentence planning, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/309959/results-omccs.pdf

3. Cook, L and Borrill (2013) J Identifying suicide risk in a metropolitan probation trust: Risk factors and staff decision making, available at https://bpspsychub.onlinelibrary.wiley.com/doi/abs/10.1111/lcrp.12034

4. Enver Solomon and Arianna Silvestri, Community Sentences Digest, available at: https://www.crimeandjustice.org.uk/sites/crimeandjustice.org.uk/files/community-sentences-2008%20blue.pdf

5. NICE (2017) Guideline Mental health of adults in contact with the criminal justice system

6. HMIP (2020) Annual Report 2019–20, available at https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2020/10/HMI-Prisons_Annual-Report-and-Accounts-2019-20-WEB.pdf

7. Ministry of Justice (2013), Transforming Rehabilitation: a summary of evidence on reducing reoffending, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/243718/evidence-reduce-reoffending.pdf

8. Scottish Government (2015) What Works to Reduce Reoffending: A Summary of the Evidence, available at https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2015/05/works-reduce-reoffending-summary-evidence/documents/works-reduce-reoffending-summary-evidence/works-reduce-reoffending-summary-evidence/govscot%3Adocument/00476574.pdf

9. Ministry of Justice (2013), Transforming Rehabilitation: a summary of evidence on reducing reoffending

10. Ministry of Justice and Public Health England (2017) The impact of community-based drug and alcohol treatment on re-offending https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/674858/PHE-MoJ-experimental-MoJ-publication-version.pdf

11. Long, C.G., Dolley, O. and Hollin, C. (2018), "The use of the mental health treatment requirement (MHTR): clinical outcomes at one year of a collaboration" Available at https://doi.org/10.1108/JCP-01-2018-0003

12. Mental Health Treatment Requirements can be combined with the other two types of requirement, but Drug and Alcohol Requirements cannot be combined. CSTRs can be combined with other elements of a community sentence, or used on their own.

13. https://www.sentencingcouncil.org.uk/sentencing-and-the-council/types-of-sentence/community-sentences/

14. Department of Health and Social Care (2019) Community Sentence Treatment Requirements Protocol: Process Evaluation Report, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/810010/cstr-process-evaluation-report.pdf

15. HMPPS/MoJ, RAR guidance, available at: https://www.gov.uk/government/publications/the-rehabilitation-activity-requirement-in-probation/rar-guidance

16. Explanatory Memorandum to the Criminal Justice Act 2003 (Alcohol Abstinence and Monitoring Requirement), available at https://www.legislation.gov.uk/uksi/2016/10/pdfs/uksiem_20160010_en.pdf

17. Ministry of Justice Offender Management Statistics Quarterly, table 4.4 (July to September 2020) Accessed at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/955967/Probation_Q3_2020.ods

18. Dame Carol Black (2020) Review of Drugs, Executive Summary https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/897786/2SummaryPhaseOne+foreword200219.pdf

19. Health Foundation (2018), Briefing: Taking our health for granted, available at: https://www.health.org.uk/sites/default/files/upload/publications/2018/Taking%20our%20health%20for%20granted_for%20web.pdf

20. Dame Carol Black (2020), Review of Drugs - evidence relating to drug use, supply and effects, including current trends and future risks, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/882953/Review_of_Drugs_Evidence_Pack.pdf

21. See https://www.gov.uk/government/collections/local-authority-revenue-expenditure-and-financing and https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/954228/RO3_2019-20_data_by_LA.ods specifically

22. Department of Health and Social Care (2019) Community Sentence Treatment Requirements Protocol: Process Evaluation Report

23. Centre for Mental Health (2016), Mental Health and Criminal Justice, available at https://www.centreformentalhealth.org.uk/sites/default/files/2018-09/Centre_for_Mental_Health_MH_and_criminal_justice_PDF.pdf

24. HMIP (2020), 2019/2020 Annual Report: inspections of probation services, available at https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2020/12/2019-2020-Annual-Report-Inspection-of-probation-services-1.pdf

25. For additional insight into the challenges facing the uptake of CSTRs, see Long, C. (2016) 'Research & reports', available at https://doi.org/10.1177%2F0264550516677061

26. HMIP (2017), The Implementation and Delivery of Rehabilitation Activity Requirements, available at https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2017/02/Report-Rehabilitation-Activity-Requirement-Thematic-final.pdf

27. See: Centre for Justice Innovation (2019), Renewing Trust, available at https://justiceinnovation.org/sites/default/files/media/documents/2019-02/cji-renewing-trust_2018-d-sw_1.pdf and Dame Carol Black (2020), Review of Drugs - evidence relating to drug use, supply and effects, including current trends and future risks

28. Academy for Social Justice Commissioning (2018) Innovation to increase the use of Community Sentence Treatment Requirements, available at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/719138/CSTR_strategic_presentation_Manchester_final.pdf and https://www.gov.uk/government/news/vulnerable-offenders-steered-towards-treatment

29. Department of Health and Social Care (2019) Community Sentence Treatment Requirements Protocol: Process Evaluation Report

30. Ministry of Justice (2020) A Smarter Approach to Sentencing

31. HM Government (2017), 2017 Drug Strategy, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/628148/Drug_strategy_2017.PDF

32. NHS Long term plan (2019), available at https://www.longtermplan.nhs.uk/wp-content/uploads/2019/08/nhs-long-term-plan-version-1.2.pdf

33. The Five year Forward View for Mental Health https://www.england.nhs.uk/wp-content/uploads/2016/02/Mental-Health-Taskforce-FYFV-final.pdf

34. Ministry of Justice (2020) A Smarter Approach to Sentencing

35. https://www.gov.uk/government/news/148-million-to-cut-drugs-crime

36. The Independent Advisory Panel on Deaths in Custody and Magistrates Association (2019), Effective community sentences and the role treatment requirements can play in preventing deaths in custody, available at https://www.magistrates-association.org.uk/Portals/0/MA-IAP-survey-final-270619.pdf

37. Department of Health and Social Care (2019) Community Sentence Treatment Requirements Protocol: Process Evaluation Report

38. Ministry of Justice (2020) A Smarter Approach to Sentencing, page 43

About the Centre for Justice Innovation

The Centre for Justice Innovation seek to build a justice system which all of its citizens believe is fair and effective. We champion practice innovation and evidence-led policy reform in the UK's justice systems. We are a registered UK charity.

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