



Commentary

The contractual governance of drug users in treatment

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ABSTRACT

One of the challenges for drug treatment services is how to engage drug users effectively. This commentary examines one particular strategy for enhancing engagement that appears to have spread quite rapidly in recent years: the use of contract-like written agreements between treatment service providers and users. The development of the contractual governance of drug users in treatment is located in the wider context of emerging social control strategies and practices. In particular, insights are drawn from the socio-legal literature which has begun to examine these new control practices in diverse domains. The commentary also reports on the findings of a national survey of all 149 local authority areas in England that was designed to provide a preliminary mapping of the extent of contractual governance in treatment settings (response rate = 62%). In spite of the fact that the use of contracts between drug services and service users does not feature in the national drug policy framework, our survey strongly indicates that it is a widespread practice. Although these agreements can take on many different forms, typically they set out the responsibilities and requirements placed on users and, somewhat less frequently, what the service commits to providing for them. This novel practice of contractual governance may be viewed as having considerable potential but it also raises important issues concerning justice and rights. We conclude by arguing that this is an important area of emerging practice which raises significant theoretical and policy questions and the need for further research.

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Introduction

One of the abiding challenges for drug treatment services is how to engage drug users effectively: to identify and attract them, to keep them coming and to ensure they comply with what is required of them. Services which are unable to do this will obviously struggle to contribute to important drug policy objectives, such as reducing mortality rates, curbing the spread of blood-borne viruses and supporting recovery. Effective engagement is the *sine qua non* of effective treatment.

Over the years, many innovations have been introduced to deal with engagement and retention problems, including reducing access thresholds (Finch, Groves, Feinmann, & Farmer, 1995), establishing rapid prescribing services (Keene, Stenner, Connor, & Fenley, 2007), rewarding attendance and compliance (Prendergast, Podus, Finney, Greenwell, & Roll, 2006; Petry, 2012), developing outreach services (Needle et al., 2005), making case management more 'assertive' (Vanderplasschen, Wolf, Rapp, & Broekaert, 2007), and using criminal justice leverage (Seddon, 2007a). Inevitably, there is a mixed picture of success from this diverse range of efforts

and the challenge has far from disappeared. Indeed, to the contrary, in an 'age of austerity' with public spending budgets across Europe (and beyond) being squeezed tighter than for many years, the problem has arguably become even more acute. The need for drug treatment to demonstrate that it can engage effectively with its target group is greater than ever.

This commentary examines one strategy for enhancing engagement that appears to have spread quite rapidly in recent years: the use of contract-like written agreements between treatment service providers and users. Although these agreements can take on many different forms, typically they set out the responsibilities and requirements placed on users and, somewhat less frequently, what the service commits to providing for them. This novel practice of contractual governance of drug users in treatment may be viewed as having considerable potential, not only to address the engagement challenge but also to underpin efforts to provide more personalised social and health care through individualised, tailored agreements. On the other hand, it may also be seen to raise serious ethical issues and concerns about human rights, as it appears to be based on a model of autonomy and responsibility that is at odds with conventional notions of addiction (West, 2006; cf. Foddy & Savulescu, 2006).

It is significant that if we look beyond the drug policy field, the emergence of contractual governance is clearly part of a wider set

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of developments in the realm of politics and government at the turn of the twenty-first century (see [Crawford, 2003](#)). A key part of our purpose in this commentary will be to locate the contractual governance of drug users in treatment in this wider context of emerging new social control strategies. In particular, we will draw theoretical, conceptual and empirical insights from the largely socio-legal literature which has begun to examine these novel control practices.

In the first section of the commentary, we introduce some of the key conceptual building blocks for our enquiry, specifically, the ideas of 'contract' and 'contractual governance'. We then turn, in the second part, to a consideration of some of the particular issues that may arise in relation to the contractual governance of drug users in treatment settings and include a review of the small body of literature in this area. In the third section, we present some preliminary findings from the first stage of an empirical study we are currently conducting. Finally, in conclusion, we map out a future research agenda to advance understanding of what we believe to be a significant development in the field.

Contracts and contractual governance

The idea of legally binding promises can be traced as far back as Roman law ([Nicholas, 1975](#)). The concept of contract emerged in a form that we would recognise today in the late eighteenth century, at around the same time as the birth of modern industrial capitalism. In this sense, contracts, as a mechanism for ordering economic exchange, are foundational to modernity. As [Atiyah's \(1979\)](#) magisterial legal history demonstrated, the fortunes of the contract rose and fell during the 19th and 20th centuries, but in recent decades it has once again taken on a renewed centrality in social and economic life ([Vincent-Jones, 2000, 2006](#)). We will return in due course to consideration of this 'renewal' but we must first address a more basic question: what is a contract?

A standard definition in common law is that a contract is an agreement giving rise to obligations that are recognised by law ([Furmston, 2006](#)). From this perspective, contracts form social bonds, structure relationships and act as instruments through which the separate and potentially conflicting interests of the parties are brought to a shared and mutually beneficial purpose. There is usually an assumption that parties to a contract have what is known as 'contractual capacity'. By providing legal remedies if a contracting party fails to perform their duties or comply with the requirements of the contract, they also act as a mechanism for social regulation.

In certain important respects, however, this classic, legalistic concept of contract is unduly narrow and fails to capture the everyday realities of contractual arrangements. [Teubner \(2007, pp. 52–3\)](#) argues that the legal institution of the contract has 'fragmented into a multiplicity of different operations, each occurring in a different mutually-closed discourse'. These operations include not only legal obligations but also economic transactions and 'productive acts' (see also [Black, 2004, 2007; Gilbert, 1996](#)). [Macneil \(1980\)](#) makes the simple yet significant observation that the 'bindingness' of contractual obligations can be attributed to social norms as well as legal rules and institutions. The idea that contracts create both legal and social obligations is developed further by [Collins \(1999\)](#), who uses a regulation perspective to demonstrate that a contract does not have to be legally enforceable to create contractual relations. Indeed, his work highlights the ways in which contracts provide normative guides to behaviour that influence the conduct of the parties even if they do not actually constitute legally binding agreements. In fact, he argues that the law actually plays only a minor role in practice, compared to the extra-legal dimensions of contractual relations. [Collins \(1999, p. 15\)](#) suggests that a contract is best understood as 'a

form of communication system' which "'thinks" about the relation between people in a particular way'.

[Andersen \(2008, p. 84\)](#) argues similarly that contracts establish a specific medium through which people can observe and communicate with each other. Both [Collins](#) and [Andersen](#) draw attention to the fact that the construction of contractual identities, roles and responsibilities is significantly shaped by the social context from which the relations arise. Likewise, they stress the need to acknowledge that the performance of contractual duties is affected by the setting and circumstances within which they are embedded and performed. It is evident, then, that in order to study the use of contracts in any setting, we must go beyond the texts of agreements and investigate the environment in which they function.

In recent decades, the contract has risen to a new social and economic prominence. Most notably, since the 1980s, there have been concerted efforts to introduce a range of contractual terminologies, principles and mechanisms into the running and regulation of the state, with 'new public management' reforms designed to introduce markets to the public sector in order to promote greater economy, efficiency and effectiveness ([Hood, 1991; Osborne and Gaebler, 1992](#)). Enabling this development is what [Vincent-Jones \(2006\)](#) has termed the 'new public contracting', the emergence of which has fundamentally restructured the functions and activities of the state and the organisation of public service. Not only have relationships between state institutions and their policy-making procedures become increasingly structured by contracts, but central and local governments are increasingly outsourcing and entering into contracts with public, private and voluntary sector agencies in order to pursue public policy goals. This has been very evident in the drug treatment sector. In the UK, for example, local multi-agency Drug and Alcohol Action Teams (DAATs) enter into service level agreements with a range of providers.

At the same time as this internal reconfiguring of the 'state', social relationships between state agencies and citizens are also being regulated more and more through a variety of mechanisms that resemble contracts. These have emerged across a very diverse set of domains, from home-school agreements in education to behavioural contracts in public housing. In both appearance and effect, these mechanisms constitute distinctive new forms of contract, as their purpose is neither to facilitate economic exchange nor to regulate the provision of services but rather to modify and control specific behaviours – hence [Mackenzie \(2008\)](#) refers to them as 'control contracts'. More specifically, they are aimed at governing the conduct of individuals who are viewed as socially 'problematic' because certain elements of their behaviour breach social norms. [Crawford \(2003\)](#) has described this phenomenon as the 'contractual governance of deviant behaviour'.

We can locate this new practice in the wider context of neoliberal responses to the perceived shortcomings of the welfare state in late modern society. According to [Vincent-Jones \(2000, pp. 344–5\)](#), the use of contracting regimes reflects 'the loss of faith in state interventions directed at rehabilitation and the view that clients and offenders are free agents who should accept greater responsibility for their predicaments' (see also [Jayasuriya, 2002](#)).

In probation and social work, contracts have been used as a technique of behavioural control since the 1980s. A pioneering series of papers by [Nelken \(1987\)](#), [Nelken \(1988\)](#), [Nelken \(1989\)](#) examined the use of 'contracts' and 'working agreements' as social work techniques, whilst [Cohen \(1985, pp. 72–4\)](#) observed their early deployment in the criminal justice context in his seminal *Visions of Social Control*. In the 1990s, the UK government, as happened elsewhere, made the notion of contract the basis for radical social security reforms as benefit entitlement became conditional on entering a 'jobseeker's agreement' with an employment officer. Home-school agreements were introduced under the School Standards and Framework Act 1998, whilst the Youth Justice and

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