



The Sainsbury Centre

for Mental Health

The Community Order and the Mental Health Treatment Requirement

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January 2008



Acknowledgements

The authors would like to thank the following for their helpful comments and suggestions on various drafts of this briefing:-

- Sean Duggan, Director of the Criminal Justice Programme
- Graham Durcan, Research and Development Manager, Criminal Justice Programme
- Jo Keil, Research Assistant
- Chiara Samele, Head of Research

We are also very grateful for advice and comments from Angus Cameron and Kate Gilbert (London Probation), and Gordon King (CSIP).

Additionally, thanks go to Alistair Compton, Research Officer, Prison and Probation Statistics team in the Ministry of Justice, and his colleagues for providing much of the recent data.

Unless otherwise stated, statistics on the use of community orders were obtained from the Ministry of Justice and are unpublished.

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Summary

The prison population has soared in the last decade. On 23 November 2007 there were 81,454 people in custody, 2 per cent more than a year earlier (NOMS 2007), and an increase of more than 20,000 since 1997. The Home Office has predicted that the prison population could rise to 101,900 by 2014 (Home Office 2007a).

In parallel with the upsurge in the prison population, the number of people receiving community sentences has also increased, while there has been a steady decrease in the use of fines. In the decade between 1995 and 2005 the number of people sentenced to community sentences rose from 129,922 to 204,247 (Home Office 2007b).

In April 2005, the Community Order became the new generic community sentence (for crimes committed after April 2005) available to magistrates and judges as an alternative to prison. The Community Order gives a choice of twelve different requirements including unpaid work, electronic curfew, supervision, drug and alcohol treatments and mental health treatment.

The Community Order should not be confused with the Community Treatment Order enshrined in the Mental Health Act 2007. Also known as supervised community treatment, these orders will compel someone to have treatment while in the community, following detention in hospital under the Act.

The average length of a Community Order is 14 months. The vast majority (85%) of Orders comprise one or two requirements. The two most frequently used are Supervision (37 per cent) and Unpaid Work (31 per cent). Five of the requirements - Residential, Attendance, Mental Health, Prohibited Activity, and Exclusion - make up less than one per cent of total use.

In 2006, 725 Mental Health Treatment Requirements (MHTRs) and 11,361 Drug Treatment Requirements were issued. Despite the low numbers to date the use of MHTRs has been steadily increasing month by month.

Only 19 of the 60,253 single-requirement orders issued in 2006 were MHTRs. In contrast 39,392 were for Unpaid Work. 72 per cent of all MHTRs used with a Community Order were combined with a Supervision requirement.

There are significant regional, gender and ethnic variations in the way the requirements are issued and which ones are given. The London probation region used the MHTR more, both numerically and proportionately, than any other region.

25 per cent of the prison population is comprised of people with a non-‘white British’ ethnicity (Home Office 2006), but only 9 per cent of the general population of England and Wales derives from these groups. Some 28 per cent of all MHTRs issued in 2006 were given to non-white ethnic groups. One MHTR in eight was issued to a black or black British offender.

Women are as likely to receive an MHTR as men. Proportionately women were more likely to be given a drug treatment requirement than men, more likely to receive a supervision requirement, but less likely to receive an accredited programme requirement.

The courts may face a number of difficulties in issuing the MHTR. There are several legislative obstacles placed upon the courts that may hinder sentencers issuing an MHTR. For example, an offender must have enough of a mental health problem to warrant the requirement, but not a

problem that warrants more help i.e. hospital admission.

The stigma of mental illness can be a powerful influence on offenders in open court and prevent offenders who might otherwise qualify for the requirement from consenting to it.

One of the most substantial factors that prevents the court from issuing an MHTR is the difficulty in obtaining access to psychiatric assessment, on which the requirement depends. And many offenders are not given an MHTR because their mental health needs have not been identified.

The Sainsbury Centre is setting up a research programme to address the knowledge deficit in this important area of policy and statute.

Introduction

In April 2005, the Community Order became the new generic community sentence (for crimes committed after April 2005) available to magistrates and judges as an alternative to prison, when a fine or a discharge is deemed inappropriate. The Community Order gives a choice of twelve different requirements including unpaid work, electronic curfew, supervision, and drug and alcohol treatments.

One of the twelve is the Mental Health Treatment Requirement (MHTR). This requirement can be issued to offenders who have an identified mental health problem, where treatment is readily available and when the offender has given their consent. The requirement can be set for up to three years. The order must be managed by an offender manager, and it must be conducted under the direction of an appropriate medical practitioner as described in statute (see the appendix).

Reviews have found a high prevalence of mental illnesses among prisoners in England and Wales (Fazel and Danesh 2002, Social Exclusion Unit 2002, Singleton et al 1998). While less is known of the mental health of those serving sentences in the community, a recent study has indicated that the mental illness levels of these offenders are also very high (Solomon and Rutherford 2007).

According to the national risk/needs assessment tool for adult offenders in England and Wales, the Offender Assessment System (OASys), the level of emotional needs that may have been directly related to the criminal behaviour of those serving community sentences in 2005/6 was 43 per cent (Solomon and Rutherford 2007).

Female supervised offenders appear to have higher levels of mental health need than males. A third of women subject to community supervision by the Probation Service said they had a mental disorder. During the same period the figure for men was one in five (Mair and May 1997).

Levels of mental health need for offenders managed in the community appear to be increasing. In 2002 a review of work in inner London boroughs found that at least 20 to 30 per cent of individuals in touch with the Probation Service displayed evidence of a mental disorder (London Probation 2002). By 2006 further research demonstrated that 48 per cent of these individuals were experiencing mental health concerns and that as many as a third of offenders in the community also had a personality disorder (Solomon and Rutherford 2007).

Despite the high levels of mental health problems among offenders serving sentences in the community, the MHTR has been used in less than one per cent of all requirements issued. Only 725 were issued in England and Wales in 2006, out of a total of 203,323 requirements.

Legislative obstacles might explain some of the limited application of this requirement. Associated issues could include service provision to deliver the requirement, the capacity and capability to carry out mental health assessments and the complex needs with which offenders present.

Even where the MHTR has been used, very little is known about its delivery or efficacy. For example, the impact of an MHTR on the mental health or re-offending behaviour of recipients is uncertain.

A key priority for the Sainsbury Centre's criminal justice programme is to redirect people with mental health problems into care and treatment and, where appropriate, away from custodial sentences. The MHTR may provide a feasible option, but the dearth of information on how the requirement has been received and utilised across England and Wales does not allow for robust conclusions to be drawn. This paper sets out what is known so far about the MHTR and the major areas for enquiry about its operation.

1 Community Sentences

1.1 A brief history

Community sentences have been available for 100 years, since the Probation Service came into existence in 1907. Since then, the community sentence has been renamed and reconfigured many times, most recently in 2005.

Table 1: Community sentences overview

Name of Order	Date Introduced	Details
The Probation Order	1907	Involved one-to-one sessions with a probation officer, the probation order lasted for a minimum of six months and a maximum of three years. It was replaced by the Community Rehabilitation Order (CRO) in 2001.
The Community Service Order (CSO)	1972	Lasted between 40 hours and a maximum of 240 hours. In 2001 it was replaced by the Community Punishment Order (CPO).
The Combination Order	1991	Combined probation and community service, and was introduced in the 1991 Criminal Justice Act. Probation involvement lasted between 12 months to 3 years, with community service of 40-100 hours. In 2001 it was renamed as the Community Punishment and Rehabilitation Order (CPRO).
The Drug Treatment and Testing Order	2000	Lasted between six months and three years.
The Community Order	2005	Implemented as part of the Criminal Justice Act 2003 replacing all other community sentences. Twelve requirements became available to sentencers to form the new Orders.

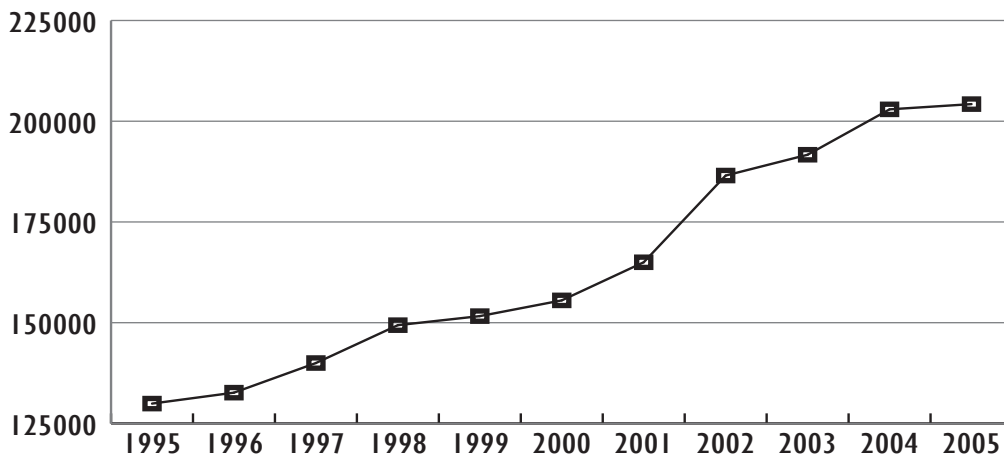
1.2 Trends in use

In the last ten years, the community sentence has been used extensively across England and Wales and its use is increasing. The greater use in community sentences is in part a result of the steady decline in the use of fines and the increasing punitiveness of sentences. The government acknowledges that:

“...sentencers have increased the use of community punishments, but only for those who would previously have got fines ...” (Cabinet Office 2006).

There are notable variations in the way it has been used. Over a 10-year period up to 2005, the number of people given community sentences increased by more than 74,000, representing a rise of 57 per cent (Home Office 2007b).

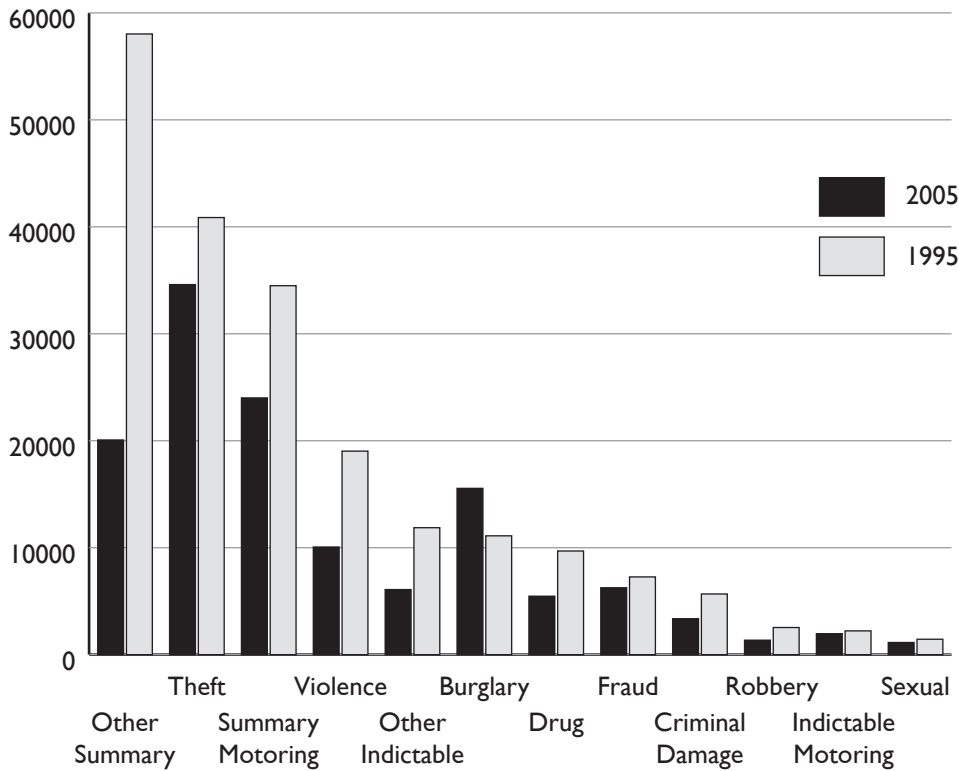
Figure 1: Number of offenders starting community sentences each year, 1995 – 2005



1.3 Offence types in receipt of community sentences

The largest proportion of offenders given community sentences committed an offence type of other summary offences, theft, or summary motoring (Home Office 2007b).

Figure 2: Number of offenders given community orders by offence type in 1995 and 2005



Note: A summary offence is an offence triable only ‘summarily’. It is not ‘indictable’, and is almost always tried in a magistrates’ court. ‘Summary motoring’ refers only to motoring offences triable in a magistrates’ court, while ‘summary other’ is all other summary offences.

2 The Community Order

In April 2005, as part of the implementation of the Criminal Justice Act 2003, the community sentence was re-launched as the Community Order and since that time has been used for all offenders given community sentences, except those whose crimes were committed before April 2005.

The Community Order was intended to give sentencers more flexibility and choice when assigning a sentence in the community to an offender, tailoring court judgements to the needs of the offender and the community more appropriately. In addition the new order was intended to apply the sentencing principles of punishment, rehabilitation, reparation and public protection more effectively. The overarching aim was to increase public confidence in community sentences.

The Community Order invites a hybrid approach to community sentences, introducing twelve possible requirements that sentencers can assign to offenders. The number of requirements issued is meant to be levied in proportion to the seriousness of the offence.

2.1 The Twelve Requirements

Table 2 below describes the main elements of the twelve requirements available for sentencers when constructing the Community Order (National Probation Service 2006, Mair et al 2007).

Table 2: The 12 requirements of the Community Order

Requirement	Time demanded	Details
1. Unpaid Work	40 - 300 hours	An Unpaid Work Requirement must be completed within 12 months. It involves activities, such as cleaning up graffiti, making public areas safer or conservation work. The work is intended to benefit the local community and often residents are able to suggest projects for offenders on Unpaid Work to carry out.
2. Supervision	Up to 36 months	An offender will be required to attend appointments with an Offender Manager or Probation Officer. The focus of the supervision and the frequency of contact will be specified in the sentence plan based on the particular issues the offender needs to work on. The length of a Supervision Requirement must be the overall period for which the Community Order is in force.
3. Accredited programme	Length to be expressed as the number of sessions; must be combined with a Supervision requirement	These are aimed at changing offenders' thinking and behaviour. For example, the Enhanced Thinking Skills Programme is designed to enable offenders to understand the consequences of their offence, and to make them less impulsive in their decision-making. This requirement is particularly intended for those convicted of violence, sex offending, drug or alcohol abuse, domestic violence and drink impaired driving.

Requirement	Time demanded	Details
4. Drug rehabilitation	6-36 months; offender's consent is required	If offenders commit crime linked to drug abuse, they may be required to go on a Drug Rehabilitation Programme. Programmes may involve monthly reviews of an offender's progress.
5. Alcohol treatment	6-36 months; offender's consent is required	This requirement is intended for offenders whose crime is linked to alcohol abuse and treatment.
6. Mental health treatment	Up to 36 months; offender's consent is required	After taking professional advice, the court may decide that the offender's sentence should include mental health treatment under the direction of a doctor or psychologist.
7. Residence	Up to 36 months	An offender may be required to live in a specified place, such as in a probation hostel or other approved accommodation.
8. Specified activity	Up to 60 days	Including community drug centre attendance, education and basic skills or reparation to victims.
9. Prohibited activity	Up to 36 months	Offenders may be ordered not to take part in certain activities at specified times, like attending football matches. If offenders do not comply with this requirement, they can be sent back to the courts for re-sentencing.
10. Exclusion	Up to 24 months	An offender may be prohibited from certain areas and will normally have to wear an electronic tag during that time.
11. Curfew	Up to 6 months and for between 2-12 hours in any one day;.	An offender may be ordered to stay at a particular location for certain hours of the day or night. Offenders will normally wear an electronic tag during this part of their sentence. If a stand-alone curfew order is made, there is no probation involvement and is privately contracted.
12. Attendance	12-36 hours with a maximum of 3 hours per attendance	For offenders under 25, the court can direct the offender to spend between 12 and 36 hours at an attendance centre over a set period of time. This requirement is designed to offer 'a structured opportunity for offenders to address their offending behaviour in a group environment while imposing a restriction on their leisure time'.

The twelve requirements have been mapped against their intended effects of:

- **Punishment:** Offenders should be properly punished for their crime and a lengthy, well-planned and properly supervised community sentence is tough on offenders and offers far more constructive possibilities for the future.
- **Reparation:** Offenders may be required to face their victim or give back to their local community, which can facilitate their viewing their crimes in a different way.

- **Rehabilitation:** Offenders need support and opportunities to change to deter them from committing more crimes.
- **Protection:** Protecting the public is the top priority.

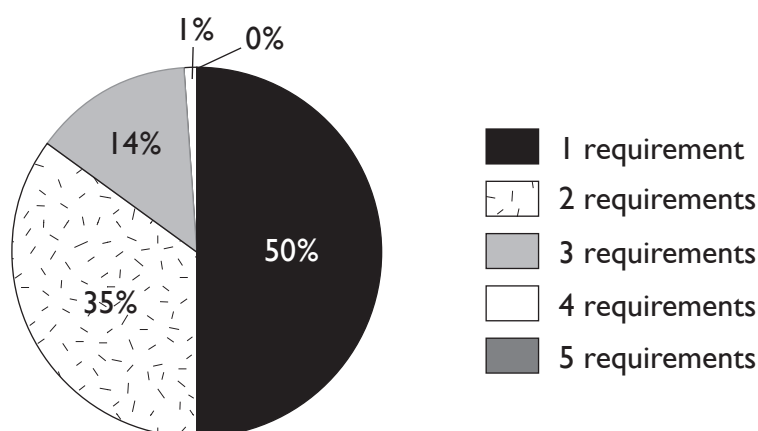
Table 3: Requirements and their intended effect (Home Office 2005)

Requirement	Punishment	Reparation	Rehabilitation	Protection
Unpaid work	✓	✓	✓	
Supervision			✓	
Accredited Programme			✓	
Drug Rehabilitation			✓	
Alcohol Treatment			✓	
Mental Health			✓	
Residence			✓	✓
Specified Activity		✓	✓	
Prohibited Activity	✓			✓
Exclusion	✓			✓
Curfew	✓			✓
Attendance Centre	✓			

2.2 The use of the Community Order

During 2006 121,690 Community Orders were issued in England and Wales. The vast majority (85%) of Orders comprise one or two requirements. (Offenders whose crimes were committed before April 2005 were sentenced with the older forms of community sentences, even after the Community Order was introduced.)

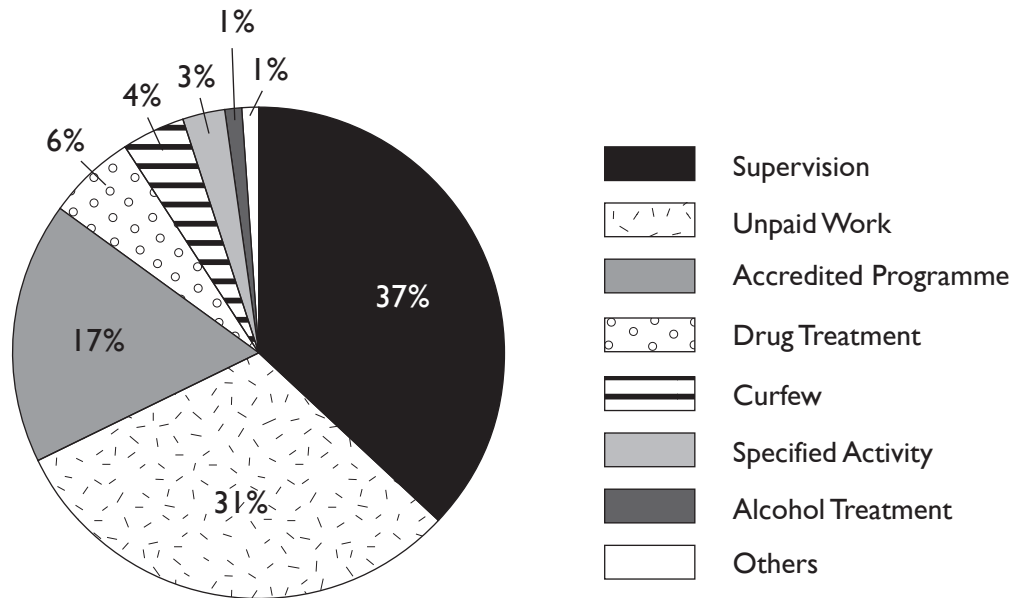
Figure 3: Commencements of Community Orders by number of requirements issued in 2006 (%)



The average length of a Community Order is nearly 14 months. So for example, offenders receiving only one requirement would serve an average sentence of around 12.4 months. However, those with four requirements would serve sentences averaging 17.6 months (Home Office 2006b).

The two most frequently used requirements with Community Orders are Supervision (37 per cent) and Unpaid Work (31 per cent). In contrast, five of the requirements - Residential, Attendance, Mental Health, Prohibited Activity, and Exclusion - make up less than one per cent of total use.

Figure 4: Requirements issued with Community Orders, 2006
(excluding stand-alone curfews)



2.3 Regional Variations in use

The Home Office intended that the number of requirements would be in proportion to the seriousness of the offence e.g. minor offences would receive only one or two requirements, while more serious offences would receive three or four. In exceptional circumstances, an offender might receive as many as five requirements.

However, it is unclear how this proportionality has been applied by courts across England and Wales. For example, Norfolk used the most single requirement Orders (63 per cent of cases), while Gwent did so the least (36 per cent of cases). The conclusions to be drawn from these figures are either that offenders in Gwent are committing more serious crimes, or that the courts in this region are taking a more punitive stance in interpreting the seriousness of the crimes.

Regional variation is also evident between areas using three or more requirements. For example, Gwent issued the highest proportion of orders with three or more requirements, at 25 per cent, while Bedfordshire issued the least with 6 per cent.

The type of requirements issued with Community Orders also differs between areas. During 2006, Unpaid Work accounted for 46 per cent of requirements issued in Norfolk but only 24 per cent in the West Midlands and Northumbria. Supervision accounted for 47 per cent of requirements in Teesside, but only 26 per cent in North Wales.

As a consequence of these disparities in use of Community Order requirements across England and Wales, offenders are being sentenced differently depending on where they live.

3 The Mental Health Treatment Requirement

The Community Order that was implemented in April 2005 as part of the Criminal Justice Act 2003, allows sentencers to issue an MHTR (see the appendix for the legislation). The MHTR as part of the Community Order could be regarded as a re-launch of the Probation Order with Psychiatric Treatment. This type of order was phased out in 2001, as was the little used Community Rehabilitation Order with a requirement for psychiatric treatment (for more on the predecessors to the MHTR, prior to their introduction, see Clark et al 2002)

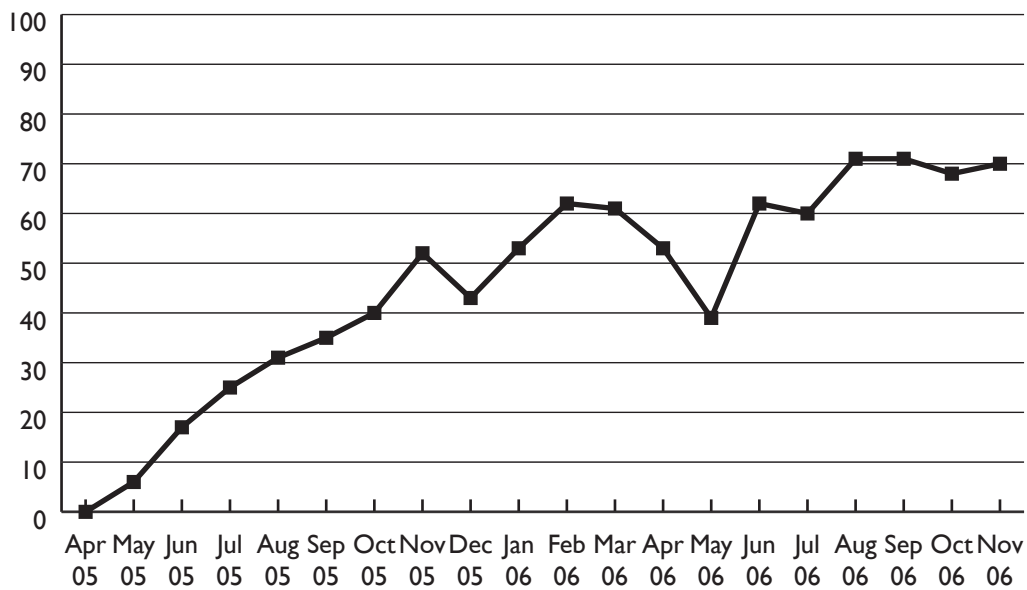
In order to issue an MHTR, the court must:-

- Ensure that treatment to improve the offender's mental health problem will be provided;
- Ensure that any hospital treatment is not given in a secure psychiatric unit;
- Be satisfied that the offender's mental health problem requires and may be susceptible to treatment, but is not serious enough to invoke the sections of the Mental Health Act 1983;
- Be satisfied that the practitioners and services are available to carry out the treatment;
- Ensure that the offender is willing to comply with the requirement.

3.1 Requirements issued

Since the introduction of the Community Order, relatively few MHTRs have been issued across England and Wales compared with some other requirements. For example, in 2006 725 MHTRs and 11,361 Drug Treatment Requirements were issued. This variance could be accounted for in a number of ways. For example the relationship between substance misuse and crime is different to that between mental health problems and crime and the wide variation in numbers does not necessarily mean that more offenders have mental health problems than drug problems. Moreover, there are national targets for the achievement of drug treatment requirements that both probation and partners such as drug action teams must meet. There are no such targets for MHTRs. Despite the low overall numbers to date however, the use of MHTRs has been steadily increasing month by month (see Figure 5, overleaf).

Figure 5: Monthly use by the courts of the Mental Health Treatment requirement with Community Orders, April 2005 – November 2006



Note: The December 2006 figure has been omitted because there are fewer sentencing days in that month.

In the first and second quarters of 2007 the MHTR was issued a further 384 times (Ministry of Justice 2007). After two years of use, the total number of MHTRs issued with Community Orders has exceeded 1,300.

3.2 Stand-alone and combination requirements

Only 19 of the 60,253 single-requirement orders issued in 2006 were MHTRs. In contrast 39,392 were for Unpaid Work.

72 per cent of all MHTRs used with a Community Order were combined with a Supervision requirement. From the existing data it is not possible to draw any firm conclusions as to why the courts are rarely issuing other requirements alongside the MHTR, such as Unpaid Work, Drug Rehabilitation or Accredited Programme. There could be an association with mental health stigma and discriminatory attitudes. We shall be exploring this in the research programme (see Section 5: Next steps).

3.3 Regional variation

During 2006, seven out of the 42 probation areas - London, Kent, West Midlands, Merseyside, Thames Valley, Essex and Greater Manchester - accounted for 55 per cent of all MHTRs issued despite the fact that these areas accounted for 36 per cent of the total number of requirements issued nationally.

The London probation region used the MHTR more, both numerically and proportionately, than any other region. In 2006 they issued 201 MHTRs, 0.8 per cent of the total numbers of requirements issued in London with Community Orders. In contrast, Yorkshire and Humberside issued 39 MHTRs,

0.16 per cent of their regional total.

Further variations are notable in the 2006 figures for the 42 probation areas:-

- 20 issued fewer than 10 MHTRs;
- 8 areas issued them less than 5 times each;
- Northamptonshire issued an MHTR only twice - out of 4,851 requirements levied;
- North Yorkshire also issued an MHTR only twice - out of 2,861 requirements levied.

3.4 Ethnic and gender variation

25 per cent of the prison population is comprised of people with a non-‘white British’ ethnicity (Home Office 2006). However, only 9 per cent of the general population of England and Wales derives from non-white ethnic groups.

There was significant variation by ethnicity in the use of the MHTR in 2006. Some 28 per cent of all MHTRs issued in 2006 were given to non-white ethnic groups. 12 per cent were issued to black or black British offenders, and this group also received the MHTR proportionately more often than any other. These figures must be considered within the context of the regions where the MHTRs were issued, i.e. the London probation region may contain a higher proportion of people of non-‘white British’ ethnicity than areas issuing fewer requirements.

An average of only 14 per cent of all requirements issued with Community Orders were for female offenders, with 15 per cent of MHTRs issued to females. Proportionately women were more likely to be given a drug treatment requirement than men, more likely to receive a supervision requirement, but less likely to receive an accredited programme requirement than males. Women are as likely to receive an MHTR as men.

4 Obstacles to the usage of the MHTR

The courts may face a number of difficulties in issuing the MHTR and these may explain some of the shortfall in its use. This section of the briefing describes possible obstacles that have emerged from an initial assessment of the available data. They are not listed here in any hierarchical order and will inform the design and development of the Sainsbury Centre research project (see Section 5: Next Steps).

4.1 Legislative obstacles

There are several legislative obstacles placed upon the courts that may hinder sentencers issuing an MHTR.

The law states that the offender must have enough of a mental health problem to warrant the requirement, but not too much of a problem that more help is needed than the requirement can provide i.e. hospital admission. Despite the high prevalence of mental health problems among offenders serving community sentences, the requirement is only suitable in very particular cases.

The Criminal Justice Act 2003 states that:

“A court may not by virtue of this section include a mental health treatment requirement in a relevant order unless the court is satisfied, on the evidence of a registered medical practitioner approved for the purposes of section 12 of the Mental Health Act 1983, that the mental condition of the offender-

- (i) is such as requires and may be susceptible to treatment, but
- (ii) is not such as to warrant the making of a hospital order or guardianship order within the meaning of that Act.”

Legally, therefore, offenders may not be eligible for mental health services because of the nature of their mental health problems. Research looking at offenders who had been assessed by a Criminal Justice Mental Health Team found that in practice most of the team’s clients had had previous contact with mental health services, but were diagnosed as having either a minor or an untreatable mental illness. Thus only a small proportion fulfilled the eligibility criteria of a diagnosis of a severe and enduring mental health problem. Their pattern of service use was sporadic, or mainly crisis use, and dominated by non-attendance (Green 2003).

The 2003 Act also requires that treatment is provided

“...under the direction of a registered medical practitioner or a chartered psychologist with a view to the improvement of the offender’s mental condition.”

In addition, there must be arrangements for treatment in place at short notice:-

“The court is also satisfied that arrangements have been or can be made for the treatment intended to be specified in the order (including arrangements for the reception of the offender where he is to be required to submit to treatment as a resident patient).”

A further potential obstacle is the prerequisite for the offender to agree to the requirement:

“A court may not by virtue of this section include a mental health treatment requirement in a relevant order unless the offender has expressed his willingness to comply with such a requirement.”

The necessity for consent, which also applies for alcohol treatment requirements and drug

rehabilitation requirements, may be a stumbling block for the courts even in the cases where the first two potential obstacles have been addressed.

Mental health service users in the general population have repeatedly identified stigma and discrimination as significant obstacles to their quality of life and access to employment and a range of services (Thornicroft et al 2007). As a consequence, the prevalence of mental illness stigma can be a powerful influence on offenders in open court. The offender may feel that consenting to drug or alcohol treatment is preferable to consenting to mental health treatment, even if mental health problems were the underlying cause.

4.2 Access to services

There is a lack of access to mental health services for offenders supervised in the community. A report commissioned by the Home Office and the Department of Health published at the end of 2005 looked at community provision for offenders. It concluded:

“There is a particular dearth of mental health provision for offenders in the community. Whilst the Offender Mental Health Care Pathway published in January 2005 by the Department of Health provides some examples of good practice, this primarily relates to the provision of mental health services to ex-prisoners discharged into the community (Offender Health Care Strategies 2005).“

4.3 Mental health assessment

One of the most substantial factors that prevents the court from issuing an MHTR is the difficulty in obtaining access to psychiatric assessment, the gateway to this disposal. A medical assessment is crucial to the process, even where the treatment of the requirement is going to be carried out by a chartered psychologist.

Many offenders who have mental health problems are not given an MHTR because their mental health needs have not been identified. Before imposing an MHTR, a psychiatric assessment must be delivered by a named consultant. If this assessment is not arranged and conducted, the MHTR will not be issued, thus depriving the offender of the care and treatment and offender interventions that could make a crucial difference both to their mental health and their offending behaviour.

The problems of obtaining psychiatric assessments can be due to local budgeting or time constraints between criminal justice and health services. Yet even where an assessment has been arranged, it has been suggested that unless the psychiatric reports are commissioned by psychiatrists with local connections it may not be possible to get access to local mental health services for the offender (NACRO 2007).

4.4 Complex needs

Offenders on community sentences who have both mental health and drug problems face particular difficulties accessing services and treatment. The voluntary sector service provider Turning Point has found that “...support is not offered for mental health needs until after drug treatment has ended or may not be offered in cases in which mental health needs are only identified once treatment has started. Some areas don't take people with mental illness because these clients are assessed as not being able to cope with the available treatment.” (Turning Point 2004) In addition, offenders with a

'dual diagnosis' are more likely to receive an alcohol or drug treatment requirement than an MHTR, as part of their community sentence.

Similar problems confront offenders with multiple needs. Research by the Revolving Doors Agency with their clients, many of whom had spent different periods on community sentences and often also in custody, revealed that:-

- just under half required support to address at least two significant problems, such as housing difficulties, drug issues and alcohol dependency;
- offenders on community sentences who have mental health problems have been slipping through the net of services with their needs unidentified;
- one third had some unmet needs, of whom a small proportion were at immediate risk of physical or mental ill health (O'Shea 2003).

5 Next Steps

5.1 Summary

The data presented here describe both the rising trend in usage of community sentencing and the infrequent and differential application of the MHTR. This requirement may offer offenders with mental health problems a viable alternative to custodial sentences. In the absence of a clear understanding of its application and effect, however, such recommendations cannot be made.

During 2008 the Sainsbury Centre will be conducting research to explore the MHTR, its usage, delivery and impact across nine London boroughs.

5.2 The research project

The main aims of the MHTR research project are to:

- Explore how an offender is issued with an MHTR and the decision-making processes prior to and at the point of sentencing;
- Understand how the MHTR works in practice by describing what it entails, the key professionals/agencies involved in conducting it and the processes/procedures by which it is carried out;
- Explore the experiences of offenders who have received an MHTR - the perceived benefits, areas of difficulty and potential improvements.
- Explore the validity of the obstacles hypothesised above, and identify any further issues related to the ease of difficulty in issuing MHTRs.

We will also seek to explore:

- the process of sentencing, from pre-sentence report stage through to sentencing by the court;
- the views of magistrates and judges, and identify the problems that have prevented them from issuing the requirement at the point of sentencing;
- the relationship between primary and secondary care services and the criminal justice system, particularly in relation to pre-sentence reports;
- the capacity of mental health care services to provide treatment under the requirement;
- the way the efficacy of the requirement is measured - such as re-offending rates or treatment progress;
- the benefit of the requirement to offenders and any aftercare services post-sentence;
- the suitability of the MHTR as an effective, suitable and therapeutic form of diversion for offenders with mental health problems;
- the possibility of introducing the Improving Access to Psychological Therapies programme within the MHTR.

Updated information will be made available as the project progresses on the Sainsbury Centre website (www.scmh.org.uk).

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Appendix: The Criminal Justice Act 2003. Chapter 44

Section 207

The Mental health Treatment requirement

- (1) In this Part, “mental health treatment requirement”, in relation to a community order or suspended sentence order, means a requirement that the offender must submit, during a period or periods specified in the order, to treatment by or under the direction of a registered medical practitioner or a chartered psychologist (or both, for different periods) with a view to the improvement of the offender’s mental condition.
- (2) The treatment required must be such one of the following kinds of treatment as may be specified in the relevant order-
 - (a) treatment as a resident patient in an independent hospital or care home within the meaning of the Care Standards Act 2000 (c. 14) or a hospital within the meaning of the Mental Health Act 1983 (c. 20), but not in hospital premises where high security psychiatric services within the meaning of that Act are provided;
 - (b) treatment as a non-resident patient at such institution or place as may be specified in the order;
 - (c) treatment by or under the direction of such registered medical practitioner or chartered psychologist (or both) as may be so specified;but the nature of the treatment is not to be specified in the order except as mentioned in paragraph (a), (b) or (c).
- (3) A court may not by virtue of this section include a mental health treatment requirement in a relevant order unless-
 - (a) the court is satisfied, on the evidence of a registered medical practitioner approved for the purposes of section 12 of the Mental Health Act 1983, that the mental condition of the offender-
 - (i) is such as requires and may be susceptible to treatment, but
 - (ii) is not such as to warrant the making of a hospital order or guardianship order within the meaning of that Act;
 - (b) the court is also satisfied that arrangements have been or can be made for the treatment intended to be specified in the order (including arrangements for the reception of the offender where he is to be required to submit to treatment as a resident patient); and
 - (c) the offender has expressed his willingness to comply with such a requirement.
- (4) While the offender is under treatment as a resident patient in pursuance of a mental health requirement of a relevant order, his responsible officer shall carry out the supervision of the offender to such extent only as may be necessary for the purpose of the revocation or amendment of the order.
- (5) Subsections (2) and (3) of section 54 of the Mental Health Act 1983 (c. 20) have effect with respect to proof for the purposes of subsection (3)(a) of an offender’s mental condition as they have effect with respect to proof of an offender’s mental condition for the purposes of section 37(2)(a) of that Act.
- (6) In this section and section 208, “chartered psychologist” means a person for the time being listed in the British Psychological Society’s Register of Chartered Psychologists.

Section 208

Mental health treatment at place other than that specified in order

- (1) Where the medical practitioner or chartered psychologist by whom or under whose direction an offender is being treated for his mental condition in pursuance of a mental health treatment requirement is of the opinion that part of the treatment can be better or more conveniently given in or at an institution or place which-
 - (a) is not specified in the relevant order, and
 - (b) is one in or at which the treatment of the offender will be given by or under the direction of a registered medical practitioner or chartered psychologist, he may, with the consent of the offender, make arrangements for him to be treated accordingly.
- (2) Such arrangements as are mentioned in subsection (1) may provide for the offender to receive part of his treatment as a resident patient in an institution or place notwithstanding that the institution or place is not one which could have been specified for that purpose in the relevant order.
- (3) Where any such arrangements as are mentioned in subsection (1) are made for the treatment of an offender-
 - (a) the medical practitioner or chartered psychologist by whom the arrangements are made shall give notice in writing to the offender's responsible officer, specifying the institution or place in or at which the treatment is to be carried out; and
 - (b) the treatment provided for by the arrangements shall be deemed to be treatment to which he is required to submit in pursuance of the relevant order.

Published January 2008

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