

# The probation service in England and Wales: A decade of radical change or more of the same?

European Journal of Probation

2020, Vol. 12(2) 129–146

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DOI: 10.1177/2066220320947243

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## Abstract

This article reviews developments in probation in England and Wales since 2010, a decade in which services were exposed to the logic of competition and profit. In 2014, the Conservative-Liberal Democrat Coalition government's *Transforming Rehabilitation* (TR) reforms promised an end to a top-down, target-centric culture of state intervention by outsourcing services for low-to-medium risk offenders to 21 privately-owned Community Rehabilitation Companies (CRCs). And yet, just four years after the reforms were implemented, the Conservative government announced that CRCs' contracts would be terminated, with all offender management services returned to the public sector. With a focus on the private sector, the article argues that radical change to the probation service's structure has entrenched a focus on centrally-administered performance targets and audit. In other words, contrary to the decentralising rhetoric at the core of TR, the decade has in many ways produced more of the same managerialism that the reforms were presented as a means to displace. The result has been a general decline in the quality of probation services.

## Keywords

Probation, *Transforming Rehabilitation*, managerialism, marketisation

## Introduction

The formation of the Conservative-Liberal Democrat Coalition government in 2010 heralded a 'rehabilitation revolution' (HM Government, 2010: 23), with the probation service in England and Wales at the heart of its reforms to the criminal justice system. A Green

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Paper, *Breaking the Cycle*, identified reducing high rates of reoffending, and the resultant costs to the taxpayer, as the most pressing criminal justice issue (MoJ, 2010). Greater market (and voluntary sector) involvement in probation services, the Coalition government argued, would ‘unlock the professionalism, innovation and passion of experts from all walks of life’ (MoJ, 2010: 9), simultaneously reducing reoffending and enhancing efficiency. These pledges were substantiated in a later document, *Transforming Rehabilitation: A Strategy for Reform*, which outlined several key changes to probation – notably, the extension of services to *all* offenders sentenced to over one day in custody by making greater use of private sector providers (MoJ, 2013a). As of June 2014, the *Transforming Rehabilitation (TR)* reforms replaced 35 publicly-owned Probation Trusts with a National Probation Service (NPS) and 21 privately-owned Community Rehabilitation Companies (CRCs) (NAO, 2016). The former manages offenders who pose a high risk of harm to the public; the latter supervise low-to-medium risk offenders (MoJ, 2013b). A ‘Payment by Results’ (PbR) mechanism was introduced to remunerate private providers, the stated aim of which was to facilitate ‘innovative’ practice (MoJ, 2013b).

However, in May 2019, the Conservative government revealed that the NPS would (re)assume responsibility for the day-to-day management of *all* offenders (MoJ, 2019). Dame Glenys Stacey, the-then Chief Inspector of HMI Probation, called *TR* ‘irredeemably flawed’ (HMI Probation, 2019a: 3). She highlighted how a transactional model of probation had ‘downgraded’ and ‘diminished’ the profession. An exodus of qualified staff resulted in unsustainably high caseloads managed largely by unqualified practitioners (HMI Probation, 2017a, 2019a). Commercial pressures had undermined the norms and values on which professional practice depends (HMI Probation, 2019a), exacerbated by a PbR mechanism that was ‘not well suited for probation services’ (NAO, 2019: 9). Dame Glenys Stacey’s criticisms of the impact of *TR* on the probation service thus stand in stark contrast to the Coalition government’s articulation of market logic as the primary means through which to reinvigorate ‘professionalism’ and inspire ‘innovative’ practice (MoJ, 2010, 2013a).

This article reviews developments in probation during a decade in which most services in England and Wales were outsourced to providers in the private sector, with a focus on culture and practice in the CRCs. The first part provides a brief history of the policy context from which *TR* emerged. Thereafter, the article highlights the factors that have contributed to the failings of *TR* – with a particular emphasis on probation identity and culture, inter-organisational working, and the PbR mechanism through which private providers are paid. It argues that ‘radical’ changes to probation in England and Wales were enforced through ‘more of the same’ managerial processes of targets and audit. While the NPS and the CRCs have experienced similar challenges, the (relative) absence of market logic in the former has enabled it to better cope. The article thus concludes by speculating about the next decade for the service following the Conservative government’s proposed re-nationalisation of services.

## **TR: A brief history of the present**

Many commentators noted that the *TR* reforms were the most ‘radical’ in the probation service’s history (e.g. Deering and Feilzer, 2015; McNeill, 2013). These observations

reflect the decision to cede state provision of the majority of probation services to the private (and voluntary) sector. A focus on the discontinuities of social policy can, however, mask important continuities with the recent past (Clarke and Newman, 1997) – not least because the legislative roots for *TR* can be traced back to New Labour's Offender Management Act 2007, which stripped Probation Trusts of their statutory responsibility to directly provide services to offenders (Burke and Collett, 2016). The financial crisis of 2007/08 provided the impetus for the Coalition government's attempts to further remake public services, presenting private enterprises with greater opportunities to seek more secure markets (HM Government, 2011). As the effects of a banking crash reverberated around a globalised financial system, the incumbent New Labour government was forced to intervene, propping up banks deemed 'too big to fail' via a huge injection of borrowing (Clark, 2016). The resultant recession provided an opportunity for a shift in political economic discourse towards controlling and managing government debt (Downes and Morgan, 2012). Restoring economic stability became the key issue around which the 2010 General Election was fought (Clark, 2016). The Conservative Party's election campaign focused on alleged economic extravagance, bemoaning the New Labour government's 'terrible legacy' (Conservative Party, 2010: viii) of public debt. Improvident public services, they argued, were holding back the economy: had the public sector displayed the same ingenuity as the private sector during New Labour's time in office, the same quality of service could have been delivered for £60b less each year (Conservative Party, 2010). In this way, public debt was reconceived as the *cause* of the financial crisis as opposed to an *effect* of bailing out beleaguered banks.

The public debt narrative proved successful and, after 13 years in power, New Labour were replaced by a Conservative-led Coalition government with the Liberal Democrats (HM Government, 2010). Their *Programme for Government* defined budget deficit reduction as 'the most urgent issue facing Britain' (HM Government, 2010: 15). The Coalition government argued that this would be achieved not by increasing taxes but by cuts to a bloated and inefficient public sector in which professional discretion had been lost within a top-down, target-centric culture of state intervention (HM Government, 2011). They set out five principles on which public sector reforms would be predicated: increasing choice, decentralising power, competing for services, improving access, and ensuring greater responsiveness (HM Government, 2011). The solution to a crisis of free markets was, therefore, *more* markets for public services, summarised by Crouch (2011: viii) as 'the strange non-death of neoliberalism.'

Neoliberalism is a polysemous concept; it is applied differently depending on the political history, culture, and conditions of a particular jurisdiction (Clark, 2016). Variations between nation states are underpinned by the belief that free markets are the most expedient means through which to pursue individual liberty (Harvey, 2005). The ideological framework for such a shift emerged in the late-1970s from the New Right, a response to the collapse of the Keynesian consensus between market-based inequalities and the equalities guaranteed by the state by right of citizenship (Dean, 2010). For Clarke and Newman (1997: 12), this postwar accord was based upon 'bureau-professional regimes of state welfare'. Bureaucratic structures ensured impartial access to services, whilst professional knowledge and indeterminacy sought to provide a personal counterweight to impersonal provision. For the New Right, however, such bureaucracy was an

inefficient impediment to the economic prosperity of individuals and corporations, and thus the nation state (Dean, 2010). Those who were dependent upon the welfare state were presented as parasites who incurred upon the freedoms of citizen-taxpayers (e.g. Murray, 1990). Proponents of neoliberalism contended that the state should absent itself from the economy, reflecting the belief that self-correcting markets are inherently more efficient and effective (Clarke and Newman, 1997). In other words, for the New Right, the state had to become more entrepreneurial (Osborne and Gaebler, 1992). Neoliberal reforms, therefore, sought to aggressively impose markets on all spheres of public life by using quasi-market structures to hold professionals *and* government to account (Dean, 2010).

Managerialism, ‘the process of subjecting the control of public services to the principles, powers and practices of managerial co-ordination’ (Clarke et al., 2000: 5), has been central to the neoliberal reconstruction of the state. For Clarke and Newman (1997), the managerial state not only *empowered* new providers to deliver services, but also ensured the *disciplinary* constraints required for efficient provision – especially with regard to the exercise of professional discretion. Managerialism thus emphasised decentralisation and competition, as well as transparency and accountability. On the one hand, the state aimed to devolve its authority to a mixed economy of organisations – public, private, and voluntary – as local authorities were expected to assume the role of commissioner rather than direct provider (Clarke and Newman, 1997). On the other hand, reforms to the public sector in the 1980s were concerned with enhancing efficiency from within the centralised planning framework that had defined the Keynesian welfare state (Clarke and Newman, 1997). Budgetary constraints were imposed upon public services by central government, with local providers compelled to demonstrate their effectiveness through performance targets and audits (Power, 1997). Market-based reforms, whether outright privatisations, outsourcing, or the use of private finance to fund public services, gradually obfuscated the boundaries between the public and the private sector (Clarke and Newman, 1997). A discourse of decentralisation, therefore, conceals the ways in which managerialism has expanded state power.

Nowhere is the growth of the state more apparent than in the expansion of the crime-control sphere, which has emerged as an alternative to the welfare system to manage the communities marginalised by the economic dislocations produced by neoliberalism (Wacquant, 2009). This expansion reflects the concurrent rise of neoconservative discourse: where neoliberalism seeks to empower autonomous citizens, neoconservatism strives to enforce the morality of work and family upon its subjects (Dean, 2010). In the criminal justice sphere, neoconservative ‘tough on crime’ discourse was a central pillar of Margaret Thatcher’s successful 1979 General Election campaign (Garland, 2001). The Labour Party’s adoption of such rhetoric whilst in opposition and, later, in government highlights the perceived political capital in punitive justice policy (Deering and Feilzer, 2019). Indeed, since 1993, the prison population in England and Wales has nearly doubled from approximately 43,000 to just over 83,000 (MoJ, 2016, 2020), a period that has similarly witnessed the advent of ‘mass supervision’ (McNeill and Beyens, 2013: 3) of offenders in the community.

The tensions between neoconservatism and neoliberalism thus created the conditions from which *TR* emerged (Deering and Feilzer, 2019). For probation, a neoliberal emphasis

on controlling costs via processes that emulated the market, such as performance targets and National Standards supported by regular audit (Phillips, 2011), was contravened by a neo-conservative stress on 'law and order' (Garland, 2001). The resultant 'punitive managerial' (Cavadino et al., 1999: 54) compromise consciously limited professional autonomy in the pursuit of the efficient supervision of ever-greater numbers of offenders (Robinson, 2008). However, the Coalition government disparaged the use of performance targets to promote efficiency, promising 'to ensure greater flexibility and professional discretion' (MoJ, 2010: 46). This renewed focus on professional autonomy constitutes a reversal of a discourse of derision that characterised the first wave of neoliberal reforms under the Conservative governments of the 1980s (Clarke and Newman, 1997). The disciplinary consequences of managerial shifts in the 1980s were, instead, attributed to New Labour's purported 'Big Government' (Downes and Morgan, 2012: 187) approach – which, it was argued, had contributed to ineffective probation practice and increases in the prison population (MoJ, 2010).

*TR* was predicated on four structural reforms to the probation service: the extension of 'statutory rehabilitation' (MoJ, 2013a: 6) to *all* offenders sentenced to less than twelve months' imprisonment; creating markets for offenders deemed to be low-to-medium risk of harm; 'Through the Gate' provision of services from the prison into the community; and the implementation of a PbR mechanism through which to pay providers (MoJ, 2013b). The Coalition government argued that the efficiencies generated by competing for services would pay for the reforms (MoJ, 2013a), with savings resulting from reduced reoffending estimated to be approximately £12b over the seven-year duration of the contracts (NAO, 2016). Here, there are clear parallels with the Carter Report (2003), which proposed to extend post-sentence supervision to all prisoners; implement 'end-to-end' linkage between the prison and the community; widen 'competition' and 'contestability' for probation services; and connect providers' budgets to their performance. This indicates continuity between the Coalition government and New Labour's approach to probation in the previous decade, but there are also important congruities in terms of staff attitudes to organisational change. Robinson and Burnett (2007: 328), for example, found that the principal objection to the Carter Report (2003), and the subsequent establishment of the National Offender Management Service (NOMS), was with 'the ogre of contestability' – that is, the intention to compete for probation services. Here, again, there are parallels with the *TR* reforms.

### **'Business as usual'? Probation identity and culture after *TR***

From 1 June 2014, *TR* split the probation service into the publicly-owned NPS and 21 privately-run CRCs (NAO, 2016). Assessing risk is the sole province of the NPS, which advises the courts on sentencing and determines where offenders are allocated; CRCs are expected to 'innovate' to reduce reoffending, working with offenders serving community sentences and providing 'Through the Gate' continuity of service (MoJ, 2013b). Preferred providers for the 21 CRCs were announced in October 2014, with private companies assuming responsibility for the contracts in February 2015 (Albertson and Fox, 2019). Indeed, the extent to which the tendering process benefited large, multinational corporations has contributed to the belief that ideology was the primary driver of the *TR* reforms (Burke and Collett, 2016).

Albertson and Fox (2019) assert that the public are, in general, suspicious of marketisation and privatisation. For Hedderman and Murphy (2015), however, a lack of public interest in the probation service and the work it performs resulted in very little media coverage of, and thus opposition to, *TR*. Their review of the LexisNexis database of newspaper articles showed just 24 referenced the reforms in 2013. The most radical aspect of *TR* – the outsourcing of probation work to private companies – was largely uncontested, as were the-then Justice Secretary Chris Grayling’s claims as to the failings of the service to reduce reoffending amongst a cohort of short-term prisoners for whom they had no statutory responsibility to provide services. Accordingly, if there was broad consensus that the rehabilitative *ends* of the *TR* reforms represented a welcome break from the ‘prison works’ mantra of recent decades, then the *means* through which these aims were to be achieved proved unsettling to large numbers of those working in and around probation (Burke and Collett, 2016).

The Coalition government’s critique of New Labour’s ‘Whitehall knows best’ (MoJ, 2010: 6) approach laid the foundations for *TR* (MoJ, 2013a); however, this managerial philosophy was perpetuated in their imposition of reforms, which promised greater discretion whilst depriving staff and trade unions of meaningful consultation (Deering and Feilzer, 2019). When *TR* was announced, McNeill (2013: 85) argued that the humanitarian values on which probation was founded were at risk of being ‘corrupted’ by the influence of market logic. The Coalition government’s summary of responses to a consultation document entitled *Punishment and Reform: Effective Probation Services* (MoJ, 2012) acknowledged this dissonant potential: ‘staff members were generally opposed to the policy of opening up to competition the management of offenders and believed that this should be a function directly provided by public servants’ (MoJ, 2013c: 5). However, the Coalition government prevented probation leaders from speaking out (Deering and Feilzer, 2019). Despite the service’s lack of ‘a history of militancy’ (Kirton and Guillaume, 2019: 8), Napo (probation’s professional association and trade union) organised two strikes: the first took place in 2013, after a majority (80%) of union members voted in favour of industrial action when *TR* was announced, while the second occurred six months later in early-2014. Such opposition is supported by surveys conducted just before the move to private employment, which found that probation staff were overwhelmingly opposed to *TR* (Deering and Feilzer, 2015; Kirton and Guillaume, 2015). Strike action, although unsuccessful, thus displayed a collective resistance to the reforms through the continuation of a probation identity grounded in an ethos of public service (Kirton and Guillaume, 2019; Robinson et al., 2016).

Grant’s (2016) literature review of the working identities of agents of community supervision in the UK asserts that they have remained ‘durable’ in the face of the punitive, managerial trends identified above. Indeed, for Mawby and Worrall (2013: 141), while ‘no monolithic probation culture. . . pervades the organization’, a shared value set based on commitment to the client and a desire to engender change among the less fortunate is an important source of collective identity. These ideals, as opposed to any particular technical skills, are what makes a person ‘right’ for the job (Tidmarsh, 2020a; Robinson et al., 2014). As such, the relative stability of probation values in recent decades has enabled staff to make sense of their work in spite of persistent organisational

change (Annisson et al., 2008; Deering, 2010; Deering and Feilzer, 2015; Robinson and Burnett, 2007).

Collins (2016) draws upon ‘commitment’ – a philosophical concept that involves immersion in particular activities, events, and social settings, and finding inherent value in such associations – as a lens through which to explore the tensions between the commercial elements of *TR* and the importance of probation as a moral good. He differentiates between ‘professional’ and ‘organisational’ commitment. The former concerns one’s approach to their profession, including a willingness to devote emotional capital to a chosen vocation, and is influenced by shared values and a sense of community; the latter refers to an acceptance of, and adherence to, the methods and goals of an organisation. Collins (2016) argues that while organisational commitment has declined in recent years, the result of attempts to instate a punitive, managerial identity within probation, professional commitment to the client-centred values that underpin the service have proved resilient. However, the introduction of private sector organisations to the probation ‘marketplace’ has posed significant challenges for staff.

Academic scholarship on probation identity and culture has (perhaps unsurprisingly) focused on staff allocated to the CRCs rather than the NPS. HMI Probation (2020a) have found some organisational disaffection among staff in the latter, although this predominantly relates to what they see as the bureaucratic nature of HM Prison and Probation Service (HMPPS) rather than the NPS’s ‘vision’ (HMI Probation, 2020a). With regard to research on the private sector, Robinson et al.’s (2016: 161) ethnography of the transition to a newly established CRC drew upon the concept of ‘liminality’ – ‘the experience of being betwixt and between the old and the new’ – to highlight feelings of status anxiety and loss of identity whilst adapting to working life in a CRC. In the absence of a ‘clear identity’ (Robinson et al., 2016: 173) for the ‘new’ organisation, staff continued to embrace the ‘old’ label of ‘probation’ to make sense of the attempt to establish a private sector identity, particularly when dealing with criminal justice agencies in the public and voluntary sector. This indicates an enduring commitment to the profession over the new organisation (Collins, 2016).

Such changes to ‘probation’ terminology were also apparent in Tidmarsh’s (2019, 2020b) study of a CRC: changes to staff job titles, from ‘probation (service) officers’ to ‘(senior) case managers’ were intended to emphasise *coordination* of services rather than direct working with offenders, a shift that resembles the discourse and objectives of New Labour’s ‘offender management model’ (Robinson, 2011). Staff lamented, but reluctantly accepted, a mode of practice dependent upon the (further) outsourcing probation work to the voluntary sector (Tidmarsh, 2019b, 2020). A failure to buy into new languages and methods, therefore, suggests that staff work *in* but are not *of* the CRC.

Burke et al. (2017) found evidence of the same historic resilience that has characterised staff experiences of change within probation. Drawing upon Waring and Bishop’s (2011) ‘typology of occupational identity narratives’ in their study of staff transitions from the NHS to privately-managed Independent Sector Treatment Centres, they applied the same categorisations – *pioneers*, *guardians*, *marooned* – to probation culture in a CRC. Senior managers were the group most likely to take a *pioneering* attitude, with many expounding the view that the changes liberated practice from the bureaucratic customs of a centrally-administered public sector. The group most resistant to change

was the unionised members of staff, most of whom had worked in probation for many years. This group felt *marooned* by the reforms, distanced from decision-making, and opposed the performance targets intrinsic to the contractual element of *TR*. The *guardians*, the most common group, retained their public sector identity and subscribed to a ‘probation ethos’, but were determined to adopt a ‘business as usual’ approach to the changes. In other words, a desire to help service users took precedence over their personal opinions on *TR*. The *guardians* echo previous research on organisational change in which practitioners were willing to focus on the positives, to ‘grasp the nettle’ (Robinson and Burnett, 2007: 331), so as to navigate the NOMS reforms. This indicates that CRC staff are the ‘culture carriers’ (Clare, 2015: 50) of a value set that has anchored the service amidst organisational restructuring (Burke *et al.*, 2017).

The mobilisation of a professional memory in the CRCs should not be interpreted as evidence that all probation services were adequate before the ‘rehabilitation revolution’, nor that staff were satisfied (see, for example, Farrow, 2004); rather, nostalgia for a prior probation cognisance, real or imagined, which foregrounds offenders has continued to prove an important coping mechanism for those adapting to persistent restructurings. That said, professional commitment in the CRCs has not prevented perceptions of a hierarchy of probation services.

### **‘Us and them’: (Inter)organisational working**

Despite the durability of probation identity, culture, and values among those allocated to the private sector, organisational divisions have emerged *between* CRCs and the NPS. Early evidence from the implementation of *TR* indicated that communication between the public and the private sector would likely present difficulties, although such exchange was exacerbated by longstanding IT issues (HMI Probation, 2014). Tensions between CRCs and the NPS also reflect the manner in which staff were assigned to the respective organisations. Staff were consulted on their organisational preference, although, in a majority of cases, the final decision was ultimately imposed by the state (Robinson *et al.*, 2016). Most (qualified) probation officers were allocated to the NPS, while (unqualified) probation service officers were shifted to the CRCs (Kirton and Guillaume, 2015). As a result, unqualified staff in the CRCs are ‘doing work formerly undertaken by probation officers’ (HMI Probation, 2019a: 74).

The growth of probation service officers in relation to probation officers in recent years is frequently taken as evidence of de-skilling (e.g. Gale, 2012; Mair, 2016). For Fitzgibbon and Lea (2014), this demographic shift laid the foundations for splitting the service according to risk of harm. They argue, in no uncertain terms, that:

The assertion that unqualified personnel are capable of monitoring and supervising offenders, not just in unpaid work but also in the crucial area of motivating offenders to desist from crime – which requires skills that experienced probation officers take years to acquire – is quite frankly fanciful and misleadingly disingenuous. (Fitzgibbon and Lea, 2014: 35)

While this view reflects badly, and perhaps unfairly, on the work of many probation service officers, it nonetheless suggests that radical changes to the structure of the service

present a continuation of a managerial pursuit of ‘efficiencies’ through cheaper labour (Gale, 2012; Tidmarsh, 2020b). Such allocation has contributed to the view that the NPS are the ‘elite’ (Robinson et al., 2016: 168) organisation in a ‘two-tier and fragmented’ (HMI Probation, 2017a: 6) service.

The emergence of an ‘us and them’ culture (Deering and Feilzer, 2015; Kirton and Guillaume, 2015) has proved particularly detrimental to the CRCs, not least because a lack of understanding about what the private sector delivers has meant that the NPS is reluctant to subcontract services (Woolford and Salami, 2019). Key to the Coalition government’s attempts to empower private providers were the use of ‘black box’ contracts, in which CRCs were free to individualise their own terms (HMI Probation, 2018a). The expectation was that providers would form robust supply chains from which to commission specialist services; however, ‘vague statements of intent’ (HMI Probation, 2018a: 12) pertaining to their development have proved unenforceable. This failure to establish supply chains, along with NPS concerns over ‘value for money’, has impacted the services available to commission from the CRCs. In addition to a lack of confidence in the quality of interventions, ‘there is an enduring cultural dimension: professional probation staff do not see themselves as purchasers, and most do not want to be’ (HMI Probation, 2018a: 13).

While HMI Probation and HMI Prisons’ (2017) joint inspections of CRCs’ ‘Through the Gate’ services have demonstrated an over-reliance on signposting to other organisations, this work has been hindered by the quantity and quality of pre-sentence reports (PSRs) that are prepared by NPS staff (HMI Probation, 2019a). In cases where a short-term prison sentence was imposed, judges and magistrates had access to a PSR in fewer than one in four cases, while reports are often re-used when an offender is sentenced for a new offence (HMI Probation, 2019a). This devaluation and degradation of PSRs can be located within longer term trends towards ‘speedier’ justice (Mair, 2016; Robinson, 2017). Indeed, there has been a marked increase, from 3% to 36%, in the number of offenders who have been recalled to prison as ‘a direct result of the . . . extension of statutory rehabilitation to those serving short custodial sentences’ (NAO, 2019: 7).

Amidst the negativity surrounding the CRCs, however, there has been evidence of good practice. One such innovation that has been received positively by staff and service users is the introduction of community hubs as a means to support the process of desistance in many CRCs, often through multi-agency working (HMI Probation, 2020b). While staff are not always aware of all services available in the hubs (HMI Probation, 2020b), their promise lies in the balance between a mode of practice that conforms to the people-oriented motivations for entering the service (see Annison et al., 2008; Deering, 2010) that also enables them to meet the terms of an order (Dominey, 2018). However, such examples of innovation are few and far between, in large part because of the constitution of the probation ‘marketplace’.

## **PbR and the probation ‘marketplace’**

Enabling probation staff to enact meaningful reductions in reoffending could only be achieved, the Coalition government argued, through ‘a fundamental break with the failed and expensive policies of the past’ (MoJ, 2010: 2). They asserted that a probation service

operated according to state-administered targets had created perverse incentives in which the ends of practice were neglected at the expense of internal processes; *TR*, by contrast, promised that ‘the level of prescription set out in contracts in relation to activities aimed at rehabilitation and reducing reoffending will be kept to an absolute minimum’ (MoJ, 2013b: 10). In this sense, the reforms were presented as a way to bring together the interests of probation staff, offenders, and taxpayers.

The implementation of a PbR mechanism was central to efforts to inspire innovative practice whilst retaining a focus on efficiency (MoJ, 2013a). Despite a lack of evidence as to the effectiveness of PbR for funding public services (NAO, 2015), David Cameron (2012), the Prime Minister when *TR* was implemented, described it as ‘such a good idea I want to put rocket boosters under it’. Here, the appeal of PbR for probation services lies in its simplicity: ‘the taxpayer only funds rehabilitation services that work’ (MoJ, 2012: 1). However, this presentation *oversimplifies* the extent to which probation providers can be paid according to results. Reoffending is particularly prolific amongst the cohort of offenders who serve short custodial sentences (HMI Probation, 2019b), while such data take two years to materialise (Hedderman, 2013). The time lag between the point at which a prospective provider would pay their fixed costs (rents, utilities, staffing, etc.) and the realisation of (unpredictable) outcome-based payments meant PbR contracts that were overdependent upon results disincentivised potential bidders (Albertson and Fox, 2019).

As a result, the PbR mechanism was separated into three types of payment: ‘fee for service’, an output-based reimbursement for the delivery of statutory requirements; ‘fee for use’, to cover the cost of services delivered on behalf of the NPS; and ‘payment by results’, an outcome-based reward for demonstrating a reduction in reoffending (NAO, 2019). Contrary to the Coalition government’s claims to ‘[a]ccountability through transparency’ (HM Government, 2011: 35), CRCs are protected by commercial confidentiality (House of Commons Justice Committee, 2018a). The National Audit Office (2016) have estimated that ‘payment by results’ comprised just 10% of CRCs’ funding, although HMI Probation (2017a) have asserted that it could constitute anywhere between 6% and 28% of payments. Given the NPS’s reluctance to commission services from private providers (HMI Probation, 2018a), discussed above, CRCs’ funding was mostly derived from ‘fee for service’ payments (House of Commons Justice Committee, 2018a). These metrics accrued greater financial significance, as CRCs could be penalised for a failure to comply (NAO, 2017). Accordingly, the structure of the probation ‘marketplace’ necessitated the continuation of the managerial logic of performance targets, albeit distilled in contractual form.

That CRCs’ caseloads are lower than anticipated further entrenched a focus on ‘fee for service’ targets (House of Commons Committee of Public Accounts, 2019). The Coalition government initially estimated that CRCs would supervise 80% of offenders (NAO, 2016); however, the reality is closer to 59% (NAO, 2019). This is, in part, because fewer offenders are being processed through the criminal justice system, but also because concerns over the quality of services being delivered by the CRCs have meant that fewer are being assessed as low-to-medium risk (House of Commons Committee of Public Accounts, 2019). Cumulative payments of £3.7b for CRCs over the duration of their contracts proved to be a huge overestimation, as they have been financially punished for

something that lies beyond their control (NAO, 2017). As such, CRCs have focused on the delivery of services for which they are paid as opposed to innovating to improve the quality of services (HMI Probation, 2019a).

And yet, while organisational caseloads have decreased, individual workloads have *increased* (HMI Probation, 2017a). This partially reflects the decision to expand post-sentence supervision to approximately 50,000 offenders per year – many of whom are low-to-medium risk of harm but have multiple and overlapping needs – but also because of staff redundancies in many CRCs (HMI Probation, 2017a, 2019a). Here, again, the Coalition government's claims as to 'a culture of. . .transparency' (MoJ, 2013a: 19) are called into question, as CRCs are not obliged to publish data on staffing levels. However, anecdotal evidence gathered through inspection reports of individual CRCs has shown 'substantial reductions' (HMI Probation, 2019a: 74) in staffing. Even in CRCs where no frontline practitioners have been made redundant, cuts to administrative staff numbers have increased the clerical burden on the former (Tidmarsh, 2019). According to HMI Probation (2019a: 74), '56% [of staff] in CRCs tell us that they find their workloads unmanageable.' Indeed, Walker et al. (2019) attribute a rise in sickness absence to an increase in the pressures of work since *TR*. Participants in their study reported heightened feelings of stress, anxiety, and even suicidal thoughts.

Such strains are not unique to CRCs, for the NPS has also experienced a 'critical shortage of probation officers' (HMI Probation, 2020a: 4). Further, Phillips et al. (2016: 183) have demonstrated the 'relentless' nature of engaging exclusively with high-risk clients for staff in the NPS. Staff enjoyed the challenge of working with this cohort, although many struggled to manage the resultant anxieties. That the 'quality of probation work is noticeably better across the NPS than in the body of CRCs' (HMI Probation, 2017a: 23; 2019a), however, suggests the former have coped better with this challenge: five of seven NPS regions were rated as 'good' in HMI Probation's (2019c) latest round of inspections, whereas 19 of 21 CRCs were adjudged to 'require improvement'. While direct comparisons between the public and private sector are difficult, in large part due to differences in the risk profiles of their respective caseloads, the intensification of this audit culture (Power, 1997) to monitor providers' performance since *TR* nonetheless stands in direct contrast to the Coalition government's criticism of 'overly bureaucratic inspection regimes' (MoJ, 2010: 82) in previous decades. Here, the relative stability of the NPS's funding when compared to the CRCs (and the voluntary sector) has shielded it from the 'penal accountancy' (Tidmarsh, 2019) of the PbR mechanism - that is, the financial consequences of a failure to meet performance targets.

## **A culture of performance**

A focus on performance is not exclusive to *TR*, nor to the private sector provision of probation services (see Phillips, 2011); rather, the 'commercial and contractual pressures' (NAO, 2016: 43) under which CRCs function have jeopardised their ability to implement operating models. The Ministry of Justice intervened to preserve providers' financial stability, injecting £342m to help embattled CRCs (NAO, 2017); however, extra funding could not prevent two private providers from falling into administration (House of Commons Committee of Public Accounts, 2019). In February 2019, Working

Links was rendered insolvent and its three CRCs were transferred to another provider, while Interserve Justice followed them one month later (House of Commons Committee of Public Accounts, 2019). The former occurred shortly after an inspection of a Working Links CRC (Dorset, Devon and Cornwall) found that, '[f]or some professional staff, workloads are unconscionable. Most seriously, we have found professional ethics compromised and immutable lines crossed because of business imperatives' (HMI Probation, 2019d: 4). Meeting performance targets so as to avoid fines took precedence over supervision within Dorset, Devon and Cornwall CRC, while some staff artificially deflated offenders' risk of harm status to evade expectations for weekly face-to-face contact for higher risk offenders.

The case of Dorset, Devon and Cornwall CRC is the most egregious example of the impact of market logic on the service and its staff, one that represents a radical change in how probation values are enacted as opposed to 'more of the same'. However, the importance of meeting centrally-administered targets in order to maintain income has been frequently linked to providers' underperformance (House of Commons Justice Committee, 2018a; HMI Probation, 2019a; NAO, 2019). Such pressures have also filtered through to voluntary sector providers (NAO, 2016). *TR* has restructured funding to favour contracts over grants; however, just 11% of 1,433 voluntary sector organisations involved in criminal justice provide services directly to CRCs (NAO, 2019). These organisations are disproportionately larger - in terms of income and staff - than many of those external to supply chains, who still accept referrals from probation (House of Commons Justice Committee, 2018a). This demonstrates how CRCs and the NPS employ such services whilst avoiding financial obligations to commit to their delivery (Clinks, 2018; Tidmarsh, 2019). *PbR* contributes to this instability, not least because of the legal costs incurred in the negotiation of such contracts (House of Commons Justice Committee, 2018b). *TR* has thus entrenched a 'tick-box culture' of monitoring (Clinks, 2018: 24), as CRCs' financial problems have reduced the number of voluntary organisations involved with probation and inhibited the extent to which they can innovate (House of Commons Committee of Public Accounts, 2019).

The difficulties of reconciling 'quality' of probation practice with the financial consequences of the failure to meet performance targets are evidenced by thematic inspections of areas of practice that span the probation estate. For example, specialist services for women have been impeded by insecure, short-term contracts with women's centres (HMI Probation, 2016). Likewise, an inspection of enforcement and recall practices found that CRCs tend to be more concerned with meeting targets than purposeful rehabilitation (HMI Probation, 2018b). Here, CRCs have failed engage with the evidence-base for reducing reoffending (HMI Probation, 2019a). Rehabilitation Activity Requirement (RAR) days, introduced in 2015 to give private providers greater discretion in the activities required to reduce reoffending, have replaced accredited programmes as the most common form of intervention (HMI Probation, 2017b). Though accredited programmes, which typically rely on cognitive behavioural therapy, have been critiqued for a neglect of the welfare needs of offenders, they were nonetheless integral to building an evidence-base to counter 'Nothing Works' (Martinson, 1974) scepticism of rehabilitative interventions from the late-1990s onwards (Robinson et al., 2012). By contrast, no evidence pertaining to the effectiveness of RAR days exists (HMI Probation, 2019a).

A culture of performance has thus detracted from the relationship between practitioners and offenders (HMI Probation, 2019a). Dominey (2019) has conceptualised such relationships through notions of ‘thick’ and ‘thin’ supervision. The former refers to a productive relationship with the offender that is embedded within the community; the latter is predominantly office-based, with poor links to the community. She concludes that the *TR* reforms, and the impact of increased caseloads in particular, have pushed probation supervision in the CRCs ‘in the direction of thin supervision’ (Dominey, 2019: 298) – such that telephone supervision of offenders now accounts for some 40% of ‘meetings’ (HMI Probation, 2017a).

## **Conclusion: Radical change, but more of the same**

An overhaul of probation’s organisational structure through the *TR* reforms was accompanied by promises of radical change in terms of the culture of the service, with bureaucratic control supplanted by the dynamism of the market (MoJ, 2013a). However, the logic of competition and profit has further entrenched the managerial practices that the reforms were presented as a means to replace. While a *probation ethos* (Robinson et al., 2016) grounded in a desire to work with people and the belief that offenders can change has persisted (although such continuity is not always recognised across organisations), the structural challenges inherent to making markets for probation services, and the PbR mechanism in particular, have deepened the state’s reliance upon managerial processes of target and audit. The NPS is not without its difficulties, but greater stability in terms of funding has allowed it cope better than the CRCs with the challenges posed by *TR* (HMI Probation, 2019a). Inspection regimes can, however, only reveal so much about the impact of *TR* on staff in the NPS, for research has revealed concerns over staff well-being (Phillips et al., 2016). Indeed, more such research on the experiences of NPS staff would help to shine a light on the impact of *TR* on practice and culture.

A potent combination, then, of inter-organisational divisions between the public and the private sector, increased individual workloads, and the financial consequences of a failure to comply with performance metrics has largely mitigated the potential benefits of *TR* to staff in the CRCs. The reforms ‘can be situated along a managerial continuum’ (Tidmarsh, 2019b: 16), part of a decades-long period in which (quasi-)market mechanisms have inhibited ‘innovation’. Practice and culture in the CRCs thus represent more of the same: a continuation – and, in many ways, an exacerbation – of the problems faced by the pre-2010 probation service.

Given the challenges outlined above, it should come as little surprise that CRCs will be abolished when their contracts expire in 2021 (HMPPS, 2020). Initially, the Conservative government reaffirmed their commitment to a ‘mixed market approach’ (MoJ, 2018: 3). However, on 11 June 2020, the government, influenced in part by the covid-19 pandemic, announced an end to the competition process for private sector delivery partners, thereby bringing *all* services into public control upon the expiration of CRCs’ contracts (HMPPS, 2020). Further structural and cultural change presents several important obstacles that must be overcome over the next decade for probation services in England and Wales. First, the decision to reintegrate offender management services will require a ‘healing’ of extant tensions between staff in the CRCs and those in the NPS.

Here, clear articulation of probation values, something the service has struggled to achieve in recent decades (Gelsthorpe, 2007), could be utilised to (re)emphasise a collective sense of identity. While the focus on professionalism is welcome, HMI Probation (2019a) have acknowledged that there will be an absence of qualified staff for some time yet. The government will need to ensure that opportunities for professional training and development are not negated by a shortage of frontline staff. Carr (2020) has suggested that probation practitioners and leaders can learn from the Council of Europe's 'Guidelines Regarding Recruitment, Selection, Education, Training and Professional Development of Prison and Probation Staff', and the emphasis they place on supervisor-offender relationship. This supervision should, therefore, be 'thick' (Dominey, 2019), with meaningful contact supported by well-resourced community organisations.

## Funding

The author received no financial support for the research, authorship, and/or publication of this article.

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