

HARKNESS FELLOWSHIPS ASSOCIATION LECTURE – 25 JANUARY 2021 – A BRIEF HISTORY OF THE PROBATION SERVICE AND ITS CHALLENGES. FROM ‘ADVISE, ASSIST AND BEFRIEND’ TO ‘ASSESS, PROTECT AND CHANGE’.

Justin Russell, Her Majesty’s Chief Inspector of Probation

Many thanks to Veronica and to the Association for the chance to speak to you tonight. I’ll always be grateful to the Harkness Fellowships for the year I spent in the United States – it was a crucial and formative year in my career which had a massive effect on where my life went afterwards.

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I arrived in the US in the summer of 1993. It was just before the start of Bill Clinton’s first term in office and he had big plans on the public policy front – from Hilary Clinton’s ideas for healthcare reform, to a shakeup of the welfare system to ending the ban on gays in the military – so we had a ringside seat that year to his efforts to push this agenda through – not all of it successfully.

I was based at UC Berkeley and spent my year looking at drug abuse treatment programmes for offenders. I was able to visit crack abuse treatment projects in the Bronx and West Oakland; state and county prisons in Texas, San Diego, Chicago; probation projects for people released from custody in New York and a wide range of academics at Harvard, NYU and elsewhere as well as a fascinating range of senior healthcare and criminal justice administrators at state and federal organisations.

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But the thing that had the most impact on me was what were called Drug Courts. Faced with prisons bursting at the seams because of mandatory minimum sentences for possession of often quite small amounts of crack cocaine, local criminal justice systems started experimenting with ways of diverting drug related offenders from prison if they agreed to enter drug treatment. This man in particular – Judge Stanley Goldstein – was an early advocate of this approach and I was able to sit in on his drug court in Dade County Miami and watch as he presented certificates in court to people who’d successfully completed their treatment programmes, applauded by their families in the public gallery. And I saw similar things happening in Washington DC and in Oakland.

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Arriving back in England in the Autumn of 1994 I found that my Harkness Year had opened my eyes to new policy debates and ideas across a massive range of topics. More importantly, it had made me realise that if you were interested in public policy and in making really big and rapid policy changes – that had to happen through politics. So, when an advert appeared in the Wednesday Guardian at the end of 1994 for a policy expert to cover home affairs in the Labour Party Policy Unit I applied and was successful. It was to be beginning of 25 year career working on criminal justice policy in a whole range of settings and one I've never regretted.

One of the more immediate and satisfying consequences of this shift of career, was the chance to put the learning from my Harkness Year to use. Based on what I'd seen in the American drug court model, I came up with the idea of the Drug Treatment and Testing Order or DTTO – which was launched by the then Shadow Home Secretary, Jack Straw in September 1996.

As with the drugs courts in the US, this enabled judges in England and Wales to sentence drug related offenders to a programme of treatment as an alternative to a prison sentence. Unlike previous probation orders however and in line with the American learning – this was also combined with regular drug testing to provide an objective measure of whether the offender had actually stopped using drugs, as well as regular, in person, reviews by the judge to report on progress and either receive praise or a word of warning on this.

After Labour was elected in 1997, the DTTO became law in the 1998 Crime and Disorder Act and was rolled out nationally from October 2000, backed up with over £50m a year of funding for implementation. It proved popular with the courts and by the end of 2003, over 18,000 orders had been given out by Courts.

A key aspect of the Drug Testing and Treatment Order and perhaps what gave it political appeal was that it combined the carrot of practical support for the drug dependent offender with the stick of further court action if they didn't go along with the programme – with drug testing results available to the judge providing objective evidence of compliance. To adapt Tony Blair's famous phrase slightly, it was tough on the criminal but tough on the causes of their crime as well.

And it is this particular combination of care and control – and the inherent and ongoing conflict between them that is perhaps the defining feature of the probation service and has been ever since its foundation and will be a key theme of this lecture.

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But let's start at the beginning. Since this is a Harkness audience I thought I'd start with a picture of this man and the story of transatlantic policy transfer from the Victorian era.

This is John Augustus, a Boston shoe maker, born in 1785, he was a committed Christian and member of the American temperance movement. Inspired by both of these beliefs he gave up his shoe making business in 1846 and devoted himself to philanthropy full time. In particular, he devoted himself to trying to persuade the courts to give first time offenders a second chance by offering to stand bail for them as an alternative to a court sentence and prison and to supervise them during their bail period to encourage their good behaviour. From 1842 to 1858 he stood bail for an astonishing 1,946 people, making himself liable for bail pledges of over \$243,000.

He died at the age of 74, reportedly from “a general prostration due to overtaxing his powers”. But other volunteers and sympathetic judges continued his work and in 1869 the state of Massachusetts established a State Visiting Agency which continued to attend court to persuade them to offer young offenders an alternative to prison accompanied by regular supervision and reports to court.

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Back in England, late Victorian efforts were also underway by progressive justices and charitable bodies to divert first time criminals – or least those felt to be the more deserving ones – from prison

From the 1870s, the Church of England Temperance Society started to send what were called court missionaries into court to identify deserving offenders, whom in return for signing the pledge to abstain from alcohol and a promise to be of good behaviour and ongoing supervision, the courts would be willing to defer sentence.

By 1900 there were perhaps 100 of these male court missionaries and at least 12 female missionaries working with female offenders.

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The early emphasis of this fledgling form of probation work was both about saving souls and very practical help, often of a very intensive and personal kind. Early missionaries took people they had 'saved' in court into their own homes for months on end, found lodgings for people and put up deposits or stood security for loans to buy furniture and ran social clubs in the evenings in return for prayers and uplifting talks from the local vicar.

Meanwhile, visitors to the US and to the early probation system in Massachusetts from the 1880s onwards, came back inspired and started to campaign for probation to be put on a statutory basis in the UK. This eventually paid off after the election of the great reforming Liberal government of 1906, with the 1907 Probation Act.

This enabled offenders to be released by the courts on their own recognizance with supervision for up to 3 years and set out various requirements that could be attached. And it set out the duties of probation officers as well, including in words which have become famous within the service to "advise, assist and befriend" the offender.

Although the government didn't provide any funding for probation officers and left it up to local magistrates as to how they were to be recruited and paid, by 1919, there were 700 to 800 probation officers in post and 10,000 probation orders a year were being made.

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From the late 1920s onwards in a phase which was to last until the 1960s, the emphasis of the service started to shift increasingly from salvation for moral failure and practical help – to seeing offending as an issue of individual rather than social pathology - a disorder of the mind which needed diagnosis and treatment. With individual, therapeutic case work as the dominant form of practice

Probation took inspiration from psychoanalysis and psychology. Assessment of an offender's underlying emotions and unconscious feelings and pathologies became as important as their material needs. And the service became increasingly professionalised, with a requirement for university training and a new Probation Training Board – with qualified probation officers acquiring social work diplomas.

This is not to say that the older, missionary beliefs in redemption and practical help disappeared from the service. As late as 1934, half of all full-time probation officers were still from organisations like the Church of England Temperance Society or Salvation Army – so the old imperative to save souls and provide practical help remained a key, though waning, strand in probation culture.

By the 1960s, there were over 2,300 probation officers and over 70,000 people being supervised on probation orders and the probation service had acquired fully professional status, based on a model of psychologically informed casework and a well established position in the world of both criminal justice and social work.

But this was all about to change significantly.

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Several significant things happened to probation caseloads in the 1970s.

The first, was that probation started to become a punishment in its own right, rather than just an alternative to a prison sentence. In 1972, the Community Service Order was introduced, a new punishment supervised by probation which required offenders to do up to 240 hours of unpaid work in the community. It rapidly became popular with the courts and by 1979 there were 15,000 CSOs a year being given out.

A second key change, was a new statutory role supervising many thousands of people on license after they were released from prison on parole – a new prison after care duty.

The net result of all this was a significant increase in the total probation caseload – but also a big shift in who was in that caseload – from young people to adults and from people on community sentences to prisoners released from custody – reinforcing the journey the probation service was going through from being a social welfare agency to a more explicitly criminal justice one.

A key reason for this was desperation on the part of politicians and civil servants to reduce pressures on the prison system which was creaking under the strain of rapidly growing custody rates. Probation might not do much to reduce re-offending rates but it might at least help divert people from prison by encouraging judges to use it as a cheaper alternative to custody.

An increasingly punitive range of additional requirements were therefore also added to community orders – including, for example, curfew requirements monitored by electronic tags, which were rolled out in 1995. Though, rather than diverting people from custody, both the prison and the probation population continued to climb and it was the use of fines which actually fell.

In addition to punishing offenders, probation was increasingly expected to manage the potential risks they presented to the public. A series of high profile murders committed by people on probation in the 1990s – led to a much greater focus on public protection, with the probation service also now expected to liaise with victims to ensure that they were kept updated on parole arrangements and release plans and given a chance to feed in their views on license conditions for release

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So, by the time we get to the present day, the role of the probation service looks very different to that of those early police court missionaries. With a shift from care to control and punishment; from early diversion and youth to the management of adult offenders; from social work to criminal justice.

But elements of each of these three eras of probation practice remain. The service still seeks to provide practical help around work and housing and get people off drugs and away from problem alcohol use. It continues to look to assess underlying emotional needs and psychological shortfalls – what are called ‘criminogenic needs’ in the jargon – and to refer people to psychologically informed programmes to tackle poor anger management or thinking skills. And it has an increasing focus on public protection and the management of the highest risk sexual and violent offenders – often working with the police and children’s services to share information around domestic abuse or child safeguarding risks and to agree enforcement strategies for controlling these risks.

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But it’s not just the service itself that takes on all of these roles. It’s individual probation officers that must do all three of these things as well. Although some functions have been outsourced – like electronic monitoring of curfews through tags, which is done by private companies – and some support may be provided by specialist agencies – like drug treatment services or community mental health teams – we still expect individual probation officers to combine

a welfare, a diagnostic and policing role. Or in the new tagline of the National Probation Service, to assess, protect and change.

Research shows that a strong and trusting relationship between a probation officer and the person they're supervising is critical to encouraging someone to desist from crime.

Yet at the same time as we ask probation staff to believe in the people they supervise, we simultaneously say to them, "but don't believe everything"; stay alert to risk; probe what may really be going on in the background; show what we call "professional curiosity".

That's a pretty tricky balance to hold in your head and demonstrate in your practice – and not surprisingly that balance sometimes slips.

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This is something that we pay close attention to in the inspections my organisation does. Over the past three years we've inspected thousands of individual cases being supervised by the service. This is a high level summary of the results.

What we find is that the service is generally good at engaging with the people they supervise when assessing them or drawing up plans. That they normally do a competent job of identifying underlying needs – whether practical or psychological. But that delivery of services to meet those needs can be hit and miss and that the assessment and management of risk of harm to the public remains the weakest area of performance - with less than half of the cases we inspect being satisfactory – with these scores being particularly low for cases managed by the private sector Community Rehabilitation Companies.

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Although this may reflect a natural preference amongst probation staff for the welfare rather than public protection and punishment part of their role – it's also because we may simply be asking probation officers to take too much on.

When we ask the probation officers we interview how many cases they're having to supervise, we find caseloads into the 60s and 70s are common. In the private sector probation companies, over two thirds of staff told us they have a caseload over 50 and 42% said it's over 60. And whilst staff in the public sector

National Probation Service have lower caseloads, these are almost entirely composed of higher risk violent and sex offenders, so the strains can be just as great.

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A major driver of these excessive caseloads has been the significant fall in investment in the service over the past 20 years. An analysis by my researchers shows that after you take inflation into account, the average amount of funding per case under supervision fell by 40% in real terms between 2003 and the beginning of 2019.

If you look carefully at that graph you can see that the downward trend accelerates from the Spring of 2015.

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That was the year that the Transforming Rehabilitation reforms introduced by Chris Grayling went live – which saw management of the entire low and medium risk caseload as well as of unpaid work and offending behaviour programmes – transferred to 21 private sector contracts across England and Wales, controlled by 8 parent companies. That represented about 140,000 cases or 60% of the entire caseload. Higher risk cases and responsibility for court reports was retained in the public sector in a new National Probation Service organised across 7 regions, with probation staff employed as civil servants on national terms and conditions.

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Ironically, Transforming Rehabilitation or TR, wasn't actually designed primarily as a cost saving measure but some fundamental flaws in the way the contracts were designed – particularly a reliance on a payment by results mechanism which linked payments to re-offending rates – has meant the Government has ended up spending perhaps £700m less over the lifetime of the contracts than was originally intended and approved by the Treasury.

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Within a couple of years, the results of this were becoming clear – with falling probation officer numbers, rising caseloads and falling quality of supervision. Our inspections of every service – public and private sector in 2018 and 2019 showed that 20 out of 21 of the private sector services were rated as requiring

improvement, or in one case, Devon, Dorset and Cornwall, shortly before it went into administration – ‘inadequate’

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Added to the challenges of TR, from which the service is only now beginning to recover, has been the even greater challenge of Covid since March of last year.

Overnight, probation had to completely change the way it operates from face to face appointments to all but the highest risk offender being supervised over the phone, with staff working from home.

Face to face group rehabilitation programmes had to stop – as did many of the unpaid work parties – so backlogs of both have now built up.

And we reported last week, there’s been a huge increase in the backlog of cases waiting for a court hearing – up 44% in the Crown Courts, with some Crown Court trials not being listed until 2022.

Though we found the service was recovering well in the period til Christmas with offices reopening, more people being seen face to face and rehabilitation programmes starting up again – the latest national lockdown is likely to have paused the progress being made and adds to the recovery time.

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So, that’s the story up until now. What of the future?

In spite of Covid and the scars of Transforming Rehabilitation, I’m actually cautiously optimistic. The Government has sensibly abandoned the TR experiment and decided to reunify the probation service in a new, merged, national public sector organisation with all staff employed as Civil Servants – from June of this year. Though there will continue to be some outsourcing of additional advice and support services like employment and training or accommodation.

Significantly more money has been pumped into the service this year – an extra £155m – plus the same amount promised for the next financial year – and the number of probation officers is starting to increase again – with plans to recruit 1500 more POs per year.

There’s a welcome focus back on those sorts of practical issues that the original church missionaries used to help with – getting people into accommodation or into work or training. And - £80m extra was announced

last week for drug abuse treatment, including for the Drug Rehabilitation Requirements which succeeded the DTTOs I developed after my Harkness year.

And probation has come out of the shadows of the prison service again. Although its still part of a single prisons and probation agency, it has a stronger more separate identity and is now led by its own Director General.

Of course, challenges remain.

The service will be going into the new unified structure still having to manage the impacts of the pandemic as well as managing a major transition programme.

New investment has so far only been promised for one year and there's a lot riding on the next longer term spending review if this investment is going to be sustained as it needs to be. Structural change by itself won't be a magic bullet to put right the problems of the last five years.

And increasing confidence in the service itself, needs to be matched by renewed confidence amongst judges in the effectiveness of community sentences which have seen a huge drop in use over the past ten years – and which took a bit knock from TR. And local leaders need to be given the freedoms to innovate and rebuild the local partnerships which have always been such a key part of how the service operates.

Recovery will be a long and winding road – but the journey has begun.