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| Notes | For additional information please contact Samira Ali on samira.ali@magistrates-association.org.uk |

About the Magistrates Association

The Magistrates' Association is an independent charity and the membership body for the magistracy. We work to promote the sound administration of the law, including by providing guidance, training and support for our members, informing the public about the courts and the role of magistrates, producing and publishing research on key topics relevant to the magistracy, and contributing to the development and delivery of reforms to the courts and the broader justice system. With 12,000 members across England and Wales, we are a unique source of information and insight and the only independent voice of the magistracy.

Background

Generally, it has not been a normal year to judge how reunification of the probation service is working. This is especially given the impact of Covid-19, but even before reunification, the effectiveness of probation was difficult to measure for two reasons:

- 1) Magistrates have told us they rarely, if ever, see recidivism statistics;
- 2) Magistrates themselves don't get involved in probation supervision unless people breach or issues arise with requirements attached to orders, which they review if they become unworkable e.g., requiring a change to curfew conditions.

This submission is a thematic compilation of contributions from members of the MA, who sit in adult courts across London. We hope it will be of benefit of the Committee. Further queries on the content of the submission should be sent to the email address above.

National and policy context

The probation inspectorate's annual report¹ contained a survey² of 1,534 probation staff on attitudes to reunification - a question on how well changes have been implemented saw London receive one of the lowest measured satisfaction rates (31%) of all probation service regions.

¹ HMI Probation, '2021 Annual report: inspections of probation services' <https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2022/02/Probation-Staff-Survey-2021-report-v1.0.pdf> (November 2021)

² HMI Probation, 'The views of frontline probation staff about unification: a survey by HM Inspectorate of Probation' <https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2022/02/Probation-Staff-Survey-2021-report-v1.0.pdf> (November 2021)

Some of the issues in our submission below - such as recruitment difficulties and lack of on-the-day reports - are common elsewhere but were observed to have been experienced before reunification. It would not be right to suggest they are the result of this. For example, HMI Probation's 2019 report on the previous structure of probation "Transform Rehabilitation" outlines various similar issues connected to the previous split system.

The Transforming Rehabilitation (TR) programme itself saw some programmes that were previously run by probation (such as "Think First") being run by CRCs under RAR provisions, while NPS retained management of higher risk offenders on other accredited programmes. Some CRCs introduced very good innovative programmes but others less so. National consistency was lost though, there were opportunities during TR to address local need.

Some areas saw very good communication of what was carried out under RAR while in others, confidence in RAR as a sentencing requirement was low as courts were given no indication of what work may be carried out.

It is not of course for courts to decide what is done on a RAR requirement. A 2019 report from the then Chief Inspector of Probation Dame Glenys Stacey on Transforming Rehabilitation³ also made this point. The report found that purposeful activity provided by CRCs in connection with a RAR was unpredictable and often lacking. As a result, that report states that "magistrates are not clear what CRCs do in implementing and enforcing RAR provision, and their confidence in RAR provisions has been undermined". It is the experience of our members that some indication of the expected work really helps to demonstrate the value of the proposed sentence; increased confidence in RARs is a welcome goal for the new service.

Good practice learned from CRCs should not be lost but instead needs to be integrated into the reunified probation service so that there is national consistency at the highest levels previously achieved by private companies.

Staff shortages

A key theme among responses was the chronic shortage of staff in the London probation service, which was observed by a south west London magistrate to be "struggling" and "desperately short of staff". They added:

"A few weeks ago, at Wimbledon, we had no probation officers available at court not even for the remand court, because with sickness and other unavailability they had no-one available neither in the building nor remotely". (south west London magistrate)

Another aspect of the issue was the loss of experienced probation officers to similar roles elsewhere in the criminal justice system;

"They have lost many of their experienced probation officers to the Youth Offender teams, where they are paid more, and they are struggling to recruit." (south west London magistrate)

"[T]he London Weighting has not risen for 20 years, and regional pay would benefit London. It has lagged not just as public sector pay has been capped but vis other similar sectors within social work/criminal justice" (west London magistrate)

The churn of staff was seen to lessen the effectiveness of having one professional to work with someone over time, a point made by a west London magistrate.

³ HMI Probation, 'Chief Inspector's Report' <https://www.justiceinspectors.gov.uk/hmiprobation/wp-content/uploads/sites/5/2019/03/HMI-Probation-Chief-Inspectors-Report.pdf> (March 2019)

Staff shortages were observed to have various undesirable knock-on efforts by all magistrates who fed into this submission:

i) Sharing staff

One respondent, who sits in central London, said

“[i]t is common for probation at the moment to be covering more than one court (including remand and GAP courts) and some days recently there have been no or only one officer available to all the courts - due to sickness.” (central London magistrate)

Another from south west London added that her area had to share a senior probation lead manager with the neighbouring Croydon, because they are struggling to recruit and retain at the senior management level.

ii) Impact in court

Staff shortages created real impacts for magistrates:

“On a couple [of cases] we could still sentence, as the probation officer in court was able to assist, but most had to be adjourned again.” (central London)

One magistrate said:

“I have sat in an all-day sentencing court twice in the last two weeks. There were a significant number - maybe a quarter - of non-reports - not because the defendant hadn't turned up, but because either there had been no probation officer to see them, or no appointment had been made in the first place because there were no staff available to do the report.”

Stretched so thinly, members say that court-based support is not felt to be as great a priority as other areas of work, including offender management. It was felt that less work was being done with medium- and low-risk offenders as a result:

“The Probation service is basically too busy to take them on, so cannabis users and lower-level alcoholics/binge drinkers get no help at all”.

One magistrate (central London) commented that offender management is usually prioritised, which comes at the expense of the availability of court-based officers to advise the court and complete reports.

A London-based bench chair agreed with the assessment above, saying that “[r]isk assessment is paramount to what is offered, and it seems that less work is being done with medium and low risk offenders”.

Quality of reports

Responses on the quality of reports were mixed. On the issue of their content, a central London magistrate said that they were “unsure” that the quality of reports at Westminster is always of the highest standard. They highlighted instances where probation had, in assisting the bench with an appropriate sentence, failed to analyse the sentencing guidelines correctly, and had suggested inappropriate community orders.

Another, based in south west London, conversely felt the content was high-quality, commenting that the structure “produce[s] better quality reports with a stronger handle on range of available interventions”. This magistrate qualified this by saying that, without sufficient resource, reports are becoming more and more difficult to produce at all. Logistical issues with their production was an ongoing issue:

“They are also having to ask more often for three weeks to produce reports, and the availability of on-the-day reports is minimal. This requires more adjournments, and therefore court time”. (south west London)

Another magistrate had observed a number of reports not being done because they haven’t been allocated, with very few on -the-day reports, and had experienced “continual requests of 4 weeks to complete a report”. (central London)

Resulting impact on the rehabilitative offer

Where mentioned, it was generally felt that unpaid work (UPW) programmes were working well. Another south west London magistrate visited an unpaid work unit in Wimbledon in January and commented that magistrate attendees were impressed at how well it was organised. They were reassured that, whilst there are significant backlogs, UPW as a sentencing option is viable and that they’re tackling the backlogs in an organised manner.

Since reunification, HMI Probation has raised concerns about the availability of rehabilitative interventions for the new organisation.⁴ This was a concern similarly reflected in contributions from members, who felt the impact of the narrowing down of available programmes. A south west London magistrate felt - despite saying the quality of reports was generally good – that a large number of the programmes that they had available to them to complete under Rehabilitation Activity Requirements (RARs) seem to be being discontinued and not replaced:

“This is limiting the work they can do. Most of the reports had some reference to “x would have benefitted from the y programme, but it’s no longer available”. (south west London magistrate)

The rationalisation of programmes occurring since unification was observed by some to be to the detriment to the variety of programmes. One magistrate member who sits in central London had seen similar “limitations in the programmes being offered”, with “little put in place of withdrawn programmes”.

⁴ HMI Probation, ‘2021 Annual report: inspections of probation services’
<https://www.justiceinspectors.gov.uk/hmiprobation/wp-content/uploads/sites/5/2022/02/Probation-Staff-Survey-2021-report-v1.0.pdf> (November 2021)