

A Practitioner's Response to 'Tackling Substance Misuse from a Problem-Solving Justice Approach'

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Summary: 'Tackling substance misuse from a problem-solving justice approach' by Dr Geraldine O'Hare and Peter Luney was published in *Irish Probation Journal*, October 2020. This intriguing article considers an evaluation of the Substance Misuse Court pilot that was established at Belfast Magistrates Court in April 2018, a partnership between the Northern Ireland Courts and Tribunal Service (NICTS), the Probation Board for Northern Ireland (PBNI) and Addiction Northern Ireland (ADNI). It documents the positive outcomes, the lessons learnt and the challenges for the sustainability of the Court beyond the initial pilot. This practitioner response to that article will undertake a brief comparison between this new initiative and the 'Drug Treatment Courts' in Dublin and Louth,¹ consider some constants and variables and identify possible learning and opportunities for future developments across both jurisdictions. Reflections throughout the paper reflect the author's perspective based on her experience of working with individuals who have addiction difficulties.

Keywords: Drug Treatment Court, Substance Misuse Court, problem-solving justice, Probation Service, Probation Board for Northern Ireland (PBNI), substance misuse, addiction.

Introduction

Problem-solving justice originated in 1989 with the establishment of the first Drug Treatment Court (DTC) in Florida, USA. It has since expanded internationally and into other fields. The underpinning theory is therapeutic jurisprudence, which appraises the law as a social force that can positively influence emotional and psychological wellbeing (McNamara, 2013, p. 18).

Dublin's DTC has been in existence since 2001. It remained the only problem-solving court in Ireland until the establishment of the Louth DTC and

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¹ In 2017, a judge who had previously been part of the Drug Treatment Court in Dublin initiated the introduction of the model for clients in Louth, a small county (77,684) in the northeast with proximity to Northern Ireland.

the Belfast Substance Misuse Court (SMC), both in 2018. O'Hare and Luney's article presents the findings of an evaluation undertaken of the Belfast SMC pilot (O'Hare and Luney, 2020). It is essentially optimistic about the impact of the Court, based on the achievements of the first phase of implementation. The article outlines key benefits of the Court, such as positive client engagement, an improved wraparound service with speedier access to treatment, and an increase in client self-efficacy. Challenges faced by the operational team were also identified, in particular the issue of dual diagnosis, as a significant number of referrals had underlying mental-health difficulties compounded by drug misuse. The identification of those challenges informed recommendations for the Court's second phase.

As a Probation Officer, I work with individuals whose offending behaviour correlates highly to their addiction difficulties. Having also previously undertaken research in the area of DTCs as part of a Master's programme in social work, I found it particularly interesting to undertake a brief comparison between the three Irish problem-solving courts, to consider the differences and similarities across approaches, and to identify possible learning which could inform their future practice.

Substance Misuse Court Team

All three courts work from a multidisciplinary and multi-agency approach. Within their article, O'Hare and Luney outline that the Belfast SMC is delivered in partnership with the Northern Ireland Courts and Tribunal Service (NICTS), the Probation Board for Northern Ireland (PBNI), and Addiction Northern Ireland (2020, p. 43). Notably, the PBNI offers a psychological service to participants, in addition to support from a Probation Officer. The Dublin and Louth DTC teams provide a similar complement of staff, with the exception of a psychological input.

From my experience of working in this area in both a community and custodial context, I have found that many individuals misusing substances do so as a maladaptive coping mechanism following trauma. Whilst substance misuse is being addressed, many suppressed emotions come to the fore, and psychological support during this time can, therefore, be beneficial. O'Hare and Luney highlighted that within the Belfast SMC evaluation, that support was valued by participants (2020, p. 49). As our understanding of the importance and benefits of trauma-informed approaches has developed since the establishment of the Dublin DTC in 2001, access to psychological services for the participants of the Dublin and Louth DTCs should be considered.

All participants of the Dublin DTC receive education/training support from the education and training authorities (McNamara, 2013, p. 30). This is not part of the dedicated suite of services within the other two courts where Probation Officers provide a conduit to education and training opportunities for participants. Unproductive use of time is an identified risk factor relating to recidivism (Bonta and Wormith, 2013, p. 87). Thus, there is a clear rationale for the inclusion of formal training/employment supports as part of the SMC and DTC programmes. Desistance literature, with its focus on the creation of opportunities that allow individuals to demonstrate their intrinsic self-worth, recognises the impact of significant life events like employment in the rehabilitation journey. It recognises the role of these meaningful activities, the rituals that bring people together, supporting personal agency and a changing narrative that supports the reshaping of identity and reintegration.

An interesting observation made by O'Hare and Luney, was the desire for a co-located team by some of the Belfast SMC staff (2020, p. 53). This was based on the view that it would improve team-building and shared learning and assist with efficient case management. The benefits for staff working on a full-time basis with the SMC are clear. Notably, a staff member from the voluntary service expressed reservations regarding the establishment of a co-located team, voicing concern that it might impact on the impartiality of decision-making. It might also raise a question about the dangers of 'mission creep', where original objectives become broadened and initial goals are altered or forgotten. Co-location also raises the question as to which service would bear the financial costs and resource burden of establishing and maintaining such a team. Nevertheless, it raises a thought-provoking idea, one which, to my knowledge, has not been considered by the Dublin DTC team to date. It may be less pertinent for the Louth DTC, which operates on a smaller scale, with one sitting on a monthly basis.

Operations of the Substance Misuse Court

According to O'Hare and Luney (2020, p. 44), the Belfast SMC engages with referrals once guilt is established. Potential participants have either pleaded guilty to the index offence or have been found guilty, and they are diverted to the SMC prior to sentencing. The Dublin and Louth DTCs operate on a similar basis. Subject to the participant successfully completing the Belfast SMC programme, sanction may be addressed by 'conditional discharge' with liberty to re-enter by the relevant parties. This decision can be reviewed/rescinded if

a further offence is committed. Notably, the judges presiding over the Dublin and Louth DTCs have the option of not proceeding to conviction, which leaves the participant free of any criminal record in relation to this matter. However, should the participant's placement be terminated for any reason, the case is returned to the original sentencing court for further adjudication.

Whilst there are evident similarities between the admission criteria for all three courts — such as no history of serious violent offending — there are some notable differences. The Belfast SMC accepts participants who have an addiction to alcohol only (O'Hare and Luney, 2020, p. 46). It is the only one of the three courts to do so. Whilst the Dublin DTC will address poly-substance misuse, it focuses primarily on those with an addiction to heroin. This decision was made following a review of the needs of those engaged with health services in the late 1990s (Department of Tourism, Sport and Recreation, 2001, p. 20). The Louth DTC works with individuals who are engaged in abuse of one or more illicit substances. It is interesting that, in light of the widely acknowledged complex relationship with alcohol in Ireland, alcohol misuse was not considered at either the planning or review stages of the Dublin or Louth DTCs, or at least was not documented. This may be considered further by the DTC teams drawing from current trends and research² on the nature and patterns of substance misuse amongst those in contact with the criminal justice system.

Within O'Hare and Luney's article and the *Evaluation of the Substance Misuse Court* pilot report (NICTS and NISRA, 2020), there is little reference to the programme content itself. Therefore, one would assume that the programme is individualised, much like the Louth DTC. The Dublin DTC has three phases, each with its own requirements and goals to achieve, in order to progress onto the next phase, prior to graduation. O'Hare and Luney explain that staff of the Belfast SMC identified some limitations with the current structure of the Court and believe that a comprehensive treatment plan from the outset may be of assistance. Aspects of the Dublin DTC may assist them, particularly in the area of goal-setting at different stages of the programme.

Personal circumstances, such as unstable accommodation and anti-social peer group, may mean that community-based addiction programmes can present significant challenges for some probation clients. Some participants of the Dublin and Louth DTCs have sought residential treatment to assist them in addressing their addiction difficulties, although regrettably, there are

² The findings from a research study, conducted by the Probation Service and the Central Statistics Office, on all cases subject to probation supervision at a point in time will be published in 2021.

no formal links established between the courts and treatment centres, to enable fast-tracking of placement. Similarly, there do not appear to be such relations between the Belfast SMC and their counterparts. I believe that a formal arrangement to avail of timely residential treatment that would complement a participant's progress through the 'stages of change'³ would be a beneficial addition, when community-based interventions are less appropriate and may simply serve to reinforce feelings of failure and powerlessness.

Evaluation of the Substance Misuse Court

The *Evaluation of the Belfast Substance Misuse Court* yielded overall positive results, including a reduction in substance misuse or abstinence, and relatively short programme completion (NICTS and NISRA, 2020 p. 45). It is difficult to make direct comparisons between the three courts because of different stages of development, aforementioned variables and the absence of a published formal evaluation in respect of the Louth DTC. Nevertheless, I believe that there is learning to be gained from the evaluation process itself.

O'Hare and Luney note that various research methods were utilised to collect data for the evaluation, including data collected by key stakeholders, substance misuse testing, client questionnaires, applications of structured risk-assessment tools, and focus groups with operational staff. This wide scope of data collection ensured that all stakeholders in the process had the opportunity to share their views, and that the evaluation was not focused solely on numbers. As a result, several additional benefits were recognised, including the development of meaningful relationships, which could not have been captured by figures alone but have significance to the programme (2020, p. 58). It is further explained within the article that 'in recognition of the importance of credible feedback', a service-users' group which is to be facilitated by an external agency will be developed within phase 2 (2020, p. 50).

Since the initial pilot of the Dublin DTC in 2001, three evaluations have been completed, the most recent of which was in 2010 (Department of Justice, Equality and Law Reform, 2010). This evaluation utilised quantitative research alongside consultations with management of the relevant agencies. Several recommendations were made, including a review within twelve to eighteen months that included a focus on data collation (2010, p. 30). By 2017, a review had not been undertaken. In 2017, a new national strategy,

³ A 5-stage model identified by Prochaska and DiClemente (1983) that offers an integrative framework for understanding the process of behaviour change.

Reducing Harm, Supporting Recovery: A Health-Led Response to Drug and Alcohol Use in Ireland, 2017–2025 was published (Department of Health, 2017). Despite recommendations dating back to 2009, this was the first time that alcohol was integrated with drugs as part of the national strategy, and was included in the definition of substance misuse. The related action plan for 2017–2020 identified the mapping of the future direction and objectives of the Drug Treatment Court as a strategic action with a commitment to an independent evaluation of the Court (Department of Health, 2017, p. 91). I understand that this review has commenced; and whilst awaiting publication of the results, continual promotion of the DTC is being undertaken as recommended in the plan.

Whilst the Dublin DTC and the Belfast SMC were policy driven, the Louth DTC was initiated by a District Court judge who had previously presided over the Dublin DTC (Geiran, 2021, p. 41). He had witnessed at first hand the merits of the approach, and upon his transfer to Co. Louth, pursued the introduction of a DTC. A review was undertaken approximately eighteen months following programme commencement; however, this has not been formally published.

It is my belief that participant and operational team feedback should be sought as they are active participants in the process. It would be worthwhile for the Dublin and Louth DTCs to look to our Northern Ireland counterparts and assess the value of obtaining such feedback. Their method of data collection may also offer useful suggestions.

Conclusion

O'Hare and Luney (2020) offer a comprehensive overview of the Belfast SMC in their paper which reflects on the recent evaluation of the Court. They highlight clear strengths of the Court, from which valuable lessons can be learned. These include the inclusion of psychology on their multidisciplinary team, alcohol misuse alone as an entry criterion and a more holistic method of evaluation. They also discuss the challenges faced by the operational team, such as the structure of the programme. The Dublin DTC programme may be able to offer possible solutions in this regard based on the use of a staged approach over a number of years. The development of a co-located SMC team was identified as a recommendation from this evaluation. The structure, function and added value of this approach are worth considering, with the opportunity for engagement across the jurisdictions on how if at all this might be taken forward. Given the experience in both jurisdictions, it would seem

appropriate to agree a more structured approach to shared learning, possibly through an annual workshop/webinar involving the key agencies, with inputs from service-users.

It is my firm belief that the absence of a formal relationship between the courts and residential treatment centres that facilitates fast-track placements is a missed opportunity. As a practitioner working with individuals with addiction difficulties, I believe that this can only complement the programmes offered and should be considered by the courts.

The Louth DTC was the first Irish example of a formal problem-solving court that grew organically, as the other two were policy driven. There are merits in a review of this Court to evaluate its development and inform future practice should other regions wish to introduce a DTC in a similar manner. It also raises an idea recently proposed by Phil Bowen of the Centre for Justice Innovation, of the possibility of incorporating DTC principles and practices within district or magistrate courts, without the introduction of a formal structure of a dedicated court.

This paper argues that whilst there are some variables between operations and stages of development, there is a really important opportunity now for the three courts to share learning, to increase understanding of the model across the criminal justice system and beyond, and to support the ongoing delivery of high-quality services to participants who in the main have long histories of marginalisation and disadvantage. This collaboration is timely given the strategic actions identified in the current National Drug and Alcohol Strategy. In conclusion, I suggest that the Public Protection Advisory Group (PPAG), with representation from both Probation Services and other criminal justice agencies, is well placed to establish a mechanism that can facilitate cross-jurisdictional sharing of policies, procedures and practice that supports and enhances the current commitment to the ongoing delivery of high-quality effective practice across these courts.

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