

Liverpool Crown Court



## Guidance Note # 2/2023

# Intensive Supervision Court Pilot

(with effect from 26 June 2023)

### Purpose

The purpose of this guidance note is to provide an overview for practitioners of the new 'Intensive Supervision Court' pilot which is due to commence at Liverpool Crown Court on 26 June 2023. It provides information about the particular type of Intensive Supervision Court that will operate at the QEII, including a description of the approach we are going to take and the procedure we intend to adopt.

### General matters

- ❖ The scheme for intensive supervision court (ISC) pilots at certain selected court centres was introduced by The Police, Crime, Sentencing and Courts Act 2022. This Act contains provisions which give ISC courts additional powers in relation to community orders and suspended sentence orders.
- ❖ Liverpool Crown Court has been selected to pilot a substance misuse ISC. Other models of this type of approach are being piloted in other parts of the country – such as the Women's ISC at Birmingham Magistrates' Court – but at the QEII we are concerned with offenders whose repeated crimes are in some way linked to their addiction to alcohol or drugs.

- ❖ An ISC is a type of ‘problem-solving court’<sup>1</sup> A number of international jurisdictions have been successful in reducing reoffending and the use of custody by establishing problem-solving courts, particularly in relation to offenders with substance misuse issues, based on the US drug court model that has been in operation for over 30 years.
- ❖ The Substance Misuse ISC is intended to provide an intensive community order or suspended sentence order as a robust and rehabilitative alternative to short custodial sentences. It will combine intensive supervision and interventions to address underlying issues linked to offending, delivered by a multi-agency team. The order will be overseen by a designated ISC judge who will hold regular court-based reviews of progress and can use clear, consistent, and graduated privileges and sanctions in response to compliance and progress.
- ❖ What distinguishes this approach is how it brings together community treatment and services, with the court – and more specifically the judge – operating as a principal mechanism for encouraging a reduction in substance misuse and reoffending. Through regular judicial monitoring, the aim is to deliver specialised community sentences which are designed to change behaviour and hold offenders accountable.
- ❖ The Substance Misuse ISC has a broad range of aims covering justice, health and wellbeing, including:
  - to reduce the frequency and harm of re-offending
  - to reduce drug and alcohol use which is linked to offending and facilitate an offender’s recovery
  - to increase offender engagement and compliance with their community sentence

---

<sup>1</sup> <https://justiceinnovation.org/sites/default/files/media/documents/2019-03/problem-solving-courts-an-evidence-review.pdf>

<https://justiceinnovation.org/publications/delivering-smarter-approach-piloting-problem-solving-courts>

<https://justiceinnovation.org/publications/problem-solving-courts-guide-practice-united-kingdom>

- to reduce the use of short-term custody, and
  - to increase confidence in more robust community options, compared to standard court processes and disposals, particularly (though not exclusively) for repeat and prolific offenders.
- ❖ It is hoped that these aims can be achieved by using the following new measures that will be trialled during the pilot:
- the ability to impose standalone drug testing requirements as part of a community order or suspended sentence order in instances where the individual does not meet the criteria for a Drug Rehabilitation Requirement (DRR) or where it is deemed suitable to have a combination of both the DRR and drug testing (i.e. for longer community orders)
  - the ability to attach reviews to all community orders and suspended sentence orders, which can be increased or decreased in frequency in response to the individual's compliance and progress
  - the ability for a judge to initiate breach hearings in a review hearing where the court deems that the individual has breached their order
  - the ability to impose a short custodial sanction for up to 28 days, a maximum of three times over the course of the order, for non-compliance
- ❖ These provisions will be available to the judges at Liverpool Crown Court for an initial period of 18 months from 26 June 2023. Any orders made during the pilot period will continue to have the ISC provisions applied to them for the duration of the order (i.e. up to a maximum of three years for a Community Order).
- ❖ These additional powers complement the existing framework for sentencing provided by the Sentencing Act 2020. The court, when considering whether an ISC disposal is

appropriate, will always have regard to the statutory purposes of sentencing and will continue to apply existing sentencing guidelines.

## Guidance

### A Eligibility

1. Broadly speaking, the Substance Misuse ISC is intended for Defendants with a substance misuse need – which may form part of a broader set of complex needs – who are at risk of up to 2 years' imprisonment. The ISC is primarily a diversion from custody, and Probation and other agencies must consider the Defendant to be suitable for supervision and effective management within the community.
2. To be eligible for an ISC disposal, a Defendant must:
  - a) Be 18 years of age or older on the day of conviction
  - b) Be convicted of an offence that is linked to their substance misuse - such as, but not limited to, acquisitive crime, drug possession and supply
  - c) Be assessed by Probation and the treatment provider as having drug and/or alcohol misuse problems which are linked to their offending behaviour
  - d) Be resident in the city of Liverpool (with some exceptions, living within the postcodes L1 – L20, and L24 – L27)
  - e) Consent to the sharing of personal information between participating agencies/bodies and consent to treatment and engagement with service providers
  - f) Be motivated to address their problems and indicate a willingness to engage with the ISC programme

- g) Be willing to sign an ISC participation agreement during the PSR assessment stage.
3. A Defendant will not be eligible for an ISC disposal if they are suspected of being a member of or affiliated to an OCG; or the offence(s) involved is:
- a) A second or subsequent offence of possession of an offensive weapon in a public place
  - b) A second or subsequent offence of possession of an article with a blade/point in a public place
  - c) Threatening with an article with a blade/point in a public place
  - d) Possession of a corrosive substance or acid in a public place
  - e) A firearms offence
  - f) A sexual offence listed in Schedule 3 of the Sexual Offences Act 2003 and/or if the Defendant is already subject to the notification requirements of that Act for a previous offence.

## **B Assessment**

4. A decision about whether a case should be committed from the Magistrates' Court to Liverpool Crown Court for sentence will continue to be made in accordance with the Sentencing Council 'Allocation' guideline. In making this decision, the Magistrates' Court can take account of a Defendant's potential eligibility for an ISC disposal.
5. A decision about whether the Magistrates' Court should request the preparation of a pre-sentence report will be taken in accordance with CPD 3A.9
6. When a court (whether the Magistrates' Court or the Crown Court) requests the preparation of a PSR for a Defendant who is to be sentenced at Liverpool Crown

Court, a Senior Probation Officer (SPO) will identify whether the Defendant is potentially eligible for an ISC disposal. If the SPO identifies that the defendant is potentially eligible for such a sentence, the PSR assessment will be allocated to a Probation Practitioner within the dedicated ISC team.

7. The assessment of suitability is robust, and as part of this process a Defendant will be expected to sign a Participation Agreement. This explains the nature of the pilot and the requirements of an ISC disposal, should they be given such a sentence. The Participation Agreement makes clear that:
  - a) the final decision about the type of sentence to be passed will be made only by the judge, in accordance with the statutory purposes of sentencing and applying any relevant sentencing guidelines; and
  - b) a Defendant is at risk of a custodial sentence for all their offending if the judge decides that the ISC disposal is not an appropriate sentence, or subsequently if a Defendant fails to comply fully with the requirements of the programme.

## **C The ISC sentence**

8. During the period of the pilot, all judges at Liverpool Crown Court will have the power to impose an ISC sentence. However, only designated ISC judges will carry out the reviews that will be a requirement of every order. Ordinarily a Defendant will be reviewed by the same ISC judge throughout the course of the order, and the frequency of reviews will depend on a Defendant's level of compliance. It is likely that initial reviews will be held fortnightly, becoming monthly if sufficient progress is made.
9. A community order or suspended sentence order with an ISC 'package' will contain a combination of the usual community order requirements, with key additional ISC measures designed to provide intensive wraparound support to ensure that the factors which appear to drive a Defendant's offending can be addressed.

10. Because the fundamental purpose of the ISC pilot is to provide a rehabilitative, treatment-oriented, alternative to custody, a strong focus will be on requirements such as treatment requirements for drug and alcohol dependency and/or mental health needs. The public protection element of the order is also vital to ensure that the risk of serious harm and reoffending can be managed effectively in the community. This might be achieved through electronic monitoring or prohibited activity requirements.
11. All orders must contain at least one requirement imposed for the purpose of punishment unless the court also imposes a fine. In addition to requirements such as unpaid work or a curfew, the additional ISC measures of regular reviews and drug testing can also be regarded as punitive.
12. ISC orders will pay due regard to the particular needs of young offenders; female offenders; and offenders with mental disorders, developmental disorders, or neurological impairments.

## **D** **Reviews**

13. Following sentence and during the review process, the ISC judge will use a variety of privileges and sanctions to encourage and motivate effective performance by a Defendant. These will be applied in a procedurally fair manner.
14. Sanctions include the power to commit a Defendant to custody for up to 28 days, a maximum of three times during the course of the order.
15. Review hearings will typically be held on a Friday afternoon, and the format of the hearing will be directed by the ISC judge conducting the review. It is likely that a less-formal style of court appearance will be adopted to encourage active engagement by all involved.
16. A review report will be prepared for each review hearing.

17. Review hearings during the early stages of the order will always be in person at court. As the order continues and depending on the level of compliance and the personal circumstances of the Defendant (e.g. where there are employment or childcare commitments), the ISC judge may on occasions permit remote attendance.

## **E Breach**

18. Probation Practitioners and the ISC judges will recognise that successful completion of an order will often be marked by intermittent lapses or setbacks. Not all of these will constitute a breach or result in breach proceedings. A key consideration in assessing whether a failure to comply will be classified as a breach is whether it presents an increase in risk of causing serious harm or risk of reoffending.

19. During the pilot period at Liverpool Crown Court there will be two ways in which a breach can be initiated for non-compliance with an order:

- a) **Probation Service initiated**

Where a suggested breach is initiated by Probation, the standard practice for breach proceedings in the Crown Court will be followed. A Defendant will be summoned to a breach hearing, or an application will be made for a warrant if, for example, contact has been lost.

- b) **Court initiated**

New powers were added to the Sentencing Code by Schedule 14 to the Police Crime Sentencing and Courts Act 2022 to allow a pilot court to hold breach proceedings in respect of a community order or suspended sentence order. Section 217B to the Sentencing Code provides: *'If the court is of the opinion that the offender has without reasonable excuse breached a community order requirement of the order, the court may adjourn the hearing so that the court can deal with the case forthwith under paragraph ... 11 of Schedule 10 (powers of court to deal with offender on breach of requirement).'*



20. Where custody is a possible breach outcome (through the new power of committal where there has been a wilful and persistent breach, or as a result of revocation and re-sentence of a community order, or activation of the suspended sentence order) and/or a Defendant should have legal representation, the breach proceedings will normally be adjourned to a later date. Any adjournment is likely only to be for a short period and an addendum breach report will be prepared by the Probation Practitioner.
21. If a Defendant fails to attend the resumed breach hearing the court has power under paragraph 9A(2)(b) of Schedule 10 of the Sentencing Code to issue a warrant for their arrest.
22. There is provision under the Criminal Legal Aid (Remuneration) Regulations 2013 for an advocate and litigator to be paid a fixed fee for representing a Defendant at a hearing in respect of a breach of a Crown Court order.

## **Administrative support**

23. Administrative support for the Substance Misuse ISC will be provided at Liverpool Crown Court by a dedicated court coordinator.

Enquiries to do with the ISC should be sent by email to:

[ISC-LiverpoolCC@Justice.gov.uk](mailto:ISC-LiverpoolCC@Justice.gov.uk)

## **HHJ Andrew Menary KC**

Resident Judge and Honorary Recorder of Liverpool

1 June 2023