

TRANSFORMING REHABILITATION, A FISCAL MOTIVATED APPROACH TO OFFENDER MANAGEMENT

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Abstract

The probation service is about to undergo major changes in its structure as the Government drives through its proposals outlined in Transforming Rehabilitation. The question is whether this will be an improvement in how offenders are supervised and supported? In addition what will be the impact on the protection of the public? This paper outlines a number of concerns that are already affecting probation staff including the issue of risk.

Keywords

Target setting; risk; Payment by Results; what works.

Introduction

The probation service has been at the crossroads many times in its history but currently it is heading for its greatest challenge since its inception. The recommendations contained in 'Transforming Rehabilitation' will change the justice system. The question that has to be asked is whether it will be for the better? Recently thirteen Labour Police and Crime Commissioners have written to Chris Grayling, Secretary of State, to express their concerns about the planned changes and the potential impact for public safety. They stated that Probation Trusts know and understand their local areas and have constructive working relationships with agencies such as the police and private and voluntary sector groups. They were concerned with the fragmentation of services and how risk of reoffending can oscillate over time. The sheer speed of the proposed changes also alarmed them and they accused the Secretary of State of hiding behind the 2007 Offender Management Act (discussed later in the article) rather than seeking Parliamentary approval (see Russellwebster.com for details of responses to Transforming Rehabilitation). NAPO, the probation officers' union has complained that Transforming Rehabilitation conflates areas that probation is responsible for with those for which it is not, for example supervising short-term prisoners on release, and then to lay blame on it for not doing the work very well. One response would be that this is a somewhat disingenuous and cynical, constructing of a straw man for destruction. Undoubtedly, there is distinct merit in working with those sentenced to less than 12 months, this is a view shared by current probation staff and service users alike, as is the proposal to engage ex-service users and mentors to provide an individualised approach to sentence planning. But should this be a rationale for the dismantling of the probation service?

Debbie Ryan of G4S sees the Transforming Rehabilitation agenda as a:

Once in a lifetime opportunity to look at probation with a blank sheet of paper. It is a chance to put service users at the heart of the new service models and if the new providers get it right we will see less people in prison and more money in rehabilitation. (Cited in Webster, 2013a)

We would question the notion of starting with a blank piece of paper when we have substantial experience of the evolution of effective ways of working with offenders, from low to high risk. Should we be jettisoning all this for working on a blank piece of paper, or even the back of an envelope, to start again? The irony is that the National Offender Management Service is training probation services across the world in a model we seek to discard. We have to question how such 'innovation' will be paid for, given that the current plans are influenced by the current government's austerity measures and a significant part of the argument for reform being one of improving value for money. This paper will consider the evidence and the politics for the proposed changes.

The Probation Service in England and Wales has changed remarkably in its hundred year history from a philanthropic, untrained base to what it is today, an organisation perhaps overly target focused (not the fault of the service) but with a workforce that is trained to identify and manage risk (Goodman, 2012). It has withstood previous attempts to deprofessionalise it, notably Michael Howard in 1995 withdrawing the requirement for

staff to be trained for the work, which was overturned by New Labour when they were returned to power in 1997. It was new Labour that produced the Offender Management Act 2007 that introduced more competition into the probation service but it did not go as far as the current proposals. Sadiq Khan, Labour's Shadow Justice Secretary, has complained that experienced probation staff have not been treated with respect, with Labour voting against the new Bill which has been described by them as an enormous gamble (Khan, 2013).

The current government's plans appear to be, as some have suggested, a dismantling and privatisation of the service. It could be argued that the Probation Service as it existed needed to undergo a metamorphosis, having spent the majority of the past 15 years being driven by unrealistic and irrelevant targets imposed by the previous Labour government. Indeed, Burke (2011a) claimed that the publication of the Green Paper: 'Breaking the Cycle: Effective Rehabilitation and Sentencing of Offenders', (Ministry of Justice: 2010) was a bold and ambitious move to reform a system that had become overly centralised and bureaucratic. This system had witnessed the prison population grow, rather than tackle the root causes of reoffending. Following the departure of the then Justice Minister Ken Clarke, the resulting legislation (Legal Aid, Sentencing and Punishment of Offenders Act, 2012) has taken a very different tone and sees a return to more traditional conservative values (Burke, 2011b)

Under this legislation the Government plans to restructure the Probation Service into a National Service responsible for the supervision of all those assessed as high and very high risk of harm, whilst private and third sector companies will bid to provide the supervision of medium and low risk offenders and will be subject to a Payment by Results (PbR) approach to their work. Within this article we will explore the reasoning behind the government's new proposals, we will look at the possible implications for the assessment and management of risk and draw upon the views and concerns of current staff taken from the authors informal conversations with practicing probation staff, at a range of levels, in conjunction with our own observations resulting from engagement with people on the social network site, twitter.

Why Transforming Rehabilitation?

Developments in probation practice over the past decade or more have led to a number of wholesale changes in the way in which Probation Officers do their work (Bracken, 2012). This includes an increased reliance on risk assessment and control measures, increased inflexibility in reporting to probation offices as well as the delivery of offending behavioural programmes designed to address criminogenic needs (as if these could be split off from other aspects or characteristics of the offender). Much of this has been influenced by a need to be seen as being effective in practice and to meet government set targets. It is arguable that in doing so probation practice has become too focused on negating the deficits of the offender at the expense of the socially inclusive factors that impact on an individual's ability to desist from criminality. It renders the offender as a passive recipient of the intervention. Indeed, research carried out by the Social Inclusion Unit in 2002 (cited, Dobson, 2004) highlighted nine key areas that most influence recidivism rates. It is important to note that whilst all of these areas are included in the standardised risk assessment tool used by the probation service it is arguable that current

probation practice is ill-equipped to adequately address them. Undoubtedly, probation cannot be expected to resolve deep rooted social problems (Jordan, 2003) such as unemployment or lack of social housing, but for the individuals being supervised these are real factors that need to be addressed if they are to have a chance of desisting from crime. In the past probation nurtured relationships with hostels, housing associations and even ran projects to get offenders back into work. These projects were scrapped as the work became more and more focused on supervision and adherence to ever more restrictive National Standards. Charities and private companies are not likely to fare any better on new tightly budgeted interventions. Being met at the prison gate by an old lag is not really addressing the problem either, mentoring can be helpful as long as it is not too restrictive and hectoring.

Grayling (2013) stated: “There is a wealth of expertise in the public, private and voluntary sector- we need to unlock”. We would not argue about the expertise of the third sector and the need to work with it. However this should not be at the expense of dispensing with probation expertise in recognising and harnessing this good work in collaboration rather than competition. Realistically small charities will not be in a position to compete for the new contracts but will be brought in to provide a respectable veneer by the large private companies who will drive down costs to provide the cheapest possible prices. Will this be worth having? We have already seen how this has resulted in staff being made redundant in supervising community punishments negating the potential to encourage desistance (Sofos, 2013); rather, ticking boxes for minimal interventions is a somewhat short-sighted way of intervening with offenders.

The above is not to deny that there are agencies/organisations that exist in the charitable sector that hold individual expertise in areas that would assist individuals on their desistance journey and the desire to draw upon this expertise is an admirable one. However, to its credit the probation service has a long history of effective partnership working and many probation offices have close links with specialist charities and organisations that are mandated to assist the service users with specific needs such as employment, education or drugs and alcohol. This frees the probation officer to focus on risk assessment and management concerns. Nevertheless, the claims made by Justice Secretary Chris Grayling are that there remains a consistently high rate of reoffending that the current system clearly cannot address. His posturing is ‘evidence-lite’, unlike the impressive way in which offending rates have been falling for those supervised by probation.

The predicted rate takes into consideration the profile of offenders in the current cohort. Over recent years, the probation caseload has been increasingly made up of offenders with a high risk of reoffending. This is one of the reasons that comparing historical reoffending rates can be misleading. Therefore measuring actual reoffending against predicted reoffending provides a fair measure of performance. On this measure, the reoffending rate of those supervised by the probation service nationally was 9.18% against a predicted 9.67% – a reduction of 5.05% – more than enough to secure a Payment by Results bonus under the proposed Transforming Rehabilitation contracts. (Webster, 2013b)

In many ways the organisations that are likely to take on work hitherto undertaken by the probation service have not faced intensive scrutiny. St Giles Trust undertake much useful work in prison resettlement. It is interesting to note the personal comments from an academic, Alex Sutherland, from the Cambridge Institute of Criminology on the Women's Information and Resettlement for Ex-offenders (WIRE) project from April 2010 to early 2012.

Perhaps the biggest obstacle is that the WIRE project appears to lack a clear idea about what it is trying to achieve...As well as impacting on the operation of the project, this has implications for important administrative aspects as well. Without knowing the answers to questions such as 'What is the WIRE trying to achieve?', 'For whom?', 'How?' and 'Over what time-scale?', it is not possible to collect coherent data on the project and within what time-frame these should be achieved. This is not meant to undermine the work being done, but that work and the enormous effort accompanying it might be better 'spent' on a more focused approach (Sutherland, 2012: 17).

Whilst there have undoubtedly been some high profile failings in probation practice in recent years the evidence suggests that the service has not only improved to meet the targets set but has excelled to become the first ever public sector organisation to be awarded the British Quality Foundations 'Gold Medal for Excellence'. Indeed, Michael Teague (2013) argues that there is copious evidence that confirms the effectiveness of probation practice and that the statistics published are being used to justify a policy already decided upon rather than being used to formulate said policy. This assertion appears to be supported by the use of the recidivism rates of offenders sentenced to under 12 months to justify probation reforms; this cohort that does historically have a high rate of reoffending but is not currently supervised by the probation service. It is clear that those sentenced to less than 12 months custody represent a group known for their statistically high rate of reoffending although we could argue that this serves more to promote an abolition of such sentences than reforming of the probation service who on a comparable note demonstrate a much higher success rate. We would add that proposals to test those released from prison on short sentences for both class A and class B drugs is likely to lead to number of offenders breaching their licences, perversely increasing the prison population and not lowering it.

Payment by Results

The introduction of a method of payment by results is seen as a way of not only driving up standards but also reducing the cost to the public purse yet it is largely unproven in its effectiveness and appears to be a twist on the previously failed attempts to introduce contestability into the criminal justice system (Burke, 2011a) which supports an argument that competition will drive up standards suggesting that a flaw with the current system lacks any real incentive to affect change and is too focused on risk of harm. This a viewpoint shared by some service users:

A privately owned service...is far more performance based it is quality and not quantity that determines a higher level of professionalism, performance means being judged on success which includes reducing reoffending (Anon, Inside Times, 2012).

Over the last years they have not had our interests at heart, now it is being paid by performance there is a big difference...it's all about them making money (User voice, 2013).

It may well be that linking financial gain to the effective delivery of services does have a positive effect on the delivery of those services. However, this will greatly depend on those commissioned to do so. It has been announced that there has been a significant interest from more than 700 companies from across the world, it is also confirmed that despite the ongoing investigation of their handling of other public service contracts companies such as G4S and Serco will also be allowed to bid (BBC, 2013) It is concerning that many of those most skilled to deliver the required services such as charities for example do not have the funds to compete (Third sector, 2012) which is likely to mean that large private organisations are likely to be the primary bidders who have no experience of working with offenders which raises significant concerns and has been met with some distrust from service user groups (User Voice, 2013). The government plans envisage that current staff will transfer to the new providers and thus will negate any lack of experience the new companies may have however, this in itself has raised significant concerns within the probation staff groups. Whilst most staff members have expressed a moral distaste for the plans for what has been quoted by some as 'justice for profit' it is apparent from discussions on twitter, as well as from anecdotal conversation with probation staff, that the overriding concerns in fiscal terms relate to the individual terms and conditions staff may experience under the employment of the new Community Rehabilitations Companies (CRCs).

Expect salary will be harmonised, with third sector pay, can't see salary protection happening (@offenderex: 2013).

They are about profit, the only way to save money in probation is staff cost, that means less pay, less staff and higher caseloads (Probation Officer: N.H, Private Conversation: 2013).

Staff concerns in this regards may well be unfounded and there is clear indication that terms and conditions will be maintained at least until the point of share sale. That said, evidence taken from the work programme suggests that such a course of action is seen as a viable option even by third sector providers. St Giles Trust, a charity that works with ex-offenders, for example underestimated the costs and time scales involved in delivering a programme to get young people back into work and had to cut staff numbers in order to reduce costs. Evan Jones, head of community services at St Giles Trust says it has been stung by PbR. Speaking at the *Third Sector* Payment by Results workshop this month, he said St Giles had bid successfully for a programme for getting young people into work, but made mistakes when tendering. "We underestimated the time it took to get young people

into work," he said. "As a result, no one won - we had to reduce staff to cut our costs and the project didn't produce the expected results." (Third Sector, 2013).

Another side effect of PbR was that staff, conscious of meeting targets, tended to rush meetings with service users and felt pressured to try and meet unrealistic outcomes (Third Sector, 2012). One practitioner in a drug rehabilitation agency commented that it was not possible to deal honestly with the PbR contract that required the outcome of contact with clients to be abstinent. This, they commented, was simply not possible in the time allotted to work with users. As a consequence, either heavy users would be avoided, they would not achieve the target and thus not get paid under PbR, or they were economical with the truth. This might be seen as an inconvenient result, but worrying when contracts for rehabilitating offenders is linked to PbR. We have seen a worrying number of cases where large private contractors, the very ones that are likely to win these contracts have been economical with the truth in such matters as the numbers of offenders who are being tagged. Indeed Justice Ministers have rejected offers from G4S to repay £24 million and makes the final overcharging bill by G4S and Serco likely to be in excess of £30 million (Travis, 2013). Death and custody does not seem an impediment to claiming that they are safely tagged and the public protected.

What constitutes a result in the PbR model is yet to be clarified, yet the target is clear: the Ministry of Justice is of the view that the rate of reoffending is consistently high and needs to be reduced. However, any experienced probation officer will tell you that recidivism in itself is not an accurate measure of change and improvement in an individual (Ledger, 2010) and a reduction in risk can sometimes be a realistic goal. For example, a class A drug user who through intervention moves from committing serious street robbery to shop lifting could be considered a success and a move along their journey to desistance. However, under PbR would this be counted as a failure, resulting in a financial penalty for the provider? This raises significant concerns in regards to potential conflicts of interest stemming from the key idea that profit making organisations ultimately need to be accountable to their shareholders. Thus, we could surmise that the needs of the service user will be outweighed by the need of the balance sheet. Indeed, Teague (2011) argues that when probation staff focus their skills on revenue collection their capacity to act as neutral, professional rehabilitators may be compromised. Professional standards of staff is one area of concern from the American model that has been shared by UK stakeholders. In America this has been addressed by introducing a pre-determined minimum standard for probation staff (Schloss and Alarid, 2007), an option being mooted in the UK with the Probation Chiefs Association calling for a professional Institute for Probation which, it is hoped, would see a standard of qualification and professionalism that would remain in the service.

Risk assessment, management and Transforming Rehabilitation

Of all the concerns expressed in regards to the reforms, the matter of risk is clearly the most pertinent. It is envisaged that service users will be split by risk of harm, with the national service maintaining the supervision of all those assessed as high and very high; low and medium risk being managed by the CRCs. Whilst it is not currently clear how this will be achieved, the current plans call for the NPS to complete an initial assessment and

then the case will be allocated to either side. This is problematic in itself due to the complicated nature of risk assessments which Kemshall (2008) states are notoriously open to bias, in which professionals engage in subjective decision making which means that risk perceptions impact on how differing professionals and groups define and assess risk. Whilst the introduction of structured risk assessment tools clearly have their advantages (Miller and Mahoney, 2013) and the introduction of such tools has gone some way to negate such biases, risk is still in the eye of the beholder (Kemshall, 2008). Given that the very nature of the reforms will see performance being linked to fiscal gain it is not inconceivable to assume that these inherent biases will be amplified and could in affect lead to service user's risk being assessed as higher or lower dependant on the desired outcome to keep them with or send them to the national service or CRC. The problems with risk are further highlighted by the fact that at this stage it is unclear if the CRCs will be required to complete on going assessments of risk and/or what degree of risk assessment will be required by the NPS at commencement. What is known is that, as part of the reforms, the Ministry of Justice has announced the development of a new streamlined assessment tool that will be used.

The concerns related to the issue of allocation by risk is further highlighted by the dynamic nature of risk itself which could see service users effectively 'ping ponging' between the NPS and the CRCs a factor which undeniably could increase the risk posed to the public. User Voice (2013) raised this as a concern with one service user stating,

There is the potential for people to be passed around from one person to another and therefore lack consistency....relationship and trust may not be gained.

The importance of the relationship between the probation officer and service user is well documented and formed an integral part of the Carter Report (2003) which led to the implementation of end to end offender management. Whilst it should be noted that the current service does have some issues with providing truly end to end management this is generally due to staff turnover and the vast majority of cases are, or at least have the potential to be, managed by the same probation officer from pre-sentence stage to the end of their order. Despite this, G4S (one of the potential primary bidders) claim that:

For the first time there is the opportunity for the offender to have a single point of contact throughout their journey from release from custody to stabilisation. Evidence has shown 'what works' to reduce re-offending is the joined up co-ordination of a single plan to obtain primarily: a job, a house, a stable relationship and support to deal with debt. The recent NOMS publication on offender segmentation supports this holistic approach to offender engagement, noting that 'programmes that tackle just one risk factor are unlikely to make a difference by themselves. Interventions that target multiple factors are more likely to be effective.' This reform will integrate these services through a process and scale never been seen before. (G4S, 2013)

The current reforms by their very nature are unlikely to achieve this and in many ways are counterproductive to this goal. In fact we are moving away from a system that has a history of good partnership working to address multiple needs to one where a service user could be managed by a multitude of providers and where they can be removed from a productive working relationship at times of both success and failure which further impacts on effective risk assessment and management. This is because, as stated by Nash and Williams (2008), it is paramount for an assessor to fully understand a service user for a risk management plan to be effective. It is clear from the format of the reforms that the Ministry of Justice considers the probation service best placed to manage risk because the national service will maintain overall responsibility for the assessment of all offenders (at least at the initial stage) and the management of high risk offenders. Does this not mean, therefore, that there is some sense in the current service being best placed to deliver the supervision of offenders in the community? If the answer to that question is no then there is a need to the evidence which supports such an assertion.

There appears to be another misnomer at the heart of this misguided report, namely that the probation service is somehow against the notion of partnership. Nothing could be further from reality. Various mechanisms, such as cash limiting, have been used in the past to ensure that a certain percentage of probation money had to be devolved to the voluntary sector. Probation has worked willingly and constructively with organisations providing accommodation, specialist services in mental health, substance misuse and so on. Will this continue after probation has been transformed? There are grounds for thinking almost certainly not. Private companies will want to maximise their income and be unwilling to share it with other organisations raising the potential for innovations to become copyright property of the companies who will not want to lose competitive advantage.

Finally it is worth considering what we know about what works with offenders. Supervising offenders is a complex task and the evidence base is mixed. As Pawson and Tilley (1997) comment, certain ideas work for some people in some circumstances (see Goodman, p52 for a detailed discussion, 2008). This is why it has to be a professional activity. Shapland *et al.* (2012) have argued that engaging offenders and building relationships with them is an essential of the process of stopping reoffending. Furthermore, a number of other qualities are needed: advocacy, motivating, being able to talk about their problems and so on. Offenders need to be 'steered' into a non-offending way of life. Whilst this may be easily recognisable to people involved in probation we need to remember that, in reality, it is difficult to change people who have a poor self-image, low motivation and little self-confidence. McCulloch and McNeill's (2008) work on desistance-focused approaches which draws on work by Farrall (2002) and Rex (1998) (both of which asked probationers what they wanted from their probation officers) highlights the consistent message that probationers do not expect to have their problems resolved for them, rather they want advice and guidance. It was more realistic for probation to develop 'individual and community partnerships needed to enable probationers to achieve these goals themselves' (McCulloch and McNeill, 2008: 166). We agree with this finding: it takes skill to empower clients to find solutions and to achieve their goals. Untrained staff often find it easier to be 'rescuers' and do what they think is in the client's best interests. Thus, we argue that rather than starting with a blank piece of

paper we need to build on the lessons learnt from many years of engaging with offenders and being informed by research and good practice.

Conclusion

Will offenders realise the changes in supervision post Transforming Rehabilitation? The answer is almost certainly yes. Supervision will possibly be more idiosyncratic, possibly more rule-bound, staff might be less sensitive to issues of race and gender – we do not know the extent to which these changes will manifest and how they will be felt by probationers. We *do* know that the criminal justice system is discriminatory (Ministry of Justice, 2011) and the probation service has worked hard and learnt lessons to deliver services that are culturally and gender sensitive. This is not to say that they have it completely right but there is an acknowledgement that ‘colour blind approaches’ are insulting and do not work. The wheel should not have to be reinvented. Some of the companies likely to be bidding do not have a good track record in this area. Transforming Rehabilitation ignores this, which is a cause for great concern. What is clear is that costs will be cut and this may well result in a less well trained work force. Importantly, this situation has occurred previously and it did not work. Work with offenders is skilled and difficult: practitioners need to have the training to appreciate what makes people ‘tick’. This should not be conflated with the use of tick boxes to prove effective work has been done.

We have examined the proposed reforms to the probation service under the Transforming Rehabilitation Agenda. Whilst we can see that the plans hold some merit in the goals they are trying to achieve (reducing reoffending in an environment where saving tax payers money is paramount) it is evident that the current proposals raise some specific concerns. PbR could have the desired effect of raising standards and driving innovation but it is just as likely to force those innovative organisations out of the market place, resulting in the primary bidders being multinationals with little or no experience of probation practice. The motivation is more likely to focus on profit and minimum interest in the world inhabited by the offender.

Current probation staff have expressed concerns of a moral nature objecting to the possibility of probation services being run by such organisation and these concerns also focus on the very real possibility of decreased terms and conditions and a possible loss of professional status. Although some moves are being attempted to secure a Probation Institute to ensure that the service continues to be staffed by highly educated and skilled individuals there remains an important and unanswered question; will staff supervising low and medium risk offenders have any form of training?

Perhaps of most concern is the possibility of risk to the public that the current plans may hold. As stated it is not clear how, or if, CRCs will be required to deliver on-going risk assessments and to what extent financial implications might have on creating bias in risk assessment. Of particular concern is the fact that the very nature of allocation by risk could result in service users being passed from one provider to another resulting in points of increased risk and, critically, interrupting the journey to desistance. This aspect of the reforms needs to be explored further.

We are not disputing that for there to be a substantial decrease in recidivism rates the current system needs to change and draw on the skill sets of other agencies with expertise in specific fields relating to the causes of offending behaviour. However, it appears that the current plans are unlikely to achieve this. Rather, we advocate a revisit to the offender management model. One example of such work might be a model in which the probation service becomes the commissioner of such services on a local level whilst holding on to supervision and remaining a constant figure in the life of the offender. Can we afford to take a leap into the unknown?

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