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## Evaluation of drug testing in the criminal justice system in three pilot areas

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The Criminal Justice and Court Services Act 2000 gave the police the power to drug test detainees in police custody and courts the power to order drug testing of offenders under the supervision of the probation service. The testing is restricted to specified Class A drugs: heroin and cocaine. The new powers apply to those aged 18 or over who have been charged or convicted of "trigger offences" (these include property crime, robbery and specified Class A drug offences). These powers are currently being piloted in three areas: Hackney; Nottingham; Stafford and Cannock. An evaluation programme is being undertaken over a three-year period. The results reported here represent a preliminary evaluation of the first few months of the project and have informed the planned extension to six new pilot areas.

### Key points

- The police and the probation service at all three sites have adopted the new provisions. Whilst there have been some implementation difficulties, the testing has become successfully embedded into normal working procedures and there are many examples of good practice.
- Police testing was implemented between July and September 2001. 1,835 tests had been undertaken by the end of February 2002, involving 1,468 individuals aged 18 or over for the 'trigger offences'. Compliance has been good with less than 0.5% of tests refused.
- The proportion of police tests where results were positive for cocaine and/or heroin were: Hackney, 63%; Nottingham, 58%; Stafford and Cannock, 47%.
- Probation testing started in early November 2001 and 106 individuals had been or were being tested by the end of February 2002. Over half of those tested have breached the conditions – testing positive for opiates and/or cocaine either for three consecutive or for two non-consecutive tests over a six week period.
- It is too early to detect any impact of drug testing on drug misuse and/or offending but theories as to how this might work centre on the separate or combined *punitive effect* (possible penalties resulting from a positive test) and *surveillance effect* (motivation to change behaviour as a result of being monitored). Either of these effects could work with or without the support of drug treatment.
- Early findings suggest that:
  - the ways in which drug testing is linked to advice and support given to individuals seeking treatment needs to be strengthened considerably at a local and national level
  - for the *surveillance effect* to work, the tester has a potentially very important role in reinforcing messages about the consequences of a positive test result
  - for probation testing, the relatively strict breach conditions currently applied may be too demanding for some offenders, who need support over a period of time to achieve abstinence. Greater flexibility might be helpful for this category of offender.

**The views expressed in these findings are those of the authors, not necessarily those of the Home Office (nor do they reflect Government policy)**

**Table 1 Police drug monitoring data: cumulative to 28 February 2002**

Pilot site (start date)	Total no. of tests attempted	Successful tests	Positive cocaine and heroin	Positive cocaine only	Positive heroin only	Negative
Hackney (17 Sept 01)	363	347	91	100	27	129
Nottingham (17 Sept 01)	936	915	275	141	111	388
Stafford/Cannock (30 July 01)	536	503	60	67	107	269
Total	1,835	1,765				

The Criminal Justice and Court Services Act 2000 gave the police the power to drug test detainees in police custody and courts the power to order drug testing of offenders under the supervision of the probation service. For the police, this involves drug testing of individuals charged with a trigger offence. For probation, drug testing of offenders is specified for those who have received one of the following:

- a court request to conduct a Pre-Sentence Test
- a drug abstinence order (DAO)
- a drug abstinence requirement attached to a community sentence (DAR)
- drug testing as a condition of release from prison on licence.

The aims of the new initiative are to deter drug misuse and related offending whilst under criminal justice supervision and to identify offenders who should be receiving treatment and monitoring their progress.

### The pilot programme

In the first instance, the powers have been adopted in three pilot areas: Nottingham; Hackney; Stafford and Cannock. Police testing started in July 2001 in Stafford and Cannock and in September 2001 in Hackney and Nottingham. Probation testing started in all sites in November 2001.

The pilots have been designed to assess how the drug testing powers work in practice, and how and whether the objectives of the new provisions are met. For these reasons, an evaluation project has been set up to monitor progress of the pilots, identify good practice and assess overall effectiveness. The pilots will be evaluated over a three-year period and a final evaluation report will be available in Autumn 2004.

Each element of the pilot programme (testing on charge, testing on community sentence, testing on licence) is being evaluated to assess:

- effectiveness – the primary research questions are to find out whether drug testing reduces offending either in its own right or via a reduction in drug consumption by offenders, with or without the support of treatment
- cost-benefit – this is concerned with the cost of drug testing and whether this is outweighed by the value to society of the reduction in offending and drug consumption
- processes and structures – the primary research questions are designed to assess whether the operational processes and organisational structures impair or facilitate the effectiveness of the new testing powers.

To answer these questions, the evaluation team is undertaking primary and secondary data collection and analysis. The data collection includes a major programme of interviews with offenders (including initial, six month and twelve month follow-up interviews), interviews with local stakeholders (police, probation, Crown Prosecution Service, courts, Drug Action Team, Drug Prevention Advisory Service and arrest referral schemes), group workshops, observations of processes, and case tracking.

It should be noted that the preliminary findings reported here are from the first few months of the evaluation – the system is evolving on a daily basis as new issues are encountered and resolved.

### Police pilots

The sites have been collecting monitoring data on the number of tests conducted and their results (Table 1).

The numbers of individuals tested for trigger offences are: Hackney, 339; Nottingham, 693; Stafford and Cannock 436. As shown in Table 1, some individuals have been tested on more than one occasion. The ratios of tests to individuals varies across the sites. Hackney shows the lowest rate, possibly due to the increased geographical mobility across borough boundaries in London. Table 2 is a summary profile by gender, age and ethnicity of those tested.

This analysis is supported by the interview data, which also showed high levels of unemployment, poor health, homelessness, and low educational attainment. There have been very low levels of refusals (less than 0.5%) which suggests good compliance with the provisions.

**Table 2 Profile of individuals tested by police: cumulative to 28 February 2002**

	Pilot sites		
	Hackney	Nottingham	Stafford/Cannock
Male	85%	78%	84%
Under 35	72%	84%	85%
White European	42%	83%	96%
African Caribbean	49%	10%	2%

### Probation pilots

The number of those given drug testing conditions up to the end of February 2002 and the numbers who have breached their conditions by testing positive on three consecutive or two non-consecutive tests over a six week period are shown in Table 3. Nottingham has by far the largest number of

**Table 3 Numbers tested by probation: 5 November 2001 to 28 February 2002**

Pilot site	Drug testing conditions			Tested positive for cocaine and/or heroin		
	DAOs	DARs	On licence	1st breach	2nd breach	3rd breach
Hackney	1	2	6	–	–	–
Nottingham	4	59	6	45	–	–
Stafford/Cannock	2	24	2	11	4	1
Total	7	85	14	56	4	1

Note: breach data takes longer to be notified and some breaches may not be reflected in these figures.

orders to date. This reflects some implementation difficulties experienced in the other two sites for DAOs and DARs. There have also been setbacks in relation to drug testing for those released on licence across all three sites. There are insufficient numbers at present for more detailed analysis of these data.

### Effectiveness issues

It is too early to identify any impact of drug testing on offending or drug misuse. However, some issues are emerging which may have an impact on the potential effectiveness of the provisions.

#### Offenders' views

Although it is very early days in the evaluation, some issues have already emerged from the programme of offender interviews. Only one in five tested by the police thought it would affect their behaviour; but this proportion was higher among those who thought that drug testing results would have an impact on the sentence they received. Verbal responses suggest that individuals are confused about whether there are any punitive consequences of a positive test result.

For individuals being tested by probation, there appear to be two broad categories of offenders:

- those for whom testing alone has the potential to have an effect on behaviour, either via the punitive or surveillance effect
- those who find abstinence too difficult a target to achieve without treatment and/or other related programmes to help them tackle their substance abuse.

For those who need the support of treatment, and who are keen to address their drug misuse, the threat of breach appears to be either inconsequential or de-motivating.

#### The tester's role

The time spent with individuals whilst they are being tested provides an opportunity to reinforce messages about the consequences of a positive test result.

For the police, civilian detention officers (CDOs) have been appointed to undertake testing and the tester's role is increasingly recognised as being more than the administration of the test itself. The procedural guidance for testers is currently being revised to ensure that the consequences of a positive test result are explained to detainees and that arrest referral is offered. (The referral schemes have trained drug workers operating in or near the police custody suites. Drug misusing arrestees are able to discuss their problems on a voluntary basis with the drug workers, who can also help them gain access to appropriate treatment.) Two of the sites are going

further, with training for CDOs on the purpose of the testing process and the role of arrest referral. They are also considering drugs awareness training.

Probation Service Officers or Team Assistants have been appointed to undertake probation testing. At all three sites the role of testers has developed to incorporate motivational support to offenders, including directing them towards treatment wherever possible. As with the police, some sites have implemented or are considering specialist training for testers so that they can work to support case managers with a specific focus on addressing the drug misuse aspect of the offenders' behaviour.

#### The links with treatment

The mechanisms by which drug testing is to be used as a means of targeting treatment are not yet clear. For police, some difficulties have been experienced where the arrest referral scheme is not working well, and the connection between a positive test result and treatment targeting is not being made. However, sites are now coming to recognise the importance of integrating the drug testing process with the arrest referral arrangements that have been set up locally and are strengthening operational links.

For probation, the extent to which the client is directed towards appropriate treatment varies according to the relationship between case managers and testers, and the level of knowledge about local treatment options. All sites recognise the need to strengthen the operational links between the criminal justice system and treatment services to ensure that referral routes are appropriate.

For police and probation in all three sites, the availability of timely and appropriate treatment services, which reflect the pattern of drug use, is considered a major issue. Treatment services are available on all three sites, although reported waiting times are fairly high (6–8 weeks) for certain types of treatment (especially prescription services). There is also a potential mismatch between the needs of offenders with a drug misuse problem and the focus of treatment provision for the wider population. Locally, some sites are seeking solutions to this via the Drug Action Team (a multi-agency partnership responsible for coordinating anti-drug activity at a local level).

These issues should also be considered at a national level. Some sites have suggested there should be scope for more formal links between drug testing and treatment services (e.g., attaching conditions to seek treatment services to bail or to community orders). Local probation and court staff feel that some individuals would benefit from this, if it were available as an option. It is important to note that this is not seen as an alternative to Drug Treatment and Testing Orders

(DTTOs), but as a complementary (and lower-tariff) sentencing option which bridges the gap between sentences for offenders with controlled drug use and the DTTO.

### Sentencing and breaches

It is too early to tell whether drug testing is having an impact on sentencing and bail decisions. All three sites have experienced some difficulties in terms of:

- notification of test results to court so that they can have a bearing on bail decisions and sentencing
- the identification by probation and courts of all individuals who meet the criteria for drug testing either on licence or a community sentence.

Locally, sites have implemented a variety of systems to improve:

- communication within and between agencies
- understanding of the guidance by all stakeholders involved.

These initiatives appear to be improving the situation.

Some stakeholders have suggested that testing by the police should be allowed to have an impact on police bail. Some feel that this will increase the deterrence effect of drug testing.

The use of breach for those tested by probation services has emerged as a major issue. Breach rates were very high at Nottingham (see Table 3), which is the site where the new orders have been implemented most extensively. Locally and nationally, consideration is being given to changes to allow breach arrangements to be made to work in a more flexible way. The aim is to combine the penalty and support role in a more appropriate way so that those who need treatment can meet the abstinence requirement. Probation and magistrates perceive that, for these individuals, current breach provisions are potentially de-motivating and an ineffective and inappropriate use of resources.

### Management lessons learned from the pilots

The pilots have all been implemented using similar project management arrangements:

**Steering Groups:** all sites have a Steering Group with representatives from agencies affected locally. These groups have played an important communication role during the setting up phase of the project. Early lessons from the first three pilots include the need:

- to involve all core agencies including police, probation, Crown Prosecution Service, courts, Drug Action Team, Drug Prevention Advisory Service and arrest referral schemes
- for clear national and local terms of reference and nominated communication responsibilities.

**Project management:** each site has identified a project manager within the police and probation service, with responsibility for overseeing the implementation of the pilots. These project managers have been the primary channel for all communication about the pilots between the local strategic and operational stakeholders and the Home Office. All sites have benefited from motivated and enthusiastic project managers.

**Communication:** all three sites have found communication a major management challenge, especially in view of the number of agencies and individuals affected by the drug testing powers. Difficulties have been experienced at:

- a strategic level, with some stakeholders at some sites not being fully engaged from the start
- an operational level, both in terms of communicating procedural information (guidance) to all those involved, and communicating test results to those whose decisions are affected by them.

These difficulties are to be expected at the early stages of partnership working as it takes time for communication networks to be established.

**Guidance:** early evidence suggests that some of the implementation difficulties experienced by the pilots have been caused by lack of clarity as to the purpose of the drug testing powers, and the way in which testing is expected to affect behaviour. There is a short term need to establish a clearer understanding of how drug testing can in practice reduce drug misuse and related offending.

Further guidance from the Home Office is also needed, particularly for new sites, on the purpose, role and membership of the steering group, and the strategic and operational communication requirements.

### Other suggestions

Some stakeholders locally have suggested that the scope of the drug testing powers should be wider. Options to widen the coverage of the scheme which have been suggested include extending the scheme to:

- other offences such as handling, attempts, and prostitution linked to drug misuse. Although there is discretion to test 'non-trigger' offences in both police and probation, this is not generally being taken up due to pressures of time
- 16–18 year olds – the police have suggested that the deterrent effect could work well for individuals who have yet to become addicted.

These options require legislative change and will not be considered by the evaluation team.

### Methodological note

The research is being conducted by Matrix MHA Research & Consultancy Ltd, a multi-disciplinary research and consultancy organisation with experience of major, national evaluations, with the support of Nacro who are undertaking the offender interview programme and an academic expert panel comprising leading experts in drugs and crime research and in qualitative and quantitative research techniques.

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