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Community sentences since 2000: How they work – and why they have not cut prisoner numbers

Catherine Heard



CENTRE FOR CRIME
AND JUSTICE STUDIES

About the Author

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Introduction

Over the past decade, the Centre for Crime and Justice Studies has been charting developments in community sanctions and calling for a more ambitious approach to criminal justice policy, informed by principles of social justice.¹ Our research has shown that the UK's increased use of community sentences has not led to any overall reduction in the number of people in prison. At best, it may have controlled the growth of short-term prison sentences. At worst, it has simply expanded the net of criminalisation and punishment, exacerbating rather than resolving social harms.

This report offers a unique review of the range of alternatives to custody in the UK, from bail, through community sanctions and probation, to early release from prison. It gives an overview of how governments have attempted to control the staggering rise in prisoner numbers since 2000 by the use of so-called 'alternatives' – and largely failed to do so. The key measures are explained in Appendix 1, with supporting statistical and financial data for the separate jurisdictions of England and Wales, Northern Ireland and Scotland in Appendix 3. Probation practices under the three systems are described in Appendix 2.

The information in Appendices 1 – 3 is generally descriptive rather than analytical. It was gathered as part of an ongoing comparative project funded by the European Commission: Alternatives to Custody in Europe, or 'ACE'.²

The ACE project compares current law and practice in alternatives to custody across eight EU states: Italy, France, Greece, Latvia, Poland, Portugal, Spain and the UK.³ These countries have widely divergent systems and practices, notably in pre-trial detention, community sentences and probation. Most have chronically overcrowded prisons, as was shown in a separate report published by the same team of researchers in 2014.⁴ By building up a comparative picture in a similar way, the ACE project aims to identify better approaches to ending the wasteful, harmful over-use of prison currently blighting so many European countries. It seeks to promote the fairer, more effective use of alternatives. To that end, we have developed a set of core principles on the use of alternatives to custody, which should inform and underpin the policy and approach of governments and criminal justice agencies. These are set out in the main body of this report (see page 7)

In comparison to prison, people's understanding of the purposes of sentencing, of community measures and the role of probation tends to be patchy: reliable information is hard to come by. We therefore hope that this report with its wealth of data will be a useful resource.

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Prison and the alternatives: an overview

We begin with a short summary of the key data on prisoner numbers and community sanctions, before providing an overview of how government policy in England and Wales, Scotland and Northern Ireland has addressed (or failed to address) the UK's chronically high prisoner numbers.

This is followed by some simple proposals for a more ambitious policy to cut the UK's use of prison, and a set of core principles for the better, fairer use of alternatives.

What do the numbers tell us?

Overall, the quantitative data reveal a growth in the use of custody and in the length of sentences served. At the same time, there has been a rise in the use of community sentences. These trends largely arise from changes to statutory sentencing provisions, which have become more punitive.

Reforms to community sentencing, though frequent in this period, have failed to reduce prisoner numbers overall. Indeed, the expansion in the use of community sanctions since 2000 was never likely to address the UK's extremely high prisoner numbers.

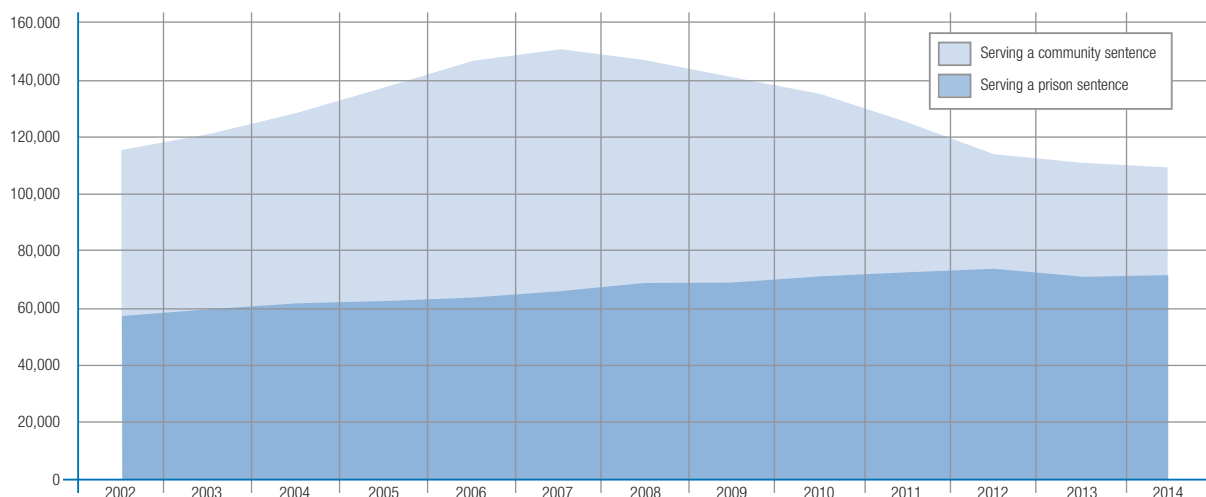
Government policy on prisoner numbers since 2000

The number of people in prison following conviction for a criminal offence in England and Wales, Northern Ireland and Scotland has increased sharply. Yet there has been no discernible government policy or strategy to reduce prison numbers and the use of custody overall, as distinct from simply controlling further growth.

This is despite government data showing that reconviction rates for those leaving custody are higher than those dealt with by alternatives such as fines or supervision. It is despite regular reports that UK prisons are over-crowded and conditions poor, with incidents of mental illness, self-harm and suicide at alarmingly high levels and staff struggling to maintain safety.

In policy terms, government emphasis in all three of the UK's jurisdictions has been focused on 'reducing reoffending' (including in particular by looking for alternatives to short-term prison sentences), rather than cutting prisoner numbers overall. Many criticise this approach, not least for its failure to take account of the wider social and individual factors needing to be included in any analysis of the causes of law-breaking.⁵

People serving community sentences and prison sentences – the numbers



1. Figures for England and Wales only (2002 – 2014). While the use of community sentences has also grown in Scotland and Northern Ireland (as have prisoner numbers) the available data is not directly comparable to that for England and Wales. For full data, along with source references, see Appendix 3.
2. 'Serving a prison sentence' refers to the final-sentenced population as at 30 June each year and excludes remand and non-criminal prisoners.
3. 'Serving a community sentence' refers to those under suspended or deferred custodial sentences, community orders or youth rehabilitation orders, as at December each year.
4. Each person 'serving a community sentence' is counted only once, even if they are subject to several types of sentence at the year end.

There has also been a policy shift towards the greater use of community sanctions. These have frequently been re-packaged and presented as ‘tougher’ and making the person ‘pay back’, by doing unpaid work, or forgoing freedom of movement, sometimes combined with probation. In terms of the development of alternatives to custody over this period, there are four notable trends, all of which have been driven by government policy on criminal justice and on public sector delivery.

1. Requirements imposed with community measures have become more onerous (for example, the maximum length of time a curfew can be imposed has been extended from 12 to 16 hours a day).
2. The punishment element is more visible. (For example, people on unpaid work requirements must wear bright orange jackets saying ‘Community Payback’; and there is a statutory requirement for every Community Order to contain at least one punitive element.) This has led some to comment that community sentences have become more ‘prison-like’, moving away from the rehabilitative model.
3. There is a growing role for the private sector, with financial incentives to cut reconviction rates under a ‘payment by results’ system (in England and Wales).
4. There is greater use of electronic monitoring, both as a requirement to a Community Order (where there is a curfew requirement) and as a post-prison control (through home detention curfew, widely used in England and Wales and Scotland). Again, private companies are the main providers.

There is little evidence that any of these developments will reduce prisoner numbers overall, or help to divert people from prison, or avoid the associated costs and other harms of incarceration. In the case of some measures, such as ‘payment by results’ for probation services, it is too early to tell.

Below, we provide an overview of the factors behind the UK’s extremely high prisoner numbers and what, if anything, has been done at government level to try to address the problem.

England and Wales

Prison populations rose steadily under the two (Labour) governments in power for the first two thirds of the period 2000 - 2015. They continued to rise under the (Conservative-Liberal Democrat) coalition government for the five years to May 2015. Throughout this period there was no clear government strategy or policy to reduce overall numbers in custody.

66% The growth in England and Wales’ total prisoner population between 1995 and 2009

In July 2009 the Ministry of Justice published an analysis of factors behind the 66% growth in the England and Wales prison population

from 1995 to 2009.⁶ It identified two main drivers behind the increase: more people sentenced to immediate custody (as a result of tougher sentencing laws) and more people recalled to prison for breaking release conditions. An additional but less significant factor identified was the rise in numbers of people imprisoned for breaching non-custodial sentences. The analysis found that since 2000 the average time spent in prison had increased by 14%. There had also been a rapid increase in the number of breach cases resulting in prison, reflecting legislation introduced in 2003 to toughen enforcement of community sanctions and licences.

In November 2014 the Ministry of Justice accompanied a release of sentencing statistics with a statement *welcoming* the steady increase in the average prison sentence

14% The increase in average time spent in prison since 2000, in England and Wales.

handed down in the period since 2010 when the coalition government took power. The statement pointed to the government’s record in taking ‘major steps to toughen sentencing’ and linked this to continued falls in crime rates. On sentencing, for example, the government had introduced legislation extending mandatory life terms for certain serious offences and imposing longer prison sentences for the most serious driving offences.

These most recent examples of government policy illustrate the degree to which any policy aiming to *reduce prisoner numbers* is avoided. Recent reforms to the systems of community sanctions and post-prison probation are widely seen as ideologically driven attempts to open up criminal justice processes and interventions to the private sector. It remains to be seen what impact they will have on prisoner numbers or reconviction rates.

Although there have been several parliamentary and NGO reports pointing to the need to cut overall prisoner numbers, none has had any detectable effect on government policy. For example, over recent years the House of Commons Justice Select Committee has emphasised the dangers of allowing the prison population to escalate and consume resources that could be better spent elsewhere, for example, by dealing with drug and alcohol addiction and expanding early intervention and diversion programmes. In a report published in March 2015, the Committee identified a ‘need to re-evaluate how custody, and alternatives to it, are used in a cost-effective way which best promotes the safety of the public and reduces future crime’.⁷ The Chair of the Committee said the country needed to ‘get away from arguments about which party is hard or soft on crime’ and instead foster a debate on effective practices, informed by evidence.

These observations echo those contained in a British Academy report published in July 2014⁸ which called for a deeper re-examination of penal policy, located outside of politics. The report noted that a key contributing factor to prison growth was the increased use of prison for breach of release conditions and community sentences.

As we explain in more detail in Appendix 2, the probation system in England and Wales was radically reshaped in 2014 – 2015, under the ‘Transforming Rehabilitation’ programme. This has opened up the bulk of probation work to the private sector and introduced a controversial ‘payment by results’ system based on future reconviction rates. It has greatly expanded mandatory post-release supervision, placing an added burden on an already stretched service, with no additional funding to pay for it.

Scotland

In July 2008, the Scottish Prisons Commission published a report⁹ advocating limiting the use of custody to cases where the moral seriousness of the offence, coupled with public safety grounds, warranted nothing less. It recommended a significant reduction in the prison population by avoiding the unnecessary use of short sentences and making more use of ‘community payback’ sanctions in their place. Emphasis was placed on the reparative aim of justice, making good to the victim or the community, for example, by unpaid work, paying a fine or compensation, and engaging in rehabilitation. Rehabilitative effort was recast as something done by the individual, rather than a change coerced by the state; this made it a form of reparation – paying back for offending by turning one’s life around.

Scotland now has a statutory presumption against short prison sentences. There has since been a big fall in numbers sentenced to less than three months.

received a short prison sentence is now more likely to get a community sentence. Data published in 2014 suggest this has reduced the number of short sentences passed. The proportion of sentences of three months or less has fallen from 53% of custodial sentences in 2006–07 to 29% in 2012–13.¹¹

In its latest justice strategy programme,¹² a priority of reducing reoffending (as distinct from cutting prisoner numbers) is highlighted. A central part of this involves community sentencing and we return to this subject in Appendix 1. The report also referred to wider social problems – notably poverty – giving rise to crime, problems whose solutions lay beyond the criminal justice system (CJS). It emphasised the need for non-CJS agencies to be mobilised to tackle these problems.

Overall, while the political debate on prison numbers in recent years in Scotland has appeared more progressive than that in Westminster, it is unclear whether

The report led to a reform programme by the Scottish government. In the years since devolution, Scotland has built on its community punishment regime to try to reduce overcrowding in prisons. There is now a statutory presumption against short prison sentences.¹⁰ Anyone who would previously have

the country has yet taken a truly different path towards reducing the use of custody. Recent trends on the use of custodial sentences and average sentence lengths are not reassuring. In 2012 – 2013, 15% of people found guilty of an offence were given a custodial sentence, the highest proportion in the previous ten years.¹³ The average length of a custodial sentence was 283 days, 51 days longer than in 2006 – 2007. The number of those recalled to prison for breach of licence conditions increased by 1,000% in just a decade.

Northern Ireland

An independent review of prisons was launched in 2010 following an unprecedented rise in the prison population. The resulting report (the ‘Owers report’)¹⁴ published in October 2011 found that the rise in prisoner numbers resulted from a ‘continuing failure to get to grips with longstanding population drivers, such as the numbers of remand prisoners and fine defaulters, together with a new driver, the number of prisoners recalled [under legislation enacted in 2008]’.¹⁵ The Owers report discussed a ‘culture of denial and compromise’ before devolution of powers which had led to wasted public money and failures to deliver a safer society.

To put this right, the report argued, a complete transformation was required, rather than mere incremental change. The authors rejected a market-based approach to prisons in favour of a political approach to resolving dysfunction in the prison service. A Prison Reform Oversight Group with official, professional and civil society input was set up in December 2011 to work towards reform. Following this, the Department of Justice launched a consultation on community sentences to encourage their greater use as an alternative to short sentences, resulting in draft legislation.¹⁶ The draft bill contains provisions for low level offences to be dealt with by fines rather than court prosecution.

The initiatives developed following this review aimed to move Northern Ireland’s prison system away from its historic role (criticised as simply ‘warehousing’ many political prisoners), towards a more conventional correctional model. As a result of the various reviews and initiatives, an effort was made to combine prison reform, community justice and other areas into one overarching *Strategic Framework for Reducing Reoffending*, published in May 2013.

Disappointingly, plans to follow Scotland in introducing a statutory presumption against shorter prison sentences did not result in legislation. The promised reforms of the prison system have made little progress.

‘Continuing failure to get to grips with longstanding [prison] population drivers’
‘A culture of denial and compromise’

The Owers report

Rethinking our use of prison

For the UK to have any chance of tackling its excessively high prisoner numbers, the following goals and principles would need to inform government policy at every level.

1. Minimal resort to prison

Far too many people are in prison. Yet prison does not reduce crime, either through deterrence or rehabilitation. Prison costs more than the alternatives, even ones involving high levels of supervision. Prisons cause immense social and economic harm. Rates of reconviction of people who have been in prison are high. But repeat convictions are just one example of the harms caused by prison. There are many others: unemployment, poverty, mental illness, homelessness, family breakdown and social exclusion. These harms impact not only ex-prisoners but also families and wider society.

2. Reduction in prison populations

It is important to develop policies to cut prisoner numbers overall, including by:

- Substituting short custodial sentences with suspended or community sentences
- Restricting the use of long prison sentences in view of the severe harms they cause
- Promoting and extending the use of parole, and

- Ensuring alternative sanctions and measures do not lead to growth in prisoner numbers.

3. Better use of alternatives

A commitment to making better use of alternative sanctions and measures is required. 'Better use' is not just applying probation and other measures instead of prison when appropriate. It is also avoiding the over-use of community sanctions. These sanctions are forms of punishment and control: they must not simply widen the net of punishment by criminalising people in ever-increasing numbers. They must not increase prisoner numbers 'by the back door' – for example, jailing someone for breaking a curfew or not paying a fine.

The better, more targeted use of alternatives would save resources and reduce the widespread harms caused by excessive use of prison. It would enhance community safety more effectively than prison sentences, at a fraction of the cost.

4. Addressing the wider social harms

It is also important to recognise that policy-makers committed to reducing prisoner numbers need to look beyond criminal justice solutions and confront the socio-economic factors and political choices that contribute to high prisoner numbers and to law-breaking.

Better use of alternatives: some guiding principles

As part of our work with our European partners on the ACE project, we have developed the following core principles. They are informed by the available data on good and bad practice in the use of alternative measures, and by the international minimum standards on community sanctions to which all EU member states have signed up. As the information in Appendices 1 and 2 shows, the UK's criminal justice system is not in full compliance with these principles.

1. Pre-trial

In view of the rights to liberty and to be presumed innocent until guilt is proven, remand in custody pre-trial should be a last resort, only used in exceptional cases. Pre-trial detention and any other restriction pre-trial (such as electronic monitoring) should only be applied following a hearing at which the defendant has had a fair opportunity to object. Any measure applied should be no more than what is necessary and proportionate to ensure a fair trial.

2. Alternative sanctions

- Be used selectively, in a way that is proportionate to the offence
- Be of a fixed, proportionate duration
- Be clear in scope and realistic in requirements
- Not stigmatise individuals, but respect their dignity, privacy, and family life
- Be properly targeted, based on a thorough, objective assessment of the person's background, previous record and support needs
- Take account of age, maturity and any specific needs that could affect the ability to comply with, or benefit from, the measure
- Help to restore individuals to their place in society, enabling them to choose desistance
- Be worthwhile, helping towards personal autonomy and social integration
- Be properly resourced and organised, and
- Be supported by trained professionals from a wide range of backgrounds, equipped with sufficient human and financial resources. Private sector involvement must be subject to equally high professional standards and safeguards as public sector provision.

3. After prison

Any requirements imposed as a condition of release from prison must be proportionate in nature and duration. They must be targeted and practical, aimed at the person's

social inclusion, mitigating the harms resulting from time spent in prison and helping to adjust to life outside.

If conditions and requirements are necessary, they must be selected in a procedurally fair way. The individual must be given a fair chance to contest the factual basis on which they are imposed and to challenge disproportionate infringements of liberty or private or family life.

4. Effects of breach

The effects of breach of any alternative sanction must be proportionate to the offence itself, the nature of the breach and the person's circumstances.

There must be no automatic recourse to prison or any other harsher sanction than that for which the measure itself was imposed. A reasoned decision must be taken based on all the available information. The decision on breach must be free from discrimination based on any personal characteristic, but must take account of the person's circumstances where these could impact on the ability to comply with requirements.

5. Accountability and transparency

Accountability: Government departments and officials as well as private sector providers responsible for delivering probation and other community sanctions should be publicly accountable for the impacts of their policies on imprisonment and use of alternatives. Independent and well-resourced inspection and monitoring systems should apply to public and to private sector bodies delivering alternative sanctions, programmes, probation and monitoring. Inspection reports and evidence should be published promptly.

Transparent data on sentences, their impact and costs:

The government should publish independently verified data on the use and impacts of prison and alternatives to custody (to include pre-trial measures and post-release requirements). Reconviction rates should not be the sole basis to judge a measure's effectiveness. Other key impacts are whether the person has benefited from support or supervision by, for example, completing training programmes and finding employment or housing.

The relative costs of prison and its alternatives should be monitored. Data should be published on these costs, at least annually and preferably quarterly. Sentencing and cost data should be presented in a way that enables the public to understand the costs and social impacts of prison, compared with the alternatives.

Conclusion

The UK's use of alternatives to custody has expanded greatly since 2000. However, despite many reforms and restructurings, community measures have done little if anything to stem the steady increase in prisoner numbers.

Although couched in the language of rehabilitation, the government's recent decision to break up probation in England and Wales and open its services to a competitive market and 'payment by results' – results focused on the narrow measure of reconviction rates – is unlikely to help. It may in fact hamper the rehabilitation prospects of probation work in prisons and in the community, given the extra pressures it will place on probation services and the lack of additional funding to help them meet those pressures.

Increasing the use of community sanctions and making them ever more punitive cannot avert the risks and harms of our over-reliance on prison. It simply widens the net of punishment, consuming resources that would be better spent on improving access to mental health treatment and drug and alcohol programmes, and promoting and resourcing other ways of diverting people away from criminal justice towards the support they need. Our long-standing over-reliance on criminal justice interventions leaves little space to develop fairer, more effective solutions to the problems our society faces.

Notes

- 1 See, for example: Mills H, Roberts R, *Reducing the numbers in custody: looking beyond criminal justice solutions*, (2012), at www.crimeandjustice.org.uk/publications/reducing-numbers-custody-looking-beyond-criminal-justice-solutions; and Mills H, *Community sentences: a solution to penal excess?* (2011), at www.crimeandjustice.org.uk/publications/community-sentences-solution-penal-excess.
- 2 Information was gathered from published sources including data collected by criminal justice agencies, principally the Ministry of Justice, the National Offender Management Service (NOMS) and the equivalent devolved authorities. In some cases data was obtained by *Freedom of Information Act* requests. The information was collected during the first half of 2015 and was accurate as at 29 May 2015.
- 3 The ACE project runs to July 2016. Further outputs will include a *European Handbook on Alternatives to Custody*, containing examples of good practice and proposals for reform. For more information on the project, go to: www.crimeandjustice.org.uk/project/european-observatory-alternatives-imprisonment.
- 4 European Prison Observatory, *From national practices to European guidelines*, November 2014. Available, along with the eight individual country reports, at: www.crimeandjustice.org.uk/prison-conditions-across-europe.
- 5 For a recent critique of the limitations of the 'reducing reoffending' approach to criminal justice policy, see Clarke R, 'I would give up ... chasing the re-offending rainbow' (2014), at www.crimeandjustice.org.uk/resources/i-would-give-chasing-reoffending-rainbow.
- 6 Ministry of Justice *Story of the Prison Population: 1995 – 2009, England and Wales*, July 2009.
- 7 *Prisons: planning and policies*, HC 309, March 2015.
- 8 British Academy, *A presumption against imprisonment: social order and social values*, July 2014.
- 9 *Scotland's Choice: Report of the Scottish Prisons Commission*, July 2008.
- 10 *Criminal Justice and Licensing (Scotland) Act 2010*.
- 11 Howard League Scotland, website, Trends, 31 October 2014. Further analysis will be needed at a later stage, to test whether any unintended consequences have flowed from this measure, such as a trend towards longer custodial sentences for 'borderline' cases.
- 12 *Strategy for Justice in Scotland*, September 2012.
- 13 Howard League Scotland, October 2014 (cited above).
- 14 Owers A, Leighton P, McGrory C, McNeill F, Wheatley P, *Review of the Northern Ireland Prison Service*, October 2011.
- 15 *Criminal Justice (Northern Ireland) Order 2008*.
- 16 *Faster, Fairer Justice*; NIA Bill 37/11-15.

Appendix 1:

What are the alternatives to imprisonment?

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Introduction

The information presented below is an essentially descriptive account of the various alternatives to prison which the UK's criminal justice systems provide. It sets out the legal foundation of the key measures at all stages of the process: pre-trial, at sentencing, and after release from prison. Information is provided on how the measures work in practice, the roles of criminal justice agencies and private or public sector bodies in delivering them, and what the evidence shows about their impact.

The information provided here does not go beyond the various *criminal justice*-based alternatives to prison to analyse the more fundamental causes or consequences of our heavy use of prison and community-based punishment. Those are clearly important matters, both in their own right and as part of any socially just approach to criminal justice reform. But as they did not form part of the Alternatives to Custody in Europe project, they are beyond the scope of this description of alternatives to custody.

1 Before trial: release pending trial ('bail')

In the UK, the alternative to detention pre-trial is release, which may be ordered by the court with or without specific conditions attached. This pre-trial release is known as 'bail' – a person is remanded on bail (in contrast to being remanded in custody, being 'on remand'). There can be no supervision or other community measure imposed, until conviction for an offence.

The bail system is designed to provide a framework striking a proper balance between right to liberty of the unconvicted defendant and the public interest in crime prevention and the administration of justice.

Under the European Convention on Human Rights (ECHR), Article 5, a person can only be deprived of liberty on the grounds specified, including for the purpose of bringing them before the competent legal authority on a reasonable suspicion of having committed an offence or when it is considered reasonably necessary to prevent them committing an offence or fleeing. The presumption under the Convention, therefore, is that bail should be granted and denial of bail should be justified by relevant and sufficient reasons, such as:

- A risk that the defendant will fail to appear at trial
- A risk that he/she may interfere with evidence or witnesses or otherwise obstruct the course of justice
- A risk that he/she will commit a further offence while on bail
- A disturbance to public order would result, or
- That the defendant would be at risk of harm against which he/she would be inadequately protected.

All three UK bail systems complement the ECHR structure and are capable, if applied correctly, of meeting the above purposes.

In terms of public protection, it has been recognised that bail law and practice must have public confidence and

be transparent and consistent. When offences are committed on bail or individuals flee justice while on bail, media coverage usually questions the right to bail and criticises the courts who granted it.¹

UK bail laws in brief

In England and Wales and Scotland, the bail system is statutory and in Northern Ireland, it is based on common law. All systems are based on the same presumption, that a person not yet convicted of any offence should be released until trial. However, in England and Wales, there is no presumption in favour of bail where the defendant is charged with murder, manslaughter, rape, attempted murder or attempted rape. In such cases bail can only be given in exceptional circumstances and reasons must be given for any grant of bail. In Scotland, bail cannot be granted where the charge is murder or treason. In Northern Ireland, bail can be granted on any charge including murder.

England and Wales: The law on bail granted by courts is contained largely in legislation. There are statutory exceptions to the right to bail. It must not be granted where the court is satisfied:

- a) that the defendant, if released would:
 - i) fail to surrender to custody
 - ii) commit an offence while on bail, or
 - iii) interfere with witnesses or otherwise obstruct justice;or
- b) that the defendant should be kept in custody for his/her own protection.

The law lists factors to be taken into account when the court decides whether to release, including

- The nature and seriousness of the offence
- The defendant's social background, paying regard to the defendant's character, previous criminal record, community links
- The defendant's previous history of compliance with bail conditions, and
- The strength of the evidence against the defendant.

No conditions should be imposed on release pending trial *unless* necessary to ensure the defendant surrenders to custody in future, or to prevent the commission of an offence while on bail, or the interference with witnesses or obstruction of justice. In such cases, the court can impose conditions, including that the person must:

- Inform the police of any change of residence
- Not go to certain places
- Remain at a specified place during specified times
- Not leave the UK
- Report at specified times to the police or other authority
- Avoid contact with specific persons

- Provide a security or surety to the court
- Undergo therapeutic treatment or treatment for addiction
- Wear an electronic tag, and
- Surrender passport and not apply for any international travel documents.

As of December 2012, legislation restricts the use of remand in custody for people who would be unlikely to receive a custodial sentence on conviction.² It is too early to tell whether this will result in a decrease of people remanded in custody.

Police bail: In addition to the formal court-ordered bail system, in England and Wales and Northern Ireland, it is also possible for a suspect to be bailed by the police, either before a charging decision, or after charge and before court. As at October 2014, over 70,000 people were on pre-charge bail from 40 police forces in the UK.³ There has been a growing trend for police to impose stringent conditions, such as obliging people to return to a police station regularly or surrender travel documents. Police bail practices have drawn criticism from NGOs due to the excessively long periods for which pre-charge bail can last.

Electronic monitoring: Before the court can impose this, it must be satisfied that without it, the defendant would not be granted bail. This is intended to ensure that tagging is only used where necessary and to support the proper use of public funds. In practice, its use as a bail condition has increased significantly.

Northern Ireland: The law on bail is non-statutory. A presumption exists in favour of bail. Conditions often imposed include electronic monitoring, curfews, exclusion or abstinence orders. Grounds for refusal are similar to those outlined above for England and Wales. However there are procedural differences between the two systems and the number of remand prisoners in Northern Ireland prisons and the length of time they spend awaiting trial have been criticised.⁴

A recent report on bail in Northern Ireland recommended placing the law and procedure on a statutory footing for greater clarity and rights protection.⁵ A public consultation followed but progress in implementing the reforms has been delayed due to other priorities and is unlikely to be brought forward until the next Assembly mandate following elections in 2016.

Scotland: The law on bail is based on statutory and common law provisions. Bail must be granted in any case where not opposed by the prosecution. Prosecutors are required to oppose bail based on factors such as: the accused's previous criminal record; a history of offending on bail; likelihood of re-offending; lack of a fixed address; flight risk; danger to the public; risk to witnesses; and risk to national security. Even if opposed, bail must be granted in all cases except those where there is a good reason to

remand in custody based on public interest and the interests of justice. Guidelines from case law provide examples for courts to assist them in this decision. The guidelines refer, for example, to the risks of witness intimidation or failing to attend trial.

If bail is granted this must be subject to standard bail conditions. These relate to the need to attend future hearings, not commit further offences, not interfere with witnesses and being available for enquires or reports. The court also has discretion to impose additional conditions to ensure the standard ones are complied with. These are not laid down by the law but common examples are that the accused not approach the victim; adhere to a nightly curfew; or reside in a bail hostel.

Roles of public and private sectors

England and Wales: Magistrates and crown courts decide on bail. The National Offender Management Service (NOMS) is responsible for commissioning and delivering adult offender management services, in custody and in the community. This involves managing the Bail Accommodation and Support Service (BASS) and arranging tagging and monitoring with private sector providers, to enforce compliance with curfew and residence orders.

The BASS is aimed at those aged over 18 who would have a strong likelihood of being remanded in custody due to a lack of suitable accommodation and support. The accommodation, known as 'bail hostels', is managed by privately contracted providers commissioned by NOMS. Referral and other support services are provided mainly by the National Probation Service.

Northern Ireland: The bail decision is made by the court but a police bail system also exists. Probation plays a role similar to that in England and Wales in providing advice to the court on suitability, available support and accommodation. It also liaises with providers of bail accommodation and electronic monitoring where these conditions are imposed with the grant of bail.

Scotland: Only a court can authorise a grant of bail. Criminal Justice Social Workers provide services to courts geared towards reducing the number of vulnerable groups and females remanded in custody. Schemes exist to offer additional support to - or supervision of – people on bail. The availability of such schemes can influence a decision to grant bail.

A common example is a "bail information" scheme whereby information on employment, health, and community/family support is gathered and verified by social workers. It helps the court decide whether to grant bail. Research has shown judges and others approve of the scheme but complain of its under-resourcing.

In larger cities voluntary sector bodies play a role in monitoring curfews, supervision and bail accommodation, as well as providing counselling on problems such as addiction.⁶

Impact of bail

Effective use of pre-trial bail reduces the prison population by controlling numbers remanded in custody. However, prison places are sometimes taken up, where serious breaches of bail conditions occur and bail is revoked as a result.

The impact on individuals will depend on the conditions, if any, that the grant of bail is subject to in individual cases. Generally it is accepted that being at liberty compared to being in custody pending trial offers greater protection of the suspect's fundamental and social rights: employment, housing, family life, presumption of innocence, fair trial rights and effective trial preparation. However, the imposition of electronic monitoring has impacts on individuals and family members and curtails aspects of normal family and private life. Other restrictions such as residing in a bail hostel, avoiding certain places, giving up travel documents can restrict normal relationships and affect wellbeing. This is all the more so if the restriction is imposed for excessive periods.

If compared to awaiting trial in custody, release pending trial is a more satisfactory solution for the suspect, family, the wider economy and society. Even if remand prisoners are able to enjoy a regime compliant with international standards, and this is often not the case in UK prisons, the disadvantages of imprisoning un-convicted persons are the costs of doing so (prison place costs, micro and macro-economic impacts) and the undue infringement of rights to liberty and a fair trial. Bail impacts are therefore less severe than being held on remand. If no conditions (or at least no intrusive or restrictive conditions) are imposed, the individual's work, home and private life should be largely unaffected and the presumption of innocence protected.

We present statistics on the use of (court-ordered) bail in all three jurisdictions, in Appendix 3 (section 3: section 2 shows the numbers remanded in custody).

2 Post-conviction: community sanctions

What are the sentencing options?

Courts in the UK have four types of sentence available: custodial sentences; community sentences; fines; and discharges. Discharges are used for very minor offences when the court decides not to impose a punishment because the experience of coming to court has been punishment enough (along with the criminal record resulting from conviction).

Custodial sentences may be ordered to have immediate effect or be suspended, i.e. not come into effect unless and until, for example, a further offence is committed. Courts can also make ancillary orders when sentencing, such as compensation orders or driving disqualifications. Sentencing law and the range of any custodial sentence that may be imposed are set down in statute, but additional guidance for sentencers is also issued by independent bodies (in England and Wales, the Sentencing Council).⁷

Statutory purpose of sentencing

When deciding on sentence the court must have regard to the purpose of sentencing (as well as to law and guidance specific to the offence and other circumstances). The purpose of sentencing is defined by statute⁸ as:

- a) the punishment of offenders
- b) the reduction of crime (including through deterrence)
- c) the reform and rehabilitation of offenders
- d) the protection of the public, and
- e) the making of reparation by offenders to persons affected by their offences.

In England and Wales, guidance states that the court must not pass a custodial sentence unless it is of the opinion that the offence (or combination of offences) is: 'so serious that neither a fine alone nor a community sentence can be justified'. Other preconditions of a custodial sentence are that (in most cases) a pre-sentence report has been obtained and the defendant is legally represented or has been offered the opportunity to be represented but has refused.⁹ The sentence must take into account the seriousness of the offence by reference to factors such as the person's culpability, the harm caused, whether the harm was intended or foreseen, and any previous convictions.¹⁰

There is a statutory requirement on the Sentencing Council to 'have regard to the cost of different sentences and their relative effectiveness in preventing re-offending' when exercising its functions, notably when drafting guidelines.¹¹ Some have called for clearer guidelines to ensure that short-term prison sentences are used less, that prison is not seen as a gateway to rehabilitation, and that in relation to women in particular, there is less resort to custody.¹²

Pre-sentence reports (PSRs) prepared by probation officers are considered before sentencing, both in cases heard by magistrates (where the maximum custodial sentence is six months' imprisonment), and in those heard by judges in the Crown courts (the more serious cases, where juries deliver the verdict and judges pass sentence).

PSRs are designed to give information to the sentencer about the circumstances and context of the law-breaking and the individual's personal situation, including any support needed and its availability. A PSR should contain a recommendation on the appropriate sentence type, which magistrates, in practice, usually follow and sentencing judges sometimes follow. A recent report recommended that PSRs should be dispensed with in some magistrates' courts cases, and replaced by oral reports from probation officers in court, to speed up court processes.¹³

The main types of community sanction

We will focus on three types of alternative sanction currently applied in the UK: community sentences, suspended sentences and (in Scotland only) structured deferred sentences. In addition to these, however, it is important to remember that fines are commonly used in

all three jurisdictions (with prison sometimes used to punish fine defaulters).

In common with other countries that have introduced or extended these types of sentence, the UK's aim was to control rising reconviction rates and stem the relentless rise in prison numbers. Several reports have highlighted the effectiveness of non-custodial sentences, for those who would otherwise receive short prison sentences.

These draw on data showing the poor cost-benefit ratio of

470% The rise in people sent to prison for not complying with a community sentence. (England and Wales: 1995-2009)

such sentences. Short prison sentences cost much more than (even intensive) supervision; they also lead to higher reconviction rates, with the consequent further costs and other harms.¹⁴

However, the current system of alternative

sanctions has a negative side. Between 1995 and 2009 the number of people imprisoned in England and Wales for failing to comply with a community sentence grew by 470%.¹⁵

● Community sentences (all of UK)

In England and Wales these are called Community Orders. They involve a 'menu' of possible requirements such as community payback, probation supervision and rehabilitation activities of various kinds. In Scotland, the alternatives include Community Payback Orders, Drug Treatment and Testing Orders and Restriction of Liberty Orders. In Northern Ireland, the alternatives include the Probation Order, Community Service Order, Combination Order, and Supervised Activity Orders.

● Suspended sentences (England and Wales, Northern Ireland)

These are custodial sentences served in the community unless the sentence is breached, which can result in recall to custody. In England and Wales, the Suspended Sentence Order (SSO) can be given for prison sentences of up to two years.

● Structured Deferred Sentences (Scotland)

These orders involve deferring sentence for good behaviour, and are aimed at low-tariff offences by people with underlying needs. They aim to give the person time and support to address the needs that led to the offence, and to assess progress in doing so before deciding whether and how to sentence.

Community sentences: how they work

In England and Wales these are called Community Orders. Where a person aged 18 or over is convicted of an offence, the court can make a Community Order if satisfied that the offence is serious enough to justify it.¹⁶ As a result of recent legislation,¹⁷ a Community Order must now contain at least one punitive element (eg community payback, electronic tagging, or participation in a programme).

A Community Order can last less than a day or as long as three years. It can include one or more of the following requirements (which also apply to suspended sentence orders):

- 1 Unpaid work, known as 'community payback'
- 2 Rehabilitation activity requirement or 'RAR' (after 1 February 2015 when *Offender Rehabilitation Act* took effect)
- 3 Participation in a programme
- 4 Prohibited activity
- 5 Curfew (usually enforced by electronic monitoring)
- 6 Exclusion (ban from entering a specified place)
- 7 Residence at a specified address
- 8 Mental health treatment
- 9 Drug rehabilitation
- 10 Alcohol treatment
- 11 A supervision requirement (only offences pre-*Offender Rehabilitation Act 2014*)
- 12 If the person is under 25, an attendance centre requirement
- 13 Activity requirement (only offences pre-*Offender Rehabilitation Act 2014*)
- 14 Foreign travel ban.

Sentencing guidelines state that for low-level seriousness offences, only one requirement will normally be appropriate but that if more than one is applied, the duration can be shortened. In practice two requirements (community payback and supervision) have made up the vast majority of all community based sentences, with half the possible requirements relatively rarely used. Probation officers guide the court on the suitability or availability of requirements in individual cases.

The most important requirements are described below, in order of frequency of use by the courts.

Community payback: this requires the person to work unpaid, for between 40 and 300 hours on a suitable project organised by probation. The number of hours is set by the court. The work is usually done in 8-hour shifts at weekends but if the person is unemployed, it is usually done during normal working hours. The type of work will vary depending on locality and the probation service operating the scheme. Common projects are clearing public areas, painting buildings or removing graffiti. The public can nominate projects. Eligibility criteria are:

- The work must benefit the local community
- The project must not take paid work away from others
- No one must make a profit from the work
- It must be challenging and demanding
- It must be worthwhile and constructive
- The person must be seen to be putting something back into the community¹⁸

In some probation areas,¹⁹ people can enrol on training courses as part of their Community Payback activities and

gain qualifications such as the Construction Skills Certificate Scheme, fork-lift truck drivers' licences, painting and decorating, horticulture and health and safety.

Supervision: The individual is placed under the supervision of a probation officer for up to three years. They must attend appointments with the officer or any other person as directed. The requirement may be imposed for the purpose of 'promoting the offender's rehabilitation'. Supervision orders are available for low, medium or high level of seriousness, but are rarely set as stand-alone requirements. More commonly they are used to support activity or treatment programmes.

Programmes: Programme requirements are accredited schemes offering specified activities aiming to help address attitudes and behaviour that contribute to offending. Programmes fall into four categories: general offending, violence, sexual offending and domestic violence. These must be recommended by a probation officer at the point of sentence. They are only offered for medium to high-level seriousness offending. Examples currently on offer include anger management, aggression replacement, education, training and employment, thinking and communication skills, domestic abuse, sexual offending and drink-drive rehabilitation programmes. NOMS works with public health bodies in the commissioning of treatment programmes.

Curfew: This can require someone to be at a fixed address for between two and 16 hours during a 24-hour period for up to 12 months. The order can be enforced with electronic tagging. Tags can only be issued if there is a monitoring system for curfew in their area. Monitoring can also be done via spot-check, with private security firm sending employees to check on the person at home, but tagging is more common. The order is often combined with supervision or unpaid work requirements.

Drug rehabilitation: This can only be ordered with the person's consent. The shortage of places has been criticised. Legislation in 2012 removed the statutory minimum of six months for DRRs, allowing for greater flexibility in tailoring and delivering treatment and recovery options according to individual need.²⁰

Alcohol treatment programmes: this can only be ordered with the person's consent. The lack of places has been criticised in view of high proportion of alcohol-related problems among those convicted of offences.

Prohibited activity orders: these are intended to prevent people from committing further offences of the same type he or she has just been convicted of. Often an individual is prohibited from going into a certain area where he or she has caused trouble or from carrying the items used to commit criminal damage.

Mental health treatment requirement: the order will only be made if the court is satisfied that the condition is treatable, and with the person's consent. Lack of availability of mental health treatment has been criticised as has the unrealistic threshold for eligibility for treatment and difficulty in getting mental health practitioners to support treatment programmes. Legislative changes introduced in 2012 aimed at relaxing requirements to make these orders easier to grant.

Attendance centres (for those under 25): Official guidance states that although they are primarily a punishment (restriction of liberty in a controlled environment), the activities and instruction offered are also designed to strengthen desistance factors. The centres must include social education and life-skills training to: increase employability; maintain physical and mental health (including being aware of the effects of alcohol and drugs); have successful relationships (including respect for parents/partners; parenting skills and social skills); and deal effectively with high risk situations (including first aid, risks of carrying weapons and 'gang culture').

Women's attendance centres have been established in all three jurisdictions. These provide interventions for women that may include probation and other community sentencing options, as well as other services that recognise that women are more likely than men to have multiple, complex needs, which influence their law-breaking. Frequently, trauma such as sexual violence or domestic abuse, mental health problems, substance issues and financial difficulties – or a combination of these - can underlie law-breaking. When effectively resourced, the centres can strengthen the work of probation and help divert women from prosecution and from prison.

A 2007 report on women in the criminal justice system²¹ clearly demonstrated that women offenders need specialist support. In England and Wales, women's centres were placed on a more secure policy footing as a result of this report's recommendation for more of such centres and government funding for their support. Local probation teams have set up arrangements with voluntary sector women's centres and women's community support bodies. Links are offered with specialist organisations and services across a wide field of needs. Programmes offered are designed to tackle the causes of law-breaking including homelessness, reduced access to welfare benefits, domestic or family abuse, family and parenting challenges, health and substance issues. The centres improve women's access to training, volunteering and work placements. Probation teams provide information to courts at the point of sentencing, on activities and support services offered and available places. Residence requirements (eg residing at an approved place such as a probation hostel) are sometimes added to women's centre attendance orders for high risk offenders and include a supervised curfew.

Activity Requirements designed for women are frequently delivered in women's centres. An example is

'Wiser', offered in Greater Manchester, which incorporates ten 75 minute sessions of group work plus one-to-one appointments designed to engage, motivate and help with anger, emotional disturbance and troubled relationships.

A similar centre for women in Scotland is the 218 Centre operated by the charity, Turning Point Scotland. It has a 12-bed residential unit and a day service programme offering a range of group work sessions (sometimes part of community sentence orders), one-to-one support and a clinic helping with mental and physical health issues. As well as dealing with women who have been convicted of an offence, it is also designed to offer ways to divert women from prosecution. Access is also available to a clinic which deals with mental and physical health issues. In Northern Ireland, a women's centre in Belfast, the Inspire Women's Project, was positively evaluated for its work in supporting women involved in the criminal justice system. However, its services have now been suspended due to lack of funds.

Rehabilitation activity requirements

As these are a new kind of order, little information about their value has so far emerged. Some CRCs have welcomed the RAR, noting the greater flexibility provided and suggesting it will enable offender managers to make Community Orders more responsive to individual needs and ensure targeted support is offered for employment, training, education and restorative justice.²²

Localised pilots

In some areas, alternatives to custody are piloted locally for specific groups. In parts of the north-west of England, two such schemes have been tested. Intensive Community Order (ICO) was launched in June 2014 and is aimed specifically at young men aged 18 to 25 for whom magistrates, when sentencing, are considering short-term custody. This followed an Intensive Alternative to Custody (IAC) programme launched in 2009, which was said to have delivered up to 10% better outcomes than short-term prison in reducing reconvictions. Both schemes are described as blending probation supervision with community payback, as well as offering education, training, employment opportunities, health and wellbeing advice, and other support.

Control or rehabilitation?

Rehabilitation is one of the statutory purposes of sentencing and, in theory at least, sentencers are supposed to have regard to rehabilitation prospects when passing sentence. Rehabilitation as a concept in the UK has traditionally been associated with reform, personal change and helping people to move away from ways of thinking that, for them as individuals, could lead them to offend. In order for rehabilitation (according to this description) to be possible, a person must have fair access to the resources and opportunities necessary to desist from law-breaking, for personal change to be possible.²³ Rehabilitation can thus be seen as a *right* of the person

who has served a sentence, and as an *obligation* of society and the state which is not *dependent* on personal reform but necessary for its achievement.²⁴

In practice, the rehabilitation impact of any community sentence will depend on the requirements selected by the sentencer, their suitability for the person concerned, and how well they are provided during their delivery. Most of the requirements available to courts have some rehabilitative potential. But sentences are often structured to combine this element with one of control or punishment. Control is present even in the purely rehabilitative requirements, to the extent that failure to participate could result in more punitive requirements being imposed, or support being withdrawn. Rehabilitative impact requires probation staff and others to achieve active engagement in the programme or activity and ensure the necessary support is in place.

Guidance to sentencers²⁵ on how to select requirements refers to the statutory purposes of sentencing (set out above) by giving the following indications for each sentence type:

- Community payback - *punishment + reparation + rehabilitation*
- Activity requirement - *rehabilitation + reparation*
- Participation in a programme - *rehabilitation*
- Prohibited activity requirement - *punishment + protection*
- Curfew (usually enforced by electronic monitoring) - *punishment + protection*
- Exclusion - *punishment and protection*
- Residence requirement - *rehabilitation + protection*
- Mental health treatment - *rehabilitation*
- Drug rehabilitation - *rehabilitation*
- Alcohol treatment - *rehabilitation*
- Supervision requirement - *rehabilitation*
- Attendance centre requirement – *punishment*.

In comparison to the type of community sentences they replaced in 2005 Community Orders were seen as better by probation staff in a survey.²⁶ Greater flexibility and potential to target to individuals' needs were highlighted. Activity requirements were noted as offering a wide range of activities, from day-centre attendance to education, skills assessment and training, and making reparation to victims or persons affected by the crime.

One size fits all?

If the court orders unpaid work, or participation in a programme, or imposes some other requirement, that should reflect a thorough assessment by the court, aided by probation, of the person's individual needs and history. Requirements with a therapeutic and/or treatment content, often in combination with supervision, can be imposed by sentencers, but are less frequently used in England and Wales than unpaid work and electronic monitoring.

In practice the degree of individualisation in any community based sentence will depend greatly on whether the court is provided with the information needed to make a proper assessment. The key tool is the pre-sentencing

report prepared by probation together with any information on available programmes or treatment places. Advice to the court on sentencing has traditionally been a key part of the probation officer's role but the recent restructuring of the probation system in England and Wales could result in the body responsible for this work (the National Probation Service) having less time to prepare the report. Future streamlining of court processes could result in the reports being dispensed with altogether at some hearings.²⁷

In England and Wales unpaid work is not, in reality, individualised for the specific person, but based on what programmes are available: the selection is carried out by the local CRC, sometimes from among work programmes nominated by the public in the local area. There is also no individual variation of tagging regimes to suit individuals: once subject to a tagging order, people under this form of surveillance are treated in exactly the same way. It has been shown that sentencers imposing a non-custodial sentence more frequently impose community payback and supervision than a treatment order or programme requirement. This trend may be increased as a result of the statutory requirement introduced in 2013 that every community order must contain a punitive element.

Role of public and private sectors

Private sector providers are increasingly involved in Community Payback and delivering accredited programmes, as well as in electronic monitoring. Some have questioned the wisdom of continuing to commission justice services from Serco, given that in 2013 the company had to repay £68.5 million to the MOJ after overcharging for tagging.

NOMS is the public body which commissions the services of public and private sector providers including CRCs and the third party providers of programmes. There has been controversy over the use of private companies to manage and supervise unpaid work in the community. Questions have been raised by the National Association of Probation Officers union over the claims about savings made by Serco, the first such provider to supervise unpaid work. The union (together with other unions representing probation workers) has also challenged the legality of such work being supervised by private as opposed to public bodies, pointing to provisions against this in the UN's Forced Labour Convention.

For some requirements, such as prohibited activities or exclusion orders, the police will have a role in monitoring the orders. Public health services are involved in the commissioning of substance misuse treatment and testing services required by community sentences.

If Community Orders are not complied with, the CRC may involve the NPS which in turn will take steps towards requiring compliance. Courts and prisons may then become involved.

Funding

Funding provided by the MOJ, through NOMS, has been cut over recent years and has been concentrated on

programmes aimed at those seen as 'higher risk'. This has resulted in a large reduction in the number of accredited programmes completed each year since 2009/10.²⁸ Government funding to Women's Centres is now restricted to programmes for women who have been convicted, aiming to prevent their reoffending. Work with women seen as being *at risk* of offending, while still done by Women's Centres, is no longer funded by government.

Impact on prisoner numbers

There is no evidence that the use of community sentences has led to a reduction in the numbers in prison, despite evidence of an increase in their use over recent years. A clue as to the reason is contained in a 2010 government report, *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*.²⁹ This pointed to a decrease in the use of fines in favour of community sentences and concluded that there had been an 'upwards drift in severity' of sentences for certain types of offence. It found that this could explain why prison numbers were not decreasing. Research by the Centre for Crime and Justice Studies has also highlighted the risk of 'net widening' when community sentences are over-used.³⁰

Until recent legislative changes,³¹ the sanction for breach of community sentence was imprisonment. Courts now have wider powers to avoid resort to custody for breach, but it is too early to tell whether they will be used effectively. The risk will remain that breach will lead to custody. Because of this, and since community sentences are demanding and punitive, they should not be used where a fine or discharge would be suitable, or for low risk offenders.

Evidence suggests that Women's Attendance Centres are effective at diverting women from law-breaking and from breaching community orders, and more so than short custodial sentences.³² In England and Wales, the future of attendance centres and similar initiatives now delivered by the private sector will depend on how the reforms under the 'Transforming Rehabilitation' (TR) programme take effect and the extent to which the Centres can prove that their programmes and services can reduce reconvictions.³³ We describe TR's main features in Appendix 2, in our account of the probation system in England and Wales.

Statistical data on community sentences in all three jurisdictions is given in section 5 of Appendix 3.

Other impacts

Government data suggests that community sentences outperform short spells behind bars in terms of life outcomes and reconviction rates, but the data is limited. The detailed analysis contained in 'cohort studies' focus mainly on reconviction rates for those who have received community orders. It seeks to show which individuals are more likely to reoffend and the factors that might explain this. The findings show that re-offending is greatest in the first months of the Community Order and that

offenders often have complex needs, some of which are related to their law-breaking. The evidence reinforces the importance of a wide range of 'static' factors in predicting future offending, such as gender and index offence. It also shows that early interventions based on the effects of 'dynamic' factors (such as employment, accommodation, relationships) can be effective.

The government also publishes limited data on employment which suggests that people who have completed community orders are twice as likely to be in employment on completing an order, than people on release from prison.³⁴

Do community sentences stigmatise?

There are two potentially stigmatising features in our range of community measures: unpaid work under community payback orders, and the requirement to wear a tag and submit to a curfew.

Unpaid work

The requirement to complete unpaid work as part of a 'community payback' order is a frequent feature of sentencing in England and Wales. Work must be 'challenging and demanding' and 'must be seen to be putting something back into the community'.³⁵ It typically involves carrying out work seen to benefit the local community, done at weekends, under supervision.

Those performing unpaid work must wear high visibility orange 'tabards' or jackets bearing the words 'community payback'. This is a mandatory requirement³⁶ but the practice has been in place since shortly after the payback scheme was launched in 2005. The rules state that the jackets' purpose 'is not to stigmatise or humiliate offenders', but to comply with health and safety requirements and to ensure the work is visible to the public, providing evidence that community sentences are being enforced and thereby improving public confidence in such sentences.

Projects often involve cleaning or removing rubbish, perhaps the results of other criminal or anti-social behaviour such as graffiti or discarded drug-use items. Some may argue that this activity is of minimal rehabilitative value and carries disproportionate stigma.

Examples of other kinds of activity that have (less commonly) been ordered as community payback, which may have greater socialising and rehabilitative value, include work with charities helping to grow food and deliver it to local care homes, and working in stables to enable disabled children to take part in horse-riding.

The rights of those undertaking such work do not extend as far as those enjoyed under UK legislation by employees, for example, there is no right to payment of a minimum wage or not to be unfairly dismissed. However, equality and health and safety legislation must be observed.

There are rules and safeguards in place explaining to providers what they must do to respect the equality, diversity and safety of those undertaking unpaid work. A

Community Payback Operating Manual contains rules about the work placements to be provided, including that equipment and transport are provided and maintained safely, that work sites are overseen, that needs of individuals, including their personal safety, are identified and matched to suitable work placements. The manual states that 'where practicable', a sole female should not be placed in a work group of males and a male supervisor, that work should not interfere with the person's other work/training commitments, caring responsibilities or religious observance. The manual also provides (but as an option rather than a national requirement) that a work placement can 'maximise opportunities for the development and accreditation of skills to meet the needs of offenders with an identified employment need'.

Tagging

Electronic monitoring and the requirement to wear a tag is punishment and control with no rehabilitative value (except to the limited extent that it may reduce non-compliance with supervision or programme attendance). It has been argued that it stigmatises, particularly in view of the need to wear a large black plastic device around one ankle at all times. Changes in dress and restrictions on the ability to engage in sports are among the potentially stigmatising effects, as are the effects that seeing the ankle tag may have on the person's children or intimate partners.

Are foreign nationals treated differently?

The answer depends to some extent on which alternative to prison is being considered, and on the immigration status of the foreign national. There are no explicit sentencing restrictions on foreign nationals. The *Equality Act 2010* would prevent any unlawful discrimination by government bodies, probation services or CRCs on grounds of race (defined as including colour, nationality (including citizenship) ethnic or national origin).

Citizens of European Economic Area (EEA) countries may be termed foreign nationals, but are exercising treaty rights by being in the UK. For nationals from states outside of the EEA, eligibility for some measures will depend on whether there is a legal right to remain in the UK and what that right derives from. Undocumented migrants, illegal entrants and over-stayers face far greater barriers than EEA citizens.

In practice, access to effective rehabilitation is more difficult for foreign nationals. Immigration status will dictate a person's entitlement to public services crucial for rehabilitation such as accommodation, health, benefits and employment. Difficulties in communicating in English and accessing information and support could increase the risks for a foreign national's chances of rehabilitation and desistance.

In view of the statistical over-representation of non-nationals in UK prisons,³⁷ questions arise as to whether this is due to the greater prevalence of law-breaking serious enough to warrant custody, or to a greater propensity to arrest and prosecute non-nationals or to

sentence them to custody instead of an alternative. There is no statistical data to assess this.³⁸

Pre-trial

Eligibility for bail is likely to be influenced by nationality and immigration status. Courts can refuse bail on the basis of a risk of absconding. When there is insufficient information or evidence against which to assess this risk, the default option will sometimes be to refuse bail, effectively placing a heavy burden on defendants to prove that they will not abscond.

Alternative sanctions

However, courts themselves are not bound by equality laws when sentencing. There are no express provisions or criteria applicable to the consideration whether non-national defendants should be given an SSO or CO with a probation element, or a prison sentence: this decision should be made based on the same considerations as for any defendant.

The pre-sentence report is an important aid to the court in deciding on custody or a community sentence but the law does not require PSRs in all cases where a foreign national is being sentenced. In practice, whether a report is requested will come down to the court's culture and how pro-active the probation service is in seeking to persuade the court of the need for one. This, in turn, will be influenced by how suitable the person is for a community sentence.

It has been suggested³⁹ that courts are less likely to consider non-nationals as suitable. Reasons may include: irregular immigration status precluding access to benefits or work; perceived risk of absconding before finishing the sentence; or to facilitate deportation after completing the sentence. Evidence cited in a recent article suggests reluctance to recommend some community penalties for foreign nationals – supervision, attendance on programmes – compared to nationals. Possible explanations offered are perceived difficulties in giving full effect to the sanctions, and lack of skills and awareness on the part of probation staff leading to cultural stereotyping. The evidence suggests that both probation staff and sentencers favour community payback over supervision for both foreign nationals and irregular migrants.⁴⁰

Post-custody

There are no rules restricting access of foreign national prisoners to resettlement or rehabilitation services or programmes. However, access to pre-release services will be less useful in practice where the prisoner is to be deported as opposed to being resettled in the UK.

As for eligibility for parole or licence and the availability of probation as a condition thereof, different rules apply to non-nationals. Those who are subject to a criminal court recommendation for deportation can be detained at specific stages of the deportation procedure, pending their removal. Foreign nationals who have served prison sentences of 12 months or longer are subject to the

automatic deportation provisions of the *UK Borders Act 2007*. They can be held in immigration detention pending deportation. Such people will have contact with probation services while in prison, and again after their release from immigration removal centres on immigration bail while under licence. Where a foreign national held in immigration detention remains under licence, they must notify probation of their proposed bail address and get this approved, before applying for release.

A recent Probation Instruction⁴¹ sets out guidance for staff assessing applications by those under licence to relocate to a non-UK jurisdiction. It sets out requirements for close family or residential ties or other reasons such as compassionate grounds to agree to the request. Regard must be had to the nature of the index offence, and whether connected with overseas activities such as frauds involving an overseas company, extremism with international dimensions etc.

In response to the reforms introduced by the TR system questions were raised by the NGO Detention Advice Service (DAS).⁴² DAS asked how foreign nationals would be included in the planned probation and rehabilitation reforms. The response was to confirm such individuals would be removed 'at the earliest opportunity' but would still benefit from 'a range of activities to support their eventual release into society' while serving their sentences. It was not explained whether this referred only to prison-based activities or also to probation supervision in the community.

The NGO, Bail for Immigration Detainees (BID), has argued that foreign nationals in immigration detention are a 'low priority among probation staff', who often assume the person will be deported when this may not in fact be the case: 40% of deportation orders are successfully appealed and many who are ultimately deported will spend months or years on immigration bail in the community before this. They should not therefore be ignored or refused probation assistance.⁴³ BID has urged the MOJ to consider the needs of foreign nationals in the future provision of rehabilitative services.

Are there gender-specific programmes?

There is no specific sentencing regime applicable to females in the UK jurisdictions. However, gender should be taken into account by offender managers when considering the support to be offered.⁴⁴ In some areas, schemes and programmes designed to provide for women's needs are available, as set out below.

England and Wales: A 2014 report found that most female prisoners are serving short-term sentences for non-violent, low-level law-breaking. Two-thirds are serving sentences of six months or less.⁴⁵ The average sentence length for women has been increasing and was 2.7 months longer in 2013 than in 2002. The average cost of a woman's prison place is £56,415; almost three times the cost of an intensive community order at £10,000-£15,000. Many female prisoners experience high rates of mental

health disorders, have been victims of sexual and domestic violence, and suffer from substance addictions. Often, women serving short sentences are reconvicted: 54% of women leaving prison are reconvicted within one year; for those serving less than 12 months this increases to 64%. The report argues that the Sentencing Council should review sentencing guidelines to address these issues, but there has been no move in this direction to date.

Following campaigns for better provision for women, the government added a clause into the Offender Rehabilitation Bill 2014, placing a duty on the Justice Secretary to ensure that contracts with the new probation providers consider and identify the particular needs of women. This could help to ensure that consideration of the need to provide gender-specific services informs future commissioning decisions.

Aiming to address some of the issues faced by women passing through the criminal justice system, Women's Centres have been set up throughout the UK. There are also NGOs actively campaigning for reduced use of custody for women and greater use of alternatives. For example, Women in Prison has called for better rehabilitation services and stronger accommodation support (in addition to a reduction in the use of custody for women).

There are also programmes specifically for men. These, for example, provide support to young fathers, or men who want to address domestic violence or relationship problems. These programmes are usually offered by charities as accredited programmes and supported by probation. Such charities include, for example, Safe Ground and BandoBrothers.⁴⁶

In March 2013 the government published Strategic Objectives for Female Offenders.⁴⁷ An advisory board meets four times a year to discuss progress on these. The focus is on preventing reoffending. The objectives of the strategy tie in with the policies of the TR programme. The board is tasked with working with sentencers in promoting the better use of alternatives and it held regular meetings in 2013 and 2014.

Northern Ireland: The Northern Ireland Executive published a three-year strategy on 29 October 2010, entitled 'A Strategy to Manage Women Offenders and those Vulnerable to Offending Behaviour'. A key aim of the strategy is to reduce the number of women entering the criminal justice system in Northern Ireland. To achieve this, it focused on four areas:

- Providing alternatives to prosecution and custody
- Reducing women's offending
- Gender-specific community supervision and interventions, and
- Developing a gender-specific approach to custody.

This was followed by a 2013-2016 update report,⁴⁸ noting areas of progress including use of fixed penalty notices in place of prosecution, supervised activity orders and fines in

place of custody, reducing the use of custody for non-payment of fines, and developing models for better resettlement support and rehabilitation. The report called for further progress on diverting women and girls from law-breaking and prosecution through targeted early intervention work. It noted Scotland's progress in this area.

Scotland: Following the doubling of Scotland's female prison population in a decade, the Scottish Commission on Women Offenders was asked in 2011 to report on how to reverse this trend. It reported in 2012 and its recommendations included: supporting a range of reoffending reduction projects, including the provision of mentoring support by public social partnerships; and piloting a multi-agency approach to diversion from prosecution. The Scottish Government accepted the recommendations and took action to implement almost all of them, including by making funding available.⁴⁹

How are victims' interests reflected?

This happens to a limited extent, through the following processes at the point of sentence and subsequently:

Victim Personal Statements (VPS)

In England and Wales, police will refer the victim to support organisations when the offence is first reported. Police also ask victims if they want to provide a VPS explaining how the crime has affected them or other family members. The police ask whether the victim would like this read out in court if the suspected perpetrator is convicted. If the court so chooses, the VPS is read out after the verdict is given and before final sentence. The court considers the VPS before sentencing and it is common for judges to refer to these in published 'sentencing remarks' released after trial (short statements which explain how the sentence takes account of the harm that the offence caused).

In Scotland, Victim Statements were piloted in 2003 and then introduced in 2009 for victims of certain higher tariff offences. Changes were made by the *Victims and Witnesses (Scotland) Act 2014*. In Northern Ireland, there are victim information schemes and liaison services similar in some respects to those in England and Wales. Victims can make Victim Impact Statements which the prosecutor draws to the court's attention, although research has suggested⁵⁰ these are mainly restricted in to cases of sexual or violent offences.

Duties to inform and liaise with victims

Probation staff have various statutory responsibilities to contact victims after sentencing to ensure they are informed of the measures imposed.

In England and Wales, after sentencing, police or prosecution service staff in court Witness Care Units (WCU explain to the victim the meaning and effect of the sentence and, if the victim is eligible for Victim CS, must refer the victim's details to the VLU no later than twenty working days after the court notifies the WCU of the

sentence. The VLU must then contact the victim and ensure the necessary information and support is provided in accordance with the scheme (see below).

The NPS has a statutory responsibility to contact victims of serious sexual and violent offences within 40 working days of the sentence where the person receives a minimum of 12 months imprisonment or certain disposals under mental health legislation. These people are subject to a period of supervision on licence, monitored by the probation service. They must adhere to specified conditions and victims can request extra conditions that relate specifically to them, such as a non-contact order or an exclusion zone from a particular area during the supervision period.

Other duties to inform arise before the person is released from custody. There are several key stages when the victim liaison officer (VLO) must inform the victim about the progress of the sentence and planned release process. These include when the person applies for early or temporary release on licence and when the Parole Board is making an assessment. Victims can provide separate statements on impact and their concerns about release at this point. Victims can also apply to attend parole hearings. Victims are given an opportunity to make representations at various stages and the VLO and probation staff must facilitate this. However, victims' views are at this stage of little direct influence on the decision as other factors are more central to the release decision: see under 'Parole', in Appendix 1.

NOMS has issued a manual for those working in probation explaining all aspects of victim contact scheme.⁵¹ This explains all the obligations and expected standards of performance, from the first contact between victim and probation to the final stage of supervision after custody, and under ongoing licence conditions and public protection requirements. This manual also explains how to ensure that any disclosure of information to victims by probation staff is necessary and proportionate.

In Northern Ireland, there are various statutory requirements in place and a Victims Policy and Victims Code of Practice have been issued.⁵² Since 2005, legislation⁵³ has required the PBNI to make information available to victims about the nature and duration of supervision orders and other requirements of the sentence imposed on their perpetrator and in relation to releases on licence.

Restorative justice

This process is sometimes offered to the victim if the service is available in their area. In its classic form, restorative justice (RJ) involves meetings between a trained facilitator and the victim and offender, leading eventually to a 'conference' at which victim and offender, in the presence of the facilitator, are given the opportunity to discuss the impact and background of the law-breaking and how to move forward. RJ can be used for any type of crime and at any stage of the criminal justice system, including alongside a prison sentence or community measure. The offender must have admitted the crime, and

both victim and offender must be willing to participate. RJ practices can include other communication methods, such as letters or recorded interviews.

All three jurisdictions have operated RJ for some years although access to it is patchy across parts of the UK, so the service is not yet guaranteed even if both victim and offender are willing to engage in it.

In England and Wales, the Ministry of Justice has expressed strong commitment to using RJ at every stage of the criminal process. It launched an action plan and a steering group in 2012 with a view to achieving this. Legislation in 2014 amended sentencing laws to enable courts to defer sentencing to give time for a RJ requirement to be carried out.⁵⁴ RJ activity is only permitted where both offender and victim consent. Minimum standards have been developed for RJ practitioners. Coordination of RJ work among prisons, probation and other providers is aided by the Restorative Justice Council.

Since the Transforming Rehabilitation restructuring, RJ is being piloted by CRCs in some areas. In London, it is delivered as a specified activity requirement of community sentences and suspended sentences. Elsewhere, it is provided as part of the victim liaison service for victims of people sentenced to more than 12 months in custody. Best practice standards for RJ are set by the RJC and NOS are also available on key performance criteria. RJ programmes in prisons have grown significantly since 2000. Many of these focus on developing awareness of harms to victims and family members, rather than direct meetings with victims.

Doubts have been expressed about whether RJ really represents an alternative to imprisonment and can help reduce imprisonment.⁵⁵ Some argue that RJ has been co-opted and has become an add-on to other criminal justice practice and sanctions, rather than a real alternative.

Compensation orders

All three jurisdictions feature the power of sentencers to order the defendant to pay compensation to the victim. This can be ordered where the offence has caused personal injury, loss or damage. Compensation orders are not available in all cases and the rules and procedures vary between the jurisdictions.

Variations to community sentences in Northern Ireland and Scotland

Northern Ireland: The court can make any of the following orders as alternative sanctions:

- Fines
- Probation orders
- Community service orders requiring unpaid work in the community. These can last between 40 hours and 240 hours
- Combination orders, combining a probation order and a community service order. The period of supervision can last from one to three years. The community service part can range from 40 to 100 hours

- Other orders (for example, supervision and treatment orders, residence requirements, activity orders, and community responsibility orders), and
- Curfews, usually monitored by tag.

With the exception of fines, the above orders are all supervised by the NI Probation Board (NIPB). NIPB currently delivers accredited and approved programmes towards helping with individual problems. Examples are anger management and cognitive behavioural programmes, domestic abuse and sex offender treatment programmes. Some are complemented by referrals to third sector providers such as Addiction NI, for those required to undertake drug or alcohol treatment programmes. Probation staff can also refer people to attend these programmes voluntarily. The recent inspection report stressed importance of speedy entry to these programmes and pointed to several cases where immediate places had not been available and the person was then breached or committed a further offence in the interim period.⁵⁶

Funding cuts have badly affected many NGOs and voluntary sector bodies providing services and programmes. For example the Inspire Women’s Project, set up to provide a comprehensive set of support services for women convicted or at risk of offending in NI, saw its work suspended in 2015 due to lack of funds, despite positive evaluation reports.

Fine defaulters being sent to prison had been identified as a long-standing factor in rising prison numbers by 2011 in Northern Ireland. A report on the prison system in 2011 found that in one women’s prison, half the inmates were there for fine default.⁵⁷ It recommended Supervised Activity Orders as the norm for fine default rather than imprisonment. More broadly, the same report recommended a statutory presumption against custody for those who would face sentences of three months or less, in favour of properly resourced community penalties. This has not been implemented.

Scotland: Scotland brought the Community Payback Order (CPO) into force in February 2011, to replace Community Service Orders, Probation Orders and Supervised Attendance Orders. The CPO sits alongside other community-based court orders including the Restriction of Liberty Order (requiring the person to stay at specified place during particular hours, usually enforced by electronic tagging) and the Drug Treatment and Testing Order. It was intended as an aid to rehabilitation and sentencers can select the requirement based on the circumstances of the case. So, in addition to unpaid work, convicted persons can be ordered to complete a period of intensive supervision or attend alcohol, drug or behaviour programmes.

The Scottish government has identified the reduction of reoffending as a priority including by increased use of community sentences. In its 2012 strategy paper it said it would ‘continue to deliver effective community sentencing through the new Community Payback Order which is a

crucial alternative to custody’. The Scottish Howard League welcomed this commitment, but questioned how it could be properly funded when ‘the total budget for community justice is still only one third that assigned to prisons’; it called for ‘a greater shift in resources from custody to community justice.’⁵⁸

Scotland’s total budget for community justice is still only one third that assigned to prisons, according to the Howard League, Scotland, who call for ‘a greater shift in resources from custody to community justice’.

Appendix 3, section 5 presents statistical data on community sentences of various types, in Northern Ireland and Scotland.

Suspended sentence orders (SSOs): how they work

The suspension can last from six months to two years. An SSO will generally include one or more of 12 *requirements* (listed above) but can be given without any requirements. Sentencing guidance states that because of the threat of custody embodied in the sentence, requirements should be less onerous than those used in a community sentence: if the court wishes to impose a more onerous requirement consideration should be given to a community sentence rather than an SSO.

In Northern Ireland, determinate prison sentences can also be suspended if the court decides this is appropriate. In such a case the defendant will not go to prison unless convicted of a further offence within the period of suspension.

Scotland did not introduce SSOs, in part because it took into account evidence from England and Wales that SSOs had replaced community sentences not custody.

England and Wales: The SSO provides a sentencing option for cases where the crime merits custody and would normally attract a sentence of up to two years in prison, but where in the circumstances this sentence should not be served immediately but instead should be suspended for a period.

For decades, courts have had discretion to suspend sentences of less than two years where circumstances justify it.⁵⁹ SSOs were reshaped under 2003 legislation. This saw the introduction of the high tariff community sentence, which was intended to replace short term prison sentences and was implemented in 2005. Supervision by probation officers could be added as a requirement. Unfortunately, the SSO appears to have displaced lower tariff community based sentences, rather than been a direct replacement for short term prison sentences.

Legislation in 2012 introduced greater flexibility for judges to impose SSOs.⁶⁰ There is an option (but no longer a need) for SSOs to contain a community order such as supervision, a curfew (limited to 12 months with permitted hours up to 16 per day), or community payback.

All SSOs (and all Community Orders) must now contain a ‘rehabilitation activity requirement’ such as

going to an attendance centre. The rehabilitation potential of an SSO will usually depend on other factors, including whether it is combined with some other requirement targeted at the specific circumstances of the individual.

However the control element is still in place: for example, an individual subject to a CO or an SSO (even one without a community requirement) is required to seek the permission of the probation officer or the court before changing his place of residence.

A breach occurs when either another offence is committed, or any community order requirement is not complied with. The court must activate the original custodial sentence unless it would be 'unjust' to do so.⁶¹ But whereas before, breach would result in instant custody, or an amendment to a community requirement (eg to increase the punitive or restrictive element) a further option is now available – a fine of up to £2,500.

Despite official guidance⁶² suggesting that more onerous conditions are more appropriate for use in COs than SSOs, it has been argued, in analyses of how conditions within each type of order are used, that SSOs are being used punitively.

Role of public and private sectors

More complex interactions will occur if the SSO also includes a community order requirement, or if one is imposed due to breach of an SSO. If so, the following will be involved: National Probation Service (NPS), Community Rehabilitation Companies (CRCs), Electronic Monitoring contractors, NOMS and other providers of probation services. Certain mandatory actions are required to ensure SSOs (and COs) are enforced. An NPS 'enforcement officer' will be required to take any case of breach to court.⁶³ If treatment orders are also made, outside agencies working with people in, for example, drug or alcohol treatment will be involved and will need to coordinate with probation officers. The latter can then help someone facing multiple requirements to ensure appointments are kept and necessary support given.

Impact on prisoner numbers

One potential effect is to reduce prison numbers and save money in comparison with prison, particularly in view of the option of combining an SSO with a curfew order. However, there is little evidence of any such effect in practice. Data is limited but leads to the conclusion that SSOs have made no significant contribution to diversion from custody or reducing use of short custodial sentences. Rather, the data suggests that the effect has been for SSOs and COs to replace fines in broadly equivalent cases, and no overall impact on the use of short sentences. NGOs, probation staff and other public sector bodies with expertise have argued that SSOs have not fully achieved their aims since the current form of SSO was implemented in 2005 and have not reduced the use of short term custody, not dealt with up-tariffing and failed to tailor community sentence elements of SSOs to individual need.⁶⁴

We provide a range of statistics on the use of SSOs in all three jurisdictions, in Appendix 3 (section 6).

Other impacts

Other impacts may flow from specific requirements added onto SSOs (if any). Unpaid work is a requirement that is frequently imposed in conjunction with SSOs (around 22% of cases in the period 2005 - 2008 and the trend to its use was increasing).⁶⁵ But it is unclear to what extent this helps recipients of SSOs to find paid work after the sentence has been completed: specific data is not produced on this to any reliable scale.

Accredited programmes are sometimes added to SSOs. These can offer the chance to take part in cognitive behavioural work, seen by some as an effective way to work with people convicted of an offence. But the general trend is to make SSOs as onerous as COs, with a larger proportion involving punitive requirements, most often unpaid work. Over a period of four years ending 2008 research shows that in no cases where SSOs were ordered had courts also imposed requirements of mental health treatment programmes or attendance centre requirements. Drug or alcohol treatment had been ordered in only a small proportion of SSO cases. The reasons identified included lack of availability and also lack of knowledge and/or innovative thinking on part of probation staff and sentencers, despite fact that officers interviewed mentioned alcohol and mental health requirements being the ones most needed and least available.⁶⁶

In terms of family and relationships, SSOs are clearly preferable when compared to the highly adverse impacts of custody on relationships and a person's the ability to move away from law-breaking. However, to be given the support necessary to desist and comply with any additional sentence requirements, while also sustaining personal relationships, a person will often require the targeted help of a probation officer.

A 2009 report by the Centre for Crime and Justice Studies found that supervision was applied in conjunction with SSOs in well under half of all cases and that its use decreased by 5% over the four years to 2008.⁶⁷

Recent government data suggests that SSOs (and Community Orders) are more effective than short custodial sentences in reducing reconvictions and that SSOs were more effective than COs. The study also suggests that both kinds of order are more effective in reducing reconvictions when combined with a period of supervision.⁶⁸

Government research shows that community sanctions are more effective than short prison sentences in reducing reconvictions.

Structured deferred sentences: how they work

These orders are unique to Scotland. They involve deferring sentence for good behaviour, and are aimed at low-tariff offenders with underlying needs. The aim is to avoid 'up-tariffing' these people to probation or community payback orders, when their needs would, in

the past, have been met by criminal justice social work support now only available for higher tariff offenders. Such orders could be a useful way of reducing unnecessary use of prison.

The order allows courts to review progress every three to six months of a deferment, looking at the person's behaviour and make any appropriate adjustments to the order. (Such progress reviews do not feature in Community Payback Orders.) The value of these orders is to help deal with people who would at some point be classed as a high risk of custody purely due to low level, but high frequency offending, driven by their social needs.⁶⁹ These sentences are often used in conjunction with voluntary undertaking of drug or alcohol treatment programmes.

There are two types of SDS:

- **Low tariff SDS** - this is normally given when the court believes that an offender needs a high level of support to help deal with the problems which led to the offending.
- **High tariff SDS** - offenders will be given this type of sentence if they are at risk of receiving a prison sentence because they have previously not attended other community-based sentences such as supervision or community payback. The court will also impose a bail condition, instructing offenders to co-operate. If they do not co-operate or miss their appointments, the court can issue a warrant to arrest them.

Individuals will be offered support to deal with any problems or issues which may have led to them having to go to court. These include:

- The impact of their actions on others, including victims
- Drugs issues
- Alcohol issues
- Mental health
- Education/training
- Benefits and welfare rights
- Anger management
- Housing
- Employment
- Using their time in a better way.

When individuals have completed the SDS, the court will receive a report written by CJSW staff, about how well they co-operated and what progress has been made. The court will use the information in this report to decide how to deal with the case. How well the individual has co-operated is likely to affect the decision the court makes as well as the nature and circumstances of the offence itself.

SDSs are only available in some areas in Scotland, including the three areas where the scheme was initially piloted, then continued following positive evaluation reviews, plus a further two areas. The scheme was found in a majority of cases to have had positive outcomes, with only one in 16 cases resulting in a more serious sentence outcome.⁷⁰

Impact

The SDS aims to use focused supervision to tackle the person's criminogenic problems capable of being addressed through social work interventions, particularly alcohol and drug misuse. A 2013 study found that evaluation of the SDS (including court reports) indicated that between half and four-fifths of offenders had reduced their alcohol and/or drug use between the date the SDS was imposed and the end of the deferral period.⁷¹ Evaluation also suggested that non-compliance rates were lower than those for community service or probation over similar periods.⁷²

Despite the positive results emerging from these reports, since 2005–2006 (when the SDS was first introduced) both the number of deferred sentences and the proportion they represented of all sentences have decreased, at least as regards male offenders. Women have seen a greater proportion of deferred sentences.

3 Community measures post-prison (early release)

Overview

The point during a custodial sentence when a person is released from prison will depend mainly on the length and type of sentence and the person's behaviour in custody. These factors will also influence what happens to a person on release and whether conditions or restrictions will be imposed, including any period of curfew, tagging or probation.

In England and Wales, recent changes to sentencing law⁷³ have created two major changes relating to the period immediately after release. These changes relate to compulsory periods of supervision (for those sentenced to less than two years) and to restrictions on automatic early release rules part way through a term of imprisonment.

'Extended sentences' (introduced in December 2012) include a custodial part and a licence part. The custodial part is designed mainly to punish. The licence part is designed to deal with risk posed by the individual. The court can impose extended sentences where it finds that the person is 'dangerous' and poses 'a significant risk of serious harm to members of the public'. Until 2014 most prisoners serving extended sentences were automatically released at the 2/3 point without consideration by the Parole Board. Once released they served the remainder of the custodial period on licence, and then the extended licence on top of that. Only a minority of those serving such sentences were not eligible for automatic release and instead had their cases considered by the Parole Board.

Recent legislation ended the system of automatic early release.⁷⁴ Now all prisoners serving an extended sentence of any length, irrespective of whether they have a previous conviction for a relevant offence, have to go before the Parole Board. If release is not granted, the person will be released at the expiry of the custodial term. Under the previous form of extended sentences introduced with 2003

legislation, automatic release was granted at the half-way point of a sentence. The result of these changes is that in 3 years, receiving an extended sentence will for many prisoners double the time they serve, resulting in more pressure on prison places, and on the workload of Parole Boards.

Purposes of release on licence:

- To protect the public
 - To prevent re-offending
 - To promote successful re-integration into the community.
-

If a person is released early from prison they will be subject to a licence, setting out conditions they must adhere to because their sentence is still ongoing but they are serving the rest of it in the community and not in prison. Anyone on home detention curfew will be on

licence. If the conditions are broken the person may be recalled to prison. A person on licence will have to attend regular meetings with a probation officer. There may also be certain other conditions imposed.

In England and Wales, licence conditions are set by prison governors, with any additional conditions being selected from an approved list and recommended by probation. Standard conditions set for all prisoners include requirements to keep in touch with and receive visits from the designated probation officer, permanently live at an address approved by the probation officer, not travel without permission, not commit an offence, be of good behaviour and 'not behave in a way which undermines the purposes of the release on licence, which are to protect the public, prevent re-offending and promote successful re-integration into the community'.

For life-sentenced prisoners, licence conditions are set by the Parole Board. A life licence remains in force - and individuals remain liable to recall - for the rest of their life, but subjects can apply to the Justice Secretary (through a request to probation) and argue that the conditions are no longer necessary and should be cancelled. The supervision element of a life licence normally remains in force for around 4 years (up to 10 years for people convicted of sexual offences), and can remain in force for longer or shorter periods depending on the case. The Justice Secretary will normally refer the case to the Parole Board before cancelling the supervision requirements.⁷⁵

The recall of prisoners to prison due to breach of licence or other release conditions has been identified as a major contributing factor in prison population growth. In the latest government prison population projections (for 2014-2020)⁷⁶ it is acknowledged that the imposition of automatic post-release supervision for anyone sentenced to less than two years would likely impact on prison numbers. The analysis states that breaches of these licence or supervision periods could result in the person being recalled or committed to custody, impacting on the prison population. The estimated impact is higher levels of growth in projected recall numbers than in previous projections published prior to the legislation introducing the automatic supervision period.

In Northern Ireland, too, this has been identified as contributing to rising numbers. The Owers report on Northern Ireland's prison system recommended that recall only be used to address risk or non-compliance and only for the shortest time necessary. It also criticised the inadequacy of data in Northern Ireland on length of time spent in custody by those recalled or the numbers of people recalled. It recommended better data in respect of both.

The key measures in brief

There are three measures of importance in the UK: parole, home detention curfew with electronic monitoring, and post-release probation supervision. These measures are not simply considered 'alternatives' to the continuation of custody. They also reflect policy goals regarding resettlement practice, public protection and controlling the risk of reoffending.

Statistical data on all three measures' use across the UK are provided in Appendix 3 (section 7).

Parole

The possibility of seeking parole is open to the majority of sentenced prisoners in the UK at a certain point during their sentence. The purpose is for a decision to be taken about whether a prisoner should be released from prison (or moved to open conditions) to help prepare the prisoner for eventual return to the community after serving the prison sentence. The parole process involves an assessment of the risks of releasing the prisoner. It therefore requires consideration of the interests of victims and the wider public as well as those of the prisoner. If conducted properly, the parole hearing gives a prisoner an opportunity to be involved in decision making process about his future after prison.

Home Detention Curfew and electronic monitoring

Eligible prisoners may be released from prison early on condition they wear an electronic tag, usually on the ankle. Includes a curfew condition that requires those subject to it to remain at a particular place for a set period each day (usually for 12 hours). This is called Home Detention Curfew in England and Wales and was introduced in 1999 (England and Wales) and 2006 (Scotland). In Northern Ireland, electronic monitoring has also been introduced as a condition of licences for the release of prisoners undergoing post-prison supervision or subject to a curfew.

Probation supervision

Whereas the above two measures involve some discretion in the decision-making process, there are also sentences entailing automatic periods of compulsory post-release supervision. Probation is an automatic consequence of sentence length (England and Wales – two years or less), or sentence type (Northern Ireland, in cases where a determinate custodial sentence was ordered).

People under post-release supervision in England and Wales

2002 – 22,000

2014 – 39,270

See Appendix 3, section 7 (iii)

From 2015, a further 50,000 people will be under post-release supervision, due to the new mandatory requirement for all serving up to two year sentences.

Probation after release can also be selected on a discretionary basis as one of the licence conditions set.

The UK has seen a rapid growth in the number of people are subject to post-release probation since 2000. This is likely to continue, due to recent extensions of probation requirements for short-term prisoners.

We now deal with the measures in detail.

Supreme Court recently held that, for fairness reasons, they will generally be needed.⁷⁸ Therefore, paper adjudications by a single Parole Board member will now be far fewer. Reliance on paper hearings had grown when the Board's workload increased dramatically due to introduction of indeterminate sentences for public protection (now abolished) and a new rule that licence breach cases had to be dealt with by the Parole Board.

There will now be a hearing if the Board considers, based on the file it receives, that there is a realistic prospect of success, or if oral evidence is required from the prisoner. At the hearing up to three members of a panel will decide the application, based on evidence from the prison on:

- Offender's behaviour in prison
- Future plans once released
- Whether offender likely to commit more crime or is a danger to the public
- This offence and any previous offences
- What the judge said when sentencing
- The statement of any victims
- Medical, psychiatric and psychological evidence.

Parole: how it works

The aim of the parole process is to decide whether a prisoner should be released (or moved to open conditions) and to help prepare the prisoner for this. It requires consideration of the public interest as well as those of the prisoner; and to a limited extent, the interests of victims. The process involves an assessment of the risks of releasing the prisoner, which is carried out by a public sector body that acts independently of the prison estate and judicial system.

The decision is taken either at an oral hearing, at which the prisoner can make representations or, in some cases, on the basis of a hearing 'on paper', based on written statements and representations which the prisoner is entitled to see and comment on prior to the decision. Parole decisions require consideration of the interests of victims and the wider public, as well as those of the prisoner. Parole Boards operate differently in each jurisdiction: we describe the system in England and Wales, first.

The rules are set out in subsidiary legislation.⁷⁷ Prisoners eligible for parole are those who have an extended sentence, or a fixed-term sentence:

- of 4 years or more, or
- passed for a serious violent or sexual crime committed before 4 April 2005.

No one sentenced to less than four years can apply for parole. If the person is serving life imprisonment, or an indeterminate sentence, the Justice Secretary applies for parole on their behalf.

Prisoners can apply up to six months before their earliest release date. After an application form is submitted the hearing should take place no longer than six months later. Delays are frequent, in practice: see below.

Hearings are held in prisons and are not open to the public. Decisions are sent to the prisoner in writing and are not public documents. Oral hearings never used to be held and even today are not held in all cases. But the

There are frequently delays beyond the six month limit. Prisoners sometimes succeed in claiming compensation for delay. A former chairman of the Parole Board has called for more funding, warning of potential prison disturbances (and recalling the events at Strangeways prison in 1990) if action is not taken to resource effectively for rising caseloads.⁷⁹

Unsuccessful applicants can apply for a judicial review of refusal of parole where:

- Important information was not given to the Parole Board, or
- The application was not dealt with appropriately, eg the decision was manifestly unreasonable.

Victims are allowed to attend to make statements but not to remain for the whole hearing. Their evidence might be needed if a release is to be made conditional on, eg the offender not going to an area where they live. Victims are informed when any release conditions they have requested are not applied by the Board.

There have been complaints by victims that their views are not given due regard at the parole stage. In response the Parole Board has pointed to the limited relevant information victims would have about the matters the Board must consider, which concern the prisoner's progress during sentence as evidenced by for example,

Strangeways, here we come?
 'If you have more people in prison who simply do not know when they are going to be released, then you've got the risk of disaffection.'
Sir David Latham, former chairman of Parole Board

psychologists' evidence, probation and prison officers' reports. Victim statements are not likely to contribute to the objective risk assessment required.

If conducted properly, the parole hearing gives a prisoner an opportunity to be involved in decision making process about his future after prison as well as on the imposition of licence conditions which could restrict various freedoms. A fair process requires all the necessary information to be available to the decision-making panel, and to be properly tested by those wishing to challenge that information.

Legal aid cuts have severely compromised prisoners' ability to challenge unreasonable parole decisions or take action over serious delays

Justice requires that people whose interests are affected by an official decision have a fair opportunity to contribute to and influence the decision process.⁸⁰ Legal representation is a key part of this. However, following austerity cuts, legal aid

funding is now only available if the prisoner is being considered for release from a life sentence. For all other prisoners, no legal aid is offered. This means many prisoners' ability to challenge unreasonable parole decisions or take action over serious delays will be severely compromised.

Control or rehabilitation?

Parole decisions are aimed at risk control. Rehabilitation could in some cases be helped by a supervision requirement or some other targeted support to resettle the person being contained in the licence assuming this is properly resourced and delivered.

Role of public and the private sectors

There has traditionally been no private sector involvement in Parole Board decisions. Ensuring that prisoners' applications for parole are properly dealt with involves co-operation between the Prison Service, the Parole Board, probation and the police. The NPS is responsible for preparing all Parole Board reports on behalf of the probation service, and for victim liaison. Assistance is also needed from the MOJ (for analytical and similar input) and NOMS (managers will usually be important witnesses at parole hearings).

Following the Transforming Rehabilitation reforms in England and Wales, private providers will also have a role in supporting the through-care and post-release supervision of some prisoners. They will have to liaise effectively with the Parole Board and the NPS. Good collaboration and information-sharing will be needed between the NPS and the CRCs. In addition, the workloads of NPS offender managers must be kept under control, otherwise practitioners have warned it will be impossible to create the necessary level of engagement with the individual prior to the hearing. If there are staff shortages or funding cuts to the NPS this will result in delayed hearings when reports are not ready.

Evidence to a Parliamentary Committee observed that, for the reforms to succeed, the Parole Board would need to focus on the more serious offenders, such as those being released on parole following a life or indeterminate sentence. The less serious offenders could be left to the contracted-out sector.⁸¹

Funding

The Parole Board in England and Wales has suffered budget cuts and staffing reductions. The overall number of salaried staff had gone down from roughly 100 to around 82. There has been no decrease in the number of staff on the casework support side, the cuts having been made to middle management. Members are paid for oral hearings they sit in, and these are the most expensive part of the parole service. Oral hearings have increased in number as a result of recent Supreme Court decisions discussed above which trebled the number of anticipated oral hearings, raising operating costs by at least £10 million, according to Parole Board estimates.⁸² A further consequence has been an increase in the backlog of cases awaiting decision which exceeded 1,000 at the end of 2013.

Another ongoing pressure on the Board's caseload is the change to how breaches of licence by released prisoners are dealt with. Now, the Board is responsible for recalled prisoners, who will often be required to attend a Board hearing after a breach while on licence, even in cases where the original offence was not serious. In all such cases the Board must decide whether the person should be released again.

Impact on prisoner numbers

The number of prisoners granted parole in any year will have a corresponding impact in reducing numbers. However, the number of prisoners eligible to apply for parole has seen a steady increase over recent years and, as stated, there is a backlog of delayed cases. This reduces the downward impact on prison numbers that a fully functional parole system could have.

Those recalled for breach of licence are also now dealt with by the Parole Board. For all those where a decision is taken to return them to custody, there will be a corresponding increase in the prison population.

Wider impacts

At best, the parole process can be seen as a key part of overall sentence planning for prisoners and those supporting them. The decision must look into whether the prisoner has worked towards 'addressing his/her offending behaviour'. A common ground for parole refusal is that the board considers the prisoner has failed to do so. However, this process will be hampered from the start if the sentence plan does not include work to help the prisoner do this: for example, through counselling, courses, and work experience. With resources, staff levels and funds being cut year after year while prisoner numbers increase, it is questionable how fair the parole process can be, and what positive impact the process will have on prisoners' future lives in the

community. When resources are cut and workloads increase, the focus inevitably shifts to risk control.

The positive impacts of the parole system would be maximised if the parole application process itself worked more efficiently, with the appropriate staffing levels and all available support offered to the prisoner to ensure the procedure was understood.

Home Detention Curfew (HDC)

This measure is provided by primary legislation accompanied by rules in secondary legislation (known as Prison Service Orders). Since its introduction, HDC use has grown steadily.

In England and Wales applications are decided by the Prison Service and authorisation is given by prison governors (or in private prisons, by the prison controller) under authority delegated by the Justice Secretary. All eligible prisoners must be assessed for HDC whether they apply for it or not.

In Scotland, potentially eligible prisoners must apply for HDC. Otherwise, the approach is generally similar to England and Wales. CJSW can assist the decision by providing information and support about, for example, accommodation availability.

The information below covers the two jurisdictions, but when there are significant differences between the two, these are pointed out.

How it works

HDC allows prisoners serving sentences between three months and four years to be released early on licence into the community, while wearing an electronic tag (usually on the ankle). In Scotland prisoners serving over four years and granted parole are also eligible for a HDC for the period between parole being granted and their parole qualifying date.

HDC has a curfew condition requiring prisoners to remain at a particular place for a set period each day. Guidance states that the normal period should be 12 hours, though requests can be made to shorten the period, for example, for employment or caring obligations. Curfews can never be less than nine hours. Breach of the curfew or other licence conditions or being charged with a further offence may result in recall.

Prisoners convicted of certain offences are excluded (sex offences and some violent offences) as are those liable to deportation on release. Others are presumed unsuitable unless there are exceptional circumstances (examples include those convicted of terrorism offences or homicide). To be eligible, prisoners must:

- Pass a risk assessment (decision made by prison staff, includes a report by probation.⁸³ This report may include third party comments, for example, from people at the proposed address or from the victim).
- Have suitable accommodation approved by the probation service.

- Meet other criteria aimed at public protection and preventing reoffending.

Other conditions can be included in the licence on a case-by-case basis.

Time spent on HDC varies according to original prison sentence length, from a minimum of 14 days. The maximum length of time has been extended several times since its introduction. The current maximum in England and Wales is 135 days; and in Scotland it is six months. In England and Wales the average amount of time spent on HDC was 2.8 months, in the quarter ending December 2013.

Control or rehabilitation?

The official purpose is to 'manage more effectively the transition of prisoners from custody back into the community'.⁸⁴ HDC is intended to support a prisoner's transition out of prison by controlled access to the community. It gives the person a period of conditional liberty with a lesser set of constraints than those entailed by incarceration. It can prepare prisoners for full freedom by creating opportunities to respond 'responsibly' by getting to the end of the release period without breaching the constraints, 'testing prisoners in conditions that afford them increased freedom is a valuable means of helping ex-prisoners reintegrate with their families and communities'.⁸⁵ The aim is to promote rehabilitation and resettlement while offering a measure of public protection.

It is not the officially stated purpose of the scheme to reduce prison numbers or prison sentence lengths. Despite the measure's potential to reduce pressure on prisons at a time of overcrowding and constrained resources, there is political sensitivity about connecting early release schemes to their impact on prison numbers. To illustrate this, the Sentencing Commission in Scotland, when reviewing early release schemes, were asked not to look at the impact on prison numbers of these schemes or reforms to them.

In short, HDC is essentially aimed at control, extending a form of surveillance and restriction of liberty, outside the prison walls. The notional goal of helping towards reintegration is questionable given the fairly short duration of the measure, particularly if limited support services are available.

Roles of public and private sectors

HDC involves collaboration between the following agencies.

Prison Service: Makes decision to grant HDC and responsible for recall to prison in cases of breach. In Scotland initial risk assessment carried out by prison service.

Probation: Compiles report assessing suitability of the proposed accommodation prior to HDC being granted and assessment of available information about prisoner. In

England and Wales: Responsible for monitoring any non-curfew licence conditions (e.g. subject to supervision). In Scotland: If there are any nonstandard conditions that require monitoring, CJSW or police are expected to do this, although they have no statutory obligation to do so.

Police: They are notified of HDC releases. If they arrest or caution someone subject to HDC, they are expected to inform the prison service.

Private contractors: The provision and monitoring of electronic tags is contracted out to the private sector in all three jurisdictions. In England and Wales, Capita currently provides electronic monitoring. The legitimacy of measures dependent on electronic monitoring has also been threatened by disputed charging practices. G4S and Serco previously supplied these services but withdrew from the 2013 bidding process whilst facing a Serious Fraud Office investigation about over-charging. In Scotland, Serco has a five year contract entered into in 2013, worth £13 million. If the curfew is broken the police and probation services are sent an 'alert' by the private provider.

Funding

What it costs

To monitor someone on home detention curfew for 90 days: **£1,300**

To jail someone for 90 days: **£6,500**

It costs an estimated £1,300 to monitor someone on HDC for 90 days, compared to £6,500 for a similar period in custody.⁸⁶ However, as only those judged less 'risky' are eligible, this group is most likely to include those for

whom prison is least appropriate. So it may be more useful to compare the cost of prison and HDC to a similar period of time spent on a community sentence. In a 2012 report⁸⁷ the current system was criticised as insufficiently competitive, as a small group of private companies controlled the market and NOMS were failing to harness sufficient innovation or reform in the technology or the involvement of probation and police. The budget for HDC is provided by the Ministry of Justice through NOMS.

Impact on prisoner numbers

England and Wales: Without HDC it is clear that, other things being equal, prison overcrowding would be an even more serious problem than it is today. The Ministry of Justice has acknowledged this in official reports on the period since 2005, linking under-use with rises in prisoner numbers and increased use with falls in the amount of time served.

In terms of reconviction rates, the effects are less clear. A recent study⁸⁸ showed that people on HDC were no more likely to engage in criminal behaviour when released than those with similar characteristics who were not eligible for early release on HDC. Another study suggested that HDC can have a positive effect on reducing reoffending, but only when combined with other forms of support and monitoring.⁸⁹

Scotland: Research with prison staff and CJSW found that most considered the main purpose of HDC to be the management of prison populations. This was reinforced by figures showing that it is the most crowded prisons that make the most use of HDC.⁹⁰

However, there are concerns that HDC (and early release more generally) is not well explained in the public domain and risks being seen as a way to manage prison populations without due consideration for public safety. This situation risks increasing the level of public cynicism about this kind of measure being too lenient compared to a longer time in prison.

Wider impacts

People on HDC are free to work during normal working hours and, in that sense, its benefits outweigh the disadvantages of remaining in prison and unable to work or look for work. If an offer of employment conflicts with the hours of the curfew, the individual should explain this to probation services in order to seek a revision to the terms of the licence. In practice, this could be difficult to bring about quickly, and some people on curfew may be restricted to applying only for work that can be done outside their curfew hours. For those with childcare or other caring responsibilities to fulfil, this would be a further factor making the curfew difficult to meet while simultaneously working during normal hours.

There is some evidence that families can find 12-hour curfews stressful but HDC is usually strongly supported by families as it enables their relative to get out of prison.⁹¹ It has been suggested that one reason why women's compliance rates are lower than men's may be that women sometimes have no option but to break the curfew due to caring responsibilities, particularly when they are single parents.⁹²

Relationships and family life are generally considered better under an HDC than when someone is in prison (assuming they do not themselves present a threat or risk to family members). However, the inflexible way HDC can be applied has been criticised. This relates to the insensitivity of the equipment given that a tag-wearer can cause an alert simply by putting out a rubbish bin outside during curfew hours. It is important that sparing use is made of HDCs and that innocent breaches like this are not capable of triggering costly or disproportionate consequences.

Questions have been raised about the suitability of ankle tags for women, as these would potentially be more noticeable than for men and may 'heighten stigma and embarrassment'.⁹³ Some people are more likely to find it difficult to occupy themselves and use time effectively whilst under curfew, which can increase family and relationship stress and lead to boredom and depression.

Post-release probation

Supervision after a person's release from prison has traditionally formed a significant part of probation's work

in all the UK systems. The main elements of probation for all three UK jurisdictions will be covered in Appendix 2 (Probation systems in the UK). Below, we explain aspects of the UK systems that are specific to supervision after release from prison and not covered later. First, some key differences between the three jurisdictions.

England and Wales: A key feature of the recent restructuring of probation (under ‘Transforming Rehabilitation’) is the extension of compulsory post-release supervision to a larger number of short-sentenced prisoners.

Northern Ireland: The Determinate Custodial Sentence is unique to NI and requires an offender to serve a fixed period of imprisonment followed by a fixed period of supervision in the community. The sentencing court will specify the length of each part of the sentence.

Scotland: As part of their legal duty to promote social welfare and community safety, criminal justice social work offer supervision for prisoners returning to the community subject to licence and conditions. They also contribute to risk assessment and planning for high risk offenders under multi-agency public protection (MAPPA) arrangements discussed in Appendix 2.

CJSW services have a legal duty to provide assistance to persons released from prison and their families on request, following a short-term sentence (up to four years). They are also required to provide compulsory supervision for long-term prisoners (sentences of more than four years) who are subject to statutory supervision, including where supervision is a condition of parole. In addition, large national voluntary agencies⁹⁴ provide a range of personal assistance and family support. Unique to Scotland, a lifetime supervision order (Order of Lifelong Restriction) is available to the Court when sentencing.

The Howard League, Scotland, has called for improved transitional support for all short-term prisoners on release, arguing that every prisoner who requires it should be met at the gate by a support worker or volunteer known to them, and that this person should continue to support the individual as long as is necessary for them to become able to maintain a tenancy.⁹⁵

Control or rehabilitation?

Recent years have seen a shift of emphasis in how the work of post-release probation is delivered, away from traditional rehabilitation and resettlement support, towards risk management, crime prevention and safeguarding.

Though presented as reforms that would improve rehabilitation outcomes for larger numbers of offenders, it is too early to say whether the restructuring of probation will in fact do this. In March 2015, the House of Commons Justice Select Committee warned that the level of pressure that prisons are currently working under risked undermining the positive impact of the ‘through-the-gate’

and post-release probation support envisaged under the Transforming Rehabilitation programme. The increase in overcrowding prisons had, in their view, undermined constructive regimes designed to encourage rehabilitation and had actually limited the opportunities to reduce reoffending.

Roles of public and private sectors

Probation remains a public service in Scotland (carried out by Criminal Justice Social Work) and Northern Ireland. But in England and Wales probation is split between the public and private sectors, as we describe in more detail in the next section.

In England and Wales, the task of delivering the additional caseload of post-release supervision (now that this is compulsory for anyone sentenced to less than two years) will fall mainly to the new private Community Rehabilitation Companies (CRCs). It will therefore be planned and managed by the private sector, in collaboration with voluntary, statutory and other bodies. The public sector body responsible for higher risk cases, known as the National Probation Service, will also be closely involved as will police and courts. We describe the way probation works in the UK in Appendix 2.

Funding

There will be around 50,000 extra cases for probation to supervise in England and Wales as a result of the extension of compulsory post-release probation, but no extra funding from government to pay for it. Payments to the CRCs for the cases they supervise will be geared to ‘results’ based largely on whether the person has been convicted again within a year from release.

The government stated that the only way it can afford to introduce the additional supervision for short-sentenced prisoners is to introduce private sector delivery incentivised through payment by results.

Only time will tell whether the necessary savings will be generated. The risks are that the quality of supervision will be reduced, reconviction rates will not be cut, and orders will be breached resulting in greater workloads for CRCs, the NPS (which has responsibility for enforcing orders), courts, police and prisons. These adverse consequences could carry heavy costs which could exceed savings achieved by privatisation.

Impact on prisoner numbers

It is too early to know what impacts on prison numbers the additional compulsory supervision requirement will

50,000

The number of extra cases for probation to supervise, following changes under Transforming Rehabilitation in 2014 – 2015

£0.00

The extra government funding to pay for this

have but one potential adverse effect would arise if large increases in breach numbers led to further pressure on the prison population. The new laws on compulsory post-release supervision for anyone sentenced to two years or less set out the potential effects of breach. There are four sanctions for magistrates to choose from. These are: fines, unpaid work, an electronically monitored curfew and prison for up to two weeks. Even if prison is not used the first time, if one of the other sanctions is applied but breached, prison would be more likely the next time.

Wider impacts

For post-release probation to have positive wider impacts this will likely be as a result of productive and effective relationships, support and programmes being offered to ex-prisoners during their compulsory period of post-release probation. In Appendix 2, on probation practice, we describe the potential positive impacts which targeted, professional and well-resourced probation support can have. We also describe its limitations when those released from prison continue to face multiple disadvantages and the additional stigma of having a conviction and having served time in prison.

The main justification for the recent restructuring of probation in England and Wales was the high reconviction rates of short-sentenced prisoners, and the fact that supervision after release was not provided for such prisoners but only for those seen as presenting a higher risk. However, there is no evidence yet that extending supervision on a compulsory basis to cover anyone sentenced to two years or less would have any specific impact on reconviction rates.

Notes

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- 2 *Legal Aid, Sentencing and Punishment of Offenders Act 2012* (LASPO).
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- 7 The key sentencing guideline in this context is *Seriousness* (2004), which contains guidance on whether a custodial sentence or a community sentence is merited, or whether a fine or discharge would be more appropriate. For discussion of the role of Sentencing Council and arguments for its greater involvement in strengthening guidance for custody decisions relating to women, see Gerry F, Harris L, *Women in Prison: is the penal system fit for purpose?* (pp 43ff), Halsbury's Law Exchange. October 2014.
- 8 See section 142 of the *Criminal Justice Act 2003* (CJA), for England and Wales. This does not apply to offences where the sentence is fixed by law.
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- 10 CJA s 143.
- 11 *Coroners and Justice Act 2009*.
- 12 These calls are usefully summarised in *A presumption against imprisonment: social order and social values*, the British Academy, July 2014.
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- 17 *Crime and Courts Act 2013*.

- 18 Information on Community Payback on Serco's website: http://www.serco.com/markets/homeaffairs/communityservices/communitypayback.asp?utm_source=Community%20Payback&utm_medium=redirect&utm_campaign=redirect.
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- 20 *Legal Aid, Sentencing and Punishment of Offenders Act 2012*.
- 21 Baroness Jean Corston, report of a *Review of Women with Particular Vulnerabilities in the Criminal Justice System*, Home Office, 2007.
- 22 For example, Greater Manchester and Cheshire CRC. Information in *The Spark*, Feb 2015 issue GMCCRC's magazine for probation and legal practitioners. cgm-probation.org.uk/wp-content/uploads/2013/04/The-Spark-February-2015-final.pdf.
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- 38 As is made clear in, for example, Banks J 'Foreign National Prisoners in the UK: Explanations and Implications', (2011) *Howard Journal* 50(2): pp 184 – 198.
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- 42 Website of Detention Advice Service (DAS), an organisation providing immigration advice, information and support to those detained, or threatened with detention, under immigration powers.
- 43 Article on BID website: www.biduk.org/842/news/totally-ignored-foreign-national-offenders-and-the-introduction-of-a-payment-by-results-system-for-rehabilitation-work.html.
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Appendix 2: Probation systems in the UK

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Introduction

Probation is a core element of how alternatives to prison are provided, yet the various functions of the probation service or its significance within our justice system are not generally well understood.

In what follows we provide a description of how probation services are delivered in the three jurisdictions of the UK. The information set out was originally provided in answer to a set of specific questions put to the researchers for all of the eight countries taking part in this comparative EU project.

In England and Wales there have been far-reaching changes to probation since 2014, the full effects of which will not be clear for some time. We begin with an overview of current UK practices and important recent developments.

When can probation happen?

Across the UK, probation can take place after a person's conviction for an offence, either: (1) as an alternative sanction (when ordered as a requirement of a community sentence or a suspended sentence); or (2) after a prison sentence when a person is released on licence or on parole or because a period of probation is compulsory as an additional part of the original sentence.

Mandatory supervision cannot be imposed on un-convicted persons, although probation workers have roles prior to conviction and sentence. Pre-trial, they assist courts with decisions to grant or refuse bail, check compliance with bail conditions, and help with bail condition monitoring and enforcement. After conviction but before sentencing, they provide information to aid the court in sentencing. After sentencing, the probation service not only provides supervision if ordered in the court's sentence, but also helps to give effect to other requirements imposed, enforces supervision compliance and makes decisions about how non-compliance should be handled.

Finally, after a person's release from prison, the probation service is involved in parole applications, resettlement support, the monitoring of licence conditions and decisions about whether a breach of conditions should lead to recall to prison.

The probation model in each jurisdiction

England and Wales

England and Wales has more than a century's history of probation work. In the period since 2000, changes in justice policy and sentencing and probation legislation have shifted probation somewhat, from its traditionally social-welfarist and rehabilitative roots, towards a more control-based and punitive model. Since the mid-1990s, greater emphasis has been placed on the demonstration of effectiveness in supervision, measured by reference to compliance with programmes and probation plans, and reconviction rates. As part of this, more use has been made of risk assessment models, accredited programmes

and performance targets. The amount of staff discretion involved has been reduced.

Another major change in the role of the probation service in recent years has been the increasing priority given to public protection and the management of people perceived as dangerous. Each local area has a system known as MAPPA (Multi Agency Public Protection Arrangements) to ensure that police, probation and other agencies share information and agree strategies to reduce the likelihood of those under supervision committing serious offences.

There has been a large increase in the number of people under pre- and post-release supervision since 2000. In part this is due to increased use of community sentencing. But the bulk of the increase is due to: (1) rising numbers being sentenced to 12 months or more, for whom supervision on release from custody has been a statutory requirement for several years; and (2) to changes in sentencing laws, leading to more people spending longer periods on supervised licence following release.

The model for supervision in England and Wales is the National Offender Management Model, a universally applicable probation model whereby a single offender manager (OM) sets a supervision plan and others are responsible for delivery of its specific elements.¹ Having a single OM with overall responsibility was a policy based on research into effective probation work, which stressed continuity of personnel as a key benefit and found its absence was a factor leading to poor probation outcomes. The OM is responsible for the overall management of the individual and discharges this responsibility by determining and implementing the sentence plan and liaising with all agencies involved in delivering the requirements of the sentence to ensure it is delivered effectively and public protection is maximised.

Under this model, the nature and intensity of the supervision applied to an individual is based on four tiers aligned with perceived dangerousness and the risk of reoffending: tier 1 - punish, tier 2 - help, tier 3 - change, and tier 4 - control. The allocated tier will determine the resource allocation: the greatest resource is allocated to those considered most dangerous or prolific, under tier 4 (representing the smallest number under supervision, who need not only punishment but also help, change programmes, and control measures).

Assessing the risk of harm and the individual's needs has now become a central part of probation's role. All probation staff use the OASys risk and needs assessment tool, which is intended to account for factors that contributed to law-breaking, such as employment history, living conditions, substance abuse, to measure threats and risks. OASys is intended to:

- help assess the likelihood of reconviction
- identify and prioritise needs relevant to law-breaking
- help assess risk of serious harm
- help manage the risk of serious harm
- facilitate sentence planning
- measure change during supervision.

An additional assessment tool has been introduced for the NPS, designed to assess the Risk of Harm. One probation workers' union has complained that the time taken to complete the necessary form has greatly increased staff workloads.

Separately probation officers should assess the maturity of those in the 'young adult' category (18 to 24). Sentencing Council guidelines state that consideration should be given to 'lack of maturity' as a potential mitigating factor in sentencing decisions for young adults. In 2013 a guide to assessing maturity was developed for probation workers and others in the justice system, based on evidence from neuroscience, psychology and sociology showing that young people mature at different rates and are often not fully mature until their mid-twenties.²

The maturity assessment guide is intended to help ensure that probation or community justice interventions aimed at supporting desistance are informed by young adults' potential immaturity and take account of the capacity for further development. Probation approaches could, for example, focus on enabling positive involvement in family and social relationships, including community service or voluntary work. Proper maturity assessment processes would also help to shed light on the contexts in which law-breaking occurs. The guide covers how to carry out the assessment of maturity, how to cover it in PSRs, and how to develop appropriate supervision plans. OASys is the system by which information relating to maturity is captured and the guide offers advice on how to do this.

Recent changes to probation in England and Wales – 'Transforming Rehabilitation'

When it came to power in 2010 the coalition government promised a 'rehabilitation revolution'. This led to unprecedented legislative changes in 2014-15 and a complete restructuring of probation services, which have been opened up to independent providers from both the private and the voluntary sectors under a new 'payment by results' system of funding. These changes, branded 'Transforming Rehabilitation' (TR), have presented immense challenges to the service.

The 35 regional probation trusts that previously ran all probation services have been broken up. The bulk of probation work is now done by 21 Community Rehabilitation Companies (CRCs). These regional entities, usually partnerships between large corporates such as Sodexo, and NGOs, employ thousands of former probation trust staff. They supervise around 200,000 low and medium-risk individuals a year.

Alongside the CRCs, a new public sector body known as the National Probation Service (NPS) has been created. The NPS supervises the remaining approximately 31,000 high-risk individuals. The NPS' responsibilities are:

- Preparing pre-sentence reports for courts, to help them select the most appropriate sentence
- Managing approved premises for people with a residence requirement in their sentence
- Assessing those in prison to prepare for release on licence to the community, when they will come under our supervision

- Helping those serving sentences in the community to meet the requirements ordered by the courts
- Communicating and liaising with victims of serious sexual and violent offences, after a prison sentence of 12 months or more has been ordered (or the person is detained for mental health reasons).

The other key feature of the recent reforms is that more people on short custodial sentences will receive supervision after their release. This group had the highest reconviction rates. The extent to which the CRCs succeed in reducing the reconviction rates of this group will be the main official measure the impact of these reforms. Changes have also been made to arrangements in the prison estate aimed at ensuring all prisoners spend a period in a resettlement prison before their release.

The stated aim of TR was to bring down reoffending rates. There is a wide divergence of opinion on whether it will succeed in this aim: fears are widespread among probation professionals about the negative impacts the reforms could have on probation standards and values. One key issue will be the degree to which private companies' activities in performing public services in probation work can be effectively scrutinised and held to account. Freedom of information laws are a crucial check on the power of the executive and it may be necessary to extend their scope to breach this accountability gap.

Northern Ireland

In comparison to England and Wales, the Northern Ireland probation system has seen less upheaval in the years since 2000, although legislation in 2007 introduced some changes which brought the systems of Northern Ireland and England and Wales closer.³ For example, enforcement and risk management have now become more prominent

aspects of practice, as in England and Wales. In some respects the system resembles that which was in place in England and Wales prior to the 2014-15 restructurings described above. But there are some unique aspects to the roles of probation staff. For example, the prosecution can ask an officer of the Probation Board for a report to help it decide whether to prosecute. There is no equivalent in England and Wales to this notable use of probation

expertise at the point of potential diversion away from the criminal justice system (but see Scotland's similar approach, below).

Responsibilities for policing and justice were only devolved from the Westminster government in 2010, several years after the devolved Northern Ireland Assembly was established. Probation was an exception to the politicisation of criminal justice during the period of civil conflict that marked policing and prisons.⁴ In the mid-1970s probation staff voted not to carry out mandatory probation work with 'politically motivated offenders' in protest at legislation imposing this form of sentence. Since then probation has been characterised by political neutrality which many practitioners believe helped probation staff to achieve hands-on involvement in communities and a more social work-driven focus.

For those remanded in custody, the probation service has a social work role, for example, helping communication with family members. After a prison sentence, the role of probation officers has changed in recent years as a result of new sentence structures for

those considered more dangerous. These sentences apply to serious sexual and violent offences and involve greater public protection roles for the probation service once the prison term has been served, requiring probation supervision of up to ten years.

Scotland and Northern Ireland

- No 'payment by results' in probation
 - Probation workers have key role in helping to divert people from criminal prosecution
-

Scotland

There has been no national probation service in Scotland since 1968. Equivalent roles are carried out by criminal justice social workers (CJSW), who are part of local authorities' social work departments. The CJSW staff give information to criminal courts to assist in decisions on bail and on sentencing, including a social enquiry report. They also provide reports to prosecutors during the pre-trial stage to help decide whether there is scope to divert the person away from the prosecution altogether (a power widely used for younger people).

CJSW provide supervision support to individuals subject to measures intended to divert them from the criminal justice process. They also provide supervision for people on community sentences (for example, Supervised Attendance Orders and Drug Treatment Orders) and prisoners released on licence. They help with risk assessment and risk management planning for high risk offenders subject to monitoring in the community under multi-agency public protection (MAPP) arrangements. CJSW also have a legal duty to provide 'voluntary throughcare' to those released from prison and their families, after short term (up to four years) sentences, if this service is requested. National and local NGOs also help provide support

Scotland has not followed England and Wales in introducing privatisation and payment by results in the probation service. Instead there has been a drive to coordinate delivery through public sector, local government and voluntary institutions. This is part of Scotland's unique Community Planning process of decision-making which aims to help public agencies collaborate with communities to deliver better services in line with national priorities. There is private sector involvement in electronic monitoring.

Probation after release from prison

In all three jurisdictions, probation services play a role in delivering post-release supervision, which has become increasingly geared towards risk control and public protection in recent years. All three countries have chosen to focus policy and resources on preventing reoffending and managing risk, rather than achieving social reintegration or offering a fuller range of personal support. This emphasis is clear in the content of post-sentence supervision requirements laid down in guidance and regulations.

England and Wales: Several studies and reports have highlighted the importance of access to education, training and employment, for the successful resettlement of those who leave custody.⁵ Another important factor identified is rebuilding relationships with family, friends and others who can offer support such as former employers.

Inspection reports in the mid-2000s regularly criticised prisons' and probation services for failing to provide the necessary planning, support or access to facilities. Causes identified were high prisoner numbers, poor information sharing, bad sentence planning and staff shortages.⁶ The most recent inspection report, from 2014, found that supervision and resettlement work in prison had had little impact in helping with employment, education and training, or accommodation assistance. This was partly due to weak sentence planning and poor information-sharing across prison departments, particularly with shorter sentenced prisoners.

Since the commencement of the new legal regime under TR in early 2015, everyone sentenced to less than two years is released half way through the sentence and subject to a licence period for the balance of the sentence period (during which supervision will occur), followed by up to 12 months of compulsory supervision (during which it will continue). Those given short sentences will spend longer under post-sentence supervision; those given longer ones will spend longer on licence and less time under supervision. Those serving short sentences and those with less than three months to serve should be held in 'resettlement prisons' in the area in which they will be released. Resettlement services should be organised on a 'through the gate' basis, making greater use of mentors and with some of the payment to providers (CRCs) geared towards the outcomes they achieve in reducing reconviction rates.

Post-sentence supervision is covered in a specific instruction.⁷ This explains that the requirements that can be imposed for the supervision period after expiry of the licence period are more limited than those in a licence (where conditions are laid down, breach of which results in recall). This leaves more scope for OMs to decide on the best approach to rehabilitation. Requirements are imposed by prison governors but proposed and implemented by probation staff. They include good behaviour and residence requirements, keeping in touch with and receiving visits from the probation supervisor, not travelling without permission, not working without approval and taking part in activities as instructed by the supervisor. The activity requirements can include one-to-one work, restorative justice, or other programmes likely to enhance rehabilitation. Drug supervision can also be requested by supervisors which can be backed up by drug-testing requirements.

The relationship between prisons and probation services is key to improving the life chances of ex-prisoners. It will also be important that the new CRCs harness the involvement of other public bodies (health, education and employment ministries and their agencies)

'There are some immediate issues which must be rectified as a matter of priority if support for offenders in moving from custody into the community is to work to best effect. These include as a matter of urgency resolving staffing shortages and clearing the backlog of risk assessments. Both issues are likely to hamper considerably the efforts of the new providers of Community Rehabilitation Companies as they seek to implement their through-the-gate services. There is a risk that such services could be rendered inoperable as a result of failures in the system that are the responsibility of NOMS.'

Justice Select Committee report, Prisons: planning and policies, March 2015

and of voluntary sector organisations. The latter can be effective partners of prisons and probation services, in ensuring the opportunities for change and desistance are maximised on release.

In addition to post-release supervision, CRCs in the prisoner's home area are required to provide a basic resettlement service to every prisoner before release. Where they consider it necessary a CRC can call on the prison service to provide some rehabilitative support (eg a drug treatment programme) before release. Probation officers are responsible for carrying out risk and needs assessments at this stage but, due to staffing pressures, this is not done in all cases.⁸ A March 2015 report⁹ highlighted a risk that under-resourcing in prisons would hamper the CRCs in providing aftercare.

Scotland: In 2003 the prison service began a scheme of contractual management of its public sector prisons and the contracts require that resettlement activities are measured. This includes risk and needs assessments, programme participation, providing training and qualifications for employment, and securing accommodation. Help from other statutory agencies, including benefits and housing, is provided in prison to cut out delays in prisoners and their families accessing money and housing, where needed.

Northern Ireland: The PBNi provides probation services to prisons to ensure social welfare duties are met and assistance is given to governors to set the licence conditions. Several of the accredited programmes offered by PBNi were developed by NOMS for use in England and Wales (eg thinking skills and aggression management programmes). An inspection report from 2007¹⁰ noted that little or no resettlement service was in place for short-term prisoners. It found a heavy reliance on voluntary and community sector bodies for delivery of necessary services, pointing to the underfunding of such bodies as a potential weakness in the system. It also criticised the absence of a personal resettlement officer scheme which would help to improve services and outcomes. The report emphasised the need to hold women prisoners separately in the interests of good resettlement practice.

Can probation help develop personal skills and social inclusion?

While some alternatives to custody (such as unpaid work and tagging) are designed principally to punish and control, probation supervision in the UK aims to offer the support necessary to prevent further law-breaking. Part of this is helping people to access opportunities to develop skills and social inclusion. In practice, the availability of these benefits to people under supervision is not guaranteed and will depend on several factors.

One key factor is the early establishment of a good relationship with a dedicated and skilled probation officer who meets the person regularly as part of a planned supervision process. Under the new system in England and Wales much of the standard work of supervising people subject to probation is now being carried out by CRCs. It remains to be seen whether they are as well-placed as former probation trusts to equip individuals with necessary skills to obtain work and the support needed to improve social inclusion.

Assisting with literacy and numeracy skills and helping probationers complete job applications and prepare for job interviews are services commonly offered by CRCs. Another example is the Women's Programme run by London CRC, designed to help women convicted of certain offences to develop personal skills to turn their lives around. This CRC also offers a 'Thinking Skills Programme' to help frequent offenders develop patterns of thought to help them desist, and 'Steer Clear', a drink-drive programme focusing on the impact of alcohol on

behaviour.¹¹ Other programmes are designed to help tackle aggression, problems around abusive relationships, and difficulties in building and maintaining personal relationships. These programmes have the capacity to help restore social inclusion and develop skills. Their success will depend on the availability of places on the programmes and on their quality.

The UK systems also require probation staff to perform other functions including enforcing the court's sentence (or conditions imposed on release) and managing perceived risks of harm to victims and wider society. These functions can sometimes impede probation work designed to develop skills and independence, especially in a time of reduced resources.

The research shows that social inclusion of those under supervision is aided by effective interaction with probation officers – ideally, regular contact with the same probation officer, who supports the person through any necessary programmes and ensures any adaptations are made where helpful.

In Northern Ireland and Scotland, probation staff and CJSW staff work with voluntary sector programme providers, using similar approaches to help those under supervision develop their social inclusion skills, although the delivery methods differ from England and Wales and there is no payment-by-results system. Here, too it is accepted that a high quality relationship with a trained supervisor is as important as accessing accredited programmes if the supervision is to respond to the person's individual needs.

Tailoring supervision to specific needs

A supervision requirement does allow for greater individualisation according to the person's needs and circumstances. Once the probation order has been made, the offender manager will use the computerised OASys assessment tool, which offers a degree of individualisation to meet the needs of the offender, and which results in a detailed sentence plan including how the need will be addressed. Categories of need listed in OASys correspond to factors thought to increase the risk of law-breaking. They include accommodation, alcohol or drug issues, lifestyle, behaviour and relationship problems. Plans or interventions to address these needs are also entered into OASys, for example, treatment programmes, training or counselling. Detailed compulsory rules are in place for both prisons and probation to follow around sentence planning.¹²

Other individual assessment tools can also be used to ensure the programme is properly adapted to the offender's needs. An important example is the Maturity Assessment Tool for young adults, discussed later.

Whether these tools and other available resources are used effectively to produce a responsive supervision plan will depend largely on the skill of the probation officer in building a relationship with the offender. The use of professional judgment and discretion is important. As we explain later, much work has been done in the UK to

produce national standards and rules aimed at bringing about strong relationships and ensuring offender engagement, in recognition that this approach is better at promoting desistance.

Even where no tailored requirements (such as taking part in a work skills programme or relationship building programme) have been ordered at the sentencing stage, there is also an opportunity during supervision process for the probation officer to refer people to such programmes, if likely to benefit them. Probation officers often refer individuals under their supervision to take part in therapy or treatment as part of a probation plan. Many probation officers, however, have complained of the lack of available places on such treatment programmes, long waiting lists, and a reluctance on the part of mental health practitioners to provide services to those referred by probation officers.¹³

Similarly there is the opportunity for prisoners at parole hearings to have tailored programmes suggested and supported by probation officers.

Some fear that the TR reforms will result in probation officers playing less of a role in individualised programmes designed to help offenders, for example if privatisation results in staff cuts and lower professional standards. Some, though, have pointed to the potential of the TR reforms to introduce a greater degree of personalisation into probation and other criminal justice functions.¹⁴

In Northern Ireland, pre-sentence reports are prepared by the Probation Board and fulfil similar purposes as in England and Wales. They are prepared according to Core Standards on the quality of probation work. A shorter report known as a Specific Sentence Report is also used in some cases. Its purpose is to provide information to sentencers to help them decide whether a community service order or probation supervision is appropriate. Less information is needed for such reports and their use has recently increased.

In Scotland, CJSW staff have an important role in advising and assisting the court before sentence is passed. In recent years it has taken a more directive role than probation in England and Wales or Northern Ireland take in that it seeks to influence the sentence rather than merely provide information. This follows the clear policy aim that court reports should influence sentencers towards a non-custodial sentence, now strengthened by legislation recently passed to the effect that whenever custodial sentences of less than three months are being considered, a presumption exists in favour of awarding a community order instead.

The importance of informed consent and engagement

As explained earlier, probation rules contain a sentence planning process and a requirement that offender engagement is prioritised. This means clear information being provided at the start of the supervision process and regular meetings to assess the degree of cooperation and whether any adjustments are needed to enable compliance. In practice, when a good personal

relationship is built up between supervisor and supervisee, any programme or activity requirement proposed by the supervisor will be one that has been selected with the individual's needs in mind, and is imposed with their informed consent.

When a prisoner is released from custody, the licence document will often contain a probation requirement, to take effect after early release. Clearly consent in this situation is less freely given. While there is no requirement for the person to sign it, if they refuse to do so the governor can sign it instead and confirm that its terms have been read out to the prisoner. Thus it can take effect without the person's signature to confirm consent to the terms. As the consequence of breach is recall to prison, compliance with licence requirements will in practice be a matter of necessity rather than choice for many.

In Scotland (unlike the other UK countries), when a Probation Order is imposed by the court, it must be with the offender's formal consent, which is recorded as accepted instead of sentence, and requires the offender to express his willingness to comply with all the requirements, which must be explained by the court in ordinary language. Successful completion of the order means that the probationer receives no sentence for the original offence; non-completion means the person can be sentenced for the offence. Previously, consent was required for all community-based disposals imposed by the courts and this is still the case for a Probation Order (with or without conditions), a Community Service Order, and Drug Treatment and Testing Orders. However in recent years some orders have not required the offender's consent including Community Reparation Orders, Supervised Attendance Orders, and Restriction of Liberty Orders. Breaches of orders are themselves criminal offences with the consequence of further sentencing.

The only interventions possible before conviction are those that can be imposed pre-trial in accordance with bail law. These entail restrictions on liberty ranging from electronic monitoring, reporting to the police, travel bans and exclusion orders. There is no requirement of consent, but the restrictions must be imposed through a fair and transparent judicial process; procedural challenges by the defence are possible. In principle this approach is seen as sufficient to protect the presumption of innocence.

Support for families

There are schemes and programmes that work in various ways with the families of offenders under probation supervision. The 'Children of Offenders' Review in 2007 recommended better joint working among agencies to support offenders' families and criticised the absence of coordinated support of family need. As a result, local partnerships have been established by local authorities, involving probation, prisons and the voluntary sector, to work together to support offenders' families. The organisations involved vary from region to region, but include charities providing childcare and other kinds of family support to enable parents to undergo probation

supervision, and the assessment of suitability for community orders being carried out in children's centres. An example is POPS (Providing Support to Families of Offenders) which operates in parts of the north of England. This charity has Family Support Workers attached to prisons and probation providers and aims to 'empower families through the provision of timely information and targeted support' when a family member is involved in the criminal justice system.

Family interventions of various kinds have been presented as ways of enabling probation staff to build stronger relationships with individuals. Researchers in the northwest of England have conducted a thematic review of several such interventions in their area. The work explores the benefits of such practices but also their inherent tensions in view of the additional pressures that probation involvement can bring into family environments.¹⁵

There are also programmes that focus on helping individuals build their parenting skills as a means of helping to desist from crime. The charity Safe Ground offers a number of these programmes, both to prisoners preparing for release, and to people given community orders.

One of the main findings of a 2014 inspection report on resettlement was that too little attention had been paid to the importance of the family's role in effective resettlement.¹⁶ It called for a determined strategic effort and national guidance to put this right. There is now an instruction on rehabilitation for those in resettlement prison: key tasks include facilitating links with families and providing help with parenting and relationship skills, and offering through-the-gate support and mentoring.

In Northern Ireland the PBNi contributes funding to a service Family Links managed by Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO) to assist families to reduce the impact of the imprisonment of a member. Such responses to relieving stress and loss implicated in a state judicial sentence are justified as a response to acute needs. In Scotland, the charity Families Outside offers support and information to families affected by imprisonment.

Assessing progress during supervision

In England and Wales it is a compulsory requirement on probation and prison staff to produce an assessment of 'risks and needs' and a sentence plan and to review this plan throughout the sentence.¹⁷ Assessments and plans must be reviewed during the course of, and at the end of, the sentence whenever there is a significant change that impacts on the risk of further law-breaking and/or serious harm posed by the offender, which may include where a transfer has taken place, the offender has been released from custody, and/or one or more objectives in the sentence plan has been achieved. Their key tool for this work is OASys.

However there may be scope for improvement, by conducting a formal review of progress shortly after the first assessment when a community order has been made.

A recent MOJ research paper on reconviction rates of those issued with community orders suggested that a formal review by Offender Managers of the initial offender assessment in the first months (when the risk of re-offending is highest), could ensure implementation of sentences is tailored to the changing attitudes and needs of the offender. For example, such a review might suggest a need for additional support requirements and/or sentence flexibility.

In Northern Ireland, the probation board uses a system developed in England and Wales in the mid-1990s (since replaced by OASys), known as the Assessment, Case Management and Evaluation System. This is designed to facilitate structured assessments at all stages of supervision, focusing on the offender's needs (dynamic and criminogenic) and also motivation levels and likely responses. It involves a systematic recording process and permits the measurement of progress through all stages.

In Scotland, guidance on sentence planning, delivery and monitoring is contained in National Objectives and Standards for CJSW.

Transparency: measuring effectiveness

Information on community sanctions, supervision and other programmes is not provided in way that makes it easy for people outside the justice system to gauge their effectiveness.

As the commissioning body for probation services in England and Wales, NOMS receives and publishes performance data.¹⁸ The Ministry of Justice publishes statistics on the number and types of alternatives and sometimes commissions and publishes research on effectiveness, in terms of outcomes. Where such research is conducted, the measure of effectiveness is focused on reconviction rates. However, looking at effectiveness purely on the basis of reconvictions omits much of the positive impact that good supervision (and the effective use of alternatives to custody more broadly) can have for individuals, families and wider society. It fails to recognise the distance often travelled by individuals who have been involved in the criminal justice system and have benefited from an intervention that does not involve prison. Such benefits can include better employment prospects and improved health. Measures that focus only on reconviction rates fail to reflect the fact that some offenders may offend far less frequently, or commit far less serious offences, than if they had been sentenced to immediate custody.

Inspection and monitoring

There are independent inspectorates in each UK jurisdiction. In England and Wales Her Majesty's Inspectorate of Probation reports directly to the Justice Secretary on the quality of the assessment, planning and implementation of work with offenders and those at risk of breaking the law. It carries out inspections examining a representative sample of offender cases, to assess whether probation work has been conducted to a satisfactory standard. Findings are supported by commentary by the

Inspectorate based on its discussions with offender managers. The Inspectorate also obtains the views of sentenced individuals, victims and sentencers through questionnaires included in the reports, which are publicly available.

In addition to the external inspection of probation services, NOMS carries out performance assessment. Prior to the TR restructuring, the Probation Trust Rating System assessed the performance of the 35 probation trusts against 12 indicators for 2012-13 (reduced to seven indicators for 2013-14), falling under three areas: public protection; reducing reoffending; and sentence delivery. Performance is graded from 'exceptional' to 'serious concerns' and, again, the results are publicly available.

In Northern Ireland, performance data is provided in the PBNI annual reports. Independent inspections are carried out by the Criminal Justice Inspectorate of Northern Ireland. This published a positive inspection report on Northern Ireland's probation service in May 2014.¹⁹

In Scotland, the Social Work Inspection Agency (SWIA) is responsible for inspecting all social work services within local authorities. It publishes reports on specific authorities and occasional 'thematic' reports. Also the performance of local staff and the implementation of National Objectives and Standards are subject to ongoing monitoring by local authority management and the SWIA. The Scottish Social Services Council registers all social workers and promotes Codes of Practice for social work services staff and other service providers.

Probation research

Most large-scale research projects on probation and the effects of community sentencing are government-funded and commissioned. They are often carried out by Ministry of Justice or NOMS analytical teams in conjunction with independent research bodies and/or academics. These studies frequently make use of the statistical data published by government departments and agencies. The focus tends to be on reconviction patterns and assessing effective means of preventing further law-breaking including through delivery of community sentences and probation supervision. The NOMS Offender Engagement Programme commissioned a review of available research on desistance, published in March 2010.²⁰

OASys and other criminal justice databases, such as the Police National Computer, offer large volumes of data, with details of hundreds of thousands of offenders and risk assessments. Though limited in scope, such data can be used for research on effective types of sentence and methods of supervision. OASys analysts working in NOMS carry out regular research to assist government in policy formulation around probation and alternative sanctions.

There is a lot of research on desistance theory including studies of individuals over long periods of time to assess what has been effective or ineffective in leading them to desist. One research programme has included surveys by questionnaire of practitioners and probationers.²¹ The independent statutory body, the Economic and Social

Research Council, has also funded research projects and practitioner events on effective desistance practice. Research is often directed at new programmes or initiatives in offender management, for example, on the uses of cognitive behavioural therapy and thinking skills programmes or anger management programmes.

Overarching literature analyses are also undertaken to bring together and report on all existing research into a given area, such as quality in probation practices, or effective desistance practice, some providing comparative information on different countries' approaches.²²

The government also commissions studies on reconviction outcomes for groups of individuals given community orders.²³ The resulting reports contain sections on implications for probation practice, for example, that fewer but longer meetings with offender managers are more effective, and that better interim reviews are required to assess whether changes are needed to the plan or the sentence itself.

There is some independently funded research by NGOs and academics. Examples include research on the effects of England and Wales's shift towards greater use of community sentencing and suspended sentences.²⁴ There is a small amount of practitioner-led research, for example, that conducted under the Griffins Society model (the Society funds research by practitioners who seek to bring about change in the treatment of women and girls who offend and those at risk of breaking the law). There are also several economic analyses of the relative costs and benefits of prison and alternatives.²⁵

Legal and ethical responsibilities of probation agencies and staff

In England and Wales the duties and activities of probation agencies are largely contained in the *Offender Management Act 2007*. This Act confers power on the Justice Secretary to issue guidelines and standards for the work of probation agencies, which take the form of Probation Instructions containing detailed mandatory rules for the delivery of probation services nationally. Since the TR restructuring, the requirements on CRCs to provide the bulk of probation services are also defined in contractual service level agreements enforceable by NOMS.

In addition, National Offender Management Standards made under the 2007 Act have statutory force. The latest version was introduced in February 2015 to take account of recent changes including compulsory supervision for all short-sentenced offenders.²⁶ They comprise twelve high-level standards for all probation work, covering:

- 1 **Record keeping** – recording of contacts with offender, ensuring safe storing of, and necessary access to, data
- 2 **Court services** – giving necessary information and reports to court to help decision making; communicating sentence as necessary
- 3 **Allocation of cases** to appropriate probation service provider; clear identification of responsible supervising

probation worker; system of induction for every offender with clear explanation of commitments and what happens if fail to comply.

- 4 **Planning** – preparation of a plan covering risk of harm, how it will be managed, what the offender's needs are for sentence to be delivered, and likelihood of reoffending. This is prepared after sentence (community or suspended sentences) and up to 12 weeks before release (offenders in custody)
- 5 **Plan implementation** – face-to-face appointment within five days of case allocation (or within one day of release from custody, with 'purposeful contact' occurring at pre-release stage, and maintained after release); updating of plan as needed; facilitating offender's engagement with community resources; transferring offender between probation providers 'to maintain continuity and effective management of the offender and delivery of the sentence'.
- 6 **Risk management** – assessing and managing offender's risk of causing 'serious harm' and taking appropriate action to manage any immediate risk of serious harm to public, known victims or others.
- 7 **Victims** – statutory duties to provide information and liaison services.
- 8 **Premises** – residence planning where appropriate
- 9 **Enforcement of sentence** – issuing warnings in cases of non-compliance, and in case of licence breaches where no acceptable explanation is provided, taking action which can include seeking recall to prison.
- 10 **Review of plan** – where new information indicates significant change in offender's circumstances
- 11 **Completion of sentence** - evaluation of extent to which its objectives were achieved
- 12 **Delivering sentence requirements** – preparing offenders to undertake the activity set out in plan in order to meet requirements of sentence or post-release licence.

An independent association of probation professionals, the Probation Institute, has published a Code of Ethics for its members. This sets out high level professional values confirming, for example, members' belief in individuals' ability to change, in the inherent worth and dignity of the individual, and stating commitment to promoting diversity and human rights.²⁷

Multi Agency Public Protection Arrangements (MAPPA) provide a statutory framework to manage violent and sexual offenders. MAPPA guidance issued by the Ministry of Justice provides a mechanism through which police, prisons and probation agencies work together in their local geographical area, sharing information and assessing risks and needs. The guidance covers the monitoring of ex-prisoners released on licence. It explains when information about the person's previous convictions should be disclosed to others, where a serious risk of harm exists.

In Northern Ireland, as in England and Wales, new laws and statutory rules governing probation work are now tested for human rights compliance. Probation standards have recently been updated on the basis of a review of

international best practice including the European Probation Rules. The Probation Board of Northern Ireland publishes professional rules, protocols and policy documents, including a Best Practice Framework and the Northern Ireland Standards for probation. The PBNI also publishes a statement of values including respect for human dignity, recognising the capacity for change, commitment to diversity, victim awareness, professionalism and integrity.

In Scotland, the *Management of Offenders (Scotland) Act 2005* contains the statutory framework for the operation of Community Justice Authorities, which fund and oversee the provision of probation services. The legislation identifies probation as a social work provision and part of local authorities' duties towards ensuring community safety. National Objectives and Standards for Social Work Services in the Criminal Justice System set professional standards and benchmarks for probation services. These include reducing the use of custody and promoting alternatives in the community.²⁸

Data protection

Throughout the UK probation providers have duties with regard to offender data, under the *Data Protection Act 1998*. They are responsible for deciding what personal information is to be processed and how that should take place. Other statutory guidance states that information about an individual should not be released unless the release is 'adequate, relevant and not excessive'.

NOMS has issued guidance for those working in probation, explaining the obligations and how to ensure that any disclosure of information to victims by probation staff is necessary and proportionate under Art 8 ECHR, for example, by barring disclosure of information regarding the person's planned address, about any medical or other treatment programmes that will be undertaken. Similar guidance is published by the Scottish government and the PBNI.

Human rights

The *Human Rights Act 1998* requires all UK legislation to be framed and interpreted compatibly with the ECHR, with proceedings possible in domestic courts to challenge compatibility. The ECHR guarantees are also given effect in specific domestic law. For example, Article 5 is implemented through the law and procedure relating to sentencing, probation instructions and parole board rules. Serious disruption to private and family life, and to the right to freedom of association, due to electronic monitoring, curfews and similar restrictions could amount to a breach of rights enshrined in the ECHR. But in the criminal justice context it is very rare for ECHR rights to found successful challenges to probation requirements (or sentencing procedure or practice).

A recent English case involved a successful challenge by a prisoner to a decision by probation to insist that the manager of the accommodation where he would be living when released should be informed of his conviction for

murder. The court held this was disproportionate under Art 8, on the facts of the case and in light of the risks of reoffending as perceived by the probation officers involved.²⁹

The state is entitled to interfere with Article 8 rights in pursuance of legitimate aims, but only if the interference is reasonable and proportionate to those aims. Challenges usually fail when the court decides that the interference is necessary and proportionate in the interests of national security, public safety, the prevention of disorder or crime or the protection of the rights of others. The *Human Rights Act 1998* requires probation officers and parole boards to act compatibly with the subject's rights under the ECHR. Damages can be awarded under the Act where loss or damage is incurred as a result of a decision taken which is incompatible.

Licence conditions are not designed to be punitive, but to manage risk and protect the public.³⁰ To be lawful they must be both necessary and proportionate to the needs of protecting the public and preventing further crime. 'Necessary' means that no other means of managing a particular risk is available or appropriate. 'Proportionate' means that the restriction on liberty is the minimum required to manage the risk. Conditions may infringe a person's right to a private and family life under Article 8. They can be challenged by judicial review to test their necessity and proportionality.³¹ The same applies to any challenge to supervision requirements: legal aid is available for such reviews, subject to merits and means tests. But recent changes to judicial review and legal aid entitlements could severely limit this as a route to challenging supervision on human rights grounds.

CRCs are bound by human rights obligations in the same way as the previous public bodies that performed probation work. Therefore, when private contractors provide services that are public in nature under the new arrangements, they will be obliged to act in a way that is compatible with ECHR rights. This will include acts necessary for the core function of supervising individuals in the community. Probation instructions contain detailed requirements on health and safety, diversity and dignity at work, which extend to those on unpaid work requirements.

National standards and practices have for several years contained references to the need for those working in prisons and the probation service to respect diversity and to work without discrimination. Nevertheless, it has been argued that rehabilitation opportunities, in practice, are far fewer for foreign nationals.³² No formal requirements exist for sentencers or probation workers to ensure their decisions take account of the potential disadvantages facing foreign nationals. As a matter of policy, political imperatives to deport non-nationals after their sentences have been served consistently overshadow any principled approach to ensure effective rehabilitation. This can be seen in, for example, the UK Borders Authority Strategy's commitment to 'Considering with partners, including the Crown Prosecution Service, the most effective use of out-of-court disposals such as cautions together with

immigration powers, to remove low level foreign national offenders as an alternative to prosecution.³³

Research from Northern Ireland suggests difficulties for probation in engaging effectively with those in the Irish Traveler community.³⁴ Similarly certain types of order such as a curfew with electronic tagging may be insufficiently flexibly applied to allow those wishing to worship regularly outside the home to do so without breaching the order.

The government publishes statistics on offender equalities showing, for example, proportions - broken down by characteristics including race, faith, gender and age - of offenders in custody, supervised in the community, released on licence or HDC, or completing orders or programmes.³⁵

Complaint procedures

In England and Wales if a prisoner wants to challenge the probation conditions imposed in a licence, or complain about the necessity or proportionality of additional licence conditions imposed, the complaint can be considered by the Prison and Probation Ombudsman (PPO). The PPO is independent of the MOJ, NOMS and the probation service providers.

Complaints to the PPO can be referred by people serving community sentences under probation supervision and by any person who has had a report about them written by probation, including prisoners wishing to apply for early release under licence, home detention curfew or parole.

Annual reports are published by the PPO summarising complaints referred and the outcomes. Data are also provided on the number of complaints received and the number investigated and upheld. Recent complaints have included: failures by offender managers to have any contact with the complainant; inappropriate disclosure of information about the individual; and incorrect assessments of risks posed.

If the complainant is not satisfied with the way their complaint is dealt with by the PPO, they can refer the case to the Parliamentary and Health Service (PHS) Ombudsman. The PHS Ombudsman investigates complaints from members of the public about some public bodies, including probation providers. Cases can only be referred to the PHS Ombudsman by a person's Member of Parliament. It will normally only investigate a complaint about a probation provider after the complainant has tried to resolve the complaint with the probation agency, on the basis that they should be given a chance to respond and, where appropriate, try to make amends, before the Ombudsman becomes involved.

There is a Probation Instruction on complaints processes to be followed by NPS and CRCs.³⁶

Several witnesses to a recent parliamentary enquiry described delays in responses to complaints to the PPO, partly caused by a recent legislative change removing legal aid from many areas of prisoner issues.³⁷

In Northern Ireland, similar procedures apply as those in England and Wales: information is available on the PBNi website.

In Scotland, local authorities must provide complaints procedures and appeal mechanisms. If the individual is not satisfied with the initial CJSW response, there is a statutory right to refer the complaint to a Complaints Review Committee, made up of locally elected politicians. Both the Social Work Department and the complainant are represented at a Review Committee. If the case is not resolved, it can be referred to the Local Authority Ombudsman for consideration.

Qualifications for probation work

England and Wales: Before 1998, training for probation officers was through a social work qualification. This was replaced by the Diploma in Probation Studies, to accompany the 'punishment in the community' agenda and provide a specific criminal justice-based training. There was a greater focus on risk assessment and public protection.

Since 2010, the main route to qualify as a PO is the Probation Qualifying Framework, which combines educational learning with on-the-job experience as a 'PSO Learner'. The time taken to qualify will depend on previous academic achievement: usually 15 months to three years. The qualifications are provided by three universities under a NOMS-awarded contract, which is currently being reviewed. The existing qualification framework ends in 2016.³⁸

The PQF allows staff to progress through ascending levels of qualification whilst in employment. It also introduced qualifications for PSOs, who work with lower risk offenders, a new qualification for Probation Case Administrators and an updated more flexible qualifications leading to eligibility for Probation Officer posts.

Unlike for most professions, England and Wales has no register of qualified probation practitioners or any requirement to sign up to a code of ethics or continuing professional development rules. The Probation Institute, a voluntary membership professional standards body set up in 2014, will offer professional development opportunities and has published a code of ethics for its members. The Institute is an independent organisation aiming to become a recognised centre of excellence for probation practice and to develop a strong probation profession across private, public and voluntary sectors in the wake of the TR reforms.

Since TR came into force, MOJ has introduced guidelines describing the qualifications, training and experience required of officers of probation service providers in the NPS.³⁹ Staff undertaking probation work in CRCs 'must be competent and suitably trained, and providers must be able to evidence this. This can be evidenced through use of the PQF or an equivalent qualification or an accredited training programme. Any equivalent qualification or training programme should relate to the National Occupational Standards (NOS) for Probation.' The NOS highlight the knowledge and skills needed for probation work, reflecting changes in policy around offender engagement, desistance, rehabilitation,

protection of the public, prison work, and restorative justice.

NOS set standards and define key performance criteria across several practice areas in probation, such as the planning, reviewing and enforcement of sentences served in the community, and the provision of information needed at court hearings. NOS are also used in recruitment, and awarding promotions.

NOS also cover work with victims and witnesses, guiding practitioners on their work in providing information or advice, counselling and helping with health, safety and protection as well as keeping victims abreast of individuals' progress through the custodial or community justice sentence. There are also several NOS on restorative justice practices.

It is important that the skills of probation officers are maintained and supported by the new CRCs' recruitment and professional development systems. To ensure high standards are not compromised by competitive business practices the CRCs will need to recruit, develop and maintain suitably qualified and remunerated probation staff.⁴⁰ Following the restructuring of the probation service some aspects of training are only offered via e-learning programmes, including one compulsory course for those applying to the NPS, on bail procedures.

Skills for Justice, a training standards body for the justice sector across the UK, is developing a range of vocational qualifications in criminal justice work for staff who are not required to be professionally qualified social workers but who are essential staff in the provision of probation services.

Scotland: Qualified social work staff need a university degree in social work or its equivalent. All social workers, including CJSWs, must register with the Scottish Social Services Council (SSSC) which provides educational and continuing professional development. The social work degree is a 'general practice' award and prepares staff for work in a range of social work settings including child, adult and public care and protection services. For new recruits, induction training is provided by the local authority. There are no formal qualification requirements for volunteers in CJSW although vocational qualifications are available. Minimum training is usually provided by agencies.

In addition, various post-qualification and advanced level awards are available for those wishing to obtain higher qualifications.

Northern Ireland: Those who deliver the core professional services (probation officers and psychologists) are professionally qualified under relevant accredited occupational standards. A degree in Social Work is now the recognised professional qualification for probation officers in Northern Ireland. It offers an integrated programme covering a range of practice including family and childcare, mental health and criminal justice. The qualification is both an academic award and a professional

qualification, and is delivered through a partnership between probation agencies and universities. New graduates must then undergo a further Assessed Year in Employment before achieving a fully recognised qualification, which involves evaluation by a panel of probation professionals of their work. Unlike probation officers, PSOs do not need a social work or other academic qualification, but are expected to obtain a national vocational qualification within two years of recruitment.

Further development opportunities are provided if a probation officer wishes to obtain a post-qualification award and progress to area management level in the service.

Interaction between probation and other services

Prisons

England and Wales: Until the 1960s there was no relationship: aftercare was provided by a prisoners' aid charity. Subsequently there was greater interaction between probation and prisons around licence and aftercare, but they remained entirely separate. Until 2000, the country's 54 probation areas had more autonomy from central government than prisons. This changed in 2000 when the service was reorganised into 42 Probation Boards covering the same areas as local police forces. In 2003 a review recommended linking prisons and probation to end the fragmentation and duplication caused by two separate systems and their inability to link effectively to reduce reoffending.

NOMS was created as a result, in 2004, with the aim of creating a seamless transition of individuals from prison to the community. NOMS is an executive agency sponsored by the MOJ. It is responsible for prisons (managing public sector prisons and accountable also for those in private ownership by managing the contracts for these). It also oversees probation delivery and rehabilitation for prisoners and those being released.

Problems were encountered in the implementation of this reorganisation, as several joint inspection reports revealed.⁴¹ These included an absence of offender managers for many prisoners, and the lack of sentence plans or support with reintegration after release. It was also felt that some offender managers gave prisoners less priority than those they supervised in the community. Three further restructurings have taken place since NOMS was created but the organisation is still jointly responsible for prisons and probation. (Information on post-release probation was provided earlier.)

Northern Ireland: PBNI staff work alongside prison staff in prison Offender Management Units, focusing on a shared plan towards the prisoner's release. The Owers report cited earlier called for closer joint working between the institutions.

Scotland: a national advisory body for offender management sets out a long term strategy and framework for local authorities (responsible for CJSW and therefore probation delivery) to collaborate with the prison service and other partners such as police and prosecution services. The eight Community Justice Authorities created under 2005 legislation are tasked with working with the prison service, local authorities and other agencies, to ensure plans are created at local level to create effective joint working between the agencies, distribute funds for probation work in prisons and the community, and share information and good practice between them.

The court service

Probation serves an important purpose in providing courts with information needed about the individual, prior to bail or sentencing decisions being taken, and in relation to enforcement and breach of orders and requirements set by the court. Throughout the UK, legislation and guidance regulate the circumstances in which reports and other information are provided by probation to the courts. The effectiveness of these elements of probation's work are regularly subject to internal performance monitoring and external inspection; courts generally give strong support for the work of probation.

Following the TR restructuring in England and Wales, the NPS will perform all the court-facing roles of probation. Whether sufficiently high standards are maintained will depend on the quality of information they are able to provide on a timely basis to the court. In part this will depend on caseloads and staffing and other resources. A further key factor will be the quality and timeliness of information they receive from the CRCs about offenders and the availability of programmes and support in the local area.

Social services

In England and Wales, before TR, the 35 national probation trusts were key members of local partnerships in the criminal justice system and the wider community that aimed to protect the public and reduce reoffending. Each trust worked closely with local and national statutory and voluntary organisations, including those providing housing, education and mentoring services for the benefit of offenders, and support services for victims. For the TR reforms to succeed, it is vital that CRCs work closely with these services.

Input into crime reduction strategies

England and Wales: Crime Reduction Boards, Local Criminal Justice Boards, and Community Safety Partnerships are all statutory bodies that have to some extent enabled probation to provide expertise for crime reduction. For example, in London since 2010 a Crime Reduction Board has met quarterly to share information and work on crime reduction with probation staff, local council officers, health workers, the police, and other bodies. These bodies share information with each other in

order to assess local crime priorities. They work with probation and other public bodies to develop approaches in tackling crime. The Probation Chiefs Association (prior to being disbanded) issued a position statement confirming the importance of probation supporting these crime reduction partnerships.⁴²

The MAPPA system (in which probation has a key role) is also designed to prevent serious harm by ex-offenders.

Scotland: The Scottish government produces three-year Criminal Justice Strategy plans.⁴³ These outline the government's strategies to address crime prevention and offender management. The eight Community Justice Authorities are led by a Chief Officer who is responsible to a Board of local politicians drawn from constituent local authorities (each of which has a director of social work). They are responsible for regional strategic planning. There are 32 local authorities and each has its own organisational arrangements for delivering criminal justice services including crime prevention within the terms of the community justice strategy.

Northern Ireland: The PBNi is one of seven criminal justice agencies alongside police, courts and the prosecution service among others, the directors of which meet regularly as the Criminal Justice Board for the whole of Northern Ireland. This body has an important function in shaping strategy around crime prevention particularly in the context of preventing re-offending. The PBNi also contributes to local Community Safety Partnerships organised by district, which form and deliver action plans alongside police, housing, voluntary and community sectors. Experts have noted that overstretched probation teams find it difficult to service this work.

Probation staff and resources

England and Wales: Before the restructuring of the probation service in 2014-15 under TR, all supervision work was carried out by 35 government-funded probation trusts. These had replaced previous bodies known as 'probation boards' following legislation in 2007 (*Offender Management Act* or OMA) which opened the way for private sector providers to compete for a share of the market for probation services. The area in which private sector providers have been most active is in electronic monitoring, but after TR they will be active in other areas of community justice provision, including community payback and accredited rehabilitation programmes.

OMA removed responsibility from probation boards to arrange for the provision of probation services and transferred it to the Ministry of Justice, which (through NOMS) commissioned probation services from newly created probation trusts as well as from providers from the private and voluntary sectors.

Following TR, there are now two main employing bodies: (1) the National Probation Service (NPS), the public body responsible for assessing the risk of harm

posed by every offender, advising courts and parole boards, handling most breach cases, and directly managing those presenting high risk of harm including those subject to MAPPA; and (2) the entities forming the partnerships constituting the 21 regional Community Rehabilitation Companies (CRCs). These include private sector firms like Sodexo, large rehabilitation charities like Nacro, smaller voluntary sector bodies, and mutuals run by former probation trust staff.

The main grades for probation workers are probation officers (POs), who are qualified, and probation service officers (PSOs), who do not need to be. The statutory 'offender manager' role is not defined by grade but POs generally manage tier 3 and 4 cases, and PSOs tier 1 and 2 cases. (Tiers were explained above.) Offender manager roles are defined in the OMA and regulations made under it. They include Responsible Officers, Supervisors and Supervising Officers. Statutory instructions introduced under TR contain requirements for both the NPS and CRCs to ensure probation staff have the necessary authorisation to perform the functions of probation.⁴⁴

The NPS has seven divisional areas across England and Wales. It works in partnership with the 21 CRCs in aspects of the management of lower risk offenders. It also works with courts, police, and private and voluntary sector bodies to manage higher risk offenders. Each NPS division and CRC is subject to an individual service level agreement between it and the commissioning department, NOMS. This agreement contains details of the minimum service requirements for delivering court sentences, protecting the public and reducing reoffending. Services in supporting these outcomes cover: supporting victims, delivering court services, managing risk, managing offenders and interfacing with other system participants (including courts, police, prisons and other organisations).

Northern Ireland: Arrangements here are simpler. All aspects of adult probation work are delivered by a single statutory body, the PBNI, throughout the country. The work is either done by employed probation staff or by community service and voluntary groups. The PBNI is independent of government, but since 2010 has delivered its services under the authority of the Justice Department, following the devolution of policing and justice powers from the Westminster parliament to the Northern Ireland Assembly. It has grant-making powers and close links with local community agencies and other statutory bodies. PBNI has highly levels of partnership and co-operation with other support agencies and wider civil society bodies.

Scotland: Probation has been provided by Criminal Justice Social Work Services (CJSW) since the late 1960s, and forms part of the wider work of the 32 local authorities. CJSW teams consist of professionally qualified social workers supervised by specialist team leaders responsible for a range of criminal justice social work provision in a geographical area. In addition, there are approximately 22,100 voluntary sector organisations operating within the

justice sector. 40% of these work in the social care field. Volunteers have no responsibility for supervision of offenders but can support of the efforts of professional CJSWs. Volunteers undertake tasks to support the reintegration of offenders including mentoring, alcohol counselling, restorative justice, and education and training. A private sector company, Reliance Security Group, carries out monitoring (electronic tagging and monitoring, and custodial transport services).

Staff costs and resource allocation

Costs of probation

- Producing a pre-sentence report: **£210**
- Supervising an individual released on licence: **£2,620**
- Supervising a community order or suspended sentence: **£5,860**

In England and Wales, as at 31 March 2013, the 35 probation trusts employed 18,282 staff in total.

Frontline probation staff accounted for around 60% of those employed. Trusts then reduced overall staff numbers by around 1,600, most of them administrative roles. Most of the annual budget for spending by probation

trusts in the final two years of their existence was allocated to staff costs: £639m out of a total of £853m in 2012-13 and £646m out of a total of £867m in 2011-12.⁴⁵

In terms of the proportion of spending relating to the core functions of probation: in 2012-13, 50% was spent supervising community orders and suspended sentences; 14% on supervising offenders on licence after their release from custody; 13% managing the sentence before release from custody; 13% on court work including bail services and pre-sentencing reports; 9% on managing approved premises for those under supervision and required to stay at bail hostels; and 1% on victim liaison. Figures have recently begun to be published by NOMS on the costs of some of the key functions of probation based on staff time spent on them. Average costs of producing a pre-sentence report were £210; supervision of a person released on licence, £2,620; and supervision of a community order or suspended sentence, £5,860. (The average annual cost of a prison place, by contrast, is around £36,000.)⁴⁶

It is difficult to provide equivalent information for the present and immediate future, due to the shift to private sector delivery of most offender supervision across England and Wales. The 21 contracts awarded to CRCs were said to be worth £450m, with further funding to be provided to the NPS for the highest risk offender management work, court services and enforcement procedures.

Commercial secrecy in the running of private companies providing public services makes it difficult to

Cost of prison place per year

- (Male, Cat B) **£33,167**
- (Female, local) **£46,720**

know whether budgets allocated will be sufficient. The companies are not bound by the same rules on freedom of information as public sector bodies,

putting financial and performance information beyond the reach of NGOs and others interested in scrutinising them.

The House of Commons Public Accounts Committee⁴⁷ has criticised government practices in managing contracts outsourcing former public services. It has called for greater transparency.

Notes

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- 44 PI 31/2014, AI 27/2014, 'Authorisation as "officer of a provider of probation services" (NOMS).
- 45 Data from National Audit Office's *Probation: a Landscape Review*, March 2013 which in turn used data published by the MOJ and NOMS.
- 46 Ministry of Justice, *Costs per place and costs per prisoner* (Data for 2013-2014), October 2014. www.gov.uk/government/uploads/system/uploads/attachment_data/file/367551/cost-per-place-and-prisoner-2013-14-summary.pdf.
- 47 House of Commons Committee of Public Accounts (2014), *Contracting out public services to the private sector: forty-seventh report of session 2013-14*, London: House of Commons.

Appendix 3: Data Tables

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Introduction

In the following pages we present statistical data to support and illustrate the information on prisoner numbers and alternatives to custody in the body of this report and in Appendices 1 and 2.

In separate tables, statistics are provided on:

- prisoner numbers
- alternatives to prison pre-trial, as sanctions in the community, and following release from custody and
- probation service resources and caseloads.

The data cover all three UK systems and, as far as possible, presented in a time series from the year 2000.

1 Numbers in prison, since 2000

For each jurisdiction, we provide two tables. The first shows the annual prisoner population figures (giving the flow and daily rates where available). The second provides a detailed breakdown showing the number (per 100,000 of

the general population) and percentage of prisoners and the basis of their sentence (length of sentence, or other reason for custody).

Table 1: Numbers in prison: England and Wales¹

Total population	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010 ²	2011	2012	2013	2014
Flow rate ^{3,4}	128,866	130,934	135,820	135,042	132,961	132,058	128,986	125,881	134,148	125,877	–	120,760	112,772	107,318	103,892
Daily rate ⁵	–	–	71,218	73,657	74,488	76,190	77,982	79,734	83,194	83,391	85,002	85,374	86,048	83,842	85,509

1 All data taken from 'Offender Management Statistics' (ONS) annual editions, Ministry of Justice.

2 Data for 2010 is unavailable.

3 Counted as first receptions into penal establishments. A person received into prison to serve a sentence may previously have been received on remand after conviction prior to sentence and before that as a remand prisoner awaiting trial. First receptions will count that prisoner only once in the relevant period in which they were first received.

4 Data for 2000 to 2002 taken from Offender Management caseload statistics 2009 statistics bulletin. 2003 onwards from Offender Management statistics 2013 annual tables.

5 Figures are at 30th June each year. Data prior to 2002 is not available. Due to the introduction of a new IT system in 2010 prison population data from 2009 onwards is taken from a different source and this affects the consistency of the time series.

Table 2: Detailed breakdown of numbers in prison: England and Wales

		2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Prison population rate per 100,000 population ⁶		135	139	140	142	145	147	152	151	153	152	152	147	–
Pre-trial detainees	Number Percent	7,877 11.1	7,896 10.7	7,716 10.4	8,084 10.6	8,064 10.3	8,387 10.5	8,750 10.5	8,730 10.5	8,487 10.0	8,299 9.7	7,671 8.9	7,743	8,618
<= 6 month	Number Percent	5,447 7.6	5,969 8.1	5,751 7.7	6,009 7.9	5,959 7.6	5,165 6.5	5,873 7.1	5,131 6.2	5,343 6.3	5,441 6.4	5,003 5.8	–	–
> 6 to < 12 months	Number Percent	2,349 3.3	2,209 3.0	2,306 3.1	2,225 2.9	2,525 3.2	2,462 3.1	2,866 3.4	2,433 2.9	2,502 2.9	2,373 2.8	2,473 2.9	–	–
12 month to < 4 years	Number Percent	21,858 30.7	21,378 29.0	21,436 28.8	21,628 28.4	21,619 27.7	22,840 28.6	23,632 28.4	20,362 24.4	20,857 24.5	20,392 23.9	21,304 24.8	–	–
=/> 4 years ⁷	Number Percent	27,618 38.8	29,835 40.5	31,431 42.2	32,317 42.4	33,301 42.7	35,067 44.0	35,753 43.0	34,577 41.5	36,819 43.3	37,983 44.5	39,238 45.6	–	–
Recalls ⁸	Number Percent	– –	– –	– –	– –	– –	– –	– –	5,958 7.1	5,350 6.3	5,646 6.6	5,417 6.3	–	–
Non-criminal prisoners ⁹	Number Percent	831 1.2	1,145 1.6	1,017 1.4	1,069 1.4	1,422 1.8	1,289 1.6	1,520 1.8	1,555 1.9	998 1.2	946 1.1	1,162 1.4	–	–
Fine defaulters	Number Percent	34 0.0	46 0.1	52 0.1	78 0.1	89 0.1	68 0.1	110 0.1	99 0.1	129 0.2	129 0.2	127 0.1	–	–
Convicted un-sentenced	Number Percent	5,204 7.3	5,177 7.0	4,779 6.4	4,780 6.3	5,003 6.4	4,457 5.6	4,690 5.6	4,546 5.5	4,517 5.3	4,165 4.9	3,653 4.2	–	–

6 Calculated using Office for National Statistics (ONS) population estimates at 30th June each year.

7 Includes indeterminate sentences.

8 Due to the introduction of a new prison IT system in 2010, prison population data after 2009 is taken from a different source and recalls are shown separately (they were previously included in the relevant sentence length band).

9 Non-criminals are those imprisoned for civil, rather than criminal, offences. As result of data quality work from April 2013, around 300 prisoners who had previously been recorded as sentenced prisoners are now recorded as non-criminals.

Table 3: Numbers in prison: Scotland^{10, 11}

Total population	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Flow rate ¹²	35,012	34,082	36,120	39,783	39,076	38,347	38,746	43,506	40,450	38,986	36,521	36,012	37,002
Daily rate ¹³	5,975	5,869	6,182	6,453	6,606	6,776	6,856	7,187	7,376	7,826	7,963	7,853	8,178

10 All figures taken from Prison statistics and population projections Scotland: 2011/12 and Prison statistics Scotland, various years, Scottish Govt.

11 Scotland found large errors when processing their prison data for 2012/13 and have delayed publication. Statistics for 2012/13 and 2013/14 were due to be published alongside each other later in 2015.

12 Figures are for financial years, eg. 2003 = fiscal year 2002/03.

13 Figures are average daily population for financial years.

Table 4: Detailed breakdown of numbers in prison: Scotland

		2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
Prison population per 100,000 population ¹⁴		118	116	122	127	130	133	134	139	142	150	151	148	154
Pre-trial detainees	Number	873	768	862	1,055	1,075	1,036	1,032	1,329	1,306	1,415	1,170	1,112	1,237
	Percent	14.6	13.1	13.9	16.3	16.3	15.3	15.1	18.5	17.7	18.1	14.7	14.2	15.1
< 6 months	Number	520	491	523	521	471	531	543	568	542	501	439	426	433
	Percent	8.7	8.4	8.5	8.1	7.1	7.8	7.9	7.9	7.3	6.4	5.5	5.4	5.3
6 months to < 2 years	Number	1,105	1,060	1,187	1,176	1,163	1,161	1,214	1,159	1,226	1,567	1,767	1,682	1,822
	Percent	18.5	18.1	19.2	18.2	17.6	17.1	17.7	16.1	16.6	20.0	22.2	21.4	22.3
2 years to < 4 years	Number	778	776	780	814	857	884	913	959	1,058	1,099	1,211	1,183	1,172
	Percent	13.0	13.2	12.6	12.6	13.0	13.0	13.3	13.3	14.3	14.0	15.2	15.1	14.3
=> 4 years ¹⁵	Number	2,409	2,392	2,408	2,437	2,522	2,568	2,490	2,368	2,350	2,369	2,394	2,396	2,439
	Percent	40.3	40.8	39.0	37.8	38.2	37.9	36.3	32.9	31.9	30.3	30.1	30.5	29.8
Persons recalled from supervision	Number	100	164	195	235	293	351	397	514	610	599	621	681	701
	Percent	1.7	2.8	3.2	3.6	4.4	5.2	5.8	7.2	8.3	7.7	7.8	8.7	8.6
Convicted awaiting sentence	Number	103	122	134	152	163	188	218	243	255	264	352	362	363
	Percent	1.7	2.1	2.2	2.4	2.5	2.8	3.2	3.4	3.5	3.4	4.4	4.6	4.4
Fine default	Number	56	57	54	56	55	51	47	46	28	11	9	9	9
	Percent	0.9	1.0	0.9	0.9	0.8	0.8	0.7	0.6	0.4	0.1	0.1	0.1	0.1
Others	Number	28	35	36	6	7	5	1	-	-	-	-	-	-
	Percent	0.5	0.6	0.6	0.1	0.1	0.1	0.0	-	-	-	-	-	-

14 Calculated using ONS population estimates at 30th June each year.

15 Includes life.

Table 5: Numbers in prison: Northern Ireland¹⁶

Total population	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Flow rate ¹⁷	5,186	4,416	4,865	5,309	5,455	5,912	6,472	6,061	6,185	6,087	7,016	7,816	8,004	5,361
Daily rate ¹⁸	1,068	910	1,026	1,160	1,274	1,301	1,433	1,466	1,490	1,470	1,465	1,682	1,774	1,826

16 Data taken from The Northern Ireland prison population, various years, Department of Justice Northern Ireland.

17 Receptions to prisons in Northern Ireland. The dramatic fall in prison receptions between 2012 and 2013 is largely due to a decrease in fine default receptions. A Judicial Review in early 2013 temporarily suspended fine defaulters from being sentenced to prison.

18 Average of the daily snapshots. (This applies to all data in this section.)

Table 6: Detailed breakdown of numbers in prison: Northern Ireland

		2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Prison population per 100,000 population ¹⁹		63	54	60	68	74	75	82	83	84	82	81	93	97	100
Pre-trial detainees ²⁰	Number	311	266	341	385	446	444	529	525	507	504	508	590	545	492
	Percent	29.1	29.2	33.2	33.2	35.0	34.1	36.9	35.8	34.0	34.3	34.7	35.1	30.7	26.9
<= 6 month population	Number	59	47	55	52	59	56	58	67	81	81	87	106	103	113
	Percent	5.5	5.2	5.4	4.5	4.6	4.3	4.0	4.6	5.4	5.5	5.9	6.3	5.8	6.2
>6 to <= 12 months population	Number	88	69	74	93	93	87	100	93	95	95	93	101	117	138
	Percent	8.2	7.6	7.2	8.0	7.3	6.7	7.0	6.3	6.4	6.5	6.3	6.0	6.6	7.6
>12 months to <= 5 years population	Number	286	258	268	312	324	329	330	321	319	291	276	363	458	555
	Percent	26.8	28.4	26.1	26.9	25.4	25.3	23.0	21.9	21.4	19.8	18.8	21.6	25.8	30.4
> 5 years (inc. life) population	Number	295	243	265	290	318	355	386	430	459	464	458	478	496	524
	Percent	27.6	26.7	25.8	25.0	25.0	27.3	26.9	29.3	30.8	31.6	31.3	28.4	28.0	28.7
Fine defaulters	Number	22	22	17	20	24	25	29	26	21	23	30	33	35	4
	Percent	2.1	2.4	1.7	1.7	1.9	1.9	2.0	1.8	1.4	1.6	2.0	2.0	2.0	0.0
Non-criminal prisoners	Number	6	6	6	8	10	6	2	6	6	6	2	2	1	1
	Percent	0.6	0.7	0.6	0.7	0.8	0.5	0.1	0.4	0.4	0.4	0.1	0.1	0.1	0.1
(missing data)		–	–	–	–	–	–	–	–	–	7	11	9	19	–

19 Calculated using ONS mid-year population estimates.

20 Northern Ireland does not break down the remand population any further. Remand prisoners include those charged with an offence and whom the courts have ruled should be detained in custody pending trial; those whom the courts have permitted to be released on bail pending trial but have not as yet met the conditions (usually financial) of the bail; those who had been released on bail but have subsequently been re-admitted to prison because they breached a condition of bail; and those who have been found guilty by the court but have been ordered to be detained in custody pending sentence.

2 Pre-trial: number remanded in custody each year²¹

Table 7: Pre-trial: number remanded in custody each year: England and Wales²²

		2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Pre-trial detainees	Number ²³	7,877	7,896	7,716	8,084	8,064	8,387	8,750	8,730	8,487	8,299	7,671	7,743	8,618
	Per 100,000 population	15.0	14.9	14.5	15.1	14.9	15.4	16.0	15.8	15.2	14.8	13.6	13.6	–

Table 8: Pre-trial: number remanded in custody each year: Scotland²⁴

		1999/00	2000/01	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11	2011/12
Pre-trial detainees	Number ^{25,26}	873	768	862	1,055	1,075	1,036	1,032	1,329	1,306	1,415	1,170	1,112	1,237
	Per 100,000 population	17.2	15.2	17.0	20.8	21.1	20.3	20.1	25.7	25.1	27.0	22.2	21.0	23.3

Table 9: Pre-trial: number remanded in custody each year: Northern Ireland²⁷

		2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Pre-trial detainees ²⁸	Number ²⁹	311	266	341	385	446	444	529	525	507	504	508	590	545	492
	Per 100,000 population	18.5	15.8	20.1	22.6	26.0	25.7	30.3	29.8	28.5	28.1	28.1	32.5	29.9	26.9

21 All rates calculated using the Office for National Statistics 'Population Estimates for UK, England and Wales, Scotland and Northern Ireland' (mid-year estimates, 30th June each year), reference tables. Available at: <http://ons.gov.uk/ons/rel/pop-estimate/population-estimates-for-uk--england-and-wales--scotland-and-northern-ireland/index.html>

22 Pre-trial detainee Figures taken from National Offender Management Statistics: 2013 Annual Tables, FigureA1.1. Ministry of Justice.

23 Figures as at 30th June each year. Data prior to 2002 is not available. Due to the introduction of a new IT system in 2010, prison population data from 2009 onwards is taken from a different source, which affects the consistency of the time series.

24 Pre-trial detainee Figures taken from Prison statistics and population projections: 2011/12; Prison statistics Scotland: 2009/10; and Prison statistics Scotland: 2008/09, Scottish Govt.

25 Figures are average daily population for financial years.

26 Large errors were found when processing prison data for 2012/13 and so Scotland has delayed publication. Statistics for 2012/13 and 2013/14 will be published alongside each other later in 2015.

27 Pre-trial detainee Figures taken from 'The Northern Ireland prison population in 2009'; 'The Northern Ireland prison population in 2012'; 'The Northern Ireland prison population in 2013', Department of Justice Northern Ireland.

28 Northern Ireland does not break down the remand population any further. Remand prisoners include those charged with an offence and whom the courts have ruled should be detained in custody pending trial; those whom the courts have permitted to be released on bail pending trial but have not as yet met the conditions (usually financial) of the bail; those who had been released on bail but have subsequently been re-admitted to prison because they breached a condition of bail; and those who have been found guilty by the court but have been ordered to be detained pending sentence.

29 Average daily population

4 Number in prison serving a final sentence

Table 13: Number in prison serving a final sentence: England and Wales

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Daily rate	–	–	57,306	59,437	60,976	62,257	63,493	65,602	68,234	68,560	71,000	71,964	73,564	70,913	71,481
First receptions	93,671	91,976	94,807	93,495	95,161	92,452	90,038	91,736	100,348	94,964	–	90,955	86,479	82,305	78,488
Daily rate per 100,000	–	–	108.9	112.4	114.7	116.2	117.7	120.6	124.4	124.1	127.5	128.1	130.0	124.5	–

Table 14: Number in prison serving a final sentence: Scotland

	1999 - 00	2000 - 01	2001 - 02	2002 - 03	2003 - 04	2004 - 05	2005 - 06	2006 - 07	2007 - 08	2008 - 09	2009 - 10	2010 - 11	2011 - 12
Daily rate	4968	4940	5147	5239	5361	5546	5604	5614	5814	6146	6441	6377	6576
Rate per 100,000	98.1	97.5	101.6	103.4	105.4	108.5	109.2	108.6	111.7	117.5	122.4	120.3	123.8
Receptions	20336	19926	20328	20957	20437	19652	19488	20430	18229	16566	15824	14943	15331

Table 15: Number in prison serving a final sentence: Northern Ireland

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Daily rate	767	818	851	902	935	976	960	955	1090	1228	1334
Rate per 100,000	45.0	47.7	49.3	51.7	53.1	54.9	53.5	52.9	60.1	67.3	72.9
Receptions	2753	2909	3002	3255	3094	3208	3124	3682	4239	4545	2477

5 Community sentences

Table 16: Community sentences: England and Wales⁴⁸

		2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	
Community order ^{49,52}	People serving	Flow	53,248	111,752	117,860	120,743	122,796	118,696	112,571	103,759	99,166	94,878
		Daily	46,846	93,895	101,858	101,153	97,481	91,776	84,168	76,231	73,567	71,055
		Rate/100,000	87.4	174.0	187.3	184.4	176.5	164.8	149.8	134.8	129.2	–
Males	Flow	45,832	95,111	99,573	101,552	103,074	99,598	94,046	86,708	82,448	78,222	
	Daily	40,356	80,652	86,952	86,066	82,682	78,077	71,243	64,669	62,211	59,962	
Females	Flow	7,416	16,641	18,287	19,191	19,722	19,098	18,525	17,051	16,718	16,656	
	Daily	6,490	13,243	14,906	15,087	14,799	13,699	12,925	11,562	11,356	11,093	
Revocations ^{53,54}	Ran full course	–	27,525	53,107	60,961	67,877	69,151	69,178	64,282	53,165	48,912	
		–	(39%)	(47%)	(49%)	(52%)	(53%)	(55%)	(55%)	(54%)	(55%)	
	Good progress	–	9,175	10,895	13,685	15,664	15,657	13,836	12,856	12,799	10,672	
		–	(13%)	(10%)	(11%)	(12%)	(12%)	(11%)	(11%)	(13%)	(12%)	
	Failure to comply with requirements	–	16,938	25,007	23,638	20,885	19,571	17,609	16,363	12,799	10,672	
		–	(24%)	(22%)	(19%)	(16%)	(15%)	(14%)	(14%)	(13%)	(12%)	
Conviction of an offence	–	9,881	13,462	13,685	13,053	13,047	12,578	12,856	11,814	10,671		
	–	(14%)	(12%)	(11%)	(10%)	(10%)	(10%)	(11%)	(12%)	(12%)		
Other reasons	–	7,058	11,358	12,441	13,053	13,047	12,578	10,519	7,876	7,114		
	–	(10%)	(10%)	(10%)	(10%)	(10%)	(10%)	(9%)	(8%)	(8%)		
N for revocations (100%)		–	70,577	113,829	124,411	130,533	130,474	125,778	116,876	98,453	88,930	

48 All figures from Offender Management Statistics quarterly. Probation Annual Tables 2013, Ministry of Justice.

49 These community sentences were introduced in 2005.

50 All flow rates are counted as people starting supervision by the probation service in a given year. The Ministry of Justice informed us that information of the total number of people supervised across a whole year was not held centrally. The total number of people supervised in a year will be higher as it includes people who started a supervision in a previous year but is yet to expire.

51 All daily rates are counted as people supervised by the probation service as at 31st December each year.

52 Each person is counted once for each type of supervision received in the period or at 31st December.

53 These are numbers of revocations occurring over a whole year.

54 It has only been possible to compare percentages over time from 2008 onwards, as before then not enough time had elapsed for all orders to run their full course. These orders were introduced in April 2005.

Table 17: Community Order requirements: England and Wales⁵⁵

	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
All Community Orders (100%)	96,133	211,905	223,511	226,234	231,444	223,227	211,335	192,732	173,766	168,909
Unpaid Work	29,947 (31%)	66,937 (32%)	74,779 (33%)	74,629 (33%)	76,699 (33%)	73,797 (33%)	69,674 (33%)	61,639 (32%)	51,130 (29%)	48,683 (29%)
Supervision	34,741 (36%)	76,234 (36%)	78,102 (35%)	77,777 (34%)	77,769 (34%)	72,998 (33%)	67,332 (32%)	61,434 (32%)	57,856 (33%)	55,095 (33%)
Specified Activity	2,638 (3%)	7,706 (4%)	8,763 (4%)	9,639 (4%)	13,476 (6%)	15,189 (7%)	19,663 (9%)	21,421 (11%)	20,441 (12%)	16,500 (10%)
Curfew	3,209 (3%)	9,615 (5%)	12,608 (6%)	15,526 (7%)	16,479 (7%)	17,476 (8%)	17,279 (8%)	14,930 (8%)	12,665 (7%)	16,688 (10%)
Accredited Programme	17,440 (18%)	34,287 (16%)	30,143 (13%)	26,483 (12%)	23,442 (10%)	20,444 (9%)	16,448 (8%)	13,430 (7%)	12,864 (7%)	12,575 (7%)
Drug treatment	5,853 (6%)	11,895 (6%)	12,145 (5%)	13,153 (6%)	12,087 (5%)	11,996 (5%)	9,866 (5%)	9,290 (5%)	9,138 (5%)	8,396 (5%)
Alcohol treatment	1,356 (1%)	2,439 (1%)	3,267 (1%)	4,664 (2%)	6,485 (3%)	5,949 (3%)	5,873 (3%)	5,971 (3%)	5,893 (3%)	5,415 (3%)
Attendance Centre	94 (0%)	287 (0%)	430 (0%)	523 (0%)	787 (0%)	947 (0%)	1,367 (1%)	1,338 (1%)	1,170 (1%)	949 (1%)
Prohibited Activity	130 (0%)	483 (0%)	847 (0%)	1,116 (0%)	1,376 (1%)	1,491 (1%)	1,258 (1%)	931 (0%)	762 (0%)	2,036 (1%)
Exclusion	195 (0%)	510 (0%)	845 (0%)	1,029 (0%)	1,106 (0%)	1,135 (1%)	1,021 (0%)	962 (0%)	712 (0%)	1,235 (1%)
Residential	268 (0%)	762 (0%)	930 (0%)	956 (0%)	929 (0%)	1,062 (0%)	899 (0%)	816 (0%)	522 (0%)	665 (0%)
Mental Health	262 (0%)	750 (0%)	652 (0%)	739 (0%)	809 (0%)	743 (0%)	655 (0%)	570 (0%)	613 (0%)	672 (0%)

55 Sharp increases from 2005 reflects the fact that these orders were introduced for offences committed after 4th April 2005.

Table 18: Scotland:^{56,57} Community Payback Orders and legacy orders⁵⁸

		2005	2006
Total in existence ⁵⁹	Total	23,592	–
	male	20,139	–
	female	3,453	–
Total in force on 31st March 2013	Total	13,738	17,010
	male	11,598	14,344
	female	2,140	2,666

56 All figures are for financial years.

57 Data on cases of different orders sourced from *Criminal Justice Social Work Statistics*, Scottish Govt. Data on costs sourced from *Cost of the criminal justice system in Scotland*, Scottish Govt.

58 Community Payback Orders replaced community service orders, probation orders and supervised attendance orders for offences committed after 1 February 2011.

Table 19: Scotland: Commencements⁶⁰

		2006 - 07	2007 - 08	2008 - 09	2009 - 10	2010 - 11	2011 - 12	2012 - 13	2013 - 14
Community payback order ⁶¹	Total	–	–	–	–	–	10,228	16,057	18,599
	male	–	–	–	–	–	8,826	13,678	15,741
	female	–	–	–	–	–	1,402	2,379	2,858
Community service orders	Total	5,937	6,202	6,437	6,429	5,940	3,044	693	227
	male	5,334	5,512	5,668	5,502	5,112	2,463	490	–
	female	603	690	769	927	828	581	203	–
Probation orders	Total	8,404	8,706	9,179	8,838	8,136	3,040	514	138
	male	6,903	7,062	7,535	7,170	6,642	2,400	402	–
	female	1,501	1,644	1,644	1,668	1,494	640	112	–
Supervised attendance orders	Total	3,047	4,438	4,306	3,859	3,307	2,877	1,752	779
	male	2,505	3,693	3,650	3,345	2,900	2,531	1,540	–
	female	542	745	656	514	407	346	212	–
Total orders	Total	17,388	19,346	19,922	19,126	17,383	19,189	19,016	19,743
	male	14,742	16,267	16,853	16,017	14,654	16,220	16,110	–
	female	2,646	3,079	3,069	3,109	2,729	2,969	2,906	–

60 Counts orders commenced so will double count individuals subject to more than one type of order in a given year.

61 Information on orders commenced was collected from local authorities from 2011-12 onward. Figures from the Scottish Court Service suggest around 300 community payback orders were imposed in 2010-11.

Table 20: Scotland: Revocations

		2006 - 07	2007 - 08	2008 - 09	2009 - 10	2010 - 11	2011 - 12	2012 - 13	2013 - 14
Community payback orders	Order successfully completed/early discharge	–	–	–	–	–	1801 (68.9%)	6844 (68.6%)	11,062 (72.2%)
	Revoked due to review	–	–	–	–	–	104 (4%)	518 (5.2%)	766 (5%)
	Revoked due to breach	–	–	–	–	–	436 (16.7%)	1758 (17.6%)	2,468 (16.1%)
	Transfer out of area	–	–	–	–	–	112 (4.3%)	381 (3.8%)	524 (3.4%)
	Death	–	–	–	–	–	31 (1.2%)	77 (0.8%)	99 (0.6%)
	Other	–	–	–	–	–	132 (5%)	405 (4.1%)	408 (2.7%)
Community service orders	Order successfully completed/early discharge	3569 (65.7%)	3762 (64.6%)	4375 (63.6%)	4690 (69.6%)	4499 (74%)	3503 (74.4%)	1448 (71%)	–
	Revoked due to review	353 (6.5%)	271 (4.7%)	258 (3.7%)	340 (5%)	196 (3.2%)	181 (3.8%)	129 (6.3%)	–
	Revoked due to breach	1036 (19.1%)	1346 (23.1%)	1537 (22.3%)	1239 (18.4%)	909 (14.9%)	722 (15.3%)	331 (16.2%)	–
	Transfer out of area	285 (5.2%)	244 (4.2%)	288 (4.2%)	223 (3.3%)	196 (3.2%)	133 (2.8%)	53 (2.6%)	–
	Death	30 (0.6%)	23 (0.4%)	38 (0.6%)	34 (0.5%)	26 (0.4%)	16 (0.3%)	12 (0.6%)	–
	Other	159 (2.9%)	179 (3.1%)	387 (5.6%)	211 (3.1%)	256 (4.2%)	151 (3.2%)	64 (3.1%)	–
Probation orders	Order successfully completed/early discharge	4065 (60.2%)	3998 (58.4%)	4236 (56.6%)	4302 (57%)	4716 (59.8%)	4442 (67.1%)	2499 (74.8%)	–
	Breach – non-compliance	940 (13.9%)	1098 (16%)	1110 (14.8%)	1026 (13.6%)	891 (11.3%)	594 (9%)	345 (10.3%)	–
	Breach - further offence	735 (10.9%)	699 (10.2%)	884 (11.8%)	894 (11.8%)	783 (9.9%)	565 (8.5%)	170 (5.1%)	–
	Breach - non-compliance and further offence	134 (2%)	149 (2.2%)	199 (2.7%)	134 (1.8%)	168 (2.1%)	106 (1.6%)	51 (1.5%)	–
	Transfer out of area	325 (4.8%)	293 (4.3%)	335 (4.5%)	331 (4.4%)	363 (4.6%)	191 (2.9%)	98 (2.9%)	–
	Death	106 (1.6%)	86 (1.3%)	111 (1.5%)	93 (1.2%)	106 (1.3%)	74 (1.1%)	28 (0.8%)	–
	Other	450 (6.7%)	526 (7.7%)	613 (8.2%)	771 (10.2%)	856 (10.9%)	647 (9.8%)	148 (4.4%)	–
Supervised attendance orders	Order successfully completed	1661 (61%)	1685 (56.7%)	2410 (60.6%)	2182 (63.9%)	1951 (60.1%)	1719 (65.1%)	1338 (62.9%)	–
	Revoked due to review	282 (10.4%)	302 (10.2%)	212 (5.3%)	221 (6.5%)	182 (5.6%)	195 (7.4%)	178 (8.4%)	–
	Revoked due to breach	629 (23.1%)	797 (26.8%)	1146 (28.8%)	797 (23.3%)	776 (23.9%)	556 (21.1%)	457 (21.5%)	–
	Transfer out of area	54 (2%)	79 (2.7%)	79 (2%)	93 (2.7%)	88 (2.7%)	54 (2%)	52 (2.4%)	–
	Death	10 (0.4%)	14 (0.5%)	23 (0.6%)	17 (0.5%)	23 (0.7%)	14 (0.5%)	10 (0.5%)	–
	Other	88 (3.2%)	93 (3.1%)	106 (2.7%)	104 (3%)	226 (7%)	101 (3.8%)	93 (4.4%)	–

Table 21: Scotland: Community payback order requirements

	2011 - 12	2012 - 13	2013 - 14
Unpaid work or other activity	7776 (76%)	12,785 (79.6%)	14,879 (80%)
Offender supervision	6382 (62.4%)	8,816 (54.9%)	9,413 (50.6%)
Conduct ⁶²	2360 (23.1%)	1,610 (10%)	1,147 (6.2%)
Programme	809 (7.9%)	1,047 (6.5%)	1,178 (6.3%)
Alcohol treatment	536 (5.2%)	398 (2.5%)	400 (2.2%)
Compensation	350 (3.4%)	609 (3.8%)	606 (3.3%)
Drug treatment	236 (2.3%)	183 (1.1%)	167 (0.9%)
Mental health treatment	74 (0.7%)	97 (0.6%)	65 (0.9%)
Residence	51	37	45

62 The fall in the use of the conduct requirement after 2011-12 is due to a 2012 appeal court judgement that conduct requirements must be specific and include more than general conditions to stay out of trouble or to refrain from committing another criminal offence. This will have an impact on the level of supervision requirements as orders with a conduct requirement should also include supervision.

Table 22: Scotland: Costs of Community Payback Orders, Community Service Orders, Supervised Attendance Orders and Probation Orders⁶³

Volume	Total Expenditure	Unit Cost ⁶⁴
19,576 Orders commenced	£37,374,215	£1,909

63 Refers to unit cost figures from 2013/14.

64 The unit cost is calculated by dividing total recorded expenditure on Community Payback Orders, Community Service Orders, Probation Orders and Supervised Attendance Orders across the 8 CJAs by the volume of those disposals. The unit cost does not include the costs of delivering some services which may be accessed by offenders as a consequence of requirements imposed with these orders.

Table 23: Scotland: Drug Treatment and Testing Orders⁶⁵

		2012 - 13	2013 - 14
Total in existence ⁶⁶	Total	1,333	–
	male	1,064	–
	female	269	–
Total in force on 31st March 2013	Total	747	706
	male	601	569
	female	146	137

65 Figures include DTTO IIs, which have been piloted in the City of Edinburgh, Midlothian and East Lothian areas since June 2008.

66 This information can be obtained from the unit level returns Scottish Justice Analytical Services received from local authorities for the first time in 2012-13. This constitutes a proper flow rate.

Table 24: Scotland: Commencements⁶⁷

		2004 - 05	2005 - 06	2006 - 07	2007 - 08	2008 - 09	2009 - 10	2010 - 11	2011 - 12	2012 - 13	2013 - 14
	Total	526	599	673	601	752	739	661	557	640	620
	male	437	494	552	461	576	566	533	455	512	497
	female	89	105	121	140	176	173	128	102	128	123
Revocations	Successfully completed/early discharge	120 (38.1%)	186 (40%)	208 (38.9%)	183 (37.3%)	215 (39.7%)	263 (44.7%)	303 (46%)	339 (53.6%)	310 (52.6%)	345 (52.2%)
	Revoked due to review	32 (10.2%)	81 (17.4%)	76 (14.2%)	68 (13.8%)	83 (15.3%)	119 (20.2%)	115 (17.5%)	90 (14.2%)	135 (23.3%)	134 (20.3%)
	Revoked due to breach	133 (42.2%)	154 (33.1%)	197 (36.8%)	173 (35.2%)	193 (35.6%)	144 (24.5%)	185 (28.1%)	127 (20.1%)	101 (17.4%)	149 (22.5%)
	Transfer out of area	0 (0%)	4 (0.9%)	2 (0.4%)	7 (1.4%)	8 (1.5%)	5 (0.9%)	6 (0.9%)	41 (6.5%)	11 (1.9%)	6 (0.9%)
	Death	1 (0.3%)	4 (0.9%)	1 (0.2%)	2 (0.4%)	3 (0.6%)	4 (0.7%)	6 (0.9%)	4 (0.6%)	6 (1%)	8 (1.2%)
	Other	29 (9.2%)	36 (7.7%)	51 (9.5%)	58 (11.8%)	40 (7.4%)	53 (9%)	43 (6.5%)	32 (5.1%)	22 (3.8%)	19 (2.9%)

67 Counts orders commenced so will double count individuals subject to more than one type of order in a given year.

Table 25: Scotland: Cost of DTTOs⁶⁸

Services/Disposals	Volume	Total Expenditure	Unit Cost ⁶⁹
DTTOs (Including Drug Courts) ⁷⁰	614 Orders commenced	£5,897,261	£9,605

68 Refers to unit cost figures from 2013/14.

69 The unit cost is calculated by dividing total recorded expenditure on DTTOs across the 8 CJAs by the volume of DTTOs commenced.

70 Drugs courts issue disposals other than DTTOs. Taking all drugs court expenditure into account in calculating the unit cost of a DTTO is therefore likely to over-estimate the unit cost of a DTTO. Conversely, excluding the costs of drugs courts entirely is likely to understate the unit cost.

Table 26: Scotland: Restriction of Liberty Orders⁷¹ – People with a charge proved in the Scottish courts given a Restriction of Liberty Order as a main penalty⁷²

		2004 - 05	2005 - 06	2006 - 07	2007 - 08	2008 - 09	2009 - 10	2010 - 11	2011 - 12	2012 - 13	2013 - 14
Restriction of liberty order	Total	1097	1136	1179	1155	1143	931	831	845	919	1074
	male	–	–	–	–	1016	828	742	727	765	–
	female	–	–	–	–	127	103	89	118	145	–

71 There is only information on RLOs handed out in the Scottish courts in total for 2004/5 to 2013/14, and by gender for 2008/9 to 2012/13.

72 Data sourced from 'Criminal Proceedings in Scottish Courts', 'Criminal Proceedings in Scotland' and Freedom of Information Response from the Justice Analytics Service, FOI reference: FoI/14/01825, Scottish Govt.

Table 27: Scotland: Cost of RLOs⁷³

Services/Disposals	Volume	Total Expenditure	Unit Cost ⁷⁴
Electronic Monitoring ⁷⁵	3,929 new reports	£2,884,643	£734

73 Refers to unit cost figures from 2013/14.

74 The unit cost is calculated by dividing total recorded expenditure on electronic monitoring by the volume individuals monitored.

75 This section shows the unit cost of electronic monitoring which is issued in the following circumstances: Court orders (Restriction of Liberty Orders and as a sanction for breaching a community payback order); Early release from prison (Home Detention Curfew for short term prisoners and Parole Licence for long term prisoners (over 4 years sentence)); Movement Restriction Condition as part of Intensive Support and Monitoring (imposed by children hearings); and as part of a DTTO.

Table 28: Northern Ireland: Probation Orders, Combination Orders and Community Service Orders⁷⁶

			2007 - 08	2008 - 09	2009 - 10	2010 - 11	2011 - 12	2012 - 13	2013 - 14	
Probation Order	No. of people given new orders ⁷⁷	Total	1318	1274	1274	1350	1335	1177	1209	
		male	1131	1056	1064	1132	1081	950	958	
		female	187	218	210	218	254	227	251	
	Flow rate ⁷⁸	Total	2784	2754	2740	2884	2977	2830	2694	
		male	2362	2331	2304	2440	2488	2334	2192	
		female	422	423	436	444	489	496	502	
	Daily rate ⁷⁹	Total	1503	1500	1594	1702	1698	1523	1517	
		Per/100,000	85.3	84.3	88.9	94.3	93.6	83.5	82.9	
		male	1293	1266	1357	1453	1415	1263	1258	
		female	210	234	237	249	283	260	259	
	One year breach rate ^{80,81}	Total	–	–	–	22%	24%	24%	–	
	Combination Order	No. of people given new orders ⁷⁴	Total	206	204	214	308	315	315	280
			male	189	190	206	283	287	292	256
female			17	14	8	25	28	23	24	
Flow rate ⁷⁵		Total	415	420	438	559	635	662	637	
		male	379	388	411	523	583	606	582	
		female	36	32	27	36	52	56	55	
Daily rate ⁷⁶		Total	213	212	252	311	332	346	342	
		male	196	195	241	286	298	317	317	
		female	17	17	11	25	34	29	25	
		Per/100,000	12.1	11.9	14.1	17.2	18.3	19.0	18.7	
One year breach rate ^{77,78}		Total	–	–	–	39%	31%	34%	–	
Community Service Order		No. of people given new orders ⁷⁴	Total	756	958	1156	1280	1505	1409	1313
			male	679	840	1019	1125	1285	1212	1135
	female		77	118	137	155	220	197	178	
	Flow rate ⁷⁵	Total	1280	1464	1752	2014	2270	2329	2126	
		male	1154	1303	1561	1780	1969	2007	1841	
		female	126	161	191	234	301	322	285	
	Daily rate ⁷⁶	Total	482	601	740	806	915	841	760	
		male	444	548	659	719	793	735	670	
		female	38	53	81	87	122	106	90	
		Per 100,000	27.4	33.8	41.3	44.7	50.4	46.1	41.5	
	One year breach rate ^{77,78}	Total	–	–	–	28%	28%	27%	–	

76 Figures taken from Freedom of Information response from the Probation Board of Northern Ireland. FOI reference: 023.60.14.

77 Counted as the number of people given new Probation Orders, Community Service Orders or Combination Orders in a given year.

78 Total number of people supervised at any point during the year under Combination Orders, Probation Orders, or Community Service Orders in a given year. Includes people whose order commenced in a different year but has not yet expired.

79 Number of people supervised at a point in time (end of financial year, 31st March) under Probation Orders, Community Service Orders or Combination Orders.

80 Figures taken from 'Statistical Brief – Analysis of Breach Rates: 2012/13', Probation Board for Northern Ireland.

81 An order is deemed to have breached when an order contact meeting type of 'Decision to Breach', 'Breach Summons Lodged', or 'Breach Warrant Lodged' is recorded on the PIMS (PBNi case management system) referral within one year of the start date of the order. The rates presented in this figure should therefore be described as 'one-year breach rates'. It is not possible at this stage to include either the reason for the initiation of breach proceedings or the outcome of the proceedings due to the way this information is recorded on PIMS.

Table 29: Northern Ireland: Cost of Probation Orders, Combination Orders and Community Service orders⁸²

	Community Service Order	Probation Order	Combination Order
Unit cost	£2,000	£4,200	£4,200

82 Refers to costs in 2010 taken from DOJNI (2011) 'Consultation on a review of community sentences'. Belfast: DOJNI.

Table 30: Northern Ireland: Number of people given an additional requirement where they started a Combination Order or Probation Order by additional requirement^{83,84}

	2007 - 08	2008 - 09	2009 - 10	2010 - 11	2011 - 12	2012 - 13	2013 - 14
Alcohol Management Programme	172 (39.4%)	180 (29.8%)	219 (33.4%)	263 (34.5%)	154 (26.9%)	169 (29.4%)	182 (32.1%)
Anger Management and Cognitive Self Change programmes	159 (36.5%)	150 (24.8%)	121 (18.4%)	167 (21.9%)	133 (23.2%)	106 (18.5%)	70 (12.3%)
Community Sex Offender Groupwork Programme	30 (6.9%)	33 (5.5%)	22 (3.4%)	24 (3.1%)	36 (6.3%)	47 (8.2%)	49 (8.6%)
Integrated Domestic Abuse Programme	66 (15.1%)	86 (14.2%)	75 (11.4%)	79 (10.4%)	57 (9.9%)	67 (11.7%)	47 (8.3%)
Probation Approved Accommodation	9 (2.1%)	15 (2.5%)	24 (3.7%)	24 (3.1%)	22 (3.8%)	16 (2.8%)	14 (2.5%)
Resolve ⁸⁵	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	33 (5.8%)
Think First	0 (0%)	141 (23.3%)	195 (29.7%)	206 (27%)	171 (29.8%)	169 (29.4%)	134 (23.6%)
Thinking Skills ⁸⁶	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)	38 (6.7%)
Total	436	605	656	763	573	574	567

83 Sourced from Freedom of Information response from the Probation Board for Northern Ireland. FOI reference: 023.60.14.

84 Figure excludes for example, additional licence conditions and interventions recommended by the Supervising Officer during the period of community supervision.

85 This is a new programme.

86 The 'Thinking Skills' programme has now replaced the 'Think First' programme.

6 Suspended sentences

Table 31: England and Wales:⁸⁷ Suspended sentences

			2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Suspended sentence order ⁸⁸⁻⁹¹	People serving	Flow	5,848	32,727	44,421	45,502	46,897	47,902	47,521	45,275	43,134	44,944
		Daily	5,383	28,364	42,912	43,977	43,615	43,561	41,766	38,452	38,227	39,251
		Per 100,000	10.9	60.7	81.7	83.0	84.9	86.0	84.6	80.0	75.7	–
Males	Flow	45,832	95,111	99,573	101,552	103,074	99,598	94,046	86,708	82,448	38,181	
	Daily	4,727	24,698	37,091	37,759	37,264	37,450	35,673	32,747	32,711	33,657	
Females	Flow	723	4281	5,951	6,476	6,823	6,694	7,046	6,803	6,234	6,763	
	Daily	656	3,666	5,821	6,218	6,351	6,111	6,093	5,705	5,516	5,594	
Revocations ^{92, 93}	Ran full course	–	2,929 (31%)	12,910 (46%)	20,452 (50%)	24,081 (55%)	25,344 (56%)	26,865 (57%)	26,372 (57%)	22,631 (55%)	55%	
	Good progress	–	530 (6%)	1,632 (6%)	4,090 (10%)	4,378 (10%)	4,892 (11%)	4,713 (10%)	5,358 (12%)	5,035 (12%)	13%	
	Failure to comply with requirements	–	2,646 (28%)	6,131 (22%)	6,136 (15%)	5,254 (12%)	5,455 (12%)	5,185 (11%)	5,156 (11%)	4,026 (10%)	9%	
	Conviction of an offence	–	2,308 (25%)	5,088 (18%)	6,954 (17%)	7,005 (16%)	6,731 (15%)	7,070 (15%)	6,971 (15%)	6,377 (15%)	16%	
	Other reasons	–	996 (11%)	2,508 (9%)	3,272 (8%)	3,065 (7%)	3,036 (7%)	3,299 (7%)	2,595 (6%)	3,084 (7%)	7%	
	N for revocations (100%)	–	9,409	28,269	40,904	43,783	45,458	47,132	46,452	41,153	38,196	

87 Figures taken from Offender Management Statistics Quarterly, Probation Annual Tables 2013, Ministry of Justice.

88 Introduced in 2005.

89 Flow rates are counted as people starting supervision by the probation service in a given year. The Ministry of Justice informed us that information of the total number of people supervised across a whole year was not held centrally. The total number of people supervised in a year will be higher as it includes people who started a supervision in a previous year but is yet to expire.

90 Daily rates are counted as people supervised by the probation service as at 31st December of each year.

91 Each person is counted once for each type of supervision received in the period or at 31st December.

92 These are numbers of revocations occurring over a whole year.

93 It has only been possible to compare percentages over time from 2008 onwards, as before then not enough time had elapsed for all orders to run their full course. These orders were introduced in April 2005.

Table 32: Convictions where disposal included a suspended custodial element at courts in Northern Ireland^{94, 95}

		2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Suspended sentence	Total	1,701	1,591	1,633	1,898	2,175	2,264	2,336	2,970	2,777	2,993	3,503	4,151	4,526	4,408
	male	1,565	1,445	1,489	1,705	1,952	2,008	2,094	2,625	2,482	2,685	3,092	3,613	3,881	3,795
	female	136	146	144	193	223	256	242	345	295	308	411	538	645	613

94 Data collected on the principal offence rule; only the most serious offence for which an offender is convicted is included.

95 Data provided by the Department of Justice for Northern Ireland via email.

Table 33: Structured deferred sentences, Scotland^{96, 97}

	2008 - 09	2009 - 10	2010 - 11	2011 - 12	2012 - 13	2013 - 14
Total	4,659	2,819	768	493	586	614
male	3,634	2,172	529	329	361	398
female	1,025	647	239	164	225	216

96 A new criminal case management system was introduced by the Scottish Court Service during 2006/07 so the first year with full information available is 2008 - 09.

97 Data taken from a freedom of information response from the Scottish Courts and Tribunals Service. FOI reference: RWF0I201549.

7 Post-release measures

i) Parole

Table 34: Parole – England and Wales⁹⁸

	2009 - 10	2010 - 11	2011 - 12	2013 - 13	2013 - 14
Parole releases ⁹⁹	2,491	2,788	2,790	3,777	3,268

98 Figures taken from Parole Board for England and Wales Annual Report and Accounts 2013/14.

99 Includes oral and paper review, recall and advice hearings for determinate, life and IPP sentenced prisoners which resulted in a release outcome.

Table 35: Parole – Scotland¹⁰⁰

	2007 - 08	2008 - 09	2009 - 10	2010 - 11	2011 - 12	2012 - 13	2013 - 14
Parole releases	362	336	314	297	323	236	245

100 Figures taken from 'Parole Board for Scotland Annual Reports'.

Table 36: Parole – Number of people on PBNi caseload serving licences in the community at 31 March 2007 to 31 March 2014^{101, 102}

		2007	2008	2009	2010	2011	2012	2013	2014
Numbers supervised	Female	<4	<4	<4	<4	4	8	21	31
	Male	74	83	94	118	218	366	560	769
	Total	–	–	–	–	222	374	581	800

101 This includes: Life Sentence, Article 26 Licence, Determinate Custodial Sentence (DCS), Extended Custodial Sentences (ECS), Indeterminate Custodial Sentences (ICS) and GB Transfers. The increase is due to the introduction of the DCS, ECS and ICS licences (ref Criminal Justice (Northern Ireland) Order 2008)

102 Data taken from Freedom of Information response from the Probation Board of Northern Ireland, FOI reference: 023.11.15.

ii) Home Detention Curfew

Table 37: Home detention curfew: England and Wales¹⁰³

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
No. released on HDC	15,511	13,648	20,456	21,188	19,294	17,296	13,666	11,428	11,721	11,534	12,250	12,727	12,803	10,419
Average daily population (at end of year) ¹⁰⁴	1,700	1,700	3,100	3,700	3,400	3,300	2,500	2,400	2,600	2,500	2,800	2,800	2,800	2,500
No. of males released	14,006	12,120	18,509	19,050	17,159	15,392	12,122	10,108	10,239	10,164	10,770	11,151	11,142	9,051
No. of females released	1,505	1,528	1,947	2,138	2,135	1,904	1,544	1,320	1,482	1,370	1,480	1,576	1,661	1,368

103 Data taken from *Offender Management Caseload Statistics 2004*, Home Office, and *Offender Management Statistics*, 2013 annual edition, Ministry of Justice

104 The figures have been rounded to the nearest 100.

Table 38: Home detention curfew: Revocations – England and Wales

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Total	769	673	1,479	2,716	3,003	2,627	2,184	1,654	1,442	1,441	1,154	1,179	924	701
Breach of HDC conditions	–	365	815	1,470	1,710	1,722	1,522	1,227	1,062	930	625	718	742	634
Charged with new offence	–	110	218	402	464	327	230	155	169	228	205	221	47	1
Breach of non-HDC licence conditions	–	10	57	139	173	166	124	96	64	95	114	96	8	0
Other	–	188	389	705	656	412	308	176	147	188	210	144	127	66

Table 39: Home detention curfew: Scotland^{105, 106}

	2007 - 08	2008 - 09	2009 - 10	2010 - 11	2011 - 12
No. released on HDC	2,082	2,056	1,885	1,820	1,942
No. men released on HDC	1,857	1,804	1,674	1,614	1,698
No. women released on HDC	225	252	211	206	244
Average daily population ¹⁰⁷	310	370	373	358	365
Average men daily population	274	325	333	320	323
Average women daily population	36	45	40	38	42

105 HDC was implemented in 2006 in Scotland. These figures include all those aged over 16.

106 Figures taken from *Prison Statistics and Population Projections Scotland 2011-12, Cost of the criminal justice system in Scotland* dataset and a Freedom of Information response from the Scottish Prison Service, FOI reference: FOI 14274.

107 Figures exclude prisoners recorded as unlawfully at large. This is due to a time lag in recording the outcome of recall procedures in certain cases, which results in an over-estimate of the HDC population if these cases are included. Figures for 2010-11 have been revised upward by about 15% as a result of cleaning outstanding cases recorded as unlawfully at large.

Table 40: Recalls to custody from HDC: Scotland

	2007 - 08	2008 - 09	2009 - 10	2010 - 11	2011 - 12
Total ¹⁰⁸	511	458	394	381	381

108 Figures for 2007-08 were revised in the 2009-10 data release as a result of technical difficulties in recording the outcome of recall procedures in certain cases. The revised figures are about 10% lower than those published in the original 2007-08 release.

Table 41: Reasons for recall to custody from HDC: Scotland¹⁰⁹

	2007	2008	2009	2010	2011	2012	2013	2014
Assault (or threat) on contractor	1	2	1	3	–	1	1	1
Breach of licence conditions	109	127	109	79	95	91	82	79
Cancelled breach - appeal	20	38	27	16	15	9	13	14
Cumulative breach of curfew	42	32	14	22	19	18	8	13
False breach (SPS/Serco error)	8	16	17	13	3	10	8	10
Intentional damage to EM equipment	64	60	52	44	29	41	35	33
Minor breach of curfew (>2<6 hrs)	9	7	4	3	6	2	1	4
New warrant served	21	42	43	48	37	41	34	28
Presence at a restricted location	–	–	1	4	1	1	–	1
Preventing installation of EM equipment	22	20	10	15	19	19	10	11
Preventing maintenance of EM equipment	1	2	–	3	–	2	1	1
Serious breach of curfew (>6 hrs)	201	190	149	131	145	128	106	119
Withdrawal of consent (householder)	26	30	29	28	35	25	18	20

109 Figures are for calendar years so do not correspond to data on total recalls to custody.

Table 42: Scotland: Cost of HDC¹¹⁰

Services/Disposals	Volume	Total Expenditure	Unit Cost ¹¹¹
Electronic Monitoring ¹¹²	3,929 new reports	£2,884,643	£734
Home Detention Curfew Reports ¹¹³	2,919 Reports written	£415,744	£142

110 Refers to unit cost figures from 2013/14.

111 The unit cost is calculated by dividing the total expenditure over the volume.

112 This section shows the unit cost of electronic monitoring which is issued in the following circumstances: Court orders (Restriction of Liberty Orders and as a sanction for breaching a community payback order); Early release from prison (Home Detention Curfew for short term prisoners and Parole Licence for long term prisoners (over 4 years sentence)); Movement Restriction Condition as part of Intensive Support and Monitoring (imposed by children hearings); and as part of a DTT0.

113 This only represents the cost of the report writing. The cost of the Electronic Monitoring element of the Home Detention Curfew is £734.

iii) Post-release supervision

Table 43: Post-release supervision – Number of people under post release supervision December 2002 to December 2014 in England and Wales¹¹⁴⁻¹¹⁶

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Number of people under post release supervision	22,000	21,106	22,739	25,603	26,096	28,721	32,220	34,881	37,229	40,049	42,162	39,565	39,270
Number of men under post release supervision	20,777	19,839	21,319	24,095	24,550	26,930	30,190	32,656	34,835	37,487	39,558	37,255	37,056
Number of women under post release supervision	1,223	1,267	1,420	1,508	1,546	1,791	2,030	2,225	2,394	2,562	2,604	2,310	2,214

114 Data taken from *Offender Management Statistics*, Ministry of Justice, annual editions.

115 Each person is counted only once in the total even if they were subject to several types of sentence at the year end.

116 Reliable information on the probation caseload is only available from 2002 onwards.

Table 44: Post-release supervision – Number of people under post-release supervision by the PBNI at 31 March each year in Northern Ireland¹¹⁷

	2010	2011	2012	2013	2014	2015
Post-release supervision	722	649	648	765	925	11,048

117 Figures taken from PBNI Caseload Statistics 2014/15, Probation Board for Northern Ireland.

8 Probation resources

Table 45: Probation resources – England and Wales

	2001 - 02	2002 - 03	2003 - 04	2004 - 05	2005 - 06	2006 - 07	2007 - 08	2008 - 09	2009 - 10	2010 - 11	2011 - 12	2012 - 13	2013 - 14
Annual cash terms budget (£) ¹¹⁸⁻¹²¹	596,395	609,976	810,827	881,071	821,024	827,300	845,000	897,000	899,000	875,000	821,000	853,000	864,211
Annual real terms budget (£) ¹²²	799,189	796,428	1,037,553	1,092,977	990,809	972,025	964,601	998,886	975,880	924,253	851,960	871,110	864,211

118 Figures for 2001/02 to 2006/07 taken from 'Probation resources, staffing and workloads 2001-2008' by M Oldfield, and R Grimshaw

119 Figures for 2007/08 to 2011/12 taken from written question to the Secretary of State for Justice by Sadiq Khan on 23rd January 2013: <http://www.theyworkforyou.com/wrans/?id=2013-01-23d.136548.h>

120 Figures for 2012/13 taken from National Audit Office (2014) 'Probation Landscape Review'

121 Figure for 2013/14 calculated from individual Probation Trust annual reports and accounts: <https://www.gov.uk/government/publications/probation-trust-annual-report-and-accounts-2013-2014>

122 Calculated using HM Treasury GDP deflators at market prices and money GDP, last updated 23rd December 2014.

Table 46: Probation resources – Scotland

	2011 - 12	2012 - 13	2013 - 14
Expenditure (£m) ¹²³⁻¹²⁶	116.35	–	108.9

123 Refers to cost of Criminal Justice Social Work Service

124 Expenditure is in cash terms

125 Figure is made up of the Criminal Justice Social Work Service expenditure in each Community Justice Authority, and offender services expenditure shown in the Scottish Government Consolidated Accounts

126 Figures taken from Scottish Government (2014 and 2015) Cost of the criminal justice system in Scotland dataset, Figure One

Table 47: Probation resources – Northern Ireland

	2004 - 05	2005 - 06	2006 - 07	2007 - 08	2008 - 09	2009 - 10	2010 - 11	2011 - 12	2012 - 13	2013 - 14
Annual cash terms budget (£) ¹²⁷	15,106	17,105	17,711	17,768	18,918	20,911	14,993	21,421	23,020	22,908
Annual real terms budget (£) ¹²⁸	18,739	20,642	20,809	20,283	21,067	22,699	15,837	22,229	23,509	22,908

127 Figures taken from Probation Board for Northern Ireland annual reports and accounts 2005/06 to 2013/14. Figures prior to this are not available.

128 Calculated using HM Treasury GDP deflators at market prices and money GDP, last updated 23rd December 2014.

9 Number of probation officers since 2000

Table 48: Number of probation officers since 2000 – England and Wales

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Frontline staff ¹²⁹⁻¹³³	8,457	9,594	10,515	13,017	13,322	14,470	14,654	12,824	12,097	–	10,235	9,787	8,944	8,775	8,482

129 Includes Senior Practitioners, Probation Officers, Probation Service Officers, Trainee Probation Officers (certainly for 2007-2013) employed by the probation service as at 31st December each year (end of quarter 3).

130 From 2000-2008 the number of frontline staff is probably slightly overestimated. This is because the workforce reports did not break the job groups down into job functions, meaning a very small number of staff who work in 'corporate services' are included in the Figures for those years (overestimated by approx. 80 people).

131 For 2014 this is calculated as staff in pay band 5, pay band 4 (PQF and non-PQF qualified) and pay band 3 (PSO and non-PSO) working in 'offender management', 'interventions' and 'other agencies/services' functions within Community Rehabilitation Companies, in addition to Probation Officer grade staff working in the National Probation Service (both as at 31st December 2014).

132 Workforce data for 2009 is not available.

133 Staff numbers for 2010 to 2013 taken from 'Probation Service Quarterly Reports', Q. 3 of each year. Figures from 2000 to 2008 taken from 'Prison and Probation Expenditure', by Mills, H., Silvestri, A. and Grimshaw, R. Figures for 2014 taken from 'National Offender Management Service workforce statistics: December 2014' (Figure3), and 'Community Rehabilitation Company Workforce Information Summary Report: Quarter 3 2014/15'.

Table 49: Number of probation officers since 2002/03 – Scotland

	2002 - 03	2003 - 04	2004 - 05	2005 - 06	2006 - 07	2007 - 08	2008 - 09	2009 - 10	2010 - 11	2011 - 12	2012 - 13	2013 - 14
Frontline staff ¹³⁴⁻¹³⁵	1,310	1,452	1,549	1,694	1,681	1,766	1,840	1,808	1,796	2,000	2,070	2,100

134 Figures until 2010 relate to Scottish Social Work Services criminal justice staff. Figures from 2011 relate to Fieldwork Services (Offenders) staff (Figure1 of SSSC, 2011 and 2012). Due to the change in collection date of local authority social work services data (the ownership and publishing of local authority social work services staffing information has been transferred from the Scottish Government to the Scottish Social Services Council), figures from 2011 are not comparable with the earlier figures. Even before 2011, Figures may not be strictly comparable between years due to recording changes.

135 Figures for 2002/03 to 2009/10 taken from 'Staff of Scottish Local Authority Social Work Service 2010' (Annex A, Figure1). Data after this taken from 'Scottish Social Services Sector: Report on Workforce Data', 2011-2013.

Table 50: Number of probation officers since 2006/7 – Northern Ireland

	2006 - 07	2007 - 08	2008 - 09	2009 - 10	2010 - 11	2011 - 12	2012 - 13	2013 - 14
Frontline staff ¹³⁶⁻¹³⁷	234	243	255	280	292	276	290	301

136 Includes probation management but not administrative staff.

137 Figures for 2006/07 to 2010/11 taken from Probation Board of Northern Ireland annual reports and accounts (2006/07 to 2010/11). Figures after this taken from Freedom of Information responses from the Probation Board of Northern Ireland, FOI references: 023.36.12; 023.47.13; and 023.60.14.

10 Average caseload per probation agent

Table 51: Average caseload per probation agent – England and Wales

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Caseload ¹³⁸⁻¹⁴²	–	–	19.0	16.0	16.4	16.3	16.7	19.5	20.7	–	23.8	24.4	25.6	25.5	25.9

138 Calculated from total court order and pre- and post-release supervision cases supervised by the probation service at 31st December each year.

139 Reliable information on the probation caseload is only available from 2002 onwards.

140 Caseload for 2014 is calculated as the number of people under probation supervision on 30th September 2014 - data up to December was unavailable.

This figure counts an individual only once even if the person is under multiple types of supervision, so the caseload for 2014 is probably marginally higher than this figure suggests.

141 Calculated using frontline staff figures shown above.

142 Number of cases supervised taken from Freedom of Information Response (2014) from the Ministry of Justice, FOI reference 94398.

For 2014 taken from *Offender Management Statistics Quarterly*.

Table 52: Average caseload per probation agent – Scotland

	2002 - 03	2003 - 04	2004 - 05	2005 - 06	2006 - 07	2007 - 08	2008 - 09	2009 - 10	2010 - 11	2011 - 12	2012 - 13	2013 - 14
Caseload ¹⁴³⁻¹⁴⁴	–	–	–	–	–	15.1	14.9	14.5	13.5	13.1	12.7	13.1

143 Total number of cases calculated by adding up case commencements of diversion from prosecution, bail supervision, community payback orders, community service orders, probation orders, supervised attendance orders, drug treatment and testing orders, statutory throughcare in custody and the community, and voluntary throughcare. It therefore excludes people whose supervision began in a previous year but is still in operation in a following year. The caseload figure is therefore probably an underestimation.

144 Figures taken from *Criminal justice social work statistics 2013-14*, Excel tables, Figure 1.

Table 53: Average caseload per probation agent – Northern Ireland

	2006 - 07	2007 - 08	2008 - 09	2009 - 10	2010 - 11	2011 - 12	2012 - 13	2013 - 14
Caseload ¹⁴⁵	16	16	16	15	15	16	15	15

145 Calculated from the number of offenders supervised at the end of the financial year, taken from PBNI Caseload Statistics 2013/14.

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