

# Restructuring NOMS:

## Some implications for prisons and probation

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### Introduction: separate organisational identities

**When the probation system emerged during the first decade of the 20th century it was slowly grafted onto an expanding criminal justice system which already had well established prisons. Nevertheless for the first time in British penal history it was possible for the courts to impose a Probation Order containing a supervisory element within the community which constituted a clear alternative to punishment and imprisonment. From its legislative foothold in the Probation of Offenders Act 1907, probation supervision stood as a separate entity from a prison system which had been at the heart of Victorian penalty throughout the 19th century.**

Some thirty years later the Criminal Justice Bill 1938, which gave effect to proposals contained in the Home Office Departmental Committee of 1936<sup>1</sup>, was aborted because of the Second World War. However this was rectified by the 1948 Criminal Justice Act that was an attempt by the post-war Atlee government to enable socialist thinking to tackle crime. Some of the changes included abolishing birching, penal servitude, prison with hard labour and whipping, which dismantled features of the Victorian penal system. By contrast the legislation introduced Detention Centres and Attendance Centre Orders, and encouraged the courts to use Borstal training rather than prison for young offenders. Furthermore the 1948 Act introduced corrective training and the maximum period of preventive detention was raised from 10 to 14 years. Despite elements of a tougher attitude in the post-war period, the Labour government also created the welfare state that complemented the rehabilitative ideal which was being pursued within both probation and prison. It is important to add that even though prisons and probation pursued the goal of rehabilitation, they continued to do so as separate organisational entities.

### Moving closer together

The early 1960s was a busy time for probation because in addition to the 1962 Departmental Committee<sup>2</sup>, the Advisory Council on the Treatment of Offenders<sup>3</sup> published its report on after-care that came

to have a major impact on the future relationship between probation and prisons. Because of the importance of this report it is necessary to devote some attention to the background against which it emerged as follows.

#### *Voluntary Aftercare Tradition*

Prisoners' Aid Societies were founded towards the end of the 18<sup>th</sup> and beginning of the 19<sup>th</sup> centuries, but the work of local aid societies had to wait until the Discharge Prisoners' Aid Act of 1862 before receiving statutory recognition. The Gladstone Committee of 1895 considered the work of Aid Societies and whilst it acknowledged the benefits to prisoners, lamented the lack of organisation. Next the Central Discharged Prisoners' Aid Society was established in 1918 which, in 1936, became the National Association of Discharged Prisoners' Aid Societies (NADPAS). Between 1862 and 1935 the Societies were financed by monies received from charitable sources and grants from public funds, but by 1950 most societies were experiencing financial difficulties. Significantly the Maxwell Committee in 1953 recommended that the NADPAS appoint social workers at local prisons, with training and qualifications similar to probation officers and known as Welfare Officers. Therefore by 1962 prison welfare officers, employed by NADPAS, were in post in all local prisons.

#### *Compulsory Aftercare for young and adult offenders*

In 1901 Borstal emerged and an Association of Visitors was created to befriend young offenders on release which, by 1903, became the Borstal Association. The 1908 Prevention of Crime Act placed Borstal training on a statutory footing and Borstal licence was introduced that persisted until the 24<sup>th</sup> May 1983 by which time the 1982 Criminal Justice Act was implemented and Borstal replaced by the sentence of Youth Custody (a further change of name occurred in 1988 when Youth Custody became a Young Offender Institution). With the 1948 Criminal Justice Act compulsory aftercare, until this time applied to lads released from Borstal in addition to the sentence of preventive detention, was extended to men and women released on licence from sentences of corrective training and the new form of preventive detention,

1. Home Office (1936) Report of the Departmental Committee on the Social Services in Courts of Summary Jurisdiction, Cmnd. 5122, HMSO.
2. Home Office (1962) Report of the Departmental Committee on the Probation Service (Morison Committee), Cmnd. 1650, HMSO.
3. Home Office (1963) The Organisation of After-Care. Report of the Advisory Council on the Treatment of Offenders, HMSO.

including persons under 21. It was decided that the three aftercare organisations: Borstal Association; Central Association for the Aid of Discharged Convicts; and the Aylesbury Association (for women); should be rationalised into one body called The Central Aftercare Association.

Consequently this was the position in 1963 when the ACTO report on aftercare was published. By 1967, a result of an ACTO recommendation, an expanded probation service was renamed the Probation and After-Care Service because it became responsible for all forms of compulsory supervision and aftercare. By 1969 probation began to fill social work posts in Remand Centres, Detention Centres and Borstal allocation centres. Therefore during the 1960s and beyond it can be said that probation was drawn closer to the prison sphere of influence.

### Still hope for probation

Following the General Election of June 1987 a one day seminar was held at Leeds Castle in Kent on the 28<sup>th</sup> September 1987. It was attended by the then Home Secretary, Douglas Hurd, and other Home Office officials<sup>4</sup>. One of the urgent issues on the agenda was sentencing policy and the role of probation in a climate where the prison population had reached what was considered to be an alarming 50,000 when it had been 43,000 in 1980. New prisons had been built during the 1980s yet the statistical projections were for an increase to 60,000 but with the possibility of an unimaginable and politically unacceptable 70,000 by the year 2000. Therefore notwithstanding the law and order rhetoric of Conservative governments since 1979 there was, by the late 1980s, a serious commitment to keep the prison population as low as possible. A key element in the emerging strategy was to restructure probation to ensure that community sentences could be used for more serious offenders as a clear alternative to custody. Even though since the 1960s the clear separation of probation and prisons was being eroded as the former forged closer links with the prison system, Douglas Hurd continued to affirm a

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specific role for probation which would now be directed towards punishment in the community to gain credibility with sentencers. Ultimately this culminated in the Criminal Justice Act 1991. However this proved to be a short-lived policy<sup>5</sup>.

### 1993 'Prison Works' and threats to probation

By 1993 the Hurd era gave way to Michael Howard, from alternatives to prison to 'Prison Works' which signalled a distinctly new penal phase. On the 6<sup>th</sup> October 1993 the Home Secretary's speech at the Conservative party conference announced a 27 point plan on law and order which included building six new prisons, secure training orders for 12-14 year olds, and a desire to review community sentences with a view to making them more punitive. This was a difficult time for probation and it was possible the organisation would not survive in what had become an unsympathetic climate for its traditional social work role within the criminal justice system. Even though probation survived because of its willingness to take on 'What Works' after 1997, prisons gained the upper hand

during a period when the Conservatives and Labour parties were slugging it out to be the champion of law and order.

### Reducing the 'cultural divide' after 1997

After decades of ideological, philosophical, and organisational distinctions between the prison estate and probation, notwithstanding closer cooperation since the 1960s, a period of consultation was established in 1997 to explore ways in which probation and prisons could be better integrated with a view to improving efficiency and raising performance levels<sup>6</sup>. In other words could it be possible for these two organisations to work more closely together to reduce re-offending; better prepare prisoners for release; share resources, information, knowledge and skills; and reconfigure organisational structures to provide value for money?

In Chapter 2 of the *Prisons-Probation* review, there is a reference to modernising the organisational

4. For further information on this period see: Lord Windlesham (1993) Responses to Crime, Volume 2: Penal Policy in the Making, Clarendon Press, Oxford.

5. For more detailed information on this important period for probation see: P. Whitehead and R. Statham (2006) The history of probation: Politics, Power and Cultural Change 1876-2005, Shaw and Sons, and particularly the discussion contained in Chapter 4.

6. Home Office (1998) Prisons-Probation: Joining Forces to Protect the Public.

framework of probation. Furthermore, and significantly, it is stated that legislation beginning with the Probation of Offenders Act 1907 still directs employees of the service to advise, assist, and befriend which it is claimed is now 'completely out of line not just with the expectations of the courts but also with the reality of the work which probation staff undertake day in and day out'. This is because the service has become more orientated towards public protection which means that a modernised service must confront, challenge, and change offenders, rather than primarily focus on providing advice, assistance, and friendship, thus constituting a profound shift in organisational values. Therefore a harsher and more punitive tone is tantamount to the process of modernisation. The document proceeds to state that there is a lack of probation accountability to central government due to fragmented governance arrangements. Accordingly it needs to be better organised and forge closer links with central government, the prison system, police, mental health services, local authorities, and crown prosecution services. Interestingly the theme of modernisation and cultural transformation involves, it is argued, much clearer national direction and stronger national leadership and the then Home Secretary must be able to have political responsibility — in the form of centrally imposed command and control — over area probation services. It is within this context that the review of prisons and probation arrangements talked about reducing the *cultural divide* between the two organisations. Even though the Prisons-Probation review considered merging the two organisations into a single service during the period 1997/98, at this stage this was considered a step too far primarily because probation remained a locally organised service.<sup>7</sup>

### **National Offender Management Service**

Subsequently, in 2002, Patrick Carter was asked to review correctional services and reported the following year which became the precursor to the emergence of the National Offender Management Service (NOMS)<sup>8</sup>. In this review Carter analysed the

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current state of the prisons; concerns about overcrowding; lack of help for short-term prisoners; and observed how no one agency had responsibility for the full remit of offender services. Consequently he proposed the concept of end-to-end management and a single agency to deliver it in the form of the National Offender Management Service. In other words that which was being suggested during 1997/98 in terms of reducing the cultural divide, was now given effect as prisons and probation were brought closer together under the unifying umbrella of NOMS. Accordingly there would be a Chief Executive and National Offender Manager, in addition to 10 Regional Offender Managers who would be responsible for commissioning services — both custodial provision and in the community — for the management of offenders in their respective regions. Moreover and importantly the goals of effectiveness, better performance, and target achievement, would be sharpened up via a mechanism of contestability in what would be a marketised mixed economy of provision. In other words it is possible that the work currently being undertaken by probation could be awarded to other organisations within the public, private, and voluntary/Third sectors. Notwithstanding this

further rapprochement between the two organisations it may be suggested that probation maintained some independent representation within the Home Office. But this was about to change as a consequence of additional restructuring to which we now turn.

### **Restructure the restructuring: prison take over of probation?**

A new Ministry of Justice was created in May 2007, which assumed responsibility of probation and prisons following the shake out within the Home Office. By the end of 2007 Patrick Carter published another report, this time focusing on prisons. One of the proposals contained in this report was for a reappraisal of the Headquarters function of NOMS which would have implications for both prisons and probation. In other words the restructuring of offender

7. A step too far in 1998 but certainly not by 2003 because by 2001 probation had been centralised and nationalised. For additional information see: P. Raynor and M. Vanstone (2007) 'Towards a correctional service' in: L. Gelsthorpe and R. Morgan (eds.) Handbook of Probation, Willan.

8. Again see the aforementioned Handbook of Probation (2007) for some informative essays on NOMS.

services associated with the creation of NOMS during 2003/04 was itself now being restructured. This was initiated during January 2008 with a view to improving the efficiency and effectiveness of managing offenders and also the rationalisation and refocusing of resources to enhance front line delivery. By March 2008 this amounted to bringing probation and prisons even closer together within a streamlined Headquarters function, and the reorganisation of regional structures primarily by conflating the roles of Prison Area Managers and Regional Offender Manager. Additionally with this latest bout of restructuring Phil Wheatley, who was the Director General of Her Majesty's Prison Service, became Director General of NOMS. Consequently there have been material changes to the upper managerial and strategic reaches of the organisation.

One significant outcome of this restructuring is that probation no longer exists separately from, or even on equal terms with, the prison system. Instead it has been subsumed beneath rather than standing alongside the Director General. In fact the organisational map of the restructured NOMS, produced in July 2008, revealed that the Director of Probation, Roger Hill, no longer occupied a position standing shoulder to shoulder with Phil Wheatley. Rather he was re-located below the Director General and set alongside seven Directors who are in turn responsible for operations, high security, finance and performance, human resources, the capacity programme, commissioning, and offender health. By the autumn of 2008 it became clear that the Director of Probation role would not be replaced when Roger Hill became the Director of Offender Management in the South East region. Therefore streamlining appears to have greater implications for probation than prison, even though the Minister of State, David Hanson, denied this was a merger or even the prison take-over of probation at the National Association of Probation Officers Conference on the 17.10.2008. Accordingly both agencies will remain as individual delivery services with their own governance and employment structures. Nevertheless it is difficult to square these ministerial comments with the latest NOMS organisational structure.

It should also be acknowledged that changes at the national level were established on the 1<sup>st</sup> April 2008 and that further changes to regional structures should be completed by April 2009. This means that each of the ten regions will appointment a Director of Offender Management (from ROM to DOM) to coordinate and

commission all probation and prison services from the public, private, and Third sectors consistent with the legislative provisions contained in the Offender Management Act 2007. In fact such arrangements were put in place in London and Wales during 2008 which means that the Prison Service London Area Office and the office of the Regional Offender Manager were formally merged in the Director of Offender Management. It may be suggested that these latest changes are largely cosmetic, primarily concerned to save money, and will hardly be noticed lower down the organisational structure by prison officers and probation offender managers when working with offenders. On the other hand senior managerial and organisational reconfigurations within NOMS could culminate in the declining influence of the probation ethos throughout the whole of the criminal justice system. If this is the case then the following reflections on restructuring the restructuring are offered for consideration.

### Reflections and implications

Firstly the point should be made that the wide ranging changes which have affected probation during the last decade particularly are not a result of slow evolutionary processes *initiated from within*, but rather swift and decisive revolutionary changes *imposed from without* by central government. Moreover these are not the kind of changes which necessarily would have been chosen by the organisation itself, and introduced over a period of time, after a careful analysis of their likely implications. Rather one is talking about a series of convulsive changes which have rapidly transformed the character of the organisation, which continues with the latest restructuring.

Secondly it may be suggested that initiatives designed to encourage organisations to work more closely together to reduce cultural divides, can be perceived as a laudable objective with more positive than negative features. By contrast when organisations are 'forced' to move closer together for political more than ideological and professional reasons, the end result could be that the distinctive contributions of each are diluted. Such developments can, for example, damage those necessary checks and balances within the criminal justice system which rely on the disparate influences and contributions of its component parts. In other words competing and sometimes discordant voices heard from within different organisations can be a sign of health rather

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than dysfunctional practices (prisons *and* probation, magistrates *and* judges, police, court clerks *and* solicitors), particularly when developing policies which respond effectively to offending behaviour. The quality of cogent arguments; the challenge of different perspectives; listening to and learning from each other's professional values and responsibilities; steering a course through contrasting positions and sometimes associated conflicts; are all valuable mechanisms to maintaining the strength of organisations and democratic institutions. This perspective finds some support from a barrister in the North-East of England who participated in a research project<sup>9</sup> recently undertaken on modernisation and cultural change in the probation service. He stated that 'The probation service has changed beyond recognition over the course of the last ten years. The shift of the probation service has left the criminal justice system unbalanced. There is too much emphasis on punishment and a void where there should be an agency dedicated to values of befriending and assisting'. In other words probation is different to other criminal justice organisations and that this difference should be maintained rather than diluted.

Thirdly at one level it can be argued that rationalisation and streamlining organisational functions to save money is a good thing. Organisations should not be allowed to become bloated on the back of tax payers' money and the principles of economy and efficiency can be compelling. However the criminal justice system should not solely be guided by such principles (often referred to as the New Public Management) because dealing with people who offend, the role of punishment, and recourse to community or custodial sentences, raise moral issues which takes us beyond financial, bureaucratic, and managerial concerns. Probation, until relatively recently, constituted a challenge to punishment and imprisonment and by doing so made a distinctive contribution throughout the 20<sup>th</sup> century to criminal and social justice. But this distinctive sphere of influence

is being eroded by further restructuring which could increasingly see the prison agenda dominate probation's historic mission to *humanise* the system in which it functions.

Therefore, and finally, it may be suggested that what is currently taking shape is not in the interests of either prison or probation. This is because a strong probation service which has a distinctive voice within NOMS, and which is allowed to promote the probation ideal<sup>10</sup>, can help to ensure prisons are used as a last resort for more serious offenders, save on costs, and reduce pressure on hard pressed staff within overcrowded prisons without compromising on the goal of effectiveness.

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### Summary and Conclusion

One hundred years ago there were fundamental differences between the emerging system of probation and well established prisons. Subsequently both institutions continued to develop as separate entities by pursuing their own distinctive penal-welfare trajectories. By the 1960s probation and prison edged closer together as probation officers began to take up posts within custodial facilities as well as becoming responsible for all forms of voluntary and statutory aftercare. Then, during the 1990s, the political situation changed to such a degree that

probation was under real pressure to survive as punishment and prisons acquired new saliency. This culminated in the survival of probation in circumstances where the cultural divide between the two organisations was reduced within the emergence of the National Offender Management Service. Latterly, during 2008, the Ministry of Justice arrived at the decision that prison structures should effectively assimilate probation within the upper reaches of a restructured organisation. It is also worth reinforcing that further regional changes during 2008/09; perusing the composition of the Ministry of Justice Ministerial Team and Corporate Management Board; and the professional background of those already appointed as

9. During 2006 and 2007 I was involved in interviewing a number of Solicitors, Court Clerks, and Magistrates, in addition to collecting more limited data from Barristers and Judges on their understandings of change within the probation service since 1997. See: P. Whitehead (forthcoming 2009/10) *Exploring Modern Probation: Social Theory and Organisational Complexity*, Policy Press.


10. The essence of the *probation ideal* can be said to have a number of components which include: a concern about the impact of crime upon victims and offenders themselves; a belief in the capacity of people to change; avoid negative labelling; custody as a last resort; values rooted in tolerance, decency, care and compassion; understanding why people offend and the impact of adverse material and social circumstances on behaviour.

Directors of Offender Management; profoundly alters the balance between prisons and probation because the influence of the latter is seriously under-represented. At one level it is possible to suggest that all those events described earlier have been necessary, if not inevitable, to streamline managerial structures which had become expensive since the creation of NOMS in 2003/04. Alternatively such developments can be perceived as a concern because they further dilute fundamental organisational differences and the contribution probation has made to the criminal justice system for over a hundred years which, over the longer term, will not benefit either probation or prisons.

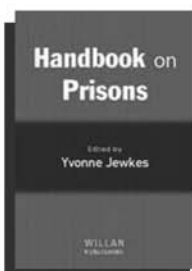
In conclusion it is worth emphasising that for decades during the 20<sup>th</sup> century probation was a different species to custodial facilities. In fact this was a difference in *kind* rather than *degree*; the choice was either community or custody; and there was a real sense in which probation was *in* but not *of* the penal system. Additionally the primary task of prison was defined as humane containment, for probation the supervision of offenders in the community, and different skills were required to undertake these

distinctive tasks. Yet increasingly this separateness has been eroded to such an extent that probation and prison are currently located on the same continuum of sentences in that both are involved in the delivery of punishment, albeit one in the community and the other custody. With the appearance of NOMS, the latest round of restructuring, and the rigorous application of value for money principles, organisational edges have become extremely blurred which confusingly conflates the role of both organisations within one organisational structure.

Alternatively it can be argued cogently that probation should be a stand-alone organisation represented by a distinct body of values, which promotes the notion of the probation ideal, and as such requires a separate and distinctive voice — *which it no longer has* — within the Ministry of Justice to discharge its historic responsibilities within the criminal justice system. In other words rather than reducing cultural divides, one should instead promote the separation of cultural and organisational traditions to the benefit of all organisations, their staff, and of course the effective supervision of offenders.



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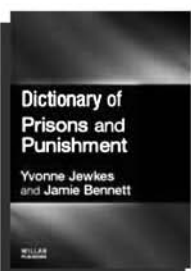
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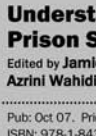
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