



Justice and Home Affairs Committee

Corrected oral evidence: Community sentences

Tuesday 9 May 2023

10.30 am

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Members present: Baroness Hamwee (The Chair); Lord Beith; Lord Blunkett; Baroness Chakrabarti; Lord Filkin; Baroness Henig; Baroness Meacher; Baroness Prashar; Baroness Sanderson of Welton; Baroness Shackleton of Belgravia.

Evidence Session No. 1

Heard in Public

Questions 1 - 16

Witness

[J](#): Justin Russell, HM Chief Inspector of Probation.

USE OF THE TRANSCRIPT

1. This is a corrected transcript of evidence taken in public and webcast on www.parliamentlive.tv.

Examination of witness

Justin Russell.

Q1 The Chair: Good morning, everyone. Welcome to the Justice and Home Affairs Committee and our first evidence session in our new inquiry on community sentences. I welcome particularly Justin Russell, His Majesty's Chief Inspector of Probation.

We have apologies from Lord McInnes of Kilwinning. Lord Sandhurst hopes to join us at around 11.30. Three of our members are online. I hope that will not make any difference to the flow of the meeting. I remind Members that, as this is the first public session, they should declare any interests that they have the first time that they speak. I start by declaring an interest as a trustee of the organisation Safer London, which works with young people to try to deter them from crime and any involvement in crime, and works with their families. By definition, they are in the community.

Mr Russell, can you tell us what, in your view, characterises an ideal, or at any rate good, community sentence? This is obviously based on your inspections. We understand that you are not responsible for the service and that you are an inspector, but you will have seen best practice. Perhaps you can give us some positive examples.

Justin Russell: Thank you for having me today. We inspect both the Probation Service and Youth Offending Services across the whole of England and Wales. That gives us insight into thousands of cases that we inspect individually; we also have a wide range of focus groups with staff, managers and other agencies providing services to people on probation. A very important part of what we do now is interview people on probation themselves. We have a partnership arrangement with User Voice where we build that into all our inspections now. Those are the insights that I hope that I can bring to the committee today.

In relation to the ideal community sentence, the Sentencing Act lays down the purposes of probation. I think they are quite sensible. They are to reduce crime, to protect the public, to involve some element of reparation, to rehabilitate people on probation and, obviously, to bring an element of punishment.

Punishment is clearly something for the courts to decide on. What we as an inspectorate are particularly interested in as we go around the country inspecting services is, first, whether Probation adequately identifies the needs of people on probation, particularly the needs that may be driving their offending behaviour in the first place. The second key thing we are looking at is whether the Probation Service is protecting the public from the potential risks of serious harm that may be presented by people on probation.

From my point of view, an ideal community sentence will assist the Probation Service in both those key aims of the service. Where necessary, it will ensure that someone on probation has their needs met. There are specific requirements to

address an alcohol problem, a mental health problem or a drugs problem, for example. Unfortunately, those requirements are not used as widely as they could be, and perhaps we can talk about that later.

There is a range of other requirements that also help with public protection. There is now a wider range of requirements that can be attached to orders, including GPS tagging, alcohol abstinence monitoring and a range of other techniques that can be used to assist probation officers to assess whether the risks of someone on probation are increasing. In an effective community sentence, I would be looking for a mixture of rehabilitative elements that help with desistance and meet the needs of someone on probation and definitely elements that protect the public.

The courts should also give the Probation Service the flexibility it may need to ratchet the interventions it is using up or down, within reasonable boundaries, without having to go back to court to get the requirements varied. For example, in relation to electronic monitoring, if someone needs to change the hours of a curfew to meet a person's employment needs, it should be easier to do that.

One of the interesting things in the way sentencing works is that the intensity of the sentence, particularly the intensity of the interventions associated with it, tends to be associated with the seriousness of the offence that is before the court. It has to be a fairly high-tariff offence before the most intensive interventions, such as drug rehabilitation requirements or mental health requirements, can be attached.

That is slightly unfortunate, because quite often the people with the most profound needs are stuck in cycles of very low-level but extremely persistent offending. Typically, a street heroin user who is constantly shoplifting or committing minor, petty offences will not get a long community order; they will get a fine or a short prison sentence. That does nothing to tackle the underlying needs that drive the offending. There is a gap in the market for people with very profound needs who commit very prolific low-level offending but are probably not being reached by community sentences at the moment.

The Chair: You refer particularly to protecting the public. In your view, are the means of protecting the public separable from the rehabilitative aspects, or are they all mechanical, like tagging?

Justin Russell: They are two sides of the coin. Ultimately, you promote someone's desistance from future offending potentially by building on the strengths that they already have and by having a strong relationship with the people on probation. There is very strong research evidence that one of the best predictors of reoffending is whether you have a strong relationship with your probation officer. That strong relationship can be based on honesty about the behaviour of someone on probation. Effective GPS tagging, drug testing or alcohol abstinence monitoring may make it possible to have an honest conversation with someone on probation about whether they are still using drugs or keeping away from the areas they are supposed to keep away from. That can strengthen the ability of a probation officer to have an honest relationship and to promote desistance from crime in the future.

Q2 The Chair: You mentioned low-level offending and the frustrations around that. What are the principal challenges that you have observed to the successful delivery of community sentences? That is obviously one of them.

Justin Russell: We have been inspecting probation services around the country since they were unified in June 2021, nearly two years ago. The Probation Service faces huge challenges at the moment. We have published reports on 23 local probation areas. We have rated 13 of those inadequate in our overall ratings. Only one has been rated good. Clearly, there are some huge underlying issues with probation delivery of community sentences and post-release supervision.

At the moment, we are finding two big challenges. The first relates to staffing. We find big gaps in key probation grades all around the country, particularly in London and the south-east, but not just there. The overall vacancy rate for probation officers is about 29% at the moment. It is 34% in London. In some of the local areas in London that we inspected, it was over 50%.

Those vacancies are being filled. There are about 2,000 probation officers in training at the moment. In our more recent inspections, we see fuller staffing complements, but we are not yet seeing that translating into a better quality of supervision. There are now many inexperienced trainee probation officers who are sometimes not doing the basics and that it is not yet sufficient to push up the quality. We are very concerned about the poor quality that we are seeing around the country. We rate two-thirds of the cases that we inspect as insufficient on our quality standards. That is a very concerning figure. It is actually worse than it was before unification.

So staffing is one issue. The key challenge with staffing is that, if you do not have enough staff, it translates into big caseloads, and unmanageable caseloads; 70% of the probation officers we interview think that their caseloads are unmanageable. Even though the caseload numbers have come down, they are still saying that. You can see the consequences of that in some very high sickness rates in the service at the moment.

The Chair: Did you say manageable or unmanageable?

Justin Russell: Unmanageable; 70% of probation officers say that it is unmanageable. That is translating into stress and high levels of sickness in the service, which make it even more stressful for the people who are still working. So there are huge issues of staffing. There are some green shoots when it comes to recruitment and the staffing figures are getting better, but it will be a while before that translates into better supervision of community sentences.

The second area is the services available to people on probation. Again, we are finding backlogs in the delivery of things like unpaid work or accredited programmes. We are finding that the commissioned services from the voluntary sector, which we can talk about later, are not working effectively in the way referrals are being made. As with services for others living in the community, there are huge waiting lists at the moment for things like mental health treatment, and

people on probation are joining a very long queue. So, yes, we are finding some really big barriers to effective delivery in our local inspections at the moment.

The Chair: When I saw the grading of services, I immediately thought of Ofsted, given that its work is in the news, but it is much more nuanced and detailed than the headline Ofsted figures. In your discussions with staff, is the public reporting of performance any sort of deterrent? If you get nought out of 27, as one probation service did, it must be deeply depressing. Is that a problem?

Justin Russell: Obviously, it can be very upsetting to staff and, in particular, to local heads of service to get those sorts of ratings. I hope that in our reports we are very sure to give context to our markings. We point to broader systemic issues of recruitment, vacancies, training and centrally run contracts. Often it is beyond the control of local heads of service to do very much about those. I hope staff recognise that by flagging the wider context in which services are working we recognise the challenges that they are facing.

We give a voice to staff. The raw material for all our reports is the feedback that we get from individual probation officers. We interview staff at every level of the service. We interview administrative staff, PSOs, probation officers and heads of service—a very wide range of staff—in focus groups and individually. It is their feedback that informs our reports. We are accurately reflecting what they feel is the very difficult situation they are working in at the moment.

Q3 Baroness Shackleton of Belgravia: Good morning. Thank you very much for being with us today. I am sorry that I am not physically with you. What assessment have you made of the relationship between the Probation Service and sentencers? You mentioned flexibility in your answer to the Chair's question to you. How regularly do they interact with you, and how good is their relationship? In particular, would you be able to communicate to them the example you gave of the multiple offender, low-level criminal who shoplifts to obscure a much deeper problem?

Justin Russell: We have not done a national survey of sentencers or looked at the work of probation court teams since 2017, which was in a different world, where Transforming Rehabilitation (TR) was still in place and probation court teams were being run by the National Probation Service, the NPS, and interventions were being delivered by private sector Community Rehabilitative Companies (CRCs). We have not gone back and done something at that scale since then.

In our local inspections, we offer sentencers the chance to respond to a survey. Unfortunately, not many do, but we get a bit of data from that. We try to interview Crown Court judges and magistrates too, so we have a bit of feedback from them. Generally, they are fairly positive about the probation court teams they work with. That is reflected in the HMPPS survey of judicial satisfaction. About two-thirds of judges responding to that in the first quarter of last year said that they were broadly satisfied with the probation support they were getting. It is surprisingly positive, given what we are finding about the quality of work being done by Probation, but

at a personal level sentencers feel they have a good relationship with the local probation service.

The head of the service and the chief executive of HMPPS have been very keen to promote greater liaison between the Probation Service and the judiciary. There is a national forum that is now chaired by the chief probation officer. At local level, there are liaison committees. Crown Court judges are expected to meet probation twice a year. The guidance is that magistrates should meet probation at least quarterly. There is encouragement of regional probation directors to inform judges in their area about the performance of local probation service on a quarterly basis. There is a set agenda for liaison committee meetings that encourages probation to share data on things like breach performance and the availability of services in an area. There has been a big push in the service to improve liaison, which is paying off in what we find anecdotally in our inspections.

An interesting set of data is to be published this year. For the first time, the service will publish more detailed data from a judicial survey. It will ask four questions about things like satisfaction with breach, availability of services and overall performance. I am told that will be publicly available later this year. There will be some interesting insights from that.

Baroness Shackleton of Belgravia: You mention a survey, but obviously it is not compulsory. Could you be getting a skewed result, because the only people who fill it in are those who do not complain, or vice versa?

Justin Russell: That is certainly true. In the final months of TR, at the beginning of 2021, we did a specific thematic on drug treatment for people on probation. We had a very strong response. We surveyed all magistrates, through the Magistrates' Association, and over 450 responded. You are right. They were slightly less positive about that particular aspect of sentencing. They liked the idea of drug rehabilitation requirements, but felt that they were being poorly delivered. At that time, they did not have confidence in CRCs to meet the needs of people on probation who had a drug problem. When you dig a little in a specific area, you start to uncover some issues.

One of the interesting themes that still comes through and that we may move on to later is Rehabilitation Activity Requirements: the so-called RAR days. Sentencers have always been a bit concerned about the lack of transparency about what may go into those days. They award a certain number of days but do not actually know what will be delivered in those days. We continue to get feedback that it would be good to know a bit more about that.

The other area, in a generally positive picture, is sentencers telling us that they would like more information on the outcomes of the people they sentence. It is the classic thing: they only see someone if they come back before them for a breach hearing or a reoffence. They do not see the success stories. That is a shame.

Baroness Shackleton of Belgravia: Would your jobs be made easier if you had

obligatory requirements to have a completed satisfaction survey both ways, so that there was communication of what the sentencers thought about you and what you thought about the outcome of what they had done—the sentences?

Justin Russell: That will be for the service itself rather than for me, as an inspectorate, to determine, but it would seem like a good idea to build in some sort of feedback mechanism.

Q4 Lord Blunkett: Thanks for being with us, Mr Russell. I think you have partly answered the question that I was going to ask you in the context that you laid out at the beginning of the session when you spoke about vacancy levels in the service, morale and the inexperience of those coming into the service, which is inevitable, given the backcloth, and in your reply to Baroness Shackleton about how sentencers do not see the outcome of the community sentence that they have applied.

Let me reshape it. If there is clear awareness, as there is, that things are not right, and there has been a major drop in the application of community sentences, could anything more be could done, in addition to what you have just described, on rehabilitation days, how they work and whether they are applied, and on feedback on the outcome of the sentence given, to build confidence for sentencers to come back to delivering effective community sentences rather than short prison sentences, which, as you described earlier, are universally understood to be totally ineffective?

Justin Russell: I certainly think it would be good to promote feedback from regional probation directors and local heads of service to local judiciary about outcomes from sentencing. One question that will be in the survey that will be published is whether sentencers are happy with the communication they get from their local probation service about what is available and about probation performance. We will get some sense from the survey of how content they are with that.

I understand that there are regional engagement events that regional probation directors offer sentencers in their region. They also circulate newsletters and bulletins about what is happening in probation. Ultimately, to be honest with you, what would increase confidence levels would be improved performance from probation. I said that we have real concerns about that performance. If I was a sentencer and I saw the number of unpaid work orders that are hitting the 12-month point without being completed, for example, or I read some of our reports about the lack of enforcement activity, I would be concerned about the effectiveness of probation delivery. If you are to improve confidence, getting the quality of sentence management up has to be foundational.

For the benefit of the committee, I looked at our data on the court reports that we inspect. We have inspected 400 court reports since the Probation Service unified. We rated 52% of them as “insufficient”. The key reason for insufficiency was that we did not feel that they were properly assessing the risks of harm presented by the person who was being sentenced. For example, only 36% of the court reports we looked at had put in a domestic abuse inquiry to the police about whether there

had been callouts or intelligence on that person. We had similar issues with safeguarding.

We asked whether the actual sentence awarded was the same as the one recommended by the probation officers. Interestingly, we found in our sample that sentencers were more likely to give immediate custody than was recommended in the court reports that we inspected. In 13% of those court reports there was immediate custody, versus only 2% where it had been recommended. If sentencers gave a community-based order, it was much more likely to be a suspended sentence order. In a third of the court reports that we inspected where a community order was given, the actual sentence was an SSO, but that was the recommendation in only 12% of court reports. From our data at least, there is a lack of congruence in whether sentencers always follow the recommendations of probation officers in their court reports.

Lord Blunkett: There is a clear correlation between the fact that they do not have confidence and the fact that they are delivering something that is not recommended. Given the vacancy levels and the inevitable level of inexperience of new recruits, is there anything that you feel could be done to redress that? Is there anything really good going on in England and Wales that you could point to that would allow us to say, “Even in these circumstances, post what happened with Christopher Grayling’s changes, there is still really good practice we can draw on”?

Justin Russell: There are a couple of areas where there are reasons for optimism. We are seeing encouraging signs in the rollout of something called the community sentence treatment requirement programme, which is a joint NHS-MoJ programme to increase the number of people on probation who get a mental health treatment requirement. It was launched in 2018; about two-thirds of the country is now covered and about 2,500 people have had a treatment requirement as a result of that. It is promoting much better working between probation practitioners and local mental health workers. That is encouraging. I think it will be rolled out everywhere by next year.

We are also seeing a revival of investment in integrated offender management—what we call IOM—of the most prolific offenders. That involves joint police and probation teams working together, sharing an office, hopefully with drugs workers and employment workers, doing joint home visits and really getting on top of the people who are the most prolific offenders in a local area. We felt that that had gone off the boil when we inspected it in 2020, but there has certainly been a revival in that approach since then. That has been encouraging.

The third area is not about community sentences but about recognition of the accommodation needs of people coming out of prison. During the pandemic and the lockdown conditions, people realised that they could not discharge people from prison with literally nowhere to live, so emergency arrangements were put in place for the Probation Service to directly commission temporary accommodation for that group. Since the pandemic finished, that has been made part of generic probation

practice. It is called CAS3. In five regions of the country, the Probation Service can now buy three months' worth of temporary accommodation for people on probation leaving prison, which is a positive thing. We are finding lower recall rates in the areas where that is happening. I think there is a commitment to roll it out nationally. Certainly the national data seems to show a slight improvement in the accommodation status of people on community orders.

Q5 Lord Blunkett: Perhaps that could be applied to those who are homeless who have committed the kinds of offences that you have described, which would otherwise lead the sentencers to deliver a custodial sentence. That might be helpful.

Finally, you might not want to do it this morning, but could you let us have any evidence of where, at community level, you have discovered really good working practices not just in the Probation Service but in local government and the voluntary and charitable sector? Other people may want to reinforce that point later in the morning.

The Chair: The use of pre-sentencing reports is declining. They have almost disappeared. Instead, we have same-day fast delivery reports. When I read about them, I found that they are typically produced by the Probation Service on the day of a hearing. It seemed to me that that would be an impossible task. It has to be some basic facts but little assessment. Is that right? Is it a positive development, in some ways?

Justin Russell: There has been a big drive to speed up the sentencing process and, as you say, to promote on-the-day oral or short-form reports. In our sample of court reports, over 90% were in one of those two forms. Only 3% were standard delivery reports, where you need an adjournment to do a more detailed assessment. The Probation Service itself recognises that the pendulum has swung too far against longer-form standard reports, particularly for people who have serious and complex mental health needs or something else, when you need time to go away and work out whether there is a potential option for treating someone.

We found a particular example of that in our serious further offence review of the Damien Bendall case. He had a short-form report. That very poor-quality court report missed a whole load of previous intelligence from the police and the Prison Service, recommended a completely inappropriate curfew and did not ask the householder, Terri Harris, about her happiness with having him there. All sorts of things went wrong with that court report. We clearly felt that that was a classic case where there should have been an adjournment. He was a complex character and had a violent past. There should have been an adjournment to do a more in-depth report on him. That shows the dangers of rushing too fast in some of these reports.

We have a particular concern about risk. I mentioned the lack of police domestic abuse checks. That probably results partly from having only a couple of hours to do them when you are preparing your report.

Q6 The Chair: I am not sure where this question fits in, but I will ask it now because you

have mentioned focus groups and other surveys that you are doing. Do you include surveys of victims?

Justin Russell: We do not. That is an interesting question. We have been doing a specific thematic inspection of domestic abuse perpetrators and how well they are supervised. That includes interviews with the partners of the people on domestic abuse orders.

We look at the work of what are called victim liaison officers. That is a specialist role in probation. Their only role is to liaise with victims to make sure that they have the chance to feed into parole decisions and pre-release planning, and that they are informed during someone's sentence about any progress that is being made. In general, we find that the work of VLOs is quite positive. We have given them more positive ratings than some other aspects of probation performance. They are a very dedicated group of staff. Quite often, they have long service, and they are very committed to getting the views of victims. That comes through in the discussions that we have with them.

One other thing to flag is that we are designing a new inspection cycle at the moment, which will go live at the end of this year and will look at and rate whole regions. It will include a specific standard on the quality of the victim liaison work that they do.

Q7 **Baroness Prashar:** Good morning, Mr Russell. My question is about the partnership with the voluntary sector. You mentioned commissioning. Last November, you wrote a blog in which you argued that the Probation Service is not making the most of partnership with the voluntary sector. Why is that? What would you recommend should be done?

Justin Russell: The voluntary sector is a hugely important partner for probation. I gave a speech to Clinks, which that blog was based on. It represents the interests of the voluntary sector, working in prisons and probation.

The roots of the Probation Service lie in the voluntary sector. It was an entirely voluntary role when it first started 100 years ago, with Salvation Army volunteers or people from Church of England temperance societies, so the history is firmly rooted in the voluntary sector ethos and commitment. That went away a bit. It became an entirely salaried, professional service over time. Over the last 20 years, there has been a pushback towards involving the voluntary sector more and making grant and commissioned funding available to it. That started in the mid-2000s.

There are two key ways in which the Probation Service can commission services from the voluntary sector. Commissioned rehabilitative services contracts—CRSs—have been nationally let from the centre to cover six different pathways; they are worth about £200 million and about 29 organisations have been contracted, nearly 70% from the voluntary sector, with rather more for women's services, where it is nearly 100%. That is a positive role.

The feedback from the voluntary sector involved in those contracts is that the contracts have felt quite constraining and they have gone to the big national organisations such as Nacro, Catch22 or St Giles. Smaller providers have felt squeezed out because contracts have been let at regional or police force area, and they felt that they were not able to compete. There is an issue about the commissioning mechanism. Does it properly allow the whole range of voluntary sector providers to go for the grants? There has been a review and a commitment to move towards grant funding, which is a positive thing.

The second area has been a more devolved funding stream, where individual regional directors have an innovation fund which they give out as grants to smaller organisations that are not currently providing any of the other services. That has been very interesting. They have invested in neurodiversity services, mentoring support, and services for black or ethnic-minority service users. That has been a positive thing, but it is a small amount of money.

There are three or four issues that I flagged in my blog and in the Clinks speech. The first is referral volumes. Because the contracts with the voluntary sector were let nationally and were at a huge pace—people only had a few months to tie them all down—they had to make assumptions based on limited data about what the volumes would be. In particular, they did not have access to CRC data, so it was just the National Probation Service data. Basically, they got the assumptions wrong. They would admit that now. They underestimated the potential demand for things like women's services and accommodation. Initially, there was a huge flood of those. In some ways, there have not been enough referrals for well-being services. There is a mismatch between referrals and what is being commissioned.

Another issue from the feedback on both sides is that the actual referral mechanism is not giving the providers of services enough information about the people being referred; sometimes they are not even getting accurate contact details. They are also not being told the potential risk levels of people or of their other needs. In TR days, voluntary sector providers had direct access to probation case management systems. They do not have that any more; they cannot get into nDelius. They told us repeatedly that they would like that access.

There is a basic scepticism from probation practitioners. We interview them in every area about how valuable they find the services. They were somewhat sceptical, particularly about the accommodation service. They say that it is not about providing people with housing; it is another signposting service. It is filling out the duty to refer forms, but they can do that themselves or they have their own connections with local housing, social housing providers or with the council.

There has been big investment. My criticism would be that perhaps it has been in signposting or assessment services rather than in direct commissioning of what is needed, which would involve a much larger amount of money.

Q8 **Baroness Prashar:** Thank you for a very comprehensive answer. What criteria does the Probation Service use for making referrals or contracting out and giving grants?

What should it be doing itself?

Justin Russell: There is a split. We will probably talk about rehabilitation and RAR days. One way of fulfilling an RAR day is by referring someone to one of the providers or you can do the work in-house. It tends to split half and half.

There is lack of clarity about the fundamentals of what a probation officer is. What is their role? Is it directly to provide interventions to people on probation, or is it merely to manage the interventions and inputs of a range of other people they are referring on to, whether a statutory service like DWP or the local housing office, or one of the voluntary sector providers? If all that probation work is just about referring people on and filling in assessment forms, it is a desiccated and not particularly satisfying role.

The balance between what probation staff should be doing themselves on interventions and working with people on probation, and what others should be doing, is an interesting issue. It is getting that balance right.

Baroness Prashar: What are your personal observations?

Justin Russell: It is horses for courses. There are certainly things that specialist staff can do better than a generic probation officer. Youth Offending Services, which we also inspect, have embedded specialist workers. A typical Youth Offending Service has an embedded Child and Adolescent Mental Health Services (CAMHS) worker, an embedded speech and language therapist and an embedded educational psychologist. They are specialists who really know their stuff. They are in the office and can interact on a daily basis with case managers. There is no real equivalent in probation. You need specialist help. Regional directors or local probation should have the flexibility to buy that in and have it in their own offices, rather than necessarily do it through an externally commissioned contractual arrangement.

Baroness Prashar: Are you arguing for greater flexibility? There seems to have been too much structure in the way contracting happens.

Justin Russell: Regional probation directors would like to see far more of that budget being devolved to them so that they can make their own choices about what they purchase. There is an interesting pilot in Greater Manchester where the services in Greater Manchester are not commissioned from HMPPS headquarters; they are agreed locally between the combined authority of Greater Manchester and the regional probation director. We are seeing a more nuanced and flexible range of services there as we inspect.

Baroness Prashar: Are there any good examples that you can point to, or give some information about, of how you think the partnership is working and what kind of relationship they should be looking towards?

Justin Russell: We have not yet published our Greater Manchester inspections. We are happy to share them when we do. That is the best example we have found yet.

The Chair: You mentioned mental health needs. What is the relationship like with the NHS?

Justin Russell: We did a whole national thematic on mental health right across the criminal justice system. It was a joint thematic with all of the other criminal justice inspectorates, which we led. In about 38% of the cases we inspect, someone has a mental health issue. It is a big chunk of the caseload and it is a big chunk of police work. We found that there was a lack of a common definition of mental health across the system that was shared with the NHS. We felt that was not helpful and meant that it was impossible to know accurately what the needs were and the numbers who should be getting treatment. It was a recommendation that Lord Bradley made in 2009 that has not yet been implemented. That was disappointing.

There has been a lot of investment in identifying people with a mental health problem when they first come into the system. There are now liaison diversion mental health workers in almost every police custody suite. They are picking up over 100,000 a year through those assessments. The issue then is whether that information is passed on to the CPS, the courts and the Probation Service. We found that often it is not. Quite often, people did not realise that they could share the information and felt that there were data protection restrictions, which was unfortunate, or they forgot to share it or did not have the systems that would enable them to do it. There is an information-sharing issue as well as a basic service provision issue. It is the classic thing: there has been a lot of investment in assessment and identification, but the actual services that people then need, if they are assessed as needing them, are not there. We know about the waiting times for those.

Q9 **Baroness Henig:** May I preface my question with an observation? It is 18 years since I retired as a magistrate. In my neck of the woods, which was in the north and north-west, 18 years ago there were major problems with the Probation Service; there was a shortage of alcohol referrals, all those sorts of problems. I find it very depressing that things have got worse, and they were pretty bad then. From everything you have said, the situation is even worse now than it was at that time. That is the impression I am getting. You have already said that in the Probation Service you have found so far that the majority of officers are not performing satisfactorily. You have also said that commissioned services are not working effectively. I am finding this quite hard.

My question relates to whether probation activities and services differ substantially from one geographical area to another. You commented that commissioned services were working effectively. You mentioned that in Manchester there is some glimmer of hope, because there is something working effectively in Manchester. Are there other parts of the country where similar partnerships are working, or do we have real problems across the country?

Justin Russell: I am afraid we find quite a lot of problems across the country. In 12 of the 23 reports we have published, we rated service delivery as inadequate, reflecting what we find in our cases. When we inspect individual cases, we find that

the needs of the person are not being met. To give you some data, employment and education needs are being met in only 46% of the cases we inspect; alcohol misuse in only 26% of cases, and drug misuse in only 28% of cases. A lot of needs are not being addressed by the services in place. The services vary according to who the provider is. We get good feedback on women's services. That has been a positive area. That also comes through in our User Voice data; the feedback for women is broadly more positive than it is for men.

Yes, it is a difficult picture. Some of the services are directly commissioned and we have talked about those. Other services reflect broader statutory provision and the variation in how those services are doing, whether that is an NHS mental health trust or whoever the drugs treatment provider is in a local area.

We now have a unified probation service, it has come back into the public sector, into the Civil Service. For the first time in the history of the service, all probation officers are now civil servants. That is quite a profound change. There is some talk that we are going back to what it was like before TR. We are not really. We are not going back to trusts; we are going back to everyone being a civil servant and to far greater central control over standards and policies, the way processes are carried out, and the commissioning of services. That leads to less variation in how things are done. Going back to the discussion we had earlier, regional directors would welcome more devolution, and more power to innovate and do things a bit differently. Some of the ex-CRC heads of service I talk to rather miss the days of CRC, when they had more control over the services they could buy, the way they did recruitment or the way that they organised their workforce.

Baroness Henig: It worries me that there seems to be a vicious circle in the sense that the Probation Service is possibly not meeting the expectations of magistrates, because clearly, as you imply, there are problems in the Probation Service; and the commissioned services are certainly not living up to the expectations of the Probation Service. Therefore, not surprisingly perhaps, magistrates are moving to short prison sentences not because they particularly want to, but because there seems to be at least some solution, rather than casting the offender out to the community and waiting to see what happens. Can you comment on that? It worries me that there seems to be a vicious circle developing.

Justin Russell: Potentially. The interesting thing is that, in the composition of the prison population, the proportion on short sentences of under 12 months is massively less than it was 10 years ago. Ten years ago, there were 7,000 to 8,000 people under 12 months. It is now 3,500. It has come down by more than 50%. The people on short sentences are hugely prolific offenders; on average, they have 50 to 60 previous convictions. My impression is that there are magistrates who feel that they have run out of road on sentencing options, so that is where they are turning, which is unfortunate.

The provision of a convincing residential alternative to custody would be worth looking at. There has been some investment in women's centres. There is a strong

case for investing in residential drug services with a condition of residence attached as a way of dealing with some of those constantly cycling people.

Baroness Henig: Are there enough residential drug services? There never used to be.

Justin Russell: That has been an area that suffered a lot during the austerity years. There has been a big drop in that sector, partly because it is very expensive and it can only be commissioned on a consortium basis if you are going to do it properly.

Baroness Henig: If the services are not there, you cannot refer people to them.

Justin Russell: No. At the beginning of 2021, we did a big national thematic on drug services for people on probation. We found at that point that very few people were being sentenced on community orders to drug treatment. There are huge numbers being identified with a drugs problem in prison; 25,000 people have an opioid addiction and are being treated for that in prison. We tracked them, and once they came out only a third were getting follow-up treatment after they left. It is not just community orders; it is also meeting the post-release need for residential rehab.

Baroness Chakrabarti: Listening to you, I detect the irony that we, as a community, are prepared to incarcerate but not to house. It seems to be one of the recurring problems—to house and rehabilitate. The very basic prerequisite for rehabilitation might be that you have somewhere safe and adequate to live. I was also struck by your comments about what it is to be a probation officer now. You made a number of very pertinent comments about that.

I have been around this space long enough to remember the old duty to advise, assist and befriend, which was jettisoned in the mid to late 1990s. You are saying that now there is the element of central control. Presumably, politicians did not like people in corduroy trousers who were from a sociology and social work background, so we had to go more punitive and now into central control. Do you have thoughts on what the appropriate balance for the duties of a probation officer ought to be between the punitive element and the rehabilitative element, and the skill set that goes with that?

I forgot to declare my interests. I am a council member of Justice and a supporter of the Howard League for Penal Reform.

Justin Russell: In our inspections, when we inspect individual cases and we interview the probation officers and the PSOs supervising those cases, we follow each case right through from initial assessment to review and delivery of the sentence plan. We find problems at each stage.

Our most positive marks are for the quality of engagement between probation staff and people on probation. Quite often, they are good at engaging with people on probation. They involve them in the assessment and planning. Our feedback from people on probation is generally positive about that relationship. In general, we find that probation staff are identifying the needs of people on probation. A very

comprehensive assessment is done when someone first starts their community order and that then informs their sentence plan. Whether those needs can be met is another issue, and we have talked about the availability of services.

The weakest area of performance is around risk of harm and the assessment and management of that. I have talked about issues with the sharing of police data, and there are similar issues in working with local authorities and children's services, around safeguarding information. We find what we call a lack of professional curiosity: sometimes there is a tendency to take at face value what someone you are supervising is telling you, rather than triangulating it against other sources. Where that goes wrong, it can lead to really disastrous consequences.

I referenced the Bendall case earlier. At both the court report stage and the initial assessment stage, Damien Bendall's assertion that he was like a father figure to Terri Harris's children was taken entirely at face value, and that she was quite happy to have him live in the house. None of that was checked with Terri Harris or her family. Asking the questions and going wider is not happening at the moment, and that is leading to some very poor scores around risk assessment and management.

I recognise that we ask probation officers to do a very difficult balancing act. On the one hand, we say, "It is really important that you have a strong and trusting relationship with the person you are supervising. You need to get their trust, you need to show that you are working to meet their needs and that you are thinking about their strengths". On the other hand, we also ask them to show professional curiosity, not necessarily to take everything that they are being told at face value, but to check up with the police and social care. That balance is a difficult thing to get right and our inspections have shown that they do not always get it right.

Q10 Baroness Chakrabarti: We understand that there are 16 potential requirements for an adult community order, but that 11 of the 16 are rarely used. Can you reflect on that? Is it that the requirements are defunct and should not be there? Is there inadequate resourcing for the requirements, or is there a problem with the Probation Service being unable or reluctant to provide them?

Justin Russell: From the national data and our own inspection data, the top three requirements are essentially RAR—rehabilitation activity requirements—unpaid work requirements and accredited programmes, although accredited programmes are some way down the list. That reflects a movement in 2014-15, as we went into transforming rehabilitation, deliberately to have unspecified rehabilitation requirements that would allow the Probation Service to decide what was most appropriate to build into a sentence. It is an historic reflection of that shift in 2015.

Baroness Chakrabarti: It is not a problem; it is just a framing thing.

Justin Russell: The Probation Service can still require people to do drug treatment or attend thinking skills programmes, or all the rest of it, within a RAR; you do not have to have that as a requirement. Certain things have to be attached by the court.

Baroness Chakrabarti: This particular issue is not really a problem; it is just a

framing, drafting thing.

Justin Russell: It is, although one area where I would certainly like to see more attention is around drug rehabilitation requirements. Those numbers are still disappointingly low. In 2008, 17,000 drug treatment testing orders were given out by the courts. When we looked again in 2021, that number was down to less than 4,000—a 75% drop in the use of court-ordered drug treatment and testing, which is concerning. Numbers have gone up by about 10% since then but are still a long way from what they could be.

When we did our investigation of drugs, we estimated, based on our sample of inspections, that about 75,000 people being supervised in the community by probation had a drugs problem linked to their offending. Then we said, “How many referrals to drug treatment is the Probation Service making every year?” There are national figures on that and it is fewer than 3,000. There is a huge gap between what I think is a potential need for specialist treatment and what is being given. Given that class A drug addicts commit half of all property crime, there is huge potential to get more of that group into treatment and use probation to do that. If there was a requirement I would like to see used far more than it is now, it is certainly drug testing and treatment.

The other concerning thing was that we followed an entire quarterly cohort of people who had been given a drug testing and treatment order at the beginning of 2020. We found that only half of them had actually completed the DRR. In nine out of 10 orders, there had been no court oversight. That is a crucial part of the order; you go back to court to report on your progress. There had been very little drug testing as well.

Baroness Chakrabarti: How did that happen, or not happen?

Justin Russell: It could be argued that it was partly the pandemic. Certainly, that made drug testing very difficult, and courts were under the cosh. It is still concerning that the key essential parts of an order—the testing and the court reporting—seem to have disappeared and they need to be brought back in if it is to have much impact. That would certainly be one thing.

An area where we worried that there were too many requirements was in relation to curfew or electronically tagged curfew orders. We found that curfew orders were being given to people with no domestic abuse checks being done beforehand, which seems crazy.

Baroness Chakrabarti: You are locking someone in.

Justin Russell: Yes, you are locking someone in with a potential victim; you are requiring them to live with a potential victim on a tag without having checked whether there is a domestic abuse flag against that address or that person. We made a recommendation that it should be absolutely mandatory that those checks

were done, and that was implemented in April last year. As you can see in the figures, it led to quite a big drop in curfew orders.

The Chair: There is a lot that we want to take up with the sentencers when we come to take evidence from them.

Q11 Baroness Sanderson of Welton: Now we come to the RARs. They are the most common requirement, and you have just said that there was a desire from 2014-15 to have greater flexibility, but, as you also said, there seems to be a lack of transparency and understanding of what goes on within the RARs, so there is a question about how much input the offender has over what will make up a RAR. Not more importantly, but equally importantly, it does not seem that there is very much knowledge about what they constitute and how long people do them for; you can have the maximum sentence but the days are not being done. Given that that is the focus and seems to be the common requirement, it seems that we do not really know enough about what they are doing and how effective they are.

Justin Russell: That is true.

The Chair: Before you answer, Mr Russell, can I intervene? We have been using the acronym RAR, which is Rehabilitation Activity Requirement for those who are listening to this.

Justin Russell: There is a lot of jargon in probation.

The Chair: Have I thrown you off your stride?

Baroness Sanderson of Welton: No, because we mentioned it previously.

Justin Russell: It is true that we struggle to get any data on things like completion rates for different RARs, how much different options are being used and what the waiting times are for them. We have not done a specific inspection of RAR delivery since 2017. When we inspected RARs, we found that, nine months after sentencing, only 22% of the RAR days had been delivered; in only two of 72 cases we inspected had they been fully completed and only half of the people subject to them had complied with the order. There was definitely evidence then of poor delivery. To be honest, I am not sure that we would find a much better position now.

What happened in the TR days was that, because there was emphasis on payment by results, it was deliberately built into the system that providers should have as much flexibility as possible to try to chase down reductions in offending and to innovate. To some extent, that happened. Different CRC providers came up with different menus of RAR days. They did some interesting work. They developed RARs for stalking offences, and they invested a lot in mentoring. Some very interesting stuff was happening, but 1,000 flowers were blooming without much effort to test the evidence basis for those interventions.

After unification, there was a probably welcome rationalisation of all the hundreds of different programmes. There are now three things to be done to fulfil the RAR

days. The first is referral to one of the commissioned services to help with accommodation, Education, Training and Employment (ETE) or finance and benefits needs. The second is that the probation officer can use a toolkit. The service has now rolled out toolkits for domestic abuse or sex offences. The third thing is what is called a structured intervention, which is for lower-risk offenders. Those are group or individual sessions based around thinking skills or aimed at particular types of offender.

We do not have up-to-date data, and we have not been able to get any, on the volumes of all those different things being used, but we are sceptical about how widely those interventions are being used. As I said, we are currently doing a thematic on domestic abuse perpetrators, where we look at the use of four structured interventions for domestic abuse. We are finding quite low levels of referral to those. We are also finding real variation in how the toolkits are being used. Practitioners are feeding back to us that they find the toolkits quite complicated; they have not been properly trained in them and are not sure how to make the best use of them. I would not be confident that things had improved since we last looked at it in 2017, if I am honest.

Baroness Sanderson of Welton: I can absolutely see that it is the area where innovation will happen. When it is good it is very good, but, as you say, we do not have the proof of exactly which ones are working. You just mentioned the drug rehabilitation requirement not being used enough and yet this is being used a lot. Why are sentencers going for this requirement, when we are not really sure of the evidence base, and are perhaps not going for drug rehabilitation?

Justin Russell: It is because drug rehabilitation requirements are not being recommended in court. When they are recommended, they are given. There is a very close congruence between the proportion of our cases where they have been recommended and a judge has gone along with them. The feedback from judges in the drugs thematic was that they are not being recommended by their court teams. We recommend that there should be specialist drugs workers in court who do the assessment and can feed into the pre-sentence report to recommend that requirement. It is a reflection of that. You would not want judges to give them out in inappropriate circumstances, so you need an informed assessment at the pre-sentence report stage.

The other thing to note is that someone can still be required to attend drug treatment as part of a RAR. It does not have to be a drug rehabilitation requirement. They have to consent to the treatment. I think they can be asked to be assessed without consent, but they need to consent to engage with a treatment provider.

Baroness Sanderson of Welton: How much input does the offender have, because that is obviously part of the RAR set-up?

Justin Russell: The initial assessment at the start of a community sentence would be very detailed. OASys has a whole section going through all their needs and all their

strengths, leading to a plan that is then agreed with the offender. As I said, we find that probation officers are reasonably good at engaging with people on probation at that point. They could be better, but that is certainly one of the stronger areas of performance.

The Chair: In 2017, there was a report that officers were spending more time on management and recording tasks than should normally be necessary. Is that still the case?

Justin Russell: We are about to do a thematic inquiry into management oversight and the role of SPOs in probation, so we will have up-to-date information on how much time they are spending on that. It is generally recognised that the SPOs, the crucial middle management grade, do not have the capacity to spend time with the people they line manage and to do the reflective supervision that is needed, particularly as so many of them are new. They are newly qualified and coming into the service. Quite often, they had to do their training online during the pandemic, so they were not sitting next to their manager or to colleagues. They missed out on a lot of the learning that you pick up through osmosis by doing that. We notice those deficits as we go round.

The Chair: Most of the delivery contracts will come to an end pretty quickly, in a year or so. Have negotiations started for new contracts yet?

Justin Russell: You would need to ask people at HMPPS where they are with that process. They are certainly having to start thinking about it—questions about how much might be devolved, and how much remains at the centre for commissioning.

Q12 Baroness Meacher: I do not have a prepared question, but I would like to ask you something, Mr Russell, although you have, in a sense, begun to answer it. Just in case it is an interest, I declare that I am co-chair of the APPG on Drug Policy Reform.

Have you had a chance to see the latest report of the Association of Police and Crime Commissioners? It makes fascinating reading and is rather relevant to our discussions. The PCCs argue that, because half of homicides and half of acquisitive crime is committed by people with a drug problem, drug treatment should be a major part of community sentencing. They are very keen to work with bodies in the criminal justice system to promote those. I have certainly picked up, towards the end of these discussions, that you are aware that this is a massive and growing gap. They rightly point out that addiction is the issue, not only drug addiction, but alcohol addiction and gambling addiction.

To what extent would you be interested in working with the PCCs to promote community sentences with strong treatment of these addictions, the focus being the treatment of addictions? To what degree might you have the support of the Probation Service in promoting the work of those people?

Justin Russell: I take every opportunity that I can to promote the integration of drug treatment in community sentences, as you will have gathered.

Baroness Meacher: Yes, indeed I did.

Justin Russell: I regularly meet HMPPS senior leaders to talk about where they are on their action plan to respond to our thematic. After the Government published their drug strategy at the end of 2021, there was a significant increase in treatment funding. It was not in the control of the Probation Service, so it still has to join the queue with everybody else. One of the interesting issues is whether probation should be able directly to commission treatment for people in its caseload to guarantee access.

There was something called the Drug Interventions Programme, DIP, 15 years ago, in the mid-2000s, which had huge investment in ring-fenced funding for offenders with a drugs problem. There was the creation of criminal justice pathways. There was a big investment in the testing of people at arrest to see if they had a drugs problem, and then automatic referral to treatment and services, if necessary. We found that the services that came with that had withered on the vine. The money had lost the ring-fence and gone into general local authority budgets, which meant that that group lost out.

Baroness Meacher: You referred to people on short-term prison sentences. We are very concerned that community sentences need to replace those. Those people in prison were people who had committed dozens of offences time and time again. Presumably, the main issue has been that they were not given addiction treatment for drugs or other kinds of addiction. Therefore, on they go and they commit crime. The PCCs refer to people turning up in court over and over again. That is what we hope that, together, we can change. It would be grand to have your support.

Justin Russell: We would be happy to give that.

Baroness Henig: I am still not clear. Are the drug services, which I agree are absolutely required, actually there? Who is providing them?

Baroness Meacher: They are working with local authorities to improve provision across the country.

Baroness Henig: I understand that, but I get the impression from the chief inspector that they are not actually there.

Justin Russell: I have asked this. There are local services in place. They are commissioned by local authorities; I think it is the public health bit of the local authority. When I ask what the waiting lists are like, I am told they are not huge. There is a lack of residential services, but for community-based services, and certainly prescribing services, it is not like mental health. I did not get the impression that there are huge waiting times. It is more about identifying people and referring them and keeping them in treatment. The evidence seems to suggest that you need to keep someone in treatment for at least three months for it to have an impact.

Baroness Henig: It is residential where the big gap is.

Justin Russell: Yes, that would be my instinct.

Lord Blunkett: As a matter of interest, one of the quirks of the mid-2000s was that the health service had to be dragged kicking and screaming into this, which is why the Home Office, God help us, had to take a lead on getting the drug intervention programmes up and running. Some £0.5 billion was put in at the time and it made an enormous difference, but we still did not have the residential provision. It is just a reflection.

- Q13 **The Chair:** May I backtrack a little to community work? We understand that almost a third of the unpaid community work that was imposed was left uncompleted last year. Do you want to say anything about that?

Justin Russell: It is certainly true that in our inspections we find big backlogs of uncompleted unpaid work orders. The delivery of unpaid work was massively hit by Covid. There was a delivery model that relied on taking people out in minibuses to do group projects, which was not possible with social distancing. There were eight months between the start of the pandemic and the end of 2021 when the service could not deliver unpaid work at all in the normal sense. As a result, a backlog built up, and by the end of 2021 we think that 13,000 cases had reached 12 months without having completed their hours. The service was struggling to get back to pre-pandemic levels of delivery, so there is a pandemic effect.

Over and above that, there is the same staffing impact on probation that I referred to more broadly. There are huge gaps in the numbers of supervisors, project co-ordinators and administrative staff. The service ran a big recruitment campaign last summer to try to recruit 550 unpaid work staff. It was broadly successful, except in London and the Thames Valley area, where there are still gaps that are hampering delivery in those areas. In some parts of the country, such as Greater Manchester, Kent, Surrey and Sussex, it is hitting 150% of pre-pandemic delivery, so it is pretty much back, and up and running and doing well. The service has really struggled to get on top of the backlog and the delivery timetable for doing that has slipped frequently.

- Q14 **Lord Beith:** On the discussion we had a moment ago, does the service sufficiently recognise that uncompleted unpaid work is a real danger in the sense that it promotes the argument that people should be in prison and not doing community sentences? It leads to newspapers being able to argue that community sentences are some kind of soft option. It is a pretty serious issue to address.

Justin Russell: It is. Getting back confidence in community options relies on dealing with those big backlogs. It is not just unpaid work; there were problems delivering accredited programmes for sex offenders and domestic abuse perpetrators during the lockdown, where again we are finding backlogs around the country and long waiting times. It can take over six months to start one of those programmes. Even when people start an accredited programme, only 20% or 30% of them might complete it. It is not just the completion of unpaid work orders; there are other requirements where we are finding real issues with how people are doing.

Over and above that, we find issues around enforcement of community orders. I am just looking at the statistics on the cases we have inspected so far. Of community cases we inspected, 40% did not require any enforcement action. Where enforcement was required, 41% had not had that action taken, so we are finding issues with following up non-compliance with appropriate action, whether a warning letter, a breach or whatever the action should be.

Lord Beith: There seems to be a mismatch between the courts reducing the use of community sentences and the fact that the casebook of the Probation Service remains at pretty much the same level all the time. Is that the accumulation of uncompleted sentences?

Justin Russell: I suspect it may be, yes. We have a situation where the current backlog—people who have reached 12 months without completing unpaid work orders—is about 6,000. Another 6,000 have had their order extended. They have to go back to court to get the order extended past 12 months. Generally, the courts allow that. There is now an agreed process with the senior judiciary whereby they can do those in bulk. The backlog has shifted from being the non-extended cases to being a backlog of extended cases that still have to complete their hours. It may be quite a while before that happens.

Q15 Lord Filkin: My daughter works in the MoJ in offender management. My wife was a probation officer, and I have known Justin for many years. Could I stand back a bit and try to get my head around the problem? Let me ask a number of questions first. Shall I just rattle through the lot and you can have a go?

Good, effective community sentences are, I assume, a very important part of our system. Secondly, the number has halved in 10 years, and that would look to be a disaster. Is it a disaster? Thirdly, if this is a description of a system in collapse, where is the policy or political attention to it? If any other public service had this level of degradation or collapse, there would be flashing red lights all over it. Why is the dog not barking? Has there been a turnaround plan? Does this have political salience? The three questions are: is it important, does it matter and why is nobody doing anything about it?

Justin Russell: It does matter. Community sentences are an important part of the arsenal of sentencing options. There is a more general issue in that the volumes being processed through the criminal system more generally have fallen significantly over the last 10 years, so the number of Crown Court disposals and the number of magistrates' courts disposals have both come down quite significantly, although maybe not at the same rate as community order starts. The figures I saw were that Crown Court disposals are down 29%, with magistrates' courts down 20% and probation starts down 44%. There are fewer cases being disposed of in the courts, and as a result you get fewer community orders being given.

Lord Filkin: It still leaves the fundamental question, does it not?

Justin Russell: Yes, it does. We saw a welcome reduction in the use of custody during the pandemic, which was clearly evident. That has started to pick up again.

There is clearly a need to provide credible alternatives to short prison sentences even though that number is coming down in prisons. The issue, I think, is very much about prolific offending. I mentioned that the group on under 12-month sentences had an average number of 65 convictions. A targeted solution would really help that group that is on the boundary between short-term custody and a community alternative.

Is there a plan to turn things around? There has certainly been significant new investment in probation, which I have welcomed. When I asked my team to track what happened to real-terms funding of the Probation Service over the last 20 years, they found that there had been a 40% real-terms reduction in spending per probation case until the beginning of 2019. At that point, there was a decent spending review settlement and the service got another £150 million, which has made a difference.

The issue now is not necessarily the lack of money; it is the inability to recruit to fill the vacancies that are being funded. We are in the process of those vacancies being filled but, as I said, it is not an overnight fix. Those people will need to be trained and they will need to get experience. We are probably talking at least 18 months to two years before they are up to speed and delivering the quality that we look for in our inspections.

That needs to be seen as part of a broader strategy. It is the underlying population you need to deal with—the population of street homeless and people with a class A drugs problem who are constantly rattling in and out of not just prisons but hospital A&E departments. They are causing problems all over the place. It is that group you want a solution for, which needs to involve probation and the criminal justice system but requires a much wider range of partners.

Lord Filkin: I will not use the word “political” because you will duck that one, but why does it appear to have little senior management in MoJ? Is it on the agenda of the Permanent Secretary and the DGs that this is pretty shocking and they want to turn it around?

Justin Russell: It is on their agenda. I meet regularly with Damian Hinds as the relevant Minister, and with Amy Rees and Phil Copple as the senior leaders. I have raised concerns that there is no longer a specific director-general for probation now. There is a merged director-general of operations for HMPPS, and I think there is a danger, particularly at a time when there is a prison places crisis that is occupying a lot of headspace in the department, that you lose the necessary focus on probation improvement, and that would be a concern for some of the regional directors as well.

Lord Filkin: I had better get to my question, otherwise the Chair will tell me off. At the end, it would be lovely to get very crisply from you your recommendation about the three big things that need to change. They are pretty implicit, but let me park that for now because I am going beyond my brief. Community sentences entail a punitive and a rehabilitative component. What is the experience of offenders? Do

they experience them differently? What is the learning from your research, particularly about how women experience them? What can we learn from users' experience of community sentences?

Justin Russell: I mentioned earlier that we have a partnership with the organisation User Voice, which on our behalf now interviews people on probation in every local area that we go to, using people who have been through the system themselves. It has surveyed 1,300 people on probation since we started doing this. Perhaps surprisingly, the responses were fairly positive.

Overall, about two-thirds of the people on probation User Voice surveyed said that they were happy with the support that they had with the Probation Service. Slightly fewer, 53%, felt that they could access the services that were relevant to their needs. People generally felt that appointments were at the right time and they felt safe in the office.

Because of your question, I asked User Voice to separate the responses from women, which are about 10% of the sample. They were actually more positive; 72% of the women it surveyed were happy overall with probation support, 68% felt that they could access services and 85% felt that they were getting appointments at the right time, which I thought was interesting and positive.

A slight health warning is that the more satisfied customers may be those who are responding to these surveys. The people we cannot reach are the people who have breached and been returned to custody because probation supervision was not working for them. One of the things we are thinking about is whether we can build a more representative sample of users to talk to. Certainly, of the ones we are talking to, those are the messages that we are getting back from them.

In the things that people say are their biggest issues on probation, there are slight differences by gender. Women whom User Voice talked to were more likely to say mental health was an issue that they needed help with, and less likely to say that problems in their relationship with a probation officer were an issue for them, which I thought was interesting.

So it is actually surprisingly positive. We have built User Voice into all our thematic inspections. It is slightly less positive on some of those. We had some stories coming back in our accommodation thematic about people being discharged from prison and sleeping in cars or ending up sleeping rough again, which was concerning.

We do not specifically ask User Voice to survey people about the punitive aspects of their sentence, but we have had a few insights on that from the studies that we have done on electronic monitoring and drugs. One of the interesting issues on electronic monitoring was that one of the themes was lack of communication. People fed back that they were not always sure what the tagging requirement actually was and what the expectations were of their behaviour at the point when the tag was applied. We found that probation officers were not proactively talking to people on probation about how the tagging was going. More broadly, I wonder

about the extent to which people on probation properly understand the requirements that are put on them.

There are significant levels of learning difficulty in this population. There are big levels of speech and language problems. When we go to Youth Offending Services and talk to speech and language therapists there, they say they are finding huge levels of communication need that have to be met. That is the same population that will then migrate into the adult population with no equivalent provision there. You can look at the effort that a Youth Offending Service will put into creating easy-read guides to sentence plans and making sure that the children understand them; I am not sure that the same happens with people on probation. It is an interesting area. Do people properly understand what can be a very wide range of requirements that are put in place around them?

The assumption is that people would resent the impositions of a tag or drug testing. Actually, some of the feedback was fairly positive; that having a tag gave you an excuse to stay inside and to break contacts with people who may have been a bad influence on you. It is the same with the new alcohol abstinence tags, which are a very positive new innovation that has been brought in. On the drugs thematic, people were surprised that they were not tested more. They expected to be tested and were not, and they said that when they were tested and came back clean it was a very validating thing for them. They were pleased to be affirmed in their response to treatment. There can be positives to some of these punitive measures as well.

Lord Filkin: That is very helpful. For the record, as there are 80,000 fewer people being given custody orders now than there were 10 years previously, do we know where they have gone? Do we know how many fines, how many suspended orders and how many to prison?

Justin Russell: I do not have that data.

Lord Filkin: Does anybody know it?

Justin Russell: I do not know. There was a very interesting piece of Home Office research in 2019 that asked the killer question: are reoffending rates lower for people on short prison sentences or for people on community orders? The reoffending rates were four percentage points better for people on community orders if you did a matched sample. Short prison sentences actually seem to generate more offending than their equivalent.

Lord Filkin: That has been our assumption, and they are vastly more expensive, of course.

Justin Russell: Yes, they are.

Q16 The Chair: I am reminded by colleagues that I should have declared that I am also a supporter of the Howard League for Penal Reform.

This next question is an opportunity for you to let us know what single change you

might advocate in relation to the delivery of community sentences.

Justin Russell: Some of the themes have come out during this evidence session. Because we inspect both Youth Offending Services and probation, the biggest insight for me is what probation could learn from Youth Offending Services. There is a huge contrast with our inspection results for Youth Offending Services; we rated 70% of them as good or outstanding last year. We have not given an inadequate rating to a Youth Offending Service since 2020, I think. We said that 25 out of 33 were good or outstanding on staffing; two-thirds of youth offending cases we inspect are satisfactory; and there are much higher rates for engagement and work to tackle desistance.

Two crucial things make a difference in Youth Offending Services compared with probation. The first, which you cannot argue with, is that they have much smaller caseloads. The typical caseload for a Youth Offending Service case manager might be between six and 10 children. By contrast, half the probation practitioners we interviewed have over 40 in their caseload, and we are still finding people with 50 or 60 cases. That has to make a difference to how much attention you can pay someone. We are finding with probation that too many appointments are just 15 or 20-minute check-ins with no real work being done with someone. That is a massive difference from what happens in youth justice.

Bringing caseloads down in probation has to be at the heart of how you improve performance. That happens through recruitment and through adequate training. I accept that you probably cannot bring them down to the level of a Youth Offending Service (YOS), but you could certainly bring them below what they are at the moment.

One of the obvious things you could do would be to shift the younger age range in probation into the Youth Offending Services themselves. At the moment, Youth Offending Services stop supervision at 18, and there is effectively a cliff edge where children go from quite a personalised service, with speech and language, into the adult provision world. The peak age for offending is 18 and it is exactly at that point that you hand them over to a once-a-month probation interview with no speech and language, no CAMHS and no ETE worker. It is an obvious idea. Why not allow Youth Offending Teams (YOTs) to work with children and young adults?

Lord Blunkett: We have to ask you these questions, otherwise we do not get it on the record. You have identified considerable special needs, have you not, in literacy and language?

Justin Russell: Yes, we have.

Lord Blunkett: That now goes through to 25, so there is a synergy there that might. Continuity has been a big factor with Youth Offending Services, has it not?

Justin Russell: It has. There are very stable staff groups, very low vacancy rates, staff staying around for a long time and some service managers being in post since they were first set up in 2001. You are right, Lord Blunkett; the level of special needs is

huge. A huge proportion of people in YOS caseloads are children in need, are actively in care or have been in care. There are local authority responsibilities to them past the age of 18 that need to be fulfilled as well. Getting caseloads down is one point.

The other point, which I have reiterated through this session, is that YOSs feel locally empowered and locally governed. They are an integral part of children's services now in local authority areas. They are also tied into a very strong multiagency governance process. Every YOS has a management board that will have on it, typically, the director of children's services, the local police Basic Command Unit (BCU) commander, the head teacher of the local Pupil Referral Unit (PRU) or an equivalent senior education person, someone from the NHS CAMHS mental health trust, and a voluntary sector rep. It has all the right people you need to advocate for the children on YOS caseloads and make a difference. I am not sure that there is an equivalent for probation, but that is exactly what it needs. It needs the local empowerment and local multiagency links that can make a difference for the people they are supervising.

Baroness Shackleton of Belgravia: Chair, can I raise one issue that is comparable? Under children's law, children do not have the right to apply for money against the parent past their full-time education, but they do if they have special needs. There would be a symmetry in taking care of them in the community by extending the age past the cliff edge at least until the end of university, and in special needs cases beyond that.

Justin Russell: The more you can build in continuity through the transition beyond 18, the better. To be honest with you, although I have given a positive picture of YOT performance, education is probably the weakest area. We find that very significant proportions of children on YOS caseloads are not in education, training or employment once they get past 16. FE colleges can be quite reluctant to take children who are on YOS caseloads and their attendance is not being monitored. Even under the age of 16, there are very high levels of exclusion.

Baroness Shackleton of Belgravia: It was not the education point; it was the duration of care point rather than education. There is no logic in cutting somebody off, particularly at a critical time, and the courts in the Family Division allow that link to remain.

Justin Russell: Yes, that sounds very sensible.

The Chair: We all recognise the cliff edge, which is not a cliff edge in reality. Would you like to put an age to which the extension might go, or is it a question of just moving it upwards and seeing how we can cope with that and what difference it makes?

Justin Russell: There is evidence that the full maturation process does not happen until you are 25. That might be too much of a jump in one go. It might be better to do it incrementally, moving up to 19, 20 and 21. Youth offending teams can actually

hold on to people beyond their 18th birthday if they feel that it is in their interest, at least to allow them to complete their sentence. There is interesting learning from that, I think.

The Chair: We ought not keep you much longer because I have kept you longer than we anticipated. I have one final quick question, and I know that Baroness Chakrabarti has, and then I would like to give you an opportunity to say anything you think we might have missed.

I do not know whether you have been exercising a self-denying ordinance, but in what you would like to see you have not mentioned the budget for the inspectorate. I gather that your resources have increased by 2.8% over two years. Do you want to use this opportunity to make any sort of plea?

Justin Russell: To be honest, my predecessor, Dame Glenys Stacey, did a good job in getting the resourcing that we needed to expand our inspections. We had quite a significant increase in resources at the point when we moved to a new inspection framework for TR, and we are managing within that budget at the moment.

Baroness Chakrabarti: I bear in mind the big-picture points that you made so ably at the end. Earlier, you said a number of times that there is urgent need for a credible alternative to short periods of custody. What do you think that alternative might look like, given that you spoke earlier about people without housing and the lack of drug rehabilitation and so on? How is it possible to do that fairly intensively in an order that is an alternative to short periods of custody, rather than longer periods of custody?

Justin Russell: It goes back to that original point I was making about the link in our sentencing framework between the seriousness of the offence, the tariff and the intensity of the intervention that can be offered, which leaves a lacuna around the group of low-level offenders with very serious needs. As we have been discussing, it would need to involve a residential element—the courts can apply a residential requirement in a community order—and treatment for mental health and/or drug and alcohol problems. It would probably need to involve someone consenting to live there.

The danger is that they would say, “I’d rather have the six-week prison sentence than spend six months in a rehab, thank you very much”. The way you set up the incentives to take the alternative to prison would need to be carefully thought through. There is an irony that HMPPS is now willing to pay for three months’ accommodation for people coming out of prison. What you need is to pay for the accommodation before they have had to go into prison in the first place.

The Chair: Is there anything else that we should have thought about? Obviously, there is the opportunity for you to contact us after this meeting if there is anything more.

Justin Russell: I am very grateful for the opportunity to talk to you. I am happy to share the data that I have discussed with the team if you would like to follow any of that up.

The Chair: We are very grateful to you. You have got us off to a start to this inquiry which leaves us with lots of questions as well as lots of answers, which is where we want to be, so thank you very much indeed.