

Delivering a Smarter Approach: Probation professionalisation

Commitment in the white paper

Page 63 of 'A Smarter Approach to Sentencing' states

“Our ambition is to make sure probation officers have manageable and varied caseloads and are encouraged (to develop) specialisms. As part of this work, we will explore options to **improve the professionalisation of the probation officer and probation support officer role.**”

Purpose of this paper

In our paper, *Smarter Community Sentences*, we argued that community sentences, and community supervision more generally, should be more responsive to dynamic changes in the lives and behaviour of those supervised. We argued that “we must liberate frontline practitioners to use their skills and training and exercise greater professional discretion.”¹ We therefore welcome the Government’s commitment, signalled in the recent White Paper, to empower probation. The White Paper states, “We want probation practitioners to have the time, support and tools to develop effective relationships with those they supervise, to deliver effective interventions directly, and to place offenders with other rehabilitative services.”²

In doing so, the Government recognise that empowerment must be accompanied by support, “through investment and reforms to the way that probation services are delivered, alongside improvements to the powers available to probation practitioners.” As part of this, the Government (tentatively) have committed to “explore options to improve the professionalisation of the probation officer and probation support officer role.”³

In this paper, we offer our thoughts about what those options are and the steps the Government can take to empower probation as a profession.

Background

In May 2019, the Government announced that when Community Rehabilitation Company contracts came to an end, all sentence management responsibilities for low-, medium-, and high-risk offenders would be held by the National Probation Service (NPS). This was the decisive end of the part-privatisation reform of probation, known as Transforming Rehabilitation. This means that, from June 2021, the NPS will be responsible for the effective delivery of community sentences, licences and other forms of post-sentence management. Probation will be, once more, public and whole again.

In January 2020, the Probation Workforce Programme was launched to ensure the wider changes happening in probation are married with changes to the probation workforce. This programme seeks “to address the significant shortfall of trained probation officers in the system ... This strategy set out our commitment to increase recruitment of probation staff this year... Our ambition is to make sure probation officers have manageable and varied caseloads and are encouraged specialism. As part of this work, we will explore options to improve the professionalisation of the probation officer and probation support officer role.”⁴

Probation professionalisation has been a topic of consideration for some time. Calls for it especially heightened when probation was being cleaved in two as part of the Transforming Rehabilitation reforms, from bodies such as the NAPO, the Probation Institute and the Howard League.⁵ In 2017/18, the business plan of Her Majesty's Prison and Probation Service (HMPPS) stated that its plan aimed to "improve performance outcomes by investing in our people to enhance their professional skills and by promoting a clear and continued focus on effective evidence based practice." This plan committed to "establish enhanced professional qualifications for probation officers... establish a professional register for probation practitioners."⁶

Yet, in 2020, these measures and others that would increase the professionalisation of the probation service remain only partly delivered. There is a requirement, for example, under the Offender Management Act 2007 that the roles of 'Responsible Officer' (RO), 'Enforcement Officer' (EO) 'Supervisor' and Supervising Officer be undertaken by an authorised 'officer of a provider of probation services' and subsequent Probation Instructions from HMPPS make clear that probation providers "are required to ensure that staff authorised as 'officers' have the requisite skills to manage offenders and undertake the relevant statutory functions."

However, there are significant gaps in the existing approach. First, oversight of these professional standards are not, unlike in social work, medicine, nursing and other related professions, overseen by a regulator independent of the employer. Second, while the Probation Institute has maintained a register for all practitioners there has been no requirement for any practitioners to register with the Institute. Third, there is no independent code of conduct, appeals process or de-registration process, as there is in other professions. Finally, as probation moves, for the first time, into a single employing body, also including the Prison Service and within the Civil Service, access to independent, external scrutiny will be an important element of public confidence.

Defining professionalisation

There are a number of professions, related to and operating in the same orbit as probation, including social workers, lawyers, psychiatrists and nurses. What marks these workforces out as professions is:

- **A professional register conferring a right to practice:** Professions tend to have a set of explicit requirements that every member of the profession needs to meet in order to practice. For example, the Teaching Regulation Authority holds the individual records of teachers, including their initial teacher training qualifications, whether they've been awarded qualified teacher status, any additional qualifications and any prohibition, sanction or restriction that may/will affect their ability to carry out certain activities, or work in particular roles.⁷
- **A requirement for ongoing development:** Professional registers tend to need individuals not only to meet specific requirements in order to enter onto the register but a regular requirement to re-register/refresh registration. For example, in social work in the UK, social workers need a social work degree (an undergraduate degree in social work, or masters in social work) in order to register with one of the four UK social work regulators. In England, Social Work England require every registered social worker to record at least 1 piece of CPD before the end of the current registration year. All social workers who want to continue to practise in England must renew their registration annually.⁸
- **A code of practice and standards:** Professions tend to have clear codes of practice and standards which all those who are registered have to adhere to. For example, the Nursing and Midwifery Council publishes the 'Code', the professional standards that nurses, midwives and nursing associates must uphold in order to be registered to practise in the UK.⁹
- **An independent regulatory body to oversee the register:** Professions tend to have an independent regulatory body which oversees the register to practice. These bodies tend to

be independent of Government— for example, the General Medical Council, which maintains the register of psychiatrists and other medical professionals, is established in statute under the Medical Act 1983, which sets out the independent appointments process for the General Medical Council’s board.¹⁰

The case for probation professionalisation

Improving probation's ability to protect the public

One of the core purposes of probation services is to protect the public. Our probation service has to assess and manage the dynamic risk of very serious harm posed by people who have been released from prison (often from long sentences) and who are placed under its supervision. Probation plays a vital role in the public protection arrangements we have to supervise sex offenders in the community, helping to safeguard children and vulnerable adults. Probation works with the police, security services and others to keep us safe from the threat posed by known terrorists and extremists.

And yet there is reason to suggest that the lack of continuous professional development and clear standards, as well as a lack of funding and continuous and damaging reforms, has meant probation is not always discharging its services as effectively as the public demands. The recent serious case review concerning the offences committed by Joseph McCann¹¹ underline both the critical responsibilities of probation practitioners but also expose failures in the quality of assessment, planning and management of offender supervision. Recent HMI Inspection reports refer to decisions made by probation to recall individuals to prison that have been influenced by finance in the CRCs (to not recall) and “political and ministerial pressure” not to “get it wrong” in the NPS. One purpose of establishing clear professional standards would be to support individual probation officers to make decisions based on professional judgement without regard to operational, financial or political pressures.

More than ever, as the Government seeks to build a world-class probation service¹², it is essential that probation practitioners demonstrate that they are consistently maintaining the high level of skills and knowledge required. One way to achieve this, albeit as part of a wider package of measures to strengthen probation more generally, is to place the probation profession under a much clearer set of standards and to require probation officers to undergo continuous professional development.

Ensuring consistent practice across the country

There has always been a range of employers operating in the community supervision profession, including public sector, private sector and voluntary sector bodies. Moreover, there have always been various types of roles that make up the community supervision workforce—offender managers, key workers, substance misuse specialists etc. The split in the probation service brought about by the Transforming Rehabilitation reforms accentuated this diversity, purposely fracturing the probation service into a National Probation Service and twenty-one Community Rehabilitation Companies.

At the time of those reforms, there was discussion about how to ensure that the probation service, as a whole, retained consistent, coherent and agreed standards and qualifications. However, this work never crystallised, meaning that training, job roles and professional development have become highly varied across these organisations. This means we have workforce where some practitioners who manage offenders hold a professional qualification in probation at post graduate level, but there are also increasing numbers of practitioners holding responsibility for the supervision of offenders who hold other, different qualifications and some who have none. As the service is being made whole again, there is a new and fresh opportunity to set consistent, coherent and agreed standards and qualifications to which all practitioners, managers and leaders in probation can adhere.

Strengthening probation officer's professional judgement

As suggested in the White Paper, the Government wants to empower probation. This includes giving probation officers greater powers and greater flexibility in doing their jobs. Specifically, this includes legislating to give probation practitioners greater flexibility to take appropriate action where they have concerns about an offender's rehabilitative needs or risk to the public, and legislating to empower probation officers to vary curfew requirements. The White Paper indicates that Government intends to explore more flexible enforcement of court-imposed requirements and the power to impose new requirements for non-compliance/breach.

This new discretionary agenda is welcome but strongly suggests that the public, service users and the courts need confidence in the probation profession to exercise these greater powers with skill and judgement and, where those powers are not exercised well, for there to be a clear, transparent process for malpractice. The obvious corollary of additional powers is in trusting probation practitioners to use professional judgement to take the appropriate action.

Restoring confidence of the judiciary in probation

The White Paper states that "we need to win back the confidence of the judiciary" in the delivery of community supervision.¹³ Clearly, there are several ways in which the confidence of the judiciary can be won back, not least improving the delivery of community sentences and improving the delivery of probation's work at court, including extending magistrates' training in the role of probation and other similar mechanisms.¹⁴

However, another, complementary, way is to support probation to become an integrated and regulated service open to external scrutiny, placing it on a similar basis to other closely allied professions including social work and law. Making probation a profession would give the judiciary confidence that there were clear standards and clear professional qualifications across probation, giving the service the credibility that it has, for far too long, been denied.

Bringing England and Wales up to the UK standard

Finally, placing probation on a professional basis would bring England and Wales into line with other UK jurisdictions. In Scotland, the supervision offenders in the community is undertaken by criminal justice social teams, based in local authority social work departments. Social workers who work in the Community Justice system are trained alongside other social workers and it is not uncommon for career pathways to cross to and from this service to other social work specialisms within local authority. In Northern Ireland, all probation officers must have a social work qualification and be registered with the Northern Ireland Social Care Council (NISCC). The Honours Degree in Social Work is the recognised professional qualification for all Social Workers, as well as for Probation Officers and Education Welfare Officers in Northern Ireland.

While the standard of qualification expected in the three jurisdictions is at the same level, what does not happen in England and Wales is the same requirement for practitioners to be registered, nor having to conduct continuous professional development in order to be regularly re-registered nor having to abide by a set of ethical and professional standards in the same way. We can't think of a good reason why the English and Welsh public deserve lower standards for their probation services than those in Scotland and Northern Ireland.

Core elements of probation professionalisation

The unification of disparate probation services back into one service, the National Probation Service, from June 2021 offers an excellent opportunity to advance the professionalisation of the probation service. We outline what we think are the four core elements of any probation professionalisation.

Establish ethical and professional standards

One of the first steps to professionalise probation is to create a set of professional standards. The purpose of these standards would be to set out the professional, ethical, education and training standards that the public can expect probation workers to meet. These standards, taken together, should signify what good probation practice looks like as well as setting out what probation's code of ethical conduct is.

They would be standards that focused on individual skills, ethics, training, behaviour and competence. The standards would apply to all probation practitioners— anyone registered must act in line with them, whether they are providing direct supervision to individuals, groups or communities or bringing their professional knowledge to bear on probation practice in other roles, such as leadership, education, or research. Ultimately, they ought to be the standards shown every day by those on the register. They should be flexible enough to work in diverse contexts and take account of the different levels of autonomy and responsibility. When joining the register, and then renewing their registration, practitioners would be committing to upholding these standards.

Just as it is important to set out what the standards ought to cover, it is also worthwhile being clear what they should not. They would not set out operational standards, such as the expected level of resourcing, or the standard or level of service delivery that can be provided by service delivery organisations at any one time— these are matters to be decided on by employers and on which employers would be held to account by HMPPS and inspected on by HMI Probation.

Developing a wide ranging process for their development would be crucial. They ought to be developed independently from Government, and created with and alongside practitioners and service users in the sector, and with public input into their development.

Establish a licence to practice

Fundamental to probation professionalisation is the requirement that all probation practitioners and managers should hold a licence to practice— that in order to work in the community supervision of offenders, practitioners must be able to demonstrate that they have attained a shared and consistent level of competence. This licensing process needs to define the different levels of competence for the different levels of sophistication and demands that different types of role in probation require. Second, there will need to be a process to define which roles need these licences to practice. Lastly, it will need to transfer the existing workforce over into these various licences to practice.

In terms of defining the various licences to practice, the qualifying requirements for the various licences to practice are likely to focus on an independent measure of competence, most likely be demonstrated by a required externally accredited qualification. At present, it is most likely, for example, that an individual would get a licence to practice for a role at probation officer level if they had a professional qualification in probation at post graduate level, similar to a social work degree. A different licence to practice could be required for probation services officer roles, for example, holding qualifications at QCF Level 3 or 4. However, for some roles, most likely more junior and less demanding roles, competence may be specified through an approved internal competence based assessment which is not an external qualification. Over time, this would be required for all practitioners and managers of practice in probation and rehabilitation - those who have defined responsibilities for the management of offenders, the reduction of offending behaviour and through this the protection of the public— whether employed by public, private and voluntary sector employers.

It will also be a key step in the process toward professionalisation to define which roles need a licence to practice. It would probably make most sense to do this in stages, for example, all existing probation officer and probation service officer roles are designated as requiring a license to practice, but only provisionally, with a formal assessment, which could lead to the role being re-designated. This work would also need to consider the scope of registration: at its fullest, it should embrace all roles involved in working in the statutory supervision of offenders in the community, including roles within the prison service and practitioners in voluntary organisations contracted to work directly with individuals under the supervision of NPS.

Create a register to practice

As licences are granted, professionals would be required to enroll onto a central professional register. This registration would be the key way in which individuals would be able to demonstrate their compliance with the regulations and their license to practice. As already indicated, to enroll on to the register, individuals would be required to provide documented evidence of their competence (see above) and, over time, demonstrate their ongoing professional development (see below) and ongoing professional conduct, through re-confirming their understanding of the code of ethics. This registration would be specific to the individual and would transfer with the individual if and when they change employment within a regulated role.

This register would also need to have a clear process for removing people from the register. This process would need to embrace rigorous investigation of complaints and potential removal for malpractice as well as failure to comply with the ongoing requirements (for example, failure to demonstrate ongoing professional development), subject to specific and limited exceptions. In some instances, there would need to be sufficient flexibility in these arrangements to notify individuals of the threat of de-registration require compliance within a specified period of time. If action is not taken within this specified time scale, the individual would be de-registered.

Require practitioners to demonstrate continuous professional development

All licensed practitioners ought to be required to participate in evidence-informed continuous professional development. As part of the regular re-registration process, all regulated practitioners and managers would be required to submit evidence of continuous professional development completed across a defined period.

There would be a need to define what the evidence-informed continuous professional development ought to be. It is possible that an oversight body could ally with university probation research institutes to create distinct bodies of knowledge, skill sets and practice acumen which could form the backbone of probation workers' continuous professional development.

Create an external, independent regulatory body

Implementing these four core elements of probation professionalisation would, in our view, be immeasurably strengthened if an external, independent regulatory body was created to establish and oversee them. As we have already mentioned, many related professions are overseen by an external, independent regulatory body, for example, social work in England is overseen by Social Work England and the Nursing and Midwifery Council oversees nursing. There needs to be a body responsible for creating and maintaining standards, for issuing licenses to practice, to maintain a register of qualified practitioners, to define and oversee those practitioners' continuous professional development, and to investigate complaints and manage deregistration. Some regulators are created by Royal Charter (like the Law Society) and some like Social Work England were created in primary legislation.

The alternative to an independent regulatory body would be to embed these roles in Her Majesty's Prison and Probation Service (HMPPS), an executive agency. However, HMPPS acts as the umbrella headquarters for prison and probation services and the employer of all public sector probation workers. As we have already described, professions like nursing have a regulatory who is not the employer, preserving their focus on professional standards.

There is an open question as to whether there is an existing body which could play these roles. As we mentioned already, in Scotland and Northern Ireland, probation work is regulated as a subset of wider social work, with specialist bodies such as the Association of Criminal Justice Social Workers in Scotland playing a role to ensure that the specialised role played by social workers in criminal justice settings is recognised and developed appropriately. Of course, probation's roots are in social work so it would not be a big leap to consider relevant social work bodies as a natural home for probation professionalisation.

However, there is also an opportunity, in the forthcoming legislation to implement proposals in the White Paper, to establish a separate regulatory and professional body for probation in statute. This would ensure the independence of that body, and provide clarity about its status and the wider status of probation. There are good arguments that the size and diversity of the probation and wider offender management workforce, and the specialised nature of probation work, argues for a separate body to take on these roles.

Conclusion

Despite the hard work and effort of many to make the Transforming Rehabilitation reforms work, it was clearly the right move of the current Lord Chancellor to put probation back together again. So, the recent White Paper was the first of a post-probation privatisation world and it signals the Government's clear intention to empower probation.

We argue that a vital step on this journey would be to professionalise probation properly, creating an independent, external regulator to be the upholder of professional standards and effective practice across probation and offender management in England and Wales. That would give us a chance to re-invent a probation service worthy of its once proud traditions and one that is truly world class.

Endnotes

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