

White Paper Briefing: A Smarter Approach to Sentencing

From Napo the Professional Association and Trade Union for Probation and Family Court Staff – September 2020

The White Paper published 16th September 2020 outlines government proposals to reform sentencing and community orders. Below is Napo's response to the paper and highlights concerns with the proposals as well as unforeseen consequences of the reforms.

In 2019 Lord Woolfe said that there needed to be a full review of the terms of reference of the sentencing council as well as a full review of the guidelines as he felt it had lost focus of its original purpose, becoming more and more punitive. It is then disappointing that the Lord Chancellor did not undertake this as part of the paper. Napo believes that this is fundamental to any proposed sentencing reforms.

Napo is also clear that longer periods in custody does not aid rehabilitation and this briefing is written within that context.

Courts

Courts have been struggling with listings for some time now as a result of court closures and staff cuts. Covid-19 has further exacerbated this with an estimated 45,000 cases now awaiting court time. As a result, we are seeing trials for even the most serious offences being adjourned to 2022 and beyond. In order for any effective reforms to sentencing to take place this issue needs to be addressed as a matter of urgency by re-opening courts and not closing Nightingale Courts (one of which has closed after just 2 weeks).

As raised by David Lammy MP, problem solving courts introduced under the last Labour government, have proven themselves to be very effective and as such Napo agrees that there is no need to pilot these. Instead they should be rolled out nationally as soon as possible and courts given the funding required to do this. The closure of smaller local Courts does not create ideal circumstances for the introduction of problem solving Courts which should be connected to the local community. Their reopening (and the commitment to no further closures) could support the introduction of problem solving Courts while assisting in clearing the backlog of cases.

Pre-sentence reports

Napo welcomes the proposal to review the use of pre-sentence reports. As part of the last probation reforms an arbitrary target of 80% of all reports to be completed in a short format has contributed in a drop in quality in reports (as identified by HMIP) and therefore significant drop in courts ordering them (as identified by MOJ figures). Napo has opposed this target from day one as well as other stakeholders such as the Magistrates Association.

Napo believes that our members are best placed to determine what format a report should be written on based on the individual they are assessing, their needs and the risk they pose. Therefore, we see no reason to pilot “targeted” reports, simply allow practitioners to use their professional judgement. This would both improve the quality of reports (by allowing sufficient time for pre-sentence reports to be completed) and increase sentencers confidence in the assessments they are provided with.

GPS, Tagging and Curfews

Tagging has never really been fully utilised. In part because there is a lack of confidence in how they are monitored by the private sector. G4S and Serco have both been investigated by the serious fraud office for falsely claiming money for tags that have been fitted inappropriately or not at all. Whilst Napo welcomes the powers for probation to alter curfews as and when it is appropriate they have little control over the tagging process itself. For tagging to be both value for money and an effective supplement to other interventions this should be brought in house. Its effectiveness is currently undermined when providers fail to notify of breaches, are difficult to share information with and have little or no accountability.

Custodial Sentences

Napo is concerned that at a time when we need to be looking at developing a more progressive justice system the proposals to remove the automatic release at the half way point is a backwards move instead. Automatic release half way through a custodial sentence of 4 – 7 years was introduced by the last Labour government. With the exception of a few, very critical and horrendous cases, this has proven to be an effective way of using the licence period for more rehabilitation and public protection measures. Changing this back to two thirds reduces the amount of time probation have to work with an individual to reduce their risk and help to turn their life around during the resettlement portion of the sentence which can only happen in the community.

Preventing automatic release for certain prisoners of concern and relying on the parole board to deem them safe before they can be released, appears to similar to the now abolished IPP sentences which proved to have been disproportionate and have left prisoners wallowing in prison way beyond their original tariff. Napo is deeply worried that this measure, which can be imposed even if no further offence has been committed and concerns about risk do not have to be connected to the index offence may be open to abuse. Much more detail is required to reassure both practitioners and prisoners on what exactly these concerns relate to, what evidence is required to support refusal of automatic release and what needs to be achieved for a prisoner to be considered for release by the parole board. There are currently prisoners serving an IPP that have no prospect of release as they are unable to achieve the targets set by the parole board (for example offending behaviour programmes that must be completed for release but are not being offered in the establishment they are held or are not accessible to them because of mental health issues).

Rehabilitation and resettlement are not the same although they are both important. Rehabilitation can begin while in custody and will continue in the community. It is the process by which people make changes to their lives to enable them to desist from

offending. It may include education and training, addressing substance use, changing thinking and behaviour patterns, getting support with emotional wellbeing and mental health issues. Resettlement only happens in the community, although it should be planned while in custody. It is the process by which someone moves from custody to community and reintegrates positively into society. When people are released at the end of their sentence they may have begun their rehabilitation journey in custody but their resettlement will be done in the community with no support or monitoring by Probation as they will have no licence period. This also means that there will be no risk management on release.

It will also generate a considerable amount of additional work so reassurances are needed that the Parole Board will be adequately funded and resourced to prevent further back logs in the system.

Wider Reforms

Extending the victim service in probation is welcomed. However, the role of victim liaison officer (VLO) was downgraded by the Ministry of Justice during transforming rehabilitation. This has left our members feeling undervalued and sends a message to the public that this role is not really seen as critical. The changes will also increase workloads considerably for VLOs, many already working with hundreds of cases, so Napo would like assurances that there will be a targeted recruitment drive to increase the staff resource in this area. Napo welcomes the move to bring all interventions back in house under the NPS and the intention to integrate unpaid work into the wider community. Unpaid work is the most visible role that probation plays in communities. However, under Transforming rehabilitation many CRCs began to charge community groups for this service reducing access by small community groups to utilise it. Napo would like assurances that these charges will stop and that unpaid work can be accessed by all community groups.

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