

**TITLE OF SUBMISSION**

Probation, Politics, Policy and Practice: From New Labour to the  
Coalition government

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The following published works form the substantive basis of my application for an award of PhD. They are presented chronologically so as to demonstrate how my thinking and writing has developed during this period. They also highlight the common strands that link my work together.

- 1. Burke, L. (2005) 'From Probation to the National Offender Management Service: Issues of Contestability, Culture and Community Involvement'. London: NAPO (55 pages)**
- 2. Mair, G., Burke, L. & Taylor, S. (2006) 'The worst tax form you've ever seen'? Probation officers' views about OASys. *Probation Journal* Vol 53(1): 7-23. London: Sage Publications.**
- 3. Burke, L., Mair, G. & Ragonese, E. (2006) 'An evaluation of service provision for short-term and remand prisoners with drug problems'. *Probation Journal* Vol 53(2): 109-123. London: Sage Publications.**
- 4. Burke, L. & Collett, S. (2010) 'People are not things: What New Labour has done to probation'. *Probation Journal*. 57 (3). 232-249. London: Sage Publications.**

5. **Burke, L. (2010) 'No longer social workers: developments in probation officer training and education in England and Wales'. *Revista de Asistentă Socială* (Social Work review), ix (3/2010) 39 – 48. (Romania)**
  
6. **Burke, L. (2011) 'The training of probation officers in England and Wales' in Larrauri, E. and Blay, E. (2011) *Penas comunitarias en Europa*. 83-97. Madrid: Editorial Trotta.**
  
7. **Mair, G. & Burke, L. (2012) 'Redemption, Rehabilitation and Risk Management'. London: Routledge. (194 pages).**
  
8. **Millar, M. & Burke, L. (2012) 'Thinking beyond utility: Some comments on probation practice and training'. *The Howard Journal of Criminal Justice*. Vol 51, No 3. 317-330. Oxford: Blackwell.**
  
9. **Burke, L. & McNeill, F. (2013) 'The devil in the detail: community sentences, probation and the market' in A, Dockley. & I, Loader. (eds) *The Penal Landscape*. 109-132. London: Routledge.**

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11. Annison, J., Burke, L. & Senior, P. (2014) 'Transforming Rehabilitation: Another example of English 'exceptionalism or a blueprint for the rest of Europe?'' *European Journal of Probation*. Vol 6 (1). 6 – 23. London: Sage
  
12. Burke, L. & Collett, S. (2015) '*Delivering Rehabilitation: The Politics, governance and control of Probation*'. London: Routledge. (189 pages).
  
13. Robinson, G., Burke, L. and Millings, M. (2015) 'Criminal justice identities in transition: The case of devolved Probation Services in England and Wales'. *British Journal of Criminology*. Advance access published May 19, 2015.
  
14. Burke, L. (2015) 'Transforming Rehabilitation: The changing face of the probation service in England and Wales', *Bewährungshilfe / Soziales - Strafrecht – Kriminalpolitik*, Vol. 62. 116-128. Cologne: DBH Association of Social Work, criminal Law and Criminal Policy.

# **Probation, Politics, Policy and Practice: From New Labour to the Coalition government**

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## **Acknowledgment**

This PhD application is only possible because of the many probation practitioners and academics (far too many to mention) who have influenced my thinking and understanding of the issues covered. I am especially grateful to my co-authors, in particular Prof George Mair and Steve Collett who have supported and challenged me in the production of the two co-authored texts that have helped me shaped this PhD application. Special thanks also to Prof Roger Evans who has acted as my Director of Studies. Roger has given his time generously and his sage advice has given me the confidence to complete my submission.

## **Abstract**

The outputs presented in part submission of a PhD by publication represent the body of my published work over the past ten years. They cover policy, practice and legislative developments during both the New Labour and Coalition Governments that have ultimately led to the demise of the Probation Service as a unified public sector organisation. Two main themes are evident in my writing. The first is a critique of how an ideological commitment to economic neo-liberalism and accompanying social conservatism has shaped contemporary probation policy and public sector provision more generally. The second significant strand has been an exploration of the impact of these developments on the occupational culture and working practices of probation work.

## **Chapter One: Introduction and methodology**

With its origins in the philanthropic and religious movements of the late-nineteenth century, probation offers a fascinating historical and contemporary insight to wider social, economic and political thinking. Criminal behaviour similarly provides a prism through which social and political elites, the media, local communities and individual victims are able to voice their concerns, not just about the nature of crime itself, but what it represents or reflects about society and its institutions. In this sense, the work of probation and its rehabilitative role has become increasingly politicised and its values contested and challenged. The period covered by this submission has, for the probation service been marked by unprecedented change and organisational turmoil which has directly challenged its traditional practices and professional value base. For this reason, a key strand in my writing has been an attempt to capture these changes particularly in relation to those working within the organisation. My understanding is grounded in the insights gained from my work as a probation practitioner and manager, in both custodial and community settings. Similarly, my published work is informed by an integrated understanding of my work both as a practitioner and as an academic, which has enabled me to explore the policy and practice implications from both perspectives.

My association with the probation service spans over thirty years. As a young graduate I was employed in a probation office in inner-city Liverpool. The companionship and camaraderie of my fellow workers during this period shaped my values and the essence of probation work which is located in a belief that professional relationships can be a powerful tool in stimulating and supporting positive personal change even if the means of achieving this is contested. This is because probation involves interacting with groups of people who can be difficult and are regarded by society in general as undeserving of their efforts. My awareness of social inequality



and a respect for social diversity was deepened through my training on the Diploma in Social Work (CQSW) programme at Liverpool University. It also enabled me to locate my understanding of probation work within broader theoretical perspectives. On completing my programme of study I worked in a range of probation settings in both prisons and the community. During this time I developed an interest in training and staff development and eventually returned to Liverpool University as a joint-appointment with Merseyside Probation area. Working with the many trainees I had responsibility for, stimulated a long-standing interest in the recruitment and training of probation staff and has subsequently formed a strand of my academic writing (see **Burke 2010, 2011, Millar and Burke 2012**). In my current role I have continued to develop my thinking through my academic teaching and research. Since 2007 I have been editor of *Probation Journal*. This has placed me in the privileged position of being able to directly challenge some of the policy and practice developments that have taken place during this period as well as hopefully being a ‘critical friend’ to probation. At times it has felt like observing a runaway train as it heads towards an inevitable and potentially catastrophic outcome. Despite this, working with a group of extremely supportive and insightful board members, some of whom are front-line practitioners, has sustained hope against the political excesses of the recent past.

Throughout my career I have been committed to the notion of the reflective practitioner – something which I have tried to instil in those I have had responsibility for training and in my writing. As a young probation practitioner I was influenced by the quartet of essays written by Bill McWilliams (1983; 1985; 1986; 1987) which explored ‘the history of ideas sustaining the English probation service since its beginnings in the late nineteenth century’ (McWilliams 1987:97). Taken together the essays offer a detailed explanation of how the original missionary ideal gave way to the diagnostic era which in turn was replaced by pragmatism and

managerialism. Some years later I was delighted to be invited to the organising committee of the annual lecture at Cambridge University which aims to keep the spirit of Bill's work alive. Bill's writings opened my eyes to the fact that probation's contemporary challenges are not simply a result of what has been going on in its immediate past but are inextricably tied to the choices, tensions and initiatives that have marked out its history since its formation in the early twentieth century. *Redemption, Rehabilitation and Risk Management* (Mair and Burke 2011), was an attempt to provide an accessible but rigorous account of the origins and development of probation in England and Wales. In my later book, with Steve Collett, *Delivering Rehabilitation: The politics, governance and control of probation* (Burke and Collett 2015), we explored in greater detail probation's recent past from the formation of the National Probation Service to the current *Transforming Rehabilitation* proposals (Ministry of Justice 2013). Our aim was to:

Capture the middle ground between ideological abstraction, political and theoretical contexts for contemporary rehabilitative endeavour and the more painstaking and necessarily detailed analysis of the bureaucratic, administrative and policy frameworks within which correctional services ply their trade." (2015.174)

Taken together, these two co-authored works provide the substantive basis for the analysis in this submission. In exploring the past I have hoped at least to illuminate and provide a critical commentary on the present, in an attempt to capture an ever evolving period in the history of an all too often misunderstood and under-appreciated part of the criminal justice system in England and Wales, whilst being attentive to the practical realities of working with individuals who offend. They are supported by a range of writing drawn from published articles, chapters in edited collections, reports and comment pieces. The methodologies employed in my work

are almost exclusively qualitative in their approach however they draw on a range of sources and academic literature including policy documents and practice guidelines, first person accounts and media representations, in order to do justice to the complexities and nuances of probation work.

In the following sections I provide an analysis of how contemporary probation policy and practice has been respectively shaped by the New Labour and Coalition governments and attempt to locate my own work within these developments. References to those publications which form the substantive part of my application are highlighted.

## Chapter two: Probation and New Labour

The election of a New Labour government in 1997 was seen by many within the probation service as marking a potential upturn in its fortunes with the prospect of a more enlightened approach to law and order issues replacing the moral paucity that had marked the ‘prison works’ dogma of the previous Conservative administration. Lifting New Labour’s election slogan, myself and George Mair put it thus, ‘For many and certainly in the probation service, there was an expectation that things could only get better’ (Mair and Burke 2012: 159) From the outset, the New Labour government set about an ambitious project of public sector reforms. According to McLaughlin *et al*, at the heart of the government’s modernisation programme was an ‘emphasis on developing and employing incentives and levers to promote strategic co-ordination and collaboration via ‘joined-up’ partnerships’ (2001: 307). For the probation service this meant a closer alignment with other criminal justice agencies and the government’s public protection credentials. Initial attempts to bring the prison and probation service together in *Joining Forces to Protect the Public* (Home Office 1998) did not muster sufficient support during New Labour’s first term (see Wargent 2002:185). Mike Nellis has claimed that the desire to merge the probation and prison services pre-dated the modernisation programme of the New Labour Government and was in reality a long-held aspiration amongst Home Office civil servants, of which the formation of the National Probation Service was merely a compromise position bringing Probation under the direct control of the Home Office (Nellis 2004). Nevertheless, the creation of a National Probation Service could, as myself and George Mair pointed out in *Redemption, Rehabilitation and Risk Management*, be seen as ‘the culmination of 15 years of fragmented initiatives and changes that had tended to point in the same overall direction of centralised control’ (Mair and Burke 2012: 164). This was a profoundly important development because probation had been, since its beginnings, a local

service with a great deal of local autonomy. Admittedly, this had been reduced – slowly and indirectly at first and rather more rapidly since the 1980s – but the local nature of probation was held up by most probation officers, and certainly by the Association of Chief Officers of Probation (ACOP) - whose members probably had most to lose - as one of its defining characteristics. Centralisation did have some advantages in terms of potentially providing a higher political profile for probation but it also brought into sharp focus the tensions between local areas and central government.

The National Probation Service (NPS) came into being in April 2001. Amalgamations meant that the previous 54 local services were reduced to 42 local probation areas, which were co-terminus with police force and Crown Prosecution Service (CPS) area boundaries in order to facilitate cross-agency work (but not with Youth Offending Teams which were local authority-based). The NPS as a whole would be led by a national director and would be 100 per cent funded by government. Each local probation area was to be governed by a Probation Board whose members would have to be approved by the Home Office. As George Mair and myself pointed out in *Redemption, Rehabilitation and Risk Management*, the Boards were, in a sense, ‘a fig leaf to retain some sense of local input to how area services were run; in fact, Boards had very little scope to develop their own policies, essentially they looked after the rowing while the National Directorate and the Home Office did the steering’ (**Mair and Burke 2012:165**). With a national director running the National Probation Service, there would be far less difficulty in government imposing its wishes on a number of different, ‘independent’ probation services, policies could be driven through more effectively, and direct accountability could be strengthened.

The 2000 Criminal Justice and Court Service also turned the probation service into a fully-fledged criminal justice agency as it ended probation's responsibility for family court welfare services by hiving off this part of the service's work into the new Children and Family Court Advisory and Support Service (CAFCASS). Although civil work had been moving towards the margins for some years, it had been part of probation since its beginnings and accounted for perhaps 10–15 per cent of all probation work. The names of the three main community orders were clumsily changed, as the Prisons–Probation review had suggested: the probation order became the community rehabilitation order (CRO); the community service order became the community punishment order (CPO); and the combination order, with considerable ingenuity, became the community punishment and rehabilitation order (CPRO). A new order was introduced by the Act; the exclusion order, whereby an offender could be ordered not to enter a certain area for up to 12 months. And a drug abstinence order became another requirement that could be added to a CRO or CPRO. By 2001, therefore, there were more than half a dozen community penalties with more than 15 separate specified requirements that could be added to the CRO or CPRO. In addition, the Act introduced Multi-Agency Public Protection Panels (MAPPPs) whereby the police and the probation service had to work together to manage the risks posed by sexual and other high-risk offenders. This was another significant step for probation; in the past, probation officers and police officers would not have mixed well professionally, but MAPPPs seemed to have been a success story (Kemshall et al. 2005) as the police came to acknowledge the expertise of probation in risk assessment and conversely probation learnt to understand how the police could help keep high-risk offenders in the community (see Mawby and Worrall 2011 for a fuller discussion of these developments).

By 2001, then, the NPS was building a new organisation, heavily involved in the development of pathfinder programmes that were being evaluated, getting up to speed with DTTOs and

MAPPPs, and facing targets that were designed to be demanding with the threat of cuts in budget and the loss of government support if successful delivery was not achieved. This combination of demands was asking a lot of an organisation that had been under real pressure for almost a decade and the NPS struggled. It was clear that workloads were increasing but at the local level, it could be argued that staff concern and misgivings about the new arrangements also reflected the more structured approaches to work with offenders which was seen as an attack on traditional officer autonomy, the threat of privatisation, annual uncertainties about local budgets and a burgeoning target culture that increasingly bore down on individual practitioners and their managers. Two contradictory features of the new environment were apparent. Firstly, of all the criminal justice agencies, the probation service had the largest real terms increase in spending (Solomon 2007). Secondly, Probation was still facing an overwhelming demand for its services to the extent that the Chief Inspector of Probation talked of the system of community punishments silting up probation and suggested that consideration should be given to private contractors taking over the supervision of low-risk offenders and individuals on community service because the probation service was stretched to capacity (HMI Probation 2003).

The National Director - Eithne Wallis - set out her strategy in a document called *A New Choreography* (National Probation Service 2001). It outlined a vision for the probation service which emphasised the concepts of *justice* and *protection of the public* and recognised *preventing victimisation* as an essential probation task. More specifically, there was a commitment to the development of the *What Works* or the *Evidence-Based Practice* initiative (Underdown 1998), but this in turn became caught up in the pursuit of creating local enthusiasm for more effective ways of working with offenders whilst working with a treasury that would only provide resources for clearly identified outputs. Robinson (2001) captured this

dilemma perfectly in her assertion that, ‘The appropriation of ‘what works’ by the centre has confused the picture, arguably intensifying both positive and negative correlates of ‘what works’: that is, lending weight to the service’s claims of effectiveness; but also introducing standardisation on a national level in the form of accredited programmes and the development of a national assessment system’ (Robinson 2001: 248). Like Raynor, this author goes further to argue that the *what works* could also be seen as ‘a powerful catalyst to the creation of a national service, arguably completing the process of rendering the service governable by the centre and thereby increasing the service’s vulnerability to centrally-imposed changes in the ideological purpose of its work’. (Robinson 2001: 248)

OASys (the Offender Assessment System) was a key factor in several developments: first, as a national assessment tool it was intimately related to a national service; second, it was intended for use by both the prison and probation services, thereby linking both organisations more closely; and, third, it was considered important for What Works as accurate, systematic assessment of offenders and matching them to appropriate programmes was agreed to be a key factor in effective outcomes (see Robinson 1999, 2001, 2002 for a detailed discussion of the relationship between What Works and risk/needs assessment). OASys, however, was not rolled out electronically to probation areas until 2003 and probation officers were not universally happy with it. Using a statistical tool to predict risk of custody had led to some worries; OGRS had increased anxieties about loss of autonomy and de-skilling, and OASys –coming on the back of so many other developments – was unlikely to be welcomed uncritically. However, a survey of probation officers’ views about OASys carried out between March and December 2004 by George Mair, Stuart Taylor and myself suggested that most probation officers recognised it had advantages as well as some disadvantages; on the one hand it was comprehensive, detailed, good for risk assessment, and helpful in focusing on factors that might



have been overlooked in the past it was also time-consuming, too detailed and too inflexible. Our findings were subsequently presented in the article *The worst tax form you've ever seen?* *Probation officers' views about OASys* (Mair, Burke and Taylor 2006).

One thing is certain though, that in the creation of a National Probation Service, central government assumed control over a set of previously relatively autonomous local area services and was intent on pursuing a top-down direction of correctional services, initially in line with the *What Works* initiative, but increasingly aligned to its desire to create an integrated local approach to crime and antisocial behaviour through the state. The central drive from the National Probation Division (NPD) reflected the burgeoning target culture of New Labour and in combination with the control of local governance arrangements, probation practitioners became increasingly directed in terms of their practice, senior managers constrained by fear of withdrawal of budget and heavy handed interventions from a highly critical centre. By the time New Labour lost power, there was the most all-encompassing and rigid regulatory framework of targets, priorities, inspections, audit and governance arrangements which were squeezing the life out of probation. The situation was captured superbly in the publication by the Probation Association of *Hitting the Target, missing the Point* (Probation Association 2011).

Having undergone a wide-ranging, rapid and complex reorganisation in its first three years, the probation service was again faced with further transformation as Patrick Carter, at the behest of the Number 10 Policy Unit, began undertaking a review of correctional services. This culminated in *Managing Offenders, Reducing Crime: A New Approach* (Carter 2003). The Carter Report and the immediate Home Office response (2004) reflected a belief that if the recommendations to reduce prison numbers and re-offending were carried out, the prison population would rise to 80,000 (instead of the previously projected 93,000) by 2009 and the

numbers of those under community supervision might rise to 240,000 (instead of 300,000). This was of course dependent upon a change in sentencing practice initiated by the Sentencing Guidelines Council. Carter argued that both prison and probation were dealing with far too many low level offenders. Sentencing had to be targeted more effectively so that probation would deal with more of those who were currently being sentenced to short terms of imprisonment, and fines would deal with those who currently were receiving community penalties. Thus, diversion from prosecution should be encouraged (again), day fines should be introduced (again), community sentences should be more demanding (a perennial recommendation), electronic monitoring should be used more widely, persistent offenders should be both punished and helped more, and prison should be reserved for the most serious offenders (again). None of these recommendations was novel, but the report's insistence upon effective end-to-end management of offenders and the inefficiencies of having two different organisations dealing with offenders, led to the first of its two radical proposals: 'The establishment of a National Offender Management Service – replacing the Prison and Probation Services, with a single Chief Executive, accountable to Ministers for punishing offenders and reducing re-offending' (Carter 2003: 43). The introduction of NOMS came just three years after the creation of the National Probation Service – under the provisions of the Criminal Justice and Court Services Act - with little time for the new organisation to bed in and 'propelling change weary staff through yet another high speed restructuring' (Singh Bhui, 2004: 99). In *From Probation to the National Probation Service: Issues of Contestability, Culture and Community Involvement* (Burke 2005) I questioned the timing of the change given the considerable costs in terms of public expenditure that had been invested in the re-structuring of the probation service and the roll-out of accredited programmes. With hindsight, it is clear that this had been on the cards for at least a few years – having been floated in *Joining Forces to Protect the Public* (Home Office 1998) – but it was surprising that it had happened so soon

after the restructuring of probation into a national service only a couple of years earlier. The NPS had been given little chance to settle down and be fully evaluated, but its time was running out.

On the one hand, it is not difficult to understand the logic of incorporating the probation service into the National Offender Management Service as prisons and probation work together effectively as a single organisation in both Norway and Sweden (Ploeg, and Sandlie 2011). However, Patrick Carter's (2003) report proposing the introduction of NOMS was somewhat vague on detail, and was accepted, and acted upon, remarkably quickly by government. In *From Probation to the National probation Service: Issues of Contestability, Culture and Community Involvement* (Burke 2005), I warned that there had been 'scant recognition that the introduction of NOMS brings together two complex organisations with their own traditions and cultures, which will not easily (or for that matter should be) subsumed by organisational change alone' (p.17). Since then NOMS has gone through various structural changes which have weakened the position of probation. Given the much larger size of the prison service, probation was always going to have to struggle to make sure its voice was heard in NOMS and with the overwhelming dominance of prison staff at senior management levels it looks as if the struggle may have been lost.

Carter also believed that the quality of interventions would be improved by introducing an element of commercial competition –what he called *contestability* – which would allow other public sector, private or voluntary agencies to bid against prisons and probation for contracts to replace them. Contestability was seen as having the potential to bring both positive outcomes in terms of increased innovation and diversity in service delivery. In this respect the proposals

contained within the Carter Report can be seen as the incisive application of New Public Sector Management into the world of probation. In *From Probation to the National probation Service: Issues of Contestability, Culture and Community Involvement* (Burke 2005) I argued that contestability was problematic on a number of levels. Firstly, there was the potential tension between the statutory responsibilities of enforcement and compliance for Third Sector organisations that had developed within a framework of voluntarism and consensual engagement. Secondly, that the commissioning and purchasing of services would potentially add layers of bureaucracy and expense and lead to more diffuse systems of accountability at the local level. Thirdly, that considerable care should be exercised to ensure that contestability did not lead to fragmentation of service delivery and the skills that underpin it in the community. Finally I argued that that these developments would ultimately drive down costs to a level that, while meeting short-term goals, produces services of a lesser quality.

Despite considerable unease amongst sentencers, prison and probation staff, criminal justice commentators and a variety of politicians towards what was viewed as poorly communicated and insufficiently developed plans for the creation of a correctional service in England and Wales (Oldfield and Grimshaw, 2008), the recommendations contained within the Carter Report were accepted almost immediately by the government without consultation with the main stakeholders. As Rungay has reflected:

Carter reduced the accumulation, over nearly a century, of expertise in meeting increasingly complex, legislative obligations to a few lines that seemingly dispensed with all tiers of management, supervision and support. (2005: 207)

In *From Probation to the National offender Management Service: Issues of Contestability, Culture and Community Involvement* (Burke 2005) I also examined the wider impact of these changes and argued that whatever form the new organisation was to eventually take, it was

essential to retain its local links. I highlighted that an acknowledgment of the role played at the local level by probation through its involvement in Local Criminal Justice Boards (LCJBs) and Crime and Disorder Reduction Partnerships was one of the most striking omissions in both the Carter Report and the earlier consultation document.

Two somewhat contradictory strands can be observed in these developments. On the one hand there was a form of *re-privatisation* through the promotion of probation partnerships with the voluntary sector and on the other a *de-privatisation* through aligning it with the other statutory criminal justice organisations such as the police and prison services (Fitzgibbon and Lea 2014). This latter trend (with an emphasis on achieving the organisational goals of delivering effective criminal justice interventions, risk assessment and public protection) was perhaps most symbolised by the break with social work training. In my article, published in a Romanian social work journal (**Burke 2010**) I argued that this radical shift in the training of probation officers was significant in both its *intentions* (to move the probation service from its traditional social work ethos) and its *structure* (an integrated award combining an undergraduate degree with a practice-based NVQ delivered over two years). The changes were, certainly in policy terms, also driven by a perceived need to toughen up the probation service in order to enhance its credibility with the general public and were based on a notion that the service had somehow been contaminated by radical forms of social work in the 1970s and 1980s. However as I pointed out ‘In truth, such notions were based on a false dichotomy that characterised the social work role as one of caring and helping and probation of one of control – thereby ignoring the co-existence of humanitarianism and disciplinary concerns of both’ (**Burke 2010:40**).

In 2005, following the publication of Restructuring Probation to Reduce Re-offending (Home Office, 2005) I published a response piece in *Prison Service Journal* entitled *Restructuring*

*Probation to Reduce Re-Offending: Modernisation through Marketisation?* (Burke 2005b) in which I contended that the government's plans could potentially lead to a less cohesive system of offender management and supervision. In this short paper I began to explore a number of tensions that I believed were particularly pertinent to this development; themes which I have subsequently returned to and developed in my more recent writing. These were, the tension between 'increased central control or devolution?', 'What Works or what is politically expedient?' and 'authoritarian management as oppose to professional responsibility?' In this respect, I concluded that the government's plans to restructure the National Probation Service had to be understood within a wider policy context of economic rationalism and the marketization of public sector services. A theme which I subsequently developed more fully in the text *Delivering Rehabilitation: the politics, governance and culture of probation* (Burke and Collett 2015).

Mike Nellis has argued that the developments I have outlined here are indicative of the changed status of the probation service in that it had now become an *object* rather than a *partner* in policy development. Commenting on the haste with which the proposals contained within the Carter Report were being taken forward, Peter Raynor suggested that it "arose from a perceived political need for another eye-catching 'big idea' in criminal justice to maintain the government's stance of activism in relation to crime" (Raynor 2004: 322). In my editorial *is anybody listening?* (Burke 2007), I warned that NOMS 'top down' approach to policy implementation was stifling front-line innovation and damaging morale amongst the workforce.

At the same time as the Carter Report was published, the Criminal Justice Act 2003 (CJA 2003) received royal assent. A new *Community Order* had been devised with 12 possible

requirements for sentencers to select from. Despite criticisms that the provisions replaced proportionality with a “smorgasbord” approach to sentencing aims (Von Hirsch and Roberts cited in Easton & Piper 2005: 89), subsequent research indicated that in reality the new Community Order has been used pretty much like the community sentences it replaced and in this respect had little diversionary impact on the use of short custodial sentences (Mair, Cross and Taylor, 2007, Mair and Mills, 2009). The CJA 2003 also introduced the term ‘dangerous offenders’ into legislation within the context of establishing a new sentencing framework based upon public protection. The Act also made it easier to recall prisoners and lengthened the licence period for most offenders, ultimately increasing the prison population.

The government also instigated two reviews into the sentencing process in response to what it perceived as a lack of public confidence. The first by Sir Robin Auld was charged with reviewing the criminal courts system and looked at various ways in which efficiency might be improved (Auld 2001). Auld proposed a unified criminal courts system, in three divisions, to replace magistrates’ and Crown courts although the recommendation to create a new intermediate court tier was not adopted in the ensuing White Paper. The second report was written by a senior civil servant, John Halliday (Home Office 2001), and entailed a wide-ranging review of sentencing policy. *Making Punishments Work: Report of a Review of the Sentencing Framework for England and Wales*, argued for a clearer but also more flexible framework for sentencing so that rehabilitation and reparation could play a larger role. The Halliday report drew particular attention to the lack of post-release support for short-term prisoners, which as a result of the introduction of Automatic Unconditional Release (AUR) meant prisoners serving less than 12 months were released without any form of statutory post-release supervision. He recommended prison sentences under 12 months should be replaced by a new sentence of *custody plus*, whereby a short period in custody would be followed by a

much longer period under probation supervision. In *An evaluation of service provision for short-term and remand prisoners with drug problems* (Burke, Mair and Ragonese 2006) myself and my co-authors highlighted the particular challenges of working with short-term and remand prisoners who have drug problems. Drawing on a funded research project we had undertaken we discussed the complexities associated with partnership working and the difficulties of bridging the prison/community divide. For many of the prisoners interviewed in our study, drug taking was symptomatic of other problems within their lifestyles. We argued that this required a more coordinated approach between the National Probation service, accommodation suppliers and educational and training providers which was being made more difficult to achieve given the competition, rivalries, different approaches and public/private tensions in this area.

In December 2007, Patrick (by then Lord) Carter published his second review of criminal justice on behalf of the government – *Securing the Future: Proposals for the Efficient and Sustainable Use of Custody in England and Wales* (Carter 2007). In my editorial *Can we build our way out of the prison crisis* (Burke 2008) I questioned the wisdom of expanding the prison estate, through the building of three ‘Titan’ prisons, and criticised the review for prioritising economies of scale over the operational difficulties inherent in managing such large institutions and ignoring the underlying social, economic and political factors which have led to record levels of imprisonment during New Labours first two terms of office. I also warned that ‘NOMS had become an unwieldy bureaucracy that has added considerable costs to the overall supervision and management of offenders’ (p.6).

In January 2008, following a series of organisational restructuring involving the Ministry of Justice, NOMS was split between ‘delivery’ and ‘strategy’ with responsibility for the former



being assumed by the Director general of HMPS. In our piece *Doing with or doing to – what now for the probation service?* (Burke and Collett, 2008), published in *Criminal Justice Matters* myself and Steve Collett warned that the probation service as a distinctive voice within the criminal justice system was being lost in the name of greater harmonisation with a much bigger and politically more powerful prison service. We considered what the future held for probation following the restructuring of the Ministry of Justice and identified three key policy drivers, ‘*moving centre stage*’, ‘*correctional drift*’ and ‘*modernisation*’ which we believed were shaping contemporary probation practice and delivery. Whilst we acknowledged that there had been some significant improvements in performance by the probation service under New Labour, we argued that this had been at a considerable cost to the organisation. For us the way forward for probation lay in it being able to deliver those aspects of criminal justice policy that quite rightly should remain centrally shaped and determined – such as broad sentencing, offender management, and enforcement, for example – with local responses to local crime that are sensitive to local needs and public engagement.

During the first decade of this century, the relationship between New Labour and probation turned up close and personal. Our contention in *Delivering Rehabilitation: The politics, governance and control of probation* (Burke and Collett 2014) was that specific events during the height of New Labour’s period in office helped to advance the onslaught on probation as a public sector agency and played into the attritional approach to defining rehabilitative services within the ideology precepts of *New Public Management*. Probation services felt let down and unsupported, particularly when perceived mistakes in their supervision of dangerous offenders were, quite rightly, subjected to intimate scrutiny and review. During early months of 2006, the probation service was subjected to ongoing negative media attention following several alleged failings. The attacks followed the criticism by the Chief Inspector of the Probation

Service following the murder of the Chelsea banker, John Monckton by Damien Hanson and Elliot White, both of whom were under statutory supervision at the time of the offences (HM Inspectorate of Probation 2006a; 2006b). Vital details about Hanson's violent personality were not included in his parole report and as a result he was not deemed to be a high risk. This led to the subsequent suspension and reinstatement of four members of the London Probation Area and subsequently an approach to David Scott, then chief officer of Hampshire Probation Area, to take over the London service, which he did in 2005. In May 2006 another HM Inspectorate of Probation report (2006a) was published, investigating the circumstances surrounding the murder of Naomi Bryant by Anthony Rice – a discretionary lifer released after 16 years in prison. The then Home Secretary, Charles Clarke, was reported as describing the probation service as “the dagger at the heart of the criminal justice system undermining public confidence in criminal justice as a whole” (Daily Telegraph, 21st March 2006, cited in Allen and Hough 2007: 566). With the murder of two French students, Laurent Bonomo and Gabriel Ferez in June, 2008, London Probation Service (and the wider probation community) braced itself, as one of the accused murders was Dano Sonnex, subject to post release probation supervision. There were significant failings in the overall management of Sonnex (Hill 2009) but what became clear very quickly was that the fallout would be far-reaching and that political opportunism would determine how the circumstances of the case would be dealt with at the highest level. The events which lead to the resignation of the Chief Officer of London Probation Service, David Scott, are outlined in chapter 3 of *Delivering Rehabilitation: The politics, governance and control of probation* (Burke and Collett 2015). This, we contended, was indicative of how political duplicity and a wider blame culture had not only undermined the probation service's work with high-risk cases but also underlined the individual personal costs borne by those professionals in positions of authority when things go wrong. In my editorial *A collective failure?* (Burke 2009) I argued that although the Sonnex case was apparently

marked by individual errors of judgement (albeit probably in good faith and on available evidence), poor communication, and practice that in parts fell short of the required standards, I also drew attention to what I saw as;

... the obstinate refusal by the Secretary of State for Justice to accept responsibility for the wider funding issues and an environment of continual change and uncertainty faced by probation for the past five years has been neither helpful nor provided the principled leadership required'

(Burke 2009:219).

In her telling account and analysis of social work and probation in the light of cases like Sonnex and baby Peter Connelly, Wendy Fitzgibbon comments that political life has declined in quality precisely as government by media has risen to become a major driving force (2012: 94). Playing to the media and utilising critical incidents to prove political toughness and shift the blame may send out messages to the wider public about the intent of a government to tackle crime and reform the public sector, but if a reasoned analysis of the weaknesses of policy and the fragility of practice in complex environments is ignored, it ultimately puts the public at further risk. In my editorial *A broken profession or a broken society?* (Burke 2009), I warned that caution needed to be applied in suggesting that individual acts of cruelty and neglect open a window to family life in contemporary society, nor should they lead to the introduction of further ill-thought out draconian measures in order to appease a perceived punitive public, and certain sections of the media:

Deprivation – in all its forms – undoubtedly limits aspirations and undermines the quality of life in many localities but no matter how bad or deprived the lives of the perpetrators, there is no excuse for cruelty to children and that must be the position society takes. But this all means

that, as a society, we should be willing to take more responsibility for children whose lives are lived alongside us – or, in an increasingly divided society – parallel to ours. The notion of *understanding less and condemning more* (as John Major put it) has never seemed more inappropriate’ (Burke 2009:6).

The triumphalism of the Labour Party victory at the 1997 election was in marked contrast to the somewhat dejected figure of Gordon Brown, leaving Downing Street, having failed to reach an agreement with the Liberal Democrats that would have secured a fourth term of office. In the thirteen years between these two events the impact of ‘New Labour’ upon the Criminal Justice System had been profound. During this period New Labour’s approach to law and order often vacillated between paternalistic care and greater control and surveillance. For the probation service it has meant an unprecedented level of change which has in some respects resulted in a greater sense of organizational purpose and operational efficiency but with its ‘humanistic sensibilities’ (Nellis, 2007) severely undermined and its future in a continuing state of uncertainty. The crime control policies of New Labour in its first term were certainly far more ambitious than those of the previous Conservative government and initially appeared to offer a more enlightened approach to tackling the social and economic causes of crime. In this respect, the early optimism felt by the probation service was perhaps justified in that it appeared to occupy a central place in the government’s crime control policy – a role matched by increased investment and an enshrined separate identity after the rejection of the prison/probation review. On the other hand, the ideological and political nostrums for probation and the constant requirement to find new structures to deliver neoliberal approaches to public sector management made little sense to those who thought probation had delivered everything asked of it by successive administrations.

Whilst it is possible to identify a particular emphasis in each of New Labour's three terms in office (see **Burke and Collett 2010**), its overall approach to probation was perhaps best captured in James Treadwell's observation that "The creation of the National Offender Management Service (NOMS) can be regarded as the culmination of a move toward meticulous regulation of both those within the probation service and the offenders with whom they work" (Treadwell 2006: 3). Under this *meticulous regulation* the probation service increasingly became a law enforcement agency to which the offender reported in order for their court imposed punishment to be administered. Despite the best efforts of its workforce, probation has become increasingly narrow in its focus and removed from *the local*.

A correctional framework driven by the unseeing requirements of public service modernisation encourages technicist and rigid responses to situations rather than real engagement with individual offenders, their families and their community networks. Whether its command and control or the mechanism of commissioning and contestability, a magic bullet for solving crime does not exist.

(Burke and Collett 2008: 10).

Ultimately, New Labour could not square its desire to control probation from the centre through increasingly bureaucratic and perverse performance management ideology with its apparent commitment to localism, the development of civil society and the role of the local state in tackling both crime and antisocial behaviour. It underestimated the complexity of the criminal justice environment which requires a legislative framework of clear and intelligible criminal justice provisions to deliver individual justice within an integrated environment of local state resources and expertise (**Burke and Collett 2015**). The initial push to tackle the causes of crime was lost within an environment where reducing the use of imprisonment for less serious

offenders was sacrificed on the high altar of media driven political expediency and the price for this was an ever increasing prison population driven by a myriad of poorly reasoned sentencing and enforcement initiatives. Reflecting on new Labour's record in government in my editorial, *For better or worse* (Burke 2010) I concluded that it had; 'failed to take advantage of a falling crime rate and resorted to populist policies, fuelled by an "out of control" performance culture, which have in turn undermined the work of the probation service and led to record levels of imprisonment' (p.228).

*People are not things: What new labour has done to Probation* (Burke and Collett 2010) was written following the defeat of the Labour government in the 2010 General Election. It was an attempt to evaluate the changing relationship between probation and New Labour, placing it within the context of wider approaches to crime control adopted by the government in each of its three terms in office. In our consideration of the previous thirteen years we concluded that despite the negative impact on probation of an unrelenting reductionist focus on managerialist and technical policy fixes, there were still some grounds for optimism based on the emerging insights provided by the literature on desistance (see **Burke 2014** for a discussion of these developments). Taking a lead from Lord Ramsbotham's statement in the House of Lords that 'people are not things' we reasserted the notion of probation as a moral enterprise:

... working with people, developing their personal capacity and enhancing their social capital – the resources they can utilize in their own rehabilitation – supported by evidence-based interventions is ultimately a human and moral enterprise. Returning offenders to the status of responsible citizens accepted and integrated within their own communities ultimately offers the public much greater safety than the expensive incarceration in a burgeoning prison population that has been a key motif and consequence of New Labour policies

(Burke and Collett 2010).

### Chapter three: Probation and the Coalition Government

Following the election in May 2010, there was a flurry of activity focussed around the notion of delivering a *rehabilitation revolution*. In a short comment piece for the Howard League for Penal Reform entitled *A revolution or more of the same? Probation's prospects under the coalition government* (Burke 2010), I outlined what I saw as the main organisational, ideological, legislative and financial challenges facing the in-coming government. The appointment of Kenneth Clarke as Justice Secretary suggested a more pragmatic approach to penal policy, however as I noted in my *Probation Journal* editorial 'Evolution or revolution' (Burke 2011) it seemed to me that the Coalition was simply quickening the pace of what New Labour had either put in place or aspired to before their electoral defeat. In this respect the optimism discussed at the end of the previous chapter may have been somewhat unfounded! Kenneth Clarke, as the newly appointed Justice Secretary, inherited the legislative framework of the Offender Management Act 2007, which had introduced Probation Trusts and laid the basis for the future relationship between the Secretary of State and the 35 trusts. Competition was clearly going to be the order of the day and in December 2010, plans for a *Rehabilitation Revolution* were outlined in the form of the Green Paper, *Breaking the Cycle* (Ministry of Justice 2010a) and an accompanying Evidence Report (Ministry of Justice 2010b). The Justice Secretary's oral statement to the Commons talked of bringing forward *a revolutionary shift in the way rehabilitation is financed and delivered*, based on more local and professional discretion, fewer targets and less prescription, greater competition and a system of Payment by Results (PBR) applied to all providers by 2015.

On the one- hand, the proposals of the in-coming government offered the possibility that there would be a different and more constructive approach to the governance of probation, one that

promoted a more localised decision-making agenda. As I noted in my editorial, *For better or worse?* (Burke 2010:229); ‘Governments have a tendency to centralize and look for more radical change when there are favourable economic conditions and healthy majorities, and decentralize and look to more local solutions in adverse economic conditions when the capacity for change is limited and there is a need for shared responsibility for the management of scarce resources’. However, I found it hard to envisage how reduced wastage alone, or increased competition, would be enough without negatively impacting on front-line staff. Commenting on these proposals in my editorial, ‘*For better or worse*’, I cautioned that;

The so called ‘rehabilitation revolution’ whereby the private and voluntary sectors will be paid by how many prisoners they rehabilitate looks suspiciously like the ideological imperatives of marketization masquerading as economic necessity. The notion that organizations will be paid by results assumes a simplistic causal relationship between intervention and outcome that ignores the complex social context of many individuals who find themselves within the criminal justice system. In reality it could instead lead to an even greater concentration on narrowly defined targets and stifle creative work and innovation.

(Burke 2010: 230)

Plans to marketise correctional services were hastened up by the publication of a competition strategy (Ministry of Justice 2011). Whilst economic fortunes had been radically transformed between the latter days of New Labour and the new government as a result of the 2008 global banking crisis, there was also the shroud of David Cameron’s *Big Society* hanging over the early days of the Coalition plans. As we elaborated in chapter five of *Delivering Rehabilitation: The politics, governance and control of probation* (Burke and Collett 2015), the so-called *Rehabilitation Revolution*, far from promoting or supporting Cameron’s vision, instead took



advantage of economic circumstances to continue to push further the interests of a neoliberal economy. In my editorial *A runaway train* (Burke 2011), I argued that; ‘It is perverse to talk about a “big society” whilst instigating public sector policies that undermine the social fabric upon which society is based’ (p110).

In *Revolution or evolution?* (Burke 2011), I concluded my analysis of the proposals contained within *Breaking the cycle*, thus:

Overall, there is certainly much to be welcomed in the general approach taken within the Green Paper and major opportunities to tackle longstanding issues. An end to the obsession with imprisonment, new forms of service delivery, a changed relationship with local government, new approaches to public health and a greater commitment to localism all present opportunities as well as challenges. However, many of the proposals contained within the Green Paper appear at best sketchy and in some cases ill-conceived. Introducing the reforms, making the necessary savings and reducing costs at the same time will also undoubtedly place a massive strain on the system (p. 7)

(Burke 2011:7).

Two documents entitled *Punishment and Reform* – one dealing with *Effective Probation Services* (Ministry of Justice 2012a) and the other *Effective Community Sentences* (Ministry of Justice 2012b) were published as part of the overall Transforming Rehabilitation consultation process. Essentially, *Effective Probation Services* re-emphasised the provisions of the Offender Management Act 2007 and asserted that, ‘Competition is seen as a means of raising the quality of public services which should be financed by the taxpayer, but delivered by whoever is best

suites to do so' (Ministry of Justice 2012a, p.3). A comprehensive *Payment by Results* (PBR) approach was envisaged for the future and Probation Trusts were to be developed as commissioners of services with separate local entities bidding for work in order to create a purchaser/provider split.

Taken together these consultations proposed a radical change to the delivery and oversight of community sentences. They further promoted the ideologically driven belief that splitting the service and outsourcing lower risk offenders (irrespective of the dynamic nature of such risks) and other interventions will stimulate the market and encourage the private sector to bid for and achieve better results. Although there was some inevitable overlap, the second consultation paper, *Effective Community Sentences* (Ministry of Justice 2012b) aimed to consult on the development of existing and future provision envisaged in the Legal Aid, Sentencing and Punishment of Offenders Bill (which received royal assent on 1st May 2012). As myself and Steve Collett argued in *Delivering Rehabilitation: The politics, governance and control of probation* (Burke and Collett 2015); 'The consultation document, whilst containing some welcome sections on the treatment of women offenders and the development of reparative and restorative justice measures, was largely a rehash and reaffirmation of the importance of credible community sentences, rigorously enforced to punish offenders as well as to reform them' (p.65). Whilst the paper reiterated the government's position that community orders were not there to replace short-term custody (Ministry of Justice 2012b, para. 20) it reaffirmed a belief that they could reduce it if used effectively. It argued the case for a punitive element in every community order, the introduction of intensive community punishments (interestingly for those at the cusp of custody), more flexible use of fines and innovations in the deployment of electronic monitoring, and the piloting of the alcohol abstinence and monitoring requirement provided for within the Legal Aid, Sentencing and Punishment of Offenders Act.

In my editorial, *Misunderstanding and misappreciation* (Burke 2012), I questioned what I saw as a number of dubious assumptions that appeared to underpin the two documents. Firstly, the consultation documents cited unacceptable reoffending rates as the justification for such sweeping reforms. It would be hard to argue that reoffending rates are currently unacceptably high, with 60 per cent of released prisoners being reconvicted having served under 12 months (Ministry of Justice 2013). However, it seems somewhat perverse to blame the probation service, and use it as an excuse for further reform, for what is essentially a failure of the prison service, especially as this category of prisoner are released without statutory supervision. Moreover, according to the Ministry of Justice's own figures proven reoffending of those individuals receiving community orders in 2008 was 8.3 percentage points lower than for those who had served prison sentences of 12 months or less, even after controlling for differences in terms of offence type, criminal record and other significant characteristics (Ministry of Justice 2012b:10). Secondly, whilst the consultation paper *Punishment and Reform: Effective Community Sentences* (Ministry of Justice, 2012b) does not seek to replace short prison sentences with community penalties it proposes a clear punitive element in every community order and the creation of an intensive punitive community disposal for those on the cusp of custody. As I argued in my editorial *Misunderstanding and misappreciation*, 'Whilst punishment is of course a legitimate and expected response to criminality, by prioritizing the infliction of punishment, the proposals threaten to undermine the balance of sentencing outcomes and the underlying principles of proportionality and fairness in sentencing' (Burke 2012: 198). The rationale for such a move appeared to be based on what was perceived to be a lack of confidence in community sentences amongst the general public. In **Bauwens and Burke (2014)** we considered this 'search for legitimacy' in both England and Wales and

Belgium and how the legitimisation processes of the previous fifteen years had impacted upon probation practitioners in both jurisdictions.

The consultation papers further sought to strengthen community orders through the harnessing of new location monitoring technologies such as GPS (Global Positioning System) and GSM (Global System for Mobile Communications) as a means of monitoring certain requirements in relation to exclusion areas, alcohol abstinence, foreign travel and residence. It was envisaged that tracking through the use of ‘cyber-tags’ would not only enforce restrictive measures but would also be used to develop and reinforce positive behaviour. There is certainly potential for such measures where there is a risk of repeat offending in relation to certain types of crime such as domestic violence or other predatory types of sexual offending, stalking and harassment and it could also be used more frequently during remands. However, current evidence suggests that electronic monitoring has at best a neutral effect of reoffending and there was no significant difference in compliance levels of electronically monitored curfew orders compared to a comparison group serving other community penalties. Moreover, it seems more than a coincidence that this unprecedented expansion of electronic monitoring is being planned alongside the downgrading of probation as a state-delivered activity in England and Wales (Nellis 2014).

One positive aspect of the consultations was that they drew attention to the needs of particular groups but the analysis provided was again somewhat undeveloped and the ‘solutions’ proposed open to question. As Steve Collett and myself noted in *Delivering Rehabilitation: The politics, governance and control of probation*, ‘Taken together, these two papers, with 17 and 45 questions, respectively, posed for consultation, had the feel of a vision for the

privatisation of punishment and reform that could not answer the practical and policy questions that such an ideologically-driven approach raised' (**Burke and Collett 2015: 65**).

In a contribution to an edited collection of essays which we entitled *The Devil in the detail: Community Sentences* (**Burke and McNeill 2013**) Fergus McNeill and myself further considered the arguments and proposals contained within the two consultation papers. We explored the conditions under which, and mechanisms through which, community sentences might serve to 'stem the flow' of imprisonment. We argued that the emergence of what we termed *mass supervision* (in the community) represented both opportunities and threats in terms of how they could come to be reconfigured and delivered in an increasingly marketised environment. Outlining what we saw as the practical and methodological challenges of implementing a payment by results model of commission (see also '*Payment by Results*': *Some methodological issues and research challenges from the United Kingdom* (Burke 2013)) we argued that although payment by results may be politically attractive on a superficial level it ultimately fails to address the deeper questions of penal politics, values and approaches on which progressive reform depends. This led us to explore what alternative narratives might be imagined for community sentences? Our contention was that making community orders more punitive in a misguided attempt to match the damaging impact of imprisonment, 'was not only misguided but could undermine the legitimacy, without which securing compliance from those subject to community sentences, and even ultimately supporting their desistance from crime are jeopardised' (**Burke and McNeill 2013: 114**). Instead we argued that more attention was needed to what sorts of reparation and redemption signals could send to communities that might foster support for reintegration.

When Kenneth Clarke was replaced by Chris Grayling as Justice Secretary in September 2012, it was evident that the pace and ideological intent of the rehabilitation reforms would intensify given the formers previous role in overseeing the implementation of a payment by results commissioning model whilst he was responsible for the Department for Work and Pensions. January 2013 saw the publication of another consultation paper, entitled *Transforming Rehabilitation: A Revolution in the Way we Manage Offenders* (Ministry of Justice 2013a). This attracted some 598 responses (Ministry of Justice 2013b) and supposedly shaped the basis of the Government's final position encapsulated in *Transforming Rehabilitation: A Strategy for Reform* (Ministry of Justice 2013c). In the short time between the two documents and the earlier consultations there was a significant change in direction. Rather than holding a central role in the commissioning of services, probation would in effect now become a residual public sector organisation dealing with the most difficult and dangerous offenders. The remaining offenders who constitute about 70 per cent of probation's workload would be supervised in future by private sector organisations, in conjunction with those voluntary sector organisations who wish to form commercial alliances. Local Probation Trusts would disappear as services were commissioned on the basis of some 21 *contract package areas*. This simple description, of course, does not capture the complex web of relationships and partnerships that exist at the local level. These range from those built up over years of informal engagement and commissioned activity to meet local needs to partnerships enshrined in law and binding on local probation trusts (see chapter 6, **Burke and Collett 2015**, for a discussion of these developments). An initial attempt by the Ministry of Justice to clarify partnership arrangements under future structures (2013d) only highlighted the potential for wasteful duplication and the danger of blurred accountability and governance that had been the responsibility of the local Probation Trusts.

The Transforming Rehabilitation document (Ministry of Justice 2013) was short on detail regarding how risk would be managed across private and public bodies in a world of multiple providers. The government attempted to put a spin on the risks involved in its proposals by presenting them as a means of providing a better service to those short term prisoners who currently receive no statutory support on release. What was less clear though is how this overall increase in workload would be funded with no additional resources envisaged. Similar plans had been proposed by the previous New Labour administration but were curtailed on grounds of cost (Newburn 2013). In my editorial *The rise of the shadow state* (Burke 2013), I argued that; ‘Ultimately, it is difficult to understand the logic of fragmenting service delivery to the majority of those currently subject to statutory supervision under the guise of filling this gap in provision’ (p.4). Pointing out that the probation service’s lack of involvement with those sentenced to imprisonment of 12 months or less was not the result of a willful neglect by the organization but were the outcome of legislative changes brought about by a previous Conservative government in the 1991 Criminal Justice Act. Dismantling the probation service based on a rationale of unacceptable levels of reoffending amongst a group for which it has no statutory responsibility seemed to me to be ‘at best disingenuous and betrays a fundamental ignorance of the services work’ (p.4). Moreover, as the Probation Chiefs Association (2013) has pointed out, the possibility of introducing national commissioning with multiple contracts within a timescale of 18 months was extremely questionable when the competition for Community Payback in London had taken over two years, and this of course was restricted to a single intervention in a single area. The contracts for running the CRCs will be for between eight and ten years and As I noted in my editorial *Grayling’s hubris?*, this had ‘all the hallmarks of a ‘scorched earth’ policy which a subsequent change of government would find difficult to untangle even if it were so inclined’ (Burke 2013: 377).

The proposals contained in *Transforming Rehabilitation* were presented to parliament as part of the legislative framework of the 2013 Offender Rehabilitation Bill (subsequently proceeding to the 2013 Offender Rehabilitation Act). In a short piece for the *British Society of Criminology* (Burke 2013), I outlined my objections to the plans. Whilst I welcomed the focus on improved resettlement outcomes through the extension of the licence and supervision requirements for short-term prisoners as being long-overdue I contended that the potentially unintended consequences of this development had not been fully thought through, or financially accounted for, and could in turn have the unintended consequence of increasing the prison population.

In **Burke (2015)** I concluded that perhaps the ultimate failing of the current proposals is the lack of understanding of the complexity of supervision which cannot be reduced to an instrumental means of reducing reoffending at the lowest cost. Offenders are presented as a homogeneous group, differentiated only by the category of risk assigned, and there is little acknowledgment of diversity issues. For example, there is a glaring lack of any specific policies for dealing with women offenders despite the Government's acknowledgement in their *Transforming Rehabilitation* strategy of the widespread support among those consulted that services specifically tailored to women offenders' needs should be further developed and delivered. In this respect the government's proposals contain all the elements of what Loraine Gelsthorpe has insightfully described as a 'curious mix of political posturing, populist punitiveness and measures to reduce costs' (2012). The splitting of responsibilities across a myriad of new and untested arrangements threatens continuity of care, fragments delivery, and risks the loss of professional expertise. The demise of the probation service in England and Wales as an integrated public service has been unedifying and has further widened the distance between the community and its offenders in order to maximise profit opportunities for a small number of powerful providers.



## Chapter four: Concluding thoughts

How then do we summarise the developments outlined in this submission? In our conclusion to *Redemption, Rehabilitation and Risk Management* (Mair and Burke 2012) we considered the nature of the contemporary changes to probation. Firstly, we contended that they do not always represent radical discontinuities with the past. Secondly, we acknowledged that probation has always been subject to change – this is not something that has just begun to happen in the last couple of decades, although the scope, speed and depth of change have all certainly changed. What is different though has been the way in which change has come about. For most of its history, developments in probation were rooted in the practical everyday work of the service. Today, change is driven from the top down. In this respect probation's experience is perhaps just another example of what David Marquand (2004) has termed 'decline of the public' which he sums up thus:

The single most important element of the New Right project of the 1980s and 1990s was a relentless *kulturkampf* designed to root out the culture of service and citizenship which had become part of the social fabric. De-regulation, privatization, so-called public-private partnerships, proxy markets, performance indicators mimicking those of the private corporate sector, and a systematic assault on professional autonomy narrowed the public domain and blurred the distinction between it and the market domain.

(Marquand 2004: 2)

Focusing more particularly on criminal justice, David Garland (2001: 6) has famously listed 12 indices of change that overall characterise the developments that had taken place in crime control and criminal justice since the 1970s. In *Delivering Rehabilitation; The politics,*

*governance and control of probation* (Burke and Collett 2015) myself and Steve Collett considered Garland's work from a probation perspective. We argued that whilst all the indices of change identified remain relevant, we highlighted politicisation, new management styles and a perpetual sense of crisis as indicative of New Labour and subsequently the Coalition's approach to offender rehabilitation. We added another – blaming probation – which has come to the fore not just in relation to individual failures in supervision, but more insidiously to wider social problems and the management of particular groups (see chapter 7).

While the changes that have taken place in probation are undoubtedly part of much wider social, economic and cultural shift and must be seen in this context, there is little doubt that probation has changed in profoundly important ways. Whether or not social work was the appropriate basic qualification for a probation officer, it did provide a solid foundation on which to carry out work with offenders. As George Mair and myself argued; 'Without such a foundation, probation has lost a language, a distinct theoretical model (or models) and perhaps a justification for its existence. Becoming a fully-fledged criminal justice agency may have been necessary, even desirable, but it has left probation rootless' (Mair and Burke 2012). After Michael Howard became Home Secretary any empathy with the probation service or understanding of the difficulties it faced disappeared. Probation was an easy target for advocates of a punitive approach to crime control and the service was stripped of the assets that made it what it was. This has continued under both the New Labour and Conservative/Liberal Democrat coalition governments.

It could be argued that it is not so much that the key changes imposed on probation were necessarily mistakes in themselves. Probation needed to change and was at times reluctant to do so. The problem though was that the full, long-term, cumulative impact of the changes was

not thought through. For example, becoming a fully-fledged criminal justice agency may have been a sensible development, but having to lose completely its social work foundations meant that probation lost its unique nature. There were certainly many problems with having 42 separate probation areas, but moving to a fully centralised service based in the Home Office was not the only solution to these problems. Community penalties in general may have needed to be seen as more rigorous, but consistently making the service more punitive was a wasted effort as it could never compete with prison in these terms, and it meant the marginalisation of rehabilitation which – however difficult it may be to evidence consistently – does work in reducing offending, is less harmful to offenders and cheaper than custody. Probation had been working successfully with voluntary agencies since its earliest days, and perhaps encouraging more and more consistent use was a positive development; to open probation work up to competition, however, means not only a myriad of difficulties of regulation, control and accountability, but risks thrusting probation into a market-place where it could easily lose its way. Finally, closer working with the prison service could only have been beneficial for offenders, but the form that NOMS has taken was not necessarily the way to achieve that and the many structural changes that have taken place since are, at the very least, suggestive of government unease.

As myself and George Mair noted in *Redemption, Rehabilitation and Risk Management*, ‘At best, the probation service – despite the many changes it has come through – still exists and for that we should be grateful. At worst, the service has lost its roots, its traditions, its culture, its professionalism’ (Mair and Burke 2012). Its political masters seem to have lost faith in its abilities and it is about to lose a significant part of its funding as the decisions of the coalition’s Spending Review continue to be implemented. Community penalties may well have a future, even if it is only as an alternative to custody, but whether this is the case for the probation

service is another matter entirely. We cannot escape the reality that it is the ideological imperatives of the grand neoliberal economic strategy that has ultimately determined Probation's experience over the recent past. To simply concentrate on the immediate political environment, the interplay of party politics, public opinion, electoral success and service delivery mechanisms, without considering the wider ideological and political forces at play, makes understanding of policy direction and innovation in delivery mechanisms somewhat perplexing, particularly when they fly in the face of evidence about what is effective in reducing re-offending.

## Chapter five: Contribution to knowledge and practice

Attempting to document a period of profound organisational and practice change has been a unifying factor in my work. In reflecting upon the development of my writing and research, it would seem to be that two main themes emerge. The first of these concerns how the ideological commitment to economic neo-liberalism and accompanying social conservatism by successive governments has shaped contemporary probation policy and public sector provision more generally (see – chapter 5 *Delivering Rehabilitation* (Burke and Collett 2015)). Through my writing I have consistently challenged the dominant political consensus that competition is the best mechanism to increase innovation and improve efficiency through the allocation of resources to where they will have the greatest impact. On another level though, I would contend that this is not just the promotion of competition *per se* but its use as a mechanism towards further reducing the service delivery role of the public sector through the creation of commissioning mechanisms and financial structures that promote the influence of the private sector. Placed within this context, the changes experienced by the probation service can be viewed as part of a much broader project to reform and modernize the whole of the public sector or what David Beetham calls ‘the distortion and subversion of the public realm in the services of private interests’ (2013:4). The net result of these trends is that, ‘Justice and penal services, such as offender supervision in the community, drugs and alcohol programmes, electronic monitoring and prison transport, are repackaged as commodities which can be auctioned off in the open market. This though is not simply the state adopting a *laissez-faire* approach to the markets, nor is it a passive actor in these developments, for as Corcoran (2014:56) notes, ‘At the core of this network is the state whose controlling hand slows down, speeds up, colludes with or creates the conditions in which penal service markets can flourish’. The marketisation of probation services during the coalition government provides a good

example of this, for as Garside and Ford note; ‘having first sought to adapt the market to existing probation structures, the government found the solution in adapting probation to suit the market’ (2015: 23)

The danger here is the potential for an over-reliance of the state on a small but powerful group of private multi-national companies. This is because firstly, by definition multinational corporations are expansionist (in that they need to obtain maximum profits for their shareholders through economies of scale) thereby creating new ‘private monopolies’. In reality, only a small caucus of multinationals have the capacity to tender for large-scale government contracts and as Zoe Williams (2012) has highlighted, ‘The central problem is that it encourages companies to expand into areas in which they have no expertise and squeeze out smaller, often charitable enterprises already working in that area’. Moreover, the high profile failure of G4S to provide sufficient security for the London 2012 Olympics has also brought into question the assumed efficiency of the private sector (Orr, 2012) and reputational and quality of practice risks.

As I argued in my editorial *Pause for thought?* (Burke 2012), all too often contemporary politicians promulgate a false dichotomy between the private and the public sectors. Drawing on the work of John Richardson (undated), who is an expert in critical discourse analysis, I highlighted how private provision is often framed within the positive language of ‘reform, cooperation and partnership’. Whereas the public sector is repeatedly co-located with ‘spending’, the private sector is more likely to be framed as ‘finance’ and ‘increased choice’ which could be seen as more positive terms. Whilst these are strong metaphors within which to locate political debate, in reality both sectors are of course mutually reliant on each other.

The probation service has a long tradition of working alongside other sectors and no one within probation would claim that the organization can, or should, provide all the services required to meet the complex needs of those supervised. Whilst it may well be that the private sector has a role to play in criminal justice in the provision of specific services I have consistently questioned what seems to me to be an ‘accepted wisdom’ that private providers will deliver efficiency savings as often these are inevitably offset by increased administration and bureaucracy.

In my more recent work I have been more concerned with the moral aspects of these developments in relation to probation practice. Like many others I have been particularly influenced by the work of the American political philosopher Michael Sandel (2012) who has argued that we need to think carefully about how markets operate, what the limits of the market are, and the need to ensure that whilst the increasing penetration of public services by the private sector persists (as it seems invariably it will) that issues of legitimacy and public interest are at the forefront of these discussions. He argues that we have drifted from *having* a market economy to *being* a market society (Sandel, 2012: 10). Whereas the former is a tool for organizing productive activity, the latter becomes a way of life in which market values encroach into every aspect of public life. Sandel questions the morality of market economies that reduce public goods to mere commodities that can be bought and sold to the highest bidder. He warns that such a situation not only widens inequalities but ultimately corrupts the values of society because ‘markets don’t only allocate goods; they also express and promote certain attitudes towards the good being exchanged’ (Sandel, 2012: 8). As I noted in my editorial *Pause for thought?* (Burke 2012) this raises an intriguing question as to the extent in which marketization and the profit motive undermine the values that the probation service should stand for? As such I argued that:

Policy debates around probation practice cannot and should not be merely limited to instrumental means. Supporting and helping individuals towards achieving a better life and treating them with humanity is an ethical entitlement and not one contingent upon reducing reoffending at the lowest possible cost (Burke 2012:138).

The second significant strand to my work has been an exploration of the impact of these developments on the occupational culture and working practices of probation staff. Often characterised as interfering, well-intentioned (if somewhat naïve) ‘do-gooders’, probation staff have never had, nor sought, the symbolic status of other criminal justice professionals (**Mair and Burke 2011**). As a result the occupational culture within probation has been a largely neglected and under-researched area of academic enquiry (Burke and Davies 2011). In my editorial, *Is anybody listening?* (Burke 2007) I argued that;

In the relentless moves to modernise criminal justice, insufficient attention has been given to the views of those whose responsibility it is to implement such changes, or indeed to those individuals who are subject to them. (p.315).

Probation’s lack of a strong a identity within the public imagination is partly because much of its work is undertaken in confidential settings and involves the encouragement of longer term change processes in individuals that do not sit easily with demands for *quick fixes*. There have been attempts to increase the visibility of some community sanctions such as unpaid work (Casey, 2008) but still much of it takes place behind closed doors. Probation staff operate in an environment in which ‘rewards can be few and setbacks common (Shapland et al 2014:149) and as such the personal qualities required of, and the professional skills deployed by, probation staff in their work are often underestimated and unappreciated. Rob Mawby and Anne Worrall



(2013), in their comprehensive analysis of probation's occupational culture describe probation as *dirty work*, that is, work necessary for society but which does not retain status or public trust. Despite this the dominant practice culture within probation has remained remarkably resilient even though inevitably it has had to change and adapt to wider policy narratives. The work of Mawby and Worrall (2013), and other research studies (Deering 2011, Phillips 2014) have consistently alluded to the existence of a strongly developed sense of identity amongst probation staff and a high degree of homogeneity in the attitudes and values they hold to their work. Moreover, as Bourdieu (1980) has highlighted, how professionals make sense of the external environment is often a product of socialization and established practices. These in turn are reflected in what he termed "habitus" to describe the individual's 'internal set of dispositions that shape perception, appreciation, and action' (Page 2013: 152). There is also increasing evidence that, 'offenders (like everyone else) assess and respond to certain moral qualities of those that have authority over them' (McNeill 2009: 6).

Recruitment and training was seen as an important vehicle for bringing about change and introducing a new organisational ethos into probation during the 1990s. Between 1997 and 2003 I was Programme Leader on the BA Diploma in Probation Studies (DiP) which replaced the former social work training requirement for probation officers. Drawing on insights gleaned from undertaking this role, I became increasingly interested in what I viewed as a move towards the 'codeification' of practice knowledge and understanding and the separation of knowledge *of* theory and knowledge *for* practice (Burke 2010). In a later piece (Millar and Burke 2012) based on a study of trainee probation officers, a colleague and myself on the DiP programme warned that a 'culture of utility' was becoming prevalent in probation practice as a result of what we saw as a preoccupation with producing specific outcomes in contemporary probation

policy. This, we argued, was uncondusive to humanistic practice. Applying the Kantian idea of ‘respect for persons’ we argued that:

To pursue humanistic probation involves, first of all, accepting and asserting that, even although individuals have acted illegally, they should still be met with respect – and the respectful treatment – which is their right as human beings, independently of any humane treatment could have on the risk of their reoffending

(Millar and Burke 2012: 323)

Ultimately, my concern with the current direction of the probation service is that in the notion of a complex moral endeavour by skilled workers engaging troubled and troublesome individuals, on behalf of and accountable to the public, is being lost as a market driven logic and modes of organising replaces professional values. Throughout my work I have asserted my belief that the concept of rehabilitation is ultimately a moral undertaking because it is about what society ought to do, rather than what is currently does, to rehabilitate and reintegrate those who offend. In destroying the ethos of probation and the occupational strength of its workers through fragmentation and privatisation, this moral narrative and purpose will inevitably be undermined.

Given the unrelenting pace and change of the probation landscape it is perhaps unsurprising that my work continues to evolve and build on new insights. Recently my work has benefited from my involvement in two large scale funded research projects. My involvement in the Cost action ‘Supervision in Europe’ has enabled me to broaden the focus of my enquiry beyond the borders of England and Wales. The aim of this action is to ‘review and synthesise existing

knowledge and then enrich it through inter-disciplinary and comparative work and capacity building' ([www.offendersupervision.eu](http://www.offendersupervision.eu)). As a result of my involvement in the action I have jointly authored a report on offender supervision in England and Wales (Burke and Fitzgibbon 2013) and contributed to publications in several European countries. I am also currently involved as a co-researcher in an ESRC funded project entitled '*Devolving Probation Services: An ethnographic study of the implementation of the Transforming Rehabilitation Agenda* (Ref: ES/M000028). This project will examine this significant development in one part of the country, providing a case study of the 'devolution' of the majority of probation services. It will look in detail, in one metropolitan area, at the process and implications of moving the bulk of probation work (and staff) from the public probation service to a Community Rehabilitation Company with an uncertain future. The project will seek to understand this process from a variety of perspectives, including those of senior managers involved in running the company and probation workers engaged in supervising offenders. The approach taken of a process-based ethnographic case study enabled us to observe the 'becoming' of the CRC and hear the phenomenological accounts of those involved.

The first output from this research project was advanced access published in the *British Journal of Criminology* (**Robinson, Burke and Millings 2015**). It draws on data collected between March 2014 (when the study commenced, and some weeks prior to which Trust staff had learned of their allocation to either the NPS or CRC) and the end of October 2014 (when the preferred bidders were announced). It was in the middle of this period (1 June 2014) that the CRC was officially inaugurated, and so the research has been able to capture both the planning and anticipation, and the early months of operation of the CRC. In 'Phase 1' (March-May), we conducted 30 individual interviews, and in 'Phase 2' (June-October), we conducted 29 individual and focus group interviews with 40 people. In addition we attended around 60 senior

management meetings and staff briefings, across both phases. Our sampling strategy has included a longitudinal component, such that around half of those interviewed in Phase 2 were also interviewed in Phase 1. Our ‘tracker’ sample included all members of the senior management team and a range of staff in practitioner, middle management and support roles.

In comparison with other parts of the criminal justice system such as policing (Skinns 2011; White 2014), prisons (Ludlow 2014) and Courts (Ward 2015) we argued that although there are some similarities between the experiences of workers subject to the involuntary transfer of their labour to private sector organisations, there were also important differences. What is novel about the probation case is the protracted nature of the change process, and the ‘interstructural’ state (Turner 1967) of the new CRCs in which migrating workers have found themselves in the first few months of their existence which defy traditional public/private sector demarcations. In this context, it is perhaps not surprising that one of the key themes to emerge from the research has been ‘liminality’ in terms of being caught ‘betwixt and between’ both the old and the new organisational arrangements and public and private delivery. Ultimately, we argued that:

there are multiple challenges that confront the (d) evolving probation field in England and Wales: allowing new owners, and their models of working, time to bed in, adopting payment by results mechanisms and establishing ‘through the gate’ and post-sentence supervision structures introduced by the 2014 Offender Rehabilitation Act. But as this snapshot of the views of staff at the moment of separation indicates, a not insignificant tension that this specific privatization journey needs to grapple with is the ability of criminal justice working cultures to adapt, mutate and endure within the private sector’.

(Robinson, Burke and Millings, 2015: 16).

This research is further evidence of my commitment to a qualitative approach drawing on my insights as a practitioner and academic to obtain a narrative understanding, recognising the importance of the individual's lived experience. In this respect it is hoped that these will provide new and emerging insights into what I believe is an enthralling and important aspect of public policy.

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