

## Should Northern Irish Probation Learn from NOMS?

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**Summary:** The Probation Service in England and Wales is undergoing a process of significant change. The Offender Management Bill is proceeding through parliament and a new regime for supervising offenders is taking shape within the National Offender Management Service. This article outlines these changes. It suggests that this new model should be of interest to Northern Ireland, but that caution should be taken before simply replicating what is being introduced in England and Wales.

Until recently, there were strong similarities between probation practice in the Republic of Ireland, Northern Ireland and England and Wales. Probation officers had the same, or similar, training, and the legislative and organisational contexts were broadly similar. There was regular movement of staff between the three jurisdictions. This situation is now changing. The Committee on the Programme for Government has agreed that probation matters in Northern Ireland will be the responsibility of the devolved Assembly, and this provides an opportunity to consider how probation in Northern Ireland should be organised in the future. In this context, it is worth considering the fundamental changes, and the controversy surrounding them, to probation practice in England and Wales.

The reorganisation of the Probation Service in England and Wales is one of the most radical in its history. Proposals in the Offender Management Bill include the introduction of end-to-end management for offenders, and allowing private and voluntary bodies to bid to provide probation services. The government argues that these reforms will reduce reoffending and address some of the perceived shortcomings of the present probation regime. Opponents of the proposals contend that the changes amount to the destruction of the Probation Service. This article outlines the development of these changes and some of the arguments in favour of and against them.

**Keywords:** National Offender Management Service (NOMS), end-to-end management, contestability, Offender Management Bill.

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## **The Carter Report and the government's proposals**

The origin of the process of change in England and Wales was *Managing Offenders, Reducing Crime* (Carter Report) produced by Patrick Carter in 2003 at the request of the Prime Minister. The report identified problems with prison and probation disposals being used too much with first-time offenders and being poorly targeted, and with too much regional variation in sentencing. Carter proposed a new way of managing offenders that would reduce crime and maintain public confidence. This approach involves establishing a new role for the judiciary and ensuring that sentences are targeted and rigorous. This article concentrates on the third of Carter's proposals, that a new approach should be taken to managing offenders.

Carter suggested that the prison and probation services should be restructured into one service, the National Offender Management Service (NOMS). In this service, regional offender managers would work across prisons and probation and fund the delivery of specified contracts. The system would be focused on the end-to-end management of offenders throughout their sentence and there would be a clear separation between the tasks of supervising offenders and of providing punishment and intervention.

In immediate response to the Carter Report, the government issued the paper *Reducing Crime – Changing Lives* (Home Office 2004), which accepted Carter's recommendations and outlined the creation of a new body, NOMS, that would bring together the prison and probation services to provide end-to-end management of offenders. The intention was that a national offender manager would report to the NOMS chief executive and manage ten regional offender managers, who would be responsible for sourcing prison places and community supervision through contracts with providers from the public, voluntary and private sectors.

In addition to responding to the Carter Report, the government's proposals were designed to facilitate the sentencing framework created by the Criminal Justice Act 2003. Some of the sentences created by this Act require much greater co-operation between prisons and probation. For example, 'custody minus' allows an offender to undertake a community punishment under the threat of swift imprisonment for non-compliance; 'custody plus' involves a short prison sentence followed by a period of supervision in the community; and 'intermittent custody'

allows some offenders to spend part of the week in prison and part of it in the community. The Act also created a new generic community sentence that provided the courts with the maximum flexibility to tailor interventions to the particular circumstances of the individual offender. The government's view was that the NOMS reforms will allow this new sentencing regime to be implemented most effectively. Crucially, the government proposed that the new system would be accompanied by a check in the increase of numbers in custody. It estimated that changes in sentencing practice could ensure that the prison population in England and Wales in 2009 would be 80,000, rather than the projected 93,000.

The two most significant changes that NOMS will bring to the Probation Service relate to the concepts of end-to-end management and contestability:

- **End-to-end management:** it is proposed that there should be a single person responsible for each offender from the point where he enters the criminal justice system to the time when he leaves it, regardless of whether he is serving his sentence in prison, in the community, or in both.
- **Contestability:** the government intends to encourage the private and voluntary sectors to compete to manage more prisons and to manage offenders in the community. The intention is to encourage partnerships between public sector, private sector and voluntary bodies, harnessing their respective strengths.

The government anticipated that these changes could be achieved quickly (with a fully regionalised service introduced within five years) and invited responses to its proposals.

### **Reaction to the proposals**

The reaction to the government's proposals was overwhelmingly negative. In the House of Lords' debate on NOMS, Lord Ramsbotham, the former chief inspector of prisons, stated that of the 750 responses to the consultation only ten had been in favour of the government's proposals. Opposition has been expressed in both the House of Commons and House of Lords, by academic commentators (see, for

example, Hough *et al.* (2006) for a series of well-argued critiques of the NOMS plans) and by penal reform organisations.

The strongest opposition has come from the National Association of Probation Officers (NAPO), which led the campaign against the introduction of NOMS and objected to the introduction of contestability on both practical and ideological grounds. The Probation Boards Association (PBA 2005) also expressed concerns about the introduction of a market to probation services. It emphasised that it is imperative that future probation services retain a community link and local accountability. An interesting critic of the government's proposals has been Martin Narey, the first director of NOMS who subsequently resigned to take up a post as chief executive of children's charity Barnardo's. In a magazine interview (Jerrom 2006), Narey supported much of what is planned by the government but joined those arguing that NOMS cannot be a success unless prison numbers stabilise at a manageable level.

### **Criminal justice context**

The Offender Management Bill proceeded through parliament in 2007, but is now being considered in a very different criminal justice context than existed in 2003.

The work of the Probation Service in England and Wales has received a much higher public profile recently, due to the publicity given to a number of incidents where serious violent crimes have been committed by offenders under probation supervision. Probation Inspectorate (HMIP) reports into these incidents have identified failings in probation supervision at both an individual and an organisational level (HMIP 2006a) and failures of communication and decision-making (HMIP 2006b). A *Panorama* television documentary in late 2006 added to the public disquiet by revealing some of the limitations and difficulties in supervising offenders in hostels. Although other agencies have also been criticised, and some probation practice did withstand the scrutiny of HMIP, the cumulative effect of these incidents has been to reduce public confidence in the Probation Service and to increase the pressure for reform. The then Home Secretary John Reid criticised the Probation Service in a speech to prisoners at Wormwood Scrubs in November 2006. Those opposed to the proposed changes are now therefore arguing in a climate of public dissatisfaction with the work of probation.

In addition, the sentencing regime and custodial context has changed significantly from that envisaged by Carter in 2003. The sentence of custody plus, which seemed particularly well suited to the NOMS organisational structure, was shelved by the government in the summer of 2006 so that resources could be allocated elsewhere. The government has explicitly distanced itself from the earlier intention to link NOMS to a capping of the prison population (Clarke 2005), and the prison population exceeded the 80,000 target by the end of 2006.

### **The Offender Management Bill**

The government's response to consultation has been robust (Home Office 2006). It acknowledged that its original proposals had not been popular but did not suggest changes at that stage. However, it changed the emphasis of its discourse as the Bill progressed. There has been an increasing focus on the need to involve community and voluntary groups, perhaps in recognition of the unpopularity of the language of contestability and the reservations about the involvement of private providers. One of the purposes of NOMS is to involve a greater range of providers and the government has set ambitious targets to ensure this: 5% of probation business must be subcontracted in 2006/7, with an increase to 10% in 2007/8 (NOMS 2006). The government's language during the debate suggested that most of this business will go to the voluntary sector, but it remains to be seen whether this will be the case.

The government proceeded with the process of enacting the Bill, as originally conceived, up to the point where it was voted on in the House of Commons on 28 February 2007. However, the government was forced to make compromises in the face of parliamentary opposition. The concessions included a commitment to ensuring that probation trusts retain a local link with the communities they serve and, most crucially, a commitment to ensure that court-related probation tasks, such as assessment and report preparation, remain in the public sector. This was a key concession to those concerned that core probation work was being privatised. These compromises had the desired effect and the Bill, which at one point looked like it might be defeated, was passed by the House of Commons with a majority of 25.

The Bill proceeded to the House of Lords on 17 April 2007. It passed its second reading there, following some more minor concessions. At the

time of writing (April 2007) the Bill has progressed to the House of Lords' committee stage. Although the work of parliament is not yet complete, the ability of the government to make key concessions and thus to persuade enough of those previously opposed to the Bill to support it, suggests that the Bill's defeat is now unlikely. The expectation must be that the Bill will be enacted in a form close to its present manifestation.

### **Could NOMS be a model for probation in Northern Ireland?**

Probation developments in England and Wales have long been an influence on policy elsewhere (Raynor 2007) and Ireland has been no exception to this. There are, however, two reasons to expect that the NOMS reforms will not be imported wholesale into Northern Ireland. Firstly, NAPO, in explaining its failure to defeat the Bill, cited one factor as the absence from the House of Commons of the Northern Irish MPs, who were campaigning for the May elections at the time. If NAPO is correct in stating that the Northern Irish MPs opposed the Bill, then it seems unlikely that they would seek to introduce similar legislation into the Northern Ireland Assembly. Secondly, the goal of greater involvement of the voluntary sector has already been achieved, to a certain extent, in Northern Ireland. There is an established tradition of voluntary involvement in work with offenders in Northern Ireland, and close working relationships have been developed between the Probation Board for Northern Ireland (PBNI) and the main voluntary bodies. Recent research (NIACRO 2007) found that although all major parties in Northern Ireland supported the involvement of the voluntary sector in work with offenders, there was no suggestion of any need to introduce some form of a contestability model to achieve this.

### **Conclusion**

As Northern Ireland considers the role and function of its probation service in a new devolved criminal justice system, there are a number of places where ideas can be sought. Scotland and the Republic of Ireland have very different probation regimes than that introduced by NOMS, and the PBNI has a proud tradition of its own. The consequences of the introduction of NOMS in England and Wales will be of interest to

probation policymakers, but perhaps the wisest course will be to monitor and observe these consequences for a period before rushing to replicate the model. The laudable goal of significant voluntary sector involvement in the Northern Irish criminal justice system might be achievable in another way.

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