



## Probation Court Work

Rethinking the Skills and Knowledge for the Professional Task

Probation Institute Position Paper 1/21 - January 2021

## Purpose of the Paper

The Probation Institute sets out our view of the professional role and responsibility of the Probation Service in the courts - in particular the Magistrates Courts and Crown Courts in England and Wales. It highlights the tension between two principles; the need to deliver justice in a timely manner (originally known as Simple Speedy Justice) and the aim of passing an effective sentence that will respond appropriately to the seriousness of the offence. The paper recognises significant changes in probation structures and also the major implications of the Coronavirus Pandemic for the operation of the courts, leading to a rapid increase in the use of remote court hearings, and considers the skills and knowledge required. The Probation Institute has produced a further, linked briefing paper "[Technology, Remote Hearings and Probation Practice](#)" which discusses the developments in technology supporting remote court hearings and offers guidance to practitioners.

## Principles

1. Probation work in the courts - court duty - is the critical interface between the courts, the probation service and the defendant.
2. The probation role requires the confidence and skill to make and to assert professional judgement, and appropriate professional challenge to the perceptions of others, particularly where these may be discriminatory or prejudicial.
3. The knowledge, skills and experience required to perform the functions of the court probation practitioner both in the actual court room and remotely, are such that the primary role should be taken by a qualified officer holding the Professional Qualification in Probation or equivalent. The supporting team may be differently qualified.
4. Research and Inspection reports clearly indicates that the use of Standard Delivery Pre-Sentence Reports provides the best opportunity for the full assessment of the circumstances of a defendant - allowing full consideration of protection of the public, risk of reoffending, safeguarding issues, and optimum potential for desistance.
5. The National Probation Service must rebuild strong communication and information sharing with sentencers, including shared opportunities for training.
6. The National Probation Service must provide professional support and supervision for practitioners regularly working in the different court settings, recognising the challenges of the role and the importance to the justice system of probation performing to a high standard.
7. The role of Probation in Problem Solving Courts needs to be reviewed and clearly articulated.
8. Guidance is required in the introduction and use of the "*Pre-Sentence Report Before Plea Protocol*".
9. The National Probation Service and individual practitioners must make the necessary adaptations to the increasing use of remote court hearings, in which the probation court role requires confidence in the use of technologies and practice in performing the role effectively in a remote setting.



## Background

The embedded relationship between the Courts and the Probation Service is well rehearsed, both in historical accounts of the history of Probation, and in organisational folklore. Any publication which traces the background to current Probation work outlines the Service's origins in the Police Court Missionaries of the Victorian era, which led to the Probation of Offenders Act, 1907, and which itself laid the foundations for the formation of the Probation and After Care Service. (Statham, 2014; Canton and Dominey, 2018.)

Since then, probation practice in courts, as with many other aspects of its work, has evolved and changed. For possibly the longest period in its history, probation practitioners were viewed as '*officers of the court*,' a seemingly deferential relationship which nonetheless may have afforded Probation a level of autonomy and authority in court work - particularly in requesting adjournments to complete full reports, and in the courts' willingness to adopt the proposals made by Probation Officers. (Powell in Walker and Beaumont (eds), 1985).

In practice, during the most recent years of Probation, operating in Courts has presented a series of organisational tensions and challenges. For much of its history, probation work in courts - and specifically the '*court duty officer*' role - was undertaken by probation practitioner grade staff, who were seen to have the appropriate skills, expertise, and status to represent the agency in formal hearings. As the work of Probation evolved, to adopt a much greater focus on public protection and the management of risk, the allocation of scarce resources to Courts became challenging, and, increasingly, Probation Services Officers were asked to take on the role.

In 2015 the Probation Service in England and Wales was restructured to create one national service responsible for the supervision of high-risk offenders and 22 Community Rehabilitation Companies (CRCs) responsible for the supervision of low and medium risk offenders. The responsibility for court work was allocated to the National Probation Service. However, the interventions and services for rehabilitation became the responsibility of the CRCs whose staff were not permitted audience in the courts as they were deemed to have commercial interests in the outcomes. It is recognised that the confidence of sentencers in probation was much reduced during this period as they received considerably less information to assist in sentencing, and the proportion of community disposals also fell significantly. These may have been unintended consequences but the effects were very serious. Deterioration in the quality of reports for sentencers as well as confidence was outlined in detail by the Audit Commission (2019) and HMIP (2017). As the starting point for community orders as well as contact with the Service, this had a consequent effect on the number of community sentences, the rising prison population and the quality of sentence planning.

## Recent Developments

From June 2021 all the responsibilities of the national service and the CRCs will be combined within the National Probation Service. This is an important opportunity to review and recast the task and required skills of the probation practitioner in both the Magistrates Courts and the Crown Courts. NPS staff will then be civil servants which appears to imply certain barriers for regular liaison, training and information-sharing with sentencers. These constraints require urgent attention as NPS reviews its relationship with the Magistrates and Crown Courts.

In August 2020 the Probation Inspectorate published a new Research and Analysis Bulletin ("[The quality of pre-sentence information and advice provided to courts](#)") in which it is reported that:

*"Recent years have seen a focus on speed and timeliness, with a shift from standard delivery reports to oral reports, and an NPS performance metric measuring the percentage of reports completed within the timescales set by the court. The findings in this bulletin clearly demonstrate that the focus upon speed and timeliness has had an impact upon quality. Notably, inspectors were less likely to judge that the pre-sentence information and advice was sufficiently analytical and personalised to the service user when an oral report was delivered".*

#### **Also**

*"The quality of the pre-sentence information and advice also differed significantly according to the service user's likelihood of reoffending, with the reports less likely to be judged sufficiently analytical and personalised for those with a high likelihood of reoffending. These service users tend to have multiple and complex needs, with chaotic and unstable backgrounds".*

#### **And**

*"Our inspectors found that information from other agencies could not always be shared in the time necessary to be included in the (oral) reports, and there was less time for report authors to consider and reflect upon the information which was available. The drive towards speedier reports had thus had an impact upon quality".*

The MOJ White Paper "[A Smarter Approach to Sentencing](#)" published in September 2020 includes the following commitment concerning the need to improve the quality of court reports:

*"Many offenders who come before the court are struggling with a range of complex needs which have led them into a pattern of offending. If the probation service can better diagnose those issues at the outset in their pre-sentence reports (PSRs), courts have a better chance to tailor community sentences that target those issues and break the cycle of offending. Following on from the evidence that a number of people are sent to prison on short sentences without a PSR being conducted, we will pilot new ways of delivering timely and high quality PSRs, in order to improve sentencing outcomes and to increase the chances of successful compliance."*

These recommendations not only confirm our concerns about the role of probation in the courts but offer an opportunity for significant change and improvement in the court duty functions for which Probation is responsible.

## **Core functions in the courts**

The work of probation practitioners in both the Magistrates and Crown Courts is the interface of the Probation Service and the courts, involving the gathering and exchange of information relating to remand, sentencing, review and enforcement decisions. This is a long-standing relationship of professional advice to sentencers. Attendance at court, whether actual or virtual, or court duty as it has been known, involves a wide range of skills, knowledge and experience. In the Magistrates courts this interface marks the first encounter between the majority of service users and the Probation Service.

The remand function involves making enquiries in relation to defendants who have been arrested, charged and denied police bail overnight. The task of gathering and verifying information to assist the court with bail decisions may be done by a bail information officer or probation practitioner. Prior to the court hearing probation practitioners also undertake planning in relation to the listing for the day, and this can considerably speed up the court process in terms of gathering information and contacting relevant others.

The main function of the probation practitioner is to undertake assessments on the day of defendants who may need a pre-sentence report, either prepared on the day or through an adjournment; and advise the court accordingly. Offence category is a poor predictor of re-offending and courts frequently need more information before sentencing. Irrespective of the setting, these initial assessments require excellent analytical skills and the ability to convey complexity, whether verbally on the day, in a Fast Delivery Report or a Standard Pre-Sentence Report on adjournment. To advise the court effectively the probation practitioner needs high-quality information about the defendant from others, including probation colleagues, the police, families or wider agencies who are already involved with the defendant. This might be referred to as the triage function of the Probation Service.

To improve the prospects of rehabilitation and to better protect the public, the probation practitioner must be able to make a quick assessment, with the defendant, of the level of risk and need, so as to enable speedy delivery of justice where appropriate, but to advise the court where the depth and/or complexity of the situation requires an adjournment. This assessment and accurate advice to the court also requires local knowledge of services including mental health and substance misuse, restorative justice schemes and commissioned interventions as these will vary between areas. The probation practitioner must have good interviewing and communication skills so as to put the defendant at their ease as much as possible and gain the best response from them. A pro-social modelling approach should be adopted from the start as motivational skills are key to both brief interventions and to setting the scene for a community order.

The probation practitioner in the court setting also needs to be confident and a good communicator with a range of officials and representatives; magistrates, legal advisors, judges, ushers, custody staff, CPS and defence solicitors and barristers, families and friends and victims and witnesses. This communication ranges between informal discussion and formal procedures.

Arguing for an adjournment for a standard pre-sentence report with all the pressures of speedy performance targets, requires confidence. As one practitioner put it *"You have to be a strong officer to hold your ground."*

In problem-solving courts and other specialist courts such as domestic abuse and drug courts, greater knowledge and skills are needed to enable the practitioner to play an effective part in helping the court to make just and effective decisions. Problem Solving Courts are to be piloted in England and Wales following the publication of the White Paper ["A Smarter Approach to Sentencing"](#) in September 2020. The role of Probation in Problem Solving Courts needs to be reviewed and clearly articulated.

The *"National Pre-Sentence Report Before Plea Protocol"* is expected to be launched in England and Wales in 2021. This protocol allows for the defence council to request a pre-sentence report before a plea is taken in cases in which the defendant intends to plead guilty. Historically this type of report has been resisted by Probation to avoid putting pressure on defendants to plead guilty in the hope of a less severe sentence. Guidance on the cautious use of this protocol will be essential.

The probation practitioner will often be responsible for presenting reports in the case of breach of orders, prepared by other staff, and reports recommending early discharge for good progress. The ability to give clear and concise oral advice in the court setting comes with practice and experience but the atmosphere can be very intimidating for a newly qualified practitioner.

Other court duties involve interviewing service-users post-sentence, arranging the commencement of a new community order, and assessing safeguarding issues in relation to children and vulnerable adults, and the risk of self-harm in those who have received a custodial sentence.

## **Crown Courts**

Crown courts are staffed by specific teams located at the Crown Court. Their role includes the majority of the tasks described above. Defendants at Crown Court are not of course making a first court appearance but whether they have been on remand in custody or in bail they may have little prior contact with Probation. Crown Court Probation Practitioners have the opportunity to build up greater experience and confidence.

## **Looking forward**

As the Probation Service becomes, for the first time, a single service, located in a larger government department (HMPPS) and within the Civil Service, there are concerns that the relationship with sentencers may be subject to a new set of constraints potentially affecting communication and information sharing. In our view it is essential that at regional and local levels Probation builds again strong and effective communication with sentencers. Local Magistrates need to have confidence in Probation and see themselves as regularly well informed both of new and changing opportunities for effective community disposals and also of the outcomes of their sentencing decisions. Probation should be involved in training and community liaison with all types of sentencers.

Since the introduction of restrictions to control the Coronavirus Pandemic in March 2020 there has been a significant increase in the use of remote court hearings in which the participants are not co-located and must perform their roles either from home or from a different workplace. This has presented challenges in terms of use of technology and also of understanding and reformulating remotely the roles of the court room and court procedures. Performing the role remotely requires confidence in the use of technology, strengthening skills in making appropriate and sometimes challenging interventions remotely, and having ready access to the information needed by the court. There have however been some benefits to remote working for staff, either practical or because it is a more conducive environment. (CEP 2020).

## **Professional qualifications and support**

The knowledge, skills and experience required to perform the functions of the probation practitioner both in the actual court room and remotely are such that, in our opinion, the primary role should be taken by a qualified officer holding the Professional Qualification in Probation or equivalent. Working alone, this role should not be required of those not qualified to this level. PSOs can support court work and develop their skills. The court probation role also requires regular professional supervision, recognising the responsibilities and demands of the role, and there should be regular

opportunities for debriefing the court duty experience. Failure to support practitioners will lead to erosion of both confidence and effectiveness. Probation Practitioners operating in the court setting should be subject to registration and regulation, as is the case for other professions. A description of the skills, knowledge and experience is given at Annex 1.

## Conclusion

Court work remains at the heart of Probation practice, and, as such, the role of the probation practitioner in the courts is that of a critical professional expert with specific skills, knowledge and expertise, notably in the assessment of risk, and of the needs of people who have been convicted of committing crime. Whilst the speedy - and remote - administration of justice brings benefits in terms of timeliness, cost and convenience, it seems important to recognise that this approach cannot be suitable for each individual case. (See John Rigg, HMCTS blog, 2020). Many cases before the Magistrates and Crown Courts are complex, and involve ongoing risks, particularly to women and children (notably in cases of domestic abuse). Such cases demand a detailed and careful consideration of sentencing, in order to protect victims, and to enable change.

Robinson argues that *'Courts...are not factories; they exist to dispense justice.'* (Robinson, 2017 page 350.) Within this context, whilst adapting to changes in the delivery of criminal justice, the Probation Institute is making a case for probation practitioners in Courts to be suitably qualified and experienced; to be able to rely on appropriate organisational support, both in terms of expertise and in technology; and that the singular contribution to the sentencing process made by Probation needs greater recognition, both formally and informally. In the Magistrates Courts this means strengthening the interface between probation practitioners and magistrates to allow good, shared decisions about the priorities and timing of cases coming before the court, particularly those which do not initially present as complex.

The reintegration of Probation Services over the next 12 months or so will create further opportunities to broaden and deepen practitioner knowledge and experience, and so has the potential to enhance the place of Probation in the court setting.

This Position Paper has been produced during the Coronavirus Pandemic when the use of remote court hearings has increased rapidly. It seems unlikely that these developments will reverse. Nor, if they are well managed in an inclusive way, would we wish for this. The sister paper "[Technology, Remote Hearings and Probation Practice](#)" provides current information about the technology and processes used to facilitate remote court hearings, and practical advice for probation practitioners.

We hope that both papers will inform the period of integration of the new National Probation Service and will assist probation practitioners in playing a key professional role in court proceedings which are both just and accessible.

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## **Annex 1**

**The initial underpinning knowledge that is required for effective court duty include the following which are integral to the professional qualification:**

- Understanding of risk and assessment skills.
- Understanding and appreciation of equality.
- Understanding of confidentiality.
- Principles of working with individuals and groups in order to motivate and change offending behaviour.
- The work of the Justice System, particularly the role of Magistrates Courts and Crown Courts; the probation service, the police, prosecution and defence lawyers and forensic mental health.
- Understanding of Evidence Based Practice.
- Understanding of risk/needs assessment tools.
- Understanding the impact of the court experience on defendants and the need to explain the processes.
- Understanding the impact of crime on victims and wider society.

**The initial underpinning skills include:**

- Assess of risk of harm.
- Assess needs.
- Identify vulnerability.
- Take steps to protect those at risk of harm.
- Engage with individuals who are hard to reach.
- Influence and motivate others.
- Balance empathy with the boundaries and authority within the role.
- Work with a wide variety of people who have experienced a range of social/personal difficulties.
- Working with diverse communities including promoting equality and valuing diversity.
- Critical-thinking and decision-making skills.
- Communication effectively both verbally, in writing.
- Conduct interviews.
- Collaborate effectively.
- Organise and administer.
- Speak in a formal court setting both actual and remote.

**Specific skills and knowledge which will expand with practice and professional development include:**

- Sound understanding of all relevant disposals available to the court including opportunities for diversion.
- Knowledge of formal interventions and wider resources in the justice system and the wider community that may assist the court, and their legal position, e.g. treatment order provision in the area; Rehabilitation Activity Requirements, and restorative approaches.
- Challenging in a formal setting, including a remote setting, with regards to inaccuracy, assumptions, potential discrimination (simulation exercises).
- Use of technology for remote systems.
- Networking effectively with other organisations and individuals concerned with the court environment.

- Recognising in a court setting behaviour that is potentially indicative of mental illness, including depression and anxiety, trauma, personality disorder, autistic spectrum disorder, potential violence and risk to children and vulnerable adults.
- Assess and appropriately communicate risk of harm being caused to an individual or himself or other.
- Recognise specific risk to victims or witnesses in the court setting.
- Gathering information from the court environment and outside it to assist the court e.g. previous convictions, whereabouts of children.

## **Annex 2**

### **National Pre-Sentence Report Before Plea Protocol**

The National Pre-Sentence Report Before Plea Protocol will apply to all magistrates' courts in England and Wales, commencing on a date to be decided regionally by each Head of Legal Operations. The protocol has been agreed by HMCTS, NPS, CPS and the Law Society and approved by the Senior Presiding Judge of England and Wales.

NPS will decide whether to produce the report before the hearing, following a request from a defence legal representative, where a defendant indicates they intend to plead guilty on the full prosecution version to one or more offences. NPS will then notify the court and parties of the decision by email. Court staff will take these actions:

- If "PSR Before Plea Refused", or "PSR Before Plea Refused - incomplete" or "PSR Before Plea Granted" - Court admin to add email to Court Store as usual.
- If "PSR Before Plea - Refused - insufficient time" (with request that Legal Adviser amends the hearing date) - Court Admin to add to Court Store and send request to change hearing date (marked as urgent ) to legal adviser duty box for consideration.

Where NPS produce a report they will upload it to Court Store for the hearing.

At the hearing, the court receives the defendant's plea in the usual manner. Where the defendant pleads guilty, the court proceeds towards sentence and decides whether to access then consider the pre-sentence report.

LCCSA October 2020.