

## **Probation's Rehabilitation Agenda – Can Organisational Change Produce Results?**

The informal forerunner of the Probation Service was the London Police Court Mission based on Southwark court. The Probation Service was formally established in 1907. Probation Officers were to 'advise, assist and befriend' those for whom they had a responsibility, and in so doing reduce the likelihood of them re-offending. The prison population fell because Magistrates, faced with offenders unable to pay a fine or compensation, now had an alternative.

Traditionally the Probation Service was organised into Probation Trusts each covering a number of Petty Sessional Areas. Trusts were the joint responsibility of local and national government. Probation Officers, Probation Service Officers and Community Service Officers between them prepared reports for Courts, supervised those sentenced to an ever increasing range of Court Orders, worked with those in prison and supervised those on licence following release from prison.

National Offender Management Service Successive Governments have attempted to reduce crime and cost through changes to how the Probation Service works. As prison numbers increased, it became important to ensure that the Prison Service and the Probation Service worked together. This was one of the spurs to the setting up in 2004 of the National Offender Management Service, NOMS, an executive agency of the Ministry of Justice, responsible for both Probation and Prison Services.

Transforming Rehabilitation In January 2013 the Government published a Consultation Paper<sup>1</sup> proposing, among other things, that the Probation Service should be split. The Offender Rehabilitation Act giving effect to this proposal passed into law in March 2014 and came into force on 1<sup>st</sup> February 2015. A public sector National Probation Service, NPS, retains responsibility for preparing reports for Court, for work with offenders deemed to present a high risk of causing serious harm and for the training of Probation Officers. Twenty-one privately run Community Rehabilitation Companies, CRCs, take on work with those deemed to present a lesser risk, the 'vast majority'. When things go wrong, i.e. offenders are thought to be in breach of an order or licence, or are deemed to have increased the risk they pose, CRCs have to refer the case to the National Probation Service.<sup>2</sup>

Community Rehabilitation Companies The National Offender Management Service has awarded contracts to the CRCs, and from August 2015 CRCs will be paid by results. Each CRC is a combination of organisations: private firms such as Sodexo, charities such as the National Association for the Care and Resettlement of Offenders (NACRO) and Shelter, and joint ventures that include within them public bodies such as Stockton and Darlington Borough Councils or Probation staff mutuals. Some CRC areas are geographically large – the whole of Wales or Humberside combined with Lincolnshire and North Yorkshire being the two largest.

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<sup>1</sup> Transforming Rehabilitation – A Revolution in the way we Manage Offenders

<sup>2</sup> Staffing levels in the NPS have reduced as a result. Some Probation staff has moved to CRCs.

In addition to working with offenders sentenced to community sentences CRCs are also responsible for supervising some prisoners released on licence. This will include providing 12 months of post custodial supervision for anyone sentenced to more than one day in prison.<sup>3</sup>

Changes in sentences The 2003 Criminal Justice Act, which came into force in 2005, replaced all existing community orders for adults aged 18 and over, such as Probation and Community Service, with two new sentences:

- i) Community Order. Minimum 12 hours, maximum 3 years. Breach of any of the twelve possible requirements results in a more onerous order or custody.
- ii) Suspended Sentence Order. Minimum 6 months, maximum 2 years. Breach of any of the twelve possible requirements results in immediate custody unless there are exceptional circumstances.

At least one of these requirements must be added to Community Orders<sup>4</sup>:

Unpaid work (40 – 300 hours)	Residence (up to 36 months, 24 max for SSO)
Supervision (up to 36 months, or 24 for SSO)	Specified Activity (up to 60 days)
Accredited Programme (i.e. anger management)	Prohibited Act (up to 36 months, 24 for SSO)
*Drug Rehab (6-36 months, 24 max for SSO)	Exclusion (up to 24 months for both)
*Alcohol Treatment	Curfew (2 – 12 hours a day up to 6 months)
*Mental Health Treatment	Attendance Centre (12 – 36 hours, 3 hrs a time)

Before adding one of the starred requirements to an Order, Courts need to know that a relevant treatment place is available and that the offender consents to the treatment. Responsibility for accredited programmes, such as anger management or thinking skills lies with the CRCs.

Management of Risk a) The NPS remains responsible for preparing reports for Courts prior to sentence. At that stage, a risk assessment is undertaken using the Offender Assessment System, OASys. This will provide the basis for a decision about whether or not an offender will be classed as at high risk of causing serious harm. This assessment must be repeated at intervals if a Community Order is made and at least annually if someone is in prison. Responsibility for management of a particular offender could move from the NPS to the CRC or vice versa if the level of risk changes.

b) Those who have committed serious, violent or sexual offences will fall within the Multi Agency Public Protection Arrangements, MAPPA. Those in this group will continue to be managed by the public sector MAPPA partners as is the case now.<sup>5</sup>

<sup>3</sup> Previously this group had no statutory support to help them on release unless they were in the 18 – 21 age range. Almost 60% of prisoners released after sentences of less than 12 months reoffend within a year.

<sup>4</sup> There is no legal limit to the number of requirements that can be imposed

Improvements in Throughcare In order to improve the possibility of rehabilitation for prisoners a nationwide network of resettlement prisons has been proposed. Under this system a plan for an offender's rehabilitation should be drawn up within the first few days of entering prison. It is intended that prisoners within three months of release will move to the resettlement prison nearest to their home. Subject to risk assessments, the same provider should manage their progress from that point until the expiry of their licence.

## Comments

a) Will it work? It will be a number of years before it will be easy to make a comparison of before and after. The very obvious point to make is that the new system involves organisational complexity. The NPS is divided into seven areas most of which contain more than one CRC.<sup>6</sup> CRCs consist of several organisations, each with its own management structure and core objectives. The success of the new arrangements will depend hugely on the ability of staff in different agencies working co-operatively together. The effect of funding is likely to be divisive. CRCs, paid by results, need to optimise their performance. The NPS meanwhile, is subject to government funding limits and under pressure to produce results while managing riskier offenders. The temptation for CRCs may be to seek to transfer demanding offenders to the NPS and for the NPS to reduce caseloads by looking to pass lower risk people to CRCs.

b) Unintended consequences. There may be several, eg:

The areas to be covered by most NPS and CRC staff are very great, and it seems that because of office closures some staff will be working from home. If offenders in rural areas are expected to keep appointments at even greater distances than under the old system the time and cost implications will be significant. There are already concerns that courts are overloading Community or Suspended Sentence Orders with requirements involving additional journeys and greater time.

In some areas, these difficulties mean that there is likely to be an increasing need for home visits, sometimes to people staff do not know. Some Probation Officers are already voicing concerns about safety implications.

Perpetrators of domestic abuse may not be classed as at high risk of causing serious harm. Concerns have been expressed that CRC staff will lack the experience of Probation Officers and may fail to safeguard women from their abusers. CRCs have recruited Probation Officers, however, and CRCs are well placed to provide effective Anger Management programmes. Whichever agency is responsible for managing the abuser, supervision of caseworkers is especially important. This ensures that while attention is given to work with the perpetrator there is no loss of focus on the woman's safety.

c) Cost. There is as yet no clarity about whether the necessary resources in terms of staff and facilities will be achievable given funding levels. The Consultation Paper of January 2013 states that the measures proposed would be funded by a mixture of competitive tendering savings, which would drive down unit costs, and by expected reductions in

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<sup>5</sup> MAPPA partners are the area police, prison and probation services, who together form the Responsible Authority. Those bodies with a duty to co-operate with the Responsible Authority, 'DTC agencies' include education, employment, housing, social care and the UK Border Agency. MAPPA is non-statutory, and is supervised by a Strategic Management Board to monitor performance in key areas. There are two Lay Advisers in each area.

<sup>6</sup> In the case of Greater London and the whole of Wales, the NPS and CRC areas are the same.

reoffending.<sup>7</sup> The old Probation Trusts required few administrative staff. The same is likely to have been true of the alcohol and drug agencies that may become partners in a CRC. The need for close liaison between agencies working together in a CRC, and between CRCs and the NPS, is likely either to lead to an increase in administrative staff or to add to the administrative load on caseworkers, reducing the number of offenders that each can supervise at one time. Either would have cost implications.

d) The language used in the legislation seems genuinely to be aiming to provide a sentencing framework that can address issues causing offending and therefore aid rehabilitation. An interesting comment about resettlement prisons was that: “The focus of the new approach will be as much on helping ex-offenders to sort their lives out as on traditional supervision.” Has the wheel come full circle? A hopeful feature is that because some CRCs are involving voluntary organisations such as NACRO and Shelter there will be a useful cross fertilisation between the statutory and voluntary agencies and more direct access for those supervised to practical and financial advice.

e) Clear cut division of responsibility may be problematic and prompt variations in practice in different probation areas. For example, does the NPS always prepare reports for Court, or might the supervising officer from a CRC do so if, as can happen, someone re-offends while under supervision?

#### Questions to ponder about sentencing:

1. Someone commits an offence. They become an offender, a criminal. What do you want from the Criminal Justice System?
2. You are the Minister of Justice and Lord Chancellor. What are your top three priorities?
3. The word ‘rehabilitation’ suggests restoring to a previous, better, state. Is this really appropriate for most offenders?

Jane Howarth      *former Secretary of the Penal Affairs Panel*

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<sup>7</sup> The paper states that around £1 billion is spent currently on ‘the majority of rehabilitative and punitive services in the community.’ Contracted providers will manage the vast majority of offenders in the community, around 265,000, on a day-to-day basis.