

MANAGING HIGH RISK OFFENDERS IN THE COMMUNITY: COMPLIANCE, COOPERATION AND CONSENT IN A CLIMATE OF CONCERN

Beth Weaver¹ and Monica Barry², University of Strathclyde, Glasgow, UK

ABSTRACT

It is increasingly accepted that the change process underpinning the intended outcomes of community supervision, namely community safety, social rehabilitation and reintegration, cannot be achieved without the service user's active involvement and participation in the process. Their consent, compliance and cooperation is therefore necessary to achieving these outcomes and yet, when it comes to very high risk sexual and violent offenders, in the pursuit of community safety, control oriented, preventative practices predominate over change focused, participatory approaches. Semi-structured interviews were conducted with 26 professionals' and 26 service users' to explore how, under the auspices of MAPPA, the supervisory process is enacted and experienced and the extent and means through which it affects people's willingness to accept or invest in not only the process but the purpose of supervision. It is argued that how the process of community supervision is experienced and what it comprises, not only shapes the outcomes of supervision, but also the nature of consent, compliance and cooperation. We conclude by advocating for more participatory processes and practices to promote service users' active engagement in, and ownership of, the process of change, and in that, the realisation of both the normative dimensions and intended outcomes of community supervision.

KEYWORDS: Compliance, cooperation, consent, high risk offenders, MAPPA

¹ Lecturer, The School of Social Work and Social Policy, University of Strathclyde, Glasgow

² Principal Research Fellow in Criminal Justice, The Law School, University of Strathclyde, Glasgow

INTRODUCTION

Multi-Agency Public Protection Arrangements (MAPPA) are the operational structures overseeing the community supervision of sexual offenders in England and Wales since 2001 and in Scotland since 2007³. Despite the wide-ranging and high profile remit of MAPPA, little is known about the effects of professional efforts to exert control and support change and, as part of that, to secure the consent, compliance and cooperation of the offender. The change process underpinning the intended outcomes of community supervision, namely community safety, social rehabilitation and reintegration, cannot be achieved without the service user's active participation in the process. Their consent and cooperation, then, is not only a normative concern, a question of rights, but is an instrumental concern in so far as it is fundamental to achieving these outcomes. Serious sexual and violent offending is one form of high risk behaviour, however, where concerns with rehabilitation and reintegration are often eclipsed by concerns to promote community safety through the containment and control of risk (Brayford and Deering 2012; Weaver and Barry forthcoming). Rather than involving service users as active participants who ought to be engaged in the process of supervision and change, such 'preventative governance' practices (McAlinden 2006:199) regard the service user as an object on which mechanisms and technologies of control operate, and whose liberties and rights can be 'justifiably' curtailed or dispensed with in the presumed public interest which, as McNeill (2014) argues represents in itself a cause for concern (see also Robinson and McNeill 2004). To shed light on these practices and their effects, this article draws on a study that examined perceptions and experiences of the process and outcomes of community supervision under the auspices of MAPPA in one area in England from the

³ In England and Wales, MAPPA oversees the management of not only sexual offenders, but violent and 'other' offenders who pose a risk of serious harm; in Scotland, only registered sex offenders and restricted patients are managed under MAPPA. Restricted patients are defined as those patients who are convicted of an offence and put on a Compulsion Order and Restriction Order (CORO) under sections 57A and 59 of the Criminal Procedure (Scotland) Act 1995, or who have been found insane in bar of trial, or acquitted by reason of insanity, and placed on a CORO under s.57 (2)(a) and (b) of the 1995 Act. A CORO is without limit of time. The definition also includes prisoners on a Hospital Direction (made under s.59A of the 1995 Act) or a Transfer for Treatment Direction (made under s.136 of the Mental Health (Care and Treatment) (Scotland) Act 2003).

perspective of 26 high and very high risk violent and sexual offenders and 26 professionals. In so doing, this study explored how the supervisory process is enacted and experienced and the extent and means through which it affects people's willingness to accept or invest in not only the process but the purpose of supervision and thus, through which it shapes the outcomes of supervision and, necessarily, the nature of consent, compliance and cooperation.

This article therefore begins by exploring concepts of consent, compliance and cooperation and the relationship between them. Drawing on the findings of our research, we examine the extent to which contemporary approaches to the supervision of people who pose a high risk of serious harm encourages cooperation and change. In so doing, we reveal the conditions and contexts through which the operationalization of these norms for community supervision are constrained or enabled. In particular, we examine professionals' and service users' perceptions of the purposes of supervision and the perceived role of professionals within that. The article then illustrates the relationship between the degree to which service users retrospectively consider their consent was informed and how an apparent lack of understanding of the conditions of community supervision influences attributions of legitimacy and, in turn, compliant and cooperative behaviours. In this context, we proceed to explore service users' motivations for and experiences of compliance and cooperation prior to exploring some implications for practice. We conclude by advocating for a more participatory mode of governance that can promote service users' active engagement in and ownership of the process of change, and enable not just community safety but the social rehabilitation and reintegration of high risk offenders while recognising the challenges in realising these aspirations.

CONSTRUCTING COMPLIANCE, COOPERATION AND CONSENT

Various authors differentiate between compliance and cooperation to denote differing motives for, attitudes towards and levels of engagement with legal authorities (see for example Serin et al 2013, Tyler and Fagan 2008; Tyler and Jackson 2013). When juxtaposed with cooperation, compliance generally refers to the act of doing something because one must or risk the consequences of doing otherwise (it does not require or preclude a sense of obligation). Compliance can, in this sense, be construed as conformity with rules and regulations which implies the need for control oriented, preventative governance or regulatory practices and deterrent strategies. Cooperation denotes a more active level of engagement that implies voluntarily working together towards a common goal which necessarily involves collaboration and which implies a more participatory approach to governance. As Tyler and Fagan note (2008: 240) ‘people cooperate because they feel it is the right thing to do, not because of material gains or losses’. This distinction resonates with Robinson and McNeill’s (2008) distinction between formal and substantive compliance. Formal compliance is, in their formulation, an adherence to rules and requirements; substantive compliance is active engagement and cooperation with the requirements and purposes of the order, underpinned by an acceptance of the legitimacy of authority. Bottoms (2001), McNeill and Robinson (2010) and Ugwudike (2010) concur that the extent to which legitimacy is attributed and experienced as authentic or otherwise depends on the nature of the relationship between supervisor and supervisee. How justices and injustices in the supervisory process are subjectively experienced by supervisees will necessarily influence, enhance or diminish its perceived legitimacy (Bottoms, 1994; Tyler, 1990). In turn, perceptions of injustice and illegitimacy undermine the credibility of the supervisor and threaten compliance, and, thus, penal efficacy (Tyler, 1990; Digard, 2010).

Research on the process of desistance from crime similarly highlights the need to establish professional relationships characterised by authenticity and authority whilst avoiding authoritarianism (Barry, 2000; Rex, 1999). Attempts to positively influence an individual to invest in longer-term cooperation and, in that, processes of change (as opposed to short-term compliance with an order) should hold moral legitimacy and carry conviction from the service user's perspective (Burnett and McNeill, 2005; Rex 1999). Cooperation is not, then, achieved by coercion and threat but by forming a relationship with the individual that is based on trust and which attends to individual liberties, rights and dignity (Canton 2012). This underlines the need for authority to be exercised in a manner that is transparent and which maximises voluntariness in the process which is a fundamental component of cooperation and which requires consent. A lack of consent or agreement can undermine legitimacy and trust on which both compliance and cooperation depend (Canton 2012).

The need for consent is repeatedly underlined in the *European Probation Rules* (on which see Canton 2010): "As far as possible, the probation agencies shall seek the offender's informed consent and cooperation in decision-making on matters of implementation" (European Probation Rules, No. 6). The process of informed consent depends on the disclosure of information, the comprehension of the information disclosed and emerges from a voluntary decision in favour of a proposed course of action and an authorisation to proceed (Beauchamp 2009). While, in the context of community supervision, the level of voluntariness may be constrained 'it is crucial that probation and other executing staff seek to inform the offender fully of the nature and extent of the imposed sanction to achieve his or her cooperation' (Morgenstern and Larraui 2013: 148). This is because the core values underpinning consent, on which cooperation depends, are human dignity and autonomy (Beauchamp 2009). This is necessary 'to secure the co-operation of the offender and to

enable him to see the sanction as a just and reasonable reaction to the offence committed [which means that] the offender should participate, as far as possible, in decision-making on matters of implementation” (ER CSM No. 34). In the context of community supervision, consent also applies to the imposition of additional conditions, restrictions and actions that impinge on or affect an individual’s rights in such a way as to constitute a breach unless performed with that individual’s consent (Kleinig 2009).

While questions of procedural fairness and thus the contexts and conditions of supervision are widely recognised to influence compliance and cooperation, as Robinson (2013) observes, to understand the *nature* of consent, compliance and cooperation, we need to attend to the policy and practice contexts through which these processes are enabled or constrained. Robinson (2013) identified that the ‘era of enforcement’ in the regulation of compliance in England and Wales has been eclipsed by an ‘era of pragmatism’, characterised by increased professional judgement and discretion and a greater recognition of the professional role in encouraging compliance and cooperation. While this is, as Robinson observes, evident in official discourses on the regulation of compliance in general, as Ugwudike’s (2012:288) analysis of policy and research concludes ‘inflexible enforcement policies are now targeted at groups of offenders that are classed as ‘high risk’” underpinned by concerns with risk reduction and public protection’, described by McAlinden (2006:199) as ‘preventative governance’. Brayford and Deering (2012) elaborate how the media has negatively influenced public perceptions of sex offending and sex offenders, encouraging increasingly punitive and risk averse political responses, evident in a bifurcated legislative system across the UK, which assume that sex offenders are unlikely to change and therefore should be subjected to extended periods of containment, segregation and supervision in both custodial and community contexts (Brayford and Deering 2012; Stone 2012). Ugwudike’s (2012)

synthesis of research evidence on professional perspectives identified that they were often similarly informed by stereotypical assumptions. She observes that ‘sex offenders are [perceived as] a homogenous group ... that share several negative attributes’ (ibid: 229) as manipulators and minimisers who are resistant to change. This, she observes, informs the view that they are superficially compliant with the supervisory process and motivated by external and instrumental concerns, rather than any internal motivation to change. These negative perceptions not only impact on compliance and cooperation but shape the regulatory practices of professionals. As Canton (2012:5) observes, ‘If offenders are *others* – moral strangers (Ward 2012)...why should their preferences and aspirations be taken seriously?’ The resultant reliance on formal compliance with mechanisms of control and a distrust of any notion of substantive compliance comes at the expense of enabling cooperation and change (Ugwudike 2012).

METHODS

Understanding how the supervisory process is enacted and experienced and the extent and means through which they affect people’s willingness to accept or invest in not only the processes but the purposes of supervision reveals under what conditions it is imbued with legitimacy and authenticity. This article draws on a qualitative study that examined the experiences and perceptions of the process and outcomes of community supervision under the auspices of MAPPA in one Probation Trust in England. Interviews were conducted with 26 professional respondents, including 9 probation and 5 police and 12 policymakers (4 senior probation, 2 senior police, 4 MAPPA Strategic Management Board members and 2 National Offender Management Service professionals). The 26 service users were all managed at MAPPA level 2 or 3⁴ and had been sentenced on or before 1st June 2012. They ranged in age

⁴ ‘Cases are managed at level 2 where the offender: Is assessed as posing a high or very high risk of serious harm; or the risk level is lower but the case requires the active involvement and co-ordination of interventions from other agencies to manage

from 22 to 71, with an average age of 42. Two of the service users were female. Community-based statutory requirements resulted from Life Licence, Imprisonment for Public Protection (IPP), Automatic Conditional Release, Parole and Non-Parole Licence, a Community Supervision Order, and a Sexual Offences Prevention Order. Respondents had been on supervision for up to five years at the time of interview.

The fieldwork took place between January and September 2013. Access to service users for interview was gained by randomly selecting 35 potential interviewees from the Probation Trust's database of approximately 57 service users who fitted the criteria for the study (namely, sexual and violent offenders categorised as MAPPA risk levels 2 and 3). Probation staff were asked to contact these people (all of whom were currently on licence), and these access negotiations resulted in 26 of those 35 individuals being interviewed, either in probation offices, or in Approved Premises [hostels]. The 26 interviews overall lasted on average 55 minutes, and all were digitally recorded bar one interview with a service user who preferred not to be recorded. The findings below are based on the views and experiences of the 26 service users, 9 probation practitioners and 5 police officers.

FINDINGS

Compliance in Context: Purposes, Roles and Relationships

If substantive compliance is, as Robinson and McNeill (2008) suggest, active engagement and cooperation with the requirements and purposes of the order, understanding professionals' and service users' conceptualisations of the purposes of supervision can reveal

the presenting risks of serious harm; or the case has been previously managed at level 3 but no longer meets the criteria for level 3; or multi-agency management adds value to the lead agency's management of the risk of serious harm posed. Level 3 management should be used for cases that meet the criteria for level 2 but where it is determined that the management issues require senior representation from the Responsible Authority and Duty-to-Co-operate agencies. This may be when there is a perceived need to commit significant resources at short notice or where, although not assessed as high or very high risk of serious harm, there is a high likelihood of media scrutiny or public interest in the management of the case and there is a need to ensure that public confidence in the criminal justice system is maintained' (Ministry of Justice 2012:53).

what people are expected and expecting to comply and/or cooperate with. The principal purposes of community supervision identified by service users were monitoring and control, public protection, punishment, deterrence and reducing re-offending through rehabilitation. Eighteen of the 26 service user respondents felt that probation supervision was more oriented to control rather than change; 2 people felt it was balanced between control and change, and 4 people felt practice was change oriented⁵. Consistent with their perceptions of the purposes of supervision, most service users saw the role of professionals as primarily monitoring and enforcing the conditions of the licence for the purposes of public protection.

[T]hey're only here to monitor you, not to help you (Service user 24).

They're there to make sure that you abide by your licence...and they're there to protect the public and me as and when needed, as well as enforcing the licence.
(Service user 23)

[My probation officer's] exact words was, make no mistake about it, we are not here to offer you help or support, we are here solely to police your licence conditions. We are here for public protection (Service user 1).

Other participants, however, recognised that probation also had a role to play in supporting their rehabilitation.

[The role of probation is] to stop me reoffending; see the risk factors; to help, like, support me in the community (Service user 10).

⁵ Two people offered no opinion

Probation, for example, I think it's so that ... you can tell them your problems that you're having and [the probation officer] can sort of... help you out (Service user 16).

The majority of practitioners (police and probation) equally saw their role as primarily to manage the risks posed by serious violent and sexual offenders and to protect the public. The focus was thus primarily on preventative practices such as risk identification, risk management and risk minimisation and on securing compliance rather than cooperation and change.

The way I stop them re-offending is by catching them doing something else... Probation are there to assist people, help them and steer them in the right direction. The police... we will just be hard lined and it will be 'we'll catch you and we will breach you for everything that we can breach you for' (Police 5).

[My overarching purpose is] protecting the public... promoting behavioural change is very difficult stuff and it's [sighs], let's put it this way, I see people for a maximum of an hour a week and I'm not kidding myself that an hour a week really makes any difference in anybody's lives... So I don't think I promote behavioural change (Probation 4).

I think managing risk is the main focus... my job is to support the things that they're doing that are protective and help them to sort of try and discourage and move them away from things that aren't protective... it's not just about controlling people.... Unless they really learn to start self-managing, the future's not gonna look that bright

really. So for me, the focus is to see what they can do for themselves to manage their own risk (Probation 1).

It would seem that as risk discourse has infiltrated probation practice, the meaning of the word 'rehabilitation' has at the same time become synonymous with self-risk management and responsabilisation (Gray, 2005), as epitomised in the above quotation. Whilst Hardy (2014: 307) notes that risk management's aim is to 'produce reasonable, autonomous and 'risk free' individuals', Vanstone (2013) goes further in suggesting that probation officers used to be expected to 'encourage, cajole and persuade' probationers to cooperate, but are now more likely to leave that responsibility with offenders themselves: 'blame for failure can once again be placed firmly on the shoulders of the probationer' (ibid: 11). Whilst Vanstone suggests that there are few studies which find positive outcomes from enforcement practices in respect of probation, he also argues that enforcement apart, probation practitioners increasingly lack a humanitarian approach to probationer engagement and suggest instead a 'growing detachment' from service users (ibid: 21). It might be argued that for some practitioners and service users, such 'detachment' and a preoccupation with compliance undermines opportunities for cooperation and collaboration which can be fostered through enabling professional relationships. Indeed, a key issue that seemed to influence people's experiences of the supervisory relationship was the extent to which service users felt that the supervising officer responded to them as people in the 'sense of being valued as a human being' (Faulkner 2004:163). Where this translated into a sense of being understood, trusted and appreciated and where this manifested in transparent practices and proactive support, people described their relationship with their supervising officer in positive terms (n=14/26). People valued being treated with respect, feeling understood and listened to and being provided with the kinds of assistance they needed to move on in life. There was a clear sense

that cooperative working relationships were a two way street, requiring clear communication, negotiation and mutual trust.

I think we always have to find a way to negotiate, especially with probation, but it's having that openness and being able to do that (Service user 18)

I've built up a relationship with both [police and probation]. I think that's the best way forward. I trust them and hopefully they trust me ...From the first day I was let out, [my probation officer] made me feel really calm and relaxed ...I trust her more than I've trusted some people before. I trust her that she can steer me in the right direction and if I really need that help that she's gonna be there for me...You've basically gotta work together, you've both gotta build a relationship up. If you don't build a relationship up, then you won't build the trust and the probation officer will more than likely recall you (Service user 5).

Informed Consent, Compliance and Cooperation

In a penal context, the line between constrained and voluntary consent and, in turn, compliance can be unclear. People may consent to and comply with conditions because they represent the circumstances under which release is authorised, while also complying because of a desire to change. In such cases, it is difficult to determine where voluntary agreement and action ends and constrained consent and compliance starts. In such contexts, compliance may be due to compulsion but in part can be due to consent (Alford 2009). Nevertheless, in order to achieve cooperation, 'it is crucial that probation and other executing staff seek to inform the offender fully of the nature and extent of the imposed sanction' (Morgenstern and Larraui 2013: 148). However, across the sample of 26 service users, only one person felt that

they had been properly informed about the conditions attached to their licence and consulted on the kinds of supports that they felt they would need to help them change. Perhaps as a consequence, there was considerable variation in the extent to which people felt properly informed about or understood the meaning, implications and purposes of the conditions to which they consented and, in turn, the degree to which they were experienced as fair, necessary and/or reasonable. The extent to which people could identify with the reasons for the conditions and recognise the legitimacy of those conditions, either as a reflection of the severity of their index offence or the needs of their victim, for example, influenced the extent to which they experienced them as reasonable and, in turn, encouraged cooperation.

If you come out and you *haven't* got a condition on your licence...you can go and approach the victim, you can go wherever you want ...and ... it's not fair on the victim...so yeah, it's understandable, its reasonable (Service user 10).

For others, the lack of fit between the nature of the conditions, the nature of their offending and their perceptions of the risk they posed (or otherwise), coupled with a lack of understanding of the rationale for the imposition of certain conditions, gave rise to a sense of injustice and resentment. This had the effect of undermining relational legitimacy, engendered by attributions of trustworthiness, interpersonal respect, and neutrality (Tyler 1997) and, thus, propensity to cooperate, rather than comply.

When they planned their so called conditions...had they...worked with me they would have had a better understanding of what went on with me for a start...When it came to me they panicked and just threw things together which a lot of it doesn't make sense or it doesn't really reflect me or my past (Service user 1).

I didn't expect...them to come down so hard on me...like they just say, oh you've got a lot of convictions, you've got a lot of previous. My last one for assault which wasn't a serious assault... was 20 years ago. I was a young stupid guy then. Do you see what I'm saying? But they're not looking at that, they just look, you've got 28 convictions (Service user 4).

Some respondents experienced their licence conditions as a constructive constraint. However, more commonly, people felt that even if the conditions were reasonable, the limits of the conditions in realising their intended aims of controlling and containing risk rendered them unnecessary. In this sense, people construed compliance with the actions and behaviours advocated by conditions as internally driven as opposed to simply externally imposed. While none of the examples below amount to Bottoms' (2013) concept of self-applied or self-binding compliance strategies, from the perspectives of the people we spoke to, compliance with external controls was the product of personal motivation and the exercise of self-control, which implies a level of voluntariness, agreement and cooperation.

While you're getting rehabilitated, [the conditions] keeps you on the right path (Service user 12).

I think the licence keeps me in check sometimes but to tell you the truth I don't think it needed to be as harsh as it was (Service user 8).

I can understand why they are there ... but it's not gonna stop me from re-offending...that's a decision you've gotta make for yourself at the end of the day. No licence condition's gonna stop you from doing that (Service user 3).

Nothing will stop you. A person who's going to re-offend, no matter what restrictions you place on them, it's not going to stop them re-offend. If I chose to go down that route, then regardless of what restrictions are in place for me... that's not going to stop me re-offending (Service user 17).

Others considered that while abstinence from offending was something only they could realise, maintaining an offence free lifestyle was enabled by the support they received from both probation services and family, and/or motivated by the formal and informal recognition of the progress or changes they had made.

Attending all the programmes to see that they're all saying how much I've changed, to get positive input from them to say that I'm more or less a completely different person than I was ... and how pleased my family are and I'm getting all the support and they can see it in my looks... I'm not just doing it for myself. A lot of people have put a lot of time and it's cost a lot of money and a lot of effort to get me where I am (Service user 9).

What makes it easier is obviously being on the licence because you have got the support network. If you've got a problem, you can come and talk in confidence with your probation officer she can tell you the best way how to do thing...I've got family as well round here (Service user 10).

Few people considered licence conditions or specific interventions by professional agencies to have a direct influence on their opportunities to live differently, which may in part reflect the constraints on professionals to provide the kinds of resources (such as employment and accommodation) that can create the conditions, for some, in which change might be enabled and sustained. This begs the question, why do people comply and how is this experienced?

Motivations For and Experiences of Compliance and Cooperation

Without exception, the people we spoke to conceptualised compliance as a process of adherence to their licence conditions and acquiescence to the demands of their supervising officers. For some this was considered as an instrumental necessity in exchange for their freedom. It is perhaps unsurprising then that people generally complied to avoid imprisonment. For many, however, avoiding (re-)imprisonment meant that they could get on with their lives and maintain any family relationships, as opposed to being motivated by any potential deterrent effects that prison might engender. Rationales for compliance, then, are as much about moving on as they are about not going back.

Being on licence, to a degree, could be a deterrent cos you always have to be thinking about your licence. But to someone who wants to commit crime, no it wouldn't, it wouldn't be a deterrent (Service user 1).

[I'm] scared of going back to prison cos then I'll lose my flat again...and with my Mum being on her own... I can't risk that' (Service user 4).

It means I'm moving on. It means that I haven't had any inclination to offend since... once this is over, it'll be me moved on from a life I didn't like.... it's always something that's hanging over me, isn't it? I mean, it's all in the past but it's still very much in the future (Service user 9).

While the idea that people consent to and comply with conditions they neither understand nor accept to avoid further imprisonment is not new, how people experience this has received far less attention. The people we spoke to had a number of restrictions on their movements and associations (some intended, some unintended) as a consequence of licence conditions (including for example exclusion zones and residence requirements) and curfews set by Approved Premises. It might be assumed that maintaining compliance with these conditions, which were often experienced as exacerbating the pains of re-entry, would be onerous. However, while some people initially anticipated that compliance with what seemed like an overwhelming number of licence conditions would be a challenge, the actual experience of compliance was generally identified as unproblematic.

I think [complying is] more of your own attitude and your own belief and what you actually want. If you don't wanna be going back, then you're gonna be more in the mind saying, I don't really wanna do this but it's gonna stop me from being recalled or it's allowing me to still be able to get on with my life. A bit of a hindrance, yes but do you know what, in the scheme of things, will it be a bad thing? (Service user 18).

Probation practitioners generally felt that conditions were less oriented to reducing reoffending and more concerned with 'holding' the person in check whilst interventions were ongoing, and many of those interventions were laid down by the original sentence plan,

including programme work (regarding sex offending, substance misuse or anger management) which could not be done in prison because of lack of availability or time. However, whilst service users felt that the main priority of licence conditions was controlling rather than changing behaviour, probation practitioners suggested they were less able to control for potential offending but were more able to change attitudes and behaviour by ensuring interventions/programmes were completed.

There's not a huge amount of control that you can have. I mean, we see them maybe once, maximum twice a week, they're not micro chipped, I haven't got eyes everywhere ... I mean, we really rely on our instincts in terms of what they're doing 90% of the week when we're not seeing them, in which case the stuff that we can check is the positive stuff that we refer them to which would be the rehabilitative stuff... Managers would rather see the control aspect and they'd rather see the robust risk management plan but you can plan and plan and you can write 1000 words in your risk management plan but if the offender decides to go off and do other stuff, they're gonna do it (Probation 8).

Given the recognition by practitioners that they are limited in how much they can control service users in order to reduce risk, there is perhaps much to commend the approach of incentivising compliance. There was a clear sense that reductions in the restrictions placed on service users in this sample operated as a mechanism through which formal recognition of their progress towards change was communicated. However, where restrictions were maintained over time or reinstated - perhaps as a consequence of moving to another area - this was experienced as a definite repudiation, a form of misrecognition, particularly in the context of service users' own perceptions of their personal progress over time. The sense of

being viewed as an enduring risk was experienced as a significant source of frustration which, underpinned by a sense of injustice, diminished the legitimacy of the authority and control to which they were subject.

To start with I thought, OK, yeah, they're acceptable... but my understanding was as time went on they would begin to become less or removed. And since being in the hostel and away from the hostel, I've had nothing removed, really. So I think in some ways, yes, they can be fair but I think in another way it doesn't sort of live up to what they tell you sometimes by saying, these will become less and less and lesser. Well, in this instance, they're not, they're actually becoming more...It feels like a bit of a punishment to me... And it's frustrating because I'm trying to move on and I keep getting told, we want to help you move on, we want you to do and move on so you're more in control of your life. Well... you're actually not giving me that freedom to do that, you're not letting me be responsible for where I am, what I'm doing and everything else because you're just controlling again and that's to me not moving on. That's just stuck in the spinning wheel really (Service user 18).

I didn't have a problem complying with the licence...But when I worked for something and I'm told, you can have home leave now so I can go home... [but] no you can't stay the night. ...Now, how this works is you take an animal, put him in a cage, get him used to something, then you take that away from him and see what he does to you... The man has intellect but the point here is that you are really provoking the person (Service user 25).

The capacity to recall was perceived by service users as the principle mechanism of social control at the disposal of probation practitioners. An awareness of the potential to be recalled resulted for some people in over self-regulation and anxiety and could potentially limit what and how much information they were inclined to share with their supervising officer, which undermined the likelihood of cooperation. Equally, a number of people referred to living with the threat of recall as a hindrance to change and, for one person, indeed such threats were seen by him as amplifying his own perceived risk. In this sense, rather than incentivising cooperation, the implicit threat or risk of recall can breed resistance, withdrawal, anxiety and a reluctance to engage for fear of the reaction that self-disclosures might engender.

You could be just sitting here watching TV, doing nothing, not committing crime or nothing like that and you're just worried that you're gonna go back. It's paranoia. It gets to you...And it is, it's a constant thing on your mind... If I'm feeling like I'm proper depressed and low and that, I won't tell them because I'm scared that that's gonna be it, like you could be deemed as a risk to the public. I know I'm not a risk to the public but they might say, well he's a risk to the public, therefore recall him and that's not fair and it happens quite a lot (Service user 5).

When I first come out... the probation officer I saw, he said...you could be recalled at any point if I feel like it...and I thought...well, that's alright, that's the way you feel, I won't tell you none of my problems (Service user 10).

I believe that probation is only here to recall you. This is a general belief in prison of most prisoners...they are like the police...people don't trust them as far as you can throw them (Service user 25).

Compliance, Cooperation and Consent in a Climate of Concern

As noted above, Tyler and Fagan (2008: 240) argue that legitimate authority which is based on procedural justice and is not driven by sanctions or incentives is most likely to encourage cooperation: 'people cooperate because they feel it is the right thing to do, not because of material gains or losses'. However, it is also acknowledged by these authors that positive experiences (of outcomes as well as procedures) are more likely to bolster a belief in the legitimacy of authority and in subsequent compliance with it (see also Ugwudike 2010). Thus the fairness of the procedures and the positive nature of the engagement are crucial means of building and sustaining cooperation and enabling change. These authors conclude that:

... while society creates legal authorities and institutions to manage problems of social order, the success of those authorities is ultimately linked to the attitudes and behaviors of people ... they are more likely to [cooperate] when the gains of cooperation are more certain (Tyler and Fagan, 2008: 262-3).

However, a lack of certainty characterised many people's experiences of supervision, both in terms of getting out and staying out. Service users in this study felt strongly that they were not consulted on or adequately informed of the arrangements for their transition from prison to the community, of the conditions of their release (and the implications of them) or with regard to the kinds of supports they required to move away from offending behaviour once released from prison. This lack of involvement and participation in decision-making processes resulted in confusion, incomprehension and a lack of legitimacy in the rationale for licence conditions. In turn, this engendered feelings of injustice, frustration, resentment and

withdrawal from meaningful engagement in the supervisory process to which they felt they were subject rather than being actively involved in.

However, while service users found it relatively unproblematic to comply with the requirements of their orders, concerns with riskiness engendered mistrust and anxiety on both sides and, in some cases, rather than incentivising cooperation, encouraged a stance of 'detachment' from the process. While, as discussed above, some service users reported positive experiences of the supervisory relationship (n=14/26), others felt that professional perceptions and assessments did not reflect the person they had become but were instead focused on past behaviours. It was suggested that the paperwork relating to their past behaviour and their associated risk profiles determined professional perceptions of their present risk, despite, in some cases, a significant period of time elapsing, during which they felt substantive personal changes had occurred. As the following extracts suggest, this undermined not only relational legitimacy and the likelihood of cooperation, but opportunities for personal progression.

If I was a danger [they] wouldn't know...in order to open up to someone who I trust, I have to develop a relationship... I don't know her, she don't me. She knows what she has read from the paper[work]. So ...she is managing what she's read, she's not managing me (Service user 11).

If you offer [service users] that support rather than saying, well this is what we don't want you to do, don't do this, don't do that – cos otherwise you're always being treated as an offender, as your past. And I think people can move on and people can

change but I think if their only discussions are, this is what you did wrong last time, they've gotta have a fresh start (Service user 3).

This climate of concern that has given rise to an overwhelming professional preoccupation with risk, as these service users suggest, was captured well by one practitioner.

Risk can create a lot of fear and anxiety and I think often what we do is try and manage fear and anxiety rather than really trying to get to the nub of what is it that we're frightened of, what is the risk here? (Probation 1).

Many professional respondents however recognised that if service users were to manage their own risks in the future, they would have to be involved and engaged in the supervisory process and in that the process of change, implying a need for more cooperative working relationships and participatory practices. What service users felt they needed - often from the only source of social support available to them (i.e. probation practitioners) - was a reciprocal relationship of trust, respect and recognition, oriented to the development of hope and the realisation of good lives and through this greater control over their own lives. In this vein, a sense of sharing the task of reducing risk and reoffending was seen as crucial to service user engagement, conceptualised as doing with rather than to or by. Whilst the structural opportunities of employment and sustainable accommodation might elude them on release, the social and emotional supports that professionals can provide through supervision can imbue the supervisory relationship with legitimacy, enhance service user engagement and rationales for cooperation and augment naturally occurring processes of change.

Actively involving people in the supervisory relationship can communicate to offenders both respect and concern for them as individuals (Rex, 1999), in demonstrating an awareness of their social reality and in conveying recognition of and proactive support for their hopes and aspirations (Farrall, 2002; Barry, 2000; Burnett and McNeill, 2005). While this seems likely to support 'the active engagement and co-operation of the offender with the requirements of his or her order' (Robinson and McNeill, 2008: 434) this further speaks to broader issues of ethical and just practice as Faulkner suggests:

‘All those involved in the criminal justice process should treat people with whom they come into contact...with courtesy, dignity and respect [and] seek to preserve a sense of being valued as a human being, and of some hope for the future, even if the person has done something dreadfully wrong’ (Faulkner 2004: 162-3).

CONCLUSION

The experiences and perspectives elaborated by the service users we spoke to correlate with the limited empirical research into compliance among the ‘general’ offending population (see for example Ugwudike 2010, 2013). However, as previously observed, regulatory practices and the nature of the conditions of community supervision differ in both process and effect. While this study was solely based on participant perspectives from one area in England, various analyses of contemporary approaches to the community management of high risk offenders in the UK similarly observe that professional practice with those subject to MAPPA is typically characterised by compulsory conditions, surveillance and monitoring, enforcement, and compulsory engagement in treatment (see for example McAlinden 2006, Kemshall 2008, HMIP & HMIC 2011). The views of both service users and professionals in this study thus reinforce McAlinden’s (2006) and Ugwudike’s (2012) recognition that the

regulation of high risk offenders is more preventative than participatory, more oriented to the control of risk than the pursuit of change. Such approaches are informed by a perception of high risk offenders as having a lifelong propensity for offending and thus as superficially compliant. This perspective is echoed by professionals (Ugwudike 2012), media and the public alike (Laws and Ward, 2011) although more recent research into the dynamics of desistance among high risk offenders would suggest otherwise (see for example Farmer et al 2011; Harris 2014; Weaver 2014).

The erroneous perception that all people who pose or have posed a high risk of harm are neither motivated nor able to change has contributed to the climate of concern that shapes the policy and practice context within which community supervision occurs and which in turn influences the focus of community supervision for this population. As this study has illustrated, perceptions of enduring riskiness encourage preventative practices oriented to the promotion of community safety. This preoccupation with the control of risk shapes practitioners' engagement with service users, and shapes service users' experience of supervision and, in turn, the nature of their engagement in the process of supervision in terms of undermining opportunities for cooperation, diminishing the perceived legitimacy of the conditions and contents of supervision, and encouraging deterrent based compliant behaviours motivated by the avoidance of (re-)imprisonment.

Given the recognition by practitioners and service users that professionals are limited in how much they can control risk, this would imply a need to move beyond a short term focus on securing compliance through mechanisms of control towards a longer term focus on enabling cooperation and change and in that, a greater balance between preventative and participatory practices and a move beyond a focus solely on community safety towards social

rehabilitation and reintegration. However, that ‘reintegration’ as a purpose of community supervision was rarely mentioned by probation participants implies that there are significant structural and resource barriers to supporting access to accommodation, employment, even opportunities for social participation. While these barriers are not exclusive to the high risk offending population, they are undoubtedly exacerbated by the climate of concern enveloping both professionals and communities.

While removing these barriers and challenging these concerns is perhaps beyond the capacities of individual practitioners to alter, the findings of this study would suggest that cooperation might be better enabled by ensuring that service users experience their consent as properly informed, through meaningful consultation and the provision of detailed information about the purposes, meanings and implications of those conditions prior to release. As we have observed, this is more likely to enhance attributions of legitimacy and trustworthiness and contribute to a culture of mutual cooperation. In this vein, authentic supervisory relationships underpinned by clear communication, negotiation and mutual trust have more potential to encourage service users’ active engagement and, in turn, are more likely to create the conditions within which cooperation and change might be enabled. While space precludes a detailed elaboration of what shape and form a more participatory approach might include (on which see Kemshall 2008, Kemshall and Wood 2012, Weaver 2014), at the very least this implies establishing cooperative relationships, capitalizing on service users’ strengths, building capacities, recognizing and responding to the issues that service users perceive as barriers to change and creating meaningful and sustainable opportunities to live differently. Such an approach, advocated by the Good Lives Model (Laws and Ward 2011), is also more likely to enable the kinds of sustainable internal, behavioural, social and situational changes that are required, as Serin et al (2013:101) put it, ‘to navigate life *after* the end of [supervision]’.

REFERENCES

- Alford, J., (2009) *Engaging Public Sector Clients: From Service-Delivery to Co-Production*. Basingstoke, Palgrave Macmillan
- Barry, M., (2000) The mentor/monitor debate in criminal justice: What works for offenders. *British Journal of Social Work* 30(5): 575–95.
- Beauchamp, T. L., (2009) ‘Autonomy and Consent’ in Miller, F. G., and Wertheimer, A. (eds) *The Ethics of Consent: Theory and Practice*. New York, Oxford University Press, pp 55-78
- Bottoms, A. E., (1994) ‘Avoiding injustice, promoting legitimacy and relationships’ in Burnside, J., and Baker, N., (eds) (1994) *Relational justice: Repairing the breach*. Winchester: Waterside Press pp 53-70.
- Bottoms, A. E., (2001) ‘Compliance with community penalties’, in Bottoms, A.E., Gelsthorpe, L., and Rex, S., (eds) *Community penalties: Change and challenges*, Cullompton: Willan pp.87-116
- Bottoms, A. E., (2013) ‘Learning from Odysseus: Self applied situational crime prevention as an aid to Compliance’ in Ugwuodike, P., and Raynor, P., (eds) *What works in offender compliance: International perspectives and evidence-based practice*, Basingstoke: Palgrave Macmillan pp. 67-89
- Brayford, J., Cowe, F., and Deering, J. (2012) *Sex Offenders: Punish, help, change or control: Theory, police and practice explored*. Abingdon: Routledge.
- Burnett, R., and McNeill, F., (2005) The place of the officer-offender relationship in assisting offenders to desist from crime. *Probation Journal*. 52(3) 221-242
- Canton, R., (2010) European Probation Rules: What they are, why they matter. *EuroVista: Probation and Community Justice* 1(2) 62-71

- Canton, R., (2012) The point of probation: On effectiveness, human rights and the virtues of obliquity. *Criminology and Criminal Justice*. 13 (5), pp. 577-593
- Digard, L., (2010) When legitimacy is denied: Offender perceptions of the prison recall system. *Probation Journal* 57(1): 43-61
- Farrall, S., (2002) Long-term absences from probation: Officers' and probationers' accounts. *Howard Journal of Criminal Justice*. 41(3): 263-278
- Faulkner, D., (2004) 'Relational justice: a dynamic for reform' in Burnside, J., and Baker, N. (eds) *Relational justice: Repairing the breach*. Winchester: Waterside Press pp 159-75
- Farmer M, Beech AR and Ward T (2011) Assessing desistance in child molesters: A qualitative analysis. *Journal of Interpersonal Violence* 27(5): 930-950
- Gray, P., (2005) 'The politics of risk and young offenders' experiences of social exclusion and restorative justice', *British Journal of Criminology*, 45(6): 938-957.
- Hardy, M., (2014) 'Practitioner perspectives on risk: Using governmentality to understand contemporary probation practice', *European Journal of Criminology*, 11(3): 303-318.
- Harris, D. A., (2014) Desistance from sexual offending: Findings from 21 life history narratives. *Journal of Interpersonal Violence*. doi: 10.1177/0886260513511532
- HMIP & HMIC (2011) *Thematic inspection report: Putting the pieces together. An inspection of Multi-Agency Public Protection Arrangements*. Criminal Justice Joint Inspection.
- Kemshall, H., (2008) *Understanding the community management of high risk offenders*. Maidenhead, Open University Press.
- Kemshall, H., and Wood, J., (2012) 'MAPPA: the management of sex offenders', in Brayford, J., Cowe, F., and Deering, J., (eds) (2012) *Sex Offenders: Punish, help, change or control: Theory, policy and practice explored*. Abingdon: Routledge, pp.267-286

- Kleinig, J (2009) 'The Nature of Consent' in Miller, F. G., and Wertheimer, A. (eds) *The Ethics of Consent: Theory and Practice*. New York, Oxford University Press, pp3-24
- Laws, D. R. and Ward, T. (2011). *Desistance from sexual offending: Alternatives to throwing away the keys*. New York, NY: Guilford Press.
- McAlinden, A., (2006) Managing risk: from regulation to the reintegration of sexual offender. *Criminology and Criminal Justice* 6(2): 197-218
- McNeill, F., (2014) 'Punishment as rehabilitation', in Bruinsma, G., and Weisburd, D., (eds.) *Encyclopedia of Criminology and Criminal Justice*. Springer, New York, pp. 4195-4206
- McNeill, F., and Robinson, G., (2010) 'The dynamics of compliance with offender supervision' in McNeill, F., Raynor, P., and Trotter, C., (eds) *Offender supervision: New directions in theory, research and practice*. Cullompton: Willan pp. 367-383
- Morgenstern, C., and Larrauri, E., (2013). 'European norms, policy and practice' in McNeill, F., and Beyens, K., *Offender Supervision in Europe* [Online] Available at: <http://www.palgraveconnect.com/pc/doi/10.1057/9781137379191.0010> pp.125–154..
- Rex, S. (1999) 'Desistance from offending: Experiences of probation', *Howard Journal*, 36(4): 366-83.
- Robinson, G., (2013) 'What Counts? Community sanctions and constructions of compliance' in Ugwudike, P., and Raynor, P., (eds) *What Works in Offender Compliance: International perspectives and evidence-based practice*, Basingstoke: Palgrave Macmillan pp26-43
- Robinson, G. and McNeill, F. (2004) 'Purposes matters: Examining the ends of probation', in Mair, G., (ed.) *What Matters in Probation Work*. Cullompton: Willan. pp. 277–304.
- Robinson, G., and McNeill, F., (2008) Exploring the dynamics of compliance with community penalties. *Theoretical Criminology* 12 (4): 431-449.
- Serin, R.C., Lloyd, C.D., Hanby, L.J., and Shturnan, M., (2013) 'What and who might enhance offender compliance: situating responsibilities' in Ugwudike, P., and Raynor P.,

(eds) *What Works in Offender Compliance: International perspectives and evidence-based practice*, Basingstoke: Palgrave Macmillan pp 90-106

Stone, N., (2012) 'Legislation and sex offending' in Brayford, J., Cowe, F., and Deering, J. (eds) *Sex Offenders: Punish, help, change or control: Theory, policy and practice explored*. Abingdon: Routledge. pp 13-33

Tyler, T. R., (1990). *Why people obey the law: Procedural justice, legitimacy, and compliance*. New Haven, CT: Yale University Press.

Tyler, T.R., (1997) The Psychology of legitimacy: A relational perspective on voluntary deference to authorities. *Personality and Social Psychology Review* 1 (4): 323-45

Tyler, T., and Fagan, J., (2008) 'Legitimacy and cooperation: Why do people help the police fight crime in their communities?', *Ohio State Journal of Criminal Law*, Vol. 6: 231-275.

Tyler, T., and Jackson, J., (2013) Popular Legitimacy and the Exercise of Legal Authority: Motivating Compliance, Cooperation and Engagement (September 1, 2013). Forthcoming in *Psychology, Public Policy and Law*; Yale Law School, Public Law Working Paper No. 306; Yale Law & Economics Research Paper No. 477. Available at SSRN: <http://ssrn.com/abstract=2292517> or <http://dx.doi.org/10.2139/ssrn.2292517>

Ugwudike, P., (2010) 'Compliance with community penalties: the importance of interactional dynamics', in McNeill, F., Raynor, P., and Trotter, C., (eds), *Offender Supervision: New directions in theory, research and practice*, Cullompton: Willan pp325-343

Ugwudike, P., (2012) 'Probation enforcement practice with sex offenders' in Brayford, J., Cowe, F., and Deering, J. (eds). *Sex Offenders: Punish, help, change or control: Theory, policy and practice explored*. Abingdon: Routledge. pp 287-304

Ugwudike, P., (2013) 'Compliance with community orders: front-line perspectives and evidence-based practices' in Ugwudike, P., and Raynor P., (eds) *What Works in Offender*

Compliance: International perspectives and evidence-based practice, Basingstoke: Palgrave Macmillan pp165-184

Vanstone, M., (2013) 'Compulsory persuasion in probation history' in Ugwudike, P., and Raynor, P., (eds) *What works in offender compliance: International perspectives and evidence-based practice*, Basingstoke: Palgrave Macmillan pp 9-25

Weaver, B., (2014) Change or control? Developing dialogues between desistance research and public protection practice. *Probation Journal: The Journal of Community and Criminal Justice* 61 (1): 8-26

Weaver, B., and Barry, M., (forthcoming) 'Risky business? Supporting desistance from sexual offending' in McCartan K (ed) *Responding to Sexual Offending* Palgrave Macmillan