

The magazine of the Probation Institute

PROBATION

Issue 11: March 2019

Quarterly

PROBATION SERVICES IN COURTS

The relationship between probation and sentencers



The Prosecution of Parents for Truancy

Preventing suicide amongst people under supervision

Building a restorative probation service



PROBATION *Quarterly*

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welcome



The relationship between probation services and criminal courts has been a special one throughout the history of probation. Over the past five years or so, both sides of this relationship have been under immense strain, not only as a result of *Transforming Rehabilitation*, but also as a result of the closure of many magistrates courts and the political pressure for all courts to speed up their ways of working. In this issue, we have a number of articles that address this relationship from different perspectives. Gwen Robinson draws on her own research into magistrates courts to respond to the Centre for Justice Innovation's recent report *Renewing Trust*.

Cyrus Tata questions the assumption that report-writers are 'sellers' of prison alternatives and sentencers are 'consumers'. David Coley, a practitioner in a CRC, argues the case for a greater role in courts for CRCs to provide magistrates with better information about community sentences and Jo Easton from the Magistrates Association offers a 'view from the bench'. Concern about the numbers of deaths of probationers while on supervision prompted research by Jake Phillips, Loraine Gelsthorpe and Nicola Padfield. Here they summarise that research and offer guidance to practitioners.

Rona Epstein and colleagues report on their recent research into the prosecution of parents for their children's non-attendance at school – or rather, the prosecution of *mothers*, for it is women who are disproportionately on the receiving end of such prosecutions.

Broadening its horizons, PQ has two articles with a European theme. Ian Marder, an expert on Restorative Justice in Europe, provides informative and succinct guidance for making more use of RJ in probation services. Nicola Carr talks about the European Society of Criminology's Community Sanctions and Measures Working Group that undertakes research on supervision across Europe.

Other articles introduce: the new Chair of Clinks, Roma Hooper; the HMI Probation Head of Research, Robin Moore; and, the co-editor of the re-launched British Journal of Community Justice, Jean Hine.

The deadline for draft articles for the next issue of PQ is Monday 13th May.

Anne Worrall

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Guidance from the Editor

Probation Quarterly publishes short articles of 500 - 1500 words which are of interest to practitioners and researchers in public, private or voluntary sector work with offenders and victims.

These articles can be about:

- the activities of the Probation Institute
- news about the work of your organisation or project
- reports from special events, seminars, meetings or conferences
- summaries of your own research
- brief reviews of books or research reports that have caught your eye
- thought pieces where you can reflect on an issue that concerns you.

The articles need to be well-written, informative and engaging but don't need to meet the academic standards for a peer-reviewed journal. The editorial touch is 'light' and we can help you to develop your article if that is appropriate. If you have an idea for a suitable article, let me know what you have in mind and I can advise you on how to proceed.

SPoC in the Dock: Is it time to beam CRC staff into court?

David Coley, KSS CRC Research Unit

Transforming Rehabilitation may still seem to many probation staff like navigating a new universe. This can be especially so in the court environment as Community Rehabilitation Company (CRC) staff have no right of audience and any single point of contact (SPoC) in court is now that of their previous agency colleagues. Some feel this to be a system that was teleported

from another planet and alien to best practice communication, with arguably the results being a significant loss of confidence in the imposition of community orders. So should a new enterprise involve placing CRC staff in the shape of a SPoC in court, so as to boldly go where few CRCs have gone before?

In the summer of 2018, Kent Surrey Sussex CRC and its equivalent area NPS colleagues engaged in a series of five joint workshops to explore the issues of inter-agency work in relation to improving court practice and attendant court disposals. This included reflecting upon the significant reduction in the number of community orders being made in recent years and an apparent lack of confidence amongst Magistrates with regard to probation services (Crest, 2017; CJI, 2017, 2018).

HMIP reports (2017a; 2017b) had already highlighted challenges for the MoJ and their probation services with regard to enforcement and breach issues, Rehabilitation Activities Requirements (RARs), IT difficulties, and a general lack of inter-agency communication, with accredited programmes appearing to 'wither on the vine' (HMIP, 2017a). Additionally within the joint workshops broader best practice issues from across the field of interventions by probation service providers entered the inter-agency debates as CRC probation officers, admin staff, programmes staff, SPOs, and CP supervisors, alongside NPS court staff, keenly debated the daily realities of their respective working lives.

Within workshop discussions global themes naturally surfaced that highlighted the scale of the challenges at hand. The Transforming Rehabilitation split and post TR landscape lead the way in terms of underlying structural difficulties, alongside cuts in funding over numerous years. These were followed closely by participant-identified difficulties regarding lack of staff in some areas, high caseloads and running to keep up with 'speedy justice' expectations. When these challenges are allied to additional influential factors such as the Offender Rehabilitation Act 2014, Legal Aid, Sentencing and Punishment of Offenders Act 2012, fewer Standard Delivery Reports (SDRs) being requested by sentencers, and magistrates' training being reduced in recent years (Crest, 2017), the picture becomes more complex and nuanced. These are undoubtedly all issues that

have influenced probation practice and outcomes over the preceding years, albeit issues that have emerged since 2010-11 and thus occurring either in tandem with, or subsequent to, the onset of the decline in community disposals. Correspondingly, issues of building confidence in community sentences are of course not new (Allen, 2008) and thus need to be placed in some broader context.

So what workshop themes emerged from the views of frontline staff, from both the CRC and the NPS court teams? More importantly, what innovation emerged to address the difficulties with a view to seeking possible solutions? First and foremost it was acknowledged by both CRC and NPS colleagues that the judiciary perceive 'probation' as a single, distinct unit, not two separate agencies. As such, this provides an incentive to operate in a unified and cohesive way.

Furthermore, as stated in workshops, 'it's good to talk' and colleagues identified more combined learning and developmental opportunities as important, including more cross-agency shadowing and observation of other stakeholder roles, shared training events and workshops, and an annual multi-agency best practice courts conference. The workshops were clear that programme staff must attend such events. Developmental events would encourage the improved construction of CRC court reports with a view to advancing staff skills in relation to risk analysis, describing progress within court orders, and understanding appropriate disposals. This is in part an effort to maintain report writing confidence levels amongst CRC staff who no longer routinely practice within a court setting. Shared events would address the misunderstandings surrounding the content of RARs and accredited programme schedules and completions, with a view to all agencies holding more realistic expectations surrounding the realities of imposing and completing community orders.

Court calling SPoC

A greater CRC presence in court emerged as a pivotal theme within workshops across the region. CRC rights of audience in court were discussed at some length and whilst the principles underlying the lack of CRC voice in court were acknowledged, workshop participants defined the need for an increased CRC profile within court, primarily as a means to improved communication between all agencies and foster greater confidence. Currently available measures to be taken by CRC staff include working closely with NPS court staff through greater attendance at court hearings. This may be through an increase in staff attendance at both progress reviews of community orders and/or personal attendance at breach hearings.

However, an overriding theme to emerge from the workshops was that of a CRC SPoC being placed in court or perhaps in a nearby CRC office setting. A central SPoC for groupwork programmes was also suggested as an alternative approach. Such a role would entail the direct channelling and focussing of information flows between agencies. Examples of SPoC tasks would include providing progress updates to NPS colleagues (or directly to the Bench/Judge if called into court by NPS staff); managing breach information; gathering CPS materials from court; speaking directly with service users appearing in court to clarify details of sentence expectations and requirements; providing immediate initial appointments; relaying sentencing outcomes; promoting programme availability with timely and appropriate usage; and, liaising directly with voluntary sector agencies in court. Ultimately this role encompasses building trust and confidence at the very start of CRC involvement in the community order process and individual desistance journey. Presumably the role would have to avoid undertaking any form of professional assessment of service user risks and needs or of providing the courts with professional proposals or recommendations, due to potential conflicts of

interest. Nevertheless, the idea was understood by many workshop participants to be an obvious way forward to enhance communication between all court actors and supply information in a more immediate manner. As some CRC workshop participants commented, 'It's a no brainer'!

It is, of course, of note that Magistrates and Judges, the NPS, CPS, voluntary agencies and all other court actors, would have to be consulted on this possibility within the KSS region. Public attitudes also come into the equation, as does the issue of Magistrates leaning towards the imposition of community disposals before those of short term imprisonment (Allen, 2008). Equally, it is suggested that more discussion, consultation and brief research exploration into this option would be required before having to live with the possible negative consequences of entering into a new adventure at warp-speed ten. Furthermore, as Gwen Robinson reminds us, ongoing NPS and CRC staff training is always required if we are to do more than just 'paper over the cracks' (Robinson, 2018). Additionally, the financial implications and precise aspects of the SPoC role would need in-depth consideration by CRCs. Nevertheless, an increased CRC profile in court is seen by many KSS CRC staff as a necessary and somewhat timely enterprise.

The MoJ has acknowledged the feasibility for such a role in its consultation paper, *Strengthening probation, building confidence* (July 2018) and in the Magistrates Association response the possibility of a tentative exploration of such a role is acknowledged (MA, 2018). The MoJ consultation paper and Magistrates Association cite the existing example of Durham Tees Valley CRC becoming co-located within the local NPS court teams via a dedicated staff member. This role is designed to better inform pre-sentence reports on the available interventions and services provided by the CRC.

It is recognised by the MoJ that current legislation prevents CRC staff from supplying advice to courts and that a paucity of immediate contact between CRCs and Magistrates is creating barriers to nurturing the confidence of courts with regard to probation service providers. Likewise, the reinstatement by the MoJ of the National Sentencer and Probation Forum has occurred so that CRCs, NPS, court staff, prosecutors and others can better communicate and discuss the challenges at hand and opportunities for the future. A new Local Liaison Probation Instruction aimed at securing that CRCs participate in local discussions with courts about the services they offer has been issued. Additionally, the MoJ believes this will enhance the overall scope of the NPS Sentencer Survey and Sentencer Bulletin.

To boldly go

So does the idea of specialist CRC probation staff communicating directly within the court setting sound like a new voyage of discovery or an episode of science fiction? The KSS CRC – NPS joint workshops certainly spoke creatively of mutual best practice approaches in court and beyond, including the touchdown of CRC SPoCs in court. Furthermore, shared developmental events are seen as an improved way forward to address all challenges within the current system.



David Coley
KSS CRC Research Unit

This was especially so around communicating RAR difficulties, accredited programme completions, enforcement and CRC court report issues. As such, if a specific communication and coordination role for CRC staff within courts is seen within probation practitioner workshops as an obvious mission for the future, is now the time to start beaming CRC SPoCs down into court?

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The Prosecution of Parents for Truancy: Who Pays the Price?

Rona Epstein, Geraldine Brown and Sarah O'Flynn

'Try as they will, some parents cannot get their children into school. You cannot force a 14 year-old out of bed, you cannot force a child into school uniform who is refusing. It's not possible. You can imagine the stress this is causing. We need research on this'

This letter is from an educational psychologist working with parents of children and young people, some autistic, many with a range of SEND (Special Educational Needs or Disability). It was the starting point of this research study on the prosecution of parents whose children do not attend school regularly.

Parents whose children miss school may be prosecuted – the numbers of parents pursued is very large, more than 16,000 each year. This article will look at the law which provides for such prosecution and a study we have made of parents affected. We conclude that this should not be a criminal justice matter – it should be a child welfare issue.

The law

In England and Wales, the offence of truancy is committed by parents or carers of school age children whose children have not attended school regularly. Section 7 of the Education Act 1996 sets out a parental duty to secure the efficient education of children by ensuring the child's regular attendance at school or otherwise.

If the child fails to attend school regularly the parent is guilty of an offence. Under Subsection 444 (1) the offence is strict liability; the parent is not required to know that the child has missed school. If, for example, the child was living with her grandmother and missed school, the child's parents would be liable for prosecution for their child's truancy, even if they did not know she was missing school. Under Subsection 444 (1A) there is a further offence if the parent knew about the child's absence and failed to act. The punishment for the offence can be a fine up to £2,500 or up to 3 months imprisonment.

In 2017 16,406 people in England and Wales¹ were prosecuted, of whom 11,739 (71%) were women. 12,698 were convicted, of whom 9,413 (74%) were women. 110 people were given a suspended sentence of imprisonment, of whom 88 (80%) were women. 500 were given a community order, of whom 416 (83%) were women. Ten people were sent to prison, of whom 9 were women. It is clear that women are disproportionately pursued for this offence.

Our research

What are the reasons that lie behind children failing to attend school regularly? What problems does this create for the family? How do the parents view the school's approach to their child's problems? How does prosecution and fear of prosecution affect families? To explore these questions we produced a questionnaire and invited parents affected by this issue to fill it in online anonymously. We approached various sites where parents discuss childcare issues. A number posted a note about our research and a link to

the online survey on their site. 126 parents, mostly mothers, responded, giving information on 132 children. Since the survey was filled in anonymously we have assigned a name to each respondent and report their answers with this pseudonym and their Local Authority.

This is a self-selected group who wished to give their testimony. We may assume that the respondents were not a representative sample of parents. Since they found the survey on sites where parents seek help, information and support, they were likely to be parents of children with various health and disability issues.

The parents

Single parents comprised 26% of our sample - the same as the proportion in the general population. 44% were employed, 12% had a partner who was employed, 9% were self-employed, 24% were on benefits, 11% were on disability benefits, carer's allowance, sick leave, or disability living allowance. Several of those on benefits had to give up work to care for their child who did not attend school. For example: Ann (Wiltshire) wrote: *'Had to give up work due to school refusal. Currently receiving universal credit.'* Gloria (West Sussex) reported: *'Husband and myself on carers allowance due to having two children with SEN so on benefits due to children's disability - both had good jobs before we had children.'*

We asked whether any member of the family had health needs: 80% said yes, 20% said no. Many of the mothers were themselves ill or disabled. For example: Penelope (Stoke on Trent) is disabled and so is her child. Tamsin (Pendle) is ill; Brian (Southampton) writes that he is unable to work due to long-term illness. Many of the other children in the family were ill or disabled too. Beatrice (Sutton) said: *'Both my sons have mental health issues.'* Gillian wrote: *'I have chronic illness and my eldest is bedbound with chronic illness.'*

¹ Outcomes by Offence Data Tool 2017

<https://gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2017>

The children

Almost every parent reported that their child was anxious, often highly anxious. They described night terrors, extreme reactions of fear when it was time to go to school: meltdowns, vomiting, migraine, collapsing, self-harm. Nora (Cornwall) wrote: *'Watching my child's mental health break down: panic attacks, suicidal feelings.'*

About 40% of the children in this sample were on the autism spectrum (ASD). Many of them had other health issues. 90% of the children had SEND (Special Educational Needs/Disability) or a health problem. Chrissy (Croydon), for example, has a 15 year-old daughter with autism, ADD (Attention Deficit Disorder), dyslexia and anxiety. Alice's child has ADHD (Attention Deficit Hyperactivity Disorder), autism, and dyslexia.

One mother reported her 15 year-old son has ASD and high levels of anxiety: *'He was just overwhelmed by the school environment - school bells, kids shouting and running, smells in the canteen, not understanding in classroom. He started cutting himself, and ran away from school on one occasion.'*

All the parents reported that it was impossible to force their fearful and panicky children into school.

Bullying

Bullying was an important part of the school experience of many of the children in this survey. 60% of the children had been bullied, mostly by other children, but a significant number by staff, sometimes taking the form of humiliation. Holly (Swindon) is a single parent who is on benefits. She has two children - a 17 year-old disabled daughter and a 13 year-old autistic son who is very anxious and unwilling to go to school. Her son has been bullied and is now afraid of the bullies. Nancy (Warwickshire) wrote: *'My child was locked in a cupboard in his special school.'*

Many parents reported that the school ignored or denied the bullying. However, some schools are determined to tackle bullying; some have found a restorative justice approach to be very effective.

Prosecutions

42 parents (34%) have been prosecuted or threatened with prosecution. Among them are some of the most vulnerable families. Claudia, for example, is a single parent, who is ill with depression and anxiety, diabetes and a heart condition. Her 15 year-old son suffers from anxiety, obsessive compulsive disorder. She was fined: *'Prosecution was pointless, just made our situation worse.'*

Jackie (Birmingham City) has a 14 year-old autistic son. She suffers from asthma. She has twice been fined £60 for his non-attendance.

Prosecution and fear of prosecution puts these families under huge fear and stress. Ellen, whose 11 year-old son missed 5 months of school, wrote: *'This has been a huge source of stress for us; we had done nothing wrong so couldn't really have paid fines. I work in children's education myself so a criminal record would be devastating.'*

Taken off the school roll²

Some parents have taken their children off-roll to avoid prosecution. In our sample 16 parents have taken this step, usually to avoid prosecution. One mother reported: *'The LA threatened that they would take my child into care and put me in prison - despite eight years of medical evidence provided.'*

Glenda (Somerset) who has an adopted child wrote: *'Home educated to avoid prosecution.'* Cathy (Redcar & Cleveland) wrote: *'Threatened with fines. Deregistered as a result.'*

² See 'Schools "coercing" parents into home-educating their children', Guardian, 18 January 2018 <https://theguardian.com/education/2019/jan/17/schools-pushing-children-into-home-schooling-say-councils>

Agnes (Bromley), who has two children home-schooled, reported: *'Education Welfare Officer had been instructed by school to commence process. She closed the case as soon as I de-registered my daughter, as "not in the public interest to proceed."*

These children may be missing out on important social experiences and may grow up lacking vital social skills. While home-schooling can be successful for those who choose this route and who have the time, skills, resources and networks, for others, forced into it, the outcomes are less good. Home-schooling creates enormous stress, and financial loss, for the parents, who often have to give up work to home-school their children.

Lack of resources

There is evidence that a shortage of resources plays a significant role in the difficulties faced by these children. Many parents reported that one-to-one support in school had been begun but not sustained, or recommended by the educational psychologist but not implemented. Long waits for diagnoses and for assessment and support from CAMHS were additional causes of distress for many of the parents in our survey.

Future research

We do not have information on the 16,400 parents who are prosecuted each year, and their children. We can only report on our sample of 126 parents and their children. Research on these 16,400 families is important. Only the government can do this, as they have the data identifying these parents. We believe it is important to know how many of these families have children with SEND and what role this has played in their absence from school.

To conclude

It is evident that the punitive approach leads to harm for parents, children and vulnerable families. It also appears to be ineffective in getting reluctant and fearful children back

into the classroom. Our main conclusion and recommendation is therefore that the criminal law should not be applied to parents whose children do not attend school regularly. It should be a civil matter - a child welfare issue.

This research was funded by the Oakdale Trust. We are grateful for their support.

The full research report can be accessed at: <http://covrj.uk/prosecuting-parents/>



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Probation Services in magistrates courts

Gwen Robinson talks about her research into the relationship between probation and magistrates and responds to the CJI report *Renewing Trust*

Issue 10 of the Probation Quarterly (December 2018) included a short article by Stephen Whitehead of the Centre for Justice Innovation (CJI), heralding the publication, in January 2019, of the full CJI report *Renewing Trust: How we can improve the relationship between probation and the courts*. This report makes a very important contribution to knowledge and debates about the work probation staff do in courts, and about the relationship between probation and sentencers which has been so key to the mission of the probation service since its inception. The CJI report complements and offers a useful update on the recent thematic

inspection of probation work in courts (HMIP 2017), bringing together evidence from a range of stakeholders, including probation court staff, senior managers in both NPS and CRCs, sentencers and policy makers. The report notes 12 key findings, makes 15 recommendations and offers some great examples of innovative practices in both England & Wales and Scotland. In this short piece I cannot do justice to its nuanced analysis, but would encourage readers to examine it for themselves. What I can do, instead, is offer some reflections on the report that stem from my own recent experience of researching probation work in two English magistrates courts.

Despite its considerable importance, probation work in courts has attracted very little research attention over recent decades, and my own research was motivated by a desire to understand the nature of contemporary probation work in this context. I also wanted to understand the drivers of what has been a period of very rapid and significant change in this corner of probation work. In this regard, my research reached the same conclusion as the CJI report about the drivers of change, which is that not all of the changes affecting court work are attributable to the *Transforming Rehabilitation* (TR) reform programme: probation work has also been implicated in a parallel programme of reforms (in both magistrates' and Crown courts) centred on speeding up justice and reducing the number of adjournments. It is this latter set of developments which has been the primary driver of speedier PSR production and the dramatic rise of stand-down, oral reports. I also tend to agree with the CJI's argument (echoed in the 2017 HMIP report) that neither the speed, nor the changing modes of delivery of PSRs, are inherently problematic. Although my research did not set out to evaluate the quality of PSRs (oral or otherwise), I did have the opportunity to observe the preparation and delivery of a number of oral reports, and whilst noting that such reports do pose new problems from a quality control perspective (Robinson 2017) I was very impressed in the majority of cases and observed a high rate of concordance between proposals and outcomes. What is of great importance, I concluded, is that probation staff are encouraged and enabled to request a different type of report and/or an adjournment when the nature or complexity of the case suggests that this is appropriate (see CJI 2019: Recommendation 3). It is this ability to exercise professional discretion which may be at risk, as sentencers - themselves under pressure to dispense speedy justice - come to expect instant gratification from probation court teams (Robinson 2018a).

So, if speed isn't the main problem, what is? Both my research findings and those of the CJI suggest that, to the extent that there are problems in this arena, these can mostly be attributed to TR and its poor implementation. It is thanks to TR, and its creation of an artificial split between probation services, that court-based probation staff have limited knowledge of the contemporary content and delivery of community orders, because these are now delivered by an entirely separate organisation. My research revealed that, in court, probation staff were quite adept at 'papering over the cracks' created by TR, and this included presenting themselves to sentencers not as representatives of the NPS (their employer organisation), but of 'probation', which is suggestive of a shared mission and value base (Robinson 2018b). However, the cracks were much harder to mask in the context of breach prosecutions, where NPS staff struggled to explain apparent lapses in both supervision and enforcement activity on the part of their local CRCs. As the CJI report puts it: "the realities of the split between the NPS and the CRCs has damaged the effective functioning of probation services and it is no surprise that sentencers have noticed" (2019: 25). Where sentencers lack confidence in probation and/or community sentences, then, TR is largely to blame, and the damage was avoidable.

The final substantive section of the CJI report considers the important issue of engagement between probation and sentencers. In this section, findings in relation to both formal and informal liaison mechanisms are discussed, and the training of magistrates is considered in some detail. In the context of the latter discussion, it is argued that magistrates' training is inadequate, and evidence is offered attesting to the fact that funding for such training has fallen significantly in recent years (CJI 2019: 23).

It is also noted that, beyond their initial training, magistrates are not required to attend further training sessions, and that only a small proportion have reported receiving specific training related to TR, such as on the new Rehabilitation Activity Requirement and the new post-sentence supervision arrangements for short-term prisoners. These findings are a concern, and the CJI report suggests that probation could play a more significant role in training magistrates about the structure, content, purposes and outcomes of community sentences (CJI 2019: 24). No doubt these are sensible suggestions, and it is good to see a good practice example from Leicestershire, where NPS and CRC staff have worked together with former service users to provide annual training to local magistrates.

But it is disappointing to see no mention of training for probation staff in court teams. My research revealed a clear deficit in this area (Robinson 2018b). Team members I interviewed in the course of my research told me that they had little or no role-specific training, and little or no access to legal expertise, such that they had to rely very heavily on shadowing and observing more established team members to develop competence in the role. This mode of learning is of course extremely valuable, and not to be diminished. However, it is arguably not enough, for at least three reasons. Firstly, court teams are made up of a high proportion of Probation Service Officers who do not have the benefit of the general formal training that Probation Officers enjoy. Secondly, the move toward faster delivery and more oral PSRs places very particular demands on the communication skills of court staff, such that even some very experienced Probation Officers told me they had found the idea of joining a court team very intimidating. Thirdly, as noted above, court work today requires that probation workers have the confidence to know when it is appropriate to exercise their professional judgement and request an adjournment - or a written rather than an oral report - when the circumstances of the defendant suggest that this is needed. In short, members of

court teams must have excellent communication skills, be able to work quickly and under pressure, and be confident and assertive in their dealings with sentencers. Therefore, whilst I definitely concur with the CJI's suggestion that probation staff could play a more significant role in the training of sentencers, this should not be at the cost of training provision for probation team members themselves.

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Gwen Robinson
University of Sheffield



The voluntary sector in the criminal justice system - creating change together

Roma Hooper, the new Chair of Clinks, introduces herself and her vision for the organisation

I was delighted to be appointed the new chair of Clinks last November and I am privileged to have taken over from Dame Anne Owers who has done such a sterling job for so many years. I have a long history with Clinks, both as a colleague and friend. The organisation supports so many of the organisations I am involved with and is the backbone to the criminal justice voluntary sector providing a range of services no other organisation can offer.

Criminal justice is at a crossroads at the moment with the state of our prisons and probation service. Now is the time for Clinks to take full advantage of the knowledge and evidence gained from

its wide membership to input on policy and create the best possible space for the voluntary sector to be part of a new and refreshed criminal justice system. I firmly believe that Clinks, with its members, has the ability to use its influence to strengthen the power of the voluntary sector so it can continue to transform the lives of people in the most excluded communities and those suffering multiple disadvantages - those which mainstream services often fail to reach. But it is a challenging time and Clinks needs to access all its resources to support its members through the quagmire of uncertainty.

Clinks has a very clear vision: to have a vibrant, independent and resilient voluntary sector that enables people to transform their lives. We regularly undertake key pieces of research to ensure that we understand and can respond to the needs of the sector. We need to be fleet of foot in these times to ensure our members are getting the best possible support and resources we can provide.

Clinks recently published the latest of its annual State of the Sector reports. It highlights many of these challenges and is enabling us to focus on those priorities which will have the greatest impact. The report has enabled us to clarify our vision and priorities for the future.

In particular, we found that the basic needs of people in contact with the criminal justice system are increasingly unmet by statutory provision driving them into desperate situations, particularly if those people are protected under the Equalities Act (2010).

Charities and social enterprises are working relentlessly, in difficult circumstances, to support increasing numbers of people who are coming to them with more complex and urgent needs. They're responding by developing and delivering new services and working in partnership to share knowledge and resources, but increasing caseloads are putting staff and volunteers under pressure.

Organisations supporting people with protected characteristics under the 2010 Equality Act, including from black, Asian and minority ethnic backgrounds, and people with disabilities, are being hit the hardest by the challenging funding environment, and are seeing more people with complex issues in need of immediate attention.

Charities and social enterprises working in prisons and the community are seeing urgent housing needs, substance misuse problems and poor mental health soar, as funding cuts to public services including prison and probation take hold.

Alongside this, welfare reform, particularly the roll out of Universal Credit, Personal Independence Payments and sanctions are reported to be pushing people into poverty and leaving them unable to access accommodation.

"Many clients are faced [with] being homeless upon their release from prison. It is also difficult to obtain suitable supported housing or residential rehab funding for clients. Clients in prison are increasingly exposed to risks with new substances and rising violence."

Survey respondent

The mental health needs of charities' clients are becoming more acute. People are unable to access the support they need from community mental health providers as they have either reduced their services or have raised their thresholds.

"Social Care and mental health service thresholds have increased. Needs which would have been met by the statutory sector are falling to the voluntary sector"

Survey respondent

The sector continues to face a challenging financial environment, where organisations are reliant on grants and are unlikely to meet their costs, while often having to subsidise services they are contracted to provide.

The recent State of the Sector report (2018) provides us with real leverage with regard to where to focus our attention during 2019. We are ambitious about the future and potential of the sector we serve. Looking to the future and over the next three years we want to build and support a movement of organisations who play an essential role in helping people to desist from crime and turn their lives around.



Supporting the voluntary sector
working in the criminal justice system

To support, represent and promote our essential sector, we're working towards five goals to 2022.

1. We will increase and improve the knowledge and understanding of the role and value of voluntary organisations, especially small and specialist ones, among criminal justice system practitioners.
2. We will have established thematic and location-based networks for voluntary organisations and practitioners supporting people in England and Wales with specific needs or protected characteristics. Organisations across the country working in a range of ways will have improved access to Clinks' offer.
3. We will build on our established reputation as a trusted advocate and work with a range of UK and Welsh Government departments, national and local agencies. We will be widely known for our ability to connect people with practical expertise, in an impactful way, with those developing policy and services.
4. We will have worked with the sector to identify emerging issues and provide effective responses. We will champion coproduction, women-specific support, effective solutions to multiple and complex needs, and reducing the health inequalities of people in the criminal justice system. We will advocate for the value and the specific needs of organisations working in prisons, and for small and specialist organisations to be funded to do the work best suited to their skills and ways of working.

5. We will grow our membership and the number of paid and voluntary practitioners we have regular contact with. We will be effective users of digital technology to reach and support small and specialist organisations with limited resources. We will retain a valued core staff team with the skills and expertise to meet the needs of our sector. We will continue to generate income in a way that supports our core functions without compromise.

In conclusion, it remains a major priority to ensure that relationships with the statutory and private sector, whether that be in prison or in the community, is collaborative, constructive and engaging, ensuring we are all working towards common goals: to provide the most effective approach and services we can make available to those in our care - whether they be those serving prison or community sentences, or their families.

Links to recent Clinks reports:

<https://clinks.org/publication/state-sector-2018>

<https://clinks.org/publication/creating-change-together>



Roma Hooper
Chair of Clinks

Dear Secretary of State

Helen Schofield writes to David Gauke, Secretary of State for Justice, on behalf of: Probation Institute, NAPO, UNISON, GMB, Howard League, Centre for Crime and Justice Studies and Centre for Justice Innovation.

We write to express our collective concern regarding the proposal to re-let the Community Rehabilitation Company (CRC) contracts.

Even without making any presuppositions about the long-term future and viability of these contracts, we are very concerned over the short time frame that the government proposes during which it is intended to re-align and re-let these undertakings. Moreover, this project is set against the unprecedented political uncertainty to which we are all currently subject. This does not help, precluding, as it does, any prospect of supporting legislative amendments in the foreseeable future.

We hope you will agree that the implications of the making a further series of mistakes in the name of Transforming Rehabilitation (TR) are extremely serious for the probation services, for organisations working in partnership with probation - the courts, the prisons, the police service, local authorities and the voluntary sector, for many thousands of service users and for the public.

It is our view that these contracts should be taken back into public ownership as management operations as soon as possible and not later than 2020. This would then allow sufficient

time to properly consider and plan for future organisational arrangements. There are a number of precedents for this type of arrangement. This arrangement would take the CRCs back into the public sector ownership which applied to them from their creation in June 2014 to their privatisation in February 2015. There would be no complex legal, legislative or employment changes required, as the CRCs would simply revert to the ownership model which applied when first created.

The currently proposed time-frame for re-letting the contracts is even shorter than that which attached to the original Transforming Rehabilitation project. It is now widely accepted that the TR procurement timetable was wholly unrealistic in terms of being able to establish efficient and effective arrangements for the provision of Probation services.

Some civil servants may hold the view that lessons have been learnt from TR which will inform TR2, and that the experiences of the last four years will make re-letting the contracts easier the second time around. We do not share this view and believe that these matters will be equally complicated under TR2.

These are some of the issues that still need to be addressed:

- Examination of the payment and profit model is required, especially as the costs for strengthened specifications is likely to increase delivery costs significantly.
- Restructuring of the National Probation Service to align with proposed new CRCs.
- "Re-unification" of Wales; governance and management of the new arrangement in Wales.
- More effective commissioning of third sector agencies.
- Professionalisation including the proposed Regulatory Body with Professional Register.
- Staffing issues including TUPE/Staff, transfer to new employers and related pension issues.
- Rules in respect of monopoly provision - particularly since the proposed contract areas will be much larger.

This list is not exhaustive. Ministers will by now have seen the Delivery Confidence Assessment rating and we believe this should be made available under the Major Project Portfolio transparent data provisions.

Some of us were directly involved in the consultations and negotiations that took place under the original TR project. The rating assessment (risk register) was never made officially available at the time. In the event, some of us did have sight of it and some very serious risks were highlighted which were apparently (at the time) met satisfactorily. We now know that these risks were not properly assessed. Had they been so then the confidence of the courts, HMI, and the public as a whole might have been preserved. In our view there is a very real danger that re-letting the contracts now without proper and thorough consideration of the issues will result in the terminal decline of the Probation Service.

We do not believe it is wise to countenance a repetition of the shortcomings and mistakes associated with that original project and yet there is a very real likelihood that this is exactly what will happen if the MoJ adheres to the current proposals and the current schedule. These risks could be averted if the project is re-set in a realistic timeframe.

Much of the criticism of the current arrangements for the provision of Probation services centres on the split between the NPS and CRCs in core offender management work. The Government has recognised this in the model that will be adopted in Wales. Yet there is no allowance in the timetable for any evaluation of the outcomes of this revised model in Wales prior to CRC contracts being re-let.

We very much hope that you will accede to our suggestion above. We would then feel more confident in offering you our assurances in respect of ongoing support and advice regarding the review of the contracts.

Yours sincerely

Helen Schofield - Acting Chief Executive,
Probation Institute on behalf of:

Ian Lawrence - General Secretary, Napo

Ben Priestley - National Officer for Police and
Justice UNISON

Phil Bowen - Director, Centre for Justice
Innovation

Richard Garside - Director, Centre for Crime and
Justice Studies

Frances Crook - Chief Executive, Howard League

George Georgiou - National Pensions Organiser,
GMB

Building a restorative probation service in England and Wales

Ian Marder, a former Council of Europe scientific expert on restorative justice, based at Maynooth University, Republic of Ireland, offers guidance to practitioners and policy-makers

Restorative justice is a process involving voluntary, facilitated communication between victims, offenders and others with a stake in the resolution of a crime or conflict. Research indicates that this process can help victims to recover from crime and reduce reoffending, even

among serious and prolific offenders (Shapland, et al., 2011; Strang, et al., 2013; Sherman, et al., 2015). Importantly, the restorative framework also encompasses a set of principles which can underpin efforts to seek progressive change to institutional cultures and operational practices across criminal justice.



European probation agencies are increasingly interested in restorative justice, corresponding with growing expectations that probation should play a role in supporting victims (as per Part VI of the [European Probation Rules](#)) and enable more meaningful reparation (Canton and Dominey, 2018). Many already use restorative processes and ideas in their work. For example, since 2001, the Czech Probation and Mediation Service has had a [statutory responsibility](#) to deliver victim-offender mediation pre- and post-sentence and [included](#) victims and affected communities among its clients. Other services, like the Wrocław Centre for Restorative Justice in Poland, draw on restorative principles by enabling community participation in reparation decisions. The Irish Probation Service, meanwhile, is simultaneously a [service provider](#), a funder of specialist services, and the national strategic lead agency. Although none of these jurisdictions can (yet) claim to use restorative justice to its full potential, policymakers and practitioners across Europe are increasingly recognising its benefits and seeking to increase its availability.

In England and Wales, many probation officers [have been trained](#) in restorative justice. There has also been a [broader expansion](#) of delivery capacity across the country, with most probation services now able to refer cases to local, specialist providers. Some of these services work closely with probation: in [Gloucestershire](#), for example, probation officers often facilitate post-sentence restorative conferences jointly with practitioners from the local service. Yet, restorative justice is still not offered systematically across the country. Last year's [Crime Survey](#) for England and Wales indicated that only 7.5% of victims were offered the chance to meet their offender in 2017/18 and that a further 24.3% of victims would have accepted such an offer, had it been made. Given the importance placed on access to restorative justice within the Ministry of Justice's recent [Victims Strategy](#) and [Restorative Justice](#)

[Action Plan](#), probation and other agencies must collaborate - and be given sufficient government support - to ensure that citizens have both the information and the opportunity to decide whether restorative justice is right for them.

There have also been significant developments in the international legal framework. In 2012, restorative justice was featured in the European Union [Victims' Directive](#) in the form of protections for participating victims and a right to be informed about restorative justice services, where these exist. These requirements are now reflected in the England and Wales [Code of Practice](#) for Victims of Crime. In October 2018, the Council of Europe adopted a new [Recommendation](#) which endorsed restorative justice in much stronger terms than the Directive, and which is now by far the most forward-thinking international instrument on this subject. It states that restorative justice should be a 'generally available service' (Rule 18), available 'at all stages of the criminal justice process' (Rule 19). In other words, access to a restorative process should not be contingent on the victim's location, the offender's age or the offence type alone.

Moreover, the [commentary](#) to the Recommendation lists the desire to 'elaborate on the use of restorative justice by prison and probation services' as one of its four central aims. These documents go on to explain how probation can utilise restorative principles and processes, aside from delivering or referring cases for restorative conferencing. Rule 59 notes that well-established interventions (such as victim empathy work and direct or indirect reparation) and more innovative approaches (such as offender reintegration ceremonies and offender-family reconciliation) can be (re)designed and delivered according to restorative principles, with notions of stakeholder participation and repairing harm at their core.

Rule 60 states that restorative justice can also be used in response to conflicts involving probation workers and the offenders they supervise, or between staff. Rule 61 then outlines the potential for restorative practices to be used proactively, by and within agencies, to build stronger relationships between staff and their colleagues and clients, and to enable more participatory approaches to staff consultation and change management.

Operationally, however, Rule 58 is the most significant provision relating to probation. It states that 'restorative justice may take place prior or concurrent to supervision and assistance, including during sentence planning work' and that this 'would allow restorative justice agreements to be considered when determining supervision and assistance plans'. This Rule envisages the possibility that, whenever an offender is sentenced to supervision in the community, the first port of call could be to identify whether there are any direct or indirect victims and other stakeholders (such as the offender's family) who would be willing to engage. These parties would be invited to a restorative process at which they discuss the harm that was caused and what needs to happen to make things right and prevent it from happening again. Probation workers would still retain ultimate control and would not be prevented from reverting to traditional approaches if people did not want to engage, or in any other situation where a restorative process was not viable. However, any outcomes agreed by participants could inform - or potentially even become - the sentence plan. As well as supporting victim recovery and promoting desistance, this could increase compliance, as offenders may be more willing to engage with interventions which they play a role in selecting (Tyler, 2006).

Through Rule 58, the Recommendation provides a template for how to change organisational routines so that sentence planning becomes restorative by default. It gives us the methods

and the language to overcome zero-sum assumptions about a purported conflict between offenders' and victims' needs and interests. Of course, as can [happen in policing](#) and other contexts, probation officers may initially feel uncomfortable involving victims in deliberations and devolving some level of control to a wider circle of stakeholders. However, research shows that the practical challenges are manageable and far outweighed by the benefits for participants.

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Ian Marder
Lecturer in Criminology

Building the evidence base

Robin Moore, Head of Research at HM Inspectorate of Probation, introduces the work of the Inspectorate's Research Team.

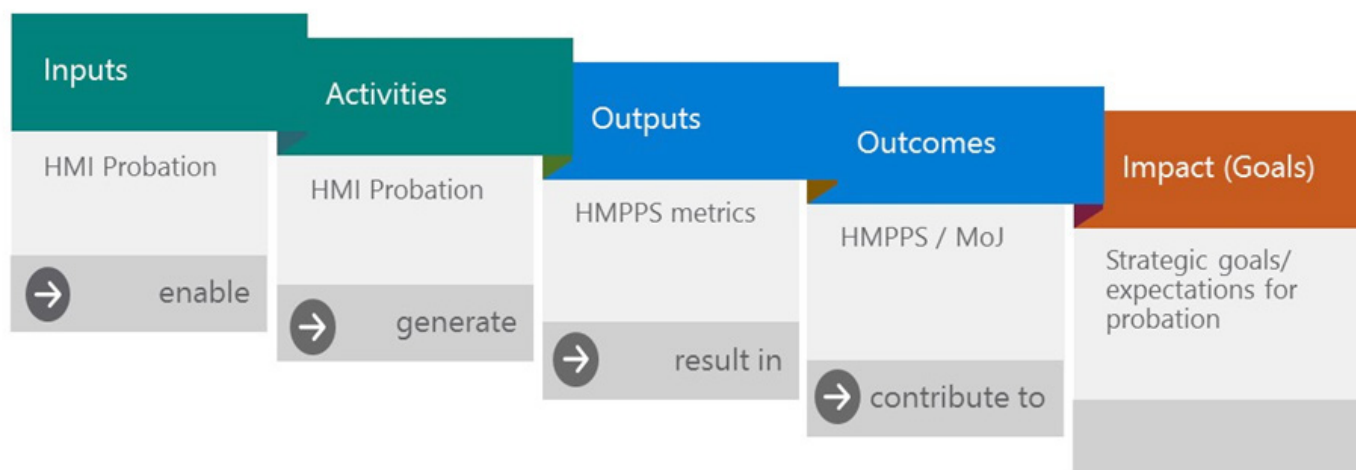
Within HMI Probation we are determined to make the best possible difference to the quality of probation services across England and Wales. We have thus established a programme of in-house and commissioned research to complement our routine and thematic inspections. As set out below, the Inspectorate's Research Team is fully focused upon developing and promoting the evidence base for probation services.



The Role of the Research Team

The primary goal of the Research Team is to make valuable contributions to the evidence base for high-quality probation services, and to help maximise the robustness and impact of inspection. There are differing types and levels of impact, and we undertake and promote research which has value at the individual practitioner, operational delivery and policy levels. We use research findings to inform our understanding of what helps and what hinders the delivery of probation services, to support our position statements and key messages, and

to further develop our inspection standards and accompanying guidance. Our current inspection standards, designed through consultation with providers and other key stakeholders, are grounded in evidence, learning and experience. However, the standards framework and the underlying evidence base must be continually reviewed - only then can we be confident that we are continuing to look at all those inputs and activities which contribute to positive outcomes for service users and meet the expectations for probation service delivery.



Our research programme

Our research and analysis activity can be divided into (i) secondary analysis of existing inspection data and (ii) primary research collating new data. We collect large amounts of data within our routine inspections, and we are determined to maximise its value. When we have completed our annual inspection of all CRCs and NPS divisions, we will be able to present a national picture and draw out key findings.

When considering topics for primary research, there are many questions that we could address, and we prioritise using specified criteria, including the quality of the current evidence, findings from our inspections, current risks to service delivery, and the development of our inspection standards. Projects are designed to be sufficiently rigorous, relevant and timely, with a focus on identifying enablers and barriers, and examples of good practice.

Specific projects

We are about to publish a Rapid Evidence Assessment on the effectiveness of remote supervision and new technologies in managing probation service users. This review (conducted by Manchester Metropolitan University) demonstrated that robust evidence for remote supervision is currently lacking and that any deployment of technology should be based on a clear rationale as to its likely effectiveness (in what context, and for whom), and should include a sufficiently robust form of evaluation.

Other research projects underway are as follows:

- Methods of service user engagement - looking at the active engagement of service users in designing, developing and improving the quality of services.
- Community hubs - exploring the extent to which they can help to engage probation service users and support their desistance.
- Research by providers - exploring the extent to which providers are developing, reviewing and adding to the evidence base.

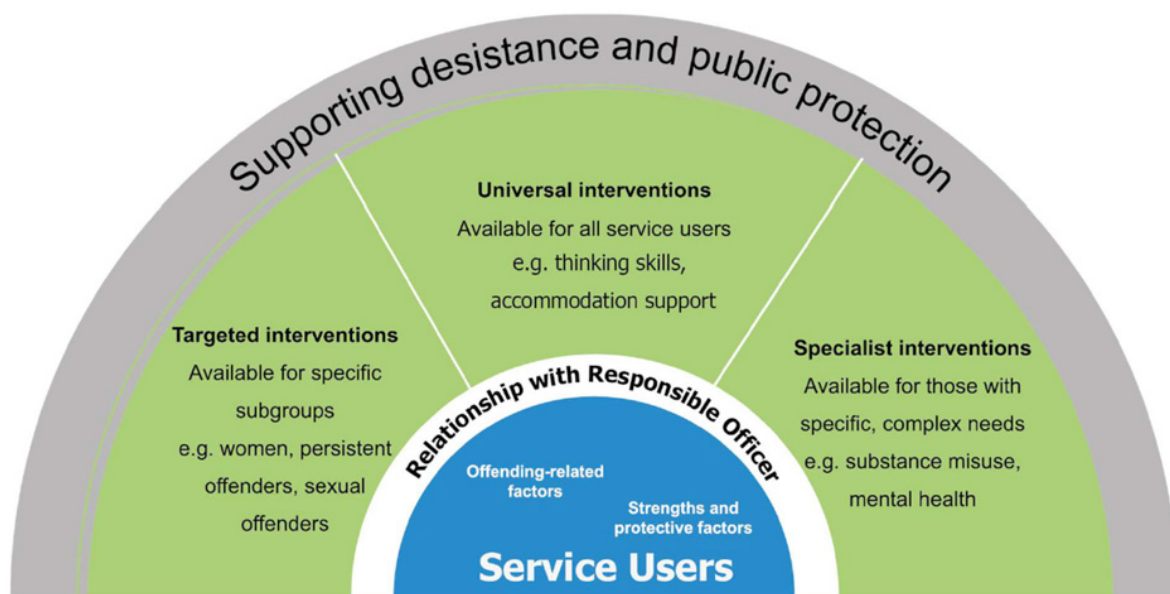
The following projects are also planned:

- Caseload levels - highlighting the relevant considerations, with a review of evidence from other jurisdictions, youth justice and other professions.
- Staff training/development - exploring practitioner needs and gaps in current training arrangements.
- Courts - exploring levels of confidence, awareness and engagement with probation.

Research & Analysis Bulletins

We are committed to publishing our research findings. Our Research & Analysis Bulletins are aimed at all those with an interest in the quality of probation services, presenting key findings to assist with informed debate and help drive improvement where it is required.

Our first Bulletin of 2019 focused upon the availability and delivery of interventions, recognising that the timely provision of a good range of high-quality interventions is at the heart of successful probation delivery, alongside strong local strategic partnerships and the critical relationships between individual practitioners and service users.



Academic Insights

To further promote the evidence base and aid understanding of what helps and what hinders probation services, we have launched an additional publication series - Academic Insights. In this series, we commission leading academics to present their views on specific topics. The first publication was produced by Professor Shadd Maruna and Dr Ruth Mann, summarising the development of the 'desistance' and 'what works' research literature. They set out how these two types of research can be highly complementary and how recognising the value of both will best support the continual development of 'evidence-based practice'.

Engagement and opportunities for collaboration

We are always interested to hear more about current/planned research projects, differing ways of filling evidence gaps and potential opportunities for collaboration. In addition to our current academic contacts, we are linked into the HMPPS National Research Committee which has oversight of all probation-based research, enabling us to promote and learn from relevant projects. We are also keen to learn more about ourselves, and we are facilitating a research project led by Dr Jake Phillips evaluating our impact upon policy and practice, and the mechanisms involved.

If you would like to learn more about our work, or would like to highlight a research proposal/project, please do contact us at hmiprobationresearch@hmiprobation.gov.uk

All of our research publications can be accessed here: <https://justiceinspectorates.gov.uk/hmiprobation/research/>





Preventing suicide amongst people **under supervision**

Jake Phillips, Sheffield Hallam University,
Loraine Gelsthorpe and Nicola Padfield,
Cambridge University

We have conducted two pieces of research in the past few years which have examined the issue of people who die under criminal justice supervision in the community. We have explored the deaths of people that occur shortly after leaving a period in detention (be that police or prison custody) as well as the deaths of people serving community and suspended sentence orders. In particular, we've been interested in self-inflicted deaths. Last year we published an [article](#) which demonstrated that people on probation are at a much higher risk of taking their own life when compared to both the general population, and people in prison. The latest [government statistics](#), published in October 2018, showed that the number of people dying under probation supervision increased yet again and, importantly, did so at a faster rate than the caseload itself. The disproportionate increase in people dying after release from prison is of particular concern. Between 2014 and 2018 the number of people on post-release supervision doubled, whilst the number of those people dying more than tripled.

If we look at the number of people dying from a self-inflicted death, we find a death rate of 116/100,000 amongst people on probation compared to a suicide rate in the general population of 8.9/100,000. This is against a backdrop of declining suicide rates in the general population. Our analysis shows that the risk of dying by suicide is even higher than for people in prison. Deaths in prison, rightly, receive considerable attention from the prison authorities, media, lobby groups and the general public. Deaths of people under criminal justice system supervision, on the other hand, receive barely any. It is worth reiterating a finding from our first study that probation providers appeared to be more concerned about whether a death was likely to receive media attention than in the circumstances of the death. There are, of course, differences in terms of the amount of control

or even influence that probation providers have over their clients compared to prison staff. Yet all probation providers assess their clients' risk of harm to self, and surely have some responsibility over whether they subsequently take their own life. The lack of attention in terms of policy, investigations and media scrutiny implies that this responsibility is not taken as seriously as it should be.

This is not to suggest that front-line practitioners do not work hard to prevent self-inflicted deaths. Rather, our argument concerns structural issues. There is still much to learn. No system for the rigorous analysis of deaths that occur amongst people on probation exists. When it comes to deaths in prison, there is an inquest, a clinical review and an investigation by the Prisons and Probation Ombudsman. This means that there are several ways of holding prisons to account as well as mechanisms for improving practice. For example, coroners can publish 'prevention of future deaths reports', the PPO can use findings from investigations into deaths in custody to write learning lessons bulletins and the quarterly reporting of safer custody figures means external bodies can scrutinise trends and the impact of policy. Details about deaths that occur amongst people on probation, on the other hand, sit in a file waiting to be published on an annual basis. There are no investigations and very little media coverage.

The PPO can investigate deaths which occur shortly after release from prison although this does not happen in practice. Yet we [know](#) that the period shortly after release from prison is a high risk period for suicide. Transitions in the criminal justice system are always traumatic and release into the community can be just as traumatic as induction into prison. We need to bear this in mind when looking at recalls.

As many readers will know, the number of people being recalled to prison has increased over the past few years. The reasons for this are complicated, but every time someone is recalled to prison, two new points of transition are introduced into that person's life: the reception back into prison and their eventual release. What is more, the process introduces additional legal proceedings and changes in the supervision process. Importantly, in [research](#) conducted by [Jay Marie Mackenzie](#), legal proceedings and changes to supervision emerged as common themes within the stories of people who had attempted suicide whilst under probation supervision. The very fact of being on probation, as well changes in the way in which the criminal justice system responds to perceived changes in risk, must be understood as processes which are likely to increase the risk of suicide.

People on probation caseloads are disproportionately likely to present with the risk factors that are associated with suicide which, according to the [World Health Organisation](#), include:

- drug and alcohol misuse;
- history of trauma or abuse unemployment;
- social isolation;
- poverty;
- poor social conditions;
- imprisonment;
- violence;
- family breakdown.

Moreover, the WHO highlights several protective factors which, interestingly, align with concepts that are considered key to delivering effective probation practice and supporting desistance:

- Strong connections to family and community support;

- Skills in problem solving, conflict resolution, and non-violent handling of disputes;
- Personal, social, cultural and religious beliefs that discourage suicide and support self-preservation;
- Restricted access to means of suicide;
- Seeking help and easy access to quality care for mental and physical illnesses.

Probation providers should be particularly well-placed to support clients with the first two of these and should work sufficiently closely with mental health providers to support clients with the final one. Good probation practice should, albeit perhaps indirectly, reduce the risk of suicide. It is good to see that the National Probation Service has a [suicide prevention strategy](#) which involves improving staff training and raising the awareness of risk factors associated with suicide. These developments should have a direct impact in reducing the risk of suicide amongst probation clients. However, as has been well documented, probation providers have struggled to maintain the quality of practice that Trusts provided prior to *Transforming Rehabilitation* whereby probation trusts were disbanded and replaced by a combination of private and state run providers. It is worth noting that the self-inflicted death rate is higher amongst the CRC caseload than the NPS caseload (although in part this may be due to differences in the age profile of the respective caseloads, with the CRC caseloads including more young offenders). Ultimately, the prevention of suicide is a matter of harm reduction rather than crime reduction. Where providers are focused on the reduction of re-offending, it is possible that other forms of harm reduction are neglected. We have argued [elsewhere](#) for an 'ethic of care' and the case for such an approach is as strong as ever.

What is to be done?

The mortality rate amongst people on probation is too high, especially when it comes to preventable self-inflicted deaths. Needless to say, probation providers and individual practitioners are not fully responsible for suicides. In most cases there are simply too many factors to take into account to place the blame at the door of one agency. However, probation providers can arguably play a much stronger role in the prevention of self-inflicted deaths. Accountability mechanisms need to be strengthened - at the very least, the extent of any possible media coverage should not be the guiding principle when deciding what kind of review to conduct following the death of someone under probation supervision. There needs to be a thorough examination of why people on probation are so much more likely to kill themselves than other groups. In order for this to happen, such deaths must be investigated.

The PPO is, in our view, in prime position to do this although we acknowledge there are resource constraints which would need to be overcome. In addition to providing a better understanding of these deaths, an independent investigation can provide some solace for bereaved families as well as signal the beginnings of a process which might enhance their access to justice in cases where things have gone awry.

Not all deaths need to be investigated in this way. We would argue for the development of a threshold which would trigger an independent investigation by the PPO, leaving others to be dealt with by the coroner. It would seem reasonable to carry out full investigations into the deaths of women, as the death rate here is so much higher than the general population, as well as deaths which occur in the first few weeks after

leaving prison. Considering the strong correlation between prior suicide attempts and successful suicides, investigating the way in which probation providers assess and manage pre-existing suicidal behaviours might also be considered relevant. This would require the introduction of a reporting system along the lines of what happens when someone dies in prison, where the death must be reported to Her Majesty's Prison and Probation Service as soon as possible. The relative role of the coroner and the PPO needs also to be examined.

Most experts agree that suicides can be prevented. People on probation often lead chaotic lives and face many challenges which are linked to risk of suicide. Probation providers have a duty to work towards preventing the self-inflicted deaths of people under supervision and we would urge continued work in this direction.



Jake Phillips
Sheffield Hallam University

Ensuring effective use of community sentences

Jo Easton, Director of Policy and Research, provides a perspective from the Magistrates Association

The Magistrates Association (MA) has carried out a number of pieces of research since the Transforming Rehabilitation (TR) initiative was introduced in 2014.¹ We were keen to gather the perspective of magistrates about the changes: what worked, what didn't and what changes should be made moving forward. Our research identified two main themes: firstly the importance of sentencers receiving detailed and relevant information from Pre-Sentence Reports (PSRs) (and what the implications might be when that doesn't happen); secondly, the importance of sentencer confidence in not just what is offered as a community sentence, but also how Community Rehabilitation Companies (CRCs) manage offenders in the community and deal with any breaches that occur. Some positive steps have been made recently in relation to the latter issue, but the MA has further proposals that could be implemented to improve overall sentencer confidence.

¹ <https://magistrates-association.org.uk/sites/default/files/Confidence%20in%20the%20community.pdf>

It is essential that sentencers have access to sufficient information about an offender through a PSR, so that they can dispose of the case in a way which meets the principles of sentencing. This can only be guaranteed if probation services have access to all the relevant, up-to-date information. Since 2014, there has been a push towards use of more oral reports, which provide courts with information without delay. The MA agree that reducing inappropriate delay is vital, and our research shows that although magistrates had concerns about the impact of these changes, they have generally seen little change in the standard of reports received.

However, magistrates deal with a high proportion of cases which involve offenders with multiple needs, and it can be difficult for the National Probation Service (NPS) to get adequate information in complex cases quickly. For example, if an offender has a mental health issue that might impact on sentencing, the NPS may need to ask the Liaison and Diversion service (or similar) for a report. Also, vulnerabilities may change over time, and a court has to rely on the most up-to-date information to order the correct sentence. So even where a report was done a few months previously, it may not represent the current situation. Another issue is ensuring offenders are willing to bring information to the attention of the NPS. This is particularly pertinent when sentencing parents or carers as the impact on dependants cannot be taken into account if sentencers don't know they exist. People are less likely to disclose personal (and potentially painful) details about themselves in a rushed meeting.

So the MA recommends guidance to ensure the provision of comprehensive, high quality PSRs, and the need to adjourn is acknowledged for certain cases so more information can be gathered.

The lack of confidence that sentencers have in CRCs relates to a number of issues: firstly, a lack of information about what CRCs offer as part of community sentences (especially Rehabilitation Activity Requirements (RARs)); secondly, a lack of availability of services for certain cohorts, including women, and people with mental health problems; and thirdly, a lack of confidence in the robustness with which community sentences are managed. For sentencers to have confidence in community orders, they need to know that they will address the purposes of sentencing: any lack of confidence could have an impact on sentencing decisions.

One of the biggest concerns following TR was that CRCs are not in court, and any contact at all with sentencers was discouraged, which meant that magistrates were not even given general background information on what was available in their area. This has now changed, and liaison between CRCs and magistrate representatives is encouraged. It will then be important for these representatives to ensure information about the work and provision of CRCs is disseminated amongst all magistrates. But advice in the courtroom is still provided by NPS, so the court doesn't hear about the content of a sentence recommendation from the body that actually provides the supervision.



Magistrates Association

This can mean sentencers don't always have a clear idea of what will actually be done as part of a sentence. This is particularly true in relation to RARs, as sentencers have no impact on the content of a RAR, and can only order a maximum number of days to be served.

Another concern raised by our members is the lack of community provision to meet the needs of specific cohorts. This is particularly true in relation to treatment requirements (Alcohol Treatment Requirements, Drug Rehabilitation Requirements and Mental Health Treatment Requirements), the use of which has reduced over the last few years.² Although there are examples of supportive options available as part of a RAR: for every positive example of treatment through a RAR, there are examples where a "RAR day" only involves a phone call or half an hour meeting. And sentencers are unlikely to know what happens on a RAR they order. Full availability of Treatment Requirements is the answer, but part of the problem is that as health treatments, they often need to be funded through co-commissioning with local Clinical Commissioning Groups. There has been recent positive work to pilot some of these requirements in 6 areas, but the MA wants full roll-out so there is good quality provision of bespoke community provision in every area. This would involve a better flow of information and co-commissioning between departments, along with establishing a mechanism to ensure that services are provided for the most vulnerable and complex cohorts (such as women offenders and repeat offenders).

The third issue relating to reduced sentencer confidence is how community sentences are managed. This lack of confidence stems partly from a lack of understanding about what is done on a community sentence (see above) but also from a concern about how robustly offenders are supervised. Recently, there have been a number of independent reviews and assessments which identified problems with certain aspects of the supervision provided by CRCs, including how they deal with breaches. If breaches are not being dealt with appropriately, this has a negative impact on sentencer confidence in the robustness of community sentences which could ultimately impact on sentencing decisions.

The MA believes many of the problems identified above can be resolved by allowing judicial monitoring of community sentences.³ Review of sentences would mean sentencers could be confident in using community options, safe in the knowledge that a bench will be monitoring progress. It would have the additional positive impact of improving the effectiveness of the sentences to support offenders in changing their behaviour, therefore reducing reoffending.



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² http://justiceinnovation.org/wp-content/uploads/2018/12/CJI-RENEWING-TRUST_2018-D-SW.pdf

³ Through enactment of Section 178 of the Criminal Justice Act 2003 and Paragraph 35, Schedule 1 of Criminal Justice and Immigration Act 2008

No hard borders: European Working Group on Community Sanctions and Measures

Nicola Carr, University of Nottingham and co-convenor European Society of Criminology Working Group on Community Sanctions and Measures.



'Community Sanctions and Measures' are defined in the Council of Europe's (2017) European Rules on Community Sanctions and Measures as:

'...sanctions and measures which maintain suspects or offenders in the community and involve some restrictions on their liberty through the imposition of conditions and/or obligations. The term designates any sanction imposed by a judicial or administrative authority, and any measure taken before or instead of a decision on a sanction, as well as ways of enforcing a sentence of imprisonment outside a prison establishment.'

The European Rules are intended to provide a guiding framework grounded in human rights principles for the implementation of Community Sanctions and Measures across the 47 Member States of the Council of Europe. The Council of Europe (not to be confused with the European Union, from which the UK looks soon set to depart) was founded in the aftermath of the Second World War with the aims of promoting democracy, human rights and upholding the rule of law.

The European Society of Criminology Working Group on Community, Sanctions and Measures comprises academics, policy-makers and practitioners with an interest in research in this area. The breadth in membership of the group reflects a growing interest in diverse aspects of community supervision across different countries in Europe. Some European countries have

probation services which are over a century old, while in other countries probation has only been established in recent years. Indeed one of the notable features in the expansion of community sanctions and measures across different European countries is the extent to which the numbers of people supervised in the community has grown exponentially and in many contexts significantly exceeds the population detained in prison. Analysis of these trends suggests that perhaps paradoxically, measures which have often been promoted as a means to reduce prison populations have actually had a net-widening effect (Aebi et al, 2015).

This provides a rich comparative context in which the different cultural, political and social dimensions of probation policies and practices can be explored and the Working Group has provided a platform for a range of comparative research, most notably a four-year long 'COST Action on Offender Supervision in Europe' (IS1106). This project explored different dimensions of probation including: practices, experiences and decision-making contexts. At the beginning of the Action participants surveyed existing research literature and found that outside the narrow frame of 'evidence-based' or 'What Works' literature there are few studies that explore the practices of supervision in rich detail. The extant research base has a narrow geographical focus (with a predominance in England and Wales) and generally focuses on accounts of what practitioners say they do rather than using other means to analyse practice, for example through the use of observations or more creative research methods. Research on experiences of supervision was even more scant.

The identification of these gaps in knowledge led to a number of small-scale comparative projects that piloted the use of different research methods (e.g. visual and survey methods) to explore dimensions of practice and experiences of supervision (McNeill and Beyens, 2013) and these in their turn have led to larger-scale research projects which have taken these creative approaches further (e.g. Fitzgibbon and Healy, 2017; McNeill, 2018).

There are many other areas of mutual interest in the European context, for instance the extent to which technology such as electronic monitoring has been deployed as an adjunct to supervision (Beyens, 2017) or how breach and compliance is dealt with in different countries (Boone and Maguire, 2018). The rich history of scholarship on probation in England and Wales as well as the more recent upending wrought by Transforming Rehabilitation, means that probation here remains a source of interest to a European audience.

The next meeting of the Community Sanctions and Measures Working Group takes place in Cambridge in March 2019 and will feature presentations of research from across Europe.

If you would like to hear more about the group, or are interested in joining you can visit our blog or contact us for further information:

<https://communitysanctionsblog.wordpress.com>

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A photograph of a hallway with three doors set into a grey wall. The two doors on the left are grey, and the door on the right is a vibrant red. The floor is a light-colored, reflective material that shows the reflection of the doors and the wall. The lighting is soft and even.

Selling 'Alternatives to Prison' to Judicial Consumers: **Why the Market Logic Fails**

Cyrus Tata, University of Strathclyde, proposes that market-based thinking embeds prison as the default sentence.

How should prison sentencing in relatively less serious cases be reduced? Generations of reform-minded government officials, probation managers, academics and practitioners have tried to reduce the use of prison in relatively less serious cases. Yet these efforts to sell community penalties have not resulted in the desired radical reduction in the use of imprisonment. Indeed, as a society we seem to be using prison more than ever - even for those whose offending in itself does not demand it.

Judicial sentencers, we are told, *would* use these 'alternatives' *if only* they could be *persuaded* to have 'confidence' in them. The solution? Pre-Sentence Reports 'provide an invaluable mechanism via which influence can be exerted over sentencing' (Taylor, Clarke and McArt 2014: 53). By 'selling' community penalties more effectively, judicial sentencers will choose to 'buy' them in the case they are about to sentence and as a concept more generally.

So instead of an open debate about penal reform and sentencing policy, 'alternatives' to prison have to be 'sold' convincingly to individual judicial sentencers on a case-by-case basis. Yet, while PSRs (and their various precursors) are important in various ways to sentencing, this strategy of 'selling alternatives' to judicial 'consumers' has failed to achieve radical change (Tata 2018). Surprisingly, many still cling to the claim that the impact of reports can be seen in the rate of 'agreement' between the sentencing suggestions in reports and the sentence passed. This is muddled thinking. As Carter and Wilkins (1967: 508) pointed out some 50 years ago: 'Probation officers write their reports and make recommendations *anticipating* the recommendation the court desires to receive'.

Propelling this logic, which holds the cultural trope of the singular sovereign judicial sentencer's choice as paramount, is a consumerist

logic of the market. So it is that so much practice and policy effort goes into trying to discover what the judicial consumer 'really wants'. What do judges look for? How can reports be more appealing to judicial sentencers? How can reports satisfy their key consumers to persuade them to buy the proposed product?

Instead, I propose that we step back from the dominant metaphors of selling and buying sentencing options. What assumptions inhere in this market-based logic? I suggest that this market-based strategy is bound to fail. The seller-buyer logic which inheres in consumerism necessitates a failure to satisfy the consumer. In his penetrating analysis of the consumer society, Bauman (2007: 46-7) explains that consumer needs and wants *must* remain, at most, only partly fulfilled:

"the desire remains ungratified, more importantly as long as the client is not completely satisfied Consumer society thrives as long as it manages to render the non-satisfaction of its members (and, so in its own terms, their unhappiness) perpetual."

Let us consider three examples which are central to 'selling alternatives' to prison.

1. Realism, credibility and the consumer

A key criticism frequently levelled against PSRs and their earlier guises is that they often lack 'credibility' and are 'unrealistic'. If, for instance, the suggested proposed sentence is in the eyes of the sentencers 'unrealistic' then the credibility of the whole report is undermined: "It diminishes the validity and the value of the report, if you're getting such an unrealistic suggestion" (Judge, Tata *et al.* 2008).

However, the ability to apprehend what a 'realistic' sentence would be is undermined both by a lack of transparent sentencing information in similar cases and, second, by an awareness of inter-judge sentencing disparity: what may be realistic to one judge may not be to another.

2. Relevance

In the consumption of reports, there is a paradox. Judicial consumers often complain, sometimes almost simultaneously, about reports being 'long-winded' *and also* about abbreviated reports being too brief with 'too many ticky boxes' (Tata 2018). Indeed, this apparent contradiction in consumer demand is played out in the restless oscillation over time between a preference for full, as opposed to abbreviated, reports (for example, Standard *versus* Fast delivery PSRs).

How can we make sense of this apparent contradiction in consumer demand: wanting yet not wanting 'comprehensive' information about the individual? The answer lies partly in the consumer cynicism which perpetual product re-branding generates.

3. Novelty and Perpetual Re-branding

Why are community penalties the subject of incessant re-branding? The perpetual search for new community penalty 'products' and ways of selling them (PSRs) so as to persuade the consumer to buy them is inherent in consumerism.

Bauman explains:

"New needs need new commodities; new commodities need new needs and desires; the advent of consumerism augurs the era of 'inbuilt obsolescence' of goods offered on the market and signals a spectacular rise in the waste-disposal industry."
(Bauman 2007: 31)

Governments tend to respond to judicial-consumer complaints about the quality of PSRs by marshalling the bureaucratic values of standardisation and speed. Yet, this can also result in consumer disappointment. Report-writing templates, now being heavily used in England and Wales (Robinson 2017, 2018), may quickly come to be seen as copy and paste, tick boxes products, engendering consumer cynicism. Product novelty is also sought in 'new alternatives' to custody, which weary judicial consumers may understandably dismiss as another over-hyped passing fad.

Selling Alternatives' embeds prison as the default

Conceiving of the judge as the metaphorical sovereign consumer in a quasi-market-place *appears* to empower the judge: the customer is always right; the customer is king. The job of the seller is to *persuade* the consumer to buy her/his goods, while the consumer can simply buy elsewhere: notably prison. This consumerist conceptualisation takes for granted and embeds the idea that the judicial sentencer is minded towards prison as the obvious default if nothing else can prove itself.

Making prison 'the last resort' may sound progressive, but it simply solidifies it as the backstop if nothing else seems good enough. It cements the supposition that unless, and until 'alternatives' can be sold as credible, prison is the only realistic option. If nothing else is sold convincingly to the sentencer, then it will be prison. Unlike 'alternatives', prison never has to prove itself to the sentencer. Prison is always assured. It does not have to be sold or marketed. It is the backstop, the default, which is always ready, dependable and available to the judge, reassuring in its familiarity.

Positioning the judge as the consumer solidifies the idea, the trope, of him/her as *the exclusive sovereign individual chooser*: the decision belongs to the judge alone. Thus, the seller must meet the expectations of the consumer - not to do so risks being perceived as naïve or unrealistic. Challenging expectations and assumptions can be bad for business.

An Alternative to 'Selling Alternatives to Prison'

Rather than framing reports in sentencing in market terms of producer/seller and consumer, we could conceive of sentencing as a (multi-disciplinary) partnership with the judge as head of the team, a relationship explicitly based on mutual professional respect, while, nonetheless, accepting that the judge takes the final decision. However, to mainstream this idea would require openly discussing the trope that sentencing belongs *solely and exclusively* to individual, sovereign judicial consumers operating in a penal market-place.

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Re-launch of the British Journal of Community Justice: **Women in the criminal justice system**

Jean Hine, co-editor of the BJCJ, presents a timely and challenging response to the Strategy on Female Offenders



The pains of imprisonment have long been identified as different for women than for men and the injustice of this, as well as the low criminality and vulnerabilities of women who are imprisoned, has been well documented. Despite the volume of evidence and various government initiatives aimed at addressing these issues there has been little change in England and Wales. The publication of the Corston report (Corston, 2007) and the subsequent acceptance of the majority of its recommendations by the government was greeted with widespread optimism and heralded as the beginning of a new approach to dealing with female offenders. More than a decade on these hopes have not been realised: the picture is much the same and the need for a better deal for females who come into contact with the criminal justice system remains. The latest government initiative for England and Wales is the recently published Strategy on Female Offenders (Ministry of Justice 2018) which repeats many of the Corston arguments and potential solutions. There is much in it to be welcomed but articles in the latest issue of the British Journal of Community Justice (BJCJ) suggest that some lessons remain to be learned: <https://mmuperu.co.uk/bjcj/issues/the-british-journal-of-community-justice-volume-15-issue-1>

The re-launch of the BJCJ is dedicated to papers about women in the criminal justice system, offering further evidence of the needs of such women, and importantly of the sorts of support and intervention that help them to overcome the issues that have led to their transgressions and help them avoid reoffending. In the first

paper, I present a context for subsequent papers, offering three things: a brief summary of the current position of females imprisoned in England and Wales; a short review of some recent international interest in the topic; and a critique of the new strategy for England and Wales. Two papers place the voice of experience centre stage. Beverley Gilbert and Kristy O'Dowd draw upon Kristy's lived experience of the criminal justice system and her struggle to, as she says, regain control of her life. She highlights how domestic, personal and socio-economic circumstances interplay to limit the options available to many women. The authors argue that organisational change and time are needed to help women in such positions. This perspective is reinforced by the article from Kim McGuigan who describes her experience of the criminal justice system and the difficulties she encountered, and recounts how timely and enduring support and encouragement helped her to overcome the considerable challenges that she faced. These voices highlight the importance of listening to and taking account of women's experiences and supporting them in facing their individual challenges to desistance.

An example of a focussed supportive project is presented by Linnea Osterman. Stable employment is a stepping stone to desistance and the Swedish project which she describes provides substantial time and resources to this end, including a wage subsidy scheme for employers to offer work to women with a criminal record. The results demonstrate economic as well as social benefits of this approach.

Rona Epstein considers the specific needs of young women, arguing that the lack of specific provision for 18-20 year old women and their early transition to an adult women's prison is not only detrimental and risky, but also breaches international rules. Another group with specific needs is female sex workers, considered by Gemma Louise Ahearne, who argues that they are seen and responded to differently because of this work. Many of the issues which they face are the same as other women but with additional trauma from 'the cycle of violence within which they live and labour'. These papers highlight the need to acknowledge the different requirements of some groups of women.

Mental health issues are prevalent among women in prison, addressed by Samantha Mason and colleagues. Prison can both exacerbate and create mental health issues and their interplay with drugs. Short term imprisonment offers little opportunity for either issue to be addressed even when services are available. The authors argue for better services and better information about the mental health problems and needs of women in prison. The new strategy acknowledges this need, suggesting community orders with treatment as a solution and proposing closer links with government departments responsible for mental health and drug services, something which has been difficult to achieve in the past.

The needs of females who offend are well established but there is a danger that research evidence could be used to support previous stereotypical views of these women as poor and unfortunate in need of help and assistance. Support is most effective when it is flexible and responsive to women's individual concerns and views, long term, and taken up voluntarily by women.

There is hope that the strategy will lead to a reduction in the numbers of women sentenced to prison and an increase in the availability of appropriate support, but this may more likely be achieved by the recently suggested ending of prison sentences of less than six months (BBC News, 2019). However history warns that this approach too brings with it danger: the lengths of sentences for women would increase to compensate.

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Jean Hine

Co-editor of the British Journal of Community Justice



The Probation Institute is very pleased to release our first e-learning product "*Working with Ex-Armed Services Personnel under Supervision*" on our website at <http://probation-institute.org/pi-learning/>

The package has been developed from the one day course produced from the key findings of our research Provision of Services for Ex-Armed Services Personnel under Supervision in 2016. Both the research and the training products have been funded by the Forces in Mind Trust and the e-learning project was steered by a group including HMPPS, Sodexo, KSS, PACT and Mark Ostling a PI endorsed learning provider.

The e-learning is accessible to all and free of charge. A Certificate is given on completion. Enjoy!

WORKING WITH EX-ARMED SERVICES PERSONNEL UNDER SUPERVISION

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Applications are invited by the Probation Institute for the 2019 Sir Graham Smith Research Awards. The research awards are an important opportunity for practitioners to develop your skills in research with employer support and to look in depth at a specific aspect of practice that interests you and can inform others.

The Probation Institute welcomes applications from practitioners in all fields of probation and rehabilitation. Projects should be suitable for a research project over a period of 8 weeks whilst in practice, with appropriate support from employers. Support from the Probation Institute and a dedicated mentor from our Academic Advisory Panel will be provided throughout the period of developing the project, conducting and writing up the research. Your report will be published and launched by the Institute.

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Further information and the Application Form are at <http://probation-institute.org/sir-graham-smith-research-awards-research-reports/>

MOJ FEMALE OFFENDER STRATEGY

Joint Probation Institute/HMPPS Conference

Save the date for an important small practice focussed conference to be held in Birmingham on 9th May to hear about ideas and approaches on implementing the MOJ Female Offender Strategy. This event will be for practitioners working with women and will include key speakers from HMPPS, CRCs and Hibiscus.

Register at <http://probation-institute.org/conference-on-female-offender-strategy-9th-may/>