

# Sentencer Confidence in Probation: A Good Job in Difficult Circumstances?<sup>1</sup>

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## **INTRODUCTION**

The Probation Services has seen as unprecedented period of change recently particularly with the formation of the National Probation Service in 2001, the introduction of new sentences with the Criminal Justice Act 2003 and then, from 2004, the creation of the National Offender Management Service (NOMS) (Carter, 2003). According to Farrow (2004) many experienced probation officers – despite maintaining commitment to the service – are now very demoralized and alienated. Along with complaints over workloads, targets and paperwork, those interviewed by Farrow were critical of ‘the stress caused by constant change and re-invention’ (p218). Davies (2004) writing in *the Guardian* put it thus: ‘Morale is low. The service has just gone through an exhausting restructuring, only to find that it is now to be restructured yet again’.

In the midst of this change the authors of this article have been involved in a study of sentencing and its impact on the prison population (Hough *et al.*, 2003; Millie *et al.*, 2003). For this the views of judges and magistrates were canvassed on a range of issues relating to their sentencing decisions, including confidence in community-based sentences and in

the probation service. At the time (2002 to 2003) the National Probation Service was still fairly new, but there was no Criminal Justice Act 2003 or NOMS. We analysed some 150 cases that ended in custody - where the sentencing decision was on the cusp between community penalty and imprisonment – and in only two cases was a lack of suitable community options cited as a key factor in the sentencing decision. Sentencers were not opting for custody because of low confidence in the probation *product* and were broadly happy with the range of community penalties on offer (see Hough *et al.*, 2003). But did this mean sentencers were happy with the probation *service*?

This article attempts to answer this question and considers sentencer confidence in the probation service’s ability to deliver. We conclude by discussing how best to maintain (or restore) this confidence during a time of even further change with the implementation of NOMS.

## **METHODS**

Semi-structured interviews were conducted with judges and focus groups were held with magistrates,

with questionnaires distributed to participants. Focus groups and interviews were conducted in areas served by six Crown Court centres in England and Wales. Two magistrates' benches were identified in each area – each with an annual caseload in excess of 350 and, wherever possible, one being a high user and the other a lower user of custody. In total, 80 magistrates took part in eleven focus groups, and 69 participants returned questionnaires. Forty-eight interviews were carried out: five with members of the senior judiciary, seventeen with Crown Court judges, twelve with recorders and fourteen with district judges.<sup>2</sup>

## VIEWS ON THE PROBATION SERVICE

A Home Office pilot survey (May, 1995) - which pre-dated the formation of the National Probation Service - found that only a quarter (23 per cent) of magistrates and a third of judges<sup>3</sup> were very satisfied with the work of the probation service in their area; the majority were quite satisfied. When interviewed for this study, one senior judge noted: 'Every judge you speak to has had experience of going for the probation option and coming unstuck with it.' However, recent improvements were observed; for example, during one of the focus groups a magistrate commented that:

*"...Ten to fifteen years ago I would have said no, but I have to say now, in my experience, that the [local] probation service...are excellent, they've improved no end..."*

In fact, among those interviewed there was widespread agreement that the probation service had improved in recent years. It is possible that the interviewees presented their service in a good light through a sense of loyalty; also, the study did not cover areas where problems are thought to be intense - notably inner London - and so some more serious concerns may have been missed. However, if progress is genuine, then how and why did the sentencers think this improvement took place?

### *Improvements*

Firstly, sentencers thought that probation enforcement had 'toughened-up' following the introduction of National Standards:

*"...They've clearly changed their act in relation to breach; they're under National Standards of course. They are clearly under greater scrutiny about their breach processes..." (District judge)*

*"...[Probation is rigorous in enforcing conditions]...under the new National Standards. They didn't used to be, they used to be abysmal before..." (Magistrate)*

Secondly, some sentencers saw the creation of a National Probation Service as a further step in improving the image of the service and community orders. Here their views were similar to those of Carter who contended that 'the creation of the National Probation Service brought greater consistency and innovation to a previously fragmented service' (2003: 22). For example, when asked about ways of attracting sentencers towards community penalties, rather than to custody, one senior judge observed:

*"...The formation of the National Probation Service may actually help to achieve that. It seems to me that the probation service are now, on a national basis, applying much more rigid criteria to their various programmes...In the past the probation service, I think it's been regarded by some sentencers at least, as a bit 'wishy-washy'...Nobody really followed them up or checked that they were really having an effect, and so they weren't perhaps quite as tough as they might be, and historically they weren't enforced perhaps as firmly. But I think a lot of that has been remedied now and I think there's an increasing perception that the probation service does enforce the orders..."*

More specifically, just under two-thirds of magistrates who completed our questionnaire were confident or very confident in the quality and stringency of supervision exercised locally by the

service. This supports recent MORI survey findings that 64 per cent of magistrates ‘trust the probation service to deal effectively with offenders’. (MORI: 2003: 8). In the same survey, 85 per cent of magistrates agreed that ‘the probation service actively ensures the fair and equal treatment of offenders.’ (*ibid* p8.).

Most sentencers interviewed for this study were also, by and large, happy with the quality of reports they had received from the service; as one recorder commented, “...there has been a sea change in the kinds of PSRs<sup>4</sup> that are produced, they are now more realistic and argue their case..”. In various focus group discussions it was apparent that some magistrates knew probation officers who were willing to look at *all* available options, an approach to reports that was welcomed:

*“...I mean it is much tighter. At one time they would have shied away...they would actually have shied away at mentioning [custody] as any kind of an option. It would not have been there, but it is there now...” (Magistrate)*

## SOME CONCERNS

While there was satisfaction among many sentencers that the work carried out by probation - in terms of enforcement and PSRs - had improved, not all were so positive. For example, one magistrate thought there was poor communication between the service and his particular bench. And in some areas sentencers expressed doubts about local enforcement, including one recorder who did not believe that probation was as strict as it might be at enforcing National Standards:

*“...One’s always anxious that probation are too slow to breach. They insist they’re not. But when you see some of the programmes, you find sometimes that they provide for three or more defaults before any warning is issued. I regard that as too many...”*

More broadly, there was evidence of regional and court-based variation in terms of sentencers’

relationships with probation and in the service’s ability to perform its functions, while being limited by funds and staffing. Indeed, many of the sentencers voiced concern that capacity of the service was hindered by a lack of funding and personnel. A typical focus group discussion with magistrates was as follows:

- R1 I think they’ve improved in the last ten years. The probation service has changed beyond recognition.
- R2 But it’s been tightened up hasn’t it?
- R3 They need more resources.
- R4 Oh I think they have [improved], only when they use accredited programmes, they’re tried and tested and they really work. I still think more can be done but I think...I think they’re really on the right track.
- R3 They’re on the right track but they need more support, more resources.
- R4 More resources, they’re stretched to the limit.

A belief that the probation service does a good job in difficult circumstances was not uncommon. For example a Crown Court judge held the following view:

*“...Probation can deliver if they’re given the resources. They’re stretched at the moment, [but] if these things are going to work, the probation service has got to be properly funded. That’s what worried me, where’s the money coming from...?”*

A lack of resources was thought to have knock-on effects in some areas in delaying PSRs. One district judge, for example, said he rarely received PSRs within three weeks due to the service’s lack of staff. It was also occasionally suggested that under-staffing meant that the supervision of offenders on community orders was not as intensive as was felt desirable.

## ENTHUSIASM FOR FEEDBACK

When asked if sentencers received enough feedback from probation, one senior judge said: ‘The answer to your question is they don’t. And the answer to your next question is that they should.’ There was

general support for the principle of improved feedback, although no real consensus as to whether this should be on individual cases, aggregated statistics, or both. For example, in one focus group a magistrate commented that ‘I think it is a major weakness, that we do not get feedback on the results of the [specific] sentences that we are handing down’. In another focus group a magistrate observed that: ‘one of the difficulties with community penalties is we don’t get feedback on how effective they are in general and how many people succeed’. That said, 80 per cent of magistrates who completed questionnaires said they would like feedback on individual cases, while only a quarter said they currently received this. Sixty per cent said they would like more ‘general’ feedback on the impact of sentences. While some magistrates said they already received feedback (usually via probation liaison committees) this was clearly not reaching everyone. This of course did not indicate whether the probation service was at fault for failing to provide the information, or the individual magistrate for failing to ask for it.

An earlier Home Office study (Hedderman *et al.*, 1999) found that most sentencers said they wanted individual feedback but did not ask for it. It was suggested that this might have been because they wanted information on certain cases about which they were particularly concerned, but not about all cases. The sentencers were also eager to receive aggregate feedback on the completion of programmes and reconviction rates. A MORI survey of magistrates found that:

*“...Magistrates are generally very positive about being informed, but more negative about how well they are consulted or listened to about the services provided. For example, only one in ten do not feel informed, whereas more than one in three do not feel they are consulted...”*  
(MORI, 2003: 24).

There was concern among some of the sentencers interviewed for this study about the effect extra requests would have on the probation service:

*“...[A judge in this court] wants reports on everybody he puts on probation...but if we all wanted that, it would put a bit of a burden on the probation service. So the only time we know is when something’s gone wrong. Occasionally they do apply to discharge the order early because things have gone well. So in that way we get some feedback...”* (Crown Court judge)

Others also made the point that they usually hear only about community orders that have failed in one way or another; that wider feedback (either individual or aggregate) would be helpful as it would provide a more balanced view of the outcome of community sentences. A Crown Court judge commented that he would find extra feedback useful, but not necessarily the burden of any extra work involved.

## ENTHUSIASM FOR REVIEWS

There was some additional enthusiasm for reviews, as already in place for drug treatment and testing orders. A review process entails regular appearances before the court by the offender who is on the order to allow progress to be monitored. Sentencers generally warmed to the notion of a more personal form of contract between the judge or magistrates and the offender:

*“...Anything that keeps you linked to the defendant...or keeps the offender linked to the court helps, it helps him, it gives him the idea that he’s, in effect, truly [his emphasis] on probation. It’s not a let-off, he’s truly being attached to the court, the court’s continuing to be interested in him...”* (senior judge).

When asked if a system of review would give sentencers better awareness and therefore more confidence, another senior judge replied:

*“...I think so...but it would be a major undertaking. I mean, there’s no doubt it would take a lot of court time and cost a lot. It would not be*

*everybody's 'cup of tea'. I mean there would be sentencers who would not want to do it...They would say that our job as a judge is not to manage the sentences, our job is to decide on the sentence, pass it and then it's handed over..."*

While some would not be enthusiastic or might not welcome the extra work that reviews and feedback would entail it was generally thought that improved communication with the probation service over the effectiveness of orders, or on outcomes, would be beneficial. Reviews were also seen as a way of improving compliance.

## DISCUSSION

Sentencers did not identify a lack of suitable community options as a factor tipping decisions towards custody. In fact, all sentencers stressed their use of custody as a 'last resort' and were insistent that they used community options whenever possible; in other words, that they did not use custody because of perceived weaknesses in or lack of community options.

Possibly some of the sentencers interviewed were inclined to be protective of their local probation service and thus tended to present it in a good light. However, the study revealed that sentencers were generally pleased with the probation service, that felt that it did a good job in difficult circumstances. This was seen as especially true following the introduction of National Standards and more recently the creation of a National Probation Service. Even though morale may be low in the probation service, it appears that this had not affected sentencer confidence.

Maintaining - or even improving - sentencer confidence in probation may be possible by increasing the availability of feedback and developing and extending the review process. The review process is by no means cheap, and it can create serious listing problems. However, if it does prove possible to engender a keener sense of responsibility to the court amongst offenders, then it could also enhance the effectiveness of the orders in question, and increase confidence amongst sentencers in the work of probation.

Better funding and increased staffing of the service is likely to provide a further way of raising the credibility of probation in the eyes of sentencers. This study found ample evidence that while most sentencers believe probation provides a generally good service, they are concerned that this service is hampered in various respects by a lack of resources. While improved review and feedback will further stretch these resources, it seems unlikely that levels of confidence in probation can be maintained if magistrates and judges have a sense of an underfunded organisation. If these are misperceptions they obviously need to be corrected; however it is more likely that sentencers' assessments are accurate, and that the remedy lies in extra resources. Whatever changes are forthcoming with the creation of the NOMS, a tightening of probation's budget should not be one of them.

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## NOTES

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<sup>2</sup> Among the district judges interviewed, four were also recorders, but for the purposes of analysis, these sentencers were included in the district judge category.

<sup>3</sup> 32% of stipendiaries (now called District Judges) and 33% of Crown Court judges.

<sup>4</sup> Pre-Sentence Reports.