

Submission¹ to the Commission on Justice in Wales on the future of the Justice System in Wales

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Overview

Since the introduction of Transforming Rehabilitation (TR) in 2014, the governance and structure of the probation service in England and Wales has been completely transformed (Ministry of Justice - MoJ 2013). Prior to 2014, the probation service in Wales was part of a unified public body providing criminal justice services across Wales and England. Wales was served by a single organisation, the Wales Probation Trust. Post-TR the probation service was split in two. One organisation, the new National Probation Service (NPS), remained within the public sector but was taken into the civil service. The NPS is responsible for the supervision of those individuals regarded as being of a higher risk of harm (but not necessarily of a higher risk of re-offending) as well as services to courts and there is an all-Wales division of the NPS. The majority of the caseload of the former probation service (those individuals assessed as being of a lower risk of harm) passed to Community Rehabilitation Companies (CRCs). The CRCs are a mixture of private companies, third sector organisations and some hybrids. Wales has a single CRC, owned by Working Links.

In our view, the reorganisation of probation services has been fraught with difficulties and should be reversed if possible. Probation services are best provided by a unified, public sector body, for a range of reasons. TR was imposed by government despite widespread opposition that argued that it was based on an ideological commitment to privatisation, rather than any evidence that it might improve the overall performance of the probation service, which was a high-performing public sector organisation, as recognised by the National Offender Management Service (NOMS) and the Probation Inspectorate (HMIP) (NOMS 2013 and 2014). In the view of government, competition for the CRC contracts would introduce, via disciplines of the market, more effective, efficient and innovative services (MoJ 2013). Critics argued that this would not be the case and that a divided service would have communication difficulties between the NPS and CRCs, that there would be 'two-tier' probation, with CRCs regarded as 'second class' (Burke 2013). It was further argued that CRCs, being commercial organisations would ultimately regard their commercial interests as their overriding priority and services to those under its supervision and the working practices of staff would be affected by this. Indeed, the introduction of commercial values and ethics was seen as likely to be inimical to staff within a public sector organisation

¹ This submission is based upon a similar one we made in November 2017 to the House of Commons Justice Committee's Inquiry into the Transforming Rehabilitation Programme

such as the probation service and predictions about a negative effect upon staff morale were made (Deering & Feilzer 2015; Kirton and Guillaume 2015).

Unfortunately, many of the concerns of critics about the impact upon practice have been borne out since the split, particularly regarding the CRCs. A number of HMIP reports into probation performance after TR have pointed to concerns about practical challenges caused by increased workloads, flawed CRC delivery models, concerns over the quality of PSRs, supervision arrangements, breach procedures, sentencers' trust in community sentences and Serious Further Offences (SFOs) (HMIP 2016a; HMIP 2016b; HMIP 2016c; Panorama 2017). Most recently, an HMIP (2017) report concluded that smaller third-sector and voluntary organisations had become less involved in providing specialist services to the CRCs than they had been previously. One of the intentions of the TR programme was that such organisations should become increasingly involved (HMIP 2017). Moreover, the third-sector organisation Clinks (2018) recently argued that many charitable organisations are effectively subsidising the CRCs as the cost of the limited services they provide is greater than any contractual income.

Probation Values and Legitimacy

In our view, whilst there are enough areas of concern about the performance of the service since TR to justify a consideration of reversing the TR changes, our particular argument is based upon the impact of the changes on probation values and the legitimacy of the service. Additionally, Wales may be in a unique opportunity to build a unified service based on social justice principles and implementing many of the reforms to sentencing that seem long overdue, i.e. on short-term custodial sentences, specific services for women, mainstream support for families and children of those serving custodial sentences, etc.

The issues of values is fundamental to why individuals chose to enter the probation service, on their view of how it should operate and its principles and purposes. In turn, this has an impact upon how practitioners view the organisation in terms of its legitimacy. In particular, we are concerned with self-legitimacy (Bradford and Quinton 2014) i.e. the extent to which practitioners see the service, and their role within it as a legitimate part of the criminal justice system. We argue here that this has a considerable impact upon their practice and morale.

Research into probation values and the legitimacy of probation practice has raised the following issues:

1. The values of Government, probation organisations and practitioners have been diverging and emerging tensions have now reached crisis point.
2. The self-legitimacy of probation practitioners is under threat, which will have a long-term effect on probation practice.

Probation's 'corporate' values

The debate around probation's corporate values and those of practitioners has emerged and developed over the past 30 years or so and one issue that has come to the fore is the increasing divergence between corporate (governmental) aims for the probation service and the views of practitioners.

From approximately the mid-1980s successive governments became increasingly involved in the probation service and followed policies aimed at moving it away from its roots in social work with those who have committed offences (with an aim of rehabilitation). The new direction was one where, whilst rehabilitation was retained as an aim, it was given a much reduced role, being superseded in importance by risk assessment, managerialism, monitoring, and punishment (Newburn 2003, Raynor 2012, Deering 2016).

These changes revealed an increasing tendency in government to place less faith in rehabilitation and more with a limited monitoring and punishment role and a Conservative Home Secretary, Michael Howard abolished social work training for practitioners, seeking to recruit ex-armed forces personnel in order to 'toughen up' practice. Whilst the Labour Government elected in 1997 restored professional training, it was not based within social work, but had a narrower focus based upon 'effectiveness and reducing re-offending' (Deering 2016).

Increased management of practice by government perhaps peaked with the creation of the National Probation Service for England and Wales in 2001. The new service had five main aims including the punishment of offenders and the protection of the public; rehabilitation was placed last of the five (Home Office 2001). Within a few years of the setting up of the new service, the government created the National Offender Management Service (NOMS) as a result of the Carter Report which considered the marketisation of the service under 'contestability' (Carter 2003). NOMS developed a commissioning model which along with the Offender Management Act 2007, laid the foundations for Transforming Rehabilitation (TR).

Practitioner values

Until the mid-1980s, in very broad terms, probation practitioner values might be seen to be 'traditional' in the sense of being humanitarian, allied to social work, and seeking the rehabilitation of those under supervision via the provision of 'help' in its broadest sense. This aimed to ameliorate a range of personal, social and economic problems faced by supervisees that were seen as underlying most offending. In the mid-1990s, Williams (1995) considered probation values to be: opposition to custody; opposition to oppression; commitment to justice for offenders; commitment to the client's right to confidentiality and openness; valuing of clients as unique and self-determining individuals; aim to ensure that victims and potential victims are protected; belief that 'purposeful professional

relationships can facilitate change in clients' (Williams 1995: 12-20). In a similar vein, Napo published its own view of professional values, based on the view that individuals have the ability to change. It set out the following values to which it was committed: respect and trust when working with perpetrators and victims of crime; open and fair treatment for all; empowerment of individuals in order to reduce the risk of harm to themselves and others; promotion of equality and anti-discrimination; promotion of the rights of both perpetrators and victims; building on individuals' strengths as a vehicle for change (Napo 2006: 5).

Studies (e.g. Annison, Eadie et al. 2008; Deering 2010; Deering 2011; Mawby and Worrall 2013) have consistently shown that practitioners have joined the probation service to work empathically with individuals experiencing a range of social and personal problems that underlie their offending. They desire to 'make a difference' with individuals who are seen as capable of change within an organisation able to assist such change. However, such studies have also shown practitioners becoming concerned at top-down changes to the values of the organisation as outlined above, which have put their professional values under pressure and thus to something of a schism between them and government (Deering 2011; Farrow 2004; Mawby & Worrall 2013; Robinson and McNeill 2004; Robinson, Priede et al. 2014). Moreover, practitioners were describing how they 'adapted' government policy to enable them to continue to practice in a manner that fitted with their own values. In other words, some degree of resistance to changing organisational values and practices was emerging (Deering 2011; Mawby & Worrall 2013).

Regarding the government's proposals for Transforming Rehabilitation, we received over 1300 responses to an online survey conducted in March/April 2014 with probation staff about the prospects for probation following the changes (Deering and Feilzer 2015). The survey revealed feelings of anger and betrayal about the changes, linked to the aims of probation and values but also the prospect (at the time) of a marketised and partially privatised service. Most respondents felt that the service should be wholly maintained within the public sector and that the private sector (and to a lesser degree the third sector) had different priorities, aims and values related to the demands of a commercial operation. Many respondents feared for the future of the service and their own position within it. Clearly, the split of probation and the outsourcing of CRCs raised for practitioners some fundamental questions about the ethics of private companies making profits from crime, victimisation, and punishment.

Recent ethnographic research which looked at the formation of a CRC from the inside, identified a number of themes that are important to the discussion here. These include separation and loss, status anxiety, loyalty and trust, and liberation and innovation. Authors concluded that the notion of 'liminality' – of being caught in transition between the old and the new – the 'public and the outsourced', was the most fundamental and important theme (Robinson, Burke et al. 2016: 161).

Thus, we argue that the value systems of government, probation organisations, and practitioners have been diverging to some degree and this has significantly accelerated since TR. We would suggest that this divergence will lead to a legitimacy crisis for probation practitioners and we turn to this point now.

Legitimacy of Probation – organisation and practice

Here, we would like to highlight a possible long-term effect of the divergence of values on probation practitioners' sense of the legitimacy of their practice. Legitimacy is also important in terms of the views of people and organisations *outside* probation and of those *supervised* by the NPS and CRCs and TR poses challenges for both. However, our concern here is the impact of TR on the self-legitimacy felt by practitioners.

Bradford and Quinton (2014) developed 'correlates of self-legitimacy' when studying the self-legitimacy of police officers which comprised: respondents' confidence in their own authority and their sense that they occupy a special position in society; the extent to which police officers feel that they are enabled and supported by their organisation and that they internalise the values represented by their organisation and identify with the organisation; a shared group identity. We adapted these for the probation service and concluded that the split of the probation service into the NPS and the CRC had a significant disruptive effect on some probation practitioners' sense of self-legitimacy. Moreover, some respondents were convinced that their concern for the legitimacy of probation practice would be shared by those under probation supervision and might thus affect levels of compliance with court orders (Deering and Feilzer 2017). Our research suggested that practitioners had grave concerns about the ethics of the CRCs and they were frustrated by a perception of an erosion of common organisational values. There was apprehension about having two different organisations involved in probation – one 'real' probation service and the other a 'second class probation', a fear that was also identified in further work in a CRC (Robinson et al. 2016: 173). Indeed, Robinson et al. (2016: 173) noted that probation practitioners thought the CRC to be 'socially invisible' without a clear identity and that practitioners felt a strain on their previous identity within the 'honourable profession' of probation due to being 'tainted' by perceived private sector values and priorities.

Research on the impact of restructuring on both the CRCs and the NPS (Kirton and Guillaume 2015) argued that probation practitioners feel that TR has de-professionalised the service and that stress levels are high, due to higher workloads, job insecurity, less autonomy and reduced opportunities for training and progression. Since the introduction of TR, both CRCs and NPS have seen an exodus of experienced staff and Kirton and Guillaume (2015) suggested that many respondents in their study were considering leaving the service and that a further attrition is likely.

Conclusion

In our view the cumulative effect of the changes to probation's corporate values, the divergence of values between practitioners and government and the recent dramatic changes to governance and organisational arrangements, may have already started to affect practitioners' sense of self-legitimacy. This, in turn may have a long-term corrosive effect upon probation practice and its wider legitimacy. An important aspect of self-legitimacy is the extent to which practitioners feel that they are enabled and supported by their organisation and that they internalise the values represented by their organisation (Bradford and Quinton 2014: 1028). The current situation means that the self-legitimacy of many practitioners is, at the very least, in some doubt. This in turn may lower morale and foster discontent with the quality services provided to those under supervision. If practitioners come to feel that the service provided to supervisees is not what it had previously been, this may have a negative effect on their feelings of being the holders of legitimate authority.

There is evidence to suggest that practice is already changing and that probation provision is becoming increasingly fragmented with clear differences emerging between NPS and CRCs, different CRCs owners, and different regions (HMIP 2016). In our view, considerable damage has been done to some individual probation staff's sense of being a member of a 'collective of professionals doing an important job well' (Ugelvik 2016: 226).

In view of this, we would argue that should probation services become devolved, they should in due course be re-unified and returned to the public sector. However, consideration could be given to doing this in slightly different, perhaps more creative ways. For example, it is well known that a significant percentage of the probation caseload are young people under the age of 25 – 25 per cent across England and Wales in 2016 (MoJ and HMPPS 2016). As such they would fit into the Welsh Government's 'Extending Entitlements' policy much in the same way as young people in trouble supervised within the youth justice system (WG/YJB 2014). In addition to this new way of working with young people and young adults, a similar approach to working with women should underpin the work of future probation services in Wales. As far back as 2007, the Corston Report (Corston 2007) argued that as far as possible women should be dealt with outside the formal criminal justice system, due to their offending being less serious, needs-based and mainly due to multiple levels of deprivation. Corston proposed community-based supervision and support for all women in need, whether or not they had committed offences and in our view, probation in Wales should seek out ways to move policy and practice in this direction. Similarly, short custodial sentences have been recognised as a flawed sentencing policy disrupting the lives of those sentenced as well as their families and children and a well-trusted probation service could offer well-supported and accountable alternatives to custody.

Thus, we would argue that the practice of any new Welsh Probation Service could be built upon principles of inclusion, rights, entitlements and social justice, as well as accountability to the courts for offences committed. This would enable stable, structured partnerships

with the voluntary sector to provide specialist services for women, substance misuse, housing, employment and training, domestic abuse and violence. Ironically, this would enable the third sector to flourish within the criminal justice system in Wales in ways that TR claimed would happen under the current arrangements, something that has patently not come to pass.

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