Enforcement policy and practice: evidence-based or rhetoric-based?

Thomas Ellis argues that probation enforcement policy has concentrated on the application of national standards and breaching offenders while failing to evaluate the effectiveness of these measures.

Throughout the 1990s the probation service has undergone radical changes of its aims, philosophy and values. One of the key changes has been the adoption of 'what works' or 'evidence-based' principles to ensure that interventions with offenders are effective. The impact of the overarching drive to introduce notions effectiveness into every aspect of the working culture of the Probation Service are debated elsewhere in this issue. For the purposes of this article, the effectiveness principle is accepted. My focus here is to ask: does current enforcement policy and practice work toward or against effective practice? In response, I will argue that current thinking on enforcement runs counter to 'what works' principles in two key areas:

- It lacks clear theoretical underpinning and evidence that it is effective.
- There is an over-reliance on tough sounding rhetoric which undermines the development of a more effective approach to ensuring compliance with orders.

I will discuss these issues in turn, before commenting on the lack of theory and reliance on rhetoric which have already produced some of the worst counter-evidential thinking from New Labour in the form of the Child Support, Pensions and Social Security Bill (1999) and the Criminal Justice and Court Services Bill (2000). I finish with a plea for enforcement to be incorporated as a necessary part of the evidence-based approach.

'Enforcement' in this article covers:

- The methods used (including the application of National Standards) by supervisors to ensure compliance.
- Breach action and court procedures.

Theoretical and evidential deficit

The Home Secretary is keen to concentrate on outcomes, but with enforcement he appears to have fallen through one of those 'wicked gaps' in criminal justice policy. Are National Standards on enforcement based on outcome evidence, or do they simply reflect a managerial preoccupation with measurable outputs? Certainly, enforcement Standards are not supported by an identifiable theoretical model or by empirical evidence of their effectiveness. Is it, therefore, conceptually supportable to present such process-based outputs as hard outcomes, as the Home Office and HM Inspectorate of Probation are wont to do, with equal status to reconvictions, changes in attitudes to offending, etc? Compliance levels alone tell us nothing about whether a change was achieved with offenders on community orders.

HM Inspectorate of Probation has produced the bulk of 'research evidence' on enforcement through a series of inspections. A more systematic audit of enforcement was also carried out recently (Hedderman 1999). These audits provide relatively simplistic assessments of the probation services' compliance with National Standards. They do not, however, provide a coherent rationale for the enforcement Standards themselves. A study focusing on the full enforcement process provided a wealth of qualitative examples of practice aimed at sustaining engagement with orders(Ellis, Hedderman and Mortimer 1996), but there has been no attempt to commission a more systematic evaluation of their worth. The Home Office, ACOP and HMIP have recently announced regional seminars to look at effective engagement with offenders (Probation Circular 7/2000). However, since the Standards will once again dominate the discourse, it is unlikely that the seminars will focus on outcomes rather than managerial outputs.

From an effectiveness perspective there are two important questions:

- Is there any evidence that the 'one size fits all' enforcement policy (irrespective of needs) is effective in reducing criminogenic need or future offending?
- Is there any hard evidence that those services which enforce their orders more rigorously produce significantly fewer reconvicted offenders?

In the absence of reliable answers to these questions, we do not know whether current enforcement is either ineffective, or worse still, potentially damaging to effective practice. We only know that, from a managerial perspective, the change to the Standards is likely to result in greater 'bureaucratic efficiency' in the process of applying National Standards.

In the absence of adequate theory and evidence, the recent audits of enforcement provoked a

political knee-jerk reaction. The maximum number of failures to comply allowed to offenders before commencement of breach action was reduced from three to two, yet the audit did not provide any theoretical argument to justify the change in terms of effectiveness. The change has, I suggest, little to do with an analysis of cause and effect, and everything to do with sounding tough.

The rhetoric of breach as a panacea

The Home Secretary has characteristically employed 'unpleasantly popularist posturing'(Toynbee 1999) in his statements on enforcement. Clearly, Straw must exist in a political world where patience is low. There is a real danger, however, in filling the time spent waiting for rigorous evaluation results with 'tough spin'. This will build up expectations among sentencers and the public that cannot be fulfilled but might ultimately undermine support for evidenced-based approaches: most notably the Pathfinder programmes. For instance, breach is increasingly presented as a panacea that will result in more offenders who fail to comply with their orders being imprisoned (Travis 1999). For instance, at the recent Probation 2000 Conference the Home Secretary misleadingly conflated the breach system for prisoners on Home Detention Curfew with that for community orders.

Once the rhetoric is laid aside, however, the current reality is that most offenders sentenced to community penalties are unlikely to receive a custodial sentence as the direct result of breach. Under the Criminal Justice Act 1991, if an offender has not been sentenced to a community penalty for an offence serious enough for imprisonment in the first place, then they cannot be imprisoned when they breach their order. Only 26 per cent of the 28,000 offenders who had their order revoked through breach in 1997 received immediate custody. Beneath the rhetoric the stark reality is that breaching offenders more readily will achieve little more than expensively processing more of them through the courts, only to award them a fine, a discharge or a new community order.

The combination of the expectations built up through tough rhetoric and the current impotence of the criminal justice system to match such expectations, has created an unreflective enforcement agenda that works against evidence-based approaches and has resulted in clause 46 of the new Criminal Justice and Court Services Bill (CJCSB). In its current form the Bill heralds a new era of net-widening in the use of custody and a complete reversal of proportionality in sentencing. Such knee-jerk legislation would shift enforcement of community orders to the opposite extreme and assure custody for virtually all cases of breach - even those cases that would formerly have been recommended for continuation of the order with a minor admonishment. Haven't we been here before with imprisonment for fine default? An evidence-based approach suggests that it might be better to look for effective intermediate measures to ensure compliance with the order, rather than expensive and misguided new legislation which will push those offenders in most need of probation input into (mostly) short custodial sentences with no prospect of tackling their offending behaviour. If the CJSC Bill goes through unamended then it should be subject to a proper cost-benefit analysis of the standard required by the Home Office Pathfinder programmes. For instance, does more rigorous enforcement produce a reduction in reconviction for all those originally sentences to community penalties?

Plans to cut benefits as a result of breach action

The knee-jerk response is also apparent in the Child Support, Pensions and Social Security Bill (1999). This Bill proposes to pilot the removal of benefits from unemployed offenders who breach their orders and who will now presumably end up in prison once their cases are heard. This approach runs directly counter to evidence-based arguments which, elsewhere, New Labour accepts - that unemployment, poverty and social exclusion are likely to fuel offending behaviour. The Prison Service is currently experimenting with the 'passport system' to ensure that prisoners have maximum support during their first four weeks of release from prison, based on evidence that this is when they are most likely to offend. The Home Office meanwhile, is busily creating the opposite situation for those on community penalties by preparing to cut offenders' benefits for between four and 26 weeks. Surely we do not wish breached offenders to commit further, more serious offences during this time so that they can receive a custodial sentence when that offence is heard alongside the breach?

Conclusion

The New Labour administration has inherited, by default, the same process-based enforcement approach that operated under Howard. But is it what this Government's approach is all about? Unlike his predecessor, Straw is noted for his ability to change his mind, even if he is not always complimented on it. I think it is time for a serious rethink of current enforcement policy and practice with the emphasis on a more balanced, evidence-led approach: one that will increase sentencer and public confidence without resorting to making tough sounding, but ultimately futile promises. ■

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