WHAT WORKS IN OFFENDER COMPLIANCE

International Perspectives and Evidence-Based Practice

EDITED BY
Pamela Ugwudike
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macmillan

Editorial matter and selection, introduction and conclusion
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Individual chapters © Respective authors 2013

Softcover reprint of the hardcover 1st edition 2013 978-1-137-01951-6

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First published 2013 by
PALGRAVE MACMILLAN

Palgrave Macmillan in the UK is an imprint of Macmillan Publishers Limited, registered in England, company number 785998, of Houndmills, Basingstoke, Hampshire RG21 6XS.

Palgrave Macmillan in the US is a division of St Martin's Press LLC, 175 Fifth Avenue, New York, NY 10010.

Palgrave Macmillan is the global academic imprint of the above companies and has companies and representatives throughout the world.

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ISBN 978-1-137-01954-7 ISBN 978-1-137-01952-3 (eBook)
DOI 10.1057/9781137019523

This book is printed on paper suitable for recycling and made from fully managed and sustained forest sources. Logging, pulping and manufacturing processes are expected to conform to the environmental regulations of the country of origin.

A catalogue record for this book is available from the British Library.

A catalog record for this book is available from the Library of Congress.

Contents

List of Tables and Figures viii

Acknowledgements ix

Notes on Contributors x

Section I Setting the Scene – Probation and Compliance: Historical and Contemporary Policy Developments

1 Introduction 3
Pamela Ugwudike and Peter Raynor

2 Compulsory Persuasion in Probation History 9
Maurice Vanstone

3 What Counts? Community Sanctions and the Construction of Compliance 26
Gwen Robinson

4 Reanalysing the Compliance Dynamic: Toward a Co-Productive Strategy and Practice 44
Trish McCulloch

Section II In the Front Line: The Importance of Offender Motivation

5 Learning from Odysseus: Self-Applied Situational Crime Prevention as an Aid to Compliance 67
Anthony E. Bottoms

6 What and Who Might Enhance Offender Compliance: Situating Responsibilities 90
Ralph C. Serin, Caleb D. Lloyd, Laura J. Hanby and Marianna Shturman

7 Compliance through Discussion: The Jersey Experience 107
Peter Raynor

8 Compliance in Prisons 119
Ben Crewe

9 Surveillance-Based Compliance using Electronic Monitoring 143
Mike Nellis

10 Compliance with Community Orders: Front-line Perspectives and Evidence-Based Practices 165
Pamela Ugwudike

Section III Evidence-Led Compliance Mechanisms: Recent Developments in International Research

11 Offender Recall for Non-Compliance in France and Fairness: An Analysis of 'Sentences Implementation Courts' Practices 185
Martine Herzog-Evans

12 Compliance Dynamics: A Multidisciplinary Review and Exploration of Compliance Processes in the Belgian Context 208
Stef Decoene and Kristel Beyens

13 Effective Supervision of Young Offenders 227
Christopher Trotter

14 A Tale of Two Innovations: Motivational Interviewing and Core Correctional Practices in United States Probation 242
Melissa Alexander, Christopher T. Lowenkamp and Charles R. Robinson

15 The Importance of Building Good Relationships in Community Corrections: Evidence, Theory and Practice of the Therapeutic Alliance 256
Guy Bourgon and Leticia Guiterrez

Section IV Offender Diversity: Contextualizing Compliance Theory, Policy and Practice

16 Working with Women in Probation: 'Will You, Won't You, Will You, Won't You, Won't You Join the Dance?' 279
Loraine Gelsthorpe

17 Encouraging Compliance, Maintaining Credibility or Fast Tracking to Custody? Perspectives on Enforcement in the Youth Justice System 295
Tim Bateman

18 Achieving Compliance with Drug-Misusing Offenders: Challenges for the Probation Service 315
Paul Sparrow

19 Conclusion: What Works in Offender Compliance 332
Pamela Ugwudike and Peter Raynor

Index 351

Tables and Figures

Tables

13.1 Overall use of skills by workers (scored 6 or more and 5 or less) by any further offence in 24 months by clients 234
13.2 Overall use of skills by workers (scored 5 or more and 4 or less) by any further offence in 24 months by young people 234
13.3 Logistic regression analysis of overall use of skills by workers (scored 5 or more and 4 or less) by any further offence in 24 months by clients, including client risk levels 235
13.4 Regression analysis of staff position (juvenile justice officer or juvenile justice counsellor), client risk level and any further offence in two years 236
13.5 Worker global scores by reoffending for high-risk offenders (LSI >20) 237
13.6 Worker global scores by reoffending for low-risk offenders (LSI <21) 237
13.7 Worker global scores by reoffending for offenders who were engaged overall 238
13.8 Worker global scores by reoffending for offenders who were not engaged overall 238

Figures

3.1 Dimensions of compliance (adapted from Robinson and McNeill 2008) 39
6.1 Model of offender change 93

Acknowledgements

The idea for this book emerged from a realization by the editors that very little has been written about offender compliance. Therefore, unsurprisingly, it was a challenge to identify suitable contributors to this volume. Eventually we did succeed in identifying academics and researchers who have through their previous work revealed a commitment to understanding offender compliance and its mechanisms. We are therefore very grateful to all the contributors for responding favourably to our request to contribute to the book and for the time and effort they invested in making this work a reality.

We are also grateful to the Swansea University Criminology Department for allowing one of us a period of sabbatical leave during the production of the book. Finally, we wish to express our thanks to all those who worked in various capacities to support the production of this book, especially Julia Willan and Harriet Barker at Palgrave Macmillan and Devasena Vedamurthi at Integra.

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Laura J. Hanby is currently completing her PhD in forensic psychology at Carleton University, Canada. Since 2008, Laura has also been employed with the Correctional Service of Canada in various capacities. Her master's work focused on the role of offender competencies in predicting treatment programme performance as well as release outcome. This research has important implications for correctional practice and, more generally, advances our understanding of the processes underlying offender change. While this research is ongoing, Laura's doctoral dissertation has taken a different focus on dynamic risk assessment. This study examines whether the assessment of dynamic risk factors and protective factors using the Dynamic Risk Assessment for Offender Re-entry (DRAOR) improves risk assessment and case management. It is expected that this systematic assessment and reassessment of dynamic and protective factors will provide insight into the mechanisms by which risk changes over time.

Martine Herzog-Evans teaches law and criminology at Reims University, Law Faculty, France. She also teaches at the Universities of Nantes and Bordeaux IV/National Penitentiary Academy. Her majors are criminal law, sentences, probation, prisons and re-entry. Publications include *Droit de l'application des peines*, 4th ed. (2012–2013); *Droit pénitentiaire*, 2nd ed. (2012–2013); *Transnational Criminology Manual* (2010); *L'évasion* (2009); and *L'intimité du détenu et de ses proches en droit comparé* (2000). She is a member of the European Society of Criminology and works with three of its subgroups: Community Sentences and Measures; Sentencing; and Prisons.

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Christopher T. Lowenkamp received his PhD in criminal justice from the University of Cincinnati, USA. He has served as the director of the Center for Criminal Justice Research and the associate director of The Corrections Institute at the University of Cincinnati. He has also held the positions of research associate and research professor at the University of Cincinnati. He served as a probation officer and jail emergency release coordinator in Summit County, Ohio. He is the co-author of EPICS-II, STARR, EPICS, two cognitive–behavioural curricula for clients and the Ohio Risk Assessment System (ORAS), and the developer of the Post Conviction Risk Assessment (PCRA) and the Pretrial Risk Assessment (PTRA), which are used in the federal probation and pre-trial services systems. He has co-authored over 60 publications on risk assessment and correctional programming.

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Vanstone, 2002); *Race and Probation* (with Lewis, Smith and Wardak, 2005); *Developments in Social Work with Offenders* (with Gill McIvor, 2007); *Rehabilitation, Crime and Justice* (with Gwen Robinson, 2009) and *Offender Supervision: New Directions in Theory, Research and Practice* (with McNeill and Trotter, 2010).

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Ralph C. Serin received his PhD from Queen's University in 1988 and has been registered with the Ontario College of Psychologists since 1990. He worked in federal correction from 1975 to 2003 in various capacities and is now an associate professor at Carleton University, where he is Director of the Criminal Justice Decision Making Laboratory and a member of the Forensic Psychology Research Center. He has consulted with the National Institute of Corrections and the Centre for Effective Public Policy, and is an advisor to the National Parole Resource Centre (USA). He has also provided training and is currently engaged in research collaboration with the Departments of Corrections in numerous US states and internationally regarding violent offenders, dynamic risk assessment, evidence-based practice, parole decision making and offender change. He is co-principal investigator (co-PI) for a recently funded innovation grant from BJA to develop e-learning materials for probation/parole officers, and is also co-PI for a re-entry model adopted by the National Institute of Justice for a national field demonstration experiment under the Second Chance Act on offender re-entry (USA). He has recently been appointed to the Correctional Services Advisory and Accreditation Panel in the UK.

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Pamela Ugwudike is Lecturer in Criminology at Swansea University in Wales. She trained as a lawyer and went on to obtain a Master's degree in Criminology and Criminal Justice (with distinction). She was awarded a University of Wales PhD studentship in 2004. After completing her PhD, she took up a position as a research officer at the Centre for Criminal Justice and Criminology, Swansea University. She was appointed a lecturer in September 2009. Her research interests include developing insights into evidence-based offender rehabilitation and exploring the dynamics of compliance with legal authorities. She is currently working (with Professor Peter Raynor and Professor Maurice Vanstone, who are also based in Swansea University) on a research project that is evaluating the delivery and impact of supervision programmes. The project is funded by the Jersey Probation and Aftercare Service. She is also working (with Professor Peter Raynor) on two projects that are also exploring the delivery and impact of supervision programmes. One of the projects is funded by the Welsh Government and the second project is funded by the London Probation Trust. Her recent publications and conference papers have explored the relevance of criminal justice policy and practice to compliance with court orders.

Maurice Vanstone is Emeritus Professor of Criminology and Criminal Justice in the Department of Criminology, Swansea University, UK. His many publications include *Supervising Offenders in the Community: A History of Probation Theory and Practice* (2004) and *Offenders or Citizens?: Readings in Rehabilitation* (with Philip Priestly, 2010).

Section I

Setting the Scene – Probation and Compliance: Historical and Contemporary Policy Developments

1

Introduction

Pamela Ugwudike and Peter Raynor

This book's main objective is to draw together the latest international research and theoretical literature on offender compliance during criminal justice supervision and after supervision ends. As far as we know, no text has focused exclusively on the subject-matter of offender compliance. This book addresses the gap in knowledge by providing a useful analysis of the extant international research and theoretical literature. It examines compliance across two broad domains: short-term compliance during criminal justice supervision[1] and long-term compliance[2] after supervision ends.

Compliance is a broad concept. To demonstrate the multidimensionality of compliance, we may turn to Bottoms's (2001) framework for understanding compliance. According to this framework, there are several forms of legal compliance, namely: constraint-based compliance; habit compliance; instrumental compliance; and normative compliance. Constraint-based compliance may stem from physical constraints such as the electronic monitoring devices that seek to reduce opportunities for non-compliance. Habit or routine compliance may manifest as established non-criminogenic routines and habits. With instrumental compliance, people comply because of perceived benefits or because they believe that the costs of non-compliance outweigh its benefits. Normative compliance is the product of internalized mechanisms that can produce compliance. It is a form of compliance that has several dimensions. It could be the product of bonds or attachments people form with others in authority, such as probation officers. It could also stem from the belief that a representative of authority has used their authority fairly (Tyler 2010, 2013; Tyler and Huo 2002). Compliance in this sense occurs irrespective of personal beliefs or principles because the authority in question is perceived to be legitimate.

Bottoms's fourfold classification of compliance and its mechanisms has greatly informed recent work in the field of offender compliance. Indeed, several chapters in this volume draw on, or attempt to critically analyse, the fourfold classification.

Robinson and McNeill's (2008) useful conceptual framework for understanding compliance also demonstrates the multidimensionality of the concept. This framework is another commonly cited piece of work and several chapters in this text also refer to it. In their description of compliance, Robinson and McNeill highlight the difference between formal and substantive compliance (see also McNeill and Robinson 2013). Formal compliance entails adhering to the minimum requirements of a court order. Substantive compliance involves the 'active engagement and co-operation of the offender with the requirements of his or her order' (Robinson and McNeill 2007:434). Regulatory theorists persuasively argue that formal compliance is superficial, it typically involves complying with the most basic requirements of the order and it may involve an unwillingness to fully engage with the change process (see also Murphy 2005). Substantive compliance, on the other hand, is normative because it is also underpinned by an acceptance that an authority can legitimately exercise power over the offender.

The nature of compliance as a multidimensional concept is also evident in the claim put forward by several commentators who argue that compliance is a construct that emerges from the interactions between practitioners and the people they supervise. From this perspective, in order to understand the nature of compliance, one has to examine the micro-dynamics of compliance, that is, the policy and practice contexts in which the key actors (practitioners and supervisees) negotiate and define compliance (see also McCulloch, this volume; Robinson, this volume; Ugwudike 2008). It follows that we may not simply presume that the definition of compliance is commonsensical and may be taken for granted. Compliance is a broad term, and its explication lies in detailed theorization and empirical analysis.

The foregoing suggests that anyone attempting to study compliance and its mechanisms is undertaking a mammoth task, given that the concept has several possible dimensions. Nevertheless, the chapters in this book do develop useful insights that can help us understand the concept, its diverse forms and its diverse mechanisms. There are numerous reasons why we should explore the factors that can encourage compliance. An important reason is that, as mentioned earlier, there is a dearth of academic research in this field. Therefore, a text is needed which brings together new and emerging insights into effective compliance strategies. These insights are also needed in the light of what official statistics, evaluations of offender behaviour programmes and other studies suggest about the extent of non-compliance. For example, recent official statistics reveal that many offenders in England and Wales are reconvicted shortly after their court orders expire (Ministry of Justice 2012). The Ministry of Justice recognizes this in its statement that: 'nearly half of adult offenders released from prison are reconvicted within a year, and overall one in five offenders spent some time in custody in the year after they were released from prison or started a non-custodial sentence' (Ministry of Justice 2011: 6). Equally, many offenders fail to complete community orders (Ministry of Justice 2012). Worryingly, the statistics also tell us that high rates of conviction for non-compliance have inflated the already burgeoning prison population (see, generally, Ministry of Justice 2010). In 2009, the Ministry of Justice observed that 'tougher enforcement' represents one of two factors that 'caused the increase in the prison population of England and Wales from 1999 to 2009' (Ministry of Justice 2010). Several offender behaviour programmes have also recorded high rates of offender attrition and non-completion (Hollin et al. 2008; Kemshall et al. 2002; Palmer et al. 2007). In drawing together emerging international perspectives on compliance, this book offers useful insights on what works best in offender compliance. We hope that practitioners, managers, academics, students, policy makers and others interested in offender rehabilitation research, policy and practice will find this text a useful resource.

This book comprises four sections. In Section I which sets the scene, Chapter 1 describes the book's objectives and presents an overview of how the book is structured. The subsequent three chapters in Section 1 focus on compliance during community-based supervision. In Chapter 2, Maurice Vanstone provides an overview of the historical and contemporary contexts of probation policy and practice. The chapter also examines how probation practitioners navigate evolving policy provisions and the implications of their actions for compliance during probation supervision. In Chapter 3, Gwen Robinson draws attention to the nature of compliance as a multidimensional concept and argues that the concept should not be decontextualized from the policy and practice developments from which it emerges. Trish McCulloch expands our understanding of compliance in Chapter 4 which emphasizes that compliance is a co-produced phenomenon. The chapter also identifies the policy developments that shape its definition; and highlights the active role of supervisees in its production.

Section II brings to the fore the typically ignored voices in criminal justice research: the perspectives and experiences of the key actors whose actions shape compliance. The key actors are: the practitioners and the people they supervise. The section comprises six chapters. In Chapter 5, Anthony Bottoms introduces an innovative approach to understanding compliance. The approach departs from the traditional focus on using external mechanisms such as threats, incentives or other criminal justice interventions to promote compliance. By contrast, the chapter provides insights into self-applied situational mechanisms of compliance that stem from the self-motivation of the individual offender. Building on the theme of offender self-motivation, in Chapter 6 Ralph Serin and his colleagues propose a departure from the traditional focus of theory and research on extrinsic compliance mechanisms. They emphasize instead, the importance of acknowledging and building on the motivation and strengths of the offenders as key mechanisms of desistance. In Chapter 7, Peter Raynor presents the findings of a study that examined offenders' views about the supervision experiences that encourage them to comply. The chapter describes the compliance strategies employed by probation practitioners in Jersey. In Chapter 8, Ben Crewe also expands existing understandings of compliance and its dynamics by exploring compliance and its mechanisms in prison contexts. By focusing its analysis within the contexts of supervision in a medium security prison, Ben Crewe's chapter clearly draws attention to the contextual nature of compliance. It presents the findings of a study that equips us with a better understanding of offenders' perspectives regarding compliance, and how offenders' levels of motivation can affect compliance. Mike Nellis also alerts us to the contextual nature of compliance in Chapter 9. He offers a detailed and insightful analysis of yet another context of criminal justice supervision – electronic monitoring. Like the other chapters in Section I, the chapter also describes the factors that can affect compliance. These range from perceived legitimacy to levels of offender motivation. In Chapter 10, Pamela Ugwudike describes the findings of a study that examined probation practitioners' views about effective compliance strategies.

Section III of the book explores new and emerging insights in compliance theory, research and practice. In Chapters 11 to 15, the authors present empirical findings from different jurisdictions, including Australia; North America – Canada and the United States; and Western Europe – England and Wales, Scotland, France and Belgium. There is an examination of how different criminal justice practitioners involved in encouraging offender compliance interpret and implement the policy provisions that govern or guide their work. The practitioners include probation, prison and youth justice practitioners and judicial professionals. The objective of this section is to draw together emerging international perspectives and international research on the skills, knowledge and strategies that are central to effective offender engagement. The section should also provide insights that can significantly inform policy and evidence-based practice across multidisciplinary contexts. Opening up the discussion in Chapter 11, Martine Herzog-Evans presents insights from France. In that chapter, Martine Herzog-Evans directs attention to the role of the courts in encouraging compliance. Indeed, the role of the courts in this context has been overlooked. Yet one can see from Martine's chapter that the courts can occupy a productive role. In Chapter 12, Stef Decoene and Kristel Beyens offer a multidisciplinary account of compliance. The chapter focuses mainly on policy and practice in Belgium. Christopher Trotter follows on in Chapter 13 with insights from Australia. The chapter draws on a study that demonstrates the impact of specific evidence-based supervision skills on compliance in youth justice contexts. Melissa Alexander and colleagues extend the discussion about evidence-based compliance strategies in Chapter 14. The chapter emphasizes that adequate staff training is required for the effective implementation of evidence-based supervision skills. Guy Bourgon and Leticia Guiterrez offer further insights on evidence-based compliance mechanisms in Chapter 15 which sets outs findings from Canada.

In Section IV, the contributing authors contextualize compliance theory, policy and practice by identifying the compliance issues that may arise during the supervision of offenders with specific demographic attributes. This group comprises women, young people and supervisees involved in drug use. In Chapter 16 Loraine Gelsthorpe describes the compliance issues that affect how women serving community orders comply. Tim Bateman explores compliance in youth justice contexts in Chapter 17 and critically explores the policy and other factors that are relevant in these contexts. In Chapter 18, Paul Sparrow examines the policy developments that pose implications for compliance in penal contexts involving drug-using offenders. The final chapter of the book draws together the key themes covered by each of the chapters and attempts to answer the question: what works in offender compliance?

Notes

1. Short-term compliance in this context may be defined as: 'compliance with the specific legal requirements' of a court order (Bottoms 2001). For example, attending statutory appointments with a probation practitioner may constitute a form of short-term compliance.
2. According to Bottoms (2001), long-term compliance can be described as compliance with the criminal law after the period of supervision. For a broad description of the difference between short-term and long-term compliance, please see Bottoms (2001).

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2

Compulsory Persuasion in Probation History

Maurice Vanstone

What follows in this chapter is a series of reflections on the probation service's function of supervising people within a legal framework which requires them to comply with certain conditions in exchange for escaping the stigma of a criminal conviction or, in some cases, prison – what Fielding (1984: 3) describes as 'a role which is gravely problematic in its combination of contradictory functions'. For most of its history, the probation service has cherished a social work identity, but what Raynor (1978) has described as 'compulsory persuasion' and others as 'authoritative and compulsory power' (Howard Association 1881: 4) has ever hovered in the background like the ghost of Banquo. It was there when Matthew Davenport Hill applied the concept of recognizance, when John Augustus bailed his first drunkard, and when the first probation officers began to advise, assist and befriend people in the United Kingdom. The driving motivation might always have been to help, but the largely unspoken dilemma has always been about how to persuade people to submit to the authority inherent in the probation contract and, perhaps more importantly, to participate in the helping process on offer. In his account of work with a man with a drink problem, Thomas Holmes (1900: 210), the police court missionary, set out his approach:

> At night I waited for him in his own room. He returned one morning about two, when I quickly took possession of him. About four o'clock he insisted on going out, but I had locked the door, so he had to remain. The next day I cut short his debauch, by taking him home with me, and putting him under lock and key. This he was most indignant about, and questioned my right to make a prisoner of him. I told him might was right, and that he had got to remain.

His successors in the forthcoming probation project were to be far more reticent about infringing the liberty of the individual, although, interestingly, echoes of his approach can be heard some 80 years later in claims made about the Kent Control Unit that ‘in real terms the Probation Control Unit exceeds in severity any institutional sentence currently available to the Magistrate's Court for a single offence.’[1] Seemingly, they, like Holmes, had few qualms about their approach and were confident about its simple efficacy. The real story of compliance and enforcement exposes greater complexity than this and is interesting, if less remarkable.

So, what kind of story is this? Emphatically, it is not a detailed elaboration of how probation officers have attempted to encourage compliance, because, as a number of commentators have indicated, there is a dearth of documented evidence and a paucity of empirical investigation into compliance (Robinson and McNeill 2010; Ugwudike 2010). The knowledge base has been succinctly summed up by Ugwudike: breach action has most often been taken for total non-cooperation, members of probation staff have displayed a reluctance to enforce legal requirements rigidly, and the use of professional discretion has been widespread. Early research shows that cooperative probationers (or, at least, those who were not breached) had high levels of contact, rapport with their supervisors, and support; and low levels of control. Moreover, they had been supervised by a probation officer with social work experience prior to entry into the probation service (Folkard et al. 1966). In community service, breach remained a last resort until at least the 1970s (Vass 1990), and, as Deering (2010: 171) explains, even at the beginning of the 21st century probation workers are ‘clear that it [is] their role to decide on the acceptability of absences and that this [is] not applied in a uniform or apparently consistent manner’. So, even in the current ‘tougher framework’, practitioners share the same ‘care versus control concerns’ of previous times (Raynor 1985).

A strictly historical account of this aspect of practice could be summed up in a few words – probation workers used their discretion and, if at all possible, avoided breach action. However, there is legitimacy in a more reflective approach which pays more attention to organizational, political and social contexts through which the service has passed. Before embarking on an exploration of the probation service's engagement with these authority-laden issues, it is necessary to be clear about what is meant by compliance and enforcement.

Definitions

Both emanate from the simple definition of the authority of a probation order in an early handbook on sentencing (Home Office 1964: 5):

> [Probation] involves the discipline of submission by the offender while at liberty to supervision by a probation officer.

So, compliance relates to the behaviour of the probationer and involves '[o]bserving the legal requirements of the order of the court or the terms of a licence or, more broadly, conforming with the purpose and expectations of supervision' (Canton 2007: 56). Enforcement, on the other hand, relates not only to the actions of the practitioner but also to the policy and procedures of the organization within which they work. It involves '[a]ction taken by the Probation Service in response to non-compliance, either through the courts in relation to community orders, or through executive recall to prison in the case of the vast majority of post-release licences' (Nicholls 2007: 120). Bottoms (2001) has provided helpful further clarification with his distinction between short-term cooperation with the legal requirements (the keeping of appointments and so on) and long-term desistance from offending (engagement in the processes of change). Even more helpfully, he has addressed the complexity of the latter by breaking it down into three types, namely: instrumental/prudential (rational calculation of pros and cons); normative (sense of moral responsibility and/or commitment to others); constraint-based (submission to discipline); and habit/routine. More recently, Robinson and McNeill (2010) have given added depth to Bottoms's definitions with the introduction of a further distinction between formal compliance (following the letter of the law) and substantive compliance (engagement with the spirit of the order's purpose).

Although these contributions add significantly to current thinking about compliance and enforcement, it is important to be aware that a focus on breach action or its absence alone does not tell the whole story. Enforcement short of breach action, in the past at least, involved a range of practices to encourage the probationer to comply with the requirements of an order: in particular, this included letters and home visits. Up until the 1980s, faced by the failure of a probationer to keep an appointment, there was an expectation of follow-up by letter and home visits. It was the responsibility of the officer to encourage, cajole and persuade probationers to maintain regular contact, but the locus of blame in the event of a breakdown of a probation order has shifted. So, when attempts to influence and modify behaviour through moral exhortation underpinned by Christian mores failed, this could be attributed to moral deficiencies in the character of the probationer, but, as the professionalization of the service led to more emphasis on the application of psychological theories and the technical skill of the probation officer, failure was more likely to be attributed to the probation officer. Now, coming full circle, with the stress on changing behaviour through control, surveillance and the policing of conditions, blame for failure can once again be placed firmly on the shoulders of the probationer. Inevitably, perhaps, *staying* with the probationer has become less of a priority. In an interesting observation, Drakeford (1992: 204) has described the detrimental effect of the rapid decline of home visiting on the principle of 'active stickability: [that is the] capacity to stick with individuals who have never had or have exhausted the ordinary process of social sustenance'. Any understanding of the processes of compliance and enforcement, therefore, has to take account of a parallel understanding of how this principle of 'stickability' has had impact on practice, as illustrated by this quote from an experienced officer:

> I was also quite prepared to bring back to court those who broke the rules of their probation order [. . .] I saw no real conflict in these two roles [. . .] On the other hand the fact that the client had failed did not mean that you gave up on them. To take a client back to court was usually done to re-establish the probation order [. . .] 'hang in there' was my motto in almost all cases.[2]

It was a way of working under the threat posed by a change of climate which, in Drakeford's view, began at the beginning of the 1980s and culminated in National Standards, regulation, the 'replacement of cooperative by coercive relationships' and probation practice becoming 'an activity to be carried out upon, rather than with, its recipients' (p. 203). The keynote of National Standards, introduced in the 1990s, was, indeed, enforcement, and, although this argument might be criticized for contributing to an oversimplified version of the history of the probation service's involvement in control (Vanstone 2004a, 2004b), it does point accurately to a pivotal change in the mechanics of enforcement and attempts to invoke compliance operated as they are now, mainly from the office desk.

Early preoccupations

As some reports in *The Times* indicate, magistrates wanted to give the new Probation Act a fair chance of success, albeit not always with high levels of confidence. In the case of a 28-year-old charged with being a suspected person, it was reported that the magistrate 'could not be very enthusiastic about the success of the new Act, but [. . .] thought it was desirable that the Act should be given a fair trial'.[3] In another, it was reported that in 'dealing with the prisoner, the magistrate remarked that the Home Secretary was most anxious to secure the good working of the Act'.[4] So goodwill there was, and by the end of the first year of probation's existence a mere 5 per cent of people placed on orders were brought back before the court in breach (Dersley 2000, cited in Hedderman and Hough 2004), and it is probable that this remained the position for the next 70 years, as confirmed by Lawson's (1978) study of 55 probationers in Essex, which revealed a breach rate of 3.7 per cent.[5]

Authority had been at the heart of police court missionary work, and its place in the newly created probation officer role was established at the outset. The clear expectation in the 1908 Probation Rules that probation officers had to bring any failure to comply to the attention of the court (Bochel 1976) reveals the exercise of control as an undeniable feature of early probation practice (Vanstone 2004a). By the time of the first set of guidelines for probation officers, enforcement was an established part of the professional language. Specific attention was drawn to enforcement as ‘the *ultimate* sanction of probation, [which] *must* be *resorted* to if there is a reason to believe that the offender will not respond to the opportunities given him’ in order to ensure that the probationer does not ‘think that the promise which he has made by his recognizance is of little effect’ (Le Mesurier 1935: 81; my italics). It is defined, however, as a last resort, and the handbook stresses the importance of officer discretion by pointing out that when a breach occurs the ‘spirit, not the letter, of the law, should guide the officer in such an emergency’ and although the ‘probation officer has the power of the Court behind him [...] he must refrain from using it arbitrarily’ (pp. 130–131). Le Mesurier cautioned against the counterproductive nature of issuing threats, and, although she made the duty placed on the officer explicit, she engaged with the conflict and tension in the role that persist today:

> The probation officer is in a peculiar position. He is an officer of the Court, and his first duty is to the Court: he is also a social worker. There need be no conflict in principle between the probation officer as a social worker and as a Court officer, but under existing conditions the occasion may arise when he has to subordinate his feelings as a social worker. (p. 131)

The next handbook (Jarvis 1974), first published in the late 1960s, made no reference to discretion but set out the position purely in legal terms:

> If a probationer fails to comply with one or more of the requirements of a probation order made by a magistrates’ court he is liable to be brought before the supervising court or before the court which made the order. (p. 66)

Obviously, care should be taken about how this difference is interpreted, but it seems reasonable to speculate that by the time Jarvis produced his guidance the discretion used by probation officers in their interpretation of the letter of the law was taken for granted and did not need reiteration.

Although it is easy to overplay the place of authority in what was essentially a social work role, as several writers have argued (and as these guidelines demonstrate), the social work element of probation, while clearly an important ingredient, was not viable until it was placed in a legal framework and provided with a coercive element (Harris 1995; Hedderman and Hough 2004; Vanstone 2008) – a point summed up neatly by one probation officer working in the late 1950s when she explained that help comes from ‘self-discipline or the discipline the order imposes [...] through the court, and its servant, the probation officer' (Todd 1963: 30). Indeed, control and the use of authority were very much at the heart of political thinking at the time of the reading of the Probation of Offenders Bill in 1907 when additional clauses were being introduced:

> Another clause will enable the Court to lay down additional conditions in the recognizance, failure to observe any of which will render the offender liable to apprehension and imprisonment.[6]

Despite the validity of this rendition of the early history, it remains true that, for the first 70 years or so of the life of probation, the social work element was in focus, with coercion part of a blurred background. Indeed, the dominance of this aspect of probation practice is illustrated by the fact that, up until the 1970s at least, probation officers were involved in matrimonial work and divorce court reports, and acted as Guardian ad Litem in adoption cases (Rimmer 1995). In fact, work in the divorce court was made a statutory duty in the 1959 probation rules (Mair and Burke 2012).

Of course, all of this is not to suggest that the probation service had settled its nervousness about use of authority. King (1964: 78), for example, asserted that the probation service had not solved 'the problem of practicing social work in an authoritarian setting', but in her discussion of the compulsory nature of supervision even she revealed her own social work pedigree by defining submission to authority as 'an opportunity for growth and change' in the probationer (p. 86). Although he found senior probation officers were more likely to take breach action than main grade officers, Lawson (1978: 61) concluded that variations in breach rates revealed a reluctance by some officers to take such action when required because 'they may find the idea of formal sanctions impalatable, and seek to avoid the problem by avoidance and drift.' There is no such fudge in what may be regarded as the first independent account of probation practice: St John (1961: 72–73) understood that officers, while trying to avoid giving the impression that the service was 'a crooks' protection service', faced a problem when taking on the role of prosecutor and becoming 'starkly identified with Authority' and imposing 'at least temporary damage' on the 'friendly relationship'.

A very real and present problem

The more frequent attention being paid to these conflicts and problems in written discourse from the 1970s onwards is evidence of growing concern. For example, while acknowledging that probation officers have always been involved to some extent in a minimal degree of controlling probationers' lives through the maintenance of contact, Goslin (1975: 56), in a paper which seems in retrospect to be a precursor to Raynor's (1978) choices made under constraint thesis and to be a harbinger of the eventual removal of consent from the process of making a probation order, argued that the direction heralded by the Younger Report (Advisory Council on the Penal System 1974) represented a 'marked advance into the territory of personal freedom'. Both parole and probation retained consent as essential, but the new direction being proposed meant that 'control-to-enforce-contact' was to be transformed into 'control-to-enforce-conduct'. In a critique of the report, Wright (1974: 103–104) attacked what he judged to be the fallacy that the extension of controls and sanctions would induce compliance, and instead conjured up an alternative vision of the structured use of a whole range of different methods designed to improve such things as problem-solving and survival skills to accompany one-to-one work. In his model, control would be invoked, but on 'the level of personal influence', and return to court would be 'a last resort'.

However, the increasing concern was given a voice by Harris (1977: 434), who, in a stark warning, expressed the view that the probation service had not adjusted effectively to new demands. As he bluntly put it:

> in spite of the vast social and professional changes which have occurred since the early days, the probation service's organization remains geared to the performing of its original tasks, and its expectation remains that philosophically its relationship to the magistracy will stay much as it always has. The probation service has not kept pace with the developing roles demanded of the main social service agency operating in the penal field, while the expectation of courts and public alike that it will continue to provide a rather odd mixture of discipline for its own sake and treatment has rendered innovations of limited value and has reduced the extent to which probation officers can use their considerable training for the benefit of their clients.

Though perhaps not as pessimistic as Harris, Vass (1980) identified further complexity when he pointed out the three-fold nature of the conflict facing probation officers who juggled with the roles of helper, defence counsellor and prosecutor. For Harris (1980), reconciling these roles was becoming impossible and he argued, therefore, that the probation service should accept defeat in its quest to find ways of reducing offending by means of social work, and concede that it was too difficult to respond to the genuine needs for help of poor probationers within a statutory supervisory framework. His proposed solution was a separation of the roles, with probation becoming a court-based welfare service offering voluntary help, leaving the delivery of punishment in the community to a new agency. The problems of adjustment highlighted by Harris were recognized, too, by Haxby (1978: 149) in his analysis of a growing, changing service,