

# It's Complicated: The Management of Electronically Monitored Curfews

*A follow-up inspection of  
electronically monitored curfews*

Thematic Inspection Report

It's Complicated:  
The Management of  
Electronically Monitored Curfews

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## FOREWORD

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Over the last six years, the use of court-ordered curfews has more than doubled. The maximum period of confinement is now likely to be extended from 12 to 16 hours per day, in an effort to increase public confidence in community sentences.

Depriving someone of their liberty is a serious matter, whether this is done by sending them to prison or confining them to their home. The period of detention, in whatever way it is applied, should therefore be proportionate to the seriousness of the offence. Sentencing may properly contain an element of punishment but to be effective in reducing offending, it should also promote change and reform.

It has become clear that electronically monitored curfews are now being used as an additional punishment for people convicted of minor offences that would not normally attract a prison sentence. Even at this level, however, punishment comes at a price. If the cost of electronically monitored curfews is to be fully justified, they need to be used more creatively and more effectively. This means providing targeted control and restriction and helping offenders to change their behaviour.

Our latest inspection shows that curfews applied in recent years have only rarely been used to best effect. In the vast majority of cases in our sample, the curfew was unrelated to the circumstances of the offence. We saw very few instances where it had been imposed specifically to stop the individual from doing something, or was part of a strategy to address their behaviour. Such an approach would require thorough assessment at the pre-sentence stage, something which now only appears to happen in a limited number of cases.

As in our earlier inspection, we remain concerned at the enforcement thresholds. Despite our previous comments, these continue to fall far short of what we think the public has the right to expect. We recognise that more rigorous thresholds, as we have advocated, could increase the numbers of minor offenders sent to custody for breach. A greater emphasis on compliance and the proposed introduction of other non-custodial options for breach, as proposed in the current sentencing review, would mitigate such an undesirable outcome.

This latest inspection also exposed continuing inaccuracies in information conveyed by courts to the probation service or the electronic monitoring provider. These inaccuracies are sufficiently serious to undermine the efficient management of cases – an even more urgent concern if the Government approves proposals to extend the number of external providers of probation services.

The matters raised in this report must be discussed and acted upon. Electronic monitoring, if used effectively, can be used both to punish and to promote change. Right now, it may do the former but rarely the latter.

**LIZ CALDERBANK**

HM Chief Inspector of Probation

June 2012

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# 1. SUMMARY

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## The inspection and the legislative background

- 1.1 This follow-up inspection fulfils the commitment made by the Criminal Justice Chief Inspectors Group (CJCIG)<sup>1</sup> to assess progress made against the published recommendations of the earlier report, *A Complicated Business* (2008)<sup>2</sup>. Both inspections were led by HMI Probation.
- 1.2 Electronically monitored (EM) curfews were introduced by the Criminal Justice Act 1991<sup>3</sup> although not immediately brought into force. Since 1999 certain prisoners with short sentences have been able to serve up to the last four and a half months of their custodial sentence in the community on Home Detention Curfew (HDC) with an EM curfew. Early release under this scheme is authorised by the prison governor. Court ordered EM curfews were made available in 2000<sup>4</sup>; they have since been in widespread use and now form part of a community sentence.

## The use of electronically monitored curfews

- 1.3 The use of court ordered EM curfews has more than doubled since 2006. This increase may be the result of a number of different factors, including increased sentencer confidence in EM curfews for the unambiguous purpose of punishment or to mark the breach of other sanctions. Conversely, and somewhat surprisingly when set against the backdrop of a rising prison population, the number of HDCs has, despite a recent small increase, steadily declined from over 40% to less than 20% of the total. This is part of a trend that has been evident since 2002-2003.
- 1.4 Although the overall number of curfews has increased significantly, changes to the contract in 2005 have led to a significant decrease in their unit cost. In 2010-2011 the total cost of EM was approximately £100M. This figure is slightly less than the annual cost for EM under the first contracts in 2004/2005 but for twice the amount of electronic monitoring.
- 1.5 It is apparent that, for some of the community cases, the curfew has added an element of control and punishment. In other cases it is unlikely that a sentence of imprisonment would have been imposed had the curfew requirement not been available. It is, of course, unproven whether EM is effective in preventing reoffending, and it is therefore a matter of judgement whether EM represents good value for money. To put the costs of EM in context, it represents about 10% of the total probation budget.

## FINDINGS

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### Community cases

- 1.6 For community cases, the Powers of the Criminal Courts (Sentencing) Act 2000 and the Criminal Justice Act 2003<sup>5</sup> require a court to obtain and consider information about the proposed address, including the attitude of persons likely to be affected by the enforced presence at the address of the offender, prior to imposing a curfew requirement.
- 1.7 In 2008 we found that 90% of community orders with EM curfews had been made following a pre-sentence report (PSR). In contrast, only 29% are now imposed with the benefit of a PSR or other report. We found many examples of EM curfews being imposed without any apparent consideration of information from an independent source. This raises concerns that the use of curfews may not be being targeted effectively or that they are being used in inappropriate situations, such as cases with domestic violence. In some cases the probation trust held information that should have been considered prior to sentence.

### HDC cases

- 1.8 In this inspection we found that the assessment of home circumstances no longer appeared routinely to involve visiting the proposed address, meeting the residents of the address or the prisoner. Most judgements about the suitability of the address were now based on a telephone call from the probation trust to the family or friend living at the proposed accommodation. This is less than ideal as a contribution to the assessment process. However, it does appear to be a pragmatic response by probation trusts to the position that the prisoner will be released on HDC unless there are 'clear and substantial' reasons for refusal. There would be merit in considering whether there are efficiency savings to be made by the releasing prison completing the HDC assessment process themselves, particularly in the case of short sentence prisoners who will subsequently have no contact with the probation trust.

### Communications from court

- 1.9 In 2008 we found that courts were sometimes using outdated forms and orders. One of the recommendations in the earlier inspection was that Her Majesty's Courts Service (HMCS) provide 'a set of clear, easy to use national forms, supported by clear instructions for their use and by training. Their application should be mandatory and monitored'. We also noted that HMCS should ensure 'that greater oversight is exercised over court administrative procedures so that the orders issued by the court accurately reflect the sentence passed'.
- 1.10 Although a new form had been issued, not all courts were using it. Older versions of notification forms were still being sent to EM suppliers. Furthermore, the

questions in the notification form remained ambiguous, so it was not surprising that we found inconsistency and inaccuracy in the way the form was used. We found several examples of forms where the sentence of the court was incorrectly recorded and others where it was unclear whether the role of 'responsible officer' was located with the probation trust or with the EM company. In many cases, the EM company was presented with information that was, at best, open to misinterpretation and, at worst, simply incorrect. These deficiencies caused significant problems where action was needed from the responsible officer, such as when the offender became subject to enforcement proceedings.

- 1.11 We also found several cases where the installation was not concluded in a timely manner as the information from the court was either unclear or was not sent to the EM company for several days after sentence.

### **Offender management**

- 1.12 Despite both the aspirations of the offender management model and the recommendation in our earlier report that the National Offender Management Service (NOMS) should 'provide guidance to staff to ensure effective offender management by the integration of curfews into the sentence or intervention planning process', we saw little evidence that this had been achieved.
- 1.13 Previously we identified the possible cause of this lack of integration as a historical consequence of earlier legislation where curfew orders were indeed separate. This remains a possibility, although perhaps more significant factors might be the apparent increase in the proportion of orders made without a PSR, and the proportion of cases where the order was imposed as an additional punishment to an existing order.
- 1.14 Where multi-requirement orders operated without any supervision requirement, the role of the responsible officer remained unclear and the sentence operated without cohesion.

### **The enforcement thresholds**

- 1.15 Despite the recommendation in our 2008 report that the Ministry of Justice (MoJ) should work to tighter and more transparent boundaries for the enforcement of curfews, but with more discretion in individual cases, the contracts and protocols established in 2005 have remained largely unchanged. The concerns that we had about the insufficient stringency of the thresholds, therefore, still remain. In particular, we feel that the fact that an offender on a 12 hour curfew could be absent for 11 hours 59 minutes and only trigger a "less serious violation"\* creates a gap between what the courts and public might reasonably expect and what actually happens.
- 1.16 The new arrangements for the delivery of EM from 2013 offer the potential to implement the necessary changes.

\* "Less serious violation" - for definition see 3.19

## **Enforcement**

- 1.17 From the evidence held at the EM suppliers, over one-fifth of cases inspected had a less serious violation recorded against them. Thirty (37%) of the sample inspected had a more serious violation recorded against them.
- 1.18 The EM companies had largely complied with the recommendation of our 2008 report to 'ensure clearer communication to offender/case managers on breach, including a simple summary on all cases'. Probation trusts had, however, been less successful in following the recommendation that they should routinely inform 'the electronic monitoring companies of their decisions regarding enforcement, and record their reasoning, on those rare occasions when they decide against following the given advice on enforcement'.
- 1.19 Enforcement action was usually undertaken swiftly. Problems, where they existed, often stemmed from a lack of clarity over who was the responsible officer. This in turn was caused by the poor quality of the information received by the EM supplier from the courts.

## **Conclusion**

- 1.20 EM is now clearly established within the criminal justice system, although its contribution to the management of offenders in the community appears increasingly confined to that of punishment and restriction, rather than as an integrated part of the sentence planning process. Whether such use is cost effective in reducing reoffending is a matter of judgement and further research.

## RECOMMENDATIONS

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### ***The Ministry of Justice and the National Offender Management Service should:***

- » develop tighter and more transparent thresholds for enforcement, but permit the use of more discretion in individual cases.

### ***HM Courts and Tribunals Service should:***

- » ensure that sufficient information about the proposed curfew address (including information as to the attitude of persons likely to be affected by the enforced presence of the offender) is available to courts when considering a curfew requirement
- » improve communication of key information about each case to the relevant electronic monitoring company by providing a set of clear, easy to use national forms, supported by clear instructions on their use and by training for the relevant staff
- » ensure that greater oversight is exercised over court administrative procedures so that the orders issued by the court accurately and clearly reflect the sentence passed by the court.

### ***Probation trusts should:***

- » ensure that staff communicate effectively with electronic monitoring providers:
  - at the commencement of any order with a curfew requirement
  - where matters pertaining to any significant Risk of Harm arise
  - in response to all notifications relating to the need for enforcement action
- » ensure effective offender management by the integration of curfews into sentence planning where they act as the responsible officer.

### ***The electronic monitoring companies should:***

- » ensure that all information and enquiries from offender managers are logged appropriately on their information systems and acted upon.

## 2. STRUCTURE OF THE INSPECTION AND THE REPORT

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### Summary

This section outlines the background to this inspection and the methodology.

- 2.1 In 2008 HMI Probation published the report, *A Complicated Business*, on a joint inspection of electronically monitored curfew requirements in community orders and licences. This follow-up inspection fulfils the commitment made by the CJCIG to assess progress made against the published recommendations of the earlier report. This inspection was led by HMI Probation.

### Methodology

- 2.2 This inspection followed the criteria devised for the earlier inspection which were based on the requirements set out in the contract, protocols and relevant guidance.
- 2.3 A scoping exercise was undertaken to define the number and types of cases that would be inspected. We looked at 121 adult cases in all, with approximately half coming from each of the two EM suppliers. These cases were drawn from four probation trust areas, Essex, Derbyshire, Kent, and the Staffordshire region of Staffordshire & West Midlands.
- 2.4 We included a mix of single and multiple requirement community orders and 38 cases released under HDC in our case sample.
- 2.5 The two EM companies, G4S and Serco, were both asked to provide a list of all cases fitting the criteria that had started in the relevant areas in June 2011. We then selected our sample from the list.
- 2.6 The inspection tool was based closely on the tool used in 2008. The same tool was used to inspect the record held at the EM company and any case record held by the probation trust. The use of a single tool to inspect separate aspects of the same case allowed us to capture data from different parts of the process and compare them.
- 2.7 The curfews we inspected had all started in June 2011 and displayed the following characteristics:
- ▶▶ around half had an identified probation offender manager
  - ▶▶ one-third were subject to HDC
  - ▶▶ one-quarter were women

- » in cases where ethnicity was recorded, nearly 90% were white British
- » no cases were classified as presenting a high Risk of Serious Harm. Of those inspected, approximately half were said to present a medium, and half a low Risk of Serious Harm.

- 2.8 As we only inspected cases where curfews had been imposed, our methodology did not enable us to comment on cases where the curfew may have been proposed but not imposed, or where the home circumstances report did not lead to a HDC.
- 2.9 For all cases (including HDCs where the offence details were known), the most common offence types were violence against the person (24%), breach of court order (13%), burglary (11%), theft (11%) and drug offences (9%).
- 2.10 In addition to the file reading aspect of the inspections, we also met with senior staff from the EM companies, the MoJ, HM Courts & Tribunals Service (HMCTS) and probation trusts.
- 2.11 We also conducted a survey among probation offender managers involved with cases in the sample, receiving 30 replies.

### 3. THE STRATEGIC FRAMEWORK FOR ELECTRONICALLY MONITORED CURFEWS

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#### Summary

This section outlines the strategic framework and legislative background for curfews and briefly describes the technology and contractual issues. It also considers the sentencing purposes addressed by EM curfews, describes the overall use and costs associated with EM and the enforcement thresholds.

#### Key Findings

- The use of EM has changed significantly. The number of court ordered curfews has more than doubled since 2005-2006, whilst there has been a significant drop in the number of offenders released from prison under HDC.
- In 2008 we were concerned that the enforcement thresholds were not sufficiently stringent. Since then, there have been no changes to either the enforcement thresholds, or the transparency of those thresholds. A more transparent approach to managing these thresholds is now being piloted.

#### Electronically monitored curfews - the technology

- 3.1 All EM curfews have certain similarities. The offender is 'tagged' with a personal identification device (PID) and required to stay in the confines of a particular address for up to 12 hours a day for a specified length of time not exceeding six months. The PID is usually worn on the ankle. A monitoring device, usually using mobile phone technology, is fitted in the home which registers the presence of the PID. If the PID goes out of range of the monitoring device, this fact is communicated to the EM company control centre staff, who then attempt to contact the offender for an explanation. If the explanation is not judged acceptable, the offender is considered to have violated their order; if the violation is sufficiently serious, the offender could be returned to court and re-sentenced or, if subject to an HDC, sent back to prison.
- 3.2 Although the PID is robust and not easy to remove, it can be cut off and is designed to break at a certain strain for safety reasons. However, if the PID is damaged in any way, the monitoring centre is alerted and instigates an enquiry. The intentional damaging of a PID is a serious violation and leads to enforcement action.

## The legislative background

- 3.3 EM curfews as community sentences were introduced by the Criminal Justice Act 1991, although not immediately brought into force. They have been in widespread use since 2000. HDCs began in 1999 and evolved to allow certain prisoners with short sentences to serve up to the last four and a half months of their custodial sentence in the community on an EM curfew. They are authorised by the prison governor.
- 3.4 When originally implemented, EM was available as part of a curfew order. Since 2005, EM curfews have been available as part of a community order or suspended sentence order. The community order with a single curfew requirement remains available as a sentencing option for the purposes of punishment.
- 3.5 The offender management model introduced by NOMs enables EM to be used as part of a broader sentencing package in which different requirements can be placed on the individual offender in accordance with their level of offending and Risk of Harm to others. Consistent with this model, we found that curfew requirements were often being added to existing community orders when breached, to make them more onerous.
- 3.6 Each EM curfew has a 'responsible officer' who implements the requirement and takes enforcement action if necessary. If the community order has only one requirement, a curfew, then the responsible officer role is undertaken by a member of staff from the EM supplier. Where there is more than one requirement, the responsible officer will be from the probation trust – namely the offender manager.

## The sentencing purposes of electronically monitored curfews

- 3.7 The sentencing purpose most clearly addressed by the court when imposing an EM curfew is to punish the offender. This is achieved through the restriction of liberty by the requirement to remain in a defined place for a set period. How onerous the sentence will be is determined by the number of hours for which the curfew is imposed, the length of time for which the curfew applies and the circumstances of the individual offender. For some people, being confined to their home every evening for a limited period would be a less of an imposition than it would be for others.
- 3.8 A curfew may also be used to fulfil other sentencing considerations. The purpose of curtailing an individual's activities may satisfy the need for a degree of control, in as much as any absence from the home will be known to the relevant authorities. An enforced curfew may also be used as part of an integrated package of interventions to help offenders break long established patterns of behaviour.
- 3.9 The purpose of an HDC, as given in the prison service guidance<sup>6</sup> is to manage the transition from custody back in to the community more effectively. Here, for those originally sentenced to 12 months imprisonment or more, the EM curfew can play a similar role to a multi-requirement community order by supplementing relevant conditions in the license. For those sentenced to less than 12 months the HDC curfew is the only requirement, and here the purpose could be compared to a single requirement community order where the main intent is to impose some continuing restriction of liberty.

## The use of electronically monitored curfews

- 3.10 The table below shows the pattern and extent of the use of EM since 2005-2006. This clearly shows a trend towards the use of court ordered EM curfews leading to more than a 100% increase over six years.
- 3.11 There has also been a year on year decrease in the use of post-release EM, although there is some evidence that this trend may be reversing, with a small increase in HDC noted in the most recent year for which figures are available. Overall, post release EM has fallen from over 40% to less than 20% of the total. This trend has been evident since 2002-2003.

Table 1

	2005-2006	2006-2007	2007-2008	2008-2009	2009-2010	2010-2011
Court	30789	38584	49761	54811	55894	64420
Post-release	20669	16294	15339	15084	14621	15278
Sum	51458	54878	65100	69895	70515	79698

### *Annual commencements of post-sentence curfews*

- 3.12 The causes of these trends are not entirely clear, although a number of hypotheses can be generated. The increase in court ordered curfews may be the result of an increased sentencer confidence in EM curfews and a desire to use them for the purpose of punishment, including sometimes marking the breach of other sanctions.
- 3.13 The continuing fall in the use of HDCs is perhaps more surprising when set against the backdrop of a rising prison population. The rules of the scheme prohibit the use of an HDC if the offender has breached the conditions of release previously, so it is possible that over time more offenders have become ineligible. It is also possible that offenders choose not to apply, or that prison governors have become more risk averse. As our methodology only looked at cases that had successfully applied for HDC, we can make no comment on applications that were refused.
- 3.14 In 2008 we noted that the National Audit Office<sup>7</sup> observed in its report on EM curfews (reporting on the year 2004-2005) that there was a strong financial business case for curfews because the cost of a curfew compared very favourably with that of custody. At that time over one-third of EM curfews were for early release from prison - this is no longer the case (see Table 1).
- 3.15 Although the number of curfews has increased significantly, changes to the contract for the supply of EM made in 2005 have led to a significant decrease in the unit cost of curfews. In 2010-2011 the total cost of EM was approximately £100M. This figure is slightly less than the annual cost for EM under the first contracts in 2004/2005 but for twice the amount of electronic monitoring.
- 3.16 For some of the community cases, the curfew added an element of control and punishment. In other cases it is unlikely that a sentence of imprisonment would have been imposed had the curfew requirement not been available. It is a matter of judgement whether the cost of EM represents good value for money. To put the costs of EM in context, it currently represents about 10% of the total probation budget.

- 3.17 We found that where there had been a PSR, or where there was an offender manager, an assessment of the Risk of Harm posed by the offender had generally been undertaken. Where there had been an assessment, approximately half were assessed as presenting a low Risk of Serious Harm and half a medium Risk of Serious Harm. In our sample there were no cases classified as presenting High Risk of Serious Harm although it is unlikely that nationally there are none.

### Electronic monitoring provision

- 3.18 At the time of our inspection, EM was currently commissioned by the MoJ from two companies, G4S and Serco, who delivered services in the five contract regions. This was unchanged since the earlier inspection. The current contract was first negotiated in 2004 and implemented in April 2005. Some changes to the thresholds for enforcement were made in October 2005, although the contract remained largely unchanged. The contract was supported by protocols<sup>8,9,10</sup> which set out expectations and were agreed by all parties including courts, police and probation. These were published in Probation Circular 23/2005<sup>11</sup>. A new contract was due for implementation in April 2013.

### The enforcement thresholds

- 3.19 In our recent inspection we noted that the thresholds for the enforcement of EM curfews remained unchanged since November 2005. The contract and its protocols described the thresholds for:
- ▶ **a less serious violation** as “one or more curfew violations whose total length amounts to a period of two hours [or more]”. Any unacceptable absences from the curfew address were therefore recorded and accumulated to give an overall total across the entire curfew period
  - ▶ **a more serious violation** as either a) a second less serious violation; b) an absence for a whole curfew period; c) damage to the monitoring equipment; d) threats to staff.
- 3.20 A fuller description of the contract and protocols can be found in the earlier report, *A Complicated Business*.
- 3.21 In 2008 we were concerned both that the thresholds were not sufficiently stringent and that many parties, including offenders, were not sufficiently clear about the detail of the thresholds. During the current inspection 93% of the offender managers who responded to our survey said that they were either very confident or sufficiently confident that they knew what the terms ‘less serious’ and ‘more serious’ violations meant.
- 3.22 The concerns that we had about the insufficient stringency of the thresholds remain. In particular, we feel that the fact that an offender on a 12 hour curfew could be absent for 11 hours 59 minutes (i.e. just under the whole curfew period) and only trigger a less serious violation creates a gap between what the courts and public might reasonably expect and what actually happens. A more transparent approach to managing these thresholds was being piloted (see Section 7).

## Conclusion

- 3.23 EM curfews have a fully established position in the sentencing framework, with courts increasing the demand for them year on year. Conversely, the number of HDC cases has generally declined, although the most recent year had shown a small increase.
- 3.24 One of the key planks to the business case for curfews is that they are less expensive than prison. Whilst this remains true, there has been a shift in their use from supporting early release from prison, to adding a punitive and restrictive element into a community sentence. Increasing the punitive element of a community order is a legitimate aim of sentencing, but is not without cost, particularly in cases where prison may not have been a likely disposal. Nor does it necessarily make the sentence more effective in preventing further reoffending.
- 3.25 The contacts and protocols established in 2005 are largely unchanged. The changes we had hoped to see to the thresholds for enforcement and their transparency have not materialised and they remain, in our view, not sufficiently stringent. The new arrangements for the delivery of EM from 2013 offer the potential to implement the necessary changes.

## 4. ASSESSMENT BEFORE SENTENCE OR RELEASE ON HDC

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### Summary

This section outlines the process of assessment for those sentenced to curfews or released on HDC.

### Key Findings

- Despite the legal obligations placed on courts to assess the suitability of a proposed curfew address, this is now seldom achieved through a PSR, and is rarely based on a home visit.
- All probation trusts responded promptly to requests for HDC assessments from prisons, although the assessment did not usually involve a visit to the home.

### Community cases

- 4.1 For community cases, the Powers of the Criminal Courts (Sentencing) Act 2000 and the Criminal Justice Act 2003 require a court to obtain and consider information about the proposed address, including information about the attitude of persons likely to be affected by the enforced presence at the address of the offender, prior to imposing a curfew requirement.
- 4.2 To this end, courts can ask for an assessment by probation prior to the imposition of an EM curfew. These assessments take the form of a PSR which helps the court to consider whether it wishes to impose either a single requirement order with the express purpose of punishment or to pass a multiple requirement order with several purposes.
- 4.3 In 2008 we found that 90% of community orders with curfews imposed had been made following a PSR, with 28% of these assessments including a home visit.
- 4.4 In this inspection we found evidence of a PSR or a specific breach report being prepared in just 29% of cases (24). We found no evidence of home visits being undertaken as part of the assessment process. Of the 24 cases where there was a PSR or specific breach report, there had been a positive recommendation for an EM curfew in 16.
- 4.5 In contrast to the position in 2008, we noted that community orders with EM curfews were now most commonly imposed without the benefit of a PSR or other report. We found many examples of EM curfews being imposed without any apparent consideration of information from an independent source. In some cases we found that the probation trust held information that should have been

considered prior to sentence. This is particularly worrying in cases involving domestic violence.

### **Practice example**

Mr. B was subject to a community order, and was also on bail for other matters. He failed to surrender to bail and was arrested on a warrant. It appeared that he was given a community order with a single curfew requirement for the bail offence. No information was sought from the offender manager. Probation records indicate that Mr. B was a known domestic violence perpetrator. EM records indicated that Mr. B's partner initially wished to rescind her consent for him to complete the curfew at her address but it appeared that she subsequently changed her mind. The eight week curfew was completed without the need for enforcement, but Mr B was subsequently charged with common assault on his partner.

### **HDC cases**

- 4.6 The level of involvement by the probation trust in an HDC case depends on the length of sentence being served by the prisoner. If the sentence of imprisonment is less than 12 months, there is no post release contact between the offender and the trust. The only routine involvement pre-release is in connection with the assessment of home circumstances to determine the suitability of the address for release on HDC.
- 4.7 Any offender serving a sentence of 12 months or longer is subject to a licence supervised by the probation trust. However, there is little contact between probation trusts and these offenders prior to the assessment of home circumstances for HDC purposes. This is because they are 'out of scope' of the offender management model until they are due for release (unless they are assessed as presenting a high Risk of Harm to others or have been identified as Prolific and other Priority Offenders (PPOs)). The request for a home circumstance report is often the first active contact between the between the prison and the probation trust.
- 4.8 The release of a prisoner on HDC (regardless of the length of sentence) is dependent on a positive assessment of the home circumstances. In all cases a pro-forma is sent to the home probation trust by the prison in advance of the proposed release date. Although the detail of the procedures varied from place to place, all probation trusts responded to these requests promptly. In 2008 we found that approximately half of HDC assessments included a home visit. The follow-up inspection found that this practice had virtually disappeared. Most assessments were now based on a telephone call from the probation trust to the family or friend living at the proposed address. Such a call would not serve to confirm the domestic circumstances - much less to provide an assessment of the suitability of the address or that of the prisoner for early release. This is less than ideal as a contribution to the assessment process. However, it does appear to have been a pragmatic response by trusts to the position that the prisoner will be released on HDC unless there are 'clear and substantive grounds' for refusal. Efficiency savings

could be made by the releasing prison completing the HDC assessment process themselves, particularly in the case of short sentence prisoners who will subsequently have no contact with the probation trust.

## **Conclusion**

- 4.9 We found that court ordered curfews were increasingly made without an independent assessment. This raises some concerns that curfews may be imposed in inappropriate situations. The fact that only a small proportion of curfews seem to have originated following a PSR with a specific rationale goes some way to explaining the apparent lack of integration of the curfew requirement.
- 4.10 Although probation trusts routinely responded promptly to requests for information on proposed HDCs, it is hard to see that the probation assessment – within the limitations in which it now operates - adds value to the process.

## 5. COMMUNICATION AT THE START OF THE CURFEW

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### Summary

This section outlines the various communications necessary at the start of the sentence.

### Key Findings

- The method of communication between the court and the EM companies had improved and was now nearly always made through secure email and usually typed. However:
  - ▶ although new forms had been issued by HMCTS, the wording of the forms was confusing and unhelpful, and did not collect or convey to the EM supplier all of the necessary information. Furthermore, some courts were still using incorrect and outdated forms
  - ▶ orders of the court and notifications often contained errors. The fundamental issue of whether there were one or more requirements to the community order was frequently unclear. A particular area of complexity arose with the amendment of existing orders to include a curfew requirement.
- These problems added to the confusion about whether the responsible officer was an offender manager from the probation trust or was an employee of the EM supplier. In turn this led to problems when enforcement action was required.
- Probation trusts seldom informed the EM company of their involvement in a case in a timely manner. Where this communication did take place, it was not always acted on appropriately by the EM company.
- In 43% of cases the EM company were not notified of the requirement before 15:00 on the day of sentence. This may reflect the time of sentencing – but whatever the reason it is likely that in these cases the equipment would not be fitted on the first night of the curfew.
- EM company staff made all reasonable attempts to clarify obvious errors in the communications they received and in all cases inspected had made sufficient efforts to fit the equipment within the contractual requirements.
- There were very few problems associated with the commencement of HDC cases.

## Communication from the court

- 5.1 The first necessary communication after a community order with a curfew requirement has been made is between the court and the EM supplier. The supplier should receive a notification form and a copy of the legal order. The obligations of the courts and the EM companies with regard to the installation of the equipment are detailed in the various contracts and protocols between the various parties. The contract specifies that where the notification from the court is received after 15:00 on the day of sentence, the EM company is allowed an extra 24 hours to fit the equipment. This is not referenced in the protocols agreed to with the courts and the contract itself is a 'restricted' document and not available to the courts. The significance of the timeliness of the communication is not widely understood. A fuller explanation of these issues is contained in the earlier HMI Probation report.
- 5.2 In the 2008 inspection we found that this initial notification was always in the form of a fax which was usually handwritten, and often unclear. This follow-up inspection found that most courts had adopted the use of secure email, and most notifications were typed. This in itself was a significant improvement. We judged that the address and postcode of the offender was clear in 88% of notifications received by the EM supplier. This still left 14 cases in the sample where information that was key to the delivery of the sentence was unclear.
- 5.3 In 2008 we also found that the forms and orders being used by some courts were outdated and therefore inaccurate. This situation had continued. In our follow-up inspection we found several examples of forms recording the imposition of a curfew order – which had not been available as an adult sentence since March 2005 – and older versions of notification forms still being sent to the EM suppliers.
- 5.4 Following the previous inspection we recommended that HMCS provide 'a set of clear, easy to use national forms, supported by clear instructions for their use and by training. Their application should be mandatory and monitored'. In our follow-up inspection we found that although a new form and guidance had been issued by HMCS, utilising the Libra system in the magistrates' courts, not all courts were using the correct form.
- 5.5 Furthermore, the new notification form to the EM suppliers contained wording that was unhelpful and confusing, asking court staff to answer 'yes' or 'no' to the question 'Is this a combined order?', followed by a further question, 'If yes, other sentences imposed'. It was not clear to us or the staff we interviewed from HMCTS what was meant by a 'combined order'. We hypothesised that the correct questions might have been 'Is this a multiple requirement order?' and 'If so, what other requirements were made?' It appeared to us that in many cases, court staff were saying that the order was combined because a suspended sentence order had been made.
- 5.6 The notification form also asked 'Is there a supervising officer?' This often appeared to be interpreted as a question about any report that had been written for the hearing, rather than relating to the outcome of the hearing. A more helpful question might have been 'Which agency is to provide the responsible officer?' Court staff were then given a series of options to select from about the responsible officer. The most common entries were either 'Probation' or 'YOT'. It appeared that most court staff had interpreted this to mean 'Is this an adult or youth case?'

- 5.7 Given that the questions in the notification form were so unclear, it was not surprising that we found inconsistency in the way the form was used.
- 5.8 As the EM companies were in receipt of the actual order of the court in less than half of the cases inspected, they were wholly dependent on the quality of the notification form – a situation that was less than ideal in view of the problems reported above. The correct documentation had been received by the EM supplier, with all the necessary information, in only just under half of cases.
- 5.9 In addition to problems with the notification form, we found continuing confusion over the wording of community orders. Although for magistrates' courts the order was usually derived from a template, the issue of whether or not there was actually a supervision requirement was often unclear.
- 5.10 There were frequent references on suspended sentence orders to the 'supervision period' (which referred to the period of imprisonment, even though in common usage it could be argued that there was no 'supervision'). Although this is perhaps misleading, it is correct in law. Despite this position, the layout of the order template served to make this unclear.
- 5.11 We found multiple examples where it appeared there was only one requirement, a curfew, but the actual order specified that the responsible officer was a probation officer, and that the offender must keep in touch with the probation officer. Furthermore, the template did not allow for the word 'Requirements' to be edited to indicate correctly that there was only one 'Requirement'.
- 5.12 We were told by senior HMCTS staff that the completion of the Libra documents was usually undertaken by administrative staff, who effectively copy typed from the court case file cover. This case file cover took the form of a thin card large enough to fold around all of the other case papers. It was formatted to allow the legal adviser to write, by hand, the relevant information on the template. Unfortunately there was no standard way for the legal adviser to record who the responsible officer should have been.
- 5.13 Although it possible to argue that one should deduce from the fact that there was only a single requirement, that the responsible officer ought to have been from the EM company, the evidence was that many staff at the court failed to do so and unwittingly entered confusing information.
- 5.14 The interplay between the various factors above meant that in many cases, the EM company was faced with information that was at best open to misinterpretation and at worst simply incorrect. These issues are very similar to the ones identified in our 2008 thematic report.
- 5.15 Although the inspection found few cases where there were significant concerns about the offender posing a Risk of Harm to others, the process of the court forwarding this information to the EM supplier was not robust. The notification pro forma required information on the offender's status in terms of being an identified PPO, ISS or Multi-Agency Public Protection Arrangements (MAPPA) case, but did not require information on the assessed Risk of Harm (where available). There were several cases where relevant information about the offence type, racially aggravated factors and mental health issues were not forwarded to the supplier. EM suppliers were therefore not party to information that could help them to minimize the risks to their staff.

- 5.16 In one case where there was a Sexual Offences Prevention Order (SOPO) in place, this was not communicated to the field monitoring officer (FMO). There was no evidence to suggest that there were any breaches of the SOPO, but the FMO could potentially have witnessed apparently innocent behaviour that, with the contextual information, could have been of great significance.
- 5.17 A further area of confusion arose where the court wished to impose a curfew requirement following a conviction for breach of an existing community order. In these circumstances it is necessary for the order to be clear if a curfew is being added to the original order (making it a multi-requirement order), or if a new order with a single requirement is being made. In the cases we inspected, this clarity was often lacking.
- 5.18 The EM companies made a reasonable assumption that unless there was evidence to suggest that there was a multi-requirement order and a probation offender manager, the order had a single requirement.
- 5.19 We found a number of instances where there had been confusion about whether a case had a single or multiple requirements. Even though we had the benefit of visiting the EM company and the probation trust, it was not always possible to give a definitive answer. As the wording of both the notification form and actual order is unclear, the only way to find a definitive answer in magistrates' courts cases would be to check the handwritten note made by the legal adviser on the case file cover. This would be a time consuming activity for court staff, the EM company and probation trusts. In Crown Court cases this check would need to be made with the electronic court log on the Crown Court IT system XHIBIT.
- 5.20 As this information is not required until enforcement action is needed, it is understandable that the suppliers would not routinely undertake this potentially time consuming task. Often the information was only found to be necessary after breach proceedings had been started.
- 5.21 As a result of these various factors, there were significant problems for the EM supplier in identifying if there was an offender manager. There were 82 community cases where it was possible for inspectors to be reasonably confident about whether or not there should have been an offender manager. Of these we found seven cases where the EM company incorrectly thought there was an offender manager and nine cases where the EM company incorrectly thought there was no offender manager. In all, this represents an error rate of nearly 20%.
- 5.22 It is likely that the error rate at the time the information was received was significantly higher as, at the time of our inspection, the curfews had been running for between 10 and 15 weeks, with various opportunities to correct the data in some cases.
- 5.23 In addition to the above, orders were not always clear about the length of the curfew required. There were several examples of the stated start and end dates to the curfew not corresponding to the number of weeks or months stated.
- 5.24 In one case a handwritten notification on an obsolete form, with a misspelt address and incorrect postcode, indicating an (illegal) 12 month curfew was received. Although this was an extreme example, it did encapsulate many of the errors that were seen in the inspection.

- 5.25 It is important to understand that these deficiencies are not merely technical, and cause significant problems where action is needed from the responsible officer, such as when the offender becomes subject to enforcement proceedings.

### **Communications from the electronic monitoring companies at the start of the order**

- 5.26 We found clear evidence that when in receipt of ambiguous information on the length of the curfew, the EM suppliers did make immediate efforts to clarify the court's intention. Although the courts used a mixture of days, weeks and months and actual dates to define the length of the curfew, the EM companies always recorded this information in days.

### **Communication between offender managers and electronic monitoring companies at the start of the order**

- 5.27 The agreed information protocol between probation and the EM suppliers in place at the time of the inspection required the offender manager to contact the supplier within 24 hours of allocation. Although we found some evidence of this happening, it was not widespread. All of the trusts we visited had a policy that acknowledged this requirement, although none monitored the implementation of the policy. In some cases operational changes such as the withdrawal of probation staff from court had made it unclear who would actually fulfil the requirement, with most offender managers unaware of it.
- 5.28 In the cases where there was clear evidence from the probation file that contact had been made at the correct time, this was not always evident from the records held at the EM company concerned.

#### ***Practice example:***

Mr. N was made subject to a multiple requirement order. He was a registered sex offender suffering from paranoid schizophrenia which was controlled by medication, which he took intermittently. He had a conviction for wounding and had been aggressive to staff. Probation records indicated that much of this information was shared with the EM company at the time of sentence. The EM company records were not clear about where information about Mr. N had come from or when it was received. The record did indicate that he should not be visited by a lone female, yet a lone female member of staff was sent to fit the equipment, although after the first fitting this did not happen again. Probation records in this case were also so poorly kept that it was not possible to be sure about the exact nature and time of any communications with the EM supplier.

- 5.29 It also appeared that some EM company staff at times entered information on the offender's record without attributing the source of the information or the date it was received. It was therefore not always possible to tell if information had been received from probation, the courts, the supplier's own records or on the advice of the company's staff in other operational areas.

- 5.30 In some cases, the fact that there had been a communication from the probation trust had been recorded, but the information was not acted upon. In one case the EM company concerned had received and recorded information that a probation officer had been in contact. However, they then failed to amend the relevant record to indicate that it was a multi-requirement order, or to check out the information further.
- 5.31 Of the offender managers who responded to the inspection survey, 85% thought that it was either very easy, or sufficiently easy to contact the EM suppliers. Where there were difficulties, these were in connection with getting through to the correct department. All but two respondents found the EM company staff to be very or sufficiently helpful.
- 5.32 Where there were problems, these appeared to gravitate around the ability of the EM suppliers to appreciate the individual case management approach. One offender manager gave the example that he had informed the supplier of arrangements for the management of the case during their absence. When there were concerns about compliance, information was not sent to the named colleague as had been requested. This led to delays in enforcement. Whilst we appreciate that EM companies are not contracted to provide a bespoke service, we would expect some flexibility of approach in such circumstances.

### **Installing the equipment**

- 5.33 One of the significant contractual requirements placed on the EM companies concerned the timeliness of the installation. The contract in place at the time of the inspection specified that where the notification from the court was received after 15:00 on the day of sentence, the EM company was allowed an extra 24 hours to fit the equipment.
- 5.34 In the sample of community cases inspected, the EM company received notification of the making of the EM requirement before 15:00 on the day of sentence in 57% of cases. This was a slightly higher figure than we found in 2008. As we did not visit courts it was not possible to judge if the timing of the notification reflected the sentencing time or was simply the time the court administrative procedure was undertaken.
- 5.35 Whatever the reason for the notification being after 15:00, the effect was the same - namely that there was a strong likelihood that in 43% of cases the equipment would not be fitted on the first night of the curfew.
- 5.36 In all cases inspected it appeared that the EM company made sufficient efforts to fit the equipment promptly and within the contractual requirements.
- 5.37 There were several cases where the failure to fit the equipment promptly was caused by the offender being absent from the required address when the installation attempt was made. The contract allowed for a second attempt to be made, which happened as required.
- 5.38 There were also several cases where the installation was not concluded in a timely manner, as the information from the court was either unclear or was not sent to the EM company for several days after sentence. In two cases the records held at

the EM company indicated that offenders themselves had made contact with the EM company to check why their equipment had not been installed.

**Practice example:**

Mr. E was made subject to a community order with a single curfew requirement on 20 June. The EM company received the notification the next day and attempted to fit the equipment. They were unsuccessful as the address on the notification form was incorrect. The company were then contacted by the offender who clarified his address. The EM supplier attempted to obtain the correct legal documentation required to install the equipment, and made several unsuccessful attempts to contact the court. The court sent out a new notification form on 27 June with the correct address, indicating that the case had an offender manager (which was incorrect). The equipment was fitted that night, seven days after the order was made.

- 5.39 For HDC cases, the notification from the prison was always received in advance of the day of release. In all but one inspected case the installation was successful on the first attempt. In this case there had been a lack of clarity over which flat in the building the offender was due to live in. Further checks made the next day led to a successful installation.

**Conclusion**

- 5.40 Although there had been an improvement in the method of communication between the courts and EM supplier since 2008, the content of communication from courts was still insufficiently clear.
- 5.41 One of our key recommendations to HMCS was that they should provide 'a set of clear, easy to use national forms, supported by clear instructions for their use and by training. Their application should be mandatory and monitored'. We also noted that HMCS should ensure 'that greater oversight is exercised over court administrative procedures so that the orders issued by the court office accurately reflect the sentence passed'. We were disappointed to find that, although a new form had been issued, not all courts were using it and the form itself was confusing. Given the courts' increase in the use of curfews, this recommendation remains critical.
- 5.42 The implications of the errors in documentation are of serious concern. The fundamental issue of whether there are one or more requirements in a community order has a bearing on which organisation has the responsibility for managing and, if necessary, enforcing the order. We saw several cases where this situation led to confusion and inefficiency. The risks inherent in failed communication are all too evident.

## 6. OFFENDER MANAGEMENT

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### Summary

This section outlines the issues involved in the offender management of curfew cases by probation trusts.

### Key Findings

- Very few of the cases inspected were subject to a thorough offender management approach with the curfew being fully integrated into the sentence plan.

- 6.1 This section relates solely to those cases where there was an offender manager; that is where the EM curfew was one of several requirements of a community order or the release was on HDC where the original offence was more than 12 months.
- 6.2 In all other cases there is no expectation that the offender will be worked with constructively to address their offending behaviour.
- 6.3 Under the offender management model, the curfew should be included as an integral part of the sentence plan drawn up by the offender manager in discussion with the offender. The sentence plan must contain clear objectives and include all of the requirements specified in the order. It should be reviewed on the completion of each requirement. A curfew can be used to support other objectives in the plan by providing a degree of control and helping the offender to break long established patterns of behaviour.
- 6.4 Of the 39 community cases, we found that the curfew was mentioned in the supervision plan in only five. We judged that it was fully integrated in the management of the offender in three.
- 6.5 Although this level of integration appears disappointing, it is not significantly different from our 2008 finding. Previously we identified the possible causes of this lack of integration as the historical consequences of earlier legislation where curfew orders were indeed separate. This remains a possibility, although perhaps more significant factors may be the apparent increase in the proportion of orders made without a positive recommendation, and the proportion of cases where the order was imposed as an additional punishment to an existing order.
- 6.6 The duration of EM curfews in multiple requirement orders may also have been a significant factor, with over one-third being eight weeks or shorter in length. Although these shorter requirements should have been fully integrated, it would appear they were often not.
- 6.7 Of the 82 community order cases inspected, 39 should, in our view, have had an offender manager by virtue of there being more than one requirement to the order.

Of these, approximately half had a supervision requirement, with one-third having unpaid work as the only other requirement.

- 6.8 Where the EM curfew was made in conjunction with another requirement that also focused on punishment, such as unpaid work, there was no clear framework within which 'offender management' could operate. Although the responsible officer for the unpaid work was also the responsible officer for the curfew, they were often inexperienced at dealing with other requirements. Without a supervision requirement focusing on the broader sentencing aims of rehabilitation as well as punishment, it was difficult for the offender manager to engage constructively with the EM requirement.

## Conclusion

- 6.9 Despite the aspirations of the offender management model to integrate curfews into a single sentence with multiple purposes, and the recommendation of our earlier report that NOMs should 'provide guidance to staff to ensure effective offender management by the integration of curfews into the sentence or intervention planning process', there is little evidence that NOMs has issued such guidance or that there has been any improvement in the integration of curfews into sentence planning. This was a missed opportunity to support rehabilitative objectives as a curfew can provide an element of control and a way of helping the individual to break long established patterns of behaviour.
- 6.10 Where multi-requirement orders operated without a supervision requirement, the role of the responsible officer remained unclear and the sentence operated without cohesion.

## 7. ENFORCEMENT

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### Summary

This section outlines the issues arising when enforcing curfew requirements.

### Key Findings

- The EM company monitoring centre staff made appropriate enquiries of offenders where violations occurred.
- Approximately 20% of cases had a less serious violation recorded against them and 37% had a more serious violation.
- Enforcement was sometimes delayed as a result of confusion about who was the responsible officer.
- Where the probation trust provided the responsible officer, although appropriate action was usually taken, they too frequently failed to communicate with the EM supplier.
- A more transparent approach to enforcement thresholds was being piloted at the time of the inspection, with promising results. The formal position has, however, remained unchanged.

### The role of the responsible officer

- 7.1 Each EM curfew has a 'responsible officer' for enforcement. If the curfew is part of a multi-requirement order, the responsible officer will be from the probation trust. If the order has only a single curfew requirement, the EM company is responsible for all enforcement actions.
- 7.2 In the case of HDCs there is a probation offender manager only where the original sentence is for 12 months imprisonment or longer. This offender manager is responsible for all aspects of the offender's supervision except the EM curfew, which is enforced by the PPCS. We welcome a change in the EM contract in 2009 whereby the PPCS and the EM companies are required to inform the relevant offender manager of any alleged breach of HDC. We do, however, still believe that the offender manager should be required to recommend a course of action to the PPCS.

### The enforcement process in community orders

- 7.3 Regardless of which agency acts as the responsible officer for enforcement, the EM company is required to investigate the circumstances of any apparent violation of the curfew. This was initially done by the company's monitoring centre staff. If the

offender was not recorded as being at the correct address by the PID at the start of the curfew, or went out during the curfew, attempts were made to contact them by telephone on their return.

- 7.4 On establishing contact with the offender, the monitoring centre staff asked them to explain the apparent violation and would, if necessary, investigate the reason given. Examples of acceptable reasons for absence include being held by the police, being detained in hospital or accompanying a dependant person to hospital. If there was not an acceptable reason for absence, the offender was informed that they were in violation of the curfew and that the absence had been logged.
- 7.5 We found that the EM company monitoring centre staff contacted those subject to curfew who appeared to be in violation and recorded their reasons. Where necessary they nearly always took appropriate action and instigated other actions.
- 7.6 In 2008 we found that the thresholds for enforcement were formally defined but deliberately opaque. Although offenders were warned about the fact that they had infringed the rules, they were not told what the enforcement threshold was, or if they were close to reaching it. There has recently been a pilot project to test the impact of a more transparent approach to enforcement; we understand that this has shown promising improvements in compliance. The formal position has, however, remained unchanged.
- 7.7 The length of any absence is recorded by the EM company and added to all previous absences to give a total accumulated time in violation. Enforcement action is required when violations meet certain thresholds. When single or cumulative absences exceed two hours, but do not amount to the whole curfew period, the threshold for a less serious violation has been reached and a final warning should then be issued by the responsible officer.

***Practice example:***

On 02 June 2011 Mr. F was made subject to a multi-requirement community order. On eight occasions between 14 June 2011 and 06 August 2011 he was shown to be absent from the curfew address for periods of between 5 and 35 minutes. On 06 August the Accumulated Time Violation exceeded the two hour threshold and he was told that his offender manager would be informed with a view to enforcement action. His offender manager was duly informed and he was interviewed about the violations. The offender manager had not previously been informed of any of the minor violations as they had been accumulating (this was in accordance with the contract). Mr. F's response to the offender manager was in effect that as it appeared that there were no consequences to the first seven minor violations (including the 35 minute one), he had chosen to believe that further minor violations would also be without consequence. Had the thresholds been more transparent, the need for enforcement action may have been averted.

- 7.8 When either a formal warning or breach action was required, it became essential for the EM company to know the details of the offender management arrangements. It was at this point that the earlier failures by the court to communicate effectively with the EM company manifested themselves as problems.

**Practice example:**

Mr. G was sentenced to a curfew requirement on 04 June. The notification was not on the correct form, and it was not clear if there was an offender manager. The EM company attempted to fit the tag on the first night but the offender was aggressive and would not comply. In the absence of any other evidence the company believed there was a single requirement and commenced breach proceedings. Despite a phone call from the offender manager who told them that it was a multi-requirement order, the company proceeded with the breach action obtaining a court date for 27 June. On the day of the hearing the proceedings were withdrawn (presumably on the basis that the EM company who had commenced the proceedings was not the responsible officer). The tag was successfully fitted on the 28 June.

**Actions following less serious violations of community orders**

- 7.9 From the evidence held at the EM suppliers, over one-fifth of cases inspected had a less serious violation recorded against them, but no more serious violation.
- 7.10 In the ten cases where there was said to be an offender manager, the offender manager was sent notification of a less serious violation promptly in eight. In return, the companies received five responses to the information sent; there was no evidence of a response in four cases; one response was not appropriate. Examining the same cases at probation showed a slightly different picture. Out of the four cases where there was no response, one was not an offender management case, a response seemed to have been sent in one and action had been taken in two cases, but this had not been communicated.

**Practice example:**

Mr. R was found to be in breach of his community order with an unpaid work requirement. The court made this order more onerous by adding a curfew requirement, making it a multi-requirement order. Due to the poor quality of the information received, the EM company incorrectly entered the case on their systems as a single requirement order. When enforcement action on the curfew was needed it was started swiftly. As the company believed it to be a single requirement order they did not notify the offender manager. The EM company successfully prosecuted the breach of the multi-requirement order and a new community order with a single curfew requirement was imposed. The offender manager did not know about the prosecution and the replacement of the unpaid work requirement until after the event. This prosecution appeared to be in contravention of the agreed rules.

**Actions following more serious violations of community orders**

- 7.11 From the evidence held at the EM suppliers 30 (37%) of the sample inspected had a more serious violation recorded against them.

7.12 In 17 cases where there was said to be an offender manager, notification was sent to them promptly in 11. In return, the companies received six responses confirming breach action. In a further two cases appropriate action had commenced but the EM company was not informed. In three cases the offender manager failed to take appropriate action and in a further case the offender was in custody on other matters and the EM company was not informed. Further information was requested by the offender manager in one case, although no response was received. In three cases there was no evidence of the original communication being received and in another there was actually no offender manager.

Frequency	Action
6	Appropriate action taken and EM company informed
3	No evidence of the communication being received
3	Offender manager appears to have failed to take appropriate action (in one case took no action, and in two issued final warnings)
2	Appropriate action taken but EM company not informed
1	Offender manager sought further information but this was not supplied
1	Offender in custody on other matters (EM company not informed)
1	Case did not have an offender manager
17	TOTAL

7.13 The perception of 87% of offender managers who responded to the inspection questionnaire was that there were either no problems or generally no problems with regard to enforcing EM requirements. In the few cases where there were problems, these were around the timeliness of information received.

7.14 Less than half the offender managers who responded were fully aware of the timescales within which they should inform the EM supplier of their decision on enforcement action. Nearly 15% claimed not to be aware of the necessity of informing the EM supplier about their decision in a timely manner.

7.15 There were 13 single requirement cases where there was a more serious violation to be enforced by the EM company. In nine of these, actions were commenced promptly. In the remaining four cases there had been confusion about whether the EM company should act as the responsible officer, or other complications. Actions were eventually commenced but were withdrawn in one as the order had expired.

7.16 This evidence revealed some of the complexities involved in the cases, and the advantages of inspecting them from different perspectives. There were clearly shortcomings in the communications between the probation trusts and the EM companies and to a more limited extent from the EM companies to the trusts. There were three cases where it appeared the probation trust had failed to take appropriate enforcement action. It is possible that further investigation might have revealed that, even in these cases, there were other factors that could have justified these decisions.

## Enforcement in HDC cases

7.17 There were very few cases in the sample of HDC cases that required enforcement action. It appeared that where action was needed the PPCS and the offender manager (where required) were informed promptly, and recall was swift.

## Information exchange

7.18 The inspection practice of looking at the same cases from two perspectives presented interesting methodological challenges. Sometimes where there were factual differences, it was possible to say definitively that one party or the other had the correct information. This inspection found many examples where this judgement was impossible to make. Even with the benefit of actually visiting the two sites, it was often not possible to say which 'fact' or 'account' best reflected reality.

### **Practice example:**

Ms. H was subject to a community order with three requirements: an eight week curfew, alcohol treatment and supervision. Whilst under the influence of alcohol she cut off her tag. The EM company promptly informed the offender manager and waited to hear her decision on the breach. Their records indicated that the offender manager did not respond and the order ended with an unresolved alleged breach.

An examination of Ms. H's case record at probation indicated that the offender manager did in fact issue a final warning for the breach (although this was not an appropriate response to a more serious violation), contacted the EM company to inform them of her actions and even received a thank you email from a named member of EM company staff.

These records of events could not simply be reconciled.

7.19 Where there was a probation offender manager, that officer was totally dependent on the information from the EM company for information about breach of the curfew.

7.20 We judged that the information passed to offender managers was nearly always sufficiently clear. This was supported by the views of the offender managers who responded to the inspection survey, 77% of whom thought the information they received from the EM company was perfectly or sufficiently clear. This represented a significant improvement on the position we found in 2008

## Conclusion

7.21 We recommended in 2008 that the MoJ should develop a 'SMART' approach to compliance and enforcement, working to tighter and transparent boundaries, but with more discretion in individual cases. We are disappointed that there have been no changes to either the stringency of the thresholds or their transparency.

- 7.22 The EM companies had largely complied with the recommendation of our 2008 report to 'ensure clearer communication to offender/case managers on breach, including a simple summary on all cases'. Probation trusts had been less successful in responding to the recommendation that they should routinely inform 'the electronic monitoring companies of their decisions regarding enforcement, and record their reasoning, on those rare occasions when they decide against following the given advice on enforcement'.
- 7.23 Enforcement action was usually undertaken swiftly. Where there were problems, this often stemmed from a lack of clarity over who was the responsible officer. This in turn was caused by the poor quality of the information received by the EM supplier from the courts.

## APPENDIX 1 - GLOSSARY OF ABBREVIATIONS

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CJCIG	Criminal Justice Chief Inspectors' Group
EM	Electronic Monitoring
FMO	Field Monitoring Officer
HDC	Home Detention Curfew
HMCS	HM Courts Services
HMCTS	HM Courts and Tribunals Service (formerly HMCS)
HMI Probation	HM Inspectorate of Probation
<i>Interventions; constructive and restrictive interventions</i>	Work with an offender which is designed to change their offending behaviour and to support public protection. A <i>constructive intervention</i> is where the primary purpose is to reduce <i>Likelihood of Reoffending</i> . A <i>restrictive intervention</i> is where the primary purpose is to keep to a minimum the offender's <i>Risk of Harm to others</i> .
ISS	Intensive Supervision and Surveillance
Libra	HMCTS's national case management and accounting information technology system
MAPPA	Multi-Agency Public Protection Arrangements: where probation, police, prison and other agencies work together in a given geographical area to manage certain types of offenders. The National Guidance for MAPPA was contained in Probation Circular 54/2004
MoJ	Ministry of Justice
NOMS	National Offender Management Service
OASys	Offender Assessment System: the nationally designed and prescribed framework for the probation and prison services to assess offenders, implemented in stages since April 2003. It makes use of both 'static' and 'dynamic' factors
PID	Personal Identification Device
PPCS	Public Protection Casework Section
PPO	Prolific and other Priority Offender
PSR	Pre-sentence report
Risk of Harm/ Risk of Serious Harm.	Risk of Harm to others is the term generally used by HMI Probation to describe work to protect the public. In the language of offender management, this is the work done to achieve the 'control' purpose, with the offender manager/supervisor using primarily restrictive interventions that keep to a minimum the offender's opportunity to behave in a way that is a risk of harm to others. Risk of Serious Harm refers to the NOMS classification system.
SOPO	Sexual Offences Prevention Order
XHIBIT	The Crown Court information system.
YOT	Youth Offending Team: multi-disciplinary teams, established in each local authority areas and responsible for supervising young offenders and working with young people who are likely to offend

## APPENDIX 2 – STATEMENT OF PURPOSE AND CODE OF PRACTICE

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### Statement of Purpose

HMI Probation is an independent Inspectorate, funded by the Ministry of Justice and reporting directly to the Secretary of State. Our purpose is to:

- report to the Secretary of State on the effectiveness of work with adults, children and young people who have offended aimed at reducing reoffending and protecting the public, whoever undertakes this work under the auspices of the National Offender Management Service or the Youth Justice Board
- report on the effectiveness of the arrangements for this work, working with other Inspectorates as necessary
- contribute to improved performance by the organisations whose work we inspect
- contribute to sound policy and effective service delivery, especially in public protection, by providing advice and disseminating good practice, based on inspection findings, to Ministers, officials, managers and practitioners
- promote actively race equality and wider diversity issues, especially in the organisations whose work we inspect
- contribute to the overall effectiveness of the criminal justice system, particularly through joint work with other inspectorates.

### Code of Practice

HMI Probation aims to achieve its purpose and to meet the Government's principles for inspection in the public sector by:

- working in an honest, professional, fair and polite way
- reporting and publishing inspection findings and recommendations for improvement in good time and to a good standard
- promoting race equality and wider attention to diversity in all aspects of our work, including within our own employment practices and organisational processes
- for the organisations whose work we are inspecting, keeping to a minimum the amount of extra work arising as a result of the inspection process.

The Inspectorate is a public body. Anyone who wishes to comment on an inspection, a report or any other matter falling within its remit should write to:

*HM Chief Inspector of Probation  
6th Floor, Trafford House  
Chester Road, Stretford  
Manchester M32 0RS*

<http://www.justice.gov.uk/about/hmi-probation/>

## APPENDIX 3 - REFERENCES

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<sup>1</sup> *Joint Inspection Business Plan 2010/2012*, Criminal Justice Inspectorates

<sup>2</sup> *A Complicated Business*, An inspection of electronic monitoring by HMI Probation, HMI Constabulary and HMI Courts Administration (October 2008)

<sup>3</sup> Criminal Justice Act 1991

<sup>4</sup> Powers of Criminal Courts (Sentencing) Act 2000

<sup>5</sup> Criminal Justice Act 2003

<sup>6</sup> *Prison Service Order 6700 Home Detention Curfews*

<sup>7</sup> *The Electronic Monitoring of Adult Offenders*, The National Audit Office (February 2006)

<sup>8</sup> *Electronic Monitoring for Offenders Placed on Community Orders with Requirements. Information Protocol*, Home Office (March 2005)

<sup>9</sup> *Electronic Monitoring for Offenders Placed on Home Detention Curfew (including prisoners released on licence). Information Protocol*, Home Office (March 2005)

<sup>10</sup> *Electronic Monitoring Protocol*, Youth Justice Board for England and Wales (September 2004)

<sup>11</sup> *Probation Circular 23/2005 New Electronic Monitoring Contracts* (March 2005)

