

Offender Management Bill

Report Stage, 27th June 2007, House of Lords

PART I

A) INTRODUCTION

Napo is the principal trade union and professional association that represents probation staff working in England, Wales and Northern Ireland. The union currently has over 9,000 members.

The Offender Management Bill was published on 1st March 2007 for consideration by the House of Lords. If it is implemented it will abolish the National Probation Service and replace it with a competitive market. Probation functions or whole Probation Areas could be privatised. In Napo's view this would be disastrous as it will erode local accountability, cooperation between agencies will be greatly diminished and public protection will be compromised. Napo welcomes amendments passed at Committee Stage which will: prevent conflict of interest; provide for local councillors and magistrates to be represented on Probation Boards and Trusts; ensure that an order has to be placed before parliament before a Trust is created; and prevent the Secretary of State from removing the exclusion of court work from the Bill by use of a simple Statutory Instrument. Instead, a report would have to be presented to both the Lords and the Commons and the draft order approved by a resolution of each House.

B) BACKGROUND

In January 2004 the Government published the Carter Report into 'Managing Offenders to Reduce Crime' and its own response 'Reducing Crime – Changing Lives'. This led then to the creation of the National Offender Management Service. Carter recommended that all individual offenders should have a nominated offender manager who would supervise the case from beginning to end. Carter also called for sentencing to be rebalanced so that Prisons and the Probation Service could cope with their caseloads. This recommendation was not acted upon but the Government did decide to introduce proposals to force the Probation Service to compete for its own work and introduce a market for the delivery of offender services.

Under the terms of the Offender Management Bill, the Secretary of State will assume the power to contract out probation services from local Areas to allow for the involvement of the private and not for profit sectors. It will also abolish Probation Boards and replace them with business-like Trusts and remove the requirement for magistrates and local authority members to sit on the Boards.

Oddly the Bill does not mention the National Offender Management Service at all and there is no reference to offender managers. No business case has been produced to support the arguments for the creation of NOMS or for the introduction of market forces. In a consultation document, 'Restructuring Probation to Reduce Re-offending', published in October 2005, out of 748 submissions just 10 were in favour of dismantling Probation.

Napo strongly supports partnership with the voluntary, not for profit and private sectors. The Service is already working in partnership on schemes which assist with rehabilitation, education, training and electronic monitoring. Napo believes that partnership rather than competition is the way forward. Indeed the Government's model for the voluntary sector has been criticised by the Charity Commission. On 21st February, Dame Suzi Leather warned that the future of Britain's biggest charities was being put at risk by the growing dependency on poorly funded contracts to deliver public services. The Commission's assessment came after a survey revealed that fewer than 1 in 8 charities running these services were confident that they were being paid enough to cover their costs. In fact only 26% of charities providing services said they felt free to make decisions without pressure to conform to the wishes of their funders. The Chief Executive of the National Council for Voluntary Organisations said on the same day that the trend towards state funding meant that many charities were not able to exercise independent judgement.

C) PRINCIPLES AND COSTS

Napo believes that the aims and values of the Probation Service have become confused over the past decade. The Government has emphasised Probation's role in terms of punishment and public protection, often at the expense of rehabilitation and reintegration. Napo believes, therefore, that the aims of the service need to be re-established, prior to any discussion of the contents of the Bill. The Probation Service is in its centenary year. The lesson from the centenary celebrations is that Probation's core objective was always about changing people's behaviour. Through supervision, offenders were encouraged to change their attitudes and lead law-abiding lives. Probation always emphasised the need to ensure that offenders complied with the conditions of the order. If that failed, breach proceedings were an inevitable consequence.

The cost of administering the corrections services has grown enormously. Figures contained in the Winter Supplementary Estimates for 2006/7 show that the total amount due to be spent on the centralised and regionalised bureaucracy of NOMS was £899 million compared with £832 for the whole of the Probation Service in England and Wales. Indeed, since March 2005 there has been a staggering 556% increase in the NOMS Head Office budget. Some of the increase is because of the NOMS administrative budget; and some of the increase is because of the transfer of staff and responsibilities out of Prisons and Probation into NOMS but, even taking this into account, the centralised budget has increased by £280 million in just 2 years. Napo believes that most of this has been spent on an IT project which is already delayed, and on consultants, advisers and commissioners. If some of this money were to be diverted to frontline services in the Prison and Probation Services it would resolve most of the current problems.

D) PRINCIPAL CONCERNS

a) Local Accountability

Under the terms of the Bill, local accountability will be eroded. The Probation Service was last reorganised in 2001 when it was hoped that the Boards which were created would be closer to local communities. Contrary to most of Government policy, which is about devolution, the NOMS Bill centralises the provision of services.

The Probation Boards' Association has pointed out recently that crime is predominately a local phenomenon, with local causes and solutions. A recent poll by YouGov demonstrated that the public views local, rather than national, services in a particularly positive light and looks for public agencies to cooperate. The PBA also noted in June 2006 that successful commissioning in any commercial venture or public sector activity is always 'close to the business' where operational matters are concerned.

It is essential that Probation works flexibly and responsively with the police, local authorities and other agencies. Napo is deeply concerned that moving to a regional or national model will undermine important public protection work with significant partners such as the courts, police, health services and local authorities. Indeed the work of the Smith Institute during 2006 has highlighted the need for greater local devolution. Along with other public sector services, the Probation Service has an overriding need to involve local communities in its work if public confidence is to be a priority. Instead of a 'centralise and control' model, Napo believes that the future direction of policy for Probation must be a shift to local accountability and local communities, through partnership not competition.

Napo believes it is critical that the membership of Probation Boards or Trusts represents the whole community and not just business. To that end the Boards should contain locally based individuals; partnership agencies, particularly the police, courts, local authorities, and health services; sentencers, both magistrates and judges; the voluntary sector, particularly victim support; and local community and council representatives.

b) Justification

Ministers have justified the introduction of a market first on the grounds that Probation's performance was poor and secondly by saying that re-offending rates were unacceptably high. Neither of these arguments is backed up by evidence.

i) Performance

The latest Home Office figures (March 2007) show that the Service is performing better than ever against its 30 Government targets. On 'enforcement', 92% of relevant cases were enforced within 10 days, which was in accordance with targets. A new compliance target was introduced in 2006/7, measuring the proportion of appointments an offender attends in the first six months of the licence. The target was 85%, and 82% was achieved during April to December 2006.

The Service was set a target that 70% of orders would reach the halfway point without breaching. That was achieved in 72% of cases. There was also a target to complete 90% of risk of harm analyses within the required time. That target is now being exceeded. Targets for completions of assessments on prolific offenders were also exceeded.

Last year the Probation Service was supervising 14,000 individuals where the risk to the public was considered high or very high. The latest statistics show that 0.44% in that category were charged with a further serious offence. Given the characteristics of the group, the offences they have committed and the fact that the vast majority are on parole, this is a surprising low statistic.

ii) Re-offending Rates

Home Office Ministers then claimed that re-offending rates were unacceptably high. Indeed in a private letter to Labour MPs dated 8 November 2006, the Minister, Baroness Scotland, claimed that nearly 60% of offenders on probation were reconvicted within 2 years. This it was claimed was similar to jail. This argument is now being used to justify privatisation.

In fact these figures are not true. The latest home office statistics (Home Office Statistical Bulletin 06/07 March 2007) show that re-offending rate for adults, aged 18 and over, on community sentences was 50.5% in 2004, the most recent year for which full figures are available. The comparable figure in 2000 for those who had custodial sentences was 64.7%. In 2004 the actual rate was lower than in 2000, when it was 53.2%. Also the cohort of offenders in 2004 was on balance more likely to offend than in 2000, with a predicted re-offending rate of 54.1. The combination of a lower actual rate and a similar predicted rate has led to progress against the target of 5.8%.

The Probation Service has, therefore, been successful at reducing and containing re-offending rates. The next cohort of results is due in 2008 and will contain the impact of Accredited Programmes which were in their infancy during the period 2001 to 2003, but have already made a significant impact.

Fig 1 – Actual two-year re-offending rate 2000 and 2004 cohorts

	2000	2004
Community Sentences*	53.2%	50.5%
<i>Community Rehabilitation Order</i>	61.1	59.6
<i>Drug Treatment and Testing Order</i>	N/A	82.3
<i>Community Punishment Order</i>	40.9	37.9
<i>Community Punishment and Rehabilitation Order</i>	61.3	52.2
Prison	64.8	64.7

* Figures for community service reconvictions are unadjusted

The Offender Management Caseload Statistics for 2004, which were published in December 2005, confirm that the reconviction rates reported were unadjusted. They include any subsequent conviction for a standard list offence in the follow up period after the date the order commenced. This means they include convictions for offences committed prior to the date of commencement, often termed pseudo-reconvictions. The document then says 'unadjusted rates cannot, therefore, be used to (a) assess effectiveness or changes in effectiveness over time or (b) compare the effectiveness of prison with probation or any other sentence.' The re-offending rates for Probation may well, therefore, be lower than the published 50.5%.

E) ALTERNATIVES

Napo believes that the Government's objective of greater cooperation between agencies and a reduction in re-offending coupled with the end-to-end management of offenders, could be achieved through multi agency cooperation. Scotland has rejected the notion of a National Offender Management Service and competition, and instead opted for the establishment of a statutory duty on Prisons and Probation to consult with each other and the voluntary sector on the provision of offender services. The Scottish Executive has also accepted the argument that services for offenders should be as close to the point of delivery as possible.

Accordingly Community Justice Authorities, comprising locally elected councillors, have produced plans on how cooperation will be realised and how service delivery will be enhanced. The NOMS Bill for England and Wales does not contain any requirement for the Prisons and Probation Services to cooperate. There are numerous examples in England and Wales where a duty to cooperate has been successful in delivering efficient services, including Youth Offending Teams and Multi Agency Public Protection Arrangements for dangerous offenders

F) CONCLUSION

Clauses 1 through to 15 effectively abolish the Probation Service and replace it with a market. Napo has argued that this will not work and that public protection will be compromised. There is an alternative which would lead to the efficient supervision of offenders, greater cooperation between agencies and a reduction in crime. The reorganisation of Probation could have been based on the Youth Justice model or on a 'duty to work together'. The Multi-Agency Public Protection Arrangements place a duty on probation and police to supervise offenders convicted of serious crimes. Scotland has recently rejected privatisation and placed a statutory duty on Prisons, Probation and the voluntary sector to cooperate together to reduce re-offending. This system, which came into play early last year, is working well. Napo hopes, therefore, that Members of the House of Lords will consider partnership rather than competition; local commissioning rather than regionalisation and the concentration of power on the Secretary of State; and on aims and values for the service which reflect the needs of probation in the 21st Century.

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