

THE MAGISTRATES' ASSOCIATION
JUDICIAL POLICY AND PRACTICE COMMITTEE

Evidence to the Justice Select Committee: Role of the Probation Service

Introduction

Since its beginnings over 100 years ago, the role of probation has changed — and perhaps the first question that the Justice Select Committee should address is — what is the fundamental purpose of the service? The purposes of sentencing are clear — they are set out in legislation, but do the aims of probation match this?

- The punishment of offenders
- The reduction of crime (including the reduction by deterrence)
- The reform and rehabilitation of offenders
- The protection of the public
- The making of reparation by offenders to persons affected by their offences.

Magistrates have a high degree of confidence in community sentences — witnessed by the large number of such sentences imposed and by the high level of agreement with community order proposals put forward in pre-sentence reports by the Probation Service. This has coincided with a 15 per cent reduction in the number of offenders sent to prison by magistrates for non-summary offences from 2007-2009 (MoJ Sentencing Statistics Brief).

Community Orders represent almost 40 per cent of magistrates' courts disposals for non-summary offences and are therefore a critical component of magistrates' sentencing options. They are acknowledged to be the most effective disposal to achieve a reduction in reoffending.

There are three stages at which the probation service interacts directly with sentencers:

1. Pre-Sentence Reports

Information given on the offender by the probation service through pre-sentence reports is information that a sentencing bench would not otherwise have. More importantly, information is given with an in-depth knowledge of the programmes that are available locally, and these vary across the country. PSRs are invaluable to sentencers because they enable a bench to sentence with the full knowledge of local requirements that they may then deem necessary to accommodate the five key elements of any sentence:

- Punishment,
- Rehabilitation,
- Reparation,
- Protecting the public and
- Reduction in crime.

In the past, long periods elapsed between the court request for pre-sentence information and its delivery by the probation services. This situation had improved with the introduction of ‘standard’ and fast’ delivery reports — and, in some courts this led to a high probability that a report could be delivered on the first sentencing hearing date. However, because of the decreasing availability of probation staff at courthouses, this is beginning to drift back towards delays in many areas of the country. Reports are now rarely provided *on the day*, but within a few days. This is preferable to the original three week delays that were the norm not many years ago but experience around the country would suggest that the momentum for speedy delivery of justice is being lost because of financial imperatives. ‘Fast delivery reports’ as originally envisaged are not working and it is feared that the time to produce fast delivery reports may lengthen even further due to the numbers being requested and as probation is forced by budgetary cuts to reduce its staff numbers.

2. **In court**

The presence in court of probation is important in four respects:

- a. Probation staff can hear the reasons for the PSR which may not always be apparent in the documentation.
- b. Probation staff can be questioned about offenders’ previous response to community orders; something that is not always demonstrated on an offenders’ record, which itself is often not up to date.
- c. Probation staff can give an update on the effectiveness and/or progress of a current order.
- d. Programme content and options can be discussed prior to sentence with complete knowledge.
- e. The offender is party to these discussions in court which assists the concept of engagement and the involvement of the offender.

Although some of this information forms part of the magistrate’s sentencing form, these forms are not universally used in the magistrates’ courts. All *justices* use them — but some other members of the judiciary do not which often leads to the need for duplicated communication in court prior to a final sentence being passed. The sentencing bench must have all relevant information available.

3. **Post court**

Management of offenders either on community orders or on licence following custodial sentences is vital for many reasons:

- a. To co-ordinate a sentence
- b. To monitor progress
- c. To ensure compliance
- d. To monitor and report breaches

Magistrates and probation staff will often work together in the final stages of a community based order with the Magistrate joining the closing session to issue certificates or to commend the offender for completing the sentence.

It is important that a single agency is responsible for the management of offenders. We believe that the current arrangement is difficult enough to control without adding in different pressures that may come from different organisations and different types of organisation.

We would also like to see more co-operation within NOMS leading to more programmes being coordinated during spells in custody and their seamless transition to the community licensing period.

Financial pressures particularly from private organisations brought into the CJS could change the focus from service delivery to profitability. The Criminal Justice System is of such importance to public confidence that a focus on profit would move the CJS away from its core aims.

Responses to the particular questions posed

a. Are probation services currently commissioned in the most appropriate way?

Sentencers require a single body from whom to gain information and through whom to co-ordinate community sentences. We have that at the moment in the Probation Service.

Currently probation services are commissioned from the Ministry of Justice (MoJ) via National Offender Management Service (NOMS) then regional Directors of Offender Management Services (DOMS), acting for NOMS, then via Probation Trusts. We see no reason why a department of the Ministry of Justice cannot commission services directly. There seems little need for NOMS and therefore DOMS. Allowing Probation Trusts to commission would ensure that all types of contract are possible with all sorts of providers, rather than moving towards specific national organisations taking most of the contracts. There is merit in small providers supplying services, particularly on a local basis.

Probation Trusts are probably best at providing close working (including one to one work) with offenders. Of course, other organisations could do this but whether they would have the same dedication and genuine desire to reduce reoffending through this kind of work is questionable.

Magistrates' experiences of Clear Springs, the previous national provider for bail accommodation, have not been altogether positive. We wait to see how the new provider operates.

b. How effectively are probation trusts operating in practice? What is the role of the probation service in delivering "offender management" and how does it operate in practice?

The effective operation of probation trusts varies from trust to trust. The last reorganisation has led to quite a few mergers and more are likely in the future. The removal of DOMS and the regional structure could increase possible mergers (e.g. Cheshire and North Wales have close links). We regret the fact that serving magistrates

are no longer eligible to sit on trusts and look for improved methods of liaison in the future.

Offender Management means working with an offender throughout the duration of his / her sentence and licence. This seems to work reasonably well and involves, amongst other things, the use of analytical computer tools such as OASys which is currently being made less complicated, for greater ease of completion.

Currently, models around Integrated Offender Management are being trialled. These involve very close working with other agencies such as police and local authorities. Partnership work is the key here and one wonders if non Probation Service organisations would manage this in such an acceptable manner.

The Probation Service as a whole has an extremely dedicated workforce which is clearly an asset in terms of performance. As magistrates we know that ‘managing offenders’ requires a balance of enforcement and encouragement to ensure that the court’s wishes are complied with and that sentences are completed. We know that offenders in the community can only be managed to the extent they are willing and capable of being managed. Using enforcement too readily can make it more difficult to get the sentence completed.

Magistrates are also aware that there is a gulf between the post release supervision provided to those on sentences of 12 months and more and the total lack of supervision of those released after short sentences. It is sometimes argued that more public protection is provided by a community order involving 2 years’ supervision than by a prison sentence of two months followed by nothing at all.

Magistrates would like to see more co-operation between the custodial and community divisions of NOMS.

c. Are magistrates and judges able to utilise fully the requirements that can be attached to community sentences? How effectively are these requirements being delivered?

Services are provided professionally, but their provision is piecemeal at best — which means that good practice does not necessarily roll out from area to area and region to region. Specialist programmes for drug-users, alcohol abusers and the mentally disordered are particularly patchy. This is potentially causing injustice because some offenders who are not getting the programmes that they require.

There are many examples on a local basis which demonstrate that not all requirements are available in each local area. For example there are no attendance centres in Thames Valley so an attendance centre requirement is impossible. Expanded, this must mean that not all offenders have the same opportunities for reform across the country, which in turn would indicate that there is a post code effect operating. Much of this, locally, is said to be due to lack of appropriate funding, so that the probation trust has to cut its cloth for best effect. For example, probation will seek to have supervision requirements restricted to the highest risk offenders because they do not have the staff to supervise every offender on a community order. Resource shortages can also mean that offenders have to wait before they can start a programme because there is more demand than there are places available. The community domestic violence programme is one where

there are often long waits after sentencing before a place can be made available. The mental health treatment requirement is very little used because it requires assessment. Moreover, some parts of the country report that curfew is not recommended as often as it might be because report writers are not familiar with it, as it is not administered by probation.

Additionally, feedback on the success or otherwise of types of combinations of requirements does not happen as much as we would like. We do not require a ‘tick box’ combination approach, but we would benefit from better knowledge of how effective particular combinations of programmes are in certain circumstances.

d. *What role should the private and voluntary sectors play in the delivery of probation services?*

Both sectors have much to offer — that is not at issue. What is at issue is whether they should be commissioned and directed by probation trusts or whether they should tender directly to DOMS, NOMS, MoJ in direct competition with probation trusts.

Commissioning ought to be done by the probation trusts. We are concerned that a profit motive would adversely affect private sector delivery if not commissioned through probation trusts. Small, but very effective, local service providers could find themselves too small to compete on a level playing field.

We would be concerned if offender management were to be outsourced, partly because this is the core probation activity and partly because we doubt that there are qualified probation officers already available to do the work in the private sector. Outsourcing offender management would probably therefore just mean changing the employment status of the existing workforce.

e. *Does the probation service have the capacity to cope with a move away from short custodial sentences?*

Almost certainly not because it struggles to cope with its present workload. The logical approach would be to reinvest some of the savings from reducing short custodial sentences into probation services. This might take five years to implement properly. We would be very concerned if a reduction in short custodial sentences meant an increase in the already very high workloads of probation officers and deterioration in their effectiveness.

Offenders who serve short prison sentences are likely to be persistent offenders who have not engaged well with probation in the past. They are likely to be very resource intensive if they are given community orders and probation will not be able to cope with them. There are schemes in Greater Manchester, Derbyshire and elsewhere piloting ‘*Intensive Alternatives to Custody*’ which are proving very successful, but which are only available on a piecemeal basis, because of funding.

If the savings released from not sending someone to expensive custody could be directed towards probation then these options would become more viable. Perhaps a system of funding following the offender could be considered?

One of the problems is that the institutions to which offenders are sent for a short term are geared up for long term offenders. This does not mean that a short term custodial sentence is not appropriate but that the operation of the sentence cannot treat the cause of offending behaviour. An extremely high proportion of the offenders given a short custodial sentence have already served a number of community sentences with a variety of requirements that have failed to address their offending behaviour. So there is a continuing need for short custodial sentences available to the judiciary for this type of repeat and sometimes prolific offender.

f. Could probation trusts make more use of restorative justice?

Restorative Justice is quite clearly an ethos with which probation is comfortable. Most sentencers have no difficulties with the concept, either. It operates reasonably well within the youth justice system because it has been their focus for some time. We are not so certain that private sector organisations take the same view. We believe that they might struggle with it.

We do have concerns in the way that restorative justice is currently administered by the police. We believe that this would be better delivered through the courts and the probation service.

Public opinion would also need to be prepared for more restorative justice so there was no backlash from those who would argue that it was ‘too soft’, as some already do in respect of community sentences.

g. Does the probation service handle different groups of offenders appropriately, e.g. women, young adults, black and minority ethnic people, and high and medium risk offenders?

There is little evidence that the probation service operate inappropriately with different groups. The Race Discrimination Delivery Board continues to be told of ‘counter-intuitive’ (i.e. negative) evidence of discrimination in this regard across the main tiers of the criminal justice system. This is almost certainly because there is none. However, it has to be recognised that it is often more expensive to provide programmes for minority groups and so they are often run less frequently than for other groups. For example, there can often be a delay in placing a female offender on a woman-only programme which works against the need to get offenders started on programmes as soon as possible.

h. Is the provision of training adequate?

Probation staff are well trained and magistrates have high respect for their professionalism. However, current budgetary constraints mean that training is under severe pressure. However, those with whom we interact seem to be good. It has to be remembered that the kind of person who is attracted to probation generally tends to be good at working with people, having good listening skills, etc. This is definitely not a job for everyone, especially the faint hearted!