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Transforming Probation Services in Magistrates' Courts¹

Introduction

The attachment of probation workers to the criminal courts is as old as the practice of probation itself, and a rare element of continuity in the history of probation services and provision. Indeed, probation work in the courts has always been the 'frontline' of probation practice: it is the principal context in which sentencers come into contact and interact with probation workers, and where many defendants will encounter 'probation' for the first time. Yet despite the endurance and importance of probation work in the criminal courts, researchers have only rarely shown an interest in it (Robinson & Svensson 2013). It is equally surprising that the first dedicated inspection of court work in England & Wales took place as recently as 2017. The report of the thematic inspection offers some interesting insights into contemporary probation work in courts, but it does not fill the research void in respect of court work which the inspection team themselves acknowledge (HMIP 2017: 11).

This article presents findings from an exploratory study of court work in two English Magistrates' courts which (in common with the thematic inspection) was conducted in 2017. The study involved two principal research methods: observation of the daily activities of court team members and semi-structured interviews with 21 members of the two teams, which took place towards the end of the research. The aim of this article is to provide an insight into contemporary probation work in Magistrates' courts, in the wake of two major reform programmes: *Transforming Rehabilitation* (Ministry of Justice 2013) and *Transforming Summary Justice* (e.g. Department for Constitutional Affairs 2006; Ministry of Justice 2012a). These parallel programmes of reform have had major implications for probation work in court settings, the first seeing responsibility for court services assigned to a new National Probation Service (NPS) in the context of a newly fragmented probation field; and the second emphasising the speeding up of court processes, including the provision of pre-sentence reports (PSRs) delivered by probation.

¹ This article is dedicated to the members of the two teams who so generously gave their consent to participate in the study, and whose company was thoroughly enjoyable throughout.

The article begins by presenting a brief overview of the limited research on probation work in courts, before going on to consider the more recent changes to the provision of court services alluded to above. The study on which this article is based is then described, and then the key findings are presented in six sections, which consider, in turn: place, space and territory; roles and teamwork; the particular challenges of court work; the positive aspects of court work; contemporary frustrations; and finally questions of incorporation and identity.

Probation in court: a brief review of research

Despite its importance, probation work in the courts has attracted almost no research attention. Where researchers have shown an interest in probation court work, it has tended to be the artefacts of that work – i.e. pre-sentence reports - that have been the subject of analysis (e.g. Gelsthorpe et al 2010; Hudson & Bramhall 2005; Gelsthorpe & Raynor 1995). The only empirical project in England & Wales to shed light on probation's role in court was Carlen's seminal study *Magistrates' Justice*, which is now more than 40 years old (Carlen 1976; see also Carlen & Powell 1979). Carlen characterised magistrates' courts as 'multi-professional workshops' and emphasised conflict, competition and 'uneasy compromise' in the daily interactions between the various professional groups in and around the courtroom, with probation officers jostling for position and credibility alongside police officers, social workers and solicitors.

Similar themes are also evident in Margaret Powell's reflection on her own practice as a probation officer in London from the early 1970s, which appeared in a practice text edited by critical theorists Hilary Walker and Bill Beaumont. Powell (1985) described her experience of performing court duty on a fairly regular basis over more than a decade. She argued that the probation officer in court occupied a weak, disadvantaged position compared with other professionals, having "little with which to barter for power and influence" (1985: 21), including less technical knowledge than clerks and lawyers, and little control over space or time in the court arena. The editors introduced Powell's chapter as one of two dealing with probation work in the context of more powerful state institutions (the other being a chapter on probation work in prisons), the practice issues arising from "our marginal position", and "the need to combat the twin

dangers of incorporation and exclusion" in such contexts (Walker & Beaumont 1985: 5). Meanwhile, McWilliams (1981) suggested a decline in the influence, status and visibility of probation officers at court in the preceding 15 or so years, which he attributed to a growing gulf between a virtually unchanging bench and a much changed probation service which, in his view, was becoming more accountable to the Home Office rather than the courts (though see James 1982 for a critique of this argument).

Similar concerns around status and marginalisation were also found in a Scottish study of criminal justice social workers whose role included preparing SERs. The Scottish workers expressed status anxiety which was linked to their physical dislocation from the court in field offices and, as a result, felt "on the margins" and "uncertain of their place" in the legal field (Halliday et al 2009: 417). Most recently in England & Wales, Mawby & Worrall's (2013) interview-based study of the occupational cultures of probation work touched upon probation work with other agencies, including courts, police and prisons. They suggest that a key turning point in the relationship between probation and the courts came at the close of the twentieth century, when the drive to speed up justice - and with it the delivery of pre-sentence reports - began to take hold (see also Robinson 2017). They saw in this development a perceived threat to the professional judgements of probation officers, "since fast delivery reports are inevitably based on limited information and do not have to be prepared by qualified probation officers [...] [who] are now routinely replaced by lesser qualified probation service officers in court" (2013: 65). Mawby & Worrall concluded that:

the historically close, or federated, relationship between probation and the courts has become increasingly distant as the perceived traditional skills and contribution of probation to the process and procedures of sentencing have been regarded as less indispensable (2013: 82).

In common with McWilliams more than 30 years previously, then, Mawby & Worrall (2013) present a narrative of decline in respect of the status of probation at court.

Transforming Rehabilitation, 'E3' and the creation of specialist court teams

Worrall & Mawby's research was published a year before the implementation of the *Transforming Rehabilitation* reforms which were to dramatically reconfigure the probation field (Robinson 2016). In the context of these reforms, the existing 35 public

sector Probation Trusts were dissolved and replaced with a new (public sector) National Probation Service (NPS) and 21 Community Rehabilitation Companies (CRCs) contracted out to a range of providers dominated by private sector interests. In this process, responsibility for the provision of probation services in the criminal courts fell to the new NPS. A series of reports published by HM Inspectorate of Probation between April 2014 and May 2016 documents this transition, highlighting the introduction of new processes and procedures associated with the reconfiguration of probation services and the new requirement to make decisions about the appropriate allocation of cases for supervision between the NPS and CRCs (e.g. see HMIP 2016). Specifically, new mandatory steps were added to the PSR production process: a new Case Allocation System (CAS), Risk of Serious Recidivism (RSR) tool and Risk of Serious Harm screening all now needed to be completed prior to the allocation of the case to the appropriate provider (NOMS 2014).

Whilst adjusting to these significant changes, the NPS published *Effectiveness, Efficiency and Excellence*, which proposed (among other things) a fully specialised court service (NPS 2015). Colloquially known as E3, this document emphasised the efficient allocation of resources across the different areas of responsibility of the new NPS and the promotion of consistent practices across its seven regions. The subsequent publication of an NPS Operating Model confirmed the establishment of dedicated court teams, to take on responsibility for the preparation of all PSRs and conducting all enforcement work, as well as the provision of other court duties (NPS 2016).

Due to the lack of research in this area, noted above, little is known about the organisation of probation court work or court teams in England & Wales prior to TR, although there are strong indications that probation areas – latterly Trusts – were free to make local decisions in respect of the deployment of staff to perform court duties, including the division of PSR writing responsibilities between workers based in court teams and those based in field teams (e.g. NPS 2015; Burnett 1996; Powell 1985). Powell's (1985) account suggests the emergence of specialist court probation teams from the mid-1970s in some magistrates' courts, previously found only occasionally at Crown Courts. However, in Burnett's (1996) study of assessment and case allocation practice, only 5 of the 40 teams she visited had fully specialist teams in which no reports were allocated to and prepared by field officers. The dominance of this mode of

organisation, Burnett argued, reflected a general preference for continuity of the relationship formed between the report writer and the offender at the pre-sentence stage, when a preliminary supervision plan or ‘contract’ would be drafted in conjunction with proposals for community-based sentences. The NPS Operating Model severed that connection between report author and supervision, ensuring that the report author would in future never go on to supervise the case, but would instead pass him or her on to one of two new organisations.

This new mode of organisation raises a number of important questions about the contemporary experience of court teams. For example, how do specialist teams operate? How do members of court teams understand and experience their roles? And, do specialist teams risk incorporation into the dominant culture of the court, as Powell (1985) suggests? These are all questions on which the research presented below aims to shed some much needed light.

The study

This article presents findings from a study of probation court work conducted by the author in the first seven months of 2017, with two probation teams based in Magistrates’ courts. The study set out to gain an insight into the contemporary roles and activities of court teams and the perspectives and experiences of court workers themselves. Having obtained ethical approval for the study from the researcher’s institution, permission to conduct the study in one of the seven NPS regions was sought from and granted by the National Offender Management Service in 2016 and thereafter access to the two teams was agreed with local probation managers². An information sheet about the research was circulated to team members prior to meeting the teams to discuss the research and elicit their informed consent to be observed and (potentially) approached for an interview, with no obligation to agree. No objections to the research or to being observed were voiced by members of either team. Team members were assured that both observational data (in the form of hand-written notes) and interview data (in the form of audio recordings) would be anonymised in any reports or publications stemming from the research.

² Although they were in the same NPS region, the two sites were formerly (pre-TR) covered by different Probation Trusts.

The teams involved in the study varied in size: the first, in a city centre, was a large team of about 20 practitioners, 7 support staff and two managers of Senior Probation Officer (SPO) grade. The research began with this team, where I spent several weeks before joining the second team, which was chosen for contrasting size. This team was based in a town and consisted of 6 (mostly part-time) practitioners, two support staff and one part-time manager of Senior Probation Officer SPO grade.

The study deployed two methods: **overt** observation of the everyday activities of the frontline practitioners, and semi-structured interviews with members of the two teams in a variety of roles (including line managers, practitioners and administrative support staff). Observations spanned 81 hours on 13 separate days, and were conducted on different days of the working week with a view to observing a range of activities in the context of varying court schedules. A typical day spent with a court team included time in the 'backstage' areas of the team's offices, as well as 'frontstage' in courtrooms and in small interview rooms where defendants³ were being interviewed for PSRs (Goffman 1990). Both observations and interviews were approached purposively, with a view to capturing the maximum possible variety of roles, tasks and experiences. In total I conducted interviews with 21 people, all of whom I had already spent some time observing or shadowing. These were made up of 2 managers (SPOs), 6 administrators, 5 Probation Officers (POs) and 8 Probation Service Officer (PSOs). No-one with whom I requested an interview declined. In this article, the anonymity of interviewees is protected by the use of pseudonyms. This article draws on both the interviews and my observations, data from which was analysed by the researcher using an inductive approach, which involved the identification of common themes (as well as issues which indicated contrasts) between the two sites and across both sets of data.

'Embedded probation': place, space and territory

As the brief review of the literature presented above has shown, the physical dislocation of probation workers from courts has clearly contributed to feelings of marginalisation and status anxiety, both in England & Wales and in other jurisdictions where probation staff have 'plied their trade' at court (e.g. Powell 1985; Halliday et al 2009; Beyens &

³ Defendants whose PSR interviews were observed were asked to give their verbal consent to my presence as an observer. It was explained that the focus of the research was the work of probation staff and that no details about them or their case would be recorded. No notes were taken during these interviews.

Scheirs 2010). In the current study, however, no such dislocation was found. In both sites, probation had its own suite of offices within the Magistrates' court building.

In the City, the probation suite consisted of a reception area and waiting room on the ground floor accessible via a door clearly labelled 'probation'. From there, a further door (with entry code) led upstairs to two large open-plan offices and a smaller office where the manager was based. In the Town, probation staff occupied three rooms to the rear of the first floor of the court building, accessible via a door (and entry code) on the ground floor. One was the manager's office; the other two were shared by practitioners and support staff. Both teams also had access to a kitchen/common room area, as well as doors to the street which did not require them to pass through the court building. The offices of both teams were adjacent to a space used by mental health workers who regularly visited the courts from but were based in local diversion units.

Although these dedicated spaces for probation staff were not new and were a legacy from the former Trusts, they were having to accommodate teams that were expanding in light of the move toward a fully specialist model. Until very recently, both courts had had dedicated probation teams, but these had been staffed entirely by PSOs (managed by an SPO), and the allocation of reports had been split between the court team and other staff (including POs) based in local field teams. Not surprisingly, in the wake of the turmoil created by TR, the 2016 decision to create specialist teams had unsettled NPS staff in and beyond the court teams, as it presaged a process of review to determine courts' resourcing needs, and the inevitable re-deployment of some staff. Having been formerly composed almost exclusively of PSO grade staff, both teams had recently taken on new PO members to meet demand for PSRs in more serious and complex cases. As Karen, a manager of the City team put it, this was a process of ensuring that "we have the right staff to do the right work". Probation's territory at court was thus now being shared not just by PSOs, administrative staff and managers, but also by a small number of POs: three in the City team and two in the Town. While the fieldwork progressed, further new arrivals were anticipated. Space was thus a source of some anxiety in both teams, as they anticipated further growth in their numbers; but being permanently on-site, with their own dedicated territory, gave teams an air of professional security and ownership that belied the picture of marginalisation found in past research and

commentary in England & Wales, and in other jurisdictions where probation workers and other court personnel are not co-located.

Roles and teamwork

When the research commenced with the City team in January, I struggled to make sense of who was doing what, and how the work was organised. During my early days, it was not at all clear why the open-plan office was sometimes fully occupied and at other times virtually empty; nor was it always clear what individuals were so busily doing at their workstations. But as the research progressed, it became apparent that there was an invisible choreography underpinning each day's activities: both teams had put in place rota systems to manage their work and to ensure that, when the courts were in session, individuals knew what their particular responsibilities were.

Thus, in both sites there were monthly and daily rotas which took into account the known variations in court schedules (e.g. the running of GAP, N-GAP and breach courts on specific days of the week⁴), the availability of team members, and the different skills and role specifications of POs and PSOs. Thus, for example, only PSOs were allocated to court duty and the prosecution of breaches, freeing POs up to focus on the preparation of PSRs in the more serious and complex cases. 'Runner' was another PSO role, and this could involve a range of activities, from relaying information to and from colleagues on court duty, to making calls to other agencies to check for domestic violence callouts or child protection queries for colleagues preparing PSRs. In the City site, an agreement had been reached with the courts that requests for oral reports would normally be met within an hour, and this heightened the importance of delegating to others, where possible, tasks relating to the collection of information to inform oral reports. So, a high degree of structure was evident in both teams, and the importance of teamwork gradually became clearer to me: as Karen, manager of the City team, remarked in her interview: "you can't be an autonomous individual here".

Indeed, teamwork was not just evident in the instrumental sense of meeting imminent deadlines for discrete pieces of work, but also on a more fundamental level, in the daily sharing of questions and information between colleagues, and in the role of more

⁴ GAP indicates 'Guilty Anticipated Plea'; N-GAP indicates 'Not Guilty Anticipated Plea'.

experienced team members in assisting new team members to ‘learn the ropes’. I noticed that no-one seemed at all fazed by the prospect of being shadowed by me, an ‘outsider’, and this made sense when I learned more about the process of *enculturation* in the court context: that is, the normal process by which new members acquire the norms, values, behaviours and other tools of the particular culture. All of the PSOs I interviewed explained that they had relied upon shadowing, observation and questioning of colleagues in order to get a direct insight into the various aspects of the court role. This was true both for those whose first probation role had been in a court team, and for those who had moved into court work from another PSO role or from an administrative position. Formal training was hardly mentioned, even when prompted, or was something which PSOs had only accessed some weeks or months into the job. For example, William, who had joined the City team as a PSO just 6 months before I interviewed him, having moved from an administrative role, was very clear that his principal means of learning was “through my teammates helping me out: asking the team, shadowing the team, and then getting on with it”. After a month he had been sent on a 2-day course on court reports, which “confirmed that I was doing it right; but it would have been handy to have done it earlier”. In the court teams, then, the process of enculturation was heavily dependent upon the willingness of the more experienced members of the team to share their knowledge and experience, and to model good practice.

The particular challenges of court work

The practitioners I interviewed had different amounts of experience of court work: among the PSOs⁵ this ranged from 6 months to 18 years (with an average of 6 years), and for the POs between 1 and 5 years (with an average of just over 2 years). Most of them came to court with some experience of an Offender Management (OM) role, and some had also held other semi-specialist roles (e.g. in drug teams or Youth Offending Teams). But whatever prior experience they had, all said they had been aware that court work would present them with new challenges. Indeed, two PSOs in the City team explained that they had resisted a court role at first. Mike told me that he had been

⁵ Of the eight PSOs, three were in their first PSO role. Of these, two had started in administrative positions within probation, and one had moved across from a former position with an electronic monitoring company which had brought him into the court arena in a prosecutorial role. The other five PSOs had all moved to a court team prior to the changes brought by TR.

directed to come to court from a drugs team, which he had not wanted to leave. He explained: “One of my arguments at the time was that I really wanted to work with people, and I didn’t think that I would be working with people in a court team”. Echoing Mike’s reservations, other team members referred to a perception among some colleagues that court work was somehow not ‘real’ probation work, or that it was a ‘desk job’.

Sarah, in her first PSO role, had had a different reason for resisting a role in the court team: “I had a massive tantrum, I didn’t want to do it. I didn’t want to speak in public”. Public speaking was routinely mentioned as the biggest challenge faced by people new to court work⁶. Peter, a PO with the City team, explained that he had opted for a transfer to the court team precisely “because it was completely out of my comfort zone”. Opting for court, he felt, was the best way to confront his anxieties about public speaking, which he felt would stall his probation career if he did not address them. Comparing his experience of court and an OM role, he characterised the former as “more intense and more immediate, adrenaline-based, you get thrown into something”. I recognised this depiction of court work from my observations: it was very clear to me that in a court team individuals had to be poised for action and able to respond quickly, calmly and effectively when called upon. Sam, a PSO with the City team, said “the courts can ask anything and you have to be accurate [and] you have to make judgement calls”. When I asked interviewees to describe their role, they commonly used adjectives which referred to the pace and intensity of the work, such as *dynamic, full-on, fast paced, chaotic, intense, busy, immediate*. Several also made comments about the need to be able to cope with ‘difficult’ court personnel. Mike, for example, said “Some of the magistrates and judges can be quite challenging, but I’m thick-skinned”. In a similar vein, Jessica (PO, Town) said “If you need to be liked, this job’s not good”.

Comparing his current role and his previous role as an **Offender Manager**, Peter also noted that the approach to assessment was different. As he put it, “it’s more basic, less complex work, less complex risk assessments compared with [the ones I was doing in] the field team”. Here, Peter identified a challenge that all the POs (and some of the PSOs)

⁶ The third quarter of 2016 saw the number of ‘stand-down’ PSRs - those delivered orally in court on the day of request - exceed the number delivered in writing (i.e. standard and fast-delivery written reports) for the first time (Ministry of Justice 2017).

had faced on joining a court team, and that was the need to adapt existing working practices in a new environment – a process of *acculturation*. Those (the majority) who had come to court teams with experience of assessment and of preparing PSRs arguably had less to learn than some of their colleagues, but they had had to learn to work more quickly, and this had meant adapting their customary interviewing practices in order to elicit the required information from offenders in a much shorter timeframe. Dave, an experienced PSO with the City team, explained: “You lack the ability to have those more thorough, in-depth interviews”. This was supported by my observations: in the City site I observed seven PSR interviews conducted by four different practitioners, which lasted between 15 and 30 minutes, with an average of 24 minutes. All of the interviews were tightly focused, with a view to eliciting only information deemed relevant to the delivery of the report and a recommendation for sentencing. As Fred, a City team PO put it, “you don’t want to open a can of worms, but hopefully [any complex issues] could be looked into post-sentence”.

In contrast, in the Town the five PSR interviews I observed (by three different practitioners) lasted between 15 and 90 minutes, with an average of 56 minutes. It was only toward the end of the fieldwork there that the Town team was coming under pressure to produce more same-day reports and to a shorter timescale, and I was able to observe their efforts to adjust to these new expectations. Predictably, this was more of a challenge for the POs in the team, who were very experienced practitioners accustomed to conducting more in-depth assessments and producing more written than oral reports. In an interview with Eva, conducted towards the end of the fieldwork, this struggle was made quite explicit: “That’s what the PO role is for, doing a proper risk assessment. Now all that seems to matter is the sentence, not what’s going on in their lives”. For Eva, the challenge of speeding up her assessments felt like a conflict with her understanding of both the PO role and the functions of a PSR (see also Robinson 2017). Grace, the Town team manager recognised this: “I would say the POs are struggling with their role; they still prefer to do written reports and Layer 1 OASys⁷ which is creating issues in other areas of [the region] where they don’t have that capacity”.

⁷ Layer 1 OASys is a shorter form of the Offender Assessment System developed by the Home Office from 1999 (e.g. see Howard et al 2006).

Meanwhile, the PSOs in the Town team were facing challenges around the blurring of the traditional boundary between their role as PSR authors and the role of the PO colleagues: that is, they were being encouraged to take on some ‘medium risk’ reports in respect of sexual offending and domestic violence (see also HMIP 2017: 37). Their manager, and PO colleagues, acknowledged that this was proving a difficult transition for some. Jessica (PO) commented:

All of a sudden they’re turning the PSO court officers’ lives upside down. PSOs have been made to access certain training, to think more analytically, things they haven’t done for the past 15-20 years. It’s good for some but not for others, Culturally that’s a big change for them, a shock to the system.

However, in the City team, I was told that this move to ‘up-skill’ PSOs had been resisted collectively some time ago, and it did not appear to be on the agenda currently.

The positives of court work

One of the key findings of this research was that, despite its challenges, court work was predominantly experienced by those in my sample in very positive terms. In the interviews, when asked to sum up how they experienced their role, the following adjectives were common: *interesting, enjoyable, satisfying, rewarding, fulfilling, motivating, stimulating, exciting, happy, committed, fun*. Several interviewees said they loved “everything” about their role. Even the minority who said that they had initially resisted a move to court, said that they were now glad to have joined the team. Mike, who had resisted a move to the court team because he expected it to take him away from service users, told me that he had quickly found that “you are working with people all the time”, and that it was not unusual to encounter some of his former caseload at court.

Sources of job satisfaction were many. These included the everyday unpredictability and variability of the job; the opportunity to help defendants by recommending appropriate sentences to the court; the relative formality of the environment; the daily interactions with other professionals in the court arena; and the camaraderie of the team. Mike’s reflections on the best aspects of the court role, which centred on helping and supporting defendants, were not unusual: he said that he particularly enjoyed “trying to get better support for people coming through” and “getting the right sentence

for people". William (PSO, City) similarly commented that "when you propose a sentence, and they go with that sentence, that's quite an important thing that you've done, which has a big impact".

Another positive theme which emerged very clearly was the relatively 'contained' nature of court work and its closer resemblance to a '9-5' job than other probation roles. Fred (City PO) put this well when he said: "Every day's compartmentalised: it's stressful, but it's a different sort of stress. For me it's manageable stress; I can get away from it".

To return to City PO Peter's comparison of OM and court work:

[In the field team] the pressure is constant and there can be a constant feeling of dread around all that you know you have to do. Court work is easier in that respect, because you do the work, you get the work done, and then you go home and you don't think about it.

Every practitioner interviewee mentioned this aspect of their role as a positive for them. As Sarah (PSO, City team) put it, "It's nice to be able to leave it behind". John, a PO colleague, said "You can go on leave and come back without having a pile of emails requiring two 70-hour weeks to catch up". He added: "It's less flexible time-wise but it is a better work-life balance; I go home and have more mental energy". Members of the court teams thus felt somewhat protected from the problem of 'spillover' into their personal lives or out-of-hours time, which has been found to be an issue in OM roles (Westaby et al 2016; see also Phillips et al 2016). Jessica, a PO with the Town team, suggested that "I think that in today's probation climate it's a bit of a respite niche compared to the field".

But the perceived positives of court work were not simply centred on a favourable comparison with OM roles: there was also a perception of an enhancement of legitimacy for court teams in light of *Transforming Summary Justice*, with its emphasis on speeding up justice processes (Ministry of Justice 2014). Several interviewees made comments that contradicted the hitherto dominant narratives centred on powerlessness, marginality and a decline in respect of the status of probation at court: they talked about the positive relationships the team had cultivated with the courts in recent years, and some went so far as to argue that the relationship was now better than ever. For example, when I asked Eva (a PO with the Town team) about the relationship between

the courts and the team, she said: "I think it's improved. I used to think we were the poor relation, that our opinion didn't matter very much. We were sat there on the side bench and I used to think we didn't matter". Karen (City team manager) was perhaps most positive about the contemporary situation:

We've moved much more centre stage really, you know there's a stronger thrust on enforcement and sentencing on the day which is part of the timeliness agenda and that for us has been really good because instead of reactively being told 'we want to request a report' at court, you're now being asked to *do* the report, so you're using your skills actually in the court setting and standing up and trying to be articulate and persuasive in the court setting which I think is actually far more rewarding than, you know, way back when, when you were just sort of taking details from the service user and then writing the report later.

Karen's view largely tallied with my own observations of the teams in action in the courts. Although I heard about occasional conflicts with sentencers, usually centred on unrealistic expectations or misunderstanding of probation's role or resources, my general impression was of excellent professional relationships, appreciative benches and a tacit acknowledgement that the speedy and effective service provided by the probation teams was pivotal to the delivery of 'swift and sure' justice (Ministry of Justice 2012a).

Contemporary frustrations

Not all, however, was rosy in the garden for the court teams: the individuals I spent time shadowing and interviewing clearly did experience some considerable frustrations, and the sources of these were twofold. Some stemmed from the general 'probation' context; others derived specifically from changes related to the *Transforming Rehabilitation* reforms. In the first category was the persistent problem of inadequate IT, on which HM Inspectors commented in very strong terms in their recent thematic inspection of probation services in courts:

The NPS hardware and software are generally dated, and lack functionality, inhibiting both efficiency and effectiveness [...] NPS operational staff did not have access to appropriate working tools and so were ill-equipped to function in a modernised, digital working environment (HMIP 2017: 8).

This quotation perfectly captures what I observed in the two teams, which made a mockery of the aspiration of ‘digital justice’ propounded in recent Government strategy documents (Ministry of Justice 2012b).

The second issue (not highlighted in the thematic inspection report) concerned a lack of access to training – especially (but not exclusively) *legal* training. Despite working on a full-time basis in a court building, neither team (as far as I was able to discern) had easy access to legal advice to inform their everyday decisions. On several occasions individuals told me that they had only learned of important changes to sentencing legislation or guidelines via informal discussions with legal clerks. Although members of both teams could of course consult their managers (and each other) for advice, I was nonetheless surprised by the apparent failure of the NPS to provide ongoing legal training for the court teams, or to provide access to advice from a qualified legal practitioner on a more formal basis.

Members of both teams also shared their frustrations around getting to grips with new processes and procedures stemming directly from the restructuring of probation services under TR. As noted earlier, the need for court teams to allocate cases has seen the introduction of a number of new mandatory tools which PSR authors have to complete. Dave (City PSO) expressed the frustrations of the majority well:

First it was having to interview the person and report back in 60 minutes. Then it was, you have to do your RSR score. And now it’s your RSR score, OGRS score⁸, tiering system⁹, and still be ready to feed back in an hour. In my eyes a lot of the systems we have to do involve data duplication which is unnecessary and time-consuming. Streamlining these would help, and making sure everyone is trained to use whatever new systems are introduced.

A common refrain was that “we don’t get shown anything” (Sam, City PSO). It appeared to me that there was a heavy reliance on the EQuIP process management system¹⁰ to fill knowledge and information gaps; but team members craved ‘proper’ training, delivered

⁸ OGRS refers to the Offender Group Reconviction Scale, a tool used to measure the risk of re-offending.

⁹ National Probation Service (2016) *E3 Tiering Framework: Case Allocation*.

¹⁰ EQuIP denotes ‘Excellence and Quality in Processes’. It is an online process management system for the NPS which ‘maps’ all operational processes and provides links to relevant forms and guidance. Commenting on the EQuIP system, Sam (PSO, City) said “So much onus is put on EQuIP but it’s the most boring work tool I’ve ever come across. The system is so user-unfriendly – and no-one’s ever shown us how to use it, ironically”.

face-to-face, and (just as importantly) explanations for what felt like the “constant tweaking” of processes (Melanie, administrator, City). Towards the end of the fieldwork, a new tool was being introduced to assist with sentencing recommendations¹¹, and this met with particular criticism as not just ‘yet another’ requirement, but as an affront to the professionalism of practitioners.

It’s put our backs up because our judgement is more valid than that and it just seems to state the obvious. You do wonder whether it’s really necessary and where it’s coming from aswell (John, City PO).

John was not alone in questioning the rationales for new tools and guidance on sentencing recommendations post-TR. For example, a number of practitioners said they wondered whether changing OGRS criteria for offending behaviour programmes were driven by profit considerations, indicating that these ‘ tweaks’ had not been clearly explained. Victoria (PSO, Town) was particularly scathing, both about the use of the various mandatory tools and the broader issue of ‘probation for profit’, which she saw as related:

The RSR and CAS¹², I don’t see the relevance of them. I don’t need a tool to tell me if someone’s going to the CRC or NPS; but it’s all about who gets what now, and it’s all about money again and it grates on me.

There were other significant frustrations stemmed from the restructuring of probation services under TR. The most prominent of these, which I observed again and again, was poor communication with local CRCs (also observed by HMIP), which frequently frustrated the attempts of those performing court duty to update or explain to the court particular events in relation to CRC supervisees. This was a particular issue for those performing breach court duties: the teams received information about breach cases from a remote ‘hub’, and on several occasions I heard about inaccurate and otherwise poor quality information being passed to the court team. Gail (PSO, City) said “We have to address the court with a lack of knowledge [and sometimes] we look stupid”.

¹¹ National Probation Service (ND) ‘Smart’ Guidance Tool – Formerly known as EPF.

¹² RSR denotes the Risk of Serious Recidivism tool; CAS denotes the Case Allocation System.

Team members also regretted the fact that, once a person had been sentenced, they could do nothing more than provide them with details of the organisation that would be responsible for their supervision. Gail said: "To me, it's embarrassing. Before, we would tell them who their officer was going to be and offer a first appointment with that person and it was more personalised". Relatedly, some practitioners acknowledged that they had little idea about the quality of supervision or interventions that individuals would receive when they left court. For example, John (City PO) said "Most of the cases we deal with here are CRC and we don't really know what the CRC do with people apart from not keeping very good records and having caseloads of 90".

Incorporation and identity

In her reflection on the emergence of specialist teams in some magistrates' courts, Margaret Powell (1985) expressed concerns about what she saw as a heightened risk of 'incorporation' into the culture of the more powerful 'host' institution. Given the physical embeddedness of the court teams, and their relative separation from other parts of the newly fragmented probation system, Powell's hypothesis certainly sounds credible. It was also voiced by the manager of the Town team, who expressed the following view:

I think the culture with any court team is that the court team get absorbed into the court culture, and I think they would say they're there to serve the court (Grace, SPO, Town team).

I was therefore interested in what members of the court teams had to say on this subject, as well as what I might be able to learn from their behaviour in and around the courtroom.

Several of the practitioners said in interview that they understood their role as centred on meeting the needs of the court. It was also clear from both observations and interviews that members of the court teams enjoyed regular interactions with other court staff, and many relished their participation in the 'multi-disciplinary workshop' of the court (Carlen 1976). The PSOs, in particular, who spent most time in the courts and interacting with other court staff, valued this aspect of their role and the opportunities they were afforded to forge productive working relationships with other court personnel (ushers, legal clerks and solicitors) – some of whom they had known and

worked with for many years. On the face of it, these findings might suggest a degree of ‘incorporation’, and a lack of identification with the NPS or the institution of ‘probation’. However, there were other indications to the contrary. For example, the majority of interviewees said they saw the defendant, as well as the court, as a key beneficiary of their labour¹³. Furthermore, several made explicit reference to the distinctiveness of their role in court. For example, William (City PSO), who was just six months into his role, made the following observations:

You've got your prosecution and your defence, and then you've got us. They're not us. We've got working relationships with our field teams and we're all in the same team basically, whereas they're not. I'm not sure that all court staff fully get what probation do; I think it's lost on some people. I think if you work in probation you should want to help people to change and help reduce reoffending, help people change their lives. Because not all offenders are scumbags. I'm not sure the court staff would look at it the same way we do.

Like William, several interviewees referred to values that they saw underpinning their role, which centred very firmly on being impartial, non-judgemental and empathic, and securing the ‘right outcome’ for the defendant. Thus, there was a lot of evidence that members of the court teams subscribed to the kinds of probation values which have been identified in other research in recent years (e.g. Grant 2016; Robinson et al 2014).

I was also interested to note, during my many periods of observation in court, the tendency of team members to present themselves as being from a generalised entity of ‘probation’. Although, on occasion, individuals introduced themselves (e.g. when presenting oral PSRs) in more specific terms as members of the National Probation Service, there was a strong tendency to try to preserve an image of ‘probation’ as a unified body which stood for something specific and distinct in the court arena. This extended to the prosecutorial role of PSOs, where they were almost always dealing with breaches of CRC cases and sometimes faced questions about the actions or decisions of CRC Offender Managers. When I asked team members to explain their self-presentation in court, I heard two related types of explanation. The first was that most of the

¹³ Some interviewees also mentioned victims and/or the public as beneficiaries.

magistrates did not have a good understanding of what had happened to probation under TR, so the continued use of a general ‘probation’ identity was a means to avoid confusion. The second was about legitimacy: court staff were loath to expose the many ‘teething problems’ created by TR and the fragmentation of the service because they feared this might damage the courts’ perceptions of the credibility of community-based sentences. Despite the changes wrought by TR, the court teams were actively engaged in the preservation of an idea of ‘probation’ as a reliable and trustworthy service in the eyes of the court, and of themselves as representatives of that service.

That said, there was a recognition among team members of their relative isolation from the rest of ‘probation’, including both the NPS as their own employer, and the CRCs in which many of their former colleagues now worked. Some interviewees reflected that court teams tended to be “on the periphery”, “islands” or “bubbles”, and that this had become even more so since TR. Eva (Town PO) for example observed that when field teams had been involved in report writing, there was regular contact because the court and field teams gate-kept each other’s reports; “so I suppose it’s even more cut off now”. Perceptions of the wider NPS ranged from “remote” to “faceless” and “impersonal”: although team members were very conscious of their new status as civil servants, they knew little about the organisation, its structure or its senior personnel. This was partly because line managers acted as buffers between the teams and the more senior management, passing information about new policies, procedures and performance to their staff at team meetings. Meanwhile, many team members were still feeling angry and upset about the decimation of the Trusts which had formerly employed them, and the ‘loss’ of former colleagues to the CRCs. As noted above, lines of communication with CRCs local to the courts were poor and a constant source of frustration. Furthermore, as already noted, court team members had little insight into the contemporary quality of community requirements being delivered by CRCs (see also HMIP 2017).

Conclusion

The sparse body of research and related commentary on probation work in courts had tended to tell a rather negative story centred on a narrative of declining importance and status on the courtroom, and experiences of marginalisation and invisibility on the part of probation workers. At the same time, the prospect of specialist court teams has raised

concerns about the risks of incorporation into the dominant culture of the host institution. This article has presented a snapshot of the reality of practice in two specialist court teams which contradicts these dominant characterisations.

To the extent that it is possible to draw conclusions about the culture of contemporary court teams, this article suggests that court teams exist in something of a ‘cultural bubble’: one into which the central values and skills of ‘probation’ had clearly been imported, but which is becoming increasingly insulated from the wider probation field. Within this cultural bubble, some aspects of the wider court culture have inevitably been absorbed: for example, the formality of the setting (which dictates how team members dress and present themselves), and the contemporary speed of sentencing (which has re-shaped the pace and organisation of their labour and of the main product of their work: pre-sentence reports). Yet despite their relative isolation, probation teams are managing to retain a sense of their cultural difference from other court personnel: that is, ‘who they are’ as members of a wider community of probation practitioners.

It is, however, still very early days in the life of specialist court teams, and this article has pointed to a number of risks that face them currently. Whilst court teams do not appear to be at imminent risk of incorporation into the dominant culture of the court, they do risk becoming increasingly isolated and dislocated from their wider probation ‘family’. This of course is a consequence of the changes wrought by *Transforming Rehabilitation*, which have seen court teams become one of a number of fragments of what was once a unified service. Court-based practitioners are rapidly becoming out of touch with the field, such that the content of sentences and requirements they are recommending on a daily basis is becoming more and more obscure. At present, they are striving to ‘paper over the cracks’ created by TR, but in the longer term, important gaps in knowledge and understanding could undermine the legitimacy of court teams in the eyes of sentencers, and such a loss of confidence could be difficult to reverse. Practitioners are also starved of appropriate training – particularly in legal matters – which also creates reputational risks to court teams. Court teams thus need access to appropriate training, and they need some exposure to the contemporary field, ideally in both parts of the reconstituted probation service.

References

- Beyens, K. & Scheirs, V. (2010) 'Encounters of a different kind: Social enquiry and sentencing in Belgium', *Punishment & Society*, 12, 3: 309-328.
- Burnett, R. (1996) *Fitting Supervision to Offenders: Assessment and allocation decisions in the Probation Service*. Home Office Research Study 153. London: Home Office.
- Carlen, P. (1976) *Magistrates' Justice*. London: Martin Robertson.
- Carlen, P. & Powell, M. (1979) 'Professionals in the magistrates' courts: the courtroom lore of probation officers and social workers', in H. Parker (ed.) *Social Work and the Courts*. London: Edward Arnold.
- Department for Constitutional Affairs (2006) *Delivering Simple, Speedy, Summary Justice*. http://webarchive.nationalarchives.gov.uk/+/http://www.dca.gov.uk/publications/reports_reviews/delivery-simple-speedy.pdf [accessed 14 November 2017]
- Gelsthorpe, L. & Raynor, P. (1995) 'Quality and effectiveness in probation officers' reports to sentencers', *British Journal of Criminology*, 35 (2): 188-200.
- Gelsthorpe, L. Raynor, P. & Robinson. G. (2010) 'Pre-sentence reports in England and Wales: changing discourses of risk, need and quality', in F. McNeill, P. Raynor & C. Trotter (eds.) *Offender Supervision: new directions in theory, research and practice*. Abingdon: Willan.
- Goffman, E. (1990) *The Presentation of Self in Everyday Life*. London: Penguin.
- Grant, S. (2016) 'Constructing the durable penal agent: Tracing the development of habitus within English probation officers and Scottish criminal justice social workers', *British Journal of Criminology*, 56: 750-768.
- Halliday, S., Burns, N., Hutton, N., McNeill, F. & Tata, C. (2009) 'Street-level bureaucracy, interprofessional relations, and coping mechanisms: A study of criminal justice social workers in the sentencing process', *Law and Policy*, 31, 4: 405-28.

HM Inspectorate of Probation (2016b) *Transforming Rehabilitation: Early Implementation 5*. Manchester: HM Inspectorate of Probation.

HM Inspectorate of Probation (2017a) *The Work of Probation Services in Courts*. Manchester: HMIP.

Howard, P., Clark, D. & Garnham, N. (2006) *An Evaluation and Validation of the Offender Assessment System (OASys)*. London: Home Office.

Hudson, B. & Bramhall, G. (2005) 'Assessing the 'other': constructions of 'Asianness' in risk assessments by probation officers', *British Journal of Criminology*, 45: 721-740.

James, A. (1982) 'The probation officer at court: some further thoughts', *The Howard Journal*, 21: 105-117.

Mawby, R.C. & Worrall, A. (2013) *Doing Probation Work: Identity in a criminal justice occupation*. Abingdon: Routledge.

McWilliams, W. (1981) 'The probation officer at court: From friend to acquaintance', *The Howard Journal*, 20: 97-116.

Ministry of Justice (2017) *Offender Management Statistics Quarterly: July-September 2016*. London: Ministry of Justice.

Ministry of Justice (2013) *Transforming Rehabilitation: A Strategy for Reform*. CM8619. London: Ministry of Justice.

Ministry of Justice (2012a) *Swift and Sure Justice: The Government's Plans for Reform of the Criminal Justice System*. London: Ministry of Justice.

Ministry of Justice (2012b) *Digital Strategy*. London: Ministry of Justice.

<http://open.justice.gov.uk/digital-strategy/> [accessed 14 November 2017]

Morgan, R. (2003) 'Thinking about the demand for probation services', *Probation Journal*, 50, 1: 7-19.

National Offender Management Service (2014) 'Case allocation', *Probation Instruction 05/2014*.

National Probation Service (2016) *NPS Operating Model Version 1.0*. National Probation Service.

National Probation Service (2015) *E3 Blueprint: Effective. Efficient. Excellent*. National Probation Service.

Phillips, J., Westaby, C. & Fowler, A. (2016) "It's relentless": The impact of working primarily with high-risk offenders', *Probation Journal*, 63, 2: 182-192.

Powell, M. (1985) 'Court work', in H. Walker & B. Beaumont (eds.) *Working with Offenders*. Basingstoke: Macmillan.

Robinson, G. (2017) 'Stand-Down and Deliver: Pre-sentence reports, quality and the new culture of speed', *Probation Journal*.

Robinson, G. (2016) 'Patrolling the borders of risk: the new bifurcation of probation services in England & Wales', in M. Bosworth, C. Hoyle & L. Zedner (eds.) *Changing Contours of Criminal Justice: Research, Politics and Policy*. Oxford: Oxford University Press.

G. Robinson, G. & Svensson, K. (2013) 'Practising offender supervision', in F. McNeill & K. Beyens (eds.) *Offender Supervision in Europe*. Basingstoke: Palgrave Macmillan.

Westaby, C., Phillips, J. & Fowler, A. (2016) 'Spillover and work-family conflict in probation practice: Managing the boundary between work and home life', *European Journal of Probation*, 8, 3: 113-127.