

Enable and Ensure: The role of inspection in probation

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Foreword

Probation in England and Wales is in crisis. Since the ill-conceived privatisation of most probation functions under the ‘Transforming Rehabilitation’ programme in early 2015, the various parts of a now fragmented system have declined alarmingly.

This decline has been chronicled in a series of reports from the probation inspectorate over the past few years. The Chief Inspector of Probation, Dame Glenys Stacey, has also made a number of critical interventions. In a speech in September this year, cited at the start of this briefing, Dame Glenys stated that the private probation companies were ‘not generally producing good quality work’ and that ‘the benefits that Transforming Rehabilitation promised’ were yet to be realised.

The private companies, she also noted, were ‘financially stretched’. The government sought to allay these financial pressures earlier this year, with a financial bail-out to the struggling companies. Dame Glenys was publicly supportive of these moves. Others are less sure. As Joe Kuipers asks in this briefing, ‘how bad does a transformation have to get before those with power and influence actually advise that the plug needs to be pulled’.

In contrast to these big policy issues, the question of the appropriate standards and ratings for probation work will strike some as rather narrow, possibly arcane. But as Joe Kuipers shows in this briefing, effective inspection is essential to ‘enable improvement and to ensure that what a service is expected to achieve is indeed being achieved’. Setting the bar too low risks offering an overly generous picture of a service facing systemic problems. With the Ministry of Justice wishing to reduce its own oversight function, the role of independent and robust probation inspection is that much more important.

Effective inspection also has a political dimension. The proposal, highlighted in this briefing, to conduct separate inspections of the National Probation Service and the private probation companies could risk consolidating the fractured and disjointed service that many consider to be at the heart of the current problems with probation.

The future of probation inspection, as this briefing makes clear, is key to the broader debate about the future direction of probation delivery.

Richard Garside
Director

The Probation Inspectorate (HMIP) *Consultation on standards and ratings for inspecting probation services* – launched on 8 November, with a deadline for responses by 8 December – is comprehensive, necessarily quite complex, and well referenced. It has already been subject to detailed discussions, meaning that this consultation exercise is quite limited. It appears that much has been decided. Responses are focused on nine questions; question nine does open the way for more general comments. The formatted response document is described as needing just 15 – 20 minutes to complete, quite a challenge if serious and detailed commentary is being sought. The consultation document itself is 44 pages long.

This briefing addresses some key background information and then asks questions of the consultation document, and tries to provide some ideas for improving the proposed HMIP approach. In many respects I cover all nine questions, but maybe not as neatly as HMIP might like. I make no apologies for this. HMIP is asking about complex issues.

Context of the consultation

This consultation has been preceded by two significant speeches by Dame Glenys Stacey, HM Chief Inspector of Probation. On 19 September, she asked if probation services can deliver what we all want and expect. On 7 November, she outlined her views on the next steps for probation reform.

Speech on 19 September: 'Can Probation Services Deliver What We All Want and Expect?'

Among her observations in this speech were:

- With some exceptions, Community Rehabilitation Companies (CRCs) are 'not generally producing good quality work, not at all'.
- 'Probation reform has not delivered the benefits that Transforming Rehabilitation promised, so far'.
- 'We rarely see the innovations expected to come with freeing up the market, and instead proposed new models, new ways of delivering probation services on the ground and

supporting them with better IT systems have largely stalled'.

- 'The voluntary and charitable sectors are much less engaged than government envisaged'.
- 'Promised improvements in Through the Gate resettlement – mentors, real help with accommodation, education, training and employment for short sentence prisoners – have mostly not been delivered in any meaningful way'.
- 'Too often, for those under probation supervision we find too little is done by CRCs'.
- 'We often find nowhere near enough purposeful activity or targeted intervention or even plain, personal contact'.
- 'Staff morale, workloads, training and line management are highly variable and need to improve if probation is to improve. Staff are change weary and more than that, too many are too overburdened with work'.
- 'Their employing companies are financially stretched, with some unable to balance the books, as unexpected changes in the type of cases coming their way have resulted in lower payments than anticipated'.

Dame Glenys also stated:

'Of course, these companies strive to meet performance targets set by contract – just as they should. That is the nature of contracts. Many achieve well against some of those targets, but often enough this is at a cost to the quality of work and the more enduring expectations we all have of probation services. To give one example, CRCs commonly produce timely sentence plans, and so meet contract expectations, but those plans may not be good plans, comprehensive plans, based on a comprehensive assessment. What is more, we find too often that despite sometimes heroic efforts by staff, plans are not followed through into action, into real work that can make a material and positive difference.'

Speech on 7 November: 'Next steps in probation reform in England and Wales'

Dame Glenys' tone in this more recent speech was softer than that of her September speech. She set out five pointers to the future: essentially hoped for aspirations, as at this time performance is a long way from securing these hopes. She also outlined the Ministry of Justice (MoJ) aspiration of reducing the burden on their

oversight arrangements in the light of inspection findings. A cynic might translate this as a wish to cut costs, but however looked at it signals the rise of HMIP after a period best described as the wilderness years.

She also returned to the question she posed in her September speech: 'Can probation services deliver what we all want and expect?' Her answer to this essentially rhetorical question was: 'The short answer is yes, given the right conditions, but they cannot do it alone, or without sufficient funding.' She went on to say: 'When staff are so hard pressed, and have limited access to specialist services, we find there is too little purposeful activity in too many CRC cases. That is the nub of it: too little meaningful work, overall.'

She went on to offer ministers six top tips to consider in developing probation for the future. Most interesting, she referred to the difficulty of commissioning in the criminal justice field, and set out why. Is this the start of questioning the payment-by-results model? I for one hope so. She also reaffirmed the critical nature of the relationship between probation staff and those they supervise and how operating models adopted by some CRCs undermine this.

Recent inspection reports

Two telling inspections have centred on the Through the Gate Services (TGS), the supposed lynchpin for the Transforming Rehabilitation (TR) programme. Prior to the changes of recent years, the former Probation Trusts had offered to undertake this work. It was rejected out of hand by Chris Grayling and Michael Spurr as it did not fit with the politically- and dogmatically-driven, unevidenced agenda for the TR changes.

A report published jointly with HM Inspectorate of Prisons – *An Inspection of Through the Gate Resettlement Services for Short-Term Prisoners* – found that the core services to deliver the TGS vision were still not in place. It also found that the needs of individual prisoners were not being properly identified and planned for. Not enough was being done to help prisoners get ready for release, it also found.

The introduction to a subsequent June 2017 report – *An Inspection of Through the Gate Resettlement Services for Prisoners Serving 12 Months or More* – stated:

'Clearly there is more time for resettlement work with these prisoners, but CRCs are making little difference to their prospects on release. We found them no better served than their more transient fellow prisoners were some eight months ago. The overall picture was bleak. If Through the Gate services were removed tomorrow, in our view the impact on the resettlement of prisoners would be negligible.

'There is much more CRCs should be doing to make a difference to the lives of those they are meant to be helping, but we found them focusing most of their efforts on meeting their contractual targets, to produce written resettlement plans. Responding to the needs of prisoners received much less attention, but meaningful expectations are not specified clearly in CRC contracts, and good, persistent work is not incentivised or rewarded sufficiently.'

Although the National Probation Service (NPS) fared better when inspected, reading between the lines many shortcomings are identified, not least around quality issues. The latest inspection of West Mercia, out in November 2017, also makes for grim reading, both for the CRC and the NPS, and the failures of the interface between the two organisations.

How bad does transformation have to get?

An outsider might wonder how bad does a transformation have to get before those with power and influence actually advise that the plug needs to be pulled. In this respect it is regrettable that Dame Glenys has supported increased funding to failing CRCs. That said, from her comments we can assume that she has significant concerns about the model for delivering probation services, and the split between the NPS and CRCs. Clearly I do not know what advice she is giving to ministers, but publicly she has argued for more money for the CRCs now, presumably as she could not condone supporting provider failure. I would argue that services are failing now, and my preference would have been to let the CRCs go to the wall without any bail out.

They were warned.

For those who use the argument that problems with TR were unforeseen I can guide you to the 42

blogs I published, starting from June 2012, at joekuipers49.blogspot.co.uk, which predicted exactly what is now happening, while also keeping staff informed, in the absence of accurate information from the MoJ. Mine was only one of a number of voices. In his 2015 book, *Competition for Prisons*, the former Director for Competition in the National Offender Management Service, Julian Le Vay, wrote that watching the unfolding TR plans was ‘like watching people doing their best to organise the perfect train crash’.

The HMIP consultation

I will now address the standards and ratings, and follow broadly the sequence of the consultation document, making comment as I go along using the paragraph numbering used in the document. At the outset I want to be clear that there is much to commend in the proposed HMIP approach, but my focus will be on where perhaps further thought might improve the aspiration that by way of inspection better service delivery will be achieved.

Probation oversight

Paragraphs 1.5 – 1.8 set out the HMIP role in probation oversight. The focus will be on inputs and activities, in some way separated from outputs, outcomes and impact. This raises two questions:

- Dame Glenys has been critical of standards that she describes as ‘processy’. Surely looking at inputs and activities requires a degree of specificity? As a general critique of the standards, many of the prompts leave far too much unspecified and do not state clearly exactly what is required of providers. Many of the qualitative questions in relation to offender assessment are excellent and remind me of those asked when we undertook the work on pre-sentence reports (PSRs) and offender assessment inspections some years ago, but there is no specificity about by when such an assessment should be completed. It seems unwise to leave this wholly open-ended, especially in terms of risk assessment and planning, most concerning with the more regular absence of good PSRs. Quite properly in the section on implementation the issue of timely commencement of the sentence requirements is acknowledged, but what is meant by ‘promptly’ or ‘at an appropriate

time’? Inspectors’ interpretations will be open to challenge when, with managerial consent, either commencement or assessment may be delayed beyond a specified period. And, should HMIP not establish some minimum requirements concerning levels of contact, which again can be varied with managerial agreement? What constitutes prompt allocation of a PSR? What is a timely resettlement plan? What is acceptable in terms of failed appointments? I could go on, and my concerns relate to lack of clarity for providers, inspector and inspection variability of approach, and most crucially failing to provide key stakeholders (sentencers) with grounds to be confident in probation service delivery. Discretion is a wonderful thing, but it also poses great dangers for individual staff facing a serious further offence investigation. Some stakes in the ground would at least enable inspectors to ask why supervision falls outside the perimeter. And, the ‘liberation’ from national standards after TR has no doubt contributed to the very variable and generally very poor inspection findings.

- Secondly, how will HMIP marry up inspection findings to outputs, outcomes and impact? Further clarity on this aspect would be helpful. I presume if a sentence plan refers to accommodation or employment needs then their achievement might be recorded and should be measurable elements of inspection?

Future inspections

At 1.9 the structure of future inspections is set out. If I understand this correctly the proposal, apparently agreed already, will be to conduct separate inspections of the NPS and CRCs. Two questions:

- What are the implications of this approach for assessing the interface between the NPS and the CRCs? And,
- Is there an unforeseen danger in HMIP consolidating the split in probation by this approach, or is this a more considered decision guided by ministers?

Inspection principles

At 2.1 inspection principles are referred to (Annex A), as are the high-level expectations of probation services (Annex B), all uncontroversial. However, in the context of the disjunction between

inspection findings and contract and service level agreements, it is perhaps puzzling that the opportunity is not taken to achieve a greater reconciliation between the two.

Inspection framework and structure

Section three begins to set out the inspection framework and structure. The approach taken is to look at how the organisation is run, with separate standards relating to service delivery. The framework is to be supported by inspection guidance materials. A question:

- Will the guidance materials be published?

The three 'domains' of inspection

HMIP proposes three domains. The first two domains apply to all probation providers: CRCs and the NPS. Domain one covers how well the organisation is led, managed and set up. Domain two covers the quality of work in individual cases, and how well individuals are being supervised. Domain two is structured so that HMIP will be able to report locally and (with consolidated data) nationally on the extent to which the enduring aims of probation are being met, as well as reporting against each standard. Domain three addresses organisation specific responsibilities, for the NPS and for CRCs.

Clearly there is a close relationship between good strategic and operational management and leadership, and the quality of probation services. Domain one standards will cover these prerequisites, and domain two will cover enduring expectations of probation services: protecting the public, reducing reoffending and ensuring the sentence of the court is served.

The structure of domain, standards and prompts makes good sense. At 3.2 the document states that all the key questions and prompts have a binary yes or no response. This is laudable, but raises a question:

- Most of the questions are not binary in nature and often contain two questions in one. For example, 'does the assessment identify and analyse offending related factors?' The answer could well be 'yes and no'. In this case, which takes precedence? If the 'and' is inclusive, then the answer is 'no'. This could be a tricky one for inspectors. A cursory look reveals that at

least 90 per cent of the questions are constructed in this way, driven probably by a desire to keep the number of questions low.

The rating system

Section four sets out the rating system. HMIP proposes a four-point ratings system (outstanding; good; requires improvement; inadequate). This would be a composite aggregation of inspection results in the various domains. Whilst I commend a system of rating, the terminology proposed is weak. I would suggest that the average reader would be forgiven if they thought 'requires improvement' was actually a relatively positive rating. Even outstanding services have scope for improvement and the concept of above and below the line is fudged. I would advise the following ratings, and link them clearly to expected follow-up inspections:

- Excellent, few areas for improvement. No follow-up needed.
- Good, more areas for improvement. No follow-up needed.
- Inadequate, many areas for improvement. Improvement plan to be submitted to HMIP within four weeks of feedback to provider. Follow-up at six months. Potential unannounced visits.
- Failing, most or all areas for improvement. Improvement plan to be with HMIP within four weeks and quarterly follow-ups. Unannounced visits will take place.

The overall rating aggregation will enable numbers of improvement areas to be specified, giving clarity to the terminology 'few, more, many, most' above. This approach sets the bar very clearly with two categories above the line and two below. This is not a time to be mealy-mouthed. Under previous inspection regimes, a number of chief officers took the view, or were encouraged to realise, that it was time to move on. Should the word 'failing' be problematic then perhaps use 'seriously inadequate with great cause for concern'.

To address the issue of overburdening HMIP I would suggest that excellent services are then inspected two or three years after the inspection, good services 18 months to two years after the inspection, etc. It is not sensible to leave those services that are below the line for a year without further detailed scrutiny.

Paragraphs 4.6 – 4.13 address domain two and three ratings. For the consolidated results, arising from case assessments against the standards, HMIP is not proposing to change the four performance bandings used in past years. For ease of reference they are:

- Minority, less than 50%;
- Too few, between 50 and 64%;
- Reasonable majority, between 65 and 79%;
- Large majority, more than 80%.

The document explains that it believes there is value in keeping the performance bandings unchanged so that inspectors are ‘not increasing or decreasing our expectations of the quality of probation services’. The bandings are then matched against the rating system described above. ‘Minority’, for instance, would equate with HMIP ‘inadequate’, which I would call ‘failing’.

On balance I question whether the bandings represent what a layperson, or key stakeholders such as sentencers, might agree with. It could be argued that they are generous. Recalling that current inspections are based on these bandings, a more robust approach would have led to even more dispiriting inspection results. The percentages are certainly a far cry from the performance demands placed on Probation Trusts in the past, and a cynic might be forgiven for believing that such generosity suits both the MoJ and providers, key contributors to the consultation to date. That said, I would suggest the following bandings, not least on the basis that commercial businesses would consider performance at the current arrangements financially ruinous:

- Minority, less than 50%;
- Too few, 50 – 74%;
- Reasonable majority, 75% – 90%;
- Large majority, more than 90%.

The document continues, at 4.12, to explain future reliance on larger sample sizes to achieve an 80 per cent confidence level, statistically. The rationale for this is not explained. It is worth noting that an 80 per cent confidence level is not normally used in evaluations or clinical trials as a meaningful measure. To avoid this potential criticism, and bearing in mind that HMIP is not a research body, I would propose not attempting to achieve statistical significance in this line of work. Instead HMIP could aim for sample sizes that

represent an acceptable percentage of the provider’s caseload, including taking a proportion of cases at random and without warning.

The document then sets out the approach to domain one ratings, which on the face of it appears to create an odd separation between domain one and domains two and three. HMIP states ‘domain one ratings for each inspection will not (my emphasis) be driven by our findings in individual cases, although we will always check the correlation between domains and the need for further interrogation. Instead, the evidence we need for domain one ratings will come from elsewhere: primarily from data, documents and evidence submitted by the organisation, and through interviews with leaders, managers, staff, individuals subject to probation supervision and other relevant stakeholders’. That said, it is also suggested that there will be strong mapping across the domains. Perhaps this is an area where there remains some confusion or lack of conclusion?

If this is a matter for final agreement, I urge HMIP to return to a previous methodology, which is to undertake domain two and three work before commencing on domain one. In this way, the crucial information concerning service delivery becomes core to the work undertaken in inspecting domain one. It will avoid inspectors being confronted by management speak and enable them to be properly challenging over unfounded organisational claims. This is why in my time with HMIP we moved to starting with service delivery and tracking back to the organisation. I would go further and advise that to highlight what is actually important HMIP changes their domain one to domain three; their domain two to domain one; and their domain three to domain two. HMIP’s apparent proposed approach is an old-fashioned and traditionally hierarchical one. Naturally, it will be helpful for HMIP to receive advance information setting out organisational policies.

At paragraphs 4.22 – 4.26 the document sets out the proposed approach to making an overall provider rating. Each of the ten NPS or CRC standards will be scored on a 0 – 3 scale, and using the proposed HMI Probation descriptors:

- 0 = inadequate;
- 1 = requires improvement;
- 2 = good; and
- 3 = outstanding.

The document then describes a rationale for setting the overall rating level, the proposed scoring totals aligning as follows:

- 0 – 5, inadequate;
- 6 – 15, requires improvement;
- 16 – 25, good; and
- 26 – 30, outstanding.

An example is given where six standards at good and four at requires improvement would give an overall assessment of good. Now I recognise that any system of amalgamating scores is complex and open to challenge, but a methodology that assesses a service to be good with four standards judged to be below the line (40 per cent) is seriously questionable. It also strikes me that out of 10 standards it is very unlikely that any service will score five or less, which could be seen as a determined effort to create a more successful picture than warranted. In a nutshell, four standards are attributed to the organization, so it is conceivable to get above the line quite easily whilst service delivery is failing.

To address this HMI Probation could review the scoring totals as follows:

- 0 – 8, failing;
- 9 – 17, inadequate;
- 18 – 24, good; and
- 25 – 30, excellent.

What does good inspection look like?

This briefing is called 'Enable and Ensure'. Under the leadership of Sir Graham Smith, as the Chief Inspector, HMIP did not fight shy of both making recommendations and offering advice to those services that were judged to be below the line. This was also in the context of the then 'What Works' agenda, also launched by HMIP. The

natural criticism of this approach is that HMIP might then be inspecting its own advice. An intelligent inspectorate can cope with this as with its knowledge, improvement advice must be available, and any subsequent failings by the organisation would most likely be due to failure to implement successfully.

This goes to the heart of good inspection, firstly to enable improvement and to ensure that what a service is expected to achieve is indeed being achieved. This is not to confuse this approach with matters of accountability. Services are not accountable to HMIP, but only through their normal management arrangements.

Conclusion

As stated at the outset, there is much to commend in the HMIP proposals. Not least of all, it has produced a very comprehensive document for consultation. However, I have raised a number of questions and suggested various remedies that would enable HMIP to achieve the impact it is seeking. It will not achieve any impact if an over-generous system is put in place, a system that potentially satisfies the MoJ and providers but one that fails to properly highlight that which is just not acceptable. Dame Glenys refers to inspectors being able to see the wet paint in terms of how services prepare for inspection. I sincerely hope that HMIP does not apply more gloss.

Dame Glenys asked if probation services can deliver what we all want and expect. Her affirmative answer was predicated on the right conditions, amongst other factors. Regrettably I do not share her optimism. Despite what will be the best efforts of HMIP, and the best possible methodologies, those conditions will not exist whilst probation remains fractured and disjointed.

About the author

Joe Kuipers has over 40 years' experience in probation in all grades and arenas. This includes a number of years as an advisor to the Home Office and the MoJ and over 10 years with HMIP. At HMIP he was Assistant Chief Probation Inspector and acting Deputy Chief Inspector. Amongst other work, whilst with HMIP, he led on the Internal Monitoring and Inspection Programme; PSR quality improvement

programme; the Offender Assessment quality improvement programme; and the design and introduction of OASys, the offender assessment system. He also led for HMIP on the content of the first National Standards and subsequent iterations. He also served as Chair of Avon and Somerset Probation Trust until its abolition under the TR programme.

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