



Speech

Dame Glenys Stacey, HM Chief Inspector of Probation

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Probation Journal event: 'Punishment, sentencing and probation'

Birkbeck, University of London

Thank you for inviting me to speak here at Birkbeck this evening. It is such a pleasure to have the chance to meet with you all, and to discuss with you matters that are dear to my heart.

I understand Birkbeck's founders first met in the Crown and Anchor, in the Strand. It was THE public house for radical and reformist thinkers at the time, back in the 1820s. Nowadays, the college enjoys more contemporary facilities, but is just as hospitable as the Crown and Anchor – as we have seen – and no doubt it is just as committed to radical and reformist thinking.

This is a timely event, and a fitting venue, as we cannot deny we have experienced radical and reformist thinking in shaping the probation service delivery model in recent years. Now government is planning further changes, and has consulted on some aspects of the way probation is to be delivered. What is more, ministers are expressing a new interest in the tri-partite relationship between punishment, sentencing and probation. I welcome that fresh interest.

This event gives us, here, the chance to think about how these things relate to each other, and how the right balance is to be struck between punishment, rehabilitation and restoration (another tri-partite relationship, I think). When we look at desistance research, the focus is on the need for offenders to 'make good' as Professor Shadd Maruna put it. This is somewhat different to punishing people, yet we know that there is a public expectation that offenders will be punished. This is a given, and indeed all community sentences must by law contain at least one element of punishment.

There's a good debate to be had – and I would argue that it is a question of balance! But I have been asked to speak now about some of the key themes that have arisen from our inspections of probation services. That may seem a dry subject, but I hope to show you it is not, and indeed that it is directly relevant to the wider issue, and the tri-partite relationships we are speaking of. I would like to focus on three areas: alternatives to short custodial sentences, the advice given to courts on sentencing, and then sentencer confidence in community sentences – as we are more likely to see community sentences if judges and magistrates have faith in them.

Community sentence orders are on the decline, despite research showing them to be more effective than short sentences at rehabilitating offenders. Over the past 10 years, the number of community orders has reduced by 52 per cent, and the number of drug and

alcohol treatment orders and the number of Accredited Programmes ordered are down as well. Over the same ten-year period, the number of suspended sentences – which are, of course, custodial orders – increased by 31 per cent.

Incidentally, I was encouraged to see recent pilots that show sentencers are more likely to order drug and alcohol rehabilitation orders when a psychologist is present to assist the court. I think it is really encouraging that these arrangements for expert clinical advice, in court, are being trialled, and I welcome the prospect of the extension of this programme, subject to continuing positive evaluation. Specific drug and alcohol treatment orders can change people's lives for the better.

At various points in time, policymakers have hoped that community sanctions would operate as an alternative to imprisonment, reduce prison populations, and be a safe and cost-effective way to control crime and rehabilitate offenders. It hasn't worked that way: across Europe, data on imprisonment and community sanctions show there has been a widening of the criminal justice remit, with more people entering the system through both custody and community sanctions. So, what are the alternatives, now, to short prison sentences?

Prisoners who serve short sentences typically have chaotic lives and greater levels of need. This is often characterised by a combination of substance misuse, homelessness and mental health issues. Working with this group is challenging but important, both for the individual involved and for society at large. When people are in and out of custody, it causes disruption to the individual, our prison and probation services and to wider society.

In most cases, short prison sentences do more harm than good. The Ministry of Justice's own research confirms community sentences can lead to greater reductions in reoffending, compared to short custodial sentences. Community sentences can keep a vulnerable person on the right side of the prison gate, but they need to be delivered well, to be effective.

So for example, unpaid work, when combined with other aspects of probation, has great potential but our inspections have found it is not being delivered to a uniformly high standard.

Unpaid work is often the longest period that an offender is likely to be in close contact with a member of probation staff. Good unpaid work can help individuals to develop life and vocational skills that reduce the risk of reoffending. Research shows unpaid work is most effective if it starts promptly and runs regularly, and those doing it see it as useful and rewarding, and if staff supervising the work follow the principles of pro-social modelling.

That is what we should expect. However, our thematic inspection from 2016 found managers gave little consideration to how unpaid work could contribute to rehabilitation, and we still find it regarded as an adjunct to probation supervision, rather than fully integrated into it as part and parcel of the rehabilitative work. But in 2016, the requirements for unpaid work (what good unpaid work looks like) were not specifically stated.

Following on from that inspection, we have worked over the last year with probation providers and government to produce clear, unequivocal standards for Unpaid Work, and for all other aspects of probation work as well.

And I am glad to see government taking a new interest in unpaid work, and asking – in its consultation recently about the future of probation services – what can be done to promote unpaid work schemes which both make reparation to communities and equip offenders with employment-related skills and experience? It is the right question, hopefully seeking the right balance between reparation and rehabilitation, without undue emphasis on punishment.

Do have a look at our standards. They are on our website. They now underpin all our inspections, and they are being used increasingly by probation providers, to inform for example their staff training and their own quality management systems.

Unpaid work is a commonly used community sentence, up there with Rehabilitation Activity Requirements - orders that enable probation providers to do what is best with each individual, by way of rehabilitation. In our 2017 inspection of these types of order, we found insufficient meaningful probation activity, and no activity at all in about one in ten cases.

Government has the opportunity now to be more specific about what is expected, as it recasts contract provisions and moves to a smaller number of CRCs nationwide. We have recommended already that these orders should only be used when they are likely to provide the best rehabilitation for the offender, over and above other options. So for example, in cases of domestic abuse we know that the number of orders made for an offender to undertake the only accredited programme ('Building Better Relationships') has reduced by 12% in twelve months, and we hope in highlighting that, that the National Probation Service will recommend it and magistrates and judges order participation in the programme more often.

I say that I hope the NPS will recommend it, as in deciding whether to order unpaid work or a rehabilitation activity requirement or indeed to impose a prison sentence, courts are advised by the NPS, responsible for providing advice in some 140,000 cases each year.

Traditionally, pre-sentence advice was delivered in full written reports. In recent times, challenging targets for speedy justice have led to most advice being delivered orally, on the day. After a shaky start, it is a credit to the NPS that it now has a good process in place. It is generally able to get the right information together quickly, and competent and motivated staff are in court daily, to enable courts to pass sentences swiftly and safely.

However, we have found that the NPS does not assess the risk of an individual going on to cause serious harm well enough overall, and yet this is core probation work.

In addition, the NPS's reports generally meet the court's needs but they are less likely to be comprehensive enough for CRCs, who take over and manage most cases. There is a fault line here – CRCs cannot be sure that the NPS presents a full enough picture for them in each case. CRCs are then paid for producing timely sentence plans, rather than making sure each plan is based on a sufficiently thorough assessment of the individual. In some cases, plans do not take into account relevant matters, such as a history of domestic abuse, child protection issues, or antisocial attitudes and lifestyles.

We know that the NPS has plans to improve pre-sentence work and has invested in technology here as well. And it is now taking a default position and advising community sentences rather than suspended sentence. And again, we welcome government's renewed interest: in its recent consultation it has proposed that a more comprehensive assessment of the individual is developed and added to over time, so that all agencies dealing with the individual have access to the right information at the right time, without having to collect it from scratch.

The NPS can get yet better at advising courts, but of course, judges and magistrates need to be sure that a community sentence will be delivered well enough, in order to have confidence that a community sentence is preferable to the alternatives. Sentencer confidence is a live issue.

More than a third of community and suspended orders include a Rehabilitation Activity Requirement, but we know from our inspection of such cases that magistrates lack confidence in them. A survey by the Magistrates' Association has found almost three-

quarters of respondents said they did not have enough information about what offenders will do when serving such a requirement.

When it comes to it, confidence is built by consistent, good quality probation services, but we have found serious failings in the delivery of Rehabilitation Activity Requirements on the ground. It is time to look again at RARs – they haven't delivered as intended – and I was pleased to see that the Ministry of Justice recognise recently the need to be more specific, in CRCs' future contracts, about what is expected.

For starters, and as we recommended when inspecting RARs, these orders need to be started promptly, there need to be proper programmes of structured work, and absences need to be dealt with promptly and consistently as well. The public, magistrates and judges need to know individuals have meaningful supervision and receive appropriately tailored probation services, striking the right balance between reparation, rehabilitation and punishment, in order to have faith in community sentences.

The Ministry of Justice's consultation on the future of probation services closed last week (21 September). The Inspectorate responded, of course, and we have published that response on our website. We look forward to hearing more about how the government will shape the future of probation services, and trust that our inspection findings will be material to government and ministers as they think through the next iteration of the probation delivery model.

The way probation services are delivered is inextricably linked to the efficacy of sentencing. It underpins that tri-partite relationship between punishment, sentencing and probation, and it influences it as well – as the better we are at probation, the more likely it is that judges and magistrates will order a community sentence, and the more likely government policy will lean towards community sentences as well.

Thank you for listening and I look forward to hearing your thoughts shortly.

[ENDS]