

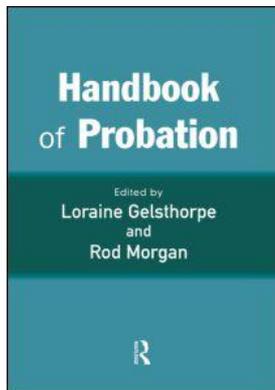
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Chapter 3

Probation, governance and accountability

Rod Morgan

Introduction

At the time of writing, spring 2006, the future governance of the Probation Service in England and Wales remains uncertain. The Government has announced (Home Office 2005) its legislative intention fundamentally to change existing governance arrangements. But the enabling Bill has yet to be published and, given the doubts and opposition already signalled, it is by no means certain that the Government will get through all the changes it wishes. This chapter aims, therefore, to cover the following: first, to chart the evolution, until 2001, of local probation services; secondly, to describe the current National Probation Service (NPS) arrangements, accountability for which is shared between the Secretary of State at the centre and 42 area probation boards locally; thirdly, to describe the accompanying accountability mechanisms which surround probation work (inspection, complaints, serious incident investigations, etc.) and will likely continue to operate whatever structural changes are now made; fourthly, to describe the steps leading to the Government's announcement, in November 2005, that it proposes abandoning the existing model in favour of a centrally governed commissioning system in which local probation trusts will compete with voluntary and commercial providers of probation services; fifthly, to speculate on how the new governance and managerial arrangements, if legislated for after this text is put to bed, might work and what the advantages and drawbacks of such a system might be.

Governance pre-2001

From 1907, with the passage of the Probation of Offenders Act, until implementation in 2001 of the Criminal Justice and Courts Services Act 2000, probation services in England and Wales were both provided and administered locally. Their administration and governance became progressively more

formalised, however, and over the years the financial and managerial control of the Home Office grew steadily, particularly from the 1980s onwards.

Probation officers have since 1907 been officers of the court. They were originally appointed by each court in which they served, the 1907 Act empowering courts to appoint paid officers. Though considerable use was made of the statute, a review undertaken 15 years later found that 215 courts had not appointed a single officer and the conditions of service of many were unsatisfactory (Home Office 1922). As a consequence in 1925 their appointment was made compulsory in all magistrates' courts. Their value remained unappreciated by many benches, however. The voluntary, police court, missionary origins of the service continued to influence recruitment and conditions of service. Many courts went on recruiting part-time officers on meagre salaries well into the 1930s (Home Office 1936) and the Police Court Mission, a Church of England organisation which continued to part finance some officers' salaries and expenses, did not finally cease employing officers until 1938. Prior to this date a system of 'dual control' by the Mission and the courts operated in many areas, a system which most officers wished to end (McWilliams 1983: 130).

In the inter-War period the work of probation officers became overseen by probation committees comprising magistrates elected by their peers. Meanwhile, as early as 1922 there was created a national Probation Advisory Committee (reconstituted as the Probation Advisory and Training Board in 1949 and the Advisory Council for Probation and After-Care in 1962) and, in 1936 within the Home Office, a section to oversee the development of the service (in the post-War period this became known as the Probation and After-Care Department) as well as a national probation inspectorate (Morgan 2004: 80) was created. This approach was put on a statutory footing by the Criminal Justice Act 1948. Each petty sessional area, or combinations of petty sessional areas if the Secretary of State determined, was designated a 'probation area', each of which was to have a probation committee and a case committee or committees. The former comprised magistrates and a recorder from the Court of Quarter Sessions and the latter magistrates and co-opted persons with such qualifications as were considered useful. Probation committees had the duty to appoint sufficient probation officers as the caseload of the area needed, to pay their officers' salaries and expenses and 'provide for the efficient carrying out' of their work (5th Schedule, s. 3). Rates of pay and expenses were laid down by the Secretary of State. Case committees had the duty to review the work of probation officers in individual cases (*ibid.*: s. 6).

The role of the probation services was steadily broadened in the post-War years. Officers became responsible for: discharged prisoners' aftercare and the statutory supervision of prisoners on licence; the throughcare of prisoners while in prison (later undertaken by officers seconded to prison service establishments); matrimonial conciliation to support the magistrates' courts' family jurisdiction and, after 1957, acting as welfare officers in divorce proceedings; fines enforcement by means of money payment supervision orders; the introduction of new sentences such as community service the management of which fell to the service; and so on. But the system of administration through local committees (albeit formally retitled probation

and after-care committees after 1967) continued. By the late 1960s the cost of probation services, including probation training, was divided equally between the local authorities and central government, though parts of the services' role (the whole of the cost of prison-based welfare posts, for example) were met by the Exchequer. Administrative oversight of the services by the Home Office was tightened. The probation inspectorate was expanded to include after-care and prison welfare. Recruitment and training of officers was increasingly through a Home Office training course, which by 1965 accounted for two-thirds of all new recruits. A corporate, national, pay negotiating committee had already been established, with representatives of the local authorities, justices and the Home Office on one side and the National Association of Probation Officers (NAPO) on the other, implementation of the agreed salary scales falling to the Home Secretary.

That is, the structure and substance of governance was subtly changing. The steer from the centre became firmer. But this continued to rub along with the constitutional doctrine of devolved, local area services, now reduced through amalgamation to 59 in number. More robust challenges to these constitutional arrangements grew in the early 1980s out of the conjunction of the so-called 'nothing works' movement (or mood – see Martinson 1974; Brody 1976) which gained ascendancy in the late 1970s, the simultaneous 'penal crisis' (Bottoms and Preston 1980) resulting from the burgeoning prison population, and the election in 1979 of a Conservative administration under Margaret Thatcher dedicated to tough 'law and order' measures and committed to tighter control over public expenditure (Downes and Morgan 2007). The Probation Service, which in the view of one commentator had 'failed at rehabilitation ... failed at reducing the prison population ... and [was] committed to "soft" social work values which meant that offenders who deserved punishment received help instead' (Mair 1997: 1202), became a prime government managerial target and has remained so ever since.

In 1984 the Home Office published a *Statement of National Objectives and Priorities* (SNOP) which signalled the Home Secretary's intention to subject probation policy and practice to a degree of control never previously attempted (Raynor and Vanstone 2002: 77–8). Any pretence that probation services were locally autonomous, able to set their own priorities unfettered by government prescription, was now over. Henceforward the Home Office, which since 1974 had been paying 80 per cent of services' budgets, would prescribe in ever greater detail what work should be resourced and how tasks should be undertaken (see Home Office 1988, 1990a, 1990b). The Home Office did not accept that 'nothing worked' and laid down standards for probation work (Home Office 1992) the enforcement of which an expanded inspectorate, placed on a statutory footing in 1991, closely monitored in what were termed 'Efficiency and Effectiveness' inspections (HMIP 1993). These developments represented a challenge to the professional autonomy of individual probation officers, were associated with growing demands for management performance data and practice accountability, and were allied to increased pressure that practitioners adopt evidence-based working practices legitimated by Home Office and other research. The Home Office also directed ring-fenced funding for some probation-based initiatives which served the broader needs of

the criminal justice system (for example, the 'hypothecated grant' for bail information and support schemes in 1992–4 – see Haines and Morgan, this volume).

There were already indications, however, that the Home Office doubted that its purposes could be achieved within the existing framework for governance. The 1990 Green Paper placed the writing clearly on the wall:

The probation service has already responded to pressure for change. Over a short period of time there have been rapid improvements in consistency of standards, objectives and of management approach. These have been partly on the service's own initiative and partly in response to the Statement of National Objectives and Priorities published in 1984, the National Standards for Community Service Orders and further guidance from the Home Office. It cannot be taken for granted that the demands of the White Paper and the needs of the criminal justice system into the next century can be met by a collection of independent probation areas, loosely coordinated, with varying management structures and a professional base established in a working environment bearing little relationship to today's. It must also be asked what enhanced role can be played by the voluntary and private sector. (Home Office 1990b: para. 1.5)

The Green Paper set out three options, with arguments for and against each, for establishing a national probation service, either as a division within the Home Office or as an executive agency (as the Prison Service became in 1992) or as a non-departmental public body (NDPB) (*ibid.*: para.s 8.11–14). These options, when set alongside ideas for creating a market of providers of different probation services sketched out in a preceding Green Paper (Home Office 1988), presaged the reforms which, in the new millennium, New Labour have determined to pursue:

One possibility would be for the probation service to contract with other services, and private and voluntary organisations, to obtain some of the components of punishment in the community. The probation service would supervise the order, but would not in itself be responsible for providing all the elements.

Another possibility would be to set up a new organisation to organise punishment in the community. It would not itself supervise offenders or provide facilities directly, but would contract with other services and organisations to do so. (Home Office 1988: para.s 4.3–4)

Some of the managerial problems to be faced were set out in an Audit Commission analysis. The then 56 area services differed hugely in size, the largest, the Inner London Probation Service (ILPS), with over 1,000 staff, being on its own as large as the smallest 13 area services combined, with the smallest, the City of London Service, having only five officers (Audit Commission 1989: para. 22). Divisions of labour within probation services, partly as a consequence of size, differed greatly, some being dominated by individual casework generalists, highly resistant to the developing Home

Office-driven managerialist controls. In each area the chief probation officer was accountable to his or her probation committee one-third of whose members might by now be co-opted members, though their composition differed anomalously, depending on the type of local authority. In outer London and in the former metropolitan counties there was a requirement to co-opt elected local authority members. This was not the case in the shire counties (though this was changed by the Criminal Justice Act 1988).

Probation services were, as a result, delicately balanced between three interest groups – sentencers and the courts, the local authorities and the Home Office. The Home Office provided most of the money and had the greatest interest in how effectively it was spent (not least in terms of consequences for other parts of the criminal justice system), but as yet had ‘limited direction in how the service is used or how big probation budgets should be. The local authorities ... have limited financial interest in probation ... but have considerable influence over its size. The courts have no financial interest in the probation service at all, but they determine how it should be used’ (*ibid.*: para. 172).

In the event the then Conservative government, on the basis of these Green Paper-inspired discussions, took limited statutory measures (Criminal Justice Act 1991) to increase Home Office leverage over probation services. The probation inspectorate was made a statutory body with the Secretary of State empowered to direct aspects of its activities. The Secretary of State took default powers with respect to ‘failing’ probation committees. The 80 per cent of the budget contributed by the Home Office was henceforth cash-limited, meaning that any overspend had to be met by the local authority. And existing powers to amalgamate services were extended to Inner London. The government stepped back from taking a further measure, floated in the 1990 Green Paper (para. 5.26), that the Secretary of State be empowered to determine the employment of particular candidates as chief officers as opposed to approving candidate short lists. The government’s decision document noted that performance-related pay had been introduced for chief and deputy chief officers, the implication being that the Home Office was by other means increasingly able to influence both the selection, performance and tenure of senior officers (see Wasik and Taylor 1994: 159–60).

The Home Office piper was now better able to call the probation tune, and did so. The number of area services was reduced to 54 and national standards for the supervision of offenders were laid down (Home Office 1992). In 1995 a further Green Paper (Home Office 1995) was published. This proposed that the various community sentences (probation, community service, combination orders, etc.) be amalgamated to form a single, portfolio community order with the courts deciding precisely what requirements to attach in individual cases. This suggested that the role of many probation staff might shift further from being professional assessors of individual offender’s needs and likely responses to being administrators of differentiated punishments in the community. In such a case the requirement that officers have higher education, social work-type, professional qualifications, a requirement already doubted as necessary by Home Secretary Michael Howard, was called fundamentally into question. Yet, somewhat surprisingly, given that their proposals were based on the premise

that community sentences were 'poorly understood ... failed to command the confidence of the public despite the greater prominence and extra resources given to probation services in recent years ... [and were] still widely regarded as a soft option' (*ibid.*: para. 4.4), the outgoing Conservative government failed to pursue the contracting out developments they had mooted.

The results of the managerial initiatives taken by the Conservative administration failed, after 1997, to convince the incoming New Labour government that structural change was not required, however. As David Faulkner, a former senior Home Office director, has described the period:

The service suffered a series of public attacks and humiliations, from both Conservative and Labour governments ... Opinions will vary on the extent to which they were deserved or justified ... Statistics of re-offending did not show the hoped-for improvement, and those for failure to comply with court orders suggested that breaches were too often complacently ignored. Both were represented as evidence that too many officers were 'on the side of the offender' and neglecting their duty to protect the public, and that the service's management was too often ineffective and incompetent. (Faulkner 2001: 313)

The Probation Service was widely referred to as a 'failing service'. Moreover, the landscape of contiguous services, notably the prison and youth justice services, in whose operations many probation officers were now embedded, underwent fundamental, structural changes suggesting that the probation services were unlikely to be allowed to remain in their present form. The new executive prisons agency had from 1992 contracted out the management of some new prisons to commercial companies and many independent commentators, some of whom had not favoured the initiative, concluded that, despite teething problems, the development had been positive both in terms of improved regimes delivered in the contracted-out establishments and the knock-on consequences for the state service (see Morgan 2002: 1147–9). In 1998, following the Crime and Disorder Act, the youth justice system was reformed. Multi-agency, local authority youth offending teams (YOTs), to which probation officers were initially seconded (many remain seconded), were created, overseen by an NDPB, the Youth Justice Board (YJB), with considerable commissioning and purchasing responsibilities and powers.

Meanwhile, New Labour settled into government and announced a review of both the prison and probation services. The expanded probation inspectorate, in the absence of any substantial managerial capacity within the Home Office, collected performance data from local services in the course of their inspections and published a series of thematic reviews (HMIP 1998a, 1998b, 1999a, 1999b) suggesting how practice might be made more effective. The Government determined, however, that these initiatives did not suffice. Following its review of services (Home Office 1998), it introduced and, in the face of considerable opposition in the House of Lords, got through the Criminal Justice and Court Services Act 2000 (CJCSA), which in spring 2001 created the National Probation Service (NPS). The new framework constituted

a compromise. The Home Office review inclined toward forging a combined 'correctional service' out of the probation and prison services, but noted from experience overseas (Canada, Australia, New Zealand and Scandinavia) that 'no country has moved with one giant step from completely separate organisations to complete integration. There has always been a gradualist approach, with central HQ merger first and then moves towards other (local) mergers' (*ibid.*: Appendix C, 3). The review accordingly favoured, as a first step, either the formation of regional probation agency services or a national probation agency on the lines of the then Prison Service. In the event, the risks acknowledged by the review of 'some disruption to established local links between probation services and local authorities, voluntary groups, the courts and local criminal justice agencies' (*ibid.*: 13), combined with a powerful lobby in Parliament in favour of the retention of strong local connections and accountability, led to the creation of the NPS, but with local probation boards.

At the same time a fresh, thoroughgoing review of the sentencing framework under John Halliday (Home Office 2001) picked up on the 1995 Green Paper proposals that there be a portfolio community sentence. The Halliday recommendations formed the basis of the provisions in the Criminal Justice Act 2003. All of this is to say that New Labour reinvigorated and implemented most of the Conservative Party's core ideas (many of which originated from the Home Office), and with respect to the marketisation of probation services now underway, now proposes implementing the most radical of them on a scale not contemplated by the Conservatives.

A national service: trials and tribulations

The functions of the NPS established in 2001 are:

- To assist the courts in deciding appropriate sentences and to supervise and rehabilitate offenders by giving effect to community sentences, supervising prisoners released on licence and providing accommodation in approved premises (CJCSA, s. 1 – those family-related duties previously undertaken by local probation services were hived off to a new, separate, national service, the Children and Family Court Advisory and Support Service (CAFCASS)).

Further:

- All persons with duties relating to the NPS are to have regard to five aims when exercising their functions: the protection of the public, the reduction of offending, the proper punishment of offenders, ensuring offenders' awareness of the effects of crime on victims and the public, and the rehabilitation of offenders (CJCSA, s. 2).

The constitution of the NPS is as follows:

- The Service is subject to the direction of a National Director, supported by a National Probation Directorate (NPD), who is accountable to the Secretary of State: neither this office or the Directorate, which is part of the Home Office, has a statutory basis. They exist to support the Secretary of State whose function is to ensure that provision is made throughout England and Wales for the purposes set out in s. 1 (CJCSA, s. 3).
- For administrative purposes England and Wales has been divided into 42 probation areas (the number may be altered by the Secretary of State), coterminous with court, CPS and police boundaries, for each of which there is a probation board comprising the chief officer and representatives of the local community appointed by the Secretary of State plus a judge appointed by the Lord Chancellor (CJCSA, ss. 4–5 and Schedule 1).
- Probation boards are, with the exception of chief officers (who are separate post-holder Crown Servants appointed by the Secretary of State), the employers of the probation staff in their area and are responsible for ensuring that there is sufficient provision in their areas for the purposes of s. 1 (CJCSA, s. 5(1)–(2)).
- It is for the Secretary of State to determine whether provisions made by boards are sufficient. He has default powers over boards in the event of his deciding that they are failing to perform their functions or not providing good value for money. He may make a ‘management order’ replacing any or all members of a board including the chief officer (CJCSA, ss. 5 and 10).

The 54 former probation services were reduced, by amalgamation, to 42 probation areas, each with their own probation board. The 42 areas are coterminous with the administrative structure of the police, CPS and the courts, though not the Prison Service, and are grouped in nine English regions, each with their own regional government office, plus Wales, for each of which the NPD appointed a regional probation manager. This involved the creation of some very large areas, notably London, where five former probation services were reduced to one, with an offender caseload comprising 23 per cent of the work of England and Wales.

Jack Straw, when Home Secretary, appointed Eithne Wallis, a former chief probation officer, to manage the transition to the national service, and his successor, David Blunkett, subsequently appointed her as the first National Director of the Service. Over the next three years the National Probation Directorate (NPD), the central administrative arm of the Service, grew in size with a staff, at its height, of approximately 350. At the time of writing (spring 2006), however, the NPD is rapidly shrinking, a large proportion of its staff having moved across to the National Offender Management Service (NOMS), as the commissioning functions of that body develop preparatory to passage of the enabling legislation for the proposed new structure, which the Government has announced it intends shortly to introduce (enabling legislation was introduced in early 2005 but aborted – see below – and has

since been repeatedly put back). During this transitional period the division of labour and precise functions of the burgeoning NOMS – which, ironically, already has a staff in excess of 1,000 – and the withering NPD are in flux and difficult to delineate. Ever since 2001 a junior minister (or ministers) within the Home Office ministerial team has been given responsibility for probation and prisons and, subsequently, NOMS. It is to this minister, and the relevant permanent secretary, that both the National Director of the NPS, the Director of NOMS and HM Chief Inspector of Probation, reports. With the appointment in 2004 of Martin Narey, previously Director General of the Prison Service and then Commissioner of Correctional Services, as the first National Offender Management Director, he rather than the National Director of the NPS became the prominent, publicly visible manager of the Service. Though Martin Narey resigned at the end of 2005 and was replaced, though without permanent secretary status, by Helen Edwards, formerly Director of the National Association for the Care and Resettlement of Offenders (NACRO), the new locus of influence was preserved. Policy-making power now resides with NOMS not the NPD. Indeed a question mark now hangs over the future existence of the NPD.

Founder members of the 42 probation boards, each of which has between seven and 15 members, chairs being part-time paid appointees and their colleagues receiving *per diem* fees and expenses, were appointed in 2001. Members, who are eligible for reappointment, serve for three years. Depending on the number on the board, the other members generally comprise four magistrates and two elected members of local authorities from within the area. One member is a Lord Chancellor-appointed judge from the locality. The remaining members are drawn from the public living or working in the area. The chief officer, who is responsible for the day-to-day running of the local area, is the only executive (staff) member of the board.

Prior to 2001 the Association of Chief Officers of Probation (ACOP) was an influential body that spoke for local services and exercised some influence over the direction of policy. ACOP ceased to exist in March 2001 and, perhaps surprisingly given the turbulent and uncertain time that the NPS has since suffered, no successor organisation (like the Association of Chief Police Officers (ACPO) or the weaker Prison Governors' Association (PGA) or the fledgling Association of YOT Managers) has emerged exclusively to represent the views of chief officers. Some of ACOP's functions were transferred to the Probation Boards Association (PBA), membership of which is open to all boards and their members, including chief officers, on a board subscription basis. The relationship between the PBA and the NPD has at times been an abrasive one, not least because the PBA, which has a full-time chief executive, Martin Wargent, a former chief probation officer, and secretariat, sought to represent boards' interests by resisting what the PBA saw during the period 2001–4 as the centralising diktats of the NPD (see, for example, Wargent 2002). In this struggle the position of chief officers was difficult and compromised, not having a representative body of their own and, though members of the PBA, being Crown servants appointed by the NPD, acting on behalf of the Secretary of State.

The PBA's *Handbook* (2001) describes boards as responsible for:

- establishing the strategy for the work of the area, within the policy framework and resources set out by the Home Secretary;
- preparing an annual area plan and budget, which contains both national and local priorities and takes account of national performance measures set by the NPD; the plan is submitted to the Director General of the NPS for agreement;
- contracts with other organisations to provide services, e.g. employment, education and training for offenders;
- ensuring that it is a good employer;
- meeting together at least four times, and as far as practical ten times, a year, those meetings being held in public;
- monitoring and assessing the area's performance against the annual plan with the aim of continually improving performance;
- reviewing the financial management and probity of the board.

It was probably inevitable that the relationship between the PBA and the NPD would prove difficult given that establishing the NPS involved ensuring a common administrative and managerial framework as well as greater consistency across the country in how offenders were worked with. Though, for example, the previous, 54, more-or-less-autonomous, probation services subscribed to a common National Negotiating Committee-agreed staff salary and working conditions scheme, they interpreted it differently and the working conditions and salaries of non-probation staff differed. Their estates arrangements (ownership and maintenance of buildings, office services, etc.) varied. And they had different IT tie-ups with their local authorities. The NPD took over the management of most of these aspects of policy. The consequence was some employee disaffection locally and many boards, whose members included commercially-minded persons familiar with local labour and property services market conditions, resented their lack of control as NPS employers. Many thought the financial consequences of NPD decisions for their budgets disadvantageous (these issues are hinted at in HMIP 2003b: para. 3.8). With the emergence of NOMS, the centre of the PBA's attention has shifted from the NPD to it.

Contextual accountability arrangements

One cannot, by definition, be accountable *to* someone unless it is clear what one is accountable *for*. Which is why defining the outcomes of a service, and agreeing some priorities and procedures for delivering those outcomes, are essential components for achieving accountability. *External* accountability rests crucially on the chain of *internal* managerial control and the collection of performance data. One may argue about whether managerial controls are appropriate – whether they are excessive in number or inappropriately targeted, stifle innovation, allow sufficient scope for professional judgement and discretion, etc. – but without paper or electronic performance traces,

and means for monitoring those traces, any true accountability is rendered nugatory. In this section we consider what further accountability mechanisms support the existing governance arrangements.

Published statistics and performance data

There is no legislative requirement, as there is for the Prison Service (see Morgan 2002: 1140–2), for the Secretary of State to produce and publish an NPS annual report or for certain operational statistics to be laid before Parliament. The Probation Service has for many years nonetheless done so. Until 2003 *Probation Statistics* were published annually by the Home Office, aggregating and analysing data returned by the local probation services until 2001 and thereafter the area administrations of the NPS. The *Probation Statistics* were never as extensive or sophisticated as the *Prison Statistics*, but they were a valuable source of accessible data on such issues as the changing characteristics of the probation caseload, the number and nature of reports written by probation staff, the characteristics of probation staff, etc. In 2004, however, they were replaced (as were the *Prison Statistics*) by an annual volume of *Offender Management Caseload Statistics* prepared by the branch of the Home Office Research Development and Statistics Directorate attached to NOMS (Home Office 2004b). Parallel changes were made to the annually published *Criminal Statistics*. It will no doubt take time for the precise format of the new statistics, along with the reports of NOMS and the Home Office more generally, to settle down. In the short term, however, the situation is most unsatisfactory with consequential difficulties for those wishing to understand and call the Service to account. Many data that were formerly published routinely or intermittently (for example, the characteristics of probation staff, the nature of recommendations made in pre-sentence reports or the proportion of offenders remanded in custody and subsequently receiving non-custodial sentences) are no longer published or made easily accessible. Information about NOMS, the work of the Probation Service and its offender caseload is currently fragmented and relatively incoherent. It will not be easy, for example, for readers to find out what staff are employed where, how the NOMS and NPS budget is dispensed and how the nature of offender assessment and supervision is changing. The operation of the Probation Service is today arguably less transparent than for many a year.

Her Majesty's Inspectorate of the National Probation Service for England and Wales

There has existed, as we have noted, a probation inspectorate since 1936, though not put on a statutory footing until 1993. The current statutory authority is the Criminal Justice and Courts Services Act 2000, ss. 6 and 7. The Secretary of State appoints HM Chief Inspector and determines his staff and resources. The inspectorate is required to inspect the provisions made by each local probation board under s. 5 of the Act and the Secretary of State may direct the inspectorate to make those assessments according to criteria specified in directions. The Secretary of State may direct that particular reports be submitted, but whatever reports are submitted or requested, copies must be laid before Parliament.

How statutory inspection arrangements work in practice is often opaque, though in the case of the probation inspectorate the nature of operational changes made in recent years have been described rather fully:

Inspectorates have a variety of functions – public interest accountability, giving independent advice to Ministers, identifying good and bad practice, driving up performance, safeguarding the interests of the customers, users and other beneficiaries of services, and so on. But the manner in which they fulfil these functions depends ... on the nature and the organisation of whatever service they inspect ... there is, and should be, a symbiotic relationship between what an inspectorate does and the character of the inspected service. (Morgan 2004: 81)

The Chief Inspector argued that, following the creation of the NPS and the NPD in 2001, it was necessary and sensible for HMIP to change its approach and methodology. Prior to 2001, he suggests, HMIP had to some extent operated as a surrogate NPD in relation to the 'more-or-less autonomous probation services'. There were no national performance data other than those collected by HMIP. The inspection programme was essentially a form of performance management, focused on compliance by probation staff with the National Standards for Supervision introduced in 1992 and updated since. With the creation of the NPD, it was appropriate for it, and not HMIP, to manage the system, routinely collect performance data and check on their reliability and validity. Henceforth HMIP would certainly use those performance data, but it would concentrate its inspectoral effort less on *processes* and more on *objectives* and *outcomes*, giving greater attention to *users* (offenders) and looking not just at what the NPS itself does, but also at what is achieved in *partnership* with other agencies and bodies. Further, inspections were now to be less *routine* and more *targeted*, depending on what the management data and other indicators suggested were the risks and needs. The corollary was that more inspectoral effort was to be devoted to *thematic* reports, looking at data *across* probation areas (*ibid.*: 82–4).

To sum up, the Chief Inspector's account was that now that there existed a framework for managerial control *by* the Home Office, HMIP could and should operate more like an independent inspectorate and less like the management arm *of* the Home Office.

The annual reports of HMIP show unequivocally that, in accordance with this manifesto, the inspectorate has since 2001 devoted less of its time to routine area inspections and more to thematically focused reports on aspects of probation performance, attempting to look at the relationship between what the Chief Inspector has described as the potentially virtuous triangle of offender *assessments*, *interventions* and *outcomes* (*ibid.*: 84; HMIP 2003a: chapter 5; HMIP 2004).

The data from these routine and thematic reports should assist not just the public at large, ministers and Home Office advisors to assess the merits and shortcomings of policy and practice across the country, but also members of probation boards to see how local provision compares with practice elsewhere.

In 2003, *inter alia*, HMIP published, as we have seen, its initial assessment of the governance of probation areas by probation boards, a key aspect of the new structure (HMIP 2003b). The review was superficially encouraging. Boards had been appointed and settled into their new roles pretty smoothly. They were responsive to national priorities and were adopting a systematic approach to area planning, strategic development and policy review. But there was a sting in the tail of the report which, given that the Government had at that stage not given an indication that they intended abolishing boards as currently constituted, was potentially devastating. Did boards, the inspectorate asked, add value? If boards did not exist could other structures and processes very easily take over their responsibilities? HMIP did not answer either of their own questions with negative assessments. But neither did they 'find evidence to contradict' them. The statement arguably provided another nail for the coffin of the 2001 arrangements.

In 2003, in a public lecture commenting, *inter alia*, on a Cabinet Office review of regulation and inspection arrangements across Whitehall, the Chief Inspector floated the proposition that HMIP, together with the four other inspectorates of criminal justice services, be abolished and a single criminal justice system inspectorate be created (Morgan 2004). This proposition was subsequently adopted by the Government (CJS 2005) and enabling legislation introduced. But the amalgamation proposal has since been abandoned in favour of greater administrative integration of inspectorate budgets and collaborative working.

The Prisons and Probation Ombudsman

Unlike HMIP, the Prisons and Probation Ombudsman (PPO) has not yet been placed on a statutory basis and until 2001 the Ombudsman dealt only with prisons-related complaints. In 2001 the Ombudsman had added to his remit 'the provision of an independent complaints service for offenders under the supervision of the National Probation Service' (PPO 2002: 14).

Persons eligible to make complaints to the PPO are offenders who either are, or have been, under the supervision of the NPS, or have had presentence reports (PSRs) prepared on them, or who live, or have lived, in NPS hostel accommodation, and have failed to get satisfaction from complaints made through the NPS internal system. The PPO does not normally consider complaints made on behalf of offenders by organisations or other individuals and decisions made by ministers or persons acting on behalf of ministers are excluded. However, the actions of agencies acting on behalf of the NPS – for example, contracted out supervision or surveillance such as community service or electronic surveillance – is included. Complainants must normally contact the PPO within one month of receiving a substantive decision from the probation board to their internal complaint and he will not normally accept a complaint after a delay of one year unless the delay is somehow the fault of the NPS or is very serious. When complaints are judged eligible the PPO has unfettered access to all documents relevant to his investigation. He communicates his findings in writing to complainants, copies his reports to the relevant persons in the NPS, and may make recommendations to the Home Secretary, the National Director or the probation board, as appropriate.

The PPO has to date received very few complaints from probation-related offenders – 97 in the first six months, and 192, 282 and 309 respectively in the three years March 2002–5. Only a tiny proportion, 10 and 13 per cent respectively in the last two years, were found to be eligible, invariably because the internal complaints system had not been exhausted. This is a much lower absolute number and proportion than that for the Prison Service (typically between 40 and 50 per cent). Moreover, nearly all the complaints so far received have been from prisoners, usually complaining about issues relating to their recall or release – mostly the fairness or accuracy of parole reports – or alleged failures of probation officers to maintain contact with, or provide information to, them while in prison. Remarkably few complaints have so far been upheld, two fully and ten partially in 2003–4 and only one fully and six partially in 2004–5 (PPO 2002, 2003, 2004, 2005). The PPO reports that the complaints he receives from prisoners regarding the NPS are typically more complex than those he receives about the Prison Service because they normally relate to the alleged actions of individual officers (HMIP 2004: 52). It is reassuring, therefore, that he has so far seldom found the Service wanting. Complaints regarding alleged racism, inaccuracy or unfairness in probation reports have rarely been even partially upheld. A high proportion of complaints, including some not strictly eligible, are resolved by the PPO with the NPS informally. It is usually a matter of re-establishing effective communications between the Service and the prisoner concerned.

The emergence of NOMS

Proposals that probation services be subject to a purchaser–provider split with a view to stimulating market competition between providers have, as we have seen, been in the air since the early 1990s. However, most commentators will take the 2003 Carter Report as the starting point for the creation of NOMS. This is for the very good reason that Patrick Carter, a successful businessman who has undertaken several policy reviews on behalf of Prime Minister Blair, recommended that the agency, combining the objectives and functions of both the probation and prison services, be formed and his recommendation was immediately adopted (Home Office 2004a). Next came some brief Home Office consultation papers in 2004, and in early 2005 publication of the Management of Offenders and Sentencing Bill. The Bill was lost because of the June 2005 general election. The Bill provided, crucially (clause 2), that the Secretary of State be empowered to direct probation boards to contract for the provision of specified probation services with specified persons, or that the board not provide certain services as directed. This was in keeping with the then plan that probation boards be retained but that Regional Offender Managers (ROMs), already appointed by spring 2005, commission probation and prison services which might be tendered for by voluntary and private agencies as well as probation boards.

Between the 2005 general election and early autumn 2005 this plan was amended. In October 2005 the Home Office published a more radical plan for NOMS (Home Office 2005). It announced that it intended introducing an

amended Bill in December 2005, a plan then put back to early summer 2006 (the expectation at the time of writing, May 2006). This is where matters now stand. The current proposals include the following:

- Abolishing probation boards as currently constituted and creating in their place, in however many areas the Secretary of State shall determine, probation trusts, the members of which would continue to be appointed by the Secretary of State, but which will likely be smaller than the existing boards. 'It is not proposed to replicate the detailed legislative prescriptions on the appointment process for, or membership and constitution ... so as to create flexibility ... as contractual arrangements change' (para. 15). However, since trusts 'will no longer be the sole providers of probation services' there is no longer a case for a Crown Court judge necessarily to be a member (para. 18). Further, if trusts 'are to operate with greater freedom' it makes sense for them to be able to choose, employ and line manage their own chief officer (para. 20).
- Giving the Secretary of State the statutory duty to make arrangements with others to provide probation services. This will mean that either the National Offender Manager or the ten ROMs, acting on behalf of the Secretary of State, 'will enter into arrangements, through contracts or service level agreements (SLAs), with other organisations in the public, private or voluntary and community sectors to provide them for him' (para. 10). These 'other organisations' are to include the local probation trusts.
- This is not intended to mean, however, that certain probation services are to be reserved for probation trusts or that trusts will be given contracts or SLAs: they may fail to win any contracts, something NOMS envisages (para.s 25–6). Either the National Offender Manager nationally, or the ROMs regionally, 'will commission services from whichever organisation is best placed to deliver them. They will be free to commission across probation area boundaries and across the custody/community divide' (para. 11).
- Separating the commissioning of 'offender management' and probation 'interventions' (para. 11), though it is envisaged that both could be provided by the same agency (NOMS 2005: para. 35).
- Giving the Secretary of State 'powers of last resort'. If trusts lose all of their business, they will cease to exist. However, the Secretary of State will be empowered 'to recreate a trust to take over an alternative provider in case of failure and/or to create a "shadow trust" to bid for work on behalf of the public sector in a future market test, with a full trust being set up if the bid is successful' (para. 26).
- Creating, at the outset, 42 probation trusts for the existing 42 probation areas. However, the Secretary of State is to be empowered to amend their number and boundaries 'to keep pace with changes elsewhere' in the criminal justice system. 'It is proposed that this be done administratively rather than, as at present, by means of a parliamentary procedure' (para. 27).

Before dissecting these proposals, we should go back to the Carter Report in order to chart the direction and distance so far travelled.

In his letter to the Prime Minister which serves as the preface to his report, Carter wrote as follows:

Despite recent improvements, a new approach is needed to break down the silos of prisons and probation and ensure a better focus on managing offenders ... The Report calls for a new National Offender Management Service (NOMS) responsible for reducing re-offending. It separates the case management of offenders from the provision of prison places, treatment services or community programmes (whether they are in the public, private or voluntary sectors).

In fact, most of the Carter Report was not devoted to structural change, but rather to sentencing policy and practice and the enforcement of sentences, aspects of which were judged, either explicitly or by implication, to be seriously flawed. Too many minor or first-time offenders, for example, were receiving more punitive sentences whereas 'the system needs to improve its grip on persistent offenders' (Carter 2003: 18). There was unwarranted sentencing disparity and 'poor self-governance in respect of sentencing practice' (*ibid.*: 20). Carter also observed, however, that the prison and probation services remained largely detached from each other. 'A more strategic approach to the end-to-end management of offenders across their sentence is needed' and 'no front line organisation ultimately owns the target for reduced offending'. This was in 'sharp contrast to the Youth Justice Board, which has a clear aim to "prevent offending by children and young people"'. They have a strong focus on managing young offenders (through the Youth Offending Teams). This structure ... appears to have made a significant impact on rates of re-offending' (*ibid.*: 23).

This reference to the YJB is instructive, for the YJB does not *manage* YOTs (see Morgan and Newburn, this volume). YOTs constitute devolved, multi-agency and largely locally financed, local government teams. The YJB *monitors* YOTs' performance and partly finances them, providing each with a core grant and ring-fenced funds for innovative offender interventions. YOTs themselves determine whether to deliver interventions in-house or contract out. However, the YJB does commission custodial places for juvenile offenders, and does so from a variety of providers. This arrangement has been judged generally to work well (Audit Commission 2004), though reoffending has so far reduced only marginally and the factors contributing to that reduction are debatable. This is an issue to which we shall return.

Carter concluded that introducing private sector prisons had worked well and that the benefits of competition, which had hitherto scarcely been tested with regard to front-line probation services, should be given greater scope in the prison and probation services generally. In a brief, six-page chapter, he sketched out 'A New Approach to Managing Offenders'. The essence of Carter's proposals was that a NOMS:

should be established, led by a single Chief Executive, with a clear objective to punish offenders and help reduce reoffending. Within

the service there should be a single person responsible for offenders. This would be separate from day-to-day responsibility for prisons and probation. (Carter 2003: 33).

Thereafter Carter provided only the lightest of sketches as to what this should mean in organisational practice, though two concepts were emphasised both in his script and diagrammatically. 'Offender management' should be fundamentally separated from 'operations', by which Carter meant the running of prisons and specific offender interventions within them, and 'community interventions and punishment' (*ibid.*: 36–7).

The Home Office response to these proposals was published within a fortnight: as the Home Secretary emphasised, the Carter Report had 'been developed closely with the Home Office'. He also asserted that many of the day-to-day tasks of probation and prison staff 'would not greatly change'. But they would be more integrated by offender managers, who would be 'largely Probation Officers' (Home Office 2004a: Foreword). Despite the progress that had been made by both the probation and prison services the Home Office asserted that it was 'still all too easy for offenders to fall between the gap between the services' (*ibid.*: para. 25), a scarcely veiled reference to the shortcomings of sentence planning and prisoner resettlement arrangements (see HMIP 2001; Social Exclusion Unit 2002). Great emphasis was placed on the benefits already achieved by contracting out the construction and management of prisons to the private sector, benefits that needed to be replicated across the probation and prisons field.

The appointment of Martin Narey as Chief Executive of NOMS was announced immediately and a National Offender Manager, Christine Knott (formerly Chief Officer, Greater Manchester Probation Area), later in the year. NOMS came formally into existence on 1 June 2005, most of its staff transferring from the NPD and Prison Service HQ. It became widely known that the Home Office estimated that approximately 70 per cent of the staff currently employed by probation boards would be needed for offender management-related work, and that the NOMS view was they would ideally be line managed by NOMS regional managers (ROMs), whose appointment would follow as soon as possible. It was also widely assumed that the Home Office would wish to be rid of probation boards, considered to be too large and unwieldy and to add no real value (see discussion of HMIP 2003b above).

The PBA published its initial response to Carter and the Home Office paper in February 2004. The Association was 'dismayed' that such 'far-reaching decisions' for a 'costly reorganisation' should have been taken without any business case being presented or consultation offered. Carter's analysis of sentencing trends was welcomed and the proposition that offenders be subject to improved end-to-end sentence management accepted. But the Government was reminded that 90 per cent of offenders were subject to non-custodial sentences and there should be no weakening of the vital links with local services such as policing, health, housing and education. Moreover for local accountability to be convincing, local governors had to have the 'power to put things right'. The Association welcomed the proposition that the not-for-profit sector be more involved in delivering probation services and had no

objection in principle to contracting out some services to the commercial sector. But it had concerns about the cost-effectiveness of the implied processes involved in commissioning, contract specification, monitoring and management (PBA 2004a).

In May 2004 NOMS issued an 'organogram' for the structure it had in mind, accompanied by the briefest of scripts (NOMS 2004). The diagram placed purchasers and providers on either side of a central, vertical line, at the top of which was the NOMS Chief Executive, Martin Narey, to whom both purchasers and providers were to be accountable. The 42 probation areas and boards were swept away as was the title 'probation'. On the provider side the latter was replaced by a 'Director of Public Sector Interventions' working with a National Management Board, and on the purchaser side were the ten ROMs each with a Commissioning Advisory Board and a Regional Management Board to oversee commissioning and offender management respectively. This was the framework envisaged for transferring the estimated 70 per cent of probation staff to be line managed by the ROMs.

This model was met with scarcely disguised incredulity in many quarters. The PBA's published response was almost a model of ironic restraint. What of the developing benefits of the 42 coterminous criminal justice areas each with their Local Criminal Justice Board (LCJB)? Why this elaborate, bureaucratic structure at regional level when practically all of probation's statutory and non-statutory duties, obligations and partnership structures were at the 42 areas level? What of Chancellor Gordon Brown's recent statement that the Government was intent on pursuing policies which will move 'us forward from the era of an Old Britain weakened by the man in Whithall knows best towards a 'New Britain strengthened by local centres awash with initiative, energy and dynamism'? The organogram had allegedly emerged, once again, without consultation: the PBA considered that the Service could be 'on the brink of a chaotic period which would result in real harm'. It was all a 'recipe for disaster' (PBA 2004b).

As a result of this and other expressions of doubt a compromise was reached. In July 2004 the Home Secretary announced that it had been decided not to pursue the national/regional approach, and in January 2005 the Management of Offenders and Sentencing Bill was published providing for the retention of area probation boards, but empowering the Secretary of State to direct what services they should and should not provide. In response the PBA announced that boards looked forward to developing their commissioning role with NOMS (PBA 2005b).

By 2005 the ten ROMs had been appointed and a pathfinder project announced in the north-west to begin testing the new framework for offender management. The Home Office plans to begin transferring probation area staff to be line managed by the ROMs had been abandoned: it could not legally be done. A new approach was forged. Probation boards would be abolished but be replaced by trusts, and instead of moving across to be line-managed by the ROMs, probation staff, whether involved in offender management or the delivery of interventions, would likely move about between whichever providers, public, private or voluntary sector, successfully tendered to the ROMs or the National Offender Manager for contracts or SLAs. The implicit

vertical dividing line between offender management and the delivery of specific interventions of the 2004 organogram had also been abandoned: it would now be possible, apparently, for the same providers to both manage offenders *and* deliver particular services – as probation areas do currently. This was the plan announced in October 2005, with an enabling Bill promised by the end of the year.

Having suffered almost two decades of scarcely concealed criticism and hostility from successive ministers, Conservative and Labour; having endured the fundamental change in structure and working practices inherent in the creation of a national service in 2001; and now, for the 18 months since the beginning of 2004, having faced great uncertainty about their future employment – probation staff, particularly senior managers, unsurprisingly reported low morale and little confidence in the proposed arrangements (PBA 2005b). Their views were reportedly widely shared by probation board members.

NOMS: likely prospects

Let us assume that the Government introduces, and successfully secures passage of, the enabling Bill outlined in October 2005 (Home Office 2005). What might the proposed arrangements for NOMS and the NPS mean in practice?

The first point to be made is that there are innumerable, important details to the proposed framework that have yet to be made clear. For example:

- There has not yet been set out any statement of the principles which should govern the proposed market in probation services. (This was accomplished for prisons through the provisions in the Criminal Justice Act 1991 for the appointment of a Crown ‘controller’ in each privately managed prison, etc.) Are any aspects of probation work – the preparation of court reports, for example – to be exempted from the services for which non-public bodies might contract? And, if not, would non-public agencies preparing court reports be eligible also to deliver interventions possibly proposed in those court reports? Would such overlaps not embody conflicts of interest?
- It is not yet clear what characteristics probation trust members are to have and whether there is to be any semblance of local accountability to constituent local authorities and the courts either through the trusts or, should trusts fail to secure contracts or SLAs, through other providers or the ROMs.
- Reference is made in the October 2005 statement to: ‘local partnership arrangements’ and the ‘significant advantages [which] have accrued from coterminosity of geographical boundaries between local [criminal justice] agencies’; and to boards’ statutory and non-statutory duties other than the provision of probation services (Home Office 2005: para. 27). However, it is far from clear how these duties will satisfactorily be met given the uncertainty and possible flux in the number and range of possible future

providers of probation services. Probation areas, for example, are statutory partners of YOTs, and are obliged to contribute resources to them: how are these obligations in future to be met? Probation areas are currently represented, through their chief officers, on the LCJBs: how are probation services, critical to joint criminal justice system effectiveness, to be represented in future?

- Further, as noted earlier, external accountability rests crucially on the chain of internal managerial accountability and there is a symbiotic relationship between internal performance management and external inspection. How are these relationships in future to be structured, not least that the Government proposes that the criminal justice inspectorates should work more collaboratively?

In addition, there are fundamental, operational issues, the discussion of which is beyond the scope of this chapter, which have implications for governance and about which serious doubts are entertained as to the likely effectiveness of the proposed structure. For example, the connection between changing the direction of the sentencing trend and structural reorganisation of the probation and prison services was singularly opaque in the Carter Report, and remains opaque in the operational plans for NOMS (see, for example, Hedderman 2006). Many commentators have from the outset considered that the prospects for launching NOMS successfully would be poor were the prison and probation services to be overwhelmed by a rising prison population. At the time of writing, May 2006, the prison population stands at over 77,000, a record high. Further, there are substantial doubts regarding the model of offender management being implemented: what will work administratively will not necessarily be effective from offenders' standpoint (see Partridge 2004; PA Consulting Group and MORI 2005; Robinson 2005; Raynor and Maguire 2006). These doubts will be exacerbated if the relationships between offenders and their supervisors is fragmented by the division between offender management and delivery of particular offender programmes by a multiplicity of agencies.

This brings us to the question of accountability, local and national. The structure and conceptual basis of the 2004 organogram has been largely abandoned, but the position of one person within it, the NOMS Chief Executive in the Home Office, remains intact. Both the commissioning and delivery of offender management and all custody and community-based sanctions are henceforth to be accountable to the Chief Executive of NOMS and, through her, the Secretary of State, who is to be empowered to both appoint the members of probation trusts and determine the content and recipients of all service provider contracts and SLAs. There remains the possibility that the Secretary of State may decide, administratively, that there should be links between the membership of trusts and the judiciary, the local authorities and other bodies: this is one question about which the Home Office sought the views of stakeholders (Home Office 2005: para.s 16–18). But it is difficult to interpret the Government's proposals as not representing a significant shift towards centralised command, as is and has been the case with the Prison

Service. This is the exact opposite of that for which the Government itself and several commentators (see Faulkner 2006), as well as the PBA, have argued. Even if the Secretary of State decides that there should be such membership links, the trusts will no longer determine what services they provide locally: those decisions will rest with the ROMs or the National Offender Manager. In such a case, if local communities wish to question the manner in which offenders are or are not supervised, their recourse would appear to be to ROM offices at regional government level. There will be no democratic local connection, as there is not with prisons.

This restructuring plan rests on the twin propositions that the elected government will discern the wishes of the judiciary and the community at large, that the National Offender Manager and the ROMs will interpret how those wishes are to be shaped to local circumstances and needs, and a more open, competitive market will secure enhanced effectiveness and value for money. If the corollary of these arrangements leads on the one hand to lack of continuity in supervisory relationships with offenders and on the other fragmentation of probation services as far as local partnerships are concerned, then the consequences for both reduced reoffending and effectively joined up criminal justice policy will be jeopardised.

As if these structural uncertainties and process outcomes were not enough, the criminal justice and local government landscape within which probation services are delivered is itself changing fundamentally. In autumn 2005 the Home Secretary announced that he proposed amalgamating police forces. Though his successor, in summer 2006, put these plans on hold, few commentators doubt that they will eventually be resuscitated, with knock-on consequences for the organisation of other criminal justice services. Meanwhile, within local government the development of children's trusts and local area agreements will potentially transform the delivery of services with consequences for the operation of YOTs and, thus, their partnerships with probation services. For all these reasons it is difficult to foresee the reality of probation governance and accountability in the short to medium term.

Further reading

For a general history of the Probation Service, including aspects of its governance, Peter Raynor and Maurice Vanstone's *Understanding Community Penalties: Probation, Policy and Social Change* (2002) is an excellent introduction. The website of the Probation Boards Association (<http://www.probationboards.co.uk>) provides authoritative guidance to the governance provisions of the existing framework. To get to grips with the turmoil surrounding recent changes in the governance of the service, both made and proposed, there is no substitute for reading the key official documents, principally the Carter Report, *Managing Offenders, Reducing Crime – A New Approach* (2003), and the Home Office responses *Managing Offenders – Changing Lives* (2004a) and *Restructuring Probation to Reduce Re-offending* (2005). Chapters 20 and 23 of David Faulkner's *Crime, State and Citizen: A Field Full of Folk* (2006) and a collection of essays edited by Mike Hough, Rob Allen and Una Padel, *Reshaping Probation and Prisons: The New Offender Management Framework* (2006), sketch aspects of the argument about future policy directions.

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