

Hitting The Target, Missing The Point

A constructive critique of the regulatory framework for probation trusts



A Disproportionate System

In creating trusts, the Government said it wanted a culture that was "enterprising", "innovative", "business-like" and "results-oriented". Instead, a weighty regulatory framework puts the priority on compliance. Meeting the letter of requirements and avoiding risks dominates much operational practice.

“Well intentioned measures have been introduced, intended to improve quality, but the work required to service targets and audits has become disproportionate to both the need and the benefit, and these tasks have become counterproductive. Freed of this burden, trusts can indeed take centre stage in commissioning and providing effective assessment and supervision and can play their part in a very real revolution in rehabilitation.”

Sebert Cox, Chairman, Probation Association

Reducing the current burden of compliance and over-regulation with a proportionate system will support probation trusts to deliver what matters:

- Protection of the public,
- Punishment of offenders,
- Rehabilitation of offenders,
- Support for reparation to victims.

The Green Paper *Breaking The Cycle* provides an opportunity to reform regulation so that it supports, rather than stifles, effective probation practice.

We set out here the full extent of current regulation. Trusts are held accountable through a range of measures which are best considered in three linked categories:

- a number of sources set the **standards, instructions and guidance**, i.e. what each trust is required or recommended to do,
- a system of **targets, monitoring and measurement** sets performance measures and targets for which trusts collect data to monitor performance and report on results,
- a range of processes provide **assurance** to the trust board, public and government that the probation service is performing soundly in financial and operational terms.

We commend the proposals in this paper to Government.

Standards, Instructions and Guidance

The **Contract** between the Secretary of State for Justice and each trust sets the framework of requirements and details these in **15 schedules**. Only one of these is specific to the individual trust.

The following are the main Standards, Instructions and Guidance to which the service is required to work:

- **National Standards** for the Management of Offenders run to **64 pages**. They detail timeliness and other standards. For example, there are timescales for:-

- 🕒 Allocation of cases
- 🕒 First contact with Offender Manager
- 🕒 Sentence Plan preparation
- 🕒 Frequency of contact
- 🕒 Enforcement action
- 🕒 Case review

Performance against National Standards is required to be monitored using a sample of cases. The monitoring form has **73 questions**.

- The **NOMS Offender Management Model** is a **40 page** document which sets out model arrangements and standards for managing offenders. National Standards are built on the Offender Management Model.
- **Probation Service Instructions** were first issued in 2009 mirroring the Prison Service Instructions process. **Nine Probation Instructions** were issued during 2009 covering subjects such as Recall of Prisoners on Licence, Implementation of the Armed Forces Act and Medication in Approved Premises. In 2010 **20 instructions** were issued covering, for example, Unpaid Work Specifications, statutory changes to Community Safety Partnerships, the Probation Qualifications Framework, an Offender Feedback Questionnaire and the Bail Accommodation Scheme.
- **Probation Circulars** were used prior to the "Instructions" process to issue guidance and mandatory requirements. **43 circulars** were issued in 2006, **40** in 2007, **23** in 2008, and **7** in 2009. Most of these are still in force.
- The **Offender Assessment System (OASys)** is the mandatory national electronic system for assessing risk of reoffending, risk of harm and offender related needs. It is also a tool for sentence planning, risk management and review. Although not designed as such, it is used to collect much of the data for performance management. The **OASys Manual** has **242 pages**, plus appendices. It sets out the features of the system and how it is to be used. There are periodic updates to OASys. There are shorter and longer versions of assessments through OASys. A full risk of harm assessment requires a form of **30 pages** to be completed for each case.
- The **Community Payback Manual** runs to **52 pages** plus a number of appendices. It sets out mandatory requirements and non-mandatory advice and details the requirements on consultation, monitoring and record keeping, offender assessment, management and enforcement. It also includes the forms to be used for the

assessment of offenders on community payback and other model documentation.

- Accredited programmes aim to change offenders' thinking and behaviour. Delivery arrangements for each one are specified in **accredited programme and treatment manuals**. There are **16 accredited programmes** tackling anger management, domestic violence, sex offending, thinking skills, drink driving and alcohol and substance misuse. The delivery of all accredited programmes is video recorded and managers are required to observe **1 in 10** sessions of a tutor's delivery, rating the quality of delivery on a **4 point scale** over a number of criteria. These ratings have to be entered on to **Interim Accredited Programme Software (IAPS)** the national accredited programmes computerised monitoring system.
 - The **246 page Approved Premises Handbook** covers the legal framework, role of managing bodies, role of managers, equality, staff training, admissions, risk assessment, effective regimes, supervision and enforcement, drugs and alcohol, protection from self harm and record keeping. Some National Standards also apply to Approved Premises and there is a set of Performance Improvement Standards (introduced in 2006, revised in 2007 and again in 2008) which set out **10 key standards**.
 - **Multi Agency Public Protection Arrangements (MAPPA)** provide statutory guidance which trusts have "a duty to have regard to in exercising their functions". It runs to **346 pages** defining the offenders covered by MAPPA, the roles of all the agencies involved including probation, and the structures, systems and procedures to be used by all the agencies in managing MAPPA cases (generally high and very high risk offenders in the community).
 - The **Governance Handbook for Probation Trusts** sets out the framework in which trusts operate and defines the responsibilities of the trust board, its chair, chief executive and treasurer. It includes **14 sections** on the accounting arrangements and financial and budgetary control procedures which trusts must operate and model standing orders covering **52 headings** and **3 appendices** about the way a trust is organised and conducts its business including tendering and contract procedures. It refers to **17 other sources** of guidance in promoting best practice in governance.
- A trust chair said that it was obvious to anyone involved with probation operations, even for a short length of time, that the service was overburdened with instructions and requirements. "You don't need to ask how heavy the elephant is when it's standing on your foot," he said.
- **Financial regulations** are specified in the contract and in the governance handbook. The **220 page** HM Treasury document "**Managing Public Money**" must also be complied with. Trusts are required to produce an annual plan incorporating their financial plan, for approval by NOMS before the start of each year. Monthly, quarterly and annual financial reporting is required.
 - The **Delegation Letter** to each chief executive as accountable officer gives formal delegated budgetary, financial and procurement authority and sets the mandatory delegated limits within which the trust must operate. It states the personal responsibility and legal authority of the accountable officer and the financial limits beyond which the accountable officer must refer to another authority. No overspending is allowed, and underspending cannot be carried forward from one year to the next. Yet no account is taken of the supervisory or fiduciary responsibility of the trust board.
 - Trusts are required to make returns to NOMS of all their costs in the form of inputs to **PREview**, a national costing system. The system, which is at the first stages of implementation, is designed to enable benchmarking and comparison of costs between probation trusts for each element of the service. PREview is intended to show what is actually spent by trusts – another system will aim to set out model expenditure patterns.

Targets, Monitoring and Measurement

Most of the targets which trusts must achieve are included in the **performance management system**. This system changes almost every year as measures are introduced or dropped.

There is a single measure of the primary objective of reducing reoffending which is calculated by comparing the actual rate of reoffending over a three month period with a predicted rate. Often the differences are not statistically significant. **It is difficult, even for practitioners, to understand and interpret the data**. Other reoffending data is collected, e.g. reconviction rates one year after completion of community sentences, but it is only published at national, not trust, level.

Significant changes were introduced for 2010-11. The **Probation Trust Rating System (PTRS)** contains over **80 targets** grouped into **4 domains**. Performance is ranked either: 1 - serious concerns; 2 - requiring development; 3 - good performance; or 4 - exceptional performance. The domains are Public Protection, Offender Management, Interventions and Organisational Capacity. Each quarter the domain scores are aggregated into an overall score for each trust. The **10 standards** for Approved Premises produce a single score in the PTRS.

Other targets are included in the contract but not in the PTRS. NOMS at regional level can set additional targets for individual trusts on which they have to report separately.

Nine monthly and **quarterly information and data returns** have to be provided by trusts to NOMS. Trusts also have to make regular returns to NOMS on occupancy levels, risk profiles, drug testing and other associated tasks in Approved Premises. These returns feed the PTRS.

The whole performance targeting and monitoring system requires an **intense management and maintenance effort at local, regional and national levels**. Small data errors can easily shift PTRS rankings so a major investment of staff time goes into data cleansing, checking and validation by each trust.

NOMS reviews operational and financial performance and monitors **improvement plans**. There is usually frequent contact between NOMS and trusts on trust development and there are formal quarterly contract review meetings. The agency is responsible for allocating resources to trusts and requires **monthly financial returns** to exercise oversight of spending and cash flow.

At local level, trusts are party to **community safety plans** and agreements with local partner organisations, e.g. police, health, fire and local authorities. Such plans and agreements usually contain targets for reduction of specific types of crime and reoffending which the partners jointly agree to achieve, monitor and report on publicly.

Assurance Processes

Processes have developed over time to provide assurance that probation trusts are operating satisfactorily and meeting requirements.

Non-executive Trust Members appointed by the Secretary of State operate as a board to provide strategic oversight and direction to each trust and monitor its accounts and performance. Board meetings are held in public and, unless there are overriding reasons for privacy, all their reports and minutes are public documents.

Trusts are required to have **Audit Committees** and to operate them as laid down in an **Audit Committee Handbook**. Audit Committees are required to establish a programme of internal audits that is compliant with the Government's Internal Audit Standards to provide assurance about any aspect of the service, though the focus tends to be on financial probity and value for money. An Internal Audit Service is provided to trusts via NOMS' Audit and Corporate Assurance team. The majority of these internal audits are determined by NOMS' priorities although local audits are also requested by trust audit committees. Findings from internal audits are reported to the trust and NOMS at regional level. Annual summaries go to NOMS National Audit Committee.

The Internal Audit experience varies across trusts. Some report a positive and useful process, with clear added value to their business assurance. Other trusts report being "audited to death", with little or no value for money. One trust estimates that it needs only **10** days of audit this year but is receiving **36**, whilst another is expecting **69** days of which **40** will require the involvement of a staff member to provide the necessary information.

External Auditors audit trusts' accounts to ensure they present "a true and fair view" of the financial state of the trust. They provide assurance that resources have been properly used and that arrangements to secure value for money are sound. Trusts are required to publish their **Annual Report and Accounts**.

To ensure that the data feeding the PTRS is sound, there is a mandatory **quality assurance audit of OASys**. Trusts also have **internal quality assurance processes**. A large percentage of time is spent checking and sampling that all the requirements subject to audit and inspection are being complied with and reviewing and acting upon results from internal QA processes.

Trusts are required to conduct Approved Premises **self audits annually** against the 10 Performance Improvement Standards. The results are submitted to NOMS for verification. Final scores are included in the Public Protection domain of the PTRS. In 2010-11, high performing trusts were not required to complete the full Audit.

NOMS undertakes national **audits of Accredited Programmes**. The plan is now to audit every custody and community provider of Accredited Programmes over a two year cycle.

There is a **Snapshot Audit of all Unpaid Work** projects in March each year. The snapshot in 2009 covered **4,171** work projects and gave information on the nature of the projects, offender numbers, the use of high visibility jackets, the commissioning organisation etc. NOMS also require a regular return on throughput in community payback including the use being made of intensive orders.

NOMS also requires ad hoc audits on various aspects of service delivery.

Her Majesty's Inspectorate of Probation (HMIP) inspects each trust's provision of probation services. The main focus in recent years has been on the quality of offender management, particularly whether the risk of harm posed by offenders has been effectively managed. The results of area inspections feature in the PTRS as individual scores. HMIP also carry out **thematic inspections**, often as joint inspections with other inspectorates. These have covered subjects such as approved premises, sex offenders, court administration, and women offenders. These result in recommendations on good practice which all trusts are expected to implement.

There are national processes of assurance and learning from **Serious Further Offences (SFOs)** by offenders on the probation caseload or recently leaving it who commit a serious offence. There is a detailed mandatory procedure for reviewing the management of the case and reporting to NOMS. The categories of offences include murder, manslaughter, rape and serious sexual offences.

The review paperwork is more than **40 pages** long and has a number of stages, from the offender being charged through to conviction. The aim is to check that everything that should have been done to manage the offender's risk of causing harm has been done and to learn lessons for general application.

There is also a **national quality assurance process for the SFO reviews themselves**. Each SFO Review is given a quality rating by NOMS according to the criteria in the User Guide. A sample of SFO reviews is assessed on a quarterly basis by HMIP, NOMS and others on a QA panel to determine whether the review accurately reflects the information held in the case file.

One recent analysis of an SFO report showed that **22** staff were involved in the investigation at **29** different stages, ranging from identifying the case in court, through investigatory interviews and discussions between senior managers, to submitting the report. These processes took **27** hours, but as most stages involved two or more staff the total of staff time would be much greater. This does not include time spent on this case by NOMS staff.

Trusts contribute to **Serious Case Reviews** under the local arrangements for Safeguarding Children and Safeguarding Vulnerable Adults when a known offender is involved and there are serious concerns. These are conducted at local level and generally involve police, probation, local authorities and other agencies as relevant to each case.

The Prison and Probation Ombudsman deals with complaints made by offenders which have not been resolved satisfactorily at local level and prepares an annual report which features lessons and learning points from this work.

Probation has contributed to community safety partnerships for many years and on 1 April 2010 trusts became one of the **Responsible Authorities** under the Crime and Disorder Act for reducing crime and disorder in local areas. Trusts have a duty to work with partners, which include police, health, fire and local authorities, on crime reduction, and the partners have a duty to help probation trusts reduce reoffending.

Local authorities have executive and scrutiny roles and are expected to use their powers to examine trusts' contribution to reducing crime and disorder to assure themselves and the local electorate that trusts' work is satisfactory.

Scrutiny Committees are likely to require trusts to give evidence and attend their hearings.

Local **Community Safety Partnership** members, including probation trusts, will generally review their operations and effectiveness including, for example, work with Prolific and Priority Offenders (PPOs).

Proposals

“Probation is over regulated. Even at a time of financial stringency, reoffending can be reduced and the needs of victims met through high quality, targeted supervision. Trusts can deliver this if they are trusted and if onerous controls are replaced by a proportionate system which supports but does not overwhelm the service. These proposals will refocus practice and management.”

Christine Lawrie, Chief Executive, Probation Association

Standards, Instructions and Guidance

1. These should be clearly designated as mandatory or discretionary.
2. Mandatory instructions should link to the contract between the Secretary of State and the trust, statutory requirements and public interest issues around probity and governance. All other documentation should be advisory.

Targets, Monitoring and Measurement

3. Targets and measures should be reformed to focus on the outcomes probation services must deliver on behalf of the public via the contract with the Secretary of State and through local authority arrangements. These should form the core of the contract between the Secretary of State and the trust.
4. Probation priorities should be to produce quantifiable outcomes against the four aims of public protection, punishment, rehabilitation and reparation to victims.
5. Investment in a small core of model multi-agency indicators would incentivise community safety partners at local level. These would inform local authority scrutiny activity.
6. The information gathered to monitor outcomes, from HM Inspectorate of Probation reports and from research should more directly and systematically feed the development of standards, instruction and guidance to support more effective practice against the four priorities.

Assurance Processes

- 7.** External audit, HM Inspectorate of Probation and Local Authority scrutiny arrangements can between them provide sufficient independent assurance to the public and Parliament. The remit of HMIP could be amended to encompass aspects of SFO analysis.
- 8.** All other assurance activity, including internal audit, should be managed within the trust.
- 9.** Contract management should be the route by which NOMS, as commissioner on behalf of the Secretary of State, assures itself that trusts are performing as required.

The Probation Association is the national voice of the 35 trusts which employ the staff of the probation service in England and Wales. We represent the interests of probation trusts to Government, the Ministry of Justice and others.

We would like to thank Warwickshire Probation Trust for its invaluable assistance in the preparation of this document.



Probation Association

The Voice of Probation Trusts

-  29 Great Peter Street, London SW1P 3LW
-  020 7340 0970
-  020 3301 3297
-  association@probationassociation.co.uk
-  www.probationassociation.co.uk