

What should the ‘independence’ of IAPs look like?

*A personal viewpoint piece by Andrew Bridges, Strategic Director, NAPA
(views not necessarily shared by every NAPA Associate)*

1. Why are there independent APs (IAPs) at all?

There are historical explanations, described elsewhere, of how ‘Approved’ homes for delinquent boys and others, run by charitable bodies, evolved over time through several changes of use into the IAPs of today. But now, in the first three decades of the 21st century, there are ‘business case’ reasons why IAPs have moved from being an anomalous relic from the past into becoming a key component of the Criminal Justice System (CJS) of England & Wales.

This transition started once all the APs in England & Wales began to be used almost exclusively for men and women being released from prisons, a change of use that had been long overdue. Once this new usage had become established, demand for AP places began to grow. Rightly, the Ministry of Justice (MoJ) – established in 2007 – sought to ration the supply of places by restricting eligibility primarily to individuals who were assessed as being of high risk of harm to others, stipulating that the principal purpose of APs was for “public protection”. Nevertheless, the demand for AP places generally has remained high, and projections made by the MoJ still predict further future increases in demand, especially with rising pressures in the prison population overall.

2. Why does MoJ/HMPPS now want IAPs?

Because the MoJ is forecasting an increase in demand for AP places, HM Prison & Probation Service (HMPPS) wants to increase the number and range of them that are available at any one time. At first sight, the position looks positive, with HMPPS already directly managing c90 APs itself, besides which the dozen or so independent APs (IAPs) might seem to be making a very modest contribution. But the difficulty is with how to *increase* the numbers of AP places. Sometimes a few bedspaces can be added to existing premises, and this has been done sometimes, but the need to try to meet potential future demand requires new APs altogether, especially in those geographical areas where there are not enough APs – or any, in some instances.

Opening a new AP is a remarkably difficult task. Not only does there have to be a building that needs to be either purchased or built from scratch, but more importantly it has to gain the right planning permission for it to be used as an AP – and any application to house “ex-prisoners” in a local community almost always leads to a strong adverse public reaction. It is not impossible for HMPPS to establish a new AP directly itself, but in the main it is instead a much more attractive option for HMPPS to invite independent providers to bid to provide an IAP in a specified area of the country. To illustrate this point: During 2021 and 2022, HMPPS managed to open one new directly-managed AP itself (though this was replacing an existing AP), but in contrast was able to gain four new IAPs by commissioning them from independent providers.

So although there are, as ever, financial restraints, HMPPS sees APs generally as a key component in its overall task of managing and supervising individuals who have offended, and sees the IAPs as making a particularly important and valued contribution within that component.

3. Are there other potential considerations?

The ‘outsourcing’ of some public services can sometimes be driven by overtly ideological motivations, as was the case with rail privatisation in the 1990s, and the part-privatisation of Probation services in 2014. However, although the commissioning of services by IAPs is consistent with Conservative ideology, there is little in its history or development to suggest that ideology has been the main driver in the case of IAPs – instead it has been the pragmatic ‘business case’ outlined above.

Nevertheless, within the ‘business case’ approach, when commissioning any service, the question of ‘competition’ arises, which has two potential elements: competition between potential independent providers, and competition between the independent sector overall and the public sector:

- Competition between independent providers takes place at the stage of awarding contracts, and in the first two decades or so of the 21st century, MoJ/HMPPS has developed increasing care to ensure that contracts for any of its services are to be awarded following full and fair competition between providers, both current and potentially new providers. This process for awarding contracts is heavily regulated within Government, and in the 2020s decade it is being applied conscientiously.
- Competition between the independent sector and the public sector, however, is rarely discussed openly at all, and probably with good reason. The lesson from prison privatisation has been that it is next to impossible to make a useful and fair comparison on primarily financial grounds between publicly managed and independently managed prisons because of factors such as the costs of public service pensions, of Crown Immunity (compared with commercial insurance), and the various capital costs, which mean overall that you will never really be ‘comparing like with like’. Although direct ‘competitions’ have been run between public and private prisons the evaluations have necessarily had to be made on a series of qualitative judgements on the information provided. Given that, in such competitions, ‘Government’ is acting as both the commissioner and as one of the competing providers, those competitions have been considered by some to be in principle unsatisfactory too¹. For this reason, and for the pragmatic reasons outlined further above, the question of direct competition between IAPs and the state-run sector may be unlikely to arise.

4. What does MoJ/HMPPS therefore want from the IAPs?

Despite the many practical obstacles that make it difficult for Government to compare like with like when evaluating competitive bids, nevertheless the desire to maximise value for money for the public during times of continued financial restraint will still apply. But, for the reasons given above, a desire to drive down cost does not seem to be the main motivation for HMPPS to develop the IAP sector. The ‘business case’ for consolidating, and ideally expanding, the provision of IAPs would appear to be a pragmatic one: There is a growing demand for places, and the independent sector seems to offer a much more promising route to meeting that growth in need.

This then leads to the key question of this paper: If the provision of AP places for individuals being released from prisons in England & Wales is to be met by a mixture of state-run and independent institutions, how far should those institutions be exactly the same as each other, or can there be differences? (and if so, what?) NB A similar issue arose with ‘public’ and ‘private’ prisons.

As ever with a national service of any kind, there is a strong drive within HMPPS for consistency, and the reasons for this are understandable. When differences can be found between provision of any public service in different geographical parts of the country, a cry of ‘postcode lottery’ is easily raised by critics, and legal actions based on such arguments have been successful in the past. But how far should that drive for consistency go?

One lesson that has perhaps been learned from the prison privatisation experience is that certain elements of national ‘infrastructure’ must apply to both sectors, notably the facility to allocate and manage individual cases. Standards of physical security etc need to be consistent nationally too.

But when we focus specifically on managing residents within each local IAP there is some scope for variety that is both feasible and desirable - a mix of national consistency and local creativity. However, the problem is that although MoJ knows it wants, from its providers, some of that

enterprising creativity within a high degree of national consistency, it doesn't have a framework (or rationale, or 'strategy') for defining how that mix of consistency and creativity should be made up.

Without this framework, MoJ/HMPPS goes into its 'default mode' of driving for consistency; it has a tendency to slide into setting increasingly detailed prescriptions about how the work should be done. The unfortunate effect of this is to 'squeeze out' much of the creativity that MoJ actually wants to see from IAPs.

In short, MoJ knows that it wants a mix of consistency and creative initiative from its providers (it talks helpfully of "Social Value"), but – I argue – it does not know how to define that mix.

5. Therefore, how should the mix between consistency and creativity be defined?

As already indicated, this question probably needs answering under two separate sub-headings, National infrastructure, and Local delivery:

i) National infrastructure:

It might sound unnecessary to say it, but there does need to be a high level of consistency in the way that the IAPs function as part of the 'national system': standards of building security, drug testing arrangements, being part of whatever case allocation systems that HMPPS establishes, and operating the same national case management, and email/comms systems. The reason that it perhaps needs saying is that with early private prisons they were allowed to establish their own case management IT systems, which led to difficulties with maintaining case management when individual prisoners were moved between prisons and were then release on licence. This arrangement had to change.

In the AP world, it is already the case that HMPPS acts almost as direct management when it comes to such matters of 'national infrastructure', including direct arrangements for providing upgraded security equipment in IAPs. To a very large extent, under this heading there is very little scope for 'local creativity', and therefore for good reasons 'consistency' is the dominant consideration.

ii) Local delivery – work with individual IAP residents:

Here, the picture should be quite different. In principle, the answer to the question is not complicated, even though the detailed implementation requires some additional thinking-through:

The principle is: Prescribe WHAT is to be achieved, but only Advise HOW it should be achieved:

- The commissioner should specify, wisely, the operational outcomes – the measures of what success looks like – and Prescribe that this is WHAT it requires from its independent providers –
- But although it might offer Advice, it should avoid prescribing HOW those outcomes should be achieved, because working with individual residents is – of course! – an individualised service.
- For example: You commission the taxi, the destination and the agreed price, but you don't then 'backseat drive' the driver through every step in the journey.

The difficulty is in the application of this principle within the 'messy reality' of the AP world - indeed in Probation work generally – especially while MoJ/HMPPS continues to make a poor job of defining and managing the outcomes it wants for Probation. However, I have previously demonstrated, both in principle and in my own past practice, how the core outcomes of mainstream Probation work, the Three Purposes of Probation, can be defined, managed, implemented and even inspected.²

The Three Purposes are: Reducing Likelihood of Reoffending, Implementing the Sentence, and Containing Risk of Harm to others. I have also set out³ how these should be measured as **outcomes** (and have done so in practice myself in the past). It is difficult to operate this, but it can be done, though it requires a determined focus.

There is then the further additional challenge of trying to focus on just one, relatively ‘short’, stage in the rehabilitation journey that is being undertaken by each person on Probation, such as a period of residence in an AP. (Individuals deemed to be of High Risk of Harm to others will normally stay at an AP for no more than 12 weeks on their release from prison.) In principle there is the need to set ‘interim’ outcomes for this stage of the rehabilitation journey – i.e. **achievements** by the individual that will mark *progress towards*, or ‘stepping stones’ towards, future desistance and the other longer-term outcomes. It is these that provide the basis for the ‘WHAT’ that the commissioner needs to specify for AP work. APs make their contribution to the longer-term outcomes by enabling residents to achieve such ‘stepping stones’ of progress on their individual desistance journeys, and APs – particularly IAPs – need to be able to demonstrate that they are delivering that **contribution**.

So, it is argued here, IAPs should be accountable for demonstrating that they are making that contribution, but there should be the scope to be creative in how they make that contribution. Accordingly, when MoJ/HMPPS asserts that it wants a mix of consistency and creativity from its IAPs, it is logical to argue that **the consistency should be with WHAT it wants to see achieved during the period of residency, and the creativity is about the HOW it is to be achieved.**

6. For example

Quality of practice: Rightly, both managers and practitioners like to talk about this. It can be defined as a key ‘Enabler’ in the process – that enables the individual to progress on his or her desistance journey. Assessment and preparation before arrival, induction and assessment after arrival, and continuing interaction during residency, all require good quality practice by IAP staff.

Unfortunately, there has for many years now been a tendency to try to promote such Quality by issuing ever more detailed stipulations, guidances, checklists, forms and formats – all with the best of intentions – often designed by skilled current or former practitioners; but this is a mistake. These well-intended initiatives are based on the fallacy of ‘comprehensiveness’ as they endeavour to cover every eventuality. Yet a single format, such as OASys (Offender Assessment System), cannot cope with every eventuality anyway, and meanwhile it runs the great risk of becoming ‘a long form that you just have to fill in’ rather than an opportunity for the practitioner to engage with and think about the unique features of the individual they are working with. This ‘comprehensive stipulation’ approach is a classic example of Prescribing the HOW, which, as well as being time-consuming, also stifles creativity.

Alternatively, when defining Quality of practice, it is instead possible to Prescribe the WHAT. You define what you want the individual to have experienced as a result of the interaction – i.e: the resident will have been assessed well before arriving, is inducted well on arrival, and is managed well during their stay. Doing each of these things “well” can be made more specific, e.g. For Induction, “The resident will have experienced a humane and respectful face-to-face interaction in which she/he has been made aware of her/his rights, responsibilities, constraints and opportunities while at the AP.”

By Prescribing the WHAT instead of the HOW, skilled practitioners will undertake and write their assessments, plans and reviews in way that is focused, succinct and appropriate to the needs of the case, rather than as a series of ‘answers’ on a long form that was designed to meet some external ideal of comprehensiveness.

Staffing: In terms of staffing of any individual AP, this is also a matter for local delivery – not national infrastructure – so again it should be Prescribed in terms of WHAT is to be achieved – that residents will be in an environment which is safe, and where they are treated with respect, and are being expected to work to progress their own rehabilitation journey etc. It is not necessary or desirable to prescribe HOW the staff profile or establishment should be made up.

7. Why is this all very difficult?

‘Drawing the line’ between the WHAT and the HOW is difficult at the best of times. It is especially difficult for the commissioning authority – MoJ/HMPPS – to do this while it remains insufficiently clear about the overall outcomes it wants from Probation work overall. While that overall strategy

remains unclear at the macro level, it is not surprising when at the micro level its managers and commissioners find themselves composing increasingly detailed procedure manuals, guidance documents and forms in their efforts to stipulate how Probation work should be carried out.

It is not the purpose of this paper to set out the full case for how Probation work overall could and should be much better managed – that has been done elsewhere⁴. But in a nutshell, a clear focus on the core Three Purposes of Probation would make it clear to Parliament and to the public what Probation work is aiming to achieve, and at the same time would provide a framework within which the various elements of the ‘Probation world’ should **make their contributions towards** the achievement of those Three Purposes. In the case of APs – both state-run and independent – although they generally keep a resident for no more than 12 weeks, they can still be expected to make their contribution towards that person becoming less likely to reoffend, complying with their sentence, and having their Risk of Harm to others contained and managed. When successful, a period of AP residency serves as a ‘stepping stone’ on an individual’s desistance journey.

These ‘contributions’, or ‘stepping stones’, are difficult to define at the best of times, but when the overall strategy is insufficiently clear, then micromanagement, overprescription and setting plausible-sounding detailed objectives will seem to some to offer an attractive way of filling the vacuum, even though these can all easily stifle the individual creativity that is also wanted. That lack of strategic clarity by MoJ/HMPPS is why defining the boundary between the WHAT and the HOW, which is difficult to do anyway, has become especially difficult at the operational level. Instead, a strong focus on the Three Purposes could provide the clarity needed to enable Probation work generally to be managed with the ‘right mix’ of consistency and individual creativity.

8. Summing up:

A commissioned service, such as an independent AP, should certainly expect to work within a centrally managed national infrastructure as it aims to achieve the outcomes that have been specified (“Prescribed”) by the commissioning authority – it should not expect to be able to decide, ‘independently’, to aim for different outcomes. However, what an IAP should be able to do – independently – is exercise its creativity in how it goes about achieving the Prescribed outcomes. Accordingly, **the commissioning authority should Prescribe WHAT outcomes are to be achieved, but should do no more than Advise HOW those outcomes should be achieved.**

It is understandable that MoJ/HMPPS, the commissioning authority, finds it difficult to carry out this approach in practice because it does not yet focus clearly enough on the core Three Purposes of Probation supervision. Once that focus is reached, it will become a little easier to specify the interim outcomes – the “stepping stones” – that IAPs need to be aiming for in order to demonstrate that they are making their contribution towards making more likely the achievement of the Three Purposes.

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¹ Le Vay, Julian, *Competition for Prisons: Public or Private?* Policy Press, Bristol (2016)

² Bridges, AM, ‘An Introduction to Modern Probation Theory’,

https://www.andrewbridgesprobation.com/files/ugd/b9d8fa_d2d294f19f694189a1dccc0ed73e95d.pdf (2022)

³ Ibid

⁴ Ibid