08_CHAPTER 8: PUBLIC PROTECTION

Examining the impact of strengthened public protection policy on probation practice

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Abstract

Over recent decades, probation policy has witnessed legislative changes that has forcibly shifted practice towards one driven by a *public protection* discourse. This chapter briefly introduces the notion of public protection and its emergence from the *dangerousness* and risk narrative and sketches the legislative changes that have impacted probation policy and practice since the 1990s. Much of this legislation is inconsistent with probations' ethos and principles and as such we highlight some of the resultant challenges. To explore the public protection work of probation, we apply four forms of rehabilitation as conceptualised by McNeill to those convicted of sexual offending and managed by probation. Finally, we argue that public protection approaches such as models of containment, control, and preventative sentencing, hinder the work of probation practitioners, fail to protect the public as intended, and increase penal excess.

A brief history of public protection in probation and the current policy context

The notion of public protection has for centuries, centred around the social construction of *dangerousness* and the *dangerous offender,* (Harrison 2011; Williams 2017). Harrison reports how during the 1950s-70s, the habitual property offender was labelled 'dangerous', but became less of a threat with increasing property insurance services and a greater distribution of economic wealth. Instead, attention to those committing acts of violence became central to the dangerousness narrative and by the 1980s concentration on acts of sexual violence and the sexual perpetrator heightened. Particularly fervent were ideas of satanic ritual abuse, as well as rampant homophobia, fuelling ideas of predatory 'perverts' lurking around children's playgrounds (Lancaster 2011). Intersections of personal characteristics such as age, gender, race, disability, and sexuality, profoundly contributed to

the social construction of dangerousness. Indeed, people with mental health conditions continue to be stigmatised as dangerous and violent when evidence finds them more likely to be a victim rather than perpetrator of violence (Ahonen 2019). Changing socio-economic and political contexts and public responses to the perception of dangerousness are important because they shape correctional legislation and thus, the work of probation.

However, while the debate of *what* and *who* is dangerous, persists, the narrative of dangerousness has been somewhat subsumed by the principles of *risk* (Williams 2019; Bottoms 1977). For agencies such as Probation, working with people enmeshed in the criminal justice system, socially constructed labels of dangerousness are unhelpful and purposeless However, 'risks are estimates of the likely impact of dangers' (Garland 2003: 49) meaning probation practitioners can develop tangible and useful strategies based on more concrete risk estimates. By the 1990s, the work of Probation to *Advise, Assist and Befriend* became engulfed by a risk narrative (Kemshall 2016). The government white paper *Crime, Justice and Protecting the Public* (1990) argued that when sentencing certain *types* of criminal, not only should the current offence be considered, but so too should previous offences and potential future crimes (Nash 2010). With the implementation of the Criminal Justice Act 1991 followed by the enacting of the Criminal Justice and Court Services Act 2000, the then National Probation Service for England and Wales became formally mandated to (a) protect the public, (b) reduce re-offending, (c) punish offenders, (d) ensure offenders' awareness of the effects of crime on the victims of crime and the public and (e) rehabilitate offenders. This forced the Probation Service to reposition itself squarely into the public protection arena, despite its work for decades already serving to protect the public.

During the New Labour years (1997-2010) public protection took a more prominent role with greater focus on the *dangerous offender*. The Criminal Justice Act (CJA) 2003 declared prospective sentencing as a means of prevention and public protection (Padfield 2017), significantly impacting

the work of probation. This saw greater use of sentences such as mandatory life sentences under the *two-strikes* policy; discretionary life sentences for those considered *dangerous;* Extended Sentence for Public Protection (EPP); and a raft of community sanctions and licence conditions. Also introduced was the Imprisonment for Public Protection (IPP), a risk based penal tactic (Ashworth 2010), imposed if a person committed a specified sexual or violent offence. Dangerousness became a presumption unless rebutted and as with life sentences, a tariff would be served before being considered for release. This net widening approach saw nearly 3000 offenders sentenced to an IPP within two years of its introduction (Ministry of Justice 2013). A Ministry of Justice green paper *Breaking the Cycle* (2010) consulted on reducing IPPs to a more prescribed range of offences as discrepancy and uncertainty relating to the inequality of sentencing was found. Some offenders would receive an IPP whereas, others despite committing similar crimes would receive a fixed custodial sentence. Additionally, victims were confused as to when offenders would be released (Ministry of Justice 2010). By 2012, the IPP sentence was abolished, and although a decreasing population, as of March 2021, there remain 1784 unreleased prisoners serving IPPs (Ministry of Justice 2021a) long passed their tariff. Likewise, the Extended Determinate Sentence (EDS) became a sentencing option under the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) in which the dangerousness threshold is met if the person is deemed by the court to be a *significant risk*. In addition, Ancillary Orders and less visible penalties, such as notification requirements, run alongside and even beyond the main community sentences many of which probation oversee. Shortly after, the Offender Rehabilitation Act 2014 was passed, extended probation supervision for all offenders sentenced to a custodial sentence for more than one day and less than twelve months, was required. Following any period of custody, a licence period and post-supervision sentence (PSS) equated to a mandatory period of twelve months. Within this Act, Rehabilitation Activity Requirements (RAR) were inserted into community orders so that rehabilitative type programmes such as drug or alcohol treatment could be sanctioned to assist a more structured rehabilitation offer. One of the problems with this strategy, is that PSSs become more onerous and failure to adhere to or complete an RAR or PSS will likely

result in a return to court and possibly prison. In a recent House of Commons Committee of Public Accounts progress review the Ministry acknowledged 'it is a long way from getting post-sentence supervision right' (2019: 6) and despite community sanctions being punitive (Canton 2018) painful (Durnescu 2011) and pervasive (McNeill 2019), they continue to be perceived as a 'soft option' (Bauwens and Mair 2012).

The drive towards strengthening the public protection mandate was further established by the CJA 2003 and the introduction of Multi-Agency Public Protection Arrangements (MAPPA). MAPPA brings together the Police, Probation and Prison Services as statutory agencies, with a *duty of care to co-operate* for other agencies, such as Children's Services, Mental Health and partnerships, (i.e., Jobcentre Plus). MAPPA's primary function is to manage those individuals or groups who meet the criteria of one of three categories. These include Category 1: Registered Sexual Offenders; Category 2: Violent Offenders; and Category 3: Other Dangerous Offenders. Once categorised, the level of management is agreed by MAPPA agencies and the individual is managed at Level 1 by one lead agency, Level 2 a multi-agency approach to support the risk management plan or Level 3 where the risk presented requires senior management staff to authorise additional resources. Most cases fall to Category 1 and managed under Level 1. Agencies within the MAPPA forum contribute to risk management plans devised by the lead agency and the sharing of information to support risk assessment. MAPPA is pivotal to public protection, according to the MAPPA Annual Report 2020, there has been a 75% increase of offenders under its management since 2010 (Ministry of Justice 2020) with low proportions (less than 0.6%) of offenders going on to commit Serious Further Offences (SFO).

With a greater multi-agency approach and an increase in the reliance on tools driven by actuarial approaches, probation staff have less autonomy when making individual clinically informed judgments and assessments (Schaefer and Williamson 2018). Indeed, the development of assessment

tools to identify the *most risky offenders* continue to evolve. Actuarial approaches dominate the field and are statistically driven tools that aggregate the number of shared characteristics of one population into a categorisation of risk that represents a likelihood of recidivism (Werth 2019). Actuarial risk assessment tools mitigate assessor bias, minimise subjectivity and are more accurate when predicting recidivism rates compared to clinical judgment alone (Boer and Hart 2012) but they cannot identify which individual within a population will go onto to offend. Instead, they only help predict which *group* or *type* of person might go on to offend. With the work of probation being typically hidden (Shah 2020), the general public and media when critical of probation appear unaware or at least unclear of intensive risk assessment processes as well as the fallibility of risk classification. Despite, recidivism data showing even *low risk* offenders go on to commit serious further offences (SFOs) (Craissati and Sindall 2009), a public protection approach and pre-emptive risk management dominates practice (Garland 2003) and this practice is operationalised through an assortment of assessment tools.

Currently, each probation case is assessed using the Offender Group Reconviction Scale (OGRS), embedded in the Offender Assessment System (OASys) which incorporates the probability of violent offending (OVP) and general re-offending (OGP) as well as the Risk of Serious Recidivism (RSR) tool; the latter offering a percentage of future re-offending based on dynamic change, such as homelessness and unemployment. In public protection cases, such as those convicted of sexual offending, additional assessment tools, policies, and directions are used. The Risk Matrix 2000 (RM2000) (Thornton *et al.* 2003) tool, previously used to assess the likelihood of sexual and violent crime, has now been replaced with the OASys Sexual reoffending Predictor (OSP) assessing sexual contact and non-contact sexual offending within OASys (Ministry of Justice 2021b).

Men who have committed sexual offences are further assessed by the Active Risk Management System (ARMS) identifying risk and protective factors and regarded as a dynamic assessment

(Kewley and Blandford 2017). Previously a separate assessment report, prepared by the police and probation jointly and required to be completed within 15 working days of sentence and/or release from custody, is now embedded into OASys. Known as an ARMS Informed OASys (AiO) the AiO development is perhaps indicative of a move towards productivity and cost-efficiency and supports HMPPS's belief that valid assessment tools are recognised as statistically strong predictors of recidivism (HMPPS 2020), yet questions whether the professionalism and skills of practitioners are becoming diluted.

Polygraph testing also supports how probation practitioners manage men released from prison convicted of a sexual offence when assessed as high or very high risk of serious harm. While a polygraph outcome in isolation cannot result in an individual being recalled to custody, it can assist with possible breaches of other licence conditions, for example being in an undisclosed new relationship. The use of polygraph testing continues to generate much debate (Gannon, Beech and Ward 2008; Cross and Saxe 2001); with concerns relating to a lack of theoretical support, methodological limitations of studies, the use of confession as a measure of the truth, as well as ethical and practical applications of the tool itself (Elliott and Vollm 2016). Despite these, some empirical studies find the tool effective in relation to increased rates of client disclosure and greater insight into the client's engagement in risk behaviours or sexual preoccupation (Madsen, Parsons and Grubin 2004). In 2021, a three-year polygraph pilot has been extended to men convicted of domestic abuse offences and assessed as high risk (Home Office 2021).

The monitoring and management of high-risk offenders, particularly those regarded as having *dangerous ideologies* (Clarke 2021) were re-evaluated following the murders of Saskia Jones and Jack Merritt, at Fishmongers Hall in London 2019 by Usman Khan. At the inquest into their deaths, failings by the Probation Service, Police and M15 were highlighted as contributory to the deaths of the two students, as Khan at the time of the offence, was managed under MAPPA arrangements

(Fishmongers' Hall Inquests 2021). In response, a National Security Division in the NPS was created with the aim being to strengthen the supervision of *dangerous* offenders and provide statutory agencies with the tools 'which they need to defeat those who threaten us and our way of life' (Buckland 2020).

Over the decades, probation policy and practice has seen changes that tighten, strengthen, and reinforce approaches to assess and manage the risk of those deemed a danger to the public. Despite this, SFOs have occurred across all risk classifications. In 2017-2018, 54% of those convicted of an SFO were classified as *high risk* and managed by the National Probation Service, yet the remining 45% were committed by offenders assessed as low and medium risk, thus, managed with fewer resources by Community Rehabilitation Companies (Ministry of Justice 2019). Risk and risk behaviours are dynamic and fluid, they change rapidly and unexpectedly. While the use of risk classification to determine the deployment of public protection resources to the management of people convicted of serious offences has become the mainstay of criminal justice agencies, there is an inevitably that this approach will and does result in both false positives and negatives. Indeed, when things go wrong, political and media responses perpetuate erroneous notions of risk (Teague 2016) which contribute to a public condemnation and misunderstanding of the limitations of probation services (Fitzgibbon 2016). While it is right that the work of probation ought to have public scrutiny, a misinformed perception of risk is burdensome (Shoesmith 2016), particulary when navigating unrealistic expectations and pressures around public protection and rehabilitation.

Relevance/applicability of the 4 forms of rehabilitation

Public protection approaches are dominated by models of containment, control, and preventative sentencing. A recent growth in interest in both desistance and public health prevention has to some degree helped provide redirection (Kemshall 2017). Thus, we consider the extent to which the work

of probation, even in a public protection arena, can be applied to four forms of rehabilitation (McNeill 2012). As noted, people convicted of a sexual offence are a group subject to the most stringent and punitive public protection policies, and account for 72% of MAPPAs caseload (Ministry of Justice 2020). In the following sections the application of each of the four forms will be made to this population.

Personal Rehabilitation

While all people convicted of sexual offending will be subjected to MAPPA conditions, most will at some time be required to adhere to periods of supervision under probation. It is this period in which the opportunity to develop RSOs personal capacity and exposure to opportunities that support a process of desistance can be capitalised upon. McNeill *et al.* (2012) outline eight principles (see introduction chapter of this text) in which desistance could be operationalised during the supervision process. Paramount to a process of supervising someone under public protection restrictions is for probation staff to recognise the complexity and significant psychological barriers this population face, when attempting to desist from crime. Challenges include self-stigma (Evans and Cubellis 2015), shame (Bailey and Klein 2018), unresolved trauma, including childhood sexual victimisation (Levenson *et al.* 2016b), empathy and cognitive deficits (Blagden *et al.* 2017), intellectual developmental difficulties (Craig 2017), and problematic attachment styles (Marshall and Marshall 2010). Any one of these issues in isolation might impede the development of an effective working relationship between supervisor and supervisee, but it is likely RSOs will have a combination of issues, which over the duration of the community sentence could change. As such, a mutual understanding must be developed in which both members of the supervisory dyad recognise and acknowledges challenges ahead and allow for realistic and meaningful goals/targets to be set. Probation staff are, therefore, likely to require extra training, support, space, and time to successfully navigate these barriers during supervision, as not only will RSOs bring problematic personal histories,

but related ‘pains of probation’ and punitive public protection sanctions will likely impede these further (Durnescu 2011).

One of the significant problems with public protection and preventive sentencing approaches to the supervision of RSOs is that sentences very rarely become spent (Thomas and Marshall 2021). Instead, people are held in a state of ‘civic purgatory’ (Henley 2018) unable to rid themselves of legal labels associated with their crime. The challenge for probation staff, therefore, is to provide opportunities in supervision that assists the RSO to reconstruct pro-social identities even while restricted by a climate of public protection. Here language is critical; where identity transformation has not yet occurred, probation staff must encourage an imagined future non-offending self to help prompt the development of an authentic desistance process (McAlinden *et al.* 2016). In this instance, sentiments of hope and aspiration are required. During supervision, probation practitioners can actively encourage the re-storying of new identities (Mullins and Kirkwood 2019). Practitioners ought to urge probationers to narrate positive accounts of non-offending experiences that affirm a moral *core self*, while, allowing and enabling opportunities to engage in a reflective narrative. This will facilitate a demonstration of moral awareness and reinforce the ability to learn from past behaviours.

Finally, like desistance in non-sexual offending populations, most RSOs will simply age out of crime and desist naturally. Either through the natural maturation process (Harris 2021), the strengthening of informal social controls (marriage, employment, education), or through cognitive transformation (Harris 2016), many just stop offending. This is reflected in low recidivism rates of between 7% and 15% (Hanson and Morton-Bourgon 2005) as well as findings that indicate risk declines the longer a person remains offence free in the community, including those assessed as high risk (Hanson *et al.* 2014) and is equally supported by the low rates of SFOs committed by those managed under MAPPA (Ministry of Justice 2020).

Legal Rehabilitation

The rehabilitation of RSOs is hampered by substantial legal restrictions (see Thomas and Marshall 2021 for a thorough account of the implementation of legislation since the 1990s). This is because, public protection approaches advance the rights of others over the rights of RSOs. Attempts to help rehabilitate and reintegrate this group into society are somewhat undermined by public protection and preventative sentencing. Restricted movements, increased reporting requirements, limited opportunities to access employment, education, and social support to some degree curtail the rehabilitation efforts of probation practitioners. One legislative example of the increasing promotion of the rights of others over the rights of RSOs is the use of registration requirements. The 1997 Sex Offenders Act required people convicted of a sexual offence to provide details, such as their name and address, to the police at a specified point in time following conviction/release. Initially intended as a register, police used it verify and identify suspects after a crime was committed and hoped it might serve as a deterrent to those registered (Nash 2016). While registration was not intended as a form of punishment (Thomas 2004), several stages of legislative *strengthening* has occurred since its implementation (Thomas 2008) including increasing restrictions and a greater role of police practitioners assessing and managing RSOs in the community (Kewley 2017; Nash 1999). This is despite consistently high compliance rates (Thomas and Marshall 2021); between 2%-3% of RSOs in 2019-20 were cautioned or convicted for breaches of their registration requirements, meaning between 97/98% complied (Ministry of Justice 2020).

Additionally, arbitrary time scales in which RSOs must register information with the police, ranges from anywhere between two years to life (Thomas and Marshall 2021) leaving RSOs subjected to somewhat of a ‘civic purgatory’ (Henley 2018). This is despite weak evidence that the tool protects the public or deters further offending (Levenson *et al.* 2016a) indeed, there is no difference in re-offending rates between those who do and do not comply with registration (Levenson *et al.* 2010).

Instead, unintended consequences are experienced, including limited access to employment, social support (Levenson and Hern 2007), RSO family members experience shame, isolation, and fear (Tewksbury and Levenson 2009) and RSOs experience greater rates of homelessness (Cann and Isom Scott 2020). Unlike the legal provision which allows some sentences to become 'spent' and legitimate legal rehabilitation to be claimed (Rehabilitation Periods 2019), public protection sentences never become spent, with registration requirements often extending beyond prison or community sentences. While many appeals against indefinite registration requirements have previously failed, in 2008 the case of *F and Thompson v Secretary of State for the Home Department* was heard. The defence argued, that not having the right to review or appeal on indefinite requirement to register, when assessed as no longer posing a risk to the public, was disproportionate and a breach of Article 8(1) of the European Convention on Human Rights (Gillespie 2009). With the case upheld (in England and Wales at least), those subjected to a lifetime notification registration requirement can now, after 15 years of registration, apply to request their requirement be revoked. Between 2019-20, 411 RSOs had their lifetime notification revoked (Ministry of Justice 2020), the number of those who either were eligible and did not make a request or had their request refused, is unreported.

Human rights are universal principles that apply to all 'members of the human race, and as such are considered to be actual or potential moral agents' (Ward and Connolly 2008: 87). Yet in a socio-political climate that prioritises the rights of victims over offenders, the work of probation is fraught with tension, and RSOs most vulnerable to their rights being breached (Hadjisergis 2020). Indeed, punitive punishment through requirements such as lifetime registration, are arguably both futile in protecting the public and instead cause unintended harms to RSOs and their families. To help alleviate this dichotomy and balance the rights of RSOs with risk and public protection, probation staff must aim to give equal attention to both risk management and strengths-based approaches. Doing so will help promote values such as autonomy, self-determination, freedom to flourish as well as assist people to access opportunities and develop the capacity to achieve good lives (Ward and Maruna

2007; Ward and Stewart 2003). By reducing or addressing the risks posed by RSOs, while also helping promote their core interests, the public are protected and the RSO has the opportunity to thrive while contributing to society (Ward and Connolly 2008). Although risk management approaches already require rights-based and ethical approaches to working with offender populations, this is not always evidenced in practice (Hadjisergis 2020). Indeed, a lack of training, limited knowledge, as well as the dominance of a risk based/public protection climate often results in a depreciation of RSOs human rights.

Social Rehabilitation

Desistance often begins within the individual, but it can only be effectively operationalised and maintained when communities in which people live, allow reparation, forgiveness, and restoration. As such, desistance is firmly embedded within the social relationships around us (Weaver 2015), yet, public protection arrangements, serve to contain and isolate probationers, particularly RSOs, from the community. Employment, for example, serves as an excellent resource for building social capital and a consequence of the desistance process (Skardhamar and Savolainen 2014), yet for nearly all RSOs universal restrictions limit the type of employment they can engage in, making it extremely difficult to secure employment (Cooley 2020; Farmer *et al.* 2015). This is a concern as once employed, RSO re-offending rates decrease (Kruttschnitt *et al.* 2000; van den Berg *et al.* 2014). Understandably, those who have committed sexual offences against children or vulnerable adults will of course be unsuitable for roles that would provide access to children or vulnerable adults; yet despite not all RSOs presenting a risk to children, the label attached creates a barrier. Even employers who actively seek to employ people with convictions and perceive *lower risk sex offenders* as deserving of a second chance (Nason 2020) will rarely employ such individuals due to the potential for reputational damage (Atherton and Buck 2021).

Restoring and building (new) social bonds, is critical in the journey of desistance and reintegration following punishment (Weaver and McNeill 2015). For RSOs, this is equally as important, however, repairing broken social bonds for this population is a challenge. Often intimate relationships have been permanently marred by their own offending behaviour, and either safeguarding restrictions or personal choice of victims/relatives mean relationships can never be repaired. For those who are able to maintain relationships post-conviction these appear important bonds (Farmer *et al.* 2015). Although further examination of the quality of relationships is needed; for example, simply being married does not mean it is positive and directly promotes desistance (Kruttschnitt *et al.* 2000), instead the quality of relationships is dynamic, with differences experienced between pre- and post-conviction. However, supportive relationships that develop post-conviction appear combative of the stigma associated with the conviction and thus assists self-image (Lytle *et al.* 2017).

The relationship between sexual recidivism and social relationships is mixed (Kras 2019) with some studies finding stable positive family/social bonds reduce sexual recidivism (Walker *et al.* 2020; Hanson and Harris 2000) whilst others find no link (Lussier and McCuish 2016). However, the relationship domain is an important factor when considering the priority of public protection. For RSOs, the motivations for sexual offending are complex and for many, relational and situational factors were crucial in their pathway to offending. Access to children, for example, might have arisen through employment or family privileges in which contact was *free*. However, not all RSOs are predatory in their *modus operandi* - some offend as a result of situational and/or opportunistic factors (Wortley and Smallbone 2010). Thus, once convicted, punished, and treated, probation staff have a unique role in helping navigate the development of social capital.

Beyond assisting with practical opportunities to safely develop new relationships (e.g., source or identify social groups/networks) probation staff can help improve social skills, through pro-social modelling, problem solving, and cognitive restructuring (Trotter 2018). The stigma and shame

associated with the offence will likely cause stress and anxiety regarding meeting new people and making safe disclosures. Thus, providing opportunities to practice and rehearse social scenarios in a safe confidential environment is encouraged; particularly for people who have spent long periods of time incarcerated. Being able to strengthen social skills, express thoughts, and feelings, receive feedback, and plan interactions and responses, is a valuable source of support. Peer led strategies, those that are outside of treatment, might also be a helpful way for RSOs to give and receive mutual support, while also building skills and confidence to manage social situations (Cresswell 2020). These might provide opportunities for RSOs to process some of the challenges they face with others who have a unique shared understanding.

Engagement with the community is vital for the development of social capital, while probation practitioners provide a space for assisted desistance (Villeneuve *et al.* 2021) helping RSOs overcome barriers to (re)build social bonds with people in the community (Stout 2018), requires the trust, voluntarism, and reciprocity of the community (Wilson *et al.* 2016). Circles of Support and Accountability (COSA) may go some way to help provide a bridge between formal arrangements and the community. COSA UK facilitates groups of community volunteers to work with the RSO, providing regular practical, social and emotional support so that the RSO can reintegrate back into the community safely (Nellis 2009). A community initiative, COSA UK is firmly rooted in criminal justice systems as it partners with key MAPPA agencies and is funded by the Ministry of Justice (Circles UK 2015), so arguably remains a form of assisted desistance (Tomczak and Buck 2019). COSA research is, however, encouraging in that it appears effective in reducing dynamic risk, increasing protective factors, improving wellbeing (Winder *et al.* 2020) and reducing sexual recidivism (Duwe 2018). However, it is far from conclusive, there are not only significant methodological limitations with studies carried out to date, but work is needed to provide clarity as to what constitutes circle successes and failures (Dwerryhouse *et al.* 2020). One encouraging aspect,

however, is the degree to which COSA provides RSOs the opportunity to develop meaningful social capital and strengthen community bonds beyond those of their probation officer (Richards 2020).

Moral Rehabilitation

People with sexual convictions are notoriously viewed harshly by the general public, perceived irredeemable (Payne *et al.* 2010) and therefore, requiring harsh punishment (Rogers and Ferguson 2011). Negative attitudes make legitimate social reintegration unlikely as effective reintegration relies upon the willingness of professionals and community members to accept reformed RSOs back into the community (Willis *et al.* 2010). Attitudes are, however, malleable and as such can be changed (Harper *et al.* 2017) through training, education or awareness raising activities. One of the biggest challenges for probation is, therefore, brokering mutual reparation. Critical to their role is acting as a buffer between supporting RSOs manage social stigma while also negotiating community reparation, with an often-hostile public perception.

Yet the work of probation does not occur within a moral vacuum. It operates within a changing, and at times contradictory political landscape, often working with issues that require highly complex and multi-level solutions (Burke *et al.* 2019). Indeed, the tension between public protection and assisting those deemed the public need protection from, is an example in which moral friction is observed. On the one hand, the credibility of probation is judged by its bureaucratic controllers, the media and general public (Robinson *et al.* 2017). Athough mostly hidden from public sight (Shah 2020), such scrutiny expects the Probation Service to protect the public from all known harms. Whereas, probation as a social process receives its legitimacy from probationers when rules are perceived as fair and reasonable (Wallace *et al.* 2016). The public protection space in which probation practice operates is an excellent platform to begin to foster discussions around moral rehabilitation. With its historical roots firmly embedded in rehabilitation and working closely with local communities, it is

well placed to assist stakeholders navigate the moral aspects of rehabilitation. Probation practitioners are extremely skilled in calculating the needs of stakeholders and as such could effectively and sensitively negotiate public protection concerns along with the rights and needs of probationers requiring a process of reparation.

Can public protection practice and policy reduce penal excess?

With a 75% increase in the last decade of cases being managed under public protection arrangements (Ministry of Justice 2020) there is little sight of a reduction in penal excess. Public protection practice and policy, like most Western correctional services embrace a culture of individualism, in which mainstream media and governments depict the criminal as an actor of free will, dangerous, deviant, and unable and unwilling to change. Yet, while, exclusionary penal sanctions are the dominant response to crime (Kemshall and Wood 2007), such systemic individualism is a problem because while the notion of crime is both socially constructed and mutable, its causes are multi-faceted. Criminal behaviour does not operate within a vacuum, instead, people's behaviours function within layers of biological, social, economic, political, and cultural/historic contexts. Therefore, solutions that only target the individual such as lengthy prison sentences and onerous community sanctions are unlikely to reduce penal excess.

It is without doubt that there are some people motivated and determined to cause harm to others and a period of incarceration is likely the most appropriate solution to protect the public based on the risk of harm they pose. However, the narrative of *dangerousness* permeates public protection policy to such an extent it groups all people convicted of certain offences by this label, resulting in greater penal excess. One such example is a trend of lengthier prison sentences. Between 2008 and 2018, the average custodial sentence length went from 15.4 months to 20.2 months (Justice Committee 2021) and by 2020 it had reached 21.4 months (Ministry of Justice 2021c). Inflation in sentence length is

explained by several factors including, increases in specific types of offence (sexual, robbery and arson); the response of sentencers' perception that prison protects the public whereas community sanctions are a *soft option*; an increase in recall action; and social policies that fail to address the complex psychological and social needs of people long before they commit crime (Justice Committee 2021). Not only, therefore, are sanctions increasing, but they are failing to reduce reoffending and thus ineffective at protecting the public as 'the average number of reoffences committed by each reoffender actually increasing' (House of Commons Committee of Public Accounts 2019: 3).

One of the pervading problems with current arrangements are the inadequate resources available to support and work with people who have complex needs and commit crime. For example, the time in which probation practitioners have to engage in meaningful contact with offenders has significantly reduced (National Audit Office 2019) and as such being able to respond to complex needs, develop professional relationships and help make change is significantly compromised. Instead, people with complex needs are met with pervasive penal sanctions, that do not support change, but are designed to control and manage perceived disorderly groups (Feeley and Simon 2009; Metcalf and Stenson 2004). As already discussed, a highly stigmatised population, people with poor or untreated mental health conditions or learning disabilities, are labelled dangerous and not managed according to their health needs, but according to a correctional classification branded as *public protection*. The now abandoned IPP policy is evidence of penal excess and harm caused to those with complex needs. In one joint inspection (HM Inspectorate of Probation 2008) over two thirds of IPP cases reviewed had at least one diverse need (mental health, substance use, or learning difficulty) and found IPP prisoners to have greater mental health needs and a raised risk of self-harm and suicide than other prisoners. Given complex needs of IPP prisoners plus the under resourced and unprepared prison and probation practitioners at the time, it is unsurprising to find the consequences for those sentenced to an IPP were dire, with 'prisoners languishing in local prisons for months and years, unable to access the interventions they would need before the expiry of their often-short tariffs' (HM Inspectorate of

Probation 2008:3). The effects on prisoners and their families were, and continue to be, overwhelming, with confusion, despair, diminishing mental health and increasing suicides (Strickland and Beard 2012). Furthermore, the impact on people with limited capacity to understand their sentence is of concern. Take for example, the summary provided below, from one of the second author's probation case load. The example illustrates the impact of an IPP sentence on this individual:

> E, now 57 years of age, was formally diagnosed with learning disabilities, poor mental health, and a personality disorder during his time in custody. While serving a 48-month IPP for sexual offending he was transferred to a medium secure hospital. While in hospital he committed a further sexual offence and received a second IPP sentence with a tariff of thirty months. He was returned to custody, untreated and is now 12 years passed his tariff. He is assessed as high risk of harm and high risk of re-offending, his escalation of risk occurred while in custody after offending against other prisoners and staff. However, because E is unable to engage in behaviour change programmes due to his low IQ and sexual pre-occupation, he has little to no concept of working with probation, and is therefore, unable to reduce the risk he poses and meet parole requirements.

While there is undoubtedly a need to protect others from the potential harm E might cause to others, a prison environment fails to assist him progress through his sentence, it does not appear conducive to meeting his complex needs. Arguably a case such as E requires the expertise of health professionals rather than a correctional approach. This is not, however, an isolated case, as IPP sentences were issued regardless of individual complexities (HM Inspectorate of Probation 2008).

In addition to the consequences for people subjected to public protection sentences, the impact a dangerousness narrative has on frontline staff is notable. A culture of blame has infiltrated recent practice and with disruptive organisational change, a shortage of skilled and experienced

practitioners, high caseloads, a lack of staff resources and core local services (HM Inspectorate of Probation 2020) it is unsurprising to find poor quality public protection activity. Indeed, a small number of cases while subject to probation supervision go on to commit an SFO. Such cases may result in ministerial involvement and policy change and the impact of an SFO is often wide reaching and notwithstanding the serious harm to victims and their families, the media and public become invested in probation work, seeking accountability from individual staff members. High profile SFOs include the murder of John Monckton and attempted murder of his wife Homeyra Monckton in 2005. These offences were committed by Damien Hanson and Elliott White while both were under probation supervision. Subsequent reviews found problems with case management and procedures and following an investigation into the management of the case by the then Home Secretary, four staff were suspended. Similarly, the murder of two French students Laurent Bonomo and Gabriel Ferez in 2008 by Dano Sonnex brought a furore of criticism of probation, both from the public and media internationally. The then Chief Officer resigned, and the probation officer named by the media. Working conditions and cultural contexts such as these are not conducive to a climate that reduces penal excess, instead, practitioners fear potential consequences of a SFO and thus make decisions driven by professional anxiety and fear.

Conclusion

The idea of *who* or *what* threatens our society has changed over the decades. In response to this perceived and changing threat, public protection policies have been strengthened and reinforced over the last two decades. Despite purported improvements to protect the public, it is unclear if such policies have been effective in both alleviating penal excess or protecting the public from harm. By using the example of RSOs, we have sought to demonstrate how public protection policy and practice dominates approaches to manage this population. Irrespective of this groups historically low recidivism rates they have tended to be subjected to disproportionate preventative sentencing and the

negative impact this approach has been notable on probation practice. Tough, lengthy and unproductive sanctions placed on individuals subject to public protection arrangements have made it extremely difficult for probation practitioners to foster a climate of desistance. Not only does this result in individuals failing to achieve their sentence goals, remain compliant and not re-offend, but the social construction of *dangerousness* is further reinforced, galvanising calls for greater public protection and inevitably, penal excess.

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