Breaching non-compliance: proactive practice or ignoring the complexities?

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The notion of legitimacy refers to the ‘psychological property of an authority... that leads those connected to it to believe it is appropriate, proper and just’ (Tyler, 2006, P. 375), as such, it relates to supervised individual’s cooperation and belief in the authority of their probation practitioner and the Probation Service. Yet, engagement strategies are borne from deterrent philosophies, using a threat-based method to compel compliance. A notable influence on compliance, and legitimacy, is how practitioners deliver the Community Order and whether this adheres to ethical principles and procedural justice (Burnett & McNeil, 2005).

Therefore, when considering enforcement-based decisions, our values, and organisational Code of Ethics become ever more important to consider.

Between 2015 and 2020 I worked at West Yorkshire Community Rehabilitation Company (CRC) before being seconded to the National Probation Service to complete the Professional Qualification in Probation (PQIP). In the CRC, I mainly worked with people serving community-based sentences, and when faced with a high workload and little capacity to be flexible, I now reflect that my enforcement approach was simplistic and rigid, yet consistent with legislation. Whilst my decisions would withstand public scrutiny and meet organisational objectives, on a personal level I may have only facilitated formal compliance for those wanting to avoid further breaches. Therefore, I may not have been enabling change or desistance, and consequently, restricting legitimacy in the belief system of the person on probation (McNeill, 2011) and overlooking their personal needs (Eadie & Canton, 2002). In retrospect I may have created a punitive environment on Community Orders rather than focussing on rehabilitation to facilitate improved outcomes for the individual, and the community. As such, due to the CRC’s changing contractual obligations (which would influence local culture within that CRC) a subsequent focus on enforcement created a deterrent-based belief system in myself, I thus moved into the enforcement team.

Since moving to the NPS, I have had more time to work with people on a holistic level. This has allowed me to consider the context to apparent non-compliance. Due to a more theoretical and evidence-based understanding through completing the PQIP, I found myself being more sensitive to peoples’ needs and taking into consideration the reasoning behind my enforcement actions, to ensure decisions were defensible, responsive, and - importantly - fair. This is more in line with the Probation Institute’s Code of Ethics, and my own values which were a key driver in my decision to enter probation in the first place. This provided me with greater capacity to skillfully exercise my professional judgement to facilitate greater outcomes for people on probation.
On a personal level, I hold beliefs in the capacity for people to change but this has been affected over time, increasing my cynicism for particular offences (such as Domestic Violence offences). Thus, I remain mindful that unconscious biases may affect enforcement decisions that I make. Additionally, my professional identity has been formed throughout my time in Probation. Crucially, this is shaped by the respective culture and context of the time and the focus of the Service and Criminal Justice System as a whole.

In the new era of the Probation Service, there is still much work to be done to repair the damage to the delivery of services from Transforming Rehabilitation (TR). At this time, with the distribution of legacy CRC cases yet to fully materialise, staffing pressures and an influx of new practitioners (through PQIP and staffing campaigns), crafting a new culture - in which strengths-based practice and professional discretion is to be used competently by practitioners - will take time along with investment in staff and their continued development. Throughout my time in probation, I have seen practitioners lack a clear understanding of breach, due to the lack of training for a fundamental part of our practice. Briefings often focus on organisational processes and rather than the impact of enforcement proceedings on compliance and desistance. This can counteract our overall aim to successfully rehabilitate people on probation.

To promote a community-based order as a credible alternative to custody, a practitioner’s understanding of the dimensions of compliance is critical, particularly when attempting to determine how it may affect the desistance journey. While policies, post-TR and post-reunification, endorse prompt and proportionate enforcement, there is increasing emphasis on practitioners being able to exercise professional judgement on whether a failure to comply requires enforcement action to be taken. Professional discretion is often used in the context of enforcement-based decisions to manage diversity in people’s circumstances, as per the Equality Act 2010 and Probation Institutes Code of Ethics. To treat people equally would ignore individual differences and restrict practitioners to legislative measures. Allowing professional judgement means skilled practitioners can assess compliance holistically and take a fair, responsive and diverse approach to enforcement. In practice, a delicate balance must be struck between consistency and flexibility, as such between the roles of ‘enforcer’, ‘referrer’ and ‘motivator’ (Knott, 2004). Whilst it is important to consider legislation within our practice to safeguard from arbitrariness, plasticity to enforcement decisions can protect against rigidity (Canton & Hancock, 2013). As such, the cycle of change (Prochaska & DiClemente, 1983), which has been a large part of offence-focussed work, highlights that motivation can vary and as such gives credence to the view that resistance should be worked with, not suppressed, and in turn, can have a positive impact on compliance.

Enforcement can play a critical role in probation supervision and the effectiveness of sentence delivery. In support of this, the Criminal Justice Act (2003)’s assumes that a deterrent philosophy is a driving force behind compliance and engagement, in contrast to the strengths-based philosophy. Whilst compliance has an underlying relationship with desistance, when taking into account individual differences and reasons for non-compliance, this is not always a true reflection of the people’s individual and personal progress outside the context of attendance.
An Inspection report conducted by Her Majesty’s Inspectorate of Probation (2018) states that where people have achieved positive progress it was likely due to the practitioner’s persistent efforts or a multi-agency approach to address their diverse needs effectively. Taking an investigative approach to all instances of non-compliance can safeguard against inflexible enforcement procedures and can allow for further opportunities to meaningfully engage people with their sentence, and other agencies to develop an individualised plan to address needs and form their path towards desistance.

Canton and Dominey (2017) point out that government agencies should provide environments where the individual can thrive, which a strengths-based approach can facilitate, and Her Majesty’s Inspectorate of Probation (2020) has endorsed the use of strength-based philosophies within sentence delivery toolkits. This approach would aim to avoid retriggering people through the power and control inherent to rigid enforcement protocols, but to build confidence through the development of strengths and skills. This could potentially reduce instances of non-compliance, increasing legitimacy and allowing for people on probation to be successfully reintegrated into society through rehabilitation rather than forcing conformity.

References


