

# Tightening up probation: a step too far?

Carol Hedderman and Mike Hough express their concern.

This article examines the enforcement of probation and community service orders, paying particular attention to Clause 46 of the Criminal Justice and Court Services Bill. Without amendment the proposed legislation will curtail sentencer discretion in dealing with breaches of community sentences and damage the Probation Service's ability to work with offenders.

## Does probation need 'tightening up'?

Throughout the 1990s the answer to this was 'yes'; and despite improvements, the answer is probably still 'yes'. To oversimplify a little, the Probation Service saw its role in the 1980s primarily in terms of diverting offenders from prison, and diversion obviously ran counter to strict enforcement of probation conditions. Some offenders were able to run the system ragged. Probation National Standards were introduced to correct this by specifying how soon after sentencing arrangements for community penalties should be in place, how frequently offenders should be in contact with their supervisors, and how non-compliance should be dealt with. The Standards were also expected to improve public confidence in community penalties.

On behalf of ACOP we have now completed two national audits of the way in which probation services enforced the 1995 Standards, which were in force until April 2000. The first audit, done in early 1999, showed a patchy level of compliance with the Standards; the second, six months later, showed considerable improvements. For example, the vast majority of appointments are now made within the Standards' time-frames. 84 per cent of offenders keep their first appointment, and a further six per cent have an acceptable reason for their absence.

## Clause 46 and the National Standards 2000

The National Standards 2000 were introduced on 1 April. The most significant departure from the 1995 Standards is the requirement that breach proceedings should follow after

a single warning, rather than two. Clause 46 of the Criminal Justice and Court Services Bill firstly confers statutory status on the warning. Secondly, it requires sentencers to impose a prison sentence on those who are breached. Fettering sentencer discretion in this way amounts to a major change. True, there are weasel words which relieve magistrates and judges of the duty to imprison "in exceptional circumstances" and require them to "take account of the extent to which the offender has complied ... with the order". But the intended effect of the legislation is to imprison the vast majority of offenders who breach community orders. The Home Office has planned on an annual increase of 15,000 prisoners entering prison, with a 2,000 increase in the daily prison population. This represents an average time served of seven weeks.

We see no particular problem in replacing two non-statutory formal warnings with a single statutory one. However, a near-mandatory prison sentence is not only bad law; it is impractical and represents poor value for money.

It is bad law because it offends against principles of proportionality. A fair system of justice must ensure that sentences designed to rehabilitate are no more intrusive than ones designed simply to punish. Under Clause 46 it is inevitable that some offenders will end up in prison in direct conflict with the intentions of the sentencer. Petty offenders living chaotic lives - drug-dependent shoplifters, for example - are particularly at risk.

Insisting that imprisonment is the default response to breach is impractical and poor value for money because it will impose needless costs on the Prison Service whilst undermining the effectiveness of probation work with offenders. The service works with offenders who, by and large, have shown themselves to be impervious to deterrent sanctions. They will have been punished over the years without effect by their parents, their schools, and the courts. They can be helped by probation to address their offending, but there is often one step back for every two steps forward. This reality is ignored by the proposed legislation. We see several undesirable consequences:

- The gains made by offenders prior to breach proceedings will be sacrificed on the altar of tough-mindedness;
- Probation officers will no longer be able to use the breach process as a sharp reminder to recalcitrant offenders of the need to comply with supervision.
- There will be more breach proceedings, at a time when demands on the police and on the courts are already injecting

unacceptable delays in serving warrants and listing cases;

- Some probation officers will simply avoid using formal warnings in cases where a prison sentence would be disproportionate;
- Sentencers will be denied a constructive role in monitoring the progress of probationers;
- Some sentencers are likely to pass nugatory sentences in cases where a prison sentence would be disproportionate, signalling a lack of confidence in the legislation.

## What should be done?

We fear that the net effect of Clause 46 will be to undermine rather than support the integrity of National Standards. It is important that this clause is amended to restore sentencers' discretion. Minimally, it should be redrafted to ensure that custody is mandatory only in cases where it would have been appropriate for the original offence.

In improving enforcement, effort should be focused on training for probation officers, tightening management supervision and improving recording systems. The new National Standards lay the groundwork for much of this work. Our audits show that the probation service can rise to the challenge. The 'big stick' is neither the only nor the best way of securing offenders' compliance. There is a need to chart and disseminate best practice in:

- Providing incentives to comply (eg early revocation for good behaviour)
- Scheduling appointments to maximize chances of compliance (eg linking to signing-on days.)
- Penalising non-compliance in ways that retain offenders in programmes.

The earlier involvement of sentencers in the breach process could be turned to everyone's advantage - provided that they have some genuine decisions to make. The process of sentencer review as exemplified in Drug Treatment and Testing Orders is valued both by probation officers and offenders. If anything, the role of magistrates and judges in breach proceedings should be broadened rather than narrowed.

If Clause 46 reaches the statute book unamended, probation will be less just, less effective and in many cases, little more than a waiting room for prison.

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The two CPRU reports on the ACOP enforcement audit are available on [www.sbu.ac.uk/cpru](http://www.sbu.ac.uk/cpru)