

# Independent Sentencing Review 2024 to 2025: Call for Evidence

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December 2024

## About the author

This submission draws on my personal experience of working within the probation service between 2001 and 2016, as a qualified Probation officer and latterly within senior leadership roles, as well as subsequent research and practice. My current role is Head of Criminology, Sociology and Social Policy at Swansea University, where I am also completing a part time PhD in probation values<sup>1</sup>. I convene the Wales Probation Development Group, part of the Wales Centre for Crime and Social Justice<sup>2</sup>.

## Summary

This response explores the vital role of Probation in community sentencing drawing on professional experience and available evidence, including:

- The critical role of *probation officers in court* in delivering Pre-Sentence Reports (PSRs) - drawing on professional skills, training and expertise, and leveraging local resources. As well as the importance of engaging local partnerships and defendants in sentencing proposals.
- The need to *reset probation in the community* – locally delivered and controlled. Promoting community sentencing, local commissioning, and renewing a commitment to community partnerships.

## Response to Theme 1 - History and trends in sentencing

The probation service plays a critical role in supporting sentencing and the delivery of sentences. Therefore, changes within probation and its place in court in the last 20 or so years has been a key contributor to changes in sentencing outcomes.

As a new Probation Officer (PO) practicing in the early 2000s, my colleagues and I were regularly in court to provide updates on clients (now known as ‘people on probation’). Adjournments for Pre-Sentence Reports (PSRs) were commonplace; for the PO to interview and fully consider the background to the offender and offence and provide suitable sentencing options for the court to consider.

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There are various factors that have gradually eroded the central role of POs as ‘officers of the court’ to provide sentencing advice, as well as the probation service’s relationship with the courts:

- *Changes in the way standard PSRs are written* - From the early 2000s, PSRs based on in-depth assessments drawing on the professional skills and experience of POs, became auto-generated through inputs to the Offender Assessment System (OASys). Whilst OASys-informed reports promote efficiency and consistency, the writing of PSRs largely became a cut and paste exercise. Issues of bias, error and a lack of quality control may negatively affect the use of risk assessment tools (Kemshall, 2021).
- *More ‘speedy’ reports and less PSRs*- ‘Simple, speedy, summary justice’ policy in 2006, followed by targets set by the ‘Transforming Summary Justice’ and ‘Better Case Management’ efficiency programmes (2015 onwards) led to the proliferation of oral reports and ‘fast delivery’ or short format reports, over the standard delivery PSRs. Fewer reports were delivered overall - a 52% drop in PSRs between 2009 and 2019 was noted by the Ministry of Justice (MoJ) (2020).
- *Quality issues of oral reports* – Over half of PSRs are delivered as oral reports (58% of in 2018/2019, with only 3% standard delivery) (HMIP, 2020). Issues exist regarding the sufficiency of information and limitations of the analysis of offender circumstances (Whitehead, 2008). The inspectorate has also raised concerns around the quality of oral reports (HMIP, 2020).
- *Fewer qualified Probation Officers in Court* - Significantly, most fast delivery PSRs are undertaken by Probation Service Officers (PSOs), who do not hold the same professional qualifications as POs. Despite minimal training, PSOs have a significant role in influencing sentencing as well as supervising cases. Notably they do not feature within the Probation Professional Register Framework which contains guidance for staff around professional standards (MoJ/HMPPS, 2024).
- *Policy changes impacting on resourcing, experience and judicial confidence* – Policies resulting in court closures and loss of staff expertise were compounded by the failed ‘Transforming Rehabilitation’ policy and implemented without proper engagement with Magistrates and Judges. Low confidence in community sentences has been acknowledged by the MoJ (2020).

With the current court backlog, it is unlikely that a return to the days of long adjournments for reports will be feasible. However, pre-sentence reports remain a

critical tool for sentencing outcomes, and those who receive a PSR are more likely to successfully complete their court order (Gray et al, 2023). Rolling out promising initiatives such as ‘problem-solving courts’ will be resource intensive, but there are some realistic, evidenced based ideas worth considering:

- Whilst additional time to provide reports may give the opportunity for greater quality, research suggests that having **court-based officers, with access to all relevant information** in informing sentencing, can support judicial confidence (Tata et al, 2007).
- Moreover, it is not the adjournment time that improves the report quality but **professional skills, training and quality assurance** processes (Gelsthorpe & Raynor, 1995). Therefore, either PSOs require upskilling, more POs need to be involved in sentencing, or a combination of both. Probation Officers could provide quality assurance to PSO practice. There is learning from the recent PSR pilot on additional training support (Rizk & Bhakta, 2023).
- Integrate **desistance-led approaches** into sentencing assessments (Wong & Horan, 2021). This includes drawing on individual strengths and engaging them in the sentencing process. This may be particularly helpful for persistent offenders. Raynor (2018) similarly suggests ‘developing rehabilitative proposals in agreement with the defendant’ and ‘restoring the requirement of consent to a community sentence’.
- Draw on the **principles of Problem-Solving Courts** to broker support from local partners around health and social challenges. Whilst it may be unfeasible to fully roll out this approach, there could be learning from the principles of effective problem-solving courts. These include the *use of existing resources, multi-agency partnerships, specialist support and promoting cultural and attitude change* (Mentzou & Mutebi, 2023). All available leavers should be considered, including well-established Community Safety Partnerships who have a statutory duty to reduce reoffending as well as Integrated Offender Management schemes that focus on prolific offending. Within Wales, the devolution of probation may assist to reduce any barriers to local partnership working (see later point).
- Vanstone (2021) highlights the importance of ‘paying attention to the social context of offending’ and **exploring interventions to divert at Court**. Academics have increasingly highlighted the impact of trauma and ‘adverse childhood experiences’ on those who have offended (McCartan, 2020). Vanstone points to an ‘in-court’ diversion scheme where probation recommendations led to discontinued court cases, including due to individual’s mental health or

vulnerability. Deferred sentencing could be another approach which may have greater potential, for example with young adults (see Roberts et al, 2022).

### **Response to Theme 2 - Structures**

The important role of probation and community sentencing is not fully understood, and this will continue to be the case whilst penal populism reigns. Media and politicians do little to help, by emphasising the need for tough sentencing and the importance of more prison places. In order to introduce more alternatives to custody, **the lack of knowledge and understanding about the probation service and community sentencing which permeates throughout society needs to be addressed.**

Magistrates are drawn from the community and if there was a greater presence of probation officers within the community this would develop a wider understanding and transparency of community sentences. Probation tends to rely on the provision of unpaid work as its face in the community and whilst this remains one route to improve community engagement and understanding, there are other initiatives worth exploring.

For example, the '**Local Crime and Community Sentence (LCCS) scheme** was a successful community engagement project that ran across England and Wales during the 2000s (see Grimshaw 2006, Grimshaw and Oliveira, 2008). LCCS involved magistrates and probation officers giving presentations to community groups, to improve public understanding of community sentencing. As a Probation Officer who participated in the scheme, I saw first-hand the mutual benefits of raising the profile of probation and its work. Whilst this may be a resource challenge, there is an opportunity for the service to revisit this scheme and develop its volunteering capacity. Where the Police have special constables and rely on the support of organisations such as Crimestoppers (see Rabaiotti & Smith, 2024), Probation may benefit from a charitable or voluntary arm that can support and promote its work and help develop public trust and confidence.

### **Response to Theme 3 - Technology**

In the increasing digital age, there is a need for probation to improve its understanding around both the potential and the risks of technology for community sentences, particularly **ethical challenges presented by Artificial Intelligence**. As Phillips (2017) argued 'unless we understand the technology that underpins practice, we cannot fully understand practice'.

Implementing technology needs careful consideration, so that it enhances and **integrates into probation delivery**. For example, electronic monitoring (EM) mostly works best alongside supervision and supportive measures (Graham & McIvor, 2017).

GPS tracking for prolific offenders can be used positively within Integrated Offender Management schemes (Hudson & Jones, 2016, Powell et al, 2024). Alcohol abstinence monitoring via ‘sobriety tags’ appear to have a high compliance rate (MoJ, 2024) and can work alongside alcohol treatment requirements.

However, **costs of technology** need to be borne in mind; for example, research by the Mayor of London’s Office found little difference between those on alcohol monitoring and a comparison group who received probation supervision (Harrison et al, 2020). Within the EM pilot for domestic abuse perpetrators, GPS tags were used in 96% of cases and associated location monitoring costs are expected to be an issue for an expansion of the scheme (Rolls et al, 2024).

There is a potential for technology to undermine professional judgment by probation officers. Experienced officers I have spoken to during my research have been frustrated by system constraints and limitations of their ability to use their professional analysis skills. Technology should be able to **enhance probation work, rather than de-professionalise or deskill**. For example, it would be helpful if POs had handheld devices such as those used by the Police, to enable them to work within the community.

Moreover, if technological developments involve people on probation, it is important to consider issues around digital literacy and digital poverty.

#### **Response to Theme 4 – Community Sentences (and Theme 7 - Individual needs of victims and offenders)**

Probation should be a locally delivered service and the answer to improving probation (and community sentence) outcomes could lay with local governance and control (HMIP, 2023). In Wales, local control would involve devolution of probation (Raynor, 2018, Borja et al, 2023).

A locally delivered service would be better able to use the following levers –

- *Ensuring Unpaid work (UPW) is visible and engaging within the community.* Quality of placements is important and may increase compliance - including opportunities that provide meaningful contribution to community or employability skills (Jackson et al, 2024). Visibility does not need to include hi-vis vests; people on probation find these stigmatising and it can effect their engagement (Jackson et al, 2024).
- *Building better relationships with key agencies and partnerships* (such as Community Safety Partnerships – see below) is important for a flow of UPW projects as well as developing other creative interventions and accessing services to support the social needs of people on probation.

- *Returning to local commissioning for rehabilitative services* – including support for housing, employment advice and improving basic skills in literacy and numeracy. Probation should be able to understand and articulate the needs of local cohorts and have the power to commission locally to meet these, rather than being constrained by central government processes (see Borja et al, 2023).
- *Renew the relationship of Probation within Community Safety Partnerships (CSPs)*. Despite the introduction of the statutory duty to reduce reoffending by CSPs (brought in around 2009 where probation became responsible authorities), CSPs tend to rely on Police and Local Authorities and probation engagement is limited (Rabaiotti & Harrison, 2023).
- *Continue tailored approaches and pilots towards certain cohorts* (as suggested in Theme 1 response) but *not at the expense of access to services for the wider cohort*. For example, people on probation have worse health than the general population, by recognising them as an ‘inclusion health’ population group provides access to public health interventions (Rabaiotti, 2024).

*Due to the short timeframe for submissions, it has not been possible to address Theme 5 and 6 in this response.*

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