

Submission to the Gauke 'Independent Sentencing Review 2024-25'

Dr John Deering, Visiting Fellow, University of South Wales

Theme 4 - Community Sentences

'How should we reform the use of community sentences and other alternatives to custody to deliver justice and improve outcomes for offenders, victims and communities?'

Whilst this submission is included under Theme 4, firstly it briefly considers some of the reasons why the probation service and community sentences have become progressively a far less central and progressive element within the criminal justice system in England and Wales in recent decades.

Ever since the 1991 Criminal Justice Act brought the probation service 'centre stage' and made the probation order a sentence of the court, rather than an alternative to a sentence, probation supervision of those convicted by the courts has been central to the response to offending in England and Wales. However, this position has been eroded in recent decades; and significantly since the provisions of Transforming Rehabilitation (TR) from 2014 (Deering & Feilzer, 2019).

Whilst the reasons for this have many strands, there are two elements that may be seen to have made a significant contribution. Firstly, the emergence of political and

ideological views that sought to move the work of the probation service from one largely of rehabilitation, to one focusing on 'offender management' and punishment (Deering, 2011). This itself was part of a wider move to more punitive policies followed by governments in the UK from the early 1990s, that has resulted in the general 'up-tariffing' of sentencing which has underpinned the greater use of custodial sentencing, along with the length of such sentences being increased (Roberts et al., 2003). At the same time the workload of the probation service has increased considerably to include supervision of more serious offending both on community sentences and post-custodial licences.

These broad political changes brought in turn pressure to bear on the values, aims and purposes of probation practice and thus on practitioners themselves. Government had been open about trying to change practice (and practitioners) from working on the basis of 'advise, assist and befriend' those under supervision to an approach that emphasised punishment, control and risk management (Deering, 2011). However, there is a body of evidence that suggests that practitioners continued to join (and still do) the service for what might be called 'traditional values' aligned to social work (e.g. Deering & Felizer, 2015; Mawby & Worrall, 2013). However, the continued pressure in this direction has brought many to leave the service or feel that the legitimacy of their work has been called into question ((Kirton & Guillaume 2015; Deering & Feilzer 2019; Robinson et al 2016).

Transforming Rehabilitation was an undoubted failure. Almost immediately after its implementation concerns were raised by the Probation Inspectorate and in a number of inspections, weaknesses were identified across the practice of mainly the Community Rehabilitation Companies culminating in a damning review by the House of Commons Justice Committee (2018), which in due course led to the reunification of a single public sector service for England and Wales from circa 2020 (Deering & Feilzer, 2017).

More specifically whilst legislation has had a major impact of the 'official' purposes of probation, one specific provision has, in effect, seen the abolition of the open-ended provision of supervision by a probation officer of a person sentenced by the court. The abolition of the Supervision and Activity Requirements of the Community Order under the Offender Rehabilitation Act 2014 effectively ended a type of supervisory practice that had previously existed under the Probation Order and the Community Order since 1907 (Robinson & Dominey, 2019).

Whilst the reversal of the majority of provisions under TR brought some hope for a more positive future, much of the damage done has yet to be repaired, due to a continuing punitive approach to sentencing and the probation service's focus on risk management, enforcement and punishment, compounded by large workloads. There has been an exodus of experienced staff (Kirton & Guillaume, 2015) and evidence that the courts lost faith in the work of the service (Magistrates' Association, 2017; Centre for Justice Innovation, 2018). These factors have contributed to a significant fall in the numbers of Community Orders made, but the continuation of excessive workloads. The Probation

Service is now increasingly focused on the supervision of those awaiting release from custody and their subsequent period of licence. However, this is a reductive form of supervision, based mainly upon monitoring attendance and assessing risk. Community Orders have shrunk in numbers significantly as a percentage of court sentences and no longer comprise what might be called an open-ended process aimed at achieving rehabilitation, behavioural change and hence the protection of the public.

How then can this position be reversed and the probation service and its supervisory function within the criminal justice system be more central and rehabilitative?

- Firstly, the government needs to consider the cultural and ideological atmosphere that has developed in recent decades. This promotes a punitive approach that argues for the increased use of custody as 'necessary' for the purposes of punishment and to 'protect the public'. This in turn has resulted in the current prisons' crisis. One way of reversing this would be to consider a return to the sentencing thresholds introduced by the Criminal Justice Act 1991 that required courts to justify imposing a custodial sentence by stating that certain offences were 'so serious' that only custody could be imposed and that this decision is backed up by evidence.
- Promote the central role of the Probation Service in supervising a significant percentage of those sentenced in ways that are evidence-based and known to potentially reduce re-offending, hence protecting the public. The aims and purposes of the probation service should be to pursue a probation 'ideal':

'... to engage with those under its supervision in a humanistic and

supportive manner with a view to encouraging behavioural change while recognising structural and social disadvantage as important factors in offending that need to be addressed.'

(Deering & Feilzer, 2015: 2)

- Ensure that probation practice is evidence-based and employs supervision based upon the principles of the Risk/Needs/Responsivity and desistance approaches. All of this needs to be based in a good professional relationship between supervisor and supervisee that is empathic, positive and aimed at supporting individual desistance from offending (Raynor & Deering, 2023). To facilitate this development, staff training in supervision skills and the development of good relationships should be promoted (Raynor et al, 2014). Indeed a good professional relationship is recognised as the essential basis for the potential success of other forms of intervention (e.g. Dowden & Andrews, 2004)
- Empirical academic study underpins the potential for effectiveness of such approaches as Core Correctional Practices (Dowden and Andrews, 2004), Pro-Social Modelling (Trotter, 1993), Motivational Interviewing (Miller & Rollnick, 2002) and Interviewing and Supervision Skills (Raynor et al, 2014).
- As mentioned, in addition to the personal, the social/external factors in the lives of those who have offended need to be addressed to support desistance. Therefore practice must seek to utilise external universal services to (re)connect individuals to support with, for example, housing, benefits, employment and training, drug and alcohol services.

- None of these proposed changes should be taken as reducing the importance of the assessment and management of risk. Work in assessing and managing the more serious individuals should clearly continue alongside the developments outlined above
- It appears likely that one of the reasons for the large reduction in the making of Community Orders by the courts, particularly the magistrates' court is the dislocation of the relationship between the courts and the probation service. The service was founded as a court agency, but since the creation of the National Probation Service for England and Wales in 2001, this link has been largely broken. Dissatisfaction with communication and the work of the service, particularly since TR has perhaps been one reason for the drop in the number of community sentences made (Raynor & Deering 2023; Du Mont & Redgrave 2017). In order to increase the number of community orders and hence reduce the use of custody, this link needs to be re-established with formalised communication.
- Much of this proposed change is likely to require legislation to resurrect probation supervision as outlined above. A revived Supervision Requirement is necessary to allow for a wide range of supervision practice and interventions, with both individuals and groups.
- Finally, it is argued here that there is a strong case for emphasising an evidence-based approach to practice skills and interventions alongside enhanced inter-agency collaboration as the basis of the making of more Community Orders and the reduction in the use of custody. As mentioned, a cultural shift is also

necessary to promote a less punitive approach and one based on a different concept of proportionality, of the 'punishment fitting the crime' than has become the case in recent decades.

References:

Centre for Justice Innovation (2018) *Renewing trust: how we can improve the relationship between probation and the courts*. London: CJL

Deering, J. (2011) *Probation practice and the new penology: practitioner reflections*. Aldershot: Ashgate

Deering, J. & Feilzer, M. (2015) *Privatising Probation: is Transforming Rehabilitation the end of the probation ideal?* Bristol: Policy Press

Deering, J. & Feilzer, M. Y. (2019) 'Hollowing out Probation? The roots of Transforming Rehabilitation' *Probation Journal*. 66(1): 8 – 24.

Dowden, C. & Andrews, D. (2004) The importance of staff practice in delivering effective correctional treatment: a meta-analytic review of core correctional practice. *International Journal of Offender Therapy and Comparative Criminology*, 48 (2): 203-214

Du Mont, S. & Redgrave, H. (2017) *Where did it all go wrong? A study into the use of community sentences in England and Wales*. London: Crest Advisory

Kirton, G. & Guillame, C. (2015) *Employment relations and working conditions in probation after Transforming Rehabilitation*. London: Queen Mary, University of London

Magistrates' Association (2017) *Response to the Transforming Rehabilitation Inquiry*.
[Available at: www.magistrates-association.org.uk]

Mawby, R. & Worrall, A. (2013) *Doing probation work*. Abingdon: Routledge

Miller, W. & Rollnick, S. (2002) *Motivational Interviewing: preparing people for change*.
2nd Ed. London: Guilford Press

Raynor, P. & Deering, J. (2023) 'Effective practice for a devolved Probation Service',
in Welsh Centre for Crime and Social Justice, *Towards a Devolved Probation Service in
Wales*, [Available at www.wccsj.ac.uk]

Raynor, P., Ugwuodike, P. & Vanstone, M. (2014) The impact of skills in probation work: a
reconviction study. *Criminology and Criminal Justice*. 14(2): 235-249

Roberts, J. & Hough, M. (2005) *Understanding public attitudes to criminal justice*.
Maidenhead: OUP

Robinson, G. & Dominey, J. (2019) Probation Reform, the RAR and the forgotten
ingredient of supervision. *Probation Journal*, 66(4): 451-455

Robinson, G., Burke, L. & Millings, M. (2017) Criminal justice identities in transition: the
case of devolved probation services in England and Wales. *British Journal of
Criminology*, 56: 161-178

Trotter, C. (1993) *The supervision of offenders - what works? A study undertaken in
community-based corrections*. Melbourne: Monash University and the Victoria Dept. of
Justice