

## **The potential benefits of a devolved Probation Service in Wales**

Evidence submitted to the Commission on Justice in Wales by Professor Peter Raynor

1 From the point of view of evidence-based policy, the most persuasive argument for the devolution of probation services to Wales is that this would avoid the policy errors made by the Ministry of Justice (MoJ) in London. For example, there is little doubt that if justice, or at least probation services, had been devolved to Wales five years ago, we would have avoided the ill-judged privatisation programme which has reduced the quality and effectiveness of most probation work since 2014. The accumulated evidence that this programme, known as Transforming Rehabilitation or TR, is a mistake is now beyond serious dispute (see, for example, the summary provided by my evidence to the Justice Committee in Westminster on ‘The Design, Implementation and Consequences of “Transforming Rehabilitation”’ – a copy is attached with this submission). Devolution to Wales would enable reassessment of the application of TR to Welsh services. Other policies which have emerged from the Ministry of Justice and the Home Office could also be examined in the light of evidence about their effectiveness or appropriateness to Wales. A number of these are mentioned in the evidence to the Justice Committee. They include the gradual displacement since 2001 of both the judiciary and local communities from the governance of probation (a possible contributor to the lack of confidence in community sentences recently reported by Crest Advisory [du Mont and Redgrave 2017]); the disappearance of the probation order requiring the consent of the probationer, which gave a legal framework to the required cooperation by probationers; the lack of focus on staff skills as a major component in effectiveness, and a tendency to develop policy on the basis of ideology rather than evidence (for discussion of this recent trend see the attached article ‘From Nothing Works to Post-Truth’). **A devolved Probation Service in Wales should be able to do better than this.**

2 **This inevitably raises the question of whether Wales is too small to sustain a viable probation service. This can be fairly easily answered by considering examples from elsewhere in Europe. Scandinavian countries with less than twice the population of Wales have excellent, effective and highly regarded probation services, and probation also operates well in the Republic of Ireland. Jurisdictions** smaller than Wales with their own well-developed probation arrangements include Northern Ireland, Malta and the Channel Island of

Jersey. The latter, with a population around 100,000, has fully devolved criminal justice and a Probation and After-Care Service which is internationally recognised for quality and for evidence-based work. Small size does not prevent effectiveness in probation and sometimes helps it to retain a close link with local communities. Wales itself was a pioneer of evidence-based practice in the 1990s, including the first properly evaluated implementation of a cognitive-behavioural group programme for probationers in Britain (see Underdown 1998; Raynor and Vanstone 1996), and contained well-regarded University-based training courses for probation officers in Swansea and Cardiff, and more recently Newport. Changes in Home Office and MoJ policy have meant that these courses no longer exist, but substantial expertise in the field still exists within the Welsh Universities, including active researchers with international reputations who have contributed to the development of probation in other jurisdictions. These include Catalonia, Finland, France, Ireland, Jersey, Malta, Romania and Scotland. The intellectual resources and social capital to support a devolved Probation Service are available in Wales, but the institutional support remains to be developed. In this context it is worth looking closely at the governance of probation in some other small jurisdictions. Scotland and Jersey are instructive examples.

3        In Scotland, just under twice the size of Wales, probation services ceased to be separate organisations in the 1970s and are now provided within Local Authority Social Work departments, with a specialist identity as ‘Criminal Justice Social Work’. This specialism required considerable effort to establish in the 1980s and 1990s, including the development of targeted postqualifying courses to enable social workers to specialise in work with offenders. Current practice appears good, underpinned by a penal policy which includes a presumption against short prison sentences, which are regarded as ineffective. Scotland has its own legislation, its own expert panel for the accreditation of rehabilitative programmes, its own Risk Management Authority to oversee risk assessment and arrangements for high-risk offenders, and its own Inspectorate. It also supports a very active programme of relevant research in Government Departments and particularly in Universities, where the highly successful multi-University Scottish Centre for Criminal Justice Research (SCCJR) has received very significant Government funding. ‘Criminal Justice social workers’ train and qualify as social workers with additional training on crime and criminal justice. (Similar arrangements apply to probation trainees in Ireland and in Northern Ireland, as they did in England and Wales until probation training was separated from social work in 1997).

4 In Jersey, which is much smaller than Wales, probation is managed within the Island and overseen by the Royal Court through a Board of judges (known as Jurats). In Jersey (as also in Ireland) the statutory basis of probation is still found in legislation of the early 20<sup>th</sup> century and includes probation orders made with the probationer's consent. Probation managers in Jersey believe that being part of the Court system rather than part of Home Affairs (the Jersey equivalent of the Home Office) gives them distinct advantages. They discuss all policies and developments with the Jurats, so that the Service is well understood by sentencers, and belonging to the Court system helps to protect them from 'political interference'. Professional standards are high, with excellent management and regular evaluation of effectiveness, but on-Island resources to support these are limited. The Service pays for periodic inspections by HM Inspectorate of Probation and commissions research and specialist training from a range of international experts. The result is an unusually high level of evidence-based practice, a significant presence in the Confederation of European Probation (CEP) and international interest in applying research on effective practice skills which was originally carried out in Jersey (see the attached articles on 'Probation in Europe: Jersey' and 'The Impact of Skills in Probation Work'). Devolved probation in Wales might find it difficult to resource the level of institutional support for inspection and research which is available in Scotland, and might need to strike a balance between the Scottish approach and Jersey's creative use of outside resources.

5 Regarding independent inspection, HM Inspectorate of Probation offers a tried and tested approach, recently updated by the Chief Inspector Glenys Stacey who has not been afraid to make strong criticisms of the operation of TR. However, there are other approaches which could be examined in the future. For example, some sections of Welsh probation now have experience of the Correctional Programs Assessment Inventory (CPAI), developed originally in Canada and now widely used in Canada and the USA to provide a comprehensive evidence-based assessment of the functioning of 'correctional' agencies. Currently there are two accredited users of CPAI-2010 based in Wales (in Swansea, believed to be the only accredited users so far available in the UK) and work is proceeding on the adaptation of this type of assessment instrument to Welsh expectations and patterns of service provision. This could at some stage offer an evidence-based supplement or alternative to

conventional inspection, with more practitioner involvement and learning. Regarding research, studies carried out by Wales-based researchers have been influential but arguably piecemeal, depending heavily on a handful of academics some of whom are close to or beyond retirement age. The Wales Centre for Crime and Social Justice, which brings together researchers and practitioners from all parts of Wales, was originally conceived as a Welsh version of Scotland's SCCJR but received much less Government funding, so that its main activity has been an annual conference and its members have to seek support for their research elsewhere. A substantial amount of criminal justice research in Wales has been supported by the Ministry of Justice and the Home Office on a study-by-study basis rather than by core funding, and often covering areas in England as well as Wales. Devolution might decrease the willingness of MoJ to fund probation research in Wales, and there will need to be careful consideration of how to support research in the context of a devolved Welsh Probation Service.

6 It is sometimes argued that criminal justice needs to be devolved as a whole rather than piecemeal. However, it appears feasible to devolve probation (and perhaps youth justice) as going concerns on their own, or as a step towards fuller devolution. Most of the other services offenders require to support their rehabilitation and desistance are devolved already. Governance of a devolved Service could be based on the model of the former Wales Probation Trust, responsible to an appropriate Minister but leaving much of day-to-day oversight to regional Boards, perhaps coterminous with police areas. They should include strong representation from magistrates and judges and have strong links with local voluntary organisations, local authorities and Police and Crime Commissioners. Whatever the detail of the governance arrangements, the priority should be to recreate a confident and effective probation service from the wreckage left by TR. For example, a devolved Service could begin to address the following:

- Restoring more local decision-making and control in probation operations. Most crime control is local and informal, and perceived legitimacy is rooted in communities. A sense of even partial local ownership could do much to restore confidence, and local commissioning of services from voluntary organisations and even the private sector could be more responsive to local needs and make more effective use of local resources. If 'community prisons' with a locally-based

resettlement and reintegration role ever become a reality, collaboration with a locally-based probation service would strengthen them. In addition, a strategy of greater local control would be expected to include devolution of criminal justice powers to Wales. Recent proposals by the Association of Police and Crime Commissioners to take over probation might meet the criterion of localism to some degree, but would expose the Service to competition for resources as the Commissioners oppose ring-fencing of finances.

- Recreating judicial involvement in the local governance of probation services and the setting of local priorities, giving the Courts an input into defining what they want and need (for example, research in the 1990s showed that they wanted pre-sentence reports which helped them to understand defendants' lives and motivation, and there is evidence that some are concerned that the current focus on speedy throughput of cases, with most reports prepared within hours, can work against justice);
- Developing a clear policy framework repositioning community sentences at the centre of a strategy to replace short prison sentences;
- Allowing more pre-sentence reports to focus on developing rehabilitative proposals in agreement with the defendant, with enough time to do this;
- Restoring the requirement of consent to a community sentence (possibly even restoring the probation order as one of a range of options);
- Concentrating more resources on staff development and in particular the development of staff practice skills (recent research shows that highly skilled staff make as much or more difference to reconviction rates as having the right programme designs);
- Ensuring regular supervision by experienced staff who understand and use practice skills themselves (recent research also shows that this makes a difference). Ideally this should happen within a Service managed by people who understand what it is for, what it does and what it potentially could do.
- Evaluating outcomes continuously, and designing new initiatives so that they *can* be evaluated;

- Reversing the privatisation. TR clearly has not worked, and it shows very few signs of working any time soon, even though large additional sums of money have been allocated to failing Community Rehabilitation Companies (CRCs). The most cost-effective solution is to find a way to unravel the contracts and restore the control of probation operations to probation services (including any useful innovations which some CRCs might by then have developed). Restoration could take some time, as the contracts, like most privatisations, may be hard to unravel; however, current contracts are time-limited. There is also a growing impression that some officials within the MoJ, and maybe even some politicians, may be willing to consider alternatives to the problems presented by TR. This might help the case for devolution.

## References

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## Attachments

Raynor, P. (2017) *The Design, Implementation and Consequences of 'Transforming Rehabilitation'*. Evidence submitted to the Justice Committee Inquiry. Published online on 19 December 2017 on [www.parliament.uk](http://www.parliament.uk)

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1 June 2018