HM Inspectorate of Probation

Supporting children's compliance on community supervision

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HM Inspectorate of Probation

Academic Insights 2023/04

Contents

Foreword

HM Inspectorate of Probation is committed to reviewing, developing and promoting the evidence base for high-quality probation and youth offending services. *Academic Insights* are aimed at all those with an interest in the evidence base. We commission leading academics to present their views on specific topics, assisting with informed debate and aiding understanding of what helps and what hinders probation and youth offending services.

This report was kindly produced by Mairéad Seymour, introducing the concept of compliance and exploring strategies that pro-actively support and encourage substantive compliance by children and young people. The establishment of positive working relationships is seen as crucial for promoting and encouraging compliance, requiring practitioners to utilise a range of skills, to have the time and persistence to build positive relationships, and to demonstrate genuine concern and interest. Meaningful strategies to encourage compliance must be sufficiently flexible to accommodate differing and changing circumstances, experiences, motivations, strengths and barriers. At the same time, attention needs to be given to ensuring that approaches are sufficiently fair, equitable and consistent. Clear and consistent communication is required from the outset so that children and young people are clear about the expectations upon them and to support perceptions of procedural fairness and legitimacy. Within our inspections, we will continue to assess whether sufficient focus is given to developing and maintaining effective working relationships – with children and their parents or carers – and to encouraging and enabling compliance.

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The views expressed in this publication do not necessarily reflect the policy position of HM Inspectorate of Probation

1. Introduction

There is increasing recognition within the criminal justice system that strategies that engage individuals and encourage cooperation in the first instance may be more effective in promoting compliance with legal requirements than rigid, front-end enforcement approaches. One of the most recent examples is the '4 Es' framework adopted as part of policing public health regulations introduced in England and Wales at the start of the Covid-19 pandemic. Based on guidance issued by the NPCC (National Police Chiefs Council) and the College of Policing in March 2020, the framework espoused engagement, explanation and encouragement as police strategies to promote public compliance, with enforcement utilised only as a measure of last resort. Aitkenhead et al.'s (2022) analysis of policing the pandemic from a public and police perspective, reports that the '4 Es' approach helped to uphold police legitimacy while securing compliance with Covid-19 regulations and avoiding 'any major breakdown in the relationship between the public and the police' (p.7).

In the youth justice domain, there has been a notable shift in England and Wales away from enforcement towards engagement in policy discourse and practice guidelines. The most recent case management guidance from the Youth Justice Board (YJB) emphasises that every effort should be taken to engage children to complete their order, with breach proceedings identified as a measure of last resort and initiated in exceptional circumstances (Youth Justice Board, 2022). The approach aligns with the YJB's recently introduced central guiding principle of 'Child First' (Day, 2023; Youth Justice Board, 2021) and is in stark contrast to a decade or more earlier when the language of enforcement, in the form of mandatory warnings and breach proceedings, was embedded in policy discourse (Youth Justice Board, 2010). Offending statistics published by the YJB (2023) identify that 'breach of statutory order' has fallen by 89 per cent over the last ten years. While a multiplicity of factors are likely to underpin this figure, policy and practice shifts that emphasise support for compliance, rather than enforcement for non-compliance, provide at least partial explanation for the trend.

There have been substantial reductions in new entrants to the youth justice system and in the number of children in custodial detention facilities over the last decade and beyond (HM Inspectorate of Prisons, 2023; Youth Justice Board, 2023). While the result is lower Youth Offending Service (YOS) caseloads, HM Inspectorate of Probation (2022) argues that the needs of children entering the youth justice system are increasingly complex and far-reaching with the Covid-19 pandemic further exacerbating their circumstances. Harris and Goodfellow (2022) reiterate the point, explaining that vulnerability and marginalisation among many children in or on the periphery of the justice system, has led to them being the most adversely impacted by the pandemic. They describe the pandemic for these children as 'an additional trauma to an already extensive list' (p.4).

It is against the context of the above developments and circumstances that this paper explores theory, policy and practice in supporting children's compliance on community-based court orders. It begins by considering the term 'compliance' as well as the mechanisms that underpin decisions to comply (or not). Thereafter, the focus turns to unpacking what compliance means in the context of children and young people on community supervision before exploring strategies that pro-actively support and encourage compliance and respond to their non-compliance in ways other than formal enforcement procedures.

2. Supporting and encouraging compliance

2.1 Defining compliance

Bottoms (2001, p.89) makes a distinction between 'short-term requirement compliance' and 'longer-term legal compliance' in the context of compliance with community disposals. Short-term requirement compliance refers to compliance with the requirements of a community order, while longer-term legal compliance indicates compliance with the criminal law by avoiding reoffending. Robinson and McNeill (2008, p.434) suggest that 'short-term requirement compliance' as articulated by Bottoms (2001) be further categorised into 'formal' and 'substantive' compliance. Formal compliance refers to the supervisee's adherence to the minimal technical requirements of the order such as attendance at appointments, while substantive compliance implies the supervisee's meaningful participation in the supervision process. Overall, four dimensions of compliance are suggested:

- non-compliance
- formal compliance
- substantive compliance
- longer-term legal compliance.

Bottoms' (2001) theoretical framework for compliance puts forward the following four principal mechanisms that underpin the decision to comply:

Constraint-based	Compliance arising from the imposition of a physical or structural restriction such as an electronic tag or security camera or where one is coerced into submission.
Routine	A form of compliance where individuals comply through following their established patterns of conventional behaviour or acquiring new pro-social habits which become routine.
Instrumental	Compliance based on calculated decision-making involving external incentives, such as avoidance of breach proceedings or a reduction in reporting requirements.
Normative	An internalised sense of obligation to comply due to: personal norms and values about acceptable behaviour, attachment to significant others, and/or acceptance of the legitimacy of the request to comply.

Fostering the development of normative motivation to comply is likely to encourage 'substantive' compliance; normative compliance is also important for 'longer-term legal compliance' (desistance) because it does not rely on the constant presence of external factors such as threats, incentives (instrumental compliance) or restrictions (constraint-based compliance) to influence behaviour.

The suggestion in Bottoms' (2001) framework is not that a singular mechanism underpins the decision to comply; to the contrary, supervisees' decision-making about compliance is likely to be based on a combination of mechanisms, and to change over time and across circumstance (Bottoms, 2001; Robinson and McNeill, 2008). In practice, what this means is that a child or young person may comply initially to avoid further criminal justice involvement; however, the establishment of a pro-social relationship within or outside the supervisory process may change the dynamic of their compliance towards normative motivation. Conversely, negative changes in circumstances such as the loss of a positive role model or changes in routine could potentially shift motivation and the dynamics of compliance in a negative direction. Robinson and McNeill (2008) propose that individuals will commence supervision at different points on the spectrum from non-compliance to longer-term legal compliance with the aspiration that they should progress in the direction of compliance.

2.2 Unpacking (non-)compliance

Failure to attend scheduled appointments is the most commonly described aspect of non-compliance (Ugwudike 2010; Vidal and Woolard, 2016). Attendance is integral to the legitimacy of community-based supervision orders as their purpose can only be realised if individuals attend in the first instance (Hopkinson and Rex, 2003). While avoiding appointments may be the most visible demonstration of non-compliance by children and young people, existing research identifies other manifestations. In a study of young people's compliance on community supervision in Ireland and Northern Ireland, supervisors reported a number of strategies adopted by young people that compromised the purpose and integrity of scheduled sessions (Seymour, 2013). These included young people turning up late to appointments or on different days or times to those scheduled, turning up under the influence of alcohol or drugs, leaving sessions early, shouting to express their objections, or conversely sitting in silence or restricting their communication to one-word answers. Another strategy involved efforts to navigate the system by assimilating the language of supervision (ibid.). One practitioner captured the views of others in the following description:

> "Even the language they (young people) use on occasions, you know, 'I know I'm subject to negative peer influences' and I'm looking at them saying 'what did you say?'… 'I know I'm subject to negative peer influences' - you know, they've heard it, the words mean nothing to them, it's just rhetoric and they're repeating it."

The young people (n=20) in the study spoke retrospectively about their experiences of compliance with supervision. At the time of interview, they had been under supervision for an average of 22.7 months and had navigated many challenges and barriers to compliance. Some described non-compliance at the early stages of their order as non-attendance at scheduled appointments. From their accounts, it was clear that periods of non-attendance often coincided with tumultuous periods in their lives related to unstable living arrangements and/or a chaotic lifestyle. They explained that over time, they came to realise that persistent avoidance of attendance requirements would result, and in some cases had resulted, in court proceedings for non-compliance.[1] Passive or subtle forms of resistance avoid direct

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[1] In the small number of cases where this occurred, probation officers reported that young people had received another opportunity to engage in probation supervision by the court.

challenge and confrontation with supervisors and may be less open to categorisation as non-compliance (Crewe, 2007; Worrall, 1990). From what the young people said, these were the types of strategies they utilised, especially during the early weeks and months of supervision. Some described being rude and disruptive at appointments, while others explained they were withdrawn and would minimally respond to their supervisors' questions. The reasons they gave varied and ranged from being anxious about the supervision process and the expectations on them; not trusting their supervisor; not wanting to disclose personal information; and/or difficulty understanding the purpose of supervision. The majority were keen to emphasise that change had occurred and the strategies they utilised in the past to avoid supervision, or minimally engage, were no longer applicable. For a small number however, it seemed relapse into substance use, offending, or both, adversely influenced their participation and engagement with supervision (Seymour, 2013).

While continued involvement in crime and other anti-social activity may act as a barrier to engagement and arguably to 'substantive compliance' (Robinson and McNeill, 2008), recent research applies a critical lens to other barriers to engagement for children and young people in the criminal justice system. Deakin, Fox and Matos (2022) report on the experiences of over 100 young people partaking in educational and criminal justice interventions, drawing on interview and focus group-based case studies from Great Britain, Estonia, Spain and Portugal. They found that many participants viewed interventions as amplifying their sense of stigma and consequently a commonly reported strategy was to withdraw and, as they explain it, 'to be there in body but not in spirit' (p.667). Deakin et al. (2022, p.667) describe this stance as 'a latent rejection of the interventions … rather than an outright refusal to attend and participate'. Drawing on the work of Corrigan (1993), they suggest that while this may be a resistance strategy, they also propose that young people may disengage as a protection mechanism (Deakin et al., 2022). The idea of poor engagement as a protective shield is echoed by Case et al. (2023, p.53) who observed children's assessment interviews in England and Wales and concluded that 'children's reluctance to talk about certain sensitive topics came from their associated feelings of shame, embarrassment or trauma, which they were (understandably) not inclined to revisit'. Case et al.'s (2023) analysis focuses on the assessment stage when practitioners and young people may be less familiar to each other; nevertheless, it highlights the importance of practitioners critically reflecting on the supervisory dynamics and utilising creative and meaningful ways to support communication and engagement. This is especially relevant when young people's perceived engagement forms the basis of judgements about their level of compliance on community supervision.

Many children and young people in the justice system encounter negative experiences with professionals in authority and consequently commence supervision mistrustful and wary of the system. A history of existing on the margins, exclusion and social disadvantage often leave them with limited stakes in society. Given these circumstances, it is perhaps expected that levels of non-compliance with criminal justice requirements tend to be higher for children and young people than for adults, and highest for those with the most difficult personal and social circumstances (Grandi and Adler, 2016; Hart, 2011; Seymour and Butler, 2008). The evidence suggests that while deterrence in the form of enforcement may work for some young people, in some circumstances, for many the threat of a return to court for being non-compliant holds limited power (Seymour, 2013) and alternative approaches to promoting compliance are required.

2.3 Early and regular communication

Ensuring that children and young people are clear about the expectations on them from the beginning of the supervision process is an integral part of supporting compliance and reducing perceptions of unfair or unjust treatment (Seymour, 2013). 'Role clarification'

involves practitioners' ongoing exploration of expectations with supervisees including what is negotiable and what is not, limitations to confidentiality, the nature of the professional relationship and the nature of the supervisor's authority, including how authority may be used (Trotter, 2022). Ugwudike (2013) highlights the challenge of literacy problems among probationers and consequently the need for verbal as well as written communication of roles and expectations.

Previous research identifies that adolescents score lower on measures of self-restraint, self-reliance, and consideration of future consequences than their adult counterparts (Cauffman and Steinberg, 2000; Modecki, 2008). Such findings highlight the need to reiterate expectations of compliance with children and young people over the period of their supervision. Seymour (2013, p.96) reports that supervisors in her study reminded young people about what was required on an ongoing basis and often emphasised the same information 'on different days and in different ways'. Reminding young people about their obligations involved encouraging as well as challenging them about their behaviour. It also entailed utilising different communication approaches to convey key messages from engaging in dialogue or role-play with young people to acting out appropriate responses through pro-social modelling as outlined in the example below:

> *"A guy we were working with, I [YJ practitioner] took him to the leisure centre and the lady was quite rude … if the young person hadn't have been with me, I might have been rude back, but I thought 'no, we'll deal with this properly'. It's about being really upfront and candid … I said 'you know I felt like shouting back at her' … they see that you're human too, and that you're being honest and upfront and saying 'look I was going to approach it that way, but I actually allowed myself to think, to deal with it differently'. So, you're actually demonstrating what you're looking for them to do."*

Macleod et al. (2018, p.620) argue that it is not sufficient that those in authority possess 'legitimate authority'; they must also be viewed as 'legitimately occupying that role'. Clear messages from practitioners about expectations and communication on the nature of their role serves to offset potential risks to the supervisor's legitimacy in the future, especially in situations where they may need to challenge non-compliance. In the context of supporting compliance, it is necessary that young people understand the dual role of their supervisor as someone who has helping (care) as well as legal (social control) responsibilities towards them (Trotter, 2022).

2.4 Establishing legitimacy in and through the supervisory relationship

The development of positive working relationships between young people and their supervisors is at the centre of promoting and encouraging compliance. Factors identified in the literature that underpin successful working relationships with children and young people to promote compliance include:

a) **Positive relationship qualities**: The development of rapport and the presence of openness, non-judgemental attitudes, empathy, honesty, trust and respect are reported consistently as characterising successful relationships (Case, 2023; Macleod et al., 2018; Ungar, 2013).

b) **Persistence and time to build relationships**: In Sandu's (2019, p.6) study of relationship building among young people aged 16 to 25 years experiencing significant disadvantage in the UK and the US, she describes the relationship in the early stages as 'both non-reciprocal and asymmetrical' with young people responding minimally to the workers' efforts. Persistent and consistent efforts to connect over time were required to achieve successful engagement, reflecting the experience of

practitioners elsewhere when working with marginalised children and young people (Centre for Justice Innovation, 2022; Chablani and Spinney, 2011; Seymour, 2013). The challenges of engagement means that relationship building takes time and requires considerable determination from staff to establish trust with children and young people (Centre for Justice Innovation, 2022; Gray, Smithson and Jump, 2021; Nugent, 2015).

c) **Relationships that function to demonstrate concern and interest to children and young people**: While demonstrating concern and interest may manifest in multiple ways such as providing emotional support at times of crises (Sandu, 2019), Seymour (2013) describes the example of practitioners accessing services and placements and supporting young people's participation as an integral part of facilitating compliance. Where relevant, and in consultation with young people, referrals were made to drug or alcohol rehabilitation services; more commonly, the focus was on navigating services to support young people with education, training or employment aligned with their interests. It appeared that practitioners' efforts to advocate and access services on young people's behalf had a number of implications for compliance. In cases where they attributed value to their supervisor's practical support, young people perceived supervision to have meaning and purpose, which is relevant in the context of explaining motivation to comply (Bottoms, 2001). From what young people said, practitioners' efforts motivated them to attend and participate at sessions (short-term compliance). Their views echo those of Burnett and McNeill (2005) who suggest that building social bonds and capacity with those under supervision may have a double positive impact by increasing willingness to comply (short-term requirement compliance) and encouraging desistance (longer-term compliance):

'… there is a synergy between acts of practical assistance and their subjective impact on the working relationship; the worker's actions confirm his or her compassion and trustworthiness, increasing the preparedness of the offender to take steps towards desistance' (p. 236)

In Macleod et al.'s (2018) study of compliance across different educational settings, including a youth project and a school for pupils with social, emotional and behavioural difficulties (SEBD), care and commitment emerged as an important source of practitioners' authority when working with young people. Macleod et al. (2018) reject the notion that the development of caring relationships between pupils and educators compromises the latter's role in negotiating boundaries or maintaining control. They argue that a caring relationship is a way of promoting compliance rather than a mechanism to undermine authority. While coercive as well as inducement-based sources of authority were also recognised in Macleod's et al.'s (2018) study as having the potential to foster compliance (see Wrong, 2002), the establishment of positive relationships between educators and pupils at the SEBD school was seen as a necessary precursor to their effective use.

Previous research suggests that the impact of pro-social modelling and other approaches associated with effective practice may be enhanced when individuals perceive their relationship with their supervisor as positive and legitimate (Rex, 1999; Ugwudike, 2010). The evidence also demonstrates that when young people develop trust in the working relationship, it increases their willingness to engage and to accept directive guidance, even in situations where such direction involves warnings about the consequences of their behaviour (Chablani and Spinney, 2011; Seymour, 2013). In this scenario, the relationship provides the basis to influence positive behavioural change in ways that young people perceive as fair and legitimate. Young people's perceptions of the legitimacy of the law are drawn from their direct experience of interactions with the criminal justice system, and their

perceptions of how fairly they, and others, are treated by authority figures (Fagan and Tyler, 2005; Sharp and Atherton, 2007). Nurturing legitimacy in the supervisory context therefore has central relevance in light of the evidence suggesting a positive relationship between procedural fairness and compliance (Fagan and Tyler, 2005; Murray et al., 2021).

Supervising children and young people inevitably involves interactions between practitioners and parent(s) or guardian(s). While emphasis on parental deficits often dominates youth justice discourse (Goldson and Jamieson, 2002), previous research identifies that when parents utilised strategies to support compliance, such as facilitating attendance at appointments or attempting to impose boundaries, it often had a positive impact on their child's progress on supervision (Seymour, 2013). The benefits of a positive alliance between supervisors and parents are highlighted in Vidal and Woolard's (2016) study of parents' (n=87) perceptions of the quality of their engagement with practitioners and how it relates to youth compliance. They found that parents who perceived 'more support, respect, voice and fairness' from practitioners were more likely to engage in parenting strategies to encourage compliance (pp.5-6). Conversely, they also identified some cases where parents' perceptions of the practitioner's helpfulness resulted in parents using fewer of their own strategies to promote compliance. This leads Vidal and Woolard (2016, p.6) to consider if reasons include parents' faith in the practitioner's efforts and/or 'parental resignation or a sense of exasperation' regarding their child's behaviour. While the findings are mixed, they indicate potential for parents and supervisors to work collaboratively to support compliance. They also highlight the importance of developing relationships with parents as a vehicle to embed legitimacy in the process.

2.5 Interpreting and responding to non-compliance

Reasons for non-compliance include, but are not limited to (Centre for Justice Innovation, 2022; McCulloch, 2010; Seymour, 2013):

- transport difficulties
- lack of motivation
- perceptions about the relevance of an intervention
- timing of appointments
- personal, family and social issues and problems.

Identifying what constitutes non-compliance is often a first step in considering the most appropriate responses. Non-attendance at a scheduled appointment may be an objective fact, but deciding what is, and is not, an acceptable excuse for non-attendance is a more subjective decision. This is particularly relevant in the case of children and young people where factors such as their developmental maturity, circumstances and life events, and progress on supervision are likely to influence judgements about their behaviour (Hart, 2011; Seymour, 2013; Ungar and Ikeda, 2017). Day (2023, p.65) argues that 'the 'risk culture' within youth justice practice in England and Wales goes beyond interactions with children, and has created a 'risk averse culture' and workforce that is fearful of 'getting it wrong' and being subject to scrutiny and sanctions'. Consideration of risk in decision-making about non-compliance requires careful balance and nuanced discussion to ensure that the most vulnerable children and young people are not overly penalised on the basis of their circumstances, rather than specific concerns for public safety and protection. In this regard, a focus on children and young people's circumstances should not deviate from approaches to support compliance or address non-compliance; rather it should 'open our eyes to alternative avenues for addressing their behaviour' (National Police Chiefs' Council, nd., p.7).

Successful navigation of the supervisory process necessitates that barriers and obstacles to compliance are addressed (Eadie and Canton, 2002; Ugwudike, 2013). Ugwudike (2013) argues that flexible strategies that allow for individualised responses to non-compliance offer more promise than rigid and prescriptive enforcement practices. Measures such as the following are the types of flexible and enabling strategies that serve to encourage and support compliance (HMI Probation, 2021; Seymour, 2013; Ungar and Ikeda, 2017):

- negotiating the timing of appointments
- texting appointment reminders
- adapting supervisory conditions
- arranging transport
- facilitating appointments in more accessible venues

Reiterating the consequences of unacceptable behaviour to young people is another response to non-compliance, in addition to communicating promptly and consistently with them about any misdemeanours (Seymour, 2013).

Practitioners and managers exercise discretion in a range of ways from accepting the reasons given for non-attendance to seeking additional time to monitor progress (Hart, 2011; Robinson, 2011). Canton and Eadie (2008) suggest that the diverse profile and circumstances of individuals under supervision necessitates flexibility in the form of professional discretion. They suggest that an approach which incorporates wide discretion with high accountability offers the best framework. At the same time, Eadie and Canton (2002) caution against unrestricted discretion and emphasise the importance of managerial oversight and support for professional decision-making to ensure fair, equitable and consistent treatment. Consistency is relevant not only in terms of strengthening consequences, but also in supporting perceptions of procedural fairness (McIvor, 2002; Hunter and Jacobson, 2021).

3. Conclusion

Although breach proceedings are the ultimate intervention in the armoury of community supervision, the threat of a court appearance for non-compliance is likely to hold limited weight for many marginalised and disenfranchised children and young people. Even if deterrent-based strategies exert influence, Bottoms (2001) suggests that a complex range of interconnected influences shape motivation to comply. Consequently, meaningful strategies to encourage compliance must be sufficiently flexible to accommodate differing and changing motivations and barriers.

Substantive compliance is more likely to evolve where children and young people are motivated by normative reasons such as perceiving the system, including their treatment within it, as procedurally fair and legitimate. Relationships can be challenging and they require practitioners to invest considerable time and effort to establish meaningful alliances with those under their supervision. However, the weight of evidence suggests that a relational approach provides the best foundation from which to address barriers to short and longer-term compliance, to challenge non-compliance, and to build on children and young people's strengths and capacities for the future. Clear and consistent communication to explain requirements from the beginning, and to highlight the consequences of non-compliance, provides the basis from which children and young people understand the expectations of them. Modes of communication such as engaging in dialogue, negotiating the boundaries of supervision, using role-play and pro-social modelling are mechanisms to involve children and young people actively in conversations about non-compliance and to reiterate what compliance means in practice.

Expectations and responses to non-compliance applied uncritically and without consideration of children and young people's status and circumstances risks the potential for unfair and oppressive treatment. Flexibility in the form of professional discretion provides opportunities for more equitable outcomes that take into account children and young people's developmental maturity, their progress on the order, as well as their personal and family situation. Professional discretion balanced with accountability enables decision-makers to embed fairness into their responses to non-compliance. A compliance-focussed approach to navigating community supervision may enhance the likelihood of meaningful engagement and offers potential to reduce children and young people's risk of further criminalisation and stigmatisation.

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