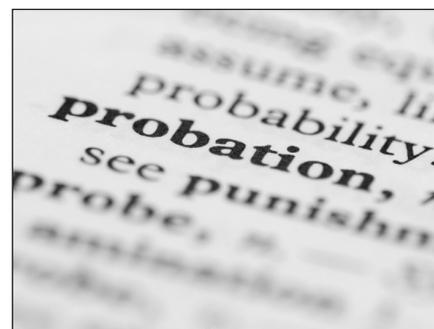


Complexity, realism and morality: consultations on probation reform

Jane Dominey and Jake Phillips outline proposals, as discussed at a recent seminar at the Cambridge Institute of Criminology



In March 2012 the Ministry of Justice published two consultations: Punishment and reform: effective probation services and Punishment and reform: effective community sentences. Taken together, the two documents have the potential to impose wholesale reform on the work of Probation Trusts in England and Wales, primarily through the privatisation of considerable sections of Trusts' work.

The consultations anticipate the implementation of parts of the *Offender Management Act 2007*, with the caveat that the preparation of pre-sentence reports, risk assessment and the management of high risk offenders remain under the purview of the public sector. All else will be opened up to competition. The government invited responses to the consultations and, in order to stimulate debate during the consultation period, a seminar was organised for practitioners and senior managers from Trusts, as well as academics and students from the Institute of Criminology and other universities. Three key ideas emerged from the seminar. Firstly, that offender management and supervision are complex processes that have wider implications than one might initially expect and that these two crucial aspects of probation work will not be served well by a commissioner/provider and public/private sector split. Secondly, we discussed evidence from the academic literature related to public opinion in which support for increasingly punitive sentences is

not evident. Thirdly, we heard about how we might think of probation as serving a moral purpose that goes beyond the utilitarian and narrow focus on reducing reoffending and protecting the public.

Complex processes

The consultations make the case for 'competing' offender management and supervision, arguing that these functions should be delivered by the same organisations on a payment by results (PbR) basis. This particular proposal has been the main focus of attention in the published responses to the consultations highlighted above. Whilst the case for keeping these two functions together makes sense in terms of reducing the potential for duplication, enhancing the possibility of end-to-end offender management and the creation of the all-important offender-worker relationship (Burnett and McNeill, 2005), there was consensus that the consultation documents underestimate how complex the supervision process in particular can be. We heard that probation practitioners use supervision to monitor the risks that offenders pose and help them attain and use certain skills that may help to reduce their risk of reoffending. However, they also use supervision to make a community sentence more legitimate for offenders through the creation of a productive and professional relationship which, in turn, is believed by practitioners to improve offenders' relations with authority and society more broadly. Moreover, practitioners believe that in the context of supervision,

'success' cannot be neatly fitted into a PbR framework because it often takes the form of intangible and hard to measure changes in an offender's behaviour and circumstances. There was concern that PbR may result in delivery organisations prioritising the offender management side of the role (which is more about signposting and hence more easily measurable) over the supervisory side of the role, which has the potential for wider and more normative change in offenders.

We also heard how the proposal to keep key 'public interest decisions' in the public sector would be hard to maintain. Whilst some key 'public interest decisions' are obvious (for example, commencing breach proceedings when an offender has gone missing) others are not so. Offender managers face key public interest decisions on a daily basis, in many cases several times a day. Supervisees often disclose information that suggests an increase in risk, for example if alcohol use has increased or a relationship broken down. Would the practitioner make a decision about what to do, or would they refer the decision to the Trust? How would a Trust employee make such a potentially important decision when they do not have regular face-to-face contact with the client? It was argued that a 'public interest decision' is in need of a more coherent definition to make such a proposal workable. As part of these discussions, the question of consistency would need to be addressed: is consistency achievable in an environment characterised by a multiplicity of providers?

Punishment with everything

The notion of punishment looms large throughout the consultation documents. One of the contributors

to the seminar suggested that, as some eating establishments offer 'chips with everything' so the Government makes the promise of 'punishment with everything'. Community sentences are to be at least as punitive as a custodial sentence. In order to achieve this, the consultation document asks whether all Community Orders should contain a punitive requirement, such as unpaid work, electronically monitored curfew or a fine.

The assumptions that underpin the argument for 'punishment with everything' merit examination. The consultation papers speak of the need for community sentences to be punitive, effective and credible without pausing to define these concepts and consider the extent to which they are compatible. There is no straightforward way of measuring the amount of punishment inflicted by a sentence; the pain of imprisonment varies depending on an individual's circumstances and resources and, in the same way, days of unpaid work may be experienced as an unwanted burden, a welcome break from inactivity or an unexpected learning opportunity.

To judge whether Community Orders are effective, it is necessary to know what they are supposed to achieve. The objective of reducing reoffending does have a high profile in the consultation documents and the implication is that Community Orders exist to reform as well as to punish. This sits uncomfortably with evidence about 'what works', which suggests that punishment is not an effective method of achieving rehabilitation (McGuire, 1995). Maybe a Community Order with supervision as its sole requirement (the old-fashioned probation order) is sometimes the most effective way of delivering the practical and psychological interventions needed to assist someone to stay out of trouble.

And where is the evidence that the public want 'punishment with everything'? The image in the consultation documents is of a public seeking more punitive responses to crime. At the seminar,

we heard of studies of opinion that suggest the public has more interest in rehabilitation than is popularly supposed. Whilst some victims do argue strongly for harsher punishment, there is also considerable support from victims of crime for disposals that are restorative or reformative in nature. A belief in the capacity of people to change has not been completely submerged by popular punitiveness (Roberts and Hough, 2011).

What about values?

Much of the argument about the consultations has been entirely instrumental in tone, asking how we can ensure that offenders in the community are punished and reformed in a way that delivers both public safety and value for money. For the most part, the argument has not strayed into the territory of values. The work of the Probation Service is seen as a series of tasks that can be reallocated to other, private and charitable, providers and not as an expression of the way that society seeks to respond to those who are troubling, troublesome and troubled (Canton, forthcoming).

Perhaps it is too late now for the debate about whether a government can or should outsource its responsibility for the delivery of justice to the private sector. Private companies already have contracts to work throughout the criminal justice process, from police station to prison. Only a small minority of published responses to the government consultation and voices at the seminar asked for the genie to be put back in the bottle. The majority position is concerned with the pragmatic, but complex, issues about accountability, regulation and managing a system with a multiplicity of providers: for example, what happens when a private or voluntary sector provider fails, how are commercial conflicts of interest to be managed, how to communicate confidential information between different providers? The organisations which are set to profit most from the government's plans have, perhaps unsurprisingly, not made their

responses publicly accessible (with the exception, arguably, of NACRO's (2012a; 2012b) contributions). It may be that these organisations have answers to the issues raised above, but these will only become clear when the government publishes its own response. Due in the autumn, this had not been published at the time of writing (October, 2012).

Some contributors to the seminar were sceptical about the consultation process itself, believing that the key decisions had already been made. They argued that the current PbR pilots should be understood as pilot ships leading the way rather than expeditions to test the waters and turn back if things go awry. It is clear that increased privatisation in the delivery of community penalties is going to happen. However, it is equally clear that there is a need for further reflection before we can be confident that the proposals in their current state actually work to protect the public, reduce reoffending and satisfy the nuanced way in which the public demand offenders be dealt with. ■

Jane Dominey is a PhD candidate at the Institute of Criminology, University of Cambridge and **Jake Phillips** is Lecturer in Criminology at Sheffield Hallam University

References

- Burnett, R. and McNeill, F. (2005), 'The place of the officer-offender relationship in assisting offenders to desist from crime', *Probation Journal*, 52(3), pp. 221–242.
- Canton, R. (forthcoming), 'The point of probation: On effectiveness, human rights and the virtues of obliquity', *Criminology and Criminal Justice*.
- McGuire, J. (ed) (1995), *What Works: Reducing Reoffending: Guidelines from Research and Practice*, Chichester: Wiley-Blackwell.
- NACRO (2012a), *Response to Punishment and Reform: Effective Community Sentences*, London: NACRO.
- NACRO (2012b), *Response to Punishment and Reform: Effective Probation Services*, London: NACRO.
- Roberts, J. and Hough, M. (2011), 'Custody or community? Exploring the boundaries of public punitiveness in England and Wales', *Criminology and Criminal Justice*, 11(2), pp.181-197.