

---

# **People Are Not Things: The Return of Probation to The Public Sector**

---

Interim Report by Lord Ramsbotham

*The mood and temper of the public, in regard to the treatment of crime and criminals, is one of the most unfailing tests of the civilisation of any country. A calm and dispassionate recognition of the rights of the accused against the State, and even of convicted criminals against the State, a constant heart-searching by all charged with the duty of punishment, a desire and eagerness to rehabilitate in the world of industry all those who have paid their dues in the hard coinage of punishment, tireless efforts towards the discovery of curative and regenerative processes, and an unfaltering faith, that there is a treasure, if you can only find it, in the heart of every man – these are the symbols which, in the treatment of crime and criminals, mark and measure the stored-up strength of a nation, and are the sign and proof of the living virtue in it’.*

- Winston Churchill, H of C debate on Prison Estimates, 20 July 1910.

*The essence of punishment is that it is the reaction of a community against a constituent member. The community has three interests to consider:*

- a. The maintenance of its own life and order, upon which the welfare of all its members depends.*
- b. The interests of the individual members generally.*
- c. The interests of the offending member.*

*Wrong is done if any of the three is neglected.’*

- Archbishop William Temple, 1930.

*‘Probation is a thing so large in its conception, and so immensely potent in its effect on the hopes and happiness of thousands of human lives every year, that it is better not even to try to find words of commendation, which might be unworthy of their subject, but to be content to make the way clear for its advance, and let its deeds praise it’.*

- L le Mesurier, A Handbook of Probation and Social Work for the Courts, 1935

*'Probation belongs at a local level and profit should not come into it. The satisfactions of the Probation Service are not financial ones, nor should they be; they are the rewards of dedication and service ... the remedying of misfortune, which is what probation is about, has no more to do with profit than the remedying of disease.'*

- Alan Bennett, Foreword to *The Golden Age of Probation*, Roger Statham, 2014

*'Probation was respected by politicians, and the courts, as a humane and enterprising Service, prepared to embrace new methods and challenges. Often derided by those who talked tough, and advocated harsh prison sentences, it moved steadily to a more centralised position in the Criminal Justice System ... Probation had its own distinctive character ... it was one of hope and a realistic faith that, with tenacity, and in valuing the positive qualities of even the most apparently hardened offenders, we could influence for the good ... As with much else, the culture of public service has been sacrificed on the altar of privatisation.'*

- Sir Michael Day, former Chief Probation Officer and Chairman of the Commission for Racial Equality, 2018

# CONTENTS

---

1	INTRODUCTION .....	5
2	GENERAL RESPONSE .....	9
3	BRIEF HISTORY OF PROBATION BEFORE TRANSFORMING REHABILITATION (TR).....	14
4	GOVERNANCE .....	28
5	COMMISSIONING .....	31
6	LESSONS FROM CRCs .....	33
7	IMPROVING SENTENCER’S CONFIDENCE IN COMMUNITY SENTENCES .....	34
8	WOMEN AND GIRLS .....	40
9	HEALTHCARE .....	42
10	THE TRAINING OF STAFF .....	45
11	CRIMINAL RECORDS .....	46
12	CONCLUSIONS AND RECOMMENDATIONS.....	47

# 1 INTRODUCTION

---

1. On 19 June 2018, the Justice Select Committee (JSC) of the House of Commons published a very critical report on the current provision of probation services entitled 'Transforming Rehabilitation' (TR), which opened with the statement that:

'The scale of the issues facing the (probation) sector – following the major structured reforms to the probation system, introduced by the government in 2014 and 2015 – is of great concern to us, given that evidence suggests that, if probation services are delivered well, they can have a positive impact on the prospects of someone receiving probation support, and wider society'.

2. Before this the Public Accounts Committee (PAC) of the House of Commons had published two reports, both critical of the financial aspects of TR, in July 2016 and March 2018, the latter being particularly critical of government contracts, awarded to Community Rehabilitation Companies (CRCs), which were undermining the objectives of TR. It pointed out that these were too complicated, with too many targets, not all of which were controllable by CRCs. On 3 May 2019 the PAC published a progress report, which, taken together with other critical reports from the JSC, the National Audit Office (NAO), published on 1 March 2019, and Her Majesty's Chief Inspector of Probation (HMCIOP), published on 28 March 2019 make up the most damning criticism of a government programme, and therefore, by implication, the Secretary of State, Chris Grayling and his Ministry of Justice (MoJ) and National Offender Management Service (NOMS) officials responsible for TR, that I have ever seen. Because the conclusions and recommendations of all four are so relevant to any review of the delivery of probation services, I include details from the three that followed the JSC report, below.

3. In July 2018, following the JSC's report, the government issued a consultation document entitled 'Strengthening probation, building confidence', which, although not specifically admitting as much, acknowledged that all was not well with probation. It could hardly do anything else as its principal quality assurer, HMCIOP, had published a series of devastatingly critical reports on various aspects of the delivery of probation services. The government's response to this consultation, which closed on 21 September 2018, is still awaited.

4. In June 2018, again following the JSC's report, Richard Burgon MP, Shadow Secretary of State for Justice, asked me to conduct a review outlining options for the form that a unified probation service might take, if the probation work, currently undertaken by the CRCs, was returned to the public sector under an incoming Labour government. This followed a commitment, in the Labour Party's 2017 election manifesto, to undertake a review of the privatisation of much of the probation service.

5. On 24 July 2018 I sent out the following seven questions to a number of experts, whose replies are all gratefully acknowledged and form the basis of the remainder of this report. The Justice Select Committee report was about the Transforming

Rehabilitation reforms, but I think it useful to look back further, to identify any principles which TR had overthrown, and to better inform those responsible for making the decision of whether to return probation to the public sector.

- a. How feasible do you think that it is to return probation to public ownership, and how should it be re-organised if it were returned?
- b. Do you think that HMPPS should be abolished, and the Probation Service given its own Director General?
- c. In thinking about how probation might be organised to cover the country, how significant is the retirement of so many senior and experienced officers?
- d. Do you agree that Police and Crime Commissioners (PCCs) could have a role in supporting probation?
- e. Do you think that probation should be responsible for finding accommodation and jobs for all those being released from prison?
- f. Do you think that there ought to be a return to the old relationship with courts and the police?
- g. Do you see a role for local government, such as providing community work opportunities?

6. Because of the need to base it on any changes that the Government might make to the delivery of probation services, following its consultation, I agreed with Richard Burgon that I would not submit my report until after the publication of the Government's response. I sent him an interim report in December 2018, but, because the government response is now so long overdue – responses are meant to be published six months after the closure of a consultation – and because the Minister of Prisons and Probation has suddenly been moved to another position, he has asked me to publish an update, before the response, which may help those interested not only in the future of probation, but in responding to the response. This is that update, in which I cover not only of the NAO, HMCIP and PAC reports but reports from the Centre for Justice Innovation and the Institute of Mental Health, because of their relevance for future probation arrangements. As before, much of what my report contains is based on what people, who are far more expert than I on the whole subject of probation, have said or written to me. I am most grateful for all their helpful comments, and will list their names in my final report. The only indication of a publication date for their consultation response that I could obtain from the MoJ, was the rather nebulous phrase 'in due course'.

7. On my first day in office as Her Majesty's Chief Inspector of Prisons for England and Wales in December 1995, I asked two questions of Home Office civil servants,

neither of which they could answer, nor could they today. Both are relevant to this review, because, although I asked them about prisons, they apply equally to probation:

a. What is the cost of imprisonment? They answered by telling me how much money they received from the Treasury each year and how much they passed on to the Prison Service. When I explained that what I had asked was how much it would cost to do all the things that Ministers said should be done with and for prisoners, they admitted that they did not know.

(1) I asked this, because I assumed that what we had had to do in the Ministry of Defence every year, namely to cost all our commitments and advise Ministers on what could not be done without extra resources, was Whitehall practice. Without knowing what resources you need, you cannot work out what you cannot do. By not knowing the size of the shortfall, Ministers, and the Treasury, have been blind to the actual cost of imprisonment, and probation, for years, which has made the impact of cuts impossible to assess.

(2) It was at this time that I became aware of a 1989 Audit Commission Report 'Promoting Value for Money in the Probation Service', which had disclosed the woeful state of financial understanding in the then Home Office.

b. How do you measure re-offending? They admitted that it was impossible to measure, the only figure that it was possible to measure being the reconviction rate, which was not the same thing. This is so today, which makes me wonder why Chris Grayling stipulated that CRCs should be judged, and paid, on unmeasurable results.

8. In contrast to the probation ethos of:

'Advise, assist, befriend',

overthrown by Jack Straw when he added the word 'punishment' to its role, the Statement of Purpose of the Prison Service was:

'It is our duty to keep securely all those committed by the courts, to treat them with humanity, and to help them to live useful and law-abiding lives in prison and on release'.

Thinking about this, following Tony Blair's CJS unifying aim, I mentally turned those words round to read what could be given to the Prisons and Probation Services as a unifying aim:

'It is our duty to help all those committed by the courts to live useful and law-abiding lives, with the qualifications that they must be treated with humanity,

and not allowed to escape from prison, or breach the terms of their probation order'.

Or, as David Faulkner, formerly a distinguished civil servant in the Home Office, has pointed out:

'because probation works in those places where people's lives are most precarious, and their future most uncertain, probation staff should encourage offenders to find opportunities, and take advantage of them, to find direction and purpose in their lives and, above all, some hope for the future'.

9. Analysing the position of prisons in the CJS, the closest analogy I could think of was with hospitals in the National Health Service (NHS). Both are the acute part to which you should only be sent if you need the treatment that only they can provide. Neither has any control over who comes in, and both know that treatment will never be completed in either, but will have to be carried on in the community in the form of aftercare. Choke either with people who should not be there, and you will prevent staff from being able to do all that they could for the people who should.

10. To continue the similarity of CJS practice to that in the NHS, there is a very close synergy between the way that the NHS conducts public health in the community, and the way that the core rehabilitation purpose should be conducted. Evidence indicates that, less than 20% of the huge NHS spend is shaped by the factors that lead to poor health, long term conditions and reduced life expectancy. The core issues, that should be taken into account by both the NHS and local government, are wider determinants of public health such as housing, warmth, poverty, inequality and life-styles. The relationship between healthcare and probation is such a neglected issue that I devote a whole section to it below.

11. The same public health approach applies to the role of probation, whose governance and delivery should be connected to locality, place and the people in it. To facilitate this, probation boundaries should be coterminous with Local Authority boundaries, rooted in neighbourhoods in which health provides integrated care for populations of 30-50,000, in which human judgement is allowed to flourish based on core values that include qualities such as resilience and kindness.

## 2 GENERAL RESPONSE

---

12. All respondents were united in the view that TR had been a serious mistake, rushed through without being thought through, and unpiloted. In particular, by splitting the provision of probation services between a National Probation Service (NPS), responsible for 'medium risk' offenders, and 21 Community Rehabilitation Companies (CRCs), responsible for 'low risk', it had violated the well tried and proven principle of integrated offender management, which had been the bedrock of probation ever since its inception: Furthermore, requiring CRCs to conform to Department of Work and Pensions (DWP) boundaries, was not only in violation of the practical alignment with Criminal Justice System (CJS) and police boundaries, but was the cause of much unnecessary administrative inconvenience. NAPO has compared the division with splitting responsibility for fire-fighting, the Fire Service being responsible for major fires, and private companies for the rest.

13. All respondents agreed that one organisation must be responsible for:

- a. Providing advice to the courts.
- b. Assessment of offenders.
- c. Managing court orders and licences
- d. Consistent supervision of offenders

14. All respondents also agreed that, before doing anything to reverse the position, and return probation to public ownership, a great deal of preliminary work would have to be done, including a major review of the suitability of a CJS, which seems 19<sup>th</sup> century in so many ways, for dealing with the problems of the 21<sup>st</sup>.

a. The CJS consists of five parts – police, the Crown Prosecution Service (CPS), courts, prisons and probation. The system only works, as a system, if each constituent part carries out its own task in partnership with the others – in broad terms police investigate, courts sentence and prison and probation administer that sentence, either in custody or the community.

(1) When Tony Blair became Prime Minister in 1997, finding that, rather than working together, the four parts were behaving like warring tribes, competing for ever diminishing resources, he issued a unifying aim to the CJS – 'to protect the public by preventing crime'. At the time I remember thinking that this aim, admirable in intent though it was, had been given to the wrong people, because the CJS only clicks in when a crime has been committed. Much better had he said 'to protect the public by preventing re-crime, or re-offending', which would have given, as their aim, to both the Prison and Probation Services.

b. Any review of probation should not be conducted solely in a CJS context, but in what is termed a 'public health' one, including all relevant partners. Too

many government Departments work in silos, and true cross government working appears to be an exception rather than the rule. The delivery of probation needs not only to be considered, nationally, by the MoJ, the Department of Health (DoH), the Department of Communities and Local Government (DCLG), the Department for Education (DfE) and the DWP but locally, linked to Local Authorities, because of their responsibility for Crime and Disorder and Youth Justice matters.

c. When the Youth Justice Board (YJB) was being considered in 1997, the then government first set up an inquiry, then commissioned senior civil servants to examine the issue in detail, including costings, then piloted Youth Offender Teams (YOTs) in the community, and then, and only then, introduced it. The fact that, despite all the pressures to which it has been subject since then, the YJB is still in existence is a tribute to the soundness of that preliminary process. I would advise an incoming Labour government to do the same with the possible return of probation to the public sector, once it has agreed to carry that out.

(1) The actual cost of probation, in other words the cost of doing all the things that Ministers would like to be done with and for offenders in the community, must be worked out in great detail, but only after an incoming government has access to the books. That view is influenced by the Coalition government's rushed introduction of a Health Bill, incorporating ideas developed while in opposition, based on supposition rather than knowledge of the facts. The issue of public safety is too important to be dealt with otherwise.

15. All respondents were also united in their view that:

a. Some of the government's proposed CRC areas are too large, and, by cutting across existing Criminal Justice and Local Authority boundaries, breach the well-trying principle that successful working with offenders, in the community, depends on local agencies - police, social services, housing, health and substance abuse providers - working together.

b. The alignment of probation and Police and Crime Commissioner (PCC) boundaries makes sense in terms of building inter-agency professional relationships, sharing services, the transition between youth and adult justice services, and, above all, integrated offender management.

16. I advise anyone considering returning probation to the public sector to commission both a consultation and an Impact Assessment on the proposal, and listen to what is said in both, unlike what appears to have happened with the TR programme. Consulting as widely as possible would be in sharp contrast to the MoJ's alleged consultation on TR, which was not only limited in distribution, but was little more than a charade, because the Secretary of State, Chris Grayling, had already decided on his course of action, from which he was not to be deflected.

17. Re-reading what officials submitted to him, in an Impact Assessment dated 21 May 2013, I can only presume that he disregarded it, because what it contained was not in line with his programme. In the light of subsequent events, many of which have borne out precisely what they warned would happen, not only were MoJ officials prescient in their analysis, but fearful of the impact on public protection if the risks were ignored. Because they are so relevant for the future, I repeat some of the warnings that were given, in the categories in which they were presented:

Over 80% risk of preventing achievement:

There is a risk that affordability objectives...cannot be demonstrated or met, leading to...financial and operational risk, and reputational damage to the department, after implementation.

There is a risk that an unacceptable drop in operational performance (during the programme) leads to delivery failure(s), and reputational damage.

51-80% risk of having a significant detrimental effect:

There is a risk that new service and market models.... are ineffective and/or inefficient, leading to operational, financial and reputational impacts, and failure to realise the planned benefits of the reforms.

There is a risk that the services provided....do not meet required quality, leading to operational failures, and loss of public confidence.

There is a risk that programme delivery is dependent on the wider government, and there is a risk that it cannot, or does not, meet the timescales set by the programme.

There is risk that failure to deliver support to probation finance leads to failure to deliver probation...to time and quality.

21-50% risk of having a significant short-term/important long-term effect:

There is a risk that changes in the context, outside the programme, result in the case for reform being undermined, or make programme delivery more difficult.

There is a risk that some or all of the ICT changes, to support the reforms being introduced by the programme, will not be effective or delivered on time.

To be confirmed

There is a risk that the programme does not deliver to the agreed time, quality and cost.

18. Other points on which there was almost unanimous agreement from respondents:

a. Probation is much more closely allied to courts and the police than prisons.

b. Her Majesty's Prison and Probation Service (HMPPS) the successor to the National Offender Management Service (NOMS) ought to be abolished and separate Directors General of the Prison and Probation Services appointed.

(1) I have not consulted people since Executive Directors for each Service were appointed last year, but, with them in post, I do not understand why there is any need for a superior bureaucrat over them.

c. Commissioning probation services ought to be a local responsibility, because communities have different dynamics and, in criminal justice terms, sentencers have to respond to local concerns. The ability of probation to be responsive in this way is being lost, and, with it, an important ingredient of the process of sentencing. The response received from the Magistrate's Association is sufficiently important to warrant a separate section in my report, which will be found at para 32.

d. Consideration should be given to reforming something akin to the Association of Chief Officers of Probation (ACOP), consisting of all Chief Officers of Probation around the country. ACOP met annually with the Home Secretary and its specialist committees met regularly with Home Office officials, thus keeping both abreast of probation problems around the country and acting as spokespersons for the Probation Service. ACOP recommended policy and operational initiatives. For a short time, after the formation of NOMS, a Probation Chiefs Association (PCA) was set up by probation chiefs, but it was side-lined by Ministers, and never really took off. It is a professional tragedy that current leaders of the National Probation Service Regions are expressly forbidden from expressing their view publicly.

e. At the time of TR, the notion of probation, which had never lost its belief in rehabilitation, and, at heart, remained people centred, had ceased to resonate with government. Chris Grayling either ignored, or did not give due respect to, the innovative record of the Probation Service, which, inter alia, had developed Victim Support, Community Services, Day Centres, Drug and Alcohol support groups of all kinds, and Risk Assessment. He never asked how probation would cater for the needs of short-term offenders, although many areas in the country had practical ideas, some of which had been tried out in practice. Instead he implied criticism of the Probation Service, by saying that the principal reason for turning to the private sector was that it would come up with innovative ideas,

which it has done in some cases, but which have not been turned into common practice.

### 3 BRIEF HISTORY OF PROBATION BEFORE TRANSFORMING REHABILITATION (TR)

---

19. The Probation Service began in 1907 when courts were given statutory authority to appoint court probation officers to supervise offenders in the community, under the ethos of 'advise, assist, befriend'. In 1963 the Probation and After-Care Service replaced the Discharged Prisoners Aid Societies and the central After Care Association. But probation remained closely allied with courts and the police, locally, until Jack Straw effectively made it subordinate to the Prison Service when he introduced his ill-named NOMS in 2004.

a. I say ill-named, because NOMS was never an operational Service, such as the Prison and Probation Services, which people could join, and in which they were moved around throughout a career. At best it was a System, and the fact that it was called a Service demonstrated a lack of understanding of what an operational Service actually is.

b. It is not the purpose of this review to examine the role of prisons, but, because probation appears to have been wrongly made subordinate to them, first under NOMS and now under its successor HMPPS, it is worth considering the essential differences between the two, beginning with the obvious fact that one is responsible for looking after offenders in custody, and the other for offenders in the community. That suggests the need to train staff for each role differently.

20. Before NOMS, probation provision was essentially local, with probation organised on a county basis, each county having a Chief Officer of Probation. The provision of probation services was overseen by Probation Committees, made up mainly of magistrates, funding being 50% national and 50% local, changed later to 80% national and 20% local. In 1984, the then Home Secretary, Leon Brittan, published a National Statement of Objectives and Priorities for the Probation Service, which has never been formally reversed. This specifically instructed the Probation Service to give a low priority to the after-care of prisoners, especially those released from short periods in custody.

a. Probation Committees were replaced by Probation Boards in 2001. Boards, which included the local judge, and contained a more eclectic mix of people, chosen for their specific skills and experience, and only appointed after interview.

b. Area Criminal Justice Boards, later replaced by Local Criminal Justice Boards, were set up to oversee the Crime and Disorder Partnerships, established by the 1998 Crime and Disorder Act. Area Criminal Justice Boards worked to the Criminal Justice Consultative Council, established in 1992, of which ACOP was a founder member.

21. Under the 1991 Criminal Justice Act, probation areas were given devolved responsibilities for providing hostel and residential accommodation for offenders, some of which still exist. The Act also introduced the concept of Employment, Training and Education (ETE) services, under which employment and training opportunities were offered, and provided throughout the period of a Community Service order, with the added bonus of their being continued after the order had been completed. It is of interest that John Patten, the Home Office Minister made responsible for bringing in the 1991 Act, was the first person to suggest adding the word 'punishment' to the role of probation.

22. In 2002 the Prison and Probation Services were incorporated into a short-lived Corrections Commission, whose first Chief Executive had formerly been Director General of the Prison Service.

a. Subordinate to him were separate Directors General of the Prisons and National Probation Services (NPS).

23. In 2004, Jack Straw, then Justice Secretary, commissioned a review of the CJS, agreeing with its recommendation that the Corrections Commission be replaced by NOMS, under the same Chief Executive. Commissioning of probation services, although probation boundaries remained coterminous with police and justice boundaries, was put in the hands of 35 Probation Trusts.

a. The unfortunate impression, that probation was regarded, by Ministers, as being subordinate to prisons, was reinforced firstly by the absence of senior probation officers from any position of authority within NOMS, and secondly, in 2006, when Jack Straw abolished the posts of Directors General of the Prison and Probation Services.

(1) The CEO of NOMS, who came from the Prison Service, was made responsible, and accountable, for both prisons and probation.

(2) ACOP was wound up in 2001, at the behest of the NPS.

(3) Then, in 2013, TR was introduced.

(i) As most of the senior positions in NOMS, including the CEO, came from either the MoJ or the Prison Service, Ministers were denied professional probation advice, which has had disastrous consequences, as the following reports disclose.

b. Officials from the MoJ and HMPPS told the PAC that the NAO report provided a clear framework of what they must do differently in the future, and that there was not a single lesson that they would not take on board.

## **NAO TRANSFORMING REHABILITATION PROGRESS REVIEW,**

Published 1 March 2019

24. To paraphrase the burden of the report, the MoJ had set itself up to fail in how it approached TR. Its chosen commercial route left it badly placed to manage the significant risks that its rushed implementation introduced. This was compounded by CRCs underinvesting in what were supposed to be innovative services, for commercial reasons, which the PAC explains, as a result of which the delivery of probation services suffered. Many early operational issues, such as friction between NPS and CRCs, still existed, and, overall, TR had achieved poor value for money for the taxpayer. In particular the MoJ's consideration that transferring CRCs to eight suppliers, working under contracts, would deliver reductions in re-offending corresponding to £10.4 billion, over the seven years of the contracts, had not been realised. The March 2019 report followed an earlier one, in April 2018, in which the NAO reported that CRC volumes were lower than the MoJ had modelled, which presented risks to their income and ability to transform their businesses. In addition to CRCs not achieving their performance targets, MoJ interventions had not resolved their financial difficulties.

25. The NAO also reported that:

a. The MoJ's low-risk appetite for failure, did not sit well with its desire for innovation.

(1) Probation services were not well suited to payment by results (PbR).

(2) Lightly specified contracts hampered its ability to hold providers to account for poorly performing services.

(3) It took two years for data on proven re-offending to become available; and outcomes cannot be directly attributed to CRCs in less.

b. While re-offending had been reduced slightly, many CRCs had not achieved their targets.

c. The MoJ had not achieved the wider objectives of the reforms:

(1) Patchy third-sector involvement with CRCs was outlined in an Inspectorate report on supply chains.

(2) Only 2 CRCs had delivered their promised IT innovation.

(3) Overall CRCs had performed poorly against range of other measures of performance.

- (a) 9 out of 13 CRCs inspected rated negatively for quality of work and protecting the public in the year 2017.
    - (b) 8 inspected CRCs 'require improvement' and 1 was graded 'inadequate' in 2018.
  - d. There were significant increases in the numbers recalled to prison, directly resulting from the extension of statutory rehabilitation to those serving short sentences of less than twelve months.
  - e. Through the Gate (TTG) services were ineffective in providing services to support transition into the community, witness inspection reports of consistent failure to meet the resettlement needs of most offenders.
  - f. The NPS had established a consistent national structure for delivering services, but was constrained by severe staff shortfalls and high workloads.
26. The NAO recommended that:
- a. Ministers and the MoJ should pause to reflect on their proposed approach, and assure themselves that it is both deliverable and consistent with the strategic aims of the probation system.
  - b. In parallel, the MoJ should work with the Reducing Reoffending Board, to produce a cross-government strategy that spelt out how probation must work with other bodies to reduce reoffending.
  - c. The MoJ should develop detailed plans for managing the wind-down period of the existing contracts, refining its approach to contract management and assurance, to ensure that the areas of greatest risk were covered.

**HM CHIEF INSPECTOR OF PROBATION'S ANNUAL REPORT FOR 2018.**

Published 28 March 2019

27. Because it is based on actual observation during inspections, and therefore so pertinent to any review of the future of the delivery of probation services, I quote extensively from the present HMCIOP's final annual report, some of which has also been said by others. Her proposals are a such a devastating indictment of the lack of direction given by successive MoJ Ministers, and MoJ, NOMS and HMPPS officials, that I hope that one reason, for their delay in producing a response to their July 2018 consultation, is that the report, together with those of the NAO and PAC, is being carefully considered by the MoJ and HMPPS. If government is really serious about wanting to correct some of the disastrous TR, in order to improve public protection, it should read, mark, and learn from what these reports contain. Over the years the MoJ has not been good at listening to, or taking advice from outsiders, demonstrated by

countless ignored reports and recommendations, from Inspectors and others. Improving the delivery of probation services is far too serious a matter for the government to ignore advice and criticism from experts, including its principal quality assurer and Parliamentary Select Committees.

28. HMCIOP writes that 'probation is a complex social service, with professional judgement at its heart, but current probation contracts treat it largely as a transactional business. Consequently, and chiefly due to the impact of commerce, there has been a deplorable diminution of the profession, and a widespread move away from good probation practice. Current rehabilitation theory is founded on belief in moral redeemability and the assumption that people can change and that a person's past is not his or her destiny. Criminality is not a permanent trait, but, very often a response to a person's life circumstances, that can be changed by altering those circumstances or increasing a person's self-understanding.

a. To implement government policy (TR), capable probation leaders were required to deliver change they did not believe in, and which went against the very ethos of the profession.

(1) It has proved well-nigh impossible to reduce probation services to a set of contractual requirements.

(2) Professional probation work is much more than a series of transactions, and, when treated as such, is distorted and diminished.

(3) CRCs have been driven to focus on transaction-based contractual targets first and foremost, rather than delivering effective probation services in accordance with the evidence base.

(4) Inspections have shown that probation supervision under contract is sub-standard, and much of it demonstrably poor.

(5) The skilled work that professionals can deliver has been devalued.

(6) Judicial confidence in community sentencing is now at serious risk.

b. **The probation model delivered by TR is irredeemably flawed**

(1) No set of design principles has been established for the probation system.

(2) Probation professionals are not subject to a common code of ethics:

(a) Professional ethics can buckle under such pressures and the evidence is that this has happened to some extent.

(3) Experience has shown that it is incredibly difficult, if not impossible, to reduce the delivery of probation services to a set of contractual requirements and measures, and equally difficult to deliver probation well without a nationwide approach to the essential underpinnings of the service. Significant flaws in the system have become increasingly obvious.

(4) It will be virtually impossible to deal with these issues while most probation supervision continues to be provided by different organisations, under contract.

(i) The government must consider carefully the future model for probation services.

(5) A number of studies have found that community sentences are more effective in reducing re-offending than short-term prison sentences. This may be due to increased opportunities for rehabilitation during community sentences and avoidance of the negative unintended consequences of imprisonment, such as losing employment or housing.

(a) Good probation work takes the level of motivation of the offender into account.

(b) The relationship between the probation professional and an individual can be pivotal, in turning people away from crime.

(c) Employment is critical in the long-term, but is often not a realistic short-term goal, until other issues have been addressed.

(d) Evidence suggests that supervision should help offenders overcome practical obstacles to desistance, such as drug misuse.

(e) More research is required to understand the effectiveness of mental health interventions and strength-based work.

(f) The dominant approach to offender rehabilitation should be based on the Risk-Need-Responsivity (RNR) model of assessment and treatment.

(i) This approach typically involves targeting the criminogenic needs of offenders, and treatment which, for cognitive elements, often uses cognitive behaviour therapy.

(ii) It can lead to modest reductions in re-offending, especially when interventions are rigorously implemented and combined with support in solving practical problems.

29. The MoJ estimated that services provided by CRCs would cost £3.7 billion over the 7-year life of the contracts, with medium and low risk supervision estimated to cost £529 million annually.

- a. Based on this CRCs had bid for a forecast profit of £269 million.
- b. But both the estimate and the contracts were so wide of the mark that, far from making a profit, CRCs forecast a £294 million loss in March 2018.

30. Both the NPS and CRCs are required, by HMPPS, to prepare sentence plans within fifteen days of an offender's first appointment. However, the Inspectorate has found that 40% of individuals under supervision are supervised by telephone only following their initial meeting and assessment, and, as a consequence, HMPPS has now issued a requirement for CRCs to plan monthly face-to-face meeting.

- a. The Inspectorate also found that, of the £3,246 million spent on research by Departments of government, only 0.52% was spent by MoJ on government services rather than general or policy research.

31. The delivery of probation services should be based on four design principles:

- a. Principle 1 The Probation Service should be an evidence-based service.

- (1) Evidence drives sentencing policy and informed sentencing decisions.

- (2) The evidence base should be developed and used to improve outcomes overall.

- b. Principle 2 The needs of individuals must be met.

- (1) Probation is also sensitive to and safe for the victim.

- (2) Delivery of services should be seamless and engage the individual under supervision.

- (3) Probation should be based on the ASPIRE- Assessment, Programming, Implementation, Evaluation – approach;

- c. Principle 3 The Probation Service should be an integrated and professional service.

- (1) Probation staff are professionals who should be qualified and engaged.
  - (2) Probation staff must be provided with the right facilities, information and support.
  - (3) The service is properly integrated with other agencies in the wider system.
- d. Principle 4 The Probation Service should inspire confidence that:
- (1) Community and suspended sentences are successful, and rehabilitation is seen to work.
  - (2) The public are protected.
  - (3) Good leadership, accountability and transparency are evident.
  - (4) The operating model supports effective delivery, continuous improvement and value for money.

## 32. HMCIOP's Proposals

- a. A nationwide commissioning strategy for specialist services should be developed.
  - (1) It should provide straightforward guidance on how to commission services, and should strike a proper balance between central and locally commissioned services.
- b. A nationwide workforce strategy should be developed.
  - (1) There is now a national shortage of probation professionals, with not enough qualified people applying to fill vacancies.
    - (a) In August 2018 the NPS overall vacancy rate was 11% (20% in London).
      - (i) More than 1100 temporary staff were employed.
  - (2) In October 2018 17% of sub-regions had workload levels at or above 110%.
  - (3) Probation professionals are not obliged by any requirement to keep their knowledge and skills up to date.

- c. A nationwide estates strategy should be developed.
  - (1) It should enable probation services to be delivered engagingly and sufficiently locally.
  - (2) Some CRCs deliver probation services in innovative ways in modern and appealing offices, community hubs or other community settings.
    - (a) NPS staff are generally working in dated and often shabby offices, and the NPS struggles to keep its offices maintained, or safe and secure.
    - (b) In a minority of areas, NPS and CRC staff work from the same premises, making the organisational dependencies less irksome.
- d. A nationwide IT strategy should be developed.
  - (1) It should include the ability to support continuous assessment of all offenders in prisons or under supervision in the community.
  - (2) Promising IT systems development in CRCs has been largely stalled, because the MoJ has been unable to provide necessary connectivity in time.
- e. In evaluating the work of probation providers government should give weight to measures of the quality of work done.
  - (1) The reoffending rate is not a sufficiently immediate or attributable measure of performance.
- f. The probation service should conform to the usual public service governance, accountability and transparency expectations.
- g. Serious Further Offence (SFO) reviews should be conducted with sufficient independence and transparency so that learning is shared, and systemic issues are identified and addressed.
- h. The government should pilot alternatives to custody for short-term prisoners and women. Those pilot arrangements should include supported accommodation options, and mental health and substance misuse treatment. The better use of monitoring technologies should also be considered.
- e. The future operating model for probation services should promote the use of established and well-regarded approaches, in accordance with the

evidence base. Evidence led approaches to new and existing challenges should be encouraged, and consistently and properly evaluated.

(1) The MoJ should ensure that evidence-led probation work is evaluated, and the best is accredited for general use.

(2) The MoJ should ensure that accredited programmes are available locally and are recommended to the court whenever they are appropriate.

f. In making future arrangements for probation services the MoJ should ensure that:

(1) Provision is made for initial assessments of the right quality.

(a) Case records must be comprehensive and kept up to date, to minimise the risk of important information being lost as individuals, move through the prison and probation system

(2) A good range of specialist services is available to meet all needs, and the specialist service sector is nurtured and maintained.

(a) The availability of mental health, drug and alcohol treatments should be increased, to meet the need.

(3) All offenders are consistently and effectively supervised.

(a) The government should reflect carefully on how best to ensure sufficient integration of unpaid work and other rehabilitative activities.

(b) The government should consider more specific rehabilitative options for community sentences, as an alternative to Rehabilitation Activity Requirements (RARs).

(4) Sufficient numbers of probation professionals are employed overall at a local level, to match workload demands, and provide for the contingency necessary to cope with changes in local demand.

(a) Continuity of probation workers is important.

(5) Provision for the learning and development of staff, and that arrangements for delivery of the strategy are practical and engaging for staff.

- (5) Staff engagement is measured annually, in ways that enable fair comparisons to be made, and that can drive improvement where needed.
  - (6) Professional staff pay arrangements are developed to recognise regional and area pressures.
- g. The government's Reducing Reoffending Board should consider how sufficient accommodation can be provided for those under probation supervision without a home.
- (1) 1 in 7 short-term and 1 in 10 longer-term prisoners are released without knowing where they were going to sleep that night.
  - (2) The latest review of TTG showed that 1 in 5 prisoners are released with no fixed abode.
- h. The Reducing Reoffending Board should also consider how to speed up the initial payments of benefits (without subsequent clawbacks).
- (1) Currently prisoners cannot attend a Job Centre and apply for or Universal Credit until after release.
  - (2) As HMCIP I began campaigning in 1999 for a person's entitlement to benefits to be assessed while they are in prison, so that, instead of a discharge grant they are given the first or regular weekly payments on release.
  - (3) The current discharge grant of £46 was set in 1996, and I defy anyone to live on that for 5-6 weeks, the time that it takes to process entitlement to Universal Credit.
  - (4) The government is setting people up to reoffend, by not tackling this piece of MoJ/DWP cross government issue.
- h. HMPPS should ensure that pre-sentence reports (PSRs) are prepared more often. They should be prepared in all cases where imprisonment is an option, except in exceptional circumstances.
- i. An independent professional body should be created to regulate the profession.
- (a) The new body should develop and ethical code for the profession.
- j. Probation premises should be kept safe and secure, and in a serviceable condition.

k. The MoJ should review the Victim Contact Scheme, so that it better meets the reasonable expectations of today's victims.

### **PAC TRANSFORMING REHABILITATION PROGRESS REVIEW**

Published 3 May 2019

33. I make no apology for repeating the opening paragraph of the report because it is such a succinct summary of the history and wrongs of TR:

'In its haste to rush through its reforms at breakneck speed, the MoJ not only failed to deliver its 'rehabilitation revolution', but left probation services underfunded, fragile, and lacking the confidence of the courts. Inexcusably, probation services have been left in a worse position than they were in before the MoJ embarked on its reforms. The MoJ accepts that many aspects of its reforms have not worked, and that services have suffered as a result. Its design of the reforms left CRCs too dependent on volumes of work which did not materialise, and their exposure to PbR worsened the subsequent financial pressure. CRCs had insufficient income to cover the cost of basic, good quality, probation services, leaving them unable to deliver the innovation promised, and vulnerable to outright failure'.

(In February 2019, Working Links, which owned three CRCs, went into administration, followed, in March, by Interserve, which owned five).

'The MoJ's attempt to stabilise the contracts, and its decision to terminate them in December 2020 – 14 months early – will cost the taxpayer an additional £467 million. Mismanagement, risk taking and the lack of properly considered planning, has badly let down offenders, and there has been no noticeable improvement in the support offered to offenders since these reforms were first implemented. They have failed to reduce reoffending by as much as expected, with the average number of reoffences committed by each reoffender actually increasing. TTG services fail to address needs like stable and suitable accommodation, and, in some cases, offenders have been provided with tents, and left with no fixed address, on release from prison. This will ultimately cost the taxpayer more, as costs are shunted elsewhere in the system. The MoJ says that it has learned lessons, but it now needs to show that it is putting them into practice, and urgently making desperately needed improvements to probation services'.

34. The PAC's conclusions and recommendations, all of which require urgent action, are as follows:

a. The breakneck speed with which the MoJ introduced the TR reforms created an unacceptable level of risk, that was not sufficiently challenged by the safeguards to protect the taxpayer.

- (1) The MoJ, Cabinet Office and HM Treasury should write to the PAC, by the end of June 2019, to set out what has been done to strengthen the approval and challenge processes, both within the MoJ and at the centre of government, in response to failed programmes such as this.
- b. The MoJ has created an underfunded and fragile probation market, and we are not confident of its ability to cope with further provider failure.
- (1) The MoJ should write to the PAC, by the end of June 2019, providing details of its contingency arrangements in the event of further provider failure, and explaining what it is doing to manage this risk as its contracts proceed to termination in December 2020. The MoJ should also provide the PAC with an outline of how it managed the impact of both Working Links and Interserve collapsing into administration.
- c. The MoJ will not make sustained progress, with reducing reoffending, until it can provide the support offenders desperately need on leaving prison, including securing stable accommodation.
- (1) The MoJ, working with the Reducing Reoffending Board, should report to the PAC, by the end of June 2019, setting out a cross-government strategy to reduce reoffending, and how it will measure whether this is working.
- d. The MoJ failed to involve voluntary sector organisations (VSOs) in delivering probation services on the scale it promised.
- (1) When it announces its new approach, the MoJ should write to the PAC, to explain what role it expects VSOs to play in the probation system, and what it will do to ensure that this role is being fulfilled successfully. The MoJ should also outline how it intends to improve its provision of specialist services, and how it will tailor those services to the specific requirements of those in need of support.
- e. The MoJ's decision to split the Probation Service has let down offenders and those working in the justice system.
- (1) If it persists with this flawed structure, the MoJ should urgently spell out how such a separation of probation services can work effectively, and what it will do to address the failings within the current system.
- f. If the MoJ does not put into practice the lessons from its failed reform programme, it is in danger of repeating the same mistakes again.

(1) When it announces its new plans, the MoJ should write to the PAC spelling out exactly how its plans to address the findings set out by the PAC and the NAO, and how it will avoid the same mistakes happening again.

35. After those three reports the following subjects will be covered in separate sections:

- a. Governance.
- b. Commissioning.
- c. Lessons from CRCs.
- d. Restoring the confidence of sentencers in community sentences.
- e. Women and girls.
- f. Healthcare.
- g. Training.
- h. Criminal Records.

## 4 GOVERNANCE

---

36. The first question that anyone considering the return of probation to the public sector must ask themselves is how it is to be organised and governed. I have always favoured a CJS Executive Committee, chaired by a Minister responsible and accountable to the Secretary of State, made up of the Directors General of the Prison and Probation Services, and the Chairmen of the YJB and a Women's Justice Board, which I would establish.

a. Each of the four would be responsible and accountable for the way that their responsibility functioned, which would lead to greater consistency, because of the oversight that each would have to maintain over their own constituent part.

b. This would obviate the need for HMPPS.

(1) In order to ensure that each of the four are provided with an adequate staff, I appreciate that this would require the dissolution of a number of MoJ departments, but they would be involved in operational matters rather than pure bureaucracy, which might be a good thing.

37. A Chief Probation Officer, or equivalent, should be appointed for every geographical area in which probation services are to be delivered, responsible and accountable to the Director General, whose tasks should include:

a. Delivering probation services to meet the needs of offenders.

b. Liaison with local authorities, including courts, police, social services, local government, health, education, substance abuse and housing.

c. Recruiting, training and leading staff, plus career development.

38. 1990 was the year of the worst riots in prison history, the causes of which were analysed by Lord Justice Woolf, later Lord Chief Justice, in a masterly report published in 1991. He concluded that the three things most likely to discourage someone from re-offending were a home, a job and a stable or family relationship, all of which were put at risk by the way that allocation of prisoners was conducted, sending prisoners to where there was an empty cell, which might be far away from their home area.

a. To counter this, he recommended that prisons be re-organised into community or regional clusters, except for high security prisons, because there were not enough high security prisoners to justify the cost of an expensive, high security prison in each region. Every region would have a sufficiency of prison places to house each type of prisoner, so that no prisoner ever needed to leave their home area. This impacted on probation, because, as Lord Woolf said, local

organisations would be motivated to become involved in the resettlement of their own local people, because, by doing so, they were contributing to their own protection.

b. He also pointed out that continuation of treatment, as under the ETE scheme, would be more possible, with the added advantage of having the same local organisations responsible for treatment in custody and the community.

39. In 1992 the then Home Secretary, now Lord Baker of Dorking, published a White Paper *Custody, Care and Justice*, containing twelve Ways Ahead for the Prison Service, including the formation of regional clusters of prisons. Regrettably none of the twelve has ever been enacted, for which successive Secretaries of State must be held responsible. Had they been I venture to suggest that neither prisons or probation would be in the state that they are now, and there would have been no need for either NOMS or TR, but that is conjecture.

40. The Government's present consultation on probation includes two models for the future – one for Wales and one for England. That suggested for Wales is favoured by many respondents, not least because, in recommending the appointment of a Regional Offender Manager, responsible for prisons and probation, it seems to be recognising the advantages so cogently analysed and recommended by Lord Woolf. The advantages of going down the proposed Wales route seem so obvious, that one can only wonder why the same approach has not been recommended for England. The proposed reduction in the number of CRCs merely seems to be adding to the confusion, because their areas will inevitably cut across many existing boundaries, requiring them to work with a multiplicity of local authorities, police and courts, Health and Education authorities, all of whom have a vital role in rehabilitation.

41. I have titled this report 'People are not Things' deliberately, because, after a lifetime in an operational service, I have come to hate the cult of managerialism – the issuing of paper orders and instructions in the belief that they will automatically be obeyed - which seems based on the belief that they are.

a. The absurdity of this cult was exposed, by David Cameron when Prime Minister, that Prison Governors, when he revealed the prison Governors were subject to over 960 instructions, printed on 46,000 pieces of paper. Common sense alone suggests that people in busy operational positions, such as prison and probation staffs, need to be led by other people, not expected to obey every letter of countless written instructions.

42. The cult of managerialism has had another unfortunate side-effect - the replacement of professional judgement by a myriad of targets and performance indicators, which can be measured and used to fuel meaningless league tables. Achieving meaningless targets and performance indicators has no place in probation, where every offender has different needs, which must be analysed and satisfied if the public is to be protected.

a. Prison and Probation staff have often complained to me about the amount of time they have to spend either answering MoJ questions, or completing endless forms, many of which ask the same question in a different way.

(1) There is a great danger that people who are over-regulated may become mere automatons, unwilling to take any responsibility including avoiding blame. Currently there are too few staff to warrant their time being wasted in this way.

(2) I would invite all Ministers and senior civil servants to specify what information they actually need, eliminating the gathering of any that they do not, and have each target and performance indicator analysed to determine whether it serves a specific operational purpose.

(i) This would, at a stroke, reduce the amount of meaningless bureaucracy with which busy staffs are currently bombarded, increase the time staff can spend working with offenders, and encourage operational leadership.

## 5 COMMISSIONING

---

43. Probation services should be commissioned so that they respond to local conditions. This requires someone, or some body, to be made responsible, and accountable, for overseeing the commissioning process, to ensure that the Chief Officer of Probation has the tools needed to deliver probation services in each area.

a. It is at this level that the private sector has a part to play, because it may be that only a private sector organisation can provide what is required in an area.

(1) As Alan Bennett says, profit has no place in probation, and all scarce resources should be used to rehabilitate offenders.

b. Maximum use should be made of the voluntary sector, motivated by involvement in the rehabilitation and protection of its own people - those from the community in which the voluntary sector organisation operates.

44. The most successful oversight model to follow appears to have been the short-lived Probation Boards, which were made up of a wide number of local experts.

a. Since then PCCs, and elected Mayors, have been introduced, and I have been interested by the number of both who have identified the vacuum in the co-ordination of local CJS commissioning, created by TR when it abolished Probation Trusts.

(1) Having identified the vacuum, many have thought about how they might fill it, thus improving CJS delivery in their areas. They are elected to set priorities for policing and wider community safety partners, locally, and, through their Police and Crime plans, reduce crime and help make communities safer.

(2) I recommend that examination of what part PCCs, and elected Mayors, could play in the commissioning of probation services in their area, is added to the list of subjects to be considered, by whoever is tasked with conducting any review of the delivery of probation services.

45. In their response to the government consultation the Labour Group of PCCs commented that its terms were too narrow, 'and seemed designed simply to fix a broken commercial model. Any benefits realised would be of little value to local communities, but mainly to private companies, enabling them to maintain their profits from a flawed and fragmented system.

a. 'Crucially the consultation failed to allow for the consideration of a more radical overhaul that probation clearly needs, to ensure not only that it operates

efficiently and effectively, but also that it is accountable to the communities it serves and responsive to their needs’.

b. ‘Currently local oversight is minimal, re-offending rates have risen, and vital information – on the risk that service users pose, for example – can no longer be shared effectively due to the fragmented nature of the service’.

c. However, the Magistrates Association believes that, although PCCs have an important role to play in commissioning:

‘Accountability for delivery of probation services should remain outside their control. Local independence is crucial, and so it would be inappropriate for probation services to be accountable to an elected Commissioner, as sentencers, and the public, must be confident that probation and community services are not politically influenced or motivated’.

46. On the general subject of the commissioning of probation services, the contracts department in the MoJ, should be excluded from any involvement. Its conduct of contracting for TR was nothing short of disastrous; as the PAC and NAO have pointed out.

a. It underestimated the demands on the NPS and exaggerated the profits likely to be made CRCs, resulting in their having to be bailed out to the tune of hundreds of millions of pounds, which the cash-strapped MoJ could ill afford.

b. Its disastrous conduct of the TR contracts indicated that it had learned nothing from the expensive failure of its court language service contract in 2011, described as:

‘a case study on how not to undertake public sector reform. A government department embarking on a reform...relying on inadequate information about the arrangements it sought to replace, and an incomplete specification of the system that would be put in its place. Add to this a lack of consultation with....an apparent hostility to Parliamentary scrutiny and challenge, and a perfect storm of poor implementation and crisis management was almost inevitable’.

(Taylor-Gooby,P, and Stoker, G, ‘The Coalition Programme: a New Vision for Britain or Politics as Usual?’, *Political Quarterly* 82(1), 4-15)

## 6 LESSONS FROM CRCs

---

47. All was not well with probation, including the organisation of the delivery of probation services, in 2013 when TR began. The upheavals around the development of NOMS, Ministerial lack of understanding and distrust, the absence of experienced probation officers from any senior advisory posts in NOMS, combined with having too many Prison Service officials in posts that could better have been filled by probation officers, plus having too many MoJ civil servants who did not understand either the ethos or the modus operandi of probation, proved to be a lethal cocktail as far as the delivery of probation was concerned. I will never know how much officials tried to oppose the introduction of TR, with its obvious risks and errors, once their impact assessment had so summarily been ignored.

48. Talking to some firms providing CRCs, and some members of CRCs it is clear that one positive result of their introduction has been an increase in economic awareness, mission driven leaders in CRCs having worked hard to deliver well, but being severely inhibited by financial resource and staffing pressures, lack of certainty about the future and operating models that were not well-aligned to the evidence base.

49. As others have pointed out CRCs were faced with problems caused by the absence of any clear purpose of probation, a transactional rather than a quality approach to professional improvement, the speed of implementation and the contracting imperfections of TR, the funding imbalance, per offender, between the NPS and CRCs. On top of all that, the MoJ entirely failed to provide promised ICT support, to redesign the inefficient OASYS assessment form, or to listen to complaints about process targets. They felt inhibited by not being able to talk to local authorities, because of the split with the NPS.

50. There is no doubt that the private sector has brought rigour to the oversight of probation. The best of them explained how they had introduced a forward-looking culture of delivering more with less, which must have relevance for the future, plus a better understanding of the relationship between cost and delivery.

51. My conclusion from all this is that anyone, made responsible for designing future delivery of probation services, would be wise to consult the best of the CRCs, and learn from them how they tried to combat some of the fragilities of pre-TR delivery.

## 7 IMPROVING SENTENCER'S CONFIDENCE IN COMMUNITY SENTENCES

---

52. The Magistrates Association responded that:

'A lack of information about community sentences is a significant problem. For sentencers to have confidence in community orders, they need to know that they will address the purposes of sentencing. Understanding what kind of programmes and work CRCs carry out, how many appointments that means, and where they will be held, is an important facet of that knowledge, and a lack of liaison between CRCs and sentencers thus risks damaging sentencer confidence.....The split between NPS and CRCs means that, while NPS continue to sit in court, staff at CRCs, who have an offender manager role, do not necessarily understand the court process or sentencing procedure. Confidence about breaches therefore remains an issue for magistrates.... (who) now have no real contact with the staff who will actually deliver the sentence, whereas previously they met them (or their close colleagues) in court and could discuss the possible sentences with them directly'.

53. Community sentences may include:

- a. Undertaking activities designed to reduce the individual's risk of re-offending.
- b. Unpaid work for up to 300 hours – removing graffiti or clearing rubbish.
- c. Undertaking a programme of work designed to challenge and change behaviour.
- d. Adherence to a curfew.
- e. A residence requirement, so that the offender is obliged to live at a certain address.
- f. A requirement to undertake mental health, drug or alcohol treatment.
- g. An alcohol abstinence and monitoring requirement.
- h. An exclusion requirement, so that the offender is not allowed to go to certain places or areas.
- i. Prohibition from doing certain things – visiting a named house or seeing a named house or seeing a named person.
- j. An Attendance Centre requirement – for those under the age of 25.

- k. A foreign travel prohibition requirement.

54. HMCIOP found that judges and magistrates fear that CRCs are lax in returning cases to court, adding to the undermining of their confidence in community sentences.

55. In addition to believing that 'encouragement is key to offender rehabilitation, and the courts can play a vital role in supporting and encouraging offenders', the Magistrates Association believes that there must be mechanisms to ensure that services are provided for the most vulnerable and complex cohorts such as:

- a. Those with multiple needs linked to offending behaviour. For example, individuals with substance misuse problems, as well as mental health diagnoses, need additional support that cannot be provided by probation alone, but must include health services.

- b. Repeat offenders, who have not managed to successfully complete previous community sentences. This cohort can be the most complex to deal with, as innovative approaches are sometimes needed. However, it can be difficult to set up measures to indicate success that rely purely on whether an offender has re-offended or not.

- (1) The most successful programme to deal with short sentenced repeat offenders that I came across as HMCIP, was at HMP Canterbury, where the Governor employed a probation officer to assess each prisoner as if he was a long term one. A long-term sentence plan was made for each one, and, on which, every time a person returned, work was begun from where he had reached last time. Within 18 months the numbers returning began to drop off. I recommended that this process should be adopted in all local prisons, but, needless to say, nothing happened.

- c. Cohorts made up of relatively few offenders, for example women. There are many difficulties relating to providing support for female offenders, which I outline below.

56. In 2018 the Centre for Justice Innovation updated its report entitled 'Renewing Trust; how we can improve the relationship between probation and the courts', its starting point being the 24% decline in the use of community sentencing in England & Wales over the last ten years, with most of the decline occurring since 2011. Sentencers still want to award community sentences, seeing them as a vital sentencing option, but their trust in them has been dented. Findings include:

- a. The number of Pre-Sentence Reports (PSRs) has fallen by a third in six years, with the sharpest falls in the magistrate's courts. Court timeliness targets, and fewer resources for probation court staff, are hampering the ability of probation to deliver high-quality pre-sentence advice.

- a. The core role of PSRs is to provide 'sentence proposals that are commensurate with the seriousness of the offence, and will address the offender's assessed risk and needs'.
  - (1) The use of oral reports has doubled since 2016 and seems to be working well for the majority of cases.
  - (2) Although an oral report was adequate for sentencing purposes, it did not support adequate sentence planning during supervision period.
  - (3) The Inspectorate found that assessment and sentencing planning material were only rarely available, and, in a significant minority of cases, the only documentation was a handwritten note of varying legibility.
  - (4) Sentencers and practitioners are concerned that the 89% fall in the use of SDRs means that some more complex cases are not being adequately assessed.
- b. The relationship between courts and probation has been buffeted by a number of reforms in the past six years, most notably the split in probation.
  - (1) Taken together these reforms have erected a significant barrier between courts and the agencies charged with carrying out the majority of the community sentences they impose.
  - (2) The range of process targets for courts and CPS performance, including measures of time between first listing and completion, plus court closures, have hampered the ability of probation to deliver high quality pre-sentence advice.
- c. A lack of information about CRC services is undermining the capacity of NPS court staff to make robust sentence proposals in some areas.
  - (1) Suspicions that they are not enforcing court orders as probation trusts once did.
  - (2) Sentencers have serious concerns about the quality of the work of CRCs when these are exposed in breach proceedings.

(a) Following sentencing NPS prosecutors are responsible for prosecuting all breaches of community sentences (where an offender has either committed a further offence or has failed to comply with the conditions of the court order).

(b) NPS court staff prosecute all breaches, including those of offenders supervised by CRCs.

(i) The role currently includes drug rehabilitation requirements reviews, other types of reviews within the handful of 'problem-solving court' initiatives across the country, and deferred sentencing schemes.

(c) 'Overall quality of offender management and consequent decision-making poor'. Inspectorate thematic inspection of Enforcement and Recall 2018.

(3) Barriers to dialogue between CRCs and sentencers about community sentence options.

(i) Assessment often deficient.

(ii) Plans, though timely, not of good quality.

(iii) Engagement of individual in constructive work insufficient.

(iv) Planned levels of contact inadequate to meet individual's needs.

(v) CRCs, constrained by level of resourcing, did not always know when enforcement appropriate.

d. The structure of Rehabilitation Activity Requirements (RARs) means that the content of community sentences is opaque to both NPS court staff and sentencers.

(1) RARs replaced supervision and activity requirements in court orders.

(2) When proposing a RAR, the pre-sentence report writer should describe the criminogenic needs to be addressed, provide information on available interventions and suggest how many days required to address needs.

(3) A sentencer who includes a RAR in an order can specify the maximum number of days' activity which it can cover, but cannot determine the type of activity to be undertaken.

e. The use of drug rehabilitation requirements and mental health treatment has halved.

(1) Funding has fallen by £105m in the last 4 years since the government removed the ring fence that prevented councils from cutting treatment to fund other areas.

f. 'Bureaucratic process measures must not be allowed to get in the way of real outcomes, especially if such intervention is like to reduce the use of custody and re-offending'.

(1) Sentencers remain largely in the dark about what happens after they sentence someone to a community sentence, because they have so few opportunities to witness progress and compliance with court orders. There is no routine process by which sentencers' perceptions of community sentences are gathered.

(2) More use should be made of the National Sentencer Probation Forum as well as local court-level probation/court liaison groups.

57. The Centre made a number of sensible and practical recommendations for improvement:

a. The Sentencing Council should develop a guideline on when sentencers should request a PSR, to ensure that they are aware of which type is like to be most appropriate in individual cases.

(1) The NPS should review the criteria for determining when a SDR is required, to ensure that they capture the full range of relevant cases.

(2) The NPS should encourage report writers to use their professional discretion to vary the format of a report when they think it is necessary to ensure appropriate pre-sentence advice.

b. The MoJ should ensure that adequate funding is available for NPS court teams in line with Lord Leveson's 2015 recommendations for more consistent probation staffing in courts.

c. The MoJ should commission an independent review of the operation of RARs, including gathering sentencers' views on their use, and publish the results.

- d. The MoJ and the DoH should urgently reconsider the overall level of funding available for drug and mental health treatment for offenders in the community, and reconsider whether funding should be ring fenced.
- e. The MoJ should require that CRCs have a permanent presence in magistrates' courts.
- f. The MoJ should develop and pilot two models of structured deferred sentences, based on Scotland's Structured Deferred Sentences; a 'low-tariff' model for offenders current facing low level community sentences, and a 'high-tariff' model as an alternative to prison sentences of up to six months.
- g. The MoJ should pilot the use of judge-led problem-solving orders as alternatives to prison sentences of six to twelve months, as part of its strategy to reduce the use of short sentences.
- h. The MoJ should consider how to provide sentencers with updates, on the progress of offenders who they have sentenced to community sentences.
- i. Local representatives of HM Courts and Tribunals Service (HMCTS), NPS and CRCs, should implement the new liaison arrangements set out in Probation Instruction 05/2018, with a particular focus on the 'sentencer issues' and 'performance information' standing agenda items.
  - (1) HMCTS, NPS & CRCs, should collaborate at a local and regional level to devise and deliver probation-led training for new and existing magistrates.
    - (a) The purpose and functioning of community and prison sentences should be a compulsory part of training for new magistrates.
  - (2) Magistrates Training Committees should promote the opportunity for judicial office holders to observe the work of prisons and probation, and should explore the feasibility of a programme of organised visits for interested magistrates.
- j. The MoJ should conduct an annual survey of sentencer perception of probation advice, and sentencing options including community sentences, as a means of helping probation providers improve their performance.

## 8 WOMEN AND GIRLS

---

58. Female offenders are some of the most vulnerable individuals within the CJS. Compared to males, they are twice as likely to report anxiety and depression, with heightened incidences of self-harm, histories of domestic violence and abuse. Within the Female Offenders Strategy, published in 2018, the government emphasised the need for specialised, gender-informed services, to assist in supporting women to lead fulfilling lives.

59. For too many years, there has been much talk about improving the delivery of probation services specifically designed for females, but nothing specific or consistent has materialised. Women are suspicious of allegedly gender free services, which claim to be able to cater for the needs of women, but are in fact male orientated, and distrust them as a result. Many women have backgrounds of mental ill health, addiction and experiences of domestic and sexual abuse, which are best dealt with by services designed for women.

a. I blame the absence of services designed for women, on the absence of anyone responsible and accountable for the 24/7 oversight of the consistent delivery of services, throughout England and Wales. To correct that I recommend the setting up of a Women's Justice Board, similar to the Youth Justice Board, its Chairman being a member of the CJS Executive Board, and Women's Offender Teams (WOTs) in all parts of the country.

b. Over the years there have been numerous Ministers for Women, who change frequently, and are in no position to maintain operational oversight over the delivery of services. There have also been numerous civil servants, with different titles, responsible for policy, which is not the same thing as being responsible for 24/7 operational oversight.

c. At a local level, commissioners should recognise the need for services which can respond to women's needs, holistically, and must work together to ensure that dedicated, women only, services, for women with complex needs, are available across probation areas.

59. Females turn to alcohol or drug abuse for different reasons to males, often seeking solace following domestic abuse. They then face considerable disadvantage, because there is too little provision of specialist women's services - which have a proven track record of providing effective therapeutic and practical help, and interventions that support rehabilitation - which can help them to turn their lives around.

a. A recent study by the Disabilities Trust, in HMP Drake Hall, a women's prison in Staffordshire, showed that of 173 offenders screened, 64% reported a history indicative of a brain injury, of which 96% reported a history indicative of a traumatic brain injury, much inflicted during domestic abuse.

60. Many of the solutions to reducing women's reoffending, lie outside the CJS, and the system should be re-designed to respond to this. Cross-departmental leadership, stronger co-operation between central and local government and ring-fenced funding, is essential to deliver effective community support for women.

61. TR has put many women's services under great strain, large degrees of risk having to be shouldered by small and medium sized organisations. Community provision for women is already under resourced and beset by cuts. Unfortunately, some providers of specialist women's services have felt unable to deliver support under TR, due to contractual complexities and constraints, and, having tried to making up funding gaps from elsewhere, have been forced to close.

62. I am grateful to Jessica Southgate, Policy Manager of the alliance Agenda, for providing me with much valuable advice on this important and neglected issue.

## 9 HEALTHCARE

---

63. In February 2018, the Institute of Mental Health published an Offender Health Commissioning Toolkit, which has been passed to the MoJ. It pointed out that little research had been conducted into the general health of people on probation, and more was needed. The health needs of such people were complex, not only because many on probation had more than one health problem, but because the symptoms and causes related to wider issues, such as substance abuse, housing, social care and employment. The research that had been conducted pointed to a high rate of drug and alcohol abuse.

64. HMPPS is responsible for carrying out all sentences given by the courts, both in prison and the community, and for the rehabilitation of all people in their care.

a. Courts are able to award a number of healthcare Community Order requirements including:

- (1) Alcohol Treatment.
- (2) Attendance at a nominated Centre.
- (3) Curfew.
- (4) Drug Rehabilitation.
- (5) Exclusion from making or maintaining contact with a person.
- (6) Mental Health Treatment.
- (7) Prohibited possession, ownership, control or inspection of specified items or documents.
  - (b) Disclosure of information.
- (8) Participation in, or co-operation with a nominated programme or set of activities.
- (9) Rehabilitation Activity.
- (10) Residence at a specific place or restriction of residence.
- (11) Supervision.

65. Despite the high level and complexity of their health needs, people on probation faced both personal and systems level barriers to accessing healthcare:

- a. Many are not registered with a GP, and only access healthcare in a crisis.
  - (1) Sometimes services are difficult to access due to location, opening hours, restrictive referral criteria and poorly understood access routes.
  - (2) Offender voices were seldom heard by those responsible for commissioning healthcare, or those for providing oversight and scrutiny of healthcare services.
  
- b. NHS England (NHSE) is not responsible for commissioning health services for people on probation, only those in custody.
  - (1) Sometimes services do not exist to meet offender needs.
  - (2) Community Commissioning Groups (CCGs) are responsible for commissioning services for offenders being managed in the community, but an alarming percentage do not realise this.
    - (a) This includes making NHS staff available to assess and treat those with Mental Health Treatment Requirements (MHTR).
    - (b) CCGs are expected to assess the healthcare needs of their local population, working with local Health and Well-Being Boards (H&W-BBs).
      - (i) Guidance encourages H&W-BBs to assess needs of disadvantaged groups, likely to be in poor health, such as offenders.
    - (c) CCGs are required to be part of statutory Community Safety Partnerships, consisting of local authority, police, NPS, CRCs and fire and rescue service.
      - (i) In 2018 the Local Government Association (LGA) reported a mixed picture of engagements by CCGs and probation services.
  - (3) Mental Health Trusts, are commissioned by CCGs, to provide services for people with mental health problems.
    - (a) The Bradley Report highlighted problems over silo working between and within health and CJS services.
    - (b) Probation staff faced difficulties over managing cases with mental health issues, due to lack or mental health awareness

training, an/or knowledge of available care pathways and how to access them.

(i) MH Trust staff can help overcome these by working in partnership with probation, providing training, and informing probation staff on pathways.

(ii) They could work alongside probation in an Offender Personality Disorder pathway.

(4) Public Health Departments in Local Authorities, whose aim is to improve and protect the health of their population and reduce inequalities.

(a) Impact monitored through Public Health Outcomes Framework indicators, such as successful completion of drug and alcohol treatment, which could have huge significance for probation.

(b) LAs are responsible for commissioning substance misuse services, Joint Strategic Needs Assessments (JSNAs) and Joint Health and Well-Being Strategies, used to inform commissioning decisions.

(i) Few JSNAs mention offenders and even fewer made recommendations about how to address their health needs.

(ii) 'It would not be appropriate for central government to be prescriptive about the process or to monitor outputs' (2013).

66. Both NPS and CRCs have a role to play in relation to the health of people on their caseload:

a. Initial identification, recording and discussing health needs with offenders, considering relationship between health and offending behaviour, and facilitating access to services.

b. TTG should include identifying any need for continuing healthcare, GP registration, and appointments with substance misuse services.

c. NPS and CRCs, working in partnership with other agencies, should be responsible for ensuring appropriate delivery of Alcohol Treatment, Drug Rehabilitation, and Mental Health Treatment requirements.

## 10 THE TRAINING OF STAFF

---

67. No aspect of probation is more important than the training of staff. Before TR there were a number of university-based courses, which all probation officers were required to undergo, during which much of the training was social service based, reflecting the then ethos. Compared to the woefully short time given to the training of Prison Officers, probation was a model of good practice. All that has ceased now that CRCs are responsible for training their own staffs, and consistency has been lost.

68. All is not doom and gloom however, because one of the outcomes of TR has been the formation of a Probation Institute, which, since its formation, has issued a considerable amount of sensible advice. I have been struck by the number of respondents who have mentioned the importance of maintaining the Institute in any future model of probation, with which I fully concur. The advantages of having a central organisation responsible for training standards are many, not least in terms of consistency. I have no doubt that, within a unified service, it could be given a number of other tasks.

## 11 CRIMINAL RECORDS

---

69. The possession of a Criminal Record not only affects a large number of people, but, under present arrangements, dogs people for decades – one acquired as a youth can be a life sentence - can be crippling when seeking employment, and can affect access to a housing, insurance and access to a university. The application of Criminal Records in this country, as per the Rehabilitation of Offenders Act 1974, is more punitive than any other country in the world.

70. In 1999 the Better Regulation Task Force recommendation for reform of the Act, was picked up by the then Labour government, which, in 2001, launched a consultation entitled *Breaking the Circle*. In its response, published in 2002 it promised a draft Bill, which never materialised. In 2010 the Coalition government launched its own consultation entitled *Breaking the Cycle*, which was followed by some alterations to the Act in the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) 2012. Since then the Standing Committee on Youth Justice published a report on Childhood Criminal Records in 2016, and the Law Commission was asked, by the Home Office, to review the operating of the filtering service, part of the Disclosure and Barring Service (DBS) set up following LASPO. In addition, Lord Dholakia and I have introduced a succession of Private Member's Bills in the House of Lords, that is currently stalled while the MoJ and Home Office await an order from the Supreme Court, following the referral to it of a case against the ROA which had been supported in first the High and then the Appeal Courts, against which the Ministries appealed.

71. Not only because it is now 20 years since the Better Regulation Task Force drew attention to the problems that the Act imposed on the rehabilitation of offenders, but because there are questions about the involvement of the private sector in administering the DBS for profit, I hope that an incoming Labour government will put back the clock to 2002, and introduce reform of an Act, the operation of which is an impediment to successful probation work.

## 12 CONCLUSIONS AND RECOMMENDATIONS

---

72. From all this I deduce that:

a. There is no reason why probation should not be returned to public ownership, but that return will require a great deal of preliminary work, which must not be rushed, but the role and purpose of probation must be defined.

(1) Many respondents believe that the traditional ethos still runs deep, and there are likely to be sufficient numbers of good people to provide an organisational infrastructure.

b. To judge from the JCS, NAO, PAC and HMCIOP reports, currently probation is in a parlous state, there having been no strategic direction since the introduction of TR, from the MoJ, NOMS or HMPPS.

c. Probation should be considered in the context of a review of the CJS, and not in isolation, and any review must include all the partners who are essential to the delivery of probation services.

d. Anyone tasked with reviewing the delivery of probation services must take account of the conclusions and recommendations, mentioned in this report, of the JCS, the NAO, the PAC and HMCIOP.

e. HMPPS should be abolished, and the Probation Service regarded as separate from, and different to, the Prison Service, under its own Director General.

f. The provision of probation services should be regarded as a local rather than a national responsibility.

g. Probation should be organised to conform with existing local government, police and justice boundaries, rather than DWP ones.

h. If organised regionally smaller commissioning areas should be considered.

i. Both the private and the voluntary sectors should be included in local provision, but neither should be involved in the governance of probation.

73. It is obviously premature to attempt make any final recommendations, until the Government has responded to its own consultation. In the meantime I am very grateful to all those who have contributed to this interim report.