



## Compliance during community-based penal supervision

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## **Compliance during community-based penal supervision**

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### **Abstract**

In this chapter, we bring together the limited literature on service-user compliance with community-based orders in England and Wales. We present an overview of key theoretical developments in the field and studies that provide empirical insights into the nature of compliance. The studies have generally found that practitioners' actions construct compliance rather than the active participation of service users. Drawing on the theoretical and empirical studies of compliance (both formal and substantive), we explore the bases and implications of limited service user participation in the production of compliance and argue that a co-productive approach is more likely long-term compliance which goes beyond the life of a court order.

### **Introduction**

In England and Wales, compliance whilst undertaking a community-based order is a relatively under-researched aspect of rehabilitative practice. This has resulted in a surprising gap in knowledge given that, as Bottoms (2013: 89) rightly observes, 'effectiveness and compliance are, in the field of community penalties, topics that are inextricably linked'. Furthermore, compliance is an important aspect of the government's agenda for community-based supervision in England and Wales, as in many other jurisdictions. Perhaps indicating the importance of compliance and service user engagement<sup>1</sup> during supervision, the National Offender Management Service (now known as HM Prison and Probation Services) introduced the Offender

Engagement Programme (OEP) in 2010 to explore how to enhance service user compliance and engagement, and how to develop research-based skills and practices (Copsey 2011). However, studies consistently indicate that the rate at which service users fail to comply with their order or complete mandatory rehabilitative programmes in the community is high and that there are links between non-compliance and increased risks of reconviction (see for example, Hatcher et al. 2012). There is also evidence that, over the years, enforcement action for non-compliance has inflated the prison population (Gyateng et al. 2010). Furthermore, missed appointments (formal non-compliance) and enforcement action have been linked to other forms of reoffending (Wood et al. 2015). All of this suggests that an understanding of the factors that encourage compliance is required. To this end, this chapter provides an overview of the existing theoretical literature as well as an empirical account of compliance dynamics.

### **Compliance during penal supervision: Theoretical developments**

In his much-cited theoretical framework on the nature of compliance, Bottoms (2013: 89) notes that complying with the requirements of a community order, and successfully completing the order may be described as ‘short-term requirement compliance’. Bottoms (2013: 89) differentiates this form of compliance from ‘longer-term legal compliance’ after the order ends. In their exploration of compliance during community-based supervision, Robinson and McNeill (2008), and others, have extended Bottoms’ (2013) analysis by drawing conceptual distinctions between short-term ‘formal’ or technical compliance and more sustainable ‘substantive’ compliance (see also Ugwudike 2008; Ugwudike and Raynor 2013). Formal or technical compliance manifests behaviorally and is the act of complying with the minimum

requirements of a court order, mainly by attending statutory appointments without necessarily engaging with the objectives of the order. In contrast, substantive compliance entails active participation and commitment to the aims and objectives of the order (Robinson and McNeill, 2008; Ugwudike 2008). Thus, substantive compliance signifies service-user engagement<sup>1</sup> and involves more than attendance. It includes an attitudinal element that finds expression in engagement with the supervision process. In other words, it equates to what some describe as cooperation (Serin et al., 2013: 94).

Key models of supervision in criminal justice contexts, for example, desistance-based models, the Good Lives Model of desistance and the Risk Need Responsivity (RNR) model all stress that service user participation and their exercise of agency<sup>2</sup> are vital components of engagement (and are manifestations of substantive compliance), and even of longer-term positive change (Bonta and Andrews 2017; Maruna 2004; McNeill, 2014; Ward and Fortune, 2013).

Writing from a desistance<sup>3</sup> perspective, Maruna (2015) draws parallels between the desistance literature on the important role of service user agency, and the extensive research on medical rehabilitation which suggests that human agency is central to decisions to address addiction and a variety of medical conditions. McNeill (2014: 10) similarly emphasises the agentic dimension of desistance and remarks that service users:

‘have strengths and resources that they can use to overcome obstacles to desistance – both personal strengths and resources and strengths and resources in their social networks. Supervision needs to support and develop these capacities’.

According to Ward and Fortune (2013: 31): ‘...the Good Lives Model (GLM) is a strengths-oriented rehabilitation approach that is responsive to service users’ particular interests, abilities, and aspirations’. Ward and Fortune (2013) imply that intervention plans and processes should be designed and implemented collaboratively, with the service user playing a meaningful role. Similarly, proponents of the Risk-Need-Responsivity (RNR) model<sup>4</sup> emphasise the importance of enabling service user participation in identifying and implementing the goals of supervision (Bonta and Andrews 2017). Aligned to this, several studies of supervision in community justice settings suggest that service user participation in the planning and delivery of a community order is vital for substantive compliance (Hughes, 2012; Rex, 1999; Weaver & Barry, 2014).

Despite the primacy that key models of supervision accord to service user agency and participation, and the finding that it is a *sine qua non* of substantive and sustained compliance, the few existing empirical studies of compliance tend to see compliance as emerging from the roles and activities of practitioners. Collectively, these studies focus on the role of practitioners in managing relational, practical structural and policy-related contradictions, to achieve compliance. In this context, the concept of ‘contradictions’ is borrowed from Pearson’s (1975) theoretical analysis of Social Work practice, and it denotes the relational, practical structural and policy-related conditions that shape frontline practice in a variety of settings. According to Pearson (1975), it is necessary to study these contradictions in order to develop a contextualised understanding of the dynamics and outcomes of practice. As we shall see, in probation practice, compliance is linked to the actions of practitioners in managing several contradictions and in the next

section of this chapter, we describe the contradictions, focusing mainly on our own studies of compliance.

One of the studies was conducted in nine offices within a Welsh Probation Area and this paper focuses on the data generated from one-to-one qualitative interviews with 19 probation practitioners, observations of supervision sessions and analysis of case management records (Ugwudike 2008; 2010; 2013). The second study entailed an extended period of observation and 32 semi-structured interviews with probation practitioners in England (Phillips 2011). Interactions with service users were also observed and the researcher sat in on staff meetings. Both studies explored the processes of securing compliance and although the studies were conducted in different locations (one in England and the other in Wales), as we shall see below, the data generated across the two studies contained important similarities and a certain level of homogeneity.

### **Empirical analysis of compliance dynamics**

Several studies identify the relational element of supervision as a factor that can affect compliance and both of our studies highlight the role of practitioners in forging good working relationships with service users (see generally, Kennealy et al. 2012; Lewis, 2014; Phillips 2011; Skeem et al. 2007; Sorsby et al. 2017; Ugwudike 2010; 2013; 2016; 2017). In Ugwudike's (2010) study for instance, the relational element of compliance was a contradiction practitioners sought to manage in order to secure compliance. Most of the practitioners believed that a negative relationship was an obstacle to compliance (see also, Phillips 2011; 2016). Therefore, there was a perception that cultivating good relationships with service users was necessary to

avert the contradiction that could be posed by a negative relationship which, in the practitioners' view was likely to discourage compliance.

Ugwudike's (2008; 2010) study also found that compliance was primarily defined as attendance, and the compliance achieved stemmed mainly from the actions of practitioners in managing practical obstacles to attendance (see also, Phillips 2011; 2016). A practical problem that several practitioners in Ugwudike's (2008; 2010) study identified as an obstacle to compliance was substance misuse. The latter fueled chaotic lifestyles and affected the ability of service users to attend routine appointments. In response, some practitioners sent reminders and scheduled flexible appointments. Another practical problem some practitioners sought to manage in order to produce compliance (primarily attendance) was the problem posed by travel costs, and participants in both Ugwudike (2008; 2010), and Phillips' (2011) studies of compliance described how they worked to overcome these difficulties. For example, practitioners in both studies employed breach avoidance techniques such as making home visits to alleviate the service users' travel costs which then obviated the need for service users to attend appointments and helped them achieve compliance. This finding, which has been recorded by other studies (see Hucklesby 2017 for an overview) reveals one of the ways in which practitioners play a key role in the construction of compliance.

There is also evidence that practitioners seek to manage structural contradictions such as lack of adequate accommodation and other deprivations by referring service users to relevant agencies. Policy-related contradictions are also sometimes addressed to achieve compliance. For example, some practitioners overlook prescriptive enforcement policies by devising more flexible responses to non-compliance that are responsive to individual circumstances (Ugwudike 2008;

2010). In both Ugwudike (2010) and Phillips' (2011) studies, there was a generalized view among the practitioners that most service users were experiencing several problems and deprivations that made it difficult for them to lead 'normal lives' or maintain lifestyles that would enable them to conform with routine reporting arrangements. The prevailing idea seemed to be that flexible compliance strategies (not tough enforcement practices) were vital for ensuring attendance. Importantly, flexible enforcement strategies served the pragmatic purpose of maintaining good supervision relationships, reducing breach rates, and increasing completion targets. Key examples of these strategies were: sending text message reminders; telephoning service users; and making home visits to follow up absences. Indeed, this tendency to employ flexible enforcement strategies to facilitate compliance is a recurring theme in several compliance studies (Hucklesby, 2017).

It could be argued that the practitioners' actions in managing obstacles and problems and in adopting flexible enforcement strategies serves the pragmatic objective of producing outcomes that act as proxies for compliance, such as high rates of attendance and completion. However, some of the practitioners may also be motivated by the humanitarian concern to remain responsive to the problems that tend to affect the lives of many service users. Furthermore, there is evidence that enforcement approaches that are unresponsive to obstacles that impede compliance can undermine the perceived legitimacy of authority and trigger non-compliance (Ugwudike 2008; 2010).

The studies cited above enhance our understanding of compliance. Nevertheless, they see compliance as stemming mainly from the practitioners' actions in managing or attempting to work with problems posed by relational, practical, and structural contradictions (obstacles to compliance) to facilitate attendance, or maintain



contact with the service users in some way. This implies that, unlike substantive compliance, which manifests as active service user participation and engagement, the compliance that is frequently achieved does not derive primarily from the active participation of the service user or their strengths and ‘competencies’ as key ‘agents of change’ (Serin et al., 2013: 96). Rather, it is a form of compliance that fits the description of formal or technical compliance as described earlier (see, Robinson and McNeill 2008; Ugwudike 2008).

### **Managing contradictions and fostering benevolent paternalism**

As noted earlier, the practitioners’ actions in managing contradictions to secure compliance might be motivated by the pragmatic objective of attaining high completion rates and a humanitarianism that is borne out of the concern to be responsive to the service users’ difficult circumstances. However, by assuming the primary role in the production of compliance, practitioners may also be motivated by benevolent paternalism (Glaser, 2011). This is particularly likely to be the case where the practitioners believe that service users are unable to comply unaided because of the problems that affect their lives.

The failure to develop and harness the service user’s role might be indicative of a paternalistic view of his or her capabilities. As a philosophical concept, paternalism (even where it is motivated by altruism) is inherently unjust as it involves imposing a decision on someone or a group against their will and consequently limits the ability of the those affected to exercise their autonomy. Thus, paternalism can result in the infantilisation of penal subjects and has been described as ‘intervening unjustly’ in an individual’s life because it does not foster a subject’s agency (Menger and Donker, 2014: 285). According to Glaser (2011: 331), in medical practice, paternalism could manifest as a ‘doctor knows best’ approach to practice. Thus,

paternalism might be inspired by the assumption that the professional's judgment and actions should be prioritized, and are morally justified because they are beneficial to the service user even if they usurp the service user's role, undermine human agency and autonomy, and infringe human rights (Glaser 2011).

Most likely, in probation supervision contexts, where paternalism exists, it is motivated by a humanistic concern to promote what the practitioner perceives to be the service user's best interests. Indeed, studies of supervision practice have consistently revealed an enduring humanitarian commitment (amongst many practitioners) to promoting the service user's welfare (Annison, Eadie and Knight, 2008; Worrall and Mawby, 2014). But where some practitioners, even if motivated by humanitarianism assume the dominant role in seeking to 'produce' compliance, it is possible that their humanitarianism co-exists with a degree of benevolent paternalism which obscures the service user's role, infantilises him or her and prioritises the practitioner's power and expertise. This is an approach to practice that can fuel passivity and dependency amongst service users.

### **Participatory practice as a mechanism of substantive compliance**

We contend that, quite unlike paternalistic approaches, participatory strategies that actively encourage service user participation are more likely to engender commitment and engagement (substantive compliance). Thus, we propose a co-productive approach which involves both parties working collaboratively to secure compliance. Bovaird's much-cited (2007: 847) definition of co-production seems relevant here. He defines the concept as:

The provision of services through regular, long-term relationships between professionalized service providers (in any sector) and service users or other

members of the community, where all parties make substantial resource contributions.

This definition implies that co-production relies on dialogue, negotiation, mutual trust, and reciprocal respect between the practitioners, service users and other stakeholders such as the service users' families<sup>6</sup> (Ugwudike 2016; 2017; Weaver, 2014). Importantly, a co-productive approach to encouraging compliance relies on the service user's active participation, which according to the models of supervision cited earlier, is linked to long-term positive change. Therefore, we contend that it is a goal worth pursuing.

We do acknowledge that some practitioners in compliance studies appear to engage in participatory practice by encouraging service user participation during sentence planning sessions. In Ugwudike's (2008; 2010) study, some of the practitioners made conscious efforts to ensure that supervision plans were drawn up with the service users. Phillips' (2011; 2016) study also found that some practitioners enable service user participation in supervision planning. This would suggest that service users are given the opportunity to participate in defining supervision goals, and there is evidence that service user participation in goal setting can encourage commitment to the goals (substantive compliance) (see Ugwudike 2016 for an overview).

However, in Phillips' (2011) study, there was limited evidence that service users actively participated in setting supervision goals. They seemed willing to accept the practitioner's recommendations with no amendment. This indicates a degree of dependency rather than participation and engagement as active agents; this might perhaps reflect a reaction to experiencing paternalism. There was also evidence that although some practitioners sought to enable service user participation in sentence implementation, this was mainly in cases where the service users were themselves

motivated and committed to participation. What is less clear is whether the practitioners did the same with less committed service users. Indeed, several studies of service user participation during probation supervision suggest that service user participation in the design and implementation of service delivery goals is quite limited, and is linked to limited participation and lack of engagement (see for example, Hughes 2012; Weaver and Barry 2014).

### **Discussion and concluding comments**

This chapter has presented an overview of key theoretical and empirical studies of compliance and it argues that two key implications arise from the lack of service user participation as capable agents who can play a significant role in the production of compliance. Firstly, lack of participation may reflect or foster paternalism which could in turn breed a sense of dependency among service users. This sense of dependency is unlikely to motivate active engagement which is associated with substantive compliance. Aligned to this, where compliance is the product of practitioners' efforts to manage obstacles and problems, the compliance achieved is likely to be formal in nature (Phillips, 2016; Ugwudike 2008; 2010; 2013). The longevity of this form of compliance might be curtailed by the inevitable reduction of supportive provision once an order ends. Furthermore, compliance studies reveal that compliance is typically defined in terms of attendance and practitioners' efforts are usually geared towards enabling attendance or maintaining some form of contact whilst in the process, avoiding breach action for non-compliance. These practices might facilitate short term compliance with the requirements of an order (or formal compliance), which is not a sustainable form of compliance (Robinson and McNeill, 2008; Ugwudike 2008).

It is however useful to place the forgoing in the wider context of contemporary probation policy, particularly given the demands on services to produce quantifiable outcomes such as improved attendance and completion rates. The quest to attain these targets could in part underscore the noted primacy of attendance and other forms of measurable compliance. Other studies of compliance in community justice settings also reveal that compliance is often defined as meeting reporting (primarily attendance) requirements (see for example, Farrall, 2002); and much of the work that occurs to produce compliance is usually geared towards facilitating attendance and avoiding breach action in order to attain compliance and completion targets (Phillips 2011; Ugwudike 2008; 2010; 2013).

Nevertheless, attending appointments without participation and engagement exemplify merely formal compliance. This might in some cases evolve into substantive compliance but, in itself, formal compliance is unlikely to produce positive effects beyond the term of the order. By contrast, substantive compliance which, as noted earlier stems from commitment and manifests as engagement with short-term and long-term supervision goals, may better produce longer term effects, including compliance with the law more generally.

We would argue that the knowledge that has been generated from our overview, in conjunction with insights from compliance studies, suggest that a more participatory form of supervision that harnesses the service users' strengths and capabilities as capable and active agents should be attempted.

## **Notes**

1. Engagement in this context may be defined as:

The active engagement and co-operation of the offender with the requirements of his or her order It is achieved when (for example) the offender subject to community service works hard and diligently; or when the offender on probation shows a genuine desire to tackle his or her problems (Robinson & McNeill, 2008: 434).

2. In this paper, we follow (Maruna, 1999: 8) to define agency as the ability to engage in purposeful behaviour – human beings demonstrate agency by engaging in ‘intentional and purposeful behaviour’. For example, those who wish to desist might exercise their agency by actively engaging in action that supports desistance.
3. There are diverse desistance perspectives. For example, whilst some desistance scholars emphasize the role of agency (Maruna, 2004), others acknowledge the role of agency but emphasize the impact of structure in the form of social influences or key transitions in the life course (for example, gaining employment or getting married), or in the form of poverty and unemployment (Sampson and Laub, 2005).
4. Please refer to Bonta and Andrews (2017) for an incisive description of the RNR model.
5. There is evidence that family members also play a useful role in encouraging compliance (see for example, Farrall 2002).

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