

AUGUST | SEPTEMBER | 2020



Magistrate

100 YEARS

ESSENTIAL READING FOR MAGISTRATES



Optimism about
community sentences

An update on community
treatment requirements

MA election time

Meet the candidates to join the MA's board

100 years of juvenile justice and the MA

Post-war reconstruction to 1960s rebellion

Getting parent-child contact right

Reflections on a contentious issue facing
family courts

 Magistrates Association

Effective community sentences and the role treatment requirements can play in preventing deaths in custody: *an update*

Independent Advisory Panel on Deaths in Custody panel member Jenny Talbot OBE and Chair Juliet Lyon CBE provide an update on community treatment requirements



The December 2019-January 2020 issue of MAGISTRATE profiled a joint survey and report by the MA and the Independent Advisory Panel on Deaths in Custody (IAP) into magistrates' awareness of local services for offenders with mental illness, substance misuse and learning disabilities.

At the launch of the report John Bache, National Chair of the MA, said:

'This report underlines the need to have robust and effective community sentences available as an alternative to custody for vulnerable offenders in every area of the country, which is simply not the case at present, as custody can bring disproportionate risks of self-harm or suicide for these people.'

This joint survey and report showed that improved communication and information sharing, effective partnerships between health, social care and justice, and proper availability of local services can save lives.¹

The impact of Covid-19

Since then, we have witnessed an unprecedented public health pandemic, which has had a significant impact on the whole justice system. This has included prisons, where prisoners have experienced a significantly reduced regime with 23-hour lockup, limited contact with families and diminished rehabilitation activity. Infection rates are mercifully lower than anticipated, but the risk of contracting the virus remains despite the small but welcome reduction in the prison population, largely due to reduced court sittings.

Guidance from the Senior Presiding Judge² reminded sentencers to always consider the impact of any sentence on an individual, including the existing situation in prisons – a point reiterated by the Lord Chief Justice, who said the impact of a custodial sentence was likely to be more severe in the current circumstances.³

The Covid-19 pandemic has brought into sharp relief the need for 'robust and effective' alternatives to custody that meet offenders' health and social care needs and reduce reoffending. This article provides an update on progress made regarding the roll-out of the community sentence treatment requirement (CSTR), despite limitations imposed by reduced court sittings and the challenges of delivering treatment in the context of social distancing. It considers the importance of pre-sentence reports (PSRs), informed by liaison and diversion (L&D) services,⁴ and the pivotal role that magistrates play in helping to ensure good outcomes for offenders and a reduction in reoffending.

Community sentence treatment requirements

Many people in contact with criminal justice services have unmet health and social care needs, which may contribute towards their offending behaviour. In 2005, treatment requirements were introduced as a sentencing option and three requirements were made available:

- Alcohol treatment requirement (ATR)
- Drug rehabilitation requirement (DRR)
- Mental health treatment requirement (MHTR)

The use of treatment requirements has, however, been very low. To encourage take-up, in 2017 the CSTR programme was developed and 'tested' in five areas (Sefton, Birmingham and Solihull, Northamptonshire, Milton Keynes and Plymouth). Over an 18-month period, the number of MHTRs across the five areas increased from 55 to 456.⁵ A third of the MHTRs ordered were combined with either a DRR or ATR. A further seven areas are now operational (Bedfordshire, Cambridge, Staffordshire, Manchester, Essex, London and the Black Country), with more sites expected later this year.

The CSTR programme seeks to reduce reoffending by providing effective, treatment-based alternatives to short custodial sentences, where appropriate, and on the day of sentencing wherever possible. As one member of the judiciary put it:

'We know if someone goes into prison for a short custodial sentence, nothing happens. It's just straight punishment. They'll come out with the same, if not more problems than they had before.'

MHTRs are overseen by a clinical lead. Dr Sunil Lad, Consultant Counselling Psychologist and Clinical Lead for the women-specific Northamptonshire CSTR site, explains:

'MHTRs provide an individualised package of care during which offenders develop an understanding of their difficulties and address the underlying factors of their offending behaviour. Supervised by a clinician, and using evidence-based practice, clients develop new skills and coping strategies for regulating their emotions and behaviour.'

According to Amy Rees, Director General of Probation and Wales for HM Prison and Probation Service:

'CSTRs are an innovative option for sentencers that facilitate a community-based sentence that ensures offenders with complex health needs receive the support and treatment they need to engage effectively with their rehabilitation. We fully

support the collaborative work between health and justice partners to strengthen our CSTR offer as it is clear from our service users just how life-changing such support can be.'

Commenting on the CSTR, Professor Pamela Taylor CBE, Chair of the Forensic Psychiatry Faculty at the Royal College of Psychiatrists, notes that the College favours community treatment for mental disorders whenever possible, adding:

'For offenders, the framework of criminal justice and health service partnerships through CSTRs is especially welcome for potentially reducing the risk of revolving door imprisonments. The College has a particular interest in people with needs requiring specialist treatment under the so-called secondary care MHTR, often coupled with alcohol or drug treatment requirements because of the complex range of problems. All college faculties – including adult general psychiatry, older age psychiatry, intellectual disability psychiatry and more – are coming together to sign a new College position statement, committing us all to engaging in such work whenever we can. We thus hope to help stem the tide of self-harm and even suicides in prison or on probation and, through improving mental health, also reduce the harms from reoffending.'

During the pandemic, the CSTR programme areas have continued to operate. New CSTRs have been ordered and pre-existing orders maintained. Providers of CSTRs have adapted their delivery and support of offenders, with treatment requirements largely being delivered via telephone and/or video link. Speaking of the support they have received, one beneficiary of the CSTR said:

'I have found phone sessions extremely helpful plus it has become an advantage having the psychology sessions through this difficult period in all our lives. Talking to Martin⁶ has helped me keep focus and maintain a positive outlook.'

Kate Davies CBE, Director of Health and Justice, Armed Forces and Sexual Assault Services Commissioning, NHS England and NHS Improvement said:

'It is a tribute to all involved that CSTRs have continued to provide treatment and support during 'lockdown'. It demonstrates the strength of local health and justice partnerships and the trust that sentencers have in the ability of CSTR providers to deliver. CSTRs are not an easy option and it is pleasing that the vast majority of those offered this sentence have seized the opportunity to address their behaviour and move on.'

In a recent update to the Lord Chief Justice on the exceptional delivery of community sentences, Sir Richard Heaton, Permanent Secretary at the Ministry of Justice, noted that CSTRs:

'...have been gathering momentum and we would like to see that continuing if possible, given their strengths – and indeed their popularity with sentencers in the courts where they are available.'⁷

Pre-sentence reports

PSRs help determine when a CSTR is appropriate. They provide an independent, expert assessment of offenders' needs, and should include information from L&D services concerning offenders' health and social care needs. Failure to identify underlying mental health needs and/or alcohol and drug misuse is a missed opportunity to address the drivers of criminal behaviour and reduce reoffending.

Improving outcomes: a five-point plan

Magistrates are uniquely placed to improve outcomes for offenders by ensuring that they receive the most appropriate sentence. The following five-point plan may help:

1. You should be kept informed of available sentencing options in your area, including the MHTR, DRR and ATR, and your local National Probation Service (NPS) can provide information. If in doubt, seek guidance from your bench chair and/or MA mental health champion.
2. A comprehensive PSR is important – it should address the specific needs of the offender and sentencing options. If you think an offender may have health and social care needs that have not been addressed, such as mental health needs and/or substance misuse, you should ask for an assessment by L&D services. You may need to adjourn for this to be undertaken.
3. If you think a CSTR may be appropriate, but is not recommended in the PSR, you should ask the NPS court officer if this option has been considered. If it has not been considered, you may decide to adjourn to enable the NPS to investigate whether a CSTR is a viable option.
4. If you are subsequently informed that a CSTR is not available, you might enquire if the offender has been referred to the relevant community service(s) and, if not, whether this can be arranged – either by L&D services or the NPS.
5. If you think treatment requirements as a sentencing option could be improved in your area, contact the IAP. We would also like to hear where arrangements are working well.

Next steps

For many people who offend, treatment is best undertaken in the community where, under supervision of probation services and overseen by clinicians, men and women can address their offending behaviour and rebuild their lives. Progress made by CSTR programme sites is greatly encouraging. The MA and IAP will continue to press for full roll-out as early as possible and to pursue recommendations made in our joint report. This is a positive opportunity, both to cut crime and to reduce the risk of suicide and self-harm.

Published CSTR data

- CSTR Protocol: Process Evaluation Report (June 2019) <https://bit.ly/magistrate2092>
- CSTR Protocol: Process Evaluation Summary Report (June 2019) <https://bit.ly/magistrate2093>

Footnotes

- 1 The full report, and the recommendations made, can be found at <https://bit.ly/magistrate2094>
- 2 Sent to all magistrates in April 2020
- 3 <https://bit.ly/magistrate2095>
- 4 Known as criminal justice liaison services in Wales
- 5 *Community Sentence Treatment Requirements Protocol – Process Evaluation Summary Report*, Department of Health and Social Care, 2019, p12
- 6 The responsible clinician, not his real name
- 7 Correspondence dated 21 May 2020

We are grateful to Mignon French JP (CSTR Programme Manager, NHS England and NHS Improvement) for her help in writing this article.

For further information about this article, or to contact the IAP, please email piers.barber1@justice.gov.uk.