Probation and the bench

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The early days

A short time after qualifying as a social worker in 1990, I found myself employed as a probation officer with the Middlesex Probation Service. Part of my probationary training involved shadowing one of my more experienced colleagues in a busy North London magistrates’ court. He was called to another court in the course of his duties, and I recall feeling a cold chill at the unerring gaze of the stipendiary magistrate (now district judge) as one of the defendants appeared from custody, looking bedraggled and sounding argumentative, after a night spent in a police cell. He was one of the ‘regulars’ who appeared in the dock, a homeless man with a troubled history of alcohol dependency, who would smash a shop window and await arrest, to secure a warm overnight stay with the local constabulary. The ‘stipe’ impatiently asked, if the probation service could ‘do something for this indigent alcoholic’ (words with a vaguely Dickensian overlay) as he needs to be offered ‘help and assistance’ as punishment clearly was not working! He was sentenced to a day in lieu, and I agreed to go into the cells before he left to interview him, with a view to offering such help and assistance as I could muster.

In the event, when I introduced myself as his ‘new probation officer’, anxiously hoping that he might respond to an approach aimed at his vulnerability, persistent offending and evident welfare need, he harrumphed, ‘I do not need any probation officer to tell me what to do’ and returned to the streets adjoining the probation office. He sadly passed away a while later having collapsed in those very same streets while intoxicated.

Around the same time, I was called upon to prepare a pre-sentence report on a female defendant who was remanded in custody and was facing sentence at the crown court. I was encouraged to attend the crown court in person to support my recommendation (as it was known at the time) for a three-year probation order, as my line manager had pointedly noted the welfare needs of the defendant outweighed other sentencing considerations. The crown court judge invited me to speak to my report at the sentencing hearing and politely but firmly questioned me on why he should follow my recommendation in light of the gravity of the offences. He retired to consider the mitigation outlined in legal representations centred on the defendant's abusive upbringing (the defendant’s counsel had gasped in disbelief when I handed him the report!) and my oral submission.
Passing sentence he noted ‘these offences are far too serious for a probation order’ (community orders had yet to appear on the judicial landscape) but he noted my comments and reduced the sentence of imprisonment from ten to seven years! Imagine my later surprise, when a well-thumbed copy of the *Justice of the Peace* magazine, which was regular lunchtime reading in the probation office, alluded to this case, with the sentencing judge bemoaning my ‘unrealistic sentencing proposal’ and opining as to just how ‘out of touch’ the probation service was becoming (or was that just me) in its report writing!

**Political imperatives and organisational change**

I cite these two examples of my own early probation practice simply as a way of briefly outlining how much then changed in subsequent years in the way that the probation service, and in particular its role in the court setting, reflected wider organisational and political imperatives. This included the first of many significant criminal justice acts in 1991 that buffeted the service in an attempt to ‘toughen up’ sentencing options; so that ‘if an offence was serious enough a community penalty may be imposed’, was now stacked with a portfolio of added requirements. The judicial mnemonic of ‘serious enough’ now entered the lexicon of report writers keen to ensure that the confidence of magistrates and judges, and indeed the wider public, was not jeopardised! Arrangements for sharing good probation practice with the judiciary often meant attending local magistrates’ liaison committee meetings. Although at times I picked up more than the odd jarringly dissonant viewpoint, with one notable meeting abruptly ending when the topic of disparities in custodial sentences between adjoining courts, also known as concordance rates, was gingerly raised!

With the creation of the National Probation Service in 2001, I had already moved to a central London probation office, and now found myself undertaking weekly court duties in two magistrates’ courts (both since closed). Amazingly, for a time, although stand down or oral reports had long continued to feature for those defendants appearing for minor offences but requiring some probation input (mainly assessing suitability for community service – symbolically changed in the 2001 Act to a community punishment order) fast delivery reports/same day reports became more evident in court practice and completing three quarters of such reports in a day was far from uncommon. A tetchy district judge (a judicial role introduced in 2000) once mildly reproached me, for a proposal in a handwritten report, which she found difficult to read, but was disposed to go along with, as Mr Guilfoyle usually has a keen eye for ‘those trying to pull the wool over the court’s eyes, and some form of rehabilitation is usually his starting point’!

There followed almost incessant top-down organisational changes, a facet of an ever changing probation service (the Ministry of Justice subsuming prisons and probation into one governmental department in 2007). A move notably set in train by the Home Secretary John Reid, who before an audience of inmates at HMP Wormwood Scrubs the previous year had described the probation service as ‘poor or mediocre’. This had prompted me to write to him directly to seek clarification for what I felt were his ill-judged remarks, only to receive a formal signed response from the Secretary of State that ‘I should not believe everything I read in the papers’!
I retired from the probation service in 2010, after twenty years as a main grade probation officer, in many ways relieved to be free of what I felt were some of the more disfiguring aspects of over-centralised political and managerial change. But I kept myself busily informed of how the service was responding to these changes by remaining an active member of the probation union, Napo, and writing articles, including a monthly blog post for the Centre for Crime and Justice Studies and book reviews on probation practice and policy for the Probation Journal.

Being sworn in as a magistrate

I recall with measured pride leaving the famed court one of the Central Criminal Court (Old Bailey), having been sworn in as a magistrate to sit on the South East London bench. One of the more memorable lines from the judicial oath which I was required to swear was ‘I will do right to all manner of people after the laws and usages of this realm, without fear or favour, affection or ill will.’ With this worthy injunction firmly in mind, I approached the day of my first sitting as a winger in the adult court with some mild trepidation and anticipation. I sought out the chair who, sensing my slight discomfort put me at my ease, stating, ‘just think how the defendant might be feeling on their first appearance’. I have a fuzzy recollection of feeling ‘elevated’ on the raised bench and made a point of seeking out in my field of vision the probation worker, now on the front line of probation practice.

The informed readership of MAGISTRATE will have many opinions on how judicial confidence in the probation service might be improved. Maybe if the policy of the MA to fully enact section 178 of the Criminal Justice Act 2003, to enable sentencers to more effectively review community orders made by the court, is brought into effect this might positively impact on how magistrates better assess the efficacy of community orders. The scars of probation privatisation, with consequential staff shortages, high caseloads and low morale are still experienced as pressing workplace issues for frontline probation staff, and the operational challenges posed to the criminal justice system by Covid-19 remain significant challenges.

Back to the Future!

Recent legislative proposals on the role of the probation service contained in the Police, Crime, Sentencing and Courts Bill (2021) do have a Back to the Future look to them! But I believe they offer a model of practice that is at least evidence-based and person-centred and in which the professional relationship with those under probation supervision is seen as the cornerstone of change, together with the timely enforcement of orders, the needs of victims and more effective engagement with local courts. A newly unified National Probation Service might well replicate some of the more unwelcome centralism noted in earlier iterations of probation service reorganisations, when probation should be fundamentally, in my view, a service located in local communities, where its ties and links to other agencies like the courts are strongest.

When I sit on the local bench, I still retain a firm commitment to ‘do right to all manner of people’ and try always to remember that justice should be seen to be done. While at the same time aiming to remember, heedful of my first hapless judicial encounter as a hard-pressed court duty probation officer with a harrumphing court user, that trying to do things better is not a bad place to start from!