

# Electronic monitoring: dangerous if left to its own devices

Mike Nellis introduces this issue of *cjm*

I first got interested in the electronic monitoring (EM) of offenders in 1989 when journalist Tom Stacey, who founded the Offender's Tag Association in 1981, wrote provocatively about its merits in *Social Work Today*, even as the government was establishing it as a stick with which to beat the Probation Service. The first three articles I wrote on EM were all hostile, and like the National Association of Probation Officers I honestly believed that this ominous American gimmick could be argued away if enough of us spoke up. Giving EM to the private sector to implement was especially chilling, but Probation had an 'over-my-dead-body' attitude to it then, and was never likely to take it on, even if the then Conservative government had been minded to let them.

By 1996, a bit better informed, and pragmatically prepared to split the technological issue from the commercial one, I had changed my mind, thinking that Probation-run intensive supervision schemes with EM-curfews might have something useful to offer. I had also realised, more intuitively than analytically, that EM would not be talked or pushed out of penal policy because it was tied to bigger and deeper shifts in the use of information and communications technology. From that point on I argued that the preferable way to deal politically with EM was for probation to own, tame and constrain it, to make it work as best it could, precisely because it was otherwise a dangerous technology that, in the hands of others, would threaten Probation's future, even more than the then government intended. Easier

said than done in England and Wales, but over time I drew comfort from the fact that other European countries, which had located EM in state agencies, were proving that EM could be constructively combined with social work, and tentatively used to reduce, or at least stabilise, prison populations (Nellis, 2014).

Come 2013, the forlorn hope that in England and Wales EM might one day become integrated in the Probation Service died forever, not least because the Probation Service itself is being privatised out of existence, except for a residual statutory service for high risk offenders, and EM is being significantly upgraded, in the name of 'transformational justice'. The Ministry of Justice's new contract for EM – the government's third since 1999 – has ditched the erstwhile commercial service providers G4S and Serco in favour of a much more complex, four-companies-working-together delivery structure, which will disperse offender surveillance outside the boundaries of a recognisable criminal justice system.

Capita is now heavily involved in running 'outsourced' public services, Astrium has a genius for mapping software, Buddi manufactures GPS hardware and Telephonica/O2 is a phone company. The new contract anticipates major increases in the use of Global Positioning System (GPS) satellite tracking of offenders without necessarily abandoning the radio frequency EM that has been the mainstay of the curfew enforcement in all EM schemes upto now. Policy Exchange, a think tank which influenced the third contract, has even grander ambitions for GPS, which it sees as a necessary and

overdue upgrade on 'failing' radio frequency technology. Even if these ambitions are not realised, Capita said on its website when it won the contract from Serco and G4S to run monitoring centres and employ monitoring staff nationwide that it looked forward to becoming part of the biggest EM scheme in the world.

These developments make it opportune to examine how EM is faring in other countries and to ponder the circumstances in which the worst might not come to the worst, as it has in England and Wales, and (in a different way) in the USA. Is the reconfiguration of 'community supervision' the more likely consequence of introducing EM than the rhetorically anticipated reductions in prison numbers? The picture is still varied, but the tendencies are becoming more obvious.

Sweden, the Netherlands, and Belgium had all set out to 'modernise' their Probation Services at the time of the millennium, but deliberately and explicitly used radio frequency EM to add an element of control to targetted rehabilitative measures. In Sweden, as **Jan Bungefeldt** indicates, its use as part of intensive supervision has been parsimonious and largely uncontroversial, mostly aimed at replacing short custodial sentences, and relatively unchanged in form since it began. The original 'Belgian model' was even more strongly grounded in social work, and **Delphine Vanhaelemeesch** regrets the recent shift toward stand-alone uses, in order to extend its use. The Netherlands has toyed with stand-alone uses in the past, but **Michiel van der Veen** is currently seeking other ways to expand it, streamlining the packages in which EM can be embedded, concentrating expertise among fewer probation officers and making prosecutors and judges better informed of its potential.

Germany remains anomalous. It recently introduced nationwide GPS tracking for high risk sex offenders as a solution to European Court of Human Rights criticisms that the preventive detention of such offenders, after their sentence had formally ended, was unacceptable,

but only one region of the country – Hesse – had ever previously used radio frequency EM as part of intensive probation supervision. As **Silke Eilzer** explains, Germany's historical memory of intrusive state surveillance has played a part in stalling the use EM, and ensuring that its use is tightly regulated by data protection law.

Radio frequency EM-home confinement can be a more or less intrusive measure depending on the number of hours per day confinement lasts, and the duration of the order. Portuguese judges would only accept EM as an alternative to pre-trial detention if defendants spend all day at home, with only 'authorised absences' for work, education and medical appointments. There are objections to such lockdown models elsewhere in Europe, but **Nuno Caiado** defends it as a pragmatic necessity – better than prison – and ameliorates its impact on families with some support from social workers. Women and men, as **Ella Holdsworth** and **Anthea Hucklesby** say, may well respond differently to EM, and across Europe there is much to be discovered about the way people respond to its different legal modalities and varied penal intensities.

Much of the critical debate on EM in Europe has been dominated by liberals and the centre left who worry that EM is, or will be, used too punitively on individuals; the conservative view that it is insufficiently punitive exists but has largely been marginalised. In Australia, that voice has been sufficiently strong to ensure that radio frequency EM home confinement projects have not only been underused by courts and underinvested in by other agencies, but eventually closed down. GPS tracking seems set to replace them, but **Marietta Martinovic** expects the same lack of investment by stakeholders. The continuing misplaced confidence in its penal capacity and the same absence of informative media and educational

strategies which undermined the use of radio frequency EM to ensure that GPS will not be the transformational technology our Ministry of Justice believes it to be.

For **James Kilgore**, who had personal experience of it, this may be no bad thing. He paints a dismal picture of EM use in the USA, with lockdown forms of home confinement co-existing with GPS. Kilgore also notes how lucrative EM remains for local and global businesses. **Craig Paterson** explores the neoliberal rationales which increasingly drive the global trade in 'technocorrections', eroding by different degrees in different places the imperfectly humanitarian forms of penal practice that had gained traction under social democracy.

Paterson rightly says that the political and commercial imperatives to upgrade EM are 'contestable', but no means of contestation are good for all time, and the ways that have worked in Europe up to now may be vulnerable from unlikely sources. The wise and necessary insights of desistance research have been cynically used by English policymakers to legitimate dispensing with the Probation Service, and everybody buys into desistance, right? Academics beware. Any finding that stand-alone EM can have positive effects on its own, however slight or occasional, might well be used politically to justify less integrated forms of EM, which may only require a little 'assisted compliance' from non-professionals to help people get through them. Far from EM supporting social work, as it has sometimes done, social assistance from non-professionals comes to support EM as an end in itself. Nor does it matter that EM has only a demonstrably 'limited', short-term effect – the obvious political solution to that is further successive periods of EM, intermittent or incessant oversight with one technology or another, maybe several all at once. We live in new times.

In the topical and comment section edited by **Tammy**

**McGloughlin** and **Arianna Silvestri**, **Nick Hardwick** writes about the recent inspection at Feltham Young Offenders Institution and argues that fundamental changes must be made.

**Julie T Davies** considers the role of 'silencing' in the suppression or manipulation of 'the truth' in connection with so-called whistle-blowers and the ways by which their treatment is ultimately state controlled. **Elaine Campbell** reflects on the inaugural elections of Police and Crime Commissioners and what they meant for participatory democracy. In spite of the rather grim picture that emerges from these, Campbell leaves us with a more upbeat take, by delineating alternative frameworks for conceptualising public engagement in contemporary societies: these, she argues, paint a more vibrant, theatrical and dynamic picture of popular empowerment. **Ross McGarry** provides a critical account of the murder of British soldier Lee Rigby in Woolwich, London in May 2013. McGarry poses some difficult questions about the depiction of the 'criminal' and 'victim' in this event. **David Scott** examines prison research and concludes that it should provide 'an honest attempt to provide an accurate reflection of reality, and a commitment to expose inhumanity and acknowledge the suffering of the powerless'. **Richard Garside** gives an update on Justice Matters, the Centre's three year initiative. Finally, **Keith Hayward** and **Roger Matthews** contribute an appreciation of Jock Young, one of the outstanding criminological thinkers of our times, who very sadly passed away in November 2013. ■

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## References

Nellis, M, (2014), 'Understanding the Electronic Monitoring of Offenders in Europe: expansion, regulation and prospects', in *Crime, Law and Social Change*.