

## Written evidence from the Centre for Crime and Justice Studies

13 June 2022

### Introduction

1. The Centre for Crime and Justice Studies, in fulfilment of its public education mission, welcomes the opportunity to present evidence about the expansion of Electronic Monitoring (EM). In 2017, the Centre published a briefing on the last major EM reform and expansion programme.<sup>1</sup>
2. This evidence submission has been written by Dr Roger Grimshaw (Research Director).

### Outline

3. Two significant official reports have recently laid bare the gaps in commissioning and overseeing EM provision and practice. This evidence submission comments on their findings, building on the evidence base about EM in this country and abroad. It concludes that the shortfalls in strategy and provision indicate a continuing failure of government strategy and require institutional reform capable of delivering appropriate and effective results. A key first step for consideration is the appointment of a regulator with an ethical and practical mission of ensuring that only appropriate services are provided, in the public interest. Given the problematic history of EM, the regulator should be reporting annually to Parliament in order to guarantee systematic accountability. Regulations which are deemed to possess an enduring public interest value should be considered for incorporation in statute.

### The current impasse

4. Evidence in official reports show major gaps in commissioning and oversight. A report by the National Audit Office (NAO)<sup>2</sup> focuses principally on the high level of strategy and policy while a report by Her Majesty's Inspectorate of Probation<sup>3</sup> has mainly explored practice.
5. On the ground, the recent inspection report shows beyond doubt that the monitoring of offenders has been siloed in many ways, losing touch with sentencers and probation staff and producing numerous information gaps. At the higher level, the NAO describes a failure to manage the development of technology capable of making proper use of new tagging information.

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<sup>1</sup> Nellis, M. (2017), *Grayling's failings on electronic monitoring: after the fiasco, what next?* <https://www.crimeandjustice.org.uk/sites/crimeandjustice.org.uk/files/Briefing%2019%20EM.pdf> ; Comptroller and Auditor General, *The new generation electronic monitoring programme*, Session 2017-2019, HC 242, National Audit Office, July 2017.

<sup>2</sup> Comptroller and Auditor General, *Electronic monitoring: a progress update*, National Audit Office, June 2022.

<sup>3</sup> Her Majesty's Inspectorate of Probation (2022), *The use of electronic monitoring as a tool for the Probation Service in reducing reoffending and managing risk*, January 2022.

6. According to the NAO, the outsourcing of systems and service integration once again poses risks to project development. The lessons of past difficulties appear not to have been drawn.
7. Opportunities to strengthen supervision and rehabilitation have been regularly foregone. The struggles of probation staff to access real-time information encapsulate the practical detachment of EM from its supposed purposes.
8. The NAO describes a systematic failure to monitor reoffending or rehabilitation. In general, the literature, which has been wide-ranging, reveals no clear evidence of impact of EM on re-offending.<sup>4</sup> It is disingenuous to pretend that EM can deliver results on a large scale which go far beyond what the most general evidence would currently suggest is likely.
9. The most important component of rehabilitative influence is the combination of human support and personal programmes, which contradicts the simplistic cost-saving claims sometimes made in government.<sup>5</sup> Research probing the views of wearers has found that they regard their compliance and openness to change as due to extra supportive features, not simply the use of the device.<sup>6</sup>
10. The NAO has discovered a lack of impact monitoring for key population groups, including by age, gender and ethnicity. The complexity of vulnerable children's development implies that practice must be trauma-informed<sup>7</sup> and the needs of women in a majority male system also imply that monitoring should be a compelling ethical requirement; the same applies to ethnicity, recent research having suggested how and why some Black people are sensitive to its drawbacks.<sup>8</sup>
11. According to inspectors, a failure of policy to mandate safeguarding assessments has exposed families to possible abuse. It is clear that the ethical responsibilities of policymakers have been neglected. The implications of system-wide data sharing pose particular ethical challenges especially in relation to families, employers and co-residents. It is crucial that an accessible complaint system open to third parties is fully established.
12. The weight of EM restrictions can vary in relation to the hours specified, the suitability of accommodation, the employment and domestic circumstances of subjects, and their family links and responsibilities. It is crucial that the range of stakeholders in EM administration is reflected in its procedures and practices.
13. Yet the government appears to give insufficient attention to the multiple impacts of EM programmes for so many stakeholders and regards extensions of EM as unproblematically adding value, whatever their focus or purpose.

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<sup>4</sup> Belur, J., Thornton, A., Tompson, L., Manning, M., Sidebottom, A., and Bowers, K. (2017), *A systematic review of the effectiveness of the electronic monitoring of offenders*, What works crime reduction systematic review series, No. 13, UCL, London.

<sup>5</sup> Dunkel, F. (2018), 'Electronic Monitoring in Europe – a Panacea for Reforming Criminal Sanctions Systems? A Critical Review', *Kriminologijos studijos*, 6, 58-77.

<sup>6</sup> Fitzalan Howard, F. (2018), 'The experience of electronic monitoring and implications for practice: A qualitative research synthesis', *The Howard Journal of Crime and Justice*, doi.org/10.1111/hojo.12351

<sup>7</sup> Arnett, C (2018), 'Virtual Shackles: Electronic surveillance and the adultification of juvenile courts', *The Journal of Criminal Law and Criminology* Vol. 108, No. 3.

<sup>8</sup> Richter, M., Ryser, B., Hostettler, U. (2021), 'Punitiveness of electronic monitoring: Perception and experience of an alternative sanction', *European Journal of Probation*, Vol. 13(3) 262–281; Irizarry, Y., May, D., Davis, A., and Wood, B. (2015), 'Mass Incarceration Through a Different Lens: Race, Subcontext, and Perceptions of Punitiveness of Correctional Alternatives When Compared to Prison', *Race and Justice*, 1-21.

## Risks and their control

14. The current NAO report echoes concerns expressed in its landmark report in 2017, in particular, the failure to arrive at a satisfactory integration of private sector and government development activity. It would not be far-fetched to conclude now that these difficulties are institutional and call for an overarching structure of regulation.
15. It is unethical to commission services with insufficient scrutiny and inadequate monitoring data, a fault that requires a major review, leading to a structure for the approval and, if necessary, licencing of services.<sup>9</sup>
16. A general unregulated expansion of EM risks squeezing and thinning the stock of human supervision, programmes and support necessary for any rehabilitation to occur.
17. The ambitious expansion of EM will compound and extend the current failings unless greater oversight is given to provision and standards of commissioning. It is doubtful whether it should be the role of inspectors to ensure that fundamental reforms are undertaken.<sup>10</sup> Until a proper structure is in place, it would be prudent to pause the expansion and to ensure that data has been collected which would support independent and authoritative judgements about the value of expansion.

## The future regulation of EM

18. It is widely accepted that in principle, EM can be part of measures to reduce imprisonment, but its management and integration into practice is more complex than imprisonment because EM operates within an open social environment and its administration can be calibrated in numerous ways. The tasks of technical development, administration and delivery are therefore demanding; principled, well-informed regulation can offer greater clarity, fairness and certainty than exists in the current terrain of persistent failure.<sup>11</sup>
19. A reshaped system that fully informs all the stakeholders in a case and recognises the voices of victims, subjects and families, should be nurtured and safeguarded by proper oversight and strengthened by an effective system of representation and complaint.
20. Unfortunately, the current arrangements at HMPPS have appeared incapable of giving strategic direction or cultivating an effective market which can reliably deliver public value. There will be no reliable improvement until EM is actively managed by the criminal justice agencies which deliver its services, and provision is placed under a regulatory structure committed to public value.
21. An appealing route forward is to appoint a regulator with a clear ethical and policy commitment to ensure only appropriate and effective services, accountable to Parliament and the public, are provided. The regulations reported to Parliament should be reviewed and considered for incorporation into statute, where they are deemed to have enduring public value.

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<sup>9</sup> Michael, K., McNamee, A. and Michael, M. (2006) 'The emerging ethics of humancentric GPS tracking and monitoring ', University of Wollongong Research Online [online], available: doi: <http://ro.uow.edu.au/infopapers/385>

<sup>10</sup> HMPPS (2022) *Response to the HMI Probation Inspection: A thematic inspection on the use of electronic monitoring as a tool for the Probation Service in reducing reoffending and managing risk*, 13th April 2022.

<sup>11</sup> Council of Europe (2014) *Recommendation CM/Rec (2014)4 of the Committee of Ministers to member States on electronic monitoring* (Adopted by the Committee of Ministers on 19 February 2014, at the 1192nd meeting of the Ministers' Deputies).