Centre for Justice Innovation

Renewing trust:

How we can improve the relationship between probation and the courts

Summary

In June 2018, Justice Secretary Rt Hon David Gauke MP pointed to the harmful impacts and poor reoffending rates of short prison sentences, and called for them to be used only as "last resort." Community sentences represent the principle alternative to short term custody and there is extensive evidence that they do more to reduce reoffending and do so at a lower cost to the taxpayer.

However, if we are to make full use of these effective community sentences, we need to support the relationship between the courts and probation organisations that deliver them. If judges and magistrates are going to feel confidence to use community sentences they need to know that the pre-sentence advice that probation staff provide them is robust and accurate and trust that when they order community sentences probation providers will deliver them in a timely and effective way. The relationship between courts and probation is, therefore vital to a well-functioning and effective criminal justice system.

Findings

Our research into the relationship between probation and the courts finds:

- The **relationship between courts and probation has been buffeted by a number of reforms** in the past six years, most notably the split of probation into Community Rehabilitation Companies (CRCs) and the National Probation Service (NPS).

- Court timeliness targets and closures have **hampered the ability of probation to deliver high quality pre-sentence advice**. For example, the use of the most comprehensive written reports (Standard Delivery Reports) has fallen by 89% in six years and now stands at only 3% of all reports – less than a third of the national target.

- Sentencers' concerns about the delivery of community sentences stem from:
  i) a **lack of information about the services provided by CRCs**;
  ii) a **lack of transparency about the new Rehabilitation Activity Requirement (RAR)**;
  iii) **barriers to dialog between CRCs and sentencers about community sentence options**;
  iv) serious concerns about the **quality of the work of CRCs** when these are exposed in breach proceedings; and
  v) concerns about **availability of substance misuse and mental health treatment requirements** for offenders, the use of which has fallen by 50%.

- **Sentencers remain largely in the dark about what happens after they sentence someone** to a community sentence and have few opportunities to witness progress and compliance with court orders. **There is no routine process by which sentencers' perceptions of community sentences are gathered.**

Key conclusions and recommendations

There has been a 24% decline in the use of community sentences in England and Wales over the last ten years, with much of the decline occurring since 2011 (primarily as a result of the increasing use of fines). While we have been unable to find a definite causal link between changes in the relationship between probation and courts and this fall, our findings paint a **worrying sense that trust of sentencers in the delivery of community sentences is fraying.** Yet, despite these concerns, magistrates value community sentences as an effective response to low and medium risk offenders and an alternative to custody.

Recommendations

We found a host of practical innovations recommended by the probation practitioners we spoke to which could rectify or, at least, ameliorate some of these trends and renew trust.

To improve pre-sentence advice, we urge the Sentencing Council and the NPS to bring forward **clear guidelines on when a PSR is required**, to ensure that expert advice is available in all the cases where it can be helpful. We would also urge the NPS to **review the criteria for determining when a Standard Delivery Report (SDR) is required** to ensure that they capture the full range of relevant cases. Over and above guidance, where it becomes clear to probation court staff that the complexity of a case warrants a more detailed assessment, the NPS should encourage report writers to use their professional discretion to select a more comprehensive format.

To improve the delivery of community sentences, we urge the Ministry of Justice to commission an **independent review of the operation of the Rehabilitation Activity Requirement**. We also strongly suggest that the Ministry give **sentencers opportunities to review the progress of offenders in the community**, including the wider adoption of deferred sentencing for low level offences and piloting of judge led problem-solving approaches as part of a wider strategy to reduce the use of short sentences. If these changes impede court timeliness and occupancy targets, so be it— bureaucratic process measures shouldn't be allowed to get in the way of real outcomes.

There are also simple steps that can be made to improve sentencer liaison and the training of magistrates. In particular, **the purpose and functioning of community and custodial sentences should be a compulsory part of training for new magistrates** and CRC, NPS and HMCTS should collaborate at a local and regional level to devise and deliver probation-led training for new and existing magistrates on community sentences, and the approach of embedding CRC staff in NPS courts teams should be incorporated into the next round of probation contracts. We also recommend that the Ministry commission **annual surveys of sentencer perceptions** as a means of helping probation service improve their performance.

We believe that these practical innovations can make a real impact with only limited resource impact. However, to really address these issues undermining trust, we will need to find more resources to support high-quality advice to sentencers. The **Ministry of Justice should implement Lord Leveson's recommendation for more consistent probation staffing in courts**. Moreover, sentencers need to be reassured that all the sentencing options provided to them by law are actually available. Therefore, we urge Ministry of Justice and the Department of Health urgently **reconsider the overall level of funding available for drug and mental health treatment for offenders in the community, and reconsider whether the funding should be re-ring fenced.**

Taken together, these recommendations offer a plan to address the relationship between sentencers and courts. However, in identifying simple practical changes, it would be a mistake to ignore the elephant in the room: the split between the NPS and CRC. The break-up of the probation trusts has erected a wall between sentencers and those responsible for delivering the majority of the sentences they pass, creating misunderstanding and mistrust. As long as the split remains, there will be a limit to how far we can go in rebuilding that relationship.

As the report notes, **sentencers still want to use community sentences— they still see them as a vital sentencing option. It is simply that their trust in them has been dented recently**, largely by reforms imposed by policymakers on hard working probation practitioners in both the NPS and CRCs. We also hope that, if the recommendations are accepted, they can go some way to addressing broader issues, like reducing the use of very short prison sentences and improving outcomes for offenders and, ultimately, reducing crime. We hope that the lessons of this report can contribute to a renewal of trust between courts and probation.

Contents

About this report

In June 2018, Justice Secretary Rt Hon David Gauke MP pointed to the harmful impacts and poor reoffending rates of short prison sentences, and called them to be used only as a "last resort".[1] Community sentences represent the principal alternative to short-term custody and there is extensive evidence that they do more to reduce reoffending and do so at a lower cost to the taxpayer. Studies by the Ministry of Justice in England and Wales show that proven reoffending by offenders on community sentences is consistently lower than matching individuals who have served short prison sentences.[2] Moreover, even the most expensive intensive community sentences cost just over one tenth of the cost of a prison place per year.[3] What's more, their performance has been improving: there has been a 12% fall in the reoffending rate for all types of community sentence since 2009. However, as previous research by the Centre shows, there has been a significant move from the use of community sentences to fines and other disposals: the past ten years have seen a 24% decline in the use of community sentences in England and Wales, with much of the decline occurring since 2011.[4]

If we are to guarantee that community sentences are used to their full potential, we must ensure that sentencers (both paid judges and lay magistrates) have trust in probation. They need to trust that they will receive good-quality pre-sentencing advice on offenders awaiting sentence and trust that they will then deliver timely and effective community sentences.

Background to this report

In 2017, we looked at why the use of community sentences (both community orders and suspended sentences) has been falling since the beginning of the decade.[5] In that research, we noted that the proportion of sentenced cases resulting in a community sentence (by which we mean either a community order or a suspended sentence order) has been falling steadily since 2010-11 in England and Wales.[6] Today it stands at more than a third less than its peak, with the bulk of the shortfall taken up by the increased use of fines. In the course of this work, numerous practitioners and policymakers expressed concerns to us that the relationship between sentencers and probation has deteriorated and that this may explain, in part, why community sentences are used less often.

This report follows up on those concerns by exploring what has changed in the relationship between sentencers and probation services over the past five years.

Methodology

The report draws from:

- An analysis of the publicly available data on the work of probation in court and in the community, as well as supplemental information provided through parliamentary questions;
- A cross-jurisdictional workshop for probation court staff from across the UK;
- A workshop for frontline probation practitioners in England and Wales;
- A roundtable for National Probation Service and Community Rehabilitation Company leaders and policymakers;
- Supplementary interviews with a number of sentencers and frontline staff.
- This programme of work included fieldwork with more than 50 probation practitioners.

We are grateful to the Magistrates Association for sharing the outcomes of their 2016 survey of members on the impact of Transforming Rehabilitation reforms.

1. Policy and operational context

Today, in England and Wales, the relationship between probation services and the court is shaped by three key areas of activity:

- **Pre-sentence advice:** National Probation Service (NPS) court teams provide Pre-Sentence Reports (PSRs) to sentencers (paid judges and lay magistrates) considering the use of community sentence or prison options. PSRs include an assessment of the risk and need of the offender and a recommendation of an appropriate sentence given those factors and the details of the offence.

- **Breach and compliance monitoring:** Following sentencing, NPS prosecutors are responsible for prosecuting all breaches of community sentences (where an offender has either committed a further offence or has failed to comply with the conditions of the court order). The NPS court staff prosecute all breaches, including those of offenders supervised by Community Rehabilitation Companies (CRCs). Formal breach proceedings involve bringing offenders back to court where they can be re-sentenced. In addition, sentencers may have contact with probation services where they monitor the compliance of offenders with their community sentence. This role currently includes drug rehabilitation requirement reviews, other types of reviews within the handful of "problem-solving court" initiatives across the country and deferred sentencing schemes.

- **Engagement between probation and sentencers:** At a managerial and institutional level, probation services formally engage with sentencers to discuss challenges and opportunities to providing services to court. They attend a range of forums including the National Sentencer Probation Forum as well as local court-level probation/court liaison groups. Another key area in which there is ongoing probation/court engagement is in sentencer training. While probation services do not have a formal role in sentencer training, it is common practice for probation services to be called on to provide some elements of training around sentences and around criminogenic needs, especially for lay magistrates.

However, in recent years, the relationship between probation and the courts has been significantly impacted by a number of changes to both the management of courts and the structure and operation of probation.

Transforming Rehabilitation

The most impactful changes have been the Transforming Rehabilitation probation reforms, introduced in 2015. While much has been written on these reforms,[7] it's worth reiterating the key features:

- The delivery of probation was split into two: a public-sector NPS, and 21 privately managed CRCs.

- The NPS is responsible for supervising high risk offenders and is responsible for providing advice to court.

- CRCs supervise all low and medium-risk offenders (the majority of offenders on community sentences) and commission almost all offender services.

- Transforming Rehabilitation also introduced a new requirement which could be incorporated into community and suspended sentence orders. The Rehabilitation Activity Requirement (RAR), which replaced the supervision and activity requirements, is a generic requirement which can cover any rehabilitative activity. A sentencer who includes a RAR in an order can specify the maximum number days' activity which it can cover, but cannot determine the type of activity to be undertaken.

Taken together, these reforms erected a significant barrier between courts and the agencies charged with carrying out the majority of the community sentences they imposed.

Court reform

On the courts side, the most notable developments are the introduction of the Transforming Summary Justice initiative in magistrates' courts and the Better Case Management reforms to the Crown Court. The Transforming Summary Justice reforms, which were adopted in 2015, sought to reform the way that criminal cases are handled in the magistrates' courts in order to create a swifter system with reduced delay and fewer hearings. This initiative focussed on creating specialised hearings targeting cases where guilty or not-guilty pleas were anticipated. It also included a range of process targets for court and CPS performance including measures of the time between the first listing of cases and their completion and the number of hearings per case.[8] Better Case Management, which was introduced in 2016, sought to implement the recommendations of Sir Brian Leveson's 2015 *Review of Efficiency in Criminal Proceedings* in the Crown Court. It aimed to streamline case management, reduce the number of hearings per case and improve engagement between parties in court. Taken together, these initiatives mark an intensified emphasis on the efficiency and timeliness of the criminal court process of the criminal courts.

Court closures and court service restructuring

Since 2010, Her Majesty's Courts and Tribunals Service (HMCTS) has engaged in a far-reaching programme of court and tribunal closures. By 2016, at least 332 courts and tribunals have closed.[9] While there has been much discussion about the impact of these closures on the public, for the purposes of this report, it is worth noting that the court service's restructuring brought on by the closure programme has created short-term disruptions to the work of a range of agencies working in the court. More long term, court closures have led to increasingly large benches of magistrates in many court areas.

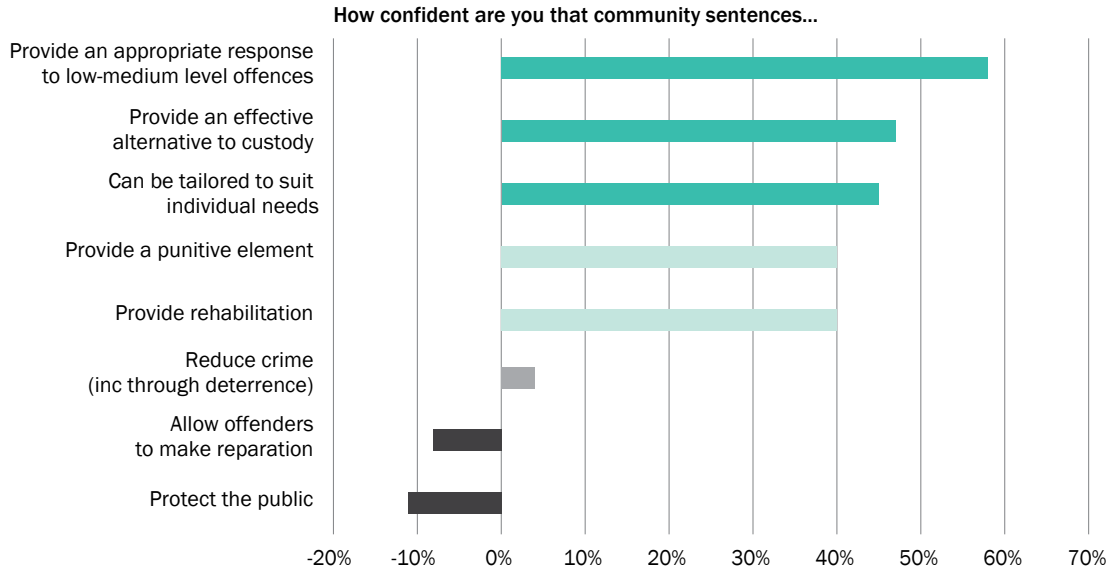
Funding

Like many public services, probation has been operating in a climate where funding has been severely constrained. It is estimated that Her Majesty's Prison and Probation Service (formerly the National Offender Management service) has seen a 22% reduction in real terms spending since 2011.[10] Across the Ministry of Justice's remit, there has been a 25% decrease in workforce between '2011-12' and '2016-17', to 68,651 people. In probation, this has meant a steep decline in the number of staff in probation and the departure of a significant number of experienced staff across both NPS and CRCs.

The impacts of reform on sentencer confidence

In order to explore magistrates' perception of the Transforming Rehabilitation reforms, the Magistrates Association conducted a survey of their members in 2016. In large part, their findings are surprisingly positive. As figure 1 shows, respondents saw significant value in community sentences across a range of criteria. In only two of the eight areas explored – reparation and public protection – did a plurality of respondents express a lack of confidence.

Figure 1: Magistrates; net confidence in the performance of community sentences across a range of criteria, 2016



Source: Magistrates Association survey of magistrates, 2016[11]

However, the same survey presented some warning signs about the direction of travel. A significant minority (38%) suggested that they had less confidence in probation now than they had under the previous arrangements.

Figure 2: Magistrates' confidence in the probation arrangements, 2016

Source: Magistrates Association survey of magistrates, 2016[12]

2. Pre-sentence advice

When someone is found guilty in a criminal court, sentencers need to determine what type of sentence to give them. In many cases, sentencers rely on the probation service present at court to deliver PSRs, which provide sentencers with assessments of an offender's risk, needs and motivation to change, as well as providing a recommendation on the most appropriate sentence.

Evidence has repeatedly demonstrated the importance that accurate assessments of risk and need has in identifying the interventions which are most likely to reduce reoffending.[13] The widely recognised risk-need-responsivity framework suggests that effective interventions must draw on assessments to identify the needs which an intervention should address, should tailor the intensity of the intervention to the level of risk, and should respond to individual's specific characteristics in the way it is delivered. Evidence suggests that when the wrong sentence is used – for example when a low-risk offender is given a high intensity intervention suitable for a high-risk offender – it can not only fail to have an impact, it can actually increase their risk of reoffending.[14]

Getting pre-sentence advice is, therefore, not only necessary for the smooth functioning of the sentencing process but plays a major role in ensuring that community sentences are effective.

How pre-sentence advice is provided

Sentencing Council guidance provides sentencers with some flexibility on when to request a PSR, suggesting that PSRs must be obtained where a court is considering imposing a community or immediate prison sentence "unless the court considers a report to be unnecessary".[15] In practice, sentencers will normally obtain a report before passing any community sentence other than a stand-alone unpaid work requirement, and before passing any prison sentence except one where custody is the only option.

Today, the NPS uses three different report formats: oral reports, Fast Delivery Reports (FDRs) and Standard Delivery Reports (SDRs).[16] Guidance on the use of different PSR formats is set out in the NPS's E3 operating model and the accompanying probation instruction.[17] Oral reports are the effective default and should be used where feasible across all types of offences; they are intended to focus on answering specific queries from the court and providing a sentence proposal. FDRs are shorter written reports which can either be delivered on the day (if information needs to be conveyed which is too complex or sensitive to be conveyed orally) or after a short adjournment if all the information required for reporting is not available on the day. SDRs are the most comprehensive form of report. They are always delivered after an adjournment and are reserved for cases meeting specific standards of harm or complexity.[18] In addition, the E3 model defined targets for the use of different report formats which necessitated a significant increase in the use of oral reports and a reduction in the number of the most comprehensive SDRs.

Providing "sentence proposals that are commensurate with the seriousness of the offence and will address the offender's assessed risk and needs" is a core role of the PSR.[19] The right sentence can protect the victims of the future by finding effective tools to manage risk in the short term while building towards a long-term reduction in reoffending. In developing their sentence proposal, NPS staff draw on the findings of a range of assessments which aim to assess the level of risk an offender poses to the public and the nature and extent of their criminogenic needs. Specific and detailed proposals help sentencers to assess whether a community sentence will provide an offender with the supervision and support which the court believes they require to be safe in the community.

As well as supporting sentencing, the PSR can also play a useful role in informing sentence planning for offenders on community sentences or in custody.[20] The assessment results and recommendations included in a PSR can help responsible officers understand an offender's needs and the reasons that particular requirements are included in an order, and in the case of sentences where opportunities for assessment will be limited, such as short prison sentences, they can be particularly important.

Imposing a community sentence

Alongside the PSR, sentencers will consider a range of issues when determining the type of sentence, its scale and its content. They will look at the offences' seriousness with reference to both aggravating and mitigating factors, harm to the victim, the offender's level of blame, their criminal record, their personal circumstances and their plea. They will also refer to the law including the maximum, and in some cases minimum, sentence and particularly to sentencing guidelines relevant to the offence committed. The factors taken into account in each case will vary depending upon the facts of each individual case, but the approach taken by the sentencing judge will be consistent.

If they are minded to sentence an offender to a community sentence, they have the option of adding in different requirements within that sentence (there are 12 requirements from which a sentencer can pick). These include requirements like an offender needing to perform Unpaid Work, being tagged with an electronic bracelet, being subject to regular supervision appointments with probation and receiving drug treatment.

Under the Transforming Rehabilitation reforms, a new requirement was introduced – the Rehabilitation Activity Requirement (RAR). It provides a generic requirement which can serve to deliver a range of rehabilitative activities. Formerly, court orders used to specify both the nature of an activity to be undertaken and the number of days, but now only the maximum number of days of activity need be specified. This allows for the precise activity to be determined following a more in-depth assessment after sentence and allocation to probation services, and amended subsequently if needs be. An activity day can be of any duration, from less than an hour up to one day, according to the length of the session.

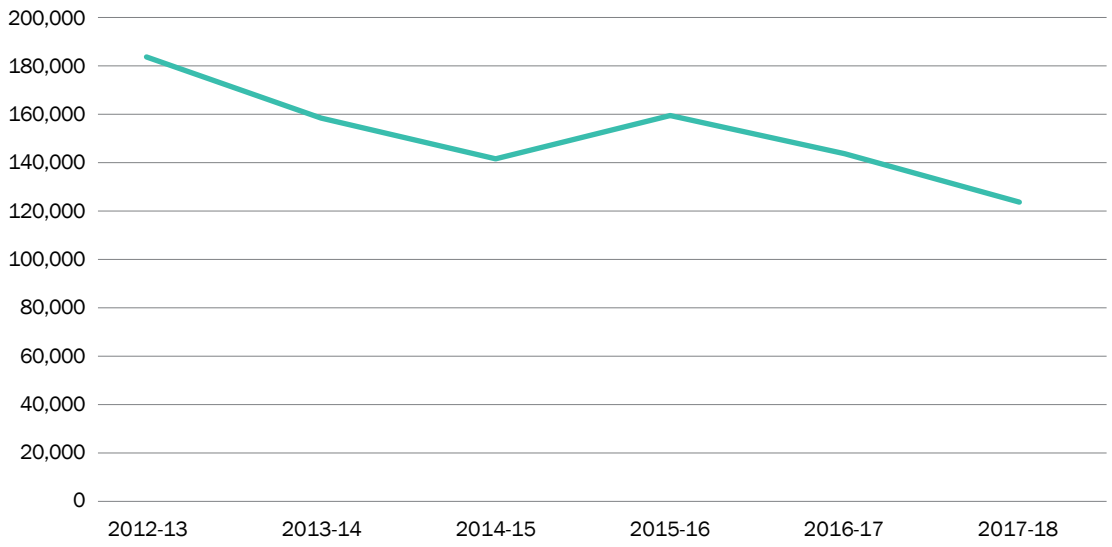
Findings

Finding 1

The number of PSRs being produced has fallen by a third in six years, with the sharpest falls in the magistrates' courts.

The past six years have seen a significant reduction in the number of new PSRs being produced. The number of reports has fallen from 185,000 in 2012/13 to 124,000 in 2017/18 – a fall of a third. This is striking at a time when the number of convictions has remained almost unchanged, falling by just 1%.

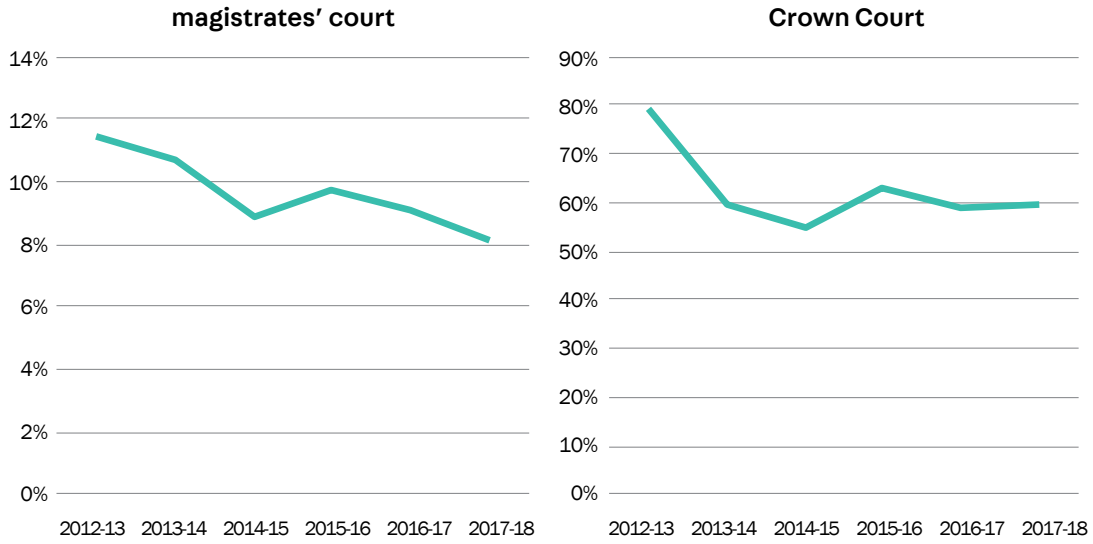
Figure 3: The number of new Pre-Sentence Reports produced, 2012/13 to 2017/18



Source: Ministry of Justice Offender Management Statistics Quarterly[21]

The reduction in the use of PSRs has been sharper in magistrates' courts than in Crown Court. In 2017/18, PSRs were used in 8% of all convicted cases in magistrates' courts, a reduction of a third from 11% in 2012/13. Over the same time period, the use of PSRs in the Crown Court has gone from 79% of all convicted cases to 59%, a reduction of nearly a quarter.

Figure 4: The proportion of court convictions where a new Pre-Sentence Report is produced, 2012/13 to 2017/18, magistrates' court and Crown Court



Source: Ministry of Justice Offender Management Statistics Quarterly[22]

Some reduction in the use of PSRs has been an explicit aim of reforms to the operations of the courts. In his 2015 review of the Efficiency in Criminal Proceedings, Sir Brian Leveson suggested that "greater use can and should be made of the discretion to dispense with reports, and an increased use of oral ('stand down') or previous reports" and going on to say that "consideration should be given to providing judges with greater flexibility not to order reports. It is at least arguable that the presumption that a report will be obtained should be removed."[23] This idea was built upon in the Better Case Management handbook which emphasises that a PSR is not required in Crown Court cases unless there is a realistic prospect of an alternative to custody or there is need for an assessment of dangerousness.[24]

Moreover, there has been an extension of the practice of re-using existing PSRs where offenders are being sentenced again for a new offence, supplementing them with a short oral statement. Probation guidance issued in support of the E3 operating model[25] suggests that court staff can re-use reports for up to a year after their initial publication, though it suggests that re-use should be accompanied with an oral update and that court staff should exercise caution when reports are more than six months old. Some court teams are now pre-screening court lists to identify defendants with recent PSRs who are currently under supervision and seeking updates from the relevant responsible officer in advance of hearings to help inform their oral updates. However, while this practice was widely cited by probation officers, no data is currently available on the extent of its use.

Finding 2

Court timeliness targets and fewer resources for probation court staff are hampering the ability of probation to deliver high-quality pre-sentence advice.

There was a broad consensus amongst participants that the ability of the NPS to deliver high-quality PSRs is being impacted by changes in the culture, practice and resourcing of criminal courts. A significant minority of probation practitioners who participated in our research suggested that they feared sentencers were forgoing the option of requesting a PSR due to a combination of resource shortages and an increased demand to meet court processing timeliness. They pointed, for example, to a reluctance to delay court proceedings for a report, if a probation officer was not immediately available to action a request. This could be a particular issue if court sessions were over-running due to over-long court lists.

Some sentencers suggested that PSRs were less useful than had previously been the case either due to the increased number of reports being written by less qualified Probation Service Officers (PSOs) or the move to less comprehensive oral reports (though over sentencers welcomed oral reports). While they were not certain this would mean that sentencers would proceed with the case without a PSR, they could not discount the idea.

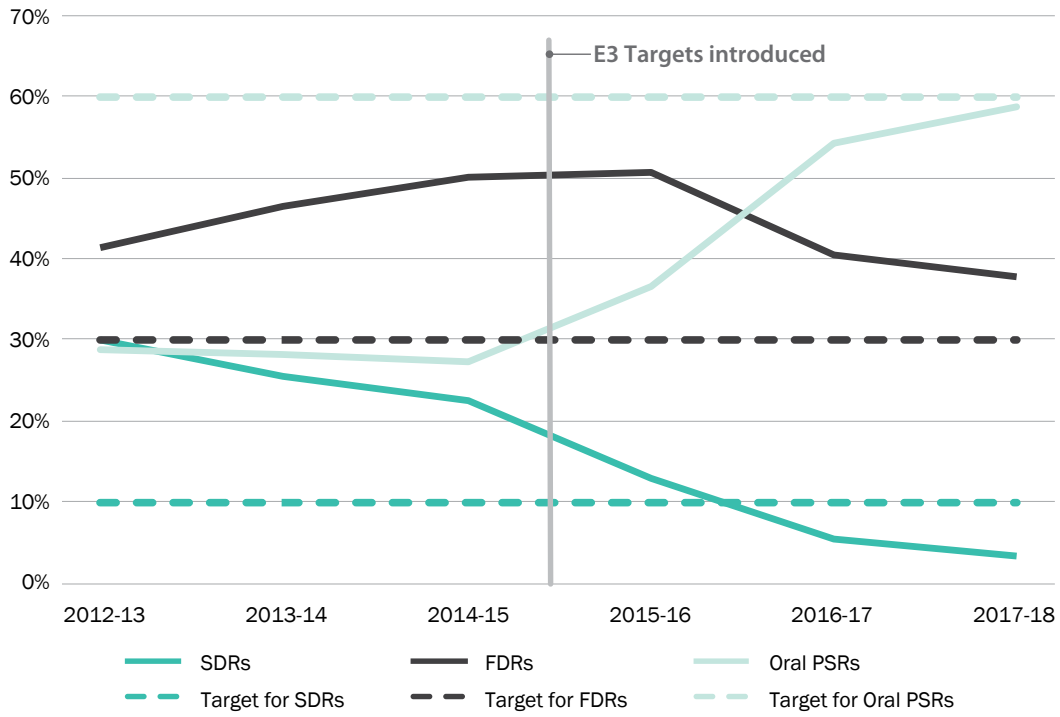
Moreover, the Probation Inspectorate, when reviewing the use of the RAR, found that assessment and sentencing planning material was only rarely available and that, in a significant minority of cases, the only documentation was a handwritten note of varying legibility.[26] This suggests that the pressures on probation staff in court to produce pre-sentence advice is impacting on the quality of work that is being performed. In this context, it is notable that the Leveson review did highlight a need for more consistent probation staffing in courts.[27]

Finding 3

The use of oral reports has doubled since 2016 and seems to be working well for the majority of cases.

As noted above, the E3 operating model (introduced in 2016) set targets for different types of report formats. Oral reports were to be increased from 27% to 60%, FDRs reduced from 50% to 30% and SDRs from 22% to 10%.

Figure 5 Pre-Sentence Reports issued by type, 2012-13 to 2017-18



Source: Ministry of Justice Offender Management Statistics Quarterly[28]

As figure 4 shows, the use of oral PSRs increased significantly after the introduction of the E3 targets, more than doubling in three years. The use of FDRs also fell by roughly a quarter, while still remaining higher than the targeted 30%.

Despite some negative predictions when the targets were introduced,[29] practitioners were broadly positive about these increases in the use of oral reports. For example, all of the NPS participants in our workshop rated their performance in proving information on details of the current offence, risk, patterns of offending, protective factors and needs as good and a majority also thought the work on needs, attitudes to victim and offence and victim issues was good.[30] Participants cited new, locally developed arrangements with police and local authority children's services departments to quickly access information such as details of domestic violence call outs or of known child protection issues.

Participants pointed to a range of measures which had been put in place in local areas to support access to relevant information from other agencies for oral reports. In the cross-jurisdictional workshop we conducted, practitioners from outside England and Wales were impressed at the speed by which English and Welsh probation practitioners could access information from other justice agencies.

Senior probation stakeholders also emphasised the role of the Safer Sentencing Framework[31] which enables report writers to use their professional judgement as to whether information that is not able to be obtained would have a direct bearing on sentencing when considering whether an adjournment is required. These positive impressions are in line with the findings of the Probation Inspectorate's 2017 review of probation work in courts. As part of the review, the Inspectorate observed 55 oral reports and found that almost all were sufficient to support sentencing and case allocation.[32]

However, probation practitioners also highlighted that, although oral reports are generally adequate for sentencing, they did not support adequate sentencing planning during the supervision period. Respondents emphasised that the outcomes of oral reports were not being recorded in some cases and were being recorded poorly in others. The Probation Inspectorate have noted that, even where recording is adequate, there is a trade-off between the amount of time available to spend on an oral report while preparing it for court, and the amount of time that the responsible officer will need to spend on assessment at the beginning of the sentence.[33] There may be an element of a "false economy" to a reduction of resource to NPS court teams as it may simply require that resource to be invested further down the line (although, from the perspective of the NPS this may be rational as the majority of responsible officers will be employed by the CRC).

Sentencers were also broadly positive about these changes. The Probation Inspectorate's 2017 review of probation work in courts found "almost universal" satisfaction from sentencers about the use of oral reports.[34] The 2016 Magistrates Association members' survey also found some evidence of positive attitudes towards oral reports – 34% of respondents suggested that information in oral reports was improving compared to only 16% who said it was worsening.

Finding 4

Sentencers and practitioners are concerned that the 89% fall in the use of SDRs means that some more complex cases are not being adequately assessed.

One of the most striking trends around the use of different report formats is the large decline in the use of the most comprehensive report format, the SDR. Their use fell by 89% over the last six years and now stands at only 3% of all reports – roughly a third of the national target. The principal driver behind this fall seems to be the adoption of the shorter FDR format as the default report format for post-adjournment reports.[35] If a case is adjourned for a PSR then the same number of calendar days are normally allowed for an FDR or SDR. However, NPS workload targets suggest that a practitioner should allow only half a day for completing an FDR against a full day for an SDR.

A number of practitioners who were involved in the preparation of PSRs expressed concern that the restrictions on the use of SDRs had led to very complex or serious cases being reported using the FDR format. They gave examples of complex and demanding cases that would fall outside of the SDR guidelines including offenders with severe but undiagnosed mental health difficulties, hate crimes and repeated sexual offending.

Probation practitioners suggested that the requirement to complete high volumes of these complex or traumatic cases, which were being classified as FDRs with only half a day of allotted staff time, was impacting on both the quality of reports and staff well-being. They cited high turnover rates in court teams, high levels of sickness and expressed concern that reports were not always as robust as they ought to be.

The probation instruction on the delivery of PSRs indicates that it would be good practice for guidance to be issued for report writers on when and how to use their professional discretion to vary the format of a report.[36] However, the practitioners who we explored this issue with were not aware of such guidance and did not feel that they were able to exercise professional discretion in this fashion.

Finding 5

A lack of information about CRC services is undermining the capacity of NPS court staff to make robust sentence proposals in some areas.

Under the Transforming Rehabilitation reforms, CRCs are responsible for commissioning the bulk of third party offender services for both CRC and NPS clients. Information about the commissioned services is made available via a "rate card" which enables NPS staff to spot purchase these services for their clients. In theory, this rate card should provide NPS staff with the knowledge of services they need to make effective and specific proposals. However, NPS court staff who participated in our research had widely divergent knowledge of the interventions available. Some had received specifically adapted rate cards which provided information about the nature of services available for a range of needs and how to access them. Others had never seen a rate card and had no direct knowledge of CRC services. This meant that those officers felt that they were making recommendations to the court blind to the actual detail and quality of the supervision the offender will be required to undertake. A lack of information about programming undermines the capacity of NPS court staff to be specific about the content of proposed requirements within an order, leaving sentencers without a clear picture of what an order will look like in practice. In the Magistrates Association 2016 survey, 29% of respondents singled out a lack of information about the content of orders as a cause of declining confidence in community sentences.[37]

This lack of information was widely felt. However, there was a wide recognition that this has been a major problem and we did find areas of encouraging practice (see case study 1).

GOOD PRACTICE CASE STUDY 1

Embedded CRC presence in Teeside Magistrates' Court

At Teeside Magistrates' Court, Durham Tees Valley CRC has worked with local NPS staff to develop a protocol for embedding a PSO in the NPS court team with the aim of ensuring that the court team has access to up-to-date information on CRC services and facilitating the provision of updates on the progress of offenders being sentenced while under CRC supervision.

The project originated in discussions between local CRC and NPS managers on improving the information exchange which took place in early 2015. It got its formal start in late 2015 when a CRC PSO was permanently assigned to work with the NPS court team. The PSO provides two kinds of information. Firstly, they keep the team informed about developments in CRC support services. They are able to provide detailed information about the aims and structure of programmes and the profile of suitable offenders as well as more practical information such as opening hours and waiting times.

Secondly, they liaise with CRC responsible officers to obtain updates on offenders who are being sentenced while under CRC supervision. Updates cover the progress made on current order, levels of engagement, any factors which may have changed the level of risk and specific issues which might preclude the use of certain requirements. The information obtained is used to supplement existing PSRs or support the writing of new ones.

A number of steps have been taken to ensure that the PSO does not play an inappropriate role in sentencing. Beyond adhering firmly to the principle that they do not have a right of audience in the courtroom, they have no role in the process of developing sentence recommendations and are accommodated separately from the main NPS office in court where case discussions with solicitors or court staff often take place.

As a relatively new initiative, the approach has not been evaluated. But stakeholders from the NPS identify two benefits. Firstly, being able to provide detailed and specific information about CRC services has increased magistrates' awareness of the content of community sentences, allowing them to make more informed choices about using them. Secondly, having rich, up-to-date information on offenders' engagement with CRCs allows PSR writers to make more appropriate recommendations. This has potentially improved offenders' compliance with orders and facilitated their progress towards desistance.

Finding 6

The structure of the RAR means that the content of community sentences is opaque to both NPS court staff and sentencers.

As noted above, the RAR is a generic rehabilitation option which was brought in as part of the Transforming Rehabilitation reforms "to provide greater flexibility in how rehabilitation is delivered".[38] When proposing a RAR, the report writer should describe the criminogenic needs to be addressed by the RAR and provide information on the available interventions, and a suggestion on how many days will be required to address those needs. If imposing a RAR, sentencers will set a maximum number of "days": each day represents one or more activities taking place on a single day ranging from a single phone call to a day-long course. They do not specify the activities to take place under the RAR. It is for the responsible officer who oversees management of the offender to determine what interventions are delivered, how many days are used and what they are used for.

This system was intended to offer the responsible officer flexibility in tailoring the activities to the changing situation of the offender. However, our discussions with both NPS court staff and sentencers strongly suggested that in practice this amounts to a lack of clarity about what an offender will actually do if given a community sentence. A sentencer imposing a RAR will often be doing so with very little certainty about the extent and nature of interventions which will be delivered within it.

In particular, the use of "days" as a measure of the extent of an order is, from the perspective of the sentencer, extremely opaque. The actual make-up of those "days" can vary widely: they might be a one hour group session or a day-long course. There is also some evidence that although RAR "days" are intended to be reserved for rehabilitative activity, other forms of contact such as supervision are, in some cases, being recorded as RAR days.[39]

This has been compounded by a lack of clarity amongst NPS court staff in how the RAR should be used. In their thematic review of the RAR the Probation Inspectorate found that "[c]ourt liaison staff were working without any rationale for the factors they should consider, and lacked clear guidance on how to decide the maximum number of days to propose. To compound matters, they were often unaware of the actual projects that could be used in a particular case, and so their time requirements."[40]

This perception from our qualitative discussions with sentencers is backed up by broader findings in the 2016 Magistrates Association members' survey. A majority of respondents (61%) suggested that the RAR was either already impacting on sentencing or would likely do so in the future. When invited to comment further, 39% of respondents identified that it had led to "Insufficient or less magistrate involvement/knowledge."

Finding 7

The use of drug rehabilitation requirements and mental health treatment requirements has halved.

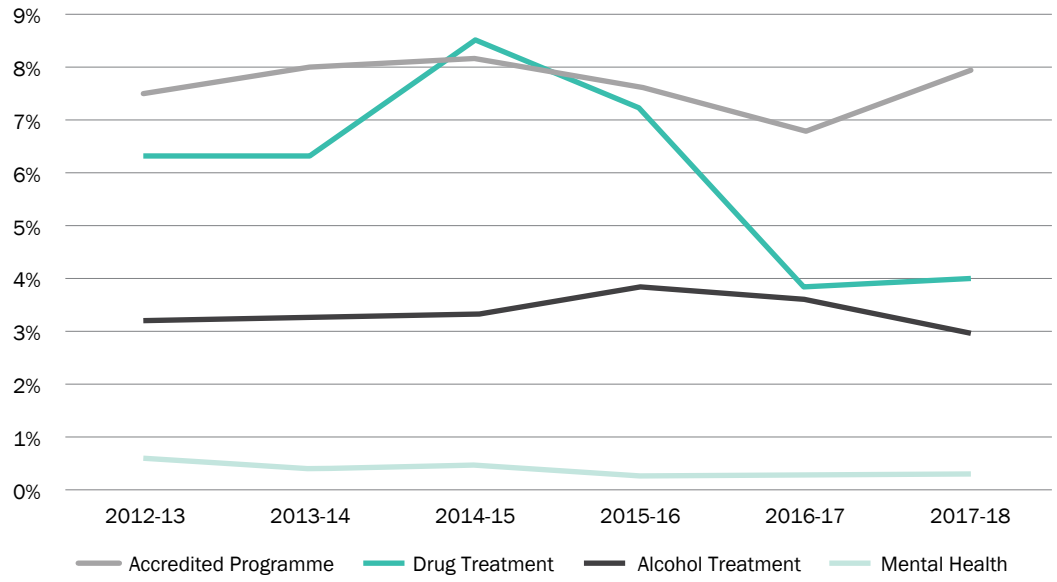
Figure 5 shows how the use of a range of rehabilitative requirements has changed over the past seven years.

The most striking changes over this time period are the falls in the use of the drug rehabilitation requirement (DRR) and the mental health treatment requirement (MHTR). The DRR has gone from being included in 8.5% of orders in 2014-15 to only 4% last year, while the MHTR has fallen from 0.6% in 2012-13 to 0.3%.

There are two potential drivers of this change. Firstly, treatment requirements may be being displaced by the RAR. While the RAR is not intended to be used in place of treatment requirements, the Probation Inspectorate has noted cases where the contact offered by a RAR is being used to support offenders into community-based drug treatment.[41] The same review also found some evidence that the RAR was being favoured by time-pressured report writers over more specific requirements due to its lower assessment requirements and the fact that it doesn't require consent.[42] On the DRR in particular,

some NPS stakeholders suggested that, while the RAR should not be used as a substitute for a DRR in cases where the latter was appropriate, in some cases drug treatment delivered through a RAR could be preferable. A RAR, it was noted, allowed drug treatment to be integrated into a flexible and evolving package of support.

Figure 6: Proportion of all community sentences containing different rehabilitative requirements, 2012-13 to 2017-18



Source: Ministry of Justice Offender Management Statistics Quarterly[43]

A second, potentially more influential, driver is the falling availability of both drug and mental health treatment in the community. Drug and alcohol treatment funding in England has fallen by £105m over the last four years (since the government removed the ring fence which prevented councils from cutting treatment to fund other areas),[44] while community-based mental health treatment has also faced real terms cuts in funding from 2011-12 to 2016-17.[45]

However, there are also areas of encouraging practice. The recent Community Sentence Treatment Requirement pilots (see case study 2) which support offenders' access to treatment have been rightly praised. However, extending these pilots will require a renewed willingness to invest in evidence-based interventions.

GOOD PRACTICE CASE STUDY 2

Milton Keynes Mental Health Treatment Requirement (MHTR)pilot

The Milton Keynes Community Sentence Treatment Requirement (CSTR) pilot is an initiative which seeks to reduce reoffending by supporting offenders' access to mental health and substance misuse treatment in the community through enhanced use of treatment requirements in community or suspended sentence orders. The pilot, which launched in October 2017 is part of a cohort of five pilots jointly overseen by the Ministry of Justice, Department of Health and Social Care, NHS England and Public Health England.[46]

The pilots seeks to expand and improve the use of the three treatment requirements which can be included within community and suspended sentence orders: DRRs, alcohol treatment requirements (ATRs) and MHTRs for adult offenders. Treatment requirements order a consenting offender to engage with NHS-funded treatment for specific needs as a condition of their order. However, while substance misuse and mental health issues are widespread within the offending population, these requirements are used only rarely: ATRs, DRRs and MHTRs are part of only 3%, 4% and 0.3% of orders respectively.[47] Participants in our research have attributed this to the challenges in obtaining the necessary assessments and consent and a lack of treatment provision.

The CSTR pilot seeks to address these issues by introducing a new screening and assessment approach in court and enhancing the provision of treatment in the community. At the local level, the approach is a collaboration between NPS, Thames Valley CRC (MTC Novo), P3, HMCTS, Compass drugs and alcohol service, IAPT health care, CCG, Health and Justice Commissioners.

In court, the new framework seeks to ensure that all the assessments and consents required for a treatment requirement can be obtained on the day. Drug and alcohol assessments are undertaken by NPS duty officers as part of PSR preparation, with the support of community-based treatment providers. For mental health needs, an initial screen is undertaken by a support worker from the charity P3, and if a need is identified then an assistant psychologist will complete the required assessments with the support of an off-site supervisor.

Once sentences are passed, offenders receive treatment in the community. Substance misuse treatment is being delivered through pre-existing treatment provision, while additional provision for mental health treatment has been established as part of the pilot. Alongside treatment, clients also receive wrap-around support from a P3 link worker who will help them address issues such as housing, financial difficulties or relationship problems. Offenders with a dual diagnosis can also receive both a MHTR and DRR or ATR simultaneously.

The current project has its roots in a pilot which operated in Milton Keynes from 2015-2017 and sought to improve the use of MHTRs with the goal of reducing reoffending by addressing the core factors driving offending in terms of both mental health and social care needs. An initial outcomes study found that offenders who completed the treatment showed a significant improvement in mental health symptoms, coping skills and criminogenic needs.[48] That project won awards from both the Howard League and HMCTS[49] and was asked to present at the international conference for correctional reform in Los Angeles in 2015.

To date, the current project has produced significant increases in the use of treatment requirements, and improved engagement amongst people on those requirements, leading to improve compliance. Staff also estimate that it has averted 142 weeks of custody. They are now seeking to extend the length of the pilot in Milton Keynes and to expand the use of this model to other areas.

Conclusions and recommendations

The picture we have been able to draw together of the changes in pre-sentence advice is complex. There has been a fall in the use of PSRs within an operating environment of fewer resources, a greater emphasis on speed, and greater division between courts and the agencies who are supervising most community sentences. Sentencers are increasingly concerned about a lack of information about what they are sentencing people to and about a seeming lack of treatment provision. It would not be appropriate to suggest a direct causal link between these changes and the falls in the use of community sentences but we do think it is fair to say that these changes have cast doubt into sentencers' minds about the content of community sentences.

More specifically, developments such as the Transforming Summary Justice reforms have spilled over to change how probation provides information to court, through the greater use of oral reporting. Despite finding a generally supportive attitude to this change, we remain concerned, as do many practitioners, that it means that there are instances where PSRs should be requested and aren't. Moreover, there are also particular concerns about whether the most appropriate pre-sentence advice is being given for more complex cases. It seems likely that the underuse of SDRs is an unintended consequence of a range of factors including the restrictions put in place in the E3 models, a lack of support for professional discretion in format choice and the compounding impacts of a pressure on resourcing. Practitioners we interviewed are concerned that this may be impacting on the robustness of probation recommendations and on the functioning of court teams and we would recommend that this issue is addressed.

Recommendation 1

The Sentencing Council should develop a guideline on when sentencers should request a Pre-Sentence Report (PSR) to ensure that sentencers are aware of the circumstances in which they need to request a PSR and which type is likely to be most appropriate in individual cases.

Recommendation 2

The National Probation Service (NPS) should review the criteria for determining when a Standard Delivery Report (SDR) is required to ensure that they capture the full range of relevant cases.

Recommendation 3

The NPS should encourage report writers to use their professional discretion to vary the format of a report when they think it is necessary to ensure appropriate pre-sentence advice.

Recommendation 4

The Ministry of Justice should ensure that adequate funding is available for NPS court teams in line with Lord Leveson's 2015 recommendation for more consistent probation staffing in courts.

We were particularly concerned to uncover a widespread view that a lack of information about CRC services undermining the capacity of court teams to make robust and specific proposals in some parts of the country. As we would have expected, a number of areas have tried to find fixes to this rather fundamental issue. We are particularly struck by the potential of the Teeside model of embedding CRC staff in NPS court teams. We would urge policymakers to consider whether this model ought to be part of the new probation contracts, if they remain insistent on keeping the NPS and CRCs as separate organisations.

However, we do think these examples of encouraging practice are simply creative ways to work around a more fundamental issue: the split between the CRCs and the NPS has been, and continues to be, deeply problematic. In this area, and in other areas of practice, the lack of information following between the split organisations is leading to serious operational problems. Added to this, the opaque nature of the RAR and the declines in the use of treatment requirements all compound a situation which to us seems very serious. The potential damage these changes have done to sentencers' awareness of what specifically community sentences consist of, what options are actually available to the court and therefore their trust in using them is likely to be considerable. It is hard not to conclude that this has been a major step backwards: a community sentencing system in which it remains unclear to judges what exactly the offender in front of them is about to embark on as part of their community sentence is not a healthy one.

Recommendation 5

The Ministry of Justice should commission an independent review of the operation of the Rehabilitation Activity Requirement (RAR), including research on the views of sentencers, and publish the results.

Recommendation 6

The Ministry of Justice and the Department of Health should urgently reconsider the overall level of funding available for drug and mental health treatment for offenders in the community, and reconsider whether the funding should be ring fenced.

Recommendation 7

The Ministry of Justice should require that Community Rehabilitation Companies (CRCs) have a permanent embedded presence in magistrates' courts.

3. Breach and judicial monitoring

As we explored the impacts of recent policy changes on the relationship between courts and probation, we were struck by how frequently stakeholders, from both probation and sentencing communities, pointed to a much more long-standing issue: the lack of opportunities that judges have to know what happens to the people who they sentence. As one magistrate strikingly put, passing sentences "is like sending people out into the wilderness" with no way of knowing what was going to happen to them. Generally, the only cases in which sentencers encounter people given community sentences are when they either reoffend or fail to comply with their community sentence and are brought back to court for breach proceedings. Even then it is unlikely that they will see an offender they originally sentenced.

The question of post-sentence contact between sentencers and offenders on community sentences was an area not within our scope at the start of our project but which became increasingly necessary based on our work with probation practitioners and sentencers.

Breach

Community orders impose specific requirements on offenders, which may be punitive (such as curfews) or rehabilitative (such as drug treatment). Where individuals do not comply with the requirements of their community order, they will return the case to court for a breach hearing. Responsible officers are required to return cases to court after two such failures to comply – though it is often suggested that, in practice, they may often fudge the recording of non-compliance in order to manage the point at which breach is triggered.[50]

According to the Probation Inspectorate, the desired outcome of the breach process is that "community orders and suspended sentence orders are enforced in a timely and proportionate manner that promotes effective risk management and the rehabilitation of offenders."[51] Cases returned to court are prosecuted by NPS prosecutors (no matter which body was supervising the offender). If the breach is proven, sentences can choose to impose a sanction, which can range from financial penalties to custody, depending on the circumstances of the case.

Research evidence indicates that breaches, warnings and missed appointments are associated with higher reoffending particularly when they occur earlier in the sentence. Those who have a poor relationship with their responsible officer are more likely to breach, and the fairness of enforcement decisions may affect this relationship.[52]

Judicial monitoring

The term judicial monitoring refers to arrangements where individuals who are either engaging with services while awaiting sentence, or subject to a sentence in the community, are required to return to court for a progress review. Review hearings are used to monitor the compliance of the defendant, motivate them to engage with support and potentially trigger formal responses to good progress of non-compliance. Judicial monitoring can ensure the court gets regular feedback on the efficacy of community supervision.

In England and Wales, judicial monitoring is widely available but rarely used. It can be used for all suspended sentence orders, community orders with a DRR and can be used for all community courts in particular courts specified by an Order in Council under section 178 of the Criminal Justice Act 2003.

Judicial monitoring is also commonly associated with "problem-solving" courts, where review hearings are a core part of a specialised structure which seeks to reduce reoffending for targeted groups of offenders through a combination of support and legal leverage. Common examples of problem-solving courts include drug courts, mental health courts and domestic violence courts.

Judicial monitoring in problem-solving courts is a well-researched area and we have good evidence that it can provide a powerful driver of better outcomes and reduced reoffending. The strength of the relationship between a judge and an offender through regular judicial monitoring has been identified

as a key driver of better outcomes. For example, a US study on drug courts found "attitudes towards the drug court judge [that] were the strongest predictor of reduced drug use and crime".[53] There is extensive research about what types of monitoring are effective[54] and an increasing evidence base on its successful deployments in different types of court cases, different countries and different parts of the justice system.[55]

Judicial monitoring can also be used prior to sentencing in order to support sentencing decisions. Under the 2000 Powers of Criminal Courts (Sentencing) Act, all courts in England and Wales are empowered to defer a sentencing decision for up to six months, provided they have the consent of the offender. During the deferment, the court can impose any conditions it sees as appropriate, which may include the requirements that are available under community or suspended sentence orders.[56] This deferment is intended to assess the offender's conduct for a period of time before they are brought back to court before a final sentencing decision is made.

Completion reports represent another approach to the post-sentence information gap. Paid judges (and magistrates but only in exceptional circumstances) can request a report on an individual offender (completion reports) at various intervals during a community sentence and/or following the completion or termination of their sentence. The use of completion reports was codified in 2005.[57] Reports were to be completed by offender managers and would provide information whether all requirements have been met and an assessment of whether supervision has been effective. However, while technically still an option, completion orders are vanishingly rare in current practice: many of the people we spoke to were not aware that they were a thing and few had ever seen one.

Findings

Finding 8

There are serious concerns, raised by the Probation Inspectorate, and felt amongst sentencers, about the quality of the work of CRCs in breach proceedings.

A recent thematic review of enforcement and recall by the Probation Inspectorate found that, "Overall, the quality of offender management and consequent enforcement decision-making in our sample of community orders and suspended sentence orders was poor. Assessment was too often deficient. Plans, though timely, were not of good quality... We found that decisions tended to be formulaic rather than properly considered... Engagement with the individual in constructive work was insufficient in too many cases. Planned levels of contact were not always adequate to meet the individual's needs. Consequently, CRCs did not always know when enforcement was appropriate."[58] In contrast, the thematic found that NPS work in these areas was generally positive. The Inspectorate acknowledged that the CRCs were "constrained by the level of resourcing, with dwindling front-line resources to manage the work."[59]

Breach may also shine an unflattering light on the way that community sentences are being delivered. A recent Inspectorate report notes that, "Judges and magistrates frequently tell us that they fear CRCs are not doing all that they should."[60] Our interviews found echoes of this – we heard anecdotal evidence from sentencers that they had a perception that things were not going well with how community sentences were being delivered and that these failings were exposed at breach proceedings. We heard exasperation from sentencers at finding offenders breached when the requirements in orders had not even been started and where multiple appointments had been missed.

Finding 9

There is probation practitioner support for expanding the use of judicial monitoring to give sentencers greater insight into how community supervision works.

Many of our probation respondents identified judicial monitoring as a promising approach which could be deployed to improve sentencers' understanding of community sentences. A number of practitioners had experience of judicial monitoring, either through DRR or suspended sentence reviews carried out in regular court practice, or through specific judicial monitoring projects such as the problem-solving

approaches in Manchester and Liverpool. Their view was that judicial monitoring, when integrated into a package of support, could improve outcomes for offenders as well as developing sentencers' understanding. Practitioners who took part in the cross-jurisdictional workshop saw particular value in the new problem-solving approaches being developed in Scotland which draw on support services already present in the community to ensure that they can be delivered even in a climate of limited resources (see case study 3).

GOOD PRACTICE CASE STUDY 3

Aberdeen Problem-Solving Approach (PSA)

The Aberdeen PSA seeks to reduce the use of short prison sentences by providing new community disposals to women and young adult males with complex needs and multiple previous convictions. Offenders receive an intensive programme of support, under the regular supervision of a specifically trained judge.

Offenders accepted into the PSA are made subject to a Structured Deferred Sentence (SDS), with the expectation that this will last for six months. They are required to attend weekly supervision meetings and engage with an intensive personalised treatment package. They are required to attend regular review hearings, presided over by a dedicated summary sheriff (equivalent to a district judge). The sheriff engages directly with the offender, exploring their progress in addressing their offending-related needs, and providing encouragement or admonishment as appropriate. The sheriff is able to end the SDS and move to sentencing at any point during the order which provides them with legal leverage which can incentivise engagement.

Two different support packages are provided for the different cohorts. Female offenders receive wrap-around support based in the city's women's centre, which is run by the local Criminal Justice Social Work department (equivalent to probation). There is a focus on group work and the value of a local space. For male offenders, support is delivered on a one-to-one basis by criminal justice social workers (equivalent to probation officers) who often meet with clients in informal spaces such as coffee shops with some additional support provided by the Venture Trust. Stakeholders commented that the differentiation was because young male clients are less likely to feel comfortable in group settings.

A recent review of the progress of the approach found that compliance rates were better than would be expected for the target group and that clients valued the support they received and their engagement with the sheriff.[61] However, it is too early in the project's life to assess its long-term impact and the evaluation did raise concern that there might be a need to increase the "aftercare" offered by the project to clients who had completed the programme.

However, many of the practitioners felt that it might be difficult to generate support for judicial monitoring in HMCTS due to the additional court hearings it would entail. They also acknowledged that it may require some additional work by responsible officers which would need to be appropriately resourced.

Finding 10

Despite evidence that they can produce better outcomes, the use of deferred sentences is discouraged.

Sentencers are expected to consult a legal advisor before deferring a sentence. The perception of and it seems that their use is discouraged are frowned upon by court officials. While statistics on the use of deferred sentences are not available, our observations and the evidence provided by our participants suggests they are only rarely used. Respondents suggested that their use was discouraged due to the desire of courts to increase processing speed and reduce the number of hearings per case.

This is in contrast with Scotland, where a formal pilot of the use of deferred sentences introduced in 2005 has led to the rollout of the model across the jurisdiction (see case study 4).

GOOD PRACTICE CASE STUDY 4

Structured Deferred Sentences (SDSs) in Scotland

A model of deferred sentences, referred to as SDSs, were piloted in Scotland in 2005. They enable regular reviews of progress at which the supervising sheriff could choose to extend the deferral or move to sentencing based on the progress achieved.

The pilot used SDSs with two groups:

- Low-tariff offenders, where the deferral period allows an element of supervision and support prior to an admonishment (particularly for a discharge), especially for offenders who cannot pay fines.
- High-tariff offenders on the custody threshold, who can use the deferment period to demonstrate their capacity to succeed on a community order.

The evaluation of the pilot found that the approach led to a reduction in reoffending and a reduced use of custody.[62] More recent evidence indicates that the prospect of admonition upon completion of the SDS may act as an incentive to compliance.[63]

The SDS is now operational in a wide range of areas across Scotland, and is often used as a mechanism to deliver services to a specific target group. For example, in the Highland region, the SDS is used to deliver employability and offending awareness programmes, while in South Ayrshire, it is used to target alcohol related offending.

Conclusions and recommendations

It has long been the case that sentencers in England and Wales generally get a very partial understanding of community sentences from their contact with offenders through breach proceedings and further offences. Judges may see offenders whose orders have been terminated for good behaviour but this represents only 13% of all orders.[64] More often, when sitting in breach court proceedings, they will only see those who fail – either those who have reoffended or failed to comply with their community sentence. At various points in time, policymakers have recognised that this gives judges and magistrates a very jaundiced view of the efficacy of community sentences and yet little has been done to remedy the problem.

It is clear from our work that this negative perception is only likely to have grown in recent years. In particular, the recent Probation Inspectorate thematic report on compliance and enforcement indicates there are real grounds for sentencers suspicions' that CRCs in particular are not enforcing court orders as effectively as probation trusts once did.[65] When the only window sentencers have onto progress on community sentences is breach, if breached cases seem not to have been managed effectively, can we really be confident that sentencers will continue to use community sentences? Moreover, sentencers continue to lack opportunities to monitor the progress of those people who they have sentenced. This denies them of an important tool to develop an internalised understanding of which sentences work for which offenders. Judicial monitoring offers a way of addressing both of these issues.

We have spent some time considering how deferred sentencing and judicial monitoring could be better deployed, not only to provide more mechanisms for sentencers to encounter a wider diversity of community sentencing practice, but also with a view to improving compliance, reducing reoffending and providing a credible alternative for sentencers to short-term custody.

While we recognise that the extension of these approaches use may impact on HMCTS timeliness targets, bureaucratic process measures can't be allowed to get in the way of real outcomes especially as both these types of intervention are likely to reduce the use of custody and reduce reoffending.

We should not though assume, that these proposals only cover specific groups with the current sentenced population. Even if these efforts were to be trialled and implemented, sentencers would still receive no feedback on the majority of community sentence cases they see. We tentatively suggest that there should be ways for individual sentencers to get regular cohort-level data on the performance of community sentences and, over time, a technological solution should be found to give sentencing judges updates on individual cases each month.

Deferred sentences

In terms of the greater use of deferred sentences, we can see merit to emulate the two-tier Scottish approach. First, we see a "low-tariff" option could provide a quick resolution to cases which are currently at the low end of the community-sentenced cohort. Public data shows that there were over 15,000 offenders last year who received a community sentence with only one requirement who had no more than one previous conviction (23% of all community sentences).[66] We suggest that many members of this cohort should be allowed to complete very short sentences of unpaid work swiftly (up to 5 days) under a deferred sentence arrangement. This type of community sentence could be paired with voluntary referral to rehabilitation services through advice and support clinics such as those that are run at Highbury Corner and Plymouth magistrates' courts[67] or other services (such as women's centres where appropriate). On successful completion, offenders would receive an absolute discharge.

This approach seeks to bring supervision to a swift conclusion while delivering community reparation and access to support, in order to manage the probation caseload and allow offenders to finish their mandate swiftly and move on with their lives. While current probation providers should retain responsibility for this cohort, they could outsource the delivery to other agencies, including the voluntary sector.

Secondly, as a "high-tariff" option, the court could defer sentencing for offenders who might otherwise be facing custodial sentences of up to six months, allowing them to access interventions and complete appropriate reparations or punitive requirements. If successfully completed, the court could then impose a shorter community order (taking into account the time already spent engaging with support). This provides the court with an opportunity to assess their willingness to engage with a community order before forgoing other sentencing options. This type of order could be especially effective for female offenders who would benefit from referral to a women's centre.

Recommendation 8

The Ministry of Justice should develop and pilot two models of structured deferred sentences based on Scotland's Structured Deferred Sentences (SDSs): a "low-tariff" model for offenders currently facing low-level community sentences, and a "high-tariff" model as an alternative to prison sentences of up to six months.

Judicial monitoring

We suggest piloting judicial monitoring within a sentencer-led problem-solving alternative to prison sentences of six months to one year for offenders whose offending is driven by complex or multiple needs. For these cases, we recommend a community order or suspended sentence order, to be reviewed regularly by a judge and supported by a high-intensity and personalised set programme of interventions to support rehabilitation, delivered by probation in partnership with existing voluntary sector provision.

Problem-solving approaches tend to specialise in particular areas and the evidence suggests that this is an effective approach. For example, an extensive study of drug courts suggests that grouping people with substance misuse problems helps the court and service providers specialise and provide targeted interventions. This is the approach being taken in a number of places like Manchester problem-solving court, the Substance Misuse court in Belfast and the new domestic violence court in Derry.

To enable this, the Ministry would need to use secondary legislation to extend the power to undertake regular court reviews of community sentences to the pilot courts as set out in section 178 of the Criminal Justice Act 2003.

The Ministry of Justice committed to considering the introduction of judicial monitoring as part of a pilot of problem-solving courts in their report, Transforming our Justice System, published in September 2016, which described them as "a significant step forward in addressing offenders' behaviour and preventing future victims". We suggest they make good on that promise, especially as part of a wider strategy to reduce the use of short prison sentences.

Recommendation 9

The Ministry of Justice should pilot the use of judge-led problem-solving orders as alternatives to prison sentences of six to twelve months, as part of a wider strategy to reduce the use of short sentences.

Recommendation 10

The Ministry of Justice should consider how to provide sentencers with updates on the progress of offenders who they have sentenced to community sentences.

4. Engagement between probation and sentencers

At a managerial and institutional level, probation services formally engage with sentencers to discuss the provision of advice to court and the delivery of community sentences. This can include a range of activities, from informal conversations in the courtroom, to providing detailed written information on services. In this section, we focus on two of the most key areas: formal liaison between probation and sentencers (at both the local and national level) and probation involvement in the training of magistrates.

Formal liaison

Local liaison arrangements between sentencers and probation services plays two key roles: supporting sentencers' awareness of changing aspects of probation performance and providing feedback to providers on sentencers' views on local provision needs. Prior to the Transforming Rehabilitation reforms, liaison was the responsibility of probation trusts. However, in the initial period following the reforms, liaison arrangements generally excluded CRCs, with the NPS expected to represent all probation providers. At the local level, the NPS was expected to "liaise between judges, magistrates and providers of probation services" and provide information on local programming, the outcomes of community sentences and local reoffending rates."[68]

Liaison at a national level between judges, magistrates and providers of probation services takes place through the National Sentencer Probation Forum. The forum's primary aim is to encourage and facilitate engagement between sentencers, NOMS, the NPS, providers of probation services and the Ministry of Justice at a national level to discuss issues and trends emerging locally or nationally which are relevant to sentencing and the provision of probation services. However, the aim of the forum is not to make decisions on service delivery, influence the terms of contracts with service providers, or to interfere with agreed government policy or legislation. CRCs were not included on the National Sentencer Probation Forum.

Probation involvement in the training of magistrates

Magistrates' training is the responsibility of the Judicial College, but in practice is delivered by a range of agencies including the college, legal advisors in individual courses and local Magistrates Association branches. Training is split into three types – "compulsory" training for new magistrates and magistrates adopting a new role, "essential" training which all magistrates are expected (but not required) to attend and "desirable" training which is optional. Compulsory training focusses on the law and court practice. It does not include information on common criminogenic needs such as substance misuse, or on the functioning of different sentence options.[69] Information about sentencing options, such as community sentences, would normally be included under "desirable" training.

Findings

Finding 11

Barriers to the involvement of CRCs in probation/sentencer liaison arrangements in the period immediately after the Transforming Rehabilitation reforms led to poor communication and undermined trust and understanding.

Guidance on liaison arrangements issued immediately after the Transforming Rehabilitation reforms indicated that CRCs were not to play a direct role in liaison arrangements.[70] While this policy has now, thankfully, been superseded,[71] probation participants suggested that the level of CRC engagement in liaison was still patchy.[72] While some areas reported good engagement, others stated that CRCs were still not playing a full role in liaison arrangements.

Stakeholders from regions with CRC input suggested that it had provided a range of benefits including transparency on CRC delivery and the regular provision of performance data. Stakeholders from both areas with and without CRC liaison involvement suggested that this approach should be extended.

Finding 12

The training of magistrates is inadequate and there has been a particular lack of proactive training for them to understand the reforms introduced under the Transforming Rehabilitation reforms.

The Justice Select Committee reviewed magistrates' training as part of its 2016 inquiry into the role of the magistracy. It found that the funds available for training magistrates fell by more than half from 2009/10 to 2012/13 meaning that an increasing volume of training was delivered by legal advisors who were not specialists in the issues being addressed. They noted that, while some efficiency savings had been sought, there were concerns about the quantity, consistency and quality of training. They also noted, with some concern that once a magistrate has completed their compulsory training at the point of recruitment, there was no requirement for them to attend any further training of any kind unless they were seeking to change roles.

The major changes made to the probation services and community sentences by the Transforming Rehabilitation reforms created a significant extra training need for magistrates as they developed their understanding of the new system. However, there is reason to believe that the training around these changes was not sufficient to bring magistrates up to speed. In their 2016 members' survey, the Magistrates Association found that only 17% of magistrates reported having specific in-person training on the RAR and only 14% of magistrates reported having specific in-person training on post-sentence supervision arrangements for short-sentenced prisoners.

GOOD PRACTICE CASE STUDY 5

Magistrate training in Leicestershire

In Leicestershire local staff from NPS have worked with their counterparts in the Reducing Reoffending Partnership CRC, the local bench and HMCTS to develop an annual training event for magistrates. The training seeks to help magistrates understand the role of the different arms of probation and the services they provide. The training is provided as part of the induction process for new magistrates, but the attendance of existing magistrates is also supported.

At the day-long event, which takes place at a CRC office, magistrates are able to meet with staff from both NPS and CRC, including those who worked on specific areas of provision such as sex offender programmes and approved premises. Talks were also given by former offenders who had volunteered with the CRC's peer mentoring programme and were now employed as paid members of staff.

A number of steps were taken to facilitate magistrates' attendance at the training. The site chosen was close to the court, and it was held on a Saturday when attendees would be less likely to be at work. The chair of the bench also designated the training as mandatory for new magistrates.

People who worked on the programme suggested that it was establish as a response to the change in probation introduced by Transforming Rehabilitation. They suggested that magistrates were not aware of the new structure. They also reflected that magistrates' experience of the impact of community sentences was principally through breach hearings and that the training offered an opportunity to provide a more rounded view.

Magistrates who attended the event described it as "inspirational" and "fantastic", stressing the "positive stories and outcomes" that they heard. Since the training, probation staff have been invited to address magistrates on a number of further occasions.

Conclusions and recommendations

For sentencers to place trust in community sentences, they must have a clear understanding of what they involve and how they are being delivered. Many of the participants in our research identified that currently not enough was being done to do this. For example, when we asked NPS representatives at our cross-jurisdictional workshop to evaluate their performance in providing effective information to sentencers about community sentences, the majority of responses suggested that performance was either middling or poor.

Participants in our research stressed the importance of probation-sentencer liaison forums. We therefore welcome the publication of new instructions[73] which now require CRC attendance at local liaison meetings in both magistrates' courts and Crown Court and which place joint responsibility on CRCs and NPS for the provision of information. We hope that this will translate into genuinely changed practice. We also hope that CRCs will follow the examples of some of the most successful areas we came across in our research, where liaison serves as a vehicle for improved local transparency. In particular, we support the use of liaison forums to share up-to-date local CRC and NPS performance data as national data is delivered with significant arrears. However, we should caution that for liaison to be effective, it will need to be supplemented with mechanisms to ensure that all sentencers have access to information shared at liaison forums.

We are concerned, however, that information about community sentences is not a core part of magistrates' training. While it is beyond the scope of this document to consider whether the current training regime is fit for purpose, it is clear that there is a role for probation to play in sharing its expertise on community sentences with sentencers. The job is not to "bang the drum" for the greater use of community sentences but to help magistrates make informed decisions on when a community sentence can be useful and the most effective way to use them. We believe that the provision of accurate information about the content and purposes of sentence options is indispensable for magistrates and that the people best qualified to deliver this information are the agencies who supervise these sentences. In our work, we've also come across examples of promising practice which can address this issue.

While, clearly, care needs to be taken to maintain judicial independence, we would take the view that it is probation staff, and even service users, who are best placed to train magistrates in the structure, content and outcomes of community sentences. In particular, delivery of training by NPS and CRC staff to both new and existing magistrates with the active involvement of probation staff is a promising approach which is being explored in some areas. We also see promise in the opportunity afforded by the most recent probation instruction on Liaison Arrangements[74] for judicial office holders to request the opportunity to observe prison and probation in their local area.

Recommendation 11

Local representatives of Her Majesty's Courts and Tribunals Service (HMCTS), NPS and CRCs should implement the new liaison arrangements set out in Probation Instruction P05/2018, with a particular focus on the "sentencer issues" and "performance information" standing agenda items.

Recommendation 12

The purpose and functioning of community and prison sentences should be a compulsory part of training for new magistrates.

Recommendation 13

CRCs, NPS and HMCTS should collaborate at a local and regional level to devise and deliver probation-led training for new and existing magistrates on community sentences.

Recommendation 14

Magistrates Training Committees should promote the opportunity for judicial office holders to observe the work of prisons and probation, and should explore the feasibility of a programme of organised visits for interested magistrates.

5. Final thoughts

If we are to make full use of the effective community sentences that we have available, sentencers (paid judges and lay magistrates) need to trust that the delivery of community sentences is effective. Sentencers need to trust that our probation services provide good-quality advice to the courts on offenders awaiting sentence and also trust that they will then deliver timely and effective community sentences when so ordered. The relationship between courts and probation is vital to a well-functioning and effective criminal justice system.

It is clear from our research that this relationship has come under undue stress. The poor implementation of the Transforming Rehabilitation reforms – for example the opaque nature of the RAR, the lack of sentencer training on the reforms and the initial exclusion of CRCs' place in liaison arrangements – were avoidable. But, at a more fundamental level, the realities of the split between the NPS and the CRCs has damaged the effective functioning of probation services and it is no surprise that sentencers have noticed.

Beyond Transforming Rehabilitation, however, we should also acknowledge the impact of the changes in the court environment. An increased focus on timeliness and efficiency, while welcome in many respects, has placed pressure on pre-sentence reporting practices in a way which may be undermining assessment in the most complex cases. And all the changes in both courts and probation need to be understood in the context of austerity with all agencies in the justice system having to deliver services with far fewer resources, creating inevitable strain.

Given that the use of community sentences is so reliant on the trust of magistrates, we return to the idea that it is imperative that the Ministry of Justice invest in annual sentencer surveys around the work of probation in courts and the operation of, at the very least, community sentences if not indeed all sentencing options. To borrow a commercial analogy, it is like a company selling services to its customers without asking them routinely what they like, what they find frustrating and what improvements they would value.

Recommendation 15

The Ministry of Justice should conduct an annual survey of sentencer perceptions of probation advice and of sentencing options, including community sentences, as a means of helping probation providers improve their performance.

There is evidence that probation practitioners are trying their best to adapt to this new environment. Despite initial concerns about the increasing use of oral reports, the streamlining of content needed for safer sentencing and new procedures for timely gathering of relevant information seems to have resulted in a robust arrangement which is suitable for most cases. The opening up of sentencer-probation liaison arrangements to CRCs seems likely to improve relationships. At a local level, emerging practice from simple initiatives such as Leicestershire's improved magistrate training, and more complex multi-agency arrangements such as the embedded CRC presence at Teeside Magistrates' Court show that there is both willingness and capacity to tackle these issues.

Still, we believe that more must be done. We need a more flexible and tailored approach to pre-sentence advice in complex cases. Information exchange between NPS and CRC must be improved. We need to look again at the potential of judicial oversight of community sentences to improve outcomes as well as building sentencer trust. Ultimately, this all rests on the crucial question of money: if we want effective community sentences, we have to pay for them. We can't be surprised that sentencers are concerned about the quality of community sentences when we, as a country, are spending less on vital interventions like treatment and less on probation staff.

Nonetheless, our findings suggest sentencers still believe in the value of community sentences – they regard them as a vital sentencing option. It is simply that their trust in them has been dented recently, largely by reforms imposed by policymakers on hard-working probation practitioners in both the NPS and CRCs. We also hope that, if the recommendations are accepted, they can go some way to addressing broader issues, like reducing the use of very short prison sentences and improving outcomes for offenders and, ultimately, reducing crime.

Recommendations

Recommendation 1
The Sentencing Council should develop a guideline on when sentencers should request a Pre-Sentence Report (PSR) to ensure that sentencers are aware of the circumstances in which they need to request a PSR and which type is likely to be most appropriate in individual cases.

Recommendation 2
The National Probation Service (NPS) should review the criteria for determining when a Standard Delivery Report (SDR) is required to ensure that they capture the full range of relevant cases.

Recommendation 3
The NPS should encourage report writers to use their professional discretion to vary the format of a report when they think it is necessary to ensure appropriate pre-sentence advice.

Recommendation 4
The Ministry of Justice should ensure that adequate funding is available for NPS court teams in line with Lord Leveson's 2015 recommendation for more consistent probation staffing in courts.

Recommendation 5
The Ministry of Justice should commission an independent review of the operation of the Rehabilitation Activity Requirement (RAR), including gathering sentencers' views on its use, and publish the results.

Recommendation 6
The Ministry of Justice and the Department of Health should urgently reconsider the overall level of funding available for drug and mental health treatment for offenders in the community, and reconsider whether the funding should be ring fenced.

Recommendation 7
The Ministry of Justice should require that Community Rehabilitation Companies (CRCs) have a permanent embedded presence in magistrates' courts.

Recommendation 8
The Ministry of Justice should develop and pilot two models of structured deferred sentences based on Scotland's Structured Deferred Sentences (SDSs): a "low-tariff" model for offenders currently facing low-level community sentences, and a "high-tariff" model as an alternative to prison sentences of up to six months.

Recommendation 9
The Ministry of Justice should pilot the use of judge-led problem-solving orders as alternatives to prison sentences of six to twelve months, as part of a wider strategy to reduce the use of short sentences.

Recommendation 10
The Ministry of Justice should consider how to provide sentencers with updates on the progress of offenders who they have sentenced to community sentences.

Recommendation 11
Local representatives of Her Majesty's Courts and Tribunals Service (HMCTS), NPS and CRCs should implement the new liaison arrangements set out in Probation Instruction 05/2018, with a particular focus on the "sentencer issues" and "performance information" standing agenda items.

Recommendation 12
The purpose and functioning of community and prison sentences should be a compulsory part of training for new magistrates.

Recommendation 13
CRCs, NPS and HMCTS should collaborate at a local and regional level to devise and deliver probation-led training for new and existing magistrates on community sentences.

Recommendation 14
Magistrates Training Committees should promote the opportunity for judicial office holders to observe the work of prisons and probation, and should explore the feasibility of a programme of organised visits for interested magistrates.

Recommendation 15
The Ministry of Justice should conduct an annual survey of sentencer perceptions of probation advice and of sentencing options, including community sentences, as a means of helping probation providers improve their performance.

Endnotes

1. Speech by the Lord Chancellor and Secretary of State for Justice, the Rt Hon David Gauke MP, at a reception of the *Care not Custody* coalition, on Thursday, 21 June 2018. Available online at: http://www.prisonreformtrust.org.uk/Portals/0/Documents/David%20Gauke%20MP%20Care%20not%20Custody%20speech%20210618.pdf
2. Ministry of Justice (2013) *Compendium of reoffending statistics and analysis 2010*, Tables 3 and 5. Mews, Aidan et al. (2015) *The impact of short custodial sentences, community orders and suspended sentence orders on re-offending*, Ministry of Justice
3. See National Audit Office (2010) *Managing offenders on short custodial sentences*, London: The Stationery Office and Redgrave and Du Mont (2017). *Where did it all go wrong? A study into the use of community sentences in England and Wales*. Crest Advisory
4. Bowen (2017) *Community sentences across borders*. Centre for Justice Innovation. Available online at: http://justiceinnovation.org/portfolio/community-sentences-across-borders/
5. Ibid.
6. It's worth noting, however, that the decline in community sentences seems to be coming primarily in the form of down-tariffing: moving to less severe sentences primarily fines. We should not, therefore assume that the decline is in itself harmful as the extra degree of coercion offered by a community sentence may be inappropriate.
7. See, in particular National Audit Office (2016) *Transforming Rehabilitation*, House of Commons Committee of Public Accounts (2016) *Transforming Rehabilitation, Seventeenth Report of Session 2016–17*, House of Commons Justice Committee (2018) *Transforming Rehabilitation: Ninth Report of Session 2017–19*
8. HMCPSI (2016) *Transforming Summary Justice: An early perspective of the CPS contribution*
9. House of Common Library (2018) *Debate Pack Number CDP-0081 Court closures and reform*
10. Chalkley (2018) *Funding for Justice 2008 to 2018: Justice in the age of austerity*. Bar Council of England & Wales, p14. Available online at: https://www.barcouncil.org.uk/media/688940/funding_for_justice-_the_last_10_years_version_-_professor_martin_chalkley.pdf
11. Source: Magistrates Association 2016 survey of magistrates, presented in Douglas Dowell (2018) *Confidence in the Community: Magistrate attitudes to Transforming Rehabilitation and Community Sentences* (London: Magistrates Association)
12. Ibid.
13. *Polaschek, Devon L. L.* (February 2012) "An appraisal of the risk-need-responsivity (RNR) model of offender rehabilitation and its application in correctional treatment." *Legal and Criminological Psychology*. 17 (1): 1–17
14. Andrews, D. A., Bonta, J., Wormith, J. S. (1 June 2011) "The Risk-Need-Responsivity (RNR) Model: Does Adding the Good Lives Model Contribute to Effective Crime Prevention?" *Criminal Justice and Behavior*. 38 (7): 735–755
15. Sentencing Council (2017) *Imposition of Community and Custodial Sentences: Definitive Guideline* p6 & p8. Available online at: https://www.sentencingcouncil.org.uk/wp-content/uploads/Definitive-Guideline-Imposition-of-CCS-final-web.pdf
16. There is some confusion in the terminology here: the E3 model refers to oral reports, FDRs and SDRs, while the accompanying Probation Instruction (04/2016), refers to oral and written on the day reports and adjournment reports. The three-tier structure is the same in both typologies, but the PI implies that FDRs will normally be delivered on the day, which does not seem to be the case in practice.
17. National Probation Service (2016) *NPS Operating Model v1* and National Probation Service Probation Instruction 04/2016 *Determining Pre Sentence Reports*
18. The E3 operating model lists four reasons why a case would merit an SDR. They are: 1. Complex multi-agency assessment required, 2. Diagnosed mental health and/or vulnerability issues, 3. Serious sexual or violent offending including domestic abuse/child safeguarding, 4. Dangerousness assessment
19. National Probation Service Probation Instruction 04/2016 *Determining Pre Sentence Report*s p7
20. National Probation Service Probation Instruction 04/2016 *Determining Pre Sentence Report*s p7
21. *Ministry of Justice Offender Management Statistics Quarterly (various editions) table 4.10*
22. *Ministry of Justice Offender Management Statistics Quarterly (various editions) table 4.10*
23. Leveson (2015) *Review of Efficiency in Criminal Proceedings* p43
24. Judiciary of England and Wales (2018) *Better Case Management Handbook* p8
25. National Probation Service Probation Instruction 04/2016 *Determining Pre Sentence Reports*
26. HM Inspectorate of Probation (2017) *The Implementation and Delivery of Rehabilitation Activity Requirements* p23
27. Leveson op. cit. p43
28. *Ministry of Justice Offender Management Statistics Quarterly (various editions) table 4.10*
29. See, for example NAPO's Parliamentary Briefing Ministry of Justice Changes to Pre-Sentence Reports accessed on 12 November at https://www.napo.org.uk/ministry-justice-changes-pre-sentence-reports
30. These evaluations covered all report formats. However, in the following discussion, it was clear that in making their judgements, participants had considered the fact that the preponderance of reports were now being delivered orally.
31. NPS Court Improvement Tool (2016)
32. HM Inspectorate of Probation (2017) The work of probation services in courts p22

33. HM Inspectorate of Probation (2017) The work of probation services in courts p22-23
34. HM Inspectorate of Probation (2017) The work of probation services in courts p24
35. NPS Probation Instruction PI 04/2016 which accompanied the E3 operating models specifies that the FDR should be used for all cases except those which meet one of four criteria: 1. Complex multi-agency assessment required, 2. Diagnosed mental health and/or vulnerability issues, 3. Serious sexual or violent offending including domestic abuse/child safeguarding, 4. Dangerousness assessment (p15)
36. NPS Probation Instruction PI 04/2016 p11
37. Source: Magistrates Association 2016 survey of magistrates, presented in Douglas Dowell (2018) *Confidence in the Community: Magistrate attitudes to Transforming Rehabilitation and Community Sentences* (London: Magistrates Association)
38. Ministry of Justice (2013) Transforming Rehabilitation: A Strategy for Reform
39. HM Inspectorate of Probation (2017) *The Implementation and Delivery of Rehabilitation Activity Requirements* p46 accessed on 12 November at https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2017/02/Report-Rehabilitation-Activity-Requirement-Thematic-final.pdf p8 p46
40. Ibid. p8
41. HM Inspectorate of Probation (2017) *The Implementation and Delivery of Rehabilitation Activity Requirements* p23
42. HM Inspectorate of Probation (2017) *The Implementation and Delivery of Rehabilitation Activity Requirements*
43. *Ministry of Justice Offender Management Statistics Quarterly (various editions) table 4.10*
44. Statistics obtained by *The Independent* from local authorities via freedom of information request and reported in May Bulman (25 August 2017) *Drug and alcohol treatment funding slashed across England by 16% in four years* in *The Independent* on 20 October 2018 accessed on 27 October 2018 at https://www.independent.co.uk/news/uk/home-news/spending-on-drug-and-alcohol-treatment-slashed-by-105m-in-four-years-a7912531.html
45. Analysis by the Royal College of Psychiatrists and reported in May Bulman (25 August 2017) *Mental health trusts left with less funding than 2012 due to government cuts, new analysis reveals* in *The Independent* on 20 October 2018 accessed on 27 October 2018 at https://www.independent.co.uk/news/health/mental-health-trusts-uk-funding-government-cuts-royal-college-psychiatrists-a8219486.html
46. Ministry of Justice Press Release (10 August 2018) "Vulnerable offenders steered towards treatment" accessed on 12 November 2018 at https://www.gov.uk/government/news/vulnerable-offenders-steered-towards-treatment
47. Data taken from *Ministry of Justice Offender Management Statistics Quarterly, table 4.4 (various editions)*
48. Clive G Long, Olga Dolley, Clive Hollin (2018) "The use of the mental health treatment requirement (MHTR): clinical outcomes at one year of a collaboration", Journal of Criminal Psychology, Vol. 8 Issue: 3, pp215-233
49. Magistrate Magazine (undated) *Awards for Milton Keynes pilot project for offenders* accessed at https://www.magistrates-association.org.uk/news/awards-milton-keynes-pilot-project-offenders on 25 October
50. Ugwudike, P. (2008) 'Developing an effective mechanism for encouraging compliance with community penalties' (unpublished PhD thesis, Swansea University)
51. HM Inspectorate of Probation (2018) Enforcement and Recall: A thematic inspection by HM Inspectorate of Probation p7 Available online at: https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2018/02/Enforcement-and-Recall-report.pdf
52. Hearnden, I. and Millie, A., Home Office (2003) and Pamela Ugwudike (2010) in McNeill et al. Offender Supervision, Willan
53. Rossman S.B., J. Roman, J.M. Zweig, M. Rempel, C. Lindquist (2011) The Multi-site Adult Drug Court Evaluation: The Impact of Drug Courts — Volume 4 (Urban Institute) accessed on 13 November 2018 at https://www.ncjrs.gov/pdffiles1/nij/grants/237112.pdf
54. Research in drug courts has indicated that there are standardised practices which drive these perceptions within the judge to offender relationship: (i) continuity of the judge (where practicable, the same judge supervising the offender for the whole period of the court order); (ii) the frequency of the relationship (regular reviews that are predictably scheduled); (iii) the individualisation of that relationship (e.g. the judge remembers the specific needs and situations of each participant from hearing to hearing); (iv) voice (the opportunity for offenders to voice their side of the story); and (v) the importance of clear communication (both oral and written, avoiding legal jargon).
55. For a fuller discussion of the evidence base on problem-solving courts see Phil Bowen and Stephen Whitehead (2016) Problem-Solving Courts: An Evidence Review (London: Centre for Justice Innovation)
56. Sentencing Council guidance on deferred sentences accessed on 29 October 2018 at https://www.sentencingcouncil.org.uk/explanatory-material/item/deferred-sentences/
57. NPS Probation Circular 78/2005 *Community Order Completion and Progress Reports to Court* accessed on 29 October 2018 at https://www.scribd.com/document/1430425/UK-Home-Office-PC78-202005
58. HM Inspectorate of Probation (2018) Enforcement and Recall: A thematic inspection by HM Inspectorate of Probation p8. Available online at: https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2018/02/Enforcement-and-Recall-report.pdf

59. Ibid. p9
60. HM Inspectorate of Probation (2017) *The work of probation services in courts* https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2017/06/The-work-of-probation-services-in-courts-report.pdf, p1
61. Jane Eunson and Lorraine Murray (Ipsos MORI Scotland), Hannah Graham, Margaret Malloch and Gill McIvor (University of Stirling) (2018) Review of the Aberdeen Problem-Solving Approach (Edinburgh: Scottish Government). Available online at: https://beta.gov.scot/binaries/content/documents/govscot/publications/research-publication/2018/09/review-aberdeen-problem-solving-approach-report/documents/00540003-pdf/00540003-pdf/govscot:document/
62. Katherine Macdivitt (2008) An Evaluation of the Structured Deferred Sentence Pilots (Edinburgh: Scottish Government). Accessed on 12 November 2018 at: https://www2.gov.scot/Publications/2008/04/09134401/0
63. Eunson et al. (2018) op. cit.
64. Data taken from *Ministry of Justice Offender Management Statistics Quarterly Table 4.9* for the four quarters making up the 2017-18 Financial Year
65. HM Inspectorate of Probation (2018) Enforcement and Recall: A thematic inspection by HM Inspectorate of Probation accessed on 13 November 2018 at: https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2018/02/Enforcement-and-Recall-report.pdf
66. Data taken from Ministry of Justice Offender History Pivot Table Q1 2018
67. Stephen Whitehead (2015) *Better Courts Case Study: Plymouth CASS* (London: Centre for Justice Innovation)
68. NPD Probation Instruction 49/2014 *Liaison Arrangements between Sentencers and Providers of Probation Services*
69. Gibbs (2014) *Fit for purpose: do magistrates get the training and development they need?*
70. NPS PI 49/2014
71. NPS Probation Instruction 05/2018 *Liaison Arrangements between Sentencers and Providers of Probation Services*
72. This finding comes from fieldwork conducted in spring and summer 2018. It is possible the picture has progressed since that point.
73. PI 05/2018
74. PI 05/2018 p6

Written by:
Stephen Whitehead with Claire Ely

Thanks to:
The following people have been invaluable in the preparation of this report: Fuschia Allen, John Bache, Phil Bowen, Jon Collins, Mark Day, Douglas Dowell, Gwen Robinson, Richard Rowles, Helen Schofield, and all at the Probation Institute, Karen Stewart, Darren Thomson and the wonderful and wise Heather Munro. We would like to express a special thanks to all the participants in our research, and in particular the many probation officers who have given so much of their time and expertise.

This report was made possible by the generous support of The Hadley Trust and the Monument Trust.