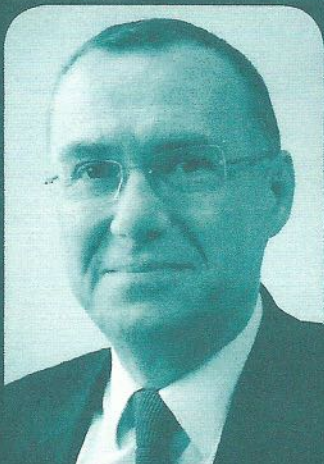


HM Inspectorate of Probation Annual Report 2009-10

Independent inspection of
adult & youth offending work



FOREWORD

**BY ANDREW BRIDGES CBE
HM CHIEF INSPECTOR OF PROBATION**

WHAT PRICE PUBLIC PROTECTION? – NO TRITE SOLUTIONS

As ever I am very proud indeed to present this Annual Report of the work of HM Inspectorate of Probation. We independently inspect adult & youth offending work in order to help improve effective practice.

'Quality':

We focus not so much on each organisation's targets (although targets can sometimes be important) but much more on how often practitioners do the right things with the right individuals in the right way at the right time – this is what we mean by effective practice. Practitioners mainly welcome our focus on what they rightly perceive as being 'Quality'.

Inspection is hardly a 'burden':

We examine representative samples of cases each time we inspect, which means that rather than require respondent bodies to produce data and documents especially for us we are simply asking them to 'show us their work' and discuss it with us. I have therefore viewed with some impatience the claims from some quarters that it is somehow excessively "burdensome" for public authorities to receive an inspection visit for one week once every three years, where we examine the work actually done with a sample of cases. There is a 'cost' of course to the respondent body, particularly for the practitioners whom we ask to discuss their work with us or even assist with some of the case assessments, but in my view most taxpayers would not consider our triennial visits unreasonably "burdensome".

A focus on Public Protection and Safeguarding the vulnerable:

The latter point is especially true given that we have over the past five years focused increasingly on the *Public Protection* and *Safeguarding* aspects of adult & youth offending practice. Catastrophic events such as a serious crime, or the death of a child, cause enormous public concern when the question arises about whether it could have been prevented, and in our various reports we have tried to be candid about what is or is not achievable in preventing such catastrophes. It was in our 2005 report on the Peter Williams case that we first pointed out that 'risk' to the public could not be eliminated, but the public were right to expect the authorities to do their jobs properly. We have repeated that point in subsequent reviews of individual cases (Hanson & White, Rice, etc) and in various inspection reports. We have strongly criticised some individual practice on occasions, but what we've criticised is a failure to 'do all that they reasonably could' rather than a failure to achieve the impossible.

Evidence of improving practice:

I make these introductory remarks in order to lead into some general comments arising from our work over the past 12 months. Focusing in this Foreword on *Public Protection* rather than *Safeguarding* (though both are equally important to the public), I can emphasise that our two core inspection programmes now include a measure of how often the *Public Protection* aspect of practice was carried out to a sufficiently high level of quality in the samples of cases which we have examined in each of our inspections across the country. It's a 'high bar' that we set, though not an impossible one, and the encouraging news is that overall both Probation and Youth Offending practice are showing evidence of improving over time. It goes without saying that there is always scope for further improvement, especially in those individual local areas where the score has been weak, but it is worth noting in this Annual Report that the general overall trend nationally is in the right direction.

Serious Further Offence reviews:

Peter Williams was one of two robbers who murdered the Nottingham jeweller Marion Bates in 2003. We found a failure by the electronic monitoring company to notify the Nottingham Youth Offending Team that contact had been lost. Damien Hanson and Elliot White murdered the London banker John Monckton in 2004, and we found a "collective failure" by the relevant staff to manage those cases properly. Anthony Rice murdered Naomi Bryant in Hampshire in 2005; in our judgement certain mistakes led to a "cumulative failure" in the way that the case had been handled over the sentence as a whole.

The price of Public Protection:

However, this does lead me to offer some further reflections on the wider subject of the public's expectations of this work, and the price we are all collectively prepared to pay for it. 'Price' is an especially topical aspect at a time when all public expenditure is under particularly close scrutiny, but the 'price' cannot be measured solely in financial terms.

It is well known that the prison population has grown from less than 50,000 to over 80,000 in the past twenty years, and there are heated ideological debates to be had in some quarters about whether that growth has been good or bad (or even 'not enough!'). My focus here though is not on the ideology but instead to consider the costs and benefits, insofar as they can perhaps be 'measured'. Some aspects – for example, the *retributive* purpose of prison – cannot readily be measured by any rational means. Surveys by Ipsos Mori (for example) appear to show that many of the electorate who were polled and interviewed say (in effect) "*I know that prison doesn't necessarily do any good, but I still want more criminals locked up for longer anyway*". It can plausibly be argued that in a democratic society it is a legitimate position for voters to take the view that for them it is good value for money to want convicted offenders locked up at an annual cost of at least £40,000 per head, perhaps for solely *retributive* purposes.

Other purposes – the *rehabilitative* and *preventive* purposes – are more open to measurement in principle, even though they are fearsomely difficult to measure in practice. Indeed, in terms of *rehabilitation*, the past few years have been a largely unsung success story for NOMS. Although some of the specific figures quoted have been open to challenge by some including ourselves (for methodological reasons), it nevertheless remains true that in 'big picture' terms a small but significant improvement has been achieved during the past few years. In contrast to the long term picture during the post war years, in which nothing really made much difference to reconviction rates, the trend over the past decade has been a small but identifiable decrease in reoffending.

This is a hugely complicated subject, because it is so difficult to ensure that you are comparing 'like with like' and thus successfully isolating the effect of the 'intervention'. (Many individual 'projects' report eye-catching improvements in reoffending rates, but these rarely stand up to close scrutiny.) However, the technique of measuring 'actual reoffending' versus 'predicted reoffending' is a credible technique, and I welcome the fact that it is one of the current methods used by the Ministry of Justice to measure progress over time nationally, though I have some reservations about its value as a local performance measure. Alongside other evidence it leads me to the view that over the country as a whole a small but identifiable decrease in *reoffending* is being achieved at both adult and youth level. (NB This is a separate point from the reduction in general crime rates, which has also taken place over the past few years.)

Of course there continues to be a large number of victims of crime each year, and since unsurprisingly many offenders are repeat offenders these victims may not be consoled by the assertion that but for effective work by Probation Trusts and Youth Offending Teams things could have been worse – but it's still true. The small improvement is a significant one in an historical context, though it is also one that Probation and YOTs will want to build on by making further improvements. My aim is that inspection will continue to help make a contribution to that by identifying where improvements need to be made.

The *preventive* purpose is even harder to measure (Here I am using the term *preventive* to refer solely and narrowly to the 'incapacitation effect' – the undiluted fact that if a person is in custody they cannot commit an offence in the community): For each person in custody, how many crimes, and of what nature, would they have committed if they had been at liberty instead of in custody? In my view, it does the liberal argument no credit to suggest that the huge rise in the prison population has made no contribution at all to the reduction in the general crime rate in recent years – the fact that it is hard to measure doesn't mean it doesn't exist at all. But at a time when public expenditure is under especially close scrutiny it would be wise to consider the price paid for this rather drastic form of crime prevention, both financially and otherwise.

I therefore offer some calculations and projections arising from two recent developments in the way imprisonment is used in England & Wales, one at the 'low seriousness' end of work with sentenced offenders, and one at the 'high seriousness' end. It is not my role as Chief Inspector to advocate one policy approach in preference to another, but it is very much part of my role to offer well-evidenced 'fair comment' to analyse how things are working in practice currently, and to draw attention to the possible policy options for the future. Crime is a very emotional business, and most discussions of the subject generate more heat than light. We have previously advocated 'more light and less heat, please', and my aim here is to shed some light on this emotionally charged topic. All such calculations and projections have to consist of broad approximations and conjecture, though mine do at least consist of informed approximations and conjecture – and I've shown the 'working out' in separate boxes in the margins next to this Foreword.

End of Custody Licence 2007-10:

In certain quarters there was great outcry about the early release scheme (now ended), whereby approximately 80,000 relatively 'low seriousness' prisoners were released up to eighteen days early each from their sentences from June 2007 to March 2010. The very low rate of reoffending of such a large number of individuals still led to a 'high-looking' total number of around 1,500 further offences.

Looking at the matter from solely a *preventive* perspective, it would be hard to deny that those 1,500 offences would have been prevented if those 80,000 prisoners had stayed in custody during those eighteen days. But the follow-on questions also need to be asked: What would it have cost to have kept them locked up? How many offences would these individuals have committed – and/or did they in fact commit – in the first eighteen days after their original scheduled release date? How many more would they have committed if released a further eighteen days early? It's hard to see that the rate of reoffending is likely to vary much either way, whether one is released a couple of weeks before, or a couple of weeks after, one's originally scheduled release date. (Equally, one wouldn't argue either that the rate for one fortnightly period should be used to project a rate of offending for a whole year.)

In each of the two full calendar years in which the 'End of Custody Licence' scheme operated, there were about 30,000 prisoners released approximately a fortnight early each. Over each year, around 500 of them committed around 600 offences in total, and were recalled (a further 500 were recalled for breaching the terms of their licence, but not for further offending). The approximate cost of keeping 30k people in custody for around a fortnight is £48m, which gives a notional calculation of **£80,000 to prevent each offence for just over a fortnight.**

Of course this was a 'select' group of relatively 'low-seriousness' prisoners, assessed as suitable for release up to eighteen days early, and therefore a low rate and seriousness of reoffending is to be expected. Furthermore, the identified cost of keeping that group locked up now, since the early release scheme has now ended, is not readily realisable ('cashable') in practice as a variable cost anyway – though it does become very much a real variable cost as soon as we create more prison places at about £170,000 each (start-up costs).

Basis for calculations re End of Custody Licence cases:

The Ministry of Justice published regular Statistical Bulletins on End of Custody Licences and recalls. I have referred to the two complete calendar years of 2008 and 2009 in order to project an annual rate in round numbers. These Bulletins show that in 2008 31,318 prisoners were released, and that 497 individuals committed 658 further alleged offences, and in 2009 29,371 were released, with 454 individuals committing 584 further alleged offences. This provides a relatively solid basis for projecting that releasing 30,000 selected prisoners just over a fortnight early each year leads to around 500 of them committing about 600 offences in total each year.

Spurious exactness should always be avoided when dealing with statistics such as these. It is reasonable to divide the currently cited figure of c£40k per annum by 25 to produce a figure of £1,600 for each prisoner for the fortnight, and multiply that by 30,000 prisoners to produce a figure of £48m as the cost of imprisoning them all for that period. Divide that by 600 offences and we have £80k for each offence. Having said that, I readily acknowledge that early release does not produce an immediate direct saving of £48m because it is not a direct variable cost. It only becomes a 'real' saving once it becomes time to build new prison places, at a commonly cited start-up cost of £170k per place, and then £40k per annum each after that.

'IPP' sentences:

At the other end of the 'seriousness scale' are the prisoners currently serving indefinite sentences. Life sentences are well established and, although mistakes are sometimes made, as we have commented ourselves in the past, the system functions well in most respects. It is not possible to eliminate risk to the public altogether, but overall the rate of reoffending by former 'lifers' is low. But as we found in one of our joint inspections this year there are continuing serious problems of a different nature with the other main indefinite sentence, IPP (Imprisonment for Public Protection).

In October 2008, the first joint report on IPP by the Prisons and Probation Inspectorates reported in critical language on the influx of prisoners serving these new indefinite sentences, and in March 2010 our second joint report went on to describe the emerging position as "unsustainable". We reported that in December 2009 only 75 IPP prisoners had been released and stayed out (in total since 2005), while there were around 70 newly sentenced IPP prisoners every month entering prison. Of the 5,788 IPP prisoners in custody, 2,393 had passed their 'tariff date', i.e. the period announced by the judge as the due punishment for their offence. In effect, these 2½ thousand prisoners are now being locked up as a form of preventive detention, as was the intended policy of course. So it is worth considering both the costs and the benefits of this policy.

I've calculated the net cost of keeping this group of prisoners locked up, rather than being carefully managed in the community, as being in the region of £80m per year. While you can never be sure of any precise answer to the 'What If?' question, my cautious (pessimistic) projection is that if at liberty this group as a whole might commit as many as 40 serious crimes a year altogether (though it could well be as few as 12). This works out at around **£2m or more per year to use imprisonment's incapacitation effect to prevent each individual further serious crime.**

Basis for calculations re IPP cases:

The current average cost of imprisonment is now cited by NOMS as being at least c£40k per annum per head. It could be argued that IPP cases are kept in the higher security and therefore more expensive prisons, but I've kept with the £40k average figure. There isn't a 'cited annual cost per case' for managing cases under the Multi-Agency Public Protection Arrangements (MAPPA), but I've worked on c£8k per annum for a 'Level 2 or Level 3' case. Hence the 'net cost per head per year' of keeping someone in prison rather than in the community on this level of restrictions is c£32k. For 2,400 cases that gives a net cost in the region of c£80m pa.

The October 2009 MAPPA report shows that 10,898 cases being managed 'at Level 2 or Level 3' (i.e. a high level of restrictions) committed a total of 48 serious crimes in the previous year – about one in 220. It would seem prudent to deduce that there would be a higher proportion of crimes per case by IPP cases if released, but it would be a major surprise if the figure were more than one in 60. (This is because we've not found higher rates of serious crimes than one in 60 even among large samples of High/Very High Risk of Harm cases who were not under MAPPA.) Therefore, although it is never possible to give an exact answer to the 'What If?' question, it is reasonable to quote 'a range of between one in 60 and one in 200', and it is cautious (pessimistic) to quote at this stage 'one in 60' as the basis for the probable occurrence of further serious crimes if 'post-tariff' IPP cases were out and being managed by MAPPA in the community. For 2,400 cases that is 40 per year (as a high projection) – it could well be as low as 12 per year.

A 'non-financial' price:

The costs are not only financial ones. It is also important to remember how many people who are not going to commit further offences are being locked up 'unnecessarily' in order for us to be sure that we are locking up the ones who will.

In the case of the End of Custody licence the ending of this scheme now means that we are keeping locked up 30,000 prisoners each year for a fortnight or so longer than we had been until recently. In terms solely of preventing crime we are being effective in preventing about 500 of them from committing around 600 offences during that fortnight, while for the other 29,500 or so the new fortnight in custody is not strictly 'necessary'. We're therefore in effect locking up 59 'low seriousness' people who don't need to be locked up, in order to lock up each one who is going to offend again in that very short period.

When we turn back to the subject of the relatively smaller group of prisoners who have committed serious crimes and are now serving indefinite sentences, we are dealing with 'high seriousness' people who commit types of offences that are statistically rarer, and we are looking at a whole year instead of just over a fortnight. My cautious projection suggesting that the group of 2½ thousand IPP prisoners who have passed their 'tariff date' might commit as many as 40 serious crimes a year means that the proportion of such reoffenders is again in the region of one in 60, though this time over the course of a whole year. This means that we are therefore in effect probably locking up at least 59 'high-seriousness' offenders who don't need to be locked up, in order to lock up each one who is going to commit a further serious crime some time during a whole year.

The same question can then be considered the other way round: Is the public prepared to accept the 'cost' of having more prisoners managed in the community, in terms of a proportionately small amount of reoffending, in order to achieve the 'benefit' of substantial financial savings, and knowing that people are not being expensively locked up for longer than they need to be?

Trite solutions to this question should be avoided, and grown-up choices need to be made instead. Although the authorities can predict *probabilities by groups*, it is impossible to predict *certainties by individuals*. 'Risks' to the public cannot be eliminated, and individual incidents should not necessarily be seen as evidence of the system failing. In this light, policy options need to be considered in a mature way.

Meanwhile the public does need to stay informed about whether the relevant authorities are 'doing all they reasonably can' to keep *Risk of Harm to others* to a minimum. As I enter my final year as Chief Inspector I trust that independent inspection by HM Inspectorate of Probation will continue to provide the best means of measuring how often they are achieving this.

Andrew Bridges CBE
HM Chief Inspector of Probation

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Predicting and managing harmful behaviour:

Most of the public advocate the idea of keeping locked up the people who are a danger to others, and allowing the release of those who are not going to offend again. There is only one snag: although the authorities can predict *probabilities by groups*, it is impossible to predict *certainties by individuals*. In this sense it is similar to car insurance: companies are very effective in predicting correctly that some types of people (young, male) are a 'high risk', while others (older, female) are much less of a 'risk' – but there are still plenty of 'high risk' individuals who don't crash their cars, and plenty of 'low risk' individuals who do. Similarly, when managing offenders in the community, the authorities can correctly do everything within their power to minimise each individual's *Risk of Harm to others*, but a small number of them will inevitably commit a further serious crime even when everyone involved has done their job properly. The dreadful impact of each individual catastrophe, despite their relative rarity, makes it very difficult indeed to determine what level of risk to the public should be deemed as 'acceptable'.