Control power

As the use of probation orders declines the service is turning more to toughter alternatives. Peter Raynor looks at the implications.

How far can a social work agency depart from its traditional client-centred focus before it becomes just another controlling arm of the state? Can a preoccupation with containment and direction of clients on behalf of the "community" coexist with a concern to help? These are familiar social work problems, and probation officers in particular have to strike a credible if precarious balance between these often conflicting claims. Many observers have attributed the fairly consistent decline from 1972 to 1979 in the courts' use of probation orders to a failure of this balancing act, and a consequent reduction of credibility in the eyes of sentencers.

One reaction to this in the probation service has been to question psychodynamic "treatment" models of social work, and to concentrate on developing a range of helpful services which can be offered to clients and courts on the basis of whatever contract or agreement is compatible with common sense ideas of justice.[1] Another has been the attempt to develop tougher probation orders, "probation with teeth", to recapture credibility with sentencers who are assumed to want toughness. This strategy relies on the insertion and rigorous enforcement of special restrictive conditions in probation orders, and is leading to considerable disquiet among some officers. Its supporters argue that if we provide sufficiently deterrent and punitive alternatives to imprisonment, we may persuade courts to send fewer people to prison. Others are less convinced, and one senior officer recently described this tendency to me as a "rising tide of controlism".

Danger of familiarity

A good example of this strategy in practice is the Probation Control Unit recently opened in Kent, where probationers are required to attend six days a week for six months, including evenings, and to conform to curfew regulations when they go home to sleep. If they have jobs, they report to the unit straight after work. Before a day off (these are limited to Sundays and bank holidays) the probationer has the conditions of his order read out to him as a reminder, and he is required to address staff by their proper titles and surnames at all times, to "protect him from the danger of becoming over familiar". Breaches of discipline (such as failure to obey a lawful instruction after it has been given for a second time) are punished by extra community service on Saturdays, or in extreme cases breach proceedings.

Documents describing the planned regime[2] explicitly emphasise containment and deterrence, and there is little reference to any procedures or practices designed to assess clients' needs or provide appropriate help. Only one of the staff is a qualified probation officer, and the work programme for the unemployed appears to consist mainly of hedging and ditching on local farms.

The unit has been jokingly described as a "non-residential prison", but in reality there is a good deal of thought behind it. Even if it turns out less harsh in practice than the plans suggest, its implications need to be considered seriously. If the probation service can legitimately operate a facility of this kind as part of a probation order, could it also run weekend prisons? What legal or professional considerations limit the range of controls which can be imposed as conditions of a probation order?

Extra conditions in probation orders are nothing new. In America they have been developed into an impressive array of powers, including in many states the option of imposing a period in custody as an integral part of probation. A recent article by Harry Joe Jaffe, an American probation officer, in the journal *Federal Probation* ("Probation with a flair", March 1979) describes some more unusual conditions, including restrictions on rights of free speech, association and assembly. Various forms of reparation and community service can be included, as can more detailed regulation of everyday life such as to "belong to no Irish organisation, cultural or otherwise; not to visit any Irish pubs". Some probationers are required to submit themselves at any time to searches without warrant, and one bag snatcher was required to "wear leather shoes with metal taps on the heels and toes anytime he leaves the house", instead of the tennis shoes he normally wore to sneak up on his victims.

But there are some limitations. Conditions must "conform with the

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constitutional rights of the probationer and the limits of the probation statute". The Federal Probation Act is seen as having a "bilateral nature", involving protection of the public and help to the offender, and some requirements have been deleted by appellate courts on the grounds that they are merely restrictive and have no rehabilitative purpose.

Under British law the position is not so clear. For instance, section 4 of the Powers of Criminal Courts Act 1973 contains provision for attendance at a day training centre as a condition of probation, but with very clear limitations. Attendance is limited to three months and is available only in areas where designated centres exist (currently London, Liverpool, Sheffield and Pontypridd). The designated centres are staffed mainly by qualified and experienced officers, and build their programmes around the assessed needs of their trainees.

On the other hand, section 2 of the same Act contains a general power to require probationers to "comply with such requirements as the court . . . considers necessary for securing the good conduct of the offender". Courts in Kent are interpreting section 2 as allowing them to order six months' attendance at the control unit. It seems at least doubtful if this section was intended to permit requirements even more restrictive than those specifically created and limited in section 4, or why bother with section 4 at all? In practice, however, the letter of the law appears to set few boundaries, and I am not aware of any relevant appeals which might settle the issue. Does this mean that section 2 can be used to create a wide range of what are virtually new sentences, without public debate or specific legislation? Are the options in any way limited by a probation officer's legal duty to "advise, assist and befriend" those under his supervision?

Tougher climate

Contributors to the *Probation Journal* and to the left wing probation officers' publication *Probe* have linked this increasing "controlism" to a number of other developments. Penal policymakers have been actively interested in "strengthened" (more coercive) non-custodial sentences since the publication of the Younger Report in 1974, and the present political climate may favour "toughness" in probation as it does in detention centres.

Some officers have argued that the social work base of the probation service's activities has been eroded by the runaway success of community service orders, which involve supervision without specific social work aims, and usually by untrained staff. Others have suggested that as probation areas have become larger, management risks becoming more remote and bureaucratic, and may react to scepticism about the value of social work by emphasising the concrete and quantifiable and becoming preoccupied with rules and routines.[3]

The concept of "need" itself is ambiguous and does not help to clarify the issue: "he needs to be contolled" is not necessarily a statement about *his* needs at all. The whole argument risks being seen as a stereotypical conflict between "hardliners" and "wets", but in practice this may turn out to be a misleading image.

Measures which are designed as "alternatives to custody" often fail effectively to divert offenders from prison. Suspended sentences are a familiar example, and recent research has revealed the failure of most intermediate treatment to divert juvenile offenders from residential care.[4] Even community service orders seem to operate as alternatives to prison only about half the time; the other half are alternatives to fines or probation. Toughness and authoritarianism may not by themselves guarantee that courts will use a particular facility only or mainly for people who would otherwise have gone to prison.

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on the day training centres by Andrew Willis of Cardiff University suggests that they are being used mainly as alternatives to prison, while remaining relatively flexible and client centred. We should not simply assume that toughness is either a sufficient or a necessary condition of credibility. To its credit, the Kent probation service is aware of the need for research and intends to look carefully at the question of whether diversion actually occurs.

There should also be some doubt about the effectiveness of more intensive supervision. Closer surveillance will not necessarily do any good unless it also involves the use of effective methods of help. Both British and American researchers have produced examples of intensified supervision actually proving counterproductive[5] and a multiplication of special requirements unrelated to clients' assessed needs may simply lead to higher breach rates. There is some evidence that effective social work depends partly on compatibility between the help offered and the client's own view of his problems and goals. This will be difficult to achieve in programmes which allow little space for clients' points of view or for the negotiation of agreed objectives.

In short, careful evaluative research is not necessarily the enemy of those who are anxious to preserve the social work content of probation, and it may even turn out to be their friend. But in addition to questions of technical effectiveness (the appropriateness of means to ends) controlism raises normative questions about the desirability of ends in themselves. Services to help some offenders were set up largely because it was thought fair and just to do so, and it is unrealistic to think that sentencers are no longer concerned about such issues.

Alternative choice

Until we know more, a reasonable principle might be to use special restrictive forms of probation with little or no social work content only if the alternative is known to be a substantially more restrictive prison sentence, and if we have the client's informed consent. Similarly, probation should perhaps be used as an alternative to an equally restrictive sentence only if we are confident that it will really be more helpful in some fairly defined way.

This kind of policy would, of course, be easier to follow if courts would state more often what alternative sentences they actually have in mind, and if some probation officers could be more specific to clients and courts about what help they are actually offering.

*Since this article was written, a relevant judgement has been delivered by the Divisional Court (Rogers v Cullen). A probationer's appeal against a condition of attendance at a day centre in North Shields was granted, on the grounds that a court has no power to impose a condition of attendance at a day centre under section 2 (3) of the Powers of Criminal Courts Act 1973 unless the preconditions specified by sections 4 (2) and (3) in relation to day training centres have been complied with. It is understood that the prosectution will appeal to the House of Lords.

References

1 Bottoms A E and McWilliams W, "A non-treatment paradigm for probation practice", *British Journal of Social Work*, Vol 9, No 2, 1979.

2 Annual report on the work of the Medway Centre, Kent Probation and After-Care Service, 1980.

3 For instance, Burnham D, "Probation: a new orthodoxy", *Probation Journal*, Vol 28, No 1, 1981.

4 Thorpe D, Green C and Smith D, "Punishment and welfare", University of Lancaster, 1980.

5 For instance, IMPACT, Vol II, HMSO, 1976: Adams S, "Some findings from correctional caseload research, *Federal Probation*, Vol 31, No 4, 1967.