

Supervising personality disordered offenders in the community: not a special case:

Eithne Wallis argues that the personality disordered living in the community should be treated no differently than other dangerous offenders.

My grandmother used to say that 'life is too short to beat about the bush'. Having come to agree with her I intend to speak plainly. I do not accept that 'personality disordered' offenders are a special case in the management of dangerous offenders in the community. In fact, I have come to the conclusion that they are entirely a false category, a conceptual rag bag created by armchair psychiatry. I

wanted to believe; I have lost many hours of my life reading the books and articles. For years I listened to and joined in the tortured debates, trying to pin down and give substance to this elusive thing called 'personality disorder'. But I have now lost patience with this tired debate because, frankly, for the purposes of supervising these offenders in the community, the practical steps to be taken to ensure safety are essentially the same as for other dangerous offenders and this spurious categorisation is completely unhelpful. At best it gives a label to a group of people whom some have been determined to see as ill and therefore not entirely culpable. The concomitant label of 'untreatable' has too frequently obstructed appropriate measures for public safety and denied or blocked access to help for the offenders themselves and to facilities to meet their needs.

I would like to see it discarded altogether because of its lack of practical usefulness and what are now profoundly emotive connotations. Might it not be sufficient to know whether an individual is suffering from a mental illness and, if so, the diagnosis, the proposed treatment and where best it can be found? If this area is clarified the ground is then cleared for the other relevant forensic assessments to take place, to assist decision makers at every point in the process of justice. In de-commissioning this classification we could escape from the mental trap of quasi illness and free ourselves to think laterally in outcome rather than labelling terms. The term 'personality disorder' has served only to obfuscate and take us down false legislative and practice trails in the past. We are at a critical point of decision making now in terms of policy, legislation and funding and it worries me enormously that we might again behave like contortionists, bending and twisting everything to fit these phantom classifications rather than designing and wrapping policy and legislation around the reality of desired outcomes and effective practice.

The offenders themselves obviously do exist and their behaviour and its consequences are very real. I would like the criminal justice system to see them as individual men and women (despite some elements of common profile) and to deal with them on the basis of four things:

- evidence of the harm they have

actually done to others, appropriately distinguishing those who have offended against people from those who damage property or create disorder and nuisance;

- assessment of their future risk and dangerousness. By risk I mean the likelihood of him/her doing such again and within what circumstances and time-frame. By dangerousness, I mean the potential or capacity to do harm of a serious physical or lasting psychological nature. Both actuarial and clinical assessments are needed;
- consideration of what access the different options (community, prison, hospital/secure provisions) would give to the facilities, programmes or treatment assessed as being the most likely to reduce his/her criminogenic risk factors i.e. to reduce the likelihood of further offending;
- due regard to the victim/s, their sensitivities, rehabilitation and future protection.

Centrality of justice

In all of this, I would like to see our justice system retain, as a central guiding tenet, the concept of intrusiveness commensurate with seriousness, but updated with an overlay of ongoing dangerousness.

Proper differentiation of these men and women, their offences and future risk and dangerousness, must be made. Not all are treatable but most are manageable. Some, because of the seriousness of their offences and their continuing dangerousness, will need to be detained for a very long time. In the case of a very small number, this will mean the remainder of their lives. But this harsh reality, at the extreme end of the spectrum, should not be allowed to deflect attention from the main issue which is the safe supervision and management of these men and women in the community as most will remain there and the vast majority of those detained will return.

Historically, we face a defining moment. My plea is that we do not make the age old mistake of planning, designing and depending on the detention elements in the system as if they are the most critical, with community supervision as an inconsequential add on or afterthought. The truly difficult reality for decision makers to face is that these women and men offenders will be at liberty in the community for all or most of

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their lives, with detention (for some) merely an episode. Let us ensure that we get this raft of legislation, policy and resourcing facing in the right direction and create a continuum of assessment, holding and community supervision arrangements and facilities to reflect the reality of the differential dangerousness and treatability that we have to work with.

Looking for a new focus

The most critical question therefore has to be 'what do we actually need to have in place to be able to manage these offenders safely in the community, or on their return to the community?' The practical answers to this question begin to come when we get into the right mindset, namely, desired outcomes and ethics. We need to be clear about what we want to achieve and able to articulate what we believe to be acceptable ways of doing so in a civilised society. After all, the return of the death penalty or lifelong detention for all serious offenders would obviate the need for any community supervision! The practical debate cannot be separated here from the ethical one. But the agencies involved with these offenders are not operating in a value-free environment and it becomes a very practical problem when they work from different or even conflicting ethical frameworks. As well as making it difficult to agree a primary common purpose for the work, perceived differences can generate mistrust and only partial participation by some. The Probation Service has been stereotyped as a corrections agency denying the patient status and inappropriately applying sanctions. Health is seen as a service which elevates the therapeutic relationship to the status of sacred cow to the exclusion of public protection issues. In reality, the position and task of each is far more complex. Whilst these two may appear very different they have the same fundamental flaw; a singular focus on the offender/patient. I would argue that the local community and victims also have an interest in the assessment and management of risk here and must be designed in to any definitions of the public interest. An integrating value system is needed to provide a clear ethical framework which has real, practical application in individual cases and which generates and supports a drive for common

purpose and agreed outputs.

In my view, restorative justice has the potential to provide just such an integrating framework for multi-agency work. As well as having a high ethical component, it is a very practical response to rising crime and increasing mental disorder. This is because its primary focus and objective is to 'make good'. I argue that punishment, retribution and blame are inadequate responses to crime. So too is any approach which falsely protects the offender or talks down the harm that she/he has done, or may do, to others. This is a concept of justice which seeks to include rather than exclude and is driven by a wish to restore rather than simply blame or punish. It marks the offending behaviour of individuals as unacceptable whilst working with them to change and stop, thereby facilitating their restoration into the community. It requires the adoption of a problem solving, rather than adversarial or retributive mentality and puts emphasis and focus on relationships, describing them in terms of 'need' and 'obligation'.

Restoring justice to communities

Restorative justice promotes the view that victims, offenders and the wider community all have needs and obligations. It aims, in the longer term, to make good and repair the damage done wherever possible to enable the former to live together (within the concept of safety) rather than have large numbers of its members damaged or excluded from it. It is in communities that men and women become offenders, live and commit offences. It is there where the harm is felt as well as being the place where the solutions lie. Ultimately, all but a very few offenders and victims will return there.

Victim awareness and empathy is central to this model, as is recognition of his/her need to be heard, to have the harm done acknowledged and repaired, to have access to real information about the process of justice - and to be protected. Where there is a continuing serious risk of dangerousness to the latter, the protection of the potential victim is paramount at any time. The balance to be struck cannot be drawn from a universal formula but on a case by case basis at a particular point in time, given that the offender's level of risk and dangerousness is not a static state but one which interacts dynamically with many other

variables.

Restorative justice has a very strong community focus based on a commitment to work to make it possible to keep and work with the majority of offenders in the community and return those detained at the earliest opportunity. It places obligations on those who incarcerate/hospitalise to maintain a perspective which reaches beyond the perimeter fence to safe community living again. This objective draws offenders, local communities, victims and the professionals into a web of significant relationships which all need to be worked at if risk and dangerousness is to be managed effectively. The diversity of our communities must always be remembered along with the cultural interplay and how psychological distress is recognised, diagnosed and managed by families and professionals.

I argue that local communities are major stakeholders in the restorative process, but all too often only the needs of the kith and kin are articulated and exclude the other components of obligation. The professionals too frequently treat the relationship with these interested parties as public relations rather than targeted inclusion in the supervision plan or care programme. Yet family members, friends and neighbours are often invaluable suppliers of information as well as having critical roles to play in the successful return of the offender and his or her maintenance and help, or indeed surveillance, in the community. At the very least, communities have to be prepared to let them back in. Restorative justice attempts, amongst other things, to develop the capacity of individuals to change, through taking the perspective of the other. Within this framework, the reduction of fear, prejudice and mis-information are also significant objectives and outcomes in the process of managing risk and dangerousness.

The other components

It is also within these communities that the many other restorative elements exist to which the offender needs access - such as

housing, employment, healthcare and social activities, to name but a few. Offenders face great disadvantage in competing for access to these facilities and some will need specially designed resources. The classification of 'personality disordered' itself carries great stigma and is very hard for the individual to escape. Yet access to these should surely be basic rights of citizenship. It is therefore for primary suppliers of these community resources to meet their obligations and play their part in stacking the odds in favour of safe management in the community, rather than leave it solely to the hard edges of the criminal justice or health systems.

In summary therefore, any framework of ethics and outcomes which does not include attention to the relationships of need and obligation between offenders, their actual or potential victims and local communities, will fall short and fail in the task of assessment, safe supervision and restoration. Let us press for the inclusion of all three elements within the new plans and legislation.

If outcomes and ethics are clear and agreed it becomes much easier to achieve the other practical elements which would make success more likely. They are as follows:

Clarity about agency roles

No single agency can actually achieve these outcomes alone; it is, in essence, a multi-agency task. However, all need to know which agency has the primary responsibility, or it could be shared between agencies as appropriate. The legal responsibility, which currently resides with the Responsible Medical Officer, needs to be released, as she/he is not generally best placed to manage the community supervision role and is too frequently thought by other key practitioners to be a strangle hold on good process. His/her contribution will continue to be critical but it should be as part of the multi-agency team or as joint holders of this responsibility. The lead role responsibility held by the police (in close collaboration with probation) within the *Sex Offender Act 1996* is now working extremely well in most areas, as is the lead role which probation tends

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to play (closely supported by the police) in the inter-agency conferencing and joint management of other imminently dangerous offenders in the community. This good practice should be acknowledged now and supported and reflected in high level policy and strategic planning for these offenders as well. Teamwork is one of the keys to success.

Open sharing of key information

This is an absolute pre-requisite to effectiveness. Section 115 of the *Crime and Disorder Act* has given all agencies the power to disclose although the legislation is enabling rather than prescriptive. Information sharing needs to go to even deeper levels, however in that it is often very difficult to find out precisely what the offender did and in the detail necessary. This Section, in my experience, has also yet to permeate health services' thinking and behaviour in many of these cases.

The centrality of risk and dangerousness assessment

This must be regularly repeated and disclosed to relevant parties, with supervision (and surveillance if necessary) planning based on it. We should not be afraid to be intrusive if in doing so we are both protecting the public and providing the high levels of help and support so often desperately needed by these offenders.

A continuum of options, services and programmes

The need to be available and easily accessible at each stage in the process of justice from first police intervention through diversion decisions, bail/remand arrangements, sentencing, release assessment and community supervision, whether on post detention orders or licence. Again, a continuum of services and facilities are needed within which to conduct these thorough assessments and to house or treat thereafter. A unique configuration of treatment, offence/victim focused programmes, education training and employment, accommodation or other services will need to be put together and made available in each case. Having the right court options available also makes a difference to effectiveness in giving practitioners the right legal framework and sanctions within which to do their jobs properly. I would like to see far more and better use being made of the hybrid order, the indeterminate life

sentence and, indeed, probation orders with conditions attached. Provided there is good throughcare and sentence planning and management, prison too can sometimes provide the right services as well as secure containment, supported by parole or other statutory licence, making best use of added specific conditions. My experience is that the conditions are often much too limited in their use and that there is still considerable unexplored potential. Detaining more patients/offenders closer to their eventual release and supervision area (or returning them there prior to the end of the detention period) would enable proper pre-release planning to become an everyday reality. The more serious offenders could be brought back into the community within the multi-agency conferencing and risk management procedures now in place between probation and police. The pre-release assessments would indicate which other parties need to be included and share these responsibilities.

Inclusion of the victim where possible

Probation Circular 61/95 gave the Probation Service the responsibility to contact victims of serious violent and sexually violent crime where the offenders have been sentenced to imprisonment of four years or more. Additionally, the *Victims Charter* places a general requirement on the Service to contact the victims, or their families, where the offender is sentenced to life imprisonment. The contact, provided the victim wants it, is for the purposes of giving information about the process of imprisonment and release itself. In addition, the victim has the opportunity to present his/her experience and views on release to the probation officer who should take this into consideration when assessing future risk and dangerousness and in reporting or making recommendations to the Parole Board. At present the victims of patients who are being treated in the High Security Hospital system do not have such opportunities. I very much hope that this aspect of practice will carry through to the new provisions currently under consideration. Some probation services are reporting real progress in their consultations/negotiations with housing departments and are succeeding in making the reintegration and accommodation of serious offenders a strategic issue for them. But most are still

reporting extreme difficulties and little progress. Local initiatives need to have the backing of high level government inter-agency action and agreements.

Enabling legislation

At present the legislative framework too frequently restricts good practice rather than facilitates it. I repeat my proposal for taking personality disordered out of the special legislation category, leaving the agencies responsible for them to assess, recommend sentence and supervise on the basis of the elements earlier presented by me. Again, I make a plea for tightly worded legislation, carefully scripted and evaluated in draft by those agencies who will actually have to do the work on the ground.

Treatment, facilities and arrangements

Others in the conference have said a good deal about the emergent evidence on which seem to work better. I shall not therefore expand further but simply lend my weight to the argument for longer term evaluation and research in this field so that future design and decision making can be more closely built around effective outcomes. I would like to see, running alongside the pursuit of 'what works' in terms of changing the offender's behaviour, more follow up and study of the offence consequences for victims, with a view to learning about the interventions with victims which would best enable them to heal and recover.

Adequate resources, properly distributed

As already indicated, I feel that public attention is often focused only on the point of admission to hospital or institution as if this were the problem solved or the most critical end in itself. Facing the fact that all but a few do come out and will find their way back to local communities with or without help, must be taken on board in terms of resource distribution. For the Probation Service the quality of the planning and process for bringing offenders back into the community is where we believe there should be much greater investment of resource - if only because return to the community is likely to be the point of greatest risk to others as well as vulnerability for the offender. Any distribution of resources in the future must therefore reflect a proper split between time spent detained and the longer periods in

the community under statutory supervision, if the revolving door syndrome is to be avoided and the public protected.

Public debate

Finally, this area of work requires both continuing public interest and debate around the many facets of rehabilitation and safe management in the community. Pursuing the active restoration of the offender will often involve the worker in taking calculated risks but these must be defensible. The public, however, need to understand that there is no totally reliable means of predicting future behaviour and that the assessment of risk and dangerousness is not an exact science. We should not allow judgements or decisions to be fudged or cloaked in a professional mystique which cannot be challenged. The offender should not be falsely protected from hearing and facing his or her culpability. Restorative justice is not a collusive model for offenders or staff but the public interest must be pursued in an honest way. We cannot promise an offending or violence free society but, if we do these things, we should be able, through time, to build public trust and confidence in our professionalism.

In conclusion, the Probation Service has in recent years increasingly changed practice and refocused on matters of public protection, as well as the redesigning of probation assessment and programmes to reflect the characteristics of what is known to work best. We also have a long history of multi-agency work, with an acknowledged ability to bring to the table and include others in this substantial work. The Service has declared its willingness to become even more involved with these groups of men and women offenders provided the necessary policy, legislation and resourcing is provided. The world of multi-agency practice has changed dramatically in the last two years and, together, probation and police, with the help of colleagues in health and housing particularly, are demonstrating an increased ability to supervise and manage dangerous offenders in the community. It is difficult, demanding and expensive work and these realities must be reflected in any new, grand design.

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