



SCOTTISH EXECUTIVE

# The Fife Drug Court in Action: The First Six Months

Crime and Criminal Justice



social  
research

**THE FIFE DRUG COURT IN ACTION:  
THE FIRST SIX MONTHS**

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# EXECUTIVE SUMMARY

## BACKGROUND

Drug Courts were initially established in the USA in the late 1980s by sentencers who were frustrated at the limited range and effectiveness of existing measures for dealing with those whose offending was related to the misuse of drugs. Drug Courts aim to reduce drug misuse and associated offending by offering treatment based options outwith the traditional court setting. Drug Courts are now also operational in a range of other jurisdictions, including Australia, Canada and Ireland.

In the UK, formalised community-based treatment approaches to drug-related offending initially took the form of Drug Treatment and Testing Orders (DTTOs). DTTOs were introduced in the UK through provisions in the Crime and Disorder Act 1998. Following the successful piloting of DTTOs in Glasgow and in Fife, Scotland's first Drug Court was established in Glasgow Sheriff Court in October 2001. A process evaluation of the first six months' operation of the Glasgow Drug Court (Eley et al, 2002b) concluded that the initial stage of the pilot had in most respects been a success. There was widespread professional support for the Drug Court concept and a shared optimism that it would prove to be more effective than traditional approaches in reducing drug use and associated offending.

A second pilot Drug Court was established in Fife in August 2002 and made its first order on 9th September 2002. Sitting in Dunfermline and Kirkcaldy Sheriff Courts it aims to reduce the level of drug-related offending behaviour; to reduce or eliminate offenders' dependence on or propensity to use drugs; and to examine the viability and usefulness of a Drug Court in Scotland, especially in a non-urban centre, using existing legislation, thus demonstrating where legislative and practical improvements might be appropriate.

The proposed target group for the Fife Drug Court is offenders aged 21 years or older<sup>1</sup> of both sexes, in respect of whom there is an established relationship between a pattern of serious drug misuse and offending, and whose drug misuse is susceptible to treatment. The main treatment options that the Drug Court has available to it include abstinence, methadone maintenance and reduction, lofexadine detoxification and naltrexone maintenance, and benzodiazepine detoxification.

All orders made by the Drug Court are subject to drug testing (urinalysis) and regular (at least monthly) review. The Drug Court Sheriff has responsibility for reviewing the Order and responding to non-compliance. A multi-agency Drug Court Team has been established to review the working, development and operation of the Drug Court and a Drug Court Supervision and Treatment Team has been established to support the Drug Court in all aspects of assessment, supervision, treatment, testing and reports to the court.

An evaluation of the pilot Drug Court in Fife was commissioned by the Scottish Executive. The research will consist of two main phases. This report presents the findings from a *formative and process evaluation* of the Fife Drug Court's operation in the first six months. The aim was to document the operation of the Drug Court during this initial period with a

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<sup>1</sup> Offenders aged 16-20 years of age may also be referred to the Drug Court under exceptional circumstances.

view to identifying any changes that might be required to enhance its operational effectiveness.

## **METHODS**

The evaluation of the Fife Drug Court's first six months of operation involved a variety of research methods aimed at the collection of both quantitative and (primarily) qualitative data. These included interviews with professionals associated with the Drug Court and with clients subject to Drug Court Orders; the collection of information from Drug Court records; observation of the Drug Court in action; individual client questionnaires completed by members of the supervision and treatment team; and the analysis of team meetings. In addition to these more formal methods, the researchers spent time informally familiarising themselves with the Drug Court in action and becoming acquainted with the role of the various professionals involved in its operation.

## **REFERRAL TO AND SENTENCING BY THE DRUG COURT**

Potential candidates for the Drug Court were usually identified by sheriffs sitting summarily in Dunfermline or Kirkcaldy Sheriff Courts, or were brought to the attention of the bench by defence agents. Professionals involved in the operation of the Drug Court were generally content with the referral criteria, though some suggested that younger offenders should be given the opportunity to participate in Drug Court Orders.

Seventy-three existing DTTOs were transferred into the Drug Court in September 2002 and 178 additional referrals for a drug assessment had been made between September and December 2002. Just over four-fifths of offenders referred were male and the majority of referrals emanated from Kirkcaldy Sheriff Court.

The drug assessment involves the client keeping a minimum of five separate appointments with the Supervision and Treatment Team and submitting to a drug test. Sheriffs were content to continue such cases on bail since this provided a more realistic test of the offender's motivation and willingness to comply. Clients were well informed about the purposes of a Drug Court Order and the expectations that would be attached to participation in the Drug Court prior to consenting to an order.

While some offenders apparently agreed to a Drug Court Order primarily to avoid a custodial sentence, most were also considered to be motivated by the possibility of getting off drugs. Views were divided over whether the possibility of participating in the Drug Court encouraged offenders to enter earlier guilty pleas. There was no evidence, however, that it encouraged them to plead guilty to offences that they were not, in fact, guilty of committing.

By the end of January 2003, 48 offenders had been made subject to a Drug Court Order. The mean age of offenders was 25 years and four-fifths were male. Four-fifths of offenders had been sentenced by the Drug Court sitting in Kirkcaldy. Around two-thirds of clients received a DTTO while around one-third received an enhanced probation order. Most offenders had numerous previous convictions and almost all reported using heroin and benzodiazepines.

Mean daily reported expenditure on street drugs varied from £5 to £90, with an average of just under £35.

## **TREATMENT AND SUPERVISION**

Multi-professional and multi-agency working are key characteristics of the Drug Court and although this has the potential for minor difficulties in practice, potential problems have been addressed and mechanisms put in place in order to overcome issues as they arise. The services made available to offenders through Drug Court Orders are comprehensive, with treatment and testing as the main component of all interventions.

The Supervision and Treatment Team provide the majority of services available to clients on Orders. While this reflects the Team's expertise and in-house resources, it should also be contextualised by the lack of services for drug users in some areas of Fife. Workers and clients expressed general satisfaction with the operation of Drug Court Orders and were aware of the underlying principles of court-mandated treatment provision. While there have been some tensions around institutional ethos and practice in relation to prescribing and testing, the will to surmount these problems is evident from respondents.

## **REVIEWS AND ENFORCEMENT**

Pre-court review meetings were perceived by members of the Drug Court Team to be an efficient and valuable component of the process of supervising clients on Drug Court Orders. Defence agents, despite their caseload with the courts, were often able to attend the pre-court reviews, which they perceived as providing a valuable source of information about their clients.

Review meetings were held in open court. This represented a significant shift in practices, for both professionals and clients, from the earlier Drug Treatment and Testing Orders pilot where reviews were held in chambers. Sheriff-client dialogues can be an integral part of the review process. However, in this initial six month period, many clients were unable to respond to Drug Court Sheriff's questions and felt awkward about the public nature of the exchanges.

Supervision and Treatment Team workers took active steps to respond to instances of non-compliance and several applications for breach had been submitted by end January 2003, though no orders had, as yet, been revoked. The Drug Court Sheriffs had a number of sanctions that they could invoke without recourse to formal breach proceedings, although sentencers believed that the range of actions currently available to the Drug Court was insufficient and that short custodial sentences would enhance their armoury of sanctions.

## **PERSPECTIVES ON THE EFFECTIVENESS OF THE DRUG COURT**

Most professionals and clients were reasonably confident that the Drug Court would be capable of bringing about reductions in drug use, offending and associated problems, though the challenges involved in achieving and maintaining an abstinent lifestyle were not underestimated. Factors that were perceived to enhance the effectiveness of the Drug Court

included the monitoring of behaviour and drug use, the regular reviewing of offenders by a dedicated bench, and the nature and intensity of the treatments and services provided. Factors that it was thought might detract from the Drug Court's effectiveness (even though they may not yet have done so) included conflicting professional values, insufficient team-based consultation with respect to treatment decisions, excessive workloads and an insufficiently firm approach to enforcement.

The capacity of the Drug Court was thought by professional respondents to be about right. None of the criminal justice professionals believed that the Drug Court had impacted significantly upon the workload of the Sheriff Courts in Dunfermline and Kirkcaldy, or upon their own workloads. However it was recognised that as the workload of the Drug Court continued to increase, this could have implications for its capacity to deal effectively with clients given Drug Court orders. There was general agreement that a dedicated Drug Court was welcomed and represented an improvement over previous arrangements for dealing with drug-misusing offenders in Fife.

## **CONCLUSION**

Fife Drug Court is unique in terms of its location (a non-urban centre) and its implementation across two courts (Dunfermline and Kirkcaldy). Many positive features of the Fife Drug Court were apparent, not least of which was the commitment and enthusiasm of those involved in its operation. The formative and process evaluation of the first six months of the pilot Drug Court in action suggests that the initiative has been successful, with the role of the Drug Court Sheriff and the dedicated Supervision and Treatment Team having been critical in this respect. Overall, the Fife Drug Court was perceived to be an important innovative response to drug-misusing offenders. The dedicated Drug Court Team, and the treatment and other resources made available to clients on Drug Court Orders, were viewed as holding much promise with respect to the reduction of drug-related offending in Fife.

## **CHAPTER ONE INTRODUCTION AND BACKGROUND**

### **THE DEVELOPMENT OF DRUG COURTS IN OTHER JURISDICTIONS**

1.1 Drug Courts were initially established in the USA in the late 1980s by sentencers who were frustrated at the limited range and effectiveness of existing measures for dealing with those whose offending was related to the misuse of drugs. Drug Courts aim to reduce drug misuse and associated offending by offering treatment based options outwith the traditional court setting. Although there are wide differences in the manner in which they operate (Nolan, 2001), Gebelein (2000) has suggested that Drug Courts are, in general, characterised by: the integration of substance abuse treatment with criminal justice processing; the use of a non-adversarial approach; the ‘fast-tracking’ of participants into treatment; the provision of a continuum of treatment, rehabilitation and related services; frequent testing for illicit drugs (and usually, in the USA, alcohol); a co-ordinated strategy between judge, prosecution, defence and treatment providers to secure offender compliance; ongoing judicial review of and interaction with each participant; integral monitoring and evaluation; continuing interdisciplinary education; and partnerships with public agencies and community-based organisations.

1.2 The impetus for the establishment of Drug Courts in North America came in part from a growing acknowledgement of the link between drug misuse and crime coupled with increasing evidence of the efficacy of drug treatment, including treatment that is compelled rather than undertaken on a voluntary basis (e.g. Hough, 1994; Gebelein, 2000). Local and national evaluations of Drug Courts in the USA have been broadly encouraging. For example, Belenko (1998, 2001), in reviewing US evaluations, concluded that Drug Courts achieved better completion rates than traditional courts and brought about reductions in drug use and recidivism while offenders were participating in the programme. Drug Courts are now also operational in a range of other jurisdictions, including Australia, Canada and Ireland (Walker, 2001), though it has been suggested that they may have lower success rates when, as in these jurisdictions, they target more serious offences and offenders (Goldkamp, 2000).

### **THE DEVELOPMENT OF DRUG COURTS IN SCOTLAND**

1.3 In the UK, formalised community-based treatment approaches to drug-related offending initially took the form of Drug Treatment and Testing Orders (DTTOs). DTTOs were introduced in the UK through provisions in the Crime and Disorder Act 1998. Under the relevant legislation, courts can require an offender to undergo treatment for his or her drug misuse, subject to the offender’s consent to such an order being made.

1.4 DTTOs were first introduced in the UK in three pilot schemes in Croydon, Liverpool and Gloucestershire (Turnbull et al., 2000). The first Scottish scheme was established in Glasgow in October 1999 when orders became available to the Glasgow Sheriff, Stipendiary Magistrate and (subsequently) High Courts. A second pilot area began in Fife in July 2000 when DTTOs were made available to Cupar, Dunfermline and Kirkcaldy Sheriff Courts. Following an encouraging evaluation, which suggested that DTTOs had a marked impact, at least in the short term, on drug use and associated offending (Eley et al., 2002a) the Scottish Executive agreed to a phased roll-out of DTTOs to other Scottish Courts. At the time of

writing, funding for the establishment of DTTO schemes has been provided to fourteen other local authorities in Scotland.

1.5 DTTOs differ from existing provisions insofar as the role of the supervising officer is limited, mandatory drug-testing is an integral component of the order and the courts have powers to review orders on a regular basis. Importantly, DTTOs involve the adoption of a new role for sentencers, requiring them to have regular – usually monthly – contact with offenders on orders via review hearings. In this capacity, the role of the sentencer is to motivate, encourage and sanction the offender for progress or lack thereof. DTTOs thus differ from traditional community-based sentences in that sentencers have active overview of the progress and outcomes of their sentencing decisions.

1.6 Following the successful introduction of DTTOs in Scotland, in February 2001, a working party was established by the Deputy Justice Minister and tasked with producing proposals for the introduction of a Drug Court within existing legislation in Glasgow Sheriff Court (Scottish Executive, 2001). Scotland's first Drug Court was introduced on a pilot basis in Glasgow Sheriff Court in October 2001. Its objectives are to reduce the level of drug-related offending behaviour, to reduce or eliminate offenders' dependence on or propensity to use drugs and to examine the viability and usefulness of a Drug Court in Scotland using existing legislation (Glasgow Sheriff Court, 2001).

1.7 The establishment of a Drug Court in Scotland, therefore, followed a different trajectory from the establishment of similar courts in other jurisdictions. In the latter case, Drug Courts represented a completely new approach to addressing drug-related offending in the community. In Scotland, by contrast, the pilot Drug Court in Glasgow had available to it the same range of disposals - including DTTOs - as was available to the sheriff court. The distinguishing features of the Drug Court were the establishment of a 'dedicated' bench and court team, the appointment of a co-ordinator to oversee and facilitate the operation of the court and the introduction of pre-review meetings to better prepare the sheriff for the review hearings conducted in the court.

1.8 A process evaluation of the first six months' operation of the Glasgow Drug Court (Eley et al, 2002b) concluded that the initial stage of the pilot had in most respects been a success. There was widespread professional support for the Drug Court concept and a shared optimism that it would prove to be more effective than traditional approaches in reducing drug use and associated offending. The number of police referrals to the Drug Court was lower than expected, multi-disciplinary teamwork had not yet been fully developed and resource implications of Drug Court Orders had not been fully acknowledged but steps have subsequently been taken to address these issues. The limited range of sanctions and rewards available to the Drug Court was also identified as an area requiring further attention.

## **THE FIFE DRUG COURT**

1.9 A second pilot Drug Court was established in Fife in August 2002 and made its first order on 9th September 2002. The Fife Drug Court sits in Kirkcaldy (on a Monday and Thursday) and Dunfermline (on a Wednesday) Sheriff Courts. It may, in its second year of operation, be extended to Cupar. According to the Fife Drug Court Reference Manual (Fife Drug Court, 2002) the objectives of the Drug Court are to:

- reduce the level of drug-related offending behaviour;
- reduce or eliminate offenders' dependence on or propensity to use drugs; and
- examine the viability and usefulness of a Drug Court in Scotland, especially in a non-urban centre, using existing legislation, and to demonstrate where legislative and practical improvements might be appropriate.

1.10 The operational arrangements for the Drug Court were established by a Steering Group. The operational procedures that were developed for the Fife Drug Court were similar in many respects to those that were developed for the Glasgow Drug Court. However, some procedures had to be tailored to take account of key differences in the way the Fife Court will operate. For example, cases are referred to the Fife Drug Court from other sheriffs sitting summarily and it has jurisdiction over all Drug Court Orders it makes in addition to all DTTOs made by other sheriffs in relation to summary cases. By contrast, most referrals to the Glasgow Drug Court are identified prior to the offender's appearance before the custody court. While it has jurisdiction over orders it makes, the Glasgow Drug Court does not have jurisdiction over DTTOs made by other sheriffs sitting in the sheriff court.

## **Operation**

1.11 The Fife Drug Court has the same authority and status as other courts and, accordingly, has available to it the same range of sentences available to the sheriff court under summary proceedings. The sentences available to the Drug Court continue to be available to the sheriff court, though DTTOs made in the sheriff court are transferred to the Drug Court for supervision and ongoing review. In respect of these orders, however, the Drug Court cannot exercise any powers (e.g. interim sanctions<sup>2</sup>) or procedures (e.g. pre-review hearing meetings) that may apply only to orders made by the Drug Court. When the Drug Court was established, sheriffs who were supervising DTTOs in Fife were given the option of continuing to supervise them to their conclusion, but all opted to transfer their DTTOs to the Drug Court. It was anticipated that the Drug Court might deal with an annual caseload of 150 to 180 new offenders on orders, which represents an increase on current levels of 50 to 70 cases per year.

1.12 Cases are referred to the Drug Court by sheriffs sitting summarily in Dunfermline and Kirkcaldy Sheriff Courts following receipt of a Drug Court Assessment. The Drug Court can only make orders in respect of offenders who have been prosecuted under summary proceedings and it cannot hear trials or dispose of cases in which a trial has been necessary to establish a finding of guilt.

1.13 The four forms of community-based supervision and treatment that are available to the Drug Court are Drug Treatment and Testing Orders (DTTOs), Probation Orders with a Condition of Drug Treatment (hereafter referred to as Enhanced Probation Orders), concurrent DTTOs and Conditional Probation Orders, and deferred sentences<sup>3</sup>. Conditional probation orders and deferred sentences are also available to the sheriff court and are not,

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<sup>2</sup> There are provisions in a Criminal Justice (Scotland) Bill to give Drug Courts the power to impose short custodial sentences or short community service orders in the event of non-compliance with a Drug Court Order, without prejudice to the continuance of the order.

<sup>3</sup> It is unlikely that deferred sentences will be used as a vehicle for requiring the offender to access treatment but they may be considered by the Drug Court Sheriff to be useful in the event of multiple charges or new or outstanding charges being brought before the court.

therefore, unique to the Drug Court. Restriction of Liberty Orders (RLOs) are also available to the Drug Court, having been made available to all sheriff courts across Scotland from 1 May 2002. RLOs may be imposed for the same offence(s) concurrently with a probation order, a DTTO or both.

1.14 The main treatment options that the Drug Court has available to it include abstinence, methadone maintenance and reduction, lofexadine detoxification and naltrexone maintenance, and benzodiazepine detoxification. Services available to the Drug Court include abstinence-based programmes, programmes for offenders stabilised on prescribed medicine, short-term residential rehabilitation (though this is rarely available), programmes related to employment and training, and supported accommodation. Interventions are provided by the core Supervision and Treatment Team (see below), with access arranged to other relevant services as required.

1.15 All orders made by the Drug Court are subject to drug testing (urinalysis) and regular (at least monthly) review. The Drug Court Sheriff has responsibility for reviewing the order and responding to non-compliance, thereby ensuring the continuity of contact that has been found to be an important feature of Drug Courts in other jurisdictions. The review process enables the Drug Court to employ a range of sanctions in the event of non-compliance or lack of effort and progress on the part of the offender, without recourse to formal breach proceedings. These include increasing the frequency of testing, of supervision appointments or of reviews (though this latter option would only be possible if reviews were being conducted at intervals of more than one month).

1.16 The Drug Court Sheriff is responsible for initiating or endorsing breach proceedings, with a ‘fast track’ procedure instituted in order that breaches might be dealt with at the next scheduled review hearing. In the event of a breach being accepted or proved, the Drug Court may allow the order to continue and impose a fine or, in the case of probation, a community service order of up to 240 hours. Alternatively, the court may terminate the order and re-sentence the offender for the original offence, in which case it is likely that a custodial sentence will be imposed.

## **Staffing**

1.17 The Fife Drug Court is staffed by one Sheriff who sits in the Drug Court for three days per week (two days in Kirkcaldy and one day in Dunfermline)<sup>4</sup>. Court Three in Kirkcaldy<sup>5</sup> and Court Three in Dunfermline have been designated for Drug Court business. The latter does not, however, have direct access to the custody suite with the result that the Drug Court is required to convene in a larger courtroom in the complex if the sheriff wishes to impose a custodial sentence (for example, for a further or outstanding offence or for a breach of a Drug Court Order). A designated sheriff clerk provides the appropriate administrative support in each court.

1.18 In Glasgow a procurator fiscal has been assigned to the Drug Court to identify potential referrals to the Drug Court and to deal with new charges and breaches of Drug

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<sup>4</sup> A ‘back-up’ sheriff has been identified to sit in the Drug Court when the Drug Court Sheriff is absent (for example on annual leave).

<sup>5</sup> Sometimes the Drug Court will sit in another court if Court Three is being used for other purposes or if practical considerations – such as a number of visitors observing the court in action – require it.

Court Orders. In Fife, a designated procurator fiscal depute dealt initially with Drug Court business but left shortly after the court began operating and has not been replaced. Instead, several procurators fiscal cover the Drug Court, though their role is more limited than it is in Glasgow on account of the different referral route through which cases come to the Drug Court in Fife.

1.19 A multi-agency Drug Court Team has been established to review the working, development and operation of the Drug Court. Meeting monthly, it is chaired by the Drug Court Sheriff and includes a Drug Court Sheriff Clerk, a procurator fiscal, the Leader of the Supervision and Treatment Team/Co-ordinator, the Drug Court medical practitioner, a senior addiction worker, a senior worker from the contracted Drug Court Treatment provider, a representative of the police and a representative of the Fife Bar Associations.

1.20 A Drug Court Supervision and Treatment Team has been established to support the Drug Court in all aspects of assessment, supervision, treatment, testing and reports to the court. At the time of writing the team consisted of a team leader<sup>6</sup>, a senior social worker, six supervising social workers (criminal justice social workers), three social work assistants<sup>7</sup>, six addiction workers, two part-time medical officers and ten nurses<sup>8</sup>. One senior clerical and five clerical posts provide administrative support. There were, in addition, a number of vacant posts in the team: two social workers, one addiction worker and one administrative worker. One nursing post (Grade E) will become vacant shortly. The social worker posts have been vacant since the inception of the Drug Court and have proved particularly difficult to fill.

1.21 When the Drug Court began sitting, the Supervision and Treatment Team was based in Buckhaven. It was subsequently relocated (in December 2002) to Kirkcaldy when suitable premises, close to the sheriff court, became available. The new premises have accommodation for the team members, interview rooms, a groupwork room, a treatment room and a drug testing room. The Supervision and Treatment Team is organised into three sub-teams which cover different parts of the geographical area served by the Drug Court. The West Team covers Dunfermline, Kelty and Rosyth and comprises two social workers, two addiction workers and 2 nurses. The Central Team covers Kirkcaldy and consists of two social workers, two addiction workers and three nurses. The East Team covers Buckhaven, Leven, Glenrothes and North East Fife and is likewise staffed by two social workers, two addiction workers and three nurses. The members of each multi-professional area team are accommodated together in a shared office. Each offender made subject to a Drug Court Order has a Case Group, consisting of a supervising social worker, addiction worker and doctor or nurse.

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<sup>6</sup> Who is also referred to as the co-ordinator but whose remit in this respect is not as wide as that of the co-ordinator in Glasgow.

<sup>7</sup> The three CJS assistants have specific duties separate from their core duties of supporting the treatment and supervision team, for example doing home visits, helping clients in relation to transport, food vouchers, chasing up people etc. One assistant has the main responsibility for all court based duties and for ensuring that clients get appointment times and that staff have these in their diaries. A second assistant supports the addiction workers in their groupwork sessions while a third supports nurses during their groupwork sessions.

<sup>8</sup> One H Grade, one soon-to-be-appointed G Grade, one F Grade and seven E Grades.

## Target Group

1.22 The proposed target group for the Fife Drug Court is offenders aged 21 years or older<sup>9</sup> of both sexes, in respect of whom there is an established relationship between a pattern of serious drug misuse and offending and whose drug misuse is susceptible to treatment. Offenders referred to the Drug Court must have been prosecuted under summary proceedings in the sheriff court. Offenders with a dual diagnosis of drug misuse and mental illness will not generally be considered as appropriate for the Drug Court during its pilot phase. However, homeless offenders may be considered for a Drug Court probation order if some stability in their accommodation can be achieved. Although the Drug Court will take into account an offender's response to past supervision, current circumstances will be afforded greater weight.

## OBJECTIVES OF THE EVALUATION

1.23 When the Pilot Drug Court in Glasgow was established it was agreed that it would be subject to independent evaluation from the outset. Evaluation was deemed important as a means of establishing the extent to which the objectives of the Drug Court during the pilot period were met. Given that the Fife Drug Court has been established in a non-urban area and has a number of operational differences from the Glasgow Drug Court, the Scottish Executive commissioned an independent evaluation of the Drug Court in Fife. Both Drug Courts are being evaluated by a research team at the University of Stirling, who previously evaluated the introduction of pilot Drug Treatment and Testing Orders in Glasgow and Fife.

1.24 In accordance with the specification issued by the Scottish Executive, the aims of the research are to:

- assess how effective the Drug Court is in reducing the level of drug related offending and reducing or eliminating offenders' dependence on or propensity to use drugs; and
- determine whether the operation of the Drug Court is viable in a non-urban area within the Scottish context.

1.25 The research will consist of two main phases. This report presents the findings from a *formative and process evaluation* of the Fife Drug Court's operation in the first six months. The aim was to document the operation of the Drug Court during this initial period with a view to identifying any changes that might be required to enhance its operational effectiveness. The specific objectives of this element of the study were to:

- identify the frequency with which different referral routes are employed, assess whether the referral and screening processes are effective in identifying appropriate cases and determine whether the deadlines for the processing of referrals are being met<sup>10</sup>

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<sup>9</sup> Offenders aged 16-20 years of age may also be referred to the Drug Court under exceptional circumstances.

<sup>10</sup> An initial assessment and comparison will also be made of the effectiveness of the referral routes used by Glasgow and Fife Drug Courts.

- assess whether the number of cases referred to the Drug Court and the resulting caseloads for each service provider are manageable
- identify the frequency of reviews, the circumstances in which they are conducted, whether they are perceived as being conducted in appropriate circumstances and how this compares with the frequency and circumstances of reviews identified in the evaluation of DTTOs
- examine the enforcement practices adopted by supervising officers, the extent to which they are consistent with agreed procedures on enforcement and the effectiveness of enforcement practices in securing compliance with Drug Court Orders
- examine whether violations of orders are being brought to the attention of the court timeously and whether breaches are being appropriately punished
- examine the extent and nature of dialogue between sentencers and offenders in the Drug Court at different stages of orders, document views about the value of this dialogue and identify any factors (such as defence agent intervention) that have an impact on this dialogue
- determine whether there is a clear consensus among service providers with respect to their relative responsibilities during the screening, assessment, treatment and breach stages
- identify any obstacles to multi-agency working among service providers and to multi-agency collaboration within the Drug Court Team
- assess whether the procedures for dealing with new or outstanding charges enable the courts to identify and deal appropriately with offenders who are subject to Drug Court Orders, and
- examine the views of relevant stakeholders on the operational effectiveness of the Drug Court approach (including the range of sentences available to the court and the range of sanctions for violation and breach) and identify factors that enhance or detract from its effectiveness.

1.26 The second main phase of the research will take the form of an *outcome evaluation*. The outcome evaluation will continue to assess the operational effectiveness of the Drug Court over the course of the pilot, and the workload and cost implications for the summary courts in Dunfermline and Kirkcaldy as a result of the transfer of Drug Treatment and Testing Orders to the Drug Court. Importantly, it will also examine the effectiveness of the Drug Court in securing compliance with court orders and bringing about reductions in drug use and associated offending.

## **STRUCTURE OF THE REPORT**

1.27 The remainder of this report is organised into six chapters. Chapter Two describes the research methods employed in this formative and process evaluation. The following chapters

correspond to aspects of the Drug Court process. Chapter Three examines the referral process, assessment and sentencing in the Drug Court while Chapter Four focuses upon drug treatment and testing. Chapter Five examines the review process, with a particular emphasis upon the nature of the dialogue between offenders on Drug Court Orders and the bench. It also discusses the enforcement of Drug Court Orders and the procedures that have been instituted to deal with new and outstanding charges. In Chapter Six the issue of effectiveness is considered. This chapter focuses both on the likely impact of the Drug Court on drug misuse and associated offending, and on aspects of its operation that enhance and detract from its effectiveness. In Chapter Seven (Conclusions) we return to the research objectives outlined earlier in this chapter to offer commentary on the effectiveness of the Fife Drug Court's operation in the first six months and to offer suggestions as to how it might be further enhanced.

## **CHAPTER TWO            METHODS**

### **INTRODUCTION**

2.1     The evaluation of the Fife Drug Court's first six months of operation involved a variety of research methods aimed at the collection of both quantitative and (primarily) qualitative data. In addition to the more formal methods described in this chapter, the researchers spent time informally familiarising themselves with the Drug Court in action and becoming acquainted with the role of the various professionals involved in its operation.

2.2     In Fife a decision was taken to bring all new DTTOs in Kirkcaldy and Dunfermline Sheriff Courts under the jurisdiction of the Drug Court and to transfer existing DTTOs made by these courts into it. In this report we concentrate primarily on those offenders assessed and those orders made since the Drug Court was established. However, some data are presented on existing DTTO cases where this serves to illustrate procedural changes that have been brought about by the establishment of a dedicated Drug Court in Fife.

### **INTERVIEWS WITH PROFESSIONALS ASSOCIATED WITH THE DRUG COURT**

2.3     In January and February 2003 interviews were conducted with a range of professionals associated with the Drug Court. Each of these interviews was, with the respondents' agreement, tape recorded and fully transcribed for analysis.

#### **Sheriffs**

2.4     Interviews were conducted with the Drug Court Sheriff and three other sheriffs who sit in Dunfermline or Kirkcaldy Sheriff Courts, including the back-up Drug Court Sheriff. Three of the sheriffs were interviewed individually in Chambers while a third participated in part of a longer interview with another sheriff. These interviews were aimed at exploring their perspectives on the operation and effectiveness of the Drug Court, including how it differed from the traditional sheriff court. Sheriffs' views about the effectiveness of the Drug Court procedures were also explored and their views sought as to how the operation and effectiveness of the Drug Court might be further improved.

#### **Sheriff clerks**

2.5     The Drug Court Sheriff Clerks in both Kirkcaldy and Dunfermline Sheriff Court agreed to be interviewed. Both interviews were tape-recorded and fully transcribed. The purpose of these interviews was to elicit their views on the efficiency and effectiveness of Drug Court procedures, both in themselves and in relation to comparable procedures in the sheriff court.

## **Procurators fiscal**

2.6 Two procurators fiscal were interviewed, one of whom had operational experience of the Drug Court and one of whom had a more strategic overview of prosecution-related matters with respect to the Drug Court. Issues covered in the interviews were similar to those explored with sheriffs and included their views about the referral procedures and criteria, sentencing in the Drug Court, the reviewing and enforcement of Drug Court Orders and their initial views about how effective the Drug Court might be. The interviews took place individually at the Area Procurator Fiscal Office in Kirkcaldy.

## **Drug Court Supervision and Treatment Team**

2.7 Interviews were conducted with the Co-ordinator/Team Leader, one medical officer/addiction specialist, four social workers (including one senior social worker), four addiction workers, three addiction nurses and two social work assistants.

2.8 The interviews explored respondents' views on the referral, screening and assessment process; the range and quality of treatment services provided; the impact of coercion, supervision and management upon the treatment process; the system of offender reviews; communication and action in a complex multi-disciplinary environment; and the perceptions of the effectiveness of the Drug Court system in reducing both drug use and drug-related offending.

## **Defence agents**

2.9 Three defence agents with experience of representing clients in the Drug Court were interviewed<sup>11</sup>. Two had clients who were mostly dealt with by Kirkcaldy Sheriff Court while one had clients mostly who appeared in Dunfermline Sheriff Court. All three had direct experience of representing clients who had been assessed for and sentenced by the Drug Court. Issues covered in the interviews were similar to those explored with other criminal justice professionals. Two interviews took place at the defence agents' respective offices and one interview was conducted in the sheriff court premises.

## **INTERVIEWS WITH DRUG COURT CLIENTS**

2.10 Interviews with Drug Court clients were intended to provide general background information on the impact of Drug Court Orders on their drug use, access to treatment services, offending behaviour and everyday lives. The interviews were also intended to focus specifically on several aspects of the operation of the Drug Court in order to provide some assessment of its effectiveness. They also sought to identify service-users' reasons for agreeing to a Drug Court Order, their expectations of what the order would involve, and to document their expenditure on drugs and their involvement in drug-related offending prior to and following the imposition of the order.

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<sup>11</sup> A fourth defence agent also agreed to be interviewed but the time frame for completion of this report meant that it was not possible. He will, however, be interviewed in the next phase of the study.

2.11 It was intended that six Drug Court clients (those placed on orders from the inception of the Drug Court in September 2002) and six clients on DTTO's (made prior to September 2002) would be interviewed in order to obtain their views and perceptions of the operation and effectiveness of the Drug Court<sup>12</sup>. Semi-structured interviews were conducted which gathered clients' views on all aspects of Drug Court Orders. In the case of the transferred DTTO clients, the interviews were aimed at obtaining their perceptions and experiences of any changes that had taken place in the enactment of their order since it had been transferred into the Drug Court.

2.12 Given the availability of space in the offices of the Supervision and Treatment Team, it was decided to interview clients when they attended for appointments with social workers, addiction workers or nurses. With the help of the Drug Court Co-ordinator/Team Leader and a social work assistant, appropriate clients were identified and the researchers were given details of appointment times<sup>13</sup>. In one case, a client was written to by the social work assistant and invited to attend for interview with the research team<sup>14</sup>. Supervision and Treatment team workers were contacted and the suitability/appropriateness of conducting an interview with their clients was discussed. On each occasion, team workers were helpful and accommodating, informing their clients about the research and its purpose and obtaining the consent of the client before introducing them to the researcher<sup>15</sup>. The researcher was then able to inform the client about the purpose of the research and issues of confidentiality and anonymity. If consent was obtained (which it was on each occasion that the client and researcher met) the interview was tape-recorded and fully transcribed.

2.13 On the occasions where the researchers were present at social work offices, other clients on orders were invited for interview and again, all clients who were approached agreed. On one occasion, a member of the research team had visited a social work office to conduct client interviews. The Drug Court social worker attending a satellite social work office on that day had a number of clients he was expecting to see, whom he thought would be willing to speak with the researcher in a general way. The clients were at various stages of their orders, which had been imposed at various points in time. Two clients were on Drug Court Orders while two were on orders imposed before the Drug Court was operational. These general discussions, during which the social worker was present, were able to provide the researcher with a broader understanding of some of the issues the clients viewed as important.

2.14 Between 22 January 2003 and 19 February 2003, interviews were conducted with five clients on Drug Court Orders (imposed after September 2002)<sup>16</sup> and three clients on DTTOs (imposed before September 2002). Informal discussions also took place with two Drug Court and two DTTO clients with a social worker present and participating.

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<sup>12</sup> Clients on DTTO's imposed before the operation of the Fife Drug Court had not given their consent to participate in the research when their Order was imposed; however, this was obtained prior to interview.

<sup>13</sup> Clients were selected on a geographical basis to reflect differing service provision and interviews were conducted at social work offices in Kirkcaldy, Glenrothes and Buckhaven.

<sup>14</sup> From a list of 13 clients identified by workers, three clients were interviewed. One client did not respond to a letter sent out to him by the social work department inviting him to attend for interview, one client was taken into custody, the remaining eight clients failed to attend for appointments with social workers, addiction workers or nurses at the times specified.

<sup>15</sup> On two occasions where the researcher was present, staff forgot to inform the client about the research and the client left the premises without meeting the researcher.

<sup>16</sup> A young child was present during one of the interviews and in another, a social work assistant was present at the request of the client.

2.15 Of the five clients whose orders were made in the Drug Court (after September 2002), and who took part in formal interviews, four were male and one was female. The lengths of time for which the orders had been in operation varied from two weeks to four months. All clients on DTTO's whose orders were transferred into the Drug Court were male and their orders had been imposed as far back as October 2001.

## **COLLECTION OF INFORMATION FROM DRUG COURT RECORDS**

2.16 A range of information was gathered by the Supervision and Treatment Team to monitor the progress of offenders from the referral stage until completion of their orders, though this information was held in a variety of databases rather than being held centrally in an integrated system. An Excel database provided information on offenders made subject to Drug Court Orders, including age, sex, where sentenced and the type of order imposed. Information about the number and basic characteristics of referrals was obtained from monthly aggregate statistics compiled by the Team Leader/Co-ordinator. These aggregate statistics also contained information about the number of Drug Court Orders and DTTOs that were breached.

2.17 The Fife Drug Court Supervision and Treatment Team were able to provide baseline data on drug use, estimated expenditure on drugs and urinalysis test results during the assessment period for 42 out of 48 clients who were on orders at the end of January 2003. Additionally, further urinalysis test results between reviews were available, where they had occurred, for these clients. Drugs were clearly defined in most cases, although occasionally broad terms such as opiates were used and whether methadone was prescribed or illicit was not made clear.

2.18 It should be noted that the different sets of data that were made available to the researchers covered slightly different timeframes (as a result of inevitable delays in the entering of relevant data into the appropriate database). The different resulting sample sizes are made clear in the reporting of results.

## **OBSERVATION OF THE DRUG COURT IN ACTION**

2.19 Observation was undertaken of the operation of the Drug Court at different stages in the supervision of orders. This included observation of the operation of the Drug Court at the point at which offenders appear for sentencing and observation of pre-court review meetings and review hearings. An observation pro forma was used to record the court sessions observed, which included details of those present, the duration of the session, the nature and content of interactions between the various parties and the proportion of time in which the bench and the offender are engaged directly in dialogue. Sessions presided over in both courts and involving both clerks to the court were observed in December 2002 and January 2003. These data were compared with the observational data derived from the court observations undertaken as part of the evaluation of pilot Drug Treatment and Testing Orders (Eley et al., 2002a) and the six-month evaluation of the Glasgow Drug Court (Eley et al., 2002b).

## First calling in the Drug Court

2.20 On four occasions the sentencing of clients in the Drug Court was observed. This included consideration of the assessment report that had been initiated by the sheriff in the sheriff court.

## Observation of pre-court review meetings

2.21 Sixteen observations of pre-court reviews were conducted over six days across a period of four working weeks in December 2002 to January 2003. Observations of the Fife Drug Court were made at Kirkcaldy and Dunfermline courts and included the pre-reviews of thirteen different offenders on Drug Court orders. One fifth of the actual number of pre-court reviews conducted at the Fife Drug Court since it was established were observed by the research team. Table 2.1 outlines the number of observations of pre-court reviews made compared to the overall number of pre-court reviews in the operational period from 9 September 2002 to 28 February 2003.

**Table 2.1: Number of observed pre-court review meetings**

	Number of pre-court reviews conducted 09/02-02/03	Number of pre-court reviews observed 12/02-01/03
First Review	32	5
Second Review	26	7
Third Review	11	3
Fourth Review	8	1
Fifth Review	2	0
<b>Total</b>	<b>79</b>	<b>16</b>

2.22 Observations of pre-court reviews were representative of the gender and age of the actual clients in the Fife Drug Court (Table 2.2), although pre-court reviews relating to older clients were under-represented in observations.

**Table 2.2: Characteristics of Drug Court clients at observed pre-court review meetings**

	Actual clients 09/02-02/03	Observed clients 12/02-01/03
Gender		
Male	39	10
Female	9	3
Age		
16-20 years	7	6
21-29 years	33	6
30-39 years	8	1
<b>Total</b>	<b>48</b>	<b>13</b>

## Observation of review hearings

2.23 Twenty-eight observations of review hearings were conducted over ten days across a period of four working weeks in December 2002 to January 2003. Observations of the Fife Drug Court were made at Kirkcaldy and Dunfermline courts and included the pre-reviews of eighteen different offenders on Drug Court Orders. One fifth of the actual number of court reviews conducted at the Fife Drug Court since its inception were observed by the research team. Table 2.3 outlines the number of observations of court reviews made compared to the overall number of court reviews in the operational period from 9 September 2002 to 28 February 2003.

**Table 2.3: Number of observed review hearings**

	<b>Number of court reviews conducted 09/02-02/03</b>	<b>Number of court reviews observed 12/02-01/03</b>
First Review	48	13
Second Review	39	11
Third Review	19	2
Fourth review	15	1
Fifth review	5	1
<b>Total</b>	<b>126</b>	<b>28</b>

2.24 The observed clients were representative of the overall client base of the Fife Drug Court in terms of gender and age (Table 2.4).

**Table 2.4: Characteristics of Drug Court clients at observed review hearings**

	<b>Actual clients 09/02-02/03</b>	<b>Observed clients 12/02-01/03</b>
Gender		
Male	39	15
Female	9	3
Age		
16-20 years	7	7
21-29 years	33	7
30-39 years	8	4
<b>Total</b>	<b>48</b>	<b>18</b>

2.25 Reviews of over one third of all clients given Enhanced Probation Orders and Drug Treatment and Testing Orders were observed at the Fife Drug Court (Table 2.5).

**Table 2.5: Characteristics of Drug Court Orders at observed review hearings**

	<b>Actual clients 09/02-02/03</b>	<b>Observed clients 12/02-01/03</b>
Enhanced Probation Order – 12 months	4	0
Enhanced Probation Order – 18 months	11	7
Enhanced Probation Order – 24 months	1	0
DTTO – up to 12 months	4	0
DTTO – 18 months	14	6
DTTO – 24 months	14	5
<b>Total</b>	<b>48</b>	<b>18</b>

### **QUESTIONNAIRES COMPLETED BY THE SUPERVISION AND TREATMENT TEAM**

2.26 Members of the Supervision and Treatment Team were asked to provide, via short questionnaires, information about clients on orders in the initial period of operation of the Drug Court. These included an indication of the main objectives of the intervention in each individual case and a rating of the extent to which it was thought to be achieved, the types of treatment that were to be provided and a rating of the effectiveness of the approach. Questions sought information about how the Supervision and Treatment Team felt the offender would respond to their Drug Court Order, how the offender would respond to the treatment provided and motivation of the offender to reduce his/her use of drugs, offending and other problems.

2.27 Further questions with rating scales asked the Team to report how they felt the offender’s drug use would change as a result of being made subject to a Drug Court order:

- how likely they thought the offender would return to his/her previous pattern of drug use
- how they thought the offender’s drug-related offending would change as a result of being made subject to a Drug Court Order
- how likely they thought the offender would return to his/her previous pattern of offending
- how the offender’s other problems would change as a result of being made subject to the Drug Court Order
- whether they felt that other aspects of the offender’s life would improve as a result of the Drug Court Order.

In each of the questions, the Team were asked to qualify their judgements about the individual case.

2.28 The Drug Court Treatment and Supervision Team were encouraged to complete the questionnaire for each offender within seven days of a Drug Court Order being made. In practice, the questionnaires were completed in February 2003 and returned to the team allowing a time lag of between 1 month and 5 months (median 3 months) between date of imposition of order and completion of the initial questionnaire. Thirty-four initial

questionnaires relating to orders made during the operation of the Fife Drug Court were completed and made available to the research team.

2.29 Sociodemographic details relating to the age and gender of the client for whom initial questionnaires were completed was available in all cases. The available data from the 34 completed questionnaires related to orders made across all the months of the operation of the Fife Drug Court (Table 2.6) and included Drug Treatment and Testing Orders (25 clients) and Enhanced Probation Orders (9 clients). Thirty male and four female clients were included, with a mean age of 26 years. Twenty-eight initial questionnaires related to orders made in the Kirkcaldy Drug Court and six made in the Dunfermline Drug Court.

**Table 2.6: Date of order reported on initial questionnaires**

<b>Month</b>	<b>Questionnaires Completed (n)</b>
September 2002	5
October 2002	6
November 2002	9
December 2002	8
January 2003	5
February 2003	1
<b>Total</b>	<b>34</b>

## **ANALYSIS OF MINUTES OF DRUG COURT TEAM MEETINGS**

2.30 One key objective of the formative and process evaluation was to examine the process of multi-agency working among service providers and multi-agency collaboration within the Drug Court Team. One of the methods intended to underpin this process was the analysis of minutes of Drug Court Team Meetings. It was intended that the regular meetings of the Drug Court Team would provide an opportunity for discussion of operational issues related to the effectiveness of the Drug Court.

### **Drug Court Team Meeting Minutes**

2.31 Agendas and minutes of the Drug Court Team Meetings from Wednesday 6 August 2002 up to Wednesday 15 January 2003 were obtained. The minutes were coded for recurring themes and issues. Permission was obtained from the Drug Court Team to enable two members of the research team to observe the Drug Court Team Meeting on Wednesday 15 January 2003.

### **Drug Court Supervision and Treatment Team Meeting Minutes**

2.32 Agendas and minutes of the Drug Court Supervision and Treatment Team Meetings from Friday 30 August 2002 up to Friday 10 January 2003 were obtained. The minutes were coded for recurring themes and issues. Two members of the research team were invited to attend the Team meeting on Friday 7 February to discuss the research process with team members.

## **ANALYSIS AND PRESENTATION OF FINDINGS**

2.33 The quantitative data were analysed using SPSS. The interview and qualitative observation data were scrutinised for the emergence of relevant themes. Throughout this report we have drawn directly upon material from interviews to illustrate the issues being discussed. It would be possible for the reader to directly attribute comments made by individuals in unique positions (such as the Drug Court Sheriff or Co-ordinator/Team Leader) to their source. We have, therefore, avoided the use of direct quotations by these respondents or have used a more general descriptor, such as ‘a professional associated with the operation of the Drug Court’.

## **CHAPTER THREE REFERRAL TO AND SENTENCING BY THE DRUG COURT**

### **INTRODUCTION**

3.1 The first stages in the Drug Court process involve the referral, assessment and sentencing of offenders. Offenders who might be suitable for the Drug Court are initially identified, following a plea or finding of guilt, by sheriffs sitting summarily in Dunfermline and Kirkcaldy. Following receipt of a Drug Assessment Report, the sheriff may decide to dispose of the case or, if the offender is deemed suitable for the Drug Court, may refer the case over to the Drug Court Sheriff for the determination of sentence.

3.2 In this chapter the referral and assessment procedures, including perspectives on the criteria for the Drug Court, are discussed. The characteristics of offenders assessed for the Drug Court and sentenced to a Drug Court Order in the first few months of the Drug Court's operation are also described. The chapter also considers the factors that have a bearing upon offenders' willingness to consent to the imposition of a Drug Court Order.

### **THE REFERRAL PROCESS**

#### **Identifying cases for the Drug Court**

3.3 The processes by which cases were referred to the Fife Drug Court differed from those that had been instituted in Glasgow. In Glasgow it was intended that the majority of referrals would emanate from the police in order that offenders might be 'fast-tracked' from the point of arrest to the imposition of a Drug Court Order. In Fife, an alternative approach was adopted, with referrals being made from the sheriff court. The Fife Drug Court manual indicated that social workers would 'sift' potential cases and bring them to the attention of the court. However, sheriffs reported that potential Drug Court cases were, in practice, brought to the attention of the court by defence agents or were identified by sheriffs themselves, either on the basis of their prior knowledge of the offender or information contained in a social enquiry report.

3.4 The role of the defence agent at the referral stage was described as being to bring to the sheriff's attention the fact that a client had committed a drug-related offence and may be a suitable candidate for the Drug Court. One defence agent indicated that the client would have been advised to bring to the court some evidence of their motivation to get off drugs, such as a letter indicating that they have been seeking counselling or some other types of help.

3.5 Defence agents were of the view that most people who might be suitable for a Drug Court Order were being given the opportunity of an assessment. As one explained:

*“I think the sheriff’s are really going out their way to give folk this opportunity at the moment, so I wouldn’t say that there is lots of people missing out, the people that I take the view are missing out are the people that are not willing to go on it, I can’t think of many that I have asked to be put on the assessment that aren’t getting it, and those that aren’t getting it, not even getting the assessment, it’s probably because it’s a very serious offence or they’ve got an absolutely appalling record.”*

3.6 Most court professionals considered the referral process to operate relatively smoothly, though one sheriff suggested that it was a little cumbersome and that it might be possible to get offenders onto Drug Court orders - and hence into treatment – more quickly. Prosecutors perceived themselves as having a potential role in identifying cases for the Drug Court, though referrals to date had been initiated by sheriffs. The Procurator Fiscal’s Office was involved in discussion with the local police force to obtain information that would enable procurators fiscal to identify potential Drug Court cases at an earlier stage in the process and to take a more proactive role in encouraging accused persons to enter an early guilty plea. Procurators fiscal were concerned at the delays that often occurred between the accused being charged and a conviction secured. The tendering of guilty pleas just before the case went to trial was perceived as unnecessarily costly. Moreover, they had some doubts as to the offender’s motivation to comply with a Drug Court Order if they pled guilty late in the process. For this reason, procurators fiscal expressed a preference for the arrangements that have been instituted in the Glasgow Drug Court whereby potential clients are referred for assessment following a guilty plea in the custody court.

### **Referral criteria**

3.7 The general view among professionals associated with the Drug Court was that the referral criteria/target group were broadly appropriate. There was agreement that a pattern of relatively minor but persistent offending linked to drug use was most likely to signal potential to suitability for a Drug Court Order. As one Drug Court professional indicated:

*“I would be looking for the type of offending which was – perhaps nuisance is understating it – but offending which is related to their habit, thefts for feeding their habit.”*

3.8 Some differences in perspective did, however, emerge, particularly with respect to the appropriateness of younger offenders for a Drug Court Order. Sheriffs believed that the focus on older offenders (that is, those aged 21 years and over) was sensible, since young offenders did not usually to have the necessary commitment and maturity for a Drug Court Order. This was evidenced by the assessment “collapsing” or the offender failing from the outset to comply with the order. As one sheriff observed:

*“I do find that the older ones, some of them are beginning to come to their senses and say ‘this isn’t the life I want, I want to change’. And this is when you start getting commitment. I think there’s got to be a degree of maturity.”*

3.9 Another sheriff suggested that:

*“... in the sixteen to nineteen year olds the peer group is all and really they don't have the motivation, they don't think about the future, they don't care very much about the future.”*

3.10 A similar observation was made by another professional associated with the Drug Court:

*“Well I think the older, the older offender I think has got more commitment...Because obviously they've been on drugs longer and they're more determined, I think that they've got more commitment to try and come off...Because I think with some of the younger ones you know it's a case of the peer group pressure and I think this is where it can sometimes break down with them”.*

3.11 It was, however, acknowledged by sheriffs that younger offenders had on occasion been made subject to Drug Court Orders because they already had a deeply entrenched drug problem:

*“...quite often our people in the court are under twenty-one because they're got a very well established drug habit by then. And it's just trying something else isn't it to see if you can.”*

*“In practice the team adopts a material degree of flexibility in assessing younger offenders and orders are made for some of them, especially those who otherwise meet the criteria... This might be when the offender has been an addict from an early age, such as 12 or 13 years old, which is not uncommon in my experience. In these circumstances, by the time they are 18 or 19 years old, especially when they are either outwith their families or have no stable family background and all the other community disposals have been unsuccessfully tried, an order may be appropriate.”*

3.12 Sheriffs suggested that other resources should be made available for young offenders with emerging drug problems, since by the time offenders reached 21 years of age *“very often you're shutting the barn door after the horse has bolted”*.

3.13 Procurators fiscal also agreed that it was appropriate to target Drug Court Orders on older offenders who had a length history of drug use and offending because they were more likely to be motivated to grasp the opportunity provided by an Enhanced Probation Order or DTTO. As one respondent commented:

*“I would think you have probably got a better chance for someone who perhaps is older, perhaps has been involved in drugs for a longer period, who really sees it as an opportunity – a real opportunity to get off drugs...I think when you are younger you maybe don't have the same self-motivation as somebody that's been there, done it and has the t-shirt for it.”*

3.14 Defence agents were, however, keen to see a little more flexibility with respect to the inclusion of young offenders in the Drug Court. They suggested that young offenders should be offered the chance to participate in the Drug Court *“to see if they can nip them in the bud before they get into that in and out of jail thing”*. One defence agent cited an example of a

younger offender who had been given a Drug Court Order and who had “completely turned his lifestyle around”. Another defence agent suggested that the referral criteria had perhaps not been as rigidly adhered to as in Glasgow because the latter Drug Court was drawing from a larger pool of potential participants.

3.15 The Drug Court can only make orders in respect of offenders who are prosecuted summarily. This was of some concern to sheriffs, who believed that some offenders who were on an indictment were potentially suitable for a Drug Court Order. As one sheriff explained:

*“I would like to see indictment cases brought within the jurisdiction of the Drug Courts, especially since I believe that they were excluded in the first place only for practical reasons, that is, the apprehension that the Drug Courts might be overwhelmed.”*

3.16 To get around this restriction, sheriffs would refer offenders on indictment to the Drug Court where they would be sentenced by the Drug Court Sheriff wearing his ‘sheriff court hat’. The resulting order would then be transferred into the Drug Court. One sheriff thought that this could potentially create some difficulty for the Drug Court Sheriff when he was dealing with a number of cases.

3.17 A second difficulty that had been identified in the early stages of the pilot concerned the policy of the Local Authority Housing Department towards tenants convicted of drug offences. Offenders made subject to Drug Court Orders were required to have an address, but those convicted of drug offences would be liable to eviction by the council. The anomaly of this situation had been pointed out to the local authority by, among others, the Area Procurator Fiscal and was understood to have been at least partially resolved through the Council Housing Department undertaking only to evict those involved in drug dealing and only after consulting other agencies, including the Drug Court Supervision and Treatment Team. In practice, the local authority was reported to have proceeded with such action on only two occasions.

### **Cases referred to the Drug Court**

3.18 On 9th September 2002 all existing DTTOs (73) were transferred to the Drug Court. Since four offenders had more than one order, a total of 69 offenders (four of whom were in custody) were transferred to the Drug Court. Information about subsequent referrals to the Drug Court Team during September – December 2002 was provided by the Co-ordinator/Team Leader. As Table 3.1 indicates, a total of 178 referrals were made in the first four months, averaging 44.5 referrals per month. Of those referrals, 83% were male and 17% female

**Table 3.1: Referrals to the Drug Court September – December 2002**

	<b>Male</b>	<b>Female</b>	<b>Total</b>
September	22	2	<b>24</b>
October	50	8	<b>58</b>
November	41	12	<b>53</b>
December	35	8	<b>43</b>
<b>Total</b>	<b>148</b>	<b>30</b>	<b>178</b>

3.19 Detailed information about the characteristics of cases referred for assessment was not available from the existing databases. However, a workload management report prepared by the Co-ordinator/Team Leader on the 53 cases referred during November 2002 furnished additional information about these cases. The majority of referrals (37 or 70%) emanated from Kirkcaldy Sheriff Court while 12 referrals (23%) came from Dunfermline Sheriff Court, two from Cupar Sheriff Court, one from Edinburgh High Court and one from Glasgow High Court.

3.20 Ten offenders had been referred for the first time for a drug assessment, while the majority (81%) had previously been referred to the team on one or more occasions (including two who had had assessments requested on eight previous occasions). The average age of those referred was 23 years and they had an average of 15 previous convictions and four previous custodial sentences. Twenty-six referrals (49%) were for a full Drug Court Assessment (Social Enquiry Report, Community Service Report and Drug Assessment), 21 (40%) were for a DTTO assessment and six (11%) involved an assessment for a Restriction of Liberty Order (RLO). By the end of the month, nine referrals had been completed, 33 had been deferred for further appointments and in eleven cases a warrant to apprehend had been issued as a result of the offender's failure to comply with the assessment. Where assessments had not been completed, this was generally a result of the offender's failure to attend all of the assessment appointments. Professionals associated with the Drug Court indicated that offenders who were assessed as suitable were generally given an order and that those who were assessed as unsuitable usually had their own response to the assessment to blame:

*“From my experience, the court tries very hard to make an order for someone assessed as suitable. And often when an order is not made, it's been lack of co-operation on the part of the accused.”*

*“I think the ones that aren't getting on it is because of their own fault, in the sense that they are not doing what they were asked, they're not going to the appointments in the assessment, they're not turning up, they're not giving samples, they're getting arrested on other matters during the course of the appointments, it's not because they're unlucky somehow.”*

## **THE ASSESSMENT PROCESS**

3.21 When a referral is made for a Drug Court assessment, a minimum of five separate appointments with the Supervision and Treatment Team is required. This includes two appointments with the social worker, one appointment with an addiction worker and one appointment with a nurse. In addition, the offender must attend to provide a urine sample for analysis. During the assessment, the offenders must demonstrate that they are drug

dependent, that their offending is directly linked to their drug use and that they are committed to change. In the event of a drug assessment being requested, the defence agent would explain to their client what the assessment would involve and would emphasise to them the importance of keeping the assessment appointments.

3.22 Whilst it was recognised that this was a lengthy and somewhat daunting prospect for offenders, there was agreement that it resulted in a more holistic view of needs, difficulties and commitment and that the subsequent de-briefing often uncovered information that might otherwise have been missed:

*“Three people do assessments and then they talk, ‘Well, what do you think?’ Sometimes they tell people different things and they’re different with nursing staff than they are with social workers. And we all get together and say, ‘Well I think he’s suitable... Oh I don’t think he is etcetera.’”*

3.23 Team members felt that the assessment system also allowed for a reinforcing of the serious implications of accepting an order although it was recognised that often offenders found themselves in an acutely stressful situation and would tend to internalise the fact that this was a non-custodial option more readily than the supervision and testing elements:

*“I think it would be natural for someone to be seduced by the fact that they are not going to be in custody. But... how are you going to make someone aware that it’s very difficult if you’re having 4 or 5 appointments a week, plus prescribing clinics. You might have to have tolerance testing. You’re going to have to provide observed urines twice a week. It’s a fair lot to ask of people: and that’s in it’s most basic form.”*

*“My sense is that the actual clients... really, all they hear is, ‘If you sign on the dotted line, you’re not gonna go to jail.’ Then they appear and - I’ve actually had people saying this – ‘If I had really known that this meant that I was gonna have to keep all these appointments, this meant I was gonna have to start having weekly urine tests, I’d have done the time.’”*

3.24 One sheriff explained that he would normally request a social enquiry report and consider its contents before requesting a Drug Court assessment. If drug use was identified as an issue at the SER stage, it was likely that the author of the SER would have been in contact with the Supervision and Treatment Team who would, as a consequence, be prepared to undertake a full drug assessment. Sheriffs expressed high levels of satisfaction with the quality of the drug assessments they received, relying upon them for guidance as to the appropriate course of action to take.

3.25 Although sheriffs in Kirkcaldy and Dunfermline could still make DTTOs, which would be automatically be transferred to the Drug Court, their preference was to leave the decision about the use of these orders with the Drug Court Sheriff:

*“We are leaving the final decision as to whether it should be a Drug Treatment and Testing Order with the Drug Court Sheriff because he obviously has the expertise and specialisation that I think we need for it.”*

## Time frames for assessment

3.26 Concern had been expressed in the early stages of the Glasgow Drug Court that the four week assessment period was longer than desirable because of the likelihood of continued offending prior to a Drug Court Order being made and the client accessing appropriate treatment. The possibility of continued offending by a client undergoing a drug assessment was acknowledged in Fife:

*“...they have an acknowledged problem which we say needs to be addressed or we should look at if it can be addressed but meanwhile we cast them adrift turning a blind eye, I suppose, to the fact that they must be keeping offending to supply their habit.”*

3.27 It did not, however, appear to have caused sentencers particular concern. As one criminal justice professional observed, a three week deferment was normal for the preparation of Social Enquiry Reports and a four week deferment for a drug assessment was not, in comparison, unduly long. That said, one sheriff suggested that assessments should be completed as quickly as possible because *“the quicker someone can be assessed and can be on the treatment aspect of the order the better”*.

3.28 Sheriffs were also content with the arrangements whereby offenders were bailed for a Drug Court assessment, since this enabled a more realistic assessment to be made of the offender’s drug use and likely motivation to comply. One sheriff commented that this was *“a risk we’ve got to take”*. However, one sheriff suggested that access to a residential centre would be helpful to enable those with more entrenched difficulties to be assessed:

*“I would like to see the setting up of a residential treatment centre for the worst addicts. I have in mind those whose history of addiction is so involved and whose lives have been for along time chaotic and for whom a residential base is the only way in which they will ever be capable of effective assessment for a Drug Court Order... They think only of their next fix and the wherewithal to pay for it, that is, criminal activity. The only solution for them, as I see it, is a residential clinic at least for assessment purposes.”*

3.29 Defence agents suggested that clients were often happy to agree to a Drug Court assessment because they would be bailed for this purpose. The fact that assessments were conducted while their clients were at liberty was seen by defence agents as a strength of the system since it enabled a more accurate assessment to be made of whether or not they would be likely to comply with a Drug Court Order. As one defence agent explained:

*“I think that’s the advantage of putting someone on bail, because you really test them to see whether or not they’re going to co-operate, because the heat’s off.”*

3.30 Although the intention was that assessments would be completed within four weeks, sheriffs reported that this target was sometimes not met because the offender failed to attend all of the appointments that s/he had been given. Where the majority of appointments had been kept, the sheriff would usually continue the case for another two or three weeks to enable the assessment to be completed. If the offender has failed to comply with the assessment, the task of the defence agent will be to encourage the sheriff to continue the case

for a further period to enable an assessment to be carried out. As one defence agent explained:

*“If they haven’t done it the first time then we’ll no doubt get all of their excuses as to why it didn’t happen, including ‘the dog’s eaten the letter’. Then your job is to try and persuade the sheriff to continue.”*

3.31 The Drug Court Sheriffs indicated that they usually went along with the recommendation contained in the Drug Assessment Report. There had, however, been occasions on which the Supervision and Treatment Team indicated that an offender was unsuitable for the Drug Court and the sheriff had asked that they reconsider the person for an order.

### **Agreeing to a Drug Court Order**

3.32 The consent of the offender to the making of a Drug Court Order is required before such an order can be imposed. Professionals were agreed that offenders were usually fully informed about the requirements of Drug Court Orders before providing the necessary consent, though there had been some initial confusion about whether offenders were required to be drug-free at the end of their orders or whether it was sufficient that their drug use was reduced and it was no longer necessary for them to re-offend.

3.33 Before agreeing to participate in a Drug Court Order, the client would have been briefed by their defence agent. They would have received information about what an order entailed and the consequences of non-compliance from the sheriff and from the Supervision and Treatment Team. The five appointments conducted during the assessment process were intended to ascertain the client’s motivation, their ability to comply with attendance requirements and to ensure they were aware of the testing and treatment stipulations. Defence agents suggested that their clients often gleaned information about the Drug Court from “*their pals who are on it*” or from “*talk on the street*”.

3.34 It was suggested by some professionals that clients were sufficiently astute to learn from observing the experiences of others and were well versed, through experience, in court procedures. However, one defence agent suggested that clients were often unaware, when consenting to a Drug Court Order, of the commitment they were required to make:

*“I don’t think that a lot of them realise how intensive it will be...I think that a lot of them have the attitude of living for today, living for the moment and staying out of jail and agreeing to do anything that would keep them out of jail. And you know, they’ll say in their colloquial terms, ‘can we no get wan o’ they Drugs Court Orders?’. And I don’t think that they know when they’re asking for that, exactly what that means. I think that they think, ‘oh we’ll just have to go and give a few samples’. I don’t think that they realise about the actual discussions that go on and the sort of therapy behind the discussions with the addiction workers. I don’t think that they realise that there’s that much more one to one that goes on.”*

3.35 When advising clients with respect to giving consent to a Drug Court Order, defence agents endeavoured to ensure that their clients were aware of the commitment that would be

required of them, stressing the onerous nature of the order. They would advise their clients only to consent to an order if they were genuinely motivated to tackle their drug problem, since the consequences of agreeing to an order then not complying were severe.

3.36 Defence agents would have reservations about the a wisdom of consenting to a Drug Court Order if their clients were “*just being half-baked about the whole thing*” or appeared unlikely to have the ability to complete an order:

*“...if they can’t keep to a simple probation order, where the requirements are much less than a DTTO, then we would say, ‘think carefully before you agree to this’. But we’d never try to pressure them not to take a Drug Court order because you never know how people can change...It’s a chicken and egg situation of ‘are they incapable of doing anything because they’re drug addicts or are they drug addicts because they’re incapable of doing anything?’ And until they try, you never know. So to be honest, I would say I haven’t advised anyone not to consent. More likely I’ve said, ‘just think carefully before you go there’.”*

3.37 Defence agents all emphasised that while they would point out to the clients the potential disadvantages of agreeing to a Drug Court Order under these circumstances, ultimately they would never advise a client not to consent:

*“At the end of the day, if a client tells you they want to go on an order, you’re just there to obey their instructions and so it’s not up to you to try to dissuade them. I think you can maybe test their commitment but I don’t think you should be trying to argue them out of it”.*

3.38 The Drug Court clients who were interviewed commented that they had initially been told about the Drug Court by a social worker. In some cases, they had asked their solicitor about it but had subsequently been spoken to by a social worker or addiction worker. One client had been told about the Drug Court while remanded in custody.

3.39 Clients confirmed that the rigorous assessment process that precedes the making of a Drug Court Order meant that they had generally received detailed information on Drug Court Orders and what they would entail:

*“Yeah, well every time I seen my social worker and my addiction worker they always explained it, what it would involve and things like that. They knew exactly what we were going through and things”.*

*“They said it was five appointments a week, four or five appointments a week, and that I need to be drug free, apart from the prescription obviously”.*

3.40 On the whole, clients expressed satisfaction with the information that they received about the Drug Court. They commented that they had received a sufficient amount of information and that the requirements of Drug Court Orders had been made clear to them from the outset. However, one client commented that he would have preferred more information before starting his order: *“It was just what people told me. I never really sat down with anybody and talked about it”.* When asked what would have been useful for him,

he commented: "*some more details about it I suppose, what it's all about, what it's got to help you, things like that I suppose*".

### **Reasons for agreeing to a Drug Court Order**

3.41 The Drug Court clients who were interviewed were aware that Drug Court Orders were high tariff disposals. Some had been informed that they were facing a custodial sentence by their solicitor ("*A custodial sentence of probably between two to three years, this is what my lawyer said anyway*"). One young man believed that he may have been put on a probation order if he had not received a DTTO. However all of the other clients believed that they would be given a custodial disposal had they not been placed on a Drug Court Order, as the following exchange illustrates:

INT *"And what sentence do you think that you would have received if you hadn't agreed to it?"*

R *Quite a lengthy one, I don't know what length of sentence but it would have been quite a lengthy one aye.*

INT *And do you think it would have been custody?"*

R *Oh aye, aye".*

3.42 Some professional respondents were somewhat sceptical about the motives of offenders when agreeing to a Drug Court Order. Many, it was suggested, regarded it as an alternative to prison and therefore "*an easy way out*" or "*a last chance to stay on the streets*", although this argument could also be advanced in respect of any non-custodial sentence. As one respondent explained:

*"The impressions that I get are not ones of great motivation. Great relief in a lot of cases – and I think that's more to do with what the alternative could have been."*

3.43 Defence agents were of the view offenders had differing reasons for agreeing to participate in a Drug Court Order. Some, they suggested, were "*100% motivated, wanting to get rid of their drug habit*" while others were primarily motivated by a desire to avoid a custodial sentence. While the latter was recognised as being a primary motivating factor for many clients, defence agents also suggested that the word was now beginning to spread that the Drug Court was not an easy option. It was therefore increasingly unlikely that clients would agree to a Drug Court Order for this reason alone. As one sheriff explained:

*"They want to escape the horrors of addiction so that they can either regain their health and get rid of pain and return to ordinary family life, including contact with children who may have been taken into care. They also want to stop offending and being the subject of regular suspicion, including on the part of the police. And finally, they want to avoid being sent either for the first time or yet again to prison."*

3.44 Another respondent stressed that whatever the original motive, the important thing was whether they managed to comply with their order and whether the order 'worked'. Members of the Supervision and Treatment Team commented that while many clients agreed to a Drug Court Order to avoid a custodial sentence, and while this may underpin their initial

compliance, it was usually possible to work on their motivation and to engage clients successfully.

3.45 One sheriff suggested that although the Drug Court might be perceived by offenders as a way to avoid a custodial sentence, there was no evidence that they used it as a *device* to escape a sentence of imprisonment. If the latter did apply, it was suggested, the offenders' motives would quickly be established:

*"If they are at it and using it as a device, they'd be very quickly found out in that their motivation and commitment will be quickly tested over the first couple of months."*

3.46 Another sheriff had addressed the issue directly:

*"I have discussed it with them. I have said 'you know I'd be interested in, quite honestly when you first were referred were you just trying to stay out of custody?'. And they've been quite candid too and said 'yes' and then they've said 'but you know as things have gone on we've seen that there's something in it for us and that there's something, you know it makes sense to take the opportunity to try and have a bit of a better life'."*

3.47 Defence agents also believed that through participating in the Drug Court, their clients were keen to receive support to deal with their drug problem and to achieve a change of lifestyle. As one agent explained:

*"...they genuinely do want to get away from the life that they're leading... a lot of them are embarrassed and disgusted at themselves and at the fact that they're going out stealing in order to fund their habit... if they had the option, they would like to have a job and they would like to have a family and they wouldn't, they wouldn't want to live the life that they're leading but they feel that without any help there's no way out of the rut."*

3.48 All Drug Court clients had a clear view of the purpose of Drug Court Orders and clearly recognised that the Drug Court itself was a direct response to drug related crime. Thus, according to these clients, the purpose of the Drug Court was:

*"To stop you using drugs and offending."*

*"To stop me stealing to get what I've been buying on the streets."*

*"Just to get everybody clean is it not? To try and get everybody off drugs."*

3.49 However, several clients indicated that participating in the Drug Court also provided them with an opportunity to receive help and support of wider nature.

*"To stop people offending and to get them back on the line of life again instead of drugs and crime basically."*

*"To help people with their problems and to get off drugs. Well I had quite a big habit, now I use heroin once a week or something, but before I was on the*

*Drug Court Order I was using it every day so it has helped me. It is good for other problems as well, like if you want to speak to your drug workers". (DTTO client transferred to Drug Court).*

3.50 Some clients may have been at least partially motivated to consent to a Drug Court order to avoid a custodial sentence:

*"To be truthful, to keep out of jail (...) it was just an escape route in the court stages, I've got a lot of good reasons for why I would choose it now, but at the time it was solely an escape route..."*

3.51 For most, however, the demanding requirements of orders meant that clients had to be motivated to change their drug use and offending behaviour. This was clearly an important objective for many of the respondents:

*"To stop myself offending first, to get myself off drugs basically."*

*"For a better life than I've been on for the past 7-9 years".*

*"I know a few guys that's on it so they told me what it would be like for 18 months maybe two years. They said 'you might get a prescription' so I said I may as well try that, see what it was like."*

### **Influence of the Drug Court on guilty pleas**

3.52 Some professionals thought that the possibility of receiving a Drug Court Order might encourage some offenders to enter a guilty plea at an earlier point in the prosecution process. For example, a defence agent cited the case of an offender who had served many previous custodial sentences but who had pled guilty to a number of charges in the hope that he might receive a Drug Court Order:

*"He wants me to go for the Drug Court thing and he's pled guilty straight away in the hope that that might happen."*

3.53 A different defence agent suggested that since most potential Drug Court clients would be appearing from custody, their pleas were more likely to be influenced by whether or not bail is opposed in the custody court. Another court professional also suggested that it was unlikely that the possibility of receiving a Drug Court Order would encourage the tendering of guilty pleas:

*"Theoretically the ones who come in to the Drugs Court have got a, should have a, fairly long record of drugs related offences and therefore they know that the chances are they'll go to jail if they don't go to the Drugs Court. But they're not guaranteed the Drugs Court so they know that if they plead guilty they could go to the jail as well, so I don't think it makes any difference".*

3.54 Sheriffs suggested that in some cases access to the Drug Court had been delayed on account of defence agents encouraging their clients to plead not guilty in order that the case would go to trial. One sheriff suggested, however, that some of the "more responsible

*agents*” would point out the potential benefits of the Drug Court to their clients and encourage them to enter a guilty plea at an earlier point in the process. In this respect, it was thought that the possibility of a referral to the Drug Court might have resulted in some cases not going to trial. Sheriffs were also at pains to point out, however, that they did not believe that this had resulted in some people pleading guilty when they were, in fact, innocent with respect to the matters with which they had been charged.

3.55 Such a position was supported by the clients themselves. Drug Court clients expressed various reasons for initially agreeing to the requirements of a Drug Court Order. For some the prospect of avoiding a custodial sentence was prominent. This may have affected their decision to agree to the requirements of the order, but did not appear to affect decisions to plead guilty. Clients commented that they pled guilty to an offence because they had committed it.

### **Restriction of Liberty Orders**

3.56 As indicated in Chapter One, the main disposals available to the Drug Court are DTTOs, Enhanced Probation Orders, combined DTTOs and probation orders, and deferred sentences. The Drug Court Sheriffs may also impose Restriction of Liberty Orders (RLOs) alongside a Drug Court Order if they believe that to do so would further enhance the effectiveness of the order. An RLO may require the offender to be in a specified place for a specified period of time or not to be in a specified place or class of place for a specified period of time. It may be made for any period of up to 12 months and it may not exceed 12 hours in any one day. The offender must agree to the imposition of an RLO, compliance with which is electronically monitored and which, if breached, may result in the court re-sentencing the offender for the original offence.

3.57 Sheriffs were varied in their enthusiasm for the use of Restriction of Liberty Orders running alongside an Enhanced Probation Order or DTTO. It was suggested that they might be of value in helping to stabilise offenders who would otherwise be tempted to ‘go off the rails’. They were also seen as providing the court with a wider range of disposals and therefore better enabling the requirements of supervision to be matched to the circumstances of the offender. One sheriff suggested that it was “*worth trying a combination of things...What will work for one individual will not for the next*”. Another proposed that RLOs would be of greater value to the Drug Court if they could be imposed at different stages of a case, including during the assessment period. However sheriffs also questioned the impact that an RLO could have on offending in the context of a Drug Court Order.

3.58 Defence agents were also divided in their views about the potential value of RLOs to the Drug Court. In some cases clients’ families had been found to be supportive of RLOs and it was also suggested that they were helpful in adding a ‘punitive element’ to what is essentially a rehabilitative disposal:

*“I don’t think any system if it’s totally punishment based will work and I don’t think it’ll work if it’s totally rehabilitation based, so it’s probably quite useful to act as a kind of balance to that.”*

3.59 On the other hand, one defence agent was of the view that RLOs and Drug Court Orders did not sit comfortably together. More specifically, the RLO was seen as being

appropriate for people who committed offences at a particular time of the day and this was thought not to be the case with drug-using offenders.

## **ORDERS MADE BY THE DRUG COURT**

3.60 Information about the number of orders made since the establishment of the Drug Court was provided by a database held by the Supervision and Treatment Team. By the end of January 2003, 48 offenders had been given a Drug Court Order. Six had been made subject to orders in September 2002, nine in October 2002, eight in November 2002, 16 in December 2002 and nine in January 2003.

3.61 Two-thirds (32) of clients had received a DTTO and one-third (16) an Enhanced Probation Order. Just over half the clients were given orders of 18 months (25 or 52%), while 15 (31%) were given orders for 24 months, seven (15%) were given 12 month orders and one (2%) was given an order for nine months. In the majority of cases (39 or 81%) the orders had been made by the Drug Court in Kirkcaldy, in seven cases (15%) they had been made by the Drug Court in Dunfermline and in one each they had been imposed by the High Courts in Glasgow and Edinburgh. Both orders imposed by the High Courts were DTTOs and were reviewed by the sentencing court. In Dunfermline in just under one third of cases (2/9) the client was made subject to an Enhanced Probation Order, while just over one third of clients in Kirkcaldy (14/39) had been given an order of this type.

3.62 On average, just under ten offenders per month were made subject to a Drug Court Order which, taking account of the existing DTTOs that were transferred into the Drug Court, suggests that the Team are well on target to meet the 150-180 case annual workload identified in the Drug Court Manual. In 46 cases, the database recorded details of the number of orders made per client. While most (36 or 75%) received a single order, seven (15%) had received two orders and three had received three or more. In total, therefore, 64 orders had been made in respect of the 46 clients for whom this information was available.

3.63 The majority of clients who received Drug Court Orders (39 or 81%) were male. Categorized information about previous criminal history indicated that the majority of clients for whom this information was available (25/37 or 68%) had at least 10 previous convictions. There was a tendency for men to be more heavily convicted than women, with half the men having more than twenty previous court appearances compared with none of the women.

**Table 3.2: Previous convictions by sex**

	<b>Male</b>	<b>Female</b>	<b>Total</b>
Up to 5	5	4	<b>9</b>
6-10	3	-	<b>3</b>
11-20	7	3	<b>10</b>
More than 20	15	-	<b>15</b>

3.64 According to the information recorded on the database, most offenders (30 or 65%) had been given a Drug Court Order for offences involving dishonesty. Ten individuals (22%) had been convicted of drug offences, six (13%) of motor vehicle offences (theft from motor vehicles), four (9%) of violence against the person and eight (17%) of other unspecified

offences<sup>17</sup>. It should be noted that many offenders had multiple charges and were convicted of more than one type of offence.

3.65 Offenders who received Drug Court Orders varied in age from 17 to 36 years, with a mean age of 25 years. This is slightly higher than the mean age of referrals, suggesting that older offenders were more likely to have been assessed as suitable for a Drug Court Order. Women given Drug Court Orders were younger, on average, than men (22 years compared with 25.5 years, t-test,  $p < .05$ ). Women were also given, on average, fewer orders than men (1.0 compared with 1.5, t-test,  $p < .05$ ). Women were slightly more likely than were men to have been given an Enhanced Probation Order (4/9 compared with 12/39) but the difference was not statistically significant. Nor was there a significant difference in the mean length of order imposed in respect of men and women (19 months and 18 months respectively). DTTOs were, however, longer, on average, than Enhanced Probation Orders (20 months compared with 17 months, t-test,  $p < .05$ ).

3.66 To assess whether there had been changes in practice with respect to the use of Drug Court Orders over the first five months of the Drug Court's operation, a comparison was made between the 23 offenders given orders in the first three months (September – November 2002) and the 35 given orders in the second two months (December 2002 – January 2003). This revealed that in the first three months, a slightly higher proportion of offenders was given an Enhanced Probation Order (10/23 compared with 6/25 in the subsequent two months) and there was a tendency for a higher number of orders to be made per offender in the first three months (1.6 compared with 1.2 in the subsequent two months). The proportion of women given orders was also slightly (though not significantly) higher in December 2002 – January 2003 (7/25 compared with 2/23 in September – November). There was no indication, however, that either the age of offenders or the mean length of order imposed had changed over the initial phase of the pilot.

### **Drug use among clients given Drug Court Orders**

3.67 Information about drug use at the assessment stage among 42 offenders given Drug Court orders was provided by the Supervision and Treatment Team<sup>18</sup>. This data revealed that these clients had a diverse range of drug-taking repertoires. One quarter of the clients were reported to have a single drug of choice (heroin in nine cases, benzodiazepines in one case), while the other 32 clients were polydrug users who regularly used between two to five different drugs. The types of drugs that clients reported using at the assessment stage are summarised in Table 3.3. Heroin was the most frequently reported drug followed by benzodiazepines. Clients reported spending, on average, £34.40 per day on street drugs, within a range of between £5 and £90 per day. There were no significant differences in types of drugs used and level of daily expenditure by gender or age.

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<sup>17</sup> These percentages were based on 46 cases since in two cases no information about the type of offence for which the client received a Drug Court Order was available.

<sup>18</sup> These are the cases for which the relevant data could be easily accessed by the team. It is anticipated that information on the remaining cases will subsequently be made available.

**Table 3.3: Self-reported drug use at the referral stage (n=42)**

Drug	Reported use at referral and assessment period	
	n	% of clients
Heroin	41	95
Benzodiazepines	15	35
Methadone	9	21
Dihydrocodeine	8	19
Cannabis	8	19
Diazepam	7	16
Valium	5	12
Ecstasy	1	2
Cyclizin	1	2
Nitrazepam	1	2

3.68 There was a close association between reported drug use at the assessment stage and the results of urine tests for illicit drugs. Clients tested positive for between one and four drugs. As Table 3.4 shows, benzodiazapines, heroin, morphine, methadone and opiates were the substances that were most commonly detected in the urine samples of these offenders during the assessment period

**Table 3.4: Positive urine test results at the assessment stage clients (n=42)**

Drug	Reported use at referral and assessment period	
	n	% of clients
Benzodiazepines	24	57
Heroin	15	36
Morphine	14	33
Methadone	14	33
Opiates	10	24
Cannabis	8	19
Diazepam	2	5
Codeine	2	5
Dihydrocodeine	1	2
Ecstasy	1	2

3.69 All of the clients who were interviewed commented that their offending was directly linked to their drug use and was usually aimed at obtaining money for drugs; for example, shoplifting and theft. Most of the Drug Court clients admitted to having lengthy criminal records that spanned most offence-types and they had experienced a range of previous disposals including DTTOs, probation orders and custodial sentences. Clients often reported having received disposals which ran alongside their Drug Court Orders and which could be dealt with should the need arise (both to encourage the client through the use of an admonition or to rebuke the client through the use of a more punitive disposal).

## SUMMARY

3.70 Potential candidates for the Drug Court were usually identified by sheriffs sitting summarily in Dunfermline or Kirkcaldy Sheriff Courts or were brought to the attention of the bench by defence agents. Professionals involved in the operation of the Drug Court were generally content with the referral criteria, though some suggested that younger offenders should be given the opportunity to participate in Drug Court Orders.

3.71 Seventy-three existing DTTOs were transferred into the Drug Court in September 2002 and 178 additional referrals for a drug assessment had been made between September and December 2002. Just over four-fifths of offenders referred were male and the majority of referrals emanated from Kirkcaldy Sheriff Court.

3.72 A drug assessment involved the client keeping a minimum of five separate appointments with the Supervision and Treatment Team and submitting to a drug test. Sheriffs were content to continue such cases on bail since this provided a more realistic test of the offender's motivation and willingness to comply. Clients were well informed about the purposes of a Drug Court Order and the expectations that would be attached to participation in the Drug Court prior to consenting to an order.

3.73 While some offenders apparently agreed to a Drug Court Order primarily to avoid a custodial sentence, most were also considered to be motivated by the possibility of getting off drugs. Views were divided over whether the possibility of participating in the Drug Court encouraged offenders to enter earlier guilty pleas. There was no evidence, however, that it encouraged them to plead guilty to offences that they were not, in fact, guilty of committing.

3.74 By the end of January 2003, 48 offenders had been made subject to a Drug Court Order. The mean age of offenders was 25 years and four-fifths were male. Four-fifths of offenders had been sentenced by the Drug Court sitting in Kirkcaldy. Around two-thirds of clients received a DTTO while around one-third received an Enhanced Probation Order. Most offenders had numerous previous convictions and almost all reported using heroin and benzodiazepines. Mean daily reported expenditure on street drugs varied from £5 to £90, with an average of just under £35.

## **CHAPTER FOUR      TREATMENT AND SUPERVISION**

### **INTRODUCTION**

4.1 The goal of the Drug Court is to assist offenders to overcome their drug dependence and to end their associated criminal behaviour through court enforced and supervised treatment programmes. This objective is premised on the acknowledgement that drug dependency is not only a problem for the criminal justice system, but is also a social concern and public health issue. In effect, offenders are sentenced to treatment. Through the sentences imposed by the Drug Court, a range of professionals will make treatment available to individuals enabling them to tackle their drug use and to engage with services offering support and assistance. The supervisory role of the Drug Court ensures that the co-operation and compliance of the offender is sustained throughout the duration of the order. The underlying ethos of this approach is that the motivation of Drug Court clients will be maintained through regular court reviews, offering a system of rewards for progress and sanctions for failure to comply with all aspects of the order. While offenders' initial motivation may be directly linked to a desire to avoid a custodial sentence, the Treatment and Supervision Team make considerable efforts to engage offenders in treatment and encourage them to have an investment in their treatment plan and progress. The Treatment and Supervision Team work directly with court-based criminal justice personnel and have direct contact with legal professionals on a daily basis. The social, medical and legal networks, which comprise the Drug Court provisions, underpin its innovative operational practice.

### **MULTI-PROFESSIONAL TEAMWORK**

4.2 Given the range of professional agencies involved in the operation of the Fife Drug Court, a variety of mechanisms have been put in place to enhance communications and oversee the implementation of policies and procedures into every day practice. This co-operation existed at management and practitioner level. Drug Court Team Meetings enhanced interagency working practices.

4.3 The Drug Court Team is intended to “review regularly the working, development and operation of the Drug Court, identify improvements that might be made or issues that need raised or resolved”.<sup>19</sup> According to the Reference Manual, membership of the Drug Court Team should consist of: the Drug Court Sheriff who chairs the meetings, the sheriff clerk with responsibility for administering the Drug Court, the procurator fiscal assigned to the Drug Court, the Drug Court Supervision and Treatment Team Co-ordinator, the Fife Drug Court medical practitioner, the senior dedicated social work Drug Court addiction practitioner, the Senior dedicated worker from the contracted Drug Court treatment provider, a Police representative, and a representative from the Fife Bar Associations.

4.4 However, membership has altered slightly from that set out in the Fife Drug Court Reference Manual due to identified needs and general expediency. Both sheriff clerks (from Kirkcaldy and Dunfermline Drug Courts) attend meetings, as does the Service Manager for Criminal Justice Services. The back-up Drug Court Sheriff attends meetings on an intermittent basis and receives all paperwork. At the first meeting of the Fife Drug Court

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<sup>19</sup> Fife Drug Court Reference Manual, July 2002, page 17.

Team (6 August 2002), it was agreed that the Drug Court medical practitioner would be invited to attend when medical issues were on the agenda. Subsequently representatives from solicitors in Dunfermline and Kirkcaldy Drug Court were invited to participate in the team. The Consultant Psychiatrist to the Drug Court is also invited to attend, although does not generally do so. A representative from Criminal Justice Services records minutes and the venue varies between Kirkcaldy and Dunfermline Sheriff Courts.

4.5 The team usually meets monthly and issues are raised and information exchanged on an informal and ongoing basis. Representatives from the different agencies have the opportunity to raise points of interest or to clarify practical procedures. The Drug Court Team Meetings consist of discussions around agenda items aimed at clarification and information sharing. While most of these discussions related directly to the operation of the Fife Drug Court they also present a forum for drawing attention to broader events likely to be of interest to team members. Issues discussed include: relevant statistical information, staffing, changes in police procedures, training events, external agency policies, treatment plans, prison prescribing practices - all of which have the potential to impact on Drug Court clients. There appeared to be a consensus among Drug Court Team members that the meetings were useful and informative, and were conducted in a relatively informal way which encouraged discussion and inter-agency co-operation.

4.6 Communication between the Crown and other professionals involved in the operation of the Drug Court took place via day-to-day contact in court and through the monthly Drug Court Team meetings at which matters of an operational and strategic nature were discussed. Procurators fiscal were happy with the nature and quality of communication between the relevant agencies and were unable to identify ways in which it might be improved.

4.7 Defence agents had received information about the Drug Court from a variety of sources including the two-day training session that had taken place prior to the implementation of the Drug Court, through presentations by the Drug Court Sheriff and Co-ordinator to the Fife Bar Associations and, in some cases, through attendance at Drug Court Team Meetings. One defence agent also reported having participated in a mock Drug Court exercise led by one of the Drug Court Sheriffs from Glasgow. Defence agents suggested that acquiring information about the Drug Court was an evolutionary process and that agents became more familiar with the procedures over time. As one defence agent explained:

*“It’s been a sort of developing education if you like. As the Drug Court’s gone on, people have got to know it’s going to work a bit better. It’s quite new so I think it was difficult to predict how it was going to work at the beginning.”*

4.8 This was re-iterated by another defence agent who suggested that solicitors had tended to be “*thrown in at the deep end*” and had to learn about how the Drug Court worked by “*feeling their way*” and acquiring knowledge through practice. Levels of knowledge about the Drug Court were perceived not to be uniform and for some defence agents the available information had been “*sketchy*”. It was suggested that written documentation on how the Drug Court procedures worked would be useful, especially for solicitors who were not regularly practising in the Drug Court, such as “*out of town agents who perhaps have the odd client*”. Sheriff clerks also commented on the need for information on the operation of the Drug Court to be made available more broadly:

*"The difficulty is when you get visiting sheriffs and visiting clerks and they don't know that they shouldn't be making Drug Court Orders, that they should just be either making an ordinary DTTO and then remitting it to the Drug Court for review or remit it to the Drug Court for sentencing, basically that's the only difficulties that we have".*

4.9 In some other jurisdictions, Drug Courts have, in addition to dedicated sentencers and prosecutors, dedicated defence agents funded by legal aid. This was not thought to be necessary in Fife since a few local law firms dealt with most Drug Court cases and defence agents were familiar with the Drug Court's operation. Defence agents from further afield were likely not to understand what was expected of them in the Drug Court and this, sheriffs suggested, was also true of visiting procurators fiscal

4.10 The Drug Court Sheriff Clerks are responsible for sending out complaints, making sure reports and paperwork are ready for the sheriff and generally running the court. The clerks also attend the Drug Court Team meetings. The more 'informal' operation of the Drug Court meant that the clerks perceived some differences to their roles compared to other courts.

*"... We are more involved in certain things. You're more aware of the accused you know and it's all very...you're more closed in and you're aware of them because you sit round a table and things like that and you're going to the sheriff and discussing various bits and pieces with the reports".*

It was also noted that:

*"Well I think it's actually quite good because I mean I can contact the team up the road if there's any problems, likewise they can contact me, there's the communication between the police and the fiscals and ourselves so we've actually got all the information there in relation to any one specific client but I think the sort of interaction's good".*

4.11 Court-based workers expressed their satisfaction with professional inter-working; however, it was pointed out that:

*"...all the agencies are based in Kirkcaldy so I think they have a far better rapport with Kirkcaldy because they're in and out of Kirkcaldy (court) whereas they send things in here and they post things, they're far more at Kirkcaldy...it's not a problem but (...) they all know each other a fair bit better".*

## **SUPERVISION AND TREATMENT TEAM**

4.12 Criminal justice social workers and assistants, addiction workers and medical officers (including doctors and nurses) comprise the dedicated Drug Court Supervision and Treatment Team. They are supported by service providers in the voluntary sector. The Supervision and Treatment Team meet up on a monthly basis to discuss general issues relating to the provision of services to Fife Drug Court. These meetings, which are open to all members of the Supervision and Treatment Team, provide a forum to discuss the practical issues which

arise on a day-to-day basis through the operation of the Drug Court. They focus on administrative tasks and procedures, ensuring any difficulties or tensions are addressed, and clarification received as appropriate. The meetings also enable the Team Leader to pass on information to other team members with regard to policies, decisions taken by the Drug Court Team, training opportunities and broader points of interest. The meetings are chaired by the Team Leader and minutes taken by the Criminal Justice Services administrator.

4.13 Social work, addiction workers and medical staff all contribute to the assessment of potential Drug Court clients, and to the preparation of the Social Enquiry Report (SER), drug assessment and subsequent action plan. Medical staff conduct and report on drug testing. Overall responsibility for the preparation of the court report lies with the social worker. A nominated officer from each of the three main disciplines forms the client's Case Group. This is convened and chaired by the supervising social worker; however the Case Group share responsibility for the supervision and treatment plan. The Case Group assess the client's progress or discuss any difficulties he/she may be experiencing and are able to inform the court of developments at the (usually) monthly review. Conclusions of the Group are largely reached through consensus, except when in relation to medical treatment.

4.14 The interagency collaboration of different disciplines means that clients are provided with a comprehensive supervision and treatment service, and benefit from workers' expertise and knowledge in compatible areas of drug dependency and treatment. In practice, however, there is the potential for tensions in the implementation of joint working practice. In the initial stages of collaborative working, there was some lack of clarity about the roles of different workers, particularly in relation to assessment and service provision. The addiction workers' role appeared to other workers to impinge on both the 'treatment' element of the order provided by nurses and the welfare element, which social workers claimed to have some responsibility for. Several nurses had backgrounds in psychiatric nursing and were able to provide motivational interviewing and counselling techniques such as group work, although these areas were also viewed as part of the remit of addiction workers. Despite the fact that some addiction workers had social work qualifications, there were references to them as 'unqualified workers':

*"I think the addiction worker, as unqualified workers, are actually doing the job that social workers were trained to do. That's not to say there's been any individual animosity, I think that's a structural issue in the way the team has been structured."*

4.15 While social workers were designated case-managers for Drug Court clients, addiction workers and nurses tended to see the clients on a more regular basis (for treatment, testing, individual support and practical assistance in accordance with the treatment plan). While the Case Groups enable all relevant workers to contribute to discussion of the clients progress, it is the responsibility of the social worker to manage the case and to prepare and submit reports (on behalf of the Case Group) to the Drug Court. While all professions are represented at the pre-review meetings, it is the social worker that attends the reviews in open court, where the client is present. While this is generally viewed as expedient due to constraints on time and clarity, individual workers expressed some dissatisfaction with this practice, which had not been originally envisaged in the Drug Court Manual or by the Drug Court Sheriff. In particular, the fact that court reports contained significant information provided by nurses and addiction workers led to blurred boundaries of ownership. There had initially been an element of disgruntlement among addiction workers and nurses when social

workers made changes to their reports, an issue which was described as “*quite de-skilling*” for the other workers. Team meetings had provided a forum for addressing this issue.

4.16 Staff recruitment and retention has been, and continues to be, an issue for the Treatment and Supervision Team. In October 2002, there were six social workers in the team, five of whom were new to criminal justice. Training was put in place to address some of the difficulties this created around procedures, practice and appropriate terminology for court reports. In the early stages of the Drug Court, staff had been appointed from a number of backgrounds, bringing a range of different professional experiences to the team (criminal justice system, prisons, hospitals, psychiatric nursing). This caused some disruption initially and led to a range of expectations and working practices among team members.

4.17 The physical proximity of the different agencies in Kirkcaldy was perceived to be a useful mechanism for enabling workers to engage in informal discussions and for information exchanges to take place. Where problems with communication had arisen between team members, there was some difference in opinion as to whether this was due to individuals or agency practices. The Supervision and Treatment Team meetings were aimed at responding to any inter-agency issues and clarifying working practices. Training was used regularly to address needs but also to enhance team working. However, it appeared that each professional group had also started to have their own meetings (addiction workers, nursing staff, social workers).

4.18 Overall, workers viewed multi-professional working as a positive and innovative way to deal with drug use and offending. However, as one worker commented:

*"Yes, I think the difficulty with multi-agency working is that in principle it's an excellent idea drawing on people's experiences, the difficulty is that no-one's really told anybody how to do it."*

4.19 Drug court clients commented that the Drug Court Orders enabled them to access the support of workers from different disciplines:

*"I just feel like my addiction worker, my social worker and my nurse are really supportive towards me, I mean I could always phone them if I've got problems. I've got their professional numbers and that. I just find them easy to speak to about problems I've been having."*

## **TREATMENTS AND OTHER SERVICES AVAILABLE TO THOSE ON ORDERS**

4.20 Following an initial screening process and health related assessment, the main treatment options that the Drug Court has available to it include abstinence, methadone maintenance and reduction, lofexadine detoxification and naltrexone maintenance, and benzodiazepine detoxification. Medical staff provide additional health related interventions such as preventative measures, health education programmes, and referral to diagnostic services (especially in relation to Hepatitis B and C testing, and HIV testing, each with pre and post test counselling).

4.21 Services available to the Drug Court include abstinence-based programmes, programmes for offenders stabilised on prescribed medicine, short-term residential

rehabilitation, programmes related to employment and training, and supported accommodation. Interventions are provided by the core Supervision and Treatment Team, with access arranged to other relevant services as required.

4.22 All orders made by the Drug Court are subject to drug testing (urinalysis) and regular (at least monthly) review. Where clients are given a substitute prescription but continue to use illicit drugs on an ongoing basis, their prescription can be withdrawn for a 28-day period, ostensibly to remove any threat of overdose. This decision is taken by medical staff; however, other workers expressed very clear views that they would like to be consulted about this. Some workers also questioned the efficacy of this practice, at the same time recognising the reasoning behind such a decision:

*"...if they are using methadone but perhaps topping up the methadone, ok that's not what they're there for, we understand that, but at the same time, if they're not offending...If you withdraw the script which is a big issue, you know if the script's withdrawn the chances of them offending increases hugely."*

4.23 Several clients were in receipt of substitute prescriptions provided by community based GPs, in liaison with the Treatment and Supervision Team. It was noted that some GPs were reluctant to provide services for drug users in the community, but where this service was provided, communication was described positively.

4.24 While medical prescribing was very much geared to opiate use, there was some confusion among the team regarding the eligibility for clients who predominantly used other drugs, notably cocaine and amphetamines. The emphasis on methadone was also questioned by some workers:

*"We're not reactive when a client comes in and says 'I don't want methadone', we should react...we're kind of saying 'Well it's methadone or nothing'."*

4.25 Another worker commented *"we can't treat somebody with an amphetamine problem, that's another type of order, a straight probation order perhaps"*, although this view was not shared by all workers.

4.26 In addition to social work and addiction workers' input to Drug Court Orders, other services included Reiki treatment, counselling (by an externally based, trained counsellor), aromatherapy and acupuncture (with workers receiving training in the latter two complimentary therapies). Group work was also made available to clients as appropriate. The team had recently provided a six-week programme on alcohol, as a direct response to clients needs. Several clients had experienced some difficulties with their use of alcohol, which had increased, or was more easily identified, as their drug use decreased.

4.27 Workers indicated that there were a number of resources in the area, provided by voluntary organisations which they could refer clients to, including APEX, SACRO, Progress to Work, Drug and Alcohol Project Leven, and Community Drug Teams. It would appear that services are available in some areas but not in others. Where services exist, Drug Court clients can be referred to them. However there is no Fife-wide service provision for drug users. Existing services are often stretched to their limit while some services have criteria for

access that effectively exclude Drug Court clients. Consequently, the Supervision and Treatment Team provide a significant level of in-house services.

4.28 All workers commented on the problems clients faced in relation to housing, particularly the reluctance of the local authority housing department to accommodate known drug users. Workers commented that Fife Council Housing Department had a policy of eviction for people who have committed drug offences or allowed drug offences to be committed in their home<sup>20</sup>. However there did not appear to be any consistency in how this policy was enacted. In addition, temporary accommodation was often inadequate:

*“I think the housing service is a real problem, there is a lot of sub-standard housing. For a lot of our clients live in very poorly monitored guest houses.”*

## **OBJECTIVES AND CONTENT OF DRUG COURT ORDERS**

4.29 Thirty-four individual questionnaires relating to orders made during the initial stages of the Fife Drug Court were completed by the Supervision and Treatment Team. The questionnaires sought to obtain information about the aims and objectives of Drug Court interventions for individual clients. They related to orders made across the first six months of the operation of the Fife Drug Court and included Drug Treatment and Testing Orders (25 clients) and Enhanced Probation Orders (9 clients). Thirty male and four female clients were included, with a mean age of 26 years. Twenty-eight initial questionnaires related to orders made in the Kirkcaldy Drug Court and six to orders made in the Dunfermline Drug Court.

4.30 The Drug Court Treatment and Supervision Team reported between five and seven main objectives for their intervention with Drug Court clients. There was no uniform set of objectives for each client. Objectives listed were identified on an individual basis and consisted of a blend of assessment for groupwork, monitoring compliance, assessment for urinalysis, targets for effective change, assessment for substitute medication, criminogenic needs, reduction in drug use and offending, cognitive behavioural work, training for employment, supervision and clinical assessment. Table 4.1 outlines the reported main objectives of intervention by the type of order. Assessment for groupwork, monitoring compliance and targets for effective change were the more commonly reported objectives. Workers noted that the main objectives could realistically be achieved in most cases.

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<sup>20</sup> As previously noted, however, it appeared that this situation had been at least partially resolved.

**Table 4.1: Objectives of intervention by type of order**

	<b>DTTO</b>	<b>Enhanced Probation Order</b>	<b>All</b>
Assess for groupwork	24	9	33
Monitor compliance	25	8	33
Targets for effective change	24	7	31
Reduce drug use and offending	22	8	30
Criminogenic needs	21	8	29
Assess for substitute medication	22	7	29
Offending behaviour <sup>21</sup>	1	5	6
Cognitive behavioural work	1	1	2
Assess for urinalysis	2	0	2
Training for employment	1	0	1
Supervision	0	1	1
Clinical assessment	0	1	1

4.31 The Drug Court Treatment and Supervision Team identified between three and five types of treatment that would be provided in the course of the orders. This was comprised of one to one work, substitute prescribing, urinalysis, clinical assessment, targets for effective change, cognitive behavioural work, counselling, financial advice, focus on offending behaviour, training needs and groupwork. Table 4.2 outlines the types of treatment by the type of order. Urinalysis, clinical assessment and one to one interventions were the most frequently cited types of treatment across both types of order.

**Table 4.2: Types of treatment to be provided by type of order**

	<b>DTTO</b>	<b>Enhanced Probation Order</b>	<b>All</b>
Urinalysis	25	8	33
Clinical assessment	21	8	29
One to one work	21	6	27
Substitute prescribing	14	4	18
Cognitive behavioural work	3	4	7
Counselling	5	2	7
Targets for effective change	0	2	2
Training needs	1	1	2
Financial advice	0	1	1
Focus on offending behaviour	0	1	1
Groupwork	0	1	1

4.32 There was little variation between treatments with respect to how effective workers expected them to be. Most treatments were rated as likely to be very effective or fairly effective. The significance of medical intervention is evident from these data.

<sup>21</sup> It is likely that a reduction in offending, as an objective of intervention, was included in the categories listed above.

## ANTICIPATED CLIENT RESPONSES TO DRUG COURT ORDERS

4.33 Workers were also asked in the individual client questionnaires to indicate how they believed clients would respond to their Drug Court Order and how motivated they were to address their drug use, offending and other problems. The relevant data are presented in Tables 4.3 to 4.7.

4.34 More than half of the clients were anticipated as being likely to respond positively to their orders and to the treatment plans that had been put in place for them (Tables 4.3 and 4.4). In most other cases the clients' anticipated responses to their orders and to treatment were mixed.

**Table 4.3: Clients' anticipated responses to Drug Court Orders**

	<b>DTTO</b>	<b>Enhanced Probation Order</b>	<b>All</b>
Very positive	5	3	8
Fairly positive	9	2	11
Mixed	9	3	12
Fairly poor	1	1	2
Very poor	1	0	1

**Table 4.4: Clients' anticipated responses to treatment**

	<b>DTTO</b>	<b>Enhanced Probation Order</b>	<b>All</b>
Very positive	8	4	12
Fairly positive	6	2	8
Mixed	9	3	12
Fairly poor	1	0	1
Very poor	1	0	1

4.35 Workers indicated that they believed more than one third of clients to be very motivated to reduce their use of drugs and around one half were thought to be very motivated to address other problems. Just under one third were considered very motivated to reduce their offending. In only a few exceptional cases were clients thought by their workers to possess no motivation in this respect at all (Tables 4.5 and 4.6).

**Table 4.5: Clients' perceived motivation to reduce their use of drugs**

	<b>DTTO</b>	<b>Enhanced Probation Order</b>	<b>All</b>
Very motivated	9	4	13
Fairly motivated	15	4	19
Not motivated at all	1	1	2

**Table 4.6: Clients' perceived motivation to reduce their offending**

	<b>DTTO</b>	<b>Enhanced Probation Order</b>	<b>All</b>
Very motivated	7	3	10
Fairly motivated	16	5	21
Not motivated at all	2	1	3

**Table 4.7: Clients' perceived motivation to address other problems**

	<b>DTTO</b>	<b>Enhanced Probation Order</b>	<b>All</b>
Very motivated	11	5	16
Fairly motivated	12	4	16
Not motivated at all	1	0	1

4.36 The Drug Treatment and Testing Orders made through the Drug Court were reported by staff to be intensive programmes for the clients. The Drug Court Treatment and Supervision Team perceived the most helpful aspects of this type of order as the structure provided, specialist help made available, substitute prescribing and urinalysis. Access to 'instant support' was seen as beneficial to clients and included tackling other problems associated with an individuals drug use and offending, such as accommodation issues.

4.37 The least helpful aspects of the Drug Treatment and Testing Orders related to the flipside of the intensive, structured and coerced programme. The volume of appointments was reported as unhelpful in cases where there were family commitments in the client's life and/or full time employment. In several cases, the requirements to comply and 'being told to come off drugs' were reported as the least helpful aspects of the order. In one exceptional case, the order in itself was seen as unhelpful as the client had previously breached an order.

4.38 The most helpful aspects of the Enhanced Probation Orders made through the Fife Drug court were reported to be their structure, 'instant' support, 'expert' help and cognitive behavioural interventions on offer. The least helpful aspects were similar to those reported for DTTOs and included the volume of appointments and the need to comply when there was evidence of a lack of compliance with previous community-based sentences.

4.39 Clients had accessed a range of treatment experiences prior to being placed on a Drug Court Order, including methadone prescriptions through their GP, attendance at community based drug services and residential resources. However, these interventions were not considered by the respondents to have benefited them in the longer term. In particular, clients noted that previous methadone prescriptions had not met their needs.

*"It wasn't enough, so no. It was not enough for me, even from the very first day, it didn't hold me. So no, it didn't help."*

*"(It helped) a bit, but the dosage they gave wasn't enough. I used to take it in the morning and by the night time it wasn't holding me. So I had to go out and buy heroin at night to keep me going to the next day."*

*"I got a prescription and I stopped, aye. But it didn't stop my offending. It didn't stop me taking drugs cos I started topping up the prescription with a lot of other things."*

## **VIEWS ABOUT THE RANGE AND ADEQUACY OF TREATMENT SERVICES**

4.40 Supervision and Treatment Team workers appeared to be satisfied in general with the services provided internally and by the range of services available for referral in the local community where they existed<sup>22</sup>. It was the package of treatment services provided which was considered to be particularly important.

*"...The premise for this order is that they will be medically assessed and treated, i.e. given the methadone prescription and that will not work on its own, and they have to have counselling alongside that and both elements of that are essential to the overall treatment plan".*

*"There's a lot of people you can identify, you can get them a script of methadone but it's not going to change all the other problems they have and you realise that, and it's about working together and looking at what else you can do for that person".*

4.41 Workers also indicated that they were able to respond flexibly to changing client needs and would adapt the treatment plan as appropriate. There was some concern among workers, however, that the treatment package on offer was not tailored to individual needs.

4.42 The emphasis on treatment and prescribing sometimes led workers (and clients) to believe that the other parts of the order were secondary. Most Fife Drug Court clients are tolerance-tested before their medication is prescribed. Clients will be tolerance-tested if their drug use is chaotic and needs to be stabilised quickly, as this can be achieved over a two-day period. Otherwise, clients will be methadone titrated (started on a level of methadone which is considered appropriate to their needs and which will be adjusted over a longer period of time). The benefits of tolerance testing are that clients can be given the correct clinical dose of medication within the two-day period. All the respondents who were receiving medication seemed reasonably satisfied with the level and type of medical support available.

*"Aye you get to say if you're happy with what you're getting and all that, but before I got my methadone I had to go for a tolerance test to see how much they think I would need. The first day you go they give you just how much they think you're needing and you go away and then the next again day they ask you how you're doing and they do like this test to see how much you're withdrawing basically, see how you're coping. Then they give you more and if you're coping with that then they just keep you on that, or if you're not coping with that they give you a bit more but they don't tell you how much it is till the end of the day, sort of thing you know, and they just keep you on that if you're stable".*

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<sup>22</sup> Apart from housing which was being addressed at senior management level.

4.43 Drug Court clients who were not adhering to the requirements of their order could have their medication withdrawn for a short period of time. This appeared to cause them considerable problems and meant that it was difficult to 'get clean', a requirement of any instigation of their medication. One client – whose DTTO had been transferred into the Drug Court - had not made much progress with his order. He had received a methadone prescription but had it withdrawn on three occasions by medical staff because of his continued drug use<sup>23</sup>. He had not been stabilised on methadone at any point in the order and this objective underpinned the sheriffs decision to continue the order. The client's main objective was to get a methadone prescription and he acknowledged that his failure to comply with the medical requirements (negative tests for illicit drugs) had been his responsibility; however, he claimed he was unhappy with the level of methadone set for him.

4.44 Tension appeared to exist with regard to communications between different workers in relation to medical prescribing practices and in relation to distinct professional practices and expectations:

*"My view is that from the court side the coercion is strong and that's where the coercion should come from, there is also coercion on the medical side and I completely disagree with that".*

This related particularly to the withdrawal of prescriptions:

*"I just feel that they could hold the clients to ransom you know, it's like sometimes it's used as a punishment."*

4.45 Addiction workers and social workers commented on the frustration they experienced when clients had their prescriptions removed without their involvement in the decision making process. The increasing workload of the Drug Court also had an effect on prescribing services:

*"within the team the only sort of difficulties now is to get people on methadone scripts and assessed, we have waiting lists so the clients get frustrated, they have to wait three or four weeks."*

4.46 One client who had recently been placed on an order had not yet received any substitute medication:

*"I know I won't need to use as much, well maybe not use anything at all, when I get a prescription. Until then I'll just have to keep on using it (heroin) until I do get a prescription".*

4.47 The provision of group work was generally seen as a positive resource; however, it was noted that more clarity was required in relation to the nature of the group work on offer. As one worker commented, *"it might be educational or psychotherapeutic...if you mix the two you have problems"*. There had also been some discussion about who should run the groups - nurses or addiction workers. Group work was seen differently by individual clients.

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<sup>23</sup> Substitute prescriptions could be withdrawn by medical staff for up to 28 days if a client was not producing negative drug tests.

While some clients viewed this as something to look forward to, others were more hesitant about any involvement in this form of support.

*"I haven't done any group work but I don't know if I'd feel comfortable with that really, I just like it one to one sometimes."*

4.48 One client had failed to attend group sessions, as he did not want to encounter another client who he believed was also attending the group. This problem was resolved when he discussed his concerns with members of the Supervision and Treatment Team.

4.49 Obtaining forensic psychological assessments was a problem in Fife. This was a potential issue:

*"We have a lot of people who are borderline and who have serious personality disorders or might be mentally ill and nobody's actually noticed because they just think they're drug addicts."*

4.50 Another issue that was also commented on was the problems workers faced in trying to get clients registered with a dentist in the local area. The Community Dental Team would provide emergency treatment but it was difficult to get general appointments for clients, many of whom had problems with their teeth as a result of methadone use and generally poor physical health.

## **DRUG TESTING**

4.51 While most testing was conducted on site, a proportion of all drug tests were sent to an external laboratory for analysis. The Supervision and Treatment Team workers and clients were generally satisfied with procedures for drug testing. In a small number of cases however, clients had contested on-site test results which showed positive for benzodiazepines. Subsequent laboratory tests showed negative for this substance at the time of the test. Workers also commented on the inability of test results to indicate a reduction in drug use:

*"I suppose the only concern I would have with the drug testing as it stands at the moment, and I understand this is a limitation in the test rather than a limitation of ethos is that a client can be making efforts to reduce their overall use, but the tests in themselves would not necessarily indicate that, if they have used an opiate it would still show positive."*

4.52 A number of clients experienced significant problems in providing urine samples for analysis. While most staff were sympathetic to the difficulties this procedure caused for many clients, it remained a requirement of the order. Failure to provide a sample on a regular basis could mean that the client was faced with a potential breach of their order. On a small number of occasions (3 out of 139 tests) female clients could not be tested as female nurses were not available at the time. Some male clients had expressed their dissatisfaction at being observed providing a urine sample by a female nurse.

4.53 Data on drug testing provided by the Supervision and Treatment Team indicates that client compliance with urine testing in the early stages of the Drug Court Order was relatively

poor. From the data available on first reviews, reported full attendance and production of urine samples at all scheduled urine testing appointments (up to Review One) was achieved by only four clients. The other 37 clients were reported to have failed to attend on 86 occasions and to be unable to provide a urine sample on a further 36 occasions. This situation does improve over the subsequent reviews but for an exceptional few the inability to produce urine samples when scheduled has been identified as a potential obstacle.

4.54 On the whole, defence agents believed that their clients were sanguine about the need for regular drug testing, accepting it as part and parcel of their Drug Court Order. That said, some clients had complained of being embarrassed by having to have the provision of their urine sample observed by a female nurse, though one defence agent suspected that in some cases this was just being used as a convenient excuse for not turning up. Some clients were recognised as genuinely having difficulty providing samples, what one agent described as the “*Bashful Bladder Syndrome*”.

4.55 In general, all respondents saw the element of drug testing, which is a key feature of Drug Court Orders, as a positive feature. It was considered by both professionals and clients to be an important element in maintaining motivation for clients and ensuring compliance. Most clients were being tested twice, or three times, a week and generally reported that they were satisfied with the process and purpose of drug testing.

*"Well at first I found it quite embarrassing but obviously it has to be done, and I get on fine with my nurse, the nurse is nice aye."*

*"...If the testing wasn't there I think you'd get a lot more people still using drugs, well people would just take the mickey out of the orders so I think it's a good thing."*

*"Aye it gives you that kick. You need to stop because if you don't stop then you need to go back up in front of the Sheriff if you're handing in positives all the time. So he's not going to find that too good."*

## **SUMMARY**

4.56 This chapter has highlighted the extent and nature of services which make up the Supervision and Treatment elements of the Drug Court. Multi-professional and multi-agency working are key characteristics of the Drug Court and although this has the potential for minor difficulties in practice, potential problems have been addressed and mechanisms put in place in order to overcome issues as they arise. The services made available to offenders through Drug Court Orders are comprehensive, with treatment and testing as the main component of all interventions. The Supervision and Treatment Team provide the majority of services available to clients on orders. While this reflects the Team's expertise and in-house resources, it should also be contextualised by the lack of services for drug users in some areas of Fife. Workers and clients expressed general satisfaction with the operation of Drug Court Orders and were aware of the underlying principles of court-mandated treatment provision. While there have been some tensions around institutional ethos and practice in relation to prescribing and testing, the will to surmount these problems is evident from respondents.

## **CHAPTER FIVE                      REVIEWS AND ENFORCEMENT**

### **INTRODUCTION**

5.1     The system of regular Court reviews of orders, with pre-court review case meetings between the sheriff and the relevant Treatment and Supervision Team workers, are a key function of the Drug Court. In the reference manual for the pilot Fife Drug Court, it was stated that review hearings would occur no less than monthly with a pre-court review meeting convened within 24 hours of each scheduled Drug Court review hearing.

5.2     The review process aims to enable the pilot Drug Court in Fife to employ a range of sanctions in the event of non-compliance or lack of effort and progress on the part of the offender without the need for recourse to formal breach proceedings. The Drug Court Sheriff is responsible for initiating or endorsing breach proceedings, with a ‘fast track’ procedure instituted in order that breaches might be dealt with at the next scheduled review. In the event of a breach being accepted or proved, the Drug Court may allow the order to continue and impose a fine or, in the case of probation, a community service order of up to 240 hours. Alternatively, the court may terminate the order and re-sentence the offender for the original offence, in which case it is likely that a custodial sentence will be imposed.

5.3     A feature of Drug Courts in other jurisdictions is their ability to impose ‘short, sharp’ sanctions, such as a brief period of imprisonment, where the offender is in violation of the order, without prejudice to the continuance of the order. Sanctioning non-compliance in this way is not presently possible in the Fife Drug Court since the imposition of a custodial sentence would automatically result in termination of the treatment order. However, provisions of this type are contained in a Criminal Justice (Scotland) Bill which, at the time of writing, had recently completed its passage through parliament.

5.4     In this chapter pre-court review meetings and reviews are critically examined from a variety of perspectives and the enforcement of Drug Court Orders is discussed. This chapter concludes by identifying aspects of reviews and enforcement that appear to enhance or detract from the effectiveness of the Fife Drug Court in the first six months.

### **THE PRE-COURT REVIEW PROCESS**

5.5     Pre-court review meetings are chaired by the Drug Court Sheriff and attended by the clerk of the Drug Court, the defence agent of the client being discussed and representatives of the Drug Court Supervision and Treatment Team (social worker, addiction worker and medical officer). The procurator fiscal has the right to attend (though, as shall be seen, does not exercise it) and other professionals who have a specialist involvement in a particular case may also be invited to attend the discussion of that case alone.

5.6     The purpose of the pre-court review meetings is to discuss the treatment and general progress or otherwise of clients scheduled to appear before the next review hearing and also to brief the Drug Court Sheriff on matters of a highly personal or sensitive nature regarding clients who are being reviewed, including health or family matters, that it would be inappropriate to discuss in open court. These meetings are held in private (in closed court or chambers) and only with the client’s signed consent.

5.7 The introduction of pre-review meetings for Drug Court Orders was regarded by sheriffs as an improvement upon the arrangements for DTTOs (which one described as not “*doing justice to what we are trying to achieve*”) since it enabled the sheriff to be better prepared for the review hearing. As one sheriff explained:

*“The written report need not necessarily convey the little nuances intended by the individual members of the team and a face-to-face meeting can produce bits of information which are not only helpful but important in making my decision.”*

5.8 Indeed, one Drug Court professional disclosed that:

*“There have been a couple of occasions where we’re not really supposed to have pre-reviews but there’s issues been brought up with somebody that’s possibly appearing in a review in the afternoon and we’ve actually sat and discussed it.”*

5.9 However, there was some difference of opinion between professionals associated with the Drug Court on the appropriateness of this:

*“It would be okay if the person’s solicitor was there but...they are entitled to be represented by their solicitor at a pre-review so it really shouldn’t be done unless the solicitor was there.”*

*“I think that there was a suggestion that they would like to do something about putting pre-reviews on the existing DTTO’s but I don’t think the legislation is there to do that. All the people who are on DTTO’s would have to sign up for it and they may not all want it. (...) I mean I think informally if the sheriff wants to find out things and that’s all for very good reasons...but if the person wasn’t represented at all it probably wouldn’t be, if their solicitor found out they might not be very happy.”*

5.10 Commenting on the pre-court reviews for clients on Drug Court Orders, one sheriff remarked that it was “*valuable to have the individuals there who’ve made the written report to ask them about certain aspects*”. Another suggested that it would be beneficial to have pre-court review meetings for all or most clients on DTTOs and not just those on Drug Court Orders.

### **Observation of pre-review meetings**

5.11 Sixteen pre-court review meetings involving the main Drug Court Sheriff were observed by the researchers at both Dunfermline and Kirkcaldy Sheriff Courts. Pre-review meetings take place either in the sheriff’s chambers or in an adjoining jury room.

5.12 The pre-review meetings were regarded as less formal than traditional court processes, characterised by one defence agent as more akin to a discussion than to representing the client:

*“You sit down and you don’t stand up to address the sheriff. You’re sitting side by side. Everyone’s sitting round the table. It’s more like a discussion as opposed to a representative of a client, you know.”*

5.13 Pre-review meetings were generally timed at 15 minute intervals to enable the attendance of the defence agents who, due to other court business, would be unable to attend a lengthy meeting. It was unusual for the pre-court review meeting to last the full duration of 15 minutes and dependent upon the location, between pre-reviews the sheriff would either retire to chambers or team members present would retire to the jury room to wait for the agent to attend before commencing with the next pre-review. As one sheriff clerk explained:

*“He (the Sheriff) goes on the bench at eleven for the pre-court reviews and they’re diaried every fifteen minutes, and the difficulty would be if someone took up a long time, it could mean that people were running late.”*

5.14 In some instances the clerk of court would be aware that a defence agent was unable to attend, in which case the pre-review would go ahead without him/her. One factor that tended to impact upon the ability of defence agents to attend pre-court reviews was the volume of other business they had to deal with. In Kirkcaldy, for example, Mondays and Thursdays were the busiest days for other court business. This was compounded by the fact that the District Court also sat on a Thursday. On some days, therefore, defence agents were described as *“running around like a headless chicken”*.

5.15 The sheriff and members of the Drug Court Supervision and Treatment Team, comprising nursing staff, social workers and addiction workers, together with the defence agents, group together informally with the clerk of court and with the researcher sitting slightly apart from the main group. As can be seen from Table 5.1 with the exception of the defence agents, who were in attendance for two thirds of pre-reviews meetings, attendance at pre-reviews by the relevant professionals was extremely high.

**Table 5.1: Attendance at the observed pre-court review meetings**

	Attendance at observed pre-court review meetings	
	n	%
Drug Court Sheriff	16	100
Clerk to the Drug Court	16	100
Addiction Worker	16	100
Nurse	15	94
Social Worker	15	94
Defence Agent	10	63

5.16 Sheriffs considered it appropriate on human rights grounds that offenders should be required to give their consent to their defence agent attending their pre-review meeting. They were also content with the offender being excluded from these meetings since no decisions about cases should be taken until the actual review.

5.17 The procurator fiscal was not in attendance at the pre-review meetings. Although the procurator fiscal has the *right* to attend pre-review meetings, the Drug Court Sheriff has indicated that there is no *requirement* on the Crown to attend them.

5.18 A professional associated with the Drug Court explained that the purpose of the pre-court review meeting was as follows:

*"It's just gathering all the information together from the addiction workers, the nurses, the social work staff so that the Sheriff actually gets the full picture of what's happening with the offender, if he's got housing problems, if he's got marital problems you know..., even problems with his dole money if he's not working so the Sheriff knows before he goes in you know exactly what the position is. I think they're quite important actually I think it's a pity we couldn't get them for just the ordinary DTTOs as well to get the overall picture but I mean you'd be starting at nine o'clock in the morning."*

5.19 There was no set order in professionals' delivery of their report but in the majority of the pre-court reviews the sheriff initially invited comments from the medical staff present. This was mostly to do with positive tests for illicit drugs and whether a suitable prescription had been agreed. If defence agents were present they would tend to be addressed next then social workers and / or addiction workers would contribute. Table 5.2 indicates the contribution made by the different professionals at the observed meetings. In addition, the clerk of court on occasion would provide information on any new offences that had come to the attention of the court.

**Table 5.2: Supervision and Treatment Team contribution at observed pre-court review meetings**

	<b>N Attended</b>	<b>N Contributed</b>	<b>Per cent</b>
Nurse	15	13	81
Defence Agent	10	8	80
Addiction Worker	16	10	62
Social Worker	15	8	53

Note: Contribution is classified in terms of speaking  
Data not recorded in one case

5.20 The duration of the 16 pre-court review meetings observed ranged from two minutes to fifteen minutes long with an overall average of six minutes (Table 5.3).

**Table 5.3: Length of pre-court review meetings observed**

	<b>N observed</b>	<b>Mean Time (mins)</b>	<b>Minimum Time (mins)</b>	<b>Maximum Time (mins)</b>
First pre-review	5	3.2	2	5
Second pre-review	7	8.0	4	15
Third pre-review	3	3.6	2	5
Fourth pre-review	1	11	11	11
All	16	5.9	2	15

5.21 At the pre-court review meetings, potential issues that were considered to be compromising a client's progress on a Drug Court Order were discussed by the group. Broadly these included:

- housing situation (e.g. whether being homeless, in temporary accommodation or living in problematic familial residences)
- the influence of living with partners who continue to use illicit drugs but are not undergoing treatment
- problematic use of alcohol by offenders
- difficulties around non-engagement in respect of missed appointments and positive samples thus affecting prescribing position
- being unable to provide urine samples
- receiving a custodial sentence during order
- unresolved issues resulting in anxiety
- issues in relation to boredom

### **Views on the role of the defence agent in the pre-court review**

5.22 Defence agents saw their role in the pre-review meetings as providing additional information that the other participants might not already possess, “*to give the sheriff information that maybe isn’t available in the face of it*”. They admitted to feeling uncertain with respect to what their role in the pre-review meetings was supposed to be, since it tended to take them into unfamiliar territory. As one agent explained:

*“It’s awkward. At the times I’ve been in them, I’ve felt unsure of my role and I’ve talked about things which are a bit vague and away from, maybe the guy’s offending and stuff because I don’t feel too comfortable about doing that. And I mention things, positive things about his personal circumstances that I’m aware of, the thing might be of quite useful knowledge for the sheriff but I’m making my own sort of views on the persons life and whether I’ve detected a change in attitude.”*

5.23 The defence agents who were interviewed varied in the extent to which they attended pre-review meetings. One attended all and considered it important to do so to ensure that the interests of the client were represented. Others attended on occasion, particularly if the review report provided by the Supervision and Treatment Team indicated that the client was “*going a wee bit off the rails*” or if there were matters out standing, such as deferred sentences. Here the purpose of attending the review would be to gauge how the sheriff was intending to deal with these matters. One defence agent drew a distinction between representing the client as a source of information (in the Drug Court) and representing them as a solicitor in an adversarial system (as in the traditional court setting).

### **Views on the effectiveness of the pre-court review**

5.24 Sheriffs regarded pre-court review meetings as an effective mechanism for feeding in the views of each of the professionals involved in the treatment and supervision of the client. This was seen as particularly important because the medical and addictions staff did not attend the actual reviews, where their contributions were mediated by the social workers. Having the various professionals present at the pre review meeting meant that they could respond directly to any questions raised by the sheriff.

5.25 Defence agents were generally of the view that the pre-review meetings were useful as a means of furnishing the sheriff and the social workers with more detailed information about clients as a basis for decision-making. They were also seen as useful to defence agents insofar as they enabled them to identify issues that were of particular concern and to discuss these with the client prior to the review hearing in the afternoon. The pre-review meetings enabled discussion to take place of sensitive issues (such as a client's HIV status) which it would be inappropriate to air in open court. By first discussing sensitive matters in the pre-review meeting, the sheriff could then refer to them in a veiled way when the client appeared in open court.

5.26 Defence agents did not express concern that issues of a sensitive nature were discussed in the pre-review meetings in the absence of the client because it had been made clear by the sheriff that the pre-review meetings were not a decision-making forum. As one sheriff explained, "*any discussion has always been to the advantage of the offender*" and relevant issues would have been discussed by the client in advance of the pre-court review meeting.

5.27 One agent was, however, concerned more generally that clients were not present at pre-reviews, while acknowledging that the clients' exclusion from the meetings "*doesn't seem to bother them at all*". Another defence agent speculated that clients were probably of the view that they were frequently the subject of 'behind doors' discussions between different criminal justice practitioners and that they did not perceive the pre-review meetings to be unusual in that respect.

## **THE COURT REVIEW PROCESS**

5.28 The Drug Court Sheriff has responsibility for the oversight of the order. The purpose of the reviews is to enable the sentencer to monitor the client's progress on an order. On the basis of these regular reviews the sentencer may, among other courses of action, vary the conditions of the order (such as the frequency of testing, the type of treatment or the frequency of the attendance at treatment), revoke the order on the basis that satisfactory progress has been made or, in the event of non-compliance, revoke the order and re-sentence the offender for the original offence. In addressing the progress of orders at reviews, the Drug Court Sheriff is expected to adopt the roles of motivator, enforcer and sanctioner. The Fife Drug Court Reference Manual suggests that the direct dialogue between the bench and offender is the cornerstone of the review hearing.

5.29 At the beginning of each court session, the client would confirm his/her name to the clerk of court and then the sheriff would begin his review of the Drug Court Order in Court. Apart from perhaps being asked to furnish additional information at the request of the sheriff, it was suggested by a sheriff that social workers played a relatively limited role in review hearings:

*"... they don't play an awfully central role I don't think in a normal review in my experience of them."*

5.30 The Drug Court clients have the right to legal representation at reviews. The role of defence agents in the review process was therefore examined closely since the evaluation of pilot DTTOs indicated that defence agent intervention had the effect of limiting dialogue

between the offender and the bench (Eley et al., 2002a). It was anticipated that defence agents would have a limited role in reviews where there was no prospect of sanctions being imposed, but that the bench may consider direct representation from the defence agent if the imposition of sanctions was under consideration.

5.31 Defence agents were perceived to make an active contribution to review hearings, in order that they may, according to one criminal justice respondent, “*steer the sheriff down the way that they want to see it going for the accused*”. The role of defence agents in reviews was also acknowledged by other court professionals to be different from their role in a traditional, adversarial court setting. As one sheriff explained:

*“Their role, given that there’s a much more direct interaction between the judge and the client at the review, is to make sure I think nothing improper occurs. That the judge doesn’t oppress or do anything unfair in relation to their client and to put forward for example if there has been a glitch to put sort of the best foot forward on that, present an explanation why and then you might discuss the explanation with the client in a way that you wouldn’t normally in an ordinary criminal court.”*

5.32 Defence agents themselves held the view that they generally did not have an active role in review hearings, unless there were other outstanding matters to be dealt with. Defence agents reported that they did less pleading in mitigation in the Drug Court since the sheriff was more knowledgeable about the client and their circumstances. As one defence agent explained:

*“We don’t have to highlight, ‘oh this is a really deprived person, look at his terrible background, you know, he’s only done this because blah blah blah blah has happened to him’. The Sheriff’s more aware of the whole picture so we’re not having to make as many kind of excuses, you know, we’re not having to say, ‘well, he’s only doing this because...’ because the Sheriff knows all of that. It’s kind of like, almost like a co-ordinator helping the client, cos the sheriff will speak to the client as well and, and sometimes you don’t say a great deal, you know... it isn’t the same as the traditional representative role.”*

5.33 Another agent suggested that their role was the same in the Drug Court as in any other criminal court, “*it’s just the way you’re put into action is slightly different because it’s a more informal court*”.

5.34 A procurator fiscal is present at all review hearings, though their role tends to be relatively limited. Generally speaking, they will contribute to the reviews only if specially invited by the sheriff to provide further information about, for example, an offence or citation.

### **Perceived purpose of reviews**

5.35 Workers in the Supervision and Treatment Team considered pre-reviews and reviews to be an important element of the Drug Court and welcomed the opportunity to discuss their clients progress, or lack of it, directly with the sheriff.

*"(...) the Sheriff is getting a monthly breakdown of exactly what's happening to this person and can intervene if he wants to. And also I suppose with this client group you do have huge variations in behaviour, dependence and all those things and so it's necessary".*

5.36 This was similar to the view expressed by the criminal justice professionals. As one respondent observed:

*"Just to see how they're going from month to month, are they sticking to the order, are they compliant, are we going to have to pull the plug on it basically you know... I think after they've been on them for a while and if the Sheriff says 'right, you're going to get (reviewed every) two months, it shows them that this review period..., well there's a bit of trust here, I'm not having to come back every month, I'm going to have to come back every two months now or whatever."*

5.37 Drug Court clients also had clear views about the purpose of Drug Court reviews:

*"So the Sheriff knows how you're progressing or if you're taking the mickey out of the programme or if you're bothering or not, if you're not bothering."*

*"Well, the way I see it is it's just showing the Judge how you've done every month and how you're trying with your order. It gives him a chance to understand, cos he always gives you a chance to speak to him at the end."*

*"I just see he likes to take an interest, for some Judges basically I just feel like they don't care but (Drug Court) Judge, I believe he does care...he's actually done a course on drug addiction so he knows exactly what we're all going through."*

5.38 Another purpose of reviews was identified by one sheriff who explained:

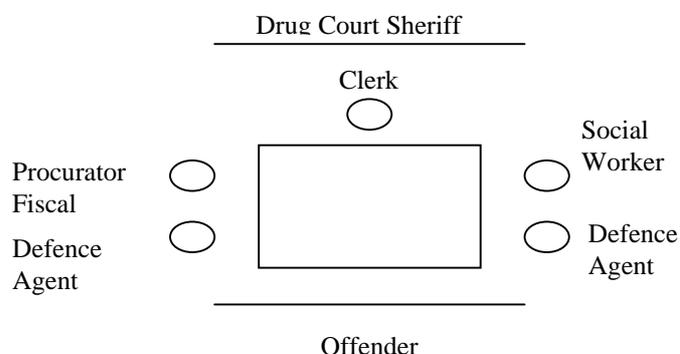
*"Certainly the review has various functions one of which is you know reminding them it is a criminal disposal and it brings them back to court to keep that in their mind because they have committed crime, a criminal offence."*

### **Observation of review hearings**

5.39 The research team made observations of 28 court reviews in the Fife Drug Court. In both Dunfermline and Kirkcaldy Drug Courts no one sits with their back to the offender (see Figure 5.1). In one observed review the offender sat at the table with the professionals. Generally there would be one social worker and one defence agent at the table for each case; however, on busier days a number of defence agents would take places if available. Whilst waiting for their own cases to be called other social workers would sit in the court at their side of the table and defence agents would sit or stand around the sides of the court. The public areas in both courts are clearly demarcated by the grouping and seating together of offenders, friends and family. At both courts the researcher would sit behind the social work staff together with the criminal justice assistant responsible for the issuing to offenders of

appointment timetables and travel vouchers. Across the 28 reviews observed social workers and defence agents were in full attendance.

**Figure 5.1: Typical seating plan for reviews in pilot Fife Drug Court**



5.40 As Table 5.4 indicates, the duration of the 28 reviews observed ranged from one minute long (this involved six clients who did not attend the first review where three cases were continued and three warrants to apprehend were issued) to eight minutes long with an overall average of three minutes<sup>24</sup>. There was not much overall difference between the first and second reviews but the later reviews tended to be shorter and to involve positive reports on the client’s progress. Justice professionals reported that compared to the earlier DTTO pilot, Drug Court reviews were felt to be longer in duration. As one respondent observed:

*“DTTO hearings didn’t take a lot of time, they just went through and were quite quick. Drug Court hearings take a little longer and I don’t know if it’s a good idea for them all to be thrown in together but that’s what they chose to do and I think we’re all beginning to get the hang of it now.”*

**Table 5.4: Length of reviews observed**

	<b>N observed</b>	<b>Mean Time (mins)</b>	<b>Minimum Time (mins)</b>	<b>Maximum Time (mins)</b>
First review	13	2.4	1	5
Second review	11	4.3	1	8
Third review	2	1.5	1	2
Fourth review	1	1	1	1
Fifth review	1	1	1	1
All	28	3.0	1	8

5.41 The same sheriff presided at all of the court review observations undertaken by the research team. Following the sheriff’s acknowledgement of the client, at first reviews defence agents addressed the court first for just over half of the thirteen reviews observed (n=7) with social workers speaking first on just two occasions and contributing to two other reviews. It is important to reiterate that six offenders did not attend and these reviews were of the duration of one minute. On five occasions the sheriff spoke directly to the client

<sup>24</sup> By the second review only one client failed to attend.

immediately following the defence agent’s input. Of the eleven, second reviews observed, defence agents spoke first at ten of these reviews with the social worker speaking first at the remaining review and contributing to two other reviews. The sheriff spoke directly to the client on six reviews. At reviews 3, 4 and 5 (n = 4) the defence agent spoke first followed by the sheriff directly to the client, with no social work contribution. The normal court process in respect of professional input appears to be the defence agent addressing the court first followed by appropriate social work input. (In some cases, dependent on the presenting circumstances, dialogue was limited to the sheriff and one other professional). Procurators fiscal were in attendance at all of the reviews observed but did not contribute.

5.42 Where the offender appeared for review there was interaction between the sheriff and the Drug Court client in all the reviews observed. The Sheriff-Drug Court client dialogue lasted between one and six minutes, with an average of two and a half minutes across the 28 dialogues observed (Table 5.5). When the length of this dialogue is considered as a proportion of the total length of the review, its crux within the review process is demonstrated (Table 5.6). On average, the dialogue constituted around one third of the review and ranged from (with the exception of failures to attend and when there was no sheriff - client dialogue) 50-100 per cent.

**Table 5.5: Length of the sheriff – Drug Court client dialogue**

	<b>N observed</b>	<b>Mean Time (mins)</b>	<b>Minimum Time (mins)</b>	<b>Maximum Time (mins)</b>
First review	13	0.6	0	2
Second review	11	2.0	0	6
Third review	2	0.5	0	1
Fourth review	1	0	0	0
Fifth review	1	1	1	1
All	28	1.1	1	6

**Table 5.6: Sheriff- Drug Court client dialogue as a proportion of review length**

	<b>N observed</b>	<b>Mean Time %</b>	<b>Minimum Time %</b>	<b>Maximum Time %</b>
First review	13	18.5	0	100
Second review	11	50.3	0	100
Third review	2	25	0	50
Fourth review	1	0	0	0
Fifth review	1	100	0	1
All	28	30.1	0	100

### **The Sheriff-client dialogue**

5.43 Sheriffs emphasised the importance of the direct dialogue between offenders and the bench in the review hearings:

*“In the Drug Court you have more of a personal connection with the individual in the sense that you interrelate to them directly and speak to them directly more often that you would in an ordinary court. Although their agents are present,*

*normally in a review you'll speak to the individual about matters that have arisen in the report."*

5.44 Another Drug Court professional highlighted the value of this interaction in the court review process:

*"...because otherwise if they appear in the ordinary court they're just told to sit in the dock, shut up and that's the size of it, they answer to their name and that's it but there is sort of more informal one-to-one chat. I think they can sometimes put their points of view over better than their solicitor can".*

5.45 The Drug Court Sheriff explained that his approach was to begin by addressing the immediate problems and "cut through everything else":

*"At an early stage of the hearing I make it clear what, if anything, is a problem or how I am approaching the review, usually through direct dialogue with the offender. This saves time, but more to the point serves everyone's interests, especially the offenders'."*

5.46 From the observations made in the Fife Drug Court, the sentencers during the reviews were very encouraging about the need for realistic progress on orders and firm about issues relating to the formality of the court proceedings (for example talking and/or giggling by clients waiting for review), attendance at appointments ("*I want better things next month*"), reducing number of positive urine tests ("*I hope there is more to come*"), and the high tariff of Drug Court Orders.

5.47 At the early reviews (1 and 2), the sheriff stressed the need to demonstrate commitment to the Drug Court Order by attending all appointments with social workers, addiction workers and the medical team. At the end of each review, the criminal justice social work assistant would offer clients a personalised record, on an A4 sheet of paper, of all their appointments to attend before the next review. This included details of date, time, location and whom they would be meeting. Sheriffs stressed that all appointments must be kept unless there were exceptional circumstances. At the early reviews, issues relating to accommodation were a cause for concern, especially with respect to following up failure to attend appointments. In several cases, the client had been in custody and unable to attend appointments and this had been clarified during the review process.

5.48 Some clients failed to attend their first review. Reasons cited by social workers and defence agents to the sheriff on these occasions included a fear of the consequences of having produced positive urine tests. This is illustrated in the following notes that were taken during one observed review:

*Male client failed to attend review 1. The defence agent states to the Drug Court Sheriff that he wondered if his client knew what the report contained and was maybe frightened of what might happen? The Drug Court Sheriff replies in the open court "I want to give him a chance, defer for a week. Team, [send] a first class letter out to him and will anyone from the Team see him?" A social worker present in court responds that a home visit will be arranged before the next court appearance.*

This case also illustrates the multi-professional teamwork involved in the process of conducting reviews.

5.49 Only some cases that were observed at the first review had full compliance with the Drug Court Order. When this occurred, the sheriff made positive comments such as *“This is a good report and I’m glad to see you are doing so well, There are negative opiate test and benzodiazapines as well. Carry on, you are doing very well”*.

5.50 In cases where client motivation and compliance was low, the sheriff responded with words of encouragement to the client with respect to expectations of progress by the next review: *“You must relate to the addiction workers, I know you have problems”*; *“we need to get you on a script”*; *“This is a very good start and I will be pleased to see the same next month. Work on your opiate use and try to get some negatives”*.

5.51 In the later reviews that were observed, the relationship between the Drug Court Sheriff and the clients had developed in most cases to the point that discussion could take place in open court of issues such as relationship difficulties, re-establishing family ties and preventing relapse. As the notes of the review outlined below illustrate, the rapport that had been established between the client and the Drug Court Sheriff had become sufficiently well-established to test the boundaries of acceptable conduct in the Drug Court:

*The defence agent introduces at the second review that his client’s addiction is methadone and he had advised him he was using street methadone. The Sheriff states that the medical team are pleased that the offender has kept all appointments. The Sheriff states “For your next review you need to get off street methadone”. The client responds “I thought I was doing a good thing staying away from heroin” and he states that he has a benzodiazepine problem. The Sheriff replies “It’s early days to talk about benzodiazepines”. The client responds “I’m addicted to benzos”. The Sheriff states that perhaps the presenting problem is in fact benzodiazapines and discusses aloud the possibility that it may be worse, if not at least just as bad. The Sheriff asks that his concerns are passed on to the Supervision and Treatment Team. Then the Sheriff asks the client “Have you met [therapist], she does Reiki? In fact she experimented with me, it was very good, you should try this”. The client replies “Did you have a problem with benzos yourself?”. The court erupts with laughter. The sheriff halts this by reminding everyone that this was no laughing matter.*

5.52 Where needed, warnings about possible sanctions against the client were made to remind clients about the high tariff of the Drug Court Orders. For example in one case involving failure to keep appointments without good cause the sheriff commented, *“I won’t accept any excuse for not attending. I’m warning you that this is your last chance. I will say no more”*. In another case where continued offending whilst on a Drug Court Order was the issue, the sheriff rebuked the offender by remarking, *“This is serious. You are up on indictment and many of my colleagues would have jailed you. I will take serious steps if you don’t comply”*.

5.53 Professionals who attended reviews commented very positively on the dialogue between the Sheriff and Drug Court client:

*"I think it's remarkable, I think the Sheriff actually talks to the offender in a normal everyday language, there may be you know cultural differences, but in everyday language with them. It's a major step forward in legal history I would have thought. It won't be viewed as that at the moment but in the years to come I'm sure it will."*

*"They feel that they are being genuinely listened to and the points they want to make being at least responded to and perhaps acted upon. I have been told this by offenders' solicitors and by members of the team."*

5.54 The dialogue between the bench and the Drug Court client was, on the whole, viewed positively by defence agents. They regarded it as an effective mechanism for establishing rapport, for humanizing the process and enabling the client to receive recognition for progress made.

*"For a sheriff to say to an accused person 'you're really doing well here' is novel and most of them get really pumped up by it."*

5.55 One agent suggested that the Drug Court Sheriffs were:

*"... Good at giving praise and everyone responds to praise and if you've done well and you get praised, then I think you benefit from that."*

5.56 Interestingly, in the light of the case study outlined above, one defence agent voiced concern that clients might attempt to engage in dialogue with sheriffs in other court settings and place themselves at risk of incurring the wrath of the sentencer as a result:

*"My only concern has been that the accused are able to identify when informality is appropriate and when it's not appropriate."*

5.57 The clerks also had concerns about the relaxation of the formal traditional boundaries between the bench and the offender:

*"It can be a bit too casual at times. I think it's fine that they've got to talk for themselves but I think they've also got to remember that it's a court...most of the time it's fine but a couple of times it's got...arguing back and forward isn't really suitable."*

5.58 While the dialogue with the Sheriff is an important feature of the Drug Court process, it was viewed by clients with a mixture of appreciation and apprehension:

*"I was quite embarrassed with it being in Court One because there was a lot of people that could sit and listen to you that was totally nothing to do with drugs. But at least in the Drug Court everybody's there for the same reason (...) I feel more easy about speaking to the Judge instead of speaking to him in front of loads of strangers, that don't know anything about it".*

*"Yeah [the Drug Court Sheriff] was really, I think he's really fair and he gives you a chance to like, express your feelings and just to tell him how you've*

*been doing every month. And I just feel [he] is really fair, I mean he likes to take an interest basically to see how you're doing and that."*

*"Embarrassing, it's all right if it's just you, like it used to be, but now it's an open court, I don't like it at all. So I've got an illness and I'd like to talk about that to him sometimes and I can't cos there's folks sitting about. I've got hepatitis C and I'm at the doctors quite a lot and I'd like to say something about that but I can't cos like the court's full of guys...It used to be just you and the Sheriff, the lawyer and the DTTO people but now it's opened up and everybody gets in."*

5.59 One client who found the interaction in court as very daunting had decided to employ a different tactic:

*"Well I'm not good at speaking so I'll need to write him a letter, that's what I have to do. Write a wee letter before I go in cos I'm not good at talking to Sheriffs or anybody like that, I'm too quiet".*

5.60 Interestingly, this is a technique employed by the Drug Court Magistrate in South East Queensland, Australia. Each participant who attends a review gives the Magistrate a written note outlining key issues that they have reflected upon since their last review and what they have learned from them. The Magistrate is able to incorporate this material into the review process, by commenting upon the extent to which it suggests that the participant is demonstrating self-awareness.

5.61 The DTTO legalisation stipulates that the frequency of reviews of orders should be no less than monthly. In Glasgow Drug Court, the sheriffs had devised a strategy of making concurrent DTTOs and probation orders when they believed it was appropriate for an offender to appear before the court for a review more often than once per month. In Fife, the approach that had been adopted to what was considered to be an "arbitrary" limit on the frequency of reviews was to continue the review in, for example, two weeks time. This approach, it was suggested, was less open to legal challenge or appeal.

5.62 Most respondents were attending reviews on a monthly basis and seemed reasonably satisfied with that:

*"(...) if you start to go downhill then the Sheriff is there to give you that wee fright so that..., it lets him know exactly how you're doing, if you're bothered."*

### **Views on the effectiveness of the court review process**

5.63 Review meetings were held in open court, which represents a significant shift in practices, for professionals and for clients, from the earlier Drug Treatment and Testing Orders pilot where reviews were held in chambers. As one justice professional explained:

*"It's more on a personal one-to-one basis. When we first started a lot of the solicitors, well a couple of them anyway, used to do all the talking and their client never got to say anything. So I quietly had a word with them and said 'look it's a Drug Court, the Sheriff's not interested really in what you've got to say he wants to hear what the offender's got to say'. I said 'if he wants to ask you a question he'll ask you but basically if it's in the Drug Court it's a one-to-one'. That's the way I've tried to sort of keep it going plus the fact of the informality where the accused just sits in the dock and talks to the Sheriff".*

5.64 Sheriff-client dialogues can be an integral part of the review process, as another professional respondent explained:

*"I think it could give the impression to the offender that the Sheriff is actually human after all you know that they're not just like little gods sitting on the bench and that the Sheriff is actually taking an interest."*

5.65 One of the perceived benefits for clients was the continuity that resulted from one sheriff (and back-up) dealing with all cases heard in the Drug Court:

*"Aye it's good because he knows everything that happened in the last review. If it was a good review and then everything sort of went downhill a bit and you got a different judge he wouldn't sort of know you. So it's better having the same judge." (DTTO client)*

*"The only difference is the Sheriff knows you. That's the difference because he's there all the time and he knows your case." (DTTO client)*

*"It's the same sheriff every month and it's better a sheriff gets to know you instead of just looking at a sheet of paper every month." (DTTO client)*

5.66 One defence agent stressed how the emphasis in the Drug Court shifted away from the offence to the circumstances of the person appearing before the court:

*"...in the Drug Court, nobody seems to really bother about the offences, it's been taken down as it's been done and it's been done because of drugs and that's why we're here, so lets just cut all that side out of it and focus on the person's circumstances and how they've been getting on. It's much more based towards your client's circumstances as opposed to the incident itself, as to why they were in the Drug Court in the first place, so that's very different."*

5.67 Other justice professionals argued that the review process was effective in its supervisory responsibilities over the individual. The review played an important part in openly discussing acceptable and unacceptable progress and conduct on the order. It could play a valuable part in reminding clients that Drug Court Orders, and in particular DTTOs, are high tariff disposals:

*"But I think the fact that there's a sort of supervisory role in the Drug Court and that the Sheriff's supervising the person...They're put on probation from the main court, unless they do something wrong we never hear about it again until*

*the end when we get a wee letter saying they've completed it. But this is supervisory...you know if he's monthly and we can pull him up about it there and then, then that's helping along the way to stop them being breached in the Drug Court you know, it's that kind of thing, a kind of encouraging role I suppose you could say."*

*"I think if that (threat of imprisonment) wasn't there then they would still think they can just do what they like, they've got to be aware that they can't just do as they like, they are still on a court order albeit a very informal court order and a much more relaxed and a new way of dealing with things. But if they don't conform and they don't do all that they're supposed to do then they can still go to prison and as long as that's there I think it's very effective, and I think it gives them a lot of help."*

5.68 Social workers expressed the view that the existing legislation regarding the frequency of reviews detracted from their effectiveness. As one worker explained:

*"I think there are times where a flexibility within the system to perhaps review somebody fortnightly initially... I think there are times where there are particular instances where there are orders that are managing and I'm questioning what it is we are doing, when we seem to go back and report with these individuals month in, month out and they are on their last warning and they have been on their last warning for three or four months and you think to yourself what is it we are actually doing, what messages are we sending here"*

### **Private versus open court review hearings**

5.69 Workers were very aware that on occasions, sensitive issues would need to be discussed and would make efforts to ensure that information was passed to the sheriff without the need for addressing it in open court.

5.70 One defence agent had some reservations about the fact that review hearings were conducted in open court. This meant that other offenders might be privy to information that could disadvantage their client:

*"[In the review court] they're all addicts and they all obviously know each other and know their suppliers and all the rest of it. And I think that if someone isn't doing well or is taking substances that they shouldn't be taking and that is getting highlighted, then it can mean that they can then become a target again with all of the other people sitting around in the court. So I think that there should be cases that should be dealt with in private because there will be issues that they might not want aired."*

5.71 This respondent was also concerned that some clients expected their reviews to be conducted in private in the sheriff's chambers and were reluctant to discuss certain matters in open court. However it was still possible for in-chambers reviews to be conducted if this was considered appropriate by the sheriff to enable issues of a sensitive nature to be discussed.

5.72 Prior to the introduction of the Drug Court, sheriffs in Fife had conducted most reviews of DTTOs in chambers. The context in which Drug Court reviews were conducted was, consequently, more formal than the previous arrangements for review hearings. Sheriffs believed that while it was necessary for the Drug Court to conduct its business in a way that was transparent and open to public scrutiny, reviews conducted in chambers had a number of advantages. As one sheriff explained, it was easier to establish rapport with the offender and to discuss issues of a sensitive nature in a less formal setting:

*"I certainly found it easier to talk to somebody across the table than with him standing feet away in a court having to speak in public, you could sit down and talk things through. It gave you the chance to discuss their problems and you'd ask questions which I'd hesitate to ask in open court, like 'how much are you using now?' and things like that, because obviously you are asking him whether he is still possessing drugs but I think it's the reality."*

5.73 Having to speak to the sheriff in open court was thought by some sheriffs to cause some offenders considerable anxiety. On the other hand, a perceived benefit of court-based reviews hearings, from the shrieval perspective, was that it enabled offenders who were being reviewed to see how others were being dealt with by the court. One sheriff remained to be convinced of that argument:

*"I used to do it actually more informally than we do the drugs court...we had it in a small room and I didn't have other people in...I know the thinking behind the drugs court is that - it's again the model in the States and different places - it's valuable for others awaiting their review to be there to see the rewards as it were to those who do well and admonishment or punishment to those who don't. I don't know what I feel about that personally."*

5.74 Another suggested that a further disadvantage of conducting reviews in open court was that "*persons of an unsavoury character*" could attend court to threaten Drug Court clients (for example, in relating to the payment of drug debts).

### **Orders transferred in to the Drug Court**

5.75 When the Drug Court began operating in September 2002, all existing DTTO's were transferred into the Drug Court. These orders had previously been instigated and reviewed in the Sheriff court; however, in some cases, the reviews had been heard in the Sheriffs' chambers. DTTO clients were asked to describe any changes that they had experienced as a result of the transfer of their order to the Drug Court.

*"It's no different, only the fact that there are less people there, seven or eight people there in the court on one day and it's all people who are in my situation. So it is different than when you are in normal court, everybody is there and the PF is maybe talking about what you've done and there's people who don't understand my situation. So it's different in that way." (DTTO client)*

*"I remember when I first attended it was in the chambers and you sat down with the Sheriff and talked to him. Now it is all done in Court Three because*

*there is a lot of us...you can't do it in chambers now or we would be there all day." (DTTO client)*

*"Well since it changed to the Drug Court there has been more help than there was before. I haven't been taking smack for about three months now. I moved out of Dunfermline and that has helped." (DTTO client)*

*"All that has changed was I was getting my prescription from my own doctor and now I've changed to this doctor here." (DTTO client)*

## **Observation of transferred-in DTTOs**

5.76 In addition to the reviews of Drug Court Orders that were observed (that is, those orders that had been made since the Drug Court was established) 49 reviews of DTTOs imposed in the sheriff courts and transferred in to the Drug Court were observed. Here some summary data are provided on the lengths of these reviews, 45 of which involved male clients (92%) and four of which involved women on orders (8%).

5.77 The mean length of the review hearings was 4.2 minutes, with a range of one to 12 minutes. This is shorter than the mean length of review hearings in the first six months' operation of the Glasgow Drug Court (6.2 minutes, Eley et al., 2002b), but longer than the mean hearing length in the evaluation of the pilot Fife DTTO scheme (3 minutes, Eley et al., 2002a). The client was present at the majority of reviews (42 or 86%). Review hearings were longer, on average, when the client was present than when s/he did not attend the court (4.5 minutes compared to 2.1 minutes).

5.78 The length of review hearing varied according to the stage of the order and the contents of the review. To examine the relationship between length of hearing and stage in the order, reviews were grouped according to whether they fell within the 4<sup>th</sup> – 9<sup>th</sup> reviews or whether they fell within the 10<sup>th</sup> - 19<sup>th</sup> reviews. Twenty-five review hearings fell in the first category and 22 fell in the second<sup>25</sup>. Earlier reviews were slightly shorter than reviews that were conducted later in an order (3.5 minutes compared with 4.7 minutes). This is consistent with the early data from the pilot Drug Court in Glasgow, which suggested that review hearings became longer as the order progressed and the client became more confident in addressing the sheriff in court.

5.79 The length of DTTO review hearings also varied according to the 'ethos' of the review. The content of each review was scrutinised by one of the researchers and the review classified as 'positive' or 'negative'. 'Positive' reviews were those in which the client was acknowledged to have made steady progress and where no issues of concern (e.g. positive test results or failed appointments) were reported. Reviews were also classified as 'positive' if there had been some setbacks but the client appeared to be back on track. 'Negative' reviews, on the other hand, focused upon recurrent positive test results, non-attendance for appointments and usually also involved discussion of new or outstanding charges (including deferred sentences which were running alongside the DTTO). They often resulted in a warrant being issued (in the event of the client's non-appearance at court), the client being

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<sup>25</sup> Two cases could not be thus categorised since the number of the review hearing was not known.

sentenced or a stern warning being issued by the sheriff that significant progress would need to be evidenced at the next scheduled review.

5.80 According to this system of categorisation, 20 reviews were ‘negative’ and 29 were ‘positive’. ‘Positive’ reviews were shorter, on average, than ‘negative’ reviews (2.9 minutes compared with 6.0 minutes). A brief analysis of the review content suggested that this was because ‘negative’ reviews often entailed the sheriff making decisions about the disposition of one or more charges or the revocation of an order. Others involved the sheriff going to some lengths to point out to the client how their behaviour had fallen short of expectations and what they must do to rectify the situation by the next review.

5.81 The balance of ‘positive’ and ‘negative’ reviews changed over the course of the orders. There was a slightly higher proportion of ‘negative’ reviews among the earlier reviews (review number 4-9) than among the later reviews (reviews 10-19) (48% of earlier reviews compared with 27% of later reviews).

5.82 It is possible, therefore, that the increase in review hearing length over successive reviews might be attributable to the later reviews being more often ‘positive’, since it has been shown that ‘positive’ reviews would be dispensed with more quickly. To test this possibility, the duration of ‘positive’ reviews alone was compared across earlier and later reviews. This revealed that later reviews were significantly longer than were reviews conducted in the earlier stages of an order (3.6 minutes compared with 2.0 minutes, t-test,  $p < .05$ ).

## PROGRESS OF CLIENTS ON DRUG COURT ORDERS

5.83 Given the early stages that most respondents were at, there had been few changes to orders by the time of writing. Tables 5.7 to 5.11 summarise levels of compliance with aspects of the orders at successive reviews<sup>26</sup>. In the early reviews (1 and 2), there was a generally low level of compliance in terms of attendance at appointments with the Supervision and Treatment Team and producing urine for testing at the required times.

**Table 5.7: Reported client compliance at review 1 (n=41)**

	Mean	Min	Max
No. of scheduled appointments with social worker and addiction worker	5.9	3	8
No. of attended appointments with social worker and addiction worker	4.1	0	8
No. of scheduled appointments with medical team	6.3	4	9
No. of attended appointments with medical team	4.1	0	8
No. of scheduled urine testing occasions	6.4	4	9
No. of attended urine testing occasions	3.2	0	7
No. of positive tests	7.2	0	16

<sup>26</sup> These data were provided by the Supervision and Treatment Team.

**Table 5.8: Reported client compliance at review 2 (n=29)**

	<b>Mean</b>	<b>Min</b>	<b>Max</b>
No. of scheduled appointments with social worker and addiction worker	6.4	2	10
No. of attended appointments with social worker and addiction worker	5.3	0	10
No. of scheduled appointments with medical team	7.1	2	10
No. of attended appointments with medical team	4.8	0	8
No. of scheduled urine testing occasions	7.0	2	10
No. of attended urine testing occasions	4.0	0	8
No. of positive tests	9.2	0	18

5.84 There appeared to be a change in levels of client compliance between the second and third reviews. As one criminal justice worker explained:

*“...I think if the first couple of months they thought it was an easy option, a big skive, but the fact that they realised that if they are going to offend and if they’re not going to turn up there are still punishments...they don’t get breached in the first sort of fall down but if they’re regularly not doing the appropriate things and not attending appointments then they can be breached or the Sheriff can take them into the big court and say ‘Well I’m considering remanding you today’...and it gives them a fright and as long as they’re aware that that’s still there and he’s still got those powers (...) they’ve got to be aware that they’re not just there to muck about.”*

5.85 From review 3 onwards (Tables 5.9, 5.10 and 5.11), partly because of increased compliance with the order and partly because of better attendance at the scheduled appointments with the medical team, there was a higher number of positive urine tests for drugs. This is related to the rapport established between the team and the client to encourage disclosure of drug use and to attend for testing, even if the client suspects that they will provide a ‘dirty’ urine. Reported client compliance at reviews 3, 4 and 5 demonstrates that there tended to be greater compliance with attendance than in the very early stages of the order but poorer compliance in terms of progression towards becoming drug free (although the numbers who had reached reviews 4 and 5 were limited).

**Table 5.9: Reported client compliance at review 3 (n=13)**

	<b>Mean</b>	<b>Min</b>	<b>Max</b>
No. of scheduled appointments with social worker and addiction worker	5.5	3	8
No. of attended appointments with social worker and addiction worker	4.2	1	7
No. of scheduled appointments with medical team	5.8	2	10
No. of attended appointments with medical team	4.2	1	7
No. of scheduled urine testing occasions	6.3	2	10
No. of attended urine testing occasions	3.8	1	6
No. of positive tests	6.5	2	16

**Table 5.10: Reported client compliance at review 4 (n=6)**

	<b>Mean</b>	<b>Min</b>	<b>Max</b>
No. of scheduled appointments with social worker and addiction worker	6.2	4	8
No. of attended appointments with social worker and addiction worker	5.0	3	7
No. of scheduled appointments with medical team	5.5	2	9
No. of attended appointments with medical team	4.2	1	9
No. of scheduled urine testing occasions	5.7	3	9
No. of attended urine testing occasions	3.5	0	9
No. of positive tests	9	2	20

**Table 5.11: Reported client compliance at review 5 (n=2)**

	<b>Mean</b>	<b>Min</b>	<b>Max</b>
No. of scheduled appointments with social worker and addiction worker	7.5	7	8
No. of attended appointments with social worker and addiction worker	6	6	6
No. of scheduled appointments with medical team	7.5	7	8
No. of attended appointments with medical team	4	4	4
No. of scheduled urine testing occasions	7.5	7	8
No. of attended urine testing occasions	2	1	3
No. of positive tests	4	2	6

5.86 Sheriffs were satisfied with the manner in which Drug Court orders were enforced by the Supervision and Treatment Team. The latter were perceived to make strenuous attempts to encourage compliance but equally were prepared to take decisive action “*when an offender steps out of line*”. As one sheriff observed, “*the impression I get from them is that they are very realistic about how they deal with things.*”

## **SANCTIONS AND REWARDS**

5.87 Clients were aware of the consequences if they failed to comply with the requirements of their order. One of the greatest concerns to many clients was the potential removal of their medical prescription if they did not maintain negative test results for illicit drugs. One client, commenting about a positive test stated: “She just told me that if I wasn't clean I was getting struck off my order”.

5.88 Sheriffs believed that additional sanctions – such as short prison sentences or fines – should be made available to the Drug Court<sup>27</sup>. As one sheriff commented:

*“If it reaches the stage where things are going awry I think the only way to do it is to bring them up sharp and say this has got to stop...If the court was*

<sup>27</sup> Though it was also recognised that a financial penalty would not be a realistic option for many offenders on Drug Court Orders.

*aware of if things were going awry they could impose 3,4,5 days detention or whatever then it might achieve something.”*

5.89 In a similar vein, another sheriff observed:

*“Although at the outset of an Order and perhaps for the first six months there is no wish to impose a sanction, after then and in some cases before, failures to attend or, for example, aggression to the drug team or failure to co-operate needs to be addressed. And after warnings are ineffective, a sanction may be appropriate, but without interrupting the order or revoking it.”*

5.90 It was also acknowledged that there was currently some scope for flexibility through the use of deferred sentence for concurrent offences or further charges. The imposition of short prison sentences while allowing the order to continue was thought by sheriffs to be a more constructive approach than revoking the order and re-sentencing the offender for the original offence. This was particularly important given the relapsing nature of drug use and the pressures that Drug Court clients could face to resume their use of drug:

*“I don’t underestimate how difficult it must be, difficult socially as well because if you’ve been hanging out with the crowd it takes a bit to turn your back on that and I think there’s quite a lot of intimidation goes on and we’ve had to change venues and times and things for people because their dealer or their buddies know they’re going for their review or for their test or whatever. And they start and hang about waiting for them, intimidation not to say violence occurs, it’s not straightforward.”*

5.91 Procurators fiscal were of the view that the short sharp prison sentences that were being legislated for in the Criminal Justice Bill were a positive addition to the range of sanctions available to the Drug Court in the event of a client’s non-compliance. One prosecutor voiced concern that the repeated use of partial sentences might fall foul of Human Rights legislation but believed, on balance, that they would be useful in the case of offenders who had little interest in completing a Drug Court Order to demonstrate that the Drug Court has some ‘bite’. There was less support from these respondents for the use of short periods of unpaid work for offenders who were failing to comply. One respondent suggested that there might be an adverse public reaction if it were known that someone who was failing to co-operate with a Drug Court Order was carrying out community service:

*“I don’t know if I fancy my granny getting her grass cut by somebody who has breached umpteen drug orders...I don’t know how the public would react to that.”*

5.92 Defence agents were of the view that the Drug Court had sufficient sanctions available in the event of an offender’s non-compliance and were sceptical whether sanctions *per se* could positively influence a client’s commitment to an order.

5.93 While there were acknowledged to be limited options available to reward good progress on a Drug Court Order, defence agents were doubtful of the value of extending the range of rewards that were available. To do so, they suggested, might undermine the perception of the Drug Court as a punitive option:

*“They’ve committed offences and it still should be a form of punishment. I think there should be verbal praise, if it’s merited. But I think that’s probably all there should be.”*

5.94 The main rewards open to the Drug Court were perceived by sheriffs to be praise and encouragement, and the disposal of offences by means of an admonition in the even of an offender on an order doing well. Sheriffs could also amend the frequency of testing, appointments and reviews. As one sheriff indicated, the frequency of court review hearings might be reduced:

*“If all attendance over, say, six months took place and negative opiates and benzodiazepine tests were provided. I have not done this yet, but have made reviews bi-monthly, Above all, I would do this if no offending had occurred since the assessment began.”*

5.95 Sheriffs in the Glasgow Drug Court had identified the absence of a more fully developed system of rewards as an area that required further attention (Eley et al., 2002b). Sheriffs in Fife agreed that a wider range of rewards might be of some value, though it was not clear what form these rewards might take. There was a concern to avoid the Drug Court being perceived to ‘treat’ offenders and there was, equally, resistance to some of the approaches that have been adopted in other jurisdictions (such as applause) to reward progress on an order.

## **THE ENFORCEMENT OF DRUG COURT ORDERS**

### **Breach proceedings**

5.96 In the event of an offender failing to comply with a Drug Court Order, the Reference Manual states that it is the responsibility of the Drug Court Sheriff to initiate or approve breach proceedings. The procurator fiscal’s role is to bring the offender to court to answer the breach by ensuring that warrants are sent to the police for execution as quickly as possible and that all outstanding warrants are monitored on a monthly basis.

5.97 Breach proceedings were thought by procurators fiscal to be somewhat problematic, though this was not an issue specific to Drug Court Orders since it applied equally to other disposals such as community service orders or standard probation orders. In essence, procurators fiscal become involved in assisting in the prosecution of breaches because the court would otherwise be required to instigate and judge breaches of court orders. Although this arrangement had worked well in the past, there was a concern that it might be challenged in future.

5.98 The role of the defence agent in the event of breach proceedings being initiated is to take the client’s instructions. If the breach is accepted or is proved, then the defence agent will step into a more traditional mitigating role with respect to the outcome. In this regard they did not consider their role in the Drug Court to differ in any way from their role in relation to breaches of other court orders. Defence agents were of the view that enforcement procedures were adequate and that everyone was working hard to made the system work.

5.99 There appeared to some lack of clarity among the relevant professionals as to who was responsible for initiating breaches of Drug Court Orders and as to the procedures that should be followed. Some respondents understood that responsibility for initiating breach proceedings lay with the Supervision and Treatment Team while others were of the view that it lay with the sheriff. Similar confusion was said to have resulted in the absence of procedural guidance for the breaching of Restriction of Liberty Orders.

### **Breaches of Orders**

5.100 Information supplied by the Co-ordinator/Team Leader indicated that between September 2002 and December 2002 a total of nine breach applications (all involving male clients) had been submitted to the Drug Court. These all pertained to existing DTTOs that had been transferred into the Drug Court. In three cases the order was allowed to continue, in two cases a deferred sentence was imposed and in four cases a warrant to apprehend was issued. Reaching a decision about whether to continue or revoke an order was said by sheriffs to involve “*a delicate judgement in each case*”. Breach proceedings had also been initiated in respect of three clients on Drug Court Orders but the breaches had not yet come to court.

### **DEALING WITH NEW AND OUTSTANDING CHARGES**

5.101 Outstanding and new charges against clients on Drug Court Orders were dealt with by the procurator fiscal on a case by case basis, with regard to evidential issues and factors such as the nature of the offences concerned. That said, a broad rule of thumb was that offences that pre-dated the Drug Court Order would not be brought to court unless necessary when the order was in force, while offences that post-dated the Drug Court Order would generally be prosecuted. Whilst not wishing to jeopardise a successful Drug Court order, prosecutors were also alert to the possibility that Drug Court clients might be dealt with more favourably than other offenders in relation to outstanding and new charges. All else being equal they were in favour of prosecution if it appeared that offenders were continuing to offend and had little regard for their Drug Court Orders.

5.102 One client who had re-offended while on a Drug Court Order had been remanded initially, but following his court appearance had been given a deferred sentence to allow his DTTO to continue. He was clearly aware of the potential consequences if he did not succeed in complying with his order:

*“...if I breach this I'm getting rattled for breaching my probation and this charge that I've got for this now, plus I've got driving while disqualified, well that's ages ago, plus an assault.”*

### **SUMMARY**

5.103 Pre-court review meetings were perceived by members of the Drug Court Team to be an efficient and valuable component of the process of supervising clients on Drug Court Orders. Defence agents, despite their caseload with the courts, were often able to attend the pre-court reviews, which they perceived as providing a valuable source of information about their clients.

5.104 Review meetings were held in open court. This represented a significant shift in practices, for both professionals and clients, from the earlier Drug Treatment and Testing Orders pilot where reviews were held in chambers. Sheriff-client dialogues can be an integral part of the review process. However, in this initial six month period, many clients were unable to respond to Drug Court Sheriff's questions and felt awkward about the public nature of the exchanges.

5.105 Supervision and Treatment Team workers took active steps to respond to instances of non-compliance and several applications for breach had been submitted, though no orders had, as yet, been revoked. The Drug Court Sheriffs had a number of sanctions that they could invoke without recourse to formal breach proceedings, although sentencers believed that the range of actions currently available to the Drug Court was insufficient and that short custodial sentences would enhance their armoury of sanctions.

## CHAPTER SIX

## PERSPECTIVES ON THE EFFECTIVENESS OF THE DRUG COURT

### INTRODUCTION

6.1 In this chapter we consider how effective the Fife Drug Court has been in its first six months of operation. Clearly it is too early to determine the impact that the Drug Court has had on drug use and associated offending among its clients. However, the interviews with offenders made subject to Drug Court Orders and the individual client questionnaires completed by members of the Supervision and Treatment Team give some early (if necessarily tentative) indications in this respect. In this chapter we also consider the perceived strengths of the Fife Drug Court approach - including the advantages of having a dedicated Drug Court - and factors which might have served to limit its effectiveness. The chapter continues with some suggestions as to how the effectiveness of the Drug Court might be further enhanced and concludes with a discussion of target numbers and capacity.

### VIEWS ABOUT THE LIKELY EFFECTIVENESS OF THE DRUG COURT

#### Professionals associated with the Drug Court

6.2 Sheriffs were cautiously optimistic that the Drug Court would impact positively upon drug use and offending, though they also recognised that it was still too early to establish how effective they would be in this regard. Even reductions in (as opposed to the cessation of) drug use were to be welcomed, since this would have a marked effect on offending. Sheriffs also thought that the structure provided by a Drug Court Order made it less likely that clients would resort to drug use and offending because they had less time on their hands. Sheriffs were able to base their optimism on their experience of having operated as a pilot DTTO scheme. As one sheriff explained:

*“I think if they are getting through the order I think it’s reasonably effective. I’m not expecting them to be clear, but I have seen they have got it under some sort of control: they are not spending as much, some of them are just taking it the odd once a week or something as opposed to daily.”*

6.3 Sheriffs also qualified their remarks about effectiveness by suggesting that the Drug Court “*doesn’t work in all cases but it does work well for some*”. Where it did work, however, the results could be clearly visible, including the physical presentation of clients:

*“I think it’s very heartening to see how it does help some people, you see them physically changing and that can happen very rapidly into the order.... Being clean, their skin looks different...”*

*“I could give examples of individual offenders such as young men who have appeared before me for sentence on frequent occasions in the past and whose future appeared to be without hope due to constant repeat offending. Since being placed on Drug Court Orders the change in them has been remarkable, albeit it is still early days in their orders. Generally most of those on Drug*

*Court Orders are doing well, albeit with occasional blips, but they are not continuing to offend.”*

6.4 Other professionals associated with the Drug Court also thought that the Drug Court could impact positively on drug use and offending, with some pointing to cases in which this had already occurred with clients on DTTOs:

*“Well, as I say we’ve had two or three that have actually finished orders and possibly been on DTTOs and have been taken over by the Drug Court, but in themselves you know they have been successes. They’ve not lapsed back into drugs and they haven’t re-offended. So I mean the Drug Court, it’s early days yet, but I mean if we could see the same success with some of them...”*

*“Well I was certainly very surprised with one of them, because this guy was continually in and out of prison and he hadn’t re-offended for two years and he’d been clean for two years and he’d got off his drugs and he’d been clean for at least the past year of his two year order so I mean it does make a bit of a difference.”*

6.5 The defence agents who were interviewed agreed that the Drug Court would be more effective than traditional approaches to drug-related offending, such as imprisonment. In the short term, however, some defence agents suspected that it might be associated with an increase in offending, until people became stabilised on their orders. As one defence agent explained:

*“I personally take a view that there might be more crime... I think it has to be inevitable. If they’re going to keep people out of jail, they have to accept that people with drug addictions are not just suddenly switch off committing crime, it’s not going to happen and it isn’t happening, but you know...”*

6.6 Defence agents based their confidence in the potential of the Drug Court to have a positive impact upon offending on their experiences of having represented clients subject to DTTOs. This led one defence agent to observe:

*“Even in cases where you see people eventually breaching them for offending again the number of offences, the nature of the offences, they’re all changing. It’s much lower, the re-offending and the nature of the offences tend to be less serious... we probably notice it because we had the Drug Treatment Testing Order before that, so it’s over the past two years. We can see a distinct change now, which is good.”*

6.7 Procurators fiscal, by virtue of their role in relation to the Drug Court, were in the position, potentially, of seeing its failures (i.e. those clients who re-offended) but not its successes. They observed that some clients on Drug Court Orders continued to offend with some regularity, though there were others who had no new offences. As one respondent commented:

*“I’ve been a little bit downhearted at the amount of re-offending from people in the Drug Court. There’s a lot of re-offending going on, which gives us an administrative problem, but that’s no reason for not having a Drug*

*Court... You have got to look at the big picture. You don't call the whole thing off because after five months people are still re-offending... Overall, it's still too early to say 'Oh, I'm against this, it doesn't work'. It's far too early to say it doesn't work."*

6.8 The procurators fiscal who were interviewed were, however, hopeful like other professional respondents that the Drug Court would have its intended impact upon drug use and offending. One opined that the Drug Court *"is the best opportunity we have so we've got to hope that it works"*, while another explained:

*"I think it's got probably as good a chance, if not a better chance, than most of the other initiatives that have been tried to deal with it [drug use]. I think there must be a good element in there of people who genuinely would like to come off drugs and they'd find it an assistance"*.

6.9 A similar sentiment was expressed by a sheriff who remarked:

*"I accept that some orders won't last and that it won't be the panacea to everything. But it's a lot better than we've ever had."*

6.10 Another sheriff made the observation that 'success' could be difficult to define:

*"It is difficult to say. Many offenders come off heroin and benzodiazepines but they get stuck on methadone and in some cases excessive amounts of alcohol. On the other hand, some offenders are able to reduce their dependence on and remain free of opiates and other drugs and even where they are on substitute medication such as methadone they succeed in reducing that if not to nil, to a very low figure. A substantial number, however, do not achieve any opiates-free situation, although most do not continue to offend."*

6.11 A third sheriff also highlighted the possibility that some clients might continue to offend for reasons unrelated to the misuse of drugs:

*"It's quite interesting that some people we find, I know its swings and roundabouts, but having successfully not only had their drugs stabilised but given them up they develop an alcohol problem. That's quite common and that often leads to different types of offending like breach of the peace and stuff like that and that's something we've got to deal with too you know."*

### **Clients on orders held by the Drug Court**

6.12 Clients who were successfully meeting the requirements of their orders indicated that they had made significant achievements, in terms of both their drug use and offending behaviour, through the support made available to them:

*"Well I haven't committed any crimes since I've been on the DTTO, I haven't offended. I've been put on a script to help myself come off the..., well to solve my addiction."*

*"I'm not using anything at all on this apart from the methadone."*

*"Well they (services) must have been some use because I've stopped using everything, it's just the prescription I use so they must be doing something right."*

*"Well personally I think it's great because it's changed my total outlook on life now like in the past six months, and everybody's always been here to support me."*

*"It's a lot better, I'm feeling a lot more confident about myself. When you take drugs it's just a totally different life, it's not really a life, it's a waste of time."*

*"I just think it's really helpful for people. A lot of my friends and that, they have had habits and then they come on this. Most of my friends are off it now so I have seen a difference in people with this order. There is a lot of people .. coming off it through this and it has really helped me as well." (DTTO client)*

*"I'm only using a tenner bag a fortnight, I was using a half gramme a day, about £40 a day. I haven't been in trouble for eight months...and I have stopped offending." (DTTO client)*

*"The order is only going to work if you want it to work. I mean if you are going to come in and lie there's no point."*

*"...there is that much involved in the changes that do take place in your life, from becoming a junkie, a heroin addict or any drug addict, to try and get some kind of normal life back... there are that many changes that it is very, very difficult for anybody to assess it right at the beginning...I think after a year it should be assessed, to be adjusted, because...you never hear anyone on an order getting it longer. Shorter, yes. But I think it's very hard for somebody who was full into it like myself (...) for somebody with a big problem in their life, two years is not a long time."*

6.13 Drug Court clients also articulated longer-term objectives and aspirations which they hoped that their participation in the Drug Court might help them to achieve.

*"Just getting a decent job, getting my life back in order and hopefully meeting somebody".*

*"A better life. I used to have a good bank account and once I started taking drugs it just disappeared. So I'm hoping to fill my bank book up again".*

*"Oh I'll do it [come off drugs, including methadone] before the end of the order, two years is too far away, I've been into it since I was seventeen, I'm coming up for 30 now, I can't keep this up".*

*"...I don't think life is long enough and I think I've ruined as much of my life as I'm prepared to, I don't think I will ever have the same quality of life as I did have, but I'm hoping to get something back".*

## Impact of the Drug Court on drug use

6.14 In the initial questionnaires they completed in relation to offenders on Drug Court Orders, workers in the Supervision and Treatment Team were asked to indicate how much they thought that the offender’s drug use would change as a result of being made subject to a Drug Court Order. The resulting data are presented in Table 6.1. In most cases workers thought that the client’s drug use would improve to some extent, though in three cases (involving offenders who had been given an order against the advice of the Drug Assessment Report) no improvement in drug use was anticipated.

6.15 Further explanations of their responses provided by workers indicated that factors seen as likely to facilitate improvements in drug use included the structure, support and substitute prescribing provided by a Drug Court Order, particularly if the client was sufficiently motivated to make the most of the interventions provided. In a few cases, however, there was “no recognition that change is required” or “no motivation to change at all”. In one case the worker suggested that the client needed to “learn from past lapses and have a greater maturity and realisation of motivation and effort required”.

**Table 6.1: Expected improvements in offenders’ drug use**

	<b>DTTO</b>	<b>Enhanced Probation Order</b>	<b>All</b>
Improve significantly	11	6	17
Improve slightly	12	2	14
No change	2	1	3
Slightly worse	0	0	0
Significantly worse	0	0	0

6.16 Despite having expectations that clients’ drug use would improve, workers also thought that a return to previous patterns of drug use was fairly likely in most cases (Table 6.2).

**Table 6.2: Perceived likelihood of a return to previous patterns of drug use**

	<b>DTTO</b>	<b>Enhanced Probation Order</b>	<b>All</b>
Very likely	2	2	4
Fairly likely	18	6	24
Not likely at all	4	1	5

6.17 Factors that were identified as being likely to influence the potential for sustained desistance from drug use included the age of the client, the length of their drug taking history, pressure from partner and peers, and hedonistic reasons for continued drug use. Being of ‘young age’ and being an ‘older user’ were both reported by the workers as making a return to previous patterns of drug use likely. Younger drug users were reported to be less motivated and less mature while older users, with a more entrenched history of drug taking, would have difficulty achieving abstinence if their families and circles of associates included individuals who used illicit drugs. For example:

*“His partner has a long history of drug use and is due out of prison and will return to his home”*

*“The boyfriend uses and has a predominant influence in her life.”*

6.18 In some cases, individualistic explanations of a likely return to drug use were provided. These included the client having ‘attitudes’ or values that militated against reducing their drug use. For example, in one case it was reported that the client *“appears to enjoy his drug use and manage his life around this”*.

### **Impact of the Drug Court on drug-related offending**

6.19 Workers were also asked to indicate in the initial questionnaires how much they believed the client’s drug-related offending would change as a result of being made subject to a Drug Court Order. In most cases it was thought that there would be significant improvements in this regard (Table 6.4). However, most clients were also considered fairly likely to return to their previous patterns of offending (Table 6.4).

**Table 6.3: Expected improvements in offending**

	<b>DTTO</b>	<b>Enhanced Probation Order</b>	<b>All</b>
Improve significantly	18	5	23
Improve slightly	5	3	8
No change	2	1	3
Slightly worse	0	0	0
Significantly worse	0	0	0

**Table 6.4: Perceived likelihood of a return to previous patterns of offending**

	<b>DTTO</b>	<b>Enhanced Probation Order</b>	<b>All</b>
Very likely	4	2	6
Fairly likely	12	6	18
Not likely at all	7	1	8

6.20 It was clear from workers’ responses that they usually considered clients to be less likely to re-offend because, if the Drug Court Order was successful, there would be no need for them to offend to fund their habit. The cognitive behavioural programme that was a constituent part of many Drug Court orders was also thought likely to contribute to an improvement (i.e. reduction) in drug-related offending.

6.21 Various explanations were advanced as to why clients were likely to return to their previous pattern of offending. In some cases, it was reasoned that the client may have difficulties in complying with the Drug Court order, that they had no motivation to change and that their history of drug taking and offending meant that further offending was likely. Where it was considered unlikely that clients would return to previous patterns of offending

this was attributed to factors such as becoming a parent and become less violent as a result of drug use being controlled through substitute prescribing.

### Impact of the Drug Court on other problems

6.22 Workers were also asked, in their initial questionnaire, to indicate how much they thought their client’s other problems would change as a result of being made subject to a Drug Court Order. The relevant data are presented in Table 6.5. In most cases it was thought that client’s problems would improve as a result of being on a Drug Court Order and, in most cases, these improvements would be attributable, at least partly, to the support that the client received through being on an order (Table 6.6).

**Table 6.5: Expected improvements in other problems**

	<b>DTTO</b>	<b>Enhanced Probation Order</b>	<b>All</b>
Improve significantly	10	4	14
Improve slightly	8	4	12
No change	6	1	7
Slightly worse	0	0	0
Significantly worse	0	0	0

**Table 6.6: Contribution of the Drug Court Order to a reduction in other problems**

	<b>DTTO</b>	<b>Enhanced Probation Order</b>	<b>All</b>
Entirely/almost entirely	9	6	15
Partially	12	3	15
Not at all	3	0	3

6.23 The most frequently reported problems in clients’ lives – aside from drug use and offending - were health, accommodation and ‘social issues’. The counselling and support provided by a Drug Court order could, workers suggested, help clients to re-establish family ties and make necessary lifestyle changes. Health issues could be addressed to some extent through Drug Court Orders and advice provided in relation to financial and emotional difficulties.

6.24 The notion that the Drug Court could offer some people hope in the face of extreme adversity was also raised in the professional interviews:

*“The biggest problem with most of the people we have here anyway – their drug problem - I think is because they have no self respect. No self worth. They’re likely to have been unemployed for however long. Left school never worked. They’ve got no prospect of ever working, they live in poverty, they live in hellish circumstances, they mix in a circle of friends, all in exactly the same position, you know. There is no light on the horizon for them. Day just goes into day, you know. If they commit an offence and go to jail, generally*

*speaking, what have they got to lose exactly? So I think the Drug Court perhaps gives them a bit more to work for.”*

## **FACTORS THAT ENHANCE THE EFFECTIVENESS OF THE DRUG COURT**

6.25 A number of factors were identified which professionals associated with the Drug Court, that were considered to make it more effective. These included:

- the regular reviewing of offenders – “*encouraging*”, “*cajoling*” and “*threatening*” them – with a combination of monitoring and the setting of targets for the next court-based review
- the monitoring of offenders’ behaviour and drug use as a means of providing encouragement and support to help sustain clients who are motivated to come off drugs
- the intensive programme provided to clients, though this could also have the unintended consequence of promoting high breach rates because clients have more opportunities for non-compliance
- the treatment and counselling that was available
- the adoption of an approach that seeks to help rather than punish, while affording public safety
- the relative informality of the Drug Court
- the sheriff’s heightened knowledge about drug use, and
- the active participation of the client in the process.

6.26 Some respondents stressed that a number of inter-related factors contributed to the effectiveness of Drug Court Orders:

*“I think a combination of factors makes it work, they’re getting a lot of attention, they can get their drugs if they choose to have it, they can have their drug use stabilised first of all and then if they choose to they can reduce. And if they are being stabilised and they’re able to lead a normal existence with a prescription then they’re not offending.”*

*“The intensiveness of it, the fact that you’re not off their backs in a good way, that you’re there every month saying ‘why has this not been done’ and ‘why aren’t you turning up’ and ‘do you realise that if you don’t turn up for these...’ and in reverse, the fact that they’re coming in every month and if they have been doing brilliantly and they’re showing negative opiates and they’ve turned up for every appointment they’re going to say ‘brilliant, well done, keep going’ and ‘what can we do to help you with this’. If they’ve got outstanding sentences deferred we’ll take that one off and admonish you on it, and things like that...In a probation order it can take months by the time they*

*get warning letters to the social workers and things and then the formal breach proceedings come in until they come to court having breached it. But the fact that the monthly reviews are there..., you come in every month and it's like a report card and basically gives them encouragement...I would say that by the time they get to court the social workers have looked at the difficulties and have sorted out anything, but sometimes a nudge from the Sheriff can help”.*

6.27 For many workers in the Supervision and Treatment Team, the effectiveness of the Drug Court lay in the whole treatment package (prescribing, counselling, support) on offer and the fact that it brought a range of specialist services into play. The involvement of a range of professionals providing assessments and reports for the court also meant the sheriff was more aware of the issues, and was able to develop a greater understanding of the client. Clients were able to access services on a fast-track basis, generally avoiding the lengthy waiting lists that characterised provisions outwith the court system. The Drug Court was considered particularly effective for individuals for whom the traditional court system had not worked, as it was able to offer a shared professional approach.

*“Hopefully we’re boosting self esteem, we’re helping to rebuild confidence and that they’re finding they ...do have the ability to go and do a training course...they’re clever enough to go to college...I think we look at them as individuals, they’re answering to the Sheriff every month...they know that we do care, we’re not just here to do a job.”*

6.28 This was also helped by incentives such as reductions in the frequency of reviews when progress is evident, a practice which encourages individuals and gives them a sense of achievement amongst their peers. Improvements were evident in individual behaviour (stopping or reducing illicit drug use and offending), major improvements in physical appearance, and attitudes in general.

*“I think it’s more successful in reducing offending than it is in reducing drug use at the minute, from what I’ve seen from the people that I work with. I’d say that 99% of my clients - maybe not 99%, maybe 90% - a big percentage of my clients haven’t re-offended since they were on the order but they are still using drugs.”*

*“From a personal point of view I’ve had quite a few success stories lately, you know where people are abstaining and they’re trying to change their life around. So I think it’s something that could be quite successful because putting them back in prison...they’re just coming out and doing the same thing again.”*

6.29 Staff recognised that not everyone placed on a Drug Court Order would, or could, successfully complete it, but made every effort to ensure that everyone was given the chance to. For most of the workers, the opportunity of providing clients with a measure of stability was the key basis of the services made available.

*“I would judge that as being a success, because you’ve managed to keep somebody stable for that length of time, they haven’t offended...and they’ve been able to think about their future which they’ve never really been before*

*because they've always hidden underneath their drug use. (...) and they're realising that if they hadn't been on an order the likelihood is that some of them would have been dead you know, so I see a huge big difference and I think it's really good."*

6.30 Drug Court clients emphasised the importance of medical support being made available at the earliest possible opportunity. They also stressed that particular difficulties were often encountered in the initial stages of a Drug Court Order.

*"The early stage is the worst. But the Sheriff sees it...I don't know, when I first went up, the last time, my first ever review it was terrible, absolutely terrible and he was going to revoke it. I don't see the point in that, it's obvious that your first thing is going to be quite bad I mean cos you're still in that mad circle of using drugs and that. Because some people when they get on a script like they're three months into their programme, they're not getting a script for a couple of months. I got my script quick but some people weren't getting theirs for like three months as I said, and I don't think that's right. And the Sheriff started getting quite tough on people, they weren't really doing well at the first review and they go up and it's really bad and they're wanting to revoke you and I don't think that's right. Obviously if you're eleven months into your order you're still doing crap then aye, fair enough but not right at the start because obviously you're going to be a bit dodgy then...."*

## **FACTORS THAT DETRACT FROM THE EFFECTIVENESS OF THE DRUG COURT**

6.31 From the interviews with professionals it was possible to identify a number of factors that they believed might impact adversely on the Drug Court and limit the effectiveness of Drug Court Orders.

### **Differing professional values**

6.32 One factor that was perceived to have impacted upon multi-professional teamwork was the differing cultural perspectives and value bases brought to the Supervision and Treatment Team by the various professional groups:

*"I think there's a very different culture in the medical world than there is in the social work world. So the medical model if you like, is very different to social work or the social work models of practice. And they do come from a whole different career and other kinds of structures so there are real conflicts between the expectations of nurses and the expectations of other workers".*

*"(...) The pilot is a huge amount of work. It's been a massive exercise and training, and it's very difficult getting people who don't understand criminal justice to come round to working out what our aims are. It's about risk assessment and public protection and looking at reducing offending and I think that a lot of people have struggled with that".*

6.33 However, it was suggested that this could be enhanced by more discussions and shared practice. This would also mean that a greater degree of consistency would be achieved.

### **Counterproductive practices**

6.34 Certain practices were identified that were not considered by some respondents to be conducive to effective ‘rehabilitation’:

*“I suppose stopping people’s prescriptions and stuff like that without consultation”.*

### **Excessive workload**

6.35 One professional respondent suggested that the effectiveness of the Drug Court would be undermined if there were too many orders for the court to cope with and for the Supervision and Treatment Team to deal with effectively. The Team was required to sustain a heavy workload as a result of the frequent report-writing required. This was partially a result of the transferring-in of DTTO cases as well as by the number of clients who were on more than one order.

### **Overly narrow focus**

6.36 The effectiveness of the Drug Court might also be undermined, it was suggested, if the wider social context of drug use was not acknowledged and was therefore not addressed. One professional respondent thought that the effectiveness of the Drug Court might be limited if people remained in their home environment and suggested that the Council could be more proactive in helping Drug Court clients to find alternative accommodation.

### **Lax enforcement**

6.37 It was thought that the attitudes of some offenders towards the Drug Court might detract from its effectiveness, especially if this resulted in persistent non-compliance that was not responded to by the court imposing appropriate sanctions. This would result in the Drug Court running the risk of being perceived as a “soft option” and ceasing, as a consequence, to command public, professional and political support. Some respondents expressed concern that there might be a perception among clients, and among the public, that there is no punishment attached to a Drug Court Order.

### **Transfer of orders to other courts**

6.38 Sheriffs pointed out that there was no provision for the transfer of Drug Court Orders between the different courts in which the Drug Court sat (Dunfermline and Kirkcaldy) or between the Drug Court and other jurisdictions. In practice, orders had been transferred so

long as the person moved to reside in a different jurisdiction that was subject to the Drug Court. However, the absence of guidance in this matter was said to be unhelpful.

### **Health and safety**

6.39 Although it was not thought to undermine the effectiveness of the Drug Court, the issue of staff safety was one that could not be ignored. As this respondent indicates, professionals associated with the Drug Court remained somewhat in the dark with respect to the health and safety protection they could expect to receive from their employers:

*“The only thing that I’ve got any concern about is the ..., it’s nothing to do with the Drug Court in itself it’s the health and safety issues which I’m going to have to take up...I’m in contact with these drug addicts, I’m getting them to sign things, contracts you know and I actually have to go up physically and hand them the contract, what if one of them was to turn round and bite me or spit in my face or something you know and they’ve got AIDS and I don’t know about it and we’re trying to find out if our Health and Safety Executive will pay for the injections”.*

### **Adapting to a new ethos**

6.40 The Drug Court represents a shift in ethos from a more formalised, adversarial system of justice to one with a more direct problem-solving focus. For those accustomed to operating in traditional court settings, making the necessary cultural shift presented some challenges at the outset:

*“It’s hard to put my finger on it about the difference, I mean it’s completely informal and it’s not like a court as such, and for somebody that’s worked in the courts for twenty-odd years (...) it’s very difficult. I’m quite happy to take it on board but it took a bit of getting on board..., the differences in the way of dealing with it...,it’s a bit like rounding people up and getting them into the court in time whereas in the other courts they just have to turn up and their case is called and...there’s lots of other agencies sitting round the table as well, something you have to get used to...but we’ve got there.”*

### **Remuneration**

6.41 Defence agent remuneration has been an issue since the establishment of the Drug Court in Glasgow. In Fife, this did not appear to be widely regarded as a problem on account of the different referral routes to the Drug Courts in Glasgow and Fife. In Glasgow, the accused appear before the Drug Court from custody and defence agents are not entitled to claim a fee for Advice by Way of Representation (ABWOR). In Fife, however, clients are not usually appearing from custody and ABWOR is therefore available.

## ENHANCING THE EFFECTIVENESS OF THE DRUG COURT

6.42 Several suggestions were made by professional respondents as to how the effectiveness of the Drug Court might be further enhanced, including the provision of more staff and improved links with a wider range of agencies (such as GPs, pharmacists and prisons). Other suggestions included increasing the range of services available or increasing the availability of existing services. Suggestions included providing clients with access to external anger management programmes when it was not possible to get an appointment with the internal counsellor providing wider access to therapies aimed at helping clients to relax:

*“...they should be maybe offered a bit more of that sort of relaxation therapy, cos it must be quite stressful to go through what they’re going through and it’s very intensive and it would be difficult to live a normal life and to be going through one of these orders I’m sure with arrangements with childcare and all the rest of it. It must be difficult.”*

and increasing access to residential rehabilitation facilities:

*“How easy can it be if you live in one of the areas where there’s a .. drug problem and the whole circle of friends are all taking?... The chap I was telling you about...his co-habitee has a drug problem too. So how are you expecting him to have his Methadone script and go and give his samples and stay negative while his missus at home is still injecting? Whereas if there was something more imaginative that they could use there and they could both go to a residential place to at least start off the process.”*

6.43 There was also a suggestion that nurses, addiction workers and external agency staff should attend review hearings (when the client was present) and have an opportunity to speak with the Sheriff rather than having their views mediated by the social worker. It was further suggested that all workers involved with a client should be involved in important decisions about their treatment (such as decisions about whether to stop their methadone prescription for 28 days).

6.44 Clients were also asked if there were any changes they thought would enhance the Drug Court. Suggestions included a comprehensive aftercare service:

*“What I do feel, you should get an aftercare once your order’s finished, you should get an aftercare, like if somebody comes and sees you like maybe once or twice a month or whatever just to make sure you’re not ending up taking the stuff again. But I’ve heard people that have finished the order just getting ‘that’s you’ basically.... then they don’t keep in touch with you or anything. There should be some sort of aftercare given to you just to make sure you’ve not got into your old ways again which is quite easy done. I think they do get in touch with a drug agency but there’s waiting lists, you know unreal, length of your arm, massive.”*

6.45 Similarly, one client was concerned that his order (two years) would not be long enough to provide him with the necessary tools to stay off drugs. He suggested that orders should be reviewed at the end of a year, to consider whether there might be any merit in

altering (reducing or extending) the order<sup>28</sup>. One professional respondent was also of the view that the sentences imposed by the Drug Court could be longer:

*“I sometimes think like, I know with probation that you can get three years probation, I sometimes think that the Sheriff puts them on too low an order. I mean he’d maybe put them on an eighteen month order where I would probably say, well I would have thought two years...Especially for the younger ones I think it would take them a bit more whereas the older guys I think they’re more sort of pushed, more experience of life...”*

6.46 Other suggestions for improvements included expanding the numbers of women dealt with by the Drug Court and the provision of greater public support for initiatives such as the Drug Court.

## **THE IMPACT OF THE DRUG COURT ON OTHER COURT BUSINESS**

6.47 Sheriffs indicated that they had been content to transfer their existing DTTOs to the Drug Court since it reduced their workloads, even though they had enjoyed their active role in the reviewing of DTTOs. The time devoted by the Drug Court Sheriff to Drug Court work was covered by a replacement post and this should have meant that any additional burden on sentencers was minimised. However, this post was initially covered by a number of visiting sheriffs and this made it difficult, on occasion, to ensure continuity in dealing with cases over successive court appearances<sup>29</sup>. In a similar vein, one of the disadvantages of having a back-up sheriff was that it was more difficult for this individual to enjoy the same continuity of contact with offenders subject to Drug Court Orders as was normally possible in the Drug Court.

6.48 The view was also expressed that the number of deferred sentences running alongside Drug Court orders might have had the effect of reducing further the workload of the Dunfermline and Kirkcaldy Sheriff Courts:

*“Well it’s taken, well all the deferred sentences that are running alongside the Drug Court orders that’s taken the pressure off the other courts so where their paperwork has gone down mine has actually gone up.”*

6.49 This view was not shared by other respondents, though some agreed that Drug Court workloads were increasing and that this could potentially cause problems at some future date:

*“Because a lot of the solicitors now, if they have a client on a Drug Court order, every time that they come up on a deferred sentence they want the deferred sentence running alongside the Drug Court order and the result is you can have a guy up on two Drug Court orders or two DTTOs and about fourteen deferred sentences running alongside and it’s getting to the stage now that the Drug Court business is sometimes heavier than a Remand Court which you would expect to be heaviest, with social enquiry reports,*

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<sup>28</sup> However, several clients had indicated during interviews that they considered their Orders (18 months or two years) to be unduly lengthy.

<sup>29</sup> There had, latterly, been less use made of visiting sheriffs since the sheriff who provided the dedicated cover for the Drug Court Sheriff was available on a more regular basis to sit in Kirkcaldy Sheriff Court.

*community service reports, so there are occasions where there are more, actually more complaints calling in the Drug Court than there are in the other courts.”*

6.50 Overall, the Drug Court was not thought by defence agents to have impacted adversely upon their workloads. Indeed, one defence agent speculated that if the Drug Court was succeeding in getting people off drugs, then their workload might, in the long term, actually decrease. The primary practical consequence was that Drug Court duties had to be ‘juggled’ with existing court duties, such as the remand court, proof hearings and trials. Having to attend court in the afternoon to represent clients at review hearings meant that other work which would normally be undertaken at that time – such as interviews with clients or prison visits – had to be re-scheduled.

6.51 Particular difficulties were encountered because the Drug Court sat in both Kirkcaldy and Dunfermline on days that were typically busy with other court business. For example, the business from the Kirkcaldy custody court often spilled over into the afternoon on a Monday, which would make it difficult for small firms of solicitors to provide representation at both courts. In Dunfermline there was also a remand court on a Wednesday, which meant that defence agents might find themselves working between two courtrooms (or three if the Drug Court was relocated to one of the larger courtrooms to provide direct access to the cells).

6.52 A defence agent also suggested that the Drug Court was often less demanding than other courts because the agent tended to make much less contribution to the proceedings. Although defence agents would speak on behalf of their clients when appropriate, in comparison with the remand court - where the defence agent is the source of most of the information about the accused person and the circumstances of the offence - in the Drug Court *“a lot of the interaction can be between the social worker who’s there and the sheriff and the client.”*

6.53 When the Drug Court began operating, a dedicated procurator fiscal was attached to it but left for another post shortly thereafter. Since then, procurators fiscal in Dunfermline and Kirkcaldy have covered Drug Court business on a rotating basis. There were no immediate plans to replace this arrangement with a dedicated post, primarily because the nature of the Crown’s input to the drug court post was not viewed as particularly challenging and could become routinised if allocated to one individual. In general, the Drug Court was not seen as involving the procurator fiscal service in a great deal of hard work.

6.54 Sheriffs believed that it would be advantageous to have one dedicated procurator fiscal (or at most two) who would cover all Drug Court business. This, they suggested, would ensure that outstanding matters and, where appropriate, new offences were brought into the Drug Court expeditiously. However the sheriffs recognised the difficulty of retaining staff in a post which offered little challenge and was unlikely to further their careers.

### **Capacity of the Drug Court**

6.55 Sheriffs and other professional respondents believed that the capacity at which the Drug Court was operating was about right but recognised that the court would probably become busier over time and that this would place a burden on the various professionals involved. One sheriff voiced concern at the possibility that limits might need to be imposed on the number of cases the Drug Court could accept, on the grounds that access to it should

be determined primarily by need. The potential for the workload to increase to an unmanageable level had been witnessed following the Christmas holiday period where the daily number of review hearings increased significantly to compensate for days when the court was closed. This, one sheriff suggested, meant that if a higher caseload was to occur “*it may have to expand if it’s to work effectively*”. That, however, would “*depend on the Executive and the resources*”.

## **IS A DEDICATED DRUG COURT NECESSARY?**

6.56 The sheriffs who were interviewed were in agreement that it was better to have a dedicated Drug Court than to have a number of sheriffs making and reviewing DTTOs. Having a dedicated sheriff meant that it was possible to achieve a consistency of approach from a sentencer with more specialised knowledge of drug misuse. Having a dedicated Drug Court also meant that the Drug Court Sheriff had more time to consider reports and arrive at appropriate decisions, although it was recognised that there would be less time available per case as the workload of the court increased.

6.57 There was general support among professionals for a Drug Court. This, for example, meant all cases could be dealt with by one sheriff who had detailed personal knowledge of the clients and was able to bring a “*personal touch*” to the reviews.

6.58 Only one professional respondent voiced opposition to having a specialist Drug Court on the basis that the development of numerous specialist courts would have a fragmentary effect upon the criminal justice process. For this reason, this respondent was in favour, once the Drug Court procedures had been tried and tested, of assimilating the work of the Drug Court back into the mainstream court system.

## **SUMMARY**

6.59 Most professionals and clients were reasonably confident that the Drug Court would be capable of bringing about reductions in drug use, offending and associated problems, though the challenges involved in achieving and maintaining an abstinent lifestyle were not underestimated. Factors that were perceived to enhance the effectiveness of the Drug Court included the monitoring of behaviour and drug use, the regular reviewing of offenders by a dedicated bench, and the nature and intensity of the treatments and services provided. Factors that it was thought might detract from the Drug Court’s effectiveness (even though they may not yet have done so) included conflicting professional values, insufficient team-based consultation with respect to treatment decisions, excessive workloads and an insufficiently firm approach to enforcement.

6.60 The capacity of the Drug Court was thought by professional respondents to be about right. None of the criminal justice professionals believed that the Drug Court had impacted significantly upon the workload of the sheriff courts in Dunfermline and Kirkcaldy, or upon their own workloads. However, it was recognised that as the workload of the Drug Court continued to increase, this could have implications for its capacity to deal effectively with clients given Drug Court orders. There was general agreement that a dedicated Drug Court was welcomed and represented an improvement over previous arrangements for dealing with drug-misusing offenders in Fife.

## CHAPTER SEVEN CONCLUSIONS

### INTRODUCTION

7.1 The pilot Drug Court in Fife aims to reduce the level of drug related offending, and reduce or eliminate offenders' dependence on or propensity to use drugs. The impetus for the establishment of a pilot Drug Court in Fife arose from an increasing recognition of the link between drugs misuse and crime, coupled with a growing knowledge base of the efficacy of drug treatment, including coerced treatment rather than services accessed on a voluntary basis. The introduction of the new Drug Court as a pilot in Fife followed the successful introduction of DTTOs in Fife and the establishment of a pilot Drug Court in Glasgow in November 2001.

7.2 The detailed nature of both the preparatory work undertaken by the Steering Group and of the Reference Manual have provided a transparent and clear statement of the aims and objectives of the newly established court and its associated procedures. The Fife Drug Court has also enjoyed the benefit of relatively little public and media interest. However, it appears to have gained public confidence by demonstrating that it is not a 'soft option' that is compromising the safety of the public.

7.3 Whilst it is still too early to assess how effective the Drug Courts will be in reducing drug use and offending, the Drug Court embodies those principles of penal policy that are thought likely to make a positive impact upon problematic drug use and drug-related crime:

*"...while the long term answers to the 'drug problem' lie in wider social and economic change, the criminal justice system does have a key role to play in developing a more effective strategy. In small but significant ways, criminal justice practices can improve the prospects of problematic drug and alcohol users who are now caught in the revolving door of court, prison and the street.... To do this requires a far reaching change in priorities and the development of a penal policy which gives precedence to the three principles already mentioned: the reduction of harm, the promotion of community safety, and the integration of problem drug users into productive life" (SCCCJ, 2002, p53)*

7.4 In this final chapter we summarise the key conclusions that can be reached on the basis of the evaluation to date and identify a number of issues that will require consideration over the remaining duration of the pilot Drug Court in Fife.

### THE OPERATIONAL EFFECTIVENESS OF THE DRUG COURT

7.5 As indicated in Chapter One of this report, the objectives of the Fife Drug Court are to:

- reduce the level of drug-related offending behaviour
- reduce or eliminate offenders' dependence on or propensity to use drugs, and

- examine the viability and usefulness of a Drug Court in Scotland, especially in a non-urban centre, using existing legislation, and to demonstrate where legislative and practical improvements might be appropriate.

7.6 Fife Drug Court is unique in terms of its location (a non-urban centre) and its implementation across two courts (Dunfermline and Kirkcaldy). Many positive features of the Fife Drug Court were apparent, not least of which was the commitment and enthusiasm of those involved in its operation. Here, some reflections on aspects of the Drug Court's operation are offered and strengths of the approach highlighted.

### **Referral and assessment**

7.7 The process of referral to the Fife Drug Court differed from Glasgow Drug Court, as individuals were generally identified by defence agents and sheriffs. Overall, there was broad-based confidence in the referral and assessment process. Professionals associated with the Drug Court, including the Supervision and Treatment Team, felt that the right people were being assessed for and being made subject to Drug Court Orders. While this process appeared to be working effectively and there was a general consensus that most referrals were appropriate, sheriffs voiced concern that the Drug Court jurisdiction was confined to cases that were prosecuted summarily. There may also be some scope for procurators fiscal to adopt a more proactive role in relation to the identification of potential Drug Court clients. However, any developments in this respect would be best viewed as an addition to, rather than a substitute for, existing procedures.

7.8 Some professionals suggested that younger offenders should be given the opportunity to participate in Drug Court Orders, while others expressed concerns that clients were predominantly from the younger age groups. This did not, however, appear to be borne out by the data and it seemed that the age profile of Drug Court Clients had increased over time. The Supervision and Treatment Team have been flexible in acknowledging that a significant proportion of problematic drug users in contact with the criminal justice system in Fife are under 21 years old and have entrenched drug taking histories.

7.9 The Drug Court assessments were considered to be thorough and detailed, and the resulting reports were highly regarded by sentencers. The Drug Court Sheriff was positively disposed towards the making of a Drug Court Order on receipt of an Assessment Report indicating that the offender was suitable for such an order. Where orders were not imposed, this was usually because the offender had failed to co-operate with the assessment. Sheriffs were content with the time-frames for assessments and were confident that continuing the case of bail for a Drug Assessment did not pose an undue risk to community safety.

7.10 Drug Court assessments were intended to identify offenders' motivation and ability to comply with the requirements of a Drug Court Order. Professionals were very aware that initially, the main motivating factor for many offenders was a desire to avoid a custodial sentence. However, it was also acknowledged that the nature of the order and the intensive support that was made available often had a positive impact on Drug Court clients' outlook, giving them an opportunity to 'turn their life around', and was certainly no easy option.

## **Supervision and treatment**

7.11 The services made available to offenders through Drug Court Orders are comprehensive, with treatment and testing comprising the main components of all interventions. The service is very well resourced in comparison to other areas of criminal justice social work. The Supervision and Treatment Team provide the majority of services available to clients on orders. While this reflects the Team's expertise and in-house resources, it should also be contextualised by the lack of services for drug users in some areas of Fife. Workers and clients expressed general satisfaction with the operation of Drug Court Orders and were aware of the underlying principles of court-mandated treatment provision.

7.12 There has been an innovative use of resources in-house. Despite the lack of facilities and access to services which is evident in some areas for drug using offenders, the team have been able to develop their skills by working at an inter-disciplinary level to provide resources such as group work. Individual workers have also had the opportunity to develop new skills in the area of complimentary therapies (aromatherapy, acupuncture, Reiki) which they have had the opportunity to use as a team resource. The development of alternative therapies, such as Reiki, has provided added value by facilitating the establishment of a 'holistic' approach to drug treatment.

7.13 Drug testing was viewed by clients as a necessary evil, which gave many a goal for reducing or ending their use of particular substances. Similarly, substitute prescribing had a significant impact on clients' need to continue to use illicit drugs and/or to offend. The threat of having prescriptions withdrawn was of some concern to many clients, and was often viewed as an overly punitive measure by professionals outwith the medical providers.

7.14 With respect to wider services, particular problems had been experienced with the Local Authority Housing Department and their policy towards tenants convicted of drug offences. This matter had, however, been discussed at senior level and appeared at least partially to have been resolved.

7.15 Despite a clear indication of the responsibilities and expected services provided by different agencies involved in the Supervision and Treatment Team, a certain amount of interdisciplinary ambiguity existed with regard to certain roles and responsibilities. Steps had been taken to overcome these difficulties through the use of team meetings and training events. Multi-professional and multi-agency working are key characteristics of the Drug Court and, although this has the potential for minor difficulties in practice, potential problems have been addressed and mechanisms put in place in order to overcome issues as they arise.

7.16 The sectorisation of the Team by geographical area has been critical in this respect and the recognition of the importance of sector-based multi-disciplinary meetings or case conferences has done much to strengthen Team identity and to clarify the professional capabilities of the various disciplines involved. In addition, strong leadership within the Team, and the development of a Team-wide approach to staff training needs and capacities, has done much to both widen the range of services available and capitalise upon individual skills within the Team.

7.17 The positive attitude of management in terms of developing services and highlighting issues in relation to resources was evident and appeared to be welcomed by members of the Supervision and Treatment Team. Issues identified by Team members through their day-to-

day contact with clients have been addressed at senior management levels as appropriate (e.g. housing issues taken up with local authority providers). The Drug Court Team Meetings have provided a forum for different agencies to raise and address issues (e.g. negotiations with local prisons in relation to substitute prescribing for Drug Court clients).

## **Reviews and enforcement**

7.18 A central component of Drug Court Orders is the regular – usually monthly – court-based reviews. Drug Court Orders differ from DTTOs insofar as these reviews are preceded by pre-court review meetings which offer an opportunity to discuss salient, and often sensitive, matters prior to the review being conducted in court. In Fife, the reviewing of cases in open court represented an increased formalisation of these procedures, which had previously been undertaken by sheriffs in chambers. The reviewing of orders in open court was viewed as necessary to ensure that the business of the Drug Court was transparent and accountable, though professionals familiar with the previous arrangements thought it likely that participation by the client was restricted as a result.

7.19 Professionals associated with the operation of the Drug Court spoke positively about the sheriff's approach to reviews, which observations suggested were generally encouraging. It appeared that offenders were more reticent than they had been in Glasgow to enter into dialogue with the bench, especially in the early stages of the order, with sheriff-client exchanges being shorter and more one-sided. It may be worth exploring mechanisms to increase client participation in early reviews since this may help to enhance motivation in the initial stages of the order.

7.20 Those involved in the operation of the Drug Court were generally content with the manner in which orders were being enforced. Sheriffs were making efforts to retain offenders on Drug Court Orders in order that they might benefit from the treatments and other services available and were aware that this needed to be balanced with swift and appropriate sanctioning of non-compliance to preserve the credibility and authority of the court. There did appear, however, to be some lack of clarity among the relevant professionals as to who was responsible for initiating breaches of Drug Court Orders (sheriffs or Supervision and Treatment Team workers) and as to the procedure that should be followed. This is an area in which clear guidance, that is understood by all of the relevant professionals involved, is required.

## **Workloads and resources**

7.21 Analysis of the workload of the Fife Drug Court in its first few months suggested that it was on course to meet its expected target of 150 – 180 new cases per year as identified in the Drug Court Reference Manual. The overall caseload of Drug Court Orders was augmented by the transfer of 73 existing DTTOs from the sheriff courts in Dunfermline and Kirkcaldy. Professionals involved in the operation of the court believed that its current capacity and workload was about right. It was also recognised, however, that a significant increase in the caseload would be difficult to sustain within its existing capacity and resources. The increasing volume of work which has already arisen due to the transfer of existing orders and the making of new referrals is likely to impact on the administration

systems of the court. At present, there is no court-based administration system dedicated specifically to the Drug Court.

7.22 Problems have been experienced in relation to the recruitment and maintenance of staff. There have been particular difficulties in recruiting criminal justice social workers, largely due to the increased workloads of Drug Team social workers in comparison to more generic offender-based work. Supervision and Treatment Team members are drawn from a range of different backgrounds, with experiences of working in different occupational settings. While this has led to a rich diversity of skills which can be utilised by the Drug Court it has led to some differences in expectations and professional modes of practice. These issues are being addressed within the team under the guidance of senior staff.

## **SUMMARY**

7.23 The commissioning of an independent evaluation of the pilot Drug Court in Fife was essential to determine whether the operation of the Drug Court is viable in non-urban areas within the Scottish context. The formative and process evaluation of the first six months of the pilot Drug Court in action suggests that the initiative has been successful, with the role of the Drug Court Sheriff and the dedicated Supervision and Treatment Team having been critical in this respect. Overall, the Fife Drug Court was perceived to be an important innovative response to drug-misusing offenders. The dedicated Drug Court Team, and the treatment and other resources made available to clients on Drug Court Orders, were viewed as holding much promise with respect to the reduction of drug-related offending in Fife.

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