

THE PROBATION SERVICE REPORTING FOR DUTY: COURT REPORTS AND SOCIAL JUSTICE

Philip Whitehead, Lecturer, University of Teesside/Probation Officer

Abstract

The probation service provides criminal courts with information on people who offend, before they are sentenced, by utilising three report formats. Firstly a comprehensively written pre-sentence report can take up to three weeks to prepare. Secondly a briefer document completed within five days, known as the fast delivery report, predominantly relies on a tick box format. The third category is oral feedback. Significantly the criminal justice system is being encouraged to call upon the services of the two briefer formats, primarily because of the time and costs involved in preparing a full report. The central concern of this paper is to explore this shift of emphasis, particularly within magistrates' courts, which militates against the probation service undertaking a detailed analysis of the social circumstances of offenders. This has potentially serious implications for criminal and social justice.

Key words: probation, reports, offenders, social circumstances, efficiency, criminal and social justice

Introduction

The probation service in England and Wales has been providing oral and written reports to criminal courts on people who offend for over a century. Occasionally issues have been raised about the content and quality of reports in that they have not always revealed an anti-punitive perspective; proposals for custody have contributed to an escalating prison population; they have also drawn people into the net of social control by advocating supervisory sentences when a fine or discharge would have been appropriate (Bean, 1976; Cohen, 1985; Box, 1987; Carter, 2007). Concerns have also been raised about the discriminatory nature of reports on ethnic minorities for not containing a sentencing proposal, culminating in punitive outcomes (Haines and Morgan, 2007). Pertinently a number of potential difficulties are beginning to surface around fast delivery and oral reports, in contrast to the standard delivery pre-sentence report, which could restrict the ability of probation to provide a holistic analysis of the circumstances within which offending behaviour occurs. This, in turn, has implications for the understandings,

judgements, and responses of the magistrates' courts particularly in promoting criminal and social justice.

Justice is a complex term to unravel because what is considered to be right and fair can be defined in different ways by those organisations comprising the criminal justice system. For example, justice embraces having regard to an offender's needs, just as much as keeping the law abiding safe and attending to the needs of victims. Moreover justice involves adherence to procedural rules and legal requirements, which expresses the notion of equality before the law, but considerations of social justice are also relevant, which acknowledges differences between people appearing before the courts from diverse social backgrounds. In other words, it can be argued that probation and the courts have a moral obligation to take account of relative deprivation, disadvantage, and inequality, prior to arriving at sentencing decisions. With these preliminary thoughts in mind, the following explores changes in the relationship of the provision of information by the probation service to courts, the type of report format selected, and the implications for justice.

Brief Overview of Reports for Courts

In the first of four papers on the history of ideas in probation, Bill McWilliams (1983) suggests it is difficult to say exactly when the police court missionaries became involved in making enquiries on offenders before sentence. Nevertheless it was probably around the 1887 Probation of First Offenders Act. Subsequently, paragraph 36 of the Departmental Committee on the Probation of Offenders Act 1907 (Home Office, 1909) recorded that the first probation officers were undertaking preliminary enquiries for magistrates. Additionally, it is 'obviously an advantage to the probation officer to know all the circumstances relating to the offence...' (paragraph 37 and italics added). In one of the earliest books written on the inchoate probation system, Cecil Leeson confirmed that probation officers were involved in making enquiries for courts to determine suitable cases for probation supervision (1914, p67). Such enquiries were conducted by taking note of the offender's character, domestic circumstances, education and employment, associates and habits. Arguably this was during a period when offending behaviour was constructed by a narrative of character defects and moral weakness, rather than theorising it could be a response to inequalities generated by the political economy. Furthermore, by the 1930s, comprehensive advice was being provided on the preparation of written reports for the courts (Le Mesurier, 1935).

By the rehabilitative orientated 1950s (Home Office, 1959), the Streatfeild Report (Home Office, 1961), was in part concerned with selecting the most effective form of treatment for offenders. The probation system had by this stage evolved beyond its theological phase (1876-1930s) to a more secular, professional, and 'scientific' expression, associated with a personalised medical-treatment model of corrections. It should also be acknowledged that the Streatfeild Report resulted in a burgeoning of reports for courts (Bottoms and McWilliams, 1986; Bottoms and Stelman, 1988). Moving on, there are copious references to the importance of probation reports in Haxby (1978, p136ff.) and by the 1980s, when

some 200,000 were being prepared annually, the social enquiry report was potentially an instrument for diverting offenders from custody in the post-rehabilitative era (Home Office, 1984). The Criminal Justice Act 1991 transformed the social enquiry report into the pre-sentence report in a more justice than treatment orientated criminal justice system (Whitehead and Statham, 2006). Therefore, notwithstanding the different philosophical contexts within which reports have been prepared since the 1880s – theological, welfare, treatment, rehabilitative, justice, and punishment in the community – they have constituted a central feature of probation practice for over 100 years.

Current Legislative Position

Section 158 of the Criminal Justice Act 2003 (CJA 2003) provides the legal basis and rationale for the preparation of reports. Accordingly, a report is prepared ‘with a view to assisting the court in determining the most suitable method of dealing with an offender’. Furthermore, s160 refers to other reports, which means that, in addition to the comprehensively written pre-sentence report, other formats are possible. Several years ago the probation officer working in the courts could be asked by magistrates and judges to deliver a stand-down report if this was appropriate. In such circumstances, a case was stood down by the court (between 30 minutes to 1 hour) to enable probation to conduct a brief interview before delivering verbal feedback to bring matters to an expedited sentencing conclusion. More recently, this practice metamorphosed into the specific sentence report which involved the preparation of a briefly written document, which in turn has been further refined into the fast delivery report. Therefore, it is currently possible for the probation service to be involved in the preparation of three different report formats which can be elucidated as follows.

Firstly, the comprehensively written pre-sentence report, structured by the computerised Offender Assessment System (OASys) and National Standards, is normally prepared within an adjournment period of 15 working days (10 days if the offender is remanded in custody). The adjournment period enables probation to conduct interviews at the office and/or home of the defendant, in addition to making relevant investigations and verifying information. This is a detailed report because it takes cognisance of the following OASys headings: offending information; analysis of the offences; accommodation; education, training and employability; financial management and income; relationships; lifestyle and associates; drug and alcohol issues; emotional wellbeing; thinking and behaviour including the offender’s attitudes. Furthermore the author has a duty to consider risk of re-offending and harm prior to making a sentencing proposal for the court to consider.

Secondly, a fast delivery report should ideally be completed on the day requested by the court (certainly no more than five working days). In other words, interviewing and writing-up the document, normally by the court duty officer, should be completed within a couple of hours. This format, unlike the full report, utilises a series of tick boxes to expedite the presentation of collected data. However, scope remains to include explanatory written text to expand upon tick box data if required. This type of report, by definition briefer than the full report, also takes cognisance of the same OASys headings

but without the necessity to undertake a computerised OASys assessment. Rather the Offender Group Reconviction Scale (OGRS) is applied in addition to the OASys risk of harm screening.

Finally it is possible for probation to be invited, or even initiate, the provision of a verbal report (similar to the former stand-down report) to expedite the sentencing function of the court even further.

Further clarification is provided by Probation Circular 12/2007 where it is stated that the standard delivery (full report), fast delivery, and oral reports, are all pre-sentence reports. In fact the three formats are deemed to be of ‘equal standing’. It is also made clear that courts ‘must be given the information they need in order to reach a sentencing decision’ (p2) which begins to raise a number of pertinent issues. One of these, emerging from the CJA 2003 and Circular, concerns who has priority in determining the information needed to facilitate a sentencing decision? For example, is it the probation service or is the decision made after taking soundings from the dramatis personae within the magistrates’ court: court clerks as legal advisors, defence solicitors, magistrates themselves? Another related issue touches upon the differential distribution of power within the organisational composition of local criminal justice systems including different ideologies, organisational dynamics, and discrete agendas being pursued. In other words probation officers, clerks, magistrates, and defence solicitors have their own views on offenders and offending which shapes the information considered necessary. There will be those who are motivated by the arguments for efficiency and others who are concerned to promote criminal and social justice without recourse to cost. Accordingly, such issues begin to raise potential difficulties associated with the selection of report formats, what is considered to be relevant information, and evaluations of justice, which will now be explored in more detail.

Some Emerging Challenges

Spend less money on reports

In a speech delivered at Wormwood Scrubbs on 7th November 2006, the then Home Secretary, John Reid, stated that ‘too much money is going on report writing and not enough on practical help’ (paragraph 14). It may be surmised that one of the reasons underlying this assessment is the introduction of the computerised Offender Assessment System (OASys) in 2001, since which it has been taking longer to prepare a full pre-sentence report, a workload weighting of 6.5 hours (formerly 8), compared to 1.5 for a fast delivery (NAPO, 2008, p10). This is because, in addition to interviewing and writing time, numerous items of collected data must be entered into the computer (Mair et al., 2006; Whitehead, 2007, p28). Having said that, it should be qualified that reports have been declining over recent years: from 185,275 in 2002 to 154,250 in 2006 (-17%: Oldfield, 2008, p14).

The Triple 'S' Agenda

The 'Simple, Speedy, Summary' justice initiative (July 2006) which began to influence the practices of magistrates' courts towards the end of 2007, is an attempt by government to introduce a more efficient *modus operandi*. In fact this initiative is consistent with the principles of new public management committed to the 3Es (economy, efficiency, and effectiveness) and VfM (value for money) (Whitehead, 2007, p34). This agenda signals a much greater emphasis upon dealing with cases expeditiously, thus reducing the average number of hearings before a case is dealt with from 5/6 to an expectation of 1 in guilty pleas. In pursuing this objective, the logical implication is a preference for fast delivery and oral formats, rather than a full report adjourned for 3 weeks. The triple 'S' agenda may well achieve simple, speedy, and summary justice (whatever this means), but is this the same as social justice for people who offend?

Service Level Agreement (SLA)

As a consequence of the emergence of the National Offender Management Service (NOMS), since 2004 (Carter, 2003) there is a Service Level Agreement (formerly performance target) between the Regional Offender Manager and local area services that 40% of all reports should be fast delivery. Additionally, in a document published by the Ministry of Justice (2008), the 'ratio of fast to standard court reports' should be improved (p7). It can therefore be extrapolated that the preparation of reports is weighted increasingly towards briefer formats. Nevertheless it should be pointed out that, even though there is a predilection for the fast delivery report, in certain circumstances an adjournment for three weeks to prepare a full report could be the judgement of the probation service even when the court has asked for a brief document. This is an important safeguard. Nevertheless it should be noted that the business plan of the Teesside area service, for example, specifies that, for 2008/9, the SLA indicative values are £318 for a full report and £79 for a fast delivery. Therefore on the grounds of business efficiency the latter is a more attractive product than the former.

Offender Management Bill

It is pertinent to allude to the debate in the House of Commons (2007) on the Offender Management Bill. On this occasion it was clarified by the Home Secretary that within the NOMS structure the preparation of reports, in addition to the supervision of offenders and breach proceedings, will remain a probation task within the public sector. However, and tellingly, this state of affairs is guaranteed to last only for 3 years when, because of contestability, the preparation of reports could become the responsibility of another organisation, perhaps in the private sector. If this is a vision of future developments (beyond the next general election in 2010) then the historical association of the probation service providing a range of information to the courts could be coming to an end.

Therefore, questions can be posed, issues raised, and concerns expressed within the operational dynamics of the criminal justice system which are pertinent to the changing

nature of information being provided to sentencers. To reiterate, one of the main areas of concern is the tension between the legitimate goal of ensuring efficiency when allocating tax payers' money to criminal justice and pursuing the ideals of criminal and social justice. Of course these two objectives are not inherently incompatible but in certain circumstances could be (Whitehead, 2007, and views of solicitors). Furthermore even though the Probation Circular states that the three report formats are of equal standing as a basis for justifying sentencing decisions, it is difficult to support the position that they are of equal standing in terms of content. In other words the full standard delivery report provides much more information on offenders' background circumstances, compared to fast delivery and oral reports.

It may be suggested there will be occasions when probation formulates the judgement and advises the court that it is appropriate to prepare a fast delivery or verbal report. Certain cases, of an uncomplicated nature, lend themselves to briefer formats without diluting the pursuit of justice, of doing what is deemed to be right. Nevertheless there will be other occasions when a full report is required in the interests of justice. Consequently the complex task of sentencing arguably involves more than routinely and proportionately matching offence seriousness with sentencing bands contained in the CJA 2003; complying with a SLA to achieve 40% fast delivery reports; and making decisions on the grounds of efficiency. Rather sentencing is a moral issue existing alongside and informing its technical and legal requirements, which means thinking carefully about the right thing to do for each individual having regard to all the circumstances. This, in turn, has implications for the selection of report formats and requisite judgements about an offender's culpability. These issues can be placed within a wider analytical framework but, before proceeding to do so, it is of interest at this point to provide some revealing statistical data.

Table 1: Criminal reports written by the probation service at Magistrates' Courts from Quarter 4, 2006 to Quarter 4, 2007, England and Wales.

	Q4 2006	Q1 2007	Q2 2007	Q3 2007	Q4 2007	Percentage Change Q4 2007
Standard Delivery Reports	24,737	25,618	24,249	23,584	21,787	-12
Fast Delivery	10,833	12,183	12,492	12,957	12,506	15
Oral	2,585	3,278	3,401	4,011	5,197	101

This data from the Ministry of Justice (2007) disclose comparisons between a 12% reduction in the full standard delivery, but 15% increase in fast delivery and 101% increase in oral reports. There is a discernible shift of emphasis emerging in the production of reports.

Reports, Social Circumstances and Justice

The Keynesian post-war settlement enabled the political establishment to intervene in socio-economic matters to mediate between the competing interests of capital and labour, promoting inclusivity and solidarity through a social democratic welfare state (Dignan and Cavadino, 2007; Garland, 2001). When this began to break down under the weight of economic turbulence during the 1970s, the resultant rise of neo-liberalism had implications for criminal justice. Neo-liberalism has reconstructed a grand narrative of individual responsibility, competition, private sector over public sector solutions, coupled with the new public management (Leys, 2001), in addition to explaining offending as rational choice (Harvey, 2005; Garland, 2001; Young, 1999 and 2007; Wacquant, 2008). This narrative competes with an analysis located within the political economy of crime exemplified by Bonger's criminology (1916); and the Chicago School (Smith, 1988), which located problems for people within the social structure. Additionally Taylor, Walton and Young (1973), Hall et al (1978), and Ian Taylor (1997) have argued that capitalism is criminogenic and there is, therefore, a need for a fully social theory of deviance reaching beyond individual culpability and punishment. This holistic sociological analysis, opposed to a reductionism which looks no further than blaming the individual, reveals how macro economic factors are associated with crime 'due to the extent and impact of unemployment, poverty and inequality following the collapse of the post-war Keynesian welfare state compromise, and the social tsunami of neo-liberalism' (Reiner, 2007). Similar points are advanced in Harvey's analysis (2005, p80) and the Cabinet Office (2006) acknowledged the relationship between adverse economic conditions and fluctuations in crime.

This body of theorising is relevant for probation practice because the process of sentencing, to which it contributes, proceeds according to parameters established by legislation and National Standards which take account of numerous variables. Some of these variables, touched upon earlier, draw attention to offence seriousness, previous convictions, aggravating and mitigating factors (Hudson, 1998) incorporated within OASys. It is offender mitigation, specifically, which should draw the courts into reflecting upon the personal histories and wider social circumstances of individuals appearing before them, historically brought to their attention by information contained within a full (social enquiry) probation report. This constitutes a challenge to reach beyond the offence (what has the offender done?), notions of individual responsibility and rational choice, to consider behavioural repertoires associated with, and perhaps a response to, adverse socio-economic factors. On a daily basis the probation service, and other court personnel, are confronted with people from adverse social backgrounds, educational and employment disadvantages, differential life chances, poverty, and associated alcohol and drugs problems. Such matters are well documented in the literature and constitute the staple ingredients of probation practice (Walker and Beaumont, 1981; Stewart and Stewart, 1993; Stewart et al., 1994).

If the principle is reaffirmed that decision making ought to take account of the social circumstances of offenders; that the pursuit of criminal and social justice should be informed by this dynamic; then it is possible to conclude that the weight currently being placed upon fast delivery and oral reports may not always be conducive to just and right outcomes. This is because of the danger of quickly skirting over salient background information which needs to be investigated and brought to the courts' attention by probation within a full report. Complex human behaviours should not be reduced to tick box report formats and completion within a couple of hours by hard pressed probation staff; sometimes the stories of people's lives require careful excavation, analysis and recounting with diligence.

Conclusion

It is being claimed that fast delivery and oral reports rather than the OASys supported full report 'represents a significant step forward' (Haines and Morgan, 2007, p204). I am unable to be as sanguine because the provision of briefer formats could have profound implications for delivering criminal and social justice. Accordingly this article has touched upon several pressing concerns which could affect the ability of probation to provide a holistic, sociological analysis of offending episodes: full reports as too expansive and expensive; the triple 'S' efficiency agenda; a Service Level Agreement that 40% of reports should be fast delivery; the Offender Management Bill debate, NOMS and the likely implications of contestability. But there are other factors at work compounding the current situation: probation staff are becoming office bound and increasingly detached from visiting offenders within the context of their families and local communities; probation training in future could sever those critical educational links with the academic community thus attenuating opportunities to develop a sociological imagination informed by criminological theory; an increasing number of untrained/unqualified staff are involved in writing briefer format reports because 'Qualified probation officers comprise only 47% of probation staff' (Haines and Morgan, 2007, p187); a neo-classical criminological discourse is getting the upper hand over social democratic perspectives (Newburn and Rock, 2006). These gathering concerns are located within a macro political context which has been 'modernising' the probation service since 1997 in tune with neo-liberal themes, new public management, competitive markets, and individual responsibility. In fact 'the fundamental premise of individual responsibility and choice mirrors the larger political environment of neo-liberalism more closely than its sociological predecessors' (Zedner, 2006, p151).

This context, within which fast delivery and oral reports have become significant documents (see Table 1 above), arguably creates problems at a number of interrelated levels. Firstly probation practice and its distinctive contribution to the criminal justice system is called into question because of restricted opportunities to provide detailed analyses and explanations of offenders' social circumstances. Secondly offenders themselves could be denied the right to have their stories recounted which incorporates both their own agency and structural considerations. It should be recalled that 'Men make

their own history, but they do not make it just as they please; they do not make it under circumstances chosen by themselves' (Marx, 1852). Thirdly the criminal justice system itself is undermined because the provision of fast delivery and oral reports could impose limits on its understanding of offenders' circumstances, thus affecting judgements about culpability. Finally the prevailing political dynamic that offending is largely a matter of individual choice perpetuates a punitive response. This approach should be challenged by enabling the probation service to provide all relevant information which could result in supportive community sentences for those 'less blameworthy because of the difficulties they face' (Raynor and Vanstone, 2007, p80). Consequently, the selection of fast delivery and oral rather than full reports, must be handled with great care by central government, probation, court clerks, magistrates, and solicitors. Perhaps one of the functions of Court User Groups comprising representatives from organisations within local criminal justice systems, and located within magistrates' courts, should be to keep the issue of reports and justice under constant review.

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