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Criminal justice reform and probation

In the press release accompanying the publication of the new Criminal Justice Bill in November 2002, the Home Secretary stressed the need for the criminal justice system to be ‘responsive to the communities it serves’ and, not for the first time, talked of the need for ‘radical reform . . . to restore public faith in the criminal justice system’. The Bill incorporates much of the thinking evident in Robin Auld’s review of the criminal courts and John Halliday’s review of sentencing (see ‘Research & Reports’, Probation Journal 48 (3), pp. 221–2). The recommendations of this latter report in particular are likely to have an enormous impact on the work of the probation service. If they are implemented, according to the review team’s own estimates, it could mean an increase in the prison population of between 3000 and 6000 and an additional 80,000 offenders under probation supervision at any one time. Notwithstanding the other merits of the Halliday recommendations, this is a worrying prospect at a time when, in real terms, probation resources have been diminishing.

In this challenging context, a number of the articles in this edition examine the impact on the probation service of the ongoing reform of the criminal justice system, and grapple with the part which a reconfigured service might play within it.

The crucial issue of resources is considered in some detail in Rod Morgan’s Thinking about the demand for probation services. This article asks some searching questions about the role which the probation service has itself played in the ‘up-tariffing’ of low risk offenders and the increased prison population which has followed. It argues that in order for resources to be directed away from the low risk offenders who are ‘silting up’ probation caseloads, the probation service must be more vociferous in informing sentencers about its work. The author suggests that an unambiguous acceptance within probation service culture that sentencers – not offenders, the public or any other party – are the core users of probation services, would be a good starting point.

From a greater critical distance, Judith Rumgay’s Drug treatment and offender rehabilitation: Reflections on evidence, effectiveness and exclusion argues that the probation service might usefully take heed of the move away from medical model interventions in the drug treatment field. This article argues that the proliferation of diverse interventions for tackling drug use contrasts sharply with the
increasingly narrow focus of the ‘What Works’ agenda. The author makes an intriguing case for an approach to probation work that in many respects seems more in accord with the government’s aim of developing a criminal justice system responsive to local communities. The service should, she argues, build on its record of grass roots inventiveness and move away from ‘exclusionary practice’, which, if it continues in the current vein, ‘will damage its reputation with the very agencies of social welfare whose support is crucial to a broader, socially inclusive, harm-reducing vision.’

‘Oh, my country, how I leave my country’: Some reflections on a changing probation service’ adds a third and more personal perspective. In a wide-ranging and historically literate paper, Tony Leach supports the exhortations in the two articles mentioned above for the service to be more proactive in building on its strengths. He also helpfully points out that the reforms ‘have not been dreamt up to persecute the probation service’ but are part of a wider trend towards public sector ‘modernization’. This paper argues that the service must both understand this wider context and strive to control its own destiny within it, if its unique contribution to criminal justice is to be retained.

‘Implementing OASys: Lessons from research into LSI-R and ACE’ touches on one of the most contentious issues in modern probation, namely the relative merits of clinical and actuarial risk assessment. Gwen Robinson’s research found that although practitioners are concerned about the dwindling importance of clinical judgement in risk assessment practice, they generally welcome the benefits of instruments such as OASys. If there is any doubt about the enduring importance of clinical assessment skills grounded on sound knowledge, they should be dispelled by David Court’s Practice note, ‘Direct work with racially motivated offenders’. This article highlights the complexity of work with this challenging group of offenders, and links with a number of articles on this theme in recent editions.

Finally, readers will not fail to have noticed that Probation Journal has been through some radical reforms of its own and is now being published by Sage Publications. It is with great pleasure and anticipation that we have embarked on this new partnership, but the fundamental aim of Probation Journal – to provide a forum for debate and to spread good practice – will remain the same. As ever, contributions from practitioners, managers, academics, policy-makers and others involved in criminal justice are very welcome.

Hindpal Singh Bhui
Thinking about the demand for probation services

Rod Morgan, Home Office, London

Abstract. This article explores three questions. First, it considers who does and should determine the demand for probation services; second, why the pattern for the demand and supply of probation services is as it currently is; and finally, it considers how the future demand and supply of probation services might be altered. The author argues that the ‘silting up’ of probation caseloads with low risk offenders is a major problem for an already over-stretched workforce and suggests a number of measures which could be taken to address this problem – these include the ‘up-tariffing’ of community service, more use of restorative justice approaches, a more effective strategy to inform sentencers of the effects their sentencing decisions are having, and a return to a greater reliance on financial penalties.

Keywords customers, demand, probation, public, sentencers, supply, victims

Context: Thinking about users/customers

During spring 2002 I attended an event for probation service chief officers and probation board chairpersons. I was a guest. An outside management specialist delivered an address which culminated in the audience being asked to split up into small groups to work at an exercise. Our task was first to identify the ‘core customers’ of the probation service and thence to work out what the ‘critical success factors’ were in satisfying those customers, what skills and behaviours were required from probation personnel, and so on. We were given 30 minutes and asked to report back. It was a typical day in the life of ‘leaders’ learning about ‘leadership’ and though I have not previously had much experience of this world, I thought the exercise rather tired.

As I walked to the room where my syndicate was to meet I felt irritated about the language being employed. Since the probation service does not ‘sell’ anything to anyone, I thought the term customer inappropriate. However, I was willing, as
I discovered my fellow syndicate members were willing, temporarily to set terminological and philosophical issues aside. The question which the management consultant clearly wished us to consider was: who does the probation service principally have to satisfy in order that its services continue to be demanded? And I had very little doubt about the answer to that question, though I anticipated we might have a debate choosing between two principal candidates – sentencers and ministers. To my surprise, however, I discovered that virtually no one in my syndicate initially agreed with my view. Animated discussion ensued. We never got around to talking about the skills and behaviours that needed to be encouraged. And we barely touched on the ‘critical success factors’. We spent all our time debating the first question – identifying the core customers. Further, when we reported back to the plenary session other syndicates announced conclusions different to ours: the public at large, offenders, victims, local communities, even community service beneficiaries, as well as sentencers and ministers were mentioned.

I have since reflected on this experience. On one level I have speculated that the lack of agreement reflected the terminological confusion. The fact that inappropriate commercial language was being used – customers buying products in a market place – meant that, in order not to appear spoilsports on the day, the audience was prepared to substitute ‘customer’ for ‘stakeholder’, ‘beneficiary’, ‘consumer’, ‘client’, etc. and, as a consequence, came up with very different results. However, I also concluded that this reasoning doesn’t entirely wash. I think this banal and in some senses misguided management exercise exposed seriously woolly thinking within the probation service which, if perpetuated, prejudices its future operation. Let me explain.

The public

Let us abandon the term customer and think of users instead. There are, as far as I am aware, no ordinary members of the public contemplating whether they should use a service delivered by the probation service. This places the probation service in a very different relationship to the public at large from, for example, the police. Most of us do decide whether to use the police, and we do so relatively frequently. If we are victimized we decide whether to call the police and report the crime event to them. If we observe an offence, we decide whether to offer ourselves as witnesses. If we are asked by the police to assist them with information, we decide whether to co-operate. We are the direct recipients of police services, about which we are more or less satisfied. The same applies to the health service, education, and so on. By contrast, ordinary members of the public are not users of the correctional services – probation and prisons. They benefit from them, or rather it is to be hoped that they do. They are hopefully better protected from being re-victimized. In this sense the public are the beneficiaries of the probation service in much the same way as they are of the civil aviation authority – whose services, exercised on behalf of the state, presumably reduce the likelihood of aeroplanes colliding and falling out of the sky. It is obviously desirable that we all have confidence in agencies like the CAA and the probation service. If we have, this
makes the task of those who fund and deal directly with them that much easier. But we are emphatically not the users, let alone the customers, of these agencies. Most citizens, I confidently predict, do not know much about the workings of the CAA and the evidence suggests they know very little about the probation service. There is no reason why they should. Furthermore, there is little prospect, whatever the probation service does, that levels of public knowledge about it will greatly increase. The probation service is part of the background fabric of the state.

Offenders and victims

Offenders, by contrast, deal directly with the probation service – about 200,000 of them at any one time (National Probation Service, 2001, p. iii). Offenders form a clear, informed view about the quality of probation staff and services. But offenders can scarcely be considered the customers of the probation service. It is not they who decide whether or not to have contact. Others do that for them. Offenders are instructed to comply. They constitute the material on which the service works. If the probation service can be said to have a product, it is ‘changed’ or ‘controlled’ offenders which is why, in the absence of incontrovertible evidence as to outcomes, the National Probation Directorate (NPD) is beginning to refer to programmes which hold out the promise of changed or controlled offenders as products.

What of crime victims? They are increasingly being brought within the fold of criminal justice decision-making as a result of the Victims Charter and statutory provisions involving them in decision-making. These victims might be regarded as users or customers, but the number involved remains small and they can scarcely be considered the probation service’s core users.

Which leaves us, I suggest, with only two candidates meriting serious consideration as ‘core customers’. First, Home Office ministers and the senior civil servants, who convert ministerial wishes into service level agreements, targets and budgets, etc. Second, sentencers. Further, at this point we need to make a distinction between probation areas and the NPD.

Ministers and civil servants

The probation service does not operate within a true market. It is part of the criminal justice system over which Home Office ministers and civil servants, of which the NPD is a part, seek to exercise some command. They model the system, estimate aggregate case-flows, determine priorities and allocate budgets. They have a key role in designing, delivering and marketing the product range, which is ostensibly designed to deliver an end product, or outcome, of reduced offending and/or improved public protection. But the government’s command is imperfect and contingent. The level of crime, and public reactions to it, is uncertain. Further, though parliament determines the criminal law and the powers available to sentencers, the latter, by custom, have a wide discretion, the independent exercise of which is jealously guarded. It follows that there is a quasi-market in sentencing options, a quasi-market, which successive governments have, since the
1980s, encouraged for political reasons and through the importation of commercial language and devices – privatization, contracting out, incentivized decision-making, etc – public servants to think of in market terms. Thus the talk of customers, products, and so on. As far as probation areas are concerned, sentencers are their core users or customers, or they should be so regarded.

Sentencers

The principal mechanisms through which the probation service makes known and offers its services to sentencers hardly need to be spelt out. The courts and the parole board require the probation service to prepare reports on offenders about to be sentenced or subject to discretionary release. The probation service undertakes risk-need assessments and recommends appropriate disposals. By these means the service in effect sets out its stall. It offers different interventions. It suggests that these interventions will meet different groups of offenders’ risks and needs. Sentencers dispose in the light, among other things, of these probation diagnoses, prognoses, and recommendations in the context of their appreciation (knowledge, understanding, trust and belief) of the available penal product range.

Like suppliers, or producers, in any commercial market place, the probation service, steered by its Home Office budget-holder, seeks to condition sentencer opinion. New sentencing options are introduced, or withdrawn, by statute. New programmes are made available within sentencing options. These options and programmes are branded in the sense that the marketing of these different products is more or less backed up with evidence regarding their efficacy and, just as importantly, penal-philosophical appearances suggesting their suitability and tariff applicability for different groups of offenders.

But the message should be clear. In the absence of mandatory sentencing, the Home Office-encouraged planning, budgeting, product development and marketing strategy counts for little if sentencers ultimately do not use them. If they exercise their discretion not to employ sentences and programmes which the Home Office targets say should be delivered by the probation service then it is pretty clear what the long-term consequence will be for the probation budget. How then can local probation managers be under any doubt about who their principal customers are?

Cultural and organization issues

There are several reasons why probation managers may judge Home Office ministers to be their core customers. First, it is the command aspect of the probation economy which most bears down on them. The Home Office-NPD set the supply targets, many of which, in the short term, either fall short of what it is anticipated, or hoped, the sentencer quasi-market will demand, or which stipulate standards which it is hoped will condition sentencer opinion and generate increased demand. The delivery of drug treatment and testing orders is an example of the first; improved enforcement standards an example of the second. These are the cash-linked imperatives which dominate local managers. Second, probation
managers mistrust that resources will follow any increased demand and supply of their services to sentencers: mistrust because they know, from bitter experience, that they do not operate in a true market. Were they to get sentencers proportionately to increase the use of the community sentences they deliver, there is no guarantee that their resources would increase. Their experience during the early to mid 1990s when Michael Howard was Home Secretary taught them that: the probation service budget was cut severely and probation caseloads increased significantly. Even if we discount the anachronistic data still published annually in the Probation Statistics – which relate offender caseloads to probation officers, who now comprise only about half of all probation service staff – a broader estimation suggests that service caseloads increased between 1990 and 2000 by about 30 per cent.

As for probation managers identifying offenders or the public at large as their ‘core customers’, this is arguably commendable testimony to their public service commitment – their resistance to inappropriate commercial market tomfoolery – and the fact that in recent years they have been drilled in the language of stakeholding. Further, meeting offenders’ needs, insofar as that increases offender motivation and compliance, contributes to sentencer confidence which, in the long run, is likely to stimulate sentencers to make increased use of probation services. Moreover, increased general public knowledge about and confidence in the probation service may persuade sentencers, the majority of whom – lay magistrates – see themselves as acting on behalf of the public at large, to make greater use of probation services. And if victims were said generally to favour probation interventions that might plausibly have the same consequence. If all that be the case, does it really matter if probation managers do not focus on sentencers as their target users?

I think it does matter. It matters because the links in this posited chain of satisfaction are weak. The level of public confidence in the probation service is very unlikely to greatly change for the reasons I have stressed – the public neither deals with the probation service or thinks about it. As for offenders’ and victims’ reactions, most sentencers (in which I include members of the parole board) are unlikely to know what they are unless the probation service informs them. This is why sentencers are the probation service’s core users and why, I suggest, that fact needs to be driven home by the creation of a more effective quasi-market than we have at present.

One last word on why we should dispense with the language of customers. Although we are nowadays attuned to the fact that in developed consumerist market economies, producers create the demand for their product – condition their customers – the orthodox doctrine is nevertheless that customers are always right and must be given what they want. That cannot and should not be the basis on which we build criminal justice. Justice is too precious and complex a matter to be grounded on crude populism. Further, the relationship between sentencers and probation staff is ideally one between professionals – with different roles, but each exercising professional judgement grounded on expertise, exchanged on the basis of trust. Sound relationships based on those values have to be earned and nurtured.
What do sentencers want from the probation service?

Since little recent work has been done on the attitudes and reasoning of sentencers in England and Wales, we have to concentrate most of our attention on the sentencing options which in recent years sentencers have taken up. Table 1 summarizes the data for the last decade. The overall pattern is clear. The number of offenders sentenced in 1990 and 2000 remained almost constant, but whereas the proportionate use of discharges held steady (at least for males), use of the fine and suspended custody fell substantially, while resort to both community penalties and immediate custody increased significantly. The total proportionate use of custody almost doubled while that of community penalties increased by approximately one half (from 15 to 24 per cent for males and 21 to 33 per cent for females).

The data can be cut in different ways – magistrates’ courts compared to the crown court, males and females, different age groups. There are important variations, but as Table 2 demonstrates, the direction of the trend is in each case the same.

Sentences have become substantially more severe, community penalties displacing financial penalties (and to a lesser extent discharges) and immediate custody displacing community penalties and suspended sentences. Furthermore, the custodial sentences being imposed are longer: though the average sentences imposed in magistrates courts have remained more or less constant at 2.6 months, those imposed in the crown court increased from 20.5 to 24.2 months between 1990 and 2000 (Home Office, 2001a, Table 7.15).

Faced with these data many people would I think hypothesize that the trend reflects more serious offending or that the offences now being sentenced are committed by offenders with more serious prior records. This is possibly part of the explanation, but the evidence clearly shows that sentencing has become more punitive and interventionist. The proportion of sentenced prison receptions convicted of crimes of violence (including sexual offences and robbery) is, at 21 per cent, less than it was ten years ago and the limited data available do not show prisoners to be more recidivist, though because prison sentences are longer, and long-term prisoners now spend a higher proportion of their sentences in custody than previously, the population in prison at any one time (the daily average population) has now a more serious offending record (Home Office, 2001b, Table 4.2; see also discussion in Morgan, 2002).

The same picture emerges from an analysis of the offenders supervised by the probation service. They are clearly less serious in type. In 1990, 26 per cent of probationers (those on community rehabilitation orders today) had violence against the person, a sexual offence, burglary or robbery as their principal current offence and slightly more, 28 per cent, were convicted of a summary offence; by 2000 the equivalent figures were 16 and 36 per cent (Home Office, 2002, Table 3.5). Community service (now community punishment) offenders display a similar pattern. In 2000, 18 per cent had been convicted for violence, sex, burglary or robbery compared to 28 per cent in 1990 and no fewer than two fifths (40 per cent) are now convicted of summary offences compared to one third (31 per cent)
### Table 1: Sentences imposed for indictable offences, all males and females, all courts, 1990 and 2000 (%)

<table>
<thead>
<tr>
<th>Total offenders</th>
<th>Discharges</th>
<th>Fines</th>
<th>POs/CROs</th>
<th>CSOs/CPOs</th>
<th>COs/CPROs</th>
<th>SSs</th>
<th>Imprisonment</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>M</td>
<td>F</td>
<td>M</td>
<td>F</td>
<td>M</td>
<td>F</td>
<td>M</td>
</tr>
<tr>
<td>1990</td>
<td>13</td>
<td>32</td>
<td>43</td>
<td>32</td>
<td>8</td>
<td>18</td>
<td>7</td>
</tr>
<tr>
<td>218,900</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2000</td>
<td>13</td>
<td>24</td>
<td>28</td>
<td>22</td>
<td>11</td>
<td>22</td>
<td>9</td>
</tr>
<tr>
<td>217,300</td>
<td></td>
<td></td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

Source: Home Office, 2001a, Table 7.9
ten years ago (ibid). The proportion of community punishment and rehabilitation order offenders convicted of summary offences is, at 43 per cent, even higher today than ten years ago (30 per cent - ibid). Nor is it the case that these less serious probation-supervised current offenders have a more serious offending history. As Table 3 demonstrates, the proportion of offenders subject to all types of community penalties who have previously experienced imprisonment has fallen significantly in the last ten years (ibid, Table 3.7) and those with no previous convictions has substantially increased.

Yet despite this pattern of less serious offending, the proportion of supervised offenders subject to at least one additional requirement, most commonly to participate in specified activities, has risen from from 24 to 33 per cent (ibid, Table 3.12). Not surprisingly the proportion whose CROs are terminated early by reason of a further conviction has fallen (down from 16 to 12 per cent between 1990 and 2000) whereas the proportion terminated for failure to comply with the terms of their order has risen (up from 3 to 7 per cent - ibid, Table 4.4).

The picture that emerges, therefore, is that more and more offenders are getting mired deeper and deeper within the criminal justice system for doing less and less. The evidence is that since 1993 crime has fallen significantly, albeit the rate remains twice what it was as recently as 1980. Yet at over 72,000 (as at September 2002) the prison population stands at a record high and the probation service has caseloads, as we have seen, 30 per cent higher today than ten years ago, caseloads that are increasingly silted up with less serious offenders.

This is not the place to consider some of the structural forces which lie behind these sentencing trends - the apparently relentless rise in recorded and unrecorded crime until the mid-1990s (Kershaw et al., 2001, Chapter 3); growth in public anxiety about crime, albeit a concern that has declined somewhat from the peak levels recorded in the mid-1990s (ibid, Chapter 5); the feelings of general insecurity which are said to characterize our post-modern, globalized world; the party politicization of ‘law and order’ and the spectacle during the 1980s and early

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**Table 2** Proportionate use of custody, 1990 and 2000 (%)

<table>
<thead>
<tr>
<th></th>
<th>1990</th>
<th>2000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>14.2</td>
<td>24.9</td>
</tr>
<tr>
<td>Magistrates’ courts:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>all</td>
<td>4.4</td>
<td>14.0</td>
</tr>
<tr>
<td>Crown Court: all</td>
<td>43.2</td>
<td>63.9</td>
</tr>
<tr>
<td>All courts: females</td>
<td>4.7</td>
<td>14.4</td>
</tr>
<tr>
<td>All courts: males</td>
<td>15.6</td>
<td>26.7</td>
</tr>
<tr>
<td>All courts: 10-14 year olds</td>
<td>2.1</td>
<td>5.3</td>
</tr>
<tr>
<td>All courts: 15-17 year olds</td>
<td>9.5</td>
<td>14.3</td>
</tr>
<tr>
<td>All courts: 18-20 year olds</td>
<td>13.5</td>
<td>24.5</td>
</tr>
<tr>
<td>All courts: 20+ year olds</td>
<td>15.7</td>
<td>27.8</td>
</tr>
</tbody>
</table>

Source: Home Office, 2001a, Table 7.9
1990s of competing politicians seeking to out-bid each other in toughness (Downes & Morgan, 2002); the development of ‘What Works’ penal policy and the revitalization of rehabilitative thinking that we can ‘make people better’ (Raynor & Vanstone, 2002); and so on. What is clear, however, is that the probation service has itself played a part. Though a significant proportion of offenders sentenced to prison are committed without benefit of a pre-sentence report (the recent HMI Probation/HMI Prisons 2001 review of resettlement found it to be 17 per cent), the same is not true of offenders made subject to community penalties. Further, though probation managers tend to argue that a significant proportion of the 42 per cent greater number of court reports requested by the magistrates’ courts during 1990–2000 (Home Office, 2002, Table 2.1) are arguably unnecessary, a declining proportion of the proposals made in those court reports are for fines or discharges. From data available to me from the Home Office Research and Statistics Directorate, from HMIP’s inspection reports and from research officers employed in some probation areas, the following picture emerges.

Though the figures vary from one probation area (and prior to April 2001, probation service) to another, it appears that proposals for custody have doubled from 2–3 to 5–6 per cent and proposals for fines or discharges have declined from 10–12 to 5–6 per cent. The overwhelming majority of PSRs in which a clear proposal is made – and a large proportion of PSRs without proposals result in custodial sentences, which suggests that the absence of a proposal is often tacit recognition of that outcome – are for community sentences. Which is to say that probation officers are encouraging the increasingly interventionist trend of sentencing. This should cause no surprise. Probation officers have for several years been encouraged to make realistic proposals and high concordance rates have come to be regarded as desirable. Thus to the extent that sentencers have moved up-tariff, so also have probation officers.

The silting up of the higher probation caseloads with less serious offenders is best illustrated with data emerging from the pilot application of OASys, the probation and prison service’s new joint offender assessment tool. Offenders with scores under 30 are below the threshold at which it is considered appropriate that they be allocated to an accredited offending behaviour programme, first because they do not need it, and second because the evidence

<table>
<thead>
<tr>
<th>Type of order</th>
<th>Previous custody</th>
<th>No previous convictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>CRO</td>
<td>38</td>
<td>35</td>
</tr>
<tr>
<td>CPO</td>
<td>36</td>
<td>19</td>
</tr>
<tr>
<td>CPRO</td>
<td>45</td>
<td>34</td>
</tr>
</tbody>
</table>

Source: Home Office, 2002, Table 3.7
suggests that their participation may increase rather than reduce the likelihood that they will reoffend. What is striking about the data in Table 4 is that two thirds of all offenders subject to community punishment orders fall into this category, a finding consistent with the figures in Table 3: almost half of all offenders doing community service have no previous convictions. The proportion of offenders with low likelihood of reoffending on community punishment orders is striking both because it is higher than that for assessed offenders subsequently fined or given conditional discharges and because the probation service hopes shortly to introduce an enhanced accredited programme of community service.

## Shaping future demand for probation services

What conclusions are we to draw from the trend data? I suggest the following:

The last decade has witnessed the introduction of an increasing array of community penalties – the combination order, the curfew order with electronic monitoring, the drug treatment and testing order (DTTO), the exclusion order and the drug abstinence order. A separate set of new orders has been introduced for juveniles. England and Wales now has the largest range of sentencing options of any jurisdiction in Western Europe. Further, the language of community penalties has been toughened. The probation order has become the community rehabilitation order and community service orders have become community punishment orders. Combination orders are now community punishment and rehabilitation orders.

Yet custody has not been displaced. On the contrary, the changes have fuelled an increasingly interventionist and punitive sentencing trend resulting in a record prison population and a probation service overburdened with low risk offenders to supervise. It has been a classic example, to use Stan Cohen’s (1985) terminology, of net widening.

We should ask searching questions, therefore, of any further proposals to introduce new sentences, or additional conditions attached to existing sentences,
particularly if they involve tougher, more intensive supervision or surveillance. Such proposals are likely to be accompanied by arguments, as they have been in the past, that the tougher orders or requirements are necessary for community penalties to be credible to sentencers: by that means alone will sentencers be willing to substitute punishment in the community for custody. This road has repeatedly been travelled before. Unless such proposals are accompanied by fundamental means to displace those low risk offenders currently subject to community penalties, the outcome is likely to be further ratcheting up of the punitive trend. What then must be done?

First, the National Probation Service (NPS), both nationally and at area level, must develop more effective means to inform the judiciary (both magistrates and judges) about the day-to-day reality of community penalties – how demanding they are for the offenders involved, what criminogenic issues are addressed and by what means, and what impact they have for offenders both individually and generally – and by so doing persuade them this work is best done if caseloads are not cluttered up with low risk offenders. Between them probation areas already employ a variety of methods ranging from explanatory leaflets attached to pre-sentence reports, to presentations to benches. Frequent references are made to the loss, with the creation of the NPS, of probation liaison committees. But the latter only ever reached the minority of magistrates who attended them and they seldom included stipendiary magistrates (now district judges). Moreover they failed, as we have seen, to stem the punitive tide. It follows that the NPS needs to develop more imaginative methods for reaching sentencers generally and getting across the many positive messages the service has to tell. One lesson, anticipated by the Halliday Report (Home Office, 2001c, paras 5.18–19) is available from the early experience derived from DTTOs which involves periodic reviews of offenders’ progress. The evidence from the operation of DTTOs, as the recent White Paper implied (CJS 2002, para 4.46), is that sentencers relish being involved in the implementation of sentences and are much more tolerant of the difficulties involved in changing behaviour than might have been imagined. DTTOs are also striking because the offenders subject to them are typically high risk. Implementing the Halliday recommendations will be expensive, but more work could be done on informing sentencers about the personal progress of the offenders they sentence.

Second, there is an urgent need to resuscitate the use of financial penalties, the decline in the take up of which has, as we have seen, been little short of catastrophic during the 1990s. A high proportion of the offenders currently being made subject to community penalties, particularly community punishment orders, would have been fined ten years ago. There are problems collecting fines (see Elliott et al., 1999) and it is facile, therefore, to regard financial penalties as a source of revenue in comparison to the costs of other disposals. Nevertheless the use of fines involves substantially less cost (and may even generate net income) compared to other penalties and the historical evidence is that they are no less effective in reducing re-offending. Moreover it is untenable to suggest that at a time when unemployment is at an historic low point, most offenders cannot afford to pay something. There is a strong case for considering the reintroduction of day fines,
so precipitously and unwisely abandoned in 1992, and the principle underlying which many benches retained (see Charman et al., 1996).

Third, the scope for making restorative justice – a meeting between the offender and his or her victim with a view to exploring some form of restitution – an option both pre- and post-sentence should actively be explored. The jury remains out as to the benefits for both victims and reoffending and many questions remain for procedural and substantive justice of employing the restorative justice approach (see Zedner, 2002). But the evidence on outcomes is positive with regard to certain categories of offences and offenders.

Fourth, community service must be moved up-tariff, where it used to be. On the basis of the pilot OASys data reviewed in Table 4, it would appear that upwards of 20,000 offenders sentenced each year to community punishment orders do not require the enhanced accredited form of community service which the NPS plans shortly to introduce. They might be fined instead. On the same basis an estimated 8500 offenders sentenced each year to community rehabilitation orders or community punishment and rehabilitation orders should not be targeted for accredited offending behaviour programmes. Many of them might be fined instead, reserving these more interventionist, and costly, programmes for higher risk groups.

Fifth, if it is argued that these low risk offenders cannot, on whatever grounds (proportionality, personal financial circumstances, etc.) be fined or given discharges, then consideration might be given to introducing less intensive, or less professional, supervision or surveillance for some categories of offenders, possibly contracted out. Stand-alone electronic monitoring orders are a clear option.

None of these five options is mutually exclusive. But they need to be pursued through a joint debate between the probation service and sentencers. Why? Because in the same way that the prison service cannot pursue sensible crime reduction initiatives due to overcrowding and the imperatives of estate and population management, so also the probation service is increasingly overburdened with low risk offenders whose supervision requirements absorb scarce resources which are needed elsewhere to address the supervision and surveillance needs of medium and high risk offenders. Something has to give. If crime reduction is to be achieved and the public better protected, the probation service must proactively, with government and sentencers, better determine the use to which its scarce resources are put.

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‘Oh, my country, how I leave my country’: Some reflections on a changing probation service

Tony Leach, London

Abstract Drawing on more than 30 years of experience, the author explores the impact of a range of recent reforms which he sees as being of particular importance to the future direction of the probation service. He argues that while changes to the socio-political context and organizational structure of probation raise many valid concerns, there is still much to be hopeful about, particularly in view of the motivated, high quality staff the service is still able to attract.

Keywords change, court, market, probation, professionalism

The other version of the last words of Pitt the Younger given in the title of this article are ‘I Think I Could Eat One of Bellamy’s Veal Pies’. These alternative versions, expressing respectively fears and forebodings for the future and relative satisfaction with the present, sum up very well the contradictory feelings I experience, as, at your editor’s invitation, I reflect on the state of the probation service as I leave it after a third of a century’s involvement with probation. Because, inevitably, I feel a strong commitment to the future of the service, there is a danger that the fears and forebodings will predominate, especially as I am acutely aware of my own inability to do anything about them. Nevertheless, at the same time, I am convinced that the service has considerable strengths and significant opportunities, particularly arising from its continuing ability to attract a highly committed and talented workforce. What follows is admittedly a discussion of a fairly random collection of issues, which have in common only the fact that I feel them to be important, and would not want them to be neglected by the service as it moves forward.

Terminology

I have already gone into print on two issues about which I feel strongly, and I will not repeat earlier arguments here (Leach, 1998, 1999). Nevertheless, I still stand
by my defence of the term ‘probation’ (Leach, 1998), for which I have received some support (Hignett, 2000), as well as criticism. I have not seen any rebuttal of the central argument that ‘probation’ locates moral responsibility where it should be, with the offender, although one critic did accuse me of being ‘a linguistic determinist’ (Nellis, 1999). If that means that I support the continued use of forms of expression that have both real meaning and a history of use behind them, then I plead ‘guilty’ to that charge. If it means that I abhor such linguistic monstrosities as ‘community rehabilitation order’, then I have no defence, because I do. ‘Probation’ is an internationally recognized concept, which links us with a world-wide network, which is ever-growing, frequently with support and practical help from the service in this country. It also commands a high degree of understanding and acceptance in this country (MORI, 1998). It is the best foundation for an effective public education and public relations campaign. We abandon it at our peril.

‘What works’

If anything, my expression of reservations about, not the ‘What Works’ movement itself, but about some of the ways in which it is being implemented (Leach, 1999), has attracted even greater support (e.g. Merrington & Stanley, 2000; Rex, 2001). Without disputing the primacy of the reduction of offending as a goal for the probation service, I am not persuaded that it is the only possible goal for the management of orders, which are made not by the service itself, nor by the Home Office, but by the courts, which sometimes have a very different agenda. I also regret the over-centralized and, in my view, over-bureaucratic way in which ‘What Works’ has been introduced. However, my main concern is a conceptual one, based on the philosophical distinction between analytic statements (which are universally true by definition) and synthetic statements (which are subject to empirical verification, and therefore capable of being falsified). At an analytic level, therefore, nobody in their right mind could possibly object to ‘What Works’, because to do so would be to oppose practice that is effective, which would clearly be nonsense. Not surprisingly, therefore, defences of ‘What Works’ are usually couched in these broad terms.

When it comes to implementation, however, there is often a subtle shift to a synthetic approach, under which ‘What Works’ is seen as referring to a relatively narrow corpus of cognitive-behavioural programmes, enforced on the service by a heavy central bureaucracy. So the essential conceptual question is whether ‘What Works’ refers to any practice that can be demonstrated to be effective (analytic), or only to accredited cognitive-behavioural programmes (synthetic).

Fortunately, in practice, there are signs that the initial narrow orthodoxy is already beginning to break down, for example in the planned accreditation of community service and ETE (Employment, Training and Education) based programmes, and ultimately I feel sure that the broader analytic approach will prevail. Of course, given our current state of knowledge, cognitive-behavioural programmes are the most promising available, and the probation service should use them. The danger is that backed by central controls they could prevent us from
ever moving beyond our current state of knowledge, by ruling out a wider heuristic approach to advancing our understanding of what is effective practice with offenders. There is also the future danger that that enterprise could be hived off, as it has largely been already, so that it is no longer the province of the probation service itself. This would significantly reduce the status and professionalism of the service, by preventing it from contributing to the development of its own knowledge base.

Local versus national

Personally, I always supported the creation of a national directorate for the probation service. I believed that it would increase the influence of the service within the Home Office, with a national director who would both be able to articulate the needs of the service directly to the Home Secretary, and in turn make known the concerns of the government back to the service. I also thought it would establish a focus for the promotion of the interests and the image of the service in the media and elsewhere. So far, of course, it is probably too early to judge, and most of us are not privy to what might be going on behind the scenes. Outwardly, however, the signs are not encouraging. The current Home Secretary (David Blunkett) appears comparatively uninterested in the probation service (although this may be a blessing in disguise). Certainly the 2002/03 budgetary settlement is a disaster for a service which is supposed to be implementing a major government policy initiative, since it does not provide sufficient resources to allow even core statutory tasks to be undertaken. It does not augur well for the future. In addition, the public relations of the service do not seem to have significantly improved. Although I may have missed something, my only sight of the national director in the national media has involved her in responding reactively (although in fairness, very well) to criticisms of the service. The positive promotional PR aspects have yet to materialize, and the jury is still out on the positive potential of a national service.

On the other hand, some of the anxieties that a national service might not be sufficiently sensitive to local issues do seem to have some basis. There are at least hints of an attitude towards the courts and the judiciary, which sees them as an inconvenient obstacle to running the probation service in the way that the government apparently wants, rather than as one of the primary customers of the service’s work, whose needs and priorities have to be understood and addressed. I recall discussions peppered with such comments as, ‘Well, the courts will just have to . . .’, which are indicative of such an attitude. While it is probably true that the service has sometimes been over-subservient in its dealings with the courts, this contrary attitude endangers a relationship which is crucial to its effective working.

There also seems to be a lack of understanding at the national level of the significant contribution made by the service to local crime reduction partnerships (Liddle, 2001) where, in my experience, we are consistently seen to ‘punch above our weight’. (In passing, it might also be said that because this is largely a management activity, this contribution is not as widely known as it should be, even within the service itself.) Nevertheless, as these partnerships develop, the
information, experience and expertise that probation representatives bring to these arenas may well be subject to the law of diminishing returns. This is very likely unless the probation service is provided with some resources that it can contribute to the communal pot; an increasing expectation within crime reduction partnerships, without having to draw resources away from the completion of its statutory duties. Again the 2002/03 budgetary settlement, which leaves the service with insufficient resources to meet even those statutory duties is hardly an encouraging precedent.

Tremendous strides have been made not only in these local crime reduction partnerships, but also in a wide range of other inter-agency co-operation, notably in work with the police on the management of high risk offenders in the community, another area where official accounts lag behind the reality (Maguire et al, 2001). All of these local partnerships need to be properly understood, appreciated and supported at a national level.

**Professionalism**

Professionalism is a word that has not been universally embraced within the service over the years. Certainly the narrow, restrictive aspects of professionalism have been rightly criticized as being precious, pretentious and self-seeking (Wootton, 1959; Walker & Beaumont, 1981). As Shaw claimed: ‘All professions are conspiracies against the laity’ (Shaw, 1901). Nevertheless, I believe that the service does need to associate itself with and incorporate within itself the best aspects of professionalism, which include a commitment to a high quality qualification training, an expectation of continuing learning and improving expertise among qualified practitioners, and an enthusiasm for maintaining and developing the knowledge base on which the work of the service rests, through study, research and recording and writing up developments. In spite of some, probably justified, criticisms (Nellis, 1992; Clarke, 1994; Home Office, 1994), I believe that the service has been able to sustain a high quality qualification training over the years, and that in the last five years a new, reputable and worthwhile structure of qualification training has been established, something which at one stage seemed unlikely. Even more encouraging is the fact that the service continues to attract large numbers of committed and talented (mainly) young people, who come forward to undertake that training. Any such system is capable of improvement, and we should continue to strive to improve it, but unlike McGowan (2002) I believe the basic structure is sound.

The picture in relation to post-qualification training is more patchy. To some extent, the service has a long and proud record of in-service training. However, not all colleagues have participated, and the training itself has sometimes been of variable quality. In particular, it has all too rarely been formally accredited or led to advanced qualifications. Indeed the service has been better at providing access to management qualifications than it has to advanced practitioner qualifications. As I left, there appeared to be a structure slowly emerging from the Criminal Justice National Training Organisation, which had the potential to rectify
this situation, but it remains to be seen whether this will finally come about. Certainly I would like to see a situation develop in which all staff can develop and extend their skills, and have those enhanced skills recognized in a formal way, in terms of advanced qualifications, which is increasingly important in our present world. This should be linked to a career structure, which provides opportunities for moving into advanced practice as well as management.

The situation with regard to developing the service’s knowledge base is even less encouraging, since it represents a tradition that the service has largely neglected. It was instructive to be involved in a partnership with a medical organization, working jointly with sex offenders in the community, which built in research from the outset, and took it for granted that the project would be evaluated and written up in a properly refereed, reputable professional journal (though sadly, even that did not persuade the National Accreditation Panel to allow the project to be put forward for accredited status). This commitment to ongoing research and evaluation and pushing out the frontiers of knowledge on which the work of the service is based is one that we need to acquire very rapidly. It is, therefore, hardly surprising that positive developments in the service’s work (e.g. crime reduction partnerships, work with the police) are little known, and that much of the work in developing accredited programmes has gone on, initially at least, outside the service. It is also the main reason for the worrying fact that the content of much of the service’s current work is being devised outside the service itself.

Another important development currently taking place within the service is the more widespread use of differently qualified staff. This is a welcome trend, because probation officers do not have a monopoly of the skills required for working with offenders. It will also be welcome if it helps to overcome one of the less attractive features of a significant minority within the service, that of devaluing and even treating less favourably colleagues who are not probation officers. This may, of course be a function of the lack of recognition and career opportunity for probation officers, referred to above.

At the same time, this is a development that needs to be monitored very closely. Because many of the differently qualified staff will attain their qualifications ‘on the job’ (and by definition will be unqualified on appointment) there could be a temptation, especially at a time of resource constraint, to overlook the need for qualifications altogether, to the detriment of those colleagues as well as the service as a whole. There could also be a danger of taking workforce-planning decisions out of expediency, for example because of a shortage of qualified probation officers, rather than from principled judgments of what skills are required for what tasks.

The public sector

Even on a national basis, the probation service is a relatively small organization, and like many small organizations, can have a tendency towards insularity. In particular, it has failed to notice the fairly obvious point that it is part of the public sector, and that many of the developments that it faces have not been dreamt up to persecute the probation service, but are part of a wider picture, in which most
public sector organizations are facing similar challenges. Personally I do not possess the expertise to draw out these similarities in detail, and this is a piece of work that needs to be done. Nevertheless, simply from reading the newspapers I am aware that most public sector organizations are facing severe budgetary constraint, government-imposed targets and objectives, a vast increase in paperwork, allegedly to enhance accountability, constant legislative, administrative and structural change, ‘modernization’, a more interventionist and critical inspectorate, greatly increased political attention and scrutiny. I believe that the probation service would be greatly assisted in facing these and other challenges, if it were able to learn from and collaborate with a wide range of other public sector organizations, some of which we might normally regard as being very different from ourselves. For example, the recent appointment of a new Education Secretary and discussions of new contracts for hospital consultants have both stimulated calls for a reduction in central government interference, less emphasis on artificial targets and a moratorium on constant change, all of which would be endorsed by the probation service.

In particular, such collaboration might enable progress to be made on what is arguably the most urgent task facing the public sector as a whole, that of challenging Margaret Thatcher’s most long-lasting legacy, the sub-Orwellian slogan, ‘private sector good, public sector bad’. Remarkably this slogan seems to survive (and have considerable currency with New Labour) in the teeth of all the evidence. As I write, another massive American private corporation (Enron) has been shown to be wholly corrupt. I myself have for nearly twenty years now, since this slogan was first promulgated, kept an informal list of potential complaints against private and public sector organizations, based on my own experience. The public sector list is minute, the private sector goes on for page after page. The real problem is that for obvious reasons difficulties in the public sector are drawn to politicians’ attention, those in the private sector are not. Perhaps the public sector trade unions should institute a campaign in which their members send a postcard to the Prime Minister every time they have a complaint against the private sector. Certainly the slogan needs to be shown up for the barefaced lie that it is.

Competitive advantage

One of the things that I did learn when exposed to private sector management theory is the vital importance of maintaining competitive advantage (Porter, 1980). The probation service operates in a number of market-places, of which perhaps the most important is the court (Sleightholm, 1995), and it is vital for the service to maintain its competitive advantage in that arena. I do not subscribe to the view that the probation service does not have any competitors. Although perhaps not yet representing a serious threat, there are many organizations in the private and voluntary sectors, which would be only too happy to get their hands on all, or parts, particularly the more attractive parts, of our work. I have always found the widespread complacency on this issue very frustrating. For example, the opposition to the service’s involvement in the Department of Transport’s Drink-Drive
Rehabilitation courses, while based, I am sure, on well-meaning principles, completely overlooks their relevance to the service’s position in the marketplace of the court, and their ability to enhance our competitive advantage there.

Equally short-sighted has been the service’s initial attitude towards technological approaches to the control of offenders in the community (Mair, 2001), although there have always been some more balanced voices (Whitfield, 1997), and even the more general attitude seems to be changing. It is clear that these approaches will develop far beyond current electronic monitoring schemes, some of them in ways that we cannot even imagine at the moment. Voice recognition and satellite tracking are still in their infancy, but will eventually come to fruition. The recent announcement of the extension of the home detention curfew scheme to prisoners serving 8 months to 4 years, in an attempt to reduce the prison population, demonstrates the political popularity of such schemes. Emerging research shows the necessity of undertaking constructive work alongside the electronic monitoring (Gibbs & King, 2002). Mere Luddite opposition will ensure either that these schemes develop as stand-alones, without being supplemented in any way by constructive work with the offenders subject to them, or that that constructive work is undertaken by agents of the technology providers and not by the probation service. It would have been preferable for the service itself to have contracted with the technology providers, and retained control and competitive advantage in this vital area. While it is probably too late in relation to electronic monitoring, opportunities may arise as new technological approaches emerge. Given the nature of our society, technology will develop. We either work with it, or are replaced by it.

The ACOP gap

The Association of Chief Officers of Probation (ACOP) was an organization that it was all too easy to criticize. Its aspirations in the early 1980s to be much more open and all-embracing than its predecessor, the Chief Probation Officers Conference, foundered on the defeat of constitutional amendments to make it more democratic in the mid-1980s, and the way its leadership exercised control in the 1990s. Sometimes it committed the most unholy gaffes, like ‘More Demanding than Prison’ (ACOP, 1988). Sometimes it sat on the fence for far too long. Nevertheless, overall it had a record of solid achievement (ACOP, 2001), and it has left a gap in the life of the probation service, which is very dangerous, and which no other body has the ability to fill. It was able to act as an effective intermediary between the service and the government, articulating the service’s views, while at the same time listening to the government, and attempting to thrash out a synthesis that might be both workable and acceptable, and without adopting a knee-jerk rejectionist stance, which simply invites the government to go ahead anyway. Also, through its committee structure, it developed detailed professional expertise in a comprehensive range of areas, on which the government was frequently forced to rely for information and advice. This was an absolutely crucial role, and one, which, in spite of my earlier criticisms, I believe ACOP fulfilled uniquely well. The new ‘Centrally Led Action Networks’ (CLANs) lack ACOP’s independence, and
the Probation Boards Association, in spite of the optimism of Martin Wargent, its chief executive (Wargent, 2002), is basically an employers’ organization with neither the freedom nor the expertise to take ACOP’s place. It was undoubtedly a mistake for ACOP to wind up in the way it did, and it would not surprise me if, in due course, a new professional association for senior probation managers were to emerge. Even such an association, however, could not undertake the exact role played by ACOP, and this leaves a serious vacuum at the heart of the service’s structure.

Who controls the past controls the future

In the midst of all this change, as Nellis reminds us (2001), ‘someone, somewhere should ensure that the probation contribution to the penal heritage is properly remembered’. One way of enabling an institution to retain its core values and traditions in the face of external pressure and constant change is for it to be aware of its past and to celebrate it. For an organization to keep in touch with its roots, they need to be documented and recorded. In his important paper, Nellis (2001) cites some important sources, but there may well be others. Not only is there no comprehensive history of the probation service in this country, there is not even reliable documentation of source material. For example, I am indebted to a former colleague for drawing my attention to the memoirs of a probation officer in the late 1920s (Ellison, 1934), a copy of which he picked up in a second-hand bookshop, and which is, I suspect, not widely known.1

While we are talking about the service’s history, has anybody yet noticed that we are only five years away from the centenary of the Probation of Offenders Act 1907, and therefore effectively the centenary of the probation service? Has anybody suggested to the Post Office the issue of a commemorative stamp? What celebrations are planned for this unique anniversary, which provides the opportunity not only to glory in the past, but also to publicize the present and plan positively for the future.

Conclusion

I do not intend to attempt to sum up my earlier comments, but simply leave them to speak for themselves. I am aware that there are many important themes that I have been unable to mention. For example, I believe that it is vital that the service continues to emphasize the contribution of social factors to criminality (May, 1999), as well as individual pathology, and the consequent need for a community dimension to our work (Harding, 2000). It is also essential that the service is provided with good information technology for a high quality case recording and management system, and that the abject failure of the Home Office to do so with CRAMS is seen as a warning of the perils of providing support services in a centralized way.

At the outset, I stated that I would be touching on a random collection of issues. On reflection, there are perhaps a few unifying themes. In common with much of
the public sector in this country, the probation service has been subjected to a
government-led process of 'modernization', and in order to justify the scale of
upheaval to a root-and-branch criticism of its structure and ways of working.
Unsurprisingly, at least some of that criticism was justified. Fortunately, much of
the new is actually or potentially better than the old. However, there is a real
danger that the good will be swept away with the bad, and I have tried to make
a case for those bits that I personally would want to preserve, including our name,
our history, our professionalism and our local roots. But perhaps more importantly,
I have tried to emphasize how crucial it is for the probation service to control its
own destiny, and my assessment is that that is going to be much more difficult
within the new arrangements.

I know that I may have sounded like Pitt the Younger bemoaning the fate of the
country. Ultimately, however, I believe in the strength of an institution which has
lasted for nearly a century now, and at the end of my career I took heart from
meeting the people who had newly chosen to work in the service, in what is, after
all, a rather odd occupation, dealing with the people the rest of society would
rather not think about. I could probably manage one of Bellamy’s veal pies after
all.

Note

1 As I share Nellis’s view about the significance of this gap, I have some aspirations
to spend some of my retirement helping to fill it. I would, therefore, be grateful to
hear of any other interesting source material of which colleagues might be aware,
and can be contacted via the email address below.

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Implementing OASys: Lessons from research into LSI-R and ACE

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Abstract This article draws on original research and other studies to explore a range of issues that probation areas are likely to face during implementation of the OASys risk/needs instrument. It considers how such instruments are viewed by practitioners and focuses in particular on how they perceive them to impact on their professionalism. The article concludes by encouraging a wider debate about the future of indeterminacy in assessment and elsewhere in probation practice.

Keywords assessment, discretion, OASys, probation, professionalism

In the latter 1990s, interest in structured approaches to offender assessment snowballed within the probation service. Initially, calls for the refinement of assessment procedures relied on a discourse of enhancing consistency and quality, with an emphasis on the positive benefits for offenders in terms of equity (e.g. Roberts, 1993; Burnett, 1996; Aubrey & Hough, 1997). As the decade progressed, however, calls for a more structured, consistent and objective approach to offender assessment received a powerful impetus from the ‘What Works?’ agenda, which encouraged the articulation of offender assessment in terms of risk and criminogenic need as a basis for decisions about resource allocation (e.g. McGuire & Priestley, 1995, pp. 21-2). The attention of probation areas thus turned to the development and implementation of risk and needs assessment instruments such as the ACE system (Roberts et al., 1996; Gibbs, 1999) and the Canadian Level of Service Inventory – Revised (LSI-R) (Andrews & Bonta, 1995). By 1998, despite a lack of ‘official’ endorsement, the majority of area services – as well as a number of criminal justice social work departments in Scotland – were using either LSI-R or the ACE system, and a small number of other areas had developed and implemented structured assessment systems of their own (Raynor et al., 2000).

In March 1999, in the context of its Effective Practice Initiative, the Home Office announced its intention to develop a new risk/needs assessment instrument, for
use by all UK prisons and probation areas (Home Office, 1999). At the time of writing, the Offender Assessment System (OASys) is in the process of being ‘rolled out’ to probation and prison services nationally.

Whilst it is too soon to evaluate OASys, it would appear to be a good time to reflect on the findings of the small number of research studies which have addressed the implementation of such instruments (e.g. Roberts et al., 1996; Aubrey & Hough, 1997; Colombo & Neary, 1998; Roberts & Robinson, 1998; Gibbs, 1999; Aye-Maung & Hammond, 2000; Raynor et al., 2000). This article draws in particular on my own detailed study of LSI-R implementation and practice in two probation areas (Robinson, 2001). In the course of this study, I conducted 29 in-depth interviews with probation service personnel. Interviewees included 15 main grade probation officers, five senior practitioners/middle managers and five senior managers, as well as a small number of administrative and research/information staff. The LSI-R training provider was also interviewed. This study differs from the majority of previous research on risk and needs assessment in that it eschewed ‘technical’ questions about the instrument (e.g. its propensity to accurately predict risk) in favour of more qualitative questions around the subjective experiences of the various ‘stakeholders’ involved in the instrument’s implementation. Of particular interest was the impact of LSI-R on perceptions of ‘professionalism’, and the ways in which users’ perceptions or subjective views in this respect affected their behaviour in terms of compliance (or not) with local policies around LSI-R deployment.

**Enhancing ‘professionalism’**

Risk/needs assessment instruments boast a number of useful applications, which are well documented (e.g. Andrews & Bonta, 1995; Aubrey & Hough, 1997). Firstly, offering a structured ‘format’ for assessment practice, they promote consistency between assessments. Secondly, their use has been linked with improvements in the quality of related areas of practice, such as PSR writing and supervision planning (e.g. Roberts & Robinson, 1998). Thirdly, by virtue of their grounding in ‘scientific’ evidence, risk/needs assessment instruments have been viewed as contributing significantly to the credibility or ‘defensibility’ of the service’s assessments (Kemshall, 1998). For example, the strategic framework of the National Probation Service states that OASys ‘will help practitioners make sound and defensible decisions about offender risk and need’ (2001, p. 9). Risk/needs assessment instruments have, fourthly, been shown to be effective in predicting risk of reconviction (e.g. Raynor et al., 2000). Fifthly, they can be used to inform decisions about the type and/or intensity of supervision appropriate to individual offenders (e.g. see Robinson, 2002). Risk/needs assessment instruments can also provide a measure of the effectiveness of probation intervention, via the comparison of offenders’ scores at the start and at the end of a period of supervision (e.g. Raynor et al., 2000; Merrington, 2001). Finally, in the context of effective information systems, risk/needs assessment instruments can inform service managers about the spread of criminogenic needs in local and/or national
offender populations and this information can, in turn, inform spending on specific services to meet those needs (e.g. Merrington & Skinns, 2000).

Given this impressive list of applications, it is perhaps not surprising that a number of studies of users' views have reported that practitioners have broadly welcomed the introduction of instruments such as ACE and LSI-R (Roberts et al., 1996; Roberts & Robinson, 1998; Gibbs, 1999; Aye-Maung & Hammond, 2000). My own study of LSI-R implementation and practice was no exception. In common with previous studies, my research revealed particular approval among practitioners for the idea of improving the consistency and quality of assessments, and LSI-R was generally regarded as a long overdue boon in this respect. The vast majority of those interviewed also referred to a sense of reassurance, security or 'back up' as a positive aspect of LSI-R use. As one practitioner commented, 'the more you can be informed other than by gut feeling, the better'. This sense of security was perceived as particularly important in relation to external audiences, namely courts, or in the context of serious incidents. For example, a team manager commented:

In terms of self perception, I suppose people feel, officers feel a bit more secure; I think there’s such a climate now of having to get things right, and the standards expected of them, that I think it’s quite useful and it does provide security for them in having an objective means of assessing people.

That this view was shared by practitioners – particularly those working with the higher risk offenders – is illustrated in the following quotation:

I get a lot from it because it gives me a lot of information; it allows me to make defensible decisions; it allows me to justify me doing what I do, particularly if it goes wrong, yeah? I mean the guy I saw this morning, if he goes home and murders his family tomorrow, I’ll be able to say: well look this is what I did and quite frankly [...] you would have made exactly the same decision. So in that sense I get a lot from it.

There was also support for using LSI-R as an evaluation tool. Both of the probation areas which were involved in my study had established local policies requiring practitioners to undertake LSI-R assessments both at PSR or commencement stage and at specified intervals during periods of statutory supervision, and policy documents stated an intention to use this data for evaluation purposes. Whilst a number of interviewees referred to the positive impact of reductions in LSI-R scores on offenders under their supervision, there was also some enthusiasm about the instrument’s capacity to demonstrate progress on a scale beyond that of individuals’ own personal practice. For example:

... I know to a certain extent it’s a crude instrument – but if you can, hopefully when, say two years down the line when we look back retrospectively at what we’ve achieved, and ... if you can say something like ... the risk tool used has shown that in 75 per cent of cases the offender’s risk to the public has reduced - you only have to use terms like that - you ring up [local newspapers] and you give them information: that’s how you improve your public perspective.
Finally, practitioners were particularly enthusiastic about the use of aggregated LSI-R data to ‘profile’ the criminogenic needs of local offender populations, and the use of this information, at ‘Head Office’ level, to inform spending on services to meet offenders’ needs. In the words of one practitioner, ‘information that comes from LSI-R about need, in terms of drugs, alcohol, housing, whatever, is informing the partnerships that we are becoming involved in’.

**Professional insecurity**

It is clear that LSI-R was regarded as a ‘professional boon’ in many ways. That is, the ‘scientific’ basis of the instrument was associated with increased credibility and a heightened sense of professionalism. However, there was also evidence of a counter-perception within the two probation areas, according to which the instrument was associated with de-skilling, the erosion of professional discretion and, ultimately, a process of de-professionalization. In theoretical terms, the introduction of a structured approach to assessment was linked with a reduction in the amount of ‘indeterminacy’ in probation practice (Jamous & Peloille, 1970). Indeterminacy refers to the component of practice which is based on specialist knowledge, its interpretation and the exercise of professional discretion. According to Jamous & Peloille, professional status is associated with the capacity of occupations to maintain indeterminacy in their practice. They argue that, as practice becomes increasingly ‘technical’ (i.e. standardized, ‘programmable’ or subject to routine practices), indeterminacy is reduced and professional status is undermined.

Although existing research has only hinted at the possible negative implications of an increasingly ‘technical’ approach to offender assessment (e.g. Aubrey & Hough, 1997; Roberts et al., 1996; Colombo & Neary, 1998; Gibbs, 1999), NAPO’s defensive stance in respect of the Home Office-developed Offender Group Reconviction Scale (OGRS) was, in the mid-1990s, indicative of a growing sense of professional insecurity around reduced levels of indeterminacy, particularly in the wake of revised National Standards (see Fletcher, 1995; Home Office, 1995). At that time NAPO’s concerns were expressed as follows:

> Such predictive methods are no substitute for sound professional assessment of risk, formed during full interviews with defendants... Further, they invite assessment by staff who do not have the appropriate training and experience. (NAPO News, February 1996, p. 4)

In a number of the interviews I conducted, the notion that LSI-R might be linked with a process of de-professionalization, or ‘professional proletarianization’ (Derber, 1982) was minimized or ‘laughed off’ as an erroneous and/or paranoid perception. The most extreme caricature of practitioners’ insecurity was expressed by the LSI-R training provider, who commented that ‘there’s a fantasy around that eventually they’ll be replaced by sort of electrodes and computers and that sort of thing’. Reflecting the findings of Colombo & Neary (1998), professional insecurity was also commonly attributed to a small minority of ‘old guard’ officers. For example,
I suspect... people are always suspicious when new things come in, especially officers who’ve been around a long time, they always think it’s a question against their professional judgement and I think that’s a load of rubbish.

... it’s a move towards increased professionalism, yeah? [...] But I’d add the caveat that I’ve got a scientific background; I could imagine colleagues would say: no, total rubbish; we’re being de-professionalized, and it’s big brother etc.

However, the analysis of practitioner interviews contradicted the notion of professional insecurity as the preserve of a minority. Fears about the erosion of indeterminacy were not in fact confined to the ‘old guard’; nor did the expression of insecurity imply blanket resistance to the instrument, even among the most experienced officers. Rather, a number of officers with varying degrees of experience and commitment to the instrument conveyed views about standardization in assessment practice which can best be described as ambivalent. For example, asked to reflect on the implications of tools such as LSI-R for professional credibility, one recently qualified officer commented, ‘It’s easy to be insulted by them’. Consider also the following comments from two other recently qualified officers:

I couldn’t go along being totally unaffected by the actual general feeling amongst the service, you know; oh, they’re gonna replace our assessment skills with a tick-box system. You know, I think there was a big fear that it was going to deprofessionalize us and that sooner or later our professional judgement’s not going to be needed. Although they were very quick to emphasize that you needed to be qualified to actually administer this test. But I think there still remains a doubt about that.

I feel it enhances [professional credibility], because it’s a standardized, verified tool, that you can say you’re basing decisions on. But at the same time I think people feel there’s a danger that a trained chimp could do it.

Given that professional insecurity was in fact quite widespread within the two services, it was not surprising to find that practitioners had adopted a number of psychological strategies to minimize their concerns. Firstly, practitioners tended to maintain a perception of the LSI-R assessment as separate from and supplementary to their own ‘professional’ assessment of the offender. For example, interviewees commonly referred to the LSI-R assessment as a ‘mirror’ or ‘reflection’ of their assessment, rather than an alternative to it. Secondly, practitioners tended to emphasize the role of interpretation and professional judgement in completing the LSI-R form. For example:

... there is an element of judgement around the person’s personality, character, what you know about them, what you know about their past [...] it is a judgement on the part of the skill if you like or the expertise of the person filling it in.

Similarly:

Give me as many forms as you like and I’ll fill them in. And it doesn’t remove the little bit of me that does what I do; it doesn’t remove me from the equation.
Comments such as these can be taken at face value: that is, as evidence of LSI-R completion as a relatively ‘indeterminate’ task requiring professional training and judgement. However, in the context of the increasingly ‘technical’ enterprise of contemporary probation practice, they can also be read as attempts to actively defend the need for professional skill in what might be considered one of the last remaining bastions of ‘professional’ practice:

I mean you’ve been trained to do a particular role, and that’s been reduced to you sort of ticking boxes on a piece of paper [. . .] So yeah, I suppose that’s maybe why I like to use my discretion with it as much as I can.

Managing ambivalence

In common with other ‘technical’ practice initiatives, risk/needs assessment instruments are associated with conflicting implications for ‘professionalism’. On the one hand, they herald a more structured, standardized approach to assessment which is associated with enhanced consistency, fairness, accuracy and effectiveness. On the other hand, they tend to de-emphasize the role of ‘indeterminacy’ in practice and consequently generate fears about de-professionalization. This apparent ‘professional paradox’ is associated with a collective ambivalence around the move toward structured approaches to assessment which needs to be sensitively managed.

In my study of LSI-R implementation, it was clear that there had been a tacit acknowledgement of a degree of professional ambivalence in the training process. That is, for the training provider, the process of getting practitioners ‘on board’ involved accentuating the positive or ‘pro-professional’ aspects of risk/needs assessment for all of the ‘stakeholders’ referred to above, whilst also offering reassurances about the significant role of ‘indeterminacy’ or professional skill in the assessment process. For example, LSI-R training appeals in particular to practitioners’ concerns about the lack of consistency – and fairness – of purely ‘clinical’ assessments. As the training provider explained, ‘you convince them by, I think, tapping into what they already know, which is that clinical judgement’s really very dodgy’. Further, a professional qualification is regarded as a prerequisite of LSI-R training and the role of professional skill in completing the LSI-R assessment is emphasized both in the training process and in the literature which accompanies the instrument (Andrews & Bonta, 1995). Indeed, an emphasis on the role of ‘indeterminacy’ in completing the assessment was conveyed by the LSI-R training provider as a crucial element in getting practitioners on board: ‘[They’re] told: not only have you got to do it in a very specific way; but we’re relying on your skills as well’.

Maintaining momentum

A consistent finding among the studies that have been conducted to date has been that, for users, the incorporation of these instruments into everyday practice has
entailed considerable demands, both in terms of the time required to gather the relevant information and the additional paperwork involved. For example, in one study, the most common complaint among ACE users was that the forms were a burden to complete (Aye-Maung & Hammond, 2000). For designers of risk/needs assessment instruments, achieving a balance between comprehensiveness and user-friendliness has been a significant problem. As prediction and assessment methods have become more sophisticated, so the instruments themselves have tended to become more lengthy and to place ever greater demands on practitioners’ time. Indeed, it is arguably the case that the quest for technical sophistication has not always been counterbalanced by an appropriate regard for user-friendliness. Of course, no assessment instrument, regardless of its predictive validity or other technical properties, is of value to the probation service unless practitioners are both able and willing to use it in the context of their everyday practice. The developers of LSI-R attempted a compromise on this issue by producing a ‘screening’ version of the instrument, comprising just 8 items (see Raynor et al., 2000) and the OASys development team has followed suit, producing two versions of OASys: both a full assessment and a briefer, ‘screening’ version for use in the context of time-limited work (OASys Development Team, 2001). However, it is noteworthy that the screening version of OASys is in fact significantly longer than the full 54-item LSI-R instrument.

Given the resource implications of most structured assessment instruments, practitioners managing demanding workloads need to be convinced that risk/needs assessment instruments serve the interests of offenders, users and the probation service more generally. My own study of LSI-R implementation demonstrated clearly that positive reinforcement is essential if practitioners are to be kept ‘on board’. Given the expectation of a long-term future for OASys, this is arguably the most important lesson for implementation managers.

In the two area services in question, LSI-R had been in use for between 11 and 21 months and, in both areas, it was clear that the commitment of many practitioners had waned over time. Indeed, for some of those interviewed, LSI-R had become an aspect of practice which was resented. The chief reason for this was that practitioners could see no evidence that LSI-R was, within their organization, being deployed in ways which would have enabled them to maintain a view of LSI-R as a ‘professional boon’. In the absence of positive reinforcement, the instrument had come to play a relatively marginal role within the two organizations, rather than the pivotal role which had been envisaged.

Firstly, neither area service had capitalized on practitioners’ enthusiasm for the instrument in respect of improving consistency in assessment practice. That is, neither area had set up the quality control mechanisms or procedures which would have reinforced the consistency-enhancing function of the instrument. Consequently, a number of those I interviewed expressed doubts about the reliability of the instrument and felt that it had failed to achieve its potential in practice. As one practitioner commented:

I think it does improve practitioners’ assessments. Having said that I think officers use it widely differently. I mean we haven’t had any follow-up training and no-one
checks that we’re using it appropriately. So if someone’s making a mistake somewhere they’ll probably carry on making that mistake.

The second and more crucial disincentive for practitioners was the lack of feedback from their completed assessments. In the words of one senior practitioner:

I think if staff see a reason for doing what can be perceived as a bureaucratic exercise, and they see some results coming from that, then they’ll do it; but actually that isn’t very evident.

Although some of those I interviewed remained expectant in terms of evaluation results and criminogenic needs profiling, others had begun to suspect that their completed assessments were in fact disappearing into a ‘black hole’. As one practitioner commented:

I’m slightly sceptical whether or not the service at the moment is sophisticated enough to correlate all the figures [. . .] I don’t think it’s happening at the moment. I rather suspect you go up to Head Office and you’d find a great big pile of LSIs in the corner! [laughs]

This practitioner’s suspicions were in fact not far from the truth. In both areas, a lack of research and information resources had meant that there was no database for capturing LSI-R data. The result was that managers’ enthusiastic plans to deploy LSI-R as an evaluation and ‘needs profiling’ tool had not come to fruition. In both area services, there were indications that the lack of feedback was proving a powerful disincentive to LSI-R utilization. One senior practitioner was particularly vocal on this subject, commenting that:

I think we’ve got genuine reasons to expect and hope to see some results of research reasonably quickly. You know, I hope I’m not impatient; but if you want to see your service as one that critically evaluates itself; if you want to think of probation officers as, roughly beginning a journey towards being able to call themselves research practitioners or whatever, you’ve got to give people something back. It’s no good saying: fill in these forms; because it just becomes rote and resented.

An equally frustrated practitioner told me:

It should be happening, otherwise it’s a waste of money [. . .] but there’s no research there and we do not have a researcher in Head Office who could collate it, and you could then say: well OK, 40 per cent of our people have got alcohol problems or housing problems or literacy problems, but we don’t get the information back, which is I think one reason for people’s . . . not liking filling in forms is you feel: you’ve filled in all these ruddy forms and you don’t get the answers back; you don’t get patterns back.

These and similar comments go a long way toward explaining why practitioners’ utilization of LSI-R was found to be strongly linked with managerial oversight. That is, in the context of extremely demanding workloads, practitioners had
come to prioritize LSI-R only in conjunction with PSR preparation, when they knew their use of the instrument was routinely monitored. As one user explained, when it came to using LSI-R in the context of ongoing supervision, ‘nobody monitors that, so obviously that’s where there’s flexibility!’

Conclusions: Prospects for OASys

All of the studies reviewed in this article have focused on the implementation of assessment instruments which pre-date OASys. However, there is every reason to believe that their findings are generalizable to the new instrument. It is argued here that, as probation areas prepare themselves for the introduction of OASys, a degree of ambivalence among staff is inevitable. This ambivalence should not be mistaken for dogged resistance to all things new. Rather, it should be understood and acknowledged as a legitimate response to the increasingly ‘technical’ character of probation practice, which is associated with conflicting consequences for ‘professionalism’.

If practitioners are to engage positively with OASys in both the short and longer term, they will need to be persuaded that the benefits of OASys outweigh the costs. For users, the main ‘costs’ relate to the time and paper burden which OASys represents, and the perceived erosion of ‘indeterminacy’, or professional judgement, both in assessment practice per se but also in relation to case management decisions which may follow from OASys assessments. Whilst the time and paper burden may be difficult to lessen, there is certainly a good argument for encouraging debate within the service about the future of indeterminacy, both in assessment practice and elsewhere in probation practice. The reflections of one senior manager who was interviewed in the course of my study indicate that the time is right for just such a debate within the service:

I think the notion of professional autonomy has now properly gone because probation officers have not been autonomous ever since they’ve been employed by an employer; but [. . .] I still feel that it is essential that if we’re going to have highly trained people, that they have elements of discretion [. . .] it’s where the professional discretion is going to come in: if programmes come out from the centre via Pathfinders and we have to use them and we have an assessment tool that is national, where does the professionalism of probation officers sit then?

In terms of the perceived benefits of risk/needs assessment, research has shown that practitioners particularly value the promise of consistency and ‘defensibility’ in assessment practice; there is also enthusiasm for the resource management and evaluation functions of the instrument. OASys users are therefore likely to be encouraged by tangible evidence that the instrument is being deployed in these ways. There is thus a strong case for prioritizing quality control mechanisms and information systems which are capable of capturing and processing OASys data. The provision of early and ongoing feedback to practitioners is likely to be a particularly important factor in maintaining enthusiasm and a perception of the instrument as a professional asset. If, however, OASys comes to be experienced
by users as a ‘one-way mirror’, from which there is no tangible return, commitment will wane and practice will quickly follow suit.

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Drug treatment and offender rehabilitation: Reflections on evidence, effectiveness and exclusion

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Abstract: The author contrasts progressive expansion and diversification in the field of drug treatment with increasingly restrictive approaches to offender rehabilitation that have developed over the past two decades. An examination of the achievements of the drug field offers insights into the relationships between research evidence and development of policy, theory and practice, and the potential impact of uncritical acceptance of claims about effectiveness. These insights are applied to the probation service’s contemporary claims to evidence-led effective practice, with particular attention to this initiative’s potential for infliction of individual and social harm through exclusion of offenders from rehabilitation opportunities.

Keywords: drug treatment, effective practice, evidence-led policy, harm minimization, offender rehabilitation, ‘What Works’

Introduction

Observation of the changes in emphasis and approach in the fields of drug treatment and offender rehabilitation that have occurred in recent years presents us with a curious paradox. Over the last two decades, services for drug misusers, a field that has notoriously been dominated by a medical model of addiction and treatment, have proliferated and diversified to embrace a variety of health and social interventions. Needle exchanges, telephone advice lines, health information in comic book style, drop-in centres, family support groups, arrest-referral schemes and active outreach programmes are examples of this rapid and creative expansion. By contrast, during the past decade, offender rehabilitation, which has traditionally been drawn enthusiastically (if somewhat indiscriminately) upon...
a wide range of strategies from personal counselling through to community level programmes, has been increasingly associated with a limited – and, indeed, medical – approach. Astonishingly, the probation service, which has an extra-

ordinary record of grass roots inventiveness in practice development, has volun-
tarily placed itself at the heart of a movement that seeks to constrain rehabilitation efforts within standardized programmes targeted at the correction of individual deficits.

This paradox is worthy of exploration, if only because lessons learned from the vigorous activity in the drugs field may help the service to plan for its response to the disillusionment and denigration that will follow any failure of the so-called ‘What Works’ initiative in effective practice. Indeed, since the enterprise is already showing signs of strain and unsustainability (Hollin et al., 2002), an exit plan may be timely.

In the following comparison of the changing fortunes of drug treatment and offender rehabilitation, I will deliberately draw on the strengths of policy, theory and practice development in the field of substance misuse. In so doing, I do not intend to imply that it is above reproach, but rather that a focus on these achievements may suggest some useful lessons for the future of offender rehabilitation. I am also deliberately drawing on experiences in the drug field from which sufficient distance in time has been travelled for us to evaluate their lasting effects, rather than the immediate, but unresolved impact of very recent events.

The science of evidence

The effective practice initiative in offender rehabilitation claims scientific authority for its assertions as to ‘What Works’, thus aligning itself with contemporary concerns that the development of all social programmes for individual, group and community betterment should be evidence led. The scientific tool to which it appeals is statistical meta-analysis of the results of evaluations of rehabilitation programmes, which allows for cumulative assimilation of the combined results of separate programmes. Notwithstanding the doubts expressed by some as to the reliability of the meta-analytic approach (e.g. Mair, 2002), this tool has been strongly advanced as providing the evidence that specific types of programmes are particularly successful in reducing offending behaviour. The types of pro-
gramme which this evidence is alleged to favour are largely cognitive behavioural in approach (Andrews et al., 1990), thus pointing to the need for the probation service to invest its resources heavily in the delivery of such interventions.

It is not proposed here to rehearse the challenges to the meta-analytic method of evidence collection or the strength of the conclusions that have been drawn from it (see, e.g. Lab and Whitehead, 1990), but rather to examine this appeal to scientific validation in the light of two telling experiences in the field of drug treat-
ment. Firstly, a report of a controlled trial of oral methadone prescribing compared with injectable heroin, published in 1980 (Hartnoll et al., 1980), was widely accepted as providing evidence of the superiority of the former approach in facilitating successful withdrawal from drug dependence. The notable reduction in
maintenance heroin prescription and adoption of a more confrontative approach based on limited courses of oral methadone which occurred at around this time has conventionally been attributed to the persuasion of this scientific experiment (Berridge, 1993; Berridge and Thom, 1996). However, Berridge (1993) observes that a considerable reduction in the amount of heroin prescribed had already occurred in the years since 1971. With hindsight, many commentators, including one of the originators of the trial, have concluded that the easy acceptance of a single documented experiment, the results of which were, as we shall see, considerably more complex and controversial than was acknowledged, was due to its apparent legitimation of a practice already favoured in clinical circles (Berridge, 1993; Berridge and Thom, 1996; Mitcheson, 1994).

Second, an evaluation of a syringe exchange scheme in 1988 (Stimson et al., 1988) was understood to show changes in drug users' injecting behaviour that promised a reduction in the transmission of the blood borne HIV virus. It thus supported a change in government drug policy, which, in the years before the realization of the public health risk of an AIDS epidemic, had been overtly prohibitive and penal in orientation. In short, the strength of the evidence, which was questionable, was less important than the political utility of scientific legitimation of a policy reversal (Berridge, 1993; Berridge and Thom, 1996).

Probation officers are not generally sophisticated in scientific method; they tend to rely on simplified interpretations of complex research studies. They are not to be censured for this; they are trained for different activities. Yet, these examples from the drug field alert us to the problematic and potentially inverse - sometimes perverse - relationship between research and policy. They suggest that scientific research may be converted to policy less often on the basis of its persuasive evidence than for its instrumental value in promoting achievement of predetermined goals. The stronger the ambitions to pursue those goals, the reader - and less critical - will be the receptivity to research evidence that purports to support them. This insight into the interaction between research and policy illuminates our need for greater scepticism as to the extent to which practice development is led by the evidence of science. Rather, perhaps we should turn to a ‘science of evidence’ - a psychology of the ways in which empirical research is selectively received, understood and implemented - for an explanation for the adoption of new practices, particularly when they contradict a profession’s established traditions.

What, then, we should ask, did the probation service stand to gain from its acceptance of the ‘What Works’ claims to scientific identification of effective techniques for the reduction of offending? One answer that has been offered to this question is that, at a time in the 1990s when it perceived its very existence as an organization to be threatened, it sought to secure its future survival through full-throated commitment to scientifically validated effective practice (Mair, 2002). It is to be remembered that the perception of imminent professional extinction arose in the context of the destruction of its training base in social work before alternative arrangements were in place, sharp decreases in funding and requirements to contract for supervision services. Whether or not the threat was real, therefore, the alarm in the service was certainly understandable.
Normalization of the drug user

The rapid increase in drug use during the 1980s contributed to a shift in social perception that has been termed ‘the normalization of the drug user’ (Berridge, 1993; Glanz, 1994). Essentially, as the prevalence of drug use increased, the legitimacy of the conventional view of the drug user as uniquely aberrant in his/her psychological functioning and relationship to society was weakened. Although the concept had been an important part of sociological theories of deviance since the 1960s (Becker, 1963), in the context of proliferating drug use it now assumed a crucial relevance to professional practice. For, if drug users were little different in psychological disposition and social relations from non-users, there was little justification for the assumption that they were in need of specialised treatment. The challenge to psychiatric dominance in the field of drug treatment that was posed by this altered understanding of the character of the user promoted the emergence of a broader, multi-disciplinary professional involvement in the field and, consequently, greater eclecticism in the intervention strategies that developed (Berridge, 1993; Glanz, 1994).

Contemporary criminological theory has contributed significantly to the ‘normalization’ of offenders. Particularly since the collapse of faith in rehabilitation during the 1970s, theoretical development has explored alternatives to the concept of crime as caused by individual defect, in search of new approaches to its effective prevention. For example: the rational choice perspective views criminal behaviour as the outcome of a reasoning process in which the costs and benefits of crime commission are weighed in the light of the opportunities and risks that it presents (Clarke and Cornish, 1985; Cornish and Clarke, 1986); routine activity and lifestyle theories point to the ways in which offenders and their victims are brought into contact through their everyday behaviours (Garofalo, 1987; Gottfredson, 1984).

Unfortunately, the current tenor of debate in the field of rehabilitation owes little to these theoretical insights into the mundanity of offending behaviour. In part, this is due to the lack of interest on the part of their originators in applying them to rehabilitative effort, when their obvious implications for pragmatic, situational interventions hold the promise of more immediate solutions to the problems of reducing crime. However, the special appeal of a medical model, in the form of cognitive behavioural theory, with its potential for practical programme development, derived from its value to the probation service’s project of reasserting its identity as an agency with special expertise in the treatment of offenders. It would not have served the probation service’s interest, at this time, to endorse theoretical approaches that emphasized offenders’ essential normality, and thereby to encourage a diverse professional involvement in their rehabilitation (Rumgay, 2002).

Models of change

In this context of a revision of ideas about the phenomenon of substance misuse, psychology has come to the aid of drug treatment in quite different ways from the
pathway selected for offender rehabilitation. A model of change developed by Prochaska and Diclemente (1986) offered an account of the process of desistance from drug use that not only reflected the observations of ethnographic research in drug careers (e.g. Biernacki, 1986; Waldorf et al., 1991), but made sense intuitively to practitioners in terms of their experiences of attempting to help problem users. Moreover, in its elaboration of stages in the change process, involving different and complex psychological states, this model had implications for precisely the kind of eclectic, multi-disciplinary practice that was emerging (Prochaska and Diclemente, 1994). Finally, the model offered therapeutic tools for encouraging change, which were enhanced by guidance for discrete areas of practice, illuminating possibilities for engaging and retaining drug users in treatment, and offering a sense of professional empowerment in the most challenging aspects of the work (e.g. Miller and Rollnick, 1991). Most notably, in these conceptualizations, the cognitive processes of the drug user attempting to establish and sustain a drug free lifestyle are presented as the unsurprising, ordinary kinds of reasoning that any person would engage in when finding him/herself in equivalent circumstances. The conflict between drug use and abstinence within these perspectives is little different in kind from the choices between opposing alternatives, each combining positive attractions and negative consequences, that confront ordinary people every day of their lives. Thus, in these approaches, professionals assume individual capacity for change, and adopt the role of enablers and enhancers of that capacity.

While criminal career research has illuminated the processes of ‘natural’ (i.e. without treatment) desistance from crime (Maruna, 2001; Shover, 1985), rather little attention has been paid to its application to rehabilitation. Nor do the programmes that have been accredited in the cognitive behavioural paradigm call for eclecticism and contributions from alternative disciplines. Within this paradigm, the offender is uniquely different from ‘normal’, law-abiding people (Kendall, 2002). The professional assumes deficit in the offender’s reasoning capability and the need for specialist corrective intervention. For the probation service, with its near century experience of the multi-dimensional complexities of offenders’ lives, to have embraced such a restrictive definition of their problems and its solution is little short of breathtaking.

A policy community

The increasingly multi-disciplinary approach has strengthened the drug treatment field in a variety of ways. Not only has it facilitated the diversification of practice already noted, but it has also enabled a creative relationship to develop between the statutory, voluntary and academic sectors. This has fuelled the growth of a collaborative ‘policy community’ (Berridge, 1993; Berridge and Thoms, 1996) that has shown itself to possess, not only strong internal consensus among its members on key issues, but the ability to powerfully influence central policy makers towards an accommodation of its views. Indeed, the government set its seal of approval on the multi-disciplinary approach in Tackling Drugs Together: a Strategy for
England 1995–98 (Lord President of the Council and Leader of the House of Commons et al., 1995). This policy has not only been refined in subsequent years (in striking contrast to the helter-skelter creation and despatch of successive sentencing policies), but has provided a blueprint for successive statutory mandates for multi-agency collaboration in social welfare and crime prevention programmes.

The probation service has featured strongly in many of these directives to participate in collaborative partnerships. It has been required to engage in formal partnerships on a growing number of fronts over the past decade: contracting for elements of supervision services; Drug Action Teams; Youth Offending Teams; Multi-agency Public Protection Panels; Crime and Disorder Reduction Partnerships; the Supporting People social housing programme; and employment/training partnerships. Yet, we hear little of the probation service’s contributions to these multi-disciplinary initiatives, largely because its pre-occupation with ‘effective practice’ as defined by specific, targeted offending behaviour programmes obscures this growing area of responsibility. Through its heavy investment of resources and energy into the delivery of accredited programmes under the effective practice initiative, the probation service is potentially squandering its opportunity to develop strong alliances with organizations to which it may then turn for powerful support.

These partnerships present a golden opportunity for the probation service to turn central policy to its own advantage by nurturing relationships across a range of sectors, on which it may then draw to preserve its unique status as an organization that bridges the worlds of social welfare and criminal justice (Rumgay, 2001, 2002). Indeed, the service has been seen to perform at its most impressive when it perceives in its efforts a contribution to the overall health of the communities that it serves (Rumgay, 2000).

Effective partnership practice is not, however, an easy option in which bland assurances of inter-agency goodwill may pass muster for concrete action and laissez-faire inertia for pro-active, strategic collaborative development. It requires a clear investment of commitment, energy, skills, training and resources (Mattesich et al., 2001). If the probation service is to harvest the potential fruits of reduced isolation, increased collaborative support and enhanced practice effectiveness that partnership may bear, it must approach the enterprise with focussed attention. The ambivalence that appears to characterise much of its contribution to partnership activity thus far accounts for its uneven success, with pockets of excellence, often due to the enthusiasm and drive of committed individuals, interspersed with neglect (Rumgay, 2000; Mair and Jamel, 2002). Much of this ambivalence arises from sensitivities around preservation of professional territory (Rumgay, 2000, 2002), although it is also to be recognized that current internal pressures on the service to adapt to nationalization, accommodate new forms of supervision and deliver the ‘What Works’ project leave it with little energy or resources to expend on inter-agency relations (Rumgay, 2002). Nevertheless, the experience of the drug treatment field testifies to the rewards that accrue from fostering a multi-agency collaborative approach.
Harm minimization

The developments that have been observed here offered a strong foundation from which the drug treatment field was able to launch its response to the HIV and AIDS crisis. In particular, the key policy theme of harm minimization that rapidly emerged after the discovery of the HIV virus among intravenous drug injectors in 1985 gained widespread acceptance, despite its controversial stance on the relative priorities of public health protection and law enforcement.

The vigorous expansion and diversification of drug services at this time, under the Central Funding Initiative, owed much to the receptivity of its multi-disciplinary agency representation, including a highly active voluntary sector (Stimson, 1994; Dorn, 1990), in which social conceptualizations of addiction had become increasingly privileged over the medical model. Moreover, Stimson (1994) points out that the swift endorsement of harm minimization rested heavily on the longstanding tradition of such ideas in British drug treatment, notwithstanding the introduction of a new terminology. This, after all, had been the essential rationale for the policy of maintenance prescribing that dated back to the Rolleston Committee of 1926 (Ministry of Health, 1926). The Advisory Council on the Misuse of Drugs (1988), capitalizing on the strength of multi-disciplinary consensus and established tradition, was quick to seize the policy initiative.

Notably, the enthusiasm for policies of limited oral methadone prescribing accompanied by confrontative therapy that spread within the Drug Dependency Clinics during the early 1980s waned at this time, replaced by more holistic approaches informed by harm minimization. In hindsight, commentators acknowledge that the approach was originally able to flourish during a period in which the Drug Dependency Clinics dominated treatment provision and the addict population was perceived to be relatively stable, enabling professional staff to select therapeutic options that appealed at least as much to their own ambitions to develop an active ‘curative’ ethos as to the needs of their clients (Glanz, 1994; Mitcheson, 1994). The rapid escalation of drug use and the advent of the AIDS crisis changed those conditions dramatically, yet opened alternative pathways to professional satisfaction.

Moreover, these new conditions forced an appreciation of the full complexity of the research findings to which the policy had appealed for its authority. One of the experiment’s originators, Martin Mitcheson recalls:

While the majority of those who were refused a heroin prescription continued to inject illegally acquired supplies and only attended the clinic when they needed a specific service, a significant minority (one-fifth) stopped all drug use. Although approximately two-thirds of both groups continued with some criminal activity the severity of this was, however, greater in those refused heroin. . . . (1994, p. 182)

In other words, the experiment succeeded in delivering harm to the majority of addicts who were unable to respond positively to the therapeutic challenge of methadone withdrawal. That harm, moreover, had a substantial impact upon the communities that accommodated those treatment failures. Seen from the harm
minimization perspective that later informed the response to HIV/AIDS, the policy could not but appear misconceived.

This salutary lesson in exploring the full detail of research findings and their implications, rather than selecting those elements that support our pre-existing ambitions, should not escape us now. We know that the ‘failures’ of the ‘What Works’ approach to programming appear to fare particularly poorly in terms of reconviction (Probation Studies Unit, 2000; Raynor and Vanstone, 1997). Nevertheless, we are not exposed to open debate as to how to respond to those people, in any terms other than the need for increasingly focussed assessments aimed at excluding poor risks from that treatment opportunity (Hollin et al., 2002). Yet, exclusions and drop-out rates from accredited programmes are already running at a worryingly high level (Hollin et al., 2002). From the harm minimization perspective, including the interests of public safety, an approach that sacrifices large numbers of society’s most vulnerable people in the pursuit of therapeutic gains for a few appears indefensible.

Drug policy and practice has been characterized by innovation and flexibility based on pragmatism and an awareness of the harm-inducing potential of strongly ideological, one-dimensional approaches. Similarly, a harm minimization perspective on offender rehabilitation would commit the probation service to ‘active participation in the development of community-based provision which is primarily accessible to all on the basis of need’ (Rumgay, 2001, p. 134).

**Softly, softly?**

The field of drug treatment has undoubtedly benefited from a number of advantages that have been notably lacking in the recent experience of offender rehabilitation. The scale of drug use in society has ensured that treatment remains a priority service; a public health crisis has facilitated expansion and innovation; central policy has been receptive to a strongly consensual multi-disciplinary ‘community’; and there has been striking coherence between the development of contemporary theories of drug misuse, models of the desistance process and practical therapeutic tools. In the world of offender rehabilitation, the scale of the crime problem has facilitated an explosion of punitiveness, a prison population crisis has diverted resources from community provision, central policy has thrived on the weakness of opposition, and contemporary discourse in rehabilitation pays scant attention to broader criminological theory.

The probation service is not to be blamed for any of these problems. Yet, it cannot absolve itself from any responsibility for the current state of rehabilitation policy and practice by appealing to powerlessness in the face of external forces beyond its control. The service has been highly active in seeking to bring about its involvement in a project that has committed its resources, dominated its attention and reduced the traditional breadth of its contribution to the communities it serves to the delivery of narrowly targeted programmes. In this respect, the pains and disappointments of the ‘What Works’ project, to date and in the future, are self-inflicted, for reasons that have been explored in this article and elsewhere (Mair, 2002).
A curious paradox remains: in the face of the probation service’s public rhetoric on ‘What Works’, I have yet to meet a probation officer who regards the effective practice initiative without scepticism. Staff who are confronted daily with the multiplicity of offenders’ personal and social needs and the complexities of the attempt of crafting a meaningful response to them, are, it seems, simply not persuaded by appeals to the effectiveness of a one-dimensional, cognitive-behavioural ‘fix’, notwithstanding any belief in its potential contribution to multi-faceted intervention strategies. Meanwhile, they spend their time, albeit often in an ad hoc, case-by-case manner, nurturing alliances with local partners that may yield an advantage in securing opportunities for the reintegration of the offenders on their caseloads into mainstream provision. They are supported, albeit unevenly, by those successful strategic partnership initiatives that have opened up their access to community resources on behalf of the individuals under their supervision.

Perhaps probation officers, in time-honoured manner, are very largely going quietly about their ‘business as usual’, while a surface rhetoric supports a showcase of ‘effective’ programmes. However, if this is the case, a further lesson from the drug treatment field may caution against complacency. Berridge observes that ‘1980s drug policy pre-AIDS had a dual face – a “political” penal policy with a high public and mass media profile; and an “in-house” health policy based on a rhetoric of de-medicalisation and the development of community services and harm minimization’ (1993, pp.142-3). HIV and AIDS provided an escape hatch from a government policy that had publicly asserted its faith in prohibitive solutions to the drug problem: the hitherto ‘softly, softly’ strategy of harm minimization practice under cover of penal rhetoric came into its own. That hardly means that we should applaud the appearance of an infection that threatened to overwhelm our public health resources. Moreover, it reminds us of the fragile, contingency-dependent nature of much policy development.

If the probation service pursues a ‘softly, softly’ approach to holistic offender rehabilitation methods, under cover of a rhetoric that emphasises narrowly defined effectiveness, we cannot predict whether some future penal crisis may ultimately liberate its strategy from the shadows, nor, if so, whether we will welcome the form that crisis may take. Meanwhile, the ‘What Works’ initiative will have sapped its energies, diverted it from the challenge of building multi-disciplinary alliances, and aligned it with an exclusionary practice that will damage its reputation with the very agencies of social welfare whose support is crucial to a broader, socially inclusive, harm-reducing vision. Having sacrificed so much of its traditional mission and ethos in pursuit of self-preservation, we may find ourselves wondering, in dismay, whether we have retained the service in a form that is really worth saving.

References


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Direct work with racially motivated offenders

David Court, London Probation Area

Abstract. The author discusses his experience of piloting intervention materials designed for work with racially motivated offenders. Despite the difficulties in prosecuting and assessing such offenders, he describes encouraging early results, showing that participants have been able to recognize the origins of their aggressive racial prejudices and identify the link with their offending behaviour.

Keywords interventions, offenders, practice, racist, skills

There have been a number of articles in this journal which have discussed current debates about and theories of racially motivated offending (e.g. Dixon, 2002; Ray et al., 2002; Dixon and Okitikpi, 1999). This article does not attempt to engage in that wider contextual discourse, but instead focuses on the issues which have emerged during the time that I have been responsible for working with such offenders using structured intervention materials developed by the London Probation Area.

From April 2001 to April 2002, I worked in a specialist post in the London Borough of Greenwich which has an especially high profile within the mass media with regard to racist violence following the murders of Rolan Adams, Rohit Dugal and Stephen Lawrence. The Macpherson Report into the murder of Stephen Lawrence presented the police, probation service and youth offending team in Greenwich with a series of challenges to improve the manner in which they dealt, either individually or in a multi-agency approach, with racially motivated crime. The Greenwich Targeted Policing Initiative, of which my specialist post was a part, developed out of this concern and was designed to tackle racially motivated crime and its impact upon the local community.

Setting out targets

My overall brief was to implement draft assessment and intervention materials devised specifically for work with racially motivated offenders (RMOs) (by Liz Dixon,
a probation officer and senior lecturer at the University of Hertfordshire, and by Sharon Harambee, a probation officer seconded to a larger policing project in the Merton area). The dilemma we faced in Greenwich was whether to screen every white offender, or to target for assessment only those offenders for whom racial hostility had contributed to the index offence. Following extensive discussion and consultation we decided on the latter. The primary rationale for this was that it met the remits of the probation and youth offending teams to address offending behaviour, as well as providing more weight to individual risk assessments, both of reoffending and in particular of harm to the public, especially to Black and Asian people. After further deliberation, we devised the following criteria to help target interventions:

1. White offenders convicted of a racially aggravated offence.
2. White offenders convicted of a ‘downgraded’ offence – for example, an offender initially charged with a racially aggravated assault who has had the charge downgraded to common assault.
3. Offenders already identified as potential racially motivated offenders (RMOs), either due to behaviour while under supervision, previous offences, or as co-defendants of anyone falling within the first two categories.

The initial hypothesis was that the greater number of referrals would be on downgraded offences, then offenders already known to us via supervision and the least on offenders convicted of racially aggravated offences. This was based on some limited material available to me from the police, extracted from custody records that showed between 1 April, 2000 and 31 February, 2001, 69 people had been arrested and charged with racially aggravated offences within the borough. In the same period Woolwich Crown Court recorded that out of 25 people appearing there on racially aggravated charges, 9 were subsequently convicted. These figures need to be placed in the context of 1,074 racial incidents reported to the borough’s police community safety unit during this period. A more detailed breakdown of these offences was impossible to obtain and a major part of my work involved obtaining supervised access to the borough’s police custody records and the local court’s process records. The purpose of this was to identify whether there were any observable characteristics in the prosecution of racially aggravated charges.

The judicial process

During the year I was in post, I tracked 114 individuals from their arrest and initial charge with racially aggravated offences. The ages of the alleged offenders ranged from a 12 year-old white female to a 53 year-old white male. Where identified, 96 were from white European origins, 9 from African/African-Caribbean origins, 1 mixed race background, with 8 from an Asian (South Asian, Chinese/Vietnamese) origin. Twenty-two were female (20 white, 2 African/Caribbean), the rest male.
I was also able to obtain details of each offence from police custody records. There were a wide variety of incidents ranging from verbal harassment to physical attack and criminal damage of the Stephen Lawrence memorial stone. There were also a significant number of assaults upon Asian storekeepers. This accounted for 22 of the arrests. Alcohol could be clearly identified as a factor via victim witness statements on 34 occasions.

In my experience the most prominent characteristic was the high attrition rate, with the Crown Prosecution Service (CPS) withdrawing all racially aggravated charges when contested by the defendant on 33 occasions (i.e. 37.6%). The court then either discharged or dismissed the case. The perception that the CPS was reluctant to pursue a contested case was clearly known to the individuals I interviewed, especially the young males convicted on downgraded charges. This ‘street knowledge’ was acquired either from peers or legal representatives. I was able to establish in interviews with offenders that the prime motivation to avoid conviction on racially aggravated charges was on the basis that it would attract a heavier sentence.

In practice this meant that out of the 35 people convicted of racially aggravated charges, only 7 had been convicted after trial; the rest had pleaded guilty. On 18 additional occasions the offender had agreed to plead guilty to a lesser offence and the racially aggravated charges were withdrawn. There is little evidence in my studies that juries or courts are reluctant to convict contested racially aggravated offences, as there were no acquittals in any of the cases that went to trial.

In the cases where the offender had pleaded guilty to racially aggravated charges, these were invariably where video evidence had been available to the court and/or the offender had continued in their offending behaviour when the police had arrived at the scene. It is also significant to note that in three of the convictions after trial, police evidence had been used to establish that the defendant had expressed racially abusive language after arrest on two occasions in reference to the victim.

When I made a presentation to a Local Authority Multi-Agency Race Crimes Initiative, there was considerable anger expressed by representatives of victim support groups as well as the local racial attacks monitoring group regarding my preliminary findings. Complaints were made that victims were not informed when a case was in court or when a decision had been made to withdraw it. The consensus was that the court system did not consider racial attacks as a priority and that it seemed to reverse the Stephen Lawrence Enquiry definition of a racial incident, in that an incident was only deemed racist if the perpetrator agreed.

**Interviews and assessments**

I interviewed 52 offenders and was also involved, either as the author or in a consultant role, in the preparation of 46 reports for both the adult and youth courts regarding most of them. These reports included downgraded offences. In 36 of the interviews the ‘Racial Attitudes Initial Screening Tool’ (devised by Sharon
Harambee at the Merton Racial Harassment Policing Project) was used. This is a series of 16 statements relating to racial stereotypes and prejudices, with which the respondent either agrees or disagrees. The higher the score, the stronger the indication of aggressive racial hostility. While the scores have ranged from 0 to 85 (the maximum score possible being 95), I found it a useful device to open up a discussion around racial antagonism in a structured form.

The screening tool is introduced as a standard assessment device and in practice it helps make an interview less confrontational. In some respects, unless a person scored especially high, (i.e. over 30) the score was less important than the discussion it generated. It was noticeable that a respondent would often make aside comments that revealed much of their distorted perceptions of black and Asian people, but when considering the statement they would provide a pro-social response. As I became more practiced in the interviews I found motivational, open and exploratory questioning the most productive and that it was unhelpful to use the word ‘racist’. Without exception, offenders viewed it as an insult rather than as a description, and employing this word in interview elicited an angry and defensive reaction. I accordingly found it more rewarding to introduce myself as a specialist in working with individuals convicted of racially aggravated offences, rather than racists or racially motivated offenders.

Only on one occasion did I interview an offender who was in absolute denial of an offence, a group attack on a black couple; most sought to minimize the offence, blame the victim and present their aggression as defensive following a perceived slight from the victim. For instance a white woman who attacked a black woman in a car-park altercation, blamed the other woman for giving her a dirty look, a white man who attacked an Asian shop-keeper blamed the shop-keeper for insulting him by refusing to serve him alcohol. The primary evidence for the successful prosecution of racially aggravated offences is the use of racially abusive language; as stated earlier, in my experience an offender would only plead guilty if this had been recorded by a security video or heard by the police called to the scene.

I found that when I promoted the community programme we were piloting, despite a minimization of the offence, an interest was shown, particularly when the offender was aware that they may be imprisoned. Whilst this may be a forced motivation, it is a starting point, especially when the offender’s interpretation of their actions often jars heavily with the victim’s experience.

Given that offenders would frequently provide a rehearsed and sanitized version of events, with racial elements ‘air brushed’ from their accounts, it was important to establish the victim experiences first, and observe the offenders’ responses. In my experience it was best to treat the court assessment as an initial one, and to recognize that a characteristic of racially aggravated offences is the vivid gulf between the perpetrators’ and victims’ accounts. I would share this apparent gap with the offender and promote the programme as an opportunity to help the offender make sense of their behaviour and to close this gap. I would describe my role as assisting them to deal with similar situations better in the future. This might sound a ‘soft sell’ approach, but I found direct confrontation closed offenders down and did not provide any useful material to inform a meaningful risk assessment.
Interventions

Twenty-six pre-sentence reports were prepared with the pilot one-to-one programme put forward as part of a sentencing option to court. This included offenders convicted of downgraded offences. Fourteen of the offenders were imprisoned with the court suggesting on four occasions that the programme formed part of their release licence. Eleven offenders were placed on community sentences with a condition to undertake the programme; unfortunately two moved to areas where the programme was not available.

I have been encouraged by the response of offenders participating in the programme, both in custody as well as in the community. The programme consists of seven modules that assess and explore socialization processes from childhood, moving onto the development of racial identity, attitudes, beliefs and values. The purpose is to encourage the offender to consider how prejudicial attitudes have contributed towards their offending and how to develop the thinking skills and practical strategies to avoid offending in the future.

The programme can take up to 22 sessions depending on the individual’s ability to understand and respond to the materials. The structured form of the programme is flexible enough to meet the different challenges presented by an offender group that crosses gender and age ranges. Police racial incident figures report that 30 per cent of alleged perpetrators were women. At present four of the ten offenders I am working with are women. The adaptability of the programme in line with risk of harm and risk of re-offending is a strength, as some materials are appropriate for adult male offenders with a history of violence but alienating and distant to a first time adult female offender. This form of offending is also characterized by an absence of victim empathy or awareness, especially immediately after conviction, when an offender frequently expresses hostility towards their victim. I have found it more effective not to approach discussion of the offence early in the programme as the minimization of the incident and anger towards the victim impedes any sincere or meaningful revisiting of the incident.

It has been noticeable with the men I have worked with that when they became engaged in the programme, although they remained reluctant to discuss their index offence, they will disclose earlier incidents of racially aggravated violence where the police were not involved. This material has been particularly productive, primarily because it has been provided by the offenders themselves - they are more amenable and open to critically exploring their own actions than those attributed to them via the court process.

It was difficult during the year I was in post to assess the impact of the materials. However, since the post was extended under a local crime and disorder partnership a probation research officer has been employed to undertake a case study evaluation, assessing impact by psychometric questionnaires completed pre and post intervention. I did, however, witness that the use of a weekly diary wherein the participant notes and considers their interaction with Black and Asian people, was a powerful tool in prompting behavioural change. A 22 year old white male I worked with on licence, convicted of group attack on a lone black man, was extremely reluctant to write down his prejudices. He instead used the diary format
as a means of positively managing his thoughts and actions whenever he experienced an interaction with a black person, which in the past may have escalated into violence.

I would therefore suggest that at this pilot stage the programme has enabled participants to identify and disclose their racial prejudices. It has also encouraged participants to take greater responsibility for the impact of these prejudices upon their behaviour both within the offence and in their lives generally. I have also found that when offenders have reached this stage of recognition, they are prepared to learn and develop the skills and strategies to manage their behaviour in a less offensive and more pro-social manner. The main evidence I have for this is the material offenders provide via their weekly diaries.

**Conclusion**

The data referred to in this report is only a partial picture of racially motivated crime. I had great difficulties receiving any referrals outside of those already identified via the court process (in practice two) I also found that there was a reluctance within all the teams, both adult and youth, to assess offenders who had not been specifically convicted of a racially aggravated offence. This also related to downgraded offences. In speaking to the relevant officers, responses varied from a concern that their clients would be negatively labelled or that they did not believe the person to be racist. On asking on what basis the latter assessment had been made, evidence offered ranged from - he/she was just drunk, he/she has black friends, he/she has black/mixed race relatives. It is also a concern that in the examples quoted, offenders had been interviewed without reference to witness statements. To counter this I was able to negotiate extra time with the local courts to re-interview offenders with the relevant witness statements.

In summary, in general practice the probation service and youth offending teams rely solely on the court system to identify racially motivated offenders via specific convictions. My experiences have demonstrated that as a result of this approach the actual incidence of crimes instigated or exacerbated by racial antagonism are hidden, and risk assessments which do not address this issue are woefully inaccurate.

As an illustration of this final point after overcoming an initial objection from his supervising officer, I interviewed a young offender who with his co-defendant had pleaded guilty to the robbery of an Asian-owned store. They had pleaded guilty from the outset to prevent the security video being used in evidence as the elder youth racially abused and threatened the storekeeper. While racially aggravated charges were not levied, the victims’ statements repeatedly referred to direct racial abuse from one and physical intimidation from the other. The supervising officer had originally assured me that the younger youth was not racist because he had said so when interviewed.

I found that this was a recurring issue throughout the year in post, that there was a perception that I was there to define who was racist and who was not. I eventually interviewed the youth and after explaining my specialist post I found
him responsive and disconcertingly candid. While he affectionately disclosed names of close black friends, he talked with passion of his hatred of Asians, and could not speak of Pakistanis without swearing in the same breath. He also described his co-defendant as a ‘mug’ for openly using racial abuse, as it would attract a heavier sentence. Whilst he maintained that the offence was not racially motivated, he agreed he had visited the store before and pressed the elder youth into robbing the place.

I would conclude that until the probation service and the youth offending teams develop the skills and confidence to explore racial hostility, in particular where the victim rather than the court alone have identified it, assessments of risk of harm to the public can only be partial at best, and at worst dangerously misleading.

Appendix

The following sentences were passed on the 53 offenders convicted of racially aggravated or down-graded offences:

- Prison: 18.
- Fines: 10.
- Community Sentences: 23, including 4 community punishment orders, 2 conditional discharges and 2 police warnings. The rest were either community rehabilitation or community punishment and rehabilitation orders. This does not include 1 deferred sentence.
- Still awaiting sentence: 2.

References


Anti-Social Behaviour Orders

Anti-Social Behaviour Orders (ASBOs) were introduced in the Crime and Disorder Act 1998 and have been up and running since April 1999. This Home Office study evaluates their use and implementation after two years, focusing on the period between April 1999 and September 2001, in which time the courts made 466 ASBOs. ASBOs may be used against any person aged over 10 who has acted in an anti-social manner. This is defined as: ‘A manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household’ (p. 1). The purpose of an ASBO as identified by the Act is: ‘To prevent the escalation of (anti-social) behaviour before resorting to criminal sanctions.’ They are thus civil orders, although breach of an order results in a criminal charge. They are available for use by the police and local authorities.

Of the 466 orders made in this report, 84 per cent were imposed on males and 74 per cent on people under the age of 21. This report finds that the use of ASBOs has been variable across the country and that concerns have been raised as to why their uptake has not been as great as expected. Amongst the reasons identified in the report are:

- A lack of strategic policies within local partnership (i.e. between the police and local authority);
- Disillusionment with the process – this has happened in some areas because of time delays;
- The amount of resources required and the amount of work involved in securing an order;
- The use of alternative strategies within some areas to combat anti-social behaviour;

The report finds that ‘The overall opinion of ASBOs amongst those who have actually used them is generally positive’ (p. 97). For the purpose of conducting the research, interviews were carried out with representatives from local authorities, police, solicitors, magistrates, court clerks and witnesses.

One of the issues highlighted in the report is that people who act as witnesses for the purpose of pursuing an ASBO through court, face the possibility of further victimization from the individuals whose behaviour is being targeted via the ASBO. Relevantly, the report writer states: ‘A process which both the police and local
authority are happy with is of little use if it is perceived as unsuccessful or traumatic by those it is designed to help’ (p. 61). The report recommends strategies through which the process can be improved for witnesses, including developing a strategy for witness support and protection and keeping the process as short as possible.

Amongst the problems identified is that of time-delay. The average time between applying to the court for an ASBO and it being granted was 13 weeks – the shortest time taken was 4 days and the longest was 35 weeks. There were numerous reasons identified for potential delays, amongst which were delays at court and difficulties in gathering evidence to support the order. A lot of areas were gathering evidence of a criminal standard to support their application, rather than a civil standard, to increase their chances of successful application. However, of the total surveyed, 96 per cent of orders applied for were successful.

An example of good practice was cited in the Merseyside Area, where a twin track approach was adopted. This involved the streamlining of applications – those for whom an ASBO would be immediately sought and those for whom a ‘problem-solving approach’ could be adopted – i.e. seeking other ways to address the behaviour. The decision on which approach to adopt was determined by ‘the urgency of the need and the likelihood of the intervention having a positive outcome’ (p. 43).

The report identified that some areas focused their attention on securing the order and did not monitor the outcome. Indeed there was little information on the success or otherwise of the orders, save for anecdotal information gathered. The report author thus recommends that strategies are adopted to deal with orders after they have been granted and to monitor their impact.

A sample of orders was considered to analyse the level of breaches. In 2000, there were 85 incidents of breach brought before the courts, involving 51 individuals. One of the starkest figures to emerge from the study was that of these 85 incidents, 46 per cent of cases were sentenced to custody for breaching their order. Of the adults in this sample, the average length of sentence was 79 days. For juveniles, the majority of sentences were for detention and training orders, the average length of which was 139 days. This figure more than any other within the report illustrates the seriousness with which the courts deal with the ASBO.

Amongst the further recommendations in the report, the author advises consideration be given to the logistical implications of the number of ASBOs greatly increasing – i.e. how they will be monitored and how to manage the community’s expectations of the orders.


Nicola Carr
Probation Officer, London
Uses of the polygraph in sex offender work

In December 1999, Wilcox et al. (1999) reported in this journal on the first trials of the polygraph as an assessment/treatment tool for sex offenders. Since that time, trials of increasing complexity and scope have been introduced each year. The results have thus far continued to confirm the utility of the polygraph in its various applications in sex offender work. There is a growing body of research suggesting that the polygraph procedure, the Sexual History Disclosure Examination (SHDE), may play a very important role in terms of assessing risk and developing more comprehensive relapse prevention plans. The main elements of our research also support this finding and are summarized below:

Reported Victims and Episodes: Data obtained from a single polygraph assessment of each subject were compared with information derived from probation record data available at the time of the polygraph examination. The differences (see Table 1) were statistically significant at the 95 per cent confidence level.

Age of Onset of Offending: Another significant finding was made when data were compared concerning the known age of onset of offending, based on official records and previous self-report versus polygraph examination admissions. For all sexual offences reported upon, including non-contact and non-invasive offences such as voyeurism and public masturbation, the mean age difference was 14 years, i.e. on average subjects indicated that they had begun sexually offending 14 years before this activity became known to the authorities (see Table 2).

Even when a more stringent offence criteria was applied, i.e. victims were likely to directly be aware of the offending, the mean age difference was 11.5 years (see Table 2). The significant latency period between onset of offending and being apprehended, together with the range of paraphilic interests reported (see section below), is particularly important if we are to understand patterns of abusive behaviour and develop effective relapse prevention strategies.

Paraphilias: This research also identified a considerably wider range of deviant or paraphilic sexual interests through polygraph examination than were obtained from other sources. Findings show significant increases in paraphilic interests reported, with an average of six per individual polygraphed as compared with between two and four on average based on a review of these men’s probation records and other materials, including psychometric findings (see Table 3). Besides the obvious public protection and treatment implications that derive from a more comprehensive understanding of offenders’ sexual interests/risk areas, the numbers of paraphilias reported by offenders are useful indicators of future risk of re-offending (Abel, 1999).

Crossover Rates: Of particular importance, there was significant evidence of crossover between broader areas of paraphilic interest and reported sexual offending (see Table 4).

Attendance Issues: It should be noted that significant differences in respect of numbers of victims, episodes of offending, paraphilias and onset of offending were identified in spite of the small number of participants in this study. This was the unfortunate result of a dropout rate of almost 50 per cent amongst men who had initially agreed to participate in the 2000 polygraph study. This finding suggested
Table 1  Estimated number of victims/episodes comparing probation records with polygraph disclosures

Men on probation and attending a sex offender treatment programme (N = 14)

<table>
<thead>
<tr>
<th></th>
<th>Probation</th>
<th>Polygraph</th>
<th>Increase</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-contact sexual offence victims</td>
<td>16</td>
<td>75</td>
<td>× 4.7</td>
</tr>
<tr>
<td>reported (mean)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Contact sexual offence victims</td>
<td>32</td>
<td>111</td>
<td>× 3.5</td>
</tr>
<tr>
<td>reported (mean)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total numbers of sexual offence</td>
<td>48</td>
<td>185</td>
<td>× 3.9</td>
</tr>
<tr>
<td>victims reported (mean)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total numbers of sexual offence</td>
<td>92</td>
<td>418</td>
<td>× 4.5</td>
</tr>
<tr>
<td>episodes reported (mean)</td>
<td></td>
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</table>

Table 2  Age of onset of offending

Men on probation and attending a sex offender treatment programme (N = 14)

<table>
<thead>
<tr>
<th></th>
<th>Subject's age (official records)</th>
<th>Subject's age (polygraph report)</th>
<th>Mean age difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mean age</td>
<td>28</td>
<td>13.5</td>
<td>14</td>
</tr>
<tr>
<td>*Mean age</td>
<td>28</td>
<td>16</td>
<td>11.5</td>
</tr>
</tbody>
</table>

*Excluding voyeurism and public masturbation

Table 3  Paraphilic interests reported

Men on probation and attending a sex offender treatment programme (N = 14)

<table>
<thead>
<tr>
<th></th>
<th>Probation</th>
<th>Psychometric</th>
<th>Sub Total</th>
<th>Polygraph</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mean</td>
<td>2</td>
<td>+</td>
<td>4</td>
<td>6</td>
</tr>
</tbody>
</table>

Table 4  Summary crossover rates as indicated by polygraph findings

Men on probation and attending a sex offender treatment programme (N = 14)

1. 93% (13 out of 14 subjects) reported that they had committed both contact and non-contact offences.
2. 50% (6 out of 12 subjects) who admitted to child sexual abuse acknowledged both intra- and extra-familial offending.
3. 33% (1 out of 3 subjects) who acknowledged sexual offences against boys, also admitted to sexual offences against girls.
4. 50% (7 out of 14 subjects) reported committing sexual offences against adults as well as children.
that meaningful consequences for non-attendance would need to be applied if polygraph use was determined to be a valid adjunct to sex offender assessment in the future.

Maintenance and Monitoring Initial Findings: Attendance difficulties have also featured in the more extensive ongoing Maintenance and Monitoring study initiated by Grubin in 2001. This effect might be the result of indifference on the parts of the offenders who volunteered, but it may also have related to more worrying factors such as engagement in current criminal activity or high-risk behaviour. It is relevant that Schmidt et al. (1973) regarded this application of the polygraph as an ‘artificial conscience’.

The Maintenance and Monitoring trials were established to help determine whether men on probation were complying with conditions of their probation orders together with treatment requirements. It revealed that even those men who attended were, in the great majority, failing to take steps they had identified as necessary to avoid risk of relapse. These ongoing trials are being conducted in several locations in the UK, combining interviews and polygraph examination results with a central focus on monitoring sex offence-related behaviour. Although this research is still in progress, the early indications are that the polygraph does indeed have a capacity to elicit information directly associated with risk of re-offending. Initial findings suggested that polygraph use in conjunction with supervision can improve monitoring and maintenance considerably.

Future Work Required: Ongoing research in Britain continues to support the view that the polygraph could play an important role in both the treatment and supervision of sex offenders on probation and licence. Another important aspect of various polygraph workshops presented by the authors has been to familiarize participants with the administration and use of the polygraph in sex offender work and create a more open-minded attitude amongst professionals about its future use in this field. Demonstrations have been given using workshop volunteers who are polygraphed during the session. This allowed other participants to observe the questioning and the accompanying responses produced. Discussions have followed the demonstrations concerning the examinee’s subjective experiences, the interview/administration techniques used and the interpretation of data. Possible uses and misuses of polygraphy have been explored as well as the need for regulations and control.

Workshop presenters asserted that the polygraph should not be used in isolation, any more than urinalysis should be regarded as a ‘stand alone’ approach to drug treatment. Rather, it has been advised that polygraph use should be integrated and properly managed within the field if it is to become maximally effective, both as a deterrent to sexual offending and as an aid to public protection.

References


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Hate crime conference

Earlier this year, the Centre for Crime and Justice Studies (CCJS) magazine Criminal Justice Matters devoted a whole issue to hate crime, which contained informative and interesting articles relating to current knowledge and awareness. This CCJS conference was a logical extension of that edition, reflecting the interest currently being generated about hate crime in criminal justice circles and amongst the public. Attendees included representatives from a variety of criminal justice agencies – police officers, prison staff, probation officers, YOT workers, representatives from the CRE and race relations bodies, those from the voluntary sector, victim groups and academics. It is worth highlighting that the conference was heavily focused towards race hate crime rather than other forms of hate crime, reflecting the knowledge base and policy initiatives that exist at present. Many of the black and Asian speakers shared moving and powerful experiences of their formative experiences of race and hate crime with the conference.

Hate crime is a relatively new area of interest in British criminal justice, and practice in this field is very much developmental. An overall theme was the fact that the agencies are all at different stages as they struggle with developing policy and practice. In his opening speech, Kamaldeep Jadhu of the CRE explained the rationale behind the zero tolerance approach to hate crime: he argued that it helps both to prevent escalation and to spread confidence amongst ethnic minority communities. He recommended the ACOP Hate Policy and pressed for agencies and communities to make more multicultural links.

The police have clearly made tremendous progress in this area in terms of
developing policy and practice. Stephen Lovelock gave a competent and vivid presentation about developments in the Diversity Directorate (formerly the Racial and Violent Crime Task Force) in the Met. He was able to show how the police have consistently achieved their targets and stayed loyal to their initial commitment in this area following the publication of the Macpherson report. There has been a rise in reporting which has been crucial to help the police develop their intelligence, crime analysis has improved beyond recognition and the community safety units have developed as planned, and are proving effective. The lay advisory committee remains a vital force and monitor of work in the community safety units. The family liaison officer training was revamped after Lawrence and is now being used throughout the world as a model of good practice. There was very little criticism of the police during the conference, which is significant and testifies to the progress made since the Lawrence report was published.

The probation service on the other hand came in for considerable criticism given the delay in providing clear pointers for practice intervention. Diane Baderin, the Diversity Director for the NPD, talked about the need to have accredited programmes but said that the service needs to be scientific in its work and to remain evidenced based. She said that the accreditation panel believes that there is no evidence to suggest that we need separate programmes despite the initial commitment. She did acknowledge the fact that different areas have been developing good practice. She informed the conference that the NPD would be recommending a new approach to research around racially motivated offenders, which would include monitoring them through cognitive behavioural programmes.

There was a sense that the probation service was ambivalent about this area of work. The Macpherson Report urged all institutions and agencies to be proactive in engaging with race crime given the evidence that it was prevalent and dangerous. The probation service was the only criminal justice agency at the conference that appeared to be dithering in its response; the other agencies were convinced of the need to make quicker progress. The practitioner workshop focused on work with perpetrators and was run by Linda Gast (co-author of ‘From Murmur To Murder’) and Michael Gast (Youth Justice Board); it advised people to use the one to one perpetrator programmes available from London, Liverpool and Leeds.

Robert Green from Crime Concern gave an inspiring, stimulating and informative presentation. He spoke passionately about his work with young people in prison and one sensed that this was a professional who was excited about his interventions, experiences and learning. He drew heavily on evidence from the United States, where, he suggested, policy and practice are ‘light years ahead of us’. (It is interesting to note that the literature review produced by NPD did not identify this evidence.) He presented a helpful typology of perpetrators:

- Thrill-seekers: people who become ‘caught up’ in racially motivated offending;
- Reactive defenders: people with a distorted sense of patriotism, who want to ‘defend’ the country against ‘invaders’; and,
- Mission offenders: ideologically driven offenders.
There was also an opportunity to attend two workshops during the day. I attended an excellent workshop on critical incident policing in Burnley. The police officers provided a candid overview of the situation at the time of the riots in Burnley last year and highlighted what they did that was good and where they needed to improve. They spoke highly of developmental approaches that have evolved for managing critical incidents, and of their belief that it prevented more widespread disturbances. There were two videos of CCTV coverage, which provided graphic footage of drunken, aggressive men who were ready for a ‘ruck’, demonstrating what the police are facing. One had the sense that the police have really grappled with the issues around hate crime – there is a ‘believing’ culture and an effective multidisciplinary approach which is in tune with community cohesiveness.

The other workshops received an equally positive response from participants. As someone who has dwelt upon the issues and challenges of this area of crime, I commend the CCJS for providing a stimulating and sophisticated conference, where all agencies were able to reflect candidly on their progress or lack of it.

Liz Dixon
Senior Lecturer in Criminal Justice, University of Hertfordshire, and Probation Officer, London

Street lighting, CCTV and crime prevention

These two short reports on crime prevention initiatives describe systematic reviews of the evidence on the effects of improved street lighting (HORS 251) and CCTV (HORS 252) on crime. The structure of the two reports is the same. The first chapters include theories on the mechanisms by which the two approaches might be seen to impact on crime. In the report on street lighting, the theory of displacement of crime into other areas and the potential to impact on the fear of crime are introduced, along with a consideration of the potential for unintended consequences from improved street lighting, such as increased visibility making it easier to commit offences and escape.

Among the methodological issues addressed are the difficulties of applying a randomized controlled experiment approach to such research and the databases used to search for studies. The reports both summarise the studies obtained and screened but excluded, which is useful for developing a clearer understanding of methodological problems.

Key Points From The Study On Street Lighting: The study posits two hypotheses on how street lighting might reduce crime:

1. Improved lighting leads to increased surveillance of potential offenders and therefore has a deterrent effect. This predicts decreases of crime, particularly during hours of darkness.
2. Improved lighting indicates increased community investment and improvements in the area, leading to increased community pride,
community cohesiveness and informal social control. This predicts decreases in crime during both day time and night time.

The application of the inclusion criteria yielded eight American evaluation studies, seven of which dated from the 1970s. Results were mixed and included:

- Four studies found improved street lighting to be effective in reducing crime while four did not, but it was not clear why the studies had different results;
- Studies identifying effectiveness tended to measure both day time and night time crimes;
- Improved lighting was more likely to be found ineffective in studies measuring night time crimes only;
- A meta-analysis of all studies found a 7 per cent decrease in crime.

Key findings from five, more recent, British evaluation studies were also included. These found:

- Improved lighting led to a significant 30 per cent decrease in crime;
- In two studies the financial savings from reduced crimes exceeded the costs of improved street lighting.

Overall, the British and American studies found that the overall reduction in crime after improved lighting was 20 per cent in experimental areas compared with control areas. The report suggests that as the studies did not find that night time crime decreased more than day time crime, the second hypothesis outlined above is more plausible. The results did not contradict the theory that improved lighting was most effective in reducing crime in stable homogeneous communities.

A need for further research to test the hypotheses was highlighted, with research design:

- Using measures of crime that include police records, victim and self report surveys;
- Looking at levels of illumination;
- Including experimental, adjacent and non adjacent areas to test hypotheses about displacement and diffusion of benefits;
- Including longer term evaluation;
- Incorporating the effects of lighting according to characteristics of the area and on different types of crime.

The overall conclusion was that improved street lighting should be ‘one element of a situational crime reduction programme and if well targeted to a high crime area can be a feasible, inexpensive and effective method of reducing crime’.

Some Key Points From The Study On CCTV: The 22 American and British evaluations that met the inclusion criteria had been carried out in three settings: city centre or public housing; public transport; and car parks. Key findings on effectiveness include:

- Eleven (50%) of the studies found a desirable effect on crime.
● Five found an undesirable effect on crime.
● Five found no effect on crime (clear evidence of no effect).
● One was classified as finding an uncertain effect (unclear evidence of effect).

Eighteen evaluations provided the data needed for meta-analysis:

● Nine (all UK) showed CCTV had a significant desirable effect on crime although the overall reduction in crime was very small at 4 per cent.
● Nine (including all 5 North American studies) showed no evidence of any desirable effect of CCTV on crime.
● CCTV had no effect on violent crime (from 5 studies) but significant desirable effect on vehicle crime (from 8 studies).

Only in car parks was there evidence that CCTV led to a larger, statistically significant reduction in crime (41% compared to about 2% in five UK public housing and city centre settings). However, it is noted that in all studies of CCTV in car parks, other crime prevention measures were in operation at the same time. It may be that it is a package of interventions focused on a specific crime type that makes CCTV-led schemes in car parks effective.

This study also comments on priorities for further research, particularly in relation to the methodological rigour of evaluation designs. With regard to policy implications, it is noted that in Britain CCTV is the single most heavily funded non-criminal justice crime prevention measure, with £170 million having been available between 1999–2001. Between 1996–1998, CCTV accounted for more than 75 per cent of total spending on crime prevention by the Home Office. This is the wider context in which an overall conclusion of the report, that CCTV reduces crime to a small degree, is set.

Both reports are at least as, if not more, informative on methodology than the specifics of CCTV or street lighting. They provide, in a concise and accessible way, an explanation of the process and role of systematic reviews in developing evidence of effective practice and an understanding of the importance of research design to drawing informed conclusions. The reports are therefore useful to those undertaking research and practitioners with an interest in the processes by which policy can be informed by (or ignore) the evidence base.


Kerry McCarthy
Consultant, Matrix MHA
Programmes for black and Asian offenders

This study was commissioned by the Home Office to 'fill the knowledge gap' about what constitutes effective probation work with black and Asian offenders, and to contribute to the development of a pathfinder programme. It is based on three main sources of information: a literature review of published research; a survey of the 54 probation services to identify current, previous and planned provision for black and Asian offenders (45 services replied, a response rate of 83%); and in-depth case studies of ten programmes identified in the survey.

Existing Evidence: The minimal existing evidence outlined in the report shows two main gaps: first, there is little evidence to support the view that black and Asian offenders have distinct criminogenic needs, although some minority ethnic groups are known to be characterized by a number of factors which are generally associated with higher rates of offending - e.g., high unemployment rates, relative deprivation, educational underachievement and institutional racism. Second, there is no clear existing evidence to show that separate groups for black and Asian offenders are likely to be effective, although having small numbers of them in mixed groups does seem counter-productive because of the feelings of isolation and disconnection which may result.

The Nature of the Groupwork Programmes: A total of 13 programmes developed for work with black and Asian offenders were identified, but only 5 of these were still running at the time of the survey, with a further 10 services planning to provide such a programme in the future. Four types of programme were identified:

- Black empowerment groups (3);
- Black empowerment within general offending programmes (4);
- Black empowerment and reintegration programmes (1); and,
- Offence specific programmes (2).

All were based on cognitive-behavioural approaches and most had few or no women participants. Staff were divided about the usefulness of mixed groups; some considered the raised awareness of cultural diversity which such groups brought to be beneficial, but others were concerned about the marginalization of those in the minority, particularly Asian offenders who tended to be in the minority in groups designed for black and Asian offenders.

Effectiveness: Only four of the programmes had been evaluated and two had conducted a reconviction analysis. Programmes run in Greater Manchester and Inner London had very positive feedback from staff and offenders. Although neither programme had conducted a reconviction analysis because they had not been running for long enough at the time of the survey, psychometric tests conducted in Greater Manchester did indicate that their programme had had a beneficial impact upon offence-related thought patterns.

The West Midlands programme and a second programme in Inner London had both conducted fairly promising reconviction studies. Inner London compared reconviction rates for those completing the Black Self Development Programme...
with outcomes for white offenders completing a similar programme, finding considerably lower reconviction rates for the former. Fifty-one per cent (18/35) black offenders were reconvicted within two years, compared to 75 per cent (38/51) of white offenders. The study conducted on the West Midlands Black People and Offending Programme was similarly positive, but was based on very small sample sizes – it showed that 2 out of 8 people completing the programme were reconvicted (the predicted rate using OGRS2 being 4).

The study highlights some factors considered to be of importance to the success of the programmes. Apart from familiar principles of effective programmes (e.g. programme integrity, thorough evaluations, etc.), factors specific to black and Asian offenders included a facilitator from a minority ethnic background who understood the needs of this client group; and effective targeting which recognizes that not all black and Asian offenders need separate provision.

Overall, the study highlights the pitiful state of knowledge in this area. It provides a modest starting point for the development of a useful evidence base, and the authors note in particular that the views of minority ethnic offenders themselves have not so far been sought. However, a survey of the criminogenic needs and experiences of probation of 500 black and Asian men has now been commissioned and should be completed during 2003. The National Probation Directorate is also piloting five different models of work in different probation areas, which, once evaluated, should provide a further valuable contribution to the knowledge base.


Hindpal Singh Bhui
Probation Officer, London

Public attitudes to the criminal justice system

Previous British Crime Surveys have suggested that a person’s attitudes towards the CJS are related to the amount of knowledge s/he has about it – in general, the less informed a person is, the less confidence s/he is likely to have in the system. Improving public confidence in the criminal justice system (CJS) is one of the government’s key aims, and this study sought to discover the extent to which informing the public about criminal justice issues could increase levels of confidence.

The study surveyed over 1000 people nationwide to test levels of knowledge about criminal justice, and just over 200 of this number participated in an experiment to test the impact of providing information. One hundred and nine people were given a 24-page information booklet, 37 people attended seminars and 74 people watched a video. The main results were as follows:

Knowledge of the CJS: Overall, public knowledge about crime, particularly
sentencing practice and crime trends, was found to be poor. The level of knowledge varied little across different demographic groups, but men, people of working age, people who had had some contact with the CJS and those with some educational qualifications tended to be slightly better informed. All three methods of providing information significantly increased levels of knowledge and understanding.

Sentencing and Confidence in the CJS: Although the respondents’ use of custody was lower than that given by the courts when sentencing a typical case, the provision of information generally did little to change sentencing preferences. There was a widespread belief in the effectiveness of prison in reducing crime, even after the provision of information. However, the experimental group were considerably less concerned about victimization after receiving information, and respondents were less likely to think sentencing was too lenient after receiving information. There was also an increased confidence in the ability of the CJS to bring offenders to justice.

This study suggests that the provision of information improves knowledge about and confidence in the CJS, and supports the view that there is no need to raise levels of punishment to increase public confidence in the system. It recommends an information marketing campaign which targets not only those in contact with the system (witnesses, victims, etc.) but also a proactive information campaign targeting the general public. The information booklet was seen to be the most cost-effective and accessible information source and, if it continues to be well received, will form part of a wider strategy to improve confidence in the CJS in England and Wales.


Hindpal Singh Bhui
Probation Officer, London
Locked in Locked out
Angela Neustatter
Calouste Gulbenkian Foundation, 2002; pp144; £8.95, pbk
ISBN 0-903319-88-8

The fact that we imprison a greater number of children and young people under the age of 21 than any other European country is the bleak fact which forms the impetus for this book. The wide ranging reforms of the youth justice system have created some notable successes in the context of a sluggish criminal justice system, too often concerned with insular internal performance targets rather than creating a safer community, and making a meaningful impact on people’s lives, whether offenders, victims or families. These successes, such as meeting the pledge on arrest to sentence for persistent young offenders, and genuinely collaborative work in local areas on prevention, have made a real difference. Nevertheless, convincing the courts and other stakeholders of the need to reserve imprisonment for the most serious cases is a project yet to be achieved.

Neustatter obtained funding to visit a number of young offender institutions and interview young people in custody, prison staff and others involved in the system. She presents her findings in an accessible and engaging way, weaving together data and the perspectives of young people in a style reminiscent of her journalistic work. The opening two chapters did leave me with a feeling of dissatisfaction, as short punchy paragraphs covered complex issues with a rather selective use of evidence, and a tendency to insert a succession of quotes from selected individuals in a manner you would experience in an article in a Sunday newspaper.

The limitations of the book are also evident in its focus solely on the 15 plus age group in young offender institutions. The opportunity to address the experiences of the younger age group in secure training centres and secure units was perhaps beyond the scope of this book, but would have provided an insight into these regimes, which has been lacking to date.

The book comes to life when it moves from explaining the system to its account of what it may feel like for a young person arriving in a young offender institution. The use of sub-headings such as ‘Fear’ and ‘Processing’ may not be to everyone’s
taste, but this is where the book gives hard messages in a way that is often buried in the convoluted prose of more academic research studies.

The chapter on remand is already out of date, as changes both positive (e.g. Bail ISSP, which allows ISSPs to be imposed as a condition of bail) and negative (e.g. Section 130, which allows for 12-16 year olds to be remanded to secure units if they persistently offend on bail, thus lowering the threshold at which children can be remanded to secure accommodation) have had a profound impact upon decision-making processes in court. Where Neustatter comes into her own is when she tackles racism, bullying and self-harm in young offender institutions. The wretchedness of the environment for anyone vulnerable, and the struggles that prison staff have in managing these young people, is evoked in these pages and they are required reading for new practitioners in this field.

Locked in Locked out ends with how prisons prepare young offenders for release. Neustatter rightly highlights the considerable changes for the 15-17 year old population, heralded by the youth justice reforms, which have provided resources to work intensively with the younger age group. This is not the case for 18-21 year olds unless they were sentenced before their 18th birthdays through a detention and training order. The White Paper ‘Justice for All’ has been influenced by the recent Social Exclusion Unit report on resettlement, and it is hoped that much needed provision will be put into place for this group.

Neustatter concludes by advocating an increased responsibility for all of us to challenge a society where non-violent young offenders have to go into custody to receive services such as education and rehabilitation. This is indefensible when even highly regarded custodial regimes such as Huntercombe have recently been subject to critical and worrying inspection reports. This book should be treated as a primer for practitioners new to this work, and an engaging encapsulation of the key issues for all those who work towards alternatives to imprisonment for children and young people.

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Barking & Dagenham Youth Offending Team

Reform and Punishment: The Future of Sentencing
Sue Rex and Michael Tonry (eds)
Willan Publishing, 2002; pp236; £30.00, hbk
ISBN 1-903240-94-8

This collection captures papers given at a Cropwood Conference in late 2001 prompted by but not pre-occupied with the Halliday Report, together with an appendix summarising the ensuing discussion. The editors assert that
such an ambitious and comprehensive review and set of proposals deserve close attention but this volume uses Halliday more as a springboard than as a sea chart with which to anticipate the detail of the voyage ahead. As selection boxes go, this provides a tempting variety with plenty to crunch on and hardly a soft centre to disappoint.

As is customary, the editors kick off and their introductory chapter provides a deft overview of Halliday, paying tribute to his ambitious breadth and impressive foundations, while wondering how the momentum can be maintained to capitalise upon the potential for beneficial change. Your reviewer then perversely turned to the final chapter, partly through regard for Andrew von Hirsch but also because it dissects Halliday’s central plank of heightened attention to criminal record (‘incarcerating the usual suspects’); von Hirsch elegantly exposes the flaws in such a shift in emphasis, being neither consistent with proportionality nor providing better opportunities for the reform of offenders. From there it was a logical one stop back up the line to Judge Peter Jones’ reflections on the Report’s implications for dealing practically with persistent offenders, from the vantage point of daily dilemmas in court. This is the most directly practice-based contribution, with some useful exemplar case descriptions, easily recognisable to a probation audience (though I’m still pursuing an incorrectly stated case citation).

In her solo riff, Sue Rex considers the role of communication in community penalties, reporting work-in-progress researching the perceptions and experiences of stakeholders, from victims to criminal justice system professionals and offenders, of community-based options in the context of broad penal aims. She identifies the disconnection ‘between what happens in court and on an order’ and concludes that we might better develop the substance of such penalties rather than invest hope in Halliday’s generic community punishment order.

Tasked to explore the uses of imprisonment, Alison Liebling summarises recent developments in making custody constructive and questions how these fit with Halliday’s proposals, particularly ‘custody-plus’ - perfect for sentencers but likely to be viewed sceptically by the prison service. For those already familiar with the contemporary face of custody, Maruna and LeBel’s contribution on ex-prisoner ‘re-entry’ (principled approaches to re-integration after imprisonment and a hot buzzword States-side, now appearing in a Home Office near you) will offer a fresher read, distinguishing the rhetoric from the practice in talk of ‘strengths-based’ activity.

Elsewhere, Rod Morgan offers a cool analysis of the place of the lay judiciary in the world as conceived by the Auld report, in light of his own recent research on the magistracy, and Michael Tonry considers the who, how and what in building a sentencing commission into our system, a ‘disarmingly under-stated’ but central proposal of Halliday, concluding that a strengthened approach to guidelines is not an unqualified blessing but worth attempting in rationalizing our heavy and disparity-laden lock-up rate. David Faulkner perhaps drew the short straw in focusing on race, ethnicity and religion, not because of the marginality of these issues but because Halliday had so little to say about them, leaving him to make some sensible suggestions that could promote a policy on diversity in sentencing.

It seemed appropriate to finish with the issue that David Blunkett has repeatedly
emphasised and which Halliday had centrally in mind, the need to address widespread public criticism of the sentencing process. Canadian criminologist Julian Roberts surveys research across Anglo-American jurisdictions to caution that public views on sentencing are generally unaffected by policy changes or the severity of sentences. He concludes that there is little reason to believe that increasing the importance of criminal record at the expense of the desert principle will achieve greater public confidence. The challenge is to devise other means by which to convey the realities of sentencing to a mass audience.

Nigel Stone
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University of East Anglia

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**No Truth No Justice**

Audrey Edwards

Waterside Press, 2002; pp143; £12, sbk
ISBN 1-872870-48-1

This book is emotional reading. Audrey Edwards gives us her account of the traumatic period preceding and following her son’s murder in Chelmsford prison at the hands of his cellmate. Her story brings to the fore the issues around the treatment of mentally disordered offenders within the criminal justice system, with particular emphases on the police, prison and mental health authorities. Edwards describes her struggle to uncover the true facts of her son’s death in the face of resistance by the public services. It is a story of, at best, poor communication, and at worst deliberate obstruction on the part of the authorities in explaining details and reasons why an evident failure in care occurred. This institutional concealment took the Edwards family eight years to break through to establish the truth, and only then through the European Court of Human Rights:

Victims are often portrayed as seeking vengeance by instituting court proceedings, whereas very often it is the only method by which they can get to the truth.

No Truth No Justice provides an object lesson in how not to treat families of people who die in prison, and thus the opportunity to make recommendations for the prevention of similar tragedies. In particular those, which could affect the treatment of mentally disordered offenders in prisons, which the author highlights, account for a large population of offenders currently serving prison sentences.

This book illustrates the determination of a family seeking answers to what were very straightforward questions, often to their own financial disadvantage. There are the obvious emotional costs, exacerbated by an inability to grieve the loss of
a son at the appropriate time. Primarily, it highlights the often insensitive treatment of the victims of these events and refers to other cases of a similar ilk, for example the case of Stephen Lawrence.

This is a useful piece of reading for professionals involved in the criminal justice system, especially mental health professionals. In helping us to acknowledge the failures and general lack of empathy caused by excessive bureaucracy and inflexible procedures, this book can help us to adapt them so that when things go wrong, the families of those affected can reach the truth quickly.

Susan Ashmore
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Kent

Young People Who Sexually Abuse: Building The Evidence Base For Your Practice

Martin C. Calder (ed)
Russell House Publishing, 2002; pp385;
£39.95, pbk
ISBN 1-898924-89-9

Though this book is a collection of chapters written by practitioners from diverse backgrounds, a unity of purpose and understanding can be discerned. The book balances analytical data with clear practice guidelines and benchmarks for best practice. It demystifies the work, which by its nature is very complex, and provides a clear framework for assessing, intervening and the management of risk. A strong theme is the importance of interventions, which seek to achieve systemic change. The treatment principles articulated here clearly emphasise the need for a holistic approach that targets specific problems and the young persons' wider social networks. The multi-systemic approach outlines the need to integrate care-givers and family members into the intervention process, and this is an approach which is consistently supported throughout the book.

Another theme is the importance of assessing attachment, social functioning and dual sexual abuse experiences and integrating these issues into a holistic intervention. The principles around good engagement are clearly identified and frameworks for reflective practice are suggested in a number of the chapters. The book also provides useful insights into working with South Asian adolescent sex offenders, the importance of understanding cultural differences and how they affect the supervisory process. On a supervisory level, issues around unconscious processes and the value system practitioners bring into this area of work are discussed. This provides a framework for looking at the issues around accreditation in this area of work. The book also looks at the impact this area of work has on
the practitioner and provokes thought around the implications for organizational service delivery and work allocation.

The collection highlights the need to have reflective practitioners who are aware of issues around counter transference and transference, and stresses the need to have access to good clinical supervision and effective support. However, the book also highlights the importance of both operational and strategic management systems to negotiate the tensions between the criminal justice and child protection processes. Despite coming from different theoretical perspectives, the contributors are beginning to lay the foundation for a research-based assessment framework.

This book provides us with a starting point in the area of female sex offenders, which is an under-researched area at present, and also highlights the need to do further research into what works with different ethnic groups.

Whilst the book is clear on frameworks, processes and procedures, the challenge for those in this field is to secure adequate resources and commitment from the various agencies; the findings outlined here should help to raise the profile of this area of work.

This book is aimed at both practitioners and strategic managers and provides research evidence to justify decisions around risk management and the deployment of resources. The book balances academic rigour with clear guidelines and pointers of best practice. A must for any worker in this field.

Helen Marangos
Social Worker
Barking & Dagenham Youth Offending Team

Working With Young People In Europe - What We Can Learn From Our Neighbours
Brigitte Volande & David Porteous (eds)
Russell House Publishing (2002); pp148;
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As the title suggests, this book ostensibly concerns working with young people in Europe. However, if the subtitle, ‘What we can learn from our neighbours?’ was a question, then the answer, on the basis of the information provided within this book, would have to be ‘not a lot’.

The editors outline in the introduction, that this publication is the product of collaborative work between five universities and four youth work organizations in France, Spain, the Netherlands and the United Kingdom. The book is divided into two distinct sections. Part one consists of an overview of the legislative frameworks
and social systems within each of the countries and their relation to young people. This section also contains cursory historical overviews, which are perhaps the most interesting part of the text. It is difficult to see, however, to whom the remainder of the material in this section would be of interest, despite the publisher’s assertions that this is an ‘... important new book’.

Details on the way in which social housing is organized in the Netherlands, general healthcare within France, or ‘Child Protection within the Autonomous Region of Valencia’, may be interesting to those with a fetish for such things, but, without any meaningful critical analysis, the text remains turgid and uninteresting.

The editors point out in the introduction that ‘Comparative social policy requires a sensitivity to the deeply ingrained cultural differences between countries on the one hand and an awareness of wider social and economic practices driving policy and practice on the other’ (p. vi). They cite Pitts (‘What can we learn in Europe?’ In Social Work in Europe 1.1, 1994), who guarded against the search for equivalence. This is all very well, but with very little such comparative analysis, it is difficult to see what can be learnt from this endeavour.

The second part of the book does attempt to provide something of this analysis and there are some elements of interest within this. However, once again this is limited. The contribution by John Pitts on ‘Recent Developments in Youth Crime and Youth Justice in England and Wales’ is written in a concise manner and provides a useful overview. However, an example of another contribution is that of Bernardo Perez on ‘The Condition of Youth in Spain’, in which he attributes the rise of the ‘punk culture’ to ‘... the failure of the education system at an individual level’ (p. 121). Such assertions would seem more at home in a 1970s news broadcast than in a book which seeks to document the current condition of youth in Europe. This raises another issue with the material in the text; the process of gathering the material took place over a couple of years and therefore some of it is already out of date.

Issues such as the collapse of the welfarist ideal 37 years into post war Europe and the rise of managerialism within social services in general are alluded to, but not explored. These in themselves would have made interesting topics for a book – unfortunately this book does not live up to its promise.

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Nigel Stone, Senior Lecturer in the School of Social Work, University of East Anglia, reviews recent appeal judgements and other judicial developments that inform sentencing and early release.

**Small-scale breach of trust**

Three recent appeal cases help to illuminate the location of the custody threshold in regard to this kind of economic crime.

A student aged 18 of previous good character working part-time as a supermarket check-out assistant persuaded two fellow employees to use the credit card details of a customer in transactions to obtain goods and cash back on his behalf, totalling £217. He made immediate, full admissions on arrest. A PSR reported that he had financial problems, having bought a car and mobile phone that he could not afford to run. His father had recently died and his relationship with his mother was strained so that he could not seek her help. He understood that another employee who had committed this kind of dishonesty had been dismissed but not prosecuted. The report proposed a community rehabilitation order. On committal for sentence a term of one month YOI detention was imposed.

On his application for judicial review of his sentence (an appeal being unavailable to him), the Administrative Court determined that custody was neither inevitable nor necessary in this instance. The sum in question was ‘small’ within the Barrick guidelines on sentencing for breach of trust. Such economic crime committed when in debt and isolated from his family did not satisfy the ‘so serious’ custody threshold, given the offender’s youth, absence of record and promising future. The case should have been dealt with by the magistrates by means of a community order, as proposed. SOGBESAN (R on the application of) v INNER LONDON CROWN COURT (2002, unreported).

Compare the case of a member of care staff in a MENCAP residential home whose duties included purchasing clothing for residents from their personal allowances. He took sums totalling £145 which he purported to spend on such items but which he kept, supplying old clothing of his own instead. The thefts came to light when another member of staff tried to exchange an item which a resident did not like. When interviewed, the offender claimed that he had provided residents with ‘a good bargain’. He pleaded not guilty. On his appeal against a term of nine
months’ imprisonment, it was submitted that his offences did not merit a custodial sentence, given that he had a good record in the post over several years, had repaid the money prior to trial, had resigned his job to take up dissimilar work earning less money and had only one previous conviction, for shop theft some 10 years ago. The PSR had identified his genuine remorse and regret and the judge had received several positive character references. The Appeal Court nevertheless considered that custody was the only type of sentence appropriate for these ‘mean’ offences in breach of trust but reduced the term to three months. R v PRESTBURY (2002, unreported).

Finally in this selection, compare the instance of a man of 27 without previous convictions who used customers’ credit card details, obtained through his employment, to hire ‘expensive’ cars, causing loss of nearly £12,000 to the car hire company. When caught he explained that he had resorted to deception through panic when unable to meet his own credit card payments. On his appeal against nine months’ imprisonment following guilty pleas to 17 deception offences, the Appeal Court agreed that such premeditated offending, ‘inspired by greed’, deserved immediate custody but, heeding the guidance in Kefford (‘In Court’, March 2002) to bear in mind prison overcrowding and the salutary impact of custody, a term of four months was substituted. [While this offending could not be considered ‘mean’ as in Prestbury, the amount here could not be classed as small and the offender lacked the mitigation available in Sogbesan (above).] R v LUSTED (2002, unreported).

Incredible and irregular

R v WILLIAMS (2002, unreported) provides a further illustration of the difficulties that can arise where a defendant pleads guilty but offers an account of their involvement which is improbable. The offender had been arrested in possession of 91 Ecstasy tablets, a hand-written list of names and £110, all evidence that could indicate a drug dealer. Having given an initial account of himself, he then changed his explanation and stuck to an account that he had been given the drugs to mind for the day, that he had written out the list under the direction of the same person and that he had been saving the money towards a deposit on a flat as he was homeless. (He was subsequently charged with a further offence of importing cannabis, having received a parcel of the drug posted from Spain, which he claimed he was paid to do on someone else’s behalf.) At trial the prosecution accepted the defendant’s basis of his pleas and the judge did not demur, ordering a PSR which repeated the defendant’s version of his involvement. When the case was listed for sentence, the judge said that his explanation made no sense and that he was not bound to accept it, inviting the defendant to give an explanation to the court. The defendant agreed to give evidence and repeated his story. When he was cross-examined by the prosecution and was challenged that the unnamed other person did not exist, the defence sought unsuccessfully to challenge this, given that his account had been previously been accepted by the Crown. The judge
found that the defendant’s account was ‘beyond belief’ and sentenced him on the basis that he had been fully involved in drugs supply.

On his appeal against a four year term for the Ecstasy offence (plus two years consecutive for the cannabis offence), the Court of Appeal noted that no Newton hearing had been ordered when pleas had been entered and the PSR ordered yet the judge had, in effect, conducted such a hearing at point of sentence. This was bound to give rise to a justified sense of grievance in the defendant when nothing had changed, save the judge’s mind. The proper course would have been for the judge to direct a full Newton hearing, rather than one in which the defendant was the only witness who had been put on the spot without opportunity to confer with his counsel and decide whether he was willing to give evidence. While there were undoubted improbabilities in his account, there had been no evidence to contradict it. Given these procedural irregularities, the Court considered that fairness required reduction of the Ecstasy term from four to three years, making five in total.

**Leniency to mother justified**

Another illustration of the Mills approach to use of custodial sentencing for women with children is provided by ATTORNEY-GENERAL’s REFERENCE No 12 of 2002 (2002, unreported), in this instance outside of the confines of economic crime. An offender disqualified from driving was stopped by police because of concern about her excessive speed and was found to be over the alcohol limit. She gave a false name and in consequence an innocent person was prosecuted. On her guilty plea to DWD, excess alcohol and perverting justice, she was fined and further banned. On the Crown’s referral to the Court of Appeal, arguing excessive leniency, the Court declined to interfere, despite the general principle that a short custodial sentence will usually follow in this kind of attempt to escape prosecution, given that she was sole carer for two children aged 14 and 16.

**Consecutive sentence justified?**

A man driving at excessive speed on a wet road while approximately two and a half times over the legal alcohol limit, after engaging in what was characterized as ‘a motorized pub crawl’, lost control of his vehicle and veered across the carriageway, eventually hitting an oncoming car. Six persons were killed, three of his passengers and three occupants of the other vehicle. Other people were injured. He had twice previously been convicted of excess alcohol and was disqualified from driving when he committed these fresh offences. Following trial on six counts of causing death by dangerous driving (maximum term 10 years) he was sentenced to five years on three counts and ten years consecutive on the remaining three, totalling 15 years, being also disqualified for life. On his appeal it was argued (a) that consecutive terms had not been appropriate, given that all the offences arose out of a single incident; (b) that it had not right to impose the maximum term, given that this implies that the crime is the most serious instance
imaginable of that kind; (c) that a life ban would impair his prospects of rehabilitation on his eventual release.

The Appeal Court agreed with the first point, stating that while the principle that consecutive sentences should not normally be imposed for offences arising out of the same incident was not absolute, exceptions tended to involve cases where different kinds of offences are concerned. Though recognizing the difficulties posed in instances of multiple road deaths, including the feelings of the relatives of those killed, the Court stated that ‘it seems wrong in principle to impose consecutive sentences in respect of each death arising from a single piece of dangerous driving’. Though the total sentence should take account of the number of deaths, it is very often a matter of chance whether there is one or several deaths in such circumstances. The main focus should be on the dangerousness of the offender’s driving. In that respect, this case featured most of the aggravating factors identified in the long-standing guideline case of Boswell (1984) and there was no significant mitigation, the offender’s good work record being of little weight. It was thus a case ‘at the very top of the range’ of seriousness – ‘It is difficult to imagine a worse case.’ A maximum term was thus justified. Accordingly, sentence was varied to ten years. As for disqualification, the Court noted the offender’s lack of recognition how impaired his driving ability had been and found this extremely disturbing. The judge had been justified in finding that he would be a danger to other road users indefinitely and this presented a rare instance where a life ban was justified to protect the public. R v NOBLE [2002] Crim LR 676.

The issue posed in Noble about the appropriate use of consecutive sentences is further illustrated by R v CARMICHAEL (2002, unreported). The offender aged 18 had been charged with robbery of another youth’s Walkman to which he pleaded not guilty, indicating that he would admit alternative counts of ABH assault and theft, asserting that he had opportunistically picked up and kept the Walkman after it had fallen to the ground during the assault. He received 18 months YOI for the assault and six months consecutive for the theft of the Walkman. His appeal on grounds that the two terms should have been concurrent was dismissed despite the fact that both concerned the same incident, ‘having regard to the separation between the two offences and the difference in kind’. The offender’s pleas had emphasized that distinction and the total term of two years was entirely justified.

**Truly exceptional**

Two recent Appeal Court judgements further illustrate the interpretation of ‘exceptional circumstances’ justifying suspension of imprisonment in circumstances of the offender’s ill-health. In R v SMITH [2002] 1 Cr App R(S) 250 the offender aged 34 had set fire to his canal boat home because he believed that his relationship with his partner was over. The fire damaged other boats moored nearby. Though he had contemplated suicide in the fire he escaped as the fire took hold. On his appeal against a three year term of imprisonment following guilty plea to simple arson he argued that in light of mitigation sentence should have been suspended.
A psychiatric report had identified that he had been under a great deal of personal stress and anguish at the time, associated with his experience of childhood abuse and his subsequent propensity to depression, agoraphobia, angry and impulsive thinking, self-harm and emotional distress. There was no evidence, however, that he presented a continuing danger. The Court of Appeal agreed that three years was excessive, in light of his impulsive recklessness rather than any intent to harm others or their property, his full co-operation with police and his remorse, and substituted a term of two years but determined that there were no exceptional circumstances that could begin to justify suspension.

In R v STEVENS (2002, unreported), a contrasting case featuring more clear-cut and patently severe physical illness, the offender had falsely claimed income support, housing benefit and council tax relief over an eight year period 1992–2000, maintaining that she was separated from her husband when he was living with her and contributing his income to the family. She had begun this deception because of worry about rent arrears but had received some £48,000. In addition to her long-standing but controlled diabetes and asthma, she had been diagnosed with severe angina in 1999 at age 51 and this remained poorly controlled with a poor prognosis. Her GP had reported that a custodial sentence could lead to a further heart attack. She nevertheless received an 18 month term of immediate imprisonment. On her appeal that her circumstances were exceptional, given her extreme ill-health, the potentially life-threatening effect of custody and the impact upon her 10 year old daughter, and the report from her prison that her angina had worsened since her admission, the Appeal Court agreed that the exceptionality criterion was satisfied and suspended the term for two years.

Lenience for burglary surprising but not perverse

Domestic burglary does not inevitably attract a custodial sentence, but a very light sentence by magistrates can attract a prosecution response, not by Attorney-General’s Reference which is not available in this context but by seeking judicial review, as illustrated by DPP v SALISBURY JUSTICES (October 2002, unreported).

A man aged 25 burgled a home at night while the 86 year old woman occupier was asleep, entering through an open bedroom window and stealing her handbag and contents. He had a long list of previous convictions, including 14 for domestic burglary, on the last occasion receiving a term of five years from which he was released on parole 30 months prior to the new offence. Magistrates not only accepted jurisdiction but, on his guilty plea, sentenced him to a £200 compensation order. The Prosecution applied for judicial review, arguing that this order was so extreme as to be outside the limit of the justices’ discretion.

The Divisional Court agreed that the disposal was very surprising and close to the limits of discretion but noted the special circumstances of the case. The offender had voluntarily reported the crime the following morning, confessing that he had been really drunk the previous night and indicating his wish to repay the value, later returning to the police station to hand over £90. This was the first occasion
on which he had come to police attention since his release from prison and comple-
tion of licence around 10 months before the present offence. He was now in a
settled relationship with his partner and child and was in full-time employment, in
contrast to his circumstances prior to his five year sentence.

Though indicating that it would have expected the magistrates to consider some
form of community penalty, the Divisional Court considered that, given the very
special factors of the case, especially that ‘a young man who has previously been
in substantial trouble has shown every indication of having put that former behav-
ior behind him’, the lower court had been entitled to ask itself whether or not a
supportive community sentence is the only alternative to a custodial sentence.
Though few justices might come to the same conclusion, their decision could not
be described as perverse. The application was thus dismissed.

**Breach of SOO: ‘Shot across bows’**

A man who had previously been convicted of indecent assault of a girl under 14
while attending a fete for which he had provided equipment, attracting a three
year probation order, was made subject of a sex offender order under CDA 1998
s2 on application of the police as his period of probation was nearing completion.
He ran a part-time business providing equipment such as bouncy castles for
children’s parties and the order was designed to address the risk this activity posed.
A proviso was made that he be permitted only to take bookings and deal with the
administration of the business. Later, the order was varied to enable him to attend
functions to set up and dismantle equipment but not within an hour of the start or
finish of any function, so that he would not come into contact with any child using
the equipment. Three weeks after the variation he attended parties, remaining
throughout, and was seen assisting children to access the inflatables. On prose-
cution for six breaches of the order, he was sentenced to two years imprisonment.
On his appeal, the Appeal Court noted his flagrant breach and considered custody
inevitable. ‘He had to have a shot fired firmly across his bows’ but 12 months
would have sufficed and that term was substituted. R v WILCOX (May 2002,
unreported).

**Racially aggravated violence**

Two recent appeals further illustrate the application of the statutory provisions on
racist conduct as an aggravating factor in determining sentence.

In R v BEGLIN (May 2002, unreported) a drunken man aged 28 had challenged,
attacked and abused the victim while he was shopping with his family in a super-
market, calling him a ‘Paki bastard’ as he was being led away by shop staff who
had intervened. He had previous convictions for affray and common assault in the
preceding five years and had been made subject to a CRO for ABH eight days
prior to this offence of racially aggravated common assault. On his appeal against
12 months imprisonment, the Court of Appeal noted that the judge had neglected to follow the guidance in Kelly and Donnelly (2001) that the sentencer should first consider the appropriate term for the offence if it was not racially aggravated and then assess what should be added to reflect the racial aggravation. Given the offender’s guilty plea, the maximum he would have received for standard common assault would have been four months, notwithstanding the non-racial aggravation of re-offending so soon after being given a chance on community rehabilitation. Though any offence where there is racial aggravation is serious, not only because of the impact on the victim but on the public who ‘rightly should be outraged’, a further eight months for the racial element here was too long. The offender clearly had a drink problem and ‘drink led him, wholly unjustifiably, to shout the remarks he did’. It was not clear here whether the motive was racial and the remark had not accompanied the violence. The appropriate addition was four months.

In R v NORDINE (October 2002, unreported) the offender had become racially abusive to a late night bus conductor who had requested his fare and asked him not to smoke. When asked to leave the bus he had attacked the conductor and also assaulted a woman passenger who tried to intervene. Eight days before this incident he had thrown a glass bottle at a police officer who had attended a disturbance at a hotel, causing a split lip and cut mouth. On his appeal against two years for ABH to the police officer and three years consecutive for racially aggravated ABH to the conductor, both following guilty plea, he claimed that the judge had failed to specify the proportion of the three years attributable to the racial aggravation element.

The Appeal Court clarified that while it is helpful for sentencers to identify what length of sentence has been added to reflect that factor, ‘it cannot be a ground of appeal that the judge failed to conduct such an analysis’. The Court therefore asked itself whether the overall sentence of three years was proper or manifestly excessive. Given that the victim was a public servant trying to maintain order on a bus late at night and the offender’s ‘deplorable conduct’ had created a ‘terrifying’ situation, three years was fully justified, consecutive to the two year term.

Comment: Though the statutory provisions governing racially aggravated offending do not specify that the sentencer should make explicit the length that is added on top of what would have been imposed for the same offence without that aggravating feature, the Court in Beglin stated that the judge had fallen into error in not following the Kelly and Donnelly approach to determining the total sentence. Yet in Nordine it seemed to take a more tolerant view of the judge’s neglect even to conduct the recommended analysis. Further, it did not seek to make its own calculation. No doubt the arithmetic would be easier to apply to the judge’s decision in Nordine than proved the case in Beglin, given that the maximum for ‘standard’ ABH following guilty plea would be around 40 months for a case at the most serious end of the scale. It is nevertheless desirable that the basis for such sentencing exercises should be transparent and it is regrettable that the Court did not lead by example by following its own guidelines in this instance.
Age 18 between offence & conviction

A youth aged 17 participated in mass disorder (in Bradford, July 2001), being present at the scene for several hours. Though he was an onlooker for most of the time, he was shown on video to join in throwing stones at police on six or seven occasions. On pleading guilty to riot, having now attained age 18, he was sentenced to 54 months YOI. He appealed on the basis that he should not have received a sentence that was heavier than could have been imposed if passed on the date when the offence was committed, citing ECHR Article 7 which states: ‘... Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.’ He thus maintained that he should have been subject to a maximum term of two years, the longest sentence of detention and training that could have been passed on a 17 year old (by a youth court - riot not being an offence that can be committed to Crown Court under the ‘grave crime’ provisions of PCC(S)A 2000 s91). The Prosecution argued in response that ‘applicable’ in Article 7 means ‘applicable to the offence’, not ‘applicable to the offence and the offender’. As the penalty for riot had not changed between offence date and sentence, Article 7 was not a relevant consideration.

In a wide-ranging judgement examining the case law relating to cases where there is a gap between offence commission in youth and later conviction (not uncommon in respect of intra-familial sexual offending), the Court of Appeal did not need to offer a view on the ‘interesting and difficult question’ of the interpretation and impact of Article 7. It concluded that the sentence passed was manifestly excessive, given the offender’s previous good character, his level of participation, his full admissions after handing himself in to the police and his remorse, and should be substituted by one of 18 months, well within the maximum term at age 17. The Court did not consider that it should give an opinion on Article 7 that would not be relevant to its judgement and therefore would not be of authoritative weight.

Invited to state that, Article 7 apart, there is a clear legal rule that a court should not pass a sentence which is in substance heavier than the sentence that could lawfully have been imposed at date of offence, the Court declined to elevate existing guidance into such an absolute principle. However, it reiterated the approach to be adopted in such instances: ‘The starting point is the sentence that the defendant would have been likely to receive if he had been sentenced at the date of the commission of the offence.’ Though this is a ‘powerful factor’, this is not the end of the matter but ‘there have to be good reasons for departing from the starting point’. However, by the date of conviction, circumstances may have changed significantly - ‘The offender may now be revealed as a dangerous criminal whereas at the date of the offence that was not so. By the date of conviction the tariff for the offence may have increased.’ In an appropriate case a longer sentence may be fully justified. However, ‘it will rarely be necessary even to consider a sentence that is more severe than the maximum that it would have jurisdiction to pass at the date of offence’. And where the date of conviction, as in this case, is only a few months after date of offence it will only rarely be appropriate to pass a longer sentence than that which would have been passed at the date of offence. R v GHAFOOR [2002] Crim LR 739.
Sentencing solo fathers

As noted in ‘In Court’ (March 2002; see also below) the Court of Appeal in Mills has identified that sentencers should pay particular heed to the impact of custody on the dependent children when dealing with mothers with sole day-to-day care of them. It would follow that the same considerations should apply in respect of fathers with the same responsibilities. R v JARETT (2002, unreported) provided the Court with such an instance, albeit not involving economic crime. After revving his engine aggressively, the offender aged 25 had accelerated away from a nightclub, in an area where large numbers of pedestrians were gathered. He lost control of his car, a BMW coupé described as ‘high powered and highly tuned’, so that the rear end spun round and he collided with a kerbside barrier. He was found to have 10 micrograms of alcohol above the legal breath limit. He was of previous good character save for a conviction for speeding. Following his guilty plea to dangerous driving and excess alcohol he was sentenced to six months imprisonment, being banned for two years and ordered to take an extended driving test.

On his appeal the Court agreed that this instance of dangerous driving, involving showing off and the clear risk that pedestrians could have been killed or injured, clearly crossed the ‘so serious’ threshold. It noted, however, that two months before this incident the mother of his two children aged three and four had died suddenly, having been their full-time carer since the couple had separated. He had given up his employment to assume care of them and was living on benefit income. ‘It was clearly a factor to balance against the circumstances of the driving that it was in the public interest that his children should be deprived of his care for as short a time as possible.’ A ‘truly short sentence’ was clearly indicated and a term of two months was substituted.

Internet child pornography

R v HUGHES (2002, unreported) provides a further instance of the Appeal Court’s stance towards offenders who download indecent images of children from the Internet. The offender aged 31 and of previous good character had been in possession of numerous still and moving images featuring children as young as around four performing oral sex on adults and girls of around ten having penetrative sex. He had borderline learning difficulties and poor verbal skills but ‘knew what he was doing’. His claim that he had no interest in child pornography but had been under threat from another man was not believed. On his appeal against six months’ imprisonment following guilty plea the Court noted that it is well recognized that consumers have indirect responsibility for child corruption but six months for an ‘inadequate’ offender without previous convictions, admitting his ‘squalid’ offences at the earliest opportunity was not in the interests of society and two months was substituted.
**Drug Treatment Services Directory**

‘DrugScope’, one of the UK’s leading centres of expertise on drugs, has published an up-to-date and comprehensive directory of drug treatment services. It is designed for use by drug users and anyone who works with them, including probation, prison and police staff, who need to find appropriate services in their areas. It includes prison contacts, national and regional services and lists other related organizations from which drug users may need support. The new directory is also available online at www.drugscope.org.uk/drugbaseii/home.asp and will be regularly updated. Organizations needing regular access to the information can agree a licensing contract with DrugScope; contact Helen Wilkinson for details. E-mail: wilkinsonh@drugscope.org.uk or call 020 7922 8627. Or order direct from Marston Book Services for £20. E-mail: direct.orders@marston.co.uk Tel: 01235 465500 (ask for direct sales).

**Irish Community in Britain Archive**

The ICBA contains an extensive collection of online full-text documents related specifically to the general welfare concerns of the diverse Irish communities now living in Britain. The archive contains a substantial collection of documents and research material produced in recent years. It concentrates on Irish community groups and includes the following categories: women, young people, older people, travellers, housing and homelessness, health (including HIV/AIDS, drugs, alcoholism, mental health, etc.), social welfare provision, education, training, employment, criminal justice and human rights issues. The archive will begin major redevelopment and expansion early in the New Year and can be accessed at http://www.smuc.ac.uk/icba/index.html

**Diversity Handbook**

The Diversity Training Handbook: A Practical Guide to Understanding and Changing Attitudes examines a range of topics including homophobia, sexism, racism, disability, stereotyping and prejudice. It provides examples of various
training techniques such as role play, psychodrama, video and small group work, and discusses ways of overcoming hostile attitudes during training from people who may not want to explore such issues. The handbook includes questionnaires on ‘diversity health checks’ and ‘eliminating institutional discrimination and racism’. Written by Phil Clements and John Jones, the handbook is available for £18.99 from the publishers, Kogan Page, 120 Pentonville Road, London N1 9JN. Tel: 01903 828800. E-mail: orders@lbsltd.co.uk

**Family Directory**

The Family Research Directory brings together a comprehensive listing of institutions, researchers and their current or recently published work in the field. It includes sections by project, by researcher and by research centre, with a separate detailed keyword index. Available for £35 from the National Family and Parenting Institute, Arbons House, Water Street, Lavenham, Sudbury, Suffolk CO10 9RN. Tel: 020 7424 3460.

**Asian Counselling Services**

Asian people are generally likely to have poor access to mental health services. This Department of Health directory has been written as a complete resource for Asians looking for help in their area. It details information on how to obtain counselling, the languages covered by local services, and other information that can help identify the most appropriate available assistance. Counselling Services for Asian People: A Directory is available for £10 through MIND Publications, 15–19 Broadway, Stratford, London E15 4BQ. E-mail: publications@mind.org.uk Tel: 020 8221 9666.

**Prison Volunteer Pack**

The Prison Service has produced a pack intended to provide a basic introduction for staff and volunteers from voluntary and community groups who are new to working in prison establishments. The pack contains an overview of the workings of the prison system and a booklet which looks at why links should be made with community-based agencies generally and black and minority ethnic groups specifically. The pack can be obtained from Anne Parfitt, Prisoner Administration Group, Prison Service Headquarters, Room 703, Cleland House, London SW1P 4LN. Tel: 020 7217 2739.
Dear Editor,

In the wake of some high profile cases in which life sentence prisoners have – after many years – proved their innocence, there have been a number of highly inaccurate articles in the press claiming that if lifers do not admit guilt for the offences of which they have been convicted, they will remain in prison literally for life. I would like to set the record straight and offer some clarification for prisoners, prison and probation staff and others interested in this issue.

Lifers who do not admit their guilt are not in consequence kept in prison literally for life. Indeed we have the figures to demonstrate this. A survey of cases dealt with in one of the two main caseworking commands in the Lifer Unit at Prison Service Headquarters, showed that 9 out of the 48 lifers who were released between January 2001 and January 2002 continued, at release, to maintain they were innocent of the offence for which their life sentence had been imposed.

Despite this, no-one would pretend that there are not difficulties involved in managing the cases of those who do not accept that they were rightly convicted. Life sentence planning and the parole process are based on risk assessment and risk reduction. Once the tariff (that part of the life sentence prescribed for punishment and retribution) has been served, the question of progress towards release hinges on a prisoner demonstrating that he or she is safe to release. Clearly, it is not easy to set the risk reduction process in train where prisoners do not accept that they committed the offence, or that the risk factors identified as connected with the offence apply. Nevertheless, this does not make participation in the sentence planning and parole processes impossible.

There is a further fundamental point to stress: for any prison service working, as we do, under strict adherence to the rule of law, it is right that we assume that those sentenced by the courts have been rightly convicted. It is not for prison staff to question a conviction or sentence and double-guess a court of law. Our duty is to do what we can to ensure that such offences are not committed again. If an individual working in the prison service uncovers evidence that suggests a prisoner is innocent then it is important that that evidence is placed before the relevant authorities. It is for the courts and the independent Criminal Cases
Review Commission to review alleged miscarriages of justice, not the prison service.

So what can the prison service do to help a person who maintains their innocence through a life sentence? Obviously this makes it more difficult to form a proper assessment of the factors contributing to the prisoner’s offending, the level of risk and the extent to which it has been reduced during sentence. This is particularly the case as far as accredited offending behaviour programmes are concerned. For example, the Sex Offender Treatment Programme (SOTP) and Controlling Anger and Learning to Manage It (CALM), to a large extent depend on offenders being willing to discuss their offences. They are therefore not usually made available to those individuals who do not accept their guilt. There is also the problem that many ‘deniers’ refuse to undertake any offending behaviour work whether it involves discussing the index offence or not.

However, the two cognitive skills programmes, Enhanced Thinking Skills and Reasoning & Rehabilitation, and work on addressing drug and alcohol problems do not require offenders to talk about their offences. So prisoners who do not accept their guilt but are willing to take part in this work should be able to do so without difficulty. Assessment of the impact of their attendance on offending behaviour courses is measured through the use of psychometric tests. Such tests are carried out before and after the courses. If the tests show that the offender still possesses cognitive deficits, which can be shown to be linked to offending, then a clinical judgment can be made about the extent to which they are at risk of re-offending.

Although denial undoubtedly makes it harder to conduct a risk assessment, it should nevertheless still be possible to make one. This can be done, for example, by using police reports about the offence in combination with social history information, the prisoner’s performance in interview and his behaviour during sentence. By taking all this information into account, it should be possible to form a reasonable assessment of risk. The assessment of the prisoner’s current level of risk must be the pre-eminent factor in determining whether s/he is ready to progress to lower security conditions or be released. Denial of guilt is only one element to be taken into account in reaching that decision.

International research and our own experience indicates that it is not at all uncommon for offenders, and especially sex offenders, at some point to deny the offences for which they have been convicted. It is also true that a number of these individuals, for a variety of reasons, subsequently admit the offence. Although the SOTP requires participants to discuss the offence for which they were convicted or the sexual elements of their offence, it can be undertaken by those who admit partial guilt. For example, those who concede that an incident took place but attempt to minimise their culpability.

However, inevitably with many deniers the emphasis has to be on working on the offending behaviour identified in any pre-convictions and/or other identified problem behaviour, such as alcohol, drugs, anger, relationships, poor social skills. For instance, although participants on the CALM programme are not expected to talk about their offending during the programme sessions they must do so during the assessment process. With the Cognitive Self Change Programme (CSCP), it is
within the treatment manager’s discretion as to whether a denier should take part, based on their discussions with the individual.

Of course risk assessment does not just depend on successful completion of offending behaviour programmes. There may, for example, be cases in which the nature of the index offence was such that the circumstances leading to it are very unlikely to be repeated. We have to be on guard against constantly looking for ‘progress’ which for many who continue to maintain their innocence throughout their sentence is inherently unlikely. When completing reports on lifers the question prison staff should be asking is ‘what is the risk currently presented by the prisoner?’ not ‘what has the prisoner done since the last reports to reduce risk?’ – although the latter will often provide a guide to the former. In all risk assessments we need to weigh positive factors, such as stable family support, employability, accommodation, lack of alcohol problems, etc., against the negative factors which might, for example, include the denial itself, poor and aggressive relationships in prison, difficult custodial behaviour, and refusal to participate in programmes such as ETS which do not require the acceptance of guilt.

The Prison Service Lifer Unit has issued detailed guidance along these lines to all staff who manage lifers in prison (it is set out in the Lifer Manual). The guidance emphasises that denial of guilt should not of itself prevent progress and ultimately release. Many lifers will be released after they have served the tariff if the parole board, and ministers in the cases of those convicted of murder, are satisfied that risk has reduced to a level where it is safe for them to live in the community again.

The key issue affecting a lifer’s progress and ultimate release is whether their level of risk, irrespective of their denial, has reduced. Similarly, the Parole Board’s first duty is to assess the risk that a life sentence prisoner may commit further offences if he is released on life licence. For that reason it is unlawful for the Board to refuse to consider the question of release solely on the ground that the prisoner continues to deny guilt.

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