



NAPO Cymru's response to the Commission on Justice in Wales

June 2018

The Commission on Justice in Wales (the Commission) has been established by the First Minister of Wales to review the operation of the justice system in Wales and set a long-term vision for its future, with a view to:

- 1 Promoting better outcomes in terms of access to justice, reducing crime and promoting rehabilitation.
- 2 Ensuring the jurisdictional arrangements and legal education address and reflect the role of justice in the governance and prosperity of Wales as well as distinct issues that arise in Wales.
- 3 Promoting the strength and sustainability of the Welsh legal services sector and maximising its contribution to the prosperity of Wales.

Of the five workstreams identified, NAPO Cymru is primarily focussed on the first, namely

- Criminal justice, including policing, probation and prisons

NAPO Cymru's view is that the Probation Service in Wales should be

- **Unified**
- **Not for profit**
- **Run as a distinct profession and organisation in its own right**
- **Managed to high consistent standards**
- **Sufficiently flexible and nimble to create, sustain and develop local partnerships and strategies that reflect and serve the communities in which it works**

We invite the Commission to take a bold and holistic view of Probation and to envision for the future a unified Probation Service of Wales

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Introduction

(i) Rehabilitation and Public Protection

“Probation” is the core provider of services to supervise and rehabilitate offenders in the community. All offenders sentenced to Community Orders by the Courts, and all offenders released from custody, on licence (and Post Sentence Supervision) are supervised by “probation”. “Probation” provides assessments and sentencing recommendations to the Courts and Parole Boards. “Probation” Officers work closely with police, social services, housing providers and local authority departments, coordinating work to both safeguard the public and rehabilitate the offender.

(ii) The Post-TR landscape

“Probation” is now not a thing. In 2014, the “Transforming Rehabilitation” programme saw the dissolution of the independent Probation Trusts, and the launch of the new Civil Service embedded National Probation Service (NPS) and privatisation of a large swathe of “Probation” to “Community Rehabilitation Companies” (CRCs). The CRC in Wales is owned by Working Links, a subsidiary of the firm Aurelius, a German Investment Company. The current CRC contracts will run until February 2022.

Transforming Rehabilitation has been -to use the term originally coined in its honour- an omnishambles. We will not describe at length the litany of failures and problems that have resulted from this: those who wish may refer to the evidence gathered by HM Govt Justice Select Committee, a succession of damning HMIP Inspections, the record of the recent Wales Select Committee, and mainstream media from the Times to the magazine “Private Eye”.

(iii) NAPO’s view: unification and not-for profit

NAPO Cymru’s view is that our Probation Service should be

- Unified
- Not for profit
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It is our view that Wales is both big enough, and small enough, to establish a Probation Service of Wales that would be a template and beacon of excellence for others to follow, grappling with the issues following TR. Wales is distinct in its visionary legislation, strong and sustained tradition of partnership working and collaboration, and grasp of the business of providing services across wide areas, rural and urban.

(iv) A challenge and an opportunity

Napo Cymru invites the Commission to consider “Probation” as a whole. In its work, the Commission will look at the role of different organisations and institutions within the Justice sector, and indeed those other organisations whose roles intersect with the delivery of crime reduction, public protection, justice and rehabilitation. When the Commission considers “Probation” it must form a view of what “Probation” is, and what it should be.

(v) Probation is unstable

Probation has been through significant changes, and remains unresolved, in a state of flux. During the lifetime of the Commission more changes will occur as the CRC contracts come to a close. It is unlikely that they will be renewed in their current form: at the time of writing it is uncertain that some CRC contracts, including that of Working Links, will remain intact till the contract end-date, with a recent report of government intentions to redraw even larger boundaries and re-tender a smaller number of even larger contracts. There is scope – and already discussion – about the potential for the area of work consigned to CRC’s to be devolved. In both Manchester and London, positive developments in devolution of criminal justice have been made.

(vi) The Split Service is unsustainable

In the discourse around probation services, there is often an assumption that the NPS is a bastion of stability and satisfactory and sustainable performance. This is not the case. It is our strongly held view that failing to recognise that the problems besetting probation begin with the splitting up of the profession/organisation, will bring unsatisfactory results.

(vii) The professional culture of Probation must be protected

The embedding of “Probation” alongside -and in effect under- the prison establishment, and its developing links with the Police service, threaten the culture and professional identity of an already fragmented and enfeebled Probation.

We invite the Commission to take a bold and holistic view of Probation and to envision for the future a unified Probation Service of Wales

1 What is working well in the justice system in Wales? What is not working well? Are there examples of innovation and good practice, both in and beyond Wales, which should be adopted and shared?

1.1 Complex local services that provide complex services to local communities are best designed and built from the community up. Probation used to work like this, in partnership with other local agencies and stakeholders, utilising expertise from charities and accessing user voice and the local “lived experience”. The part nationalisation of probation removed this localism whilst the part privatisation and introduction of the profit motive in CRCs removed the trust between local agencies. The commissioning model for buying additional local expert programmes and support (e.g. drug and alcohol support, domestic violence services, etc) placed barriers between using the charities and CRC profit, as noted by HMIP: “(The CIC’s) lack of stability was driving their relationship with principal and smaller sub-contractors in the third sector and most were looking for further efficiencies and cutbacks. Supply chains delivering services within the community were generally small scale, and non-existent in some local areas. A noticeable proportion of pre-2014 contracts with third sector organisations had been discontinued.” Evidence around health and social care, in areas like Manchester where new partnerships are being built around the introduction of an elected Mayor shows this can be overcome and localism can return to probation, if the core provision was reunified and the profit motive removed to allow charities back into the playing field.

1.2 Good practice can be seen in the MAPPA arrangements, with police, NPS and other agencies working effectively. As noted below, it is crucial for Probation to retain its own distinct identity for this good work to continue and develop.

1.3 Wales has four male Approved Premises. These are a vital component in the route from prison to the community for our highest risk and complexity cases. Their role should be developed using the PIPE -Psychologically Informed and Planned Environment- model.

1.4 The Welsh Government is pioneering joint approaches to crime across Health and Policing, drawing on research into Adverse Childhood Experiences. These approaches are informed by successful work in Scotland. Trauma-Informed Practice, and Desistance Theory informed practice is seeping into mainstream probation work, but is fettered by, in the CRCs, the profit factor and eroded contact time with offenders, and in the NPS by performance management targets which similarly erode the opportunities for contact time and meaningful rehabilitative work.

2 What are the economic, social, geographical, technological, constitutional and other barriers to improvement and how could these be overcome?

2.1 Economic: Austerity affects the delivery of probation services directly: The MoJ has implemented cuts of 24%. (Rory Stewart MP). This of course coincides

with cuts across other public services, and for offenders with complex needs, this impacts disproportionately. The lack of housing is the most fundamental and profound problem impacting on this group. Finding work in this climate is even more difficult for those seeking work who have criminal convictions.

2.2 Geographical: Centrally driven and designed policies and process oft disregard the realities of working in rural and widespread communities.

2.3 Technological: As the agency charged with coordinating work between different agencies, Probation workers use or contribute to any number of IT systems developed in its partner agencies. The routine duplication of work deserves attention, with the aim of minimising this. As an example, a sex offender case will routinely involve the preparation of a (Probation) OASys risk assessment, and very similar (Police and Probation) ARMS assessment. Both can take up to a day to prepare, both have the same information but differently configured. We would encourage better cross-departmental -and intra-departmental coordination.

2.4 There is scope for developing the use of technology (eg to monitor alcohol consumption, satellite tracking) but this will serve a rehabilitative purpose only if used within professional supervisory relationships.

2.5 Cultural: Probation -even when not “split” as at present, is a smaller organisation than its natural partners. As a distinct organisation and profession, it can “punch above its weight” but is vulnerable to being subsumed within larger organisational cultures. To wit

- Police, and visor. With developing work, particularly in MAPPA and Prolific Offenders (ION: Integrated Offender Management) there is increasing risk of Probation's identity and role being subsumed and diluted. There is high concern amongst Probation practitioners regarding the vetting processes required for Probation Staff to be given access to the Police Visor database. This process is opaque - the criteria, who makes the judgement regarding acceptability, whether the information disclosed is stored, the existence of an appeals process are unknowns. It is likely to further exclude those with “lived experience” of crime and the CJS from probation practice, whose contribution can be significant – and lead towards an homogeneity of the workforce. Furthermore, there are important, and valuable, basic differences of approach and culture. E.g.: Denial of an offence is not necessarily an indicator of risk, and challenging denial can be counterproductive to rehabilitation for some offenders. This doesn't go down well with those whose primary motivator is catch and convict, preferable with a confession in hand. Distaste for the offender is endemic in police culture, and anathema to good probation practice
- Similarly, Prisons, whose estate dominates the HMPPS are not in fact natural bedfellows of probation. Napo Cymru has grave concerns about the continuing dominance of the Prisons agenda, to the point where staff were

told to put up with no pay rise or resolution, as all the budget was to be spent on prison wage rise. At its most basic, the primary job of prisons is to keep offenders out of the community, and Probations to ease them in. The OMIC (Offender Management in Custody) strategy has been re-launched in HMPPS: It is our view that this is badly conceived and politically motivated, and a tiny handful of probation staff badly needed in the community, will enter the prison estate with the aim of changing the culture of prisons. The reverse is inevitable.

- In Scotland, "Probation" is a function of Social Services: indeed, until relatively recently the training of Probation Staff in England and Wales was to the Social Work qualification.
- Napo Cymru recommends that in any development of Probation, the need to maintain its individual, distinct, professional identity and influence is given high priority

2.6 HMPPS does not provide bilingual signage in regard to Health and Safety in Wales- there has been an "exception" made to Welsh language signage, this is lead form London and does not fully reflect the expectations that we have in Wales of being respectful of our culture and that many in the workforce as well as service users, are bilingual

3 What problems face the people who work within the justice system in Wales (including policing, prosecution, courts, prisons and probation) and the people who are affected by it?

3.1 The centralisation of high risk to the office of the Minister politicises all aspects of probation. Whether it is seeking Treasury approval to address a pay system that is broken and being prevented from negotiating for over a year because of other MoJ funding issues; seeing the stifling bureaucracy choke local decision making on issues ranging from HR to professional practice; or the politicisation of serious further offence investigations – the nationalisation of half of probation (from local Trusts to the civil service) is clearly having a negative impact.

3.2 SFO's are a real concern. We have already seen in Wales, with the case of Conner Marshall (as highlighted by BBC's Panorama programme in October 2017) how these information barriers increase the risk to the public with split local provision. If the Secretary of State's office is directly accountable for all investigations into SFO's then the risk that such incidents will be politicised, and investigations consequently become more opaque, is insurmountable, until probation is localised.

3.3 The reunification of core delivery, accountable to the Welsh Assembly and/or a reformed Probation Advisory Board for Wales is infinitely less complicated and more accountable.

3.4 The split in Probation also prevents proper professional development of staff skills. As a profession, the qualification is only the start of professional development. Pre-TR, newly qualified staff would progress from "low-end" work, working up to "high end" cases. Under the existing structures, a CRC employee cannot maintain

continuity of service and pay progression (such as it is) on taking up a post in the NPS. Nor for that matter can an NPS employee work at the “low end” at any point: the risks of burnout should not be underestimated for staff whose entire caseload is high risk, high complexity. As one member commented in feedback recently “You know you are losing it when you think of the cases who have raped *adults* as the good, wholesome guys”

3.5 Staff morale is poor, and notably the sickness absence rates in the CRC in Wales are very high: at a recent H&S meeting it was noted that the average rate of sickness absence was in excess of 25 days per year average (in general 5 or 7 days is considered healthy). Morale is not improved by staff and offenders witnessing the evidence of a failing model: bailiffs attending the Cardiff office demanding the removal of equipment because bills hadn’t been paid; or the closure of the Caerphilly Office because the water had been cut off.

3.6 Caseloads in both NPS and CRC are high. Supervision in the CRC can consist of a single telephone call to an offender for the duration of the order. The NPS has just recruited around 50 trainee officers. This will be presented as a reassurance that staff shortages are now addressed: trainees should be viewed as recipients of investment, not an instant resource, for the duration of their (now curtailed) training period. These trainees on graduating will be pitched straight into high risk, high complexity cases.

4 Does the justice system in Wales currently provide access to all who require its services, including advice? How would you improve access to justice in Wales?

4.1 The vast majority of offenders within the criminal justice caseload are white men. Minority groups are badly served, especially in times of decreasing resources.

4.2 The provision of services suitable for women in the justice system was addressed in the 2007 Corston report and some progress has been made on its recommendations.

4.3 Napo Cymru is against the building of a Women’s Prison in Wales, or any additional male prisons. Prisons are like motorways: build them, and they fill up. Corston, and many subsequently, have stated that prison is not the place for women, and that women are disproportionately imprisoned for non-violent offences, disproportionately suffer from mental health and trauma, and are further damaged and disadvantaged by imprisonment. A single Women’s prison in Wales would not mitigate the significant distances from home experienced by Welsh Women prisoners. Napo Cymru strongly advocates investment in Women’s Centres, and in Female Approved Premises in Wales.

4.4 We propose a system whereby women receiving custodial sentences are immediately considered for early release, for the majority to a local, Welsh, Women’s Approved Premises, where they would effectively serve the majority of the custodial element of their sentence, in local, therapeutic women-centred environment, in contact at an early stage with local agencies including housing and health, as well as advocacy services.

4.5 Probation is a core statutory service, and working with minorities is often best achieved in partnership arrangements with specialist niche third sector agencies. Probation (at every level from Senior/contractual management to individual caseworkers) has in the past been the glue that bonded the complex web of agencies and organisations around the offender. We recommend the strengthening of partnership arrangements and the devolution of power to build these working relationships to as local a level as possible.

5 What impact has devolution had on the justice system in Wales? What impact do you believe devolution will have in the future?

5.1 Probation requires adequate funding, the local freedom and flexibility to meet complex local needs, and political independence and credibility. None of these now exist.

5.2 Nationalisation prevents adequate funding or political independence. Along with the flawed commissioning model where responsibility for buying local services rests with the monopoly local provider needing to make a profit within a poor structured contract it is an unworkable disaster.

5.3 The creation of a Wales Probation Advisory Board chaired and championed by an elected leader from the Welsh Government with a devolved budget and commissioning responsibility would rebalance the system and restore local accountability, local flexibility and independence.

5.4 Critically, the Wales probation leadership would have the political profile for accountability to work and for probation to matter. They would also have the authority and status to stand up to the Westminster funders: the local service would have a local champion.

5.5 These arguments are true about most core public services but have particular resonance where the form of the provision is so impacted by and informed by local needs.

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