

Court proposals and the sentencing framework

Determining the correct proposal

General principles

The type, intensity and duration of the alcohol related intervention should primarily be determined by assessed need i.e. the outcome of the alcohol specific screening e.g. Alcohol Use Disorders Identification Test (AUDIT) and, where necessary, specialist assessment, provided the **overall restriction on liberty imposed by the community order (CO) or suspended sentence order (SSO) in its totality is commensurate with the seriousness of the offence(s)**. Other more punitive requirements can be added to a CO or SSO, where necessary, to reflect offence seriousness.

Taking the alcohol treatment requirement (ATR) as an example (although the same principles apply to offenders assessed as suitable for brief interventions (BIs) - delivered through an activity requirement or as part of a supervision requirement), offenders who have committed a high seriousness offence (Tiers 3 & 4 of the Offender Management Model) and are suitable for an ATR will often have an ATR with at least two other requirements (usually a supervision and programme requirement) and occasionally more e.g. an activity requirement to meet the courts need for punishment. For medium seriousness offences, the ATR will often be accompanied by a supervision and programme requirement.

In line with PC 08/2008 - *National Rules for Tiering Cases and Associated Guidance*, a proposal for an ATR should usually be accompanied by a proposal for a supervision requirement. It is unlikely that an offender who is suitable for an ATR will have only a single problem – alcohol – and the supervision requirement provides a clear legal authority to address the other issues. This supersedes the guidance in Annex B to PC 57/2005 which advised that ‘the ATR can be used as a stand alone requirement for those in the lowest band of the community sentence.’

Whilst the length of the treatment or brief intervention should reflect individual need, the total length of all the requirements i.e. the restriction on liberty should be commensurate with the seriousness of the offence and risk. Therefore, again using the ATR for demonstration purposes, although the principle holds equally well for delivery of BIs, examples of potential pre-sentence report (PSR) proposals are:-

- A shorter length ATR, but possibly a longer punishment and/or other rehabilitation requirement, could be proposed for an offender with a high seriousness of offence but a low-medium treatment need.
- A longer ATR with shorter other requirements could be proposed for an offender with a medium seriousness of offence but a high treatment need.

- An offender with a high treatment need but low seriousness of offence should have a short ATR proposed but be encouraged to remain in treatment on a voluntary basis at the end of the ATR where there is a continuing treatment need.

In cases where the court does not give a provisional indication of offence seriousness, the PSR author should make an assessment of the seriousness of the offence and make a proposal about the intensity of the ATR or other alcohol related intervention and any other requirements which is commensurate. Previous related offences should be taken into consideration by the PSR writer, as this could show an escalation of alcohol misuse and harm to others which may underpin the correct allocation to a specialist alcohol worker.

Requirements as part of a suspended sentence should be less demanding than those of a community order given the more serious sanction for non-compliance.

The court should be made aware in the PSR of all cases where sequencing of requirements is likely and this should also be stated in the sentence plan.

Alcohol treatment requirements (ATRs)

The ATR is available to courts as a sentencing option for offences committed on or after 4 April 2005 by offenders aged 18 or over. Pre-Criminal Justice Act 2003 measures continue to be in force for offenders committing offences before 4 April 2005 and for juveniles.

An ATR can be made part of a community order for a minimum of six months and maximum of three years and a suspended sentence order for a minimum of six months and maximum of two years (Annex B to PC 57/2005 incorrectly stated that the maximum duration of an ATR made as part of an SSO was three years).

An ATR can be proposed wherever the PSR author is satisfied that the requirements of section 212 of the Criminal Justice Act 2003 are met.

Under Section 212 of the Act, a court can impose an ATR provided it is satisfied that:

- the offender is **dependent** on alcohol (this does not have to have caused or contributed to the offence(s) for which he has been convicted)
- this **dependency** is such as requires and may be susceptible to **treatment**
- 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) and

- the offender expresses his willingness to comply with its requirements.

The ATR obliges the offender to submit to '**treatment** by or under the direction of a **specified person** having the necessary qualifications or experience with a view to the reduction or elimination of the offender's **dependency** on alcohol.'

The **treatment** required by an ATR for any particular period should be either:

- as a resident in such institution or place as may be specified in the order
- as a non-resident in or at such institution or place, and at such intervals, as may be so specified or
- by or under the direction of a person having the necessary qualification or experience as may be so specified

but the nature of the **treatment** shall not be specified in the order except as above.

Dependency and treatment

A court can impose an ATR only if it is satisfied, among other things, that the offender is **dependent** on alcohol and this **dependency** is such as requires and may be susceptible to **treatment**. Unlike the drug rehabilitation requirement (DRR), courts cannot make an ATR if the offender has a 'propensity to misuse' alcohol.

Whilst neither dependent/dependency or treatment are defined in the Act, the World Health Organisation's tenth revision of the *International classification of diseases* (ICD-10) defines **dependency** as characterised by 'psychological dependence' with an increased drive to use alcohol, difficulty controlling its use, despite the consequences, and in more severe cases physical withdrawals upon cessation of use. This definition of dependency is adopted in *Models of care for alcohol misusers (MoCAM)*.

MoCAM identifies moderate and severely **dependent** drinkers as 'the main groups of alcohol users who clearly may benefit from specialist alcohol **treatment**' and makes a clear distinction between the provision of these **treatment interventions** and **brief interventions** 'for those drinking excessively but not requiring treatment for alcohol dependence.' This approach is supported by the comprehensive *Review of the effectiveness of treatment for alcohol problems*.

Specified person

An ATR should be carried out by or under the direction of a '**specified person**' having the necessary qualifications or experience.

Legal advice suggests that 'specified person' does not necessarily mean a named individual but can be construed more widely to mean a group or type of individual(s), such as an offender manager, with the necessary skills or experience.

As an offender manager is required for formal supervision of the order, enforcement and general compliance, the person specified in the order to deliver or direct the delivery of the ATR could be '**a suitably qualified or experienced offender manager**'. Alternatively, as the treatment is usually carried out by a treatment provider under contract or service level agreement, it could be '**a suitably qualified or experienced member of staff from the contracted treatment provider**'.

Specified person should not be interpreted to mean the organisation by which the offender manager or alcohol worker is employed i.e. the supervising probation area or contracted treatment provider.

The proposal could read 'The offender be made subject to a community order/suspended sentence order with the following requirement(s): An Alcohol Treatment Requirement for a maximum of months to submit to treatment by or under the direction of (INSERT AS APPROPRIATE) having the necessary qualifications or experience with a view to the reduction or elimination of the offender's dependency on alcohol and.....'.

Alternatively, the proposal should specify that the offender submit to:

- treatment as a resident in a **specified institution or place**; or
- treatment as a non-resident in or at a **specified institution/place at specified intervals**.

Use of activity and supervision requirements to deliver brief interventions

An activity or six month supervision requirement is more appropriate than an ATR for those assessed as needing brief interventions rather than specialist treatment. It is for PSR authors to determine which of these two requirements is more appropriate in specific cases but in doing so they may wish to take the following general principles into consideration.

Supervision requirement

Seriousness levels

- | | |
|--------|--|
| Low | = up to 12 months |
| Medium | = 12 – 18 months |
| High | = 12 – 36 months (max 24 months for SSO) |

- The purpose of the supervision requirement is for 'rehabilitation'.

- The flexible contact levels of a supervision requirement are appropriate for the delivery of brief interventions but contact has a more general focus than an activity requirement and runs throughout the order.
- Supervision can involve contact¹ to:
 - undertake work to promote personal and behavioural change
 - deliver individual counselling
- Normally the supervision contact would be individual and brief interventions are delivered on an individual basis.
- Contact within a supervision requirement can be delegated by the Offender Manager to another person, and this arrangement might be used to provide the offender with specialised support or advice. In this way the requirement can be used to address particular issues which may arise after sentence without amendment of the order to include an activity requirement.
- Women, especially those assessed as vulnerable, should be offered the option of women supervisors and where available women-only provision.

Activity requirement

Activity (Sentencing Guidelines Council seriousness levels):

Medium: 20 – 30 days

High: up to 60 days

- Where issues are identified prior to sentence which will require a significant input of a specialised service or support this should be delivered through an activity requirement included in the order in addition to the supervision requirement.
- The general principle of the Criminal Justice Act is that specific interventions should be itemised within the order and delivered within appropriate and separate requirements.
- The use of an activity requirement allows participation in the specific activity to be explicitly included in the PSR and sentence plan. It helps to ensure offenders are clear about the expectations placed upon them, and the intentions of the court can be clearly enforced.

¹ When the OM specifications are implanted NOMS Offender Assessment and Management Group intend to issue guidance on the use of supervision requirements.

In general, we would advise that:-

Simple brief interventions or structured brief advice (generally around 5 minutes) usually delivered by the offender manager/supervisor e.g. using material from the *Alcohol information pack for offenders under Probation supervision* (NOMS 2008) and suitable for those with low alcohol needs e.g. increasing risk drinkers scoring 8-15 on AUDIT are most appropriately delivered within the **supervision** element of the order.

Extended brief interventions or brief motivational counselling (usually a small number of 20-30 minute sessions), such as motivational enhancement therapy, motivational interviewing, etc. (Tiers 2/3 of MoCAM), delivered either in-house by probation areas/trusts or in partnership with the voluntary sector to those with moderate alcohol needs (higher risk or binge drinkers scoring 16-19 on AUDIT) are better delivered through an **activity requirement**. Some areas/trusts have 'marketed' these to courts as an Alcohol Specified Activity Requirement (ASAR).

Areas/trusts should ensure that offender eligibility and suitability for specified activity requirements is OASys risk assessed (including risk of serious harm) such that offenders are duly prioritised and pre-prepared to undertake designated activities.

Discussion should take place with the partnership agency as to the number of days required to meet identified needs but at the very least the area/trust should ensure activity providers are properly informed of court requirements.

An activity requirement should not normally be used by itself but combined with a supervision requirement. Contact through the supervision requirement will provide the necessary support and motivation to ensure the activity is completed, and provide follow-up and reinforcement work to maximise the benefits of the activity, within the context of a broader programme of rehabilitation.

The proposal should read 'The offender be made subject to a community order/suspended sentence order with the following requirement(s): Aday Alcohol Specified Activity Requirement and

 While it is preferable for an exact number of days to be specified in the order, where possible, an alternative option is for the order to be worded 'for up to xx days' to give greater flexibility.

Programme requirement

Alcohol misusing offenders should be considered for a **programme requirement** where:-

- alcohol related offending behaviour needs to be addressed;
- the use of the requirement can be justified by the seriousness of the offence; and
- the offender meets the criteria for that programme.

A programme requirement is unlikely to be sufficient on its own to tackle the wide range of needs of the more serious alcohol misusing offenders. In view of this, a community order plus an accredited substance misuse programme (ASRO or OSAP) without an ATR should be proposed in relatively limited circumstances.

Programmes, such as ASRO/OSAP, should generally only be used alongside an ATR for offenders in the medium/high seriousness community sentencing band.

The Lower Intensity Alcohol Programme (LIAP) is appropriate for use with problematic drinkers, not dependent drinkers. As such, it should not be used in conjunction with an ATR, which is targeted at alcohol dependency, or with the Drink Impaired Drivers (DID) scheme. It is acceptable for orders to have requirements for both LIAP and a violence or domestic violence programme e.g. IDAP.

Offenders who have committed drink drive offences are suitable for DID. Those at the medium and high seriousness levels should be considered for a programme requirement for DID (subject to suitability), a supervision requirement; and, if assessed as suitable, an ATR. An ATR should only be added where this can be justified by the seriousness of the offence and offender need.

Details of the accredited programme should be specified in the PSR and sentence plan.

PSR authors should refer to offender eligibility and suitability for accredited programmes when making proposals in PSR reports using OASys and the targeting and risk management tools specified in the relevant programme manuals.

Use of unpaid work requirement

Where alcohol misuse has been identified as an issue, an unpaid work requirement will probably be limited to those offenders with low treatment needs and a high seriousness of offence. However, each case needs to be looked at individually and should be balanced against the offender's level of needs/intervention and an assessment as to his/her realistic capacity to comply with the requirement.

The AUDIT score will help to indicate where an unpaid work requirement may be unsuitable due to alcohol misuse. Scores of 20+ indicating dependent drinking need serious consideration as to whether the offender will be suitable for unpaid work for Health and Safety reasons and/or because the extent of their alcohol problem is likely to affect their ability to attend. As such, it is unlikely that an unpaid work requirement will be proposed in conjunction with an ATR.

The court process

Alcohol misusing offenders may be assessed via an oral report, a Fast Delivery Report (FDR) or a Standard Delivery Report (SDR).

PC 06/2009 *Determining Pre-Sentence Report Type* provides guidance on determining which type of report to use. The PC seeks to ensure that SDRs 'are only used where it is not possible to provide sufficient information to meet the needs of the court within the fast delivery report (FDR) format.' In line with a recommendation from the specification, benchmarking and costing (SBC) report, PC 06/09 aims to increase the proportion of FDRs used in Magistrates Courts from around 40% to a minimum of 70% and also provide for increased usage in Crown Courts.

Offenders identified through the use of OASys and an alcohol screening tool e.g. AUDIT as increasing risk, higher risk (except those non-dependent drinkers at the higher end of the scoring range) or less persistent binge drinkers who don't meet the dependency test of the ATR can be recommended for a supervision or activity requirement involving the delivery of brief interventions without the need for further assessment unless:-

- there is evidence that the offender presents a greater risk than suggested by the screening or has a known history of alcohol related offending or
- there are co-existing problems e.g. serious mental health issues requiring liaison and specialist assessment.

Otherwise, subject to the criteria set out in PC 06/09, such cases will usually be suitable for an oral report or a FDR.

Where resources allow, when an oral report or FDR has been requested and alcohol use has not been identified previously, areas/trusts should consider using an alcohol screening tool e.g. AUDIT in order to try and ensure they do not miss alcohol misuse. This can be administered by suitably competent court staff. The completed screening assessment e.g. AUDIT form should then form part of the oral report assessment or FDR pack. A request for adjournment will need to be made for the offender to be referred for a specialist assessment where:-

- dependent drinking or the higher end of higher risk drinking (18-19 on AUDIT) is indicated by the screening
- there is evidence that the offender presents a greater risk than suggested by the screening
- the offender has a known history of alcohol related offending

and treatment staff are not available to undertake the assessment at court.

PC 06/09 advises that a full SDR is usually required for the *Alcohol treatment Requirement (ATR)* unless arrangements are in place for specialist assessments to be completed within the timescale of the FDR. However,

'areas may have separate resources available to enable specialist assessment for specific sentencing options, such as Drug Rehabilitation Requirement (DRR) or Alcohol Treatment Requirement (ATR). Efforts should be made to engage treatment providers in making resources available, since speedy sentencing expedites the justice process and provides a quicker route into supervision and/or treatment.² If arrangements are in place for assessment at court it may be possible for a community order with an ATR to be proposed on the day of request. If not the case could be adjourned for five days or longer where local negotiations provide a more flexible timescale in order for an ATR assessment to be prepared and the outcome of the assessment submitted as an addendum to the FDR.

Given the links with alcohol misuse, it is important to note that a SDR will normally need to be prepared in cases where any of the following are applicable:-

- Current violent/sexual offence which indicates likelihood of Risk of Serious Harm (RoSH) or offender history of serious harm requiring further assessment
- Current domestic violence offence which indicates likelihood of RoSH or offender history of serious harm requiring further assessment.
- Safeguarding children/child protection issues
- Serious mental health issues are indicated by the offence/history and multi-agency liaison is required.

Pre-Sentence Reports (PSRs)

Screening and assessment should always take place pre-sentence to inform PSR recommendations.

Those offenders identified by OASys and the initial alcohol screening as alcohol dependent and likely to be suitable for the ATR should be referred at the PSR stage for a triage and/or comprehensive assessment undertaken by specialist treatment staff, as per *Models of care for alcohol misusers (MoCAM)*. The OM should ask for an adjournment when the assessment cannot be completed within the usual timescales.

Where the assessment cannot be undertaken in court, the referral should be by a telephone call to the assessor which will identify a date and time for the assessment (it will be the PSR writer's responsibility to convey this information to the offender). This should be followed up by a fax containing relevant information, including a referral form, section 9 of OASys, a copy of the completed AUDIT or other validated screening questionnaire, risk of harm assessment and any child protection concerns.

The assessor will provide a written assessment report and completed offender compact form and forward these papers to the PSR writer/court duty officer by

² London Probation Area is piloting to divert specialist assessment resources to courts.

the agreed date. The assessment appointment and report should ideally be available within 10 working days of the referral date. It is therefore important for PSR writers to expedite referral of the offender for an assessment report if the PSR is to be prepared within the three week PSR adjournment stage.

A 6 month ATR would normally be considered sufficient time to complete a treatment plan in the community, although residential rehabilitation or detoxification may require a longer period. The recommendation is that generally ATRs are made for no more than 6 months with a longer period of supervision or other requirements, where appropriate.

Report writers should generally only make proposals for ATRs when the case has a risk/needs profile equivalent to tier 2 or above and the requirement should always be accompanied by a supervision requirement.

Offenders not assessed as suitable for an ATR or who decline consent to an ATR should be considered for alternatives, which might include a community order with an activity requirement to complete extended brief interventions or/and a programme requirement for ASRO/OSAP if the normal criteria for this option is met. It should be made very clear to offenders who are not prepared to consent that any requirement(s) imposed instead of an ATR are likely to be as restrictive and equally punitive.

It is important that PSR authors agree any other requirements that they are considering proposing with those probation staff managing ATRs. Similarly, probation staff should liaise with treatment providers regarding any additional requirements that are being considered, especially the inclusion or otherwise of a substance misuse accredited programme.

Where high intensity orders are proposed for women, PSR authors should take account of the circumstances of individual women, particularly in relation to child care needs and transport. The sentence plan should reflect those needs and communication between the OM and the treatment provider will be crucial in delivering the order.

Contents of PSR

In addition to the requirements set out in National Standards, a SDR or FDR recommending an ATR should include:

- the results of assessments undertaken (OASys, alcohol screening tool e.g. AUDIT and triage/comprehensive assessment) indicating that the offender is dependent upon alcohol and that this dependency requires and may be susceptible to treatment
- a treatment plan, including the type of treatment (residential or non-residential), the name and address of the provider and for non-residents suggested intervals of treatment, if appropriate
- evidence that arrangements for this treatment are in place or can be put in place post-sentence

- a signed statement from the offender to confirm that the requirements of the order and the consequences of a failure to comply have been fully explained by the responsible officer, that he fully understands these and that he is willing to comply with the order and consents to the order being made
- the suggested length of the ATR taking into account the views of the provider
- an indication as to when the ATR will start (including, where known, the date of the first appointment with the treatment provider and the date of the first appointment with the offender manager) and, if there is likely to be any delay, the work that will be done with the offender in the interim
- any anticipated sequencing with other requirements of the order

Sentencing Guidelines

Advice on the use of ATRs and alternative requirements within community sentencing to address alcohol related crime was included in the definitive guideline on *Theft and Burglary in a building other than a dwelling* issued by the Sentencing Guidelines Council (SGC) in December 2008. The guidelines state that:-

'Many offenders convicted of acquisitive crimes are motivated by an addiction, often to drugs, **alcohol** or gambling. This does not mitigate the seriousness of the offence, but an offender's dependency may properly influence the type of sentence imposed. In particular, it may sometimes be appropriate to impose:

- a drug rehabilitation requirement (which can be part of a community order within all the community sentencing bands from low to high seriousness), or
- **an alcohol treatment requirement (for dependent drinkers), or**
- **an activity or supervision requirement including alcohol specific information, advice and support (for harmful and hazardous drinkers)**

as part of a community order or a suspended sentence order in an attempt to break the cycle of addiction and offending even if an immediate custodial sentence would otherwise be warranted.'

These guidelines have a wider applicability than simply for cases involving acquisitive crime.

It is important to keep a close eye on the concordance rate to check if the ATR and other requirements within which alcohol related interventions can be delivered are being used 'appropriately' by the court in accordance with the SGC guidelines. Areas/trusts will need to address any issues via their court liaison arrangements.