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International Journal For Court Administration

The Significance of the Judge within the Choices and Consequences and Prolific Intensive Schemes: International Lessons for England and Wales and Back again

ACADEMIC ARTICLE

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ABSTRACT

This research paper examines the significance of the judges in the problem-solving courts of England and Wales's Choices and Consequences (C2) and Prolific Intensive (PI) programmes using the lenses and language of therapeutic jurisprudence. These unique schemes mobilise an intensive combination of strict control measures (with a view to deterring people from reoffending) alongside a personalised package of rehabilitative support overseen by a judge in a problem-solving court. Our findings strongly indicate that the judge-led problem-solving court is the bedrock of the schemes. Acknowledging that this practice relies upon strong leadership from a judge as a community convener with the authority and profile to initiate and sustain the programme, this paper identifies the strengths and barriers that this finding may pose. Our data also points to the difficulties of achieving support for the model at all judicial levels. Readiness (or lack of) within judges in the future could hamper the prospects of both current and new schemes. Moreover, finding a judge with a susceptible personality lowers chances. The authors conclude that the UK's current punitive, rapid results ethos of the justice system is not working. The international problem-solving court movement has shown that long-term success often ensues when practices are embedded into a broader culture of rehabilitative justice supported by visible communities. By tapping into the broader international community, the key will be a changing cultural process to make keen and compatible judges easier to come by.

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KEYWORDS:
choices and consequences; prolific intensive; therapeutic jurisprudence; judicial leadership; judicial personality; problem-solving courts

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1 INTRODUCTION

This paper is the second in a series authored by our research team evaluating the Choices and Consequences (C2) and Prolific Intensive (PI) programmes. It is not necessary to go into detail about how the programmes work because this was done comprehensively in a 2014 report by the pioneering judge,[1] and was later summarised in our recent 2020 research.[2] However, to provide context, we will provide some core information below.

C2 and PI have been operating in two police forces in the English counties of Herefordshire and Bedfordshire since 2007 and 2011 respectively.[3] They tackle root causes of reoffending (in most instances, addiction) amongst people who, keen to reform, have a long history of prolific burglary.[4] The schemes are based on the following condition: if service-users fully disclose to the police all of their previous offending history (including unsolved crimes), in return, they can stay out of prison so long as they as they comply with the provisions of a (usually three year) Community Order under section 148 of the Criminal Justice Act 2003.[5] Provisions may include "Buddi"[6] and/or sobriety electronic tagging, regular drug and alcohol testing, education programmes, restorative justice, counselling, and/or alcohol and other drugs recovery programmes. Regardless of specific needs, all cases necessitate intermittent problem-solving court attendance.[7]

The deal offered to candidates enables unsolved crimes to be solved and comes into play when sentencing is deferred and the offender is released into the community.[8] Significantly, breach of the Order (including failure to engage in rehabilitation) risks enforcement of the original sentence inclusive of crimes previously undetected.[9] As such, given the prolificacy of the offending histories (many are three strike burglars automatically liable for three years imprisonment in accordance with sections 111(1) and (2) of the Powers of Criminal Courts (Sentencing) Act 2000),[10] non-compliance of the order is likely to result in a fairly long custodial sentence.[11] Theoretically, threat of sentence resurrection incentivises service-users to comply with (rehabilitative and other) conditions and deters new crimes from being committed, in turn reducing reoffending. By increasing the likelihood of new offences coming to light, the

1 Michael Baker, 'Choices and consequences – an account of an experimental sentences programme' [2014]. Crim. L.R. Issue 1 Thomson Reuters (Professionals) UK Limited.

2 Jake Phillips, Anna Kawałek, & Anne-Marie Greenslade, 'An evaluation of the Choices and Consequences and Prolific Intensive programmes in Hertfordshire and Bedfordshire' [2020] DOI: 10.13140/RG.2.2.24968.03842 Available from: https://www.researchgate.net/publication/344299206_An_evaluation_of_the_Choices_and_Consequences_and_Prolific_Intensive_programmes_in_Hertfordshire_and_Bedfordshire [Accessed 21 July 2022].

3 Baker [n 1]; Phillips, et al [2].

4 Ibid.

5 Criminal Justice Act 2003, Section 148.

6 The Buddi tag is an electric tag used for offender management to protect local communities.

7 Baker [n 1]; Phillips, et al [2].

8 Ibid.

9 Ibid.

10 Powers of Criminal Courts (Sentencing) Act 2000, Sections 111(1) & (2).

11 Baker [n 1].

programme is thought to increase the certainty and celerity of being caught.[12] Both programmes are highly localised and resource intensive, requiring considerable effort for all of those on the ground, including: the police, probation service, wraparound services, and judges. This means that they take just a small cohort of candidates at any one time.

The schemes sit under the auspices of the more dominant and well-known Integrated Offender Management (IOM) model of England and Wales, which provide an 'enhanced level of surveillance and control to a range of different types of offender, while also providing rehabilitation for those who are willing to accept help.'[13] However, what distinguishes C2 and PI from the standard IOM programme is the problem-solving court element (which tends not to be part of wider IOM schemes). This is considered the bedrock of the programmes, hosted in a Crown Court by a judge.[14] It is this aspect of the programme that will be explored throughout this research paper.

"Problem-solving court" is an umbrella term applied to any specialist court that makes a collaborative effort to cater for specific needs that have been evidenced to provoke and sustain recidivism.[15] The most famous members are: domestic violence, women only, community, veteran, mental health, family drug and alcohol, and drug courts, all of which tackle different areas.[16] A plethora of literature, mostly of international origin, details their successes.[17] The most heavily evaluated model is the drug court, which was created in response to Miami's congested criminal justice system caused by the crack cocaine epidemic in the late 1980s.[18] Coupling the then-emerging suite of research linking drug addiction to crime with their own experiences of repeatedly processing the same offending individuals, judges observed that repressive justice disposals (such as incarceration) could only provide short-term results. Innovatively, embryonically, and experimentally they setup a court trajectory that combined therapeutic treatment with criminal justice measures using their uniquely situated power and status in the justice system.[19] The drug courts would act as a pathfinder to

12 Baker [n 1].

13 Her Majesty's Inspectorate of Probation 'Integrated Offender Management: Effective Practice Guide' 2020 [2]. Available from: https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2020/02/Effective-practice-guide.pdf [Accessed 21 July 2022].

14 Baker [n 1]; Phillips, et al [2].

15 David B. Wexler and Bruce J. Winick, *Judging in a Therapeutic Key: Therapeutic jurisprudence and the Courts* (Durham, N.C: Carolina Academic Press 2003).

16 Jane Donoghue, *Transforming criminal justice?: Problem-solving and court specialization*. (Routledge, 2014); Erin Collins, 'Status courts' [2017] Geo. Law Journal, 105, 1481–1528; Arie Freiberg, 'Problem-oriented courts: Innovative solutions to intractable problems?' [2001] Journal of Judicial Administration, 11 (8); Michael Perlin, ''The judge, he cast his robe aside': Mental health courts, dignity and due process'. [2013] Mental Health Law and Policy Journal, 3 (1). 1–29.

17 Denise Gottfredson, Kearley Brooke, Stacey Najaka, and Carlos Rocha, 'How drug treatment courts work: An analysis of mediators' [2007] Journal of Research in Crime and Delinquency, 44(1), 3–3; Douglas Marlowe 'Research Update on Adult Drug courts' [2010] National Association of Drug Court Professionals; Eric Sevigy, Harold Pollack, and Peter Reuter, 'Can Drug courts Help to Reduce Prison and Jail Populations?' [2013] Sage Journals; KPMG Consulting, 'Evaluation of the drug court of Victoria. Government Advisory Services. Final Report.' [2014] Magistrates' Court of Victoria, 18.

18 Philip Bean, 'Drug courts USA' *Drug Link, Institute for the Study of Drug Dependence* (May/June 1995).

19 Peter Finn and Andrea K. Newlyn, 'Miami's 'Drug Court' A different approach' [1993] National Institute for Justice Available: https://www.ojp.gov/ncjrs/virtual-library/abstracts/miamis-drug-court-different-approach [Accessed 21 July 2022].

long-term change by tackling underlying addictive behaviours whilst diverting people away from the overburdened justice system more permanently.[20] A key part of this involves judges recasting their role in the courtroom from neutral arbitrator of law to one more similar to a therapist whilst retaining their powers to resentence upon breach. Part of this entails linking candidates to relevant services whilst striking up meaningful relationships with them by communicating in styles exhibiting empathy.[21] Now rolled out across the US and the globe more widely,[22] the evidence-base depicts good results for drug courts globally in terms of its main and peripheral aims.[23]

Whilst the problem-solving court movement evolved without any particular philosophical underpinning in mind (based mostly on the intuition and best practice of judges), it soon required a theoretical framework to support its radical departure away from mainstream jurisprudence[24] and began to operate under the auspices of therapeutic jurisprudence.[25] The therapeutic jurisprudence literature rationalises that legal rules, procedures, roles, as well as the law itself have therapeutic and anti-therapeutic effects on stakeholders, whether intentional or not, 'know it or not, like it or not'.[26] Its scholarship has examined how we can apply the law in a way that enhances rehabilitative, remedial and restorative outcomes.[27] As the success of the problem-solving court movement grew, therapeutic jurisprudence scholarly work enriched the courts' practical features, resulting in a symbiotic relationship. The therapeutic jurisprudence community – comprising academics, practitioners, and policymakers – now offers an arsenal of matured and actively researched guiding principles to aid delivery of court innovation programmes.[28] Returning to the inception of the courts, judicial motivation to launch new models has become a recurring theme for jurisdictions facing pressures and deficiencies including the UK.[29] Like the international problem-solving court movement, inception of C2 and PI was galvanised by judges' observations of the shortcomings of the justice system for reoffending cohorts.[30] This means that despite the current repertoire of practice, their origins tend to be piecemeal, spurred by judges' first-hand experiences of the shortcomings of the system.[31]

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20 Phil Bowen and Steven Whitehead 'Problem-solving courts: An evidence review' [2015] London: Centre for Justice Innovation.

21 Winick & Wexler [n 15].

22 Such as: Canada, Belgium, New Zealand, Israel, Australia.

23 National Institute of Justice, 'Overview of Drug courts' (NIJ 14 May 2012). <https://nij.ojp.gov/topics/articles/overview-drug-courts> [Accessed 21 July 2022].

24 Winick & Wexler [n 15].

25 Ibid.

26 David Wexler, 'Therapeutic jurisprudence: An Overview' [2000] Thomas M. Cooley Law Review 17 [3].

27 Winick & Wexler [n 15].

28 Ibid [15]; also see therapeutic jurisprudence in the mainstream blog post retrieved from: https://mainstreamtj.wordpress.com/2018/05/08/steps-towards-change-a-tool-for-judges-working-with-persons-with-substance-abuse-disorders-tj-court-craft-series-12/ [Accessed 21 July 2022].

29 Baker [n 1].

30 Ibid.

31 Ibid; Finn and Newlyn [n 19].

As will be shown, the narrative around the successes of problem-solving courts in England and Wales is different to the international picture.[32] This may in part link to the fact that research for the UK problem-solving courts, not least C2 and PI, is scant.[33] This gap led the Probation Reform Programme (an arm of the Ministry of Justice) to commission the last project to our team. It saw us tasked not only with helping to plug the identified research gap, but also to diagnose barriers preventing long-term success and comment on areas of good practice to conclude on prospects of replicability in the broader geographical landscape.

The current paper draws out our original aims, but this time developing an untapped theme from our dataset: the significance of judicial leadership (and the consequences if this were lacking). This paper's findings are intended to have practical rather than theoretical uses. We observe that court innovation relies heavily upon strong leadership from a linchpin judge. The fact that C2 and PI have always benefitted from ample and ongoing support from competent judges have made them a success. However, this is a double-edged sword and could pose problems for the longevity of the schemes. First, long-term sustainability depends upon continual recruitment of judges willing to chair the problem-solving court; this requires luck in finding a person with the amenable personal capital (such as experiences, norms, values, and belief systems) that are consistent with the ethos model. New start-ups, which further require additional support and approval from the senior judiciary, will rely on the same factor being present further up the hierarchy. Second and relatedly, success requires a judge with a personality that can engage, motivate, and encourage service-user compliance and recovery, which is not necessarily malleable through training, and is thus luck contingent. We suggest that the best chance of breaking down these barriers in the longer-term is a wholesale cultural shift in UK penal models. We begin suggesting ways this can be done, including reducing the chasm between the national and international contexts.

2 THE EVIDENCE SO FAR

2.1 POLICY AND RESEARCH: THE UK STATISTICS

England and Wales face persistent problems with recidivism. The latest statistics suggest that adult and youth offenders recidivate at a rate of 29.3% overall.[34] Adults released from custodial sentences of less than twelve months reoffend at a rate of 62.2%.[35] Proven reoffending rates have fluctuated between 26% and 28% since 2003. Nevertheless, there has been an overall decline in England and Wales's crime rates since 2007.[36] The fact that crime rates have fallen whilst reoffending rates climb makes recividists an interesting, albeit frustrating, cohort for policymakers, legislators, and government ministers. The realities of these statistics present serious issues and problems for society: for victims (who fall ill to this behaviour), wider communities (which become increasingly dangerous), legal practitioners (who have to continually

32 Phillips, et al [2].

33 Phillips, et al [2].

34 Ministry of Justice, 'Proven reoffending statistics quarterly bulletin, July 2017 to September 2017' (2019) National Statistics.

35 Ibid.

36 Ministry of Justice, 'Criminal justice statistics quarterly, England and Wales' (2017). National Statistics.

deal with this issue) and, of course, justice involved individuals themselves (who are being let down by a failing system). It raises questions such as: who are these individuals, what causes them to reoffend, and what can be done to support them to lead crime free lives?

A body of national and international research links criminal activity to drug use.[37] The UK literature suggests that around three-quarters of people in the criminal justice system have substance abuse problems[38] and approximately 60% of individuals arrested for most crimes test positive for illegal drugs under the Misuse of Drugs Act 1971.[39] More specifically, research shows that a large number of acquisitive crimes (such as: shoplifting, burglary, vehicle crime and robbery) are linked to addiction.[40] Evidence also suggests that 81% of arrestees using heroin and/or crack at least once a week reported committing an acquisitive offence within the previous 12 months (compared with 30% of other arrestees).[41]

UK statistical data show that there are gaps and deficiencies in regular sentencing models, a fact that is known to officials. In their latest response to the problem, the government released the 2020 'White Paper: a smarter approach to sentencing.,[42] where it pledged to:

> ...bring forward plans to pilot problem-solving courts, which will incorporate a number of evidenced problem-solving components such as regular judicial monitoring and the use of graduated sanction and incentives, for offenders with a high level of needs and often prolific offending behaviour. We intend to pilot these problem-solving court models in up to five courts.[43]

37 National Council on Alcohol and Drug Dependence, 'Alcohol Drugs and Crime' (National Council on Alcohol and Drug Dependence, 2015), <https://tinyurl.com/yy76h5ar> Accessed 6 June 2019; Phillip Bean *Drugs and crime* (Routledge, 2014). National Institute on Drug Abuse, 'Criminal Justice' (National Institute on Drug Abuse, 2014) <https://tinyurl.com/y289r7jy> Accessed 12 June 2019; The Scottish Consortium on Crime and Criminal Justice 'Making sense of drugs and crime: Drugs, crime and penal policy' (2003) <https://tinyurl.com/y4xtwfur> Accessed 12 June 2019; Douglas Anglin & and Yih-Ing Hser, 'Criminal justice and the drug-abusing offender: Policy issues of coerced treatment'. Behavioural Sciences and the Law, [1991] 9(3), 243–267; Tim McSweeney, Alex Stevens, Neil Hunt, Paul Turnbell 'Drug testing and court review hearings: Uses and limitations' [2001] Probation Journal 55(1) 39–53; Howard Parker & Perpetua Kirby 'Methadone maintenance and crime reduction on Merseyside' [1996]. Home Office, Police Research Group; Katy Holloway, Trevor Bennett, & Claire Lower, 'Trends in drug use and offending: The results of the NEW-ADAM programme, 1999–2002' [2004] Home Office; House of Commons; Health Committee. 'Public health: Twelfth report of session 2010–2012'. (2012. No. 1). London: House of Commons <https://tinyurl.com/y5hdh56a>Accessed 12 July 2019; Shadd Maruna, Making good: How ex-convicts reform and rebuild their lives. (Washington, D.C.: American Psychological Association, 2001). http://dx.doi.org/10.1037/10430-000 [Accessed 21 July 2022].

38 Susan Young, June Wells & Gisli Hannes Gudjonnson, 'Predictors of offending among prisoners: the role of attention-deficit hyperactivity disorder and substance use' (2011) Journal of Psychopharmacology.

39 Trevor Bennet and Katy Holloway, 'Drug use and offending: summary results of the first two years of the NEW-ADAM programme' (2004) Home Office.

40 Michael Gossop, 'The National Treatment Outcomes Research Study (NTORS) and its influence on addiction treatment policy in the United Kingdom' (2015) National Addiction Centre, Institute of Psychiatry.

41 UK Drugs Policy Commission, 'Reducing Drug Use, Reducing Reoffending' [2008] UK policy Commission <https://www.ukdpc.org.uk/wp-content/uploads/Policy%20report%20-%20Reducing%20drug%20use,%20reducing%20reoffending%20(summary).pdf> [Accessed 21 July 2022].

42 Ministry of Justice, 'A Smarter Approach to Sentencing' (2020) White Paper.

43 Ibid [n 42] [p12].

This statement appears sanguine for the future of British problem-solving courts. It further suggests that implementation will be in line with international understandings. However, the White Paper does not acknowledge that England and Wales have a chequered history in this field.[44]

In the 2000s, problem-solving courts in England and Wales appeared to have a strong place going forward. At the forefront were the six jettisoned drug courts, operated by magistrates and established as pilots by the Ministry of Justice from 2005 to 2008 as an attempt to mirror successful US frameworks.[45] However, over the course of 5 years, they slowly petered out with little explanation or justification.[46] Recent research found that conflicting priorities at state level (such as centralisation, privatisation, and austerity measures) overpowered the possibility for authentic practice.[47] However, this is not just true of the drug courts; two English and Welsh community courts were established and fell by the wayside within the same timeframe.[48] The most prominent example here was Liverpool Community Court, which was overseen by a district judge (Judge Fletcher) in a Justice Centre in Merseyside. Although no research has expressly considered causes for its downfall, available information suggests that this could be linked to the departure of the charismatic judge, Judge Fletcher, combined with similar uncompromising political forces at state level.[49] The departure away from what had once seemed like a strong trajectory in the 2000s was perplexing and unexpected, particularly so for international advocates with a keen interest given the successes delivered in their own jurisdictions.

However, there have also been some trailblazing pockets of success for England and Wales in this field. The Centre for Justice Innovation[50] recently published a national map to demonstrate where innovative criminal justice practice is being carried out.[51] This includes the fifteen English family drug and alcohol courts (FDAC), which – like similar programmes – are operated by charismatic judges. However, *unlike* similar programmes in England and Wales, FDAC has benefitted from high-profile research demonstrating success, a recent £15 million private reinvestment scheme to prevent them from being closed down, as well as expansion following their pilot period. These courts have also received special support from the Centre for Justice Innovation, leading the centre to be awarded the Family Law Community Interaction Award in

44 Phillips, et al [2].

45 Anna Kawałek, *Problem-Solving Courts, Criminal Justice, and the International Gold Standard: Reframing the English and Welsh Drug Courts* (1 January 2021). Abingdon: Routledge.

46 Ibid.

47 Ibid.

48 Ibid.

49 Center for Court Innovation, 'Judge David Fletcher, North Liverpool Community Justice Centre' (Center for Court Innovation, November 2005) (Accessed 1 July 2020); George Mair and Matthew Millings, 'Doing justice locally: the North Liverpool Community Justice Centre' Centre for Crime and Justice Studies. Retrieved from: https://www.crimeandjustice.org.uk/publications/doing-justice-locally-north-liverpool-community-justice-centre [Accessed 21 July 2022]. Liverpool Echo, 'Judge David Fletcher made a difference at the North Liverpool Community Justice Centre in Kirkdale' (Liverpool Echo, 21 December 2012) (Accessed 1 July 2020).

50 This is a UK-based charity who support evidence-based practice, disseminate, and conduct relevant research, influence policy and legislation, and work alongside practitioners.

51 See: https://justiceinnovation.org/mapping-innovation [Accessed 21 July 2022].

recognition for their input.[52] However, the fact that FDAC's journey has been rocky, with closedowns a near miss saved by independent financial bodies, furthers the argument that problem-solving courts have faced formidable challenges in England and Wales, even in their most successful and visible models.

Looking elsewhere in the England and Wales problem-solving court landscape, Manchester Magistrates' Court hosts a respective female and male problem-solving court as part of the broader drug rehabilitation requirement under sections 210 and 211 of the Criminal Justice Act 2003.[53] Recent research has appraised the strong leadership of the magistrates,[54] though prior to 2021 there had been no empirical evaluation for the men's court, which seemed to be operating in a bubble away from the national radar.[55] Across the UK, the centre's map of innovation points to other positive research outcomes within the youth justice problem-solving field.[56] Thus, successes in England and Wales in this area have been inconsistent with many schemes benefitting only from intermittent support.[57] It is against this backdrop that the ground-breaking work of the C2 and PI programmes (established around the same time) is highlighted, not least in terms of durability, where our research suggests that this could be due to the enthusiasm and competence on the part of local judges. This context also makes the publication of the recent White Paper 2020[58] particularly interesting.

2.2 CHOICES AND CONSEQUENCES (C2) AND PROLIFIC INTENSIVE (PI): LITERATURE REVIEW

Until recently, C2 and PI were relatively unknown both nationally and internationally.[59] Lack of evaluation is linked to their lack of visibility, although it is unclear whether lack of visibility has caused or is a consequence of the research gap. Either way, this points to lack of national understanding of the programmes. As previously stated, in 2014, Judge Baker provided a detailed overview of the sentencing process from the first-hand perspective of a working judge (and its pioneer), bringing some national publicity to the schemes, though not enough for them to be considered well-known.[60]

Elsewhere, a closed-accessed report from the Hertfordshire County Community Safety Unit quantitatively evaluated the extent to which key programme objectives had been met between 2007 to 2016 against tight measures of "hard" successes

52 LexisNexus Family Law [26 November 2020] https://www.familylaw.co.uk/news_and_comment/family-law-awards-winners-announced-in-virtual-awards-ceremony [Accessed 21 July 2022].

53 Criminal Justice Act, Section 210, Section 211.

54 Kawałek [n 45].

55 Ibid.

56 Duncan Lugton, 'Mainstreaming Youth Diversion' [2021] Justice Innovation Charity Briefing. Available https://justiceinnovation.org/publications/mainstreaming-youth-diversion [Accessed 21 July 2022].

57 Jane Donoghue, *Transforming criminal justice?: Problem-solving and court specialization.* (Routledge, 2014); Jenni Ward, 'The Return of 'Drugs Courts': Some Important Considerations' [The Justice Gap, 21 May 2021]; https://www.thejusticegap.com/the-return-of-drugs-courts-some-important-considerations/ [Accessed 21 July 2022]; Kawałek [n 45].

58 Ministry of Justice [n 42].

59 Phillips, et al [2].

60 Baker [n 1].

(such as recidivism and resentencing). However, only a small sample of 90 cases were analysed (itself reflective of the small number of partaking candidates).[61] Whilst this research reported a 75% reduction in offences for that period, a large proportion of individuals had had their sentence revoked (78%)[62] suggesting that results against rigid success measures were mixed. Unfortunately, we were unable to obtain more current data from the Justice Data Lab to update the evidence base using these benchmarks. Furthermore, peripheral successes were not captured by the measurements, thus giving little indication of the impact that the programme may be having on "soft" outcomes (e.g., relationships, homelessness, reduction (rather than complete cessation) of drug use, and employment).

Elsewhere, there is an unpublished process evaluation from 2015 carried out by a research team from Leicester University.[63] They indicated that a number of areas posed problems: a lack of brand identity, general strategy, and long-term goals; absence of guiding coalition amongst the multi-disciplinary services resulting in an "us and them" mentality between the police and probation services and; a blurring of roles causing confusion as to what each role of the practitioner entails.[64] An analysis of these data through the lens of Kotter's theory of organisational change concluded that synthesising a multidisciplinary team may be difficult when each organisation brings with it is own occupational norms and values.[65] Notably, when identifying barriers for success, we did not identify the same areas as problematic.[66]

Finally and most recently, our 2020 research sought to understand both facilitators and barriers to success to consider the possibility of wider implementation of C2 and PI in the English and Welsh probation landscape.[67] Through thematic analysis, six key themes emerged from our data: the need to reframe programme outcomes towards alternative measures of success (beyond rigid reoffending statistics); intensity of resources; communication and partnership working; personalising support; deterrence and; relationships between service-users and practitioners.[68] Our data suggested that there is considerable potential for rollout of this programme to other areas of the UK, which could have wide-ranging impacts, including reduced reoffending amongst drug addicted offenders, as well as creating therapeutic pathways for individuals seeking to make positive life changes.[69] We also identified a further theme that was not explored in that paper: the significance of the judge in the problem-solving court

61 CCSU 'C2 evaluation – from commencement of scheme (2007) to 12.06.16'. [2016] Hertfordshire: County Community Safety Unit.

62 Ibid.

63 Department of Criminology, University of Leicester, 'Hertfordshire Choices and Consequences (C2) and Bedfordshire Prolific Intensive Integrated Offender Management (PI) Evaluation' [2015] A report commissioned by the Hertfordshire and Bedfordshire Criminal Justice Boards and The Dawes Trust [unpublished].

64 Ibid.

65 Sam King, Matt Hopkins & Neil Cornish (2018) Can models of organizational change help to understand 'success' and 'failure' in community sentences? Applying Kotter's model of organizational change to an Integrated Offender Management case study. Criminology & Criminal Justice 18(3). SAGE Publications: 273–290. DOI: 10.1177/1748895817721274.

66 Phillips, et al [2].

67 Ibid.

68 Ibid.

69 Ibid.

on guaranteeing these successes. As such and in line with our previous research aims, we will consider the positive aspects of this key feature as well as whether there may be barriers replicating or sustaining it.

To summarise, despite the schemes being in operation for a considerable amount of time, there is still little understanding about them from a research perspective with much of the available evaluative data either unseen or hard to access. Since no literature for C2 or PI has paid special attention to the judge in the problem-solving court (in itself surprising given it is a distinguishing characteristic), this article plugs that gap by focusing exclusively on this component.

3 METHODS

The scholarly work of therapeutic jurisprudence informs this paper's evaluative framework. Although its fame was heightened through its affiliation with problem-solving courts throughout the 1990s, the therapeutic jurisprudence movement has been assigned new usages during its expansion.[70] In terms of its application to research methods and methodology,[71] the two-tiered 'liquid' and 'bottle' analytical framework is widely adopted, which can be used as a mechanism to explore the therapeutic proficiency and potential of legal settings. The 'liquid' element refers to the quality of practitioners' techniques, skills, skillsets, and methods of engagement, where insights are garnered by the cognitive behavioural sciences, including psychology, procedural justice, criminology, motivational interviewing, and social work.[72] The 'bottle' refers to wider structural factors such as: policy, organisational strategy, and legislation, which are harder to manipulate than is the 'liquid' element.[73]

Within this broader framework, we specifically use mixed and multi methods to collect data. The findings gleaned from all methodological vantage points are presented at 'liquid' and 'bottle' levels using the lens and language of therapeutic jurisprudence to understand our data.[74] First, we conducted semi-structured (qualitative) interviews with service-users, senior officials, and a variety of practitioners. The sample totalled 26 people and they were engaged through opportunistic and snowball sampling as follows. Following approval from the HMPPS National Research Committee, we recruited practitioners by contacting senior staff in the police and probation services via email. They acted as key intermediaries and provided us with contact details for the relevant practitioners, which enabled us to organise mutually suitable interview dates. Following our court observations, where we met some staff in person, we were able to identify and liaise with other practitioners willing to participate. Early interviews were conducted face to face in

70 Nigel Stobbs, Lorana Bartels & Michel Vols (eds), *The Methodology and Practice of Therapeutic Jurisprudence* (pp. 287–204). Durham, NC: Carolina Academic Press.

71 Ibid; Kawałek [n 45]; Anna Kawałek, 'a tool for measuring therapeutic jurisprudence values during empirical research' (2020) International Journal of Law and Psychiatry 71(101581) DOI: 10.1016/j.ijlp.2020.101581.

72 David B. Wexler & Bruce J., Winick law in a therapeutic key: developments in therapeutic jurisprudence (Durham, NC: Carolina Academic Press, 1999) http://www.austlii.edu.au./au/journals/CICrimJust/1997/9.pdf [Accessed 21 July 2022]; David B Wexler, 'New liquid in new bottles: the need to sketch a therapeutic jurisprudence "code" of proposed criminal processes and practices.' [2014] Arizona Summit Law Review, 7, pp. 463–480.

73 Ibid [Wexler, 2014].

74 Ibid.

confidential spaces at probation offices, police stations or in the court, whilst later interviews took place over the phone. We recruited service users primarily through their probation officers, who introduced us and organised dates, times, and venues for the interviews. Interviews lasted between thirty minutes to an hour and a half. All interviewees gave informed consent to participate, and interviews were recorded with permission and then transcribed. The breakdown of participants was as follows including two current judges and one retired judge:

- **Site 1 (C2):** practitioners: 6; service users: 7.
- **Site 2 (PI):** practitioners: 7; service users: 3.

For practitioners, we asked about how the project is implemented and administered, what works well and less well. Interviews with this group also explored how the project facilitates certain types of working, such as partnership working or desistance focused practice. The interviews with service users concentrated on their experiences of being referred to the project, benefits they have gained, and how they experienced being supervised by the court.

During the second phase of data collection, a researcher overtly undertook visual observations (both structured and unstructured) from the courtroom public gallery. At this level we focused on the interactions and behaviour of the judges. The structured part of the observations involved a quantitative method by implementing a series of standardised scales for empirically measuring therapeutic jurisprudence 'liquid' within problem-solving court jurisdictions. The tool has three scales comprising eighteen variables entitled: harnessing therapeutic support, engaging therapeutic dialogue, and inspiring therapeutic change.[75] These eighteen variables were arranged on a standardised protocol, filled in by the researcher for every case, structuring courtroom observations through a quantitative Likert measurement of 1–5, resulting in numerical data that warranted quantitative analysis. We did this by calculating the mean of scores given to each the eighteen variables across all cases to provide an overall statistical average of how well the judge had scored across each of these benchmarks. This could give us mean results for the three respective skills. For more detail on the how and why the eighteen variables are organised on the three dominant skills in this way, please refer to the relevant paper, which used the statistical analyses of principal component analysis and Cronbach's alpha to validate the intercorrelations between the variables.[76] In addition, unstructured notes were taken during the observations by the researcher of qualitative variety, which substantiated the statistics using triangulation analysis. Results from qualitative (unstructured) and quantitative (structured) observations are presented in Tables 1, 2 and 3.

4 ANALYSIS AND FINDINGS FOR THE THERAPEUTIC JURISPRUDENCE "LIQUID"

Our participants considered the problem-solving court as the backbone of the schemes, which led us to conclude previously that 'this aspect of the programme should remain front and centre going forward.'[77] We have a significant amount of unpublished data to nuance and substantiate the finding, of which some key quotations are sampled below.

75 See Kawałek 2020 for more detail [n 71].

76 Ibid.

77 Phillips [n 2] [p 5].

> *It still keeps him motivated; it still gives him his little virtual pat on the back from the judge saying, 'you're doing this and look how your life has changed.' That means the world to them.*[78]

> *It's a good interactive environment. It is still very much, 'oh, I'm going to court, so I have to be on my best behaviour'. I think it works well. It also gives each officer an opportunity to sometimes catch up on what other people are doing.*[79]

> *To use a bit of an analogy, it's a little bit like when you're a child and you'd done something good or done something bad and you'd want to tell your parent about it, they all put it like that with them going to court, because very much if they make a mistake it will very much be, 'What is the judge going to say in court?'*

> *Court reviews can kick people back in to gear if needs be.*[80]

The importance of the court for supporting the key outcomes of the programme runs throughout many of the interviews. As evidenced, the court reviews were prized by all stakeholders (not least, service-users) for encouraging compliance through accountability to the original sentencer. The implication is that without regular check-ins with the judicial body within the problem-solving court forum, the programmes yield fewer successes amongst primary outcomes (reduced recidivism, resentencing and drug use). This indicates that the problem-solving court is a key facet of the scheme, and it should be replicated in the anatomy of any new models going forward.

Since our qualitative data indicated that the problem-solving court bolstered primary outcome delivery, a deeper evaluation of its key practical features ('liquid') is presented in the next sections. The purpose is to better understand some of the precise elements worth replicating. In line with our research aims, we comment on both strengths and barriers to advise on process delivery for wider rollout (both nationally and with some findings extendable to international courts).

4.1 THE COURT LAYOUT AND STAKEHOLDERS

Typically, service-users would attend court every 6 to 8 weeks.[81] Reviews would not include lawyers,[82] rather a multidisciplinary team including: the police, probation officers (who provided links to the wraparound services), and the judge (and on some occasions, family members) all attend court.[83]

> *[There is] nobody else is in the courtroom apart from the IOM team, myself, the defendant and my court clerk of course, but no other counsel or barristers, there's nobody else there and we have a chat.*[84]

78 Practitioner 1, interview data, [data file held with authors].

79 Practitioner 2, interview data, [data file held with authors].

80 Independent body, interview data, [data file held with authors].

81 Unstructured court observations [data file held with authors].

82 A lawyer would be there during breach and sentencing hearings, but not reviews.

83 In one review a participant's baby was brought in.

84 Senior Practitioner 2, interview data, [data file held with authors].

The unorthodox physical layout of the court, key for relationship-building between the judge and service-users, was not dissimilar to a restorative justice circle of support,[85] albeit within a more formal context.

> *They don't see it as them and me...Just the physical layout, we don't have a dock officer there when they come along, they come and stand closer to me than the probation officer is to me, they hand me the letter and they're within touching distance... we speak to each other, I'm speaking to him, he's speaking to me and all of a sudden, I wouldn't quite say it's friends, but we're in a completely different relationship.*

That said, the formality of the court setting itself acted as a powerful reminder that non-compliance could result in criminal sentencing. The judge's capacity during review to revoke an order or custodial sentence was understood to be a deterrent:

> *I mean having those regular reviews and that regular correspondence with the Crown Court judge that sentenced them to the scheme initially, it just holds them to account, it keeps them, well, hopefully motivated but if not then they know that actually ultimately the judge can take that away from them at any point but it's rewarding for them.*[86]

> *The judge could represent authority rather better and on a rather more distant basis which is quite helpful I think.*[87]

4.2 CONSISTENCY OF JUDGE

Another feature of the court review process was the consistency of judge where candidates saw the same judge each review. Consistency enabled judges to take a personalised and consolidated approach to reviews, and for meaningful relationships to flourish. Linking back to section 4.1, this created the right atmosphere for enabling key outcomes through a system of accountability.

> *I feel like I'm getting to know the judge now if that makes sense. Not on a personal level but he knows about me, he must know my body language, my facial expression... I wouldn't like going to a different doctor every time. I don't know. He'll know what I'm like. He knows me. He doesn't have to read a bit of paper to be able to know me.*[88]

> *I've got a relationship with her... She's seen me progress.*[89]

> *I can pass her in the street and say hello now, do you know what I mean. That's how good our relationship is with the judge.*[90]

> *I think you need the same judge, so they get to know you. If you had a different Judge every week they can't really evaluate how you're getting on.*[91]

85 Unstructured court observations [data file held with authors].

86 Practitioner 2, interview data, [data file held with authors].

87 Senior Practitioner 2, interview data, [data file held with authors].

88 Service-user 1, interview data, [data file held with authors].

89 Service-user 2, interview data, [data file held with authors].

90 Service-user 3, interview data, [data file held with authors].

91 Service-user 4, interview data, [data file held with authors].

Regularity of judge is a key international problem-solving court ingredient[92] shown to support and sustain relationships not dissimilar to those from therapeutic practices outside of the legal context (for instance: counselling, coaching, or even physical personal training and nutrition) requiring a consistency of practitioner. With that in mind, seeing a different judge for each review would have obvious detrimental effects.

The fact that this international component was adopted in C2 and PI is noteworthy because England and Wales have faced particular challenges in the area.[93] Highlighted by the 2011 research for UK drug courts, researchers found 'partial continuity', meaning that the same magistrate sat on the bench (comprised of two or three individuals) across two consecutive drug court hearings.[94] The researchers noted that this was often difficult to orchestrate due to other conflicting deployment priorities.[95] A similar finding was reflected in more recent research (from 2021) for Manchester's problem-solving courts, demonstrating that consistency of magistrates for the drug rehabilitation requirement reviews was nearly impossible to achieve due to court centralisation initiatives, resulting in service-users seeing a new bench each time they attended their review.[96] Significantly, the 2021 research illustrated that abandonment of this key feature made it impossible for service-users to strike up meaningful relationships with court officials, in turn depleting its positive effects in terms of both primary ("hard") and secondary ("soft") outcome delivery. This led an evidence-based report to recommend that Manchester problem-solving courts review this area.[97] Elsewhere, following closure of the drug courts, these difficulties led a UK critic to conclude that it was 'almost perverse…' that the UK had failed to respond to the strong international evidence base indicating the significance of this courtroom feature.[98] Both the 2011 and 2021 findings show that other courts in England and Wales have fallen significantly short of the ideal when compared to international courts.

Although C2 and PI are chaired by judges rather than magistrates and in this way are different to the Manchester courts, the UK backdrop highlights this as a strength of the schemes. This is especially true when considering that our data also suggested that consistency could be hard to arrange, requiring commitment, flexibility, and organisation from the judge chairing the review.[99] First, this suggests that there is (and

92 John Ashcroft, Deborah Daniels, & Domingo Herriaz, 'Defining drug Courts: The Key Components. U.S. Department of Justice' [2004]. Retrieved from: https://www.ncjrs.gov/pdffiles1/bja/205621.pdf [Accessed 21 July 2022]; Karen Stimler 'Best practices for drug court: How drug court judges influence positive outcomes'. [2013] (Masters Thesis, Minnesota State University-Mankato Mankato, Minnesota; Peggy Hora, 'Courting new solutions using problem-solving justice: Key components, guiding principles, strategies, responses, models, approaches, blueprints and tool kits.' [2011] Chapman Journal of Criminal Justice 2 (1), 7–52.

93 Kawałek [n 45].

94 Jane Kerr, Charlotte Tompkins, Wojtek Tomaszewski, Sarah Dickens, Roger Grimshaw, Nat Wright, and Matt Barnard 'The dedicated drug courts pilot evaluation process study' [2011] Ministry of Justice Research Series, 1. London: Ministry of Justice.

95 Ibid.

96 Ashcroft, et al [92].

97 Kawałek [n 45].

98 Ben Estep, 'Better Courts Case-study: West London Drug Court' [2014]. Centre for Justice Innovation. Retrieved from: https://b.3cdn.net/nefoundation/c5d489a84bc7c9aa59_cym6idhsz.pdf [2].

99 Senior Practitioner 1, interview data, [data file held with authors].

must be) impetus on the part of the C2 and PI judges to make it happen. This augments our broader thesis (presented largely in section 6) that an authentic programme requires enthusiasm and willing from judges on the ground. Secondly, it indicates that judges may have the power and autonomy to effect and sway necessary change (perhaps unlike magistrates). If successes are somewhat linked to the overall power of the presiding judiciary, this could explain why there have been inconsistencies in problem-solving court durability across the UK; courts chaired by judges are likely to have more autonomy compared to magistrates' courts that are governed more closely by the state. Given its importance for primary (reduced reoffending and drug use) and peripheral (therapeutic) outcomes, consistency of judge should be prioritised in models seeking specific replication of C2 and PI, as well the new courts from the White Paper, by empowering practitioners at local and community levels.

4.3 LETTER WRITING

A key courtroom engagement strategy was letter writing. Spearheaded by the pioneering judge and now carried out by the current circuit judges, judges asked candidates to write them a letter providing first-hand reflections on progress since the last review.[100] The content was not stipulated beforehand, but would often detail personal (for instance, family or relationships, children, housing, jobs, or hobbies) and formal progress (drug use and compliance), insights, thoughts and ideas, which helped the judge to substantiate the review hearing (alongside the formal report from the probation services which included drug test results).[101] Our data suggest that letter-writing was highly effective for developing empathy and rapport, as well as enabling the court reviews to become therapeutic spaces for open conversation and recovery. For judges, it also was evidenced to afford job satisfaction.

> *They write the letter they realise that actually she is interested, she does read the letter, she wants to know about it. 'You said you've got this job now in catering. Well, what did you learn?' 'Tandoori chicken.' 'Well, what are the ingredients?*[102]

> *I don't have them standing at the back of the court talking to me through a dock officer. I don't have any lawyers coming on the review. I have them write me a letter and they can say what they want, and the letter has as much or as little as they want.*[103]

> *I would try to pick up the encouraging elements first and try to develop them often by reference to the letter which I had which I would always refer to and always ask them about so we could develop a conversation.*[104]

> *They write it down. They have to reflect on it themselves and they come back and they have a chat with me and we try and get them back on that way.*[105]

100 Unstructured court observations [data file held with authors].

101 Unstructured court observations [data file held with authors].

102 Senior Practitioner 3, interview data, [data file held with authors].

103 Senior Practitioner 3, interview data, [data file held with authors].

104 Senior Practitioner 1, interview data, [data file held with authors].

105 Senior Practitioner 3, interview data, [data file held with authors].

> *I think it affects the offenders confidence in the programme if they feel that the judge doesn't understand something that's happened or hasn't been informed about something that's happened so I've learnt to be very, very clear to ensure that I've got all of the information before embarking on the review.*[106]

> *I've got a gist of how it's going and how they're feeling and it's great.*[107]

The letter-writing strategy corresponds to some international best practice, such as that of Magistrate Pauline Spencer, who presides in Victoria's (Australia) drug court. Spence asks service-users to write goals onto a staircase diagram, breaking them into smaller incremental subgoals (steps), to manage and track progress, whilst helping to develop personalised sessions.[108] Alternatively, Magistrate Michael King (from the same court) asks for a written form to be filled out with a solution-focused plan, which is devised and developed alongside the magistrate. Although national and international strategies chime with one-another, letter-writing itself is not commonplace within the practice of international problem-solving courts. However, our data indicates high impact and success. Its universal applicability is important, not only to new UK courts, but also to other problem-solving court jurisdictions. As therapeutic jurisprudence best practice and "what works" philosophy has been shared within its rapidly growing community, we propose that this technique could be added to that bank of resources.

4.4 INTERACTIONAL AND BEHAVIOURAL STYLES OF JUDGES

C2 and PI are couched in an ethos of honesty, openness, and transparency. Although this permeated each of its various parts, principally, this tone was cultivated by the interactional and behavioural styles of judges during court reviews. In our previous report, we summarised these as: authoritarian, personable, motivational, positive, and praise giving.[109] The judges spoke to participants humanely, with compassion, understanding, and respect (for more information, see Tables 1, 2 and 3):

> *[I] talk to them as human beings, engage in conversation, try and find out the good things that were going on and try to concentrate on those to emphasise them but at the same time be realistic*

> *You always know that there's a human element to every defendant that you're sentencing.*

Internationally, these are considered unusual, but constructive and powerful techniques, signalling to the probationer, often for first time, that someone in authority cares about their wellbeing and believes in their potential to succeed.[110] Echoed within our data:

106 Senior Practitioner 2, interview data, [data file held with authors].

107 Senior Practitioner 3, interview data, [data file held with authors].

108 Pauline Spencer. 'Steps towards change – A tool for judges working with persons with substance abuse disorders.' (2018, May 8). Retrieved from: https://mainstreamtj.wordpress.com/2018/05/08/steps-towards-change-a-tool-for-judges-working-with-persons-with-substance-abuse-disorders-tj-court-craft-series-12/ [Accessed 21 July 2022].

109 Phillips, et al [2].

110 Douglas Marlowe, 'Judicial Supervision of Drug-abusing Offenders' [2006] Journal of Psychoactive Drugs Nov. 3: 323–31.

> *A lot of these offenders have had precious little praise in their lives, and they certainly had precious little praise from a judge in a courtroom and hearing that I think can be very powerful for them.*[111]

> *They love it. It's just fresh to them to get praise for something, particularly in that setting. So, I think it can be a very powerful motivator.*[112]

> *I do think that they [Judges] are very, very good and I think that it's a key part of it really.*[113]

The forthcoming sections capture the core tenets of C2 and PI judge-craft using the bespoke measurement scales from the aforementioned therapeutic jurisprudence paper.[114] The findings are presented in line with the measurement systems and grouped variables from the 2020 therapeutic jurisprudence paper that developed this tool, and corresponding advice on how to conduct replicable therapeutic jurisprudence research.[115] Column A displays each of the eighteen comprising variables. Column B displays a quantitative average score of these interactions using the numerical data from our dataset, where replicating a method from existing research, we use a cut off point of "above 3" to represent a therapeutic score and "2 or below" to represent a non-therapeutic score; this transposes the qualitative wording from the 5-way Likert scale to present the data authentically, as it was recorded.[116] In the final row, we take an average of these to compare the three skills more broadly. Each of the three main skills are then given an overall mean score. Column C then displays qualitative data that is organised thematically into the eighteen variables, which includes unstructured notes taken by our research team during observations and direct quotes from the judges. Naturally, some data qualitative samples cut across variables and could be coded in more than one category; as such, this was cross-checked across individuals from our research team to ensure interrater reliability.

Measuring courtroom interactions against these benchmarks demonstrates strong results for the judges. The grids evidence that each principal skill was operated therapeutically (m = 3.75; 3.95; and 4.1). The most well applied skill was 'engaging therapeutic dialogue' (skill 2); this suggests that the conversation methods used by the judge, mobilised by its comprising variables, were very well implemented (as demonstrated by Table 2). The data demonstrate no concerning areas of weakness. Since our participants emphasised the importance of the problem-solving court, inclusive of judicial engagement styles, for outcomes delivery (see section 4.1), the implication is that the captured techniques help to reduce recidivism and drug use amongst the cohort. Although approaches in C2 and PI have been developed in a piecemeal fashion, placing these findings into an international context resonates with cross-jurisdictional problem-solving court engagement methods. These include voice,

111 Senior Practitioner 2, interview data, [data file held with authors].

112 Senior Practitioner 2, interview data, [data file held with authors].

113 Independent body, interview data, [data file held with authors].

114 Kawałek [n 71].

115 Ibid.

116 The options were: "strongly agree", "agree" "no opinion", "disagree", "strongly disagree".

Table 1 Data for Courtroom Interactions for Harnessing Therapeutic Support.

HARNESSING THERAPEUTIC SUPPORT (SKILL 1)		
COLUMN A	**COLUMN B**	**COLUMN C**
SUBSKILLS	**QUANTITATIVE SCORE**	**QUALITATIVE DATA**
The judge takes a holistic approach by considering service-users' broader life circumstances	4.6 (therapeutic)	**Quotes from judge:** "Have you made that appointment to see the doctor?". "I think this links to your negative thoughts". "You did well last month considering your circumstances". "I appreciate that you have an exceptionally difficult background and going into a programme with a stringent set of rules is difficult". **Observations by research team:** Emphatic references to the service user's partner as a factor in recovery. Strongly suggested that he should reconsider his partner's role in his life.
The judge is realistic about drug and/or alcohol problems	4 (therapeutic)	**Quotes from judge:** "I understand that this isn't easy at all". "Don't beat yourself up". "Occasional relapses are expected". "It has been a very difficult month". "Be emotionally and mentally ready for those bumps in the road and don't see it as a total disaster if you do make a mistake". **Observations by research team:** The judge changed the curfew to allow for the attendance of rehabilitation groups.
The judge has hope and faith that service-user will make progress	2.6 (non-therapeutic)	**Quotes from judge:** "It will remain difficult, but you can do it". "This is a very good start"
The judge listens to the point of view of service-user	3.6 (therapeutic)	**Quotes from judge:** "Is there anything else that you would like to raise with me?". "I am pleased that you have been more open with the team. I know that you find it difficult but look at the difference it's made to you".
The judge praises the service-user when they are doing well	4 (therapeutic)	**Quotes from judge:** "I am extremely encouraged to see this". "Congratulations on an excellent month". "That is an incredible achievement". "I am really impressed".
The judge is personable and empathetic	4.5 (therapeutic)	**Quotes from judge:** "You look a lot better". "I am very proud of you". "We are here for you". "I was concerned about you last time". "Prioritise yourself". "You repeatedly put yourself in positions of vulnerability".

(Contd.)

HARNESSING THERAPEUTIC SUPPORT (SKILL 1)		
COLUMN A	**COLUMN B**	**COLUMN C**
SUBSKILLS	**QUANTITATIVE SCORE**	**QUALITATIVE DATA**
The judge reiterates goals so that they are clear	4.6 (therapeutic)	**Quotes from judge:** "Call if you can't remember your goals". "Remember to write me a letter and engage with probation". "Please remember to consult the community rehabilitation company". **Observations by research team:** The judge was very clear on the goal setting part of the review and emphasised goals that were felt to be particularly important.
The judge motivates service-user	3.5 (therapeutic)	**Quotes from judge:** "Keep doing what you are doing". "You need to push yourself to do well". "Good luck". "Well done". "Keep it up". "I hope this is the first of many". "I am pleased with your work – just keep going".
Overall score:	**3.95 (therapeutic)**	

Table 2 Data for Courtroom Interactions for Engaging Therapeutic Dialogue.

ENGAGING THERAPEUTIC DIALOGUE (SKILL 2)		
COLUMN A	**COLUMN B**	**COLUMN C**
SUBSKILLS	**QUANTITATIVE SCORE**	**QUALITATIVE DATA**
The judge empowers service-user during conversation	3.8	**Quotes from judge:** "I urge you to continue to progress over the next month". "I know you want that as well" "I believe you can do this" "You need to make that choice". **Observations by research team:** The judge would hand some responsibility for goal setting over to the service-user.
The judge spoke slowly, clearly, and loudly	4 (therapeutic)	**Observations by research team:** The judge slowed down when the service-user asked for clarity. The judge spoke using clear English. The service-user stood closer in proximity to the judge enabling them to hear clearly.
The judge does not rush or interrupt when service-user is speaking	4.1 (therapeutic)	**Observations by research team:** The judge makes eye contact. The judge encouraged participation from the service-user.

(Contd.)

ENGAGING THERAPEUTIC DIALOGUE (SKILL 2)		
COLUMN A	**COLUMN B**	**COLUMN C**
SUBSKILLS	**QUANTITATIVE SCORE**	**QUALITATIVE DATA**
The judge is sincere	4.3 (therapeutic)	**Quotes from judge:** "I am glad it is going well". "You need to speak to your doctor about that". "The court's sympathy will not last beyond another breach". "You haven't given me cause for optimism... Prove me wrong". "Otherwise it will have to be a custodial sentence" **Observations by research team:** They clearly were having a sincere conversation after a bad month with the service-user saying, "anything you want, judge" when setting new goals.
The judge is attentive when service-user is speaking	4.3 (therapeutic)	**Quotes from judge:** "I completely understand". "That is a very good idea". "That is exactly what we need to hear". **Observations by research team:** The judge would look up from the written report when the service-user was talking. Judge nods to show understanding.
Overall score:	**4.1 (therapeutic)**	

Table 3 Data for Courtroom Interactions for Inspiring Therapeutic Change.

INSPIRING THERAPEUTIC CHANGE (SKILL 3)		
COLUMN A	**COLUMN B**	**COLUMN C**
SUBSKILLS	**QUANTITATIVE SCORE**	**QUALITATIVE DATA**
The judge allows participant to ask questions	4.4 (therapeutic)	**Observations by research team:** The judge would check if there were any remaining questions before finishing the review. The judge invites questions from service-user to be directed at any member of the team.
The judge is realistic when we set my goals for next review	4 (therapeutic)	**Quotes from judge:** "Pay your rent arrears". "Engage with your courses". "If you don't get the job, don't lose heart". **Observations by research team:** There was an understanding that progress will be slow, and so goals were set incrementally.
The judge helps build upon strengths	3.4 (therapeutic)	**Quotes from judge:** "Please continue to engage with the support". "I think it will be helpful for you to demonstrate a week free from alcohol and drugs".

(Contd.)

INSPIRING THERAPEUTIC CHANGE (SKILL 3)		
COLUMN A	**COLUMN B**	**COLUMN C**
SUBSKILLS	**QUANTITATIVE SCORE**	**QUALITATIVE DATA**
		Observations by research team: The judge frequently encourages them to see the positives and highlights things they can be proud of about their behaviour and progress. Various outcomes were explored to encourage (name) to consider how to manage them.
The judge makes service-user feel positive about the future	3.2 (therapeutic)	**Quotes from judge:** "I am very pleased that you got onto the programme" "This is a very good report" "Let's leave this on a positive". "Good luck for the next one". "I am encouraged by the progress over the last few weeks".
Overall score:	**3.75 (therapeutic)**	

validation, and voluntariness,[117] compassion and compassionate motivation,[118] and empathy, respect, active listening, a positive focus, non-coercion, non-paternalism, and clarity.[119] These grids be a useful toolkit for new judges in newly implemented courts. This is made possible by the standardised therapeutic jurisprudence measurement tool, which facilitates externally valid datasets and replicability by providing an international relevant means of analysis.

5 ANALYSIS AND FINDINGS: A SOLUTION WITHIN THE BOTTLE?

Having highlighted areas of the programme at practice level ('liquid'), we can turn our attention to the bottle, including areas that might thwart success going forward as well as possible solutions. As stated earlier in this paper, the 'bottle' refers to rigid, structural, and macro factors such as: policy and legislation and organisational strategy[120] or culture, expectations, and norms and values.[121] Having found few issues at practice level (the most problematic area being organising the reviews to ensure consistency of judge), our data suggested that most barriers to long-term success were systemic. We identify two main barriers at this level, which we will explore in the next sections.

117 Alison Lynch and Michael Perlin, 'Life's Hurried Tangled Road': A Therapeutic jurisprudence Analysis of Why Dedicated Counsel Must Be Assigned to Represent Persons with Mental Disabilities in Community Settings'. [2016] 35 Behav. Sci. & L. 353 (2017).

118 Anthony Hopkins & Lorana Bartels (2019). Paying attention to the person: compassion, equality and therapeutic jurisprudence. In N. Stobbs, L. Bartels, & M Vols (eds), The Methodology and Practice of Therapeutic Jurisprudence (pp. 107–129). Durham, N.C: Carolina Academic Press.

119 Susan Goldberg' 'Problem-solving in Canada's courtrooms: A guide to therapeutic justice' [2011]. National Judicial Institute.

120 Wexler 2014 [n 721].

121 Kawałek [n 44].

5.1 BARRIER 1: GAINING SUPPORT FROM JUDGES AT ALL LEVELS

Our participants perceived the judge as the linchpin of the programme. Not only did they conduct the reviews, but were uniquely situated to liaise with other core agencies such as: the criminal justice board, police, probation, and other members of the senior judiciary. Therefore, success of the schemes requires strong judicial leadership.

> *The judge… has lead responsibility for it all.*[122]

> *Being a judge it's much easier to have a higher profile within the county than being a police officer or operation officer so I'd get it across to other parts of the county.*[123]

This is reflected in the international literature, where the gold-standard of practice highlights that judge must be prepared to act as a community connector pulling together the various aspects of the programme.[124] The literature suggests that the unique authority and seniority of judges makes for effective leadership of community agencies and stakeholders.[125] However, acting in this capacity requires judges to fully buy into the model and its underpinning ethos. If we trace the first scheme back to its roots, as earlier sections of this paper showed, like the US courts, C2's inception was spurred by Judge Baker's own insights into the shortcomings of the justice system, particularly for tackling drug fuelled reoffending. This provoked fresh thinking about alternative and innovative justice methods – the same thinking that inspires participation amongst the current judges. As such, judicial engagement is sparked by an interest in rehabilitative justice:

> *What appealed to me was the concern I have that for a substantial number of offenders, that's particularly those with an established pattern of offending and reoffending, the existing structures of rehabilitation and reintegration into lawful society are under resourced… I was very keen to see what I could do to help.*[126]

> *I think it's strengthened my interest in doing what can be done, which is strikes me at the moment is precious little, to try to improve the availability and effectiveness of rehabilitation within the criminal justice system.*[127]

> *[It requires] a complete change of attitude and mindset.*[128]

However, this at least somewhat hinges upon personal attitudes, outlook, experience, and norms and values. Whilst the current judges clearly possessed conducive ideologies, our data highlighted that this was not shared by all potential practitioners:

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122 Senior Practitioner 3, interview data, [data file held with authors].

123 Senior Practitioner 1, interview data, [data file held with authors].

124 Ashcroft, et al [n 92]; Bruce Winick, (2003) 'Therapeutic Jurisprudence and Problem-Solving Courts' 30 Fordham Urb. L.J. 1055 (2003). Available at: https://ir.lawnet.fordham.edu/ulj/vol30/iss3/4 [Accessed 21 July 2022].

125 Ibid.

126 Senior Practitioner 2, interview data, [data file held with authors].

127 Senior Practitioner 2, interview data, [data file held with authors].

128 Senior Practitioner 3, interview data, [data file held with authors].

> *I'm a very keen supporter of the scheme. There were other judges who were not very keen supporters of the scheme, so didn't volunteer.*[129]

> *It's a difficult one to sell, I think, for the press. For this sort of a sentence, I would have sentenced you to six or seven years in prison. Instead I'm going to give you this IOM for three years, it's intensive, you've got to do all these things and that'll be the end of it.*[130]

More explicitly, our data suggests that many police forces across the country are keen advocates of the programme and wish to imitate C2 and PI in full within their local constabularies (that is, with the support of a judge willing to chair to problem-solving court and act as the programme linchpin). However, police forces cannot accomplish full fidelity, or full impact, without the support of keen circuit judges willing to chair the court. Without the problem-solving court, the IOM programme in isolation becomes more of a probation model with potentially fewer impacts on primary and secondary outcomes, and its distinction from other programmes in the UK becomes less clear.

Resistance from judges could be explained by a further underlying theme from our dataset: judges may feel that there are risks in chairing an unevaluated model considered disjointed from traditional penal norms and values. The role carries responsibility – it caters for prolific offenders who would otherwise be in prison. The judge is accountable for successful programme delivery and justifying why these individuals have been released back into communities mean that not all judges are willing to get involved.

> *It was our responsibility so if anything went wrong it was our heads that would roll.*[131]

> *He's sentencing outside of sentencing guidelines so they really are putting their head on the block really because if things do go wrong, it will be them that will be questioned in regards to, well, you knew this, why did you not resentence and why did you sentence to this programme?*[132]

> *A judge is responsible for what goes on in their own court and in sentencing terms no other judge other than by appeal can really become involved.*[133]

Although the above theme is worth noting, our data pointed more heavily towards the influence of judges' attitude and ideology in creating this barrier. This same barrier was also found amongst senior judges. To fully understand the significance of this in this context, there must be some appreciation of the relevant members of the judicial hierarchy in the UK under the Courts Act.[134] After magistrates, on the second rung of the ladder is the district judge; they are followed by the circuit (resident) judge (who currently chair the problem-solving courts discussed); on the next level are high court judges (responsible for a collective judges within circuit); above that are presiding and senior presiding judge for the circuit and; finally, there is the Lord Chief Justice, who heads the judiciary and acts as president of the courts of England and Wales under

129 Senior Practitioner 3, interview data, [data file held with authors].

130 Senior Practitioner 3, interview data, [data file held with authors].

131 Senior Practitioner 3, interview data, [data file held with authors].

132 Practitioner 4 Practitioner 3, interview data, [data file held with authors].

133 Senior Practitioner 3, interview data, [data file held with authors].

134 Courts Act 1971.

the Constitutional Reform Act 2005.[135] All judges are employed by the Judicial Office, trained at the Judicial College, and appointed formally by the Queen.[136] Linking back to the inception of C2 (which was the original scheme that proceeded PI):

> *In 2006 the senior presiding judge who was then Lord Justice Thomas (who subsequently became Lord Chief) was going to make a visit to St Albans. I had been in conversation with a chap who was Detective Chief Superintendent who had pioneered in Hertfordshire a sympathetic way of interviewing prolific offenders… and he come to me and asked how can we deal with these people without just giving them a very much longer sentence if they have all their offending taken into consideration? At that time there was a change in the law over delaying sentences which enabled conditions to be imposed during the period of delay to see whether someone behaved themselves and I thought we might be able to adapt that in order to make it credible to give them possibly a non-custodial sentence but I wasn't disposed to go ahead without getting the support of the Senior Judiciary so it was convenient that the senior presider was coming down.*[137]
>
> *He of course subsequently became the Lord Chief and he retained an interest and kept in touch throughout his time in other roles and so he was always a very useful support to have. So that's how it started.*[138]

Thus, in addition to Judge Baker being willing to chair the review court on the ground, start-up approval also came from (then senior presiding judge) Lord Justice Thomas. This means that senior members of the judiciary must also endorse any new scheme being proposed. However, this requires senior judges to also share the thinking behind the models.

> *His cynical take on it is this; if you commit a third domestic burglary then you will go to sentence for at least three years unless you happen to be in St. Albans, in which case we'll give you a nice cosy community service.*[139]
>
> *The present resident judge… does not approve… but he has always said he wouldn't in any way stand in the way of it, so there's not in any sense opposition from him, he's just a principled objection.*[140]

Although resistance from senior judges was evident and puts up barriers for wider rollout, this was not causing issues for programmes already in place so long as there was a judge willing to practice on the ground. However, new models will need to consider how to overcome resistance on numerous judicial levels. Put differently, under barrier 1, two issues potentially come into play – first, there must be a circuit judge willing to chair the review hearings; since these are not always easy to find, this could cause issues for the sustainability of current and future schemes. Second, although circuit judges have the freedom to be creative in their practice and can

135 Constitutional Reform Act 2005.

136 House of Commons Justice Committee, 'The role of the magistracy: follow-up Eighteenth Report of Session 2017–19 [2019] House of Commons. Retrieved from: https://publications.parliament.uk/pa/cm201719/cmselect/cmjust/1654/1654.pdf [Accessed 21 July 2022].

137 Senior Practitioner 1, interview data, [data file held with authors].

138 Senior Practitioner 1, interview data, [data file held with authors].

139 Senior Practitioner 2, interview data, [data file held with authors].

140 Senior Practitioner 1, interview data, [data file held with authors].

propose suggestions for change, establishing new models also relies upon additional support from those more senior in the judiciary. Ultimately, lack of will at any level boils down to the same factor: readiness of judges' attitude, experience, and outlook, which can be difficult to come by, especially in context of external pressures. C2 was first established during a time when there was political receptivity, not only locally, but at national level – when problem-solving courts in other guises were also being established.[141] This did not directly impact PI and C2 (whose impetus came from local judges rather than the state), but they did benefit from sitting comfortably with current politics. However, as seen, problem-solving courts have experienced intermittent enthusiasm and support in England and Wales, and have often been vulnerable to changes in the political weather.[142]

Although C2 and PI have so far been supported by enthusiasm at local level by judges, willingness can be influenced by the political environment and related cultural processes. In an empirical report from 2018, criminal justice researchers evidenced that support for justice innovation can fall into a vicious circle.[143] Culture itself is a complex nexus, but the report shows that political rhetoric conditions public perception into support for punitivism, which diminishes trust and confidence in smart justice, a process exacerbated by distorted media coverage.[144] Public perception then spurs politicians either keen to get elected or who fear demotion to react with overly punitive projection plans and conversations.[145] Through confirmation bias, this in turn compounds public perception that rehabilitative justice is not fit for purpose, which then continues to contour political rhetoric, and so the cycle continues.[146] Within a chicken and egg type scenario, it is hard to determine what comes first, but these processes have the power to shape language, beliefs, outlook, and norms and values, including those of practitioners. The 2018 research suggested that a rehabilitation revolution could be on the horizon for the UK if unhealthy discourse within public conversation and media coverage can be dislodged.[147] The recent White Paper may spark fresh interest amongst a cadre of new judges. However, in a politically charged and changing landscape, plans and thinking patterns can soon change. Not only does this mean that the establishment of any new schemes is precarious (for both extendable C2/PI models and the White Paper courts), but could pose issues for the sustainability of the current ones.

5.2 BARRIER 2: JUDICIAL PERSONALITY

A second barrier emerged at bottle level. As delineated by our grids (section 4.5), the competency of the judges at C2 and PI is stark. However, what makes these findings stand out is that judges had received no specialist training (beyond rudimentary

141 Kawałek [n 45]; Donoghue [n 16].

142 Ibid.

143 Moira O'Neil, Nathaniel Kendall-Taylor, & Andrew Volmert, 'New Narratives: Changing the Frame on Crime and Justice' (FrameWorksInstitute.org, 9 July 2018) <https://www.frameworksinstitute.org/publication/new-narratives-changing-the-frame-on-crime-and-justice/> [Accessed 22 July 2022].

144 Ibid.

145 Ibid.

146 Ibid.

147 Ibid.

judicial training) and were isolated from the shared best practice afforded by international collaboration.[148] As demonstrated:

> *A lot of the time it's about trying to work out for yourself through your own knowledge of the world and your experience of individual defendants what is going to work best to put those individuals at ease.*[149]

> *He was obviously at great pains to assure me he wasn't trying to tell me how to do the role, but he was just giving me some tips and hints and thoughts from his perspective which I did find extremely useful.*[150]

Although our evidence suggested that some best practice was shared at local level between successive judges, judges were chiefly relying upon their own well-developed interpersonal skills, intuition, and life experience to guide courtroom interactions. We can infer from that courtroom successes are, at least somewhat, contingent on the personality of the judge. This taps into a widely known critique from the international problem-solving courts, famously articulated by US expert, Professor Perlin: 'the success of the courts is overly-dependent on the personal charisma of the presiding judge'.[151] This factor could pose problems for the longevity of the schemes when judicial roles get reassigned or expire.

In the UK, under the Constitutional Reform Act 2005, the Judicial College (as part of the Judicial Office) is responsible for training judiciaries in England and Wales, although statistics suggest that funding has stifled opportunities in recent years.[152] Even if opportunities were plentiful, it is doubtful that (or at least unclear if) they would be channelled into training tailored for therapeutic court practice due to points already raised about politics, culture, and receptivity to justice innovation. This could of course stabilise over the next few years if pledges from the recent White Paper play out.[153] Regardless, our data suggested that judicial training (or lack of) would not necessarily create barriers to long-term success. This is evident both from the grids (from which judicial proficiency speaks for itself) and from interviews where participants stated that training would not add much value to what, they felt, was intuitive practice.[154]

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148 Ibid.

149 Senior Practitioner 2, interview data, [data file held with authors].

150 Senior Practitioner 2, interview data, [data file held with authors].

151 Michael Perlin 'There are no trials inside the gates of Eden': Mental health courts, the convention on the rights of persons with disabilities, dignity, and the promise of therapeutic jurisprudence (2013). In B McSherry, and I Freckelton. (Eds) Coercive care: Law and policy. Abingdon, Oxon: Routledge [214].

152 House of Commons Justice Committee, 'The role of the magistracy Sixth Report of Session 2016–17' [2016] House of Commons. Retrieved from: https://publications.parliament.uk/pa/cm201617/cmselect/cmjust/165/165.pdf [Accessed 22 July 2022]; House of Commons Justice Committee, 'The role of the magistracy: follow-up Eighteenth Report of Session 2017–19 [2019] House of Commons. Retrieved from: https://publications.parliament.uk/pa/cm201719/cmselect/cmjust/1654/1654.pdf [Accessed 22 July 2022]; Judicial College 'Strategy of the Judicial College 2018–2020' [2017]. Retrieved from: https://www.judiciary.uk/wp-content/uploads/2017/12/judicial-college-strategy-2018-2020.pdf [Accessed 22 July 2022].

153 Ministry of Justice [n 42].

154 Senior Practitioner 2, interview data, [data file held with authors]; Senior Practitioner 3, interview data, [data file held with authors].

This is not to say that training would not be successful if it were available;[155]. But it does suggest that a lack of training opportunities would not create a barrier because successful practice compels a certain mould of personality, which cannot be easily created or recreated even with good training opportunities.

Across the broader landscape, evidence suggests that compatible personalities do exist within UK judiciaries if only in small pockets, and despite the tendency for punitive sentiments to overshadow mainstream justice practice, theory, and policy. As shown earlier in this paper, the now closed Liverpool Community Justice Centre demonstrated early successes when Judge David Fletcher presided over hearings.[156] Judge Fletcher's approach, character, and attitude was reported to be comparable to famous therapeutic jurisprudence champions, as well as the judges at C2 and PI.[157] In 2008 and 2011, two research reports respectively found that magistrates from the now-closed drug courts were of a similar ilk.[158] Updating the evidence-base, recent UK research found that the pool of 25 magistrates from the Manchester problem-solving courts possessed therapeutic engagement styles.[159] Similar results were found for the FDAC models.[160] This handful of examples not only demonstrates that well-suited personalities exist, but also that there is interest in rehabilitation from UK judiciaries practicing on the ground (linking back to barrier 1).

Personality cannot be easily changed, and some people will be a better fit for the role than others (as is the case for any job). As problem-solving courts have illustrated, finding the right judicial personality will always be somewhat dependent on luck. Although this has not been a problem at C2 and PI so far, it could thwart sustainability. Issues already arise from getting judges on board with the schemes. When coupled with the added requirement for a therapeutic personality, this makes the current judges appear indispensable. This could leave programmes without a chairperson and without a problem-solving court, as well as causing problems for new models. Without cultural susceptibility, judicial personalities with the appropriate outlook become more difficult to find, and filling the shoes of competent judges is harder.

6 CONCLUSION

Our data demonstrated links between the judges' operation of the problem-solving court and primary outcomes (reduced drug use and recidivism). Most prominently, touching base with the original sentencer with revocation powers kept service-users

155 See recommendations for change to judicial attitudes to training in the family justice context of England and Wales: Rosemary Hunter, Mandy Burton, & Liz Trinder (2020) 'Assessing Risk of Harm to Children and Parents in Private Law Children Cases: Final Report'. Project report. Ministry of Justice, London, UK Available at: https://kar.kent.ac.uk/81894/1/assessing-risk-harm-children-parents-pl-childrens-cases-report_.pdf [Accessed 22 July 2022]; Rosemary Hunter & Adrienne Barnett (2013) 'Fact-Finding Hearings and the Implementation of the President's Practice Direction: Residence and Contact Cases: Domestic Violence and Harm.' Family Justice Council. Available at: https://kar.kent.ac.uk/35678/ [Accessed 22 July 2022].

156 [n 49].

157 Ibid.

158 Matrix Knowledge Group, 'Dedicated Drug Court Pilots A Process Report' [2008] Ministry of Justice Research Series 7/08. London: Ministry of Justice; Kerr, et al. [n 94].

159 Kawalek [n 45].

160 Judith Harwin, Mary Ryan, Jo Tunnard, Subhash Pokhrel, Bachar Alrouh, Carla Matias, & Momenian-Schneider 'The Family Drug & Alcohol Court (FDAC), Evaluation Project Final Report' [2011] Nuffield Foundation, Brunel University.

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on track through the dual mechanism of holding people to account and deterring them future offending. As such, we recommend that new schemes should ensure replication of the problem-solving court going forward as opposed to rolling out models that do not bear this key feature.

With this in mind, we turned our attention to barriers that might present themselves when attempting replication. The first barrier was gaining support from judges at different levels. Clearly success relies upon a collaborative effort on the ground, but it is those higher up (in the judiciary) that hold the power to imitate C2 and PI authentically by chairing the problem-solving court (practising judges), as well as granting start-up approval (senior judges). Like the international problem-solving court movement, inception of C2 and PI was galvanised by judges' observations into the shortcomings of the system, particularly for tackling repeat offenders. In both contexts, judges were in the position to empower, sway, and influence change, and have enough respect from the community to act as a convener. As such, inception, longevity, and durability of the courts are, at least somewhat, attributed to an enthusiasm generated at local level by key judicial figures able to light the problem-solving court flame and keep it alive. C2 or PI so far have not faced sustainability issues because of local enthusiasm amongst circuit judges, who not only possess conducive outlook and personality, but also the seniority, profile, and influence to keep things alive even when those around and above them are not on board. This can perhaps be contrasted with the magistrates from the England and Wales drug courts; since magistrates have far less power and sway in the overall planning of justice, this makes those courts vulnerable to close down if broader priorities change.

For the current schemes, resistance presented itself in judicial members across the board. For senior judges, though this was evident, it remained unproblematic so long as a judge was willing to practice on the ground. However, reluctance demonstrated by potential replacements could hinder prospects when current judges retire or move on. Likewise, for abridged versions of the model (e.g., the IOM), we found that although many police forces across the country keenly advocate and wish to add problem-solving courts to broader IOMs, this has been met with resistance from some judiciaries, making wider rollout impossible; schemes cannot accomplish full fidelity, or achieve full impact, without this support. Similarly, devising new schemes in the future probation landscape will require both circuit judges and senior judges to buy into the plan. Thus, shortage of keen judges across the hierarchy puts the trajectory for current, abridged, and/or future models on shaky ground. The key to long-term success will therefore be strengthening the pool of resources to ensure that good judges are replaceable, where a larger supply increases the chances of appointing suitable personalities.

Lack of will at any level boils down to the same source as the discontinued drug courts: conducive attitude, politics, perspectives, experience, and ideology, which must align with rehabilitative justice theory and practice. This can be difficult to come by, especially when met with broader social, political, and cultural headwinds. Indeed, institutional support within the criminological, policy, and legal landscapes has come in waves for England and Wales. This has prevented rehabilitation from absorbing into the fabric of the justice system. This negatively influences a nexus of attitudes, outlook, and norms and values that crystalise within cultural ideologies. However, this also shows that barrier 1 (gaining support from the judicial) may have the capacity to be positively reshaped. Success is contagious as the international

movement has shown;[161] raising credentials of the models through visibility, tangible successes, and education convinces and motivates engagement and helps develop cultural susceptibility.[162] As such, cultural change will break down barrier 1 by bringing confidence to judges endorsing and participating in the model.

The second barrier that we found is that courtroom successes are contingent on the personality of the judge. This potentially is less malleable than barrier 1 even with fruitful training opportunities to hand. This reinforces findings from the international problem-solving movement suggesting that courtroom successes almost exclusively rest upon judicial charisma. If judges can already be difficult to recruit (barrier 1), the aggregate effect is that barrier 2 further reduces recruitment options for suitable judges, which could pose problems for their trajectories. Therefore, under barrier 1, resistant attitudes and outlook towards court innovation can prevent success, but this can be reshaped and mediated through cultural processes. Under barrier 2, personality is less malleable. Deficits within both these factors can have direct impacts on shortages of judicial resources.

It makes sense that where there is no supportive culture for 'smart justice', practices do not become mainstream. When successes are less visible and practices less credible, engendering engagement becomes harder. However, when a system or method is perceived to be doing well, it follows that practitioners are keener, convinced, and motivated to contribute. We can infer that stabilising, embedding, and normalising a culture of justice innovation can create positive cycles that are able to shift perspectives by creating positive cycles that are able to shift perspectives and bring more judges on board. There will always been polarised views towards unorthodox practice – some (like the previous and current judges) will buy into the model, whereas others will not. However, somewhere in the middle there are individuals that are not yet sure – this pool should be capitalised on.

We propose that this can be achieved through cultural change, instigated by a stronger UK community supportive of this type of initiative. International evidence suggests that the convener role played by judges is a powerful and persuasive tool for engaging community stakeholders due to their unique and authoritative position.[163] Lack of national and international collaboration and outreach has not impacted C2 or PI negatively. However, as we have identified, there could be sustainability risks in the future. Although relevant communities do exist in the UK (such as the Centre for Justice Innovation, Transform Justice, the Justice Gap and TJUK.org) expanding these circles will be key.

We can learn a lot from the courts globally, which have benefitted from collaboration within supportive, reputable, and observable, communities often led by judges.[164] The starting point here could be building similar networks in the UK (many of which are already nascent). One mechanism for facilitating this has been proposed by co-founder of therapeutic jurisprudence, Professor Wexler, who recently called for

161 Winick & Wexler [n 15].

162 Winick & Wexler [n 15].

163 Ashcroft, et al [n 92]; Winick [125]; Stimler [n 92]; Hora [n 92]; Denise Gottfredson, Kearley Brooke, Stacey Najaka, & Carlos Rocha, 'How drug treatment courts work: An analysis of mediators' [2007] Journal of Research in Crime and Delinquency, 44(1), 3–3.

164 See work taking place here: https://intltj.com/#:~:text=The%20International%20Society%20for%20Therapeutic,workshops%2C%20and%20seminars%3B%20engaging%20in and https://mainstreamtj.com/ [Accessed 22 July 2022].

'Amicus Justitia Briefs', which are a 'new type of legal writing' designed to bring awareness to legal practices across the globe that possess therapeutic jurisprudence goals and orientation.[165] Briefs may take the form of longer or shorter blogs, articles, or manuals, but are intended to be short, snappy, practical, and accessible, rather than academic or theoretical.[166] With judges on board, England and Wales could engage in the following three-pronged process to stimulate national and international interest and outreach:[167]

i. Create the first Amicus Justitia brief that draws attention to the therapeutic orientation of the court (particularly the grids) to initiate international dialogue and to spark interest amongst colleagues.
ii. Exchange briefs with personnel from other national and courts globally.
iii. Continue to moderate and edit the original grids to incorporate the best practice of others whilst incorporating changing local issues and finetuning local practice.

This process could be mediated by the Therapeutic Jurisprudence in the UK Chapter, which is a specialist interest group that forms an arm of the International Society for Therapeutic Jurisprudence. Next steps could be developing the first Amicus Justitia brief, which could enclose the grids from section 4.5 and the letter-writing strategy. The UK Chapter will foster and forge international relations by sharing the second brief with the international body, which in turn raises the external profile of the courts.[168] Lessons from the international models show that collaboration can finetune and judges' own practice through self-reflection and learning, build externality, credibility, and reputation, and bolster communities to empower a broader shift in culture.

Official statistics suggest that the English and Welsh justice system is not working, particularly for people with problematic drug use. Confidence and efforts to supersede punitivism, including court innovation, have often been left wanting with many new attempts in the UK short-lived.[169] If legislators, lobbyists, and policymakers are unsure of and lack confidence in their own agendas and philosophies, a therapeutic solution stands little hope of longevity and becomes merely a fad that experts soon turn their back on.[170] Political pressures have also meant that policymakers have been keen to turn around quick results to reduce reoffending, which no problem-solving court programme, in England and Wales or otherwise, could reasonably achieve when accounting for the complexity of desistance and recovery narratives.[171]

Although delivery of the recent White Paper brings fresh possibility and promise, we must err on the side of caution; long-term success often ensues when practices are embedded into an infrastructure that is receptive to rehabilitative justice. An overhaul

165 David Wexler, 'The therapeutic application of the law and the need for amicus justitia briefs' [2018]. Arizona Legal Studies Discussion Paper, 18–18 [1].

166 Ibid.

167 Also discussed in Kawałek [n 45].

168 This is a specialist interest group that forms and arm of the International Society for Therapeutic Jurisprudence note: the Manchester courts are already seeking to do this). See: TJUK.org.

169 Kawałek [n 45].

170 Kawałek [n 45].

171 Kawałek [n 45]; Shadd Maruna, 'Making good: How ex-convicts reform and rebuild their lives' (Washington, DC: American Psychological Association, 2001). http://dx.doi.org/10.1037/10430-000 [Accessed 22 July 2022].

of that system will not happen overnight. Rather it, requires progress in smaller pockets. Anchoring the court within the international community might spark interest, enthusiasm, and understanding. This in turn might help not only with the recruitment of new and inspiring judges, but on a broader level could pave the way for a shift in the way that we administer justice in England and Wales. In return, the UK could offer the international courts their own insights and best practice, and the hope is that this research might provoke such collaboration.

ABBREVIATIONS

IOM: integrated offender management

C2: Choices and Consequences

PI: Prolific Intensive

FDAC: Family Drug and Alcohol Courts

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