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Therapeutic Jurisprudence: the Application to an England and Wales Review Court

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Therapeutic Jurisprudence: the Application to an England and Wales Review Court

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Abstract

Whilst the Therapeutic Jurisprudence ("TJ") paradigm and related movements have proliferated across jurisdictions worldwide, England and Wales has significantly lagged behind. This thesis examines the therapeutic quality of Manchester Review Court ("MRC") using TJ lenses. MRC is a specialist court in England and Wales, which possesses a problem-solving rationale by bringing offenders back for regular review of recovery and law-compliance on the core Drug Rehabilitation Requirement ("DRR") component. There is no detail of MRC in the accessible literature, no mention on the UK Justice Innovation website, not in the media, not in any policy document, nor is there a court handbook or website outlining objectives and expected practice. However, MRC arguably represents the remains of the six England and Wales Drug Court pilots, established during the early noughties, and which since appear to have been closed down. In the absence of available literature, the aim of this thesis is to provide a groundwork of knowledge to a significantly underexplored area. Positing both "wine" and "bottle" (Wexler, 2014) level research questions, it uses mixed methods (standardised observations, surveys, and interviews) as well as an enveloping ethnographic stage to answer the two-tiered questions within an overall qualitative genre. The methods are justified using the Critical Realism paradigm and data points are brought together using a triangulation rationale within a broader case study approach. One of the original contributions of this thesis is positing a new empirical tool to measure the therapeutic quality of the wine ("judicial interpersonal skills") within problem-solving court contexts. To do so, it uses Principal Component Analysis to arrange eighteen sub-skills on three measurement scales: "harnessing therapeutic support", "engaging therapeutic dialogue" and "inspiring therapeutic change". Implementing these scales for measurement of the "wine" data suggests that the magistrates' interpersonal skills at MRC were largely TJ infused and the most prominent of the eighteen sub-skills exhibited within their interactions were: "understanding the complexity of Alcohol and Other Drugs recovery", "motivating individual", "giving the offender a voice", and "setting realistic goals". However, extending the analysis towards the bottle (laws, provisions, rules, and procedures), the data indicates that the wine was operated within a significantly anti-therapeutic bottle. Where England and Wales' current criminal justice system is emphasising privatisation, centralisation, and austerity measures, the bottle remains unfriendly and is thwarting effective application of TJ at MRC. If MRC were repackaged in a way that subscribes to the current criminal justice climate without eroding other core values and priorities, this would invariably pave way for a more successful future for problem-solving court craft. This, in turn, could help in tackling deep-seated current social and human issues surrounding recidivism, addiction, and austerity.

I dedicate this thesis to my Mum, Claire Kawalek, and my Dad, John Kawalek to say thank you for their continuous love.

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"Behind every beautiful thing, there's some kind of pain" (Bob Dylan, Not Dark Yet).

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1 Chapter 1: Introduction

Whilst the Therapeutic Jurisprudence ("TJ") paradigm and related movements have proliferated across jurisdictions worldwide, England and Wales has significantly lagged behind. Through TJ lenses, this thesis examines the therapeutic quality of Manchester Review Court ("MRC"), a specialist court in England and Wales with a problem-solving rationale that brings offenders back for regular review of recovery and law-compliance on the core Drug Rehabilitation Requirement ("DRR") component under section 210 of the Criminal Justice Act 2003.

During the first substantive chapter (Chapter 2, Literature Review), I identify the prevailing literature gaps surrounding problem-solving court ("PSC") craft in England and Wales to form a scientific rationale for this project. The chapter also provides a strong theoretical basis, a history of the international Drug Courts ("DCs") and related PSCs, and then continues to discuss similar rehabilitative initiatives in England and Wales. The review begins by detailing England and Wales' current problems with drug related reoffending. It further details that a plethora of research suggests that drug addiction has a demonstrable link to a smorgasbord of recidivist crimes (shoplifting, burglary, vehicle crime, robbery) (National Council on Alcohol and Drug Dependence, 2015). If the aetiology of recidivist crime is drug addiction, this links to broader and long-standing questions: when addicts are caught up in the Criminal Justice System ("CJS") could this be a window of opportunity to intervene and rehabilitate them, and; could the CJS itself be a vehicle for recovery? Such questions anchor the thesis in a policy and practice rationale, demonstrating why alternative solutions to punitive criminal justice ("CJ") measures might be necessary for England and Wales. The review continues to detail the broad theoretical changes captured by the Rehabilitation Revolution ("RR"), including Therapeutic Jurisprudence ("TJ"). It offers discussion on the complex definition of TJ and its application to research methodology before demonstrating TJ's strong link to PSC practice worldwide, as modes for dealing with recidivist individuals, as well as conveying therapeutic experiences to offenders passing through the models. The review demonstrates that a traffic of literature illustrates successful delivery of the international DCs, then hones in on England and Wales to tell a different tale.

The literature surrounding England and Wales' DCs is thin, patchy and inconsistent (Chapter 2, 2.6). Like many rehabilitative approaches to criminal justice ("CJ") in England and Wales, DCs are a significantly under-researched, under-prioritised, and misunderstood area, where perhaps consequentially, perhaps causally, there has been little published empirical-based literature (Matrix Knowledge Group, 2008; Estep, 2014). Although the literature reports only quietly on England and Wales DCs, six pilots were alive in 2011 (Kerr et al, 2011), yet their success has differed significantly to that in international jurisdictions. The last piece of England and Wales-based empirical research was a process evaluation by Kerr et al (2011). However, since then, a series of newspaper articles have detailed their closedowns (Bowcott, 2016; Robins 2013; Gibbs, 2016). Moreover, since Kerr et al's (2011) publication, there have been significant changes to the surrounding landscapes, including but not limited to, four new justice secretaries under the current Conservative government alone, imminent withdrawal from the European Union, and significant austerity measures, cutbacks, centralisation and privatisation reforms to sectors that pillar DC sustainability. Alongside this, England and Wales appear to have been unreceptive to a RR due to deep-seated public, political, and therefore cultural, attitudes promoting punitive Criminal Justice ("CJ") measures.

MRC remains an England and Wales misnomer, and as the study progressed, it became increasingly uncertain whether it was the ghost of the predecessor Salford DC or an altogether different mode of PSC practice. Confusion on its definition was augmented by conversations with staff, some of whom believed it was a DC, others a review court. Of those that I asked, no practitioner at MRC had heard of the term "Therapeutic Jurisprudence". This tells a broader story surrounding the misunderstanding, inconsistency and vagueness of TJ and related practice in England and Wales, which I seek to bring to light, and perhaps somewhat rectify, through the original contributions of this thesis. It seemed to me that MRC had slipped through the cracks, and I use the following soundbite throughout this thesis for emphasis: there is no detail of MRC in the accessible literature, no mention on the UK Justice Innovation website, not in the media, not in any policy document, and nor is there a court handbook or website outlining objectives and expected practice. The only written material (in statute and relating to the DRR review process more broadly within section 210 of the Criminal Justice Act 2003 is remarkably unclear:

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"Drug Rehabilitation Requirement: Provision for Review by Court

(1) A community order or suspended sentence order imposing a drug rehabilitation requirement may (and must if the treatment and testing period is more than 12 months)—

(a) Provide for the requirement to be reviewed periodically at intervals of not less than one month,

(b) Provide for each review of the requirement to be made, subject to section 211(6), at a hearing held for the purpose by the court responsible for the order (a "review hearing"),

(c) Require the offender to attend each review hearing,

(d) Provide for the responsible officer to make to the court responsible for the order, before each review, a report in writing on the offender's progress under the requirement, and

(e) Provide for each such report to include the test results communicated to the responsible officer under section 209(6) or otherwise and the views of the treatment provider as to the treatment and testing of the offender".

Therefore, the purpose of this thesis is to provide a groundwork of knowledge within a significantly underexplored area to fill the current literature gap.

Although the following anecdotes appear to be complicated, they are important because they embody the ambiguity surrounding this type of practice in England and Wales. I first came across MRC through a site visit to what I believed at the time was Salford DC based on the limited (albeit outdated) England and Wales literature suggesting there was a Salford DC (Kerr et al, 2011). Under the UK court centralisation reforms (Courts Act 2003) Salford magistrates' court was relocated into the central Manchester magistrates' court. The main Manchester court was thus temporarily re-entitled "Manchester and Salford Magistrates'

Court". I assumed that Salford DC had also been relocated into Manchester magistrates' during the broader merge. When I arrived, I had a sense that the court in front of me, MRC (or perhaps Salford DC), faced difficulties, partly due to ambiguity within the literature on this subject, but also because it appeared to be devoid of many of the key DC components (National Association of Drug Court Professionals ("NADCP"), 2004). I became increasingly suspicious of its authenticity, although it appeared to be TJ-friendly, rehabilitation-focused and the magistrates exhibited therapeutic interactional styles. In 2017 and 2018, during the course of this study, further centralisation reforms took place, merging Bury and Bolton into the central Manchester magistrates' court, which resulted in a further name change to a more inclusive title: "Manchester Magistrates' Court". However, it is interesting to consider that if MRC is an altogether independent practice to the predecessor UK DCs, I discovered it accidentally through the main court's previous name that included "Salford" where one of the original DCs was housed. Moreover, if I had started this study a year later, I might not have discovered it at all. These confusions largely stem from the fact that MRC does not exist in the existing literature repositories.

It was clear that some practitioners believed they were operating the old Salford DC but without full power and capacity. One example is an interaction with an ex-Salford Legal Advisor new to MRC. When preparing for the review session, he was confused as to the whereabouts of the multidisciplinary team and asked me whether I was the drugs worker as I was data collecting. This raises a sense of MRC being perceived to be Salford DC relocated, but with lost authenticity following the centralisations. I also had a strong sense that the setting could not fairly be regarded a DC; a larger number and broader range of key personnel viewed it as a "review court", who were invariably individuals that had always worked at Manchester Magistrates'. Overall, MRC's definition was not straightforward, but what was clear was that the purpose, aims and objectives of the court had not been consistently communicated to staff, and I provide explanation on how we could define it in the final chapter (Chapter 7 "bottle"). As there is nothing at all in the literature about this court, I continue to emphasise throughout this thesis that MRC is an England and Wales misnomer.

Understanding MRC's definition is important because it clarifies the appropriate international research to apply for analysis and discussion, and to make suggestions to ensure coherent, successful and sustainable delivery. If MRC is a DC then it would be appropriate to use the component matrix for these purposes (NADCP, 2004). However, if the court is something else, such as a swift, certain, and fair CJ supervision programme, we can look to other similar models to establish best practice principles (for instance: the Judicial Monitoring scheme in Victoria (Judicial College, 2015), Special Sanctions Court (Snell, 2007), Hawaii's Opportunity with Probation Enforcement ("HOPE") (Bartels, 2016, 2017, 2018) and (Probation Accountability with Certain Enforcement) ("PACE") (Carns and Martin, 2011). The lack of clarity made empirical measurement difficult. I remember after an early site visit, I became so frustrated by the court's ambiguity I sat in the library café outside of MRC, post-data collection, designing a ten-tiered table with each of the Key DC components (NADCP, 2004) to try to identify areas of compliance and non-compliance to the matrix with the broader aim of unravelling the court's ontology. This later became the foundation for Chapter 7, which discusses MRC's definition through compliance to the framework.

Creating clarity often felt like an ongoing struggle and data collection a Kafkaesque experience. MRC ran every fortnight, and after each data collection session, I would spend the following two weeks reviewing the literature in attempt to create some clarity, only to find a new stumbling block upon my return. Indeed, at times, the site has been difficult to work with empirically and I have faced many caveats: the definition was unclear; there were significant attendance issues undermining data quantities; there were information storage problems; and staff were often confused on its purpose. However, during latter parts of this study, I realised that each these experiences, each of these frustrations, said something much broader about England and Wales' current position for alternative court practice: it is misunderstood, confused and difficult to pin-point. These issues are ultimately systemic problems, and important qualitative findings that could be disclosed through conversations about the "bottle" in Chapter 7, a point I will return to shortly.

In Chapter 3, I discuss the three phases of methods leveraged within this study: Phase 1 (standardised observations), Phase 2 (surveys), and Phase 3 (interviews). I posit that although

the methods themselves are mixed, they inherently fall within a qualitative genre. Throughout Chapter 3, I argue that this project is situated in ontological and epistemological realism and is therefore grounded in the Critical Realism ("CR") paradigm. If ontological realism assumes that the world exists independent to its observers (Easton, 2010) and epistemological realism accepts to know the world is largely "fallible and theory-laden" (Sayer, 1992 cited in Easton, 2010: 1999), then CR is concerned with subjective interpretation of an objective world, where empirical data will always be limited. By mixing methods within a case study approach, the dataset generates an interpretation of an objective phenomena, where the limitations of one method can be somewhat overcome by the others (Zachariadis et al, 2013). Through the CR paradigm, I argue that purist rationales in the social sciences are not possible; on the one hand, the process of deducing intangible variables through positivism is inherently biased as they are unobservable, yet on the other, the starting point for inductive reasoning within constructivism has necessarily been deduced. Therefore, ascribing to a philosophy that frees itself from the paradigm wars is perhaps more feasible in postmodern social science research, hence positioning this thesis in a realist discourse. The analysis and discussion chapters (6 "wine" and 7 "bottle") yield an abductive process that look beyond the data to establish social causes, including the impact of legislation, policy, and privatisation and centralisation reforms to rationalise the seen effects seen within the data. Abduction somewhat overcomes the limitations of the interpretive data as it looks towards real-life structures, mechanisms and causation, beyond the empirical, beyond the epistemological, instead towards the heart of the ontological. Although this may never be fully achievable, abductive reasoning perhaps can do more than other forms of logical interference by virtue of its realist approach.

Chapter 4 is the first, but nevertheless short, analysis and discussion chapter. Here I summarise the socio-demographic information of participants from each of the aforementioned phases (Phase 1, 2, and 3) to contextualise any later findings, to characterise the sample, and to reveal any potential biases within the dataset prior to the main analyses. I show that the sources of data demonstrated enough demographic variety to be representative, whilst considering how well this study's statistics stacked up with those in Greater Manchester, as well as building on predecessor demographic findings by Kerr et al (2011) to

fill the current literature gap. It is concluded that demographics are largely analogous to Kerr et al (2011) to highlight similarities between MRC and the predecessor DC models.

Chapter 5 is the second analysis and discussion chapter, which tests the construct validity and internal reliability of the interpersonal skills wine scales to answer research question 1 ("wine") (see 2.9). It only relates to the "wine" data (see Diagram in Chapter 3, 3.3) because this uses variables grouped as scales to measure constructs unlike the "bottle" data, which measures single unilateral dimensions. The scales tested in this section refer to magistrates' interpersonal skills ("wine"). This part of the thesis was added inductively to the study and was not an outset aim. However, it is placed before any other substantive analysis chapter as it refers to the scales from the core element of this study - the "wine" – upon which analyses in the following substantive chapters hinge. In total, eighteen items, which were originally arranged on four, a priori, theoretical scales based upon a TJ training manual (Goldberg, 2011), were rearranged onto three new scales. These followed Principal Component Analysis ("PCA") to reflect the three constructs displayed and renamed "harnessing therapeutic support", "engaging therapeutic dialogue" and "inspiring therapeutic change", and the rationales behind each of these names offered were based on the TJ literature. Following this, inter-scale reliability through Cronbach's Alpha tested the internal consistency of the three refined scales, where it was assumed that reliability would be maximised if the constructs were validated within the previous PCA. Indeed, the reliability of each scale was found to be high, and much higher than for the original four scales, comparatively. These analyses contribute to the development of an empirically-sound instrument for measuring TJ principles in PSCs henceforth which is a current leading issue amongst TJ scholars (Google, TJ-Lists, 2016, 2017, 2018; Stobbs, 2015).

In the third analysis and discussion chapter (Chapter 6), I move on to analysing and discussing the findings from the "wine" data points collected during Phase 1, 2, and 3 using the PCA scales. I seek to examine the TJ-friendliness of the MRC wine to answer research questions 2 and 3 ("wine") posited at the end of this chapter, and again in the Literature Review (2.9). This chapter offers a complex analysis of the therapeutic proficiency of the MRC wine, bringing together data from various data points within a triangulation rationale

where results could be understood as either: dissonant, complementary or convergent. The chapter was written and the data reanalysed, many, many times. During earlier stages, advanced statistics were operationalised on the quantitative data (T-Tests, One-Way ANOVAs, Kruskal Wallis, Mann–Whitney U) to examine changes in therapeutic quality based on offender drug and offence types (factors external to the bench). This was eventually removed as the advanced statistics themselves, as well as the findings, detracted from the main issues and body of argument, where TJ at MRC could be much better understood using a narrative based discourse.

The Phase 1 and 2 data was analysed together firstly because they both measured the same variables using statistics. Quantitative analyses were then substantiated secondly with qualitative data from Phase 3. Numerical scores were evaluated by translating them to the qualitative wording on the Likert scale ("poor", "fair", "good", "very good" and "excellent"). A further code was also added in which "3 or above" represented a "therapeutic" score and "below 3" was "non-therapeutic", again reflecting the Likert wording. This gave qualitative life to the numerical findings as a mechanism for exploring the data (Vagias, 2006). Qualitative "wine" data was analysed in NVivo where nodes were pre-labelled as the eighteen interpersonal items within a deductive thematic coding structure (Braun and Clark, 2006). These approaches to analysis meant that constructivist and positivist paradigms were cross-fertilised both across and within data analyses.

The structure of the Chapter 6 is as follows. It firstly carries out a panel analysis to explore changes in approaches to TJ according to the panel of magistrates to answer research question 2 ("wine"). This establishes that an inconsistent bench results in inconsistent application of TJ wine at MRC under Component 7 of NADCP (2004). Within this analysis, a panel gender discrepancy emerged so research question 2A was added inductively to clarify gender impact within a confirmatory analysis. This suggested that magistrates' background rather than gender impacts upon proficiency of TJ wine. It then continues to examine quality within application of the three constructs, and their constituting sub-skills to answer research question 3 ("wine"). The data suggests that all skills could be improved through judicial training, or, ideally, implementing a single charismatic TJ magistrate highly trained in TJ-

techniques. Nonetheless, the wine at MRC was operating therapeutically and four themes emerged as key skills to MRC "wine" operation from the qualitative data: i) understanding the complexity of Alcohol and Other Drugs recovery ("therapeutic support"); ii) motivating individual ("therapeutic support"); iii) giving offender a voice ("therapeutic dialogue") and; iv) appropriate goal setting ("therapeutic change"). Of these, "motivating individual" was deemed the most fundamental skill, but "giving offender a voice" was operated the most therapeutically.

Chapter 7 then moves on to discussions of TJ at the "bottle" level. When I began the study, I had an interest in TJ, but with a narrow understanding of the concept and its scope. TJ scholars have historically emphasised the "wine" aspect of the TJ analogy, particularly the interactional styles of judges within PSC arenas (Winick and Wexler, 2003). Therefore, when I first began my research, TJ at MRC was to me: magistrates' therapeutic interpersonal skills ("wine"), which then became the core element of the study. However, as time progressed, I began to understand that TJ responses require the "wine" to be complemented with something systemic, something structural; something that lies at the "bottle" level. As outlined in the opening paragraphs of this chapter, I had the sense that TJ both at Manchester and, more broadly in England and Wales, faced difficulties due the policy, legal landscapes, and laws. Chapter 7 shifts towards examining the TJ-friendliness of the bottle in order to ignite such dialogue. Whilst the discussion focuses on MRC, this ultimately lends itself to wider conversation regarding the possibilities and pitfalls of TJ in England and Wales.

Chapter 7 is the broadest chapter of the thesis, commenting widely on court process, impact and operation to facilitate an exploratory baseline understanding of a setting where there is currently no literature to answer "bottle" research questions 1 and 2 (2.9), bringing together the "bottle" data points based on the principles of triangulation. It yields an abductive approach (Glaser and Strauss, 2010) that looks beyond the data to rationalise seen effects through a complementary desk-based research that lends itself to broader questions about the sustainability (and ultimately TJ unfriendliness) of the current bottle in England and Wales. Given that no literature is currently available for MRC, and after my frustrations in the library café outside of the court, the Ten Key DC Components (NADCP, 2004) framework

was implemented as a deductive theory-driven coding map to thematically analyse the "bottle" data and to help answer the question surrounding the court's ontology. This chapter reports on five main areas, emerging as themes, after providing some background information: objectives, treatment quality, breaches, attendance and fragmentation issues, the written report and drug testing, and the court team and court powers. It draws upon the outdated England and Wales DC research (Kerr et al, 2011) to demonstrate fundamental similarities between MRC and the predecessor DCs. The chapter ends with a conclusion that brings together a symposium of key findings detailing the unfriendliness of the bottle as well as future implications for TJ in England and Wales.

In coming back to the issues that opened this chapter, current issues surrounding England and Wales' recidivist drug-fuelled crime must be faced, and policymakers continue to posit rehabilitative alternatives for England and Wales' jurisdiction to move away from current repressive reactions (Bowen and Whitehead, 2015). However, one also cannot ignore the depreciation of the previous England and Wales DCs. As the UK faces times of political uncertainty, upheaval, and black-holes, governments have put forward an unreliable set of mixed messages in relation to RR agendas. What remains is a sense that England and Wales' court specialism is a misunderstood area, where perhaps as a result, perhaps as a cause, the surrounding policy, social structures and legal dimensions have failed to support their operation and it remains to be seen how recent plans to roll-out a fresh suite of PSCs will unfold (Bowen and Whitehead, 2015). However, this thesis does not tell a bleak story; instead, it brings clarity to a significantly misunderstood area, drawing upon past failures to pave the way for a coherent, successful and sustainable delivery of TJ in England and Wales henceforth.

Research questions and original contributions of knowledge are included below and again at the end of Chapter 2, 2.10. They have more context when posited in Chapter 2 (literature review) because they are based on the literature gaps.

1.1 Research Questions

1.1.1 Wine

- 1) How can we most accurately measure compliance with TJ values in a future problem-solving Court setting?
- 2) What impact does an inconsistent bench have on the therapeutic application of magistrates' interpersonal skills?
 - a) Does magistrates' gender impact application of TJ wine?
- 3) What is the therapeutic quality of the magistrates' interpersonal skills at MRC?

Note: question 2A was added inductively due to emerged findings from question 1 to clarify gender impact upon panel consistency within a confirmatory analysis.

1.1.2 Bottle

- 1) Does the court adhere to the international framework (NADCP, 2004)? How do we define it: is it a DC, is it a Review Court?
- 2) What is the therapeutic quality of the current MRC bottle?

1.2 Original Contributions to Knowledge

1.2.1 Theory

- The project will add breadth to limited TJ scholarship within the UK jurisdiction (see Chapters 2, 6 and 7).
- Knowledge will be gained regarding the current position of solution-focused court practice within England and Wales to fill a significant literature gap (see Chapters 6 and 7).
- Knowledge will be gained regarding operation of MRC and hypotheses made around the downfalls of the predecessor DCs including fidelity to TJ principles and the Ten Key Components (NADCP, 2004) (see Chapter 6 but mainly Chapter 7).

- A deepened and altered understanding of the conclusions derived from the Kerr et al (2011) report will be offered (see Chapters 2, 6 and 7).
- Heightened awareness of the role and operation of MRC judiciary will be achieved (see Chapter 6).
- New, original, and up-to-date information derived by both qualitative and quantitative methods regarding MRC will be carried out (see Chapters 3, 4 and 5).

1.2.2 Methodology

- New research instruments will be developed to investigate the usage of TJ within problem-solving court practice. These will represent the first attempt to provide a standardised measurement tool for this purpose. New instruments will help future researchers to understand the appropriate ways of examining similar practices in the future (see Chapter 5).
- A new formulation of "TJ principles" has been devised from the literature review for the purposes of measuring them (see Chapters 2 and 5).

1.2.3 Policy and Practice

- Better understanding of MRC on grass-root level, which will contribute to better informed operation of its practice and greater satisfaction of work by practitioners (see Chapters 6 and 7).
- Suggestion will be made for better outcomes in terms of England and Wales' current problems with repeat offending, recovery, victimisation and austerity through delivery of a more alternative method to solution-focused courts in England and Wales (see Chapter 7).

- Suggestions made for why the original DCs did not work, and, therefore, how England and Wales can succeed with similar methods going forward (see Chapters 2, 6, 7).
- Heightened awareness of TJ amongst England and Wales practitioners. Similarly, heightened awareness of MRC by international TJ experts to develop prospective training opportunities (see Chapters 6 and 7).
- New interpretations of key texts offered (King, 2016; Goldberg, 2011), which might be taken into practice (see Chapter 5).

2 Chapter 2: Literature Review, Theoretical Basis, Background, and Scientific Rationale

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2.1 Introduction

This is the first substantive chapter of the thesis. The purpose is to identify the prevailing literature gaps for problem-solving court craft in England and Wales. The chapter also provides a strong theoretical basis, a history of the international Drug Courts ("DCs"), and then continues to discuss rehabilitative drives in England and Wales more specifically. In the concluding section, this chapter establishes a scientific rationale for the project by positing the research questions and outlining where the original contributions to knowledge will lie.

The review begins by detailing England and Wales' current problems with drug related reoffending. This anchors the thesis in a policy and practice rationale, demonstrating why alternatives to punitive criminal justice ("CJ") measures might be necessary for England and Wales. The review continues to detail the broad theoretical changes captured by the Rehabilitation Revolution ("RR"), including Therapeutic Jurisprudence ("TJ"). It offers discussion on the complex definition of TJ before demonstrating TJ's strong link to DC practice worldwide, as methods for dealing with recidivist individuals as well as conveying therapeutic experiences to individuals passing through the models. The review demonstrates that a plethora of literature illustrates successful operation of the international DCs, then hones in on England and Wales to tell a different tale.

The literature surrounding England and Wales DCs is thin, patchy and inconsistent. Six DCs were in operation in 2011; however, there has been little said since the latest empirical evaluation carried out by Kerr et al (2011). Of the six original DCs, it appears (although it is debatable) that only the ghost of Salford DC remains in the form of Manchester Review Court ("MRC"), which becomes the object of doctoral study. As this thesis will show, MRC is a specialist court with a problem-solving rationale that brings offenders back for regular review of recovery and law-compliance on the core Drug Rehabilitation Requirement ("DRR") component as part of a suspended sentence or community order under Section 210 of the Criminal Justice Act ("CJA") 2003. However, there is no detail of MRC in the accessible literature, no mention on the UK Justice Innovation website, not in the media, not

in any policy document, and nor is there a court handbook or website outlining objectives and expected practice. Therefore, this is a significant literature gap to be filled and the purpose of this thesis is to provide a groundwork of knowledge to this underexplored area. Rationale: Recidivism, Drug Use and Crime

2.2 Rationale: Recidivism, Drug Use and Crime

During a Criminal Justice ("CJ") climate punctuated by austerity measures, England and Wales currently face high recidivism rates. In the latest report, the Ministry of Justice ("MoJ") (2018a) detailed that (adult and youth) offenders reoffended at a rate of 29.5% between July and September 2016. In spite of high recidivism rates, statistics also portray overall declination within England and Wales' crime rates since 2007 (MoJ, 2018b). This means that, recidivist offenders are of particular interest to CJ institutions; who are these individuals, what causes them to recidivate, and how can we stop them reoffending?

In light of these issues, current policy documents are littered with plans to tackle the recidivism problem with immediate effect (Transforming Rehabilitation, 2014; MoJ, 2018c; McGuire, 2015). However, this is nothing new; reducing recidivism has been a primary objective of both Her Majesty's Prison and Probation Service (formerly known as National Offender Management Services ("NOMS")) since it was founded in 2004 and Her Majesty's Court and Tribunal Service in 2011 respectively (Carter, 2007; MoJ, 2011b). This means that despite the Criminal Justice System's ("CJS") best efforts during the last decade (and more) reoffending rates remain consistently high for England and Wales. Scholars have argued that the recidivism problem places limits on public access to justice by overburdening the CJ institutions (Tomasic and Feeley, 1982 cited in Donoghue, 2014). The recidivism problem is reported to be lethargic, burdensome, and frustrating for legal practitioners, for victims who fall ill to these crimes, and to wider communities that become increasingly unsafe environments (Cowburn, 2016). But we must not forget that the system is also failing the offenders.

A plethora of research points to a strong link between drug use and criminal activity (Bean, 2014; National Institute on Drug Abuse, 2014; Scottish Consortium on Crime and Criminal Justice (SCCCJ), 2003; Anglin and Hser, 1991; McSweeney et al, 2008; National Institute of Justice, 2001; House of Commons Health Committee, 2009; Parker and Kirby, 1996; Bennett et al, 2004; Greaves et al, 2009; Maruna 2001). The literature suggests that around three-quarters of all offenders have substance abuse problems (Young, Wells and Gudjonsson, 2011) and that approximately 60% of individuals arrested for most crimes test positive for illegal drugs under the Misuse of Drugs Act 1971 upon arrest (Byron, 2004). The relationship between drug use and criminal behaviour is complex and manifests itself in many ways (Hough and Natarajan, 2000; Goldman 1981); for instance drug sales, property crimes, prostitution, child abuse, violence, domestic violence, and drink driving have demonstrable links to drug dependency (National Council on Alcohol and Drug Dependence, 2015).

More specifically, research shows that between one third to a half of all acquisitive crimes related to feeding the habit (such as: shoplifting, burglary, vehicle crime and robbery), are committed by drug addicts (National Treatment Agency, 2009). Evidence suggests that 81% of arrestees using heroin and/or crack at least once a week reported that they had committed an acquisitive crime in the previous 12 months (compared with 30% of other arrestees) (UK Drugs Policy Commission, 2008). Further research suggests that drug use and crime correlate particularly strongly amongst heroin users (Bryan et al, 2013). Whilst acquisitive crime is generally classified as low level, resulting in shorter-term sentencing in lieu of it being non-violent in nature (Bryan et al, 2013), it is reported as expensive, inflicting losses to the system of nearly £14 billion a year through repeat muggings, robberies and theft (Bowcott, 2014).

These ideas inherent to these statistics have been explored further by critics, experts, and policymakers who have asked broader, long-standing questions, such as: when addicts are caught up in the CJS, could this create a perfect "window of opportunity" to intervene and rehabilitate them (Donohue, 2014: 22); could the CJS itself be a vehicle for recovery (Miller, 2014) and; can we integrate drug treatment into the CJ practice (Hough, 1996)? These ideas have been operationalised most prominently, and with demonstrable effect, within international jurisdictions such as the US, with the DC model offering itself as a leading

example (discussed in more depth later in Sections 2.4, 2.5 and 2.6 of this chapter). The overarching philosophy of the DC model is therapeutic solutions offer greater effect than traditional legal interventions for dealing with drug-using offenders (Freiberg, 2001). However, the question remains as to whether England and Wales' policymakers are following the US's lead to tackle similar trends of high drug related recidivist crime, a question that remains at the heart of this chapter (addressed more explicitly in section 2.7).

2.2 A Change in Perspective: The Rehabilitation Revolution, Positive Psychology, Recovery, and Criminal Justice

Historically, psychology paradigms have been premised upon an illness ideology, whereby disease of the mind, biological defect, and human pathology were considered causes of mental health problems (Kinderman, 2014; Rapp, 1998). Treatment psychologists sought to reverse deep-seated human deficits through psychotherapy correction models (Kinderman, 2014, Rapp, 1998) although such transformation was deemed incredibly difficult, if not impossible. In 1998, Seligman posited the positive psychology model, stressing that traditional psychology frameworks had overemphasised biologic human deficits. Emphasis was shifted from an illness ideology when Seligman concluded that mental health is contextually shaped and thus a changeable phenomenon (Seligman, 1998). Psychotherapy practices that followed on became increasingly strengths-based by seeking to identify, nurture and cultivate positive aspects of human character, assuming that those with mental health problems are able to develop, change and flourish when subject to positive social conditions (Rapp, 1998; Peterman and Seligman, 2004; Seligman and Schachter, 2002; Seligman and Csikszentmihalyi, 2000; Froh, 2004; Sheldon et al, 2001).

Alcohol and Other Drug ("AOD") experts have put forward a similar strengths-based recovery model, which focuses upon mapping recovery resources (Recovery Capital) in order to achieve sustainable recovery from substance addiction (Best and Aston, 2015; Granfield and Cloud, 2008; White and Cloud, 2008; Best and Laudet, 2010). Paralleling the positive psychology domain, the new recovery paradigm assumes that AOD addiction is a state

(rather than a trait) (White, 2007) and individuals can achieve cessation by relying upon positive character traits, situations and abilities (Best and Aston, 2015). The Recovery Capital method spans personal, social and cultural and community influences (Best and Laudet, 2010; Best, Bird and Hunton, 2015; Granfield and Cloud, 2008) and recent treatment models therefore embrace recovery as a rich, complex and holistic phenomenon that spans these dimensions by taking a multidisciplinary approach to treatment (McKnight and Block, 2010).

These paradigm shifts run parallel to changes in the CJ field with critics claiming that Western jurisdictions have made a “serious effort” to advance strengths-based approaches within CJ practice (Wexler and Winick, 2003, cited in Donoghue, 2014: 16). David Garland, arguably the world's leading contemporary criminologist currently, elucidates these changes by differentiating two types of punishment within broader penal frameworks: positive and negative (McNeill, 2015). Whilst the negative pole is almost exclusively punitive, the positive pole takes a holistic view towards crime and punishment, concerned with strengths-based efforts within CJ in addition to punitivism (Ronel and Elisha, 2015; Ronel, Frid and Timor, 2013; Donoghue, 2014). Garland's negative pole embodies a traditional Durkheimian (1964) (early positivist) approach to crime and punishment, whereby offenders are deemed rational actors who make fully informed decisions towards committal of crime; therefore, criminals are inherently wrongdoing people. Negative punishment is functional, it is punitive, it is harsh, a deterrent, taking something away from offenders through imprisonment, social rejection and a criminal record (McNeil, 2015, Granfield and Cloud, 2008). RR idealism provides relief from Durkheimian sentiments, by moving towards Garland's positive pole, reconceptualising the criminal man by assuming that offenders can (and should) be rehabilitated (Maruna and Lebel, 2015, Maruna, 2001).

The shift has changed the tone, structure and delivery of many punishment disposals (Donoghue, 2014; Elisha, 2015; McNeill, 2015) and has led to the emergence of a multitude of new strengths-based, therapeutic, CJ interventions (Ronel and Elisha, 2015, Zehr, 2002, Wexler and Winick, 2003). The movement comprises of a number of paradigms, all forming part of the same comprehensive law movement (Braithwaite, 2002), key examples include:

Positive Criminology ("PC"), Preventative Law, Restorative Justice ("RJ"), Procedural Justice ("PJ"), Collaborative Law, Problem-Solving Justice, Holistic Justice, and TJ.

2.3 Comprehensive Law Movement: Theory, Practice and Principles

2.3.1 Therapeutic Jurisprudence

A leading branch from the comprehensive law movement, and, arguably the most influential, is: "Therapeutic Jurisprudence" (TJ). Founding fathers, Winick and Wexler (1999) pioneered the movement in the late 1980s by positing TJ as a legal philosophy concerned with the human, emotional, and psychological sides of the law. As two US mental health law professors, Wexler and Winick's shared expertise in psychiatry led to a mutual interest in psychological functioning within legal process (Hora, Schma, Rosenthal, 1999, Winick and Wexler, 1999; Braithwaite 2002). Winick and Wexler theorised that the law and its associated legal rules, procedures and roles have adverse therapeutic and anti-therapeutic effects on people, whether they are intentional or not, "know it or not, like it or not" (Wexler 2000: 3). The two professors began to investigate how we can apply the law "therapeutically", in a way that enhances emotional wellbeing and promotes positive, humane and rehabilitative outcomes (Winick and Wexler, 2002; Perlin, 2018; Wexler and Winick, 2010; Wexler and Winick, 1991; Wexler and Winick, 1993; Wexler and Winick, 1999; Hora 2002).

TJ was initially developed as a "twist" on mental health law, but as it extends to all legal areas, it is now considered a mental health interpretation of the law (Wexler, 2011: 31). The literature successfully demonstrates TJ's applicability to victims, practitioners and family members, as well as it spanning torts, juvenile estates, trusts, criminal, and family law (Gal and Wexler, 2015; Winick and Wexler, 1996). Thus, TJ is concerned with therapeutic consequences for anyone that has a stake in the law or legal landscape, across every law domain, and within any type of law process (Gal and Wexler, 2015). Lending itself to neighbouring comprehensive law movements (outlined above), TJ represents a shift in perspective, or a changing of lenses, which typically operationalises within alternative CJ

disposals (Zehr, 2002; Winick and Wexler, 2003). Like its counterparts, TJ offers an innovative framework for the way we think about wrongdoing by looking towards a healing, restorative and rehabilitative ideal, alive to the root causes of social issues such as (but not limited to) drug addiction (Zehr, 2002, Ronel and Segev, 2015; Winick and Wexler, 2003). The ground breaking work of international expert, Professor Perlin, examined mental disability law from a TJ perspective, discussing the implications of social perceptions and longstanding cultures of blame for those with mental disabilities (Perlin, 2016), as well as the impact of law processes of the notion of dignity (Perlin, 2013) paving way for TJ's broad application. Thus, although most frequently to date TJ has been applied to the offending individual within the criminal law context (Hora, 2002, Petrucci, 2002) one must not forget TJ's broader scope (Perlin, 2013, 2016, 2017).

TJ sits confidently on the positive branch of Garland's CJ punishment conceptualisation (McNeill, 2015), incorporating a forward-thinking philosophy aligned with the RR. However, TJ is unique to many other comprehensive approaches, such as, PC and RJ because it humanises the CJS, examining the law in a richer way, without (necessarily) putting forward major plans for change (Perlin, 2013). Consequently, the application of TJ does not automatically displace other perspectives and values of the law or within the law (Perlin, 2013); it is operationalised so "other values, such as justice and due process, can be fully respected" (Winick and Wexler, 1996: xvii). TJ is not an end in and of itself, nor a solution; instead it is a way of viewing the effect of legal systems upon people. By putting a human face on the law, it draws attention to the subtler consequences of legal process without necessarily acting as a dedicated campaign towards change. In this sense, it is both revolutionary and realistic. TJ does hold a modified law reform agenda in parts, committed to promoting therapeutic legal reform and assigning therapeutic goals to current legal systems; however, reform must sit within the practical limits of due process and justice (Perlin, 2013; Wexler and Winick, 1996: Gal and Wexler, 2015).

TJ is a complex philosophy with many different dimensions. If it draws our attention to the therapeutic and non-therapeutic effects of the law, it would be tempting to suggest that it exists purely in theory. Nonetheless, scholars have demonstrated its longstanding application

to practice, teasing out the “therapeutic” outcomes within diverse contexts, where it has now been successfully endorsed as a set of practical rulings that guide administration of relevant legal enterprises (Hora et al 1999; Hora, 2002; Perlin, 2018). Indeed, Wexler has described TJ as “going from practice to theory” (2011: 38), which is the cornerstone of current broader goals of mainstreaming (Wexler, 2018). Therefore, it is a lens through which we can inspect the law's healing - or "therapeutic" - potential (Wexler, 2001), a field of enquiry to identify and analyse important yet previously unnoticed emotional consequences of the law (Wexler, 2011), and a set of principles to guide practical operationalisation (Hora et al, 1999). In light of its many dimensions, academics, practitioners, and researchers have struggled to consistently understand TJ and have been left questioning: how do we define it, what are its principles, and how do we go about teaching them (Google Lists, TJ, 2016, 2017, 2018)? These questions have been subject to much academic discussion amongst TJ advocates, particularly on the TJ online forums (Google Lists, TJ, 2016, 2017, 2018). However, TJ experts appear to have deliberately avoided shoehorning the paradigm to allow it to be applied creatively, comprehensibly, and flexibly. into a diverse range of arenas.

More recently, researchers have raised questions around how we can measure TJ within empirical projects (Google Lists, TJ, 2016, 2017, 2018; Stobbs, 2015), which are ultimately academic questions that still remain unanswered because there is no tool posited for this purpose. Again, TJ pioneers appear to be reluctant to answer such specific questions around its measurement, encouraging researchers to find new and innovative ways to interpret and apply it. In a similar vein, although "therapeutic" outcomes have most commonly been quantified as positive, emotional and psychological outcomes, they are also open to broader interpretation, raising questions around whether or not TJ can truly be captured by empirical measurement, where I would suggest that TJ's comprehensibility means that it cannot (see Chapter 5 for full discussion on this). If TJ's longstanding goal is to draw attention to the therapeutic aspects of the law, this should be the purpose of a measurement tool: to provide a snapshot into previously underappreciated, but significant, therapeutic (or, indeed, non-therapeutic) areas of law processes (this point will be readdressed in Chapter 3 and Chapter 5). On this basis, TJ is a broad and unique field of enquiry, best understood as a series of

ideas, or a philosophy, from which we can imaginatively extrapolate principles to apply, measure, and communicate, where its comprehensibility is precisely where its uncertainty but also brilliance lies.

2.3.1.1 "Wine" and "Bottles"

Much of the TJ literature is structured around Wexler's "wine" and "bottle" metaphor (Wexler, 2014; Wexler 2016), a tool for examining the TJ potential and efficiency of a legal setting. A combination of both components (and their strength) determines the extent to which the context may and/or does operate therapeutically (Wexler 2014). Whilst the former part of the analogy refers to the therapeutic application of the law, the latter refers to the therapeutic design of the law, but the relationship between the two is intimate (Wexler, 2014).

The "wine" part of the analogy represents the way in which legal contexts are animated by practitioners' techniques, skills or approaches, which also have TJ "friendly" or "unfriendly" value depending upon correspondence to TJ coding (Wexler, 2014). Wexler (2014) notes that the wine aspect is most spoken about in the literature due to its easier application to TJ principles and because it refers to techniques that can be more easily shaped and manipulated by the literature (see Wexler and Winick, 2003). For this reason, much of the literature to date has focused exclusively on the wine component.

Wexler refers to wine as "interstitial"; it fills those discretionary and unrestricted spaces left for innovative practice within legal structures (Justice Bell, cited in Wexler, 2011: 38). Therefore, "wine" refers to the manner in which the law is applied on micro level, for example, styles of judging (Wexler, 2011). TJ friendly wine often comprises techniques borrowed from evidence-based practice within the broad behavioural science literature (Winick and Wexler, 2003). In discussing the link between TJ and PC more specifically, Wexler describes PC as a "vineyard of insights from which TJ can draw" (Wexler, 2015: 10). However, this can be taken more broadly; most commonly, TJ draws upon the fruits of PC,

Psychology of PJ, Motivational Interviewing, Social Work and RJ for enrichment of TJ practice (Wexler and Winick, 2003; Schopp, 1998).

How effectively legal actors, such as judges, apply TJ friendly wine (if at all) affects the therapeutic quality of the legal setting (Wexler, 2014). Therefore, if judges are highly trained, skilful and knowledgeable about TJ technique, the wine in itself is potentially TJ friendly, but whether or not such judges apply this therapeutic liquid (and how effectively) impacts the settings' overall therapeutic quality and impact. Similarly, in theory, TJ friendly wine could be applied to a TJ unfriendly bottle; for example, in mainstream court proceedings, a judge could use TJ techniques when interacting with defendants (Wexler, 2014; Spencer, 2014). However, the TJ potential would likely to be thwarted by the TJ unfriendly bottle, a point to bear in mind as it lies at the heart of this thesis (see Chapters 6 and 7).

The TJ friendliness of the "bottle" – or legal landscape – largely depends upon structural components (Wexler 2014). "Bottles" typically refer to laws themselves, provisions, rules, procedures, rule of law and procedural norms and values - wider structural factors that cannot easily be changed, developed or manipulated - but nevertheless impact the therapeutic quality and potential of legal contexts (Wexler, 2015). Wexler (2014) offers the Juez de Vigilancia Penitenciaria ("JVP") system as an example of a "TJ friendly bottle". Most relevantly is a statute that allows conditional release to be granted depending on both the length of time served and behavioural record (Wexler 2014). This can be applied positively to enhance therapeutic wellbeing by motivating rehabilitation, reintegration, and to helping to identify and build strengths that encourage pro-social behaviours (Wexler 2014; Wexler, 2016). In theory, a TJ friendly legal structure, or "bottle", could exist without TJ friendly wine to animate it but if practitioners lack the correct TJ 'know-how' ("wine"), the setting would lack therapeutic impact. Thus, to maximise the therapeutic potential of any setting, both the bottle and the wine should be TJ friendly. A TJ friendly bottle (such as a DC), animated by TJ friendly wine (such as TJ skilful judges), is where TJ principles best thrive.

2.4 Drug Courts: History, Rationale and Background

DCs have a longstanding history across jurisdictions worldwide and a wealth of literature details their successful operation. The first model was established in Miami-Dade County, US, in the late 1980s when the US administration's war on drugs resulted in a crack cocaine epidemic that overburdened the CJS. The revolving door phenomena caused repercussions in terms of Miami's prison and court docket overcrowding crisis (Winick and Wexler, 2003) in which drug arrests increased by 134% from 1980 to 1989. Within the same timeframe, the overall arrest rate rose by 37% (Belenko and Dumanovsky, 1993).

As research began to evidence the close link between drug use and repeat offending, policymakers questioned whether Miami's punitive justice disposals - operating a negative punishment ideal (McNeill, 2015) - were merely a "repressive reaction" (Dekkers et al, 2016: 193) that failed to successfully change addictive behaviours (Winick and Wexler, 2003; Bean, 2002). Miami's DC was set-up as an experiment founded upon questions posited within the opening sections of this chapter: if addiction is the underlying cause of much criminal behaviour, could changing drug using behaviour also reduce recidivism, reduce costs, reduce victimisation, make communities safer, and help offenders to make positive life changes (Sevigny, Pollack, Reuter, 2013; Belenko, 1998; Godfrey et al, 2002)? Drug using offenders would be offered a treatment trajectory in the form of the DC (King and Pasquarella, 2009), which would focus upon rehabilitation by initiating court-centred therapy, bringing drug treatment into the CJS. DCs would therefore break the recidivism cycle by inaugurating long-term change whilst freeing up prison space in the shorter-term through the diversion.

The literature indicates that Miami DC was successful (Marlowe, 2011); there are now 3,057 DCs in the US (National Institute of Justice, 2017) and DCs have been established across jurisdictions worldwide, for example: the UK/other parts of Europe (Matrix Knowledge Group, 2008, Dekkers, et al, 2016; Kerr et al, 2011) Canada, (Kerr et al, 2011) and Australia (KPMG, 2014; Kerr et al, 2011). The model now exists as part of a wider problem-solving court family inclusive of: domestic violence, community, veteran, mental health courts, and girl courts (Freiberg, 2002; Perlin, 2012; Collins, 2017). Whilst the DC model invariably offers a new approach to CJ, experts advise that such courts should not operate in opposition to the traditional system, nor should they offend the adversarial systems' core values (Donoghue, 2014; Perlin, 2013). The PSC movement should thus represent a change in emphasis rather than a change in structure (Miller, 2014).

Often based on best practice principles, DCs can differ in their approach and emphasis (Carey et al, 2012; Longshore et al, 2001; Hiller et al, 2010). A "typical" DC is best captured by "Ten Key Components of DCs" (National Association of Drug Court Professionals ("NADCP"), 2004), which is a component matrix offering an acclaimed measure for systematically assessing and implementing effective DC operation (Hora, 2002; Hiller et al, 2010; Marlowe, 2009, 2010). Experts have suggested that a DC must possess each of the follow Ten Key Components for successful operation (NADCP, 2004).

1. DCs integrate AOD treatment services with justice system case processing;
2. Using a non-adversarial approach, prosecution and defence counsel promote public safety while protecting participants' due process rights;
3. Eligible participants are identified early and promptly placed in the drug court program;
4. DCs provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services;
5. Abstinence is monitored by frequent AOD testing;
6. A coordinated strategy governs drug court responses to participants' compliance;
7. Ongoing judicial interaction with each drug court participant is essential;

8. Monitoring and evaluation measure the achievement of program goals and gauge effectiveness;
9. Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations;
10. Forging partnerships among DCs, public agencies, and community-based organizations generates local support and enhances drug court program effectiveness (NADCP, 2004).

Marlowe (2010: 3) states: "each of these hypothesised key components has been studied by researchers or evaluators to determine whether it is, in fact, necessary for effective results. Results have confirmed that fidelity to the full DC model is necessary for optimum outcomes". Similarly, according to NADCP (2006: 3) fidelity to the full DC model "is necessary for optimum outcomes — assuming that the programs are treating their correct target population of high-risk, addicted drug offenders". This strongly suggests that successful DC operation is interlaced with fidelity to the component matrix.

Whilst the Ten Key Components offers a framework for good practice, it is not without criticism. Experts have critiqued its prescriptiveness, failing to specify subtle details around intensity, vigour and strength (for example, the appropriate level of "ongoing judicial interaction") whilst also failing to consider wider contextual factors (McBride et al, 2001). In light of this, researchers have attempted to ascribe a DC typology (Goldkamp, 1999) by offering new dimensions and indicators to measure DC functioning that moves away from the matrix (McBride, 2001). Experts have argued that in researching DCs, we must identify the relationship between structural and process elements, positing that, without this, we are unable to consider: i) why DC outcomes work (Carey, 2012); ii) what DC aspects matter the most and why; and/or iii) why alternative DC dimensions exist (McBride, 2001; Goldkamp, 1999). Nevertheless, the Ten Key DC Components are a renowned tool for implementing, measuring and evaluating DC process (McBride et al, 2001; NADCP, 2006, KPMG, 2014). Their lack of specification in places may be a deliberate attempt to leave room to integrate localism and cultural knowledge (Allen, 2015), best practice, experimentation and innovation. In particular, for new, up-and-coming and/or poorly understood DCs, the Ten Key Components are a valuable mechanism for helping to assemble and/or understand DCs at basic structural level to identify areas of compliance and non-compliance during analysis of adherence (NADCP, 2006; Marlowe, 2010).

Perhaps the most unique DC Component is number 6, which recommends a multidisciplinary approach to tackle offenders with complex needs by bringing together drug workers, case workers, probation workers, law officials and magistrates or judges into the court setting (King and Pasquarella, 2009; Bean, 1995) to enable the delivery of integrated care (Leichsenring, 2004). Whilst the interdisciplinary approach has been critiqued for undermining (i.e., overlaying "courtification") the role of the social services, for taking public health issues into the inexperienced hands of CJ experts, and for compensating for the failings of treatment services (Miller, 2014: xix), the majority of the literature endorses DCs for an innovative approach to both CJ and treatment (Torfing, 2016: 156). It further sits in line with the Recovery Capital model from the new AOD recovery paradigm by embracing recovery as a broad and holistic phenomenon (Best and Laudet, 2010).

DCs have been criticised for posing further risks to communities and victims by releasing offending individuals back onto the streets where they would otherwise be incarcerated (Alliance, 2011). Whilst eligibility criteria can differ from court to court (Dekkers et al, 2016), the DC programme is typically restricted to non-violent offenders of low-level risk to overcome these concerns (Perlin, 2013), as well as demonstrating reductions to victimisation in the longer term (Matrix Knowledge Group, 2008; KPMG, 2014; Lowenkamp et al., 2005; Shaffer, 2006). Nonetheless, eligibility has been subject to critiques around cherry-picking (Velázquez, 2010).

Some argue that DCs are too soft on offenders (Howe, 2009). However, DC requirements are reported as strict; offenders must attend specified drug treatment, remain drug free, and submit periodic drug tests to monitor compliance whilst attending court review sessions in which sanctioning may be applied for non-compliance (under Component 6) (King and Pasquarella, 2009). This has resulted in many participants reporting them as harder options than incarceration (Kerr et al, 2011). The sanctioning and reward system serves as a carrot-and-stick style approach that acknowledges and reinforces progress whilst addressing lack of compliance (McIvor, 2009). Whilst DCs view recovery as a long-term process with inevitable relapses (NADCP, 2004), too many failed tests and continued drug use and/or criminal activity will incur sanctions, such as, expulsion, resurrection of the original sentence

and/or a few days of incarceration (NADCP, 2004). A voucher system is often put in place to reward progress (Prendergast et al, 2008) but offenders are rewarded significantly by dropped charges upon graduation where they leave the system rehabilitated (Bean, 1995; Armstrong, 2003; Winick and Wexler, 2003).

DCs have also been criticised, particularly by treatment providers, for legally coercing individuals into treatment (McSweeney et al, 2008). According to Carey et al (2012: 7) "DCs use the coercive authority of the CJS to provide treatment to addicts in lieu of incarceration". Questions have arisen as to whether coerced treatment provides an individual with the proper incentive to successfully complete a treatment programme. However, research also suggests that mandated treatment is as effective as treatment accessed voluntarily (Hough, 1996; McSweeney et al., 2008; Hora et al, 1999; Leukefeld and Tims, 1988; McSweeney et al, 2008). It has been shown that if a client remains in treatment for over 90 days, the coercion improves chances of recovery as it provides a legal incentive to stay in treatment (Hora et al, 1999).

In taking a holistic approach to CJ with the overarching aim of rehabilitating and reintegrating offenders, DCs epitomise the precepts from Garlands' positive punishment ideal, and moves away from outdated clinical-based recovery and treatment paradigms (Garland 2013, cited in McNeill, 2015). By virtue of its long-term approach to care, the DC model recognises that recovery is a gradual process, and immediate abstinence is unlikely, resonating with the Recovery Capital method (Best and Laudet, 2010). Furthermore, recovery is understood to span other life domains beyond abstinence, such as, housing, family, and community reintegration (NAPDP, 2006; White, 2007, 2008; Wittouck et al, 2013). Lending itself to a rehabilitative-ideal, the DC model has transformed courts from "neutral arbiters" to spaces that deal with "human problems", thus incorporating a TJ ethos (Winick and Wexler, 2003: 3). Indeed, DCs are famously affiliated with the TJ movement and are typically understood as the most explicit and longstanding example of TJ in action (Hora et al, 1999; Winick and Wexler, 2003; Casey and Rottman, 1999; Winick, 2002). Whilst TJ was developed independently from DC practice (although coincidentally around the same time), TJ normative goals are almost identical:

1. Focus on case outcomes which address underlying causes of offending;
2. Ongoing judicial intervention and monitoring;
3. Integration of treatment services with judicial case processing;
4. Collaboration with community-based and government organisations;
5. Removal of formal, institutionalised and adversarial legal setting (Winick 2003 cited in KPMG 2014).

TJ's long-standing interest in therapeutic legal frameworks led TJ pioneers to endorse DCs as TJ friendly bottles (Wexler, 2014) and their ideological similarities resulted in formal consolidation in 1999; since then, TJ has been understood as the philosophy underpinning DC practice (Hora et al, 1999; Hora, 2002, Hora, 2011; KPMG, 2014; Casey and Rottman, 1999). DCs should therefore be regarded as programmes that both implicitly and explicitly adopt principles consistent with TJ (McIvor, 2009; Hora, 2002; Winick 2002; Nolan, 2003) and forums in which the TJ doctrine is best exemplified. Since then, research projects have used TJ as a strong basis for developing methodology, instruments and analysis, (KPMG, 2014). Given TJ's close affiliation to DCs, it would thus be strange for researchers not to acknowledge TJ within project design.

2.4.1 The International Evidence Base and New Solutions

The DC international evidence-base has been strong, particularly across primary outcome delivery, namely: substance use and reoffending (Belenko, 1998, 2001; Brown, 2010; Wilson et al, 2006; NADCP, 2004; Lowenkamp et al., 2005; Shaffer, 2006). According to Marlowe's (2010) most recent report, over three-quarters of the US DCs (78%) reduced criminal activity, with leading models showing reductions of between 35% to 40% (Lowenkamp et al., 2005; Shaffer, 2006). Reductions in recidivism have been evidenced to last for three years post entry (Marlowe, 2010). Elsewhere, further studies also show that non-completers are more likely to recidivate than those who graduate (Belenko, 1998) and researchers have identified low relapse rates amongst DC participants (Freeman, 2003; Belenko, 1998). It has also been illustrated that DCs are the most effective way of addressing the recidivism problem over any other CJ approach in isolation (KPMG, 2014). Research suggests that the US DCs are six times more likely to keep offenders in treatment long enough for them to get better (Marlowe et al, 2016). DCs have also proven themselves as vehicles in which offenders can reintegrate and make other positive life changes, thus showing that their strengths can be taken far more broadly (Goldkamp et al., 2001).

There are two presiding schools of thought that endorse DCs for their output and operation: utilitarian and humanitarian (Maruna and LeBel, 2015). The utilitarianism perspective sees DC's as adopting a risks-based model, and endorses DC's as identifying and targeting criminogenic causations to increase efficiency, reduce crime, and overcome cost implications (Maruna and LeBel, 2015). On the other hand, the humanitarian approach sees DCs as adopting a strengths-based model, praising them for helping offenders with complex needs to rehabilitate (Maruna and LeBel, 2015). It is often difficult to unpick these approaches when discussing DC strengths. Perlin (2013: 3) famously quotes that although the risk-based model is important

... it bypasses the critical issue... do such courts provide additional dignity to the CJ process or do they detract from it? Until we re-focus our sights on this issue, much of the discourse on this topic remains wholly irrelevant.

In other words, whilst recidivism outputs are important, therapeutic outcomes are of the essence for this type of practice, especially for TJ experts.

DCs studies are not without critique. For instance, they have been criticised for overemphasising primary outputs (Wittouck et al, 2013; McBride et al, 2001). Further, researchers carrying out a systematic literature review claimed that the majority of studies (81%) fell into the rejected category of evaluation quality (Gutierrez and Bourgon 2009). New evidence has emerged reporting limited impact of DCs as well as reporting that they are costly and cumbersome (Drugs, Security and Democracy Program, 2018; Marlowe et al, 2003). Close at hand, less traditional DCs, adopting key solution-focused styles of court practice have begun to proliferate across the globe, encompassing a DC ethos yet differing in practical application, perhaps in many ways offering themselves as mechanisms for overcoming such DC critiques. These models include: the Judicial Monitoring scheme in Victoria (Judicial College, 2015), Special Sanctions Court (Snell, 2007), Hawaii's Opportunity with Probation Enforcement (HOPE) (Bartels, 2016, 2017, 2018) and Probation Accountability with Certain Enforcement) (PACE) (Carns and Martin, 2011). Common to each is the emphasis on swift, certain and fair justice. As DC critiques continue to slowly snowball, new and unconventional models should be considered as viable alternatives, where Bartels (2016, 2017, 2018) reports that the HOPE model has higher economic efficiency and lower cost implications comparative to DCs (Bartels, 2016, 2018), a point that is readdressed in Chapter 7. This could mean that earlier points made about the importance of a fidelity model may be becoming obsolete.

2.5 Judging in a Therapeutic Key

DCs are complex enterprises comprising many components. In light of this, there has been interest around which factor from the component matrix (NADCP, 2004) most heavily contributes to their success (McIvor, 2009). The DC and TJ literature often agree that the most crucial aspect of any DC are the judiciary (Winick and Wexler, 2003, Perlin, 2012; McIvor, 2009) with research suggesting that their strong role carries with it substantial therapeutic outputs for clients (Hora 2002). The literature has emphasised the importance of DC Key Component 7: "ongoing judicial interaction with each drug court participant is essential" (NADCP, 2006: 15) with numerous reports showing that judicial continuity is a key for DC success (Kerr et al, 2011; McIvor, 2006) through increasing accountability, provision of concrete goals, and raising self-esteem through the judicial-offender relationship principle (Kerr et al, 2011). Locally, Matrix Group's (2008) process evaluation conducted quantitative analysis at Leeds DC demonstrating that a 10% increase in judiciary continuity resulted in: i) decreased chances of missing a review (by 8-23%); ii) lowered chance of failed heroin tests (by 9-20%); iii) increased likelihood of completing the sentence (by 11-29%); and iv) less likelihood of being reconvicted (by 5-26%). This heavily suggested that models with judicial continuity are likely to result in successful DC outcomes in a local context.

TJ pioneers have been particularly interested in the way in which the judiciary closely monitors offenders' progress by casting a new role similar to that of a drugs worker by reclaiming power as a therapeutic expert (Bean, 1995; Armstrong, 2003; Winick and Wexler, 2003; Perlin, 2012; McIvor, 2009). The literature has been mostly interested in the techniques with which the judiciary forms therapeutic relationships with defendants (i.e., "TJ friendly wine") (Wexler, 2014) and the style in which they interact with participants (Perlin, 2013, 2016; Hora, 2002). Research by McIvor (2009) highlighted that the judiciary's interactional style and quality directly impacted on compliance and motivation within the Scottish DCs. According to McIvor (2009) the purpose of the judiciary-client dialogue is broadly twofold: i) to recognise and reinforce progress made by participants and; ii) to motivate participants to maintain and build upon achievements. Research has reflected this idea by illustrating that DC clients attach considerable significance to the dialogue that takes place between themselves and the judiciary (McIvor, 2009; Matrix Group, 2008; Kerr et al, 2011). McIvor

(2009: 47) states: "the exchanges that take place between sentencers and offenders can be a critical element in encouraging compliance both during an order and in the longer term", describing DRR reviews in the UK DCs as "vehicles" that allow this interaction to take place.

TJ scholars have been dedicated to examining what constitutes a therapeutic judicial interaction or what it means to possess therapeutic interpersonal skills. This is exemplified in key texts such as "Judging in a Therapeutic Key" (2003), where it is considered in the context of PJ psychology, as well as more TJ exclusive discourses. The PJ discipline sits adjacent with TJ and is concerned with how judiciaries "apply procedures that fully respect the individual's participatory and dignitary interests" (Winick and Wexler, 2003: 129) with TJ experts often drawing upon the PJ literature for consolidation. Some key interactional principles have been cited as: empathy, acceptance, warmth and self-expression, hope and expectancy, a future focus, and empowerment and possibility (Clark, 2001, cited in Winick and Wexler, 2003) whilst, elsewhere, Petrucci (2002) demonstrated that respect is the cornerstone of this interaction. Elsewhere, papers have put forward other suggestions such as: neutrality, respect, participation and trustworthiness (Warren, 2002, cited in Winick and Wexler, 2003) and voice, validation and voluntariness (Lynch and Perlin, 2016). Whilst there is no single definition of what it means to possess therapeutic interpersonal skills a comprehensive formula comes from Goldberg's (2011) judicial training manual, which identifies key techniques as: empathy, respect, active listening, a positive focus, non-coercion, non-paternalism, clarity.

McIvor's (2009) research on the Scottish DCs reinforced the idea that PJ is the key feature of the judicial-client interaction by invoking client engagement. Her findings demonstrated that when judicial dialogue is perceived as fair, primary DC outputs were strengthened (McIvor, 2009) and Gottfredson et al's (2007) research demonstrated similar results but in the US DC context. Significantly, work by PJ experts, Tyler and Bies (1990), indicates that actual decisions reached by judges are insignificant compared to perceived levels of fair treatment during process by identifying legitimacy as the explanation, demonstrating that the process is more important than the outputs themselves. Similarly, TJ pioneers confirm that: "relationships and processes are more important than the substance of therapies and

sanctions" (Winick and Wexler, 2003: 17). However, an apprehension to the strong judicial role is offered by Perlin (2012:33), who famously quotes that specialist courts:

when structured properly and when chaired by a judge who 'buys in' to the TJ model – are perfect exemplars of the practical utility of therapeutic jurisprudence. However, the inherent problem is that success of the courts is overly-dependent on the TJ charisma of the presiding judge.

In light of Perlin's critique and the above, it seems appropriate to conclude this section by stating that the strong interactional style and interpersonal skills of judiciaries - "the wine" - is essential for therapeutic DC operation.

2.6 England and Wales Drug Courts: History, Background and Gaps in the Literature

Previous sections of this chapter have discussed the international DCs' history and significance to TJ. It is now time to consider the situation in England and Wales, which has significantly lagged behind. Over the last twenty years, DCs have had a place in England and Wales' court history. Donoghue (2014) argues that the Crime and Disorder Act 1998 (under a Labour government) represented one of the first UK attempts at court specialism, in part, due to implementation of Drug Treatment and Testing Orders ("DTTOS"). Critics suggest that DTTOs were directly modelled upon the US DC (McIvor, 2009) because (amongst other things) they: i) enabled drug testing to become a court requirement; and ii) allowed an active judicial role by bringing offenders back to court to review progress under the DTTO (McSweeney et al, 2008). Whilst many have criticised DTTOs for being "very weak version(s)" of US DCs, overlooking essential components such as, multi-sectorial engagement (Bean 2002: 1592), DTTOS nevertheless played a crucial role in England and Wales DC history by virtue of the aforementioned provisions. The CJA (2003, Section 29), latterly replaced DTTOs with DRRs, which have been described as a: "the primary means for

sentenced offenders to address identified drug misuse within community sentencing" (MoJ (c), 2012: 22).

DRRs are designed to address drug dependency by forming part of a community order or suspended sentence, funded, overseen and supervised by Her Majesty's Prison and Probation Services ("HMPPS"), who mandate drug testing and appointments (MoJ (c), 2012; Mullen, 2015). The CJA (2003, section 210) allowed courts to impose DRRs on the basis that: a) there is certainty that the offender has a dependency on drugs/a tendency to misuse illicit substances; b) the court believes that the offender would benefit from the DRR; and c) the offender expresses willingness to comply with the DRR/has a desire to pursue recovery (NOMS), 2014). Most significantly, according to the CJA (2003, section 210), DRRs of over a year require offenders to attend intermittent court review sessions whereby recovery progress and law-abiding behaviour is monitored by magistrates, although the courts may also mandate court reviews for clients carrying out a DRR of under 12 months (CJA, 2003, section 210). The process of review very much resembles the traditional DC (Kerr et al, 2011).

The White Paper: Justice for All (Home Office, 2002 cited in Donoghue, 2014) was one of the first formal endorsements of specialist court practice in England and Wales. Following publication of the White Paper (2002), specialist courts began to proliferate in the UK with strong influence from the US (Donoghue, 2014). It was reported that the England and Wales' DC¹ model progressed organically from existing responses to drug-using offenders (MoJ, 2011). Importantly, the DCs would house the DRR court review under section 210 of the CJA (2003). According to Donoghue (2014), UK DCs were established as a response to: public and professional dissatisfaction with legal processes and reoffending rates; inability to sufficiently deal with causations of crime and; compliance issues; in other words, similar rationales to international jurisdictions. Whilst UK court specialisation had already begun in

¹ In the England and Wales, often Drug Courts are referred to as "Dedicated Drug Courts".

previous years (namely two unauthentic schemes in Wakefield / Pontefract and West Yorkshire, 1998), in 2005, England and Wales launched the first two official DC pilots, located in West London's and Leeds' mainstream magistrates' courts (Matrix Group, 2008; MoJ, 2011) as well as two Scottish pilots in Glasgow, 2001, and Fife, 2002 (MoJ, 2011; McIvor, 2006). In addition, in 2005, Liverpool's Community Justice Initiative was opened, modelled upon New York's Red Hook Community Centre, which aimed to tackle reoffending by collaborating inter-agency working between magistrates, the youth, the Crown Court, CJ agencies, and a range of social services (Booth et al, 2002). In 2011, the UK Centre of Justice Innovation was launched², modelled on the Red Hook Community Justice Center in Brooklyn, US. The centre was responsible for developing UK problem-solving approaches and promoting research (amongst other things) with the overarching aim of implementing, evaluating and disseminating new problem-solving justice ideas and practices in the UK (Donoghue, 2014). DRRs, DTTOs, and DCs showed great promise for supporting broader and long-term rehabilitative drives within England and Wales CJ and the MoJ's five-year projections (2004-2009) included plans to expand the DC model following an evaluation by Matrix Group (2008).

Matrix Group (2008) carried out a seventeen-month process evaluation of the two initial England and Wales DC pilots examining their functioning, impact, and value for money, to identify operational issues that would enable wider implementation (Matrix Group, 2008). The researchers applied a mixture of qualitative and quantitative methods inclusive of: offender and stakeholder interviews, observations, stakeholder workshops, focus groups, as well as analysis of case files and court records (Matrix Group, 2008). An area of interest was continuity of the judiciary at Leeds and its impact on DC outcomes (Matrix Group, 2008) as highlighted in the previous section of this chapter (2.6). The report generated qualitative evidence to suggest a consistent judiciary occurred at both DCs even if only partial (i.e., a single magistrate sitting for two consecutive hearings), although the researchers expressed

² This Centre still exists today.

that continuity was sometimes difficult to achieve procedurally (Matrix Group, 2008). The project further reported that judicial continuity was a "strong planned feature" of UK DCs, going forward (Matrix Group, 2008: 12). The report further suggested that the judiciary was able to increase client motivation through: appropriate communication styles and their high-quality training around addiction (Matrix Group, 2008).

The 2008 evaluation led to an announcement by the Secretary of State for Justice that four more DCs would be rolled out in: Barnsley, Salford, Cardiff, and Bristol in 2009 (Donoghue, 2014; MoJ, 2011). Subsequent years saw the UK DC model expand to UK Mental Health Courts, Anti-Social Behaviour Courts, Domestic Violence Courts, Family Drug and Alcohol courts (Donoghue, 2014). The latter model has received particular attention, and has been endorsed as a highly valuable practice in England and Wales and has been rolled out with success (Harwin et al, 2011). The Scottish pilots have benefitted from high-quality research; an impact evaluation reported that they successfully reduced drug use and related offending during the first twelve months of operation (McIvor et al, 2006). Further studies found that 50% of clients had not reoffended within a period of a year, which reduced to 29% after 2 years (McIvor et al, 2006).

2.6.1 Original Contributions from the Previous Report

The last piece of research carried out on the England and Wales' DCs was a process evaluation by Kerr et al (2011), which expanded Matrix Group's report by analysing all six UK DCs simultaneously using a case study design. Applying a combination of qualitative and quantitative methods (although emphasis was placed upon the former), researchers mapped implementation, operation, and core elements across the models, although the report did not aim to measure impact (Kerr et al, 2011)³. The qualitative component explored perceptions of key stakeholders via in-depth interviews (DC staff, practitioners, judiciary,

³ Notably, McSweeney et al (2010) concluded that a full impact assessment would be possible but would not offer value for money due to high resourcing and would risk the possibility of finding no impact.

and offenders) as well as observations and focus groups (Kerr et al, 2011). Quantitative analysis examined existing datasets gathered by the sites for the purpose of socio-demographic profiling of offenders (Kerr et al, 2011). These existing datasets allowed researchers to generate descriptive statistics around judicial continuity and breaches; however, the researchers expressed concerns over the data quality (Kerr et al, 2011).

The evidence suggested that, whilst the DCs increased partnership-working and information-sharing across a number of services and agencies, there were communication difficulties across parties (Kerr et al, 2011). The key (quantitative and qualitative) finding was that judicial continuity remained crucial for successful DC operation (cementing findings by Matrix Group (2008)). It was reported that, across the six sites, this increased the positive offender experience (Kerr et al, 2011). Across five sites, partial continuity was achieved for 90% of reviewed cases; however, this statistic must be approached tentatively: the quality of data used to generate the statistic was questioned due to reliability of the tracker used for data collection. The researchers determined that continuity could be difficult to maintain in the longer-term logistically and further suggested that continuity was easier to achieve when a single district judge resided rather than a panel of magistrates (Kerr et al, 2011).

The researchers emphasised that: "the nature of judiciary-offender interaction in the DC... play[s] an important role in encouraging offenders to engage with the court and potentially reduce subsequent offending and drug use" (Kerr et al, 2011: v). In mapping the key aspects of the England and Wales DCs, the researchers identified that the "judicial/offender relationship" was a key mechanisms contributing to reduced drug use and reoffending (Kerr et al, 2011)⁴. They reported this particular dimension as fundamental for influencing: offenders' structure and goal setting, self-esteem and confidence, accountability, engagement, increased judicial knowledge of specific cases as well as partnership working. Specifically, five judicial styles of engagement (TJ "wine") were identified: motivational, personalised,

⁴ This is diagrammed in Kerr et al (2011: 24) within figure 4.1.

interactive, authoritarian, and challenging (Kerr et al, 2011: 25), and key elements of this interaction were: an interested approach, listening to offenders, engaging with them genuinely and non-judgmentally, and encouraging them to want to do well (Kerr et al, 2011). Stakeholders also reported positively on judicial-offender interaction and demeanour; in particular, offenders praised these techniques by contending that they were unaccustomed to them (Kerr et al, 2011). Notably, the study was not generalisable; the views and behaviours exhibited had no statistical significance (Kerr et al, 2011). In terms of overall costs, initial funding had been given to the courts; however, this was not deemed to be an ongoing requirement; sites would simply need to ensure sufficient space and scheduled time for the DC as well ensuring the resources for judicial continuity, which overall would make costs fairly minimal.

Throughout Kerr et al (2011), four core DC dimensions were investigated: i) continuity of the judiciary (Component 7); ii) staff training (including the judiciary) (Component 9); iii) partnership working (Components 6 and 10) and; iv) exclusivity of the model in handling drug cases (Component 1) (Kerr et al, 2011: 1). The reason for reporting across these four areas appears to be that these elements were onset targets by Her Majesty's Court Service ("HMCS") when initially implementing England and Wales DCs. However, this is open to critique; why did the HMCS itself and latterly the researchers only focus upon four of the essential ten DC components when the international evidence-based presented at that time strongly suggested that all ten DC components are necessary for successful DC implementation and evaluation? This could indicate poor understanding of DC practice at grass-roots level by UK public bodies and researchers thereafter. The project also failed to mention TJ, which is surprising given the close alignment between TJ philosophy and DCs (Hora et al, 1999) and could indicate something broader about historical struggles for TJ in the England and Wales. Rationale for evaluating only upon these four areas is a flaw when comparing to the high quality report's such as by KPMG (2014), where successful evaluation was partly attributable to researchers' fidelity to the underlying frameworks and philosophies (i.e., Ten Key Components and TJ principles) within project design, measurement and analysis. By fortuitously revealing a lack of fidelity to NADCP (2004), Kerr et al (2011)'s

report could also raise questions around the authenticity of the pilot models: with such little adherence to the underlying framework, were the models ever really DCs at all?

Aside from the misplaced theoretical underpinning, the application of methods was also limited; all data was collected via qualitative methods (mostly through interviewing stakeholders) and all quantitative conclusions were reached by examination of existing datasets; no new evidence was determined through quantitative methodology (Kerr et al, 2011). The researchers concluded that if England and Wales DCs were to be rolled out, there needed to be clearer guidance on how the models were to be implemented both practically and theoretically (Kerr et al, 2011).

2.6.2 Since the Predecessor Report

Since 2011, the published literature has been thin, patchy and inconsistent. A series of newspaper articles detail closedowns of the original DC models (Bowcott, 106; Robins 2018; Gibbs, 2016). Of these, arguably, only the ghost of Salford DC remains in the form of MRC (although its definition is debatable, see Chapters 3 and 7). DC closures⁵ indicate that England and Wales has had little success, interest, and support for rehabilitative drives compared international jurisdictions and even neighbouring jurisdiction, Scotland, where the Glasgow model still appears to be alive and well (Wood, 2017). Yet any explicit explanations for lack of success remain unclear. Related enterprises based on similar principles have had also little prosperity; Liverpool Community Justice Centre closed down in 2013 due to low workload but without proper explanation of why (The Justice Gap, 2013; BBC, 2013). Broader questions arise: are there failures because England and Wales DCs have suffered from a lack of high quality research proving that they operated effectively, are the settings themselves completely failing, or is there another reason for their lack of success? These

⁵ The latest close down was, arguably, Leeds DC in October, 2016 - see Chapter 3, Methodology.

questions have been the source of frustration for policymakers keen to roll out court-specialism in England and Wales (Bowen and Whitehead, 2015; Bowcott, 2014).

Whilst much is unclear in England and Wales in this respect, international problem-solving court craft (whether a formal DC or a more informal version) has a proven record for effectively tackling recidivism as well as other ongoing critical social and human issues, such as recovery, victimisation, austerity, and community safety worldwide. In light of the current situation in England and Wales, which faces high recidivism rates and austerity measures, the jurisdiction would seemingly benefit from a well-functioning DC, or perhaps a looser solution focused method operating similar TJ principles with similar effects (Stobbs, 2013; Bartels, 2017). However, before such initiatives can be properly rolled out (Bowen and Whitehead, 2015) the MoJ needs to identify why and how the original DCs were unsuccessful to avoid another series of failures.

2.7 England and Wales: A Rehabilitation Revolution?

In keeping with the themes outlined within the opening sections of this chapter (2.2, 2.3), this section considers whether England and Wales has undergone or is undergoing a CJ RR. It illustrates that literature inconsistently reports upon the existence, growth and impact of England and Wales' rehabilitative drives, and that the RR initiatives have broadly been fairly stop-start. As the UK faces a time of political uncertainty, upheaval, and black-holes, recent and past governments have put forward an extremely unreliable set of mixed messages in relation to RR agendas; it remains to be seen if / how the RR will unfold. This is important because it strongly relates to the sustainability of the bottle.

Bowen and Donohue (2013) offer a sceptical view of past England and Wales' policymaking, examining systemic changes put forward by both Labour governments (1997-2010) and some years of the Coalition government (2010-2013). Donoghue (2014) further argues that the Coalition government came into power during a critical economic crisis yet faced the expense of a financially unsustainable CJS leaving them no choice but to reframe CJ towards (cheaper) rehabilitation frameworks. Thus, for some, the election of the Coalition

government in 2010 marked the beginning of the UK RR (Donoghue, 2014) and, Grayling (2012) under the Coalition government, officially announced its delivery in 2012. Here the inefficacy of the existing CJS was formally recognised in terms reoffending rates and insufficient rehabilitation services (Transforming Justice, 2014). Evidence is nonetheless conflicting; many suggest the Coalition government did nothing beneficial for the RR; it was merely a false promise (Gibbs, 2013). Now outdated, Cameron's (2016) speech held promise for a RR, stating that, during his Conservative government, the UK was undergoing the biggest rehabilitative transformation to normative CJ practice since the Victorian times. Whilst advising that "we need prisons", Cameron also strongly argued that: "we must offer chances for change, that for those trying hard to turn themselves around, we should offer hope (and)... help those who've made mistakes to find their way back onto the right path" (Cameron, 2016, np), highly suggestive of a RR. Nevertheless, Cameron's messages were paradoxical, often holding conflicting ideas around policy reform in relation to intelligent punishment (see research by Gibbs (2014) outlined below).

More recent England and Wales policy documents appear to be scattered with ideas around punishment reform, stating that England and Wales is currently over-reliant on hard punishment and insufficiently committed to rehabilitation-oriented practice (O'Neil, et al, 2016; Transforming Rehabilitation, 2013). According to O'Neil, et al (2016), CJ experts have agreed that the CJS has three systemic failures and are working towards advancing key policy reforms in order to address them: 1) over-reliance on punishment; 2) insufficient commitment to rehabilitation and; 3) failure of the services beyond the CJS to help facilitate change. Research conducted by O'Neil, et al (2016) holds promise for the future of UK DCs with data suggesting that the public are willing to consider alternative justice disposals for crimes lower in severity such as non-violent crimes, which DCs predominantly tackle (Perlin, 2013).

Furthering this idea, other recent reports state that the CJ RR has begun; it has yet to make an impact (Parliament UK, 2016) and research indicates UK statutory laws and policy are now focusing upon restoration, rehabilitation and recovery within the CJ structures (O'Neil et al; 2016; Transforming Rehabilitation, 2014). Under previous laws, sentences of less than 12

months gave offenders unconditional release after they had served half their time in prison (Mullen, 2015) yet the Offender Rehabilitation Act 2015 recently specified that offenders must only be released on licence, serving the rest of their sentence in the community with supervision from probation, which leaves room to apply rehabilitation reintegration measures to represent a TJ friendly bottle much like the Spanish JVP system mentioned previously in this chapter (Mullen, 2015; Wexler, 2014).

Authors speculate that the England and Wales RR failed to properly commence due to distorted public opinion (informed by political and public debate) across crime causation, the CJS's purpose, and how the system should be changed (Gibbs, 2014; O'Neil et al, 2016). High quality multi (and mixed) method research by O'Neil et al (2016) augments this idea exploring deep-seated (in England and Wales) cultural and public attitudes surrounding CJ. To introduce their study, O'Neil et al (2016) mapped the ideological gaps between experts and the public across the three categories, which highlighted vast discrepancies. Researchers found that whilst CJ experts held rehabilitative ideologies the public's was more retributive (O'Neil et al, 2016). The report demonstrated that public opinion is often rooted in the Durkheim risk-based model, highlighted in earlier sections as promoting severe, harsh and negative penology (McNeill, 2015) despite the majority of evidence suggesting pointing to its ineffectiveness (O'Neil et al, 2016).

In spite of the ideological gap, researchers showed that external political rhetoric (i.e., "cultural models") often also exhibit Durkheimian sentiments (O'Neil et al, 2016; Gibbs, 2014); for example, Cameron's (2012 cited in Gibbs, 2014: 5) speech quotes that "committing a crime is always a choice. That's why the primary, proper response to crime is not explanations or excuses, it is punishment – proportionate, meaningful punishment". Not only does this show conflict in Conservative rhetoric (contrasting Cameron's 2016 speech referenced earlier), authors have also asked: "how can CJ reformers effectively argue for different solutions to reducing crime when they are up against widely shared views about the efficacy of harsh punishment?" (Gibbs, 2014:4). This problem creates a vicious cycle between public opinion and political incentive whereby political rhetoric contours public belief into punitive tick-boxes which, in turn, influences political conversation (Gibbs, 2014).

O'Neil et al (2016) therefore argue that public conversations need to be interrupted and replaced with more productive, progressive and richer ways of thinking.

Prospect remains; the report suggests that whilst in England and Wales public opinion is overshadowed by punitive idealism, the public also have the potential to think in new ways about CJ reform with researchers maintaining that public opinion can be changed if commentators are "strategic with their messages" (Gibbs, 2014: 2). O'Neil et al (2016) offer empirically tested suggestions for alternative communication strategies to dislodge unproductive patterns of thinking and create space for more productive public conversations supportive of an array of CJ reform measures (O'Neil et al, 2016). Whilst this strategy will take "time and practice", the tools devised in the report hold promise for more (positive) robust, coherent, and memorable communications within public conversation if carried out (O'Neil et al, 2016: 26). These findings link to the work of Perlin (2013: 4), which states that the culture of blame surrounding mental health disability still permeates and "it continues to demonize persons with mental illness for their status. Until this is remediated, there can be no assurances that mental health courts -- or any other such potentially-ameliorative alternative -- will be ultimately "successful"". The same could be said for the drug using criminals in England and Wales, where opinion is yet to revolutionise towards more integrative attitudes (Best and Laudet, 2010) to anchor broad CJ reform.

Allen (2015) has noted that emphasis upon local involvement distinguishes the US CJS from any other international jurisdiction. As a result of budgetary pressures, many politicians began promoting situations outside the courtroom and prison system, which led to the creation of a range of local drives; for example, Justice Reinvestment Initiatives (JRIs) (Allen, 2015). These were developed across nearly half the US states with foundations in a devolved CJ and prison system, enabling justice to be administered on local (i.e., state and county) levels (Allen, 2015). Allen (2015) proposes the expansion of UK JRIs to give local agencies a greater financial and organisational role in the England and Wales CJS and to reduce the burden on national resources. Above all, however, Allen's (2015) report highlights that practices that rely upon local justice, such as DCs, are perhaps better suited to US jurisdictions due to a better "bottle" (Wexler, 2015) support at local level.

2.8 Concluding Remarks for Chapter 2

The purpose of this chapter was to review the existing literature gaps to form a scientific rationale for this thesis and to identify where the original contributions will lie. However, the chapter has achieved more than this; it has given the project a theoretical basis, history and background, whilst questioning whether England and Wales has undergone a RR. This backbone will lend itself to broad discussions during later analysis and discussion chapters about the journey of TJ in England and Wales over the last twenty years as well as possibilities going forward.

The review began by detailing England and Wales' current problems with recidivism (MoJ, 2018c, McGuire, 2015, MoJ, 2013) also highlighting that a plethora of research points to the strong link between drug addiction and recidivist crimes related to feeding the habit (such as: shoplifting, burglary, vehicle crime, robbery) (National Treatment Agency, 2009). If drug addiction causes recidivist crime, this links to broader and long-standing questions, such as: when addicts are caught up in the CJS could this be a window of opportunity to intervene and rehabilitate them and could the CJS itself be a vehicle for recovery? These questions tie into broad changes in theoretical perspectives captured by the RR. Most relatedly, psychology and recovery paradigms have moved away from a deficit model to incorporate a strengths-based perspective that seeks to cultivate positive aspects of human character to create change (Seligman, 1998; Granfield and Cloud, 2008). Running parallel are paradigm shifts within the CJ field, where changes are founded within - and elucidated by - a positive punishment ideal, to significantly change the tone, structure and delivery of many punishment disposals forcing us to think of new ways to deal with recidivist cycles within the above posited questions (McNeil, 2015).

With the changing of lenses, comes the emergence of a multitude of new therapeutic, reintegrative, and restorative interventions, including the ground-breaking work of: "Therapeutic Jurisprudence". TJ is interested in the therapeutic application of the law to enhance psychological wellbeing and promote rehabilitative outcomes, sitting confidently

within a RR ideology. TJ is a complex philosophy incorporating many dimensions and purposes: it is a lens, a set of principles, a practice, a theory and a method, and TJ experts appear to have deliberately avoided shoehorning the paradigm to allow for creative application. Researchers have raised further questions about how we can measure TJ within empirical projects (Google Lists, TJ, 2016, 2017, 2018) leading to even bigger questions around whether or not TJ can truly be captured by empirical measurement. If TJ's longstanding goal is to draw attention to the therapeutic or anti-therapeutic aspects of the law, the purpose of a measurement tool should be to provide insight into previously underappreciated, but significant, therapeutic (or, indeed, anti-therapeutic) areas of law processes. However, there is currently no tool posited for this purpose, and my project in part seeks to fill this gap, a point that I will return to shortly.

Much of the TJ literature is structured around Wexler's "wine"- "bottle" metaphor (Wexler, 2014), where a combination of both components (and their TJ strength) determines therapeutic potential of legal settings. Endorsed for both their TJ-friendliness, DCs have a close relationship to TJ, as well as a longstanding history across jurisdictions worldwide (Hora, 2002). The first DC was implemented as a result of the recidivist problem in Miami-Dade County, which faced problems much like in England and Wales currently, forcing US policymakers to consider rehabilitative alternatives. A typical DC is best captured by the "Ten Key Components of DCs" (NADCP, 2004) where results have confirmed that fidelity to the matrix creates optimum outcomes (Marlowe, 2010). Research suggests that DC model was successful (Marlowe, 2011) and splintering models have since proliferated across jurisdictions worldwide. Nonetheless, like with any craze, DCs appear to have dipped in fashion and models exhibiting new found fidelity matrices, still in possession of a TJ ethos, are beginning to emerge, perhaps offering a more sustainable alternative to the conventional model (Bartels, 2016, 2017, 2018; Lattimore et al, 2016).

Although the literature reports only quietly on England and Wales DCs, six pilots were established from the early noughties, and were alive in 2011 (Kerr et al, 2011). However, since then, their success has differed significantly to that in international jurisdictions. The last piece of England and Wales-based empirical research was a process evaluation by Kerr

et al (2011), which appeared to have a misplaced theoretical founding (failing to mention TJ), where it was fortuitously revealed that the models lacked fidelity to the underlying component matrix (NADCP, 2006). This leads to broad questions: were the models ever really DCs at all? Furthermore, what remains of the predecessors? Since 2011, there has been no published research, only a series of newspaper articles detailing closedowns (Bowcott, 106; Robins 2018; Gibbs, 2016). Of the six original DCs, arguably only the ghost of Salford DC remains in the form of MRC, which is the object of study within this thesis. As this thesis will show, MRC is a specialist court with a problem-solving rationale that brings offenders back for regular review of progress on the core DRR element under section 210 of the CJA (2003). Currently, there is no detail of MRC in the accessible literature, no mention on the UK Justice Innovation website, not in the media, and not in any policy document. Therefore, the purpose of this thesis is to fill a significant literature gap by providing a groundwork of knowledge in a significantly underexplored area. In fashion with general vagueness of this area in England and Wales, MRC's definition - a DC or review court - is unclear, which also becomes a core thread of investigation throughout this thesis (reported on in Chapter 7).

This thesis offers an exploratory study that builds upon Kerr et al (2011) using three main phases of data collection: Phase 1: Standardised Observations; Phase 2: Surveys; and Phase 3: Interviews. In line with the famous TJ analogy, the data points are split into two focuses, by referring to both "wine" (interpersonal skills) and "bottle" (broader systemic) issues to facilitate a wider qualitative narrative of MRC and, more broadly, surrounding the possibilities and pitfalls of TJ in the England and Wales, in the past, present and future. The details of the methods are discussed at greater length in the next chapter (Chapter 3).

Although DCs are complex enterprises comprising many components, the literature has emphasised the importance a consistent judiciary as well as the therapeutic style in which the bench interacts with clients (Winick and Wexler, 2003; Perlin, 2012). Whilst there is no single definition of what it means to possess therapeutic interpersonal skills, a comprehensive formula is offered within Goldberg's (2011) judicial training manual. This piece of literature forms the foundation of the posited "wine" measurement tool in this project where the four skills, comprising eighteen variables, intended to measure the therapeutic interaction of

magistrates (the "wine") at MRC: "empathy", "respect", "a positive focus", and "active listening". Notably, these eighteen items are rearranged onto three new scales following Principal Component Analysis in Chapter 5 and entitled: "Harnessing Therapeutic Support", "Engaging Therapeutic Dialogue", and "Inspiring Therapeutic Change".

Current issues surrounding England and Wales' recidivist drug-fuelled crime must be faced, and policymakers continue to posit rehabilitative alternatives for the England and Wales' jurisdiction to move away from current repressive reactions (Bowen and Whitehead, 2015). However, the RR has been stop-start, and one also cannot ignore the downfall of the previous England and Wales DCs. In the final section of this chapter, I examined whether England and Wales has undergone a RR. The moral of the story appears clear: England and Wales' RR has lacked confidence and has been stop-start, and there appear to be deep-seated cultural and public attitudes surrounding CJ to essentially create a vicious cycle between public opinion and political rhetoric, which appear to contour one-another into punitive tick-boxes. However, this thesis does not intend to tell a bleak story and will discuss possibilities for TJ in England and Wales, going forward.

2.9 Research Questions

This project examines MRC from a TJ Perspective. Research questions are structured in twofold "wine" and "bottle" format based upon Wexler's (2014) seminal analogy. These are as displayed below.

2.9.1 Wine

- 1) How can we most accurately measure compliance with TJ values in a future problem-solving Court setting?
- 2) What impact does an inconsistent bench have on the therapeutic application of magistrates' interpersonal skills?
 - a) Does magistrates' gender impact application of TJ wine?

- 3) What is the therapeutic quality of the magistrates' interpersonal skills at MRC?

Note: question 2A was added inductively due to emerged findings from question 1 to clarify gender impact upon panel consistency within a confirmatory analysis.

2.9.2 Bottle

- 1) Does the court adhere to the international framework (NADCP, 2004)? How do we define it: is it a DC, is it a Review Court?
- 2) What is the therapeutic quality of the current MRC bottle?

3 Chapter 3: Methods and Methodology**Contents Page**

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3.1 Introduction

The previous chapter (Chapter 2, Literature Review) identified the prevailing literature gaps for England and Wales Drug Courts ("DCs"). Like most problem-solving approaches to Criminal Justice ("CJ") in England and Wales, DCs are a significantly under-researched, under-prioritised, and misunderstood area, where perhaps consequentially, perhaps causally, there has been little published empirical-based literature (Matrix Knowledge Group, 2008; Estep, 2014). The latest empirical analysis (Kerr et al, 2011) is now outdated, and since its publication, there have been significant changes to the surrounding landscapes, including but not limited to, four new justice secretaries under the current Conservative government alone, imminent withdrawal from the European Union, and significant austerity measures, cutbacks, centralisation and privatisation reforms to sectors that pillar DC sustainability.

The setting where this thesis is based, Manchester Review Court ("MRC"), was, at times, a frustrating one to work with empirically. As the data throughout this thesis will show, it is unclear whether MRC is a DC or an altogether independent method of UK problem-solving practice, a question that is fundamentally ontological. The overarching issue is there is *no* UK guidance, whether of an empirical or policy-based nature, nor even in a court handbook or website outlining objectives and expected practice. The only written material is in statute within section 210 of the Criminal Justice Act 2003, which, as quoted on page 3 (introduction) and repeated in the footnote below⁶, is remarkably unclear, making empirical

⁶ 210 Drug rehabilitation requirement: provision for review by court

(1) A community order or suspended sentence order imposing a drug rehabilitation requirement may (and must if the treatment and testing period is more than 12 months)—

- (a) provide for the requirement to be reviewed periodically at intervals of not less than one month,
- (b) provide for each review of the requirement to be made, subject to section 211(6), at a hearing held for the purpose by the court responsible for the order (a "review hearing"),
- (c) require the offender to attend each review hearing,
- (d) provide for the responsible officer to make to the court responsible for the order, before each review, a report in writing on the offender's progress under the requirement, and
- (e) provide for each such report to include the test results communicated to the responsible officer under section 209(6) or otherwise and the views of the treatment provider as to the treatment and testing of the offender.

measurement difficult. The overarching aim of this thesis is to fill the literature gap relating to England and Wales in this area using original data to generate new theory. Given that no literature exists on MRC in its current format, the purpose of this study is to set the groundwork for further analysis through an exploratory qualitative-based study.

There are three phases of methods used in this study (Phase 1: standardised observations, Phase 2: surveys, and Phase 3: interviews). This chapter will: a) describe the methods which were expedited throughout this research project; b) discuss the methodological strengths, limitations, and philosophical arguments of such, and; c) describe how TJ was implemented methodologically. The chapter begins by broadly discussing the overall case study approach, outlining: location selection, data collection, methods, data quantities, and methodology. It then continues to discuss each methodological phase respectively in terms of: sampling, measurement, and data analysis, including strengths and limitations. Fundamentally, the chapter will argue that this research is situated in ontological and epistemological realism, and uses abductive reasoning to derive conclusions within an overall qualitative genre.

Please see the literature review (2.9) for an outline of research questions based on the literature gaps.

3.2 Selection of Location

I began this project in 2015 with an interest in TJ. After various literature searches, I organically discovered the DC literature. Although not necessarily where TJ finds itself, TJ and DCs have a longstanding history (Hora, 2002; Hora, Schma, Rosenthal, 1999), particularly within international jurisdictions such as: the US, Australia and Canada. As a UK-based researcher, naturally, I was interested in whether England and Wales also hosted DCs. As stated in Chapter 2, although the literature was generally quiet on this subject, a report by Kerr et al (2011) demonstrated six pilots were operating in 2011, and proposed suggestions for further implementation. According to UK problem-solving justice specialist, Donoghue (2014), they still existed when her book was published in 2014, the year before my study began (notwithstanding publication delays). Elsewhere, the UK literature gave inconsistent coverage on their existence; the media tended to report failure and closedowns

(Bowcott, 2016; Robins 2018; Gibbs, 2016), whereas the Justice Innovation Charity stated they were to be rolled out nationally (Bowen and Whitehead, 2015). However, all reports provided thin information on this topic. To find out more, I contacted all six pilot sites (Kerr et al, 2011; Donoghue, 2014) to discover most of the DCs were now closed, other than two similar specialist recovery-oriented courts that were operating within the mainstream magistrates' courts at Leeds and Salford. I assumed that these were the original DC sites; however, whether this is the case is a question that remains unanswered, which becomes a central topic of this thesis (see "bottle" analysis, Chapter 7).

I visited the Leeds magistrates' court in November 2015 to conduct informal observations. My first impression was that the court presented itself differently to DCs representations within the international literature, missing many key components (National Association of DC Professionals ("NADCP"), 2004); a clearer feature was magistrates' interactional style, which appeared to be operating in line with TJ principles (Winick and Wexler, 2003). Although observationally its definition was confusing, court staff considered it the Leeds DC pilot site (Court Staff at Leeds) consistent with Kerr et al (2011). I began carrying out fieldwork at the site in November 2015 under the impression it was Leeds DC but had suspicions as to its authenticity. Shortly after, in February 2016, it closed down due to "sustainability issues" (Court Staff at Leeds), and little more explanation was given. This very much resembled the vagueness presented throughout the UK literature on this topic.

Following this, I visited Salford magistrates' court, which under UK court centralisation reforms was relocated and merged into the central Manchester magistrates' court (Courts Act 2003) where I assumed that Salford DC had also been relocated alongside the broader centralisation. The specialist court here presented itself similarly to Leeds, devoid of many of the key DC components, although it appeared TJ-friendly, rehabilitation-focused and the magistrates exhibited a therapeutic interactional style. It is here where I based my study. As data collection progressed, I became increasingly dubious of its definition so, for lack of fidelity reasons, I redefined it: Manchester Review Court ("MRC"). Nevertheless, the data (Chapter 7) remains inconclusive on its definition, which tells a broader story of misunderstood TJ practice in England and Wales. In 2017 and 2018, during the course of this study, further centralisation reforms took place, merging Bury and Bolton into the central

magistrates' court, and its name was changed to "Manchester Magistrates' Court". It is interesting to consider that, if MRC is an altogether independent practice to the UK DCs, I discovered it accidentally through its predecessor name that included "Salford" where the original DC was housed. To reiterate and emphasise: there is no track record of this court in the accessible literature, no mention on the UK Justice Innovation website (which interestingly mentions Manchester' separate problem-solving court ("PSC"), see below), not in the media, and not in any policy document. It remains a UK misnomer, and this project will bring clarity to a significantly misunderstood area.

Explicitly, MRC was selected for this project for the following reasons:

- It lacked many key DC components (NADCP, 2004) but it had a TJ-friendly orientation, most clearly exhibited in magistrates' judging style (TJ "wine"), which I was interested in examining from a TJ perspective.
- Manchester also ran a women's PSC, operating similar principles (Justice Innovation Website, 2018). During earlier project stages, I considered whether it could be incorporated into the study. This idea was eventually excluded as the PSC was for women only with a different emphasis on female-specific issues (Justice Innovation, 2018), which would over-complicate the study and its research questions⁷.
- The city of Manchester has significant problems with high levels of drug use, particularly "spice" (Perraudin, 2017), making the broader location relevant to Drug Rehabilitation Requirement ("DRR") effectiveness. Furthermore, according to Manchester City Council (2016), approximately 42% of detected acquisitive crimes occurring in Manchester are linked to drug use (42% of robbery offences and 45% of burglaries). This suggests that tackling the underpinning causes of crime is of the essence in the City of Manchester, especially in light of broader issues with recidivism in England and Wales.

⁷ The given reason for separating men and women was a history of inappropriate behaviour in the court waiting room.

- The only relevant literature was historical DC research, now outdated (Kerr et al, 2011), which reported on Salford DC before the centralisation reforms, and not separately on MRC in current format. There was clearly a literature gap to be filled and its problematic definition became central to the project.

3.3 Data Collection

Fieldwork at Manchester began during February 2016, which involved familiarisation with the setting, staff members and relevant stakeholders, carrying out unstructured observations, and assessing the site's suitability for the project. After determining suitability (throughout above criteria), after gaining ethics approval from Sheffield Hallam University ("SHU"), and after a long wait for access approval from the Her Majesty's Prison and Probation Service ("HMPPS") (appendix 3), formal data collection began. The full empirical part of the study (inclusive of fieldwork) was longitudinal, lasting 14 months; fieldwork was carried out between February 2016 and November 2016; Phase 1 (observations) took place between November 2016 to April 2017; Phase 2 (surveys) were distributed between November 2016 and April 2017; and Phase 3 (interviews) were conducted across March and April 2017. The full study, inclusive of literature review, analysis and write-up, lasted from September, 2015 to October, 2018. Data collection was terminated due to a court centralisation initiative in April 2017, which oversaw the integration of two more courts into Manchester (see above: 3.2) which would have dramatically changed the population parameters and focus of the study. Nevertheless, this was a natural end point to data collection as saturation of the key themes had been achieved. Since this study is based on a case study methodology (see below discussion), the data collectively contributed to a full dataset, and thus saturation occurred across rather than within phases.

3.4 Methods

The empirical part of the project was operationalised using mixed methods within a case study approach, similar, and to build upon, predecessor research by Kerr et al (2011). At all times, I complied with SHU ethics policy and those of the British Society of Criminology (Wahadin, 2015). There were three main methodological phases, as outlined above. Phases

were carried out chronologically, although standardised observations continued at all times, surveys were distributed half way through observations, and interviews were carried out approximately half way through survey distribution, allowing the phases to build upon one-another. This meant that during the latter stages, data was collected via all three methods whereas in the earlier stages only Phase 1 or Phase 1 and 2, were being carried out, respectively. At all times, unstructured observations ('ethnography') were occurring.

The methods are represented visually in Diagram A, below; and are separated into two branches: "wine" (red to represent red wine) and "bottle" (green to represent a green bottle), to reflect the dual focus of this study, based on the seminal analogy of Wexler (2014). The three main methodological phases are displayed by each block, 1, 2 and 3; these were not independent but rather built upon one-another. The "wine" aspect examined the therapeutic quality of magistrates' interpersonal skills at MRC, and was considered throughout all data collection phases to give a core thread throughout the study, represented by the red blocks and the red arrows for consistency. However, the focus on the wine narrowed as the study progressed to consider broader questions around impact of the "bottle" upon practice and procedure. Unlike the red "wine" arrows that narrow, the green "bottle" arrows broaden, to reflect a broadening focus. To represent the two related but distinct focuses, analysis and discussion chapters are split into: "wine" (Chapter 6) and "bottle" (Chapter 7). Throughout the whole project, data was being gathered through unstructured observations, conversations with relevant staff members, and via an examination of the international and local DC and TJ literature. This is represented by the encompassing yellow circle, which has been entitled "ethnography", which I am reluctant to call "a phase" due to its constancy.

In the case of MRC, a mixed method approach was appropriate for achieving this study's objectives. By blending methodologies, stronger conclusions could be drawn (Tashakkori and Teddie, 2013), providing the necessary depth to an area where there is currently no published literature. It similarly enriched a broad and complete range of research questions in an area where many questions remain unanswered. A widely accepted strength of mixing methods is it liberates researchers from the paradigm wars, providing logical, creative and contemporary research alternatives to more shoehorned purist approaches, such as: positivism and constructivism (Johnson and Onwuegbuzie, 2004). The achievability of purist approaches in social science research are questioned throughout this chapter, where ascribing to a paradigm that sits somewhere in the middle is argued as more feasible in postmodern social science research, hence a realist philosophical approach, described next.

3.5 Methodology

This thesis was grounded in realist ontology and realist epistemology (Easton, 2010) by ascribing to the Critical Realist ("CR") paradigm. CR was largely established by the seminal work of Bhaskar (1975, 1978, 1989, 1998), who recognised the benefits of combining ontological and epistemological traditions during quests for knowledge. Ontologically, CR assumes that reality is independent to its observers (a largely positivist view) but accepts that this reality is largely socially constructed (a constructivist position) (Easton, 2010). Epistemologically, CR differs from objectivist-based approaches, such as, empiricism, which assumes knowledge can only be acquired via the senses (Locke, 1689). It also differs from subjectivist philosophies, such as phenomenology, which assumes that reality is entirely socially constructed (Husserl, 1963). Instead, CR epistemology incorporates both approaches by positing that knowledge construction is ultimately driven through interpretation of an objective world (Easton, 2010; Wynn, 2012). This means that empirical research is somewhat limited, and cannot fully access the objective world (Wuisman, 2005). Through its versatility, methodologically, CR philosophers propose mixing qualitative (inductive) and quantitative (deductive) methods that tend to be kept separate (Zachariadis et al, 2010). However, by lending itself to its more (but not entirely) subjectivist ontological and epistemological groundings, CRs lean more towards qualitative methodology (Easton, 2010; Wynn and

Williams, 2012). CR also tends to use abductive reasoning to explain causation, which can be defined as "a creative, but systematic process 'that describes unobservable concepts that do not occur in empirical data'" (Bunge, 2004; Glaser and Strauss 2010; Bygstad and Munkvold, 2011:3). According to scholars, abduction can do more than induction and deduction, as, through the creativity of the researcher, it explains the effect of a cause by arriving at new conclusions beyond the data (Wuisman, 2005). In other words, it attempts to explain the cause of certain empirical findings, as an attempt to access the "real" and objective world, which is posited to exist beyond the empirical.

The current study leveraged both qualitative and quantitative methods, but was consistently modelled on a qualitative methodology. Although certain methods were technically quantitative and were analysed using statistics, these were mechanisms to tell a broader qualitative narrative by ascribing to CR. The usage of induction and deduction was cross-fertilised into contrasting paradigms. On the one hand, the "quantitative" elements (Phase 1 and 2) took a more inductive approach as measurements were not standardised and were instead based on insight. Yet on the other hand, a deductive theory-driven map was implemented to analyse the qualitative data (Phase 3), hence a quantitative philosophy within the qualitative methods, and vice versa. Abductive inference was used to derive conclusions in the Analysis and Discussions chapters (Chapters 6 and 7) (Glaser and Strauss, 2010), which explained the data by linking to the social world, policy, and legislation, going beyond the data to describe the possible causes of the seen effects within the data. Thus, the method and analysis moves between induction, deduction, and abductive reasoning within an overall CR qualitative genre.

3.5.1 A Case Study Approach

CRs advocate case study research (Easton, 2010) as it tends to mix methods, thus blending ontological and epistemological positions within single research projects, whilst representing a broader qualitative philosophy (Yin, 2012). There is no universal explanation of a case study; some posit that it is an "approach" (Willig, 2008: 74; Yin, 1994), others describe it as a "research strategy" (Hartley, 2004), yet it is widely agreed that case studies use single and

small units of analysis and various data-points to help understand objects in a rich, comprehensive and holistic fashion (Easton, 2010; Wynn, 2012; Yin, 2012; Willig, 2008).

Willig (2008) posited that a case study is enriched by: i) an idiosyncratic perspective; ii) attention to contextual data; iii) triangulation; iv) a temporal element and; v) a concern with theory. This study comprised all five components. Firstly, it was interested in the particularities of MRC through subjective, qualitative interpretation. Secondly, the project examined how the court interacted with the wider environment and broader social world through analysis of relevance policy and political changes during abductive analysis (Chapters 6 and 7). Thirdly, it integrated information collected from a variety of sources using the principles of triangulation (Chapters 6 and 7). Fourthly, it was a longitudinal; it examined the case over a period of time, although it was not concerned with changes within this period. Fifthly, the study generated new theory as no literature currently existed. The study was thus heavily based upon a case study rationale.

Case studies are not without limitations. Yin (1994, p. 10) has described it as "the weaker brother of the methods of Social Sciences" as it lacks a solid definition and reputable founding (Hsieh, 2004; Flyvbjerg, 2006). However, this is a double edged sword; its versatility leaves room for innovative application (Willig, 2008), necessary when researching a topic where there is no existing UK literature or standardised tool; the fluidity of the case study allowed experimentation with methods and measurement development (for the latter see Chapter 5). The methodological legitimacy of case studies has been critiqued by positivist researchers for being too context-dependent and lacking scientific rigour (Flyvbjerg, 2006; Willig, 2008). The measurements in this study became increasingly fine-tuned as the project passed through the phases; from this perspective, it became more context-refined, and removed from an objective founding (Flyvbjerg, 2006). This may provoke broader questions about reliability; if measurements are contextually driven, then can the study be replicated? These questions were considered in Chapter 5, where Cronbach's Alpha showed that the scales had high internal reliability; thus, if another researcher wanted to measure the same constructs it is likely that the scales could be replicated. However, replicating the full research would be difficult as measurements are so situational to MRC due to the case study

approach. However, whilst the study is context-dependent, it was bound to be as no other known courts of its kind exist in the UK.

On a similar note, case studies are most commonly critiqued for lacking generalisability (Hsieh, 2004). This study is not representative, but nor is this the purpose since there are no other similar England and Wales courts to which one could generalise. Mass scientism is perhaps best applied to projects where there is an established groundwork of knowledge. As there is nothing currently known, generating expert knowledge through nuanced, exploratory, phenomenological analysis was the aim, providing a baseline of knowledge for more confirmatory analyses in later projects. Perhaps the critique on representativeness could itself be critiqued; is it not true that all social science research has some bias (Campbell, 1975; Flyvbjerg, 2006)? Whether natural science or social science, quantitative or qualitative, research questions are ultimately theoretical, and researchers themselves identify concepts relevant to the project (Willig, 2008). In other words, all choices made by a researcher, questions, categories, coding, originate in a subjective mind, even in large scale analysis (Flyvbjerg, 2006). In other words, is pure deduction possible when the starting point is ultimately subjective? These discussions lend themselves to broader epistemological debates about knowledge bias, which questions the possibilities of predictive theory, universals and scientism (Flyvbjerg, 2006). Scholars further claim that case studies tend to simply affirm researchers' viewpoints, hypotheses and theories, again critiquing them for their subjectivism (Flyvbjerg, 2006). Nonetheless, subjectivism has its own sort of rigour; as a phenomenological approach, it can zoom in on real-life situations to often displace rather than affirm preconceived ideas (Willig, 2008; Flyvbjerg, 2006). In this study, the qualitative data lent itself as a valuable falsification tool; I began the study under the assumption Manchester was a DC, which soon got discredited by the data (see Chapter 7). In this example, my own dispositions were invalidated, not confirmed, by what was ultimately subjective data, hence the rigour of a subjectivist methodology.

As shown, a case study approach is not without limitations; results cannot be generalised, it arguably lacks academic credibility, it is subjective, and reliability tends to be low through focus upon micro issues. However, this has both favourable and unfavourable consequences; in this case, it was entirely appropriate for gaining expert knowledge in a significantly

unknown area, in a necessarily rich, holistic and comprehensive fashion. The methodology consistently fitted into a qualitative genre, telling a story of MRC through interpreted, first-person, narrative-based discourse, which could be tolerated by a case study approach. Case studies often stimulate new research in new areas, and are often the starting point for future projects (Eisenhardt, 1989). This was precisely the purpose of the study; in a significantly unknown area, this is a preliminary, exploratory and introductory analysis that sets the groundwork for further study. As such, notwithstanding these limitations, the case study approach lends itself an invaluable methodology for achieving the study's objectives. The next sections go on to detail the each methodological phases in turn.

3.5.2 Phase 1: Standardised Court Observations: Overview

This section discusses the Phase 1 methodology. The method used was standardised observations and measurements were taken using a uniform protocol (appendix 1). This systematic approach to observations complemented the unstructured observations carried out during ethnography (yellow circle, Diagram A). The rationale for the standardisation was to create consistency across observations to make viable comparisons on the therapeutic quality of panels, which was posited (2.9) as research question 2 ("wine") and answered in Chapter 6, Section 6.2.1.1. The standardisation meant that I was able to coherently organise my observations, as well as overcoming the limitations of relying upon memory or failing to write everything down inherent to a more unstructured observation method (Cargan, 2007).

Without making any contact (verbal or non-verbal) with clients or key personnel, the visual observations were carried out overtly by sitting in the courtroom public gallery, watching what happened as the interactions unfolded in their real-life capacity where the intention was to be as much of a 'fly on the wall' as possible. Observations were an ideal mechanism to directly measure the court, and allow real-life behaviour to be recoded (Cargan, 2007), which was of particular interest given the paucity of published literature. During this stage, measurements were taken for wine only (see Diagram A) and no interactions between any other participants were recorded. During any one hearing, the number of panel magistrates varied from one to three, but most often there were two sitting. At no point did the panel

comprise the same magistrates, although some individual magistrates were seen on different panels on a number of occasions.

A widely acknowledged and accepted limitation of the observation method is that it is inherently biased (Cargan, 2007). Results from Phase 1, 2 and 3 were converged in Chapter 6 and 7 to overcome some of the intrinsic bias within the method. Thus, whilst bias is certainly a limitation, this was overcome somewhat by bringing the data points together to consider similarities across results. It is also important to note possible consequences of the Hawthorne effect (Nord, 1963), in which the overt research presence may impact behaviour (McCambridge et al, 2014). In Chapter 7, there was found to be inconsistency in the therapeutic quality of interpersonal skills depending on the bench sitting. Could it be that on the stronger days, magistrates' behaviour became more therapeutic as they knew they were being studied? This was controlled for as the study objectives and measurements were not disclosed to participants and it took place longitudinally so participants became accustomed to my presence.

3.5.2.1 Standardised Observations: Sampling

As a comprehensive case study, the project related to all individuals within the timeframe, without excluding certain demographics so long as they were involved in the court reviews (detailed next in Chapter 4). There are broadly two ways that sampling can be expedited: i) random sampling (based on the principles of probability, for instance: systematic, stratified, cluster/multistage or drawing names out of a hat) or; ii) non-random sampling methods (not based on randomness, for instance: quota, convenience, purposive, or snowball) (Demack, 2007). The benefit of random methods is the sample better represents the parent population, thus, analyses can be accurately inferred back to the broader population parameter (Dale, 2006; Flick, 2011; Field, 2013). In statistical analysis, this is determined through the p value (Demack, 2007). Scholars posit that if we do not use a random sampling method to control for demographic differences, we cannot ensure the sample matches the parent population (Demack, 2007). Thus, the strongest criticism of non-random sampling is it renders statistical testing (through the p value) somewhat inaccurate (Demack, 2007).

In this study, sampling was carried out opportunistically; Phase 1 observations began simply as soon as access was granted by HMPPS and was terminated following the court centralisation reforms. Therefore, the sample comprised of those present during this timeframe, opportunistically. Breaching the assumption of randomness should be thus kept in mind when interpreting results from the one-way ANOVA in Chapter 6. In defence, random sampling methods could be critiqued; even the most rigorous random sampling technique could not produce a perfect reflection of the population due to sampling variation; individuals are heterogeneous, which means that one sample taken from the population would never be the same as the next (Dodes and Greitzer, 1964), which means that any random sampling method is inherently flawed.

3.5.2.2 Standardised Observations: Measurement Tool

The "wine" measurement tool was based upon Goldberg's (2011) TJ judicial training manual, although specifically tailored to the setting. The tool was piloted for a few weeks before the final measurement protocol was put in place (Appendix 1). A gold-standard measurement tool was not used as this is currently unavailable in the TJ literature. I developed a tool to initially measure four hypothetical therapeutic interpersonal skills: "empathy", "respect", "active listening", and "a positive focus". Each hypothesised skill was broken down into a series of narrower (and more quantifiable) sub-skills, which collated a comprehensive measure for each construct⁹. The problem with measuring latent variables, such as "interpersonal skills", is that they exist ontologically as intangible things outside of natural science meaning they cannot be measured directly (Bauer, 2017; Field, 2013). The rationale for measuring a series of elemental facets was to overcome this problem by making the construct more quantifiable (Field, 2013). It also added refinement, precision, and organisation to the dataset, which could only be enabled through such standardisation unlike an ethnographic approach (see section 3.6 of this chapter). In addition, measurements were

⁹ See the measurement tool used in Appendix 1 for clarity on these.

taken for other information such as magistrates (gender, number of) and clients (offence, drug type, progress) within given access permissions (which forbade any direct interaction with magistrates).

For every case seen, the same tool was used to record magistrates' proficiency at each sub-skill, using a Likert scale of 1-5; "1" represented "poor" and "5" represented "excellent". This meant that interpersonal skills were rated against the same set of criteria for every client seen, hence generating standardisation across the observations. Whilst both (standardised and ethnographic) observations are distinctly subjective methods, the standardisation added objective rigour by shoehorning the observations into a set of criteria to allow patterns, relationships and trends to be interpreted more coherently within the analyses. Scores given to the magistrates were as a collective panel rather than individuals since all magistrates contributed to the "wine" interaction. The aim was not to accuse certain magistrates of poor performance, rather to conclude on the court's therapeutic quality by examining the impact of the full panel on application of TJ "wine". The variables were reorganised onto three new scales following the Principal Component Analysis ("PCA"), presented in Chapter 5, to increase validity (and were renamed: "therapeutic support", "therapeutic dialogue" and "therapeutic change"). To ensure coherency across the full case study dataset, these analyses were based only on their remodified composition as they appeared within Instrument 2. Therefore, please see Phase 2 measurement and analysis below for more information on how the scales were moderated and implemented.

3.5.2.3 Standardised Observations: Analysis

Standardisation provided by the measurement protocol allowed the data to be collated into a dataset in Statistical Package for Social Scientists ("SPSS"). Each row represented a single hearing and some participants appeared in the dataset a number of times as MRC is a regular court that brings participants back for repeated progress monitoring through regular review. Overall, there were fifty-one rows (therefore, fifty-one individual observed hearings) across ten different dates (ten Wednesday afternoon sessions at the court), which was equivalent to

approximately twenty hours of observations. Although SPSS was the most appropriate software for succinctly and uniformly summarising key characteristics, the analyses were not positivistic, i.e., not based on hypothesis testing through deduction. As so many subjective steps were taken in the methodological design and analytical process (including the non-standardisation of measurements), the purpose of the statistical analysis was to characterise data and to help 'tell the story' of the therapeutic quality of the wine at MRC.

3.5.3 Phase 2: Surveys: Overview

In Phase 2, data was collected using the survey method and measurements were taken through a standardised questionnaire (Appendix 2). Whilst this phase, above any other, was interested in general structures of opinion, and thus had a positivist 'flavour', it was premised in an interpreted, inductive measurement design, grounded a blend of paradigms within CR. During November 2016 to April 2017, surveys were disseminated to *clients* attending MRC to explore court operation phenomenologically from the viewpoint of service users. The survey design was cross-sectional (as opposed to longitudinal) (Bryman and Cranmer, 2004) as questionnaires were distributed during a single timeframe to measure a single cohort of individuals, rather than to measure changes over time. Since there was no up-to-date UK literature on the setting (Kerr et al, 2011), this method enabled information to be gathered quickly and efficiently, from as many possible client respondents.

The total client population was small (totalling 57), within which there was a significant non-attendance issue (see Chapter 7); Phase 1 data showed that only 22 of the 57 individuals attended review hearings. The population was taken as *attendees only* because perceptions of non-attendees were irrelevant to court operation. Although these issues generated a small sample (20 cases), which must be considered when interpreting statistical analyses, non-attendance was also an important qualitative finding, which says a lot about this type of practice more broadly in England and Wales (see Chapter 7). One potential issue with participant answers is fear of negative perception, especially within questions about compliance on the court order, where dishonesty would undermine data validity. This was controlled for by developing relationships and trust with participants before the

measurements were implemented. Moreover, if the survey method generates results that are superficial or lacking in depth (Mathiyazhagan and Nandan, 2010), this was also overcome by offering complementary results from richer methods, such as: ethnography and interviews.

Questionnaires were handed to participants outside of the courtroom through opportunistic sampling either before (four clients) or after (sixteen clients) their review hearing, where they filled in the written form (see Appendix 5). As such, there were two types of distribution. i) four surveys were given to clients who had attended the court on previous occasion(s) whereby participants relied upon their memory to answer; ii) Sixteen surveys were given to clients straight after their review and so answers were based on the review they had just participated in. A weakness of the former distribution is it relies upon memory (DeFranzo, 2012) and the strength of the latter distribution is the data could be directly correlated with the observation data in Phase 1 to validate both data points through a repeat measures design as the same variables were being tested (see Chapter 6, Section 6.3 for analysis using bivariate correlations). Wording of the questions were identical for both types of distribution; the only difference was the phrasing at the top of the questionnaire was adjusted from: "based on your experience in court *today*..." to "based upon your experience at court *before*." The separation of participants into the two pools was determined opportunistically; the clients in the first cohort were early to their review and were asked to participate as they waited. Once the court hearings had begun, I was in the courtroom collecting data for Phase 1 and could not continue to ask individuals to participate as they waited. As such, the sixteen other participants were asked to participate after their review as they left the courtroom whilst magistrates were reviewing the next client's DRR review report (for details on the written report see Chapter 7, 7.2.6).

3.5.3.1 Surveys: Sampling

In this phase, random sampling was not feasible due to: i) difficulties determining the population parameter and ii) the non-attendance problem briefly outlined above. In

determining the population, comprising of both Community Rehabilitation Companies ("CRC"; private sector) and the National Probation Service ("NPS"; public sector) clients, HMPPS held incomplete records¹⁰. On 13 December 2016, upon my request, Cheshire and Greater Manchester CRC ran a report to disclose all DRR clients who had attended MRC over the previous six-month period, which revealed only seven clients. This was vastly inaccurate and the court would often see more than seven CRC clients on a single afternoon (Phase 1 data). The CRC reported that they were "suspicious" of these figures, which again became an important qualitative finding discussed in Chapter 7. The NPS refused to give any details on population parameters. To overcome these issues, a full list of all clients scheduled for review was ascertained through the court listings, which became the accepted population parameter. However, this was unofficial as it was not based on probation records.

Whilst, theoretically, a random sampling method could have been expedited on the court listings, clients could not have been sampled by post, email, or phone, due to refusal on behalf of the HMPPS and the court to disclose personal details, and some of these individuals were homeless with no practical way of contacting them. Therefore, the only way to gain contact with sampled participants was in person through attending the court on the afternoon of the hearings. This was further problematic as a non-attendance issue meant it would have been severely time-consuming to wait for attendance and keep reselecting participants until an adequate sample was ascertained, especially as the court ran for only a few hours every fortnight. This issue could have been controlled by developing an inclusion criteria of attendees, where clients could be selected randomly from an inclusive list of attendees, and I could have waited at court until the sampled individual was due to appear, continuing to do so until an adequate sample has been ascertained. However, determining this was difficult; I could guess likely attendees but this had no guarantee. I asked for help from court and DRR staff to develop inclusion criteria, but they too could only hypothesise. In the end, it is likely that the same cohort participants would have been selected with a random or non-random

¹⁰ This is based on the review reports examined in Phase 1.

sampling method because survey data was collected from all but two attendees, which is nearly a census of data¹¹ (20 of 22). Put differently, random sampling would have been extremely arduous only to have ended up with the same sample non-randomly.

As such, the data for Phase 2 was collected non-randomly (opportunistically), by attending the court and asking attendees to participate, which worked well for co-ordinating visits to the site for Phase 1 data collection. Notwithstanding these difficulties, the study could be critiqued as having low external reliability due to the non-random sampling method, especially by more positivist researchers (Mathiyazhagan and Nandan, 2010). However, the site was a challenging one to work with, and whilst opportunistic sampling brings with it a multitude of issues (Demack, 2007), it was nevertheless the most sensible method with all things considered, and these difficulties were documented as important qualitative findings in Chapter 7 in which they contributed to a broader, and arguably more important, narrative about operationalisation of TJ in England and Wales.

3.5.3.2 Surveys: Measurement Tool

Like in Phase 1, the questionnaire was devised specifically for this study and did not replicate pre-existing scales. Thus, the Phase 1 limitations outlined must be considered, and the tools should be re-tested by future TJ researchers to increase validity and reliability. There was a total of thirty items on the questionnaire, including twelve broad questions about the court's general operation - "bottle" questions - based on the DC literature (NADCP, 2007); each of these "bottle" questions measured unilateral concepts. There were also eighteen questions relating to the therapeutic quality of the judiciary's interpersonal skills - "wine" questions - based on TJ literature (Goldberg, 2011), each of which contributed to facets of a construct. Twenty-nine items were closed statements where participants could *not* answer in their own words but had to choose a pre-defined answer. However, the final question ("any other comments") allowed for more qualitative feedback to be given, which was coded and

¹¹ One client refused to participate and one was unable to as he was illiterate.

analysed with the qualitative Phase 3 data separately. This qualitative answer was added to give nuance to client answers (Flick, 2011) (see Appendix 2).

The nineteen quantitative items required participants to select a pre-defined answer on a Likert rating scale of one to five, ranging from: "strongly agree", "agree", "neither", "disagree" or "strongly disagree" (Vagias, 2006) (see Appendix 2). The purpose of adding a neutral option was to avoid forcing an opinion where there might not be one (Flick, 2011). A Likert scale could reflect attitudes, showing the extent to which respondents agreed or disagreed with statements that would not be possible on a "yes/no" question or checklist response (Flick, 2011). The five-way Likert scale gave refinement across participants' answers, although this could have been improved by a broader point scale (such as a ten-way) (Wittink and Bayer, 2003). An issue with the survey method is differing interpretations of question meanings across participants, so to guarantee accurate responses, statements were kept clear, short, and coherent in line with Porst (2000) and colloquial language was used as advised by (Flick) 2011 to heighten validity. It was especially important that questions were written accessibly due to the targeted population; a report by Creese (2016) showed that 85% of the general population had literacy skills at L1 or L2 dropping to 50% amongst prisoners¹².

The Phase 1 and 2 interpersonal "wine" skill items intended to measure the same constructs, respectively. However, the measurement tools were not identical; there were more items per skill in the first Phase 1 tool, which were refined, and some excluded when developing the Phase 2 tool. This was partly to ensure that the questionnaire was kept short to guarantee a higher response rate whilst leaving room for more general questions around court feedback. Refining meant improving the scales; items transferred from Instrument 1 to Instrument 2 were deemed most relevant to each skill and the setting. However, this was an entirely subjective approach to instrument design, open to critique, and most likely lacking in reliability as measurements became increasingly fine-tuned to the context. In this sense,

¹² Level One Literacy is considered the level required for succeeding in most types of employment (Creese 2015).

Instrument 1 was a pilot for the development of Instrument 2. The subjective approach to instrument design lends itself to a largely qualitative philosophical positioning, using induction to design the scales. Items translated from Instrument 1 to Instrument 2 were paraphrased to reflect the change in method; for instance, "motivating clients" was reworded into a rateable statement as: "magistrates motivate me". The content of the transferred items were nonetheless tantamount, which was ensured by retaining key words. Although there are substantial, and accepted, limitations to bypassing standardised measurements, this thesis represents a first attempt to create TJ measurement scales to be further piloted (see Chapter 5).

3.5.3.3 *Surveys: Analysis*

Issues with non-attendance along with a small population meant that the sample contained 20 of 22 cases, although this was nearly a census of data. Whilst the survey method may not have been the best method to use *statistically* as the sample was small, the collected data significantly contributed to a largely qualitative analysis of the court's therapeutic quality and perceptions on impact (as presented in Chapter 6 and 7).

At the time of data collection, it was believed theoretically that there were *four* interpersonal skills (constructs) based upon eighteen subskills, which were arranged on four scales as (see Appendix 2). In Chapter 5, PCA and Cronbach's Alpha were carried out to check for construct validity and inter-scale reliability, respectively, on the eighteen Phase 2 "wine" questions (*not Phase 1*) to verify that there were instead three measured constructs. Sub-variables were rearranged onto three new scales and renamed based on their commonalities, and their inter-scale reliability was found to be high. The rationale for carrying out these checks on the Phase 2 scales not Phase 1 scales, is that even though they measured the same hypothesised skills, they had been modified and improved since Phase 1 as only certain variables were transferred from Instrument 1 to Instrument 2 based upon their relevance to the construct and setting. The scales could be critiqued for not covering the full construct; for instance, if we accept the name of the first component as "harnessing therapeutic support" there are probably more variables than eight for administering this skill. Nonetheless, the

construct validity of the given measurements was high, and it could be argued that no measurement scale can ever fully capture the intended construct within social science research due to intangibility issues (Field, 2013).

As this study did not use gold standard measurement scales, there is no guarantee that they measured the intended constructs. Unlike natural science research, which measures tangible objects, social scientists are dealing with human invented concepts. As tangible things exist outside of human conception, natural scientists can develop metrics that measure them directly e.g. centimetres, millilitres, etc. (Bauer, 2017) yet the indirect nature of social science variables makes this more difficult (Field, 2013). Often, social scientists will trial and error psychometric tools to increase their validity and reliability, where, if similar results are reached every time, the measurements have more guarantee and rigour, and become standardised (Sullivan and Garden, 2011; Stewart et al, 1999). Yet TJ, as a relatively new paradigm, has not yet benefitted from tried and tested scales, which made empirical measurement within this study somewhat difficult.

Even though the PCA (Chapter 5) increased validity, for the above reasons, the measurements have no guarantee and conclusions must be treated somewhat tentatively. However, the above epistemological issues demonstrate that measurements within all social science research, even when using the most rigorous scale, could be criticised for being fundamentally value-laden; if the object is intangible, how do we ever really know it has been measured correctly? Whilst the non-standardised measurements may be open to criticism particularly by the positivists, so could social science scales, even those that have been standardised. In Chapter 5, the "wine" scales went through rigorous checks, where it was found that their validity and reliability was high. In spite of this the posited scales are only a starting point; the suggestion going forward is for the TJ community to take them, re-use, modify and adapt them, which may help overcome some bias, although, like any measurement scale in social sciences, standardised or not, this can arguably never be fully achieved. As scales were non-standardised, this study lends itself to a qualitative genre, although perhaps so does all social science research as it remains open to question: when dealing with intangible things, can purist positivism ever be achieved in the social sciences?

A further critique from a TJ perspective is that these measurements do not measure the TJ paradigm comprehensively; they instead measure MRC from a TJ angle, and are therefore context-dependent. Wexler (1995, cited in Carson and Bull, 2003: 584), posited that tighter definitions of "therapeutic" should be avoided by research communities as they might "eclipse" broader issues. Over-tightness of the measurements within this study were controlled for as the focus of phases broadened to consider other therapeutic responses, such as rehabilitation and compliance within the "bottle" focus points. Nevertheless, it is important to be aware that these measurements are only a small facet of "therapeutic interpersonal skills" and an even smaller brick in a broader wall of "therapeutic" consequences. Perhaps it is not possible to measure TJ; perhaps this is not its purpose. The proposed scales offer an important original contribution, filling a current methodological gap in TJ, nonetheless open to development, adaption, and critique in the future. If TJ's longstanding goal is to draw attention to the therapeutic aspects of the law, this should be the purpose of a measurement tool: to provide an insight into previously underappreciated, but significant, therapeutic (or, indeed, non-therapeutic) areas of law processes; the posited tool could do exactly that (see Chapter 5).

Finally, in Chapter 6, the linked cases (which totalled 16 of 20), were compared on the same sub-variables through bivariate correlations to check for consistency across Phases 1 and 2 on a client-to-client basis (Chapter 5), within a core component ("wine", in red, Diagram A). This meant the limitations of the Phase 1 and 2 methods could be somewhat overcome by the other. The Phase 2 data, both "wine" and "bottle" were summarised using descriptive statistics, and presented in Chapters 6 and 7 with the rest of the findings to form a narrative thesis within a triangulation rationale. No tests of statistical significance were carried out on the Phase 2 data because the dataset was too small.

3.5.4 Phase 3: Interviews: Overview

In this phase, five semi-structured interviews were carried out with a range of stakeholders, including: three clients, one court staff member and one DRR staff member¹³. The three clients had already been investigated in Phase 1, then 2, and now in the third phase, they became case studies where consistency across the dataset could be considered within analysis and discussion (Chapters 6 and 7). Although participants were sampled opportunistically (see below subheading), participant demographics were diverse (see Chapter 4). The two staff members had different roles in the courtroom, and the clients were of various ages and offence types, increasing validity, reliability and representativeness of the findings. On the other hand, client drug typology in every case was polysubstance decreasing such rigour. Nevertheless, the similarities within this demographic also played as a strength because they highlighted inconsistency in feedback where one might expect consistency (particularly surrounding the treatment services in Chapter 7, 7.2.3).

Interviews were carried out in dialogue with participants using a guiding, pre-planned, interview schedule, from which I often deviated for more free-flowing discussion, hence the semi structure. Clients were interviewed straight after review in a local café and staff members were interviewed in the court offices. Questions were open-ended to leave room for inductive knowledge construction though participant viewpoint, although even the most open-ended questions will always be suggestive (Flick, 2011), where deductive elements inevitably permeate technically inductive methodological structures. Even during narrative interviews where participants are encouraged to tell their story in monologue, there will always be some prompts from a researcher, or else the participant would not know what to talk about. Even selection of an inductive research topic is itself deductive. This suggests that pure induction is not possible even in an approach such as grounded theory in social science research. Whilst this stage of data collection ultimately adopted a bottom-up approach, and new ideas were formed, it also had top-down aspect in the form of the interview questions and latterly through the deductive coding structure within the analyses.

¹³ Names have been anonymised to protect identity.

Interview schedules were largely consistent across participants, although they were tweaked accordingly (Flick, 2011). Staff members were asked more focused questions about court or DRR practice respectively whilst clients were asked questions about their court experiences. In all instances, there were some questions around the therapeutic quality of magistrates' interpersonal skills to maintain a core consistency ("wine", Diagram A), but, as the broadest phase, it was also concerned with court impact, operation, practice and procedure ("bottle", Diagram A). Interviews could range from between forty-five minutes to one hour and a half and I encountered some difficulties with the client cohort, leading to two interviews either being shorter or longer than expected. As clients were in early-stage recovery, most of them admitted that they were intoxicated at the time of interview; one of whom came across subdued, and gave one word answers, causing the interview to underrun. Another was also intoxicated and significantly animated, discussing tangential issues, causing the interview to overrun. In both instances, I used my integrity as a researcher to tease out ideas or to keep them on track with the interview; however, this was something I did not consider beforehand, and will need to factor into future studies involving similar populations.

Conducting interviews within the final stage was beneficial because their qualitative nature could look beyond the often more restrictive measurements taken within previous phases. They could also take a more confirmatory approach, asking participants to elaborate upon previous findings, including ethnographic findings (yellow circle, Diagram A). A strength of the interview method in this study was that they made knowledge about unobservable process (in this case the probation services and treatment providers) more accessible. However, the inherent problem with relying upon the perceptions of others (both when using survey and interviews methods) is they rely upon indirectness portrayed by phenomenological viewpoints (Flick, 2011). This was overcome by integrating the results with complementary, more direct, observation methods in Chapter 6 and 7. Interviews further rely upon participants being truthful (De Schrijver, 2012), and where they are not, validity decreases. Therefore, I developed trust with participants by visiting the site every fortnight which MRC ran, where I became familiar with participants to enhance truthfulness of their claims. Nevertheless, the biggest difficulty with this stage of data collection was ascertaining participants, which will be discussed in the next section.

3.5.4.1 Interviews: Sampling

Phase 3 sampling was also carried out opportunistically, both for clients and staff. For clients, I asked all Phase 2 respondents, who were already determined opportunistically, if they wished to participate in an interview. Only three responded, which is most likely attributed to their chaotic lifestyles during early stage-recovery. I gave every participant from both Phase 1 and Phase 2 a flyer detailing the study's objectives and my work email address in case they changed their mind but, unfortunately, nobody responded. There were an additional four clients that originally agreed to participate but either cancelled last minute or did not turn up for their interview. Again, this is most likely linked to the chaotic nature of drug-using lifestyles. Three clients agreed to participate in the study once they had filled in the questionnaire after their hearing, which enabled consistency checks to be carried out during every phase for these selected individuals.

For staff members, interview participants were selected by sending out a flyer via email. Two staff members agreed to participate, who then re-forwarded the email to other staff members; however, nobody else responded. This is likely to say something about the fact the court was a not prioritised area for most practitioners working in the setting (precluding magistrates). In total, two staff members agreed to participate: one court staff member and one DRR staff member. However, as the project utilised a case study design, the phases ran together rather than separately to form a full dataset. Thus, sufficient amounts of data were gathered across datasets to achieve the objectives and data saturation. As Phase 3 clients were from a range of ages and demographics, and staff members had different roles in the court (see Chapter 4), they were diverse enough to form representative results. Unfortunately, due to access restrictions I was unable to interview magistrates with Her Majesty's Court and Tribunals Service. Once I have achieved my PhD degree, it will be easier to get access granted to study the judiciary, and indeed next steps involve interviews with these individuals. Although this is ultimately a limitation, it did allow more third-party and objective data to be gathered, and I was able to have short conversations with these individuals during ethnographic observations.

3.5.4.2 *Interviews: Analysis*

Interviews were interpreted using thematic analysis ("TA"): "a method for identifying, analysing and reporting patterns (themes) within data" (Braun and Clarke, 2006: 6). Whilst TA had been previously overshadowed by more dominant forms of qualitative analysis, in 2006, it was established as a clear-cut, branded, method for data analysis within social science research by the seminal work of Braun and Clarke (2006). Its reputation for allowing epistemological flexibility, operationalised by researchers from various paradigms, made TA suitable for the current project, whereby, through CR, I aimed to use a deductive ("top-down") approach to the qualitative data (Braun and Clark, 2013: 178). This was operationalised through a predefined coding structure, namely: the Ten Key Components (NADCP, 2004) and the eighteen variables from the three PCA scales (Chapter 5), which were implemented as codes to maintain consistency within measurement across phases, and which is where most of the themes arise from. This meant using a quantitative, deductive approach to analysis on a largely qualitative dataset, successfully blending two contrasting epistemologies. As a comprehensive mode of data analysis, TA could tolerate this blend, unlike an approach such as grounded theory, which relies more purely upon inductive reasoning within qualitative analysis. Notably, whilst this was a technically deductive approach, deduction was not used in its purest hypothesis testing sense (Wilcox, 2013); it was operationalised instead as a theory-driven map to identify codes, and latterly themes, within the data. Although most themes arose from deductive codes, I was also open to development of "bottom up" themes, which were data-driven and based upon Braun and Clark's (2006) six phases. Although the minority, some themes were established in this way and are documented within Chapters 6 and 7.

The qualitative analysis began during data collection, during which time I was already familiarising myself with the data through verbal interaction. I re-listened to the verbatim transcriptions to check for accuracy and to ensure validity, whilst in the process heightening my familiarity with the dataset. Data was analysed in NVivo, where nodes were pre-labelled as the eighteen interpersonal skills variables and the Ten Key Components. NVivo lent itself as an appropriate tool for analysing the data as it generates standardisation within qualitative

data, meaning that a more deductive approach to qualitative data could be taken through the software. A "developing themes" node was also created, which involved collating further key themes, through refining ideas and creating subthemes. Developing thematic nodes was, in part, based on the number of references; more references per category alerted my attention to the potential theme. However, importance also related to question context, relationship between codes, and the repetition of ideas within the datasets and/or across participants. This entirely subjective approach to code and theme development is an acknowledged limitation of qualitative data analysis, and was controlled for through repeat measure design within a triangulation rationale. Notably, the ethnographic data was also analysed at the same time as the interview data due to its qualitative nature, as well as the "question 30" qualitative answers from Phase 2. Findings were substantiated with the other data using triangulation principles, where data is presented in Chapter 6 and 7.

3.6 Ethnography

This aspect of data collection was based upon ethnographic methodological principles. Ethnography has been defined as: "participating, overtly or covertly, in people's daily lives for an extended period of time, watching what happens, listening to what is said, asking questions - in fact, collecting whatever data are available to throw light on the issues that are the focus of the research" (Hammersley and Atkinson, 1995: 1). Throughout this study, I did precisely that; overtly collecting qualitative notes documenting my experience at court as I observed its operation in a real-life capacity without actively participating. This not only included observations at the site, but also conversations with key personnel both in person and via email, and then revisiting the literature to substantiate findings, where I then took more questions into the next session. As such, it was the broadest phase of data collection, represented by the yellow enveloping circle in Diagram A.

The main area of interest during the ethnographic stage was the court's adherence to the Ten Key Components (NADCP, 2004), which turned into a broader ontological question around its definition, added to the research inductively. Although the question lent was built in inductively, as I had preconceived expectations of what a specialist court might look like

meaning that my observations were unconsciously based on what I already knew to also maintain a deductive element. I was flexible to new ideas; for instance, my perception that Manchester was a DC got discredited through data gathered inductively during this stage, somewhat resembling the falsification discourse posited by key philosopher, Popper (1983). Whilst this was the most unofficial mode of data collection, in many ways it was the most important; it allowed me to really get to know and understand the setting comprehensively and directly. This was not a phase of data collection, rather a state of continuous exploration, necessary to build a baseline of knowledge in a field where there is currently no literature, where methods and methodology became somewhat subordinate to my experience of the practical application of the setting (Flick, 2011). It was complementary to, and necessarily richer than, the more restricted Phase 1 observation measurements gathered via a standardised protocol.

Whilst the study took an ethnographic approach, and is thus entitled "ethnography", it was not carried out a purist form, like the work of anthropologist, Malinowski (1922), whose methodology involved a several years trip to the Trobriand Islands in Melanesia where he studied indigenous culture. This was the purest type of induction; he participated in a natural setting that he knew little about beforehand, gathering data by immersing himself in an unknown civilisation. Whilst my study was infused with ethnographic ideology, it does not claim to be ethnographic purism. Nonetheless, the achievability of pure induction and the ability to bracket personal belief-systems (Heidegger, 1962) is questionable when researchers inevitably have preconceived, a-priori, ideas about themselves, their work, the setting they are researching, the broader world that surrounds them, and how they relate to each of these. In the work of Malinowski, there must have been some background reason for why he visited the Trobriand Islands, even if curiosity and some expectation provoked the visit. This calls into question the possibility of pure induction in social science research, a point I already touched upon in Section 3.5.4 of this chapter. In other words, even the purest inductive method, such as ethnography, is permeated by deductive elements.

A widely accepted limitation of ethnography is it is difficult to record everything that happens, especially as speech generally occurs faster than writing (Cargan, 2007). This is particularly true in this study, where ethnography occurred during all data collection phases,

making multitasking sometimes difficult. The ethnographic approach was more than just observing the site - it also involved emails and conversations, which made this issue more manageable. To further avoid unmanageability of notes, I took down only key information that helped to answer the research questions, including quotes. Of course, the problem with being so selective is it makes the dataset inherently biased (Cargan, 2007). However, in line with the above argument around induction, it could be said that any research project is invariably shaped by preconceived categorisations by a knower; if it were not, understanding the world would be chaotic, nonsensical and impossible. We could ask therefore ask: is pure induction in social sciences ever possible?

3.6.1 Ethnography: Analysis

The data from this study formed 54 pages of unstructured qualitative data from visits to the site: one afternoon every 2 weeks, for 14 months. This was analysed together with the qualitative interview data in NVIVO using the Ten Key Components (NADCP, 2004) and the interpersonal skills variables (Chapter 5) as top-down coding systems within thematic analysis¹⁴. The findings and discussion are presented in Chapter 6 and 7.

3.7 Triangulation

The findings of this thesis, from all data points, were collated based upon the principles of triangulation in Chapters 6 and 7. Triangulation is a contemporary approach, now commonly implemented and cited, yet there is still technical guidance on how it should be operationalised. As somewhat of a grey area, it remains more of a concept than a strict mode of analysis (National Institute of Health, 1999, cited in Farmer et al, 2006). Whilst without uniform definition, it can be interpreted as: "a 'dialectical' process whose goal is an in-depth, nuanced understanding of research findings, clarifying disparate results by placing them in dialogue with one another" (Mertens and Hesse-Biber, 2012: 75). According to Flick (2011),

¹⁴ See Phase 3 above for more information on analysis process.

triangulation can take the form of either: theoretical, methodological (Denzin, 1970), investigative or data. The latter style was used in this study where data from different vantage points was compared to check for validity where they either: agreed (converged), focused on different aspects of an issue (complemented) or contradicted one-another (diverged) (Kelle and Erzberger, 2003). Triangulation thus offered itself as a discursive validity check to audit the full dataset. Indeed, Chapters 6 and 7 offer complex analyses where all data points are brought together to respectively analyse the "wine" and "bottle" data based on a triangulation rationale.

Perhaps a philosophical oxymoron, the achievability of triangulation might be critiqued by purist philosophers, alongside the precision of results when combining dichotomous traditions (Hammersley, 2008). In this study, triangulation successfully enabled an epistemological dialogue between philosophies within a CR discourse to strengthen the results (Holtzhausen, 2001). Triangulation also enabled saturation of the key ideas across the full dataset to be achieved, where the phases are facets of the whole dataset, rather than independent. Whilst the legitimacy of combining qualitative and quantitative methodologies has been questioned, especially how to interpret conflicting results from conflicting paradigms (Johnson and Onwuegbuzie, 2004) this study's results were generally convergent or complementary. However, some explanations were given for dissonant results in Chapters 6 and 7, and other data points were able to provide such explanation, which is the benefit of interlinking the phases. Chapters 6 and 7 thus present all findings of the case study, helping to answer the broader question on the court's definition using abductive reasoning to look beyond the data and tap into relevant policies, legislation, reforms, and to provide causal explanation of effects seen in the data. Whilst this chapter has shown that the methodology moved between induction and deduction, questioning the possibilities and pitfalls of both paradigms, the findings are brought together through abductive reasoning, within an overall CR philosophical position, where more realist interpretations of the data could be made.

3.8 Conclusion

If ontological realism assumes that the world exists independent to its observers (Easton, 2010) and epistemological realism accepts to know the world is largely "fallible and theory-

laden" (Sayer, 1992 cited in Easton, 2010: 1999), then CR is concerned with subjective interpretation of an objective world, where empirical data will always be limited. Through the CR paradigm, it has been argued that purist rationales in the social sciences are not possible; on the one hand, the process of deducing intangible variables is inherently biased as they are unobservable, yet on the other, the starting point of inductive reasoning has necessarily been deduced. By mixing methods with a case study approach, the dataset generated an interpretation of an objective phenomena, where the limitations of one method could be somewhat overcome by the others (Zachariadis et al, 2013).

The setting under investigation was MRC, a court with a problem-solving rationale that brings offenders back for regular review, and where magistrates monitor progress in a therapeutic style. As there is no recent England and Wales-based empirical literature for DRR review courts, the purpose of this thesis is to fill a significant literature gap by providing groundwork of knowledge in a significantly underexplored area. The aim of this chapter was to describe the methods and methodology of this thesis, using CR to justify the design. It has described the strengths and limitations of the methods used, namely: standardised observations, surveys, and interviews, and has explained that there was an ongoing ethnographic stage that enveloped the full study. In many ways, this site was very challenging to work with empirically; the definition was unclear, there were significant attendance issues undermining data quantities, and there were information storage problems. Each of these made measurement somewhat difficult; however, they are also important qualitative findings, documented and discussed in Chapters 6 and 7. However, the purpose of this chapter was to disclose the methodological limitations and impacts on data that these issues had.

There is currently no universal formula for how to implement TJ methodology, which is perhaps a deliberate attempt not to shoehorn the paradigm into a prescribed method (Wexler, 2014). Although this leaves a space for creative empirical study to take original forms, TJ's broadness, as theory, practice, method, lens, set of principles, etc., (Wexler, 2014), would make an extensive measurement of TJ impossible, and any suggested tool would always be somewhat flawed for lacking flexibility and comprehensibility. For this study, a tool and coding structure for measuring the interpersonal skills of Manchester magistrates at "wine"

level was developed; this was based upon a guidebook for problem-solving court craft (Goldberg, 2011). For the bottle questions, the Ten Key Components document (NADCP, 2004) helped to develop the "bottle" questions and framed the analysis and coding. By using PCA and Alpha to validate and increase reliability to the scales, this study intends to add something new to the TJ body of literature, positing a measurement tool that could be adapted for similar studies, both qualitative and quantitative. Notwithstanding, the limitations of these measurements have been disclosed; whilst there are intrinsic issues with the scales, I have suggested that perhaps there are in all social science measurements.

By moving between induction and deduction within a mixed methods approach, a more qualitative approach to the quantitative data was taken and a more quantitative approach to the qualitative data. This meant that paradigms were cross-fertilised both across and within data-points. Whilst some of the *methods* themselves were technically quantitative (standardised observations, surveys) the *methodology* consistently fitted into a qualitative genre, telling a story of MRC through interpreted, first-person, narrative-based discourse. The analysis and discussion chapters (6 "wine" and 7 "bottle") yield an abductive process that looks beyond the data to establish social causes, including the impact of legislation, policy, and privatisation and centralisation reforms to rationalise the seen effects seen within the data. This somewhat overcomes the limitations of the interpretive data as it looks towards real-life structures, mechanisms and causation, beyond the empirical, beyond the epistemological, instead towards the heart of the ontological. Although this may never be fully achievable, abductive reasoning perhaps can do more than other forms of logical inference as it takes a more realist approach.

The analytical processes will be described next in the forthcoming four analysis and discussion chapters. Firstly, the socio-demographic profiles of participants will be presented (Chapter 4). Secondly, validity and reliability of the "wine" measurements and deductive coding map will be analysed (Chapter 5). Following this, the main body of analysis will take place in Chapters 6 and 7, which are split into complementary "wine" and "discussion" counterparts.

4 Chapter 4: Analysis and Discussion, Chapter 1: Socio-Demographic Profiling of Participants: Phase 1, 2 and 3

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4.1 Introduction

The previous chapter (Chapter 3) described the methods and methodology leveraged throughout this thesis. Three main methods were outlined: Standardised Observations (Phase 1), Surveys (Phase 2), and Interviews (Phase 3). The previous chapter further described the object under investigation: Manchester Review Court ("MRC"). This is a specialist court, with a problem-solving rationale, where clients return to court for regular review of recovery and law-abiding progress under the section 210 of the Criminal Justice Act 2003. This chapter moves on to analysing the collected data. This is the first, but short, analysis chapter, intended to summarise the socio-demographic information of participants from each of the aforementioned phases (Phase 1, 2, and 3). The purpose of the chapter is to contextualise any later findings, to characterise the sample, and to discover any potential biases within the data prior to the main analyses.

Firstly, Phase 1 and 2 are analysed together because they both use larger amounts of statistical data, which is easier to sum together within the same dimensions on the same variates, which are analysed using used basic frequency tables from Statistical Package for Social Scientists ("SPSS"). Within these descriptive statistics, some clients were counted more than once (up to four known times), because individuals returned for regular review, and because the unit of analysis is MRC, and not the cases within it. Missing values are a result of missing information on offenders' reports or altogether lack of report from the Probation Services, an issue discussed at greater length in Chapter 7, 7.2.5. Secondly, the characteristics of the Phase 3 data are summed by lifting information from the qualitative datasets. This stage was analysed independently to Phase 1 and 2 as it uses a different data type and smaller amounts of qualitative data to examine the demographics of the five Phase 3 participants.

The chapter concludes by commenting on the data's representativeness. As outlined in Chapter 3 and is discussed in more depth in Chapter 7, 7.2.4, there was a significant problem with non-attendance at the court, in which roughly a third of those listed on the court listings

failed to attend their reviews. The cause of this is likely to be something systemic, discussed at more length as a "bottle" problem (Chapter 7, 7.2.4). However, for the purpose of analysis within this chapter, this made ascertainment of large amounts of data difficult.

The chapter is structured as follows. It will analyse the demographics of Phase 1 and 2 datasets across: age, gender, drug type and offence type. It then moves on to Phase 3, Client background information (within the same dimensions as Phase 1 and 2 above), as well as linkages to other data phases, then summarises staff background information (in terms of gender, age, role in the court, and length of time worked in that role). Key findings of this chapter are then summarised in the conclusion, where it is found that the sample demographics are representative of the population.

4.1.1 Socio-Demographic Profiling: Phase 1 and 2

4.1.1.1 Age

Table A: Frequency Table Displaying Age Groups for Phase 1 and Phase 2

		Phase 1		Phase 2	
		Frequency	%	Frequency	%
Valid	18-25	4	13.8	3	21.4
	26-35	3	10.3	4	28.6
	36-45	11	37.9	3	21.4
	46-55	11	37.9	4	28.6
	Total	29	100.0	14	100.0
	Unknown	22		6	
Total		51		20	

4.1.1.1.1 Phase 1

Phase 1 age demographics were collected by examining offenders' Drug Rehabilitation ("DRR") reports¹⁵. The table shows that there were 22 out of the 51 cases where the age was unknown and recoded as "missing" due to aforementioned issues with absent or poor quality DRR reports. Of the known ages, the majority of clients fell within the elder age groups; 36-45 (second eldest) and 46-55 (eldest) age brackets and the least in the lower age brackets: (18-25 and 25-36). Hansten et al (2000, cited in Mendoza et al, 2013) demonstrated that attrition rates tended to be higher amongst younger DC participants, which Mendoza et al (2013) hypothesised was because younger individuals had greater problems with substance use compared to older individuals. In linking to the non-attendance issue outlined in the introduction of this chapter (and explained in more detail in Chapter 7, 7.2.4), these figures could potentially explain the demographics of those within the non-attendance population to suggest that non-attendees were populated by younger individuals.

4.1.1.1.2 Phase 2

During Phase 2, there was an "age" question at the beginning of the survey to collect this demographic. Of the known ages, 18 was the youngest and 51 the eldest, although, in reality, there was very little difference between the number of individuals within each category of the gathered data due to small sample. The majority of clients fell within the 56-65 and 26-34 age brackets (28.6%) and the minority fell within the 18-25 and 36-45 age brackets (21.4%). This stands in opposition to the statistics portrayed by the British Drugs Survey, 2014 (cited in Mann, 2014) which stated that although 31% of 16-24 year olds admitted to have taken drugs, 35-44 year-olds were the biggest users of drugs with nearly half (47%) of this age group having taken them.

Between the two phases, most participants fell within the 46-55 (eldest) age bracket and the least within the 18-25 (youngest) brackets. Demographics collected for the most recent

¹⁵ For more detail on these see the Literature Review (Chapter 2) and "bottle" analysis (Chapter 7)

England and Wales Drug Court ("DC") evaluation, showed that just under half (45%) of participants were between 26 and 35 years old across all sites (Kerr et al, 2011). My study therefore confirms an increase in older participants since 2011 and potentially explains demographics of the non-attendance sample as due to attrition of younger users.

4.1.1.2 Gender

There were two female participants seen in Phase 1, the rest were male. Similarly, in Phase 2, one participant was female and the rest were male. Conversations with staff members confirmed that the MRC was for males only and there was a similar Manchester problem-solving court ("PSC") aimed at females only (ethnographic data) (see Chapter 3, 3.2). As MRC was male only, I observed magistrates speculate that these women had been misplaced on the MRC programme and redirected to the PSC to suggest disorganisation with the programme placement systems or communication issues between the court and probation services (ethnographic data). Nonetheless, since they had attended (and attendance was a problematic phenomenon), magistrates gave them a review anyway. Thus, their data was included in the study; however, statistical comparisons across gender-type are rendered futile as there are too few female cases make this analysis meaningful.

4.1.1.3 Drug Type

Table B: Frequency Table Displaying Main Drug Type for Phase 1 and 2

		Phase 1		Phase 2	
		Frequency	%	Frequency	%
Valid	Heroin	11	22.9	3	17.6
	Crack	5	10.4	2	11.8
	Cocaine	1	2.1	1	5.9
	Mix	31	64.6	11	64.7

	Unknown	3		3	
Total		51		17	

Like the age demographics, drug type was recorded by extracting information from the DRR review report including both illicit and licit (alcohol) drugs, although tobacco was excluded as it was not seen as an underlying cause of criminal activity. Policy documents state that all clients must be using a substance either singlehandedly or in addition to alcohol to be eligible for the DRR (National Offender Management Service, 2014). "Mix" refers to polysubstance individuals who had problems with more than one main illicit or licit drug type (excluding tobacco). In a study that compared the frequency and patterns of mono and poly drug abuse, Kedia et al (2007) stated that: "the interaction among multiple drugs can heighten the neurological, physiological, and psychological impact on the user as well as potentially increase the negative consequences of poly drug abuse". This suggests more complexity within the addictions of poly drug users over singular, and, thus, perhaps a more difficult recovery. This could indicate that MRC is less effective for polysubstance users.

Table B shows that the majority of cases fell within the "mix" drug type for both phases (p1 = 64.6%; p2=64.7%). The second most used drug type was heroin (p1=22.9%; p2-17.6%), crack cocaine the third (p1=10.4%; p=11.8%), and cocaine powder the least (p12.1%; p2=5.9%) for both Phases 1 and 2. Prevalence of the former two drug types links to evidence presented in the Literature Review (Chapter 2), suggesting that 81% of arrestees using heroin and/or crack at least once a week reported that they had committed an acquisitive crime in the previous 12 months (compared with 30% of other arrestees) (UK Drugs Policy Commission, 2008). Further research suggests that drug use and crime correlate particularly strongly amongst heroin users (Bryan et al, 2013). This therefore sits in lines with broader court objectives, seeking to dealing with broader problems with drug fuelled recidivism (see Chapter 5, 7.2.2). A report by Regan et al (2016) (carried out around the time that data collection was taking place) estimated that, in Manchester, there were 4,709 heroin and/or crack cocaine users aged 15-64. This was a rate of 12.97 per 1,000 of the population (1.3%), which is higher than the estimated rate for England (which is 8.40 per 1,000 of the

population). This could explain the prevalence of these drug-typologies within my study, where Manchester appears to have a particular problem with these two substances. In the previous report by Kerr et al (2011) no drug use figures were generated by researchers, making it impossible to comment on changes in service users since 2011. A literature gap has therefore been filled by this study in terms of using demographics. Importantly, the statistics in Table B above show that both data phases had the same drug type frequencies, where mixed is significantly more prominent than singular use at MRC. This is likely to be attributed to the fact that it was the same clients seen during both phases of data within a repeat measures style design (outlined in Chapter 3, 3.5.3).

4.1.1.4 Criminal Offence

Table C: Frequency Table Displaying Offence Types for Phase 1 and Phase 2

		Phase 1		Phase 2	
Offence		Frequency	%	Frequency	%
Valid	Theft/Stealing	28	60.9	10	58.8
	Assault / Battery	7	15.2	4	23.5
	Criminal Damage	2	4.3	1	5.9
	Burglary	3	6.5	1	5.9
	Breaking Restraining Order	2	4.4	1	0
	Blade in Public Place	2	4.3	0	0
	Offence against Public Order	2	4.4	1	5.9
	Unknown	5		3	
Total		51		20	

Table C shows that the majority of cases fell into the theft/stealing demographic across both Phase 1 and 1 datasets (p1=61%; p2=58.8%). This builds upon demographic information produced by Kerr et al (2011), in which theft was reported as the most common offence type by accounting for 40% across all six pilot sites. However, as the data was otherwise sparse in Table C across all offences, two recodes were created to facilitate a more succinct exploration of this data. Firstly, they were recoded into violent/non-violent and, secondly, into acquisitive/non-acquisitive.

Table D: Frequency Table Displaying Criminal Offences Recoded into Violent and Non-Violent Offences

		Phase 1	Phase 2
		%	%
Valid	nonviolent	84.4	76.5
	violent	15.6	23.5
	Total	100	100

Firstly, criminal offences were recoded into "violent"/"non-violent" offences because traditional DCs do not permit the participation of the former offender type (Matrix Knowledge Group, 2008; Perlin; 2013). Research by Mair and Burke (2013) showed that DC staff tended not to favour the inclusion of violent offenders for ethical reasons. Table E confirms that the majority of offenders were non-violent (84.4%) at MRC. As some (15.6%) clients did commit violent offences, there might be expected to be lowered effectiveness amongst these individuals due to changed judicial attitudes as per Mair and Burke (2013). This links to predecessor research by Kerr et al (2011), which also reported that violent offenders were included in the predecessors, although again in the minority (e.g., assault occasioning actual bodily harm, threatening behaviour, and possession of an offensive weapon). The similarities in eligibility are likely to be linked to the fact that the DRR itself

lies at the heart of both models. MRC's wider inclusion criteria, and indeed the predecessors D's, parallel looser methods of problem-solving practice, such as Hawaii's Opportunity Probation with Enforcement programme ("HOPE") (Bartels, 2016, 2017 2018). Its looser eligibility lends itself to broader philosophical questions around the definition of the UK models, discussed in more depth in Chapter 7 to answer research question 1 ("bottle) (see Literature Review, 2.9).

Table E: Frequency Table Displaying Criminal Offences Recoded into Theft and Non-Theft Offences

		Phase 1		Phase 2	
		Frequency	%	Frequency	%
Valid	acquisitive	31	67.4	11	64.7
	non-acquisitive	15	39.1	6	35.3
	Unknown	5		3	
Total		51	100	20	100

Secondly, offences were recoded into "acquisitive"/"non-acquisitive" in line with a traditional DC's mission statement: to rehabilitate drug addiction as the underlying causes of acquisitive crime (NADCP, 2004, Component 1). For this recode, "burglary" was recoded as an acquisitive crime although some research has shown that DCs are less effective for property crimes (Carey et al., 2008, 2012). It was included in this code because according to Regan and Worrall (2015), approximately 42% of detected acquisitive crimes occurring in Manchester are linked to drug use including: 42% of robbery offences and 45% of burglaries. Moreover, according to the National Treatment Agency (2009) burglary is categorised as an offence fuelled by drug addiction.

Table E confirms that the majority of clients fell under the acquisitive category (p1=67.4%; p2=64.7%) to stack up with the wider statistics approximated by Regan and Worrall (2015). Although these are high percentiles they also indicate a minority fall within non-acquisitive to again show broader eligibility than a traditional DC, in line with comments made within the above recode surrounding parallels to looser methods of problem-solving practice. This links to Kerr et al (2011) where it was reported that non-acquisitive crime types were also accepted by the predecessors (such as: possession, cultivating, fraud, criminal damage), which, again, is likely to be due to the core DRR element at the heart of both models.

4.1.2 Socio-Demographic Profiling: Phase 3

During Phase 3, five interviews were carried out with three clients and two members of staff. Their demographic data was lifted from the interviews and summarised below. Details are minimised to protect identities, following SHU ethics policy and those of the British Society of Criminology (Wahidin, 2015).

4.1.2.1 Client: Background Information

Table F: Summarising Demographic Information of the Three Clients

		Client 1	Client 2	Client 3
Date group data was collected	Phase 1	4, 7, 10	1, 10	3, 9
	Phase 2	Date 4	Date 7	Date 3
	Phase 3	Date 7	Date 10	Date 9
Age Group		(36-45) (40)	16-25 (25)	46-55 (50)
Drug Type		Mix	Mix	Mix

Offence typology	acquisitive non-violent	non-acquisitive violent	acquisitive non-violent
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Table F demonstrates that clients participated in various methods on a range of different dates. Date plays an important role in the panel analyses later (Chapter 6, 6.2.1); therefore, it is advantageous that their variety was demonstrated within this factor. All clients have polysubstance drug dependence under the "mix" code, which previously was highlighted as potentially undermining court effectiveness due to a more complex recovery (Kedia et al, 2007). The fact all participants had polysubstance addition decreases rigour of methodological representativeness. Nevertheless, similarities within this factor also played as a strength because it highlighted inconsistency in feedback, where one might expect consistency (particularly surrounding the treatment services in Chapter 7, 7.2.5). Clients 1 and 3 both committed acquisitive and non-violent crimes and Client 2 committed non-acquisitive and violent to demonstrate variety within this demographic. Each client was from a different age demographic, giving rigour to their claims. Overall, the client demographics were somewhat representative of the population other than drug type, where all participants were mixed. This might undermine rigour and effectiveness, and should thus be kept in mind throughout forthcoming analyses.

4.1.2.2 Staff: Background Information

Table G: Summarising Demographic Information of Staff

	Court Staff 1	DRR Staff 1
Role	Member of the court team	Member of the DRR team
Age Group	26-35	26-35
Gender	Male	Female

Length of time worked in the role at time of interview	15 years	3.5 years
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Both staff members fell within the same age bracket demographic. However, they displayed variety within other dimensions, such as, length of time worked in that role, the role itself, and gender. This means that data is derived from diverse sources within these dimensions, giving me confidence in the representativeness of their interpretations. Of course, more data would always increase such rigour; however issues with data quantities were disclosed in Chapter 3.

4.2 Conclusion

The purpose of this short chapter was to summarise the socio-demographic profiles of participants within this study, from Phases 1, 2, and 3. This was an important step, where the rationale was to characterise the sample and to identify any areas of potential bias within the results. Firstly, the Phase 1 and 2 demographics were examined because they both operated with large amounts of data across: age, gender, drug type and offence types. For both datasets combined, most participants fell within the 46-55 age brackets confirming an increase in older participants since Kerr et al (2011). It was hypothesised that attrition rates were to be higher amongst younger DC participants based upon Hansten et al (2000). These figures could potentially explain the demographics of those within the non-attendance population to suggest that non-attendees might be populated by younger age demographics. There were two female participants in Phase 1 and in one in Phase 2. It was hypothesised that they were accidentally placed on the MRC programme. However, their data was counted towards the analysis as they contributed in the review process, although no comparisons will be made across genders due to small amounts of females.

Following this, it was found that the majority of cases fell within the "mix" drug type for both phases, which is more complex addiction (Kedia et al, 2007) and, thus, a potentially more difficult recovery. This could mean that MRC is less effective for polysubstance users. The

most prominent singular drug types were crack cocaine and heroin, which sit with broader Manchester statistics indicating their prevalence (Regan et al, 2016). This fills a literature gap as Kerr et al (2011) failed to report on this area. In terms of offence types, the majority of cases fell into the theft/stealing demographic across both Phase 1 and 1 datasets building upon Kerr et al (2011), which also reported theft as the most common offence, accounting for 40% of crimes across all sites. Criminal offence types were further summarised using two recodes. Firstly, criminal offences were recoded into "violent"/"non-violent" offences because traditional DCs do not permit the participation of violent offenders (Matrix Group, 2008, Perlin, 2013). Although the majority of offenders were non-violent, some clients were violent, which might lower effectiveness for this style approach. Secondly, offences were recoded into "acquisitive"/"non-acquisitive" in line with a traditional DC (NADCP, 2007). Although the majority of the clients fell under the acquisitive category some fell into non-acquisitive, which is open to the same critique as the violent code. Inclusion of both violent and non-acquisitive individuals is similar to results from Kerr et al (2011). Broader eligibility than the traditional DC model parallels looser methods of solution-focused court practice (as per Bartels (2016, 2017, and 2018)). This informs broader discussions on changes to practice, which is offered in Chapter 7, 7.2.6 as one of this thesis' original contributions. Overall, demographics displayed by Phase 1 and 2 were representative of the population.

Phase 3 demographics were then considered. Client background information was first considered including date of data collection (across all three phases), age group and offence type. Other than drug type, where all participants were polysubstance, the sample was representative across the other dimensions. The concentration of polysubstance users might undermine rigour of the sample and effectiveness of MRC practice. Nevertheless, similarities within this factor also played as a strength because it highlighted inconsistency in feedback where we might expect consistency. Although both staff members came from the same age demographic, there was enough variety within other dimensions; both had different roles at the court, they had worked in their roles for different lengths of time, and had different gender. Therefore, again, sources were diverse and data could be considered somewhat representative.

Broadly, this short chapter has showed a diverse range of demographic data sources, which gives me confidence in the representativeness of their interpretations when exploring the object in question in following chapters (MRC). Although this could be improved with more data, this was unfeasible due to issues with the site discussed in Chapter 3 and Chapter 7. Next steps now involve testing the reliability and validity of the "wine" scales within Chapter 5.

**5 Chapter 5: Analysis and Discussion Chapter 2: Validity and Reliability Testing the
Interpersonal Skill "Wine" Scales**

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5.1 Introduction

This chapter will test the construct validity and internal reliability of the interpersonal skills wine scales to answer research question 1 ("wine") (see Literature Review, 2.9). It only relates to the "wine" data (Diagram A, Chapter 3) because this aspect uses variables grouped as scales to measure constructs unlike the "bottle" data measurements, which use single unilateral dimensions. This part of the thesis was added inductively to the study and was not an outset aim. However, it is placed before the main "wine" analysis chapter as it refers to the scales upon which the following chapter (Chapter 6) hinges. The same scales are then used as a deductive coding map in Chapter 7. To carry out these analyses, the Phase 2 scales (not the Phase 1 scales) were tested (described already in Chapter 3). This is because, although the scales were similar, the Phase 2 scales had been modified and improved since Phase 1 as only certain variables were transferred from the first tool to the second based upon their relevance to the construct and the setting (as described in Chapter 3). All variables were measured on the same Likert scale of 1-5 ("strongly agree" to "strongly disagree") to point in the same direction, meaning that no scales needed to be reversed to carry out this analysis.

In total, there were eighteen items, which were originally arranged on four, a priori, theoretical scales based on Goldberg's (2011) work. These eighteen items were rearranged onto three new scales following Principal Component Analysis ("PCA"), which was used to check construct validity. Although historically PCA was an exploratory tool to help familiarise researchers with patterns and potential problems within datasets before performing more complex analyses, it has also been applied for research instrument design evaluation (Dancey and Reidy, 2007; Lolli and Girolamo, 2015; Sloodweg et al, 2014) and confirming anticipated structures or suggesting other combinations of variables (Costello and Osborne, 2005). The preceding analysis did both of these things by rearranging items from the hypothesised scales (based on Goldberg, 2011) onto new scales. As PCA suggested that there were three principal components (or constructs), items were rearranged, reconstructed and renamed to accommodate this. Following this, inter-scale reliability through Cronbach's Alpha tested the internal consistency of the three refined scales, where it was assumed that

reliability would be maximised if the constructs were validated within the PCA. Indeed, the reliability of each scale was found to be high, and much higher than for the original four scales, comparatively. Although no items were removed, some were flagged as potentially undermining the validity and reliability of the scales. These analyses contribute to the development of an empirically-sound instrument for measuring Therapeutic Jurisprudence ("TJ") principles in problem-solving courts contexts henceforth. Next steps involve testing the new scales on a larger sample in a similar setting, then carrying out confirmatory Factor Analysis ("FA") on the same measurements. The analyses in this chapter are an original attempt to develop TJ empirical measurement scales, which is a current leading issue amongst TJ scholars (Google, TJ-Lists, 2016, 2017, 2018l Stobbs, 2015). The suggested scales are by no means perfect; rather, they are a starting point, now ready for further piloting.

The Multi-Variate Exploratory Factor Analysis: Principal Component Analysis and its output are now reported.

5.2 Multi-Variate Exploratory Factor Analysis: Principal Component Analysis

5.2.1 Rationale for PCA

As discussed in Chapter 3, unlike natural science research, which deals with tangible, natural 'things' such as: salt, water etc., social science research is concerned with human invented, intangible concepts, such as: intelligence and humour (Bauer, 2017); in this case, interpersonal skills. As tangible things exist outside of human conception, natural scientists can develop metrics that measure them directly (Bauer, 2017). However, the indirect nature of social science variables makes measurement difficult (Field, 2013). This is often offset by developing psychometric tools that measure a series of elemental attributes to the given variable (Field, 2013)¹⁶. In this study, "empathy", "respect", "active listening" and "positive focus" were respectively measured through a series of eighteen facets to form four theorised

¹⁶ See Methods, Chapter 3, for full discussion on the limitations of social science research.

scales¹⁷. However, as these scales were hypothetical, based upon a TJ training manual (Goldberg, 2011), and not standardised, it was necessary to explore whether the devised scales measured the intended unidimensional constructs (Field, 2013).

Exploratory Factor Analysis ("EFA") includes both FA and PCA (Costello and Osborne, 2005; Field, 2013; Dancey and Reidy, 2007). Both are data reduction methods that can explore the data and confirm hypotheses (Dancey and Reidy, 2007). They are often used as a preparatory stage before carrying out further advanced statistical tests, such as multiple regressions (Dancey and Reidy, 2007), and both explore underlying dimensions of a dataset through clusters of variables (Field, 2013) and by simplifying datasets into factors or components based upon their loadings (Brown, 2009; Field, 2013). They also consider the construct validity of items within scales (Dancey and Reidy, 2007), and help to devise instruments to measure underlying variables (Field, 2013; Floyd and Widaman, 1995; Musulin, et al, 2004). The forthcoming analysis will use PCA (rather than FA) to explore the construct validity of the proposed psychometric tool in order to compound TJ measurement scales.

Whilst there are trends in the way EFA is carried out, guidelines tend not to be absolute and decisions should be tailored to the dataset for optimal results, hence its exploratory nature (Costello and Osborne, 2005). There is significant disagreement amongst social scientists as to which data reduction method (FA or PCA) should be used and when (Costello and Osborne, 2005) but most agree that in spite of their mathematical differences, solutions tend not vary significantly (Field, 2013; Dancey and Reidy, 2007). The overarching difference is that FA reduces variables into underlying *estimated* factor structures by clustering those that correlate highly with one-another together using a theoretical model (Field, 2013). This explores relationships between variables to reveal any latent variables causing the existing variables to co-vary by reporting on their shared variance (Costello and Osborne, 2005). Whilst FA starts with estimates, PCA reduces the original variables *without estimates* into a

¹⁷ See Appendix 1 and 2.

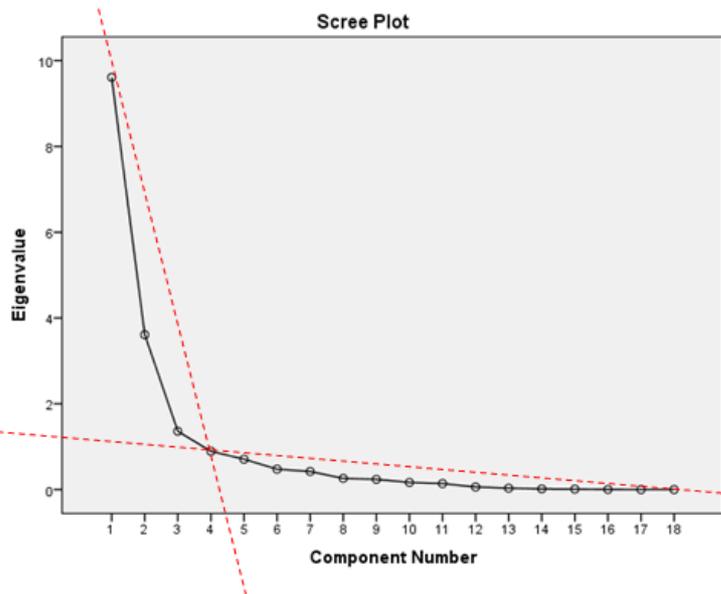
reduced set of components to explain how each variable contributes to the given component and the linear variability between them. The principal components extracted represent a reduced number of inter-correlated variables (Field, 2013). In other words, FA relies on estimates whereas PCA does not.

PCA is the most commonly used technique although many favour FA. Costello and Osborne (2005) argue that researchers are likely to already know how variables relate and therefore FA is preferable as it can say more about underlying variable structures. For this reason, FA is better suited to projects that use a standardised measurement tool because it can look beyond the bounds of the standardisation to reveal any latent variables causing the existing variables to co-vary (Costello and Osborne, 2005). In the current study, PCA was most appropriate because although we could hypothesise how the variables interrelated based on the literature (Goldberg, 2011), at this stage, it was statistically uncertain due to non-standardisation of the scales. Although FA is able to say something deeper, PCA can confirm and/or overthrow other combinations of variables, and reveal validity of the questionnaires (Dancey and Reidy, 2007). This was appropriate in this study due to non-standardisation of the scales where PCA could confirm or overthrow the proposed structures. However, a future study could retest the same scales using FA to add confirmation and depth to the findings.

5.2.2 Component Extraction

PCA was carried out and the principal components were extracted. Extraction is the process of deciding which (and how many) principal components should be retained (used in FA for determining factor structures) (Field, 2013; Costello and Osborne, 2005). The scree plot is the most widely used technique for determining retainable components, i.e., eigenvectors (Costello and Osborne, 2005; Field, 2013). By mapping eigenvalues (Y axis) for each principal component, which explain the variance of the data, the plot identifies the point of inflexion, i.e., the bend point in the data, and retainable components include any points above (but not including) the break (Costello and Osborne, 2005; Field, 2013). A scree plot was run and interpreted below.

Diagram A: A Scree Plot: Mapping the Eigenvalues for Each Component



The red lines were added to the scree plot for readability (Field, 2013). The plot suggests that there are three principal components (eigenvectors) as the plot bends distinctly at point four. By default, Statistical Package for the Social Sciences ("SPSS") uses Kaiser's (1960) standard by retaining eigenvalues greater than 1, yet many state this is too strict and over-estimates components (Jolliffe, 1972, 1986 cited in Field, 2013; Costello and Osborne, 2005). For clarity, the analysis was re-run using a lower cut-off of 0.7 (Jolliffe, 1972, 1986 cited in Field, 2013), but the scree plots generated were identical. For further clarity, the plot was also re-run as per Costello and Osborne (2005), manually setting component extraction at two, four, and five but again the scree plots were identical. As such, there was strong reason to believe that three principal components should be extracted and there was no need to further clarify this by determining the cleanest factor structure (as per Costello and Osborne, 2005). Table A was then run to check the percentages of variance explained by each of the three extracted components.

Table A: Demonstrating the Importance of the Components in Percentages

	% of Variance
1	53.391
2	20.055
3	7.548

The table suggests that the three components together explain 80% of the total variance and the final 20% is explained by the remainder of the less prominent components. It is not uncommon to consider solutions that account for 60% of the total variance (and in some instances even less) as satisfactory (Hair, 2014). Therefore, 80% was accepted as high amount of variance explained to confirm three principal components.

5.2.3 Component Rotation

Once extraction of the principal components was confirmed, rotation was considered, which aims to simplify and clarify data structures (Costello and Osborne, 2005). Rotation has been defined by Vogt (1993: p. 91 cited in Brown 2009) as: "any of several methods... by which the researcher attempts to relate the calculated factors to theoretical entities". The PCA pattern matrix calculates the weight each variable (i.e., its eigenvalue) has on the variate (i.e., the eigenvector) with a larger eigenvalue loading indicating greater importance to that component (Field, 2013). By calculating degrees to which variables load onto each component, rotation seeks to retain variables with larger eigenvalues and ignore smaller ones, although these conclusions can be arbitrary (Field, 2013).

As noted by Vogt (1993), there are two types of rotation methods: orthogonal and oblique (Brown, 2009; Field, 2013). Whilst there are many methods affiliated with each type of rotation, the majority of PCA studies use Varimax (which is an orthogonal method) (Costello and Osborne, 2005) for simplicity and interpretability (Brown, 2009). The overarching

difference is orthogonal rotation assumes components are uncorrelated whilst oblique rotation allows components to correlate with one-another (Brown, 2009; Field, 2013; Vogt, 1993). Brown (2009) argues that oblique methods are theoretically more accurate in the social sciences as behavioural patterns are rarely partitioned into neatly independent units, and researchers often mistakenly use orthogonal solutions simply because they are more easily interpretable. Field (2013) further argues that orthogonal rotations should be discarded for any data involving people because human constructs are inevitably highly related. Most argue that the overarching purpose should be to achieve a simplified re-structure in which each component has a few high loadings and the rest close to zero to create theoretically meaningful sub-dimensions (Bryant and Yarnold, 1995; Kim and Mueller, 1978, cited in Brown, 2009). Brown (2009) tested the differences by rotating the same data by three orthogonal methods and two oblique methods and the differences were not substantial, producing similar loading patterns (Brown, 2009). In this study, following Field (2013), an oblique rotation method (direct oblimin) was used because there were strong theoretical grounds to assume that variables correlated with one-another as they all intended to refer to the "therapeutic interpersonal skills" phenomenon, and were therefore necessarily related. However, as there is no widely preferred method of oblique rotation, as all produce similar results (Fabrigar et al., 1999, cited in Brown, 2009), the degree to which the factors were allowed to correlate was left at default Delta 0 in SPSS as recommended by Field (2013) and Costello and Osborne (2005).

5.2.4 Loadings

When using oblique rotation, as is the case here, the pattern matrix (rather than structure matrix) is used to examine item loadings (Costello and Osborne, 2005). Higher loadings indicate a stronger relationship to the given component (Field, 2013). Minus loadings also indicate a strong relationship to the component only in the opposite direction (Dancey and Reidy, 2007). The following pattern matrix was generated to examine loadings of variables on components and the colours added to highlight groupings of variables (Field, 2013). Loadings of below .32 were suppressed as they were considered too low (Costello and Osborne, 2005).

Table B: Summary of Principal Component Results for Interpersonal Skills Questions on Questionnaire Originally Entitled: Empathy ("E"), Respect ("R"), Active Listening ("AL") and Positive Focus ("PF").

Pattern Matrix ^a			
	Component		
	1	2	3
Q6 (E) Magistrates are compassionate to me	.907		
Q25 (E) Magistrates understand what it's like to have drug and/or alcohol problems	.889		
Q11 (PF) Magistrates have faith that I will make progress	.863		
Q9 (AL) Magistrates listen to my point of view	.858		
Q8 (PF) Magistrates praise me when I am doing well	.843		
Q26 (E) Magistrates are caring	.788	.531	
Q4 (R) Magistrates speak to me without pity	-.650	.506	
Q21 (R) Magistrates reiterate my goals so they are clear	.581		-.523
Q5 (PF) Magistrates motivate me	.578		-.344
Q24 (AL) Magistrates give me a voice		.975	
Q27 (R) Magistrates speak to me slowly, clearly, and loudly		.948	
Q14 (R) Magistrates are sincere when they speak to me		.688	
Q28 (R) Magistrates do not rush or interrupt me when I am speaking		.656	-.538

Q23 (AL) Magistrates are attentive towards me		.614	
Q17 (AL) I can ask questions where I need to			-.915
Q19 (E) Magistrates are realistic when we set my goals for next review			-.827
Q20 (PF) Magistrates help me build upon my strengths			-.732
Q12 (PF) Magistrates make me feel positive about my future	.406	.327	-.473
Extraction Method: Principal Component Analysis. Rotation Method: Oblimin with Kaiser Normalization.			
a. Rotation converged in 11 iterations.			

5.2.5 Pattern Matrix: Findings

The pattern matrix in Diagram A above demonstrates the following:

- A total of three principal components were identified. This contradicts the a priori assumption that there were four components based on Goldberg's (2011) work. The coloured boxes were added to represent the strongest grouping of variables according to component. Purple represented component 1, blue component 2, and orange component 3. The old scale variables were quite evenly scattered across the three principal components.
- There are six variables that cross-load (4, 21, 26, 5, 28, and 12) onto more than one component. In doing so, they explain something about each component.
- The first two components load positively (purple and blue), and the third component loads negatively (orange).
- The first component has the most variables (8), which decreases for component 2 (to 6) then 3 (to 4). This decrease is to be expected as the prominence of components also reduces (Field, 2014).

- Question 4 cross-loads most problematically by loading highest (but negatively at -650) on component 1, but grouping better with component 2 (as a '+'). It was grouped with component 2 to enable consistent signage within the same component.
- Question 12 loaded onto all three components although it was tagged as component 3 because it loaded most highly here.
- The other cross-loaded items (26, 21, 5 and 28) were tagged with the component of their highest loading.
- -.473 is the overall lowest loading, as part of component 3 which is typical of the last item on the last component (Field, 2014).

5.2.6 Correlations between Variables

After the patterns had been identified through their loadings, correlations between variables within components were considered using the correlation matrix (Appendix 4a). According to Field (2013: 685) component solutions have no real meaning if variables are not "sensible", which can be deduced by analysing the correlations between variables. In other words, correlations are meaningless when they are: a) not high enough or b) too high (Field, 2013). In the first instance, if items are measuring the same underlying dimension, we would expect those items to correlate with one-another; therefore, problems occur when they are *not high enough*. Field (2013: 685) recommends scanning the correlation matrix and excluding variables with "lots of" correlations below "about 0.3", although he criticises his own method for being loose and highly subjective. The correlation matrix only revealed Q4 as problematically not high enough although a stricter analyst may have also excluded 23, 24, and 27 based on the same rationale. Q4 had already been flagged as problematic by the pattern matrix (Table B) for cross-loading high on two components, which highlights that it potentially undermines rigour. According to Field (2013: 685), in the second instance, variables are also not "sensible" when they correlate *too highly* with one another to become either multicollinearity or singular by essentially measuring the same thing as the construct itself. Whilst in FA, multicollinearity is problematic as it makes it impossible to establish the meaning a variable to a factor, high correlations are not an issue in PCA, and so it was not considered (Field, 2013).

Now the PCA has been carried out, the next sections discuss the results and their limitations within the following subheadings: i) Sample Size, ii) Component Loadings and Communalities, and; iii) Disregarding and Retagging Items: Proposing New Scales. I will then proceed with the reliability tests.

5.3 Discussion

5.3.1 Sample Size

Whilst most recommend larger sample sizes as applicable for PCA (Field, 2013; Winter et al, 2000), there are no strict rules (Costello and Osborne, 2005) and guidelines tend to vary (Field, 2013). Field (2013) suggests 300 as a safe sample size although Dancey and Reidy (2007) recommend a smaller number of 100. According to Stevens (2002) cited in Field (2013), for large samples (1,000 plus), small factor loadings (.162) can be considered statistically meaningful, but for a small samples (of 50), larger loadings (of .722) are necessary. Field (2013) argues that reliability of factor loadings decreases as sample sizes curtail. In light of this, this study significantly lacks a big sample (20 cases). However, most PCA experts argue that the importance of sample size is secondary to strength of the data, decoded by analysing component loadings and communalities after extraction (Costello and Osborne, 2005; Field, 2013). This will be discussed in the next sections, where it will be argued that the strength of data overcomes the small dataset.

5.3.2 Component Loadings and Communalities

Different studies posit different standards of data strength for PCA (Field, 2013). Whilst noting that it is rarely achieved, Costello and Osborne (2005) define strong data as satisfying each of the following criteria: i) uniformly high communalities not below 0.4 (with 0.8 representing high) without cross loadings; ii) several variables loading strongly on each component (strong loading is .32 minimum) (Tabachnick and Fidell, 2001); and iii) factors with no fewer than three items (although more than 5 loaded variables over 0.5 is preferable). The current data: i) had consistently high communalities above 4; however, there were some cross-loadings above 0.5 (Q4, 21, 28) (see Appendix 4b); ii) variables loaded strongly on

each component; iii) all factors had three or more items. Therefore, the data 'more or less' passed the Costello and Osborne (2005) and criteria, which was posited as an arbitrary rather than prescriptive guideline, where a looser fit is acceptable. Whilst cross-loadings within criterion one weakened the strength of the data, this was somewhat unavoidable given the heavily related nature of the variables.

Field's (2013) criterion is stricter than Costello and Osborne (2005), in which he argues that as the number of variables per component increase, loadings can also decrease (Field, 2013). He recalls the findings of Guadagnoli and Velicer (1988) stating that any component with four or more loadings of above .6 are reliable regardless of sample size, a test that this study did not pass unless removing component 3 altogether. On the other hand, Field (2013: 684) also states that components with "a few" low loadings should not be interpreted unless the sample size is above 300, which the dataset accomplished. Secondly, Field (2013) states that as communalities become lower, the importance of sample size increases. He states that if all communalities are above .6, small samples are perfectly adequate (Field, 2013), which this study would have passed but for Q23. Elsewhere, Kaiser (1974) (cited in Field, 2013) recommends disregarding all variables with a loading below .5, whilst Hutcheson and Sofroniou (1999) cited in Field (2013) posit the following: .9 to 1 (marvellous); .8 to .89 (meritorious); .7 to .79 (middling); .6 to .69 (mediocre); .5 to .59 (miserable); 0 to .49 (unacceptable). The communality table explains variation based on the three components. When dropping Q23 (which loads at .476), the communalities of this dataset are strong enough to pass both Field's (2013) and Hutcheson and Sofroniou's (1999) communality test. Nevertheless, it passes Costello's (2005) test when Q23 is still included. Further, if Q23 was so bad it would have loaded as its own component, but the pattern matrix shows it weighs highly onto component 2 (at .614).

What the above discussion shows is the current debate over requisite sample size and its relationship to data strength according to loadings and communalities necessary to carry out PCA. Guidelines are not absolute (Costello and Osborne, 2005), which lends itself to the fact that PCA is an exploratory tool rather than to a strict data testing mechanism. Therefore, standards should be interpreted loosely and how strict a researcher chooses to be ultimately

rests on theoretical choices. Costello and Osborne (2005) state that even their standard, which is more lenient than Field's (2013), is rarely ascertained and so a more liberal fit is acceptable, which this study achieved. Even considering Field's (2013) stricter guidance could indicate strong enough data in spite of the small sample given the loose and arbitrary nature of his recommendations. Extending to the more qualitative philosophical positioning of the thesis (discussed in the previous Chapter 3, Methods), this analysis could duly accept Costello and Osborne's (2005) more subjective standard, in which the main problems were three cross-loading items above 0.5, which could undermine data strength (Q4, 21, 28), although this was inevitable given the interrelatedness of the constructs within the tested phenomenon. Whilst these could be removed, they were left in to maintain data nuance and because they were not too problematic, although were flagged as potentially dubious. Costello and Osborne (2005) further noted that problematic items could be as simple as a poorly worded question, which is something that I will explore below. This section has shown that, whilst a larger sample could have strengthened the findings, data strength was acceptable for this analysis.

5.3.3 Disregarding and Retagging Items: Proposing New Scales

Based on the three components revealed, items were rearranged from the original "empathy", "respect", "active listening" and "positive focus" scales onto three new scales and renamed based their underpinning idea. Although each of these was a TJ principle, I was unsure of what to name the components, and I changed their names many times. I first called them "the three E's" ("empathy", "empowerment" and "encouragement"), but felt these were not specific enough to TJ, so renamed them so they more explicitly aligned with TJ principles as: "alliance", "empowerment" and "strengths-building". However, for the rationales explained below, I eventually decided to name them: "Harnessing Therapeutic Support", "Engaging Therapeutic Dialogue" and "Inspiring Therapeutic Change". The names of these components were based on the blogs of TJ court specialists and magistrates, Spencer (2018) and King (2017) within their court craft series on Spencer's famous mainstreaming TJ blog. The verbs "harnessing", "engaging" and "inspiring" were added to portray an action during magistrates' administration of the skills. Although this is one of the original contributions of this thesis, I

do not claim these scales are perfect, and I will offer critique in the forthcoming sections. What this analysis does is to provide the TJ literature with proposed empirical scales to measure therapeutic interpersonal skills of judges and magistrates within problem-solving courts, and, within the goal of mainstreaming TJ, perhaps regular courts henceforth, or other TJ aligned settings.

Table C: Naming the New Components

Harnessing Therapeutic Support	Engaging Therapeutic Dialogue	(Debilitating) Inspiring Therapeutic Change
Q6 (E) Magistrates are compassionate towards me	Q24 (AL) Magistrates give me a voice	Q17 (AL) I cannot ask questions when I need to
Q25 (E) Magistrates understand what it's like to have drug and/or alcohol problems	Q27 (R) Magistrates speak to me slowly, clearly, and loudly	Q19 (E) Magistrates are not realistic when we set my goals for next review
Q11 (PF) Magistrates have faith that I will make progress	Q28 (R) Magistrates do not rush or interrupt me when I am speaking	Q20 (PF) Magistrates do not help me build upon my strengths
Q9 (AL) Magistrates listen to my point of view	Q14 (R) Magistrates are sincere when they speak to me	Q12 (PF) Magistrates do not make me feel positive about my future
Q8 (PF) Magistrates praise me when I am doing well	Q4 (R) Magistrates speak to me without pity	
Q26 (E) Magistrates are caring	Q23 (AL) Magistrates are attentive when I speak	
Q21 (R) Magistrates reiterate my goals so they are clear		
Q5 (PF) Magistrates motivate me		

5.3.3.1 Component 1: *Harnessing Therapeutic Support*

I originally called this scale "empathy" but felt that it was too passive as the component has a more active ingredient: for instance, to "motivate", "reiterate", "praise". I therefore changed it to, and it was for a long time: "alliance". However, I came across the work of King (2016)¹⁸, who writes about therapeutic support. He defines it as follows: "*supporting* is acknowledging and identifying with a person's situation", which is intrinsic to both alliance and empathy. He references Adler and Proctor (2007, np), where "support" has the following facets displayed below, which are shown to match the variables on this scale as per the revealed components. Examples given by King (2016, np) are provided in the footnotes to demonstrate their likeness to the given variables.

- "Empathising"¹⁹: "magistrates are compassionate towards me", "magistrates are caring", "and magistrates understand what it's like to have drug and/or alcohol problems".
- "Agreement"²⁰: "magistrates listen to my point of view".
- "Offers to help"²¹: "magistrates reiterate my goals so they are clear".
- "Praise"²²: "magistrates praise me when I am doing well".
- "Reassurance"²³: "magistrates have faith that I will make progress", "magistrates motivate me".

Although this is a not perfect fit, it is a strong match to suggest that this component represents "therapeutic support". Interestingly, the three variables added to the "empathising" dimension above were all "empathy" variables on the original four scales, strengthening the

¹⁸ TJ Court Craft series #4) Better judicial conversations.

¹⁹ "I understand why you would be upset about using".

²⁰ "You did the right thing by telling me you have relapsed".

²¹ "How about we reschedule your next court appearance so you can attend your son's graduation?"

²² "You did a fantastic job in staying off drugs for three months!"

²³ "Given your enthusiasm, commitment and excellent relapse prevention plan, I think you will achieve your goal of staying off drugs".

fit and implying that "empathy" is an underlying dimension of "support". Perhaps the weakest fit is "magistrates motivate me". Although in the footnotes, the statement is motivational: "I think you will achieve your goal of staying off drugs", I felt that motivation at MRC was a standalone dimension, rather than a sub-component of reassurance. This was affirmed in the analysis and discussion Chapters 6 where "motivation" emerged as a key theme within TA and was also seen as the most important skill as it was also a central tenet of MRC. As it loaded without problem onto this scale in Table B, this might suggest that motivation is a key ingredient of therapeutic support and could be added to King's criteria as a suggested original contribution to practice. It could otherwise suggest that this scale was measuring an altogether different construct to "support" and should be renamed. As the component was such a strong fit to King's version of "support" overall, I named it "Harnessing Therapeutic Support", but suggest that motivation is its own a sub-dimension of the support construct, at least in - and when measuring - MRC, although this is open to rebranding by future empirical researchers. Previously, question 21, "magistrates reiterate my goals so they are clear", was flagged as undermining data strength. This might be poor wording; thus, future researchers might change it to something clearer, such as: "magistrates make sure my goals for next time are clear" or "I come away from reviews clear on my goals for next time".

5.3.3.2 Component 2: Engaging Therapeutic Dialogue

What is really interesting about this component is that every variable taps into the idea of speech to affirm that the variables are measuring the same construct. I originally called it "empowerment" as it links to the idea of giving clients power, which they might not have in an adversarial setting. However, I felt that this did not properly capture the speech dimension, which I later understood as "dialogue". According to King (2016)²⁴ solution-focused judging involves a particular form of communication: "a dialogue between judicial officers and participants that aims to promote particular common goals". Intrinsic to this dialogue is a "two-way communication" (King, 2016, np).

²⁴ Court Craft Series #1) Enhancing Judicial Communication.

King (2016) further states this dialogue has four main dimensions, one of which is: turn-taking²⁵. Turn-taking includes giving space, encouragement and support for the client to communicate their viewpoint. This is demonstrated by the component: "magistrates give me a voice" and "magistrates do not rush or interrupt me when I am speaking". According to King (2016), turn-taking also involves a degree to which the judiciary demonstrates they have listened to the participant, demonstrated by the following of my variables: "magistrates are attentive when I speak". Furthermore, within the same blog, King again cites Alder and Proctor (2007), who describe two further aspects of effective communication: i) commitment to the person and; ii) commitment to the message. The former is "caring about what one says and being sincere", which links to variable "magistrates are sincere when they speak to me" and "magistrates speak to me without pity". The latter includes "use of language that makes sense to the other person", which links to "magistrates speak to me slowly, clearly, and loudly".

Although the name of this component taps into key ideas within King's (2016) blog, he inadvertently demonstrates that my scale here does not comprehensively cover the full "dialogue" construct. Future researchers might therefore add to this scale and reconfirm component structures using FA. One variable open to particular criticism is "magistrates speak to me without pity" (question 4), which does not fit so well with King's blog. This was also identified in section 5.3.5 as the most problematic cross-loaded item, by loading highest (but negatively at -650) on component 1, but grouping better with component 2 (as a '+'). It was grouped with the "dialogue" component 2 to enable consistent signage within the same component. Problems might be due to poor wording, along with question 28 from the same "dialogue" component, which also cross-loaded onto component 3: "magistrates do not rush or interrupt me when I am speaking". "Without" and "do not" operate the negative, whereas all the other variables operate the positive, which is potentially misleading, and might explain why they were problematic. Question 4 could become positive by rewording to something to

²⁵ The other three are: connecting, mutual influencing and co-creating outcomes.

the effect of: "magistrates are sympathetic when they speak to me" "magistrates are compassionate when they speak to me". However, this is very similar to "magistrates are compassionate towards me" from the "support" component. This could explain why Question 4 also loaded negatively onto component 1 indicating that "speaking *with* pity" (i.e., to the effect of sympathy or compassion) is an inherent part of the "harnessing therapeutic support" construct, hence its cross-loading. Notably, this variable also had low reliability according to Cronbach's Alpha below to further indicate less rigour. It is up to future researchers what they do with this variable; they could retag it as Component 1, rename it so it is clearer, or altogether remove it. I have kept it as part of Component 2 to retain nuance and depth to my own more qualitative project but this could be classed as a limitation especially by more positivist researchers. Interestingly, four of the six items were originally part of the hypothesised "respect" construct (Goldberg, 2011), where it could thus be hypothesised that respect is an underlying dimension of therapeutic dialogue.

5.3.3.3 Component 3: Inspiring Therapeutic Change

On the third scale, items loaded negatively, hence why it was given a negative name, "debilitating therapeutic change" and negative lettering was added to reflect its negative meaning. For the proposed scales, the Likert was reversed to a positive subject "inspiring therapeutic change", and the wording of each variable reflects this by removing the negative red words. When reversed, the items implied that magistrates were forward-focused within their interaction, attempting to promote positive self-development amongst clients. For this reason, I first called it "encouragement". However, it was changed for similar reasons to the first component, where I felt it had a more active ingredient to simply encouraging: for instance, "setting my goals for next review", "building upon strengths", "positive about the future". I then called it "strengths-building" but this was too similar to variable "building

upon strengths". I eventually decided upon "inspiring therapeutic change" based upon on the blogs of Spencer (2018) and King (2017) described below²⁶.

For the first item, "setting my goals for next review" very much resembled, King's (2017, np) statement: "research suggests achievement is promoted through the setting of goals. It is also well accepted that behavioural change and rehabilitation is best driven by the person seeking to make the change". Both magistrates put forward strategies for setting positive goals; Spencer suggests a staircase diagram where steps towards reaching goals can be broken down, and King suggests a written form where the offender makes a futuristic plan for change. These are inherently linked to "feeling positive about the future" and "building upon strengths" as Spencer comments that shame and low self-worth can be overcome by setting goals, and are therefore central tenets to this skill. The "asking questions" item appeared as a slight anomaly; however, Spencer justifies its relevance to the component by asking that participants record their thoughts on the staircase document before their hearing. The "asking questions" item thus refers to individuals' active participation in their goal setting although this could be made more explicit in future questionnaires. Next steps involve testing the reliability of the new scales through Cronbach's Alpha.

5.3.4 Reliability Analysis

PCA was used in the preceding sections to validate the measurement scales by modifying the original four scales into three new scales. This section will take this a step further by testing whether measurements consistently measure the constructs they intended to measure through inter-scale reliability checks (Field, 2013). The term "reliability" broadly relates to whether the same measurements would be taken if they were retested at a later date (Field, 2013). However, scales themselves are reliable when they produce a result that are internally consistent with the overall questionnaire; if all scale items behave similarly, the scale is

²⁶ Court Craft Series, #8 (A Judicial Officer Assists Offers to Set Rehabilitation Goals and Strategies) and #12 (Steps towards change – a tool for judges working with persons with substance abuse disorders).

reliable (Field, 2013). If reliability demonstrates whether items consistently measure the same construct, the eight items on the "support" scale should theoretically act similarly, and the same applies for the other two scales. Even if they have been relabelled incorrectly, the purpose of carrying out reliability tests on the three new scales was to find out whether they consistently reflected the same construct during measurement.

Cronbach's Alpha was performed on each scale, which is a split-half test, widely used to reveal scale reliability, by splitting scales into two random halves. If the scale is reliable, scores from the two halves should correlate highly across several participants (Field, 2013). The main issue with testing scale reliability through split-halves is the many ways it could be randomly split (Field, 2013). Cronbach (1951) overcame this issue by creating a formula that loosely represents an average value of every possible variety, which equates to Alpha (α) (Field, 2013). Whilst statisticians debate the acceptable cut-off point, most posit a value that lies between .7 and .8, although this threshold could vary according to the subject under investigation and project at hand (Kline, 1999, cited in Field, 2013). The following tables display the results from the Cronbach's Alpha reliability tests for the three new scales. No items were reversed scored so items the Likert scales were already coherently measuring in the same direction. In each output, the "Corrected Item Total Correlation" score refers to the extent to which the item correlates with the overall scale, which, if below .3, should be dropped (Field, 2013). The "if item deleted" column reflects the change in α , if that item were deleted, meaning that a score greater than the overall α , decreases reliability (Field, 2013). Problematic items have been highlighted in red below and reliability indicated by green.

5.3.4.1 Cronbach's Alpha: Results

Table D: Harnessing Therapeutic Support

Cronbach's Alpha	N of Items
.957	8

	Corrected Item-Total Correlation	Cronbach's Alpha if Item Deleted
Q6 Magistrates are compassionate to me during reviews	.870	.948
Q5 Magistrates motivate me	.763	.958
Q8 Magistrates praise me when I am doing well	.923	.945
Q9 I feel that Magistrates listen to my point of view	.943	.944
Q11 Magistrates have faith that I will make progress	.877	.948
Q21 Magistrates reiterate my goals so they are clear	.833	.951
Q25 Magistrates understand what it's like to have drug and alcohol problems	.877	.948
Q26 Magistrates are caring	.647	.961

5.3.4.1.1 Findings: Harnessing Therapeutic Support

As the overall α is .957, the reliability of this scale is high (Field, 2013). This could be critiqued for being too high, indicating redundancy of items, where the sub-variables ultimately measure the same thing as the construct itself. However, as the number of items on the scale increases, Cronbach's alpha also tends to increase without changing internal consistency (Field, 2013). High reliability could therefore be a reflection of the number of variables on this scale (eight items) comparative to the other two scales, which have fewer (Field, 2013). The "Corrected Item" scores were below 0.3 to show that items correlated strongly with one-another to indicate internal consistency. However, Question 26's score is above the overall reliability, indicating that it decreased reliability of the scale and is potentially problematic. This should be considered by future researchers.

Table E: Engaging Therapeutic Dialogue

Cronbach's Alpha	N of Items
.865	6

	Corrected Item-Total Correlation	Cronbach's Alpha if Item Deleted
Q24 Magistrates give me a voice	.825	.812
Q27 Magistrates speak to me slowly, clearly, and loudly	.924	.791
Q28 Magistrates do not rush or interrupt me when I am speaking	.747	.827
Q14 Magistrates are sincere when they speak to me	.747	.827
Q4 Magistrates speak to me without pity	.227	.905
Q23 Magistrates are attentive towards me	.529	.869

5.3.4.1.2 Findings: Engaging Therapeutic Dialogue

As overall α is .865, the reliability of this scale is high (Field, 2013). The "Corrected Item" scores were below 0.3, other than question 4, which indicated that other items correlated strongly with one-another and were internally consistent. Questions 4 and 23 are above the overall reliability score indicating that they decrease reliability, and if removed, would improve alpha. The above analyses have all demonstrated that Question 4 "speaking without pity" is problematic, decreasing validity and reliability; thus, future researchers might change its wording or altogether exclude it. Question 23 was also flagged as potentially having low communality in the PCA to again suggest potential problems with the item.

Table F: Inspiring Therapeutic Change

Cronbach's Alpha	N of Items
.895	4

	Corrected Item-Total Correlation	Cronbach's Alpha if Item Deleted
Q17 (AL.1) I can ask questions where I need to	.817	.875
Q19 (E.2) Magistrates are realistic when setting my goals for next review	.816	.847
Q20 (PF.4) Magistrates help me build upon my strengths	.767	.866
Q12 (PF.3) Magistrates make me feel positive about my future	.772	.870

5.3.4.1.3 Findings: Inspiring Therapeutic Change

The overall α is .895, which is high (Field, 2013). As the "Corrected Item" scores were below 0.3, this indicated that items correlated strongly with one-another and were internally consistent. No questions are above the overall reliability score, suggesting no items are problematic to the "change" scale and it is therefore the most internally reliable.

5.4 Conclusion

This chapter has used PCA to reveal that the eighteen interpersonal skills variables measured three principal components, and used Cronbach's Alpha to check the reliability of the three revealed constructs. PCA was carried out to modify the original theoretical assumption that there were four constructs based on Goldberg (2011). A highly topical issue in current TJ conversations is the broad question of how social scientists can empirically measure its

principles (TJ-Lists, 2016, 2017, 2018; Stobbs 2015). This study provides a useful starting point for a prospective tool to be further piloted by future TJ researchers interested in measuring therapeutic interactions within specialist courts, which can be adapted for both qualitative and quantitative studies.

I was aware that by bypassing standardised scales and creating scales based upon a theoretical piece of TJ literature, the scales may not accurately measure the construct intended. PCA was able to explore this idea, although does not provide clear rules or exact answers. Using the scree plot, three principal components were extracted, although the inflection point is subjective (Field, 2013), and some researchers may have extracted four, others two. An oblique method was used to rotate the factors because the variables were inter-correlated, as they all corresponded to the same therapeutic interpersonal skills phenomenon. Due to this rotation method, the pattern matrix was used to interpret loadings where Q4 was flagged as undermining the data strength as it cross-loaded heavily onto both components 1 and 2. Although it loaded higher on component 1, it was tagged as part of component 2 because it grouped more consistently with the positive signage here. However, like most decisions within this analytical technique, this is an arbitrary judgement where other analysts may have tagged it differently.

There are six variables that cross-load onto more than one component, and, by doing so, explain something important about each construct. Whilst it is good to be critical, and remember that cross-loadings undermine quality of the data (Field, 2013), it is also important to note that loadings are never going to be clear-cut when items broadly refer to the same intangible, social, phenomena, as is the case here. Although there is strong indication of three overarching components, structures displayed in Table B might only represent the sample population, and not a broader parent population. However, equally, a larger sample might also confirm and verify the structures, rather than overthrow them, and, indeed, confirming and refining the scales are suggested next steps.

Although there are few sample size guidelines for usage of PCA, larger samples invariably minimise statistical errors (Osborne and Costello, 2005). This dataset was small, which was due to site difficulties with attendance. Whilst ascertaining large amounts of data was an

empirical caveat (see Chapter 3 and 7), this chapter has showed that the data was nevertheless strong enough for this analysis as per Costello and Osborne (2005). However, there are also no strict criteria on what constitutes data strength, and stricter readings (Field, 2013) may have dropped certain variables. As Field's (2013) stricter definition is more of a spectrum than an absolute, no results were removed, and were instead retained for nuance. Other than some cross-loadings, which were inevitable based on the interrelated nature of the constructs, the data strength confidently meets Costello and Osborne's (2005) standard in spite of the small sample size.

However, these measurements scales perhaps do not comprehensively measure all of what it means to carry out "a therapeutic interaction". It must be noted that TJ is a broad and comprehensive philosophy, where no tool could ever capture its full operationalisation, but perhaps nor is this the purpose of TJ. Perlin (2017) highlights its vastness and dynamism by emphasising that TJ requires ongoing attention to developments in psychology, criminology, and social work, and workability into the legal system, highlighting the non-comprehensibility of the current tool. If the tool cannot fully capture "therapeutic interpersonal skills", then it certainly does not capture the TJ paradigm in its rawest form either. However, I would also question whether full measurement of TJ is possible (see Chapter 2, 2.4.1). If the TJ's objective is to draw attention to the underappreciated therapeutic or anti-therapeutic consequences of the law (Wexler 2000), the current tool could do exactly that by providing insight into the TJ wine at MRC to, in this sense, fulfil TJ's purpose.

The issue of comprehensibility was further highlighted by Perlin (2017), who emphasises that TJ moves beyond procedural justice ("PJ") principles; although they are of great importance in the courtroom, there are other TJ practices and technique that must be integrated in proceedings for TJ court successes, such as collaboration with community services. This critique was also acknowledged inadvertently by Wexler (1995, cited in Carson and Bull, 2003: 584), who posited that tighter definitions of "therapeutic" should be avoided by research communities as they might "eclipse" broader therapeutic issues. These studies highlight the pitfalls of empirical measurements that are too refined, overshadowing other indicators of a therapeutic encounter. These points by Perlin and Wexler are acknowledged in this study as broader therapeutic responses were considered within the "bottle" data collection

and analysis. A further point: this study examines the variables as one-dimensional, independent, entities without considering how they are interlaced. A further analysis examining their relationship, and how they are interconnected, might be an interesting topic worth further study if the instrument were to be reused. Moreover, some of the scaling systems, upon which the measurements were taken, could be critiqued for being too wide (1-5) and might have been better captured by a closed "yes" or "no" response rather than a rating. Each variable was measured on the same 5-way Likert for the purposes of consistency across measurements within this study; however, this might be changed for further analysis.

Following validity checks, reliability of the three scales was considered using Cronbach's Alpha, a split-half reliability test, where a cut-off of .8 showed that each of the scales had high reliability (Field, 2013): "support": .957; "dialogue": .865; and "change": .895. Reliability of the "support" scale could be critiqued for being too high, indicating redundancy of items, where the sub-variables ultimately measure the same thing as the construct itself. However, as the number of items on the scale increases, Cronbach's alpha also tends to increase without increasing internal consistency. Therefore, high reliability could therefore be a reflection of the higher number of variables on this scale (Field, 2013). Q26, Q4 and Q23 decreased reliability of their respective scales as they were higher than α when deleted (Field, 2013). However, since deletion only increases reliability marginally, and α would still be within the reliable range (Nunnally, 1978), these items remain part of the scales and future researchers can decide whether to keep them depending on how reliable they would like measurements within their study to be. This might depend upon theoretical choices, where researchers carrying out strict statistical analyses might delete them, whereas researchers implementing them as a coding structure within qualitative analysis might keep them. By way of comparison, Alpha was also carried out on the old four scales, where reliability was significantly lower than the new scales²⁷. Therefore, verifying scale structures through PCA increased their reliability as well as validity.

²⁷ Empathy: .839; respect: .678; active listening: .622; positive focus: .883.

The original scales were based upon the problem-solving communication skills for judges section within Goldberg's (2011) Therapeutic Training Manual, lifted from Spencer's blog. For this reason, all variables, regardless of their scale, have been called "judicial interpersonal skills", which King (2006: np) defines as: the "ability to listen and communicate effectively with an ethic of care and the ability to motivate others to consider positive change". Judicial interpersonal skills are a fundamental tenet of TJ, and are consistently and broadly discussed throughout the literature, with key text, "Judging in a Therapeutic Key" (Winick and Wexler, 2003), dedicating a section to describing its importance and operationalisation (see Chapter 2, 2.6). However, perhaps the variables together better reflect therapeutic alliance, interactional styles, sources of a therapeutic relationship, or something else, a question that ultimately stems from the uncertainty surrounding measurement of latent variables, which are facets of human conception, rather than independent entities from the natural science world (see discussions in Chapter 3). Perhaps the scales are measuring something altogether different from their titles, but whatever that is, these analyses have indicated high validity and high reliability and are therefore a starting point for future TJ empirical researchers, to be adapted, modified, and rebranded as seen fit.

Having already summarised the socio-demographic information of participants, and now having checked the validity and reliability of the wine scales, this thesis now moves on to analysing and discussing the main findings from the measurements taken using these scales (Chapter 6) before the "bottle" data is then presented (Chapter 7).

6 Chapter 6: Analysis and Discussion, Chapter 3: "Wine"**Contents Page**

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6.1 Introduction

In the previous chapter, Principal Component Analysis ("PCA") and Cronbach's Alpha were used to check for validity and inter-scale reliability of the "wine" measurement scales to answer "wine" research question 1 (Chapter 2, 2.9). I was aware that by bypassing the use of standardised scales, measurements taken may not accurately capture the intended construct and PCA was able to explore this idea. PCA revealed that the eighteen substituting items, arranged on the four a priori scales, measured three principal components. They were thus rearranged onto three new scales to reflect these outputs, and renamed: "Harnessing Therapeutic Support", "Engaging Therapeutic Dialogue", and "Inspiring Therapeutic Change". Cronbach's Alpha illustrated high inter-scale reliability of the three dimensions.

Using the three scales, the current chapter moves on to analysing, summarising, and discussing the findings from the "wine" data collected during Phase 1, 2, and 3 to examine the TJ-friendliness of Manchester Review Court ("MRC") wine (see Diagram A in Chapter 3). This will answer research questions 2 and 3 ("wine") posited in Chapter 2, Section 2.10 and outlined again in the footnote below²⁸. Analysis will be carried out using descriptive statistics (means and bivariate correlations), a parametric test (one-way ANOVA), and deductive thematic analysis. Limitations of these techniques, and of the measurements themselves, were disclosed in previous chapters: Methods (Chapter 3), and Reliability and Validity Analysis (Chapter 5). Please also refer to these chapters for a review of methodological processes.

This chapter offers a complex analysis of the therapeutic proficiency of the MRC wine using data from various data points where results could be understood as either: dissonant,

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Research Question 2) What impact does an inconsistent bench have on the therapeutic application of magistrates' interpersonal skills?

Research Question 2A) does magistrates' gender impact application of TJ wine?

Research Question 3) What is the therapeutic quality of the magistrates' interpersonal skills at MRC?

complementary or convergent using key data triangulation principles (Kelle and Erzberger, 2003). The challenges of bringing together many different data sources and data types into one succinct analysis are manifold. The current chapter was written and the data reanalysed many, many times. Firstly, it was analysed in three separate sections (to reflect Phase 1, 2 and 3) using the original four scales. However, following the PCA (Chapter 5), it was analysed for the second time in three separate sections based on the three reconfigured scales. During the second analysis, advanced statistics were operationalised on the quantitative data (T-Tests, One-Way ANOVAs, Kruskal Wallis, Mann–Whitney U) to examine changes in therapeutic quality based on client drug and offence types (factors external to the bench). This was eventually removed as the advanced statistics themselves, as well as the findings, detracted from the main issues and body of argument, where Therapeutic Jurisprudence ("TJ") at MRC could be much better understood within a narrative based discourse. Eventually, this chapter was reanalysed and rewritten for the final time by knitting all data points together in the same chapter to answer the research questions using a more qualitative statistical (descriptive) approach.

Where this chapter uses statistics, it does not intend to offer strict positivist analyses; rather, it exploits numbers to tell a broader qualitative story of the court's therapeutic quality (see Methods, Chapter 3 for further details). This is an inherent part of this thesis' Critical Realist philosophical position, which involves blending qualitative and quantitative approaches whilst in favour of the former (Sayer, 2002). Referring to Diagram A in Methods (Chapter 3), there was consistency across the three core data phases (1, 2, and 3: wine) highlighted in red. This meant that measurement of the wine was based upon the same three constructs outlined (from the PCA) across every phase. The purpose of using the same construct composition across data points was to build a holistic, coherent and consolidated thread of analysis that contributed to a central line of arguments with data triangulation.

The Phase 1 and 2 data was analysed together because they both measured the same variables using statistics. Since the number of sub-skills within each construct varied, the mean value was calculated and scores were rounded to one decimal place for a concise analysis. As the Phase 1 and 2 scales measured in opposite directions, the Phase 2 scales were reversed so "5" also represented the highest score. Numerical scores were evaluated by translating them to

the qualitative wording on the Likert scale ("poor", "fair", "good ", "very good" and "excellent"). A further code was also added in which "3 or above" represented a "therapeutic" score and "below 3" was "non-therapeutic" score again to reflect Likert wording and to give qualitative life to the numerical findings and as a mechanism for exploring the data (Vagias, 2006). Green and red highlights were added to the tables to represent non-therapeutic (red) and therapeutic (green) scores for ease of readability.

Quantitative findings were then substantiated with qualitative data from Phase 3. Qualitative "wine" data was analysed in NVivo where nodes were pre-labelled as the eighteen interpersonal items within a deductive thematic coding structure (Braun and Clark, 2006). The Ten Key Components (NADCP, 2004) were used in a similar way for deductively coding the data, mainly for analysis within the next chapter (by mostly referring to broader "bottle questions"); however, I was open to data falling within these codes during the wine analysis. Similarly, I was open to inductively (rather than deductively) realised codes based on Braun and Clark (2006). After coding the qualitative data, a "developing themes" node was created in NVivo. Collated themes were, in part, based on the number of references per node: more references per category alerted my attention. However, thematic importance also related to question context, relationship with other codes, and the repetition of ideas within the datasets and/or across participants.

In linking back to Diagram A in the methods chapter (Chapter 3), "wine" data was collected more exclusively within Phase 1 and 2 (using quantitative methods), and the focus on the wine narrowed as the study passed through the phases. Comparatively, the Phase 3 qualitative data focused much more upon "bottle" questions (using a qualitative method). Naturally, this means there is less qualitative data to substantiate this chapter compared to the next. Nonetheless, four themes emerged as key skills to MRC operation from the qualitative data: i) understanding the complexity of Alcohol and Other Drugs ("AOD") recovery (as part of "support"); ii) motivating individual (as part of "support"); iii) giving offender a voice (as part of "dialogue") and; iv) appropriate goal setting (as part of "change"). Of these, motivating individual was seen as most fundamental skill, but giving offender a voice was operated the most therapeutically. These findings built upon the previous report (Kerr et al, 2011: 25), where the judicial interactional styles were reported as: "motivational;

personalised; interactive; authoritarian and challenging". All skills could be improved through training, or, ideally, by implementing a charismatic TJ magistrate highly trained in TJ-techniques. In spite of this, all skills were operated therapeutically in spite of their minor differences. Within each of these skills, a panel analysis was also run to link back into research question 2 ("wine") to show changes in administration of TJ across different benches within Component 7 (NADCP, 2004).

The structure of the chapter is as follows. It firstly carries out a panel analysis to explore changes in approaches to TJ according to magistrates to answer research question 2 ("wine"). Within this analysis a panel gender discrepancy emerged so research question 2A was added inductively to clarify gender impact within a confirmatory analysis. It then continues to examine proficiency of the three constructs, and their constituting sub-skills to answer research question 3 ("wine"). It further uses bivariate correlations to consider the relationship between the quantitative sub-variables on a client-to-client basis for each of the three constructs. Discussion is offered in each section, but the chapter concludes with a symposium of key findings, which also offers some original insights for improving MRC "wine". The next chapter moves on to examine TJ on a broader level, using the bottle data to ignite a wider discussion about the TJ-friendliness of the surrounding England and Wales landscapes. Nevertheless, as will be demonstrated, these exclusive "wine" and "bottle" analyses are highly interlinked.

6.2 Analysis and Findings

6.2.1 Wine: Research Question 2: Does the Therapeutic Quality of the Magistrates' Interpersonal Skills Vary According to the Panel Sitting?

According to the National Association of Drug Court Professionals ("NADCP") (2004: 15) within Component 7, the "ongoing judicial interaction with each drug court participant is essential" and the Therapeutic Jurisprudence ("TJ") literature also emphasises the importance of a consistent bench for facilitating therapeutic relationships (Winick and Wexler, 2003; Hora 2002, cited in Stimler, 2013; Kerr et al, 2011). Consistency of the bench has also been emphasised within the operation of looser methods of problem-solving practice such as Hawaii's Opportunity with Probation Enforcement ("HOPE") (Bartels, 2016, 2017, 2018).

Specialist courtroom interaction expert, Petrucci (2003: 152), explicitly states: "perhaps the most prominent feature of the judge's approach was the consistency with which he dealt with defendants". However, MRC was non-compliant to Component 7 (NADCP, 2004) as the bench changed fortnightly²⁹. Therefore, this research question explores the impact of the inconsistent bench on the therapeutic application of TJ wine at MRC.

To carry out the Phase 1 and 2 quantitative analyses, groups of cases were recoded into "date group" and given a number (which totalled 10) because many cases (between 3 and 7) could be seen by the same panel of magistrates on the same date³⁰. Therefore, each date group (or number) represented a different panel of magistrates. Table B was generated to compare the overall mean of each of the three interpersonal skills (or constructs: see Chapter 5) across date groups for Phase 1 and 2 to explore consistency. Table B also gives the mean difference between the Phase 1 and 2 scores (column 4), and an average of the two scores, which is taken as the "final score" (column 5). The "final score" allowed the two scores to complement one-another to give a final mean based on complementary triangulation principles. No Phase 2 data was collected on Date 1 or Date 9; access approval for Phase 2 had not yet been granted on Date 1 and there were no respondents available for participation on Date 9. Table A was also created to characterise the ten panels based on any additional information gathered during data collection (number of magistrates sitting, magistrates' gender) to contextualise the findings. Unfortunately, due to access restrictions no further demographics of magistrates could be collected. However, as the purpose of this question was primarily to explore broader impact of the breach of Component 7 on consistent application of TJ (rather than blaming certain judicial demographics for causing less therapeutic application) this was not a substantial limitation and the collected data was sufficient for the analysis.

²⁹ The court ran fortnightly on a Wednesday afternoon.

³⁰ The date has been anonymised to protect identity of magistrates.

Table A: Contextual Panel Information

Panel Number	Number of Magistrates	Magistrates' Gender	Phase 1: Number of Clients Observed	Phase 2: Number of Surveys Collected
1	2	Female	7	0
2	3	Mixed	6	2
3	2	Male	6	2
4	2	Mixed	5	3
5	2	Female	6	2
6	2	Female	6	1
7	1	Male	3	2
8	3	Mixed	3	2
9	2	Female	4	0
10	3	Mixed	5	2

Table B: Means (M) of all Therapeutic Scores when Controlling for Date Group**(Panel):**

	Phase 1	Phase 2	Difference	Final Score
Panel	M	M	M	M
1	3.2 (T)	no survey	NA	3.2 (T) -0.4 = 2.8 (NT)
2	3.5 (T)	3.1 (T)	0.4 -	3.3 (T)
3	3.7 (T)	3.3(T)	0.4 -	3.5 (T)
4	3.4 (T)	2.9 (NT)	0.5 -	3.2 (T)
5	3.5 (T)	3.1 (T)	0.4 -	3.3 (T)
6	3 (least)	2.6 (NT) (least)	0.4 -	2.8 (least) (NT)
7	3.8 (T)	3.1 (T)	0.7 -	3.5 (T)
8	3.6 (T)	3.3 (T)	0.3 -	3.5 (T)

9	3 (least)	no survey	NA	3 (T) - 0.4 = 2.6 (NT)
10	4.2 (most)	3.4 (most)	0.7 -	3.8 (most)
Total	3.5	3.1	0.4 -	3.31

Table B shows that scores tended to be concentrated in the "good" category. No scores fell into either extremes of "poor" ("1") or "excellent" ("5"); lowest scores were "fair" ("2") and highest were "very good" ("4") (Vagias, 2006). This is likely to be attributed to the use of means to summarise the dataset. The final score for each panel shows variation; every panel scored three ("good") or above ("therapeutic") but for Panel 6, which was an exception, scoring 2 ("fair") ("non-therapeutic"). The 'difference' column shows that scores given during Phase 1 observations were marginally, but consistently, higher than the Phase 2 surveys. However, the average difference between the Phase 1 and 2 scores was only 0.4 on the 5-way Likert scale, and the biggest discrepancy was less than one point (0.7). The implication here is that the measurements I took during the Phase 1 standardised observations were slightly more generous than those given in Phase 2, although only marginally, on the same variables. Importantly, this shows strong similarity across Phase 1 and 2 scores in which the results are convergent. What is interesting is that both Phase 1 and 2 show, independently, that Panel 10 was the strongest panel and Panel 6 was the weakest. These similarities give me confidence in the validity of both sets of findings thus overcoming some of the subjectivity inherent within the Phase 1 observations.

Contextualising these findings into panel type in Table A suggests that a mixed panel of three magistrates is the strongest composition (Panel 10) and an all-female panel of two (Panel 6) is the weakest. Where no data is available for Phase 2 (on Dates 1 and 9) we can hypothesise a score by subtracting the average difference (-0.4) from the Phase 1 score (displayed in the final column of the table). This shows that Panel 1, 6, and 9 were all non-therapeutic. When contextualising this into panel type, the common characteristic between the non-therapeutic panels is they are each all-female (reasons for this are explored in 6.2.1.1 of this chapter). On the other hand, panels 2, 3, 5, 7, and 10 were all therapeutic panels of mixed or male genders. Number sitting on the panel shows no pattern. This strongly suggests that the majority of

panels were therapeutic but there was inconsistent application of TJ due to the changes of benches, which could be linked to panel gender as an emerging impactor (explored later, 6.2.1.1).

For now, the Phase 1 and 2 analyses have both showed differences in the therapeutic quality of interpersonal skills ("support", "dialogue" and "change") according to the bench sitting, where Panel 6 was the least therapeutic (non-therapeutic) and Panel 10 the most therapeutic (therapeutic) according to both Phase 1 and 2 data sources. This finding will be now substantiated with qualitative data from Phase 3 (interviews) to add breadth, clarification, and complexity.

In Phase 3, participants emphasised that *"without a shadow"* (Client 3) there were differences in therapeutic quality across benches; most explicitly:

"It (therapeutic quality) depends which magistrate you've got on the bench, it really does. Some are better than others, and others are worse than you'd expect" (Court Staff 1).

"I think the vast majority of them are very good there are one or two exceptions" (DRR Staff 1).

These quotes strongly augment the statistical analyses suggesting that quality can vary across panels. The strength of qualitative data is its ability to elaborate on this point; Client 2 emphasised that a consistent bench would improve the court although qualified this by suggesting it would only be beneficial if consistency came from a therapeutic panel, otherwise:

"It would be the luck of the draw" (Client 2).

Therefore, consistency would only be beneficial if it was derived from a therapeutic source. This links to the seminal work of Perlin on mental health courts (2012: 4). He quotes: "the success of the courts is overly-dependent on the personal charisma of the presiding judge" but suggests that this may be enhanced through judicial training and attitudes concordant with TJ

(Perlin, 2012). The data suggested that the most common perceived reason for improvement was to create a more personalised review that increases understanding between reviews (Client 1; Client 3; DRR Staff 1). Explicitly:

"It allows magistrates to say: 'you look really well. When I first saw you months ago, there wasn't anything to you, but now look, you've got a glow in your cheek'" (DRR Staff 1)

"So they know your previous history" (Client 3).

Other benefits of a consistent bench identified were: accountability and relationship-building (Client; DRR Staff 1), a fairer approach to individuals (Court Staff 1), for a more consistent review quality (Client 2). Whilst all participants in this study reported inconsistency across benches, there were degrees to which this was the case.

"They're all safe" (Client 3)

Although Client 3 in the above quote thought magistrates were all proficient, Court Staff 1 and DRR Staff 1 in the previous quotes suggested that therapeutic quality could change quite dramatically across benches. Nonetheless, whilst degrees of inconsistency were identified, all participants from Phase 3 made clear that most panels were therapeutic, corresponding to the Phase 1 and 2 analyses, which illustrated the same. As the feedback on consistency derived from a number of different participant types (including staff members and clients of different demographics), and from three different data sources (Phase 1, 2 and 3), the validity of these claims are significantly heightened to suggest inconsistent bench results in inconsistent application of TJ wine. The rigour of this finding could have been intensified by building it in as a qualitative question during the Phase 2 questionnaire to gather a broad structure of client opinion. However, this would have taken away from the efficiency of the quantitative method hence its exclusion.

The finding that non-compliance to Component 7 (NADCP, 2004) results in inconsistent application of TJ wine builds upon the predecessor England and Wales Drug Court ("DC")

research by Kerr et al (2011: 24). In mapping implementation, operation and core elements of the then six DCs, researchers examined only four dimensions (of the 10 possible Key Components), of which one was a continuous judiciary. This highlights its importance to the previous models. Furthermore, researchers placed the "judicial/offender relationship" centrally in a diagram mapping key DC mechanisms for reducing drug use and reoffending (Ker et al, 2011: Figure 4.1: 24). The researchers further reported that this particular dimension was fundamental for influencing: offenders' structure and goal setting, self-esteem and confidence, accountability, engagement, increased judicial knowledge of specific cases as well as partnership working. However, when the report was published after only six years in operation (for London and Leeds) and two years (for Barnsley, Bristol, Cardiff and Salford), researchers already identified fundamental issues surrounding operationalisation of Component 7. Researchers detailed that implementation would undermine and was irreconcilable with other priorities, such as efficiency of administering breaches (Kerr et al, 2011). Nonetheless, the quantitative analyses disclosed that partial continuity (where one member sits on the bench for two consecutive hearings) was achieved 90% of the time across the six models (Kerr et al, 2011). Interestingly, the Salford DC³¹ model alone, arguably the ancestor of MRC (see Chapter 7), achieved the most continuity across the six pilots, where full bench continuity was achieved 29% of the time (dropping to 0% at Leeds, which scored the lowest). This corroborates with my findings to suggest significant decline in successful delivery of this core component within the region of Greater Manchester or within the Salford model itself over the last seven years (depending on how we define the court: see Chapter 7).

Elsewhere, a later UK report for the (now closed) West London DC was scathing on this point, stating that the UK DRRs "almost perversely" have failed to respond to the strong international evidence-base surrounding the importance of a consistent bench within Component 7 (Estep, 2014: 2). The author affirmed that England and Wales had faced great difficulties implementing a system in which offenders are coherently reviewed, yet concurrently reported the profound impacts of such infidelity. Such difficulties, both past and

³¹ Also located in Greater Manchester.

present, may be underpinned by fundamental problems lying at bottle level, namely, reforms under The Courts Act 2003³². Under this policy, one of the most profound effects on UK courts is it has widened the geographical remit of possible courts for magistrates to preside, making it harder to achieve consistency as the pool broadens. Currently, there are around twenty-five magistrates in the MRC DRR pool (ethnographic data; Court Staff 1), but this is likely to get larger as centralisation continues as it has:

"Created a larger wheel to turn, to spin on" (Court Staff 1).

In context of this deep-rooted bottle problem, continuity would seemingly be very difficult without unrealistic changes to policy reversing the centralisation reforms. As my research confirms that the consistency issue has only worsened over time (since Kerr et al, 2011), this could suggest that the original DC models were underpinned by a poorly thought-out conceptual model that failed to account for structural factors that would undermine fidelity to a crucial specialist court area. More alarmingly, the long-standing lack of compliance to this component could raise questions about the authenticity of the predecessor DCs due to fidelity issues (NADCP, 2004).

The purpose of this analysis was to investigate whether the non-compliance to Component 7 (NADCP, 2004) impacted consistency of therapeutic quality, and, if there were differences to contextualise why. The results from 1, 2 and 3 converge to suggest that inconsistency of the bench leads to different approaches to - and ultimately application of - TJ wine at MRC. Nonetheless, whilst the purpose of this question was to investigate the impact of an inconsistent bench, a potential panel gender discrepancy emerged in which all-female panels appeared to be the least therapeutic panel-type. This will therefore be investigated more explicitly in the next confirmatory analysis. The following question was added to the thesis inductively based on the aforementioned findings.

³² Salford was integrated into Manchester Magistrates' Court in 2012, Bury in 2017, and further anticipated integration of Bolton in the future (DRR Staff 1; Court Staff 1).

6.2.1.1 Wine: Research Question 2A: Does the Proficiency of Magistrates' Interpersonal Skills Change According to Magistrates' Gender?

Within the previous exploratory analysis, a gender difference emerged as a possible impactor on therapeutic quality of magistrates' interpersonal skills. This section will clarify these differences through a more confirmatory analysis investigating impact of panel gender on TJ wine at MRC. It will use descriptive statistics (means) to compare scores (Table D) to more explicitly describe the Phase 1 (P1) and 2 (P2) samples in terms of gender influence. It will then use a parametric test (One-Way ANOVA) to carry out statistical significance analysis beyond the sample. The one-way ANOVA was only carried out on the Phase 1 data because the Phase 2 data populated in Table C is sparse due to a small dataset undermining the viability of such comparisons³³.

Table C: Frequencies of Data for Phase 1 (P1) and 2 (P2)

Frequencies		P1	P1
Valid	All Male	13	4
	All Female	19	3
	Mixed	19	9
	Total	51	16

Table D: Magistrates' Gender Means Scores for Therapeutic Support (TS), Therapeutic Dialogue (TD) and Therapeutic Change (TC)

	TS		TD		TC	
Data Source	p1	p2	p1	p2	p1	p2

³³ The reason for the small dataset is due to issues with breach and attendance, outlined in Chapter 3 and discussed at more length in Chapter 7.

All male	3.22	3.8	3.95	3.3	3.31	3.3
All female	3.03	3	3.55	3.1	2.99 (NT)	2.8 (NT)
Mixed	3.63	3	3.87	3.4	3.6	3.1
Total	3.3	3.3	3.8	3.3	3.2	3.1

Table D compares the mean scores given for the three skills based on the Phase 1 and 2 datasets. What is interesting about the results is every skill from both data sources demonstrate that an all-female panel is consistently weakest (Table D). It is also interesting to note that the only non-therapeutic (below "3") panels are all-female within "Inspiring Therapeutic Change" according to both the Phase 1 and 2 datasets. The results therefore converge to suggest that an all-female panel for "therapeutic change" is weakest. There is less pattern within the all-male and mixed groups, which changed from first to second place according to dataset and skill. Interestingly, the average "support" score for both Phase 1 and 2 was exactly 3.3, meaning that they correlate perfectly, again demonstrating convergent results, and giving me broader confidence in the similarity, and therefore validity, of other results.

As both datasets on average gave a therapeutic ("good") score to every skill and gender-type other than a non-therapeutic (fair) score for all-females within "change", the datasets converge to suggest that females were less therapeutic. To broaden the impact of these findings, tests of statistical significance will be carried out on the Phase 1 dataset³⁴. The p values within these tests demonstrate whether a finding occurred by chance; if it did not ($p < 0.05$), we can assume that the finding would also be found within a broader parent population (Demack, 2007) or a similar population measured at another time.

6.2.1.1.1 Tests of Statistical Significance: One-Way ANOVA

³⁴ The phase 2 data set is too small due to the attendance problem highlighted in Chapter 7.

Null hypothesis: there is no statistically significant difference between magistrates' gender and application of the Support, Dialogue and Change skills.

Alternative Hypothesis: there is a statistically significant difference between magistrates' gender and Support, Dialogue and Change skills.

According to Gravetter and Wallnau (2013), to carry out a parametric test, such as a one-way ANOVA, the data must satisfy the following criteria:

- Homoscedasticity (homogeneity of variances) within the independent variables
- The dependent variable(s) must follow a normal distribution
- The observations within each sample must be independent

The first assumption was met through Levene's statistic where homoscedasticity (Appendix 5) showed equal variances across genders: $f(2, 48) = .263, p = .140$. For the second assumption, normality of the dependent variable will be checked below.

Table E: Tests of Normality within the Distribution of the Independent Variables

Skill Means	Skewness	Kurtosis
Support	-.236	-.512
Dialogue	-.354	-.153
Change	.178	-1.187

According to George and Mallery (2010), if skewness and kurtosis values are between -2 and +2, there is a normal univariate distribution to suggest that the current dependent variables were appropriate for parametric analysis within the second assumption (as per Gravetter and Wallnau, 2013). However, for the third criterion, the data breached the independence of observations assumption because some magistrates may appear in both an all-gender and a mixed panel, which might result in a Type 1 or Type 2 error (McDonald, 2014). Therefore, although a one-way ANOVA was run to confirm differences in skills across panel genders,

results must be treated tentatively due to breach of independence (Field, 2014). Regardless, whilst a one-way ANOVA is carried out on the data to broaden its significance beyond the sample, the descriptive statistics had already demonstrated that an all-female panel was less therapeutic within the sample itself with certainty.

The one-way ANOVA (Appendix 6) demonstrated a statistically significant difference between magistrates' gender for "support" only: $p(2, 48) = 4.673$, $p = 0.14$. Levene's statistic had already confirmed homoscedasticity, and appropriateness of Tukey corrections, which were therefore run as a post hoc test. The corrections showed a statistically significant difference ($p = 0.12$) between all-female and mixed panels where the latter panel type is $m = 0.33$ more therapeutic (Appendix 7). Thus, the p value has confirmed that for "support", the relationship between a mixed and all-female panel did not occur by chance and it is therefore likely that this finding would be present itself within a broader parent population (Demack, 2007) or within another sample taken at a different time. As such, the alternative hypothesis was accepted for "therapeutic support" only, but with caution given breach of independence. The null hypothesis was accepted for "dialogue" and "change" constructs.

In this section, the descriptive statistics have demonstrated that gender impacted therapeutic quality of wine MRC, where all-female panels were less therapeutic. Within the "change" construct all-female panels as less therapeutic than mixed, was statistically significant. Although results from Phase 1 and 2 on these points triangulate, this finding will be further collated with the Phase 3 data in the next section to check for validity. It is especially important to verify this finding with a third data source due to breach of independence within the parametric analysis. Notably, the magistrates' gender question was not asked explicitly during interviews as it surfaced only within these analytical phases after data collection. However, interestingly, it also emerged as a possible impactor within the Phase 3 dataset. Both Clients 1 and 3 referenced male magistrates as particularly therapeutic.

"The main man today... I just found him very likeable, which is a strange thing - and another difference between those in the normal courts" (Client 3).

"Him, that magistrate today, instead of trying to put you down all the time, at least he'll listen" (Client 1).

"I think he's positive about me" (Client 1).

Client 3 was interviewed on Date 3, which was already found to be an all-male therapeutic panel of two males. This means that the data sources converged to indicate a strong influence of the main male magistrate on this panel. Client 1 made the above two remarks after he was seen by Panel 7, a single male presiding magistrate with a high therapeutic score. This panel also gained the highest score ("excellent") for the "motivating" skill for this client to converge with his above quote: *"I think he's positive about me"*. This confirms that males had a high therapeutic influence on the panel on these dates. Since all data sources (1, 2 and 3) verify one-another to show magistrates' gender affects TJ at Manchester, and that a male influence increases therapeutic quality, tentativeness with the breach of independence assumption has been somewhat overcome.

These findings might be linked to the nature of the court, which deals predominantly with males (see Chapter 4). Collins (2017: 1498) details that Girl Courts in Oahu and Alameda, operating similar solution-focused principles, are staffed predominantly by women including female judges, "who are expected to act as role models for the girls". If therapeutic interpersonal skills are sources of therapeutic relationships, it could be that less therapeutic operation from female magistrates arises from the fact they are dealing only with male offenders to whom it is more difficult to relate. Therefore, a different result might be found within the women's problem-solving Court at Manchester (see Chapter 3). Nevertheless, it is important to point out that the purpose of this analysis is not to accuse female (or any) magistrates of being less therapeutic; rather, to comment on the impact of an inconsistent bench on the application of TJ within Component 7, and to explore possible causes. Importantly, the qualitative data did not indicate that female magistrates were non-therapeutic, just a positive impression from certain males. Nor did Phase 3 nuance the findings to suggest that differences only appeared within the "support" construct, and neither did participants report on a mixed panel.

Although it is interesting that a gender difference emerged from qualitative data, differences may have been linked to factors within magistrates' backgrounds, or something deeper. Indeed, the qualitative data was able to tell a richer story where age, life experience, and

attitudes to addiction were identified as possible influencers on magistrates' ability to effectively deal with clients:

"They use their own experience, they tend to be older" (DRR Staff 1).

"Whether they see it as a medical issue rather than criminal" (Client 2).

Court Staff 1 further identified magistrates' personality as key. These influencing factors link to the work of Perlin (2012) who suggests that specialist courts rely upon personality and attitudes of presiding judges. This could suggest that changes across benches are rooted in something deeper seated than gender within their attitudes to offenders. This could link to the socio-demographic information presented in Chapter 4 in which it was revealed that 15.6% of MRC clients committed violent offences. Research by Mair and Burke (2013) showed that DC staff tended not to favour the inclusion of violent offenders for ethical reasons. It was therefore posited in Chapter 4 that there might be lowered effectiveness amongst violent offenders due to changed judicial attitudes as per Mair and Burke (2013).

Unfortunately, beyond what was observational (i.e., gender and numbers on the panel), further judicial demographics (such as age, name, nationality, attitudes, or personality traits) could not be collected within the given access permission (see Chapter 3). As such, keeping track of panels and further exploration into the impact of panel demographics on therapeutic quality was not possible. Although the data does suggest gender impacts therapeutic quality, the reasons why were inconclusive. I thus suggest deeper exploration into impact of these identified factors within further empirical study particularly personality and attitudes upon therapeutic application at MRC as per Perlin (2012) and Mair and Burke (2013).

A further hypothesised factor for inconsistency could be inconsistent judicial training, which was either limited or non-existent at MRC. Under Component 9, the NADCP (2004: 21) state: "continuing interdisciplinary education promotes effective DC planning, implementation, and operations". However, the last training session for MRC magistrates was in 2010 and no refresher had been provided (DRR Staff 1), precluding some current magistrates as the pool had naturally changed with time especially under court centralisation

reforms (Courts Act 2003). Magistrates in receipt of previous training tended to refer to Salford DC training only not training specific to MRC (ethnographic data). It was further reported that no other court staff (Legal Advisors) had ever received specialist training (Court Staff 1). The same participant further told me that magistrates' specialist knowledge derived from leaflets distributed in the staff room, and DRR magistrates had regular (quarterly) panel update meetings amongst themselves (Court Staff 1). However, this falls significantly short of the training ideal under DC Component 9. This corresponds to the existing England and Wales literature where Kerr et al (2011) reported that there was limited evidence of formalised training of the judiciaries at the original DCs. Researchers thus recommending putting national standardised training guidelines in place going forward (Kerr et al, 2011). This makes clear that training is a long-standing issue for specialist England and Wales' courts, and an issue that has only worsened over time. Importantly, if certain panels are weaker, how can we blame them when they have been offered so little training on how to appropriately administer TJ wine?

This could suggest that the countermeasure to non-compliance to Component 7 is a rigorous training programme for all MRC magistrates to improve consistency within approaches under Component 9. Although this ultimately looks at improving the wine, it would require intervention from the UK Judicial College at bottle level, who, under the Constitutional Reform Act 2005, are responsible for providing training to the UK judiciary. However, the literature indicates that judicial training opportunities operate within a TJ-unfriendly bottle. According to figures, within a Criminal Justice climate punctuated by austerity measures, training budgets have been significantly cut in recent years (Judicial College, 2013-2014). The Justice Committee (2016) reported that expenditure on magistrates' training has been reduced from £72 per sitting magistrate in 2009/10 to £30 in 2013/14 although no official statistic has since been released. These figures might not only explain the lack of training at MRC and related inconsistency problems, but may also explain the downfall of the historic England and Wales' DCs, both of which require heightened judicial knowledge and specialist attitudes under Component 9, which was lacking.

The importance of training is unequivocal; Perlin (2012: 30) insists that we make "judicial training compulsory" for specialist courts although he suggests a temporary (cheaper) remedy

- providing all magistrates with copies of the key text: "Judging in a Therapeutic Key" (Winick and Wexler, 2003) to enable them to learn about essential TJ techniques, and to heighten their familiarity with the TJ doctrine. However, rigorous specialist court training through the Judicial College is the ideal solution and, although it could take up shorter-term resources, it could save costs in the longer-term by reducing recidivism, austerity, and additional related problems that England and Wales currently faces by mimicking international best DC practice (see Chapter 2, 2.2).

It is interesting to consider the origins of the therapeutic, rehabilitation-aligned, court culture exhibited at MRC if no training, or little, had been provided across staff. I asked Court Staff 1 about this in interview:

"It might well be lip service. Everyone knows the underlying fact is that review about rehabilitation... it is an underlying feeling that I think everybody in that room has" (Court Staff 1).

This quote highlights the vagueness and uncertainty surrounding MRC to explain inconsistencies found within these analyses. Indeed, "lip service" falls significantly short of the ideal of specialist training, explanation, and practice protocol posited by NADCP within Component 9.

Perhaps a more realistic suggestion would be training-up one individual magistrate to take care of all DRR reviews at MRC to comply with Component 7 and overcome the need for arduous training opportunities for all magistrates. However, Perlin (2012: 33) has expressed the inherent limitations to compliance with Component 7, requiring the court to be "chaired by a judge who 'buys in' to the TJ model". In other words, it relies heavily upon a magistrate with a TJ aligned personality, charisma, and style. Previously, England and Wales' (now closed) Liverpool Community Justice Centre demonstrated early successes when Judge David Fletcher presided over all hearings. Fletcher's approach, character and attitude were reported to align with the TJ standard, and were comparable to famous TJ Judges, such as Pauline Spencer, Michael King and Ginger Wren (Liverpool Echo, 2012). The charisma of David Fletcher and many of the current MRC magistrates (see next section of this chapter,

6.2.2) gives great hope that TJ personalities exist within UK judiciaries in spite of deep-seated punitive sentiments within broader current CJ culture (see Chapter 2, 2.6). Ensuring the correct TJ personality is in place could be enhanced through training under Component 9. I am not suggesting sourcing a single district judge for the DRR role at MRC, but I do suggest making available a single magistrate (who already sits in DRR reviews) each fortnight that the court runs. Indeed, ensuring that England and Wales' models mimic matured international best practice in crucial areas, such as Component 7 and 9, is of the essence in light of the unsuccessful operation of the England and Wales DC ancestors. Amidst a climate of austerity measures and cutbacks, reductions to the panel to just one magistrate sit with broader objectives for England and Wales that seek to save on expenditure, including overall reductions to the quantity of magistrates (Justice Committee, 2016).

6.2.2 Wine: Research Question 3: Were Magistrates' Interpersonal Skills Therapeutic?

Perlin (2011: 21) states that: "to serve effectively in this sort of court setting, the judge needs to develop enhanced interpersonal skills". Measuring the proficiency of magistrates' interpersonal skills was the core thread within the wine investigation (see "red" in Diagram A, Chapter 3, 3.4). This will be explored in more depth in the forthcoming sections.

Magistrates' feedback by participants was overwhelmingly positive³⁵.

"I was impressed and that's why I gave a very high score on that questionnaire you gave me. I don't usually give a high-scores; I'm usually always like a zero to three or four out of ten. But they (the magistrates) are in the sevens and tens" (Client 3).

"I think they're (magistrates) very approachable" (Client 1).

³⁵ Note: the "general magistrates' feedback" was the only inductive code added during the thematic analysis.

"I think to have the court, it's like an anchor. It's incredibly necessary and important-not only to society but also to the individual. It's positive to see magistrates in a different way" (Court Staff 1).

"I think they (magistrates) have been chosen well, they must've been for them to do this DRR review court. I don't whether they volunteered or not" (Client 3).

"I think these magistrates deserve respect" (Client 2).

"They're doing everything that it says on the tin" (Client 3).

"I'm very, very, very impressed. Everyone has been really down to earth" (Client 3).

"I'm impressed - they're very manageable and very understanding. And they show a lot of empathy" (Client 2).

"They (offenders) begin to view this court in a different way and they start to see the magistrate as people that want to encourage them to change" (DRR Staff 1).

This broadly indicates that MRC magistrates' were applying wine therapeutically. The upcoming questions involve a deeper investigation into the quality of magistrates' interpersonal skills: both the broader constructs ("support", "dialogue" and "change") and the eighteen substituting skills (see Chapter 5 for their breakdown) to answer the third "wine" research question. Like in the previous analyses, Phase 1 and 2 will be analysed together using means and bivariate correlations, and the findings will then be ratified by qualitative data from Phase 3 (and ethnographic data). Table F was generated to demonstrate the Phase 1 and 2 means for each of the three skills. The average mean of each skill together was also calculated to allow a broader comparison of the three skills.

6.2.2.1 Overall Quality of Therapeutic Support, Dialogue and Change

Table F: Means (M) and Average Means (AM) for Therapeutic Support, Dialogue and Change

	TS	TD	TC
P1 M	3.38	3.78	3.24
P2 M	3.05	3.33	3.1
AM	3.22	3.56	3.17

Table F shows that magistrates were most proficient at "engaging therapeutic dialogue" according to both the Phase 1 (m=3.8) and Phase 2 (m=3.33) data. The results therefore converge to indicate that "dialogue" was MRC magistrates' strongest skill. The Phase 1 and 2 data differed on the second most therapeutic skill. In Phase 1, magistrates were intermediately proficient at "support" but in Phase 2, "change" was intermediate, and vice versa. Although results on this point seem dissonant, there was such little difference (.05) between the Phase 2 proficiency of "support" and "change", within a triangulation rationale (Kelle and Erzberger, 2003), the findings became complementary; using an average mean of each phase, "change" was found to be magistrates' least therapeutic skill overall (m=3.2). The cause of a less therapeutic application of "change" might be explained by Research Question 2A, in which descriptive findings indicated that female magistrates applied this skill non-therapeutically according to both datasets. Nevertheless, the qualitative indicators also suggest that every skill was operated to a "good" therapeutic standard (Vagias, 2006). In other words, regardless of the aforementioned skill ratings (first, second, or third), they were all applied therapeutically overall. This heavily suggests that magistrates were pouring TJ-friendly wine at MRC although this could be improved to "very good" or "excellent".

To nuance these findings, by examining where magistrates could improve or areas of excellence, scores of each sub-variable within the overarching three constructs are compared in Tables G ("support"), J ("dialogue"), and L ("change") below. These three tables will respectively compare the eighteen sub-variables within each construct using the means of both Phase 1 and 2 values individually then complementarily (AM). The qualitative Phase 3 data will again substantiate these findings. Using deductive thematic analysis (Braun and

Clark, 2006), four themes - or skills - emerged as key interpersonal styles at MRC within the qualitative data, operated to differing degrees: i) understanding the complexity of AOD recovery, ii) motivating individual, iii) giving the offender a voice, and iv) setting realistic goals. These will be discussed in the forthcoming sections.

6.2.2.1.1.1 "Harnessing Therapeutic Support"

Table G: Means of Magistrates' Support Scores Phase 1 and 2

	Compassion	Complexity of AOD recovery	Reiterating Goals	Caring	Faith in Progress	Giving Praise	Motivating
p1	3.7(T)	2.9(NT)	3(T)	3.5(T)	3(T)	3.5(T)	3.6(T)
p2	3.1(T)	3(T)	2.9(NT)	3.1(T)	3.1(T)	3.1(T)	2.7(NT)
AM	3.4	3	3	3.3	3.1	3.3	3.2

The average mean ("AM") in Table H shows that magistrates applied "compassion" most therapeutically (m=3.4), and applied "care" and "giving praise" (m=3.3) jointly second. It is somewhat unsurprising that care and compassion have similar scores given that the constructs are so obviously interlinked. Although the AM in the bottom row each indicate a "good" and "therapeutic" score for all subskills between the Phase 1 and 2 scores, the red highlights indicate non-therapeutic scores within independent data collection phases, namely: "understanding the complexity of AOD recovery", "reiterating goals" and "motivating individual" to suggest that these skills may need improvement. This is especially true of the former two, which were on the border of a "therapeutic" score (3). Therefore, this analysis suggests that "support" was broadly poured in a TJ-friendly fashion, although improvements could be made to these domains to better magistrates' application of this skill. From the qualitative data, under the support construct, two subskills emerged as themes, namely: "understanding the complexity of AOD recovery" and "motivating individual", discussed below.

6.2.2.1.1.1.1 Understanding the Complexity of AOD Recovery

In the above analyses, overall magistrates score "3" for this sub-variate, which is on the border of the "therapeutic" threshold. This indicates therapeutic application of this skill, but with room for improvement and was the least therapeutic skill of the four skills emerged thematically within the Phase 3 data. This variable intended to measure how well magistrates understood the recovery process, including relapses and knowledge of the wrap-around treatment services. In dealing with relapses, the NADCP (2004: 13) state that: "a pattern of decreasing frequency of use before sustained abstinence from AOD is common. Becoming sober or drug free is a learning experience, and each relapse to AOD use may teach something about the recovery process". In other words, specialist courts must understand that sobriety is a gradual process with expected relapse. The qualitative data showed that magistrates at MRC were mostly sensitive to this ideal.

"Even though I'm not providing a negative, but providing a few days clean, they can see that I'm trying" (Client 1).

"Magistrates tended to be empathetic towards relapses" (ethnographic data, various dates).

"Magistrates took a kind and realistic approach to positive drug test results" (ethnographic data, Date 7)

"The magistrate said: 'it's great that you have produced one (of three) negative tests, how about you produce two for next time?'" (ethnographic data, Date 10).

"Magistrates tend to say 'Okay, you've not done great, you've not got any negatives but you've reduced your drug use significantly; you're only using half of what you were doing, that's a positive step, you've got to look at that going forwards'" (DRR Staff 1).

Nevertheless, on Date 6, I reported:

"These magistrates were much harsher than usual, especially in relation to positive drug tests"; "they were telling off the clients in a paternalistic manner for results"; "clients were leaving the courtroom irritated" (ethnographic data, Date 6).

"Magistrates did not have much empathy for the difficulties and complexity of the recovery process today. Staff members also commented on this after the hearings" (ethnographic data, Date 6).

Needless to say, the latter (Date 6) findings are inconsistent with TJ principles (Winick and Wexler, 2003). In revisiting the Phase 1 data to nuance this feedback, magistrates were 50% "very negative" or "negative" for "understanding the complexity of AOD recovery", and "neutral" for the remaining 50%, which was a mean non-therapeutic score ($m=2.2$). Non-therapeutic application of this skill on Date 6 thus converged with the above qualitative data. An obvious limitation to triangulating my ethnographic data with standardised observation findings is that they are both based upon my own, inherently subjective, perceptions. To overcome this, results were compared to those from the same variable on the survey data³⁶, which is one of the benefits of the repeat-measures design, which tested the same variables using two different methods (see Chapter 3). On this date, only one client had responded where he also "disagreed" that "magistrates understand what it's like to have drug and alcohol problems" (question 25). As the results converged, this suggests that magistrates on Date 6 were not sensitive to understanding the complexity of AOD recovery and were thus not operating this variate in line with TJ principles on this day. The previous analyses found that Date 6 was the least therapeutic panel and were generally non-therapeutic to suggest a broader problem with therapeutic impact on this date beyond this single variable. More broadly, however, this finding augments the previous findings from research question 2 and 2A; an inconsistent bench impacts the consistency of therapeutic application at MRC.

³⁶ Survey question: "magistrates understand what it's like to have drug and alcohol problems" (question 25).

A limitation here is that only one individual responded to the survey on Date 6 to undermine representativeness of Phase 2 respondents. Low response was caused by the non-attendance issue (see Chapter 7, 7.2.4) within an overall small sample and regularity of reviews, which meant that the pool of potential new participants became narrower as the study progressed. Whilst there was a (relatively) high attendance rate on Date 6 (six out of nine), four had already responded to the survey, and one individual refused to participate, leaving one potential participant: the respondent. Attendance was a significant empirical caveat, which is discussed in depth in the next chapter (Chapter 7 "bottle").

A further weakness of the Date 6 analysis was acknowledged inadvertently by Wexler (1995) cited in Carson and Bull (2003: 584) who posited that tighter definitions of "therapeutic" (as is that case in this particular analysis) should be avoided by research communities as it might "eclipse" broader issues. One could argue that although the harsher interactions about negative tests by the Date 6 magistrates were not intrinsically therapeutic, it could return a therapeutic response in other ways, such as: increased negative tests and enhanced rehabilitation. Thus, the measurements may have been too refined by overshadowing other indicators of a therapeutic response, such as recovery progress. This critique was controlled for within the instrument design by qualifying the introductory statement to: "where appropriate, to what extent do magistrates..." The "where appropriate" aspect of the statement allowed measurements to account for the fact that sometimes harsher responses were required particularly in cases of continuous breach during measurement of this variable. This corresponds to a comment by participants below who stated that sometimes a harsher response is necessary.

"Sometimes the court needs to say, 'Look, enough is enough'" (DRR Staff 1).

*"I say get the big stick out. Seriously, seriously, because that's the only way you're going to get these DRRs to be f**king reductive if you know I mean" (Client 3).*

These quotes sit further in line with the NADCP's (2004: 13) statement that: "although DCs recognize that individuals have a tendency to relapse, continuing AOD use is not condoned". In other words, sometimes a harsher response may be productive, and, perhaps ironically,

more therapeutic. A 'non-therapeutic' application of the "understanding the complexity of AOD recovery" skill was not restricted to Date 6 and a broader panel analysis in Table H was run to disclose this.

Table H: Understanding the Complexity of AOD Recovery, Panel Analysis, P1

Date Group	Mean
1	2.43
2	2.33
3	2.67
4	3.00
5	3.33
6	2.17
7	4.00
8	3.00
9	3.00
10	4.00
Total	2.90

Table H shows that magistrates were highly inconsistent at this skill. Magistrates applied this skill non-therapeutically on dates 1, 2, 3 and 6, and therapeutically on dates 4, 5, 7, 8, 9, 10 suggesting discrepancy within application according to panels. The Phase 3 data confirmed that magistrates had different approaches to relapse:

"Some magistrates approach things differently, and they're not prepared to allow such leeway and they might well think, "You know what? There is general relapse, and there is pulling the wool'" (Court Staff 1).

This quote confirms inconsistent application of this skill from a third party staff perspective. Findings therefore correspond to research question 2 and 2A to suggest inconsistency of TJ

within this interpersonal skill due to breach of Component 7 (NADCP, 2004). Limitations within magistrates' AOD knowledge might again be linked to court centralisation policies. UK critics have argued that court centralisation has repressed magistrates' autonomy and boycotted local decision-making powers (Bowen and Donoghue 2013) with claims that "now magistrates have no influence over the running of the courts, despite having many ideas on how they could be run more efficiently" (Gibbs, 2013). Simpson (latterly a West London clerk) characterised old magistrates' courts as being like a family defined by support, passionate loyalty and commitment, which became expunged as the court centralisation process began (Gibbs, 2013). Donoghue and Bowen (2013: 13) argue that "this process of centralised administration made it all but impossible for magistrates to introduce new and effective practices into their own courts", undermining local and community rationales (Donoghue and Bowen, 2013). Therefore, since the pool has broadened and magistrates come from wider areas in Greater Manchester, it is increasingly difficult for them to bring tailor-made responses to AOD issues into their work, as this often relies upon devolved powers and a local and community knowledge-base, a problem that lies at bottle level.

Limitations within magistrates' AOD knowledge may also be attributed to fragmentation of DRR parties through non-compliance to Component 10 (NADCP, 2004) an idea which is explored in more depth in the next chapter. In sum, the next chapter details that linkage to the services is exclusively the job of probation officers outside of the courtroom, which assess the ongoing needs of clients, coordinates services and treatment. Since the main work occurs outside of the courtroom, magistrates did not assume a pivotal connection role in courtroom, unlike a traditional DC (NADCP, 2004, Component 7). I noted:

"When offenders asked magistrates questions about treatment or services, they reverted to the probation officer for answers" (ethnographic data, various dates).

This gives a sense that the court element merely supplements the main probationary component, a point that will be revisited in the next chapter. For the purposes of this analysis, it meant that magistrates' understanding of the linked services, and the AOD knowledge that accompanies that, was invariably limited due to magistrates' (and the courts') circumscribed

role in the whole DRR process, again a more systemic "bottle" problem than one solely concerning the "wine".

Limited AOD knowledge may also be catalysed because Manchester Integrated Drug and Alcohol Service (MIDAS) (see Chapter 7, 7.2.3 for further discussion), the umbrella wrap-around services supporting the DRR, regularly changed as they are put out to tender on a three yearly rotation (DRR Staff 1). This means that the services providers, and their systems, provisions, and roles were constantly changing to make it increasingly challenging for magistrates to stay on top of the intricate details of the providers, which is, again, ultimately a "bottle" level problem.

"With every new provider you get different ways of doing things" (DRR Staff 1).

Although this does put up a hurdle for good practice, it is perhaps not an impossible one to overcome. With some passion, motivation, and dedication, magistrates could educate themselves through voluntary visits to the services to enhance their knowledge-base. That England and Wales' magistrates are unpaid volunteers who have willingly chosen DRR court work might indicate a pre-existing passion for the area, which could be capitalised upon to encourage voluntary training within this specialist domain. Of course, continuity of the bench would also help to create a specialised and more knowledgeable team across individual cases, although this looks increasingly unlikely for aforementioned court structural reasons (Courts Act 2003). As the bottle continues to tighten its TJ unfriendliness with training opportunities depreciating, perhaps the most economical approach would be the aforementioned suggestion within earlier sections of this chapter to implement a single presiding magistrate with a toolkit of specialist AOD knowledge.

Overall, this section has shown that this "understanding the complexity of AOD recovery" was applied therapeutically, but inconsistently, with room for improvement. It was the most weakly applied skill of the four skills emerged thematically, discussed throughout this chapter. This may be improved by training up a single dedicated magistrate to MRC reviews. Next steps involve analysing the second emerged theme from the "support" construct: "motivating individual".

6.2.2.1.1.1.2 *Motivating Individual*

This skill intended to measure the motivational quality of the panel's interaction. In Table H, magistrates scored an average of $m=3.2$ for "motivating individual" to indicate therapeutic ("good") operation. The qualitative data highlighted the importance of this skill as every participant identified it as fundamental to MRC operation. This collaborates with predecessor DC research, where one of the five styles of engagement identified by researchers was "motivational" (Kerr et al, 2011: 25).

"(The purpose is) motivating them and to try and reduce the drug use, just generally motivating them to do things positive in their life" (DRR Staff 1).

"To provide visible encouragement review, support, and a rock like feature" (Court Staff 1).

The object of motivation most commonly identified was decreased drug use and increased law compliance (DRR staff 1; Court Staff 1) in line with a traditional DC objectives (NADCP, 2004, Component 1). This corresponds to quote by one of the founding fathers of TJ: "problem solving courts are all characterized by active judicial involvement and the explicit use of judicial authority to motivate individuals to accept needed services and to monitor their compliance and progress" (Winick, 2003: 1060). Other purposes included motivating appointment attendance (Client 1) and ascertaining help for medical issues (Client 3). To demonstrate therapeutic application of this skill, clients clearly communicated motivational sentiments during interviews:

"I'll be drug free for the next time, I am sure" (Client 1).

Similarly Court Staff 1 stated that this was a key difference between MRC and regular courts, to highlight its therapeutic application:

"They are very much more encouraging of the defendant's progress, even if there is very little" (Court Staff 1)

These quotes suggest that "motivation" was applied therapeutically to collaborate with the previous statistical findings from Phase 1 and 2. To explore consistencies (or inconsistencies) within application of this skill to build upon research question 2 ("wine"), a panel analysis of this skill was run.

Table I: Motivating Individual, Panel Analysis, P1

Date Group	Mean
1	3.00
2	4.50
3	3.83
4	3.60
5	3.67
6	2.67
7	5.00
8	4.33
9	1.25
10	4.60
Total	3.59

The panel analysis in Table I showed that motivation levels ranged from "very good" (therapeutic) to "poor" (non-therapeutic) across panels. This heavily implies that non-compliance to Component 7 resulted in an inconsistent application of key skill "motivation". On dates 6 and 9, panels non-therapeutically applied "motivation". However, it was applied therapeutically on the other six dates, and most therapeutically on Date 10 (4.6). Changes in therapeutic quality across these dates reflect the scores within prior analyses, where 6 and 9 (all female panels) were less therapeutic than 10 (mixed). The latter was most therapeutic panel overall perhaps due to a gender influence. However, the intrinsic question of why is perhaps not important; what is important is an inconsistent bench results in inconsistent

application of the most important MRC judicial skill, which could be overcome through compliance to Component 7. Participants in Phase 3 further identified inconsistency of the bench as impacting upon application of motivation:

"I think it is motivational depends on the magistrates, different ones have different ways of doing things" (DRR Staff 1).

This participant further hypothesised that consistency would provide motivation by increasing accountability (DRR Staff 1). Importantly, these findings show that consistent motivation through a consistent bench would increase the TJ-friendliness of the "wine" (Wexler, 2014) as well as power of the overall court purpose. Findings around consistency links back to Kerr et al's (2011) research on the predecessor DCs who rationalised that "continuity of judiciary could help improve offenders' motivation to stay in treatment and complete their sentence, leading to reduced drug use and related offending". Although this study did not consider direct impact of motivation on key outputs, Kerr et al's (2011) findings are suggestive of this adverse consequence within closely related research. This also highlights both the importance and intrinsic value of motivation within both predecessor DCs and MRC to demonstrate fundamental similarities between the "wine" aspects of both models.

If motivation is such a central tenet to MRC, the good news is that data suggests that magistrates were applying it therapeutically. However, there was room for improvement, and in Phase 2 they scored $m=2.9$, which is non-therapeutic, even though overall it was applied therapeutically as $m=3.2$. If TJ draws upon the fruits of the social sciences, magistrates could train in techniques such as: motivational interviewing, CBT, and other positive psychology methods (Birgden, 2005; Perlin, 2012) which are all TJ friendly approaches proven to increase clients' chances of continuance and compliance with interventions through increased motivation levels (Miller and Rollnick, 2002).

Interestingly, inclusion of the "motivation" subskill was not based on Goldberg's (2011) manual, unlike the other seventeen sub-variables within the measurement tool; it was added due to its observed importance during early-stage court visits whilst building upon

predecessor research highlighting its significance (Kerr et al, 2011). The measurement could therefore be criticised for being context-specific; is it any surprise that motivation emerged as such a strong theme when it was deliberately added to the tool? This is an inherent issue with all social science research (whether qualitative or quantitative), where measurements for latent variables (such as motivation) ultimately derive from the subjective minds of observers to always produce inherently flawed results (Field, 2014) (see Chapter 3 for full details on this epistemological argument). In the previous report, Kerr et al (2011: 26) gave an example of a motivational style: as "if you want it to work, it will work, we see an awful lot of successes". An example from this study is similar:

"We know you can do this - you have done it before, and you can do it again"
(magistrates, ethnographic data, date 10).

This strongly suggests that MRC operated using similar key styles as the original DCs to suggest that Manchester was the ghost of Salford DC, a point that will be picked up in the next chapter.

It seems fair to conclude this section by reporting that motivation was a fundamental tenet to MRC, it was therefore the most important sub-skill of the four prominent skills. The quantitative data offered complementary results to suggest that it was applied therapeutically although there could be some improvement through training in key TJ psychological motivational techniques. Further, MRC's power could be enhanced through compliance to Component 7. Given the importance of this subskill, a more detailed analysis into effect of motivation on court outputs (rehabilitation and compliance) is a topic worth further empirical study, and could be achieved through a quantitative analysis that uses regression models. In Chapter 5, motivation was categorised as a sub-dimension of reassurance, however, this analysis suggests this could be reworked as its own dimension, which should thus be considered by future empirical researchers wishing to use the same tool.

6.2.2.1.1.2 "Engaging Therapeutic Dialogue"

Table J: Means of Magistrates' Engaging Therapeutic Dialogue Scores: Phase 1 and 2

	Sincerity	Without Pity	Not Interrupting	Slow, Clear, and Loud Speech	Attentiveness	Giving Offender a Voice
1	4.1	3.7	3.6	4	4.1	3.7
2	3.4	3.1	3.4	3.6	3	3.5
AM	3.8	3.4	3.5	3.8	3.6	3.6

"Dialogue" was confirmed as magistrates' strongest skill previously in Table F. The AM in Table J shows that magistrates applied: "sincerity" (m=3.8) and "slow, clear, and loud speech" (m=3.8) most therapeutically within "dialogue" overall and respectively across 1 and 2 datasets within convergent results. These were magistrates' most therapeutic skills both overall for all sub-skills, including in comparison to the "support" and "change" items. The green highlights indicate higher scores within the Phase 1 dataset where magistrates scored as high as "very good", unlike for the "support" and "change" items. Each of the bottom row AMs were higher than for "support". The lowest empowerment score was the same as the highest "support" score (m=3.4). This confirms the strength of this skill. Thus, this analysis augments that "dialogue" was applied therapeutically, that no subskills were non-therapeutic, and that it sits firmly within the "good" (therapeutic) code (Vagias, 2006). As such, there were no significant areas of improvement, although skills could be improved to "excellent", or "very good".

From the qualitative data, under the "dialogue" skill, one subskill emerged as a theme: "giving offender a voice". Where this analysis had already confirmed this skill was firmly therapeutic, the qualitative data also verified this and its importance to the "therapeutic dialogue" construct. These findings corresponded to the PCA in Chapter 5, as this variable loaded the highest on this construct to indicate its importance to the "dialogue" construct.

6.2.2.1.1.2.1 Giving Offender a Voice

The "giving offender a voice" variate intended to measure how well magistrates allowed offenders to express themselves in the courtroom. It links to King's (2016) post on Spencer's blog, where he remarks that therapeutic dialogue involves turn-taking, inclusive of giving client space to enable him to effectively communicate his viewpoint. This variable is borrowed from the procedural justice ("PJ") literature, in which experts Burke and Lebel (2007: 6) posit that giving the offender a voice is one of the four fundamental precepts of PJ. Whilst they are exclusive paradigms, it is not uncommon for TJ to draw upon the vineyard of the PJ literature especially during practice or analysis of specialist courts (Wexler, 2016, Winick and Wexler, 2003). Lynch and Perlin (2016: 4) famously quote that TJ is a "legal theory that seeks to reshape legal rules, procedures, and lawyer roles to enhance their therapeutic potential... in accordance with the key principles of voice, validation and voluntariness" (the three Vs). This demonstrates PJ's importance to TJ outcomes. Indeed, the seminal work of Lynch and Perlin (2016) has consistently demonstrated that the three Vs are all critical to portraying dignity in mental health court proceedings. Analysis that focuses more explicitly on the impact of all three Vs on dignity at MRC is worth further investigation, and is a possible next step post-PhD.

Table J previously demonstrated that magistrates scored an AM of 3.6 for "giving offender a voice" across Phase 1 and 2 datasets to indicate therapeutic operation also making this the most therapeutic of the four key skills. If "giving offender a voice" is essential to PJ, the "bottle" data also showed that in Phase 2, 85% of participants either "strongly agreed" or "agreed" to the PJ question: "the review process is fair". This indicates strong perception of PJ by offenders, where the cause might have been a therapeutic application of "giving offender a voice" in Phase 1. Similarly, the qualitative data suggested that this was the most essential sub-skill within the "engaging therapeutic dialogue" construct; during interviews, all five participants identified as this a key skill applied therapeutically.

"It's a lot less daunting. Instead of having to speak through a solicitor you actually get to talk to them yourself, which is obviously better because you're getting your voice heard. This is good" (Client 2).

"Instead of trying to put you down all the time, at least he'll listen, know what I mean?" (Client 1).

"I think, in the main, they give them the chance to talk.... I think sometimes people don't get asked questions. Or they don't feel that they can talk to a complete bunch of strangers... I think people want to talk and magistrates usually give them the opportunity to do that" (DRR Staff 1).

"Magistrates would often ask open ended questions to encourage participants to speak" (ethnographic data, various dates).

Client 2 also emphasised that magistrates came across like they were interested when he spoke to them within a turn-taking discourse. The qualitative data therefore demonstrates that "giving the offender a voice" was applied therapeutically in convergence with Table J. The quotes also highlight that "giving offender a voice" contributed to a unique, democratic, and non-adversarial court culture compared to the mainstream courts. The benefits of therapeutic application of this skill were explored further by participants.

"It helps give them a better understanding of what kind of person you are" (Client 2).

"They start to see the magistrates as people" (DRR Staff 1).

"You actually get your voice heard, rather than someone else mediating it, which can be quite frustrating"(Client 2).

The quotes shows that participants felt that the "offender voice" skill facilitated a fuller understanding of the person, humanising application of the law within a TJ ethos by enabling clients and magistrates to directly communicate with one-another. In the predecessor DC report, Kerr et al (2011) reported that one of the five styles of judicial engagement was "interactive". This finding is open to critique as the researchers failed to justify how they arrived at this conclusion, nor did they elaborate on what they meant by this concept. If researchers were referring to Cambridge dictionary's (accessed 2018) definition of

"interactive"³⁷ - "involving communication between people" - the previous England and Wales' DC findings may have been cemented by the data from my study as it remains a key judicial style at MRC. Nonetheless, ambiguity left by the previous researchers makes this unclear. A panel analysis of this skill was run below in Table K to explore impact of non-compliance to Component 7 on this variate.

Table K: Giving Offender a Voice, Panel Analysis, P1

Date Group	Mean	N
1	3.14	7
2	3.67	6
3	3.67	6
4	3.80	5
5	4.17	6
6	2.67	6
7	3.67	3
8	3.67	3
9	4.50	4
10	4.60	5
Total	3.71	51

Linking to the research question 2 ("wine"), Table K demonstrates that panels applied this skill to differing degrees. Although most operated "giving offender a voice" therapeutically (above 3), Panel 6 applied it non-therapeutically (m=2.7), which was a panel previously identified as weaker, perhaps due to gender. Nonetheless, and regardless of this, results from all different data points indicated that "giving offender a voice" was operated therapeutically

³⁷ This is referenced as: Interactive. (2018) in *Cambridge Advanced Learner's Dictionary and Thesaurus*. Cambridge University Press. Available at: <https://dictionary.cambridge.org/dictionary/english/interactive>.

overall. Magistrates could improve this to "very good" or "excellent" by drawing upon the blog of King (2016) who suggests a self-reflection exercise following hearings, in which magistrates ask themselves: "did you find ways to engage in two-way communication?" and "can you identify examples of good two way communication with features of turn taking?" as mechanisms for improving this interactional dimension. Therefore, drawing upon best practice principles of international TJ magistrates might improve administration of this variate. Overall, the data strongly indicates that "giving offender a voice" was operated well, although with inconsistent application, which may be overcome through compliance to Component 7 through a strong TJ magistrate.

6.2.2.1.1.3 "Inspiring Therapeutic Change"

Table L: Means of Magistrates' "Change" Scores Phase 1 and 2

	Setting Realistic Goals	Asking questions	Building Upon Strengths	Focusing on the Future
P1	3.7 (T)	3.8 (T)	2.6 (NT)	2.9 (NT)
P2	3.1 (T)	3.2 (T)	3 (T)	2.9 (NT)
AM	3.4 (T)	3.5 (T)	2.8 (NT)	2.9 (NT)

The "change" construct was identified in Table F as the weakest of magistrates' three broader skills. Within this construct, Table L shows that magistrates were most therapeutic at: "asking questions" (m=3.5), and second strongest at "setting realistic goals" (m=3.5), which were both "good" and applied therapeutically (Vagias 2006). On the other hand, "building upon strengths" and "focusing on the future" were applied non-therapeutically (fair), and the former was the overall lowest score across all eighteen sub-skills. It is interesting that both "focusing on the future" scores were exactly the same across both Phase 1 and 2 datasets (m=2.9, non-therapeutic), indicating a perfect correlation within a triangulation rationale. The only sub-skill that does not converge is "building upon strengths" where I scored non-therapeutic overall and participants scored therapeutic. Nonetheless, this was a minor difference of 0.4, and the results became complementarily to suggest that half the sub-skills

were applied therapeutically and the other half non-therapeutically. This indicates that "change" was operated somewhat therapeutically, and "building upon strengths" and "focusing on the future" could be improved to increase therapeutic application of the wine.

6.2.2.1.1.3.1 Setting Realistic Goals

At MRC, reviews occurred at 4 to 6 week intervals. Magistrates would set participants three further goals to achieve for the next review, whilst reviewing participants' progress of current goals (ethnographic data). This variable intended to measure how incrementally magistrates set these goals i.e., how realistically they reflected a recovery journey. Undoubtedly, this variable is related to the "understanding the complexity of AOD recovery" variable within the "support" construct, which also emerged as a strong theme within "therapeutic change". Although I acknowledge this link, as outlined in Chapter 5, an explicit analysis of how the variables interlink is something to consider within future research, and is beyond the scope of this project. This variable links to King's (2017) statement when naming the components in Chapter 5: "research suggests achievement is promoted through the setting of goals". King's quote highlights the importance of goal setting for achieving change within specialist settings, where attainment can be promoted through such structured goal setting mechanisms.

"Setting realistic goals" was essential to operation of "therapeutic change" at MRC as it provided an object for review and a firm set of criteria to be met by participants for next review, which Duffy (2011: 401) describes as a form of "behavioural contracting". It builds upon the predecessor DC research, which reported that the original models helped to provide concrete progress goals by structuring drug use reduction (Kerr et al, 2011), where its importance remains key at MRC. Furthermore, one of the five styles of judicial interaction identified by Kerr et al (2011) was "personalised". This is open to the same posited critiques as "interactive" in the previous section. It could link to an individually tailored approach to goals within a similar measurement to this study. In this event, my research builds upon the predecessor report (Kerr et al, 2011). To ensure coherency across inconsistent benches, magistrates would write down goals to pass to the next panel to review attainment, which represented MRC's only attempt at providing coherency across inconsistent benches within Component 7 by linking reviews together through structured goal setting notes (ethnographic

data). Most commonly, the goal was to produce one or two negative drug tests for the next review, although this could also relate to progress within other domains, such as: medical, housing, financial, relationships and jobs (ethnographic data, various dates). Its importance was highlighted explicitly by Court Staff 1:

"You want something firm for the defendant to understand - 'this is what's expected of you' - to provide attainable objectives".

According to King (2010: 13), goal setting is an essential part of the judiciary's role within problem-solving court contexts, allowing magistrates to carry out "transformational leadership" that inspires and supervises positive change, and enables them to become effective problem-solvers. The data suggested that setting goals at MRC was broadly incremental, which was confirmed by the data in Table L previously where magistrates scored an average of $m=3.4$ across Phase 1 and 2 datasets to reflect therapeutic operation. This was further verified by the Phase 3 interview data where all participants responded positively when commenting on application of this factor.

"They (magistrates) realise if you've been taking drugs for 20 years, you're not going to stop overnight so they're looking at small steps and ways to reduce your drug use. So I think most deal with it very well" (DRR Staff 1).

"Even though I'm not providing a negative, well, providing a few days clean, they can see that I'm trying" (Client 1).

"They looking at more positive steps rather than focusing on 'you're still using every day, that's very bad'" (Court Staff 1).

These quotes highlight that a positive, realistic, and forward-thinking approach is essential when setting goals, converging with the Phase 1 and 2 data to suggest that magistrates applied this skill therapeutically. This also again illustrates the interlinked nature of the variables within the "change" construct alone; clearly it is important that goal setting is carried out with "a positive focus". A panel analysis on this variable was run in Table M.

Table M: Appropriate Goal Setting, Panel Analysis, P1

Date Group	Mean
1	3.57
2	3.17
3	4.17
4	3.20
5	3.83
6	4.00
7	3.00
8	4.00
9	4.00
10	3.80
Total	3.69

Linking back to research question 2 ("wine"), the impact of an inconsistent bench was again considered within this variable. In the predecessor DC report, it was disclosed that continuity of the bench was a key for provision for concrete goals setting and increasing offenders' accountability to same (Kerr et al, 2011). Although the impact of inconsistency on concreteness and accountability was not measured in this study, change in quality of this skill could be considered here in Table M. Interestingly, Table M shows that every panel applied this skill therapeutically and therefore with more consistency than the previous three skills. This is likely to be because this was the only variable where coherency across benches was attempted though note passing under Component 7. Therefore, this analysis could confirm effectiveness of the note passing approach to suggest that more detailed notes taking (recording other data, such as: offender profile or specific conversations), might help to improve coherency within current non-compliance to Component 7. As ever, however, a single presiding, highly trained magistrate sitting in all reviews and possessing a TJ-aura would be preferable (NADCP, 2004).

As commented in Chapter 5, the scale for this measurement could be critiqued for being too wide (1-5) and measurement might have been better captured by a closed "yes" or "no" response rather than a rating. This might explain why all data was gathered on the "therapeutic" end of the scale to reflect a polarised answer rather than a degree to which it was applied. It was measured on the same 5-way Likert for the purposes of consistency with other sub-variables; however, this might be changed if further analyses use the same scales. The most therapeutic panels were panels 6, 8 and 9, each scoring "4". It is interesting that 6 and 9 had previously been identified as all-female, weaker panels, contradicting previous findings to suggest that a female influence on the panel increases therapeutic quality of "appropriate goal setting" (although panel 8 was mixed gender). This might suggest the results from the gender analysis in Question 2A was fluke, contributing to my hypothesis offered within 2A's discussion suggesting that inconsistency is linked to deeper factors in magistrates' background, attitudes, as well as prior training.

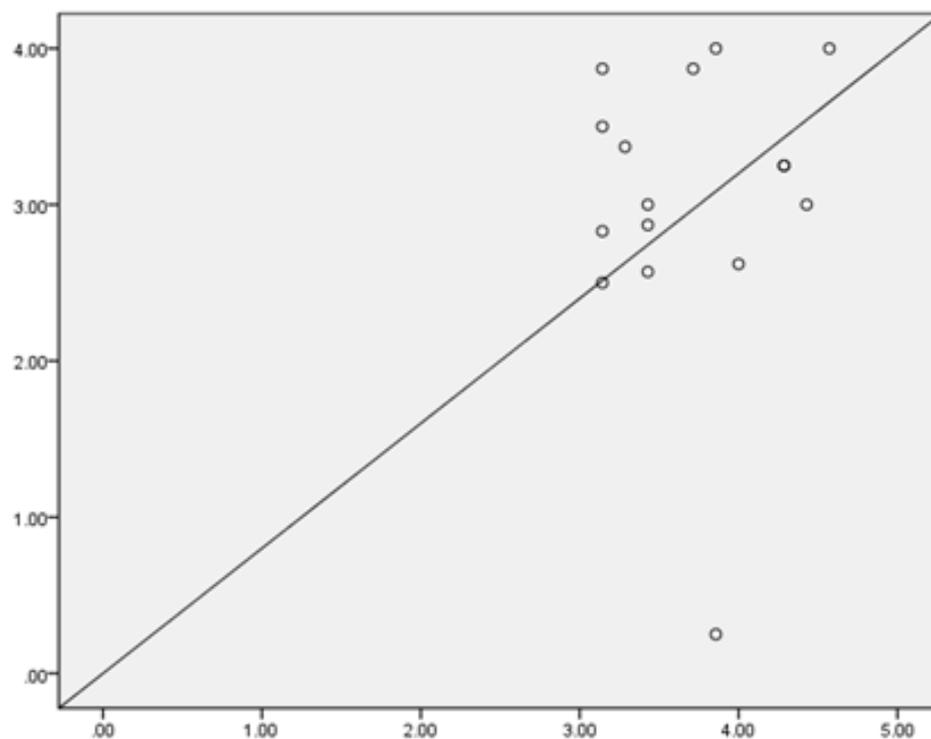
Since the averages within Table M showed that magistrates did not score "good" or "excellent", there was room for some improvement. As this variable is likely to be highly related to a non-comprehensive understanding of AOD recovery from a similar variable on the "support" construct, previous discussions suggested that improvement might be sourced through training in AOD issues as well as drawing upon international best TJ practice for handling drug addiction cases. If increased "knowledge of AOD recovery" (support) would enable the "goal setting" (change) skill to be applied more therapeutically, improving one variable might improve the other. Client 1 stated that to better this skill, magistrates could write goals down to increase clarity and as an ongoing reminder of objectives between reviews. Previously, Chapter 5 showed that TJ magistrates, Spencer and King, posited strategies for motivating positive change within offenders; I particularly liked Spencer's (2016) suggestion for a staircase where each step represents movement towards the overall goal at the top. Building upon Client 1's suggestion of writing goals down, MRC magistrates might draw upon international best practice to find new and creative ways to apply therapeutic court-craft, for instance, using Spencer's staircase diagram during review to be taken away in written form by offenders as an ongoing reminder of goals.

6.3 Bivariate Analyses

As outlined in the Methodology Chapter (Chapter 3, 3.5.3.), sixteen surveys in Phase 2 were given to clients straight after their review where participant responses were based directly on the review they had just completed. Therapeutic quality of this review had already been measured during Phase 1 Observations. As the same variables were being tested in both phases, results could be directly correlated with each other to validate results from both data points through a repeat measures design on a client-to-client basis. The purpose of this was to overcome some of the inherent bias within Phase 1 by checking whether the results converged with another vantage point. Although triangulation between the datasets has already been considered in the above analyses, this section more explicitly examines the relationship between the Phase 1 and 2 data using bivariate correlation graphs for the subskills within each construct: "support", "dialogue" and "change". They are displayed below and analysed afterwards. A line from the 0 point was added to facilitate interpretations of the graphs.

i. Harnessing Therapeutic Support

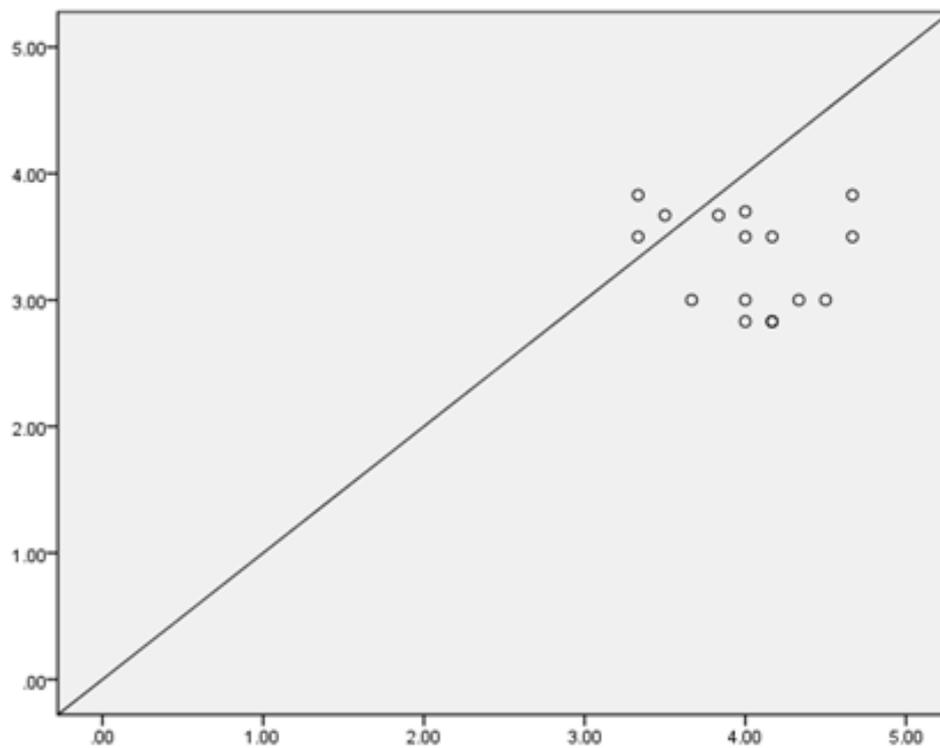
A Scatter Graph Demonstrating "Therapeutic Support" Variables for Phase 1 and 2 Data



- X Axis: Phase 1
- Y Axis: Phase 2

ii. Engaging Therapeutic Dialogue

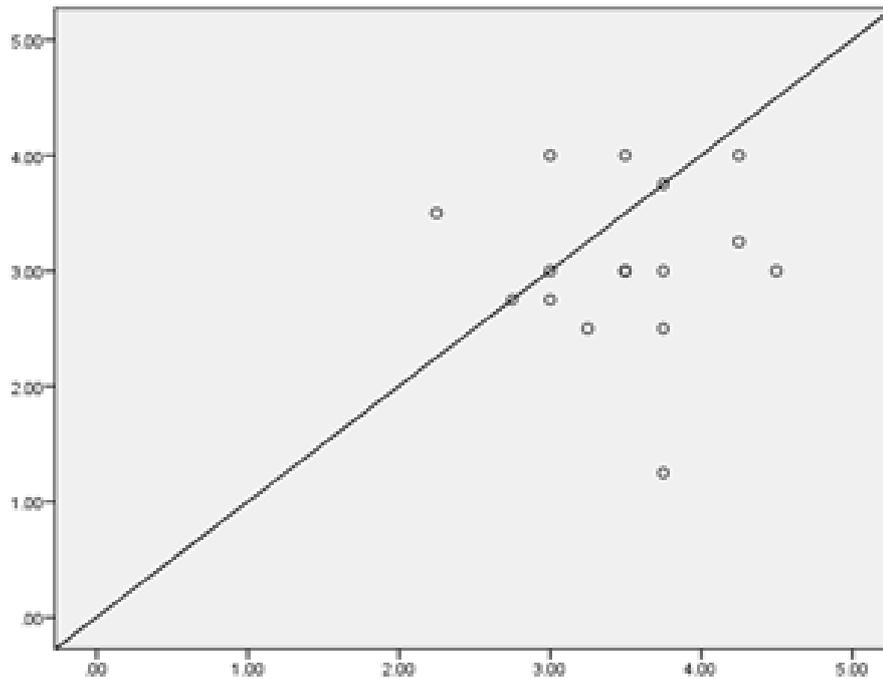
A Scatter Graph Demonstrating "Therapeutic Dialogue" Variables for Phase 1 and 2 Data



- X Axis: Phase 1
- Y Axis: Phase 2

iii. Inspiring Therapeutic Change

A Scatter Graph Demonstrating "Therapeutic Change" Variables for Phase 1 and 2 Data



- X Axis: Phase 1
- Y Axis: Phase 2

iv. Scatter Graphs: Analysis and Findings

The darker circles represent that there are more than one variable on a single point. In each graph, variables gather at the higher end, which confirms that magistrates applied skills therapeutically. The bivariate correlations show that the scores of Phase 1 and 2 correlate positively on the same sub-variables. The bivariate correlations confirm previous findings reporting that the Phase 1 scores were marginally more generous than those from Phase 2. The results from Phase 1 and 2 correlate with each other, where, within a triangulation rationale, the limitations of each method are overcome by each other (see Methods Chapter, Chapter 3). Their convergence also adds tenacity to findings presented within previous sections by giving me confidence that the results were measured accurately. Nonetheless, the charts show two outliers, for "support" and "change", which gave significantly lower results

compared to both myself in Phase 1 and other individuals on the same variates in Phase 2. Contextualising these results into information from the Phase 1 datasets demonstrated that the two anomalies were caused by the same client, whose details were extrapolated below to consider the cause.

Review Details:

Date Group	4
Panel Gender	Mixed

Individual scores given for each skill (and sub-skill) by this participant were considered (Appendix 8). Interestingly, the client gave non-therapeutic scores to all "support" sub-variates and non-therapeutic scores to all the "dialogue" sub-variates during Phase 2, although the "change" scores showed no pattern. Considering that the three overarching constructs were coded together latterly after data collection (in the Chapter 5 during the PCA), this consolidates the internal reliability and construct validity of the scales as client answers were distinctly different for both the former two constructs.

When invited, unfortunately, this participant did not want to be interviewed for Phase 3. However, under the qualitative feedback question (30) on the questionnaire in Phase 2, he gave breadth to his negative feedback stating: *"magistrates should have more drug knowledge and about individuals and their lives, etc."* This feedback can be coded under "understanding complexity of AOD recovery" as part of the "support" construct. This corroborates the previous finding that this sub-skill was applied the least therapeutically of the four thematically emerged skills. This also explains the negative scores on the "support" scale, which may have been brought down through non-therapeutic application of this sub-item. The poor feedback on the "change" scale is less explicit but could be due to the inter-relatability between this sub-variate and the "realistic goals" variate within "change" where poor score of one might drag the other down (although, as stated, the relatability between the two variates is a topic worth further study). Overall, in this section, the bivariate correlations suggest that when comparing the Phase 1 and 2 sub-skills on a precise client-to-client basis,

the results triangulate apart from one outlier. When the results of the outlier were contextualised, the reason appears to be low feedback for "understanding the complexity of AOD recovery" skill. Findings further confirm the prominence and independence of the three constructs.

6.4 Conclusion

This concluding section sums up the findings presented throughout this chapter, and offers some new insights for improving MRC "wine". This chapter offered a complex analysis that brought together the wine data sources (from Phase 1, 2 and 3) within a triangulation rationale to answer "wine" research questions 2 and 3 (posited in Chapter 2, 2.9). Naturally, the analysis comprised of more quantitative data because the earlier, more quantitative, methods focused more upon "wine" not "bottle" issues (see Diagram A, Chapter 3, 3.4). Analyses in this chapter were performed on the reconfigured scales from the PCA in Chapter 4 in which eighteen substituting sub-variables were arranged onto three scales: "Harnessing Therapeutic Support", "Engaging Therapeutic Dialogue" and "Inspiring Therapeutic Change". These scales were used both as statistical measurement of Phase 1 and 2 and as a deductive coding structure, and therefore measurement of, Phase 3 data during thematic analysis.

This chapter analysed Phase 1 and 2 together because they both used statistics measured on the same sub-variables. A subjective cut off point was added to the numbers as an exploratory technique where "below 3" represented a non-therapeutic score, and "above 3" (including 3) represented a therapeutic score based directly on the qualitative indicators from the Likert coding (Vagias, 2006). Although other researchers may have chosen a different threshold - higher or lower - to change the results entirely, the appropriateness of this cut-off was verified by the qualitative data, which showed similar results to Phase 1 and 2. This subjective (and ultimately qualitative) analysis of numbers lent itself to the Critical Realist philosophical positioning, which advocates mixing qualitative and quantitative methodology within analysis to answer research questions (Sayer, 1992 cited in Easton, 2010) (see methods chapter). The quantitative findings were substantiated with qualitative data where

results could be understood as dissonant, complementary or convergent based on triangulation principles to heighten validity (Kelle and Erzberger, 2003) by knitting together various data points.

Within Component 7, the NADCP (2004, 15) report "ongoing judicial interaction" is essential. A wealth of TJ literature further emphasises that a consistent bench formulates therapist-client style relationships in problem-solving court contexts (Winick and Wexler, 2003; Hora 2002). As MRC had no rota system in place to ensure consistency, the panel of magistrates changed each time that the court ran, fortnightly. Research question 2 ("wine") sought to understand the impact of an inconsistent bench on operation of the three core skills. Means were used to summarise panel scores across Phase 1 and 2, complementing one-another to show a "final score" to give the combined mean of each phase. In examining the changes in therapeutic scores across panels, interestingly, both Phases 1 and 2 independently showed that Panel 10 was the strongest panel ("therapeutic") and Panel 6 ("non-therapeutic") was the weakest. Therefore, from both my perspective (in Phase 1), and clients' perspectives (in Phase 2), these were the strongest and weakest panels and, although measurements I took during in Phase 1 were slightly more generous, this was marginal. This illustrates data convergence, adding validity to the claims. The Phase 1 and 2 analyses both showed differences in the therapeutic quality of interpersonal skills according to the bench, although most panels applied the skills therapeutically. The Phase 3 data further converged to suggest that the inconsistent bench resulted in inconsistent application of TJ at MRC, where all participants agreed that different benches had different styles of administering TJ wine.

Findings from this question built upon predecessor DC research by Kerr et al (2011) who established difficulties implementing a consistent bench within the original England and Wales DC models although the predecessors had greater success than MRC where no attempt is now made to ensure continuity. This thesis filled the literature gap to show this issue has significantly worsened over time, which is likely to be underpinned by court centralisation

reforms under The Courts Act 2003³⁸. Under this policy, ramifications on the old DCs as well as MRC have been profound by broadening the geographical remit of the judiciary to make consistency harder to achieve as the judicial pool broadens. As the bottle here is fundamentally TJ unfriendly, a consistent panel of three would be difficult to implement without systemic change at policy level reversing the reforms. However, this is farfetched and would undermine current managerial, quality assurance, and consistency priorities currently surrounding England and Wales CJ institutions.

Perhaps a more realistic, and indeed ideal, scenario would be implementing a single magistrate to deal with all DRR reviews. Amidst a climate of austerity measures and cutbacks, this sits with broader objectives for England and Wales, which seek to save on expenditure, including overall reductions to the quantity of magistrates (Justice Committee, 2016). This suggestion seems plausible given the irregular occurrence of MRC review hearings (one afternoon fortnightly), simply requiring one magistrate to be available for the DRR role each fortnight. However, such individual must possess the correct TJ know-how and personality (Perlin, 2012), which may be enhanced through specialist training. Given that this seems fairly straightforward, perhaps the real issue is stimulating political will, appetite and motivation to implement the correct measures to allow this type of practice to function successfully. If England and Wales is serious about revolutionising CJ, as some current policy documents appear to suggest (Bowen and Whitehead, 2015; Transforming Justice, 2014), attempts must be made to mirror international best practice through a well-researched conceptual model, including compliance to Component 7. With that being said, non-compliance to this component sits within the current goal of mainstreaming TJ (Wexler, 2014); if these magistrates also sit in the regular courts, perhaps their therapeutic interpersonal styles can also infiltrate the wider systems.

During the inconsistent bench analysis, panels were contextualised into bench demographics to help to explain TJ quality changes where a gender discrepancy emerged. Added

³⁸ Salford was integrated into Manchester Magistrates' Court in 2012, Bury in 2017, and further anticipated integration of Bolton in the future (DRR Staff 1; Court Staff 1).

inductively as research question 2A (see Literature Review, 2.9), the gender demographic was then analysed in a more confirmatory analysis using a one-way ANOVA and Tukey Corrections. Here, the p value showed statistical significance, in which mixed panels were more therapeutic than all-females at "support". This finding was ratified by qualitative data in which participants referenced male magistrates as particularly therapeutic to suggest that female panels could be less so. Nonetheless, and importantly, the qualitative data did not indicate that female magistrates were non-therapeutic, just a positive impression from certain individual males.

It is important to emphasise that the purpose of this analysis was not to accuse female (or any) magistrates of being less therapeutic; rather to comment on the impact of non-compliance to Component 7 on TJ application and to explore causes. What is of real importance is the analyses illustrated that non-compliance to Component 7 overthrew consistent application of the TJ-wine at MRC, but that a single magistrate is a possible antidote. The qualitative data also indicated other judicial demographics are more plausible impactors on consistency of TJ, namely: age and life experience, personality, and attitudes to addiction. With all things considered, inconsistencies in TJ are likely to be rooted into something deeper seated than gender, and further analysis is therefore recommended for consolidation. Inconsistencies may also be linked to limited training given to MRC magistrates under Component 9; the last session was given in 2010, precluding some magistrates as the pool had naturally changed with time. This meant that some magistrates were operating MRC blind. If it is that certain panels are weaker in TJ proficiency, how can we blame them when so little training has been offered to them? As ever, this relies upon reform to the "bottle", linking to problems with judicial training administered by the Judicial College under the Constitutional Reform Act 2005, and for the judicial training to be TJ aligned. However, the literature indicates that training budgets have been significantly cut in recent years to demonstrate a fundamentally unfriendly bottle for proper compliance to Component 9 (Judicial College, 2015).

Once impact of non-compliance to Component 7 had been considered within research questions 2 and 2A ("wine"), analysis of the overall therapeutic quality of the "wine" was carried out to answer research question 3 ("wine"). This could help to identify areas of

excellence and areas of weakness through explicit analysis of each construct ("support", "dialogue", and "change") using means. The Phase 1 and 2 analyses complemented one-another to show that "therapeutic dialogue" was magistrates' strongest skill, "therapeutic support" intermediate and "therapeutic change" least therapeutic. Whilst these differences did manifest themselves, they also were unsubstantial, and magistrates scored "good" (therapeutic) at each skill to suggest that the wine at MRC was therapeutic. When considering the little or non-existent training given to MRC magistrates, their therapeutic interpersonal skills are quite remarkable and magistrates should be rewarded for their efforts. The question was further interested in individual scores for each compounding sub-variable to give greater depth to the proficiency analysis. Using deductive thematic analysis (Braun and Clark, 2006), four skills emerged as central to the application of MRC wine, which the Phase 1 and 2 analyses complemented to show broad therapeutic application, although to differing degrees. These were: "understanding the complexity of AOD recovery" ("support"), "motivating individual" ("support"), "giving offender a voice" ("dialogue") and "realistic goal setting" ("change"). These findings built upon the previous report (Kerr et al, 2011: 25), where the judicial interactional styles were reported as: "motivational; personalised; interactive; authoritarian and challenging". Key elements of this interaction were reported to be: an interested approach, listening to offenders, engaging with them genuinely and non-judgmentally, and encouraging them to want to do well (Kerr et al, 2011). Therefore, my study cements findings from the predecessor report to demonstrate similarities within the wine aspect of both models.

Of the four prominent skills, the data suggested that "motivating individual" was the most crucial because it was also a fundamental tenet of MRC. The most therapeutically applied skill from the themes was: "giving offender a voice" within the "dialogue" construct. This links to the work of Lynch and Perlin (2016) who emphasise the importance the PJ discourse for encouraging TJ outputs during solution-focused conversation. At the time I was carrying out my research, MRC came across insular, and practitioners came across confused on its purpose, at times appearing to lack morale (ethnographic data). Anchoring goals in an international dimension might be also be a way of sparking interest, enthusiasm and learning. If Judicial Colleague funding is tightening and the bottle intensifying in TJ unfriendliness, it may be up to magistrates themselves to seek out creative extra-curricular methods to train

themselves by learning from international TJ experts. Given that magistrates are unpaid Justices of the Peace, choosing to volunteer their time to DRR court work, this might indicate a pre-existing passion to be capitalised upon. Of course, the ideal would also be one DRR magistrates presiding, with a toolkit of TJ knowledge and the appropriate TJ personality (Perlin, 2012).

Recently, Wexler (2018: 1) called for: "amicus justitia" briefs, "a new type of legal writing", designed to increase international TJ knowledge, awareness, and education by raising the profile of practices with under-appreciated therapeutic orientation. Briefs may take the form of longer or shorter blogs, articles, or manuals, but are intended to be snappy, accessible and sustainable (Wexler, 2018). In the case of MRC, engaging in these briefs might be a three-tiered goal: i) creating a first brief that draws attention to the TJ aspect of the review court (particularly magistrates' skills-base) to initiate international dialogue and spark interest; ii) exchanging briefs with personnel from the classic DCs, HOPE (Bartels, 2016, 2017/2018) or other similar models, and finally; iii) moderating and editing the original brief to incorporate the best practice of others to create a global outreach. This would also help to create a MRC training manual or handbook that includes the goals, objectives and philosophy of the court, nature of drug abuse and treatment including local issues, practice protocol, overview of the broader legal requirements, as well as international best practice to increase consistency within approaches if the bench are to remain on rotation. This would be continually modified as briefs are exchanged and as local issues change.

Raising the profile of the court goes hand-in-hand with a current wider project to raise awareness of TJ in the UK during the creation of a TJ Centre (an ongoing project supervised by myself colleagues), which will intensify global relations, create a hub for interaction, and mechanism for knowledge-sharing as well as (hopefully) sparking interest and excitement amongst the Manchester magistrates following the publication of this project. Next steps might involve development of the first amicus justitia brief, which includes the context and background of the Manchester court, and the skills exhibited within the PCA from Chapter 5, as well as key findings from this project. The UK centre will help to facilitate international partnership working for the second brief with the Manchester magistrates (hopefully) on board to spark interest within global networks. More broadly, if MRC sits in the CJ

mainstream (using regular magistrates in a mainstream courthouse) this could be a small but significant step for the UK's arm within the ongoing international goal of TJ mainstreaming (Wexler, 2014).

The overarching finding from this chapter was the wine was operated in alliance with the TJ philosophy. However it could be improved through:

- A consistent bench to comply with Component 7. This is currently looking unlikely under the centralisation court reforms within a TJ unfriendly bottle. A single presiding magistrate is preferable and perhaps more realistic.
- In either case, enhanced judicial specialist training through the Judicial College is required to adhere to Component 9. However, this intervention ultimately lies at bottle level, rendered unlikely within recent austerity measures. Therefore, it might be up to magistrates to find new ways to train themselves. Drawing upon international best practice is key, which could be initiated through "amicus justitia" briefs and a UK TJ Centre.

As the above bullet points elucidate, England and Wales has failed to sufficiently support the application of TJ wine by withholding a TJ-friendly bottle. This includes unlikely training opportunities by the UK Judicial College through non-compliance to Component 9 and court centralisation initiatives making compliance to Component 7 difficult. What this analysis has shown is that magistrates were working well under difficult structures and the wine administered was TJ unfriendly to indicate passion for good practice. It is perhaps those in the judiciary that hold the power and enthusiasm for change, to make recommendations for improvements to the system and to find creative ways to maximise the TJ friendliness of the wine. Therefore, new and creative ways to approach TJ can be taken and anchored within an international dimension. However, since changing the wine so often requires reform to the bottle, it has been difficult to write this chapter with exclusive focus upon the former. Where the current Criminal Justice System is emphasising managerialism, centralisation, and austerity measures, the bottle remains unfriendly, which means efficacy of the wine needs to be maximised. As the next chapter will show, at this moment in time, the UK is unlikely to offer

itself as a sustainable bottle for hosting a fully-fledged DC without substantial (and unrealistic) changes to the surrounding landscapes. Famously and consistently Perlin quotes: "TJ asks whether legal rules, procedures, and lawyer roles can or should be reshaped to enhance their therapeutic potential while not subordinating due process principles" (Lynch and Perlin, 2016: 15). In other words, TJ must be operated with subscription to the current legal system in a way that does not offend other core values. The next chapter extends the investigation of TJ in England and Wales to something broader, structural, and systemic through analysis of the bottle concluding that there is still great hope for court specialism in England and Wales.

7 Chapter 7: Analysis and Discussion, Chapter 4: "Bottle".

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7.1 Introduction

I began the study with an interest in TJ, but with narrow understanding of the concept and its scope. As outlined in the Chapter 2, 2.5), Therapeutic Jurisprudence ("TJ") scholars have historically emphasised the "wine" aspect of the TJ analogy, particularly the interactional styles of Judges within problem-solving court ("PSC") arenas (Winick and Wexler, 2003). On that basis, when I first started this study, TJ at Manchester Review Court ("MRC") was to me: magistrates' therapeutic interpersonal skills ("wine"), which then became the core element of the first two data collection phases within this study (demonstrated in red in Diagram A, Chapter 3, 3.4). However, as time progressed, I began to understand that to incur TJ responses, the "wine" needs to be complemented with something systemic, something structural, and broader; something that lies at "bottle" level. I had the sense that TJ both at Manchester and more broadly in England and Wales faced difficulties due the surrounding landscapes. I thus began to focus on the "bottle" within the latter data collection stages (demonstrated in green in Diagram A, Chapter 3, 3.2).

The previous analysis and discussion chapter ("Wine": Chapter 6) honed in on the wine, illustrating that broadly magistrates' interpersonal skills were therapeutic. This chapter shifts to the MRC bottle, which lends itself to wider discussions about the possibilities and pitfalls of TJ in England and Wales in the past, present and future. Previously, during the Rehabilitation Revolution ("RR") analysis in the Literature Review (2.7), it was concluded that England and Wales has been unreceptive to a RR. This left the sense that, as a practice central to the RR, England and Wales DCs, or indeed similar modes of practice, are a misunderstood area, where, perhaps as a result, perhaps as a cause, the surrounding policy, social structures and legal dimensions have failed to support of their operation.

This is therefore the broadest chapter of the thesis, commenting widely on court process, impact and operation to facilitate an exploratory baseline understanding of a setting where there is currently no literature. It seeks to answer "bottle" research questions 1 and 2 posited in Literature Review, 2.9 but confirmed in the footnote below³⁹ by bringing together the "bottle" data points (see Diagram A, Chapter 3, 3.3) based on the principles of triangulation. It yields an abductive approach (Glaser and Strauss, 2010) that looks beyond the data to rationalise seen effects in terms of social causes, impacts of legislation, policy and social reforms through desk-based research to lend itself to conversations around the sustainability of the England and Wales bottle (research question 2, "bottle"). As I reiterate throughout this thesis: there is no track record of this court in the accessible literature, no mention on the UK Justice Innovation website, not in the media, not in any policy document and nor is there a court handbook or website outlining objectives and expected practice. Therefore, measurement and framing the analysis was made difficult as the definition as well as expected practice was uncertain. For these reasons, it was sensible to use The Ten Key DC Components (NADCP, 2004) framework as a deductive theory-driven coding map to thematically analyse the "bottle" data identifying areas of compliance and non-compliance to answer the question on the court's ontology (research question 1, "bottle"). It also draws upon the outdated England and Wales DC research (Kerr et al, 2011) ending with a symposium of key findings as well as future implications for TJ in England and Wales

After giving background information, this chapter reports on five main areas established as themes during thematic analysis (Braun and Clark, 2006): Objectives; Treatment Quality; Breaches, Attendance and Fragmentation Issues; the Written Report and Drug Testing; and the Court Team and Court Powers.

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Research Question 1) does the court adhere to the international framework (NADCP, 2004)? How do we define it: is it a DC, is it a Review Court?

Research Question 2) what is the therapeutic quality of the current MRC bottle?

7.2 "Bottle": Findings and Discussion:

7.2.1 Background

This section begins the discussion by providing some descriptive, contextual, background information on MRC. As there is no record of this court in the accessible literature and any previous analyses offered are now outdated (Turnbell et al, 2000; Kerr et al, 2011; McSweeney et al, 2008); since this is such a big gap to be filled, it necessarily requires a descriptive element to underpin this discussion, and therefore any information and detail offered here is original data. Although this is basic background information, it is detailed in the last main chapter because it was collected via bottle data methods, which occurred latterly (Diagram A, Chapter 3, 3.3).

The setting under investigation was MRC, a specialist court with a problem-solving rationale that brings offenders back for regular review of their progress on the core Drug Rehabilitation Requirement ("DRR"). Under section 210 of the Criminal Justice Act 2003 ("CJA"), a DRR is a structured treatment programme with a regular drug testing component. As stated in the literature review (chapter 2), the DRR is added onto one of two primary sentencing options; i) community order⁴⁰, or ii) suspended sentence order⁴¹ (National Offender Management Service ("NOMS"), 2014). Failure to comply with the DRR requirement could mean that the original sentence is enforced (Court Staff 1). DRR clients are usually identified during conviction where the mainstream court is obliged to consider criminal background; if there is history of acquisitive crime to fund a drug habit, the individual might be assessed for DRR suitability (Court Staff 1). The DRR must be agreed by all, including the client and the court, but the final decision is made by the probation services (Court Staff 1; NOMS, 2014). The

⁴⁰ "The Community Order replaces all existing community sentences for adults. It consists of one or more of 12 possible requirements and may last for as short a time as 12 hours or for as long as three years." This includes DRRs (Mair and Mills, 2008).

⁴¹ "The Suspended Sentence Order (SSO) is a custodial sentence and should only be used where the court is minded to pass a custodial sentence of less than 12 months. However, it is made up of the same requirements as the Community Order, so in the absence of breach is served wholly in the community" (Mair and Mills, 2008).

DRR thus resembles a traditional DC model; both are diversion programmes that seek to rehabilitate offenders from drug use where sentences can be carried out in the community so long as participants comply with the requirements. Notably, the process of placement onto the DRR programme has not changed since the outdated report for predecessor England and Wales DCs (Kerr et al, 2011), which is likely to be because the DRR is the core element of both models.

What is important for this study is that the DRR has an optional requirement for regular court review under section 210 of the CJA. This study is exclusively interested in the review aspect of the DRR, not the DRR core component. Under the CJA, if the DRR is less than 12 months, review is optional but becomes a legal requirement if the DRR is over 12 months. One could speculate that the optional review requirement has become less popular with the DC closedowns as there are fewer courthouses to host the DRR review. An interesting point about MRC is that it provided regular review for participants, all of whom were on DRRs of less than 12 months, like the original DCs (Kerr et al, 2011). For this reason and due to issues with fidelity (to be discussed), it remains unclear whether MRC is a ghost of predecessor Salford DC or an altogether different method of problem-solving practice. Whilst the data is inconclusive on this topic, this question lies at the heart of this chapter.

7.2.2 Objectives

Under Component 1, the NADCP state (2004: 1): "the mission of DCs is to stop the abuse of Alcohol and Other Drugs ("AOD") and related criminal activity". There is no official written outline of Manchester's purpose, only broader objectives of the DRR itself, the aim of which is "changing patterns of substance misuse and moving towards a recovery-focused approach to treatment" (NOMS, 2014: 2). Although cessation of drug use is the ultimate goal of DCs, DRRs expect that drug use is reduced but not necessarily ceased (CJA section 209). DRR eligibility is specified within the CJA and rephrased in NOMS (2014); the offender must: i) be dependent on or has the propensity to misuse illegal drugs; ii) require and would benefit from treatment and; iii) express willingness to comply with the requirement / has a desire to pursue recovery. Whilst this criteria resembles traditional DC eligibility (NADCP, 2004), DRR eligibility is broader (see socio-demographic profiling in Chapter 4, 4.1.1). Where a DC

would only take low risk offenders (Burke, 2013; Perlin, 2013), the DRR includes *violent and non-acquisitive* offenders from low, medium and high risk sentencing band⁴² (NOMS, 2014). This was reflected within the socio-demographic information presented in Chapter 4. Notwithstanding points about fidelity, the broader eligibility offered by the DRR perhaps gives better scope to instil key TJ principles with relief from DC cherry-picking critiques (Velázquez, 2010). In other words, the broader eligibility criteria offered at MRC is perhaps more TJ friendly than a traditional DC as it means that a broader scope of individuals can benefit from the TJ aligned programme.

Furthermore, the amount and intensity of the drug treatment delivered under the DRR can be tailored to individual needs regardless of DRR length and the seriousness of the offence (NOMS, 2014). This is a well renowned TJ principle, where a flexible bottle leaves space to infuse therapeutic ideals. The most commonly cited example by Wexler (2014) is the Spanish Juez de Vigilancia Penitenciaria ("JVP") system, which as stated in Literature Review (2.3.1.1) allows conditional release to be granted depending on both the length of time served and offenders' behavioural record, which can enhance therapeutic wellbeing by motivating rehabilitation and helping to identify and build strengths that encourage pro-social behaviours (Wexler 2014; Wexler, 2016). As the JVP system offers itself as "TJ friendly bottle", the same could be said about the DRR, where a strengths-based approach to the rehabilitative element can be taken through its flexibility.

Although DRR purpose is relatively clear, objectives of the review itself are inexplicit in the literature. For the DRR ancestors, Drug Treatment and Testing Orders ("DTTOs"), McSweeney et al (2008: 40) noted reviews are: "to enable the courts to better monitor compliance and progress with treatment". However, with the update of DTTOs to DRRs, McSweeney's research is now outdated and therefore court purpose was included as a Phase 3 interview question. Here, purposes of MRC identified by participants were: rehabilitating drug use as the underlying cause of crime including acquisitive (Court Staff 1), and a

⁴² Acquisitive are crimes such as burglary, theft, robbery, or handling stolen goods; crimes related to feeding the habit (National Treatment Agency, 2009).

mechanism for breaking the broad revolving door phenomenon (DRR Staff 1). Most markedly:

"(the purpose is) to assess the defendant in reduction of consumption of illegal drugs, which the court has identified as the motivating feature in the defendant committing various offences... The government recognised that individuals commit acquisitive crime to further the drug habit" (Court Staff 1).

This suggests that participants perceived MRC history, rationale and objectives as mirroring the international DCs. Their parallels were also noted for the now lapsed DTTO models by McSweeney et al (2008: 39): "the court review process and regular testing required by drug treatment and testing orders at the time represented the nearest comparable arrangements in England and Wales to drug courts operating in other jurisdictions". Participants in this study also tended to identify the inherent nature of the *review* aspect of the court and to *motivate* broader outcomes.

"The purpose is to get an idea of where you are... so they can get an understanding of where you're at and so they can work out how to make a plan that's going to help you" (Client 2).

"It is a reminder of where you are. It is a reality check" (Client 3).

"To review the progress and how they are getting on, on the order" (DRR Staff 1).

"To try and help you, and motivate you to try and stop taking drugs... get you to do things, keep yourself busy" (Client 1).

"Motivating them and to try and reduce the drug use, just generally motivating them to do things positive in their life" (DRR Staff 1).

Common to each of these answers is the intrinsic purpose to "review" and "motivate", but this implies something must "be reviewed" or "be motivated", presumably, the more instrumental objectives outlined by participants previously. This means that although the NADCP's (2004) mission statement was not always referred to explicitly across participant answers on court

purpose, primary objectives are tantamount to the traditional DCs. MRC goals were therefore compliant to the international standard within Component 1. On the point about adherence, if the evidence-base suggests DCs positively impact what are ultimately core DRR objectives through a fidelity model (KMPG, 2014; McBride et al 2001), this could suggest changing the process at Manchester to become more aligned with a traditional DC to increase TJ outputs. Data from a range of sources contradicted this hypothesis to suggest that the court was effective for achieving core objectives. The Phase 2 quantitative data showed that 65% of respondents either strongly agreed or agreed that the reviews helped them comply with the law⁴³ and; 85% of respondents either strongly agreed or agreed that the reviews helped them stay on track with their recovery⁴⁴. The qualitative data from Phase 3 converged with this; all three interviewed clients agreed that the court had a positive effect upon these areas, demonstrated by the below quotes.

"I've been three days without... Plus, I'm usually in prison by now" (Client 1).

*"Sometimes in the week I might think 'oh, I will have a little session but then I am like oh f**k no - I've got me test tomorrow' And then leave it... it makes me comply with the law... it makes me jump through the hoops" (Client 3).*

Client 2 further agreed it helped with recovery enhancement. These results are therefore positive for court key outputs. However, validity is questioned on the grounds that participants may have been untruthful because they did not want to be perceived as non-compliant with a court order. This is somewhat overcome by asking staff, who had less of a personal stake in their answers, the same question where results were also positive.

"It's like an anchor. It's incredibly necessary and important. Not only to society but also to the individual" (Court Staff 1).

⁴³ Survey question 10, Phase 2.

⁴⁴ Survey question 13, Phase 2.

"I know people I have interviewed about DRRs, they've asked for them again... they said actually last time that really worked and really helped me" (DRR Staff 1).

Result therefore convergence to suggest that the court had a positive impact on key outputs. On the other hand, some reservations were expressed by participants.

"In terms of recovery, the court can provide that assistance. Obviously, it's a limited assistance. Some of that assistance might be the best thing that the defendant's ever had and is all that is necessary, but on some occasions, it might not be enough for the defendant and a lot more is necessary... the court can only do so much" (Court Staff 1).

Apprehensions expressed by Court Staff 1 in the above quote links to the nature of "outreach" treatment more broadly, where some individuals may be better suited to residential treatment to suggest that MRC was inherently limited by virtue of its treatment provisions. There was also a strong perception that effectiveness depended upon the circumstances or personality of the offender, level of usage, human personality and personal motivation:

"Sometimes it works, sometimes it doesn't, and sometimes it may work for a while, it often depends on usage" (DRR Staff 1).

"It's that individual's responsibility to get off drugs" (Court Staff 1)

"These junkies are not going to get off of the ship, and I'm not going to get off the ship, unless I want to" (Client 3).

"If you're susceptible to this stuff...it is horses for courses". (Client 3)

Notably, the personal motivation theme was also identified as key for DC success in the predecessor report (Kerr et al, 2011). Client 3 was an interesting case because he gave

inconsistent answers for impact. Although in the above quotes he reported positive effects on compliance and recovery, he contradicted this, stating:

"I can't say it's helping me because I'm my own man... it's up to me at the end of the day" (Client 3).

This again links to the aforementioned personal motivation and personality type themes identified above. In contradiction, within the survey he answered "neither" to the impact questions (10 and 13 above), which is more positive than in the above quote where he reported no impact at all. This means that he contradicted himself both within (Phase 3) and across (Phase 2 and 3) data sources. Contextualising this into the Phase 1 data gave breadth, clarity, and explanation. Phase 1 showed that Client 3 was interviewed directly after his review on Date 9 by an all-female panel, identified previously in Chapter 6 as a potentially less therapeutic panel-type. If motivation is a key for facilitating key outputs, as was stated by Client 3 himself, on this date magistrates scored the lowest score of "poor" for motivating clients ("non-therapeutic"). On the other hand, he filled in the survey on Date 3, where the panel were found to have "good" (therapeutic) motivation skills. It might be that inconsistencies in therapeutic quality across panels (as found in the previous chapter (6.2.1)) caused inconsistent feedback, where a more therapeutic experience leads to more positive perceptions. Other data sources confirmed this pattern; Client 1 and Client 2 both gave positive feedback after review from a therapeutic panel. Together, these findings suggest that negative perceptions could be caused by a less therapeutic court experience, consistent with the TJ and Procedural Justice ("PJ") literature (Winick and Wexler, 2003).

Overall, the data suggests that MRC had positive impacts on the key outcomes, namely law compliance and recovery. However, this this is likely to be realised inconsistently depending upon the offenders' circumstances (including using-propensity, personality and, personal motivation), and could be influenced by inconsistency of the bench and related changes in therapeutic court experiences. The answers from all data sources are largely positive and converged with one-another, although one participant (Client 3) diverged, which was

attributed to a less therapeutic court experience. The most substantial limitation to these conclusions is they are founded upon phenomenological judgements given by participants, rather than direct measurements of court impact, which may undermine validity. However, validity was controlled for by triangulating data sources, where these mostly converged to somewhat overcome its inherent subjectivity. A further limitation was that participants tended to convolute the DRR model with the court aspect within their answers, both conceptually and practically - a finding also presented in the predecessor DC research (Kerr et al, 2011). This is likely to be because the DRR is the core element of both models. If this is the case, it could mean that the MRC did not have as much of a positive impact as the data suggested, although this is nonetheless a good result for the DRR itself, which has also suffered from little, especially recent, empirical research. As this study was a preliminary, exploratory analysis, its purpose was not to directly measure impact, but this is an important subject worth further significant empirical investigation in a follow-up analysis, which could identify correlations between the above factors on impact and court outputs using regression models.

7.2.3 Treatment Quality

Through their focus upon rehabilitation, DCs must be pillared by accessible and high-quality treatment services (NADCP (2004), under Component 4. MRC was linked to an umbrella wrap-around service located around two miles away from court: Manchester Integrated Drug and Alcohol Service (MIDAS), where a number of treatment options are available (DRR Staff 1)⁴⁵. Leaflets for these services were pinned on a noticeboard outside of MRC's waiting room⁴⁶ enhancing feelings of a recovery (rather than legal) court orientation (ethnographic data). Component 4 states: "treatment facilities are accessible by public transportation, when possible" (NADCP, 2004: 9). Clients were required to navigate many DRR appointments

⁴⁵ Including: Together Women, Alcohol Anonymous (AA), Narcotics Anonymous (NA), Shelter, Samaritans, NSPCC, Addiction Dependency Solutions (ADS), NHS Change for Life, Barnabus.

⁴⁶ It is up to the Probation Worker to link individuals to these services (not magistrates), see previous discussions.

occurring on a broad geographical radius under the court centralisation reforms (Courts Act 2003), including: rehabilitation, treatment, medical, probation and court (Client 1), and linkage would only sometimes be supported by a bus pass (DRR Staff 1).

As providers were external, it is difficult to comment on treatment quality. I had the sense that the services insufficiently supported the model as clients would often complain that they were not getting enough help (ethnographic data, various dates). This conflicted with the survey data where the majority (75%) of respondents either strongly agreed or agreed that there are enough treatment options available to help with their recovery. Inconsistencies might be due to problems with the questionnaire design; every other questionnaire item related to MRC itself, whereas this question related to treatment practice outside of the courtroom, which may have confused participants. The rationale for including this item was that treatment quality was unobservable as it occurred outside of the courtroom and it thus could be made more accessible through a phenomenological viewpoint's of participants. However, in the interests of consistency, this question could have been excluded and reserved for later study.

On mass, the interview data did not stack up with the survey data, and interviews better reflected my ethnographic notes taken on this point. This included Client 2 and 3 (below), who in spite of reporting negatively in their interview (Phase 3), either agreed or strongly agreed that there were enough treatment options available when responding to the survey (Phase 2). This meant that the results for the same participants were dissonant across data points. I explored this further during Phase 3 interviews. Client 2 was homeless and was having difficulties with the housing services:

"Probation is not massively useful... there's not really much available there at all"
(Client 2).

However, as Client 2's interview took place after his first review, one could speculate that he had not been enrolled on the DRR long enough to have established the correct support. Nevertheless, Client 3 also reported a lack of treatment availability:

"I've asked for help... It's not happening" (Client 3).

As Client 3 was interviewed after his third review, following a three-month gap since his first review, it seems unlikely that poor linkage is caused by an early stage of intervention, which indicates broader insufficiency of wrap-around treatment support. On the other hand, Client 1 gave more positive feedback and appeared to be fairly proactive with treatment appointments:

"I have a group every Friday, and then a community order group, the community order, and I'm on licence as well. He comes every week to see me - probation - every week without fail. Then, I go on my groups as well" (Client 1).

A limitation here is that Client 1 appeared to have misunderstood the question, by displaying issues of convolution between more general DRR appointments and treatment appointments. When asking for clarity, he stated:

"They give you enough (treatment options)" (Client 1)

This suggests he was sufficiently supported and linked to the providers by probation and genuinely satisfied by his treatment support. Interestingly, although there were inconsistencies across client feedback, each participant struggled with polysubstance dependence (see Chapter 4), where we would expect similarities in addiction-type to be reflected by consistent client feedback within the treatment questions. As results were dissonant, this could suggest differences in quality across probation services to suggest problems with consistency within approaches to DRR individuals. However, data explicitly revealing clients' co-occurring medical, social and personal issues could have improved the accuracy, breadth and complexity of these findings by disclosing the service domains that were particularly lacking. DRR Staff 1 agreed that the range of drugs services (particularly follow-up) was insufficient, and had worsened with time due to funding cuts:

"The funding has been tough on everything. Things that were there just aren't there anymore. Like they used to have an organisation called "lifeline" and they'd do

cooking classes with people, they'd do art classes, music and other things, but I don't think that they are going anymore"(DRR Staff 1).

This participant also identified significant delays for obtaining a script appointment at probation and the following quote demonstrates the significance of this problem:

"(Scripts) can sometimes take four to six weeks, maybe even eight... Somebody said to me once 'how much am I going to have to go out and steal?... if you'd have put me on the script the week after, I wouldn't have had to go and steal things to get drugs'" (DRR Staff 1).

This participant emphasised the worsening of this issue in recent years where appointments used to be instantly available (DRR Staff 1). As DRR Staff 1 had only been working in this role for 3.5 years (see Chapter 4), this highlights declination within only a short space of time. This is congruent with, and helps add breadth and explanation to, frustrations experienced by Client 2 and 3 outlined previously to suggest inadequacy of the wrap-around services due to funding cuts. These findings sit in line with recent reforms to Public Health. Under the Health and Social Care Act 2012, statutory responsibility for health improvement was reassigned from the National Health Service to the local authorities, supported by a ring-fenced grant from Public Health England⁴⁷ (British Medical Association, 2018). Under these reforms, the public health grant was cut by 5% between 2013 and 2018, with further planned cuts of 3.9% a year until 2020/21, going forward, which equates to £3.07 billion in real terms (British Medical Association, 2018). More specifically to the prevention and treatment for drug misuse in adults, there is a further planned 14% cut to revenue spend (cash terms) by local authorities in England. These cuts are complicated by the UK's imminent exit from the European Union, which may have further financial implications for funding from initiatives such as the EU Health Programme 2014-2020 and for EU research programmes (British

⁴⁷ This is an executive agency of the Department of Health.

Medical Association, 2018). Elsewhere, reports show that no separate provisions have been commissioned to support DRRs and the like; rather the treatment element of DRRs is provided from the same services as local populations (NOMS, 2014). This shows that funding is significantly short for alternative Criminal Justice ("CJ") disposals, such as the DRR, which rely heavily upon public health support, putting increasing strain on an already overlaboured pillar of DRR sustainability. This indicates a significant problem for MRC at bottle level.

Reforms to public health outlined above are also alarmingly paradoxical to recent policy: Transforming Rehabilitation (2014). This policy in part reformed the supervision of offenders within the community including DRRs⁴⁸, by suggesting that a foundation of a new rehabilitative model should be increased local partnership working that "brings together the full range of support" across the mental health, housing, employment, and drug treatment services (Transforming Rehabilitation, 2014: 3). As it was ignited so soon after implementation of the new public health model, this opens up questions about how increased pressures on the services were anticipated in light of substantial cuts to public health grants. At the very least, the seeming inconsistency suggests that Transforming Rehabilitation (2014) may have been implemented without a well-researched projection plan, which seems to form a running theme for apparent TJ-friendly interventions in England and Wales (see Chapter 2, 2.8). This suggests that there could be significant sustainability implications for MRC as the treatment element relies so heavily on the support services (NOMs, 2014). Although these reforms appeared to have occurred after the closedowns of the predecessor DCs, Kerr et al (2011) also reported shortages with the providers, although this was not linked to funding. This suggests recent funding cuts were catalytic to a pre-existing problem. However, this is unfortunately a problem that I do not have a solution for.

7.2.4 Breaches, Attendance and Fragmentation Issues

⁴⁸ Supported by the Offender Rehabilitation Act 2015.

There was a significant issue with attendance at MRC; just over one third of participants attended (20 out of 58) over the four months the Phase 2 surveys were distributed (between November 2016 and April 2017). These findings are concordant with the predecessor DC report (2011), who also documented attendance issues to suggest that these difficulties are long-standing. Non-attendance was a major problem from a data collection perspective as it limited the number of individuals available for participation. Nonetheless, exposing and discussing this issue throughout this chapter is an important qualitative "bottle" finding. Previously, in Chapter 4, through socio-demographic profiling, it was found that the sample comprised largely of older individuals. According to Hansen et al (2000, cited in Mendoza et al, 2013) DC attrition rates tended to be higher amongst younger participants, which Mendoza et al (2013) hypothesised is because younger individuals had greater problems with substance use compared to older individuals (Chapter 4). These figures could potentially explain the demographics of those within the non-attendance population to suggest that non-attendees were populated by younger individuals.

Unfortunately, explicitly asking participants why they attended court was not an item on the questionnaire (Phase 2) because it only became an apparent issue midway through data collection and I did not want to change the design at this point. However, I was able to inquire during interviews (Phase 3) as they occurred latterly (see Chapter 3, 3.4). Whilst I can make inferences on this point through the interview data, the general structure of opinion is unknown as this data lacked generalisability. However, I will create some hypotheses on reasons for poor attendance in the coming sections.

As stated in the first section of this chapter, according to the CJA (section 210), courts "must" legally mandate review attendance for DRRs over 12 months and "may" for those less than 12 months. In other words, the review aspect of any DRR under 12 months is technically non-statutory. Since most of the individuals in this study had short DRR lengths (between 3-6 months; DRR Staff 1; ethnographic data), attendance of reviews was technically non-legal. This has not changed since the predecessor DCs (Kerr et al, 2011). This meant that breaching clients for non-attendance was complicated. The data suggested that DRR clients are allowed three breaches of the DRR more broadly before the original sentence is reinstated, and non-attendance could constitute one breach, but not always - this was ultimately the discretion of

probation officers. However, the data expressed that clear confusion on this topic amongst practitioners.

"At the moment it's up to the offender managers - they can choose to use [non-attendance at court] as one of the appointments towards a breach" (DRR Staff 1).

"There are more circumstances that might well point to breach proceedings being instigated, rather than simply putting them down to three absences".

"That's not to say, you don't miss it three times, then you won't be breached... failure to attend could constitute at some point a breach of the DRR".

As well as demonstrating uncertainty surrounding breach proceedings across, and even within, staff members, these quotes imply that there is no fixed rule for whether review non-attendance constituted a DRR breach. In terms of the attendance problem, this could suggest that clients in attendance were those in threat of DRR breach, which stacks up with data indicating that some clients attended non-optionally, as an assumed part of the order.

"I don't like coming all the time, but that's just part of the punishment. I've got to come, know what I mean? That's part of life... I've never missed any" (Client 1).

"You have to, yes. I was going to chip today when I didn't see my name on the list" (Client 3.)

"Some were waiting for the reviews agitated... during reviews some were disinterested in the conversations. Others often arrived early so they could be in and out as quickly as possible" (ethnographic data).

Data from Phase 2 further endorsed this; 10% disagreed that they liked attending the reviews and 30% responded neither to imply some involuntary impetus. This heavily suggests that

issues with attendance could stem from inconsistent breach practice at probation services in which threat of DRR breach significantly improves MRC attendance. However, this leads to bigger questions: why were only some individuals in threat of breach and was there some reluctance to administer them on the part of probation officers? Hesitation may be linked to privatisation reforms brought forth by aforementioned policy, Transforming Justice (2014), under the current UK Conservative government. This policy resulted in a two-tiered split of the probation services (previously run as probation trusts) though 70% privatisation. High risk offenders are now managed by state-run National Probation Service (public sector) ("NPS"), and low to medium risk by private contractors, Community Rehabilitation Companies (private sector) ("CRCs"). Importantly, competitive overtones have subjected CRCs to the Payment by Results scheme ("PbR"), placing decision-making at national level, with services receiving payment only when displaying visible outputs according to the binary rate (proportion of offenders who reoffend) and the frequency rate (the average number of re-offences per reoffender) (MoJ, 2018; Bowen and Donoghue, 2013). As most individuals in this study were managed by CRCs (ethnographic data; DRR Staff 1) breach for MRC non-attendance could result in no company payment if it is considered a lack of result within the DRR.

"It's definitely more lenient than it was... because there's a cost implication now"
(DRR Staff 1)

"With it being a private company, any breach has a cost implication, so I think they're encouraged not to breach people" (DRR Staff 1).

"If it is that privatisation has occurred, the first question would be to ask is... is it that profit is an issue for them and how much does that relate to how they administer breaches and whether fees arise as a result?" (Court Staff 1),

This heavily suggests that inconsistent breach practice is interlaced with the PbR model. This has resulted in a complacent attitude to what is ultimately a non-statutory obligation under section 210 of the CJA. This means that vacancy in statute under the CJA combined with the probation restructures constitute a TJ unfriendly bottle. However, recent reports by British Medical Association (2018) have heavily suggested that Transforming Rehabilitation (2014)

needs to be reversed if public health is to be broadly improved including problems around AOD addiction. Similarly, Transforming Justice (2014) has also recently come under scrutiny with reports suggesting review of the strategy, concluding: "we are unconvinced that the Transforming Rehabilitation model can ever deliver an effective or viable probation service" (House of Commons Justice Committee, 2018: 74). If such reversals are to succeed, this would significantly increase the TJ-friendliness of the bottle.

If reluctance to breach is linked to the PbR model, this may be overcome by statutory support that mandates review attendance for shorter DRRs. This would give all DRR clients coverage under the CJA, giving probation officers no choice but to breach participants for non-attendance at court. To successfully ensure this, this would mean replacing the current 12-month threshold to 3 months within section 210 of the CJA. However, with the limited number of UK courts dedicated to this purpose, this may overburden the mainstream courts, and is so perhaps better qualified with: "if the offender lives within the jurisdiction of a specialist review court". This is especially important in light of recent policies suggesting PSC roll out (Bowen and Whitehead, 2013).

Whilst suggesting change to statute seems far-fetched, lessons must be learnt from the original DC failures. It is probably no coincidence that the Legal Aid, Sentencing and Punishment of Offenders ("LASPO") Act 2012 removed the restriction for a minimum DRR length of 6 months (NOMS, 2014) around the time that DC closures started becoming documented where a contributing factor may have been difficulty stimulating non-legal attendance amongst individuals on shorter DRRs. This has seemingly been catalysed by the PbR model within the probation split. When it comes to specialist court sustainability, these two pieces of legislation are not concordant; where the LASPO Act 2012 removes requirement for longer DRRs, it creates a vacancy in legal terms for courts to perform the DRR review. This is because offenders then fall short of review obligations of 12 months within the CJA. Whilst law reform is perhaps unrealistic, it sits with TJ's most recent and biggest mainstreaming project, where Wexler (2014: 3) states: "if the law itself does not seem to permit much use of TJ, then the question of the propriety of actual law reform would come to the fore".

An alternative to legislative reform might be lengthening all DRRs. In many ways, the short DRR length⁴⁹ already detracted from the reality of the recovery process. Indeed, the literature emphasises that it typically takes years, not months, to reach stable recovery, especially when accounting for early-stage relapse (NADCP, 2004). Perhaps ironically within a TJ ideal, a longer and therefore more punitive DRR may contribute to broader therapeutic responses, such as long-term recovery, whilst also giving coverage for the current provisions under the CJA. These considerations are important in light of England and Wales' plan to re-implement PSCs (Bowen and Whitehead, 2015), in which, as stated in the previous paragraph, lessons must be learned from the original DC failures.

MRC's attendance issues could also be linked to other factors. Another explanation could be that individuals attended voluntarily because they found reviews beneficial; in spite of 40% of clients either "disliking" attending or "neutral", 85% of respondents either strongly agreed or agreed that the reviews helped them stay on track with their recovery, and 65% either strongly agreed or agreed that it helped them comply with the law. Therefore, offenders might voluntarily attend because, although not actively "liking" it, they found the reviews helpful for pursuing positive changes. This is consistent with the third DRR eligibility criteria in which: "the offender expresses his or her willingness to comply with the requirement" and ultimately has a desire to pursue recovery (NOMS, 2014: 5). If this is the case, it means that the client data is biased towards those more engaged in the programme, which is something to bear in mind in light of the positive feedback surrounding outputs outlined previously (in 7.2.2). Furthermore, 90% of respondents reported that they were "satisfied their experience at the drug reviews" and 85% either strongly agreed or agreed that "the review process was fair". The broad PJ literature consistently shows that fair treatment leads to compliance of outcomes "even if (clients are) adverse to them" (Winick and Wexler, 2003: 129). Therefore, feelings of fairness might be impetus for voluntary attendance or stimulate a greater willingness to attend. On a similar note, voluntary attendance could be linked to therapeutic court experience, concordant with findings in Chapter 6 that magistrates possessed TJ-infused

⁴⁹ Usually between 3-6 months (ethnographic data).

interpersonal styles, which could generate voluntary re-attendance. This is expressed in the below quotes.

"Many individuals appeared pleasant, contented and calm when waiting for their review" (ethnographic data).

"First-timers in particular presented as relieved and contented with their experience, and often left the courtroom smiling and thanking magistrates repeatedly" (ethnographic data).

"Pleasantly surprised" (Phase 2 participant).

Attendance could be also linked to court accessibility. This is pertinent in light of recent structural changes to the England and Wales Magistrates' Courts (directed by The Courts Act 2003, section 6), which centralised courts from Magistrates' Courts Committees ("MCS") to Her Majesty's Court and Tribunals Service (Gibbs, 2013). Under the administration of MCCs, courts were previously run by magistrates themselves and funded by local councils. However, MCCs were heavily criticised by policymakers for being inefficient (Gibbs, 2013) and fragmented (Bowen and Donoghue, 2013). The Courts Act therefore aimed to improve professionalism, increase consistency and drive performance goals (Gibbs, 2016; Allen 2015; Bowen and Donoghue 2013). Since 2003, court centralisation has expanded rapidly, increasingly limiting the role of local governments, and magistrates themselves, in court regulation (Allen 2015; Courts Act 2003, section 6; Bowen and Donoghue 2013).

During this study, Manchester Magistrates' Court had already taken on the work of Salford (2012) (including, arguably, Salford DC), and had forthcoming plans to integrate Bury (in 2017), and Bolton (in 2018), significantly broadening the catchment area to Greater Manchester, which covers 493 square miles (DRR Staff 1; Court Staff 1). Effects on the DRR are profound; it means that individuals must attend DRR appointments (including: probation, reviews, treatment and medical) on a significantly broader geographical area (as already touched upon in 7.2.3 of this chapter). Even after only the Salford merge, attending the review aspect was already a problem; one individual reported that he had walked two hours to get to court for review (ethnographic data, Date 9). With further court centralisation

reforms on the horizon, this issue is likely to worsen with time. However, by looking to change the bottle, namely, entitlement and benefit schemes at probation supplying all DRR clients with a bus pass, this issue could be somewhat relieved. DRR Staff 1 reported that only some DRR clients were entitled to this benefit; it is therefore no coincidence that all Phase 3 participants, i.e., attendees, reported that they were in receipt of this. This could suggest that bus passes encourage MRC attendance. If the broad geographical radius partially explains why many participants do not attend reviews, the centralised court model therefore constitutes a TJ unfriendly bottle, and although centralisation is unlikely to be reversed, other bottle level changes (such as the provision of a bus pass at probation) could provide relief to these systemic issues, which already have a profound impact on consistent bench operation (see Chapter 6).

Other possible reasons for non-attendance could be that attendees were able to keep on track of appointments due to higher human recovery capital (Best and Laudet, 2010), or they had higher motivation levels (Beckman, 1980). Maybe the attendees had more conducive recovery social support or living situations (Granfield and Cloud, 2011). Attendance also could be attributed to age; the median ages of respondents (i.e., attendees) was the 36-45 bracket, a time of life that individuals are ready for recovery, corresponding with the Maturation Reform Theory, which posits that the rehabilitative process inclines prior to mid-twenties, and then declines afterwards (Gleuk and Gleuk, 1940; Rocque, Posik and Hoyle, 2015). Indeed, this theory sits in line with socio-demographic information posited within Chapter 4 (Section, 4.1.1.1) suggesting that the sample comprised of older individuals. Court Staff 1 also put forward a broad range of factors to which attendance could be attributed:

"The weather, the football, traffic, traffic problems, and road closures... or it might well be the fact that it is a courthouse and they're expecting a more adversarial hearing, where they're going to be put on the spot, and that's something that nobody wants".

The point here is that it was difficult to know the exact circumstances of individuals that did not attend, and although the data is not conclusive, the strongest and most plausible explanation is a combination of TJ bottle problems, including the privatisation of probation

resulting in inconsistent breach practice, vacancy in legal terms making the review non-statutory, and centralisation reforms making accessibility difficult (Transforming Justice, 2014; Courts Act 2003). For these reasons, we can conclude that the bottle is TJ unfriendly through its failure to sufficiently support MRC operation in most elemental form: client attendance. When considering the non-attendance issue, the data already suggested that MRC had positive impacts on key objectives (see 7.2.2 of this chapter). This could suggest that rectifying these systemic "bottle" issues could help to tackle broader problems that England and Wales currently faces, namely: recidivism, austerity and drug addiction (outlined in Chapter 2, 2.2).

Under Component 10, the NADCP (2004: 23) is fundamentally concerned with partnership working between bodies stating that: "a drug court is especially well suited to develop coalitions among private community-based organizations, public Criminal Justice agencies, and AOD treatment delivery systems". The court dealt with non-attending individuals by postponing their hearing for around 6 weeks, but appeared to be stuck in a continuous cycle of re-adjournments for most attendees (ethnographic notes; Court Staff 1). This came across as disorganised and highlighted poor communication between the court and probation services around expected attendance (ethnographic data), demonstrating fundamental non-compliance to Component 10. This was cycle that was only broken when:

"The DRR review team give the indication to court that no adjournment is necessary... and that no further listing in the review court is necessary"(Court Staff 1).

Whilst the impact of this issue on economics was unknown, previously, Kerr et al (2011) reported that re-adjournment was costly in the original DC model. However, interestingly, it now seemed to be an engrained issue that the MRC had adapted to:

"We can accommodate adjournments with no issue... there is some spare time - we don't have an issue with listing DRR cases" (Court Staff 1).

In other words, non-attendance was so prolific, it could be managed through pre-planned space for re-adjudgment and by listing extra cases with the expectation that most would not attend. I wondered how the court would cope if all the scheduled listings one day all attended; on Date 5, nineteen individuals were listed to attend and I wrote:

"If everyone attended today, the court would be running into the early hours of tomorrow!" (ethnographic data)

However, only six of the nineteen listed attended on this date to highlight the propensity of the non-attendance issue as well as instilment of the problem into court practice. Interestingly, Court Staff 1 also identified re-adjudgment as a mechanism for understanding the complexity of AOD relapse tendencies:

"The court allows for relapses as it further adjourns" (Court Staff 1).

Although this highlights that re-adjudgment had become a customary, and even helpful feature, it was also clear that MRC would run more smoothly if constant re-adjudgment was not necessary (ethnographic data; Court Staff 1; DRR Staff 1). This could be rectified through better coordination between the court and probations services under Component 10 tracking expected attendees.

Fragmentation between MRC and the probation services was also expressed in other ways. There was clearly an information storage issue. As stated in Chapter 3 (3.5.3), upon my request, Cheshire and Greater Manchester CRC ran a report to disclose all DRR clients who had attended MRC over the previous six-month period, which revealed only seven clients. This was vastly inaccurate and the court would often see more than seven CRC clients on a single afternoon (Phase 1 data). Another issue was that offenders could arrive for review under instruction of the probation services to find themselves not listed (Client 3; DRR Staff 1; ethnographic data). The observed impact of this was demoralisation and loss of faith in the process by both clients and staff members (ethnographic data, various dates). This is clearly a long-standing problem; even during the predecessor DCs' early lifespan, Kerr et al (2011: 17)

reported that there were instances where cases were not listed for review when clients turned up and there were "difficulties in the communication between partners, which undermined the extent to which they worked effectively together". The Phase 3 feedback was inconsistent on the point; all three clients felt that the parties were successfully integrated whereas both staff members thought improvement was necessary:

"Everything clicks together ok" (Client 3),

"(there is room for improvement) with probation's recording, but also with the court's recording so you know who is coming in" (DRR Staff 1).

"I know that on occasion, the flow of information isn't as consistent as it would've been or could've been if it was just one organisation" (Court Staff 1)

The latter two participants attributed fragmentation between parties to the chaos created following the split within policy: Transforming Rehabilitation (2014). DRR Staff 1 elaborated that it meant tasks such as producing the review reports, purchasing, economic spending, and decision-making now have to go through a central hub at national level, which causes delays, disorganisation and dissolution between parties (DRR Staff 1; Bowen and Donoghue 2013). Inconsistencies in perceptions between staff and clients could be linked to differing stakes in the process; staff may experience difficulties with the internal administrative tasks, unlike service users. In previous UK research, Kerr et al (2011) reported that reviews were a successful and efficient mechanism for facilitating partnership working across agencies, although they identified some areas of improvement, particularly communication around court listings. As Kerr et al's (2011) report was published years before the privatisation reforms were initiated (Transforming Rehabilitation, 2014), this split is an unlikely cause of this fragmentation; rather a possible catalyst for a pre-existing problem.

Issues with fragmentation under Component 10 might also be linked to the fact that, unlike the predecessor DCs, there is no Legal Advisor ("LA") within a management role at MRC, which was reported to be a critical element for agencies effectively working together within the original models (Kerr et al, 2011). The LAs would co-ordinate and manage the DCs, including panel rota, referrals, local steering group meetings, as well as liaising with partner

agencies, completing monitoring data and being the main point of contact for DC queries and visits (Kerr et al, 2011). However, even at this early stage of the relatively short DC lifespan, when Kerr et al's (2011) report was published, the researchers identified staff resourcing problems including increased workloads of other LAs. There could yet be hope for change to the systems to increase organisation and coordination between parties; the MoJ's longer term plan is to modernise the magistrates' courts, where they aim to replace "outdated IT systems and old fashioned paper-based processes" (Croft, 2018: np). This modernisation might benefit MRC by enabling more fluent communication between probation and court to enhance the interdisciplinary approach under Component 10. However, as part of the court modernisation initiative there is also anticipated cuts to 10,000 staff members (already ongoing) as the court systems become digitalised (MoJ, 2016, 2018). Staff resourcing strains could help to explain why there is currently no LA dedicated to this role at MRC meaning that these policy changes could have conflicting impacts on MRC operation at bottle level.

7.2.5 The Written Report and Drug Testing

Like in the predecessor DC models (Kerr et al, 2011), magistrates were informed of client progress through a written report prepared by probation officers and sent to the court to substantiate the review hearing beforehand (ethnographic data, every date). The written report was technically straightforward; it usually had sections for both formal (DRR, treatment, medical) and informal (personal, relational, or housing) progress, and included perhaps the most important information: drug test results. When a full report was produced, officers reported on co-existing issues, such as: mental illness, medical problems, HIV and sexually-transmitted diseases, homelessness, basic educational deficits, unemployment/employment, and spouse and family troubles including domestic violence (ethnographic data, various dates). This holistic approach to individuals was identified as key:

"It's intended to be a multi-strategy approach, tackling the defendant's addiction, but perhaps providing support, in terms of accommodation and debt, health issues and such" (Court Staff 1).

As written reports were not standardised across probation companies, quality and information type could be inconsistent (ethnographic data). There were instances when drug test results were incomplete (DRR Staff 1; ethnographic data) and in 12% of reviewed cases, the report itself was altogether missing to show inconsistent compliance to DC Component 5: "abstinence is monitored by frequent AOD testing" (NADCP, 2004: 11). Quality of test results was also problematic:

"Some participants were adamant that the positive test results were wrong leaving magistrates in an awkward and powerless position" (ethnographic data, various dates).

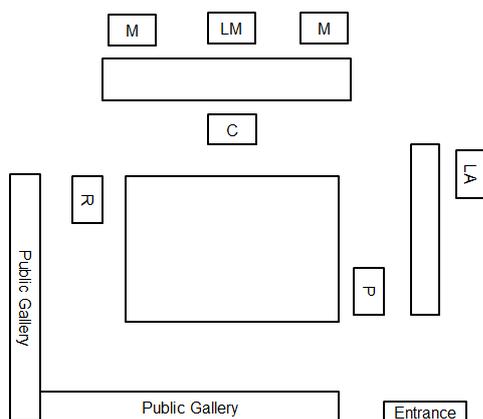
In research for England and Wales' DRRs and DTTOs (the latter being the DRR ancestors) (Kerr et al, 2011; McSweeney et al, 2008), it was revealed that report generation was arduous for probation companies, which could explain poor quality or altogether absence at the current MRC. DRR Staff 1 further hypothesised that inaccurate results may have been caused by cut street-drugs, which simply suggests inadequacy of the testing kits. These instances left magistrates powerless to effectively review progress (ethnographic data, various dates) and Client 3 commented that he would be more compliant with the DRR order if the tests were more accurate. These problems might again be linked to lack of statutory support within the CJA (section 210, d, e), which is ambiguous on written report requirements. Where the legislation makes clear that reviews themselves are non-legal for DRRs under 12 months, it remains unclear whether this also renders subsequent provisions (S.1, a-e)⁵⁰ non-legal if a DRR review goes ahead, including provision to supply a written report with full drug tests history (CJA, 2003). It is therefore unclear whether reporting upon drug testing history is a statutory requirement for shorter DRRs and whether organisations were in statutory breach

⁵⁰ "A community order or suspended sentence order imposing a drug rehabilitation requirement may (and must if the treatment and testing period is more than 12 months)... (d) each such report to include the test results communicated to the responsible officer under section 209(6) or otherwise and the views of the treatment provider as to the treatment and testing of the offender (e) provide for each such report to include the test results communicated to the responsible officer under section 209(6) or otherwise and the views of the treatment provider as to the treatment and testing of the offender".

when failing to adequately supply them. Perhaps this is not important; what is important is that more detailed reports clearly enabled more efficient, swift, and coordinated responses to individuals. Thus, legislation at "bottle" level in the form of the CJA has again been revealed as TJ unfriendly (Wexler, 2014) failing to adequately support MRC operation. Making drug tests a legal requirement for shorter DRRs through legislative reform would thus improve the power of MRC. Nevertheless, the alternative and more preferable solution, as already suggested, would be lengthening all DRRs to give coverage all DRR clients under the current CJA.

7.2.6 The Court Team and Court Powers

Diagram A: The Court Layout



Under Component 1, the NADCP (2004: 1) states that a DC "requires a team approach". Diagram A displays the court team, where it is worth noting my position ("R") during data collection. The following personnel were present during reviews: Probation Officer ("P"), LA, one or two Magistrates ("M") one Lead Magistrate ("LM"), and Client ("C") (ethnographic data). The layout of MRC was clearly a unique feature:

"It's finish and layout is different to the adversarial nature of a (traditional) courtroom... the court furniture is different... the tables and chairs that can be moved around. It's more of an informal setting rather than fixed benches and a raised

platform that the magistrates sit on. There is no dock in the DRR court. There is no witness stand. It's just tables assembled together in a square shape".

The close physical proximity between clients and magistrates in Diagram A, and the "square shape" (as in the above quote) were reported to be deliberate mechanisms to increase feelings of support, amiability and rapport across parties (Court Staff 1), mimicking the Circle of Support approach expedited within RJ Circles (Ahmed et al, 2001; Braithwaite, 2001) (ethnographic data). Although the direct impact of this is unknown, clients generally appeared relaxed and at ease their in mannerism and language (ethnographic data, various dates). Roles of all the staff at MRC were renewed to focus on rehabilitation rather than the legal case (ethnographic data). Magistrates possessed therapeutic interpersonal skills with the purpose of motivating and reviewing progress (see Chapter 6), the LA performed an administrative rather than advisory role (Court Staff 1; ethnographic data), and presence of probation staff was in place with the purpose of facilitating multi-disciplinary collaboration between respective agencies (DRR Staff 1). Clients commented positively on the casual nature of the court:

"Everyone is really down to earth, I'm very impressed. They (magistrates) are very easy-going; very on a level" (Client 3).

Although a team approach was somewhat achieved at MRC, it was in weaker design to the international standard under Component 1 in which the two most notable differences were: i) an individual from the treatment team was never present at MRC and; ii) every client was consistently represented by one presiding Probation Officer⁵¹ rather than their own officer⁵². Furthermore, defence and prosecution lawyers were never present at MRC. Had these parties been present, it might have been interesting to consider the therapeutic quality of their interaction with the client by drawing upon the work of Perlin (2013) rather than focusing

⁵¹ From the National Probation Service (NPS); Public Sector.

⁵² These are from either the CRC and NPS but most commonly the former.

exclusively on the magistrate-client interaction (in Chapter 6). Nonetheless, their absence was interpreted positively:

"Instead of having to speak through a solicitor, you actually get to talk to them (the magistrates) yourself which is obviously better because you're getting your voice heard - that is good" (Client 2).

This links to the "giving the offender a voice" skill emerged thematically in the "wine" analysis (Chapter 6). Drawing upon the predecessor report, the multidisciplinary team was achieved with much more fidelity in the original models by including the presence of multiple agencies in the DCs (Kerr et al, 2011). In reference to this, I had a notable interaction with a LA who had previously worked at Salford DC but had not sat in MRC since Salford merged into Manchester in 2012 (Courts Act 2003; Court Staff 1; ethnographic data). When preparing for the afternoon session, he was confused as to the whereabouts of the multidisciplinary team and asked me if I was the drugs worker (ethnographic data). This is an interesting interaction highlighting one of the few differences between the old models and MRC to suggest the Manchester was not the ghost of Salford DC.

At MRC, most of the work occurred outside of the courtroom at the probation services, including delivery, linkage, and recommendations to the treatment serviced⁵³ (DRR Staff 1; ethnographic data; Court Staff 1). For this reason, it was as though the MRC aspect merely supplemented the main DRR element (ethnographic data), which links DTTO research noting the same about the DRR ancestors (McSweeney et al, 2008). In this way, MRC resembled Hawaii's Opportunity with Probation Enforcement ("HOPE"), described throughout the work of Bartels (2016, 2017 2018). HOPE is a supervision programme, which, consistent with TJ principles, seeks to rehabilitate probationers from AOD-related offending (Bartels, 2018). Although much of the work at HOPE is carried out outside of the courtroom, the court features as warning hearings and breach proceedings; these operationalise key solution-

⁵³ Cheshire and Greater Manchester Community Rehabilitation Company (CRC); Private Sector.

focused principles where the judge employs a series of TJ-infused interpersonal styles to encourage positive behaviours in line with supervision goals (Bartels, 2016, 2017 2018). However, it operates with much looser fidelity to the international DC framework (NADCP, 2004) inclusive of a broader range of eligible participants (including of higher risk) (Bartels, 2016, 2017 2018). This is startlingly similar to MRC, particularly the prominence of the probationary aspect where the court supports and supplements the core DRR element as well as the broader eligibility criteria (see socio-demographic profiling in Chapter 4: these included violent and non-acquisitive offender-types).

Less traditional approaches to solution-focused practice are not unique to HOPE or MRC. They have emerged across the globe, including the Judicial Monitoring scheme in Victoria (Judicial College, 2015), Special Sanctions Court (Snell, 2007), and Probation Accountability with Certain Enforcement ("PACE") (Carns and Martin, 2011) as a few named examples. Common to each model is emphasis on swift, certain and fair justice that implements a more punitive ethos. As outlined in Chapter 2, 2.5.1, as evidence emerges suggesting that the traditional international DC models are limited in impact, as well as costly and cumbersome (Drugs, Security and Democracy Program, 2018), Bartels reports that HOPE has higher economic efficiency and lower cost implications, comparatively (Bartels, 2016, 2018). HOPE perhaps, therefore, represents a more sustainable alternative to the traditional international DC model. Importantly, both HOPE and Manchester do not exist in oblique pockets of the CJS but rather within more mainstream frameworks, which perhaps is the key for broader TJ outreach (Wexler, 2018). In context of the ongoing international goal to mainstream TJ⁵⁴, could it be that TJ's future is better founded within looser methods of solution-focused practice in which a less dogmatic approach gives scope for more comprehensive application of TJ?

⁵⁴ Overseen by Spencer, Jones and Wexler on the international Therapeutic Jurisprudence in the Mainstream Blog: <https://mainstreamtj.wordpress.com/>.

As was detailed previously in Chapter 2, 2.5, TJ experts suggest that whilst DCs offer a new approach to Criminal Justice ("CJ"), models should not operate in opposition to the traditional system, nor should they offend its core values (Donoghue, 2014; Perlin, 2013). The specialist court movement should thus represent a change in emphasis rather than a change in structure (Miller, 2014). If England and Wales has been unreceptive to a RR due to deep-seated negative penal ideologies (outlined in the Chapter 2, 2.7), its Criminal Justice System ("CJS") might better tolerate a swift, certain and fair justice framework encompassing a more punitive ethos, such as HOPE. However, if England and Wales are to move away from the classic DC model within court specialism methods, new and alternative models need to be supported by a matured, clear, and well-researched conceptual model duplicating similar international best practice. Lattimore et al (2016) developed an eleven-tiered fidelity document for accurate implementation of HOPE across sites, positing that an empirical basis illustrates that adherence results in good program outcomes⁵⁵. If England and Wales' policy, laws, and political structures do not currently allow for a fully-fledged DC as this thesis has exposed, it could be that a similar fidelity matrix is designed for Manchester, which takes into account the current penal system as well as broader bottle structures.

I wish to deviate from this point slightly to analyse court breaches and sanctioning powers. This will allow me to then return to discussing the implications of swift, certain and fair justice in England and Wales. In dealing with compliance and non-compliance, traditional DC Judges can impose rewards and sanctions responses under Component 6 in line with behavioural and rehabilitation progress (NADCP, 2004). MRC magistrates did not have such powers, which first stood out to me during my earlier site visits and was one of the first reasons I questioned MRC's authenticity as a DC (NADCP, 2004). Comparably, the predecessor DCs appeared to benefit from having breach powers in court, and ex-Salford DC magistrates explained to me that this was the biggest loss under the centralisation reforms

(Courts Act 2003; ethnographic data). Both praise and critique was therefore limited to verbal "tokens" (NADCP, 2004: 13) at MRC, and although the previous chapter (Chapter 6) showed that the interpersonal element was operated well, power of MRC was significantly restricted in absence of Component 6 (ethnographic data). Arguably, its absence lends itself as the most significant argument to suggest that in its current form, Manchester is not and could never be defined as a DC

Client 3 stated firmly that a more punitive bench operating a carrot-and-stick approach would increase compliance and encourage recovery progress, which he reported would go hand-in-hand with increased rigour of the drug tests. In the HOPE model, Bartels (2016, 2017, and 2018) describes a range of (fairly moderate) sanctions available to the court to penalise violations of the order (including cell-block, 2-day, 15-day or 30-day jail sentences). She argues that these sanctions facilitate rehabilitative and therapeutic outcomes, despite, or perhaps due to, their intense focus on punitivism, deterrence, and, of course, swift, certain and fair justice (Bartels, 2018). Although there are many similarities between Manchester and HOPE, the lack of sanctioning powers at MRC is perhaps the biggest difference. However, success of the HOPE model suggests that implementation of Component 6 could provide a more fruitful future for MRC. This would include giving magistrates an assortment of sanctions to accompany progress monitoring like in HOPE. This is a change that ultimately lies at bottle level by altering legislative powers within the CJA. In turn, perhaps ironically, more punitive sentiments at Manchester could bring about more TJ-friendly responses and would also further sit line with the currently more punitive CJ climate in England and Wales (see Chapter 2, 2.8).

Notably, the CJA sections 178 and 192 do give magistrates the power to attach and remove provisions to community orders and suspended sentences including more punitive sentences so long as the offender agrees (McSweeney et al, 2008). However, research has shown these powers are rarely used due to: ignorance, cost and resources, and availability of magistrates and fear that it created tension between magistrates and the probation services (Donoghue, 2014). Nonetheless, even if they were used, powers within 178 and 192 fall significantly short of the ideal where breaches should be aligned to HOPE for effective practice (Bartels, 2016). However, this would require a clearly thought out conceptual model that properly

considers the sustainability pillars upon which the court relies, and broader bottle factors, to ensure coherent delivery.

7.3 Conclusion

Like many rehabilitative CJ interventions in England and Wales, MRC is a significantly under-researched, under-prioritised, and misunderstood area, where perhaps consequentially, perhaps causally, there has been no published empirical literature (Matrix Knowledge Group, 2008; Estep, 2014). During the final part of Chapter 2 (2.7), it was concluded that England and Wales has been unreceptive to a RR due to deep-seated punitive attitudes towards CJ. The previous chapter (Chapter 6) further demonstrated that the wine at MRC was poured in a TJ friendly style to indicate passion for good practice by practitioners. The purpose of this chapter was to dig a little deeper in an attempt to understand the structure of the MRC bottle as well as drawing upon past DC failures to pave the way for a more successful future for court specialism.

The latest England and Wales DC analysis (Kerr et al, 2011) is now outdated, and since its publication, there have been significant changes to the surrounding landscapes, including but not limited to, austerity measures, cutbacks, and centralisation and privatisation reforms to sectors that pillar DC sustainability. Moreover, the report does not refer to MRC in current format, only the speculated predecessor model of Salford DC. Although the wine at Manchester was TJ-friendly (Chapter 6), successful application of TJ also relies upon support from the wider landscapes, which scholars call "the bottle" (Donohue, 2014; Donohue and Bowen, 2013; O'Neil et al, 2016; Wexler, 2014). Whilst the previous chapter focused exclusively on the "wine", this chapter broadened in focus, bringing together "bottle" (see Diagram A, Chapter 3, 3.3) data points based on a triangulation rationale. This enabled me to consider the legitimacy of MRC's "bottle" to answer research questions 1 and 2 ("bottle") (posited in Chapter 2, 2.9). It yielded an abductive approach (Glaser and Strauss, 2010) that looked beyond the data to rationalise realist effects in terms of social structures, legislation, and policy through an extensive desk-based analysis. As detailed previously (see Chapter 3), at times the setting has been difficult to work with empirically and I have faced many caveats

due to the unfriendliness of the bottle. However, as time progressed, I realised that each of these frustrations were important qualitative findings, which this chapter could disclose through conversations about the bottle.

To reiterate, there is no record of this court in the accessible literature, no mention on the UK Justice Innovation website, not in the media, and not in any policy document and nor is there a court handbook or website outlining objectives and expected practice. MRC was a UK misnomer and it was uncertain whether it was the ghost of predecessor Salford DC or an altogether different method of problem-solving practice. Confusion on its definition was augmented by conversations with staff, some of whom believed it was a DC, others a RC. Understanding its definition is important because it clarifies the appropriate international research to apply for analysis and discussion, and to also make suggestions for successful delivery. If MRC is a DC then it is appropriate to use the component matrix (NADCP, 2004) for this purpose. However, if the court is something else, we can look to other similar models to establish best practice principles.

As there is no explicit documentation detailing MRC's definition, aims, objectives, or practice protocol, analysis was made tricky. The Ten Key DC Components document (NADPC, 2004) was implemented as a deductive code map during thematic analysis as an attempt to reveal areas of compliance and non-compliance to the framework in an attempt to create some clarity on its definition. The following themes emerged and were reported upon: i) objectives; ii) treatment quality; iii) breaches, attendance and fragmentation issues; iv) the written report and drug testing, and; v) the court team and court powers. Through these themes, the data within this chapter has disclosed that MRC lacks fundamental fidelity to the underlying DC framework matrix, and therefore should be understood, communicated and practised by borrowing best practice from alternative models.

The question on its definition became research question 1 ("bottle"). To answer this question, the following points made throughout this chapter and key points are summarised here to suggest that MRC was ghost of Salford DC:

1. MRC mimicked international DC objectives, including those from the England and Wales' predecessor models: namely, tackling addiction as underlying cause of crime

and diverting offenders away from the mainstream CJS (namely prison) to allow them to rehabilitate, in compliance with Component 1.

2. Perhaps the biggest argument to suggest MRC is the ghost of Salford is both models provided regular review for participants, all of whom were on DRRs of less than 12 months. In both models, reviews took place without statutory obligation in a specialist courtroom housing the reviews on a distinct afternoon with a dedicated panel.
3. Like the predecessors, MRC also had broader eligibility criteria, including violent and non-acquisitive offenders from low, medium and high risk sentencing bands. Eligibility has thus always been broader within England and Wales' court specialism compared to a traditional DC.
4. Like the predecessors, clients are linked to the drugs services by their probation officers outside the courtroom, which limits magistrates' role in court. In both models, the treatment services provided insufficient support to illustrate non-compliance to Component 4.
5. Like the predecessors, test results were not produced to a satisfactory standard, demonstrating non-compliance to Component 5.
6. Like the predecessors, there appear to be fragmentation issues between parties through non-compliance to Component 10, although this appears to have worsened over time.
7. (From Chapter 6), like the predecessors, there was an inconsistent presiding bench although problems with this appear to have worsened over time, demonstrating ongoing breach to Component 7.
8. (From Chapter 6), in both models, magistrates interacted in similar therapeutic styles.
9. (From Chapter 6), in both models, training of magistrates was insufficient to suggest ongoing non-compliance to Component 9.

The following points also suggested that the court was an altogether different method of practice to the Salford DC:

1. Unlike in the predecessors, magistrates lacked the powers to reward and sanction in court to demonstrate that MRC breaches Component 6. However, there appear to be some unused statutory powers under section 174 and 192 of the CJA.
2. Unlike the predecessors, there was absence of a multidisciplinary team in court to indicate that MRC breached Component 2 and 10.

Therefore, to answer research question 1 ("bottle"): is Manchester a DC? No, it cannot be as it is significantly non-compliant to the DC fidelity framework. The court is therefore a "DRR Review Court" (hence the title of this thesis). Is it similar to previous England and Wales "DCs"? Yes - it is very similar including areas of compliance and non-compliance to the fidelity matrix. Is it the ghost of Salford DC? This is inconclusive. However, we can conclude that neither MRC nor the predecessor models (including Salford DC) are or were ever DCs at all, and therefore wrongly titled, due to fundamental fidelity issues. Perhaps its title does not matter, but what does matter is that objectives, implementation and practice protocol are consistently understood by practitioners, implementers and researchers to ensure coherent, successful and sustainable delivery. Analysis within this chapter has therefore brought to light longstanding problems at grassroots level. Although in theory UK policymakers appeared to advocate DCs during implementation in the early noughties, it seems that they did not fully buy into the practical model, instead making only a qualified and tokenistic attempt at successful operation. This ties into research question 2 ("bottle"), in which misplaced ontological founding is likely to have caused the predecessor DCs to be inflicted on poor conceptual model without considered support from the "bottle".

The chapter described the following issues at bottle level to answer research question 2 ("bottle"), is the bottle TJ friendly?

1. Non-legality of the review process combined with hesitancy to breach under the PbR at probation under the Transforming Justice (2014) and accessibility meant that court attendance is significantly poor.
2. Under the court centralisation reforms (Courts Act 2003) the court catchment area has expanded to Greater Manchester. This means that individuals must attend DRR appointments (including: probation, reviews, treatment and medical) on a

significantly broader geographical radius potentially causing participants to not attend reviews. A bus pass could alleviate this issue.

3. The wrap-around services is insufficient and does not properly support the model due to funding cuts and overburdening the system through Transforming Justice (2014).
4. Magistrates have no power to reward or sanction individuals in court due to limited powers given within legislation.
5. There are problem with the testing kits at probation limiting magistrates power to effectively respond to change during review.
6. (From Chapter 6) there were inconsistencies in bench, which was also linked to the court centralisation reforms.
7. (From Chapter 6) there were insufficient training opportunities for magistrates.

During a CJ climate punctuated by austerity measures, current issues surrounding recidivist drug-fuelled crime must be faced but one also cannot ignore the downfall of the previous England and Wales DCs. Although this looks like rather a bleak story, this chapter has shown that court-specialism in England and Wales has a strong place going forward. Whilst it is tempting to suggest that full adherence to the international framework only yields TJ-friendly responses, the work of Bartels (2016, 2017 2018) demonstrates that TJ can also be successfully found within looser nodes of problem-solving court practice.

If England and Wales' RR has been stop-start due lack of political and public appetite and confidence, and poor understanding at grass-roots level by implementers, practitioners and researchers, it might better tolerate an alternative model that emphasises swift, certain and fair justice within a more punitive ethos to mimic HOPE (Bartels, 2016, 2018). Non-traditional methods may also better represent the future for mainstream TJ as they do not exist within independent pockets of the CJS, giving further outreach for TJ principles to infiltrate mainstream arenas. It seems to me that if the MoJ rebranded and repackaged MRC in a way that is properly conducive to England and Wales' current CJS climate and structural components without eroding other core values and priorities, this would invariably pave way for a more successful future, tackling deep-seated current problems surrounding recidivism,

addition, and austerity. Full fidelity to the DC framework is not necessary, but what is necessary is a clear-conceptual framework modelled on international best practice and well-thought out principles accounting for the wider systematic structures.

The precise question of "how" is beyond the scope of this thesis, and could be the next steps post-PhD but would involve designing a renewed fidelity matrix similar to HOPE (Lattimore et al, 2016). It may involve:

- A single but highly trained presiding magistrate.
- The court supported by a dedicated LA who managed cases and coordinates with the probation services.
- Magistrates have the power to distribute punitive sanctions for non-compliance (including breaching for non-attendance).
- All clients are on longer DRRs to better reflect recovery journey and to give coverage under the CJA.
- Clients receive a bus pass to increase attendance of appointments.

Perhaps these reforms would be the end point for England and Wales' court-specialism or perhaps just the beginning. Until the bottle broadly aligns with a rehabilitative ideology and the necessary support is in place for a fully-fledged DC, this seems to be a realistic starting-point for England and Wales and MRC could thus represent great hope for broader application of TJ. In discussions about the wine and bottle analogy, Wexler (2014: 465) posits that any legal landscape that authorises problem-solving courts would "virtually by definition... be highly TJ friendly". This chapter has shown that in England and Wales is perhaps one "bottle" where this quote fails to apply; in spite of authorising court-specialism in the form of MRC and the predecessors, it offered only a TJ unfriendly "bottle" to support its operation, but with great potential for a successful future for TJ.

8 Conclusion

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8.1 Introduction

This final chapter of the thesis will offer a symposium of key findings and summarise how they answer the research questions posited in Chapter 2, 2.10 (recapped below). The chapter will end by outlining the key original contributions of this thesis and where these can be found within the main text.

8.2 Research Questions

8.2.1 Wine

- 1) How can we most accurately measure compliance with Therapeutic Jurisprudence ("TJ") values in a future problem-solving court setting?
- 2) What impact does an inconsistent bench have on the therapeutic application of magistrates' interpersonal skills?
 - a. Does magistrates' gender impact application of TJ wine?
- 3) What is the therapeutic quality of the magistrates' interpersonal skills at MRC?

8.2.2 Bottle

- 1) Does the court adhere to the international framework (NADCP, 2004)? How do we define it: is it a DC, is it a Review Court?
- 2) What is the therapeutic quality of the current MRC bottle?

In Chapter 2, the thesis began by reviewing the existing literature to form a scientific rationale for study and to identify where the original contributions would lie. Chapter 2 also gave the project a theoretical basis, historical background, and offered discussion around England and Wales' Rehabilitation Revolution ("RR"). This gave a backbone to the thesis,

lending itself to broader discussions throughout about the journey of TJ in England and Wales over the last twenty years as well as possibilities going forward.

Chapter 2 detailed that England and Wales currently faces problems with recidivism and recent Criminal Justice ("CJ") policy documents are therefore littered with plans to tackle this issue with effect (MoJ, 2018c, McGuire, 2015, MoJ, 2013). There is a plethora of research pointing to the demonstrable link between drug addiction and a smorgasbord of recidivist crimes (for instance: shoplifting, burglary, vehicle crime, robbery) (National Council on Alcohol and Drug Dependence, 2015). If the aetiology of recidivist crime is drug addiction, this links to broader and long-standing questions: when addicts are caught up in the Criminal Justice System ("CJS") could this be a window of opportunity to intervene and rehabilitate them, and; could the CJS itself be a vehicle for recovery? These questions tie into broad changes in theoretical perspectives captured by the RR. Within this, psychology and recovery paradigms have transformed previous deficit models into strengths-based perspectives that seek to cultivate positive aspects of human character (Seligman, 1998; Granfield and Cloud, 2008). Running parallel are paradigm shifts within the CJ field, where changes are founded within - and elucidated by - a positive punishment ideal, to significantly change the tone, structure and delivery of many punishment disposals (McNeil, 2015), forcing us to think of new models to deal with recidivist cycles within the above posited questions.

With the changing of lenses comes the emergence of a multitude of new therapeutic, reintegrative, and restorative interventions, including the ground-breaking work of TJ. TJ is interested in therapeutic application of the law to enhance psychological wellbeing and to promote rehabilitative outcomes (Perlin, 2016). It therefore sits confidently within a RR ideology to incorporate the new-found strengths-based approaches of psychology, recovery, and more. TJ is a complex philosophy incorporating many dimensions: it is a lens, a set of principles, a practice, a theory and a method, and TJ experts appear to have deliberately avoided shoehorning the paradigm to enable creative application. Researchers have raised further questions about how we can measure TJ within empirical projects (Google Lists, TJ, 2016, 2017, 2018) leading to broader questions about whether or not TJ can be truly captured by empirical measurement. There is currently no tool posited for this purpose, and my project in part fills this gap, a point that I will return to shortly (in 8.1.2.1).

Much of the TJ literature is structured around Wexler's "wine"- "bottle" metaphor (Wexler, 2014) where a combination of both components (and their TJ strength) determines therapeutic potential. Endorsed for both their TJ-friendly bottle and wine, Drug Courts ("DC"s) have a close relationship to TJ, as well as a longstanding history across jurisdictions worldwide (Hora, 2002; Hora et al, 1999). The first DC was implemented in Miami-Dade County, which faced problems with recidivism much like England and Wales currently, forcing US policymakers to consider rehabilitative alternatives. Research indicates that the DC model was successful (Marlowe, 2011) and models have since proliferated across jurisdictions worldwide. A "typical" DC is best captured by the Ten Key Components of DCs (National Association of Drug Court Professionals ("NADCP"), 2004) where results have confirmed that fidelity to the framework creates optimum outcomes (Marlowe, 2010). However, like with any craze, DCs appear to have dipped in fashion and unconventional models exhibiting less fidelity but still in possession of a TJ ethos are beginning to emerge worldwide, perhaps offering a more sustainable alternative to the conventional DC model as well more mainstream application of TJ (Stobbs, 2013).

Although the literature reports only quietly on England and Wales DCs, six pilots were established from the early noughties, and were very much alive in 2011 (Kerr et al, 2011). However, since then, their success has differed significantly to that in international jurisdictions. The last piece of England and Wales-based empirical research was a process evaluation by Kerr et al (2011), which appeared to have a misplaced ontological founding (failing to mention TJ), where it was fortuitously revealed that the original models lacked fidelity to the underlying component matrix (NADCP, 2004). This leads to the broader question of whether the models ever really DCs at all. Moreover, what remains of the predecessors? Since 2011, there has been no published research, only a series of newspaper articles detailing that they have closed down (Bowcott, 106; Robins 2018; Gibbs, 2016). Of the six original DCs, arguably, only the ghost of Salford DC remains in the form of Manchester Review Court ("MRC"), which became the object of study within this thesis. MRC is a specialist court with a problem-solving rationale that brings offenders back for regular review of progress on the core Drug Rehabilitation Requirement ("DRR") element under section 210 of the Criminal Justice Act 2003.

I reiterate the following soundbite throughout this thesis for emphasis: there has been no detail of MRC in the accessible literature, no mention on the UK Justice Innovation website, not in the media, and not in any policy document and nor is there a court handbook or website outlining objectives and expected practice. Therefore, the purpose of this project was to fill a significant literature gap by providing a groundwork of knowledge to a significantly underexplored area. The thesis offered an exploratory study that built upon Kerr et al (2011) using three main phases of data collection. In line with the famous TJ analogy, the research questions were split into two focuses, referring to "wine" (interpersonal skills) and "bottle" (broader systemic) issues to enable a wider qualitative narrative to be formed surrounding the possibilities and pitfalls of TJ in England and Wales, in the past, present and future. During the final part of Chapter 2, it was concluded that England and Wales has been unreceptive to a RR due to deep-seated cultural attitudes promoting punitive CJ measures. England and Wales currently faces a time of political uncertainty, upheavals, and black-holes and governments have put forward an extremely unreliable set of mixed messages in relation to RR agendas. It remains to be seen how the RR will unfold, as well as plans for further rolling out problem-solving courts ("PSCs"). However, the purpose of this thesis was, in part, to make suggestions for coherent, successful and sustainable delivery of TJ within the future of England and Wales.

To answer the questions, the three main phases of methods were described throughout Chapter 3, namely: standardised observations (Phase 1), surveys (Phase 2), and interviews (Phase 3) as well as an ongoing ethnographic stage enveloping the full study. The Critical Realism ("CR") paradigm justified the mixed methods design. If ontological realism assumes that the world exists independent to its observers (Easton, 2010) and epistemological realism accepts that to know the world is largely "fallible and theory-laden" (Sayer, 1992 cited in Easton, 2010: 1997), then CR is concerned with subjective interpretation of an objective world where empirical data will always be limited. Through the CR paradigm, it was argued in Chapter 3 that purist rationales in the social sciences are not possible; on the one hand, the process of deducing intangible variables is inherently biased as latent phenomenon are unobservable. Yet on the other hand, the starting point of inductive reasoning has necessarily been deduced. Therefore, ascribing to a paradigm that sat somewhere in the middle was necessary.

By mixing methods with a case study approach, the dataset generated an interpretation of an objective phenomena, where the limitations of one method could be somewhat overcome by the other (Zachariadis et al, 2013). Nonetheless, whilst some of the methods themselves were technically quantitative (namely: standardised observations, surveys) the methodology itself consistently fitted into a qualitative genre, telling a story of MRC through interpreted, first-person, narrative-based discourse. The methodology moved between inductive and deductive reasoning, where a more qualitative approach to the quantitative data was taken and a more quantitative approach to the qualitative data. This meant that constructivist and positivist paradigms were cross-fertilised both across and within data-points within CR. The main analysis and discussion chapters (Chapters 6 "wine" and Chapter 7 "bottle") yielded an abductive approach, looking beyond the data to establish social causes, including the impact of legislation, policy, and privatisation and centralisation reforms to rationalise the realist effects seen within the data. This somewhat overcomes the limitations of empirical data as it looks towards real-life structures, mechanisms and causation, beyond the empirical, beyond the epistemological, instead towards the heart of the ontological. Although this may never be fully achievable, abductive reasoning perhaps can do more than other forms of logical interference by virtue of its realist approach.

Before proceeding to the substantive analysis and discussion chapters, Chapter 4 summarised the socio-demographic of participants from Phases 1, 2, and 3. This was an important step, characterising the sample to identify areas of potential bias within the results and to understand later trends and changes. Firstly, the Phase 1 and 2 demographics were explored together because they both operated larger amounts of quantitative data across the same variables: age, gender, drug type and offence type. Secondly, the demographic information of the Phase 3 participants was summarised by lifting information from the qualitative data. Overall, Chapter 4 demonstrated a range of demographics across data sources, which gave me confidence in the representativeness of their interpretations.

8.2.2.1 Research Question 1 ("wine"): how can we most accurately measure compliance with TJ values in a future Problem-Solving Court setting?

The next analysis within chapter 5 moved on to consider measurement of TJ "wine" to answer research question 1 ("wine"). A highly topical current question is how social scientists can empirically measure TJ principles (TJ-Lists, 2016, 2017, 2018; Stobbs, 2015). However, there is currently no universal measurement tool posited for this purpose, which leaves space for creative empirical study to take original forms. There is also no single definition of what it means to possess "therapeutic interpersonal skills", which is perhaps a deliberate attempt to leave space for innovative interpretation, application and analysis. A comprehensive formula is offered within Goldberg's (2011) judicial training manual to form the foundation of the posited "wine" measurements in this project where four skills, comprising eighteen variables, intended to measure the therapeutic interactional style of magistrates at MRC: "empathy", "respect", "a positive focus", and "active listening". In Chapter 5, Principal Component Analysis ("PCA") and Cronbach's Alpha were used to explore the validity and reliability of the "wine" measurement scales to answer "wine" research question 1. I was aware that by bypassing standardised scales, measurements may not accurately capture the intended construct and PCA could explore this idea. PCA revealed that the eighteen substituting items, arranged on the four hypothesised scales (as above) instead measured three principal components. They were thus rearranged onto three new scales to reflect these outputs, and renamed: "Harnessing Therapeutic Support", "Engaging Therapeutic Dialogue", and "Inspiring Therapeutic Change". Cronbach's Alpha illustrated high inter-scale reliability of the new scales.

Importantly, TJ's breadth would make extensive measurement of the paradigm impossible, and any suggested tool would always be somewhat flawed for lacking comprehensibility. However, if TJ's longstanding goal is to draw attention to the therapeutic and/or anti-therapeutic aspects of the law, the purpose of empirical measurement should be to provide insight into previously underappreciated, but significant, therapeutic (or, indeed, non-therapeutic) areas of law process. The tool posited in Chapter 5 did exactly that by providing a snapshot of the wine at MRC in Chapter 6. The analyses in Chapter 5 contributed to the development of a prospective instrument for measuring TJ wine in PSCs contexts henceforth for further piloting. Whilst I do not claim these scales are perfect, far from it, they are posited as one of the original contributions of this thesis and can be re-used, modified and adapted for

both qualitative and quantitative studies carried out by TJ empirical researchers, going forward.

8.2.2.2 *Research Question 2 ("wine"): what impact does an inconsistent bench have on the therapeutic application of magistrates' interpersonal skills? 2A ("wine"): Does magistrates' gender impact application of TJ wine?*

Moving on to the main analysis and discussion chapters, Chapter 6 offered a complex analysis that brought together results from the "wine" data sources (in Phase 1, 2 and 3). By knitting together various data vantage points, Chapter 6 used the wine data to answer "wine" research question 2 and 3 (see Diagram A, Chapter 3, 3.4). Analyses in this chapter were performed using the reconfigured scales from the PCA in Chapter 5: "Harnessing Therapeutic Support", "Engaging Therapeutic Dialogue" and "Inspiring Therapeutic Change". These scales were used both as measurements within Phase 1 and 2 statistical analyses and as a deductive coding structure, and therefore measurement of, Phase 3 data during thematic analysis. Phase 1 and 2 were firstly analysed together because they both used statistics measured on the same sub-variables. A subjective cut off point was added to the numbers as an exploratory technique where "below 3" represented a non-therapeutic score and "above 3" (including 3) represented a therapeutic score based directly on the qualitative indicators from the Likert coding (Vagias, 2006). This subjective (and ultimately qualitative) analysis of numbers lent itself to the CR philosophy, which advocates cross-fertilising paradigms to answer research questions (Sayer, 1992 cited in Easton, 2010). The quantitative findings were substantiated with qualitative data from Phase 3 where results could be understood as dissonant, complementary or convergent based on a triangulation rationale to heighten validity (Kelle and Erzberger, 2003).

Within Component 7, the NADCP (2004: 15) report that "ongoing judicial interaction" is essential. A wealth of TJ literature further emphasises that a consistent bench formulates therapist-client style relationships in problem-solving court contexts (Winick and Wexler, 2003; Hora 2002). As MRC had no rota system in place to ensure consistency, the panel of magistrates changed each fortnight that the court ran. Research question 2 ("wine") sought to

understand the impact of an inconsistent bench on operation of the three core skills. The Phase 1 and 2 analyses both showed differences in the therapeutic quality of interpersonal skills according to the bench, although most panels applied the skills therapeutically. The Phase 3 data converged to suggest that the inconsistent bench resulted in inconsistent application in which every participant agreed that different benches had different styles of administering TJ wine. This finding built upon predecessor DC research by Kerr et al (2011) who previously established difficulties implementing a consistent bench within the original England and Wales models. The worsening of this problem is likely to be underpinned by court centralisation reforms under The Courts Act 2003⁵⁶. Under this policy, ramifications on specialist courts are profound by opening up the geographical radius making consistency harder to achieve as the judicial pool broadens.

As the bottle remains fundamentally TJ unfriendly in this respect, a consistent panel of three would be difficult to achieve without systemic change at policy level reversing the reforms. However, this is farfetched and would undermine other England and Wales managerial, quality assurance, and consistency priorities within CJ. I thus posited in Chapter 6 that perhaps a more realistic, and indeed ideal, scenario would be a single presiding magistrate dealing with all DRR reviews. Amidst a climate of austerity measures and cutbacks, this sits with broader objectives seeking to save on expenditure including overall reductions to the quantity of magistrates (Justice Committee, 2016). This would be further plausible given the irregular occurrence of review hearings (one afternoon fortnightly), simply requiring one magistrate to be available for the DRR role each time. However, such individual must possess the correct TJ know-how, attitude and personality (Perlin, 2012), which may be enhanced through specialist training. Given that this seems fairly straightforward, perhaps the real issue is stimulating political will, appetite and motivation to implement the correct measures to allow this type of practice to function successfully. However, if England and Wales is serious about revolutionising CJ, as current policy documents appear to suggest (Bowen and Whitehead, 2015; Transforming Justice, 2014), attempts must be made to mirror international

⁵⁶ Salford was integrated into Manchester Magistrates' Court in 2012, Bury in 2017, and further anticipated integration of Bolton in the future (DRR Staff 1; Court Staff 1).

best practice through a well-researched conceptual model, including compliance to Component 7.

During the inconsistent bench analysis, panels were contextualised into bench demographics to explore TJ quality changes where a gender discrepancy emerged. Added inductively as research question 2A, the gender demographic was analysed in a more confirmatory analysis using a one-way ANOVA and Tukey Corrections. Here, the p value showed statistical significance, in which mixed panels were more therapeutic than all-females at "support". This finding was ratified by qualitative data in which participants referenced male magistrates as particularly therapeutic to suggest that female panels could be less so. Nonetheless, and importantly, the qualitative data did not indicate that female magistrates were non-therapeutic, just a positive impression from certain individual males more generally. The qualitative data also indicated other judicial demographics as more plausible impactors on consistency of TJ, namely: age and life experience, personality, and attitudes to addiction. With all things considered, it was concluded that inconsistencies in application of TJ wine were likely to be rooted into something deeper seated than gender, and further analysis was recommended for consolidation.

Inconsistencies may also be linked to limited training given to MRC magistrates; the last session was given in 2010 at Salford DC, precluding some of the current magistrates. This indicated non-compliance to Component 9, and meant that some magistrates were operating MRC blind. If it is that certain panels are weaker in TJ proficiency, how can we blame them when so little training has been offered? Increased judicial training would rely upon opportunities given by the Judicial College under the Constitutional Reform Act 2005. However, the literature indicates that Judicial College training budgets have been significantly cut in recent years to demonstrate a fundamentally TJ-unfriendly bottle (Judicial College, 2013-2014).

8.2.2.3 *Research Question 3 ("wine"): what is the therapeutic quality of the magistrates' interpersonal skills at MRC?*

Once impact of non-compliance to Component 7 had been considered within research questions 2 and 2A ("wine"), analysis of the overall therapeutic quality of the "wine" was considered to answer research question 3 ("wine"). The Phase 1 and 2 analyses complemented one-another to show that "therapeutic dialogue" was magistrates' strongest skill, "therapeutic support" intermediate and "therapeutic change" the least therapeutic. Whilst these differences did manifest themselves, they were unsubstantial, and magistrates scored "good" (therapeutic) at each skill to suggest that the wine at MRC was TJ friendly. When considering the little or non-existent training given to MRC magistrates, their therapeutic interpersonal skills are quite remarkable and they indicate passion for good practice. The question was further interested in individual scores for each compounding sub-variable to give greater depth to the proficiency analysis within research question 3 ("bottle"). Using deductive thematic analysis (Braun and Clark, 2006), four skills emerged as central to the application of MRC wine. These were: "understanding the complexity of Alcohol and Other Drugs ("AOD") issues" ("support"), "motivating individual" ("support"), "giving offender a voice" ("dialogue") and "realistic goal setting" ("change"). These findings built upon the predecessor report (Kerr et al, 2011: 25), in which the key judicial interactional styles were reported to be: "motivational; personalised; interactive; authoritarian and challenging". This highlighted that MRC operated similar key wine styles to the original DCs. Of these four skills, the data suggested that "motivating individual" was the most crucial interpersonal skill because it was also a fundamental tenet of MRC. The most therapeutically applied skill from the themes was: "giving offender a voice" within the "dialogue" construct. This links to the work of Lynch and Perlin (2016) who emphasise the importance of the Procedural Justice ("PJ") discourse for encouraging TJ outputs during solution-focused conversation.

At the time I was carrying out my research, MRC came across insular, and practitioners came across confused on its purpose (ethnographic data). If Judicial Colleague funding is tightening and the bottle intensifying in TJ unfriendliness, anchoring goals within an international dimension might be a way of sparking interest, enthusiasm and learning amongst magistrates. Indeed, it might be up to the magistrates themselves to seek creative extra-curricular methods to train themselves by learning from international TJ experts. Given that magistrates are unpaid Justices of the Peace, choosing to volunteer their time to DRR

court work, this might indicate a pre-existing passion to be capitalised upon. Of course, the ideal would nevertheless be just one highly-training DRR magistrates presiding, with a toolkit of TJ knowledge and the appropriate TJ personality (Perlin, 2012).

Recently, Wexler (2018: 1) called for: "amicus justitia" briefs, "a new type of legal writing", designed to increase international TJ knowledge, awareness, and education by raising the profile of practices with an under-appreciated therapeutic orientation to create a global outreach. Briefs may take the form of longer or shorter blogs, articles, or manuals, but are intended to be snappy, accessible and sustainable (Wexler, 2018). Engaging MRC in amicus justitia briefs might be a three-tiered goal: i) creating a first brief that draws attention to the TJ aspect of the review court (particularly magistrates' skills-base) to initiate international dialog and spark interest; ii) exchanging briefs with key personnel from the classic DCs, HOPE (Bartels, 2016, 2017 2018) or other similar models, and finally; iii) moderating and editing the original brief to incorporate the best practice of others. This would also help to create a MRC court handbook that includes the goals, objectives and philosophy of the court, nature of drug abuse and treatment including local issues, practice protocol, overview of the broader legal requirements, as well as international best practice to increase consistency within approaches. This would be continually modified as briefs are exchanged and as local issues change.

Raising the profile of the court goes hand-in-hand with a current wider project to increase awareness of TJ in the UK and changing cultural sentiments through the creation of a TJ Centre (an ongoing project supervised myself an colleagues), which will intensify global relations, create a hub for interaction, and mechanism for knowledge-sharing as well as (hopefully) sparking interest and excitement amongst the Manchester magistrates following publication of this project. Next steps might involve development of the first amicus justitia brief. The UK centre can help to facilitate international partnership working for the second brief with the Manchester magistrates (hopefully) on board to spark interest within global networks. More broadly, if MRC sits in the CJ mainstream and continues to use regular magistrates from the mainstream courts, this could be a small but significant step for the UK's arm within the ongoing international goal of TJ mainstreaming (Wexler, 2014).

The overarching finding from the research questions 2 and 3 ("wine") was that the wine was operated in alliance with TJ philosophy. However it could be improved through:

1. A consistent bench to comply with Component 7. This is currently looking unlikely under the centralisation court reforms. A single presiding magistrate is perhaps more realistic as well as preferable. Creating a court handbook might also be a good way to ensure coherent practice.
2. In either case, enhanced judicial specialist training through the Judicial Colleague is required to comply with Component 9. However, this intervention ultimately lies at bottle level rendered unlikely within recent austerity measures at the Judicial Colleague. Therefore, it might be up to magistrates to find new ways to train themselves. Drawing upon international best practice is key, which could be initiated through "amicus justitia" briefs and a UK TJ Centre.

Ultimately, the "wine" analysis showed that magistrates were working well under difficult structures and the wine administered was TJ-friendly. However, where the CJS is emphasising managerialism, centralisation, and austerity measures, the bottle remains unfriendly. Indeed, successful application of TJ also relies upon support within wider landscapes, which scholars call "the bottle" (Donohue, 2014; Donoghue and Bowen, 2013; O'Neil et al, 2016; Wexler, 2014). The next part of the analysis extended the investigation to these structural elements.

8.2.2.4 Research Question 1 ("bottle"): does the court adhere to the international framework (NADCP, 2004)? How do we define it: is it a DC, is it a Review Court?

Since the latest England and Wales DC analysis (Kerr et al, 2011), there have been significant changes to the surrounding landscapes, including but not limited to, austerity measures, cutbacks, and centralisation and privatisation reforms to sectors that pillar DC sustainability. Whilst Chapter 6 focused exclusively on the "wine", Chapter 7 broadened in focus, bringing together the "bottle" data points (see Diagram A, 3.4) to consider the legitimacy of MRC's "bottle" to answer research questions 1 and 2 ("bottle"). It yielded an abductive approach (Glaser and Strauss, 2010) that looked beyond the data to rationalise seen

effects in terms of social structures, legislation, and policy through a complementary, extensive desk-based analysis.

MRC was a UK misnomer and it was uncertain whether it was the ghost of predecessor Salford DC or an altogether different method of problem-solving court practice. Confusion on its definition was augmented by conversations with staff, some of whom believed it was a DC, others a Review Court ("RC"). Understanding its definition was important because it clarified the appropriate international research to apply for analysis and discussion, and also to make suggestions for successful delivery. If MRC is a DC then it would be appropriate to use the component matrix for these purposes (NADCP, 2004). However, if the court is something else, we can look to other, similar models to establish best practice principles. As there is no explicit documentation detailing MRC's definition, aims, objectives, or practice protocol, analysis was made tricky. The Ten Key DC Components document (NADPC, 2004) was implemented as a deductive code map to unravel the answer to this definitional question by identifying areas of compliance and non-compliance to the component matrix. The data disclosed that MRC lacks fundamental fidelity to the underlying DC framework, and therefore should be understood, communicated and practised by borrowing best practice from alternative models (for instance: the Judicial Monitoring scheme in Victoria (Judicial College, 2015), Special Sanctions Court (Snell, 2007), Hawaii's Opportunity with Probation Enforcement ("HOPE") (Bartels, 2016, 2017, 2018) and (Probation Accountability with Certain Enforcement) ("PACE") (Carns and Martin, 2011).

The question on how to define MRC became research question 1 ("bottle"). In answering this research question, the following points were made throughout in Chapter 7 to suggest that MRC was ghost of Salford DC:

- 1) MRC mimicked international DC objectives, including those from the England and Wales' predecessor models: namely, tackling addiction as underlying cause of crime and diverting offenders away from the mainstream CJS (namely prison) to allow them to rehabilitate, in compliance with Component 1.
- 2) Perhaps the biggest argument to suggest MRC is the ghost of Salford is both models provided regular review for participants, all of whom were on DRRs of less than 12

months. In both models, reviews took place without statutory obligation in a specialist courtroom housing the reviews on a distinct afternoon with a dedicated panel.

- 3) Like the predecessors, MRC also had broader eligibility criteria, including violent and non-acquisitive offenders from low, medium and high risk sentencing bands. Eligibility has thus always been broader within England and Wales' court specialism compared to a traditional DC.
- 4) Like the predecessors, clients are linked to the drugs services by their probation officers outside the courtroom, which limits magistrates' role in court. In both models, the treatment services provided insufficient support to illustrate non-compliance to Component 4.
- 5) Like the predecessors, test results were not produced to a satisfactory standard, demonstrating non-compliance to Component 5.
- 6) Like the predecessors, there appear to be fragmentation issues between parties through non-compliance to Component 10, although this appears to have worsened over time.
- 7) (From Chapter 6), like the predecessors, there was an inconsistent presiding bench although problems with this appear to have worsened over time, demonstrating ongoing breach to Component 7.
- 8) (From Chapter 6), in both models, magistrates interacted in similar therapeutic styles.
- 9) (From Chapter 6), in both models, training of magistrates was insufficient to suggest ongoing non-compliance to Component 9.

The following points also suggested that the court was an altogether different method of practice to the Salford DC:

3. Unlike in the predecessors, magistrates lacked the powers to reward and sanction in court to demonstrate that MRC breaches Component 6. However, there appear to be some unused statutory powers under section 174 and 192 of the CJA.

4. Unlike the predecessors, there was absence of a multidisciplinary team in court to indicate that MRC breached Component 10.

Therefore, to answer research question 1 ("bottle"): is Manchester a DC? No, it cannot be as it is fundamentally non-compliant to the DC fidelity framework. The court is therefore a "DRR Review Court" (hence the title of this thesis). Is it similar to England and Wales' previous "DCs"? Yes - it is very similar, including areas of compliance and non-compliance to the matrix. Is it the ghost of Salford DC? This is inconclusive. However, we can conclude that neither MRC nor the predecessors (including Salford DC) were ever really DCs due to fundamental fidelity issues. This thesis has therefore brought to light longstanding problems with understanding the practice at grassroots level. Perhaps its title does not matter, but what does matter is that objectives, implementation and practice protocol are consistently understood by practitioners, implementers and researchers to ensure coherent, successful and sustainable delivery. This finding ties into the research question 2 ("bottle") where lack of understanding of the underlying foundations are likely to have caused England and Wales' predecessor DCs to be inflicted on poor conceptual model without legitimate support from the "bottle".

8.2.2.5 Research Question 2 ("bottle"): what is the therapeutic quality of the current MRC bottle?

The chapter described the following issues at bottle level to answer research question 2 ("bottle"):

- 1) Non-legality of the review process combined with hesitancy to breach under the PbR at probation under Transforming Justice (2014) meant that court attendance was significantly poor. Furthermore, under the court centralisation reforms (Courts Act 2003) the court catchment area has expanded to Greater Manchester. This means that individuals must attend DRR appointments (including: probation, reviews, treatment and medical) on a significantly broader geographical radius potentially causing many participants to not attend. A bus pass could alleviate this issue.
- 2) The wrap-around services do not properly support MRC due to funding cuts.

- 3) Magistrates have no power to reward or sanction individuals in court due to limited powers within legislation.
- 4) There are problem with the testing kits at probation limiting magistrates power to effectively respond to change during review.
- 5) (From Chapter 6) there were inconsistencies in bench, which was also linked to the court centralisation reforms.
- 6) (From Chapter 6) there were insufficient training opportunities for magistrates.

During a CJ climate punctuated by austerity measures, current issues surrounding England and Wales' recidivist drug-fuelled crime must be faced, and one also cannot ignore the downfall of the previous England and Wales DCs. It seems that, although in theory UK policymakers advocated DC implementation during the early noughties, they did not fully buy into the model fully, instead, only making a qualified attempt at successful operation. Although this looks like rather a bleak story, this thesis has argued that court-specialism in England and Wales has a strong place going forward. Whilst it is tempting to suggest that only full adherence to the international DC framework yields TJ-friendly responses, the work of Bartels (2016, 2017, 2018) demonstrated that TJ can also be found within looser nodes of problem-solving court practice. If England and Wales' RR has been stop-start due lack of political and public appetite and confidence, and poor understanding at grassroots level by implementers, practitioners and researchers, it might better tolerate an unconventional model that emphasises swift, certain and fair justice within a more punitive ethos. Non-traditional methods may also better represent the future for mainstream TJ as they do not exist within independent pockets of the CJS but rather within the mainstream arenas. It seems to me that if the MoJ rebranded and repackaged MRC in a way that is properly conducive to England and Wales' current CJ culture without eroding other core values and priorities, this would invariably pave way for a more successful future, tackling deep-seated current problems surrounding recidivism, addiction, and austerity. Full fidelity to the DC framework is not necessary, but what is necessary is a clear-conceptual framework, modelled on matured international principles, which accounts for wider bottle structures.

The precise question of "how" is beyond the scope of this thesis, and could be the next steps post-PhD. It would involve designing a renewed fidelity matrix similar to HOPE (Lattimore et al, 2016). It may involve the following dimensions:

- A single but highly trained presiding magistrate.
- The court supported by a dedicated LA who managed cases and coordinates with the probation services.
- Magistrates have the power to distribute punitive sanctions for non-compliance (including breaching for non-attendance).
- All clients are on longer DRRs to better reflect recovery journey and to give coverage under the CJA.
- Clients receive a bus pass to increase attendance of appointments.

Perhaps these reforms would be the end point for England and Wales' court-specialism or perhaps just the beginning. Until the bottle broadly aligns with a rehabilitative ideology and the necessary support is in place for a fully-fledged DC, this seems to be a realistic starting-point for England and Wales and MRC could thus represent great hope for broader application of TJ.

To summarise, this thesis has made the following contributions to theory, methodology, and policy and practice.

8.3 Original Contributions to Knowledge

8.3.1 Theory

- The project has added breadth to limited TJ scholarship within the UK jurisdiction (see Chapters 2, 6 and 7).

- Knowledge has been gained regarding the current position of solution-focused court practice within England and Wales to fill a significant literature gap (see Chapters 6 and 7).
- Knowledge has been gained regarding operation of MRC and hypotheses made around the downfalls of the predecessor DCs including fidelity to TJ principles and the Ten Key Components (NADCP, 2004) (see Chapter 6 but mainly Chapter 7).
- A deepened and altered understanding of the conclusions derived from the Kerr et al (2011) report has been offered (see Chapters 2, 6 and 7).
- Heightened awareness of the role and operation of MRC judiciary has been achieved (see Chapter 6).
- New and up-to-date information derived by both qualitative and quantitative methods regarding MRC has been carried out (see Chapters 3, 4 and 5).

8.3.2 Methodology

- New research instruments have been developed to investigate the usage of TJ within problem-solving court practice. It was the first attempt to provide a standardised measurement tool for this purpose. New instruments will help future researchers to understand the appropriate ways of examining similar practices in the future at wine level (see Chapter 5).
- A new formulation of “TJ principles” has been devised from the literature review for the purposes of measuring them (see Chapters 2 and 5).

8.3.3 Policy and Practice

- Better understanding of the practice of MRC on grass-root level, which contributes to better informed operation of its practice and greater satisfaction of work by practitioners (see Chapters 6 and 7).

- Suggestions made for better outcomes in terms of England and Wales' problems with repeat offending, recovery, victimisation and austerity through delivery of a more alternative method to solution-focused courts in England and Wales (see Chapter 7).
- Suggestions made for why the original DCs did not work, and, therefore, England and Wales can succeed with similar methods going forward (see Chapters 2, 6, 7).
- Heightened awareness of TJ amongst England and Wales practitioners. Similarly, heightened awareness of MRC by international TJ experts to develop prospective training opportunities (see Chapters 6 and 7).
- New interpretations of key texts offered (King, 2016; Goldberg, 2011), which might be taken into practice (see Chapter 5).

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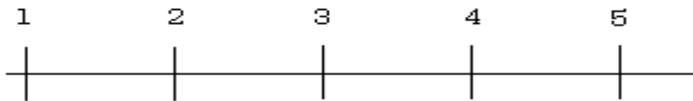
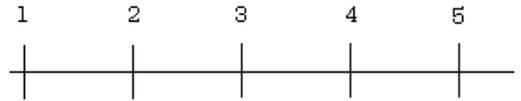
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Appendix 1a: Standardised Observations Protocol

Quality of Offenders' Report

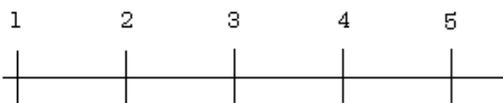


poor fair good very good excellent

Where appropriate, to what extent do/are magistrates....

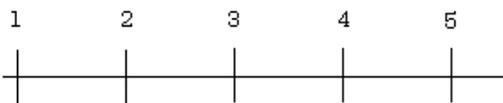
Empathy:

a. Ask Questions about other areas of lives.



N/A

b. Caring towards individual.

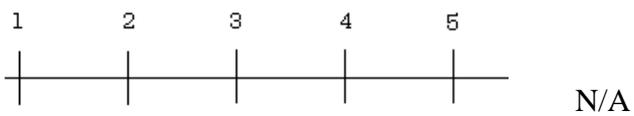


N/A

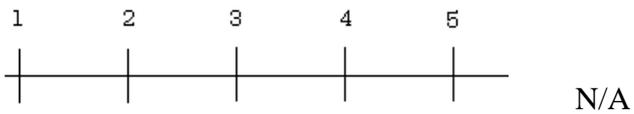
c. Conveying a Sense of Compassion.

Name:
DOB:
Observation Date:
Review Number:
Criminal Offence:
Drug type:
Number of Magistrates:
Magistrates' Gender:
Inputted into SPSS?
Directly linked to survey?

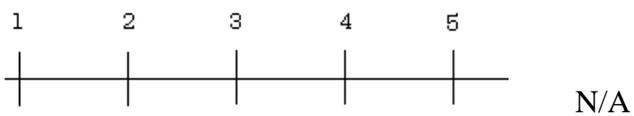
Appendices



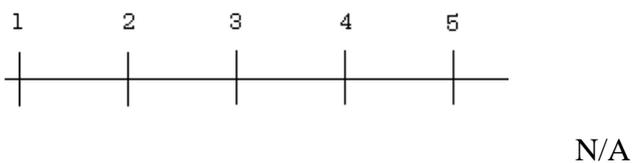
d. Appearing to Understand the Complexity of Drug and Alcohol Problems.



e. Realistic when setting Goals



f. Adopt a non-adversarial, joking, or causal tone to put client at ease



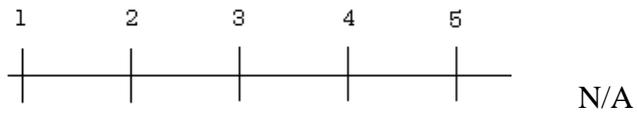
g. expressing interest in participants position



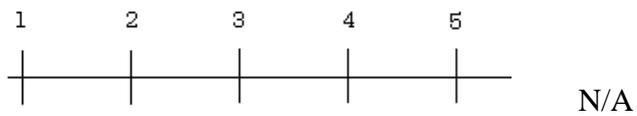
Respect:

Appendices

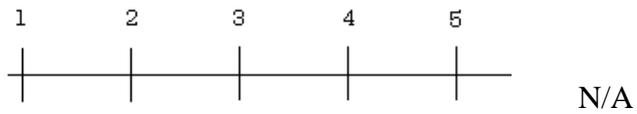
a. Speaking slowly, clearly and loudly.



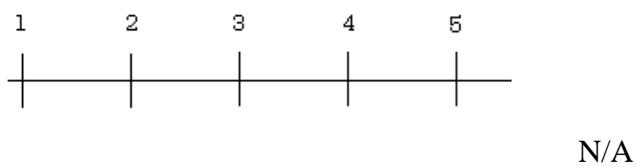
b. Speaking without pity



c. Reiterating goals to ensure that they are clear



d. Refraining from rushing/interrupting participants when they are speaking.



e. Speaking with sincerity



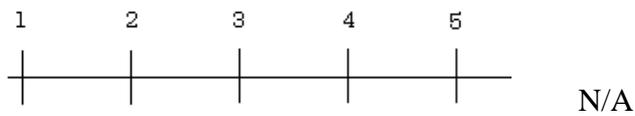
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f. encouraging participant dialogue

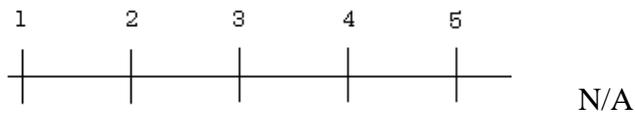


Active listening

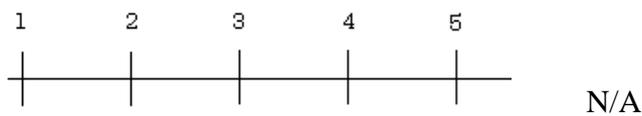
a. Giving Offender a Voice



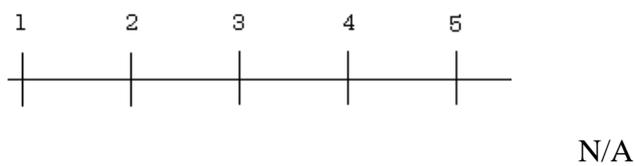
b. Listening to participant's viewpoint.



c. Words to show understanding/ for reinforcement e.g. "okay", "that's good" or "I see".

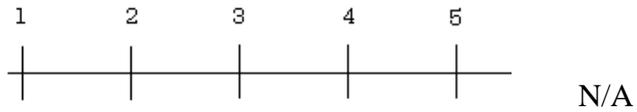


d. Attentiveness towards participant - eye contact, upright posture, and focus

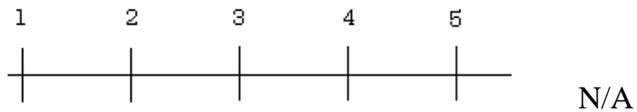


e. Encouraging participant questions.

Appendices

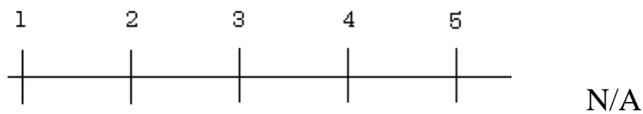


f. asking clarifying questions

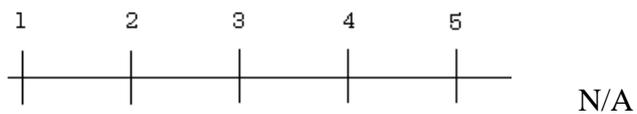


A positive focus

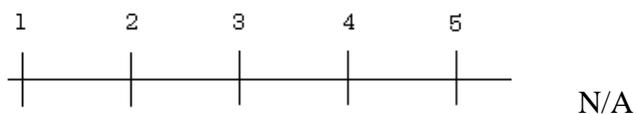
a. A positive focus upon the future



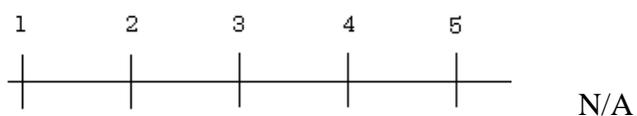
b. Expressing faith that individual will make progress



c. Giving positive praise e.g., "that's good", "well done"

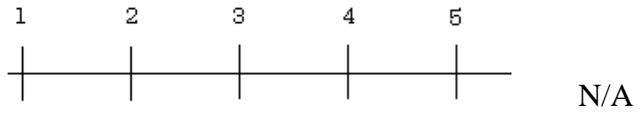


d. Motivating Individual.

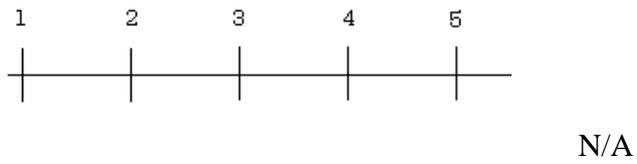


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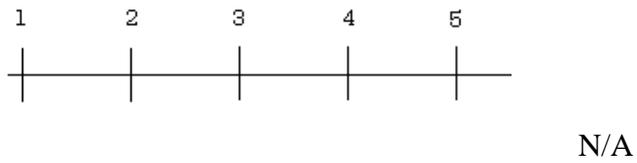
e. Helping individuals to define goals for next review.



f. Helping individuals build upon strengths.



g. refraining from condemnations



Appendix 1B: Redacted Copy of Completed Standardised Observation

Quality of Offenders' Report

1 2 3 4 5
|-----|-----|-----|-----|-----|

1 2 3 4 5
|-----|-----|-----|-----|-----|

poor fair good very good excellent

Where appropriate, to what extent do/are magistrates....

Empathy:

a. Ask Questions about other areas of lives.

1 2 3 4 5
|-----|-----|-----|-----|-----| N/A

b. Caring towards individual.

1 2 3 4 5
|-----|-----|-----|-----|-----| N/A

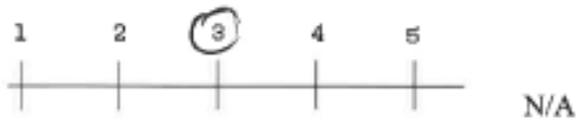
c. Conveying a Sense of Compassion.

1 2 3 4 5
|-----|-----|-----|-----|-----| N/A

Observation Date: 10/03/2017
Review Number: ?
Criminal Offence: theft (steal)
Drug type: nil
Number of Magistrates: 2
Magistrates' Gender: male
Inputted into SPSS?
Directly linked to survey? yes-

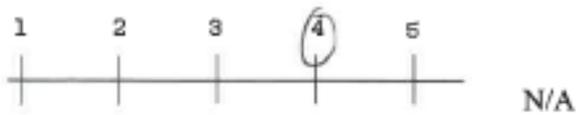
Appendices

d. Appearing to Understand the Complexity of Drug and Alcohol Problems.



N/A

e. Realistic when setting Goals



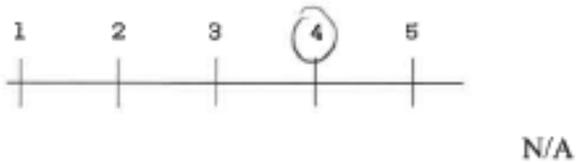
N/A

f. Adopt a non-adversarial, joking, or causal tone to put client at ease



N/A

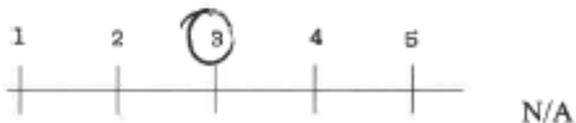
g. expressing interest in participants position



N/A

Respect:

a. Speaking slowly, clearly and loudly.



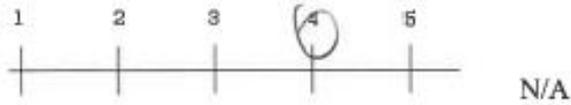
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Appendices

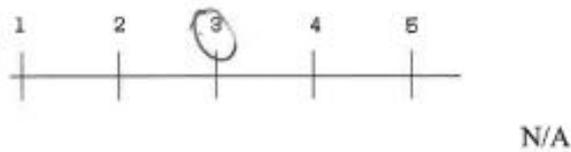
b. Speaking without pity



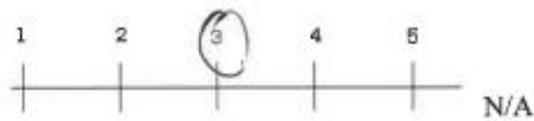
c. Reiterating goals to ensure that they are clear



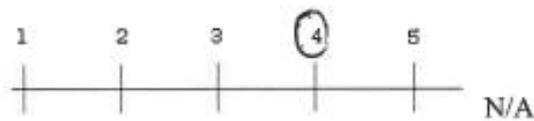
d. Refraining from rushing/interrupting participants when they are speaking.



e. Speaking with sincerity



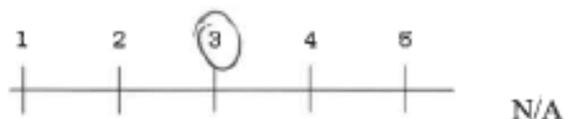
f. encouraging participant dialogue



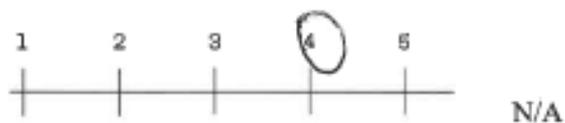
Active listening

a. Giving Offender a Voice

Appendices



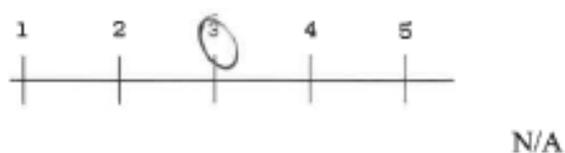
b. Listening to participant's viewpoint.



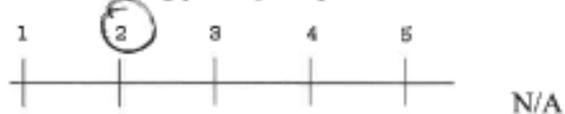
c. Words to show understanding/ for reinforcement e.g. "okay", "that's good" or "I see".



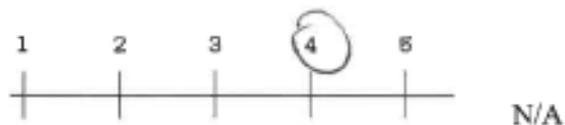
d. Attentiveness towards participant - eye contact, upright posture, and focus



e. Encouraging participant questions.



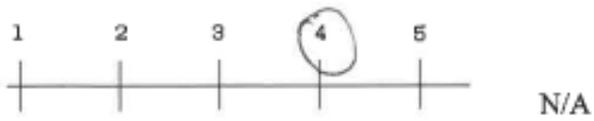
f. asking clarifying questions



A positive focus

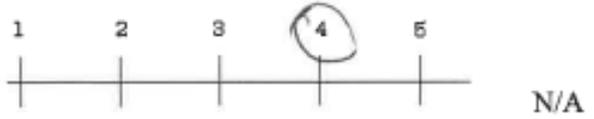
a. A positive focus upon the future

Appendices



N/A

b. Expressing faith that individual will make progress



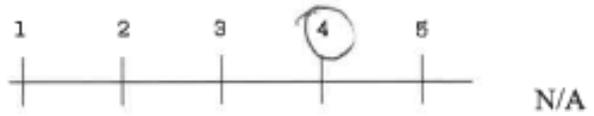
N/A

c. Giving positive praise e.g., "that's good", "well done"



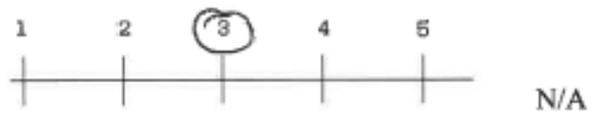
N/A

d. Motivating Individual.



N/A

e. Helping individuals to define goals for next review.



N/A

f. Helping individuals build upon strengths.



N/A

g. refraining from condemnations



N/A

Appendices

Appendix 2: Survey Dummy

Based on your experience of the reviews at Manchester/Salford Court, to what extent do you agree with the following statements? Please tick the appropriate box. There is no right or wrong answer.

	Questions	Strongly agree	Agree	Neither	Disagree	Strongly disagree
	What is your age? _____					
1	I like attending the drug reviews					
2	I would recommend the drug reviews to other people with similar problems					

Appendices

3	Drug reviews help me to comply with my DRR order					
4	Magistrates speak to me without pity					
5	Magistrates motivate me					
6	Magistrates are compassionate towards me during reviews					
7	The drug review process is fair					
8	Magistrates praise me when I am doing well					
9	Magistrates listen to my point of view					
10	Drug reviews motivate me to comply with the law					

Appendices

11	Magistrates have faith that I will make progress					
12	Magistrates make me feel positive about my future					
13	Drug reviews help me stay on track with my recovery					
14	Magistrates are sincere when they speak to me					
15	There are enough treatment options available to me with help my recovery					
16	The reviews offer me good support					
17	I can ask questions when I need to					
18	Magistrates recommend good treatment services					
19	Magistrates are realistic when defining my goals for the next					

Appendices

	review					
20	Magistrates help me build on my strengths					
21	Magistrates reiterate my goals so that they are clear					
22	I understand why I am required to attend the reviews					
23	Magistrates are attentive towards me					
24	I am given the a voice during reviews					
25	Magistrates understand what it is like to have about drug and alcohol problems					
26	Magistrates are caring					

Appendices

27	Magistrates speak to me slowly, clearly, and loudly					
28	Magistrates do not rush or interrupt me when I am speaking					
29	Overall, I am satisfied with my experience of the drug reviews					
30	Do you have any other comments to add about the reviews?					

Appendix 3: Access and Ethics Approval⁵⁷



Our Ref AM/RKT/242-KAW

17 August 2016

Anna Grace Kawalek
Department of Law and Criminology
Heart of the Campus
Collegiate Crescent Campus

INTERNAL

Dear Anna,

Request for Ethical Approval of Research Project

Your research project entitled "Does Salford Drug Court Adhere to Therapeutic Jurisprudence Theory?" has been submitted for ethical review to the Faculty's rapporteurs and I am pleased to confirm that they have approved your project.

I wish you every success with your research project.

Yours sincerely

A handwritten signature in black ink that reads "Anna Macaskill".

Professor A Macaskill
Chair
Faculty Research Ethics Committee

Office address :
Business Support Team
Faculty of Development & Society
Sheffield Hallam University
Unit 4, Sheffield Science Park
Howard Street, Sheffield, S1 1WB
Tel: 0114-225 3308
E-mail: DS-ResearchEthics@shu.ac.uk

⁵⁷ Please note that NOMs (National Offender Management Service) changed its name to Her Majesty's Prison and Probation Service during the course of this study, hence the older name on these documents.



National Offender
Management Service



Anna Grace Kawalek
Sheffield Hallam University
Anna.G.Kawalek@student.shu.ac.uk

National Offender Management Service
National Research Committee
Email: National.Research@noms.gsi.gov.uk

18th November 2016

APPROVED- NOMS RESEARCH

Ref: 2016-367

Title: A study evaluating the effectiveness of the drug review process at Manchester and Salford Drug Court.

Dear Anna,

Further to your application to undertake research across NOMS, the National Research Committee (NRC) is pleased to grant approval in principle for your research.

Please consider the following points when undertaking your research:

- The following should be included in all participation information sheets/consent forms:
 - Participants should be asked for their consent to the use of audio-recording equipment.
 - Participants should be informed that there will be neither advantage nor disadvantage as a result of their decision to participate or not participate in the research.
 - It must be made clear to research participants that they can refuse to answer individual questions or withdraw from the research until a designated point, and that this will not compromise them in any way.
 - Participants should consent to any follow-up contact and the method of this contact.
 - Participants should be informed how their data will be used and for how long it will be held.
- The following should also be included in the participation information sheets/consent forms for offenders:
 - Access to any NOMS records for the participants should be explicitly covered.
 - It needs to be clear that the following information has to be disclosed: behaviour that is against prison rules and can be adjudicated against, illegal acts, and behaviour that is potentially harmful to the research participant (e.g. intention to self-harm or complete suicide) or others.



National Offender
Management Service

- o Potential avenues of support should be specified for those who are caused any distress or anxiety.
- o The respondent should be asked to direct any requests for information, complaints and queries through their prison establishment/community provider. Direct contact details should not be provided.
- When using recording devices, the recordings should be treated as potentially **disclosive** and it is recommended that devices with encryption technology are used. Recordings should be wiped once they have been transcribed and anonymised unless there are clear grounds for keeping them any longer.

Before the research can commence you must agree formally by email to the NRC (National.Research@noms.esi.gov.uk), confirming that will comply with the terms and conditions outlined below and the expectations set out in the NOMS Research Instruction (<https://www.gov.uk/government/organisations/national-offender-management-service/about/research>).

Please note that unless the project is commissioned by MoJ/NOMS and signed off by Ministers, the decision to grant access to prison establishments, National Probation Service (NPS) divisions or Community Rehabilitation Company (CRC) areas (and the offenders and practitioners within these establishments/divisions/areas) ultimately lies with the Governing Governor/Director of the establishment or the Deputy Director/Chief Executive of the NPS division/CRC area concerned. If establishments/NPS divisions/CRC areas are to be approached as part of the research, a copy of this letter must be attached to the request to prove that the NRC has approved the study in principle. The decision to grant access to existing data lies with the Information Asset Owners (IAOs) for each data source and the researchers should abide by the data sharing conditions stipulated by each IAO.

Please quote your NRC reference number in all future correspondence.

Yours sincerely,
National Research Committee

Appendix 4a: Correlation Matrix for Principal Component Analysis, Chapter 5

	Q4 (R.1) Magistrates speak to me without pity	Q5 (PF.1) Magistrate motiveme	Q6 (E.1)) Magistrates are com passiona te tow ards me	Q8 (P.F.2)) Magistrate wh en I am doi ng we ll	Q9 (A.L.G) Magistrate my poi nt of vie w	Q1 1 (PF.G) Magistrate wh at I wil l ma ke pro	Q1 2 (P.F.3)) Magistrate fee l pos itiv e ab out	Q1 4 (R.G) Magistrate wh en the spe ak to	Q 17 (A.L.1) Magistrate ca s as k qu est io ns w he re I ne	Q1 9 (E.2) Magistrate rea list ic wh en we set my go als	Q2 0 (P.F.4) Magistrate reite rate my goal s so they are clea r up on my str en	Q21 (R.2)) Magistrate ates reite rate my goal s so they are clea r up on my str en	Q23 (AL.2) Magistrate rate are atte ntiv e whe n I spe ak ce	Q2 4 (A.L.3)) Magistrate giv me a voi ce	Q25 (E.3) Magistrate unde rstan d what it's like to have drug and alco hol probl ems	Q2 6 (E.G) Magistrate rate s are cari ng me slo wly , cle arly, and	Q2 7 (R.3) Magistrate rate s spe ak to me n I am spea king	Q28 (R.4) Magistrate not rush or inter rupt me when I am spea king
--	---	--	---	---	--	---	--	--	---	---	--	---	--	--	--	--	---	--

Appendices

							gre ss	my fut ure	me	ed to	for ne xt rev ie w	gth s						lou dly	
Co rrel ati on	Q4 (R.1) Mag istra tes spea k to me with out pity	1.0 00	- .41 4	- .595	- .51 9	- .56 6	- .45 3	- .19 9	.10 4	- .2 27	- .36 3	- .18 4	- .505	- .01 5	.40 6	a- .461	- .20 8	.41 7	.104

Appendices

Q5 (PF.1) Magistrates motivate me	- .41 4	1.0 00	.685	.79 6	.78 7	.55 7	.76 5	.52 1	.6 00	.63 2	.68 2	.684	.35 9	.21 9	.708	.51 5	.24 6	.412
Q6 (E.1) Magistrates are compassionate	- .59 5	.68 5	1.00 0	.77 2	.91 8	.89 8	.59 0	.47 9	.3 45	.55 2	.49 1	.822	.12 3	- .05 2	.740	.48 5	- .05 9	.216

Appendices

tow ards me																			
Q8 (PF. 2) Mag istra tes prai se me whe n I am doin g well	- .51 9	.79 6	.772	1.0 00	.91 7	.79 3	.75 4	.46 5	.6 02	.57 5	.73 6	.739	.33 2	.20 2	.853	.77 9	.18 0	.465	

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Q9 (AL .G) Mag istra tes liste n to my poin t of vie w	- .56 6	.78 7	.918	.91 7	1.0 00	.87 0	.70 9	.46 9	.5 23	.64 2	.65 2	.818	.25 9	.04 5	.816	.56 4	.01 5	.339
Q11 (PF. G) Mag istra tes hav	- .45 3	.55 7	.898	.79 3	.87 0	1.0 00	.63 2	.45 1	.4 65	.58 0	.59 7	.856	.13 6	.02 3	.845	.60 2	.00 8	.314

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e faith that I will mak e prog ress																			
Q12 (PF. 3) Mag istra tes mak e me feel posi	- .19 9	.76 5	.590	.75 4	.70 9	.63 2	1.0 00	.62 0	.6 16	.81 7	.70 0	.639	.59 3	.36 1	.627	.55 0	.38 8	.620	

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tive abo ut my futu re																			
Q14 (R. G) Mag istra tes are sinc ere whe n they spea k to	.10 4	.52 1	.479	.46 5	.46 9	.45 1	.62 0	1.0 00	.4 66	.51 4	.48 1	.440	.53 7	.63 3	.309	.51 0	.78 3	.742	

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me																			
Q17 (AL .1) I can ask ques tion s whe re I nee d to	- .22 7	.60 0	.345	.60 2	.52 3	.46 5	.61 6	.46 6	1. 00 0	.74 0	.89 7	.683	.25 0	.17 8	.511	.32 7	.36 5	.706	
Q19 (E.2) Mag	- .36 3	.63 2	.552	.57 5	.64 2	.58 0	.81 7	.51 4	.7 40	1.0 00	.66 9	.698	.40 0	.06 1	.465	.23 6	.21 6	.514	

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istra tes are reali stic whe n we set my goal s for next revi ew																			
Q20 (PF. 4) Mag istra	- .18 4	.68 2	.491	.73 6	.65 2	.59 7	.70 0	.48 1	.8 97	.66 9	1.0 00	.730	.28 5	.15 6	.654	.48 0	.30 7	.642	

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tes help me buil d upo n my stre ngth s																			
Q21 (R.2) Mag istra tes reite rate my	- .50 5	.68 4	.822	.73 9	.81 8	.85 6	.63 9	.44 0	.6 83	.69 8	.73 0	1.00 0	.13 0	- .14 2	.747	.43 8	.00 0	.440	

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goals so they are clearer																			
Q23 (AL.2) Magistrates are attentive when I speak	- .015	.359	.123	.332	.259	.136	.593	.537	.250	.400	.285	.130	1.000	.535	.226	.352	.540	.537	

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Q24 (AL .3) Mag istra tes give me a voic e	.40 6	.21 9	- .052	.20 2	.04 5	.02 3	.36 1	.63 3	.1 78	.06 1	.15 6	- .142	.53 5	1.0 00	.180	.48 4	.88 7	.633
Q25 (E.3) Mag istra tes und erst and	- .46 1	.70 8	.740	.85 3	.81 6	.84 5	.62 7	.30 9	.5 11	.46 5	.65 4	.747	.22 6	.18 0	1.00 0	.69 3	.05 9	.309

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what it's like to have drug and alcohol problems																			
Q26 (E. G) Magistrates are	- .208	.515	.485	.779	.564	.602	.550	.510	.327	.236	.480	.438	.352	.484	.693	1.000	.467	.510	

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caring																			
Q27 (R.3) Magistrates speak to me slowly, clearly, and loudly	.417	.246	-.059	.180	.015	.008	.388	.783	.365	.216	.307	.000	.540	.887	.059	.467	1.000	.783	

Appendix 4b: Communalities Table for Principal Component Analysis, Chapter 5

Communalities		
	Initial	Extraction
Q4 (R.1) Magistrates speak to me without pity	1.000	.623
Q5 (PF.1) Magistrates motivate me	1.000	.711
Q6 (E.1) Magistrates are compassionate to me	1.000	.858
Q8 (PF.2) Magistrates praise me when I am doing well	1.000	.910
Q9 (AL.G) Magistrates listen to my point of view	1.000	.923
Q11 (PF.G) Magistrates have faith that I will make progress	1.000	.839
Q12 (PF.3) Magistrates make me feel positive about my future	1.000	.791
Q14 (R.G) Magistrates are sincere when they speak to me	1.000	.755

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Q17 (AL.1) I can ask questions where I need to	1.000	.871
Q19 (E.2) Magistrates are realistic when we set my goals for next review	1.000	.812
Q20 (PF.4) Magistrates help me build upon my strengths	1.000	.811
Q21 (R.2) Magistrates reiterate my goals so they are clear	1.000	.873
Q23 (AL.2) Magistrates are attentive when I speak	1.000	.476
Q24 (AL.3) Magistrates give me a voice	1.000	.906
Q25 (E.3) Magistrates understand what it's like to have drug and/or alcohol problems	1.000	.827
Q26 (E.G) Magistrates are caring	1.000	.802
Q27 (R.3) Magistrates speak to me slowly, clearly, and loudly	1.000	.944
Q28 (R.4) Magistrates do not rush or interrupt me when I am speaking	1.000	.848
Extraction Method: Principal Component Analysis.		

Appendix 5: Levene's statistic for Gender Question, Chapter 6, Section 2.2

Test of Homogeneity of Variances				
	Levene's Statistic	df1	df2	Sig.
SupportMeans	2.046	2	48	.140

Appendix 6: One-Way ANOVA: Gender, Chapter 6, Section 2.2

		df	Mean Square	F	Sig.
SupportMeans	Between Groups	2	1.778	4.673	.014
	Within Groups	48	.381		
	Total	50			
DialogueMeans	Between Groups	2	.132	.802	.454
	Within Groups	48	.164		
	Total	50			
ChangeMeans	Between Groups	2	.477	1.083	.347
	Within Groups	48	.441		
	Total	50			

Appendix 7: Tukey Corrections: Gender, Chapter 6, Section 2.2

Dependent Variable	(I) Magistrates Gender	(J) Magistrates Gender	Mean Difference (I-J)	Sig.
SupportMeans	All Male	All Female	.18971	.671
		Mixed	-.41180	.163
	All Female	All Male	-.18971	.671
		Mixed	-.60150*	.012
	Mixed	All Male	.41180	.163
		All Female	.60150*	.012
DialogueMeans	All Male	All Female	.17274	.468
		Mixed	.04993	.938
	All Female	All Male	-.17274	.468
		Mixed	-.12281	.622
	Mixed	All Male	-.04993	.938
		All Female	.12281	.622
ChangeMeans	All Male	All Female	.13158	.847
		Mixed	-.18421	.722
	All Female	All Male	-.13158	.847
		Mixed	-.31579	.316
	Mixed	All Male	.18421	.722
		All Female	.31579	.316

Appendix 8: Breakdown of Variables for Anomaly shown in Chapter 5.I, Section 5.4 for Therapeutic Dialogue ("TD") and Therapeutic Support ("TS").

	N	Mini mum	Maxim um	Mean
Q4 (TD) Magistrates speak to me without pity	1	1	1	5.00
Q5 (TS) Magistrates motivate me	1	5	5	1.00
Q6 (TS) Magistrates are compassionate to me	1	5	5	1.00
Q8 (TS) Magistrates praise me when I am doing well	1	5	5	1.00
Q9 (TS) Magistrates listen to my point of view	1	5	5	1.00
Q11 (TS) Magistrates have faith that I will make progress	1	5	5	1.00
Q14 (TD) Magistrates are sincere when they speak to me	1	2	2	4.00
Q21 (TS) Magistrates reiterate my goals so they are clear	1	5	5	1.00
Q28 (TD) Magistrates do not rush or interrupt me when I am speaking	1	2	2	4.00
Q23 (TD) Magistrates are attentive when I speak	1	2	2	4.00
Q24 (TD) Magistrates give me a voice	1	1	1	5.00
Q25 (TS) Magistrates understand what it's like to have drug and/or alcohol problems	1	5	5	1.00
Q26 (TS) Magistrates are caring	1	3	3	3.00
Q27 (TD) Magistrates speak to me slowly, clearly, and loudly	1	1	1	5.00

Appendices