Compliance and enforcement

OMs have a duty to provide effective and timely enforcement of alcohol treatment requirements (ATRs), other requirements involving the delivery of alcohol related interventions and licence conditions.

Existing National Standards apply in respect of attendance and behaviour. The order is taken as a whole for the purpose of breach, with an unacceptable failure to comply in relation to any requirement counting as one unacceptable failure to comply with the whole sentence. A failure to report etc. is considered as an unacceptable failure to comply only once in respect of any one day, regardless of the number of contacts arranged for that day.

All enforcement decisions should be discussed with the treatment provider(s) i.e. acceptable/unacceptable absences and decisions regarding whether or not to propose revocation or to continue the order. This may have more significance with ATR cases, as the breach may be in respect of another requirement and not specifically about treatment.

There may be differences in opinion regarding the proposed outcome of breach proceedings between probation and treatment providers. If this is the case, any unresolved differences in opinion should be taken to the respective line managers. However, in all cases, offender managers (OMs) have the overriding decision in matters regarding enforcement.

Protocols should be developed between probation and treatment agencies regarding the information required for breach purposes e.g. evidence of attendance. Further information about what should be included in these protocols is contained in *Information sharing protocols* within the *Delivery of interventions* section of this guidance.

Treatment staff are required to report all contacts with the offender or when the offender fails to report to the OM on the day/within 24 hours of the appointment. The OM will log on the case management system all failures to attend or other unacceptable failures to comply e.g. offenders who are not in a fit state to adhere to programmes due to being under the influence of alcohol and/or are disruptive as a result of being inebriated and, where appropriate, instigate breach proceedings in line with National Standards. The specialist alcohol liaison workers/case managers will be required to provide Section 9 witness statements and may on occasions have to attend court to give evidence if the breach is contested.

Treatment provider staff may be quite apprehensive around court appearances in breach cases. Areas/trusts may wish to consider developing a memorandum of understanding around ATRs setting out the roles and responsibilities of all agencies involved in delivering interventions. This could be supported by an inter-agency training day where probation prosecutors attend and facilitate a role play around the type of questions a staff member would be asked. This approach is being rolled-out across London Probation Area for DRRs where it has been well received and reduced the anxiety of

staff who may be summoned to court to testify to an offenders missed treatment appointment.

Only appointments detailed within the sentence plan are enforceable. Where services are not delivered under a contract/service level agreement (SLA) managed by probation and there are no protocols with the various treatment providers to provide evidence in breach cases, appointments do not count towards National Standards and are not enforceable. If an offender does not co-operate with these non-enforceable appointments but is otherwise compliant and therefore cannot be breached, the OM will need to take a view whether treatment needs can be met without the non-enforceable elements. If not, the order should be returned to court for the ATR to be revoked on the basis that it is unworkable.

Section 220 of the Criminal Justice Act 2003 (CJA 2003) prescribes that the duty of offenders to keep in touch with their OM as directed and notify the OM of any change of address 'is enforceable as if it were a requirement imposed by the order'.

The use of small voluntary sector organisations and the purchasing of sessional time can make monitoring and enforcing attendance extremely problematic where there is limited capacity within providers due to prolonged periods of staff sickness and/or turnover. This may have implications for the willingness and confidence of the courts to impose new requirements and render many existing requirements unenforceable for a period of time. Where orders cannot be properly monitored and no alternative arrangements can be put in place, the order may be considered unworkable and returned to court.

There may be instances where offenders on an ATR present at their first treatment appointment – often many weeks after being sentenced - reporting either not drinking or experiencing any problems with alcohol. An individual, offender or otherwise, cannot be compelled to engage in any form of alcohol or drug treatment. However, the pre-sentence report (PSR) should contain an outline sentence plan, including the type of treatment to be specified in the order based upon the outcome of the specialist assessment, and a signed statement from the offender that he/she is willing to comply with the ATR. Under the terms of the court order, the offender should attend for treatment as instructed in accordance with the treatment plan and breach action can be taken for unacceptable failure(s) to comply with that treatment.

If at any point in the order the OM believes the offender may no longer need treatment, he should ask the provider to undertake a further assessment of the offender's condition. Following this the OM and provider should sit down and discuss the offender's susceptibility to, suitability for and response to treatment and agree whether the treatment agreed between them following assessment at the PSR stage continues to be appropriate. Should they be of the opinion that the offender does not require further treatment or needs different treatment or is not susceptible to treatment, the provider **should** make a report in writing to that effect to the OM, and the OM **should** apply to

the court responsible for the order for variation or cancellation of the requirement under Schedule 8 Part 4 paragraph 18 (1) of CJA 2003.

Neither the OM nor the provider should act unilaterally. Where there is disagreement, if raising this through the line management chain doesn't have the desired effect in forging a consensus, the OM could make the relevant reservations known to the court if receipt of a report from the provider requires an application for the variation or cancellation of the requirement i.e. the OM does not concur with the views expressed in the provider's report for x or y reasons and has tried without success to resolve the differences but has made the application because of the obligation to do so under Para. 18(1). In these circumstances, the OM may be able to find an alternative provider willing to provide comparable treatment (if available) or subject to the outcome of the court proceedings have to accept that the requirement (not necessarily the order) is now unworkable.

Breach

Under CJA 2003, a court cannot take 'no action' on a breach or use a financial penalty as a means of dealing with a breach. It can only amend the community order so as to impose more 'onerous' requirements or revoke and re-sentence.

The Act does not stipulate or give any guidance on what 'onerous' means. In effect, it could be an extension to current requirement(s) or the imposition of an additional requirement(s), within the legislative restrictions on the operational periods allowed for each type of requirement and the overall length of the order.

If the court revokes the order it can impose a custodial sentence of up to 51 weeks even if the original offence was not punishable by imprisonment.

The removal of a fine or 'no action' as options for breach may have a significant impact on the ATR target group.

The proposed outcome of the breach should be based on an offender's compliance, response to and progress on an order and the point in the order where the breach occurs.

OMs should not generally recommend to the court that the ATR be revoked and the offender re-sentenced on the first or second breach, unless of course the offender indicates he/she will not comply with the order and there are significant risk issues or the order is clearly not working. This is consistent with Sentencing Guidelines Council (SGC) advice that:–

'Custody should be the last resort, reserved for cases of **deliberate** and **repeated** breach where all reasonable efforts to ensure that the offender complies have failed'.

The SGC also advise that 'there may be cases where the court will need to

consider re-sentencing to a differently constructed community sentence in order to secure compliance with the purposes of the original sentence, perhaps where there has already been partial compliance or where events since the sentence was imposed have shown that a different course of action is likely to be effective.'

OMs should deal with breaches where the order could be allowed to continue by proposing:-

- One of a residence, prohibited activity, curfew or exclusion requirement.
- Any other requirements, if relevant, or
- An extension in the length of one or more of the original requirements (if this is an ATR the offender should consent to any amendment).

The length of any proposed extension to a requirement should be commensurate with the seriousness of the breach e.g. a very short extension for a minor breach.

Any amendment to the requirements should not exceed the maximum length available for that particular requirement e.g. an ATR cannot be extended beyond 3 years (2 years for suspended sentence orders).

An ATR may be appropriate for breach of lower level interventions following escalation in drinking.

In some areas/trusts breach reports have been used to prove the breach as well as propose options for sentencing should the offender plead guilty or be found guilty. This may be supplemented by a short oral report. Areas/trusts are encouraged to adopt this practice which avoids further adjournment.

Self-reported proof of attendance at Alcoholics Anonymous

The chit system has been established in Alcoholics Anonymous (AA) as an approved mechanism for members to provide self-reported proof of attendance to an outside authority, such as the probation service. The offender asks for a chit from the chair of an AA meeting to give to his/her OM to show that (s)he has attended.

Not all AA inter-groups have been willing to adopt the chit system, however, because they view it as collusion with the probation service and, even where a mechanism for monitoring attendance exists, OMs are unable to obtain feedback regarding the offender's progress because this would run counter to the anonymity of engagement with AA.

Appointments at AA are not enforceable as part of a requirement of a court order because an AA member cannot inform on another member, so could not give evidence in court if the offender was breached, for example, for non-attendance. Where appropriate, however, OMs should refer offenders under

statutory supervision to AA, to supplement other treatment delivered under the terms of a community sentence or post-sentence for ongoing care and support, which can be vital to achieving a successful outcome in the long term.

Court reviews

Unlike the DRR, court reviews are **not** applicable to the ATR as part of a community order but the court has discretion to decide that a suspended sentence order be subject to periodic review, including those with an ATR[1].

1 Section 5.6 of the *National Implementation Guide* provides advice on Reviews of Orders.