

Centre for Justice Innovation

Problem-solving courts in the UK

PROBLEM-SOLVING COURTS

WHAT ARE PROBLEM-SOLVING COURTS?

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Different types of problem-solving court

- Problem-solving courts embrace a wide family of distinct models:
 - Substance misuse courts, in family and criminal courts, for adults and youth.
 - Mental health courts.
 - Domestic violence courts.
 - Community courts.
 - Other models, including for young adults, female offenders etc.

Theory behind problem-solving courts

- There are three key theories that have shaped and inform problem-solving courts:
 - Risk-need-responsivity (RNR).
 - Procedural fairness.
 - Evidence-based deterrence.

Risk-need-responsivity (RNR)

- RNR provides empirical foundation on who should be treated, what should be treated and how treatment should be administered.
- The use of actuarial risk assessment tools to target interventions at evidence-backed risk factors such as substance misuse or ‘criminal thinking’.
- In delivering the interventions, RNR practice stresses the importance of adapting the intervention to the specific risk-level and learning styles of offenders.
- RNR, fully realised, should embrace the good lives model and emerging findings from desistance.

Procedural fairness

- Many factors other than whether due process has been followed influence perceptions of fairness. If people feel they have been treated fairly by an institution, they are more likely to obey its decisions.
- Four key components of procedural fairness:
 - **Neutrality:** Do individuals perceive that decisions are made in an unbiased and trustworthy manner?
 - **Respect:** Do individuals feel that they were treated with dignity?
 - **Understanding:** Do citizens understand how decisions are made and what is expected of them?
 - **Voice:** Have individuals had an opportunity to be heard?

Evidence-based compliance

- Evidence-based compliance suggests that smart use of legal sanctions can increase compliance with orders, if it has the following features, used in combination:
 - **Certainty:** It is predictable what the sanction will be for non-compliance.
 - **Celerity:** The sanction is imposed swiftly following the infraction.
 - **Proportionality:** The interim and ultimate sanctions within a programme of offender supervision are both realistic and sufficiently undesirable to deter non-compliance.

Core components

- The core components of problem-solving courts are:
 - Specialisation of the court model around a target group.
 - Collaborative intervention and supervision.
 - Accountability through judicial monitoring and legal leverage.
 - Procedural fairness.
 - Court focus on outcomes.

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WHAT WORKS AND WHY

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What works: Substance misuse courts

- Adult substance misuse courts reduce substance misuse and reoffending. They are particularly effective with offenders who present a higher risk of reoffending.
- Family treatment courts are effective in reducing parental substance misuse and can reduce the number of children permanently removed from their families.

BUT

- Juvenile drug courts have either minimal or harmful impacts on young offenders.

What works: Mental health courts

- Mental health courts reduce reoffending

BUT

- Mental health courts may not directly impact offenders' mental health, with a wide variation in observed impacts on substance abuse and 'functioning' levels.
- The treatment itself may not driving better criminal justice outcomes. There are a variety of alternative hypotheses being explored, including whether procedural fairness is the driving mechanism of improved criminal justice outcomes.

What works: Domestic violence courts

- Specialist and problem-solving domestic violence courts provide a better experience of justice for victims.
- Problem-solving domestic violence courts are more likely to impose requirements to hold offenders accountable than traditional court processing.
- Promising evidence that problem-solving domestic violence courts can reduce the frequency and seriousness of perpetrator reoffending.
- The evidence on integrated domestic abuse courts is promising.

Why it works?: Growing evidence that procedural fairness and relationship between the judge and client is key

- A perception of fair treatment leads to better compliance with court orders is more important than both the decisions the court reaches and the treatment a problem-solving court can deliver.
- The strength of the relationship between a judge and an offender is a key driver of better outcomes within the literature on problem-solving courts-

‘perceptions of procedural justice – and especially attitudes towards the drug court judge were the strongest predictor of reduced drug use and crime’.

Rossmann, S.B., Roman, J.K., Zweig, J.M. Rempel, M. & Lindquist, C.H. (2011). *The Multi-Site Adult Drug Court Evaluation: The Impact of Drug Courts*, Washington DC: Urban Institute.

Why it works?: Getting the leverage, certainty and targeting right is crucial

- Promising research that evidence-based deterrence can drive better outcomes where the court has set the right legal leverage. Drug court evidence that participants who perceive themselves to face more severe consequences if they fail completely are more likely to comply than others when in the programme.
- The most effective courts emphasise effective and repeated communication about the compliance rules and sanctions. Use of legal leverage needs to feel proportionate in order to feel fair, and it is the perceived threat that is important.
- The responsivity principle supports the tendency for problem-solving courts to specialise in working with specific groups of offenders.

The problems with problem-solving courts

- Problem-solving courts can lead to net-widening, i.e., drawing greater numbers of people into the justice system. Problem-solving should be used alongside, rather than instead of, other upstream diversion options.
- Problem-solving court judges can cause harm by benignly ‘overdosing’ low-risk offenders with multiple requirements or can unwittingly use inappropriate, non-evidence-based interventions.
- Advocates for problem-solving courts can run the risk of over-promising. They are not silver bullets. There is scant evidence that they can, on their own, significantly impact the overall numbers of people in prison, especially if they are set against increases in sentencing tariffs.

PROBLEM-SOLVING COURTS

PRACTICE &
DEVELOPMENTS IN
THE UK

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Practice and developments: There is established practice in a number of places in the UK

- **Substance misuse courts**
 - Growth of FDACs in England;
 - Dedicated drug court in Glasgow;
 - DRR/DTTO available in every court in England and Wales.
- **Specialist domestic violence courts**
 - 137 SDVCs listed by CPS but indications practice is patchy;
 - New SDVC in Derry/Londonderry.
- **Mental health courts**
 - Complex cases court, partnership between Sefton Magistrates Court and Merseycare Mental Health trust.

Practice and developments: There has been growth in the model in Scotland and plans in Northern Ireland

- Aberdeen problem-solving court (women and young adults) opened in 2015
- Edinburgh alcohol problem solving court opened in 2015
- Forfar problem-solving court opened in 2017
- Glasgow alcohol problem solving court being planned
- Proposals for substance misuse court in Belfast and a new FDAC in Northern Ireland just opened.

Practice and developments: Dedicated courts for female offenders

- There is evidence to support the application of the key features to female offenders at risk of custody.
 - A population in need of trauma informed and gender responsive specialisation: 53% of women in prison report having experienced emotional, physical, or sexual abuse as a child, compared to 27% of men and a similar proportion report having been victims of domestic violence.
 - Linking courts to Women's Community Services: They offer a one-stop shop where women offenders and women at risk of offending can access a range of services in a supportive, gender-specific environment

Practice and developments: Young adults

- There is evidence to support the application of the key features to young adults (18–25).
 - A distinct population in need of specialisation: Criminal justice system responses to young adults should reflect their variable developmental maturity
 - Procedural fairness and young adults; Research suggests that procedural fairness may be significantly more important to young people than to adults. Empirical research has identified that court-involved young peoples' perception of their sentencer has the largest influence on their views of the overall legitimacy of the justice system.

Practice and developments: Growth of new courts in Scotland use existing resources to do things differently

- The growth of new problem-solving courts in Scotland is largely happening without significant national resources but with significant political and policy backing from Scottish Government and senior Scottish judicial figures.
- The models are developing in response to local need, by corralling existing resources, and founded on collaboration between the key people within the court, such as the judge, courts staff, prosecutors and probation officers.
- In our view, this is encouraging so long as there is adequate technical support to the sites to ensure that they are ensuring that the core components are in place.

Discussion

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Core components: Specialisation

Specialisation of the court model around a target group.

- Specialisation in focus on (i) particular needs; (ii) specific forms of crime, such as domestic abuse; (iii) specific and distinct groups of defendants; or (iv) particular neighbourhoods.
- Specialised settings (often housed within mainstream court buildings).
- Specially trained court professionals.
- Specialised practices and procedures e.g. specialised assessment tools for defendants.

Core components: Collaborative intervention and supervision

Collaborative intervention and supervision

- All problem-solving courts involve the use of treatment or social services to affect offender behaviour and often combine different doses of treatment and social service to respond to complex and multiple needs and risks.
- Problem-solving courts co-ordinate supervision and interventions from multiple agencies to motivate the offender through their sentence plan and ensure that the information available to the court on compliance represents a complete view of the offender's progress.

Core components: judicial monitoring and legal leverage

Accountability through judicial monitoring and legal leverage

- Problem-solving courts employ judicial monitoring for offenders in the community, bringing them back to court for regular reviews with a designated judge.
- Problem-solving courts often hold **significant legal leverage over clients**, for example retaining the option to vary their sentence depending on progress against an agreed plan.
- Judges can use **incentives** such as early termination of orders or expungement of records and **sanctions** such as additional community service hours or short custodial stays.

Core components: Procedural fairness

Procedural fairness

- Engaging with people with neutrality and respect.
- Supporting understanding by setting clear rules, and explicitly acknowledging and re-enforcing incentives, and sanctions.
- Giving offenders a voice by engaging with them directly at sentencing and reviews.
- Using judicial monitoring not just as a compliance check-in, but rather an opportunity to engage, motivate, praise and admonish.

Core components: A focus on outcomes

Problem-solving courts explicitly set out to reduce crime by addressing criminogenic needs, alongside their traditional role.

Focussing on outcomes implies two features.

- Defining a clear set of **outcomes** which the courts aims to achieve.
- **Monitoring** the courts success in achieving those outcomes and **refining** the court model on the basis of those findings.