

**The International Centre for Prison Studies  
King's College  
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**Comments<sup>1</sup> on the**

**Home Office**

**PRISONS-PROBATION REVIEW CONSULTATION DOCUMENT**  
*Joining Forces to Protect the Public*

**Introduction**

1. As the consultation document notes, the need for greater co-operation between many parts of the criminal justice process has long been recognised. The absence of such co-operation at key junctures has reduced the efficiency and effectiveness of the system. The efforts being made by the government to create greater integration are to be welcomed. The present review has to be seen within this wider context.

2. There would be considerable benefit from undertaking the wide-ranging programme of change, to which the Home Secretary refers in his Foreword, in a more integrated manner. The danger of carrying out a number of separate reviews of various criminal justice agencies, for example, of the workings of the Crown Prosecution Service, of the magistracy, of police service boundaries and now of the links between the prison and probation services, even when these reviews take account of the needs of other agencies, means that the possibility of a more fundamental review of the criminal justice process as a whole may be overlooked. A more comprehensive review would, for example, consider the possibility of bringing many of these activities within a single government department, such as a Ministry of Justice. One recognises that the government may not wish to examine this possibility at the present time. However, it is ironic that in a European context, the Council of Europe, of which the United Kingdom is an active member, has in recent years been encouraging new member states from central and eastern Europe to transfer administrative responsibility for prison administration from Ministries of the Interior to Ministries of Justice. In contrast to this trend, the present review proposes concentrating more administrative responsibility in the hands of the Home Office in this country.

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<sup>1</sup>*This submission is based on many years of practical experience of working in the UK Prison Services and for the care and resettlement of offenders, as well as international experience with establishing alternatives to prison and knowledge of the organisational arrangements for prison and probation services in many other jurisdictions.*

3. There is also a more fundamental danger in conducting a series of reviews in a piecemeal manner. These reviews have tended to concentrate on the important matters of efficiency, cost effectiveness and outputs. None of them, understandably, has considered the matter of justice in its own right. This way of working almost inevitably creates an environment in which justice is seen as a commodity, in which decisions have to be made about how much justice society can afford and which forms of justice give best value for money. This is a dangerous path to go down in a democratic society.

### **The need for structural change**

4. We support the conclusions of the review that current arrangements are completely unsatisfactory and have been for some time. We see three issues here. First, in spite of many efforts<sup>2</sup>, the Home Office has so far failed to resolve the problems of the governance, accountability and operations of the probation service itself. Second, there has long been a serious discontinuity between the work of the prison and probation services. Third, the current organisational structure of the probation services has left a vacuum at the centre, where criminal justice policy is formulated.

#### *Governance, accountability and operations of the probation service*

5. The functioning of the probation service has been hampered for many years by a series of unresolved tensions and ambiguities, including the following:

- i. There is confusion about the purpose of community penalties. On the one hand, they are intended to ensure that there is some recompense for the crime that has been committed. At the same time, it is hoped that they might provide an answer to the personal and social problems of the offender. The role of the probation officer as friend, adviser and supporter sits uneasily with the role of exercising control on behalf of the law enforcement agencies of the state. The very necessary and legitimate work of assisting disadvantaged people to obtain their entitlements and get access to services is in conflict with the public expectation that those who have been convicted of offences and are serving a penalty should be giving, not receiving.
- ii. The autonomy given to each probation committee to decide on the detailed provision it will make for offenders undergoing community sanctions is in conflict with the requirements of equity and justice.

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<sup>2</sup> See *Punishment, Custody and the Community (1998)*, *Supervision and Punishment in the Community (1990)*, *Partnership in Dealing with Offenders in the Community (1990)*, *Organising Supervision and Punishment in the Community: a Decision Document (1991)*, *National Standards for the Supervision of Offenders in the Community (1992)*, *Partnership in Dealing with Offenders in the Community; a Decision Document (1992)*, *Strengthening Punishment in the Community (1995)*, *National Standards for the Supervision of Offenders in the Community (1995)*.

- iii. There is no adequate mechanism for organising and prioritising the very complex set of relationships which include:
- working with prisoners who are held in a national prison service;
  - providing a service to courts which are under the Lord Chancellor's Department;
  - meeting objectives set by the Home Office by means, for example, of the National Standards for the Supervision of Offenders in the Community (1995);
  - working with other agencies which help offenders;
  - receiving 20% of funding from a democratically elected local authority.

*The discontinuity between the work of the prison and the probation services*

6. The local organisation of the probation services and wide difference in local policies has long prevented the creation of any effective resettlement service for those leaving prison. Although this problem has been recognised for many years it has not been solved.

7. In addition, there are enormous cultural and organisational differences between the locally-based probation services with their various and conflicting roles and the monolithic prison service with its clarity of objectives. These differences make it very difficult for the services to work closely together.

*The policy-making centre*

8. Most important of all, the current arrangements leave a vacuum at the centre of policy making. The Director-General of the Prison Service is a major participant in policy deliberations at the Home Office. There is no Director-General of the Probation Service around the same table. Policy for dealing with offenders outside prison is led by Home Office officials who have no operational responsibilities and no capacity to put any decisions into practice operationally.

9. We therefore strongly support the structural change proposed in the document. The creation of a unified national probation service, which would be a national Next Steps Agency directly accountable to the Home Secretary, would provide the basis for achieving:

- (i) *Greater consistency and equity in the provision of community penalties.* The current arrangements have led to a patchy and inequitable provision of community sanctions, which reduces their effectiveness as alternatives to prison in the eyes of sentencers.
- (ii) *A national focus for the development of a strategy about community sanctions and provision of public information about them.* Such a focus is urgently needed. The problem of public lack of confidence is longstanding and worsening. The International Crime Victimization Survey showed that the public in England and Wales has a lower level of confidence in community penalties than nine other

Western European countries and that confidence in community penalties in England and Wales dropped between 1992 and 1996.<sup>3</sup>

- (iii) *Links at the governmental level with the government policies on social inclusion.* Many of those convicted of offences and most of those leaving prison are from the ranks of the socially excluded. For too long many released prisoners, especially those released after short sentences, have had no guarantee of help with resettlement. A national resettlement service for those leaving prison could make a considerable contribution to the problems of social exclusion.
- (iv) *Clarity of focus.* An opportunity to make a clear distinction in organisational terms, particularly where community sanctions are involved, between the monitoring of the punishment imposed by the court and arrangements for meeting the personal and social needs of offenders

### **Other issues**

10. Structural change of the probation services is an essential first step. But it is only the first step. It will need to be accompanied by a significant clarification of roles and objectives. Clear and visible leadership will be essential.

11. The status of probation staff and the possibilities for career progression will need to be clarified. In many countries probation officers are employees of the Ministry of Justice (or its equivalent) and such a status should not be problematic. The breadth of enhanced career opportunities that the new structure could offer should be clarified in order to make the advantages of such a new structure more clear to staff.

12. The establishment of a training system in which many elements are shared with the prison service, as set out in Chapter 4 of the consultation document, should be one of the priorities.

### **Working at the local level**

13. The balance within an organisation which sets policy and standards from the centre and delivers a service at a local level is always a sensitive one. Given the importance of other government initiatives to create strong local communities, it will be important to ensure that the delivery of the work of the probation service responds to specific local needs as well as to national priorities. It would be counter-productive if the new drive to strengthen community penalties were to result in a weakening of local community involvement in these very issues. A national service with a regional management structure is likely to be the best way to achieve the government's declared priorities that there should be a clear, consistent service, a well integrated system for managing offenders and speedy responsiveness to government policy.

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<sup>3</sup> See Mayhew and White, *The 1996 International Crime Victimization Survey*, Home Office, London, 1997.

14. A national probation service would have three main reference points:

- i. the courts where offenders are being sentenced,
- ii. the prisons, from which offenders are being released into supervision,
- iii. and the local area into which offenders have to be re-integrated.

The need to work closely with these three elements might dictate specific local arrangements. As a first step, co-terminosity with the 42 police force areas is a sensible arrangement.

15. As a means of maintaining and developing good relationships with the courts there is scope for a development of the Area Criminal Justice Liaison Committees into forums where questions relating to the working of the courts and their efficiency and effectiveness can be considered across all the services. It would make sense to consider ways of creating greater co-terminosity between the 23 Area Criminal Justice Liaison Committees and the 42 police force areas.

16. Relationships with prisons should be greatly improved nationally by links at Home Office level and at regional level through working links and cross transfer of staff.

17. Many parts of government are accountable nationally but work locally. In the proposed new structure there is scope for the creation of local advisory bodies which could, if properly established, perform some very important functions. The aim of such groups should be the mobilisation of local resources to help with programmes that form part of community penalties and that assist the reintegration of ex-prisoners. Membership of the groups could be generated by open advertisement. Selection could be done by staff of the new Probation Service Agency. Perhaps the arrangements currently used for appointment of members of Prison Boards of Visitors might serve as a broad model.

18. A national probation service would work locally but not be of the locality. It would therefore be easier for probation officers to see their role as enablers and mobilisers rather than providers. Their task would be to look for resources in the local area and to encourage local service providers to work with offenders with the aim of preventing re-offending, re-integrating released prisoners and reducing social exclusion. They would not, as they sometimes do at present, replicate structures which already exist within the community, nor create new structures which might be better delivered by other statutory or community agencies.

### **The wider tasks**

19. The new emphasis, which the Home Office is rightly seeking, on core criminal justice functions and management of risk will require the probation service to concentrate its resources and highly trained personnel on working in the courts and supervising high-risk cases. Much of the work on dealing with offenders' basic social problems which can be crucial to preventing further crime can be contracted to other agencies in the local area which are experienced in working with the most disadvantaged people. These would

include Citizen's Advice Bureaux and other advice services, as well as agencies that work with homeless people, mental health organisations and general welfare bodies.

## **Terminology**

20. Terminology is important if there is to be proper public understanding of what objectives are being set. The title of an organisation is important for understanding what it does. 'Probation' is a name which is widely used to describe a service which works with offenders outside prison and carries out welfare tasks associated with prisons and courts. However, as a title it explains nothing about the task of the service. 'Corrections' is an American term which, like Coca-Cola and Macdonalds, now has international application. It is not indigenous to thinking in the United Kingdom and sits uneasily with concepts such as public protection and sanction. It might be advisable to give the new Home Office directorate a title more in keeping with present thinking in this country.

21. If a new name is adopted it should not be cumbersome, which a number of those suggested in the discussion document are. Of those listed, 'Public Protection Service' is probably the one which would give the most clear message to the public and to its own staff about the priority of the organisation. However, such a title would fail to make the important distinction between punishment and public protection, which are two very different outcomes. The best way of making that distinction clear might be to use a name such as the 'Community Sanction Service'.

22. 'Throughcare', like 'rehabilitation', is a word which has been subject to mis-interpretation and is confusing. 'Resettlement', while clearer than 'throughcare', could be subject to mis-interpretation. It could, for example, be taken to refer only to the issue of accommodation. The word also has a rather dated ring to it. It might be possible to find a word which gives a better notion of the idea of social inclusion. That word itself might be used, or another such as 'social reintegration', or simply 'integration'.

## **Inspection**

23. Public services have to be inspected to ensure that they are delivering effectively and honestly the service that is required. In addition, any service that involves deprivation of liberty and curtailment of rights has to be inspected to ensure that human rights are being protected. Whilst the prison service has for some years been subject to what is probably the most thorough official inspection system in the world, inspection machinery in the probation services is much less developed. By combining the Prison and Probation Inspectorates a clear message would be given about the responsibilities of the probation service in the area of human rights. Such a move would also be likely to heighten the public profile of the Probation Inspectorate. This would help to spread knowledge and understanding of the work of the probation services.

24. Similarly, whilst complaints mechanisms and procedures are well developed in the prison service, they are less so in the probation service. Extending the powers of the Prisons Ombudsman to look at complaints against the probation services might be a

further useful unifying step. With the forthcoming implementation of the Human Rights Act combined human rights training for prison and probation officers has much to commend it.

### **A Modern Prison Service**

25. Just as the probation services need to have a more unified structure in order to deal with issues of accountability, delivery of objectives and leadership, so the Prison Service needs to consider how best to develop its links with local communities as a means of contributing to reduction of crime and protection of the public. There are a series of fundamental issues which need to be considered in this context but which are not dealt with at all in the review. For example, would incorporating elements from any of the models used to deliver health care, education and police services improve the performance of a body such as the Prison Service? Why does it stand, almost alone, as an organisation of the civil power which is managed entirely by central government? In recent years the Prison Service has been subject to innumerable internal and external organisational reviews. All of them have considered how to improve the existing organisational structure. As a result the Service has been subject to regular re-organisation which has produced more or less of the same. A number of years ago, four regional directorates were introduced. In 1990 these were replaced by 15 areas. These were later reduced to 12, with a separate arrangement for high security prisoners. It is now proposed that the number of areas should be reduced to 10 to conform to Government Offices of the Regions. At some point one should stop considering the interminable options for "improving" the existing system and should instead consider a radical review of alternatives. Such an option is not presented in the present consultation document.

26. In terms of the very limited consideration which is given to this matter in the consultation document, the prospect of re-organising the existing prison areas to conform with Government Offices of the Region would be a marginal step in the right direction.

### **The Future**

27. One understands why the government takes the view that a merger between the probation services and the Prison Service is "a bridge too far" at this stage on grounds of organisational stability. Nonetheless, it is the logical consequence of many of the arguments presented in the consultation document. There are numerous examples in other countries where such a merger already operates successfully. These examples vary from situations where there is full integration, with staff moving between the two parts of the single service, to other models, such as that in Sweden, where there is a single Prison and Probation Administration with one Director General but with the two arms of the organisation operating and being staffed separately. Such unity underlines that both services are involved in the execution of sentences imposed by the courts. It also allows, as recent developments in New Zealand have shown, the introduction of fully integrated systems for managing offenders at all stages.

28. There is already a single Minister with responsibility for Prisons and Probation. One could take that arrangement one step further by following the Swedish model, whereby there would be one chief executive for both organisations but with the two organisations continuing to operate as separate entities for as long as was felt necessary.

29. A variation on this would be to create a single agency with a non-executive chairman to whom the two Directors General would report. This was a management model recommended for the Prison Service Agency in the Lygo Report on the Management of the Prison Service<sup>4</sup>. Such an arrangement could also cater for the proposal which has been made a number of times that the Advisory Council on the Penal System should be resurrected. The non-executive chairman could also chair the Advisory Council. A key consideration here is the nature of the link between the two services and the Home Office and the relevance of agency status to organisations such as these.

30. It might be worth keeping the debate open by commissioning some research on structural arrangements in other jurisdictions and the perceived benefits and advantages of the various options.

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<sup>4</sup> Report by Admiral Sir Raymond Lygo , 'Management of the Prison Service', Home Office, London, 1991