

Rehabilitating Probation: Response to Sentencing Review Consultation

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This submission is by the [Rehabilitating Probation](http://www.rehabilitating-probation.org.uk) project team. This is a major project, funded by the Economic and Social Research Council (ESRC), to conduct research into the experiences and consequences of the unification in June 2021 of probation services in England and Wales. Our project captures and analyses first-hand accounts of the impact of organisational change at a) local, regional and national levels; and b) from a range of perspectives, both within and outside of probation. We have conducted 340 research interviews, via three annual sweeps. These have examined the experiences of frontline probation staff, Regional Probation Directors, national and local partners and stakeholders, national policy makers and operational leads. We have also co-produced research workshops with people who have experienced being supervised by probation. This submission is also informed by the prior *Devolving Probation Services* project, an ESRC funded project conducted in 2014-2015 by three members of the *Rehabilitating Probation* team to examine experiences of the Transforming Rehabilitation reforms.

In response to this Consultation, drawing on our research findings, we provide evidence and policy recommendations in relation to the following questions:

- Theme 1: What have been the key drivers in changes in sentencing, and how have these changes met the statutory purposes of sentencing?
- Theme 2: How might we reform structures and processes to better meet the purposes of sentencing whilst ensuring a sustainable system?

- Theme 4: How should we reform the use of community sentences and other alternatives to custody to deliver justice and improve outcomes for offenders, victims and communities?

Executive Summary

We encourage the Sentencing Review panel:

1. To ensure that, as far as possible, community sentences operate as a genuine alternative to custody
2. Relatedly, to ensure that considerable attention is given to ensuring that the population of individuals to be subject to probation supervision is carefully designed and structured; and that it reflects coherent normative and policy considerations.
3. To consider ways to enhance judicial understanding of the content, implementation and effectiveness of the current range of Community Order requirements
4. Related to (3) above, to consider whether to replace the Rehabilitation Activity Requirement (RAR) with the well understood, 'traditional', supervision requirement
5. To recognise that the decade of re-structuring of probation means that foundational questions about its purpose as part of the criminal justice system have been neglected. This requires urgent attention and remediation. Here, by clear-eyed reflection on the assumptions inherent in particular sentencing changes that may be considered as part of the review.
6. To recognise that appropriate, well-functioning and efficient systems, mechanisms and processes for probation are essential to the successful implementation and functioning of sentencing measures proposed by the Sentencing Review, and probation's role within that. These must be reviewed as a complement to the Sentencing Review, ensuring that the systems and processes in place are proportionate, effective and support rather than hinder good probation practice

Theme 1: History and trends

What have been the key drivers in changes in sentencing, and how have these changes met the statutory purposes of sentencing?

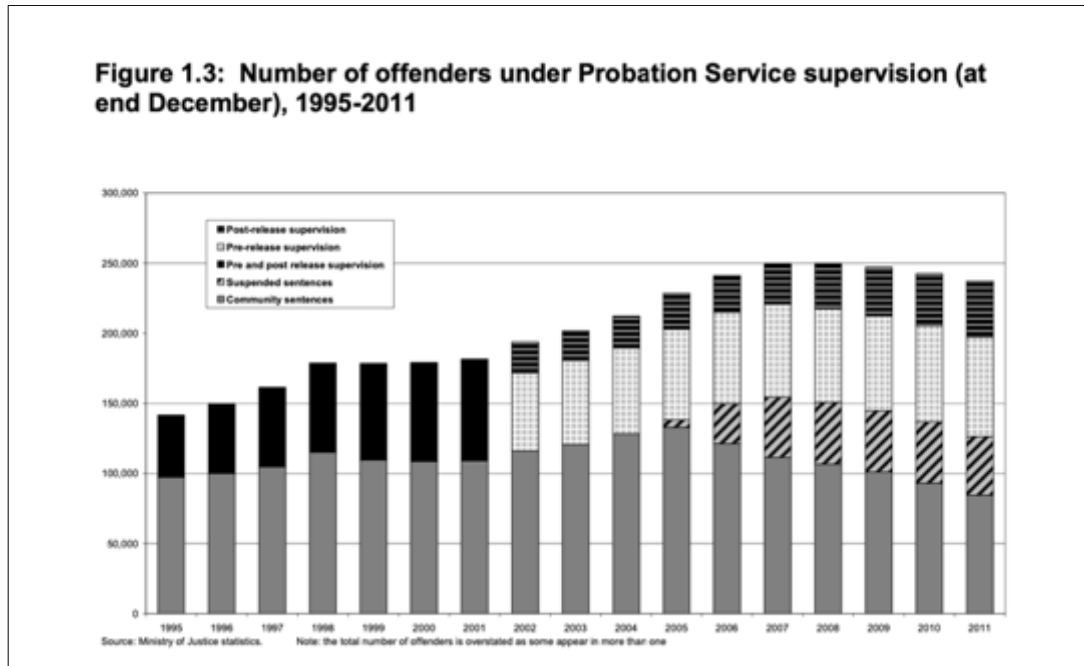
The impact of changing sentencing practices, including on levels of crime and offending

In the last 30 years there have been considerable changes in the nature of the population supervised by the probation service, relating to changes in sentencing policy. The overall population has grown. It has also shifted from a position in the mid-1990s where the majority of people supervised were serving a community sentence to a position where the majority of people supervised are doing so as the result of a custodial sentence: subject to pre-custodial supervision, post-custodial supervision, or serving a suspended custodial sentence.

In 1995 there were fewer than 150,000 people under probation supervision. At this time most of the probation caseload (two-thirds) were people serving community sentences and the remaining third was under post-release supervision. Since the mid-2000s there have been significant changes in the composition of the probation caseload. The annual probation caseload comprising court orders and pre and post release supervision has also increased by 39% between 2000 and 2008, reaching 243,434 by 2008 (MoJ, 2012).

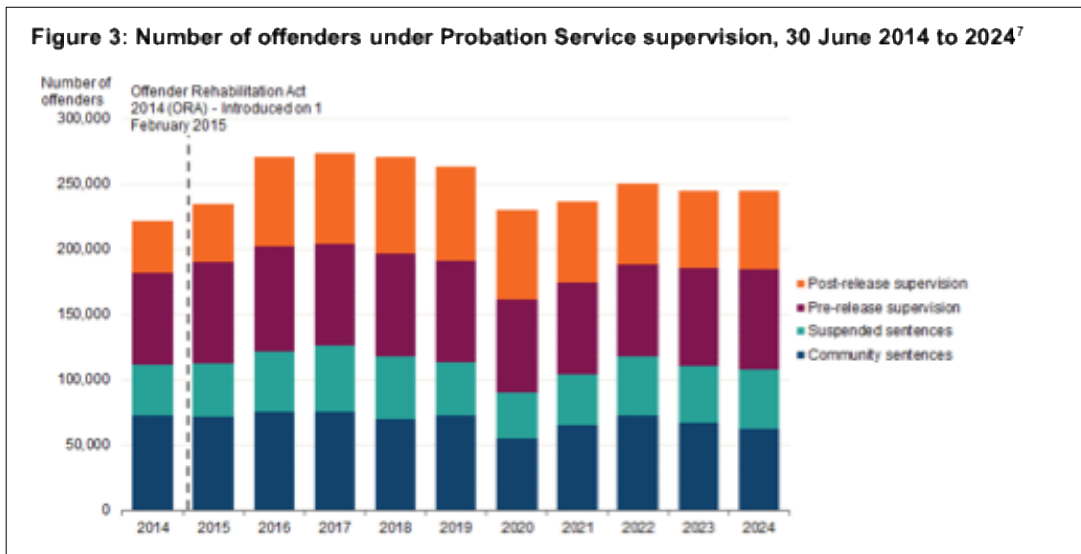
The rise in the population of people under probation supervision during this period has been attributed to two main drivers: 1) the introduction of Suspended Sentence Orders (SSOs) in 2005 under the *Criminal Justice Act, 2003* and 2) an increase in the pre and post-release supervision caseload driven by a continued growth in the numbers of people serving custodial sentence of 12 months or more, and longer licence periods (as a result of changes introduced in the *Criminal Justice Act 2003*). As the Figure below illustrates, by 2011, community sentences constituted

approximately 35% of the probation caseload and suspended sentences accounted for 17%. The remaining caseload comprised of people subject to pre (30%) and post (17%) release supervision.



Source: MoJ (2012:10) *Offender Management Statistics Quarterly Bulletin, April to June 2012, England and Wales*.

The introduction of post-sentence supervision requirements for people serving prison sentences of 12 months or less under the *Offender Rehabilitation Act (2014)* (which also provided the legislative basis for the *Transforming Rehabilitation* reforms), expanded the probation caseload, after a period of retraction. These requirements further shifted the balance of the probation caseload towards pre-and post-custodial supervision. The latest publicly available caseload data (June 2024) shows that people subject to court-ordered community supervision account for 44% of the 238,646 people on the probation caseload, and of this number a significant proportion are serving suspended prison sentences, while pre or post-custodial supervision comprises 53% of the caseload.



Source: MoJ (2024) *Offender Management Statistics Bulletin, England and Wales (April to June 2024)*.

The shift in the basis for which people are subject to probation supervision over the past two decades, and the acceleration in these dynamics in recent years, means that **probation has increasingly become a custody-adjunct service**. Legislative changes enacted over a similar time period have also changed the composition and nature of community sentences. The *Criminal Justice Act (1991)* re-positioned probation as ‘punishment in the community’ rather than as an alternative to custody, and further **legislative changes have increased the punitive ‘weight’ of community sentences** (Bottoms, 2017). An emphasis on punitiveness was further effected in the *Crime and Courts Act 2013*, with the requirement that Community Orders should include at least one punitive element. **Alongside these attempts to ‘toughen-up’ community sentences, there has also been an increased focus on the role of probation in public protection** (discussed below).

Theme 2: Structures

How might we reform structures and processes to better meet the purposes of sentencing whilst ensuring a sustainable system?

Judicial confidence in available sentencing options

Probation services were unified in June 2021 and since then **there has been a year-on-year increase in judicial satisfaction with probation services nationally**, as measured by the annual judicial survey. Against a target of 70% (as a proportion of survey participants expressing satisfaction with probation services in a 12 month period), there has been an increase from 59.4% in 2021-22 to 71.2 in 2023-4 (Ministry of Justice 2024a). Meanwhile, official statistics show a small (10%) increase in demand for pre-sentence reports (PSRs) between 2022 and 2023. However, **there has been a continuing decline in the use of Community Orders**, both numerically (from 99,166 in 2013 to 58,220 in 2023) and as a proportion of all sentences passed (Ministry of Justice 2024b). These different measures are all potentially relevant to an understanding of judicial confidence in probation, but **they present a confusing and somewhat contradictory picture**. They shed limited light on the factors that may be influencing judicial views and/or behaviour.

Our research project *Rehabilitating Probation* has included a work package designed to examine how key partners in the criminal justice field evaluate the legitimacy of the reformed probation service, and a key element of this work has involved research interviews (conducted in 2023 and 2024) with members of the judiciary in one of the 12 current probation regions.

Our preliminary analysis of this data shows **a sustained high level of regard for the *moral legitimacy* of probation: the values that underpin probation work and the representatives of probation with whom the judiciary interact on a daily basis**. However, **a combination of factors (most notably the part-privatisation of the service under the *Transforming Rehabilitation* reforms in 2014 and the impacts of the pandemic) have undermined the *pragmatic legitimacy* of probation from a judicial perspective: its ability to meet the needs of the judiciary**. Key concerns include the service's capacity to meet demand for producing timely pre-sentence reports; delays in commencing community sentences; the timely enforcement of orders; and a lack of information about the content and effectiveness of the various requirements of community orders. Our most recent research interviews suggest that the *Probation Reset* (implemented

from April 2024) has generated new concerns about whether the implementation of community order requirements will be in line with sentencers' expectations.

Preliminary analysis of data collected as part of our study thus suggests that **there are some potentially significant barriers to the increased use of Community Orders by the judiciary. Much of this stems from the combined impacts of factors that have not been within the control of the probation service itself (i.e. externally imposed organisational reforms and the pandemic).**

We are aware of ongoing work led by the probation courts team within HMPPS to enhance the efficiency and utility of pre-sentence advice, and we consider this to be a very positive step for enhancing judicial confidence. We are also aware that HMPPS is undertaking much needed work around the recruitment and retention of skilled probation staff, and we see this as an essential component of a wider strategy aimed at enhancing the pragmatic legitimacy of probation from a judicial perspective.

The Sentencing Review Panel should however consider ways to enhance judicial understanding of the content, implementation and effectiveness of the current range of Community Order requirements, and whether changes to legislation and/or sentencing guidelines could contribute to this. In particular we would invite the review to embrace this opportunity to reinstate the *Supervision Requirement* (which was replaced by the *Rehabilitation Activity Requirement (RAR)* by the 2015 Offender Rehabilitation Act). The RAR is an unhelpfully opaque and confusing element of a community sentence. A substantial body of research attests to the importance of a positive working relationship between the supervisor and supervisee as the cornerstone of an effective community sentence (Robinson & Dominey 2019). Reinstating the 'traditional' and well understood supervision requirement would, in our view, be the best way to ensure that this essential foundation for effective probation practice is properly resourced and enabled, and a positive step toward enhancing judicial confidence in community sentences.

Theme 4: Community sentences

How should we reform the use of community sentences and other alternatives to custody to deliver justice and improve outcomes for offenders, victims and communities?

How we can manage offenders in the community in a way that ensures the public can have confidence that community sentences are robust, combining effective punishment with rehabilitation to prevent further offending

The necessary starting point must be to recognise the significant legacy of the sweeps of profound organisational change experienced by probation practitioners over the past decade. This has ongoing tangible impacts on the probation service's capacity effectively to manage offenders in the community, and to do so in a manner that carries public confidence. **Our research findings suggest that there is much force to the conceptualisation of the Probation Service as a 'post-traumatic organisation' (Robinson, 2022: 264).**

Through our research – the Rehabilitating Probation project (2022-2025) informed by the earlier *Devolving Probation Services* project (2014-15) – we have been able to capture in detail the highly detrimental impact organisational change has had on the capacity of probation practitioners, individually and collectively, to operate effectively. Our findings add nuance to the succession of PDU Level Inspections delivered by HM Inspector of Probation (HMIP) in the years that have followed unification and the pressures on the probation service identified therein (see HMIP 2023). Further, our research provides insights into the work that is required to mediate, possibly to minimise, the extent to which these issues impact on the probation service's ability to better meet the purposes of sentencing. We highlight three themes emerging from our research that need to be considered.

First, our research has captured how the frequency of organisational change, systemic staff shortages and issues with the quality of the estates has made

working in probation exceptionally challenging and that this has played through into staff emotional well-being. It has negatively impacted staff judgements about their capacity to deliver effective practice. The time and energy consumed in making sense of, and implementing, organisational change has been a constant feature of the 229 interviews we have conducted with probation managers and practitioners. Whilst all acknowledge that change is a necessary and inevitable part of organisational life, our research captures that probation staff at national, regional, and local levels are experiencing ‘repetitive change injury’ (Wynen et al, 2019). Regional and local probation senior manager respondents routinely estimated to us that they had spent over three-quarters of their working time over the last 10 years ‘centred on change management, and not [on] core business’.

Second, many of our respondents expressed deep concerns about the lack of nurturing of the *probation craft*, the developed skill of balancing care and control. We have found enduring levels of loyalty and commitment to the job of probation and to the communities of people practitioners see themselves as serving (see Millings et al. 2023). But managers and practitioners acknowledge the *character* of the service has, and continues, to change. One notable feature of this change has been the incorporation of probation into HMMPS, which by many is viewed as a prison-centric organisation, and an increased centralised organisational control model within civil service structures (Carr, 2022). This was viewed by many within our research as diminishing professional autonomy and mitigating against responsive localised decision-making and service delivery.

Inexperience is a major dynamic: In our case study area (and seen nationally), nearly half the staff in PDUs have been in the probation service for less than two years and large numbers of the younger in-service staff have engaged exclusively with online training formats. We found new staff feeling under-prepared, and experienced staff frustrated at not being able to support their inexperienced colleagues due to the overwhelming demands on their own time. All felt they needed

opportunities to reflect upon and develop their professional practice, in order to make the delivery of community sentences sustainable.

Third, our research aligns with HM Probation Inspectorate (2024) data that indicates probation workers are experiencing a sense of individual and collective vulnerability that is impacting on practitioner confidence. The Inspectorate (HMIP 2024:3) documented the high level of fear that the Serious Further Offences (SFOs) review process generates and of an associated 'perceived culture of blame' that accentuated individual levels of accountability.

Alongside the attempts to 'toughen-up' community sentences noted above, there has also been an increased focus on the role of probation in public protection. However, as has been observed, foregrounding public protection is invariably a double-edged sword (McCulloch and McNeill, 2007). The promise to 'protect the public' is a potentially all-encompassing task, and one that leaves the door open to accusations of failure when a serious incident occurs, whether or not this was feasibly preventable via different actions or interventions by agencies such as probation. The increased prominence of Serious Further Offences (SFOs) in recent years, in media depictions of probation and related public debate, provides an illustration of this.

Fears of Serious Further Offences (SFOs) have been a dominant theme in our research, mentioned frequently by practitioners in interviews. Respondents described a fear of being subject to a review process and a sense of responsibilisation, if an SFO occurred on their caseload. This was voiced as a concern that they could be held individually accountable - if any shortcomings were identified in the management of the case. Staff described ways in which they managed these feelings, through becoming increasingly process driven. There is also some evidence from interviews that this led to more risk-averse practices, including a recourse to recall.

The Purpose and craft of Probation

Within the context described above, staff reported wrestling with powerful dilemmas

- To what extent to seek to go ‘above and beyond’, to seek to achieve exemplary probation practice, in a context which makes this implausible. Or to what extent to prioritise the preservation of self, focusing on their immediate professional domain: achieving the measurable expectations of their role (‘ticking the boxes’) and no more.
- To contend with **wider questions around the purpose of probation: what is it and what is it for?** Our research suggests these dilemmas are most acute within sentence management, where people struggle to see a long-term future for their careers and where administrative demands are most relentless (see Millings et al. 2025).

Most practitioner respondents considered that they operated in a heavily process-driven landscape, and in a context where public services more broadly have experienced considerable challenge and reduction. This process-driven approach was perceived to be oriented primarily towards public protection, often in a manner that was defensive and for example resulting in an orientation towards prison recall where otherwise more discretion, and a desire to pursue other measures in the community, might be more effective.

Our research suggests that the past decade of relentless organisational reform experienced by probation has crowded out the potential for consideration of the substantive purpose of the probation service – and by corollary, community sentences and other activities such as unpaid work and forms of post-sentence supervision – and crowded out the ongoing fostering of the craft of probation practice and the necessary underlying sense of the purpose of probation (see Annison et al, 2024; Millings et al, 2025).

Public sector reform expert Christopher Hood has observed that **it is ultimately ‘organisational and institutional cultures, whether of hierarchical**

management, blame-avoidance or something else, [which] shape the outcomes of efforts' at public service reform (Hood and Dixon, 2015 197). We argue this lesson is equally applicable to sentencing policy reform and their likely 'on the ground' impact.

Further, for a public service organisation, good practice depends in large part on a sense of shared mission. This draws on reservoirs of intrinsic motivation held by practitioners, informed by their own sense of identity within that organisation and its envisaged purpose. **For the Sentencing Review, it is essential that this neglect of foundational questions about the purpose of probation as part of a criminal justice system is recognised, and reflected upon as part of the review process.**

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