A Contribution to the 2024/5 Sentencing Review

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I write in an individual capacity – i.e. not on behalf of NAPA CIC – based on my 50 years in and around the Probation and Prison services. See andrewbridgesprobation.com

For this contribution I collaborated with Philip Wheatley, the Director-General of NOMS (now HMPPS) up to 2010, and I support his views on the *custodial* aspects of the prison capacity problem. I have therefore centred my "challenging and ambitious" contribution on the '*Probation* element'.

Summary of what I am saying:

I agree with Phil Wheatley's key point that the largest element in today's prison capacity problem is with the longer prison sentences, as the figures clearly confirm. The 'Probation element' therefore constitutes a smaller contribution to the overall prison problem, but it is still a real contribution, and it is also an avoidable one - and it requires its own "challenging and ambitious" remedy.

However, the remedy that would not have the intended helpful effect would be to develop the idea of so-called "tougher" community sentences. Instead we need a **comprehensive 'Probation Refocus'** that would replace the existing top-heavy cumbersome management with a much more 'bottom-up' approach to managing Probation work. Even with Probation's very limited resourcing this would enable the *additional necessary changes* to post-custody supervision and community sentences to have the desired helpful effect. I outline these ***additional 'necessary changes'*** further below.

But, first, doesn't Probation have a capacity problem too?

The capacity problem for Probation is of course qualitatively different from the capacity problem for prisons. Where prisons can simply run out of 'available beds', Probation cases can always, notionally, grow by simply being spread more thickly among the available probation practitioners. But if, for any reason, this growth can't be avoided, then these high case numbers need to be skilfully managed.

Incidentally, it is worth noting at this point that whereas typical case numbers per Youth Justice worker tend to be fewer than 10, for Probation staff case number figures of 35-50 (or higher) each are more typical, though those numbers have been higher still in the past. This means that, in the work time available, a probation practitioner with say 40 cases has approximately 45 minutes – *at best* - on average for each of their cases. That is to cover not just the time available to see each individual in person, but also to write up the resulting record, write any related reports or assessment or update, see any extended family member, liaise with Police or Children's Services, and consult any other colleague or more senior member of staff over any compliance or Risk of Harm issues.

The question that therefore has to be answered is: With the time available for each case, what is it reasonable for Probation to be expected to achieve? To tackle this, it is necessary to stop the present practice of devising longer and longer lists of tasks and expectations that each practitioner must carry out, and instead to adopt a much more 'enabling' approach to managing the way practitioners do their work. This is a key reason why I am arguing for a **comprehensive 'Probation Refocus'**.

However, I make my proposals here in the context of today's specific concerns about prisons.

What are the Probation elements that contribute to the current prison capacity problem?

1. *The unintended perverse effect of introducing Post-Sentence Supervision.*
   - The original policy intention may well have been to provide resettlement *support* to individuals leaving prison who had previously not been entitled to it,
   - BUT, in practice, its effect is that the inevitable compliance failures have resulted in numerous recalls to prison; hence a relatively small but very irritating upward pressure on prison numbers.

2. *The 'opportunity cost' from the decline in community order disposals at Court.*
   - The overall numbers of community order disposals have declined, to be replaced by an increase in immediate prison sentences, plus fines and suspended sentences that frequently lead to later imprisonment for non-compliance. This trend too has nudged prison numbers upwards a little.

Why would the development of "tougher" community sentences be counter-productive?

There is always a highly-plausible-sounding case for claiming that if only a community sentence were sufficiently "credible" in the eyes of the Courts and the public – i.e. 'tough' in the immediate demands it makes on the sentenced offender AND in the way in which it is enforced – then sentencers will in future 'naturally' impose more community sentences and fewer prison sentences.

Unfortunately, over a period going back nearly 50 years in England & Wales, every time this approach has been adopted it has led in practice to exactly the opposite effect to the one intended. This mistake has been made more than once because this 'real life' effect is so entirely counter-intuitive to what one might plausibly expect.

Why do the figures show that the use of custody in real life has always increased when this approach has been selected? Analysis of the data appears to show that, despite the best intentions of everyone involved – and some well-intended safeguarding provisions - ***in reality*** sentencers collectively simply lower the definition of the cases that merit a custodial sentence. (In the language of the past, this was known to academics and commentators as "net-widening" or "up-tariffing".)

In practical terms, cases that might have previously been given a straightforward Probation Order (for example) in the past were under such a scheme given a 'new' tough community sentence on the grounds that the case in principle 'merited custody'. There was then, in addition, the effect that those given the 'new' sentences often found themselves unable to comply with all the demands of the new order, and in due course then breached the order through non-compliance or reoffending. The sentencing statistics during these periods confirm that the well-intended safeguarding provisions in the legislation and sentencing guidelines to try to prevent these perverse effects ***simply did not work***.

What might be a more productive strategy for Probation? – a comprehensive 'Probation Refocus'

A Refocus for Probation is required so that the various current dysfunctional effects of Probation's over-ambitious policy and cumbersome management are replaced by an approach which brings clarity of purpose of ***what is achievable with each case within the resources available***. A renewed focus on the ***Three Purposes of Probation*** is the starting point for this (as below), but alongside this there needs to be a form of ***practitioner-centred management*** that enables the practitioners to provide a properly 'individualised service' – i.e. ***doing the right thing(s) with the right individual(s) in the right way at the right time*** – and doing so much more often than they are able to do at present.

I have previously set this out in my *Modern Probation Theory* (2020) – 'MPT' - a grounded theory drawn from the real experience of using this kind of "bottom-up" approach in practice as a Probation Chief at the turn of this century. (See andrewbridgesprobation.com for the concise Introduction.)

- Justice Minister ***Lord James Timpson*** might notice some similarities with his own writings on *Lessons in Upside Down Management*, even though its origins and context are quite different.

Under such an approach, Probation could and should 'refocus' on achieving its core ***Three Purposes*** – which are to ***Reduce Likelihood of Reoffending***, to ***Implement the Sentence***, and to ***Contain Risk of Harm to others***. Each of these 'success criteria' are measurable, although this is not straightforward, and they don't 'over-promise' what is achievable. Nevertheless, once practitioners are clear what success looks like they can be freed from many of the demands of the detailed lists of instructions and expectations that they currently face, and instead be enabled and empowered to use their own initiative and creative skills in how they go about achieving those Three Purposes.

Research from the last 50 years (at least) shows that there are no magic bullets to stopping people from reoffending, but, when well-motivated staff are enabled to use their creativity and initiative, they can influence individuals who have offended to change their behaviour and make a small but significant improvement to overall reoffending figures.

Refocusing the relevant sentencing provisions – the additional 'necessary changes':

These specific ***additional necessary changes*** proposed below could have a very positive effect if implemented alongside the ***Probation Refocus*** outlined above.

1. Post-custody supervision:

a) *Early release*: - (No amendment proposed)

Where an individual is being released before his or her 'due date of release', if serving a fixed-length sentence, or at any point if serving an indefinite sentence (Life, IPP etc), then the current provisions should continue largely unchanged. Probation supervision should, as ever, aim to achieve the Three Purposes: to reduce the individual's likelihood of reoffending, to implement the sentence (the requirements of the Licence), and to contain the individual's Risk of Harm to others.

b) *Release on or after 'due date of release'*: - **(Major change proposed)**

The existing provision of Post Sentence Supervision (PSS) should be set aside and replaced.
Originally, the idea of Probation supervision for these relatively short-term prison sentence cases was so that newly released prisoners could access help and support on release, and the new provision should now aim to focus on doing just that, and no more. Accordingly, given that the individual will have completed the due period of custody, they should not be at risk of being recalled to prison for any reason except for conviction for a fresh offence that itself requires a prison sentence.

I envisage that the refocused new provision would be a period of 'post-custody supervision' that would normally be for just one month. During that month, the probation practitioner should offer a minimum of three set appointments. These would not be enforceable, but they would mean that if the individual felt in need of help, support or guidance he or she would know that they could use any or all of those 'already-arranged appointments' in order to access it. If with any case the practitioner took the view that it would be positively beneficial if the period were extended beyond that one month - or if additional appointments were offered, they would have the discretion to do this.

With these cases, the Purpose of *implementing the sentence* simply wouldn't be applicable, since the sentence would have been deemed completed; the Purpose of containing the individual's Risk of Harm to others would rarely apply (more to be said about that another time), while the dominant Purpose of this form of post-custody supervision would be to help the individual become less likely to reoffend in future.

2. Community sentences:

The 'credibility' of a community sentence as an option for sentencers clearly needs to be increased, but this is not achieved by making it as 'tough-sounding' as possible. Instead a sentencer wants to be convinced that Probation knows what they plan to do with the case, and knows how they are going to do it. Although the proposed Order has to be 'demanding' – as appropriate for the individual case – it has to be *realistic* too, for that individual. ***Clarity of the purpose(s) of Probation supervision*** is the route to credibility - in the past perhaps the best way of achieving that was when the officer who was going to manage the case in person was also the officer who wrote the report for the Court, and sometimes presented it in person at Court.

That 'personal service' may no longer be feasible nowadays, but it is certainly possible for a report-writer to reference the focused message concerning the Three Purposes that Probation constantly strives to achieve with each case. They can therefore also specify this in the plan of supervision, where this is proposed. The plan in that report could even include a description of what Probation will do with this case under the heading of each of the Three Purposes.

Would the breach numbers continue to be (relatively) high?

As outlined above, there would no longer be the breaches of Post Sentence Supervision at all. There would still be periodic breaches for the post-custody 'licence' cases, but these are often for public protection reasons, and it may therefore be unwise to interfere with these in policy terms.

However, with all community sentences the requirements of the order will need to continue to be enforceable. The issue there is how far an 'enabled' practitioner is allowed the scope to manage compliance issues using their own initiative according to the needs of the individual case.

Although there will always be some cases where full breach proceedings become necessary, the preferred skill should be the art of ***promoting compliance*** by an individual under supervision. If the practitioner is empowered to show initiative and be creative in the way she or he uses their 'influencing skills' with the probationer, then unnecessary breach actions can often be avoided. With some cases, the Purpose of ***Implementing the Sentence*** can be better achieved by allowing some flexibility over when and where appointments actually happen, if the probationer responds – while with other cases someone may have to be breached quite early in the Order if it is clear that they are simply trying to 'taking advantage'. Even then, there are options – again, depending on the case – so that a sanction such as having to wear an electronic tag might enable the Order to restart in some cases, rather than clog up the local prison. Intelligent discretion by a supervising practitioner can be both more effective and less time-consuming than being required to follow a procedure manual.

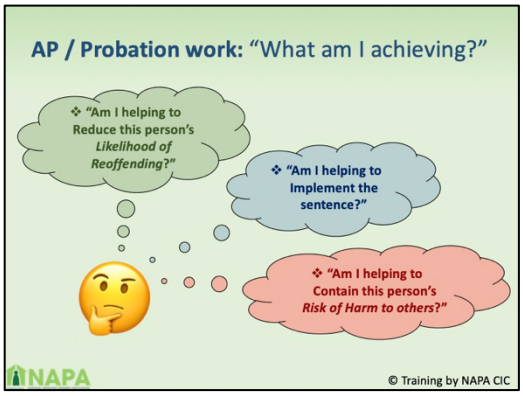
New technology: This should support (not replace) existing human community (and post-custody) supervision. There is at least one 'My Probation' type phone app in development – piloted too I understand – which should enable an empowered practitioner, and other allied staff and providers, to work much more closely and purposefully with the probationer. Equally, those serving 'Community Payback' sentences should also be better managed when such an app is finalised.

Would sentencers impose more community orders and fewer prison sentences?

Currently, the rate of short-term immediate imprisonment is not high by historical standards, so the scope for radical reductions is very limited. (The pleas by some for "abolishing short prison sentences" are entirely misguided in my view, because of the unintended perverse effects that would arise.)

But there are a lot of suspended sentences, which in turn often lead to upward pressure on prison numbers - but these are not necessary. It has been argued elsewhere that within the existing sentencing guidelines that there is nothing to stop a sentencer choosing a community order rather than a suspended sentence if the decision has already been made that a case (one serious enough for a prison sentence) can after all be spared immediate custody. All the more so will sentencers find a community sentence a much more credible option when they see that a ***refocused Probation Service*** is enabling its practitioners to be creative in devising, offering and then providing an individualised sentence plan – based on the Three Purposes – for each of the eligible cases before their Courts.

Therefore I can see no reason why the use of community sentences should not increase if and when sentencers become aware of the benefits that would arise from this 'Refocus' to Probation practice:



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