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Delivering McJustice? The Probation Factory at the Magistrates' Court

Abstract

Despite playing a pivotal role in thousands of defendants' experiences of criminal justice every year, the role of probation workers in the English and Welsh Magistrates' courts has been neglected by researchers for several decades. This article presents the findings of an ethnographic study of the work of probation staff in two such courts. The study suggests that probation work in this context is being squeezed into an operating model which bears all the hallmarks of a process described by Ritzer (1993) as 'McDonaldization'. It is argued that the proximate causes of McDonaldization in this sub-field of probation work lie at the intersection of parallel Government-led reform programmes – *Transforming Rehabilitation* and *Transforming Justice* – which have respectively focused on creating a market for probation services and enhancing the administrative efficiency of criminal proceedings. Until now, almost no attention has been paid, either by researchers or policy-makers, to the intersection of these programmes of reform in the probation suites at the Magistrates' courts.

Keywords

Probation, Magistrates' courts, McDonaldization, *Transforming Rehabilitation, Transforming Justice,* Pre-Sentence Reports.

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Biography

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Introduction

Since its inception in the late nineteenth century, probation work in England & Wales has included the provision of a service to the criminal courts, centred on offering information about defendants between conviction and sentence to inform the courts' decisions, and assessing suitability for non-custodial options (Vanstone 2004). As several commentators have observed, probation work in the juridical field is the frontline of practice as far as both sentencers and defendants are concerned: it is here that sentencers have access to information about what probation services can provide and that many defendants encounter probation staff for the first time. Yet, in England & Wales, very little is known about how probation work in the courts has developed. Although there have been several studies of the main artefacts of that work (i.e. pre-sentence reports) over the years, researchers have otherwise neglected this key area of probation work. The only empirical study to provide a direct insight into probation's role in the courts, Pat Carlen's *Magistrates' Justice,* is now over 40 years old (Carlen 1976; Carlen & Powell 1979). Given the considerable structural and cultural changes that have impacted probation services since then, we clearly cannot rely on this to inform our understanding of probation's contemporary role in court.

By far the most significant of these changes has been the bifurcation of probation services under the coalition Government's *Transforming Rehabilitation* (TR) reforms (Ministry of Justice 2013; Robinson 2016). With their emphasis on creating a market for probation services, the TR reforms dissolved the former 35 public sector probation Trusts and replaced them with a new architecture for the delivery of probation services: namely, a new (public sector) National Probation Service (NPS), and 21 Community Rehabilitation Companies (CRCs) which in early 2015 were contracted to a range of

(predominantly private sector) providers. In this reconfiguration, the provision of probation services in the criminal courts fell to the new NPS, whilst CRCs were excluded from all such work, with a view to avoiding conflicts of (commercial) interest. The new NPS thus took on all pre-sentence work, including the provision of court liaison staff and the preparation of all pre-sentence reports, as well as the prosecution of offenders in breach cases.

Meanwhile, a parallel policy programme, latterly known as *Transforming Justice* (TJ), was being implemented in the wider juridical field (e.g. Ministry of Justice 2012a, 2012b)[1]. Primarily directed at the police, the Crown Prosecution Service and the courts, *Transforming Justice* represents a range of initiatives associated with the 'modernisation' of the criminal process that have been traced back to the 1980s (Raine 2000). Prominent among its themes has been the construction of delay as a problem in criminal proceedings, and a concomitant emphasis on speeding up justice (e.g. DCA 2006, MoJ 2012a, Ward 2015). Despite being a key actor in respect of the disposal of a significant proportion of criminal cases, and playing an active role in the preparation of reports in the space between conviction and sentence[2], the probation service is hardly mentioned in the raft of documents associated with TJ. Nonetheless, in the last few years TJ has been a significant driver of a move toward faster delivery pre-sentence reports (PSRs) and a concomitant drop in the proportion of 'traditional' written reports prepared during a typical adjournment of three weeks (known as Standard Delivery Reports). In the year that the TR reforms were implemented (2014), just 21% of pre-sentence reports prepared by probation workers were Standard Delivery Reports; the

[1]The most recent iterations of these schemes in the Magistrates' and Crown courts (respectively) – both launched in 2015 - are known as *Better Case Management* and *Transforming Summary Justice.*
[2] In 2016 the probation service prepared 110,163 pre-sentence reports in the Magistrates' courts and 38,133 in the Crown Court (Ministry of Justice 2017a).

remaining 79% were either delivered orally on the day of request, or were 'Fast Delivery Reports' prepared in writing within 5 days of request (Ministry of Justice 2015). By early 2017 the proportion of Standard Delivery Reports had dropped further to just 4% (Ministry of Justice 2017a; see also Robinson 2017).

This article seeks to shed much needed light on the hitherto neglected arena of pre-sentence probation work in the Magistrates' Courts. It presents findings from an exploratory ethnographic study of probation work in two such courts which was conducted in 2017. The research was prompted by a specific interest in the intersection/interaction of these two significant sets of reforms in the probation offices embedded within the lower criminal courts, as well as a more general interest in both how practice in the reconfigured probation service is evolving, and in broader processes of marketization in criminal justice contexts. The findings of this study suggest that probation work in the Magistrates' courts is being squeezed into an operating model which bears all the hallmarks of a process of 'McDonaldization', as initially described by George Ritzer (1993).

The article begins by outlining the empirical study and proceeds to explain the approach to data analysis and the theoretical framework of the *McDonaldization thesis.* It goes on to present the findings in respect of each of the four main characteristics of McDonaldization: namely, efficiency; calculability; predictability and control. The article concludes with a discussion of what the study tells us about the evolving culture of probation work in the Magistrates' courts and suggests some avenues for future research about how key stakeholders are experiencing this ongoing transformation.

Researching probation work in the criminal courts

The best way to understand the job is to watch it because it's quite 'bitty' and hard to explain

(PSO4, City team)

The study which informs this article was conducted by the author in the first seven months of 2017, in two English Magistrates' court centres. The research took a broadly ethnographic approach and deployed two principal methods of data collection: overt observations of the everyday activities of the front-line practitioners, and semi-structured interviews with probation staff in a range of roles at the two courts. Notwithstanding Carlen's (1976) seminal work, ethnographic research in the probation field is rare (Robinson & Svensson 2013), and in respect of probation work in court, there are only a handful of recent studies deploying this methodology in the adult arena internationally. These include studies of criminal justice social workers in Scotland (Halliday et al 2008, 2009); of social enquiry and sentencing in Belgium (Beyens & Scheirs 2010) and Denmark (Wandall 2010); and, most recently, of 'community practitioners' in the lower courts in Canada (Quirouette 2017).

In England & Wales, Mawby & Worrall's (2013) important study of probation occupational culture did attend to probation work with other agencies (including courts), but it pre-dates TR and relied on interviews with former and current practitioners, only some of whom had had significant experience of working in courts, across a number of decades. Thus, whilst this study offers some interesting perspectives

from individuals, it does not offer a robust benchmark against which contemporary practice can be compared[3].

The study

Having obtained ethical approval for the study from the author's institution, permission to conduct an exploratory study of probation work in the Magistrates' courts was sought from and granted by the National Offender Management Service in the summer of 2016. Thereafter, liaison took place with a gatekeeper from one of the seven National Probation Service regions to negotiate access. Initially, access was agreed to conduct research with a large city centre Magistrates' court team, with around 20 practitioners, 7 support staff and a manager of Senior Probation Officer grade. The second site, a much smaller Magistrates' court centre, was subsequently selected because of its contrasting size. Located in a town, the second site had a probation team consisting of 6 practitioners, two support staff and a part-time manager of Senior Probation Officer grade. Access to both teams was agreed with local probation managers[4]. Written information about the research was circulated to members of both teams prior to meeting with them to answer questions and elicit their consent to being observed and (potentially) approached for an interview, with no obligation to participate. Team members were assured that both observational data (in the form of hand-written notes) and interview data (audio recordings) would be anonymised in any reports or publications stemming from the research.

[3] Coincidentally, the first official inspection of probation court work was also conducted in 2017 (HMIP 2017a), and the report acknowledges the dearth of research in this area.
[4] Although they were in the same NPS region, the two courts were formerly (prior to TR) serviced by different Probation Trusts.

Both observations and interviews were approached purposively, with a view to capturing the maximum possible variety of roles, tasks and experiences. Periods of observation (81 hours in total on 13 separate days) took place on different days of the week, with a view to observing probation work in the context of variable court schedules. Some of the time was spent shadowing individual team members as they pursued their routine activities, but I also responded to opportunities to observe specific activities, when these arose, such as pre-sentence report interviews with defendants (of which I observed 12), and the presentation of oral pre-sentence reports or breach prosecutions (of which I observed 28). Thus, a typical day spent with a court team would include time in the 'backstage' areas of probation team suite/offices[5], as well as 'frontstage' in courtrooms, and in small interview rooms with defendants[6] (Goffman 1990). When in court, I sat either on the probation bench alongside probation staff (normally located at the side of the court room, to the rear), or (less often, and usually due to space limitations) in the public gallery. Notes were recorded in small notebooks which could be easily secreted when it was inappropriate to be note-taking (e.g. in small interview rooms observing PSR interviews or during conversations in court recess time), but at other times note-taking was overt and I was open with team members about taking notes of our informal conversations as well as my observations.

Semi-structured interviews were conducted with 21 team members, of whom 2 were managers of Senior Probation Officer grade (SPO), 5 were Probation Officers (PO), 8 were Probation Service Officers (PSO) and 6 had administrative roles. All but one of the

[5] In both of the research sites, probation teams occupied a suite of offices within the Magistrates' court building.

[6] Defendants whose PSR interviews were observed were asked to give their verbal consent to my presence as an observer. It was explained that the focus of the research was the work of probation staff and that no details about them or their case would be recorded. No notes were taken during these interviews.

interviews[7] were conducted towards the end of my time with each team, such that questions were developed iteratively with a view to exploring some of the themes which emerged during the observations. All of the interviewees were people I had spent time observing or shadowing prior to approaching them for an interview, and no-one I approached to take part in an interview declined. Interviews were transcribed and in this article codes are used to protect the anonymity of interviewees. However, this article draws more substantially on the observational data than on the interviews[8].

Data analysis and theoretical framework

> I left the court building at 5pm and on my way out I saw [the SPO] who asked me how my first day had been. "You've got a well-oiled machine in there", I said. She clearly took this as a compliment, and it was partly meant as such; but it was also a comment on my strong first impression of the probation suite as a 'factory' and the work as a production line. (City, Field notes, day 1).

Having designed an exploratory study of an aspect of probation work which was clearly undergoing significant transformation, and armed with very little in the way of prior literature in this area, I began data collection without any particular theoretical framework in mind, and sought to analyse the data inductively, by attending to emerging themes. Very quickly, however – indeed, on day one with the City team – I began to make observations about the factory-like environment of the 'backstage' probation offices which brought to mind Ritzer's *McDonaldization* thesis.

First published in 1993, George Ritzer's book *The McDonaldization of Society* suggested that the operating model employed by the McDonalds fast-food franchise had come to

[7] The City team manager (SPO) was interviewed prior to commencing observations.
[8] See also Robinson (2018).

exemplify a form of economic organisation that was increasingly evident in both the delivery and the consumption of a wide array of goods and services. Cast as an "amplification and extension" of Weber's (1921/1968) theory of rationalization, Ritzer presented the fast-food restaurant as the paradigm of McDonaldization, echoing Weber's (early 20th century) characterisation of the 'bureaucracy' as the ideal-typical model of a rationalization process in the modern Western world (Ritzer 2015: 30). Ritzer outlined four key dimensions of McDonaldization: namely, efficiency, calculability, predictability and control. These dimensions, Ritzer maintained, were increasingly structuring the experiences of both consumers and workers engaged in the production of goods and services, with the 'long arm of McDonaldization' reaching into an increasing range of areas of social life and occupations, from banking to medicine, farming and education (2015: 13).

Although both Ritzer's original thesis and much of the subsequent literature which has utilised the framework of McDonaldization has focused on consumers and consumption, Ritzer and others have also pursued the analysis of McDonaldized work and so-called 'McJobs' (e.g. Ritzer 1998; Leidner 1993). Ritzer has argued that the creation of more and more McJobs is evident not only in the low-skilled service sector, but also that "large numbers of middle-level jobs are also being deskilled and transformed into McJobs" (1998: 60). Ritzer outlines the four main characteristics of McJobs (i.e. efficiency, calculability, predictability and control) in the following extract:

> [McJobs] tend to involve a series of simple tasks in which the emphasis is on performing each as *efficiently* as possible. Second the time associated with many of the tasks is carefully *calculated* and the emphasis on the quantity of time a task should take tends to diminish the quality of the work from the point of view

> of the worker […] Third, the work is *predictable*; employees do and say essentially the same thing, hour after hour, day after day. Fourth, many non-human technologies are employed to *control* workers and reduce them to robot-like actions (1998: 60, emphasis added).

Since Ritzer's original publication, a number of scholars have offered analyses of McDonaldization in respect of policing (e.g. Robinson 2006; Bohm 2006; Heslop 2011; Goode & Lumsden 2016); private security (van Steden & de Waard 2013); and, to a limited extent, courts and probation/corrections (e.g. Oldfield 1994; Schichor 1997; Wood 2013). However, the extant literature offers mainly descriptive accounts, mapping and offering evidence of each of the dimensions of McDonaldization in the particular criminal justice domain under the spotlight, largely in the absence of original empirical data. As such, these analyses tend to duplicate a critique of Ritzer's thesis which suggests that it pays inadequate attention to the forces *behind* the spread of McDonaldization (Smart 1999). Indeed, Ritzer (2015) deals with this in just three pages of *The McDonaldization of Society*.

In this article I argue that, notwithstanding allied developments in the probation context over the last 25 or so years which have variously been analysed in relation to concepts of managerialism (e.g. Gale 2012; Nellis 1999), actuarialism (e.g. Robinson 2002), commodification (McCulloch & McNeill 2007) and technologisation (Phillips 2017), the data collected in the course of this study are best presented within the framework of Ritzer's thesis. Moreover, it is argued that the proximate causes of McDonaldization in this sub-field of probation work lie specifically at the intersection of the *Transforming Justice* and *Transforming Rehabilitation* reform programmes. To put this another way, this article argues that the combination of these two policy initiatives

has acted as a significant accelerant of deep-rooted processes of change that have been seen, and variously characterised, throughout the criminal justice and public services fields since the 1980s. In the following four sections I present the findings of the research in accordance with the conceptual dimensions of McDonaldization: namely, efficiency, calculability, predictability and control.

Efficiency through specialisation: the creation of dedicated court teams

In his discussion of efficiency as the first key feature of McDonaldized workplaces, Ritzer (2015, 1998) draws explicitly on the ideas of F.W Taylor and 'scientific management' popularised in the early 20th century, as well as Henry Ford's automobile assembly line, both of which emphasised the rationalization of production. Transposing these ideas to the fast-food industry, Ritzer notes that hamburger chains, for example, "strive to discover and implement the 'one best way' to grill hamburgers, cook French fries, prepare shakes [and] process consumers" (Ritzer 2015: 36). When the fieldwork commenced in January 2017, all probation court teams throughout England & Wales were in the process of moving toward what the new National Probation Service had identified as the 'one best way' to organise its work in the criminal courts: namely, via a fully specialised model, with all court duties - including PSR preparation and enforcement work – brought 'in house' to court teams. This was one of a number of proposals that had been set out by the NPS in a strategy document called *Effectiveness, Efficiency and Excellence* (NPS 2015). Colloquially known as E3, this document emphasised the efficient allocation of resources across the different areas of responsibility of the new NPS and the promotion of consistent practices across its seven regions. It was followed in July 2016 by the publication of an NPS Operating Model (NPS

2016) which confirmed the establishment of dedicated court teams, with responsibility for preparing all PSRs and conducting all enforcement work.

In the two research sites, the former Probation Trusts had (prior to the split created by *Transforming Rehabilitation*) been working with a semi-specialised model of provision to the courts, such that they had long-established teams based in the court building, but adjourned PSRs were regularly allocated to colleagues based in field probation teams. Both teams were thus in the midst of a transition toward a fully specialised model, and had each undergone a process of review, prompted by E3, to determine their resourcing needs, taking into account the different skills and responsibilities of fully qualified practitioners (Probation Officers) and those with lesser qualifications (Probation Service Officers). In light of this review, both teams were anticipating the arrival of new team members to compensate for the lost resource of field teams who had previously been allocated a good proportion of (written) Standard Delivery PSRs. Having formerly been composed almost exclusively of PSO grade staff, both teams were deemed to require additional PO resources to prepare reports in respect of more serious types of offending, such as domestic violence and sexual offences. As one team manager put it, the E3 review sought to ensure that "we have the right staff to do the right work". The optimisation of efficiency, and in particular the team's ability to meet the needs of the courts was therefore a top priority (NPS 2016).

When the research commenced with the City team, I struggled initially to make sense of who was doing what, and how the work was organised. During my early days, it was not at all clear why the main open-plan office was sometimes fully occupied and at other times virtually empty; nor was it always clear what individuals were so busily doing at their workstations. But as the research progressed, it became apparent that there was

an invisible choreography underpinning each day's activities: both teams had put in place rota systems to manage their work and to ensure that, when the courts were in session, individuals knew what their particular responsibilities were. In both sites there were monthly and daily rotas which took into account the known variations in court schedules (e.g. the running of breach courts on specific days of the week), the availability of team members, and the different skills and role specifications of POs and PSOs. Thus, for example, only PSOs were allocated to court duty and the prosecution of breaches, freeing POs up to focus on the preparation of PSRs in the more serious and complex cases. 'Runner' was another PSO role, and this could involve a range of activities, from relaying information to and from colleagues on court duty, to making calls to other agencies to check for domestic violence callouts or child protection queries for colleagues preparing PSRs.

Thus, a high degree of structure was evident in both teams, and there was clear evidence of heightened attention to efficiency and its enhancement - both at a policy level and on the ground, in the teams' organisation and division of labour, and in the breakdown of tasks relevant to PSR preparation.

Calculability: probation by numbers

> We're very competitive and we're very performance focused. We're very keen on our data and we run the data every day to make sure we're on top of our targets. (Manager, City)

In his discussion of calculability in the workplace, Ritzer (2015:105-114) stresses a "zeal for speed" and an overriding emphasis on numbers in both the production of

goods and the delivery of services. In the context of the fast-food industry, he notes that the performance of workers is assessed quantitatively, not qualitatively: hamburgers must be served within a specified number of minutes; French fries may stand under the heat lamp for even fewer minutes; and managers are only permitted to throw away a tiny percentage of the food produced on any given day. Similarly, central management assesses the performance of each restaurant 'by numbers': sales per worker; profit margins; staff turnover; cleanliness ratings.

Targets and performance indicators are by no means new to probation practice (e.g. see Robinson et al 2014). However, the combined influence of *Transforming Justice* and *Transforming Rehabilitation* reform programmes has put even greater emphasis on the quantitative aspects of court work, and in particular the time spent on particular tasks (Robinson 2017; Nellis 2002). For example, the TR reforms ushered in a new performance framework for the NPS which features two 'service levels' (Key Performance Indicators) for court work. Both of these concern the timeliness of specific processes: specifically, the percentage of PSRs completed within the timescale set by the court and the proportion of cases allocated by the end of the second full business day following the day of sentence (Ministry of Justice 2017b: 14). More recently, recognising the changing nature of demand for reports under TJ, the NPS Operating Model introduced a new national target specifying that, by April 2017, 90% of PSRs should be completed and delivered on the day of request, and the vast majority of these should be delivered orally (NPS 2016). Meanwhile, in the City - where sentencers had embraced TJ earlier and more enthusiastically than in the Town - the court team had also, prior to the start of the research, reached an agreement with the courts that they would produce same-day, oral reports within an hour of request.

In both research sites, team members were acutely aware of the targets relevant to their labour, and regularly received feedback from their managers in respect of their quantitative performance. For example, at a team meeting I observed in the City, staff were highly praised for exceeding the new 90% target for on-the-day reports in the previous month, and I was regularly told that the team's performance in respect of this target was admired throughout the region. Meanwhile, however – and consistent with Ritzer's discussion of calculability - the *quality* of the work was not subject to explicit monitoring, and managers and team members alike were conscious of this. The managers of both teams told me that quality control systems had yet to catch up with the changed landscape of court work: they were still only required to audit the quality of full written PSRs, which were all but extinct in the Magistrates' court context. Relatedly, the growing dominance of oral reports was presenting novel challenges for quality control: whilst reports delivered orally are required to be written up and scanned for the future reference of the supervising officer (in the event of a community order) or other probation colleagues, there is no guarantee that the oral and written versions will be the same. As one interviewee told me, "what you say in court isn't the same as what you write up [afterwards]" (PSO8, Town).

Predictability: event, result, repeat

> It's different every day, but the same (PSO6, City Team).

Ritzer's discussion of predictability in the McDonaldized workplace centres on the routinization of labour, including the scripting of interactions and the breakdown of processes into a sequence of discrete steps. There are, for example, "seven steps to window service: greet the customer, take the order, assemble the order, present the order, receive payment, thank the customer, and ask for repeat business" (2015: 115).

It is long established that the juridical field is characterised by a degree of variation in respect of the cultures of individual courts and the populations of offenders and victims that they serve (e.g. Tarling 2006). But with its emphasis on consistency across England & Wales, the NPS Operating Model can be understood as an attempt to enhance the predictability of probation court work (NPS 2016). According to this model, courts and offenders should receive the same service wherever they happen to be located. For example, I observed that new recording and assessment processes introduced after the splitting of probation services served to ensure a consistent approach to the collection and recording of information by court staff, in that the same steps were followed each time between the request for a PSR and the conclusion and recording of the outcome of that case. Thus, during the research I observed that a request for a PSR inevitably started a process which began with the creation of an electronic record (an 'event') by an administrator, and then prompted a series of actions including the rapid reading of documentation provided by the Crown Prosecution Service (typically the police account of the offence and a list of previous convictions). Next came an interview with the defendant, and then the completion of risk assessment and other mandatory electronic records, often supplemented by calls to other agencies involved in public protection (typically police and/or social services) to verify information. After presenting the report orally in court, the task of recording the result on the national database and of case allocation (in the event that a community order was made) would pass back to administrative staff, who would 'result' the case. The analogy with a production line in a factory, with each worker contributing his or her labour in a predefined sequence, was striking.

There was also evidence of predictability at the level of individual workers: the pressure of time in the report preparation process meant that staff had developed their own routines, shortcuts and elements of scripted behaviour to get everything done. This was evident both from observing the conduct of PSR interviews with defendants and from the interview data: everyone had their own way of doing things and whilst this varied between workers, there was an observable consistency at the individual level. For example, one PO said: "You always have in the back of your head a template of what you're going to ask, and you have stock phrases as well that you use to speed things up" (PO2, City). Another PO in the same team described different practices in respect of how the limited PSR preparation time was used by different POs:

> Well we're all different. I've noticed [PO1] does it different to [PO2] and I do it different to them both. [PO1] does a lot of prep beforehand but he can just go into court and talk without a script, whereas I can't do that, I need a structure I can rely on. So I do less checking – I do some – spend a short period of time with the person, then think about what I'm going to say. So in that hour I probably spend about 15-20 minutes checking [information], then about 20 minutes with the person, and 20 minutes writing it up (PO3, City).

A further element of predictability concerned the types of cases POs and PSOs were typically dealing with, such that PSRs were allocated between POs and PSOs according to the seriousness of the offence. Thus for example requests for PSRs in cases of domestic violence and sexual offending were automatically allocated to a PO, and with large numbers of the former in particular coming through magistrates' courts, this type of work dominated the POs' days. More than once, POs I shadowed told me that they sometimes had days made up entirely of preparing oral reports (up to 5 in a day) on

solely domestic violence cases, which could be difficult to mentally manage in terms of differentiating between cases.

Finally, although the research did not focus on sentencing outcomes *per se*, it was noted that the convergence of TR and TJ did appear to be producing quite a high degree of predictability in regard to proposals for community sentences. Despite the availability of a menu of thirteen different requirements from which to select when proposing a community order[9], in most of the cases I observed in which a need for probation intervention had been identified, the recommendation was for a standardised number of days undertaking 'rehabilitation activities' (known as 'RAR days'). Introduced by the Offender Rehabilitation Act 2014 post-TR, the Rehabilitation Activity Requirement (RAR)[10] was designed as a 'shell' for supervision which could be proposed by report writers in PSRs but developed in detail post-sentence by the supervising officer, whether in the NPS or a CRC. The RAR was thus intended to be 'flexible' enough to match the particular resources available in that area, and to meet the needs of the individual under supervision (see HMIP 2017b). In most cases the recommendation for RAR days was accompanied by a curfew, unpaid work hours or a fine: a so-called 'punitive requirement' deemed a necessary component of the vast majority of community orders by the Crime and Courts Act 2013. Meanwhile, other requirements were rarely recommended. Sometimes this was because the local provider (CRC) had set out specific suitability criteria (e.g. OGRS scores for particular offending behaviour programmes) which defendants did not meet, or because report writers lacked the information required to make a 'less flexible' recommendation on the part of an

[9] The community order was created by the Criminal Justice Act 2003 and replaced the full range of community sentences available prior to that.
[10] The RAR replaced two former elements on the menu of requirements: the Supervision and Specified Activity requirements.

independent organisation. It is also possible, however, that the compression of time to conduct pre-sentence enquiries produced a more standardised approach to the design of proposals for community orders in general. The idea of a 'pick 'n' mix' menu thus did not fit with a McDonaldized process: in the majority of cases, it seemed, the 'burger and fries' option was selected, and it was simply a case of deciding on the size of the portion(s)[11].

Control: technology and time configuring the user

> For the moment, the office is quiet and all I can hear is the clicking of mice at five separate workstations (Field notes, Town, day 2).

Ritzer (1998) observes that in McDonaldized occupations, the role played by management in the control of workers tends to be limited, because control tends to be exercised by cultural and structural factors. For example, in the context of the fast-food restaurant, the drive-through window structures the experience and behaviour of both worker and customer, placing restrictions on what is possible in their brief interaction. In both of the court teams I observed, management was indeed very light-touch, and was not obviously deployed for the purposes of controlling the workers. Rather, the behaviour of workers was controlled by the expectations of the courts, and by targets set their own organisational structure and by NOMS[12], reinforced by the technological scaffolding around their practice.

The use of computerised case recording systems and risk assessment technologies is not new to probation (e.g. see Raynor et al 2000; Robinson 2002; Phillips 2017). Nor are

[11] The recent inspection of probation work in courts similarly found a heavy reliance on proposals for RAR days and unexpectedly infrequent proposals for accredited programmes (HMIP 2017a).
[12] NOMS was replaced in April 2017 by Her Majesty's Prison and Probation Service (HMPPS).

such systems a recent innovation in the context of court work: for example, the national Offender Assessment System (OASys) developed by the Home Office and introduced to probation areas in 2001 was intended to inform assessments in PSRs, and within a few years an electronic version of OASys made it possible to pull text into a PSR template electronically (NPS 2004; Gelsthorpe et al 2010). The actuarial Offender Group Reconviction Scale (OGRS) has an even longer pedigree in probation, and has been utilised over a number of years, including to inform decisions about the suitability of offenders for accredited offending behaviour programmes (Howard et al 2009).

I learned that the teams had been liberated from completing time-consuming OASys assessments except in conjunction with written PSRs prepared during a typical adjournment of three weeks (which were extremely rare), the expectation being that where a community-based order was made, a full OASys assessment would be completed by the supervising officer inheriting the case. However, the splitting of probation services under *Transforming Rehabilitation* had ushered in new mandatory tools to be completed as part of the PSR production process. For court teams, the reconfiguration of probation services initiated by TR had meant the creation of new 'customers' in the form of CRCs, to which the majority of new community-based orders made by the courts would henceforth be referred. This new reality had seen the introduction of new frameworks and decision tools to help workers distinguish between cases suitable for the two different providers of probation services (CRCs and the NPS). New mandatory steps had thus been added to the PSR production process: a new Case Allocation System (CAS), risk assessment tool (RSR) and Risk of Serious Harm screening all now needed to be completed prior to the allocation of the case to the appropriate provider (NOMS 2014). Practitioners were also still required to calculate

OGRS scores as part of the PSR production process, and in the seven months during which the research was conducted, two further tools were introduced, which PSR authors were expected to complete[13]. Much of the working day was spent completing these tasks, and whilst some practitioners questioned the utility of all these steps in the process – and the "trickle of increasing the amount of work we have to do" (PO1, City) - they understood that their compliance was necessary to meeting the key performance target for the timely allocation of the case to the appropriate provider. These technologies thus exerted control over workers by imposing structure in their daily activities, essentially 'configuring the user' to behave in pre-defined ways without recourse to 'management' (Gillingham 2016). This largely explains why a strong management presence was not found in either office. Indeed, managers and practitioners in both sites described the teams as 'self-sufficient' or 'self-regulating'.

Another way in which workers were controlled was by means of standardised formats for PSRs of different kinds. The vast majority of reports prepared by the two teams were delivered orally in the first instance and written up subsequently, whilst a much smaller proportion of Fast Delivery Reports (FDRs) continued to be prepared in writing within a few days. For both types of report, a template was available. In hard copy this document consisted of 4 pages, highly structured with 14 sub-headings, and report authors could use this form to write up oral reports by hand. If they preferred to type their report (or were required to, as when preparing an FDR) an electronic version had to be used, but this restricted the content of the report with pre-defined character limits, designed to encourage brevity and focus.

[13] These related to case allocation decisions and sentencing recommendations.

However, arguably of greater importance in the control of court workers was the one-hour window for PSR preparation, which was already established in the City, and was fast approaching in the Town as the fieldwork was coming to an end in mid- 2017[14]. Rather like the drive-through window at the fast-food restaurant, the 'PSR window' compressed time and pre-structured what workers could and could not do, including their interactions with the subjects of reports:

> You lack the ability to have those more thorough, in-depth interviews […] you're putting officers on the spot as to which avenues they can explore in the time period. As professionals we have to believe that we're exploring the right ones, and we might very well be, but there may be occasions when we're not (PSO2, City).

In the City site I observed seven PSR interviews conducted by four different practitioners, which lasted between 15 and 30 minutes, with an average of 24 minutes. All of the interviews were tightly focused, with a view to eliciting only information deemed relevant to the delivery of the report and a recommendation for sentencing. As one interviewee put it, "you don't want to open a can of worms, but hopefully [any complex issues] could be looked into post-sentence" (PO2, City). In contrast, in the Town the five PSR interviews I observed (by three different practitioners) lasted between 15 and 90 minutes, with an average of 56 minutes. It was only toward the end of the fieldwork there that the Town team was coming under pressure to produce more same-day reports and to a shorter timescale, and I was able to observe their efforts to adjust to these new expectations. Workers in the two different teams were, then, at

[14] In the Town, a long-serving District Judge had recently retired and I was told that his departure brought an end to the court's resistance to many of the changes associated with the *Transforming Justice* reforms.

different stages in the same process of McDonaldization in respect of the introduction of tightly controlled time limits for the production of PSRs, but their direction of travel and their destinations were very clearly the same.

Conclusion

In recent years, probation work in the juridical field has been heavily implicated in two significant programmes of criminal justice reform – *Transforming Rehabilitation* and *Transforming Justice* – which have sought to radically alter both the organisational structure and delivery of probation services and to speed up criminal justice processes, particularly in the court arena. Yet almost no attention has been paid (by researchers or policy-makers) to the intersection of these programmes of reform in the probation suites at the Magistrates' courts. The rapid evolution of probation work in the juridical field has thus gone almost completely unnoticed and undocumented. This article has set out to explore that process of evolution, and its central claim is that the organisation and conduct of probation work in the Magistrates' courts is, under the parallel influence of TJ and TR, being re-shaped along the lines of Ritzer's McDonaldizaton thesis. In the previous sections I have outlined the ways and means through which the labour of probation workers in Magistrates' court teams has come to emphasise efficiency, calculability, predictability and control. Contemporary probation work in the lower courts emphasises the speedy production, classification and disposal of offending subjects. Although it has been shown that progress toward McDonaldization is not occurring at the same speed for different teams, the analysis nonetheless suggests a shared direction of travel, with none escaping the pervasive effects of McDonaldization in the workplace.

As noted at the beginning of the article, Ritzer's thesis has been criticised for its relative inattention to the causes and spread of McDonaldization in different settings. To the extent that Ritzer does attend to explanatory factors, his approach is a functionalist one, summarised in just seven words: "It pays, we value it, it fits" (Ritzer 2015: 46). This article has endeavoured to show precisely *how* the characteristics of McDonaldization 'fit' the requirements of TR, with its emphasis on the marketization of probation services (principally, the new bifurcation of probation services into public and private spheres) and of TJ (with its emphasis on speedy justice and the fast delivery of pre-sentence information). It has not touched directly on the issue of whether (or how) it 'pays', but there are some observations that can be made at this juncture. Firstly, whilst neither the courts nor the NPS are profit-making enterprises, both have been and continue to be subject to economic pressures imposed by austerity and reduced budgets for public services, and this is a reality which underlies both TJ and TR (Allen 2013; Morgan & Smith 2017). Secondly, in respect of TR, the CRCs to which the majority of new community-based court orders are allocation *are* run for profit, and do potentially benefit from the timely allocation of cases from the court team, which enables them to meet contractual targets of their own (pertaining to initial contact with the offender and the completion of sentence plans) (Ministry of Justice 2017b).

The question of 'value' is also an interesting one. On one hand, it could be argued (and it was certainly suggested by some of my interviewees) that the changing speed and responsiveness of probation practice in the court arena has served a legitimating function, such that probation in general (and court teams in particular) may be more highly valued by the courts than in the past. As the City team manager put it, "I like to think they've realised the value of what we can contribute to the process, and so…we

are interdependent and they realise that yes we can help and yes we can help *now*". This is however a hypothesis that requires new research on the attitudes of sentencers. Similarly, we might ask whether and to what extent defendants value the contemporary arrangement of probation court work. The TJ reforms tend to construct defendants as grateful consumers of speedy justice; but, again, we do not currently have evidence to support this construction. In my observations of probation workers' encounters with defendants, I certainly saw expressions of gratitude, some explicitly linked to the speed with which their case was being dealt. However, I also saw expressions of disappointment from defendants on learning that the PSR author would not become their supervising officer, and that they would have to await contact from the appropriate agency to set up an induction to their community order. Again, further research is needed to explore defendants' experiences of the service they receive at court and in the gap between court and the start of their order.

That said, an important issue to which the study discussed in this article *did* attend, but which is beyond the scope of the present article, is the subjective experience of McDonaldization among probation workers in specialist court teams. In Ritzer's discussion of McJobs, themes of deprofessionalisation, disenchantment and dehumanization are prominent, just as they are in Marxian scholarship on the labour process. However, in Ritzer's work they are not taken for granted or regarded as inevitable: instead, he argues, their salience must be established empirically. With reference to Weber's metaphor[15] of an 'iron cage of rationality', Ritzer (2015: 159-60) suggests that McDonaldized workplaces may be experienced in a variety of ways: as an oppressive 'iron cage' from which there is no escape; as a 'rubber cage', the bars of

[15] The translation and intended meaning of Weber's "Stahlhartes Gehäuser" metaphor has been hotly contested: see Baehr (2001).

which can be stretched to allow for a degree of escape; or even as a ‘velvet cage’ which offers comfort through its predictability and ritualised procedures. These possible ways of experiencing McDonaldization in the workplace will be explored in a subsequent article.

References

Allen, R. (2013) 'Paying for justice: Prison and probation in an age of austerity', *British Journal of Community Justice,* 11, 1: 5-18.

Baehr, P. (2001) 'The "iron cage" and the "shell as hard as steel": Parsons, Weber, and the *Stahlhartes Gehäuser* metaphor in *The Protestant Ethic and the Spirit of Capitalism.* History and Theory, 40, 2: 153-169.

Beyens, K. & Scheirs, V. (2010) 'Encounters of a different kind: Social enquiry and sentencing in Belgium', *Punishment and Society,* 12, 3: 309-28.

Bohm, R.M. (2006) ''McJustice': On the McDonaldization of criminal justice', *Justice Quarterly,* 23, 1: 127-146.

Carlen, P. (1976) *Magistrates' Justice.* London: Martin Robertson.

Department for Constitutional Affairs (2006) *Delivering Simple, Speedy, Summary Justice.* http://webarchive.nationalarchives.gov.uk/+/http://www.dca.gov.uk/publications/reports_reviews/delivery-simple-speedy.pdf [accessed 15 August 2017]

Gelsthorpe, L. Raynor, P. & Robinson. G. (2010) 'Pre-sentence reports in England and Wales: changing discourses of risk, need and quality', in F. McNeill, P. Raynor & C. Trotter (eds.) *Offender Supervision: new directions in theory, research and practice.* Abingdon: Willan.

Gale, J (2012) 'Government reforms, performance management and the labour process: the case of officers in the UK probation service', *Work, Employment and Society,* 26, 5: 822-38.

Gillingham, P. (2016) 'Technology configuring the user: Implications for the redesign of electronic information systems in social work', *British Journal of Social Work,* 46: 323-338.

Goffman, E. (1990) *The Presentation of Self in Everyday Life.* London: Penguin.

Halliday, S., Burns, N., Hutton, N., McNeill, F. & Tata, C. (2009) 'Street-level bureaucracy, interprofessional relations, and coping mechanisms: A study of criminal justice social workers in the sentencing process', *Law and Policy,* 31, 4: 405-28.

Halliday, S., Burns, N., Hutton, N., McNeill, F. & Tata, C. (2008) 'Shadow writing and participant observation: A study of criminal justice social work around sentencing', *Journal of Law and Society,* 35, 2: 189-213.

Heslop, R. (2011) 'The British police service: Professionalisation or 'McDonaldization'?', *International Journal of Police Science and Management,* 13, 4: 312-21.

HM Inspectorate of Probation (2017a) *The Work of Probation Services in Courts.* Manchester: HMIP.

HM Inspectorate of Probation (2017b) *The Implementation and Delivery of Rehabilitation Activity Requirements.* Manchester: HMIP.

Howard, P., Francis, B., Soothill, K. & Humphreys, L. (2009) *OGRS 3: The revised Offender Group Reconviction Scale*, Research Summary 7/09, London: Ministry of Justice.

Leidner, R. (1993) *Fast Food, Fast Talk: Service work and the routinization of everyday life.* Berkeley: University of California Press.

Mawby, R.C. & Worrall, A. (2013) *Doing Probation Work: Identity in a criminal justice occupation.* Abingdon: Routledge.

McCulloch, T. & McNeill, F. (2007) 'Consumer society, commodification and offender management', *Criminology and Criminal Justice,* 7 (3): 223-242.

Ministry of Justice (2017a) *Offender Management Statistics Quarterly, England and Wales: January-March 2017.* London: Ministry of Justice.

Ministry of Justice (2017b) *Community Performance Quarterly Management Information Release – Appendices.* Ministry of Justice Guidance Documentation. London: Ministry of Justice.

Ministry of Justice (2015) *Offender Management Statistics Bulletin, Annual January-December 2014.* London: Minsitry of Justice.

Ministry of Justice (2013) *Transforming Rehabilitation: A Strategy for Reform.* CM8619. London: Ministry of Justice.

Ministry of Justice (2012a) *Swift and Sure Justice: The Government's Plans for Reform of the Criminal Justice System.* London: Ministry of Justice.

Ministry of Justice (2012b) *Digital Strategy.* London: Ministry of Justice. http://open.justice.gov.uk/digital-strategy/ [accessed 31 July 2017]

Morgan, R. & Smith, D.J. (2017) 'Delivering more with less: Austerity and the politics of law and order', in A. Liebling, S. Maruna & L. McAra (eds.) *Oxford handbook of Criminology, 6th Edition,* Oxford: Oxford University Press.

National Probation Service (2016) *NPS Operating Model Version 1.0.* National Probation Service.

National Probation Service (2015) *E3 Blueprint: Effective. Efficient. Excellent.* National Probation Service.

National Probation Service (2004) 'Pre-sentence reports and OASys', *Probation Circular 53/2004.*

Nellis, M. (2002) 'Community justice, time and the new National Probation Service', *The Howard Journal,* 41 (1): 59-86.

Nellis, M. (1999) 'Towards ''The Field of Corrections'': Modernizing the Probation Service in the late 1990s', Social Policy and Administration 33(3): 302-323.

Oldfield, M. (1994) 'Talking quality, meaning control: McDonalds, the market and the probation service', *Probation Journal,* 186-192.

Phillips, J. (2017) 'Probation practice in the information age', *Probation Journal,* 64, 3: 209-225.

Phillips, J., Westaby, C. & Fowler, A. (2016) ''It's relentless': The impact of working primarily with high-risk offenders', *Probation Journal,* 63, 2: 182-192.

Quirouette, M. (2017) 'Community practitioners in criminal courts: Risk logics and multiply-disadvantaged individuals', *Theoretical Criminology,* DOI: 10.1177/1362480617707951.

Raine, J. (2000) 'Modernising courts or courting modernisation?', *International Journal of Public Sector Management,* 13 (5): 390-416.

Raynor, P., Kynch, J., Roberts, C. and Merrington, M. (2000) *Risk and Need Assessment in Probation Services: An Evaluation*, Research Study 211. London: Home Office.

Ritzer, G. (2015) *The McDonaldization of Society,* 8th Edition. London: Sage.

Ritzer, G. (1998) 'McJobs: McDonaldization and its relationship to the labour process', in G. Ritzer (ed.) *The McDonaldization Thesis: Explorations and Extensions.* London: Sage.

Robinson, G. (2018) 'Transforming probation services in Magistrates' Courts', *Probation Journal.* DOI: 10.1177/0264550518776778.

Robinson, G. (2017) 'Stand-Down and Deliver: Pre-sentence reports, quality and the new culture of speed', *Probation Journal,* 64, 4: 337-353.

Robinson, G. (2016) 'Patrolling the borders of risk: the new bifurcation of probation services in England & Wales', in M. Bosworth, C. Hoyle & L. Zedner (eds.) *Changing Contours of Criminal Justice: Research, Politics and Policy.* Oxford: Oxford University Press.

Robinson, G. (2002) 'Exploring risk management in the probation service: contemporary developments in England and Wales', Punishment & Society, 4, 1: 5-25.

Robinson, G., Priede, C., Farrall, S., Shapland, J. & McNeill, F. (2014) 'Understanding "quality" in probation practice: Frontline perspectives in England & Wales', *Criminology and Criminal Justice,* 14, 2: 123-142.

Robinson, G. & Svensson, K. (2013) 'Practising offender supervision', in F. McNeill & K. Beyens (eds.) *Offender Supervision in Europe.* Basingstoke: Palgrave Macmillan.

Robinson, M.B. (2006) 'McDonaldization of Americas police, courts and corrections', in G. Ritzer (ed.) *McDonaldization: The Reader,* 2nd Edition. California: Pine Forge Press.

Schichor, D. (1997) 'The strikes as a public policy: The convergence of the new penology and the McDonaldization of punishment', *Crime and Delinquency,* 43, 4: 470-492.

Smart, B. (1999) 'Resisting McDonaldization: Theory, process and critique', in B. Smart (ed.) *Resisting McDonaldization.* London: Sage.

Tarling, R. (2006) 'Sentencing practice in Magistrates' Courts revisited', *Howard Journal of Criminal Justice,* 45, 1: 29-41.

van Steden, R. & de Waard, J. (2013) ''Acting like chameleons': On the McDonaldization of
private security', *Security Journal,* 26, 3: 294-309.

Vanstone, M. (2004) *Supervising Offenders in the Community.* Aldershot: Ashgate.

Wandall, R.H. (2010) 'Resisting risk assessment? Pre-sentence reports and individualized sentencing in Denmark', *Punishment and Society,* 12, 3: 329-57.

Ward, J. (2015) 'Transforming 'Summary Justice' Through Police-led Prosecution and 'Virtual Courts': Is 'Procedural Due Process' Being Undermined?', *British Journal of Criminology,* 54: 341-358.

Wood, D. (2013) 'Swift and sure: McJustice for a consumer society', *Criminal Justice Matters*, 91:1, 10-11.