

IMPLEMENTING COMMUNITY SANCTIONS AND MEASURES



Vivian Geiran
Ioan Durnescu

Guidelines



COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

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Contents

1. INTRODUCTION	5
2. DEFINING COMMUNITY SANCTIONS AND MEASURES	7
3. THE COUNCIL OF EUROPE AND STANDARDS ON COMMUNITY SANCTIONS AND MEASURES, INCLUDING PROBATION	11
4. PROBATION ORGANISATIONS	13
5. PROBATION STAFF	17
a) Management	17
b) Staff	18
6. IMPLEMENTING COMMUNITY SANCTIONS AND MEASURES	21
6.1 Theoretical models underpinning effective practice	21
6.2 “Who works” literature	26
7. HOW TO REGULATE COMMUNITY SANCTIONS AND MEASURES	39
8. COMPLIANCE AND BREACH	43
9. WORKING WITH THE COURT	47
10. WORKING IN AND WITH COMMUNITIES	49
11. COMMUNITY SERVICE	53
12. RESTORATIVE JUSTICE AND THE VICTIM PERSPECTIVE	57
13. ELECTRONIC MONITORING	63
14. WORKING IN PRISONS	67
15. RADICALISATION AND WORKING WITH VIOLENT EXTREMIST OFFENDERS (VEOs)	71
16. WORKING IN PARTNERSHIP; MULTIDISCIPLINARY WORK; INTER-AGENCY CO-OPERATION	75
17. THE OFFENDER’S VOICE AND PERSPECTIVE	79
18. WORKING WITH VOLUNTEERS	81
19. CASE RECORD, DATA PROTECTION AND CONFIDENTIALITY	83
20. INSPECTION AND MONITORING	85
21. RESEARCH AND EVALUATION	87
22. RELATIONSHIP WITH THE MEDIA	89
23. EUROPEAN DIMENSION	93
24. REFERENCES	97
APPENDIX 1: FURTHER READING	105

The implementation of community sanctions and measures shall be based on the development of working relationships between the suspect or the offender, the supervisor and any participating organisations or individuals drawn from the community, focused on reducing re-offending and on social reintegration.¹

1. Introduction

This publication is intended to provide guidance to management and staff of agencies implementing community sanctions and measures, and specifically those responsible for the provision of what are generally known or described as *probation* services. It should promote the development and implementation of community sanctions and measures across Europe and serve as a useful resource for the establishment of relevant policy and practice in the various jurisdictions. It has, as its starting point and foundation, the various standards and instruments of the Council of Europe that relate to the fields of probation and community sanctions and measures. Those standards provide clear direction for policy and practice across the wide range of activities related to community sanctions and measures. The development of these Guidelines followed a multilateral meeting on the implementation of community sanctions and measures, held in Strasbourg, France, in November 2018, as part of the Council of Europe co-operation activities in the penitentiary field, implemented by the Criminal Law Co-operation Unit. The two authors contributed, as consultants, to that multilateral meeting.

This guidance document does not set out to be a detailed, prescriptive monograph of what should constitute probation practice, but rather to be a strong and helpful guide, built firmly on the foundations of the Council of Europe standards, international research evidence, and practice wisdom built up over many years, across many jurisdictions. References to research and other helpful sources in the relevant literature, as well as links to relevant Council of Europe and other international standards, are provided throughout. Nevertheless, these references are intended to be helpful ‘pointers’ and primers, rather than exhaustive lists of sources.

1. Recommendation (2017)3 of the Committee of Ministers on the European Rules on community sanctions and measures, Rule 31, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680700a5a

The authors draw on their extensive experience in criminal justice, and specifically in the fields of probation service delivery and management, research, and other work at international level, particularly work undertaken in and on behalf of the Council of Europe. It is their hope that the experience they, and those with whom they work, bring to this publication, will translate into a positive sourcebook for colleagues across Europe.

Note on terminology: as persons under supervision in Europe are called differently from one jurisdiction to another, the authors have opted to use alternately but with the same general meaning the denominations of offenders, clients and probationers. They considered that this approach would honour the wide diversity in Europe in this respect.²

2. Herzog-Evans, M. (2013), "What's in a name. Penological and institutional connotations of probation officers' labeling in Europe," *EuroVista*, 2(3), pp. 121-133.

2. Defining community sanctions and measures

Community sanctions and measures, and particularly what we know as ‘probation’ and ‘parole’ work, have a long history in Europe, going back over one hundred years. Almost a century ago, Trought,³ for example, summarised the situation regarding probation and related matters in almost thirty European jurisdictions across Europe, at that time. The already lengthy and extensive history of probation, and the implementation of community sanctions and measures in Europe, can be learned from and built on, as well as developed further, through the growth of new services, organisations and systems.

Two of the core or foundational Council of Europe instruments and standards in the field of community sanctions and measures are: Recommendation of the Committee of Ministers of the Council of Europe Rec (2017)3 on the European Rules on Community Sanctions and Measures (ERCMS) and the Recommendation of the Committee of Ministers of the Council of Europe Rec (2010)1 on the Council of Europe Probation Rules⁴.

Community sanctions and measures are defined⁵ as follows:

community sanctions and measures means sanctions and measures which maintain suspects or offenders in the community and involve some restrictions on their liberty through the imposition of conditions and/or obligations. The term designates any sanction imposed by a judicial or administrative authority, and any measure taken before or instead of a decision on a sanction, as well as ways of enforcing a sentence of imprisonment outside a prison establishment.

3. Trought, T. W. (1927), *Probation in Europe*, Basil Blackwell, Oxford.

4. Recommendation (2010)1 of the Committee of Ministers on the on the Council of Europe Probation Rules,
https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805cfbc7

5. Recommendation (2017)3.

Two other important definitions,⁶ are those regarding deciding and implementing authorities:

deciding authorities means a judicial, administrative or other authority empowered by law to impose or revoke a community sanction or measure or to modify its conditions and obligations;

implementing authorities means the body or bodies empowered to decide on, and with responsibility for, the practical implementation of a community sanction or measure. In many countries, the implementing authority is the probation service.

For the purposes of these Guidelines, “deciding authorities” are usually judicial authorities or prosecutors; the actual “implementing authority” is often, if not generally, a “probation agency,” delivering what are generically described as “probation” services, both of which are defined⁷ as follows:

Probation: *relates to the implementation in the community of sanctions and measures, defined by law and imposed on an offender. It includes a range of activities and interventions, which involve supervision, guidance and assistance aiming at the social inclusion of an offender, as well as at contributing to community safety.*

Probation agency: *means anybody designated by law to implement the above tasks and responsibilities. Depending on the national system, the work of a probation agency may also include providing information and advice to judicial and other deciding authorities to help them reach informed and just decisions; providing guidance and support to offenders while in custody in order to prepare their release and resettlement; monitoring and assistance to persons subject to early release; restorative justice interventions; and offering assistance to victims of crime.*

The two instruments referenced above are key to understanding the Council of Europe standards in this area of work, especially as they reflect the overarching Council of Europe position in relation to community sanctions and measures. They are however, by no means the only such relevant standards. The Council of Europe has developed a range of other standards documents regarding the management of community (as well as custodial) sanctions. A number of these relate to specific topics (e.g. electronic monitoring,

6. ibidem

7. Recommendation (2010)1

radicalisation to violent extremism, or restorative justice) or to categories of individuals, (such as dangerous offenders, and juveniles).⁸

Policy Pointer

The Council of Europe compiles and publishes a compendium of all Conventions, Recommendations, standards and guidelines documents, relevant to probation and prisons, which is a very useful, if not indispensable source-book, and highly recommended for anyone in this field of work. This Compendium is updated periodically, especially when new standards are added, or older ones superseded. The current (2019) version of the Compendium is available on the Council of Europe webpage in respect of the Council for Penological Co-operation (PC-CP) working group.⁹

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8. Recommendation (2014)4 of the Committee of Ministers on electronic monitoring, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805c64a7 Council of Europe (2017), *Handbook for Prison and Probation Services regarding Radicalisation and Violent Extremism*, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016806f4fbd Council of Europe (2016), *Guidelines for prison and probation services regarding radicalisation and violent extremism*, https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016805c1a69 Recommendation (2018)8 of the Committee of Ministers concerning restorative justice in criminal matters, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016808e35f3 Recommendation (2014)3 of the Committee of Ministers concerning dangerous offenders, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805c649d Recommendation (2008)11 of the Committee of Ministers on the European Rules for juvenile offenders subject to sanctions or measures, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d2716
 9. Council of Europe (2019) Compendium of Conventions, Recommendations and Resolutions relating to prisons and Community Sanctions and Measures, <https://rm.coe.int/compendium-e-2019/16809372d2>

3. The Council of Europe and standards on community sanctions and measures, including probation

The Council of Europe was founded in 1949, out of the ashes of a Europe devastated by the Second World War. While early priorities were to agree the European Convention on Human Rights, and to establish the European Court of Human Rights, other initiatives were developed by the Council of Europe over the following years, including bodies to work to ensure fairness and to uphold the Convention across the justice and home affairs systems of the member states. Within a decade or so of the establishment of the Council of Europe, its work had expanded to include that of standards in relation to penal sanctions and related matters.

Standards in the penological field, as in any other under the remit of the Council of Europe, are firmly founded on the principles enshrined by the European Convention on Human Rights.¹⁰ They also reflect the best available practice, as evidenced by international research and distilled by appropriate experts, agreed collectively by the member states. The European Committee on Crime Problems (CDPC)¹¹ of the Council of Europe was established in 1958 and has responsibility for overseeing and coordinating the Council of Europe's activities in the field of crime prevention and crime control. Subsequently, the PC-CP¹² was established in June 1980, initially as an advisory body to the CDPC. Since 2011, the PC-CP has become a subordinate body to the CDPC holding one plenary meeting per year. It has a Working Group composed of nine members who meet four times a year and who are elected in their personal capacity by the CDPC, in plenary session. These are

10. European Convention on Human Rights, https://www.echr.coe.int/Documents/Convention_ENG.pdf

11. European Committee on Crime Problems, <https://www.coe.int/en/web/cdpc/european-committee-on-crime-problems>

12. Council for Penological Co-operation, <https://www.coe.int/en/web/prison/council-for-penological-co-operation>

high-level representatives of prison and probation administrations or of services, or researchers, or other penological experts.

The main tasks, role and goal of the PC-CP, are set out in its terms of reference and working methods.¹³ The PC-CP, *inter alia*:

drafts standard-setting texts, reports, opinions, collects information regarding the implementation by the prison and probation services of the relevant recommendations adopted by the Committee of Ministers, supervises the annual collection of statistical data related to prisons and to non-custodial sanctions and measures (SPACE I and II), organises meetings and high level conferences of the Directors of prison and probation services of the 47 member states.

13. Council for Penological Co-operation, Terms of reference (2018-2019) and working methods of the PC-CP, <https://rm.coe.int/terms-of-reference-council-for-penological-co-operation-pc-cp-2018-201/16807619d0>

4. Probation organisations

Probation agencies shall aim to reduce re-offending by establishing positive relationships with offenders in order to supervise (including control where necessary), guide and assist them and to promote their successful social inclusion. Probation thus contributes to community safety and the fair administration of justice¹⁴

The relevant Council of Europe Recommendations provide guidance in terms of how probation services shall organise and deliver services to offenders and others and their responsibilities to work in partnership with other agencies and organisations, to submit annual reports, to offer services to offenders, their families and to victims.¹⁵ Particularly in the Committee of Ministers Recommendation (2010)1 it is also stressed that the law should define the role of the probation organisations, that such organisations should work to the highest ethical and professional standards, irrespective of whether they are private or public, should be approved by the State and should work in line with the State policies and regulations. Other important rules emphasise that the State should ensure that the structure, status and resources of probation agencies shall correspond to the volume of the tasks and responsibilities and should reflect the importance of the public service they provide.¹⁶

The same principle is also stressed in the ERCSM,¹⁷ which specifically state that:

Probation staff shall be sufficiently numerous to carry out their work effectively. Individual staff members shall have a caseload which allows them to supervise, guide and assist offenders effectively and humanely and, where appropriate, to work with their families and, where applicable, with victims. Where demand is excessive, it is the responsibility of management to seek solutions and to instruct staff about which tasks are to take priority.

In some jurisdictions this latter principle, and in particular regarding staffing resources relative to work demands, has either not been overtly addressed,

14. Recommendation (2010)1, Rule 1.

15. See Recommendation (2010)1

16. Recommendation (2010)1 Rules: 8-10, 13 and 18-19.

17. Recommendation (2017)3, Rule 29.

or at least does not appear to have been made operational. In other words, the question of what is the appropriate level of resources corresponding to a certain volume of activity, or the workload limits per individual probation officer, are not defined. In some cases, the optimum balance between the volume of activity and available resources has been agreed between the relevant State agencies and other bodies (such as trade unions or staff associations) following negotiations. In other cases, probation agencies have been left with insufficient resources to deal with massive volumes of activity. In the absence of any agreed European standard, staff time – the main resource of any probation agency – is frequently considered to be an elastic resource, allowing one probation officer or other staff member to work with 30, 40, 100 or even 200 offenders, depending on the jurisdiction and the wider context, at any given time.

There is no simple solution to this question and it has to be appreciated that probation staff may have different demands and expectations on them, in terms of their role and functions, and established ways of working, depending on the jurisdiction in question. Furthermore, some agencies may seek to limit or control *demand* for services, rather than, or in addition to, controlling *supply* of services. There may also be variations in expectations on staff in some countries. In some jurisdictions, the primary emphasis of probation work may be simply on surveillance and control of probationers, in others, staff may be expected to engage in a variety of individual or group rehabilitation programmes. Probation staff in some contexts may have greater or less access to administrative support, to ancillary services, or to other (including specialist) staff or programmes. Nevertheless, excessive demands on, or overloading of probation staff puts pressure not only on the health, safety and wellbeing of staff, but also on the effectiveness of the probation agency itself.

Policy Pointer

It may be useful for probation agencies to set up their own optimum probation staff/client ratio that would ensure quality of the probation services. A good example in this direction is the Probation Service in Estonia that uses a points system to allocate clients to probation staff depending on the level of risk. Current probation practice in many European countries seems to suggest that limiting individual caseloads to between 40 to 60 clients per (fulltime) probation officer/supervisor at any time can ensure quality in probation services.¹⁸

18. For more on this topic, see the Confederation of European Probation, Probation in Europe Update <https://www.cep-probation.org/knowledgebases/probation-in-europe-updates/>

In terms of the administrative organisation of probation agencies in Europe, we can find a number of different models in practice:

- ▶ most of the probation agencies are public bodies, frequently divisions or agencies within Governmental institutions, mainly the Ministry of Justice, while others are private organisations (as in Austria or The Netherlands);
- ▶ most probation agencies are national agencies, covering the whole territory of the state. However, there are federal states where probation agencies follow the administrative structure of each region (like in Germany, Belgium, Switzerland etc.);
- ▶ some probation agencies function as autonomous structures under the authority of, or within, the Ministry of Justice. Other probation services are merged – to a greater or lesser extent – with the prison service in their respective jurisdiction (as in England and Wales, France, Croatia etc.). Others function within other structures (such as within the local authority or social services (Scotland) or within the Prosecution Office (Luxembourg)).

Policy Pointer

There is no single solution for the administrative organisation of probation agencies in Europe. What seems to be important for effective administrative organisation is to consider the history and the traditions of the state in question and to ensure that probation agencies have the right resources, status, standing and functional autonomy that they need to do their job, in the first instance. Furthermore, it is considered to be of the utmost importance for probation agencies to be placed within the administrative structure of the state in such a way as to ensure effective co-operation with relevant partner bodies, including the courts, community bodies and prison services, in particular.

Inter-agency co-operation is critical to effective probation work. It is vital therefore that service management develop and maintain sound working relationships and good contacts with other agencies and partner bodies, as well as with volunteers, public authorities, the media and the general public.¹⁹ These points of connection and areas of co-operation will be developed further below.

19. Recommendation (2010)1, Rule 31.

5. Probation Staff

Probation staff are the primary means through which community sanctions and measures are delivered. This is recognised in a number of specific Council of Europe standards and instruments. Both, the Council of Europe Probation Rules and ERCSM have extensive sections on staff and related matters. Issues covered can be broadly divided into those that relate to (a) management and (b) staff themselves.

a) Management

Responsibilities of implementing agencies and their organisational management include ensuring and maintaining the professional quality of staff in the first instance. Recruitment and staff training and ongoing development must be undertaken without discrimination and in accordance with appropriate Council of Europe principles, within approved criteria: integrity, personal and professional capacity and suitability, and ensuring appropriate legal, financial and working terms and conditions. Staff recruitment should also take account of the diversity and particular needs of specific categories of offenders. This is achieved by providing leadership, guidance, supervision and motivation, by ensuring that probation agencies themselves, their staff and their work, have the respect of other justice agencies, and the wider civil society. Other management responsibilities include ensuring sufficient human resources to deliver the relevant services and finding appropriate solutions where workload demands are excessive, including deciding on work priorities, where work demands exceed available resource capacity, for example.²⁰

Accountability and service evaluation should also be the responsibility of the probation agencies in order to determine the duties, rights and responsibilities of staff and arrange for appropriate management, supervision and assessment of the effectiveness of their work. Service management should also ensure appropriate salaries and conditions of service for their staff, in addition to consulting with staff as a body, especially regarding their conditions of employment.²¹

20. Recommendation (2010)1, Rules: 21-22 and 29-30.

Recommendation (2017)3, Rules: 77, 80-82 and 84.

21. Recommendation (2017)3, Rules: 78 – 79 and 84.

Policy Pointer

While the qualifications and skills of “front line” staff have always been identified as key to effective service delivery, it is increasingly recognised in more recent years that the role of leaders at all levels in the organisations delivering and managing community sanctions and measures, is equally critical to success.²² Apart from the need to evidence appropriate leadership skills on taking up senior positions in probation agencies, continuing development for such leaders, including those at Director level, can be provided through formal leadership programmes, as well as “on the job” mentoring, coaching and “shadowing” for example as well as “learning by doing.”

b) Staff

In relation to staff themselves, those recruited to probation agencies should possess the personal qualities and professional qualifications necessary to carry out their functions. They should have access to education and training, appropriate to their role and responsibilities, including initial training, to provide relevant skills, knowledge and values, and specialised training for work with specific categories of offenders and offending and with offenders or victims who may have distinct needs or be particularly vulnerable. Staff shall be accountable for their practice and have a responsibility to maintain and improve their professional knowledge and abilities, through in-service training and development, including training that encourages them to contribute to the enhancement of their work.²³

The Council of Europe, and specifically those parts of the organisation concerned with penological co-operation and assistance, have long recognised the importance of ensuring the highest standards in the initial educational qualifications, recruitment, training and development of staff in probation agencies and related bodies. The theme of the 22nd Conference of Directors of Prison and Probation Services (CDPPS), held in Lillestrøm, Norway, in 2017, was: “Staff selection, training and development in the 21st century.”²⁴

22. For example: Lamont C. and Geiran V (2017), “Making the Difference That Makes a Difference: Leading Probation on the Island of Ireland”, *Irish Probation Journal* 14(1), pp. 21-37, [http://www.justice.ie/EN/PB/0/6E80A40B6DF9B0CC802581D300460346/\\$File/IP17%20full%20Version.pdf](http://www.justice.ie/EN/PB/0/6E80A40B6DF9B0CC802581D300460346/$File/IP17%20full%20Version.pdf)

23. Recommendation (2017)3, Rules 25, 78 and 82-83
Recommendation (2010)1 Rules 23-24, 28 and 30

24. Information regarding this Conference is available at: <https://www.coe.int/en/web/prison-conferences/lillestrom-2017-22conference-directors-prison-probation-services>

Following this Conference, it was agreed to develop a standards guideline document for member states, and the PC-CP Working Group was so tasked. The Guidelines regarding recruitment, selection, education, training and professional development of prison and probation staff, approved by the Committee of Ministers²⁵, summarise and detail the parameters for good practice in this area. Specifically, the guidelines collate all the relevant Council of Europe standards, as already summarised above, and further propose that the provision of education and training should include training in professional ethics, promoting professional identity and developing the culture of the organisation in line with its overall mission. In addition, and where appropriate, there should be opportunities for joint, cross-agency prison and probation staff training and for training with staff from other criminal justice agencies, in order to encourage inter-agency and multi-disciplinary work. Such co-operation will promote the common goals of the respective services, i.e. to promote public safety, rehabilitation and reintegration. Opportunities should be offered to probation staff to learn about the nature of prison work and prison staff should be offered similar opportunities to learn about probation work.

Policy Pointer

The 2019 guidelines document provides a very useful breakdown of the specific knowledge, skills and values, issues and areas that professional training for probation staff (and prison staff) should address, with respective summary descriptions. These include:

- ▶ *practice in legal context and rights-based approaches;*
- ▶ *working effectively to promote change;*
- ▶ *promoting compliance and dealing with non-compliance;*
- ▶ *programmes and interventions;*
- ▶ *case management;*
- ▶ *report writing;*
- ▶ *risk assessment;*
- ▶ *specific types of offending;*
- ▶ *inter-agency working and community context;*
- ▶ *case records, data protection and confidentiality;*

25. Council of Europe (2019), *Guidelines regarding Recruitment, Selection, Education, Training and Professional Development of Prison and Probation Staff*, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016809661fd

- ▶ *electronic monitoring and use of technology;*
- ▶ *anti-discriminatory practice;*
- ▶ *working with juveniles;*
- ▶ *gender responsiveness;*
- ▶ *mental health, intellectual disabilities and substance misuse;*
- ▶ *foreign nationals;*
- ▶ *working with victims;*
- ▶ *restorative approaches;*
- ▶ *staff development.*

6. Implementing community sanctions and measures

Both the Council of Europe Probation Rules and ERCSM emphasise that probation agencies should aim to reduce re-offending by establishing positive relationships with offenders and promoting their social reintegration, by seeking the offender's informed consent and co-operation, and by promoting evidence-based policy and practice. Moreover, probation agencies shall work to ensure active compliance and shall not rely solely on the prospects of sanctions for non-compliance. Programmes and interventions for rehabilitation should be based on a variety of methods and the allocation of suspects or offenders to specific programmes and interventions should be guided by explicit criteria.²⁶ The aim of the following section is to outline the main theoretical frameworks that are currently "at work" in the agencies implementing community sanctions and measures in Europe. With this, it is hoped to offer some guidance on how to implement such sanctions and measures in an evidence-informed manner. The section goes further by describing what are known as the *core correctional skills* and how they work in practice. As this is not a training manual, readers are encouraged to seek out the references provided, as well as other similar resources, that can assist in working more effectively.

6.1 Theoretical models underpinning effective practice

Ever since community sanctions made their way into the criminal justice system, the "methods of treatment" have evolved in line with a range of influencing factors, including the prevailing political climate and policy or public sensibilities, as well as the current state of knowledge in the field. Indeed, as we have seen in the history of rehabilitation ideas, underlying treatment philosophies have moved from "give them the temperance pledge-book"²⁷

26. Recommendation (2010)1, Rule: 1, 85 and 104
Recommendation (2017)3, Rule: 31, 35 and 38

27. Holmes, T. (1900), *Pictures and Problems from London Police Courts*, Thomas Nelson and Sons, London, p. 40.

to social work diagnostics, to “nothing works”; to “what works” and – more recently – to desistance. According to these treatment models, the offenders were first *sinners*, later *maladapted individuals* (almost *patients*), and more recently *offenders* or *service users* as they are generally known nowadays.

There are two mainstream theoretical models that guide the implementation of community sanctions and measures in most of the Council of Europe member states today: “what works” and “desistance”. Both these models receive solid support from different Council of Europe recommendations, in particular from the Council of Europe Probation Rules. These state from the first basic principle that “probation agencies shall aim to reduce re-offending by establishing positive relationships with offenders in order to supervise (including control where necessary), guide and assist them and to promote their successful social inclusion” Further on, the Rules stress that probation staff shall seek the offender’s informed consent and co-operation; offenders shall be enabled to make an active contribution to the formal assessment; the assessment should be systematic and thorough and so on. However, as argued above, one should bear in mind that these two theoretical models reflect the current understanding of why some people commit offences, why some of them desist from crime and what is the role of implementing agencies in promoting public safety and the rehabilitation of offenders.

The “what works” rhetoric became important and started to inform the implementation of community sanctions and measures after the 1990s, when some research reports from Canada²⁸ re-evaluated some of Martinson’s evidence and helpfully concluded that “sometimes with some offenders something works”. Based on this revival and their own research, Andrews and Bonta²⁹ have put together the basis of what is now known as the risk-needs-responsivity (RNR) model. Although the first edition stressed the importance of these three principles, the latest edition (the 10th) describes no less than 15 principles. Implementing all of them seem to reduce re-offending significantly. These principles are:

1. **Respect for the person and the normative context:** services are delivered with respect for the person and personal autonomy; being humane; ethical; just; legal; decent; and normative (according to the profile of the correctional agency);

28. Ross R. R., Fabiano E. A. and Ewles C. D. (1988), “Reasoning and rehabilitation,” *International Journal of Offender Therapy and Comparative Criminology* No. 20, pp. 165-173.

29. Andrews D. and Bonta, J. (1998), *The Psychology of Criminal Conduct*, 2nd ed., Anderson, Cincinnati.

2. **Psychological theory:** base programmes and interventions on empirically solid psychological theory. This principle calls for the same imperative mentioned in the Council of Europe recommendations to promote an evidence-based practice;
3. **General enhancement of crime prevention services:** reducing criminal victimisation, specifically through reducing re-offending, is a legitimate objective of any correctional agency. Therefore, this should be the explicit aim of any such agency;
4. **Introduce human services:** do not rely solely on deterrence or sanction. Treat people as humans. This principle calls for avoiding a supervision practice based on threats and deterrence. Probationers should be encouraged to develop pro-social behaviours and “active compliance” rather than instrumental compliance with the conditions and obligations;
5. **Risk:** match the intensity of the service with the identified risk level of the case. Work with moderate and high-risk cases. Avoid inter-action between low risk with high risk cases;
6. **Need:** target criminogenic needs predominantly. Move criminogenic needs in the direction of becoming strengths. The principle of criminogenic needs draw attention to the fact that in order to reduce re-offending, the staff member has to focus on those needs that are a subset of an offender’s risk level. The authors divide these into two categories, as the first category correlates stronger with reducing recidivism: **Big four** – history of antisocial behaviour, antisocial personality pattern (e.g. impulsive, aggressive etc.), antisocial cognition (e.g. attitudes, values, rationalisations, personal identity etc.) and antisocial associates (‘social support for crime’); **Moderate four** – family/marital circumstances, school/work, leisure/recreation and substance abuse. Other offender needs may be addressed but only on a smaller scale and only for supporting the professional relationship or motivation for change. Some non-criminogenic needs may also influence indirectly the criminogenic ones;
7. **General Responsivity principle:** as with everybody else, offenders seem to learn easier based on cognitive behavioural and social learning approaches, so use skill-building strategies;
8. **Specific Responsivity:** adapt the style and mode of service to the relevant characteristics of the individual offenders, such as their strengths, motivations, preferences, personality, age, gender, ethnicity, cultural identifications, inter-personal maturity, level of understanding, attachment style etc;

9. **Breadth (or Multimodal):** target a number of criminogenic needs relative to noncriminogenic needs. Probation agencies should prioritise criminogenic needs rather than noncriminogenic needs. However, noncriminogenic needs can be targeted in a limited manner as a way to improve responsivity or enhance the quality of the relationship;
10. **Strengths:** assess strengths to enhance prediction and specific responsivity. Strengths may be also used in the interventions and resources;
11. **Structured Assessment:** employ structured and validated instruments to assess strengths, risk-needs and responsivity factors. Integrate assessment and interventions. Every intervention should be informed by assessment. Such standardised forms of risk assessment have been developed in some Council of Europe member states: LSI-R (England and Wales, in the past), OASys (England and Wales), SAVRI (Catalonia), RISC (The Netherlands), SAPRO (Czech Republic), CSNA (Latvia), BRIK (Norway), SERN (Romania);
12. **Professional Discretion:** deviate from these principles(?) only for very specific reasons. In line with the principle that no “one size fits all”, probation staff may deviate from the standard but only for strong and justified reasons.
13. **Community-based:** community-based services are preferred but the RNR principles work also in residential or custodial settings;
14. **Core Correctional Staff Practices:** effective interventions are enhanced when delivered by staff with high-quality relationship skills in combination with high-quality structuring skills. Quality relationships are described as: respectful, caring, enthusiastic, collaborative and valuing personal autonomy. Structuring practices include: pro-social modelling, skill building, problem solving, effective use of authority, advocacy-brokerage, cognitive restructuring and motivational interviewing;
15. **Management:** promote selection, training and clinical supervision of staff based on RNR and introduce monitoring, feedback and adjustment systems. Promote continuity of care. Use manuals, systems for monitoring progress and change, deliver appropriate quantities (dosage principle) of inputs, and include provision for research in design and delivery of service.

In spite of its further development in time, the model is still known in practice as the RNR model. Therefore, its full transfer, as developed into practice, is still somewhat limited.

Policy Pointer

It is desirable that all principles of “what works” are translated into practice. Probation staff, researchers and educators should emphasise all the above-mentioned principles and not only the three original or more ‘famous’ ones.

Complimentary to this model, a new theoretical framework is making its way into probation practice – the *desistance paradigm*. If the previous model is more focused on risk factors, asking the questions why some people continue committing crimes, the desistance paradigm asks the opposite question of why some people *stop* committing crimes.

There are five main categories of desistance theories. Some of them stress the importance of maturation. Some others emphasise volition and choice as factors to trigger desistance. Social bonds seem also to be very important in the process. According to Sampson and Laub,³⁰ offending is more likely when the social bonds are weak or broken. Various factors during the life course can help cement the bonds between the individual and society: for adolescents, factors such as school, family and peer group play an important role while for adults, employment, marriage and parenthood seem to play the same role. The “self-identity theories” suggest that self-definitions are very important in the desistance process. Maruna argued that “to desist from crime, ex-offenders need to develop a coherent, pro-social identity for themselves”.³¹ Ex-offenders are more likely to desist if their levels of self-efficacy are high, which means that they see themselves in control of their life and have a clear sense of purpose and meaning in life. Involvement in “generative activities” is usually helpful to consolidate this pro-social identity. The “cognitive transformation” theories suggest that desistance needs support from the cognitive processes. Giordano and colleagues,³² for instance, outlined a four-stage theory of cognitive transformation that involves:

- ▶ a general cognitive openness to change;
- ▶ exposure and reaction to ‘hooks of change’ or turning points;
- ▶ an adherence to a ‘replacement self’;
- ▶ a transformation in a desired direction.

30. Sampson R.J. and Laub J.H. (1993), *Crime in the Making: Pathways and Turning Points through Life*, Harvard University Press, Harvard.

31. Maruna S. (2001): *Making Good: How ex-convicts reform and rebuild their lives*, American Psychological Association, Washington, D.C, p.7.

32. Giordano P., Cernovich S. and Rudolph J. (2002) “Gender, crime and desistance: Toward a theory of cognitive transformation”, *American Journal of Sociology* No. 107, pp. 990-1064.

Based on these theories McNeill and colleagues³³ helpfully summarised the implications for criminal justice practice in eight themes:

1. Desistance is a difficult and complex process, likely to involve lapses and relapses. It is, therefore, important for criminal justice workers to be realistic and accommodate these setbacks and deal with them constructively;
2. Desistance is an individualised and subjective process. This means that “one size fits all” approaches will not work and criminal justice agencies will have to accommodate issues such as identity and diversity.;
3. Developing motivation and hope are very important tasks for criminal justice practitioners;
4. Desistance is a relational process, which involves a good relationship between the offender and the practitioner but also constructive relationships between the offenders and those who matter to them;
5. Apart from risks and needs, offenders have also strengths and resources that they can use to overcome obstacles to desistance. Supporting and developing these capacities is useful for criminal justice practice;
6. Desistance involves self-discovery and efficacy. Therefore, it is important for the practice to involve offenders in their own journey: work with offenders and not on them;
7. Developing human capital – skills and capacities – is not enough. Practitioners should also work on developing social capital and opportunities for ex-offenders to practice their new skills and identity;
8. The language of practice should be more positive and constructive and avoid identifying people with their undesirable behaviours.

6.2 “Who works” literature

Both theoretical models – RNR and Desistance – argue that although the content of an intervention is critical, the way it is delivered is equally important. This idea was developed further in the so-called “who works” literature that describes the skills and the characteristics needed for staff to work effectively for reducing the risk of re-offending and supporting desistance. Some

33. McNeill F. et al. (2012), “Reexamining evidence-based practice in community corrections: beyond ‘a confined view’ of what works”, *Justice Research and Policy* No. 14 (1), pp. 35-60.

scholars demonstrate that a hybrid approach in supervision is most effective – rather than a sole focus on either law enforcement or on rehabilitation.³⁴ Rex³⁵, for instance, demonstrated that offenders attributing change to the probation service perceived supervision as an active and participatory process. The probationers' change seemed to be attributed to the personal and professional commitment shown by their probation officers. The probation officer's sense of reasonableness, fairness and encouragement seemed to trigger a sense of personal loyalty and accountability from the probationer. Similarly, probationers frequently perceive receiving advice about their behaviour and problems as concern for them as individuals.

More and more researchers agree that offenders supervised by more skilful probation staff reoffend less, while staff that are trained are more skilful and achieve better results than those who have not been trained.

As it can be noted, all these studies put emphasis on some particular skills or characteristics that seem to work better with offenders. Dowden and Andrews³⁶ were the first ones who conducted a meta-analysis to identify what they called *core correctional skills*. These skills are the ones that are associated with reduced re-offending: effective use of authority, pro-social modelling, the use of resources within the local community, problem solving and positive relationships with probationers. As these skills seem to enjoy strong support from the criminological literature, we will present them briefly in the next few pages.

a) Relationship skills

In most cases, those subject to community sanctions and measures are involuntary clients. This is mainly because they did not choose freely to seek help or guidance from the probation service, but they were obliged indirectly to accept supervision under the threat of a custodial sanction. In the literature these clients are called *involuntary* or *mandated* clients.

Due to the nature of this relationship, some level of resistance is to be expected from the client. This resistance is usually expressed in the efforts of the offender to regain control over their life, simulating participation,

34. Skeem J. L. and Manchak S. (2008), "Back to the future: From Klockars' model of effective supervision to evidence-based practice in probation", *Journal of Offender Rehabilitation* No. 47, pp. 220–24.

35. Rex S. (1999), "Desistance from offending: experiences of probation", *Howard Journal of Criminal Justice* No. 38(4), pp. 366–383.

36. Dowden C. and Andrews D. A. (2004), "The importance of staff practice in delivering effective correctional treatment: A meta-analytic review of core correctional practice", *International Journal of Offender Therapy and Comparative Criminology* No. 48, pp. 203–214.

committing small violations, inciting others to bend the rules etc. However, as always, there is no absolute resistance and there is no absolute participation. On the contrary, in practice, the offender's motivation to participate in the supervision process can be placed on a continuum from involuntary to voluntary participation. Moreover, this motivation is often fluid and therefore can change depending on some personal or social events in the life of the offenders.

Probation officers play also an important role in influencing the motivation to participate by working on the quality of the professional relationship or applying other motivational techniques. We know from psychotherapy practice that the quality of therapeutic alliance is a good predictor of the outcome.

The working alliance or the therapeutic alliance has been defined in the literature in many ways but one of the most useful operational definitions is the one developed by Bordin³⁷ who describes it as having three essential elements: agreement on the goal, collaboration on the task and establishment of the bond. The bond is an emotional tie between the probation officer and the offender.

As suggested by Newman³⁸ the following strategies seem to be effective in establishing the working alliance in psychotherapy:

- ▶ speak directly, simply and honestly;
- ▶ ask about the patient's thoughts and feelings about being in therapy;
- ▶ focus on the patient's distress;
- ▶ acknowledge the patient's ambivalence;
- ▶ explore the purpose and goals of treatment;
- ▶ discuss the issue of confidentiality;
- ▶ avoid judgemental comments;
- ▶ appeal to the patient's area of positive self-esteem;
- ▶ acknowledge that therapy is difficult;
- ▶ ask open-ended questions, then be a good listener.

37. Bordin E.S. (1994), "Theory and research on the therapeutic working alliance: New Directions" In Horvath A.O. and Greenberg L. S. (ed.), *The working alliance: Theory, research and practice*, New York, NY: Wiley, pp. 13-17.

38. Newman M. (1997), "Evolution of the theory of health as expanded consciousness", *Nursing Science Quarterly* No. 10(1), pp. 22-25.

Practical tip

Apart from the above-mentioned subjects it would also be helpful for staff training to include: working with violent clients, working with quiet clients, how to maximise choices, how to build motivational congruence, how to deal with crisis (ruptures and resolutions) etc.

Some of these strategies could be effective also in involuntary clients. More specifically for this group, Trotter³⁹ has concluded that, for developing a strong working alliance, the probation officer should use the following strategies: role clarification, empathy, optimism, humour and self-disclosure.

As far as role clarification is concerned, probation officers should make sure that they cover the following aspects as soon as possible at the beginning of the contact:

- ▶ the dual role of probation supervision;
- ▶ what is negotiable and what is not;
- ▶ what are the limits of confidentiality;
- ▶ what is casework and what is case management;
- ▶ what are the offender's expectations;
- ▶ what are the limits of the relationship;
- ▶ what are the organisation's requirements.

Practical tip

It is important that the probation officer goes through these subjects together with the offender as soon as possible, even before writing the pre-sentence report or before conducting the first assessment. A good working alliance will impact on the quality of the assessment as well as what may follow during any period of supervision.

b) Pro-social modelling

Pro-social modelling was defined by Trotter⁴⁰ as a "way in which probation officers, or others who work with involuntary clients, model pro-social values and behaviours in their interactions with clients". Most of the pro-social

39. Trotter C. (2006), *Working with Involuntary Clients: A guide to practice*, Sydney, Allen & Unwin.

40. Trotter C. (2009), "Pro-social Modelling", *European Journal of Probation* No. 1(2), pp. 142-152.

strategies are based on learning theories. Indeed, rewarding or encouraging pro-social behaviours or discouraging anti-social or undesirable behaviours are the most critical elements of both theories.

Based on Trotter,⁴¹ pro-social modelling in practice seems to have four main components:

- ▶ identify the pro-social behaviour that needs to be reinforced;
- ▶ reinforce the positive behaviour;
- ▶ challenge the anti-social behaviour;
- ▶ act yourself as a role model.

Practical tip

Based on the same learning theories and on the extensive practice of Trotter⁴², it is essential that the rewards are relevant for the clients and administered effectively. It is therefore important that staff training covers all these details along with: pro-social feedback, how and when to challenge the anti-social behaviour, how to be a positive role model etc.

c) Problem solving

It seems that persistent offenders in particular may have deficits in their problem-solving skills. Spivak and Damphousse,⁴³ for instance, demonstrated that these offenders frequently have difficulties in recognising problems, in alternative thinking, in causal thinking, in generating alternative solutions and in adopting other's perspectives.

This can be the reason why some persistent offenders in particular jump on the first solution that seems to solve their problems. In many cases, this impulsive solution involves violence or maladaptive understanding of the problem. For many, the offending is just a maladaptive way to solve problems.

41. Ibidem

42. ibidem

43. Spivak A.I. and Damphousse K.R (2006), "Who return to prison? A survival Analysis of Recidivism Among Adult Offenders Released in Oklahoma, 1985-2004", *Justice Research and Policy* No. 8(2), pp. 57-88.

As in daily life, problem-solving is a process that is highly individualised. Each of us has his/her way of defining and solving problems. It is, therefore, important that probation staff share the following characteristics in relation to problem solving:

Practical tip

Training for probation staff could also include exercises on how causal, divergent or convergent thinking could be enhanced for the offenders.

1. to be sensitive to the cultural and subjective context of the client's problems;
2. to accept the offender as he/she is;
3. to understand the offender's difficulties;
4. to teach offenders the problem-solving process rather than solving the problems for them;
5. to be able to motivate clients to have confidence and generate alternative solutions;
6. to cultivate patience in analysing alternative solutions in terms of advantages and disadvantages;
7. to ask relevant questions etc.

Practical tip

Most often, the role of probation staff is to offer information or guide the process of problems solving in a teaching manner. However, it is essential that probation staff refrain from giving the offender ready-made solutions. We know this is challenging when probation services are overloaded with cases but in the long run the outcomes will pay off.

There are many models of problem-solving described in the literature. One of the most intuitive ones, is however, the one with seven steps: define the problem, collect information, identify the causes, generate solutions and analyse them, compare costs and benefits and decide on the best one, implement solution and re-evaluate the problem.

d) Motivational interviewing

Motivational interviewing is a method developed by Miller and Rollnick⁴⁴ as an efficient approach to overcome ambivalence that prevents people to

44. Miller W.R. and Rollnick S. (1991), *Motivational Interviewing, Preparing People to Change Addictive Behavior*. New York: Guilford Press.

make the desired changes in their life. Motivational interviewing is not a transformative intervention but a communication style that enhances the client's motivation for change. Therefore, the role of the probation staff is to create a certain motivational context that is required for change to take place.

The main general principles of motivational interviewing are:

- ▶ empathy
- ▶ amplify discrepancies
- ▶ avoid confrontation
- ▶ roll with resistance and
- ▶ develop self-confidence.

Empathic communication is essential in working with motivational interviewing. Acceptance is one of the main ingredients of this tool. However, client acceptance is not necessarily the same as approval. The probation staff response should be: "I accept you as a human being but I do not approve certain behaviours of yours". Acceptance and a non-judgmental attitude will encourage offenders to understand better and explore deeper the history of their own behaviour. Moreover, empathy and acceptance enhance the working alliance and the self-esteem of the client, which are very important in the process of change.

Each of us have some explicit or implicit life goals. Amplifying discrepancies is a tactic that places in contradiction these goals with certain anti-social behaviours. For instance, the desire to have a family and the anti-social behaviour that leads the offender to spend long time in prison. These cognitive dissonances stress the difference between what the client wishes to become and what he/she is right now.

The role of probation staff in this case is to ask open questions regarding the consequences of certain behaviours and their impact on achieving life goals. If done well, the client him/herself will find internal reasons for change.

Avoiding confrontation is essential as motivational interviewing is not about convincing people that they have a problem but a tool that helps them find their own reasons to change their lives in such a way that they can pursue their life goals more effectively. Therefore, whenever a probation staff member perceives any form of resistance from the client, he/she needs to change their strategy. One way that will surely trigger resistance is labelling. Thus, it is essential that probation staff avoid calling offenders, alcoholics etc.

Overcoming resistance is done usually by providing the clients more and more objective information about the problem. Usually, our opinions are grounded on certain information. If more information is available or the information is more accurate, it is likely that our opinions will change. Another way to overcome resistance is by redefining the problem or viewing the problem from another perspective. For instance, an offender's problem may be presented as being that of his/her best friend's.

One of the pre-conditions for starting a long and sometimes difficult change process successfully is to have solid self-esteem, on which to build. People need to be confident that they can make the change in order to even start the process. In some respect, self-confidence is a good indicator of the final outcome. In practice, self-esteem can be enhanced by the practitioner reinforcing the client skills, by giving prizes or other practical incentives for small progress or by providing the client positive examples from the past.

Motivational interviewing can be adapted depending on the cycle of change. According to Prochaska and DiClemente,⁴⁵ the change process includes six stages of change: pre-contemplation, contemplation, decision, action, maintenance and relapse. Depending on the client stage, motivational interviewing can mean different tactics and priorities. For example, for a pre-contemplation client, the tactics are: to develop the working alliance, active listening, amplify discrepancies and stress the person's strengths. The priority at this stage is to amplify the doubts regarding the problematic behaviour.

Practical tip

As the method has evolved in time, it is important for staff training to involve also: how to use 'change-talk', how to play the devil's advocate, how to use Colombo's technique etc.

e) Cognitive restructuring

As mentioned in the "What Works" section, the principle of responsibility seems to suggest that cognitive behavioural techniques – such as role play, coaching and so on – are the most effective ones in reducing re-offending.

In brief, cognitive behavioural theories are a combination of cognitive and behavioural theories. The first ones emphasise the role of the cognitive process. In other words, they stress the centrality of the thinking process in self-regulation and perception.

45. Prochaska J. and Di Clemente C. (1984), *The Transtheoretical Approach: Crossing Traditional Boundaries of Therapy*, Homewood, Dow Jones Irwin.

On the other hand, behavioural theories put forward the importance of the environment in the learning process. Depending on the feedback received, one behaviour can be reinforced or not. Besides these basic components, cognitive behavioural theories stress the importance of the thoughts-feelings-behaviour inter-relationship. Influencing one of them will affect the other two components.

Practical tip

(Suggest to the client): Imagine one violent situation from the recent past. What were the first thoughts that came to your mind? Were they helpful in that particular situation?

As far as work with offenders are concerned, three applications can be identified based on these theories: “self-talk”, “schemata” and distorted cognition⁴⁶.

Self-talk is a self-statement that people automatically tell themselves to support different behaviours. Some of these self-talks are helpful, while some others are unhelpful for a pro-social lifestyle.

Schemata are defined in many ways. They can be “cognitive structures for screening, coding and evaluating the stimulus...” They can be also “templates for processing the experience...” In other words, schemata are general assumptions about the world and the people, based on the previous experiences. They can be compared with glasses through which people see and interpret the environment and the events. Most of them are developed in childhood but they are revised during the adulthood. As they are very old, they are located in the amygdala part of the brain and therefore are very difficult to change. Usually, they are very strongly associated with emotions.

As in the case of self-talk, some schemata are adaptive, as they help people respond better to the environment and some are maladaptive, creating difficulties or problems.

46. Most of this section is based on McGuire J. (2000), *Cognitive-behavioral approaches. An introduction to theory and research*. Manchester, HM Inspectorate of Probation.

Examples (of maladaptive schemata among radicalised offenders)

- ▶ *Victim stance – see themselves as victim.*
- ▶ *Need for respect and control – obsessed with taking control on things and people, daydreaming about being a hero etc.*
- ▶ *Vengeful entitlements – believes people should be punished, believes in violence.*
- ▶ *Disrespect for other human beings – believes the Earth should be inhabited only by people sharing the same beliefs or characteristics as themselves, thinks there is a duty for their own “in-group” to fight others, thinks that members of other ‘groups’ are worthless.*

Cognitive distortions are sometimes expressions of the schemata, but they are usually less structured and less emotional. Cognitive distortions or cognitive errors are automatic responses to stimuli and can be functional or dysfunctional depending on whether they help people react better or worse to the environment.

Examples (cognitive errors)

- ▶ *Arbitrary inference or filtering – focusing on some aspects of the situation and ignoring the others.*
- ▶ *Catastrophising – expecting the worst.*
- ▶ *Over-generalisation – drawing conclusions from single incidents or from a limited range of events.*
- ▶ *Mind-reading – assuming that they know what others think etc.⁴⁷*

When working with schemata, self-talk or cognitive distortions, professionals are expected to follow different routines or procedures. One such routine could be:

- ▶ identify and describe the self-talk, schemata or cognitive errors;
- ▶ challenge these against facts and counter-narratives;
- ▶ adjust them in order to become more adaptive;
- ▶ integrate them into the normal routines of the person.

47. Beck A.T. et al. (1979) *Cognitive Therapy of Depression*. Guilford Press, New York.

In most cases, these cognitive contents are identified in direct conversations with the offenders. It is important to work on these elements as long as they are directly or indirectly connected to the offending behaviour.

If these elements are not directly identified in the offender's discourse, different exercises or strategies can be used: case studies followed by discussions on the identified cognitive errors, pros and cons around one thought, diaries and so on. Challenging the distorted or maladaptive schemata or cognitive errors is not an easy task. Professionals should be very patient and skilful in leading the discussions in a way that will not reinforce the existing maladaptive patterns. In this respect, motivational interviewing techniques can be helpful. Once the dysfunctional thoughts are identified and challenged, the alternatives need to be reinforced and integrated into the existing patterns. Strategies to ensure sustainable change should then be in place.

Example

Someone in close relationship to the offender (close friend, spouse etc.) could be trained to identify and reinforce the new and productive thinking pattern.

f) Group work programmes

Implementing community sanctions and measures can take place at the individual level, group level, family level and so on. Working with more than one person at the same time has many advantages. First of all, the group can offer its members mutual support. The participants can understand that they are not alone in that particular situation. The second major advantage is that, within the group, each participant can benefit but also offer support and guidance, as well as helpful challenge, to the others. Besides these two main advantages, the participants can also observe, test and adjust some new social behaviours, can practice communication skills, can develop team work skills and so on. Although the method was developed in the 1950s to work with alcoholics or neurotic patients, in more recent years the scope of the group work method has been expanded in many ways. Since the 1990s, in particular, the method is well established within the correctional services. Working with groups requires a certain level of training but the practice is definitely not that complicated or new for professionals. We all have experience in being part of some groups: in school, at the workplace and so on. Leading a group is very much based on professionalising these past life experiences.

Of course, a good group leader should be also aware of the group dynamic, group roles, selection of the participants, leadership style and so on. Apart from these elements of group work theory, the leaders should be familiar and trained in delivering different types of group work programmes, such

as those targeting: drink driving, domestic violence, offending behaviour, anger management, development of social skills and so on. These are examples of some of the most currently popular correctional group work programmes. Usually, these programmes come accompanied by manuals and instructions that explain to group leaders what they need to do, and when and how to undertake this work.

Practical tip

In some countries, group work programmes for offenders are accredited by independent experts. This can be considered as good practice as, by doing so, the implementing agency ensures that offenders receive the best, evidence-based interventions.⁴⁸

48. For one example, see Scottish Government, Scottish Advisory Panel on Offender Rehabilitation (2018), <https://www2.gov.scot/Topics/Justice/policies/reducing-reoffending/SAPOR>.

7. How to regulate community sanctions and measures

The relevant Council of Europe standards and related instruments are clear that the imposition and implementation of community sanctions and measures must be governed by law and carried out by authorities defined by the law. The relevant principles and basic standards are laid out extensively in the ERCSM. These include that rules about the types, duration and modalities of implementation of community sanctions and measures, shall be regulated by law and the conditions and obligations attached to community sanctions and measures shall be defined by clear and explicit provisions, as shall be the consequences of non-compliance with these conditions and obligations. In addition, the authorities responsible for deciding on the imposition, modification and revocation of community sanctions and measures shall be laid down in law, as will their powers and responsibilities. Any formal, including legal, obstacles that might prevent the use of community sanctions and measures with serious and repeat offenders, or in relation to certain types of offence, or any other such statutory limitations, should be reviewed and removed insofar as possible. The nature and duration of a community sanction or measure shall be in proportion to the seriousness of the offence and the harm done to victims, and shall take into account any risks assessed as well as the individual's needs and circumstances; suspects and offenders shall have the right to appeal to a judicial authority against a decision subjecting them to a community sanction or measure,⁴⁹ as well as a range of other provisions in these Rules.

Most of the Rules mentioned above emphasise the principles of *legality*, *proportionality* and the *due process* that all offenders should enjoy. Special attention is paid to the appropriateness and value of community sanctions and measures as alternatives to imprisonment. In this respect, the relevant authorities should make sure that no category of offender is excluded *ab initio* from the application of these types of sanctions and measures.

The main Council of Europe document focusing on the primary values of “just and effective use of community sanctions and measures” is the

49. Recommendation (2017)3, Rules 14-16, 19, 22 and 25.

Recommendation on ERCSM. The aims, the nature, the duration and the manner in which community sanctions and measures shall be regulated are provided in Chapter 1 – Basic principles: community sanctions and measures can enhance the prospects of social inclusion on which desistance from crime usually depends; national law shall provide for a sufficient range of suitably varied community sanctions and measures and these shall be made available to be used in practice; the nature and the duration of community sanctions and measures shall both be in proportion to the seriousness of the offence for which persons are being sentenced or of which they have been accused and shall take into account their individual circumstances; community sanctions and measures shall be implemented in a manner that upholds human rights and enables and encourages suspects and offenders to meet their responsibilities as members of the community; there shall be no discrimination in the imposition and implementation of community sanctions and measures on grounds of race, colour, ethnic origin, nationality, gender, age, disability, sexual orientation, language, religion, political or other opinion, economic, social or other status or physical or mental condition; community sanctions and measures shall be made available to foreign national suspects and offenders and implemented fairly and in accordance with the principles of these Rules, with due regard to relevant differences in their circumstances etc.

A number of additional key messages are important to be emphasised here:

- ▶ community sanctions and measures, beyond their afflictive character, should allow people to continue to live their lives in the community in line with their obligations and responsibilities. Therefore, community sanctions should be regulated in such a way to promote social inclusion and not only punishment and deterrence. By social inclusion we mean all measures that will support full and positive participation in one's community, including meaningful employment, accommodation and personal relationships;
- ▶ legislation should include provision for a wide range of community sanctions and measures, such as:
 - *pre-trial*: bail support, house arrest, deferred prosecution with probation supervision, electronic monitoring,⁵⁰ mediation,
 - *immediate community sanctions and measures, post-conviction*: suspension of the pronouncement of the sentence, suspended sentence, postponed sentence, community service, probation order, victim compensation, treatment orders, home detention etc.

50. See also Recommendation (2014) 4 of the Committee of Ministers on electronic monitoring.

- *post-custody community sanctions and measures*: conditional release, early release, community return etc.

Prosecutors and judges should be able to individualise their decisions or sentences according to the seriousness of the offence, the harm caused to the victim and the personal circumstances of the offender. Therefore, community sanctions and measures should be flexible and possible to combine with each other, and with other sanctions, as appropriate.

- ▶ community sanctions and measures should be proportionate to the seriousness of the offence and according to the circumstances of the offender. The key element here is the principle of proportionality. Community sanctions and measures should be proportionate and, therefore, they should not be alternatives to lesser sanctions such as fines or warnings. Community sanctions and measures should be alternatives to imprisonment and therefore contribute to the decrease of the prison population, as well as being valuable and appropriate in their own right.

Policy Pointer

It is important that state authorities regulate and prioritise community sanctions and measures for medium and high-risk offenders, thus, avoiding the so-called “net-widening” effect (bringing more people into the penal net than necessary). Furthermore, by doing so, the authorities will avoid another undesirable phenomenon – mass supervision. By “mass supervision” is meant, among other related phenomena, a large influx of low risk probationers under the supervision of probation services.

- ▶ Community sanctions and measures should be made available to all offenders without discrimination, therefore, policies and practices should be periodically reviewed to ensure that they do not result directly or indirectly in unfair treatment.

Example

An example of an indirect condition that can lead to unnecessary custody is homelessness. In many cases, homelessness can lead to imprisonment even for less serious offences.

- ▶ Community sanctions and measures should be available also for foreign offenders.

Policy Pointer

Legislators should avoid regulating conditions for community sanctions and measures that would exclude foreign national offenders from this option. There are some jurisdictions that restrict the application of community sanctions and measures by the requirement of needing a fixed address or domicile or strong family ties in the country. These conditions would frequently exclude foreign offenders from community sanctions and measures, if they cannot fulfil them.

The judiciary should be informed on a regular basis about the existence of the European Union (EU) Council Framework Decision 947/2008 on transferring probation decisions and alternative sanctions that allows EU offenders to be supervised by another member state than the one in which sentencing took place.⁵¹

51. For more information about how this Framework Decision works in practice, please see Probation Observatory, Training and Network, www.probationobservatory.eu

8. Compliance and breach

It is generally accepted that one of the primary aims of community sanctions, and specifically probation supervision, is to reduce the probationer's likelihood of re-offending. This is to be achieved through the dual approach of *supervision* and *help* in the community. Both of these approaches are incorporated into the concept of *supervision*, as defined in the Council of Europe Probation Rules:

Supervision refers both to assistance activities conducted by or on behalf of an implementing authority which are intended to maintain the offender in the community and to actions taken to ensure that the offender fulfils any conditions or obligations imposed, including control where necessary. Supervision may be mandatory or voluntary (upon the offender's request).

To begin with, community sanctions and measures should, as set out in the Council of Europe standards,⁵² be proportionate,⁵³ in terms of the nature of the measures and their duration, for example. To be other than proportionate can place unreasonable burdens on those being supervised. Particularly if such over-burdensome or even unreasonable or unrealistic, supervision requirements are perceived as unfair and/or unachievable, this may well increase the likelihood of non-compliance with the Court order, thus defeating its entire purpose, including the goal of reduced re-offending. In some jurisdictions for example, it is recognised that overly strict community supervision requirements can lead to elevated levels of non-compliance, resulting in turn to committal to custody, for what may have been 'technical breaches' of the supervision conditions.

Policy Pointer

The issue of compliance with the terms of a supervision order, in addition to achieving the goal of reduced re-offending, has been the subject of considerable research and practice attention over many years, as well as more recently in particular.⁵⁴ For example, legislation establishing probation

52. Recommendation (2017)3, Rule 3

53. That is, in proportion to the seriousness of the offence in question and taking into account the individual circumstances of the person being supervised.

54. See example of researches/publications under further reading.

systems, over a century ago in England, Wales, Scotland and Ireland – that is the Probation of Offenders Act, 1907 – provided for both, early discharge of the order, in the event that the person had cooperated sufficiently and supervision was no longer required, or for return to court in the event of non-compliance with probation supervision.⁵⁵ This type of legislative provision continues to the present day, across many jurisdictions.

The Council of Europe Probation Rules, in addressing the issues of enforcement and compliance, in general terms, urge that implementing agencies work to ensure active compliance by probationers in the first instance, and that they rely not only on the threat of sanctions for non-cooperation, in doing this. At the same time, there is a need to be “upfront” with clients, in informing them of the boundaries of supervision, what is required of them, the responsibilities of probation staff and the potential consequences of failure to comply with the terms of supervision. Where probationers fail to comply with supervision, supervising staff should respond promptly and clearly, taking full account of any reasons for the failure to comply. These issues are also reinforced in the ERCSM.⁵⁶

Policy Pointer

The detail of how breach processes operate in different jurisdictions can vary, in terms of the discretion available to probation officers regarding how such cases are managed, and what specific steps are subsequently followed, in particular circumstances. In some jurisdictions, any subsequent reoffence will trigger breach proceedings and a return to Court, for example. In other jurisdictions, probation services may use greater discretion in making such decisions. In others still, a reoffence is considered completely separate to the original matter that resulted in the individual receiving a supervised community sanction in the first place, and so does not necessarily trigger breach or a re-entry to Court. In the latter type of scenario, the overriding consideration in deciding whether a breach is warranted, is often whether the supervision of the probationer is or may be directly affected by the new action (including its impact on offending).

In considering the issue of compliance and breach, it is important to balance the competing issues of consistency and fairness, with individual

55. Irish Statute Book (1907), *Probation of Offenders Act*, Section 5, <http://www.irishstatutebook.ie/eli/1907/act/17/enacted/en/print> [Note: this legislation is still in force in Ireland].

56. Recommendation (2010)1, Rules 85-87.
Recommendation (2017)3, Rules 62 and 72.

circumstances and needs. The Council of Europe Probation Rules specify that in order to ensure compliance, supervision shall take full account of the diversity and of the distinct needs of individual offenders. This rule seeks to recognise and give effect to the fact that issues such as an individual's unique background and context, including for example, culture and ethnicity, relative poverty, literacy level, previous (perhaps poor) experience of dealing with state agencies, and so on, may impact on their ability to be compliant with supervision, compared to another individual, who may have a completely different set of life experiences and current context. These issues of proportionality and balance, as well as the possibility of modifying the terms of supervision orders, are also covered in the ERCSM.⁵⁷

Practical tip

As evidenced from research,⁵⁸ compliance is a complex and dynamic phenomenon. Compliance has many degrees and dimensions.⁵⁹ Usually, probationers start supervision with residual motivation to comply with the conditions and obligations. As supervision progresses, they could become more and more motivated to change the offending behaviour and improve their life prospects. However, this is not a linear process, but a flexible one, full of ambivalence, hesitation or enthusiasm sometimes. Probation staff should benefit from training to help them support substantive compliance and enhance the motivation for change.

In addition, the ERCSM⁶⁰ also stresses that where breach proceedings are instigated, "credit for any satisfactory compliance should be reflected in the length of the sentence" that may be imposed for such breach.

The Council of Europe Probation Rules⁶¹ also recognise the need for particular clarity regarding responsibility, i.e. who or what agency should hold

57. Recommendation (2010)1 Rule 54.

Recommendation (2017)3, Rules 67 and 71-72.

58. Sorsby A., Shapland J. and Robinson G. (2017), "Using compliance with probation supervision as an interim outcome measure in evaluating a probation initiative", *Criminology and Criminal Justice* No. 17 (1), pp. 40-61.

59. See Robinson G. and McNeill F. (2008): "Exploring the Dynamics of Compliance with Community Penalties", *Theoretical Criminology* No. 12(4), pp. 431-449. Robinson G. (2013), "What Counts? Community Sanctions and the Construction of Compliance". In Ugwuodike P. and Raynor P. (eds.), *What Works In Offender Compliance International Perspectives and Evidence-Based Practice*, Basingstoke: Palgrave Macmillan.

60. Recommendation (2017)3, Rule 70.

61. Recommendation (2010)1 Rule 80.

responsibility for managing compliance and breach, in the inter-agency context. This means specifically that in every case, no matter how many staff or agencies work with an individual, there should be an identified responsible member of staff with clear responsibility for assessing and co-ordinating the general work plan and for ensuring that appropriate contact with the offender is maintained, as well as for managing compliance. This is especially important where an offender is subject to more than one intervention or when more than one agency is involved. This is also crucial for good inter-agency work, and especially in the context of the need for only one agency being responsible for “holding” the Court order or sentence, and for providing assurance to the Court that their order will be managed appropriately and consistently. Apart from anything else, it is widely recognised that only one body can be held legally accountable in this way for the management of a Court order. The Council of Europe Probation Rules envisage that probation agencies should hold this role and responsibility, including providing reports to the judiciary and other competent authorities of the work being undertaken, an offender’s progress and the extent of their compliance, when and as required.

9. Working with the Court

Community sanctions and measures, including probation, have their historical antecedents, their roots, and receive their legitimacy from the Courts and wider judicial system. While probation services in some jurisdictions do work with those who may have offended outside the context of a Court order or sentence, even in those jurisdictions, the majority of probation “cases” arise and are managed on the basis of a Court or other judicial authority⁶² having ordered it. Similarly, in some jurisdictions, referrals of suspects or offenders to probation services may be initiated by prosecutors, for example at the pre-trial stage. Such referral may be for a probation officer’s assessment, and/or for the management of some pre-trial measure, such as supervision in the community, pending trial. Nevertheless, the ERCSM⁶³ clarifies the overarching principle that:

The authorities responsible for deciding on the imposition, modification and revocation of community sanctions and measures shall be laid down in law, as will their powers and responsibilities.

The commentary to this rule goes on to state that: “A further aspect of the principle of legality relates to the powers and duties of the deciding authorities which must be laid down in national law;” and that “the principle according to which competence to decide on the imposition, modification or revocation of a community sanction must be reserved for a deciding authority that is a court, judge, prosecutor or administrative authority only as laid down in law. The same is true where a pre-trial measure - a measure imposed before determination of guilt - is concerned.”

Firmly underlying this principle is the “affirmation of a principle limiting such decisions to a deciding authority, which is in itself a guarantee of fundamental freedoms and rights, and secures judicial independence having regard to the doctrine of the separation of powers and impartiality. It constitutes a manifestation of the principles underlying the rule of law which are jointly accepted and shared by the member states of the Council of Europe.” (ERCSM)

The extent that a court or other judicial authority may maintain involvement in a case, which has been referred to a probation agency, can vary between

62. In Appendix II to Recommendation (2010)1 “Judicial authority” is defined as: “a court, a judge, or a prosecutor.”

63. Recommendation (2017)3, Rule 16.

jurisdictions. In Ireland, for example, the sentencing court's role is generally finished once a decision regarding sentence or sanction of any sort is finalised. In others, the sentencing court may require regular update reports on the offender's progress on supervision.

The role of advising and reporting to a court, regarding the sentencing decision making, is an onerous one. In this regard, the ERCSM specifies that:

Advice to the court or the public prosecutor concerning the preparation, imposition or implementation of a community sanction or measure shall only be provided by staff of an organisation provided for by law.

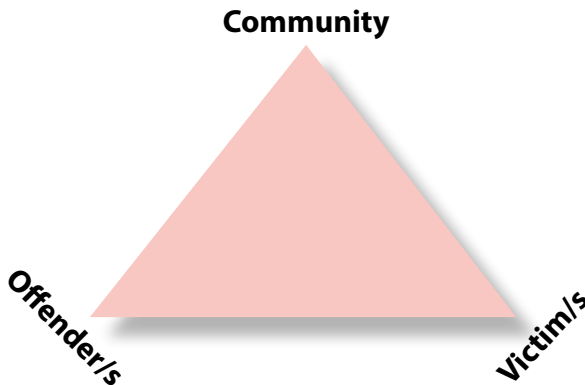
Particularly where guilt and the seriousness of the offence have been established, the judicial authority may seek specific professional information and/or advice before deciding on an appropriate penalty. That may well be the case when a judge for example, is considering the possibility of a community sanction, or of imposing a custodial sanction within which they wish to maximise the opportunity for rehabilitation and social reintegration. This role and function of providing full, impartial information about the individual's personal circumstances, as well as an analysis of their current offending, and of any previous relevant behaviour, and formulating and presenting this in a way that is helpful to the court or other deciding authority, is an extremely important one. It must be taken very seriously by probation agencies and managed to the highest standards. These standards must ensure that assessment reports provided to courts are reliable and of good quality and that staff involved in this work are appropriately qualified, trained and managed. These staff shall undertake a full assessment of the individual's situation, giving attention to the offence related needs, the risks of re-offending and how these may best be reduced, the feasibility of implementing any court order, the likelihood of compliance with any conditions or obligations, the individual's rights as a citizen and their social responsibilities.

Practical tip

The pre-sanction or pre-sentence report is a most important channel of communication for probation agencies to the courts. Special attention and specialised training should be provided to probation staff to produce high quality reports to the Court. This training will also need to be "refreshed" and updated from time to time, to ensure that relevant staff maintain the quality of their assessments and report writing. In addition, there is a need for first line managers to be skilled as professional coaches and mentors, ensuring quality standards on an on-going basis, in this aspect of probation work.

10. Working in and with communities

A diagrammatic representation of the interconnections between the criminal justice system's stakeholders is sometimes represented in the following triadic relationship:



It could be said that “the clue is in the title” - *community* sanctions and measures. While working primarily with offenders, and maintaining victims’ experiences and needs at the centre of that work, probation agencies are generally community based and community focused in their positioning, their context and their outlook. Probation also sources a significant part of its legitimacy from the community, including where that is manifested in the authority and decisions of the courts, on behalf of the wider community. In that respect, the involvement of communities is critical in offender rehabilitation and reintegration. The ERCSM recognise this:

As reintegration into the community is an important aim of community sanctions and measures, implementing authorities shall work actively in partnership with other public or private organisations and local communities to meet the needs of suspects or offenders, promote their social inclusion and to enhance community safety.⁶⁴

The Council of Europe, recognising the importance of the community dimension to both probation and prison work, chose ‘Community involvement in

64. Recommendation (2017)3, Rule 50.

prison and probation work' as the theme for the 21st CDPPS, held in Zaandam in the Netherlands.⁶⁵ In addition to papers presented by a range of academics, practitioners and policy makers, this conference also heard a joint presentation by two former prisoners/probationers from Ireland, the first time such a service-user input was heard at a CDPPS conference.

The Council of Europe Probation Rules and the ERCSM are replete with examples of how the work of probation agencies is so much embedded in and for communities. At the very basic level, a central goal of probation agencies' activities is about promoting and improving community safety. It achieves this through a range of interventions, activities and programmes, including community service, as well as a wider range of supervised community-based sanctions. These are undertaken by probation workers in co-operation with a range of community-based bodies as well as being done on behalf of the same community itself.

The ERCSM suggest that developing offenders' sense of responsibility to the community is, in and of itself, central to this work. The ERCSM devote a specific section (Chapter IV) to *Community participation* and set out the value of working in such partnership, that such community participation should not be for profit but only as provided for in law, and that, whatever the level of community participation in community sanctions, that overall authority for their management must remain with the official implementing authority, while any community body involved in this work must respect the appropriate boundaries of confidentiality. The ERCSM also emphasise that probation bodies need to encourage and develop the community (to include private individuals, as well as private and public organisations and services) to actively participate in the implementation of community sanctions and measures and assist offenders to develop meaningful ties with their communities, and to encourage communities to contribute to the social integration of offenders. They also advocate for probation agencies to put official agreements with community bodies for services, including providing clarity on the nature of respective duties and the way various tasks and functions are to be carried out.⁶⁶

It is also recognised that while probation agencies have a unique role in contributing to community safety, through offender rehabilitation and

65. More details on the CDPPS Conference, including papers and workshop presentations, are available at <https://www.coe.int/en/web/prison/conferences/-zaandam-2016-21conference-directors-prison-probation-services>

66. Recommendation (2017)3, Rules 27, 50-53 and 55.

reintegration, other bodies and agencies, and the community itself, play key roles in combining to facilitate offender reintegration. In reality therefore, community safety is a whole of community and whole of government imperative. This becomes particularly apparent when parts of the necessary jigsaw are missing: whether this is at a practical level such as where offenders cannot access appropriate or adequate accommodation, or at a more “conceptual” level, such as when ex-offenders cannot find acceptance in their community, following offending, and even following completion of the sanction imposed. It is one of the valuable roles of probation workers and organisations to act as advocates and catalysts for positive change, so as to promote positive community engagement in the work of offender rehabilitation and reintegration. It is also important, in this way, to harness the goodwill in local communities and in civil society organisations more generally, to cooperate with probation agencies and other government bodies, in this work.

Practical tip

There are many examples of how communities can contribute to the rehabilitation of offenders. One great example of this kind is the Circle of Support and Accountability (COSA) that was initiated in Canada as a cooperative movement between community-based organisations, faith-informed volunteers and the Correctional Service of Canada. Using this model, high-risk offenders can be accompanied by volunteers to facilitate the re-entry journey. COSA principles have travelled successfully to Europe in jurisdictions like the United Kingdom, The Netherlands, Ireland and so on. Another important initiative of community synergy is the Learning Together programme initiated by University of Cambridge (United Kingdom) together with different penitentiary institutions, where students from the college and from prisons learn together for at least one semester.⁶⁷ The programme is also implemented by University of Loyola Andalusia/Spain with promising results.

67. For more information, please visit: University of Cambridge, Learning Together, available at <https://www.learningtogethernetwork.co.uk/>

11. Community Service

Community Service, whereby an offender is obliged to perform a specified number of hours or days unpaid work in the community, as an alternative to a custodial penalty, dates back to at least the 1970s in some jurisdictions. A number of variations of this type of sanction now operate widely across European jurisdictions. In some jurisdictions, such as Ireland for example, community service is a direct alternative to a specified custodial sentence. In others, such as the United Kingdom, it can be used as a stand-alone community sanction. Community service is described briefly by the ERCSM as “unpaid work on behalf of the community;” and “the best-known form of reparation to the community;” as well as acknowledging community service to be one of the community sanctions most commonly in use. The Council of Europe Probation Rules⁶⁸ defines community service as:

...a community sanction or measure which involves organising and supervising by the probation agencies of unpaid labour for the benefit of the community as real or symbolic reparation for the harm caused by an offender. Community service shall not be of a stigmatising nature and probation agencies shall seek to identify and use working tasks which support the development of skills and the social inclusion of offenders.

Although community service was initially viewed by some probation officers at the time as “...alien to the social work ethos...”⁶⁹ when it was introduced in the United Kingdom for example, it was subsequently “embraced... as a renewal of the service’s original mission to keep offenders out of custody.”

The ERCSM have quite specific requirements regarding the implementation of community service, including that:⁷⁰

- ▶ tasks assigned to offenders doing community service shall be socially useful and meaningful and make use of and/or enhance the offender’s skills as much as possible;

68. Recommendation (2010)1, Rule 47.

69. Nellis M. (2007), “Humanising Justice: the English Probation Service up to 1972”, in Gelsthorpe, L. and Morgan, R. (eds.), *Handbook of Probation*, Cullompton, Willan, p.48.

70. Recommendation (2017)3, Rule 39-41.

- ▶ community service shall not be undertaken for the purpose of making profit for the implementing authorities, for their staff, or for commercial profit;
- ▶ working and occupational conditions of offenders carrying out community service shall be in accordance with all current health and safety regulations. Offenders shall be insured against accident, injury and public liability arising as a result of implementation.

Although the history of community service is one in which its value and credibility in the criminal justice system, and as part of what McCulloch⁷¹ described as "...the often contentious matrix of community penalties," was often seen as its robust reparative nature, it has come to be valued over the years, in many jurisdictions, as a positively rehabilitative and reintegration sanction in its own right.

Policy Pointer

In order to enhance the rehabilitative potential of this sanction, some jurisdictions allow that a certain proportion of the community service hours are translated into rehabilitation or treatment programme hours.

The constructive potential of community service has led to its increased favour with and use by Courts in many countries, and to implementing agencies exploring how the positive rehabilitative and reintegrative community service can be maximised.

Examples

- ▶ *In Ireland, community service programmes were extended, as a key component of the highly successful Community Return (supervised early release) programme,⁷² to suitable prisoners who had been serving between one and eight years custodial sentences, as part of a rigorous multi-agency community supervision programme.*

71. McCulloch, T. (2010), "Exploring community service, understanding compliance", in McNeill, F., Raynor, P. and Trotter, C. (eds.), *Offender Supervision: New directions in theory, research and practice*, Cullompton, Willan, p. 384.

72. See McNally G. and Brennan A. (2015), "Community Return: A Unique Opportunity", *Irish Probation Journal* Volume 12, [http://www.probation.ie/EN/PB/0/92A3B976DF13B9E28025802E00493470/\\$File/IPJ2015pages140to159.pdf](http://www.probation.ie/EN/PB/0/92A3B976DF13B9E28025802E00493470/$File/IPJ2015pages140to159.pdf)

- ▶ *Following a recommendation of the (Irish) Strategic Review of Penal Policy, in 2014,⁷³ the concept and practice of what is described as “Integrated Community Service” was introduced in practice.*
- ▶ *In Northern Ireland, the Enhanced Combination Order (ECO), which similarly combines the retributive and reparative elements of community service, with the more rehabilitative elements of a probation order, was introduced.⁷⁴*

73. See: Department of Justice and Equality of Ireland (2014) Strategic Review of Penal Policy: Final Report, Recommendation 11, p.49.

74. See Doran P. (2017), “Enhanced Combination Orders”, *Irish Probation Journal* Volume 14, [http://www.probation.ie/EN/PB/0/DC32ECC40C691B7F802581D30044E563/\\$File/PaulDoran_IPJ.pdf](http://www.probation.ie/EN/PB/0/DC32ECC40C691B7F802581D30044E563/$File/PaulDoran_IPJ.pdf)

12. Restorative Justice and the Victim Perspective

As pointed out by Canton and Dominey:⁷⁵ “It is not easy to point to a time when victims’ interests were a prominent (much less the main) consideration of a criminal justice system, which sets for itself priorities of detection, prosecution, conviction and punishment – all processes that centre on the offender.” To a large extent, in many European jurisdictions, that has changed in a significant way since the introduction of the EU Victims Directive,⁷⁶ which sets out the rights of victims and the responsibilities of relevant agencies at every stage of the criminal justice process. In some jurisdictions, particularly since the 1990s, many probation agencies, sometimes as part of a wider criminal justice system response, have generated strategic responses in relation to victims. These have included for example the publication of victim charters, the establishment of victim information offices and processes, or of restorative justice programmes.

Traditionally, probation officers in many jurisdictions did not meet crime victims directly. Nevertheless, they might have been required or encouraged to take account of victims in a number of ways: through incorporating consideration of victim issues into their preparation of pre-sanction reports or considering victim awareness in offender programmes. At an organisational level, some information provision to victims of crime might have been the extent of direct work with any victims, for many years. Well before the publication of the Recommendation of the Committee of Ministers of the Council of Europe Rec (2018)8 concerning restorative justice in criminal matters, the Council of Europe has acknowledged the role of probation agencies in helping victims of crime, as well as keeping a focus on the place of the victim in probation work with offenders. This is reflected in the text of both the ERCSM and the Council of Europe Probation Rules.

Helping to engender and develop a general sense of responsibility to the community in offenders, on account of their offending, is one thing; helping

75. Canton R. and Dominey J. (2018). *Probation*. 2nd ed., Abingdon, Routledge, p. 238.

76. European Union (2012), Directive 2012/29/EU of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime.

to develop such a sense of responsibility in an offender, for their own specific victim, is another. The European Commission has estimated that: "Every year, an estimated 15% of Europeans or 75 million people in the European Union fall victim to crime. More and more people are travelling, living or studying abroad in another EU country and can become potential victims of crime."⁷⁷ Conscious of this significant issue, the EU has adopted the EU Victims' Directive⁷⁸ which sets out the rights of victims of crime and the obligations that the various criminal justice agencies and others have in respecting and responding to this rights. The Directive has been transposed into national law in the various EU member states, clarifying the responsibilities of the different stakeholders, regarding information and service provision, and specifically with regard to the provision of Restorative Justice and similar victim-offender interventions.

In seeking to help offenders to repay their debt to society and to make good the harm they have caused through their offending, restorative justice interventions provide one range of opportunities to do this.

What has become known as 'restorative justice' has been growing in Probation and wider Criminal Justice practice in recent years. As van Garsse⁷⁹ has pointed out:

The notion of 'restorative justice' with origins in the USA and Canada from the 1970s onwards... found its way with remarkable ease through the United Kingdom and Western Europe to actually become a criminal policy approach that is well known everywhere and respected in circles both of the UN and the Council of Europe.

Recognising the advancement of restorative justice as an important part of criminal justice services, affecting victims and offenders as well as the wider community, and building on previous work in this area,⁸⁰ the Council of Europe set about generating modern standards for this work, based on developments to date and best international practice.

77. European Commission, *Victims' Rights*, https://ec.europa.eu/info/policies/justice-and-fundamental-rights/criminal-justice/victims-rights_en

78. European Union Directive 2012/29/EU

79. Garsse L. (van) (2016) 'Has Probation Any Impact in Terms of Reparation to Victims and Communities? Complicating a Simple Question', in McNeill, F., Durnescu, I. and Butter, R. (eds.), *Probation: 12 Essential Questions*, Macmillan, London, pp. 85-105.

80. Recommendation CM/Rec (99)19 of the Committee of Ministers to member States concerning mediation in penal matters.

The Recommendation CM/Rec (2018)8 concerning restorative justice in criminal matters⁸¹ brings clarity to what can sometimes be a confusing topic. It sets out valuable principles in concise form, including defining restorative justice and setting parameters for its use within the criminal justice process. It⁸² very helpfully provides the following clear definition to something that can at times evade clear definition:

“Restorative justice” refers to any process which enables those harmed by crime, and those responsible for that harm, if they freely consent, to participate actively in the resolution of matters arising from the offence, through the help of a trained and impartial third party (hereinafter the “facilitator”).

Restorative justice often takes the form of a dialogue (whether direct or indirect) between the victim and the offender, and can also involve, where appropriate, other persons directly or indirectly affected by a crime. This may include supporters of victims and offenders, relevant professionals and members or representatives of affected communities.

Furthermore, restorative justice can take place, at the request of any of the parties, or of the court for example, at any stage of the criminal justice process, including as part of a pre-sanction assessment, or as part of a sentence. It can be in a number of forms, including victim-offender mediation, restorative/family conferencing, or sentencing or peace-making circles, among others.⁸³ Restorative justice is now a well-established element of the practice of probation and community sanctions and measures more widely.

In line with international trends, Council of Europe Probation Rules (2010), ERCSM (2017) and specifically the Committee of Ministers Recommendation (2018)8, stress the position of the victim in the criminal procedure and in probation practice⁸⁴:

- ▶ where probation agencies provide services to victims of crime they shall assist them in dealing with the consequences of the offence committed, taking full account of the diversity of their needs;
- ▶ where appropriate, probation agencies shall liaise with victim support services to ensure that the needs of victims are met;
- ▶ where probation agencies are in contact with victims and/or seek their views, the latter shall be clearly informed that decisions regarding the

81. Recommendation (2018) 8

82. Ibidem, Rule 3 and 4.

83. Recommendation (2018) 8, Rule 5-6.

84. Recommendation (2010)1, Rule 93-97.

sanctioning of offenders are taken based on a number of factors and not only the harm done to a particular victim;

- ▶ even where probation agencies do not work directly with victims, interventions shall respect the rights and needs of victims and shall aim at increasing offenders' awareness of the harm done to victims and their taking responsibility for such harm;
- ▶ where probation agencies are involved in restorative justice processes, the rights and responsibilities of the offenders, the victims and the community shall be clearly defined and acknowledged. Appropriate training shall be provided to probation staff. Whatever specific intervention is used, the main aim shall be to make amends for the wrong done.⁸⁵

The Committee of Ministers Recommendation (2018)8 also emphasises other principles of restorative justice that have a significant impact on the probation practice, where they are applied: voluntariness, deliberative, respectful dialogue, equal concern for the needs and interests of all those involved, procedural fairness, collective consensus-based agreement, a focus on reparation, reintegration and achieving mutual understanding and so on. Furthermore, the Recommendation suggests that where the offenders are sentenced to supervision and assistance by the probation services, restorative justice may take place prior or concurrent to supervision and assistance in order for the restorative justice agreements to be considered when determining supervision and assistance plans.⁸⁶

Policy Pointer

It is important that these regulations are read in parallel with the United Nations (Handbook of Restorative Justice Programmes, 2006), Council of Europe (Rec(99)19 on mediation in penal matters) and the EU (EU Victim's Directive 2012/29/EU) regulations or guidelines. The European Forum for Restorative Justice or The Confederation of European Probation (CEP) can also inform victim aware probation practice.

85. Recommendation (2018)8, Rule 13.

86. Recommendation (2018)8, Rule 4 and 58.

Example

There are countries in Europe where the probation service is deeply involved in offering direct services to victims. One such example is the Czech Republic where the name of the service is the Probation and Mediation Service and where probation officers are involved in delivering victim-offender mediation, apart from the traditional offender supervision services⁸⁷.

Many organisations and networks across Europe concern themselves with Restorative Justice and its use in the justice system, as well as specifically as part of community sanctions and measures. One particularly valuable network, for practitioners and policy makers, is the European Forum on Restorative Justice.⁸⁸

87. For more information see Probation and Mediation Service of the Czech Republic, <https://www.pmscr.cz/en/about-pms/>

88. European Forum for Restorative Justice, <http://www.euforumrj.org>

13. Electronic monitoring

Electronic Monitoring (EM)⁸⁹ or “tagging”, as it is sometimes described, has been in existence since the 1990s. While initially EM was used as an alternative to pre-trial detention for juvenile offenders, nowadays it can be found at any stage of the criminal justice process, from pre-trial to execution of sentence and, for example, as part of post-release supervision of prisoners. Moreover, it can be used for offenders, but also for victims (see the victims of domestic violence programme in Catalonia) or for asylum seekers (see England, for example).

The first generation of EM was based on radio frequency – a technology that monitors the presence of the person in a single location. The second generation of EM is gaining more and more ground in Europe and is based on the Global Positioning System that monitors mobility.⁹⁰

EM is one of the most versatile penological devices: it can be just a tool, it can be an obligation, it can be a main sanction, it can be a prison modality and so on.

Its versatility and its expansion, called the attention of the Council of Europe which focuses on electronic monitoring in at least two of its recommendations: Committee of Ministers Rec (2010)1 and Rec (2014)4. The Council of Europe Probation Rules formulate two of the most important principles of EM regulation and practice:⁹¹

- ▶ when electronic monitoring is used as part of probation supervision, it shall be combined with interventions designed to bring about rehabilitation and to support desistance;
- ▶ the level of technological surveillance shall not be greater than is required in an individual case, taking into consideration the seriousness of the offence committed and the risks posed to community safety.

89. The abbreviation ‘EM’ will be used in relation to electronic monitoring, as this abbreviation has been in use for such a length of time that it has assumed widespread understanding and currency.

90. Nellis M. (2014), “Understanding the electronic monitoring of offenders in Europe: expansion, regulation and prospects”, *Crime, Law and Social Change* No. 62(4), pp. 489-510; see also Nellis M. (2015). *Standards and Ethics in Electronic Monitoring*. Council of Europe, <https://rm.coe.int/handbook-standards-ethics-in-electronic-monitoring-eng/16806ab9b0>

91. Recommendation (2010)1 Rules 57 and 58.

The Recommendation CM/Rec (2014)⁴ on electronic monitoring provides essential guidelines on how to regulate EM, including consideration of what are the basic principles, what are the ethical issues, how to ensure data protection, how to train staff and how to work with the public as well as on research and evaluation. Therefore, this text provides more practice related guidelines.

While acknowledging the difficulty of selecting only some provisions from this Recommendation, we would like to draw the attention of readers to the following EM principles that can help avoid some policy and practice complications:

- ▶ Where electronic monitoring is used at the pretrial phase, special care needs to be taken not to widen its use;
- ▶ When imposing electronic monitoring and deciding on its type, duration and modalities of execution, account should be taken of its impact on the rights and interests of families and third parties in the place to which the suspect or offender is confined;
- ▶ Electronic monitoring may be used as a standalone measure in order to ensure supervision and reduce crime over the specific period of its execution. In order to seek longer term desistance from crime it should be combined with other professional interventions and supportive measures aimed at the social reintegration of offenders;
- ▶ Where private sector organisations are involved in the implementation of decisions imposing electronic monitoring, the responsibility for the effective treatment of the persons concerned in conformity with the relevant international ethical and professional standards shall remain with public authorities;
- ▶ In order to ensure compliance, different measures can be implemented in accordance with national law. In particular, the suspect's or offender's consent and co-operation may be sought, or dissuasive sanctions may be established;
- ▶ Electronic monitoring confining offenders to a place of residence without the right to leave it at any time over the course of the overall requirement should be avoided as far as possible in order to prevent the negative effects of isolation, in case the person lives alone, and to protect the rights of third parties who may reside at the same place;
- ▶ Under no circumstances may electronic monitoring equipment be used to cause intentional physical or mental harm or suffering to a suspect or an offender;

- ▶ Staff shall be trained to communicate sensitively with suspects and offenders, to inform them in a manner and language they understand of the use of the technology, of its impact on their private and family lives and on the consequences of its misuse.

Compliance with these principles will ensure an effective, humane and ethical use of EM across Europe and will avoid dangerous developments such as the use of electroshock devices that can be triggered remotely by the computer when an algorithm detects suspicious activity. Some academics from Australia have been credited⁹² with reintroducing into the debate an ultra-punitive form of electronic monitoring that they are calling “technological incarceration”. This technology would involve near-continuous remote audio, visual and haptic⁹³ surveillance with an electroshock device in the ankle bracelet which can be triggered by the computer if an algorithm detects suspicious or unlawful activity. The potential for disproportionate use of such technology and the obvious potential torture elements involved makes this initiative at least controversial if not totally condemnable.

The ethical use of technology and algorithms in the justice systems can be also guided by the first Council of Europe Ethical Charter on the use of artificial intelligence in judicial systems and their environment.⁹⁴ One of the most important principles included in this document that has also implications for the use of EM is the principle of “under user control” that precludes prescriptive approaches and ensures that the users are informed actors and in control of their choices.

92. Nellis M. (2018), “Clean and Dirty Electronic Monitoring”, Justice Trends No. 3, <https://justice-trends.press/shaping-lives-the-use-of-electronic-monitoring/>

93. “Haptic” technology, also known as kinaesthetic communication or 3D touch, is a technology that can create an experience of touch, force, vibrations, or movement to the user.

94. European Commission for the Efficiency of Justice (2018), *Ethical Charter on the use of artificial intelligence in judicial systems and their environment*, <https://www.coe.int/en/web/cepej/cepej-european-ethical-charter-on-the-use-of-artificial-intelligence-ai-in-judicial-systems-and-their-environment>

14. Working in prisons

While, by definition, the management of community sanctions, such as probation, normally takes place in the community, this does not preclude the fact that probation agencies are part of the wider criminal justice system, and each part of that system impacts on the others. Similarly, offenders do not fall into the discrete categories of those who (only) go to prison or (only) receive a community sanction: clearly, there is considerable overlap between those who go to prison and those who are managed in the community. Community sanctions are frequently alternatives (“direct” or otherwise) to custodial sanctions in themselves, and penal sanctions often incorporate custodial elements *with* community-based elements, such as post-release supervision of one sort or another. The very definition of community sanctions, in the Council of Europe Probation Rules,⁹⁵ includes:

“...ways of enforcing a sentence of imprisonment outside a prison establishment,” as well as “sanctions and measures which maintain offenders in the community and involve some restrictions on their liberty through the imposition of conditions and/or obligations,” and “any sanction imposed by a judicial or administrative authority, and any measure taken before or instead of a decision on a sanction.”

In addition, the numbers of those in custody at any one time can include persons who have failed to comply with supervision in the community and are sent into detention on direct account of this non-compliance. All in all, the populations in “custodial” and “non-custodial” sanctions are by no means separate and discrete groups, but more likely to be interchanging and mixing on an on-going basis.

The European Prison Rules⁹⁶ are clear that while public safety and good order, as well as the punitive role of imprisonment, are all important, the reduced risk of future re-offending, and prisoner reintegration into society after release, are complementary roles for the prison system, and must be

95. Part 1, on Scope and Application. This section of the Council of Europe Probation Rules also contains a useful definition of the concept of “aftercare,” as: “the process of reintegrating an offender, on a voluntary basis and after final release from detention, back into the community in a constructive, planned and supervised manner”. In these rules, the term is distinguished from the term “resettlement” which refers to “statutory involvement after release from custody.”

96. Recommendation (2006)2 of the Committee of Ministers to member States on the European Prison Rules.

part of any prison system or regime. Indeed, Rule 6 (Basic Principles) states that:

All detention shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of their liberty.

These Rules also recognise the role played by probation agencies in prisoner rehabilitation and reintegration, for example, highlighting the value of probation assessments (including pre-sanction assessments which may have been carried out by probation officers) in implementing appropriate and effective regimes for sentenced prisoners. The European Prison Rules also specify ways in which co-operation by prison authorities with agencies such as probation, can be facilitated, to improve prisoner resettlement and reintegration after release. This co-operation incorporates assistance to prisoners in good time, begins early in the custodial sentence, including for those serving long sentences, takes account of the value of pre-release programmes and conditional early release, including under probation supervision, and focuses inter alia on the importance of family support and accessing employment opportunities. It is, of course a *sine qua non*, that prison authorities provide appropriate access to prisoners and other appropriate assistance, for staff of probation and other relevant agencies, to work in these ways with those in custody. This fundamental issue of access to prisoners is specifically addressed in the European Prison Rules⁹⁷ as well as in the Council of Europe Probation Rules.⁹⁸

In some European jurisdictions, such as Ireland and Romania, probation and prisons constitute separate organisations, although they may be agencies or parts of the same Department of Justice, for example. In others, such as England and Wales, Norway or Croatia, prisons and probation constitute one organisation. Even in the latter, “joined-up” type of structure, there can be differences in the ways in which the respective “branches” of the unified “corrections” organisation is managed and services delivered. These differences are beyond the scope of these Guidelines. Either way, it seems clear that there is general agreement that, whatever the organisational structure, probation and prisons need to cooperate to the greatest extent possible, if their respective and mutual goals are to be achieved.

There is sometimes debate about whether it is better, for service coordination and delivery that probation and prison services comprise parts of a unitary agency, or should it be better as distinct, but closely cooperating, bodies. In reality, a majority of European jurisdictions probably have probation

97. Recommendation (2006)2, Rules 103 and 107.

98. Recommendation (2010)1, Rule 60.

and prisons organised and operating separately to some extent. While, on the face of it, the question can seem to revolve around “separate” versus “joined-up”, there can be subtle differences in how systems are structured and how they work in practice. Having a “joined-up” organisation in the administrative sense is not necessarily a guarantee of smooth co-working, just as separateness does not necessarily imply a lack of coordination. The Council of Europe Probation Rules nevertheless do recognise the absolute need for inter-agency co-operation between probation and prisons organisations, however they are organisationally structured and state that:⁹⁹

Whether or not probation agencies and the prison service form part of a single organisation, they shall work in close co-operation in order to contribute to a successful transition from life in prison to life in the community.

Example

In Ireland, the probation and prison services are separate and distinct bodies, although they are both agencies of the Department of Justice and Equality. They work closely together at all levels, including having a joint strategic plan for this co-operation. In addition, there are up to fifty Probation Service staff working in Irish prisons, while there are several Prison Service staff co-located with Probation colleagues in Probation Service headquarters, working on the joint management of inter-agency projects and other shared programmes. This inter-agency co-operation has been publicly acknowledged through a number of Irish public service excellence awards in recent years.

The Council of Europe Probation Rules go on to suggest the value of inter-agency agreements between probation and prison bodies, at the same time as the need for clear rules on professional confidentiality, data protection and exchange of information, which should be provided for under national law, and specified where such inter-agency partnerships are established. There are also rules on probation supervision of prisoners following early release and in relation to aftercare, on a voluntary basis, once statutory post-release supervision is completed.¹⁰⁰

99. Recommendation (2010)1, Rule 39.

100. Ibidem, Rules: 40-41 and 61-62.

Example

A good example of how prison and probation agencies may work closely together is the preparation for release and after-care. The programme “Reducing the Risk of Re-offending” developed in Romania for instance, involves both prison and probation staff delivering group-based or individual sessions inside and outside the prison, depending on the individual plan developed with the prisoner.

15. Radicalisation and working with violent extremist offenders (VEOs)

Although the subject seems to be new, concerns about violent extremists and terrorists exist at least as far back as 1963 when the first international convention was adopted by the United Nations (Convention on Offences and Certain Other Acts Committed on Board Aircraft).¹⁰¹ The Council of Europe engaged more significantly with the topic in 2005 when the Convention on the Prevention of Terrorism¹⁰² was adopted. Up to 2019, thirty-nine member states and the European Union have ratified it. The great merit of this document is, among others, that it provides a very clear definition of a “terrorist offence”, encourages the states to adopt prevention policies and recommends measures for victim’s protection. The Council of Europe Counter-Terrorism Strategy 2018-2022¹⁰³ adds to this a strong emphasis on the role of women in preventing terrorism and the importance of individual risk assessment. The Action Plan on Building Inclusive Societies 2016-2019¹⁰⁴ complements the other documents by underlining the importance of education and promotion of social justice while combating discrimination and intolerance.

All these important principles and other policy and practice recommendations are included in the Guidelines and Handbook for prison and probation services regarding radicalisation and violent extremism.¹⁰⁵ Both documents build on the observation that overcrowding, inadequate prison conditions, racist discrimination and islamophobia, and disproportionate disciplinary measures can be factors that can increase radicalisation among offenders. In order to prevent radicalisation and promote social reintegration, the

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101. United Nations (1963), *Convention on Offences and Certain Other Acts Committed on Board Aircraft*.
 102. Council of Europe (2005), *Convention on the Prevention of Terrorism*.
 103. Council of Europe Committee on Counter-Terrorism (2018), *Council of Europe Counter-Terrorism Strategy (2018-2022)*.
 104. Council of Europe (2016), *The Action Plan on Building Inclusive Societies 2016-2019*.
 105. Council of Europe (2016), *Guidelines for prison and probation services regarding radicalisation and violent extremism*. Council of Europe (2017), *Handbook for Prison and Probation Services regarding Radicalisation and Violent Extremism*.

Council of Europe Guidelines and Handbook for prison and probation services regarding radicalisation and violent extremism advance some practice suggestions that should be followed by prison and probation agencies:

- ▶ human rights of offenders should be upheld with all categories of offenders, VEOs included;
- ▶ deradicalisation and disengagement practices should be based on a good understanding of radicalisation processes and the research evidence available regarding these interventions;
- ▶ staff need to be trained and supported to work effectively with this category of clients;
- ▶ VEOs are not a monolithic category. There are different characteristics specific to different types of VEOs (e.g. jihadists, right-wing, left-wing etc.);
- ▶ interventions with this group should be individualised and multi-modal. Interventions should potentially involve, among others, non-state agents, religious leaders, former VEOs, victims etc.;
- ▶ risk and needs assessment should be carried out by multi-disciplinary teams. Special attention should be paid to offenders vulnerable to radicalisation. Offenders' views should be canvassed and taken into account. Risk and needs assessment should be conducted based on standardised tools specifically tailored to identify the risk of radicalisation and set the targets of interventions;
- ▶ multi-agency co-operation is essential in covering both aspects: protecting the public and rehabilitating offenders. Prison and probation agencies should not work in isolation but communicate and establish links with community organisations and police or security services as appropriate to ensure continuation of the special programmes or aftercare;
- ▶ former prisoners should be assisted in contacting different support structures in the community from those that may have contributed to or supported their radicalisation. Families and social-networks should be involved if considered to have a potentially positive effect on the resettlement process;

- ▶ special attention should be paid to juvenile or young offenders, female offenders and first-time offenders;
- ▶ EM and other control measures may be combined with other professional interventions to support social reintegration.

Further reading is also recommended on this topic.¹⁰⁶

106. UNODC (2016), *Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons*, https://www.unodc.org/pdf/criminal_justice/Handbook_on_VEps.pdf
Radicalisation Awareness Network – Prison and Probation Working Group (2019), *Approaches to countering radicalisation and dealing with violent extremist and terrorist offenders in prisons and probation*, https://ec.europa.eu/home-affairs/what-we-do/networks/radicalisation_awareness_network/about-ran/ran-p-and-p_en

16. Working in partnership; multidisciplinary work; inter-agency co-operation

It is generally recognised that effective implementation of community sanctions and measures in general, and probation work in particular, requires an awareness and knowledge of the importance of inter-agency and multidisciplinary approaches to such work. Inter-agency work has been defined as:

A relationship between two or more organisations intended to increase the efficiency, effectiveness and economy of efforts of interventions with specific individuals or target groups of mutual interest to each agency.¹⁰⁷

This recognition of the importance and value of inter-agency co-operation in implementing community sanctions and measures is stated most clearly in ERCSM¹⁰⁸ as follows:

Implementing authorities shall work in co-operation with other agencies of the justice system, with support agencies and with the wider civil society in order to carry out their tasks and duties effectively and fairly.

This requirement for co-operation is reflected in the Council of Europe Probation Rules¹⁰⁹ as well. While the relevant Council of Europe standards and guidelines emphasise the individuality of persons subject to community sanctions and measures, and thus the need for appropriately individualised and tailored approaches to their supervision, they equally recognise¹¹⁰ that the implementation of a sanction or measure frequently involves the co-operation of other agencies and individuals, which in turn requires that appropriate professional working relationships are developed by implementing agency staff and any participating organisations or individuals, as well as on the “core” relationship between the suspect or the offender, and the

107. Canton R. and Hancock D. (eds.) (2007), *Dictionary of Probation and Offender Management*, Willan Publishing, Cullompton, pp.142-144.

108. Recommendation (2017)3, Rule 74.

109. Recommendation (2010)1, in particular Rules: 31, 35 and 37-38.

110. For example, see Recommendation (2017)3, Rule 31.

supervisor, all of which should be focused on reducing re-offending and on social reintegration.

Recognising the role of the wider community and its various organisations that may be able to assist in offender reintegration, it is important that implementing authorities work actively in partnership with other public or private organisations and local communities to meet the needs of suspects or offenders, promote their social inclusion and to enhance community safety and that individuals and organisations – public and private – in local communities be actively encouraged to cooperate in this. In some situations, such as where aspects of the implementation of community sanctions or measures are “sub-contracted” to other bodies, it is advisable to have written agreements in place for how this is to be managed.¹¹¹ The Council of Europe Probation Rules spell out¹¹² how such written inter-agency agreements are useful, especially with regard to such sensitive issues as client data protection and confidentiality.

This type of inter-agency co-operation is particularly required in specific types of work, especially work involving certain categories of offender. For example, the Committee of Ministers of the Council of Europe Rec (2014) 3 concerning dangerous offenders¹¹³ contains such provision; similarly, the Council of Europe Handbook and Guidelines on radicalisation and violent extremism emphasise the essential nature of such co-operation, beginning with information sharing and joint risk assessment and case planning, and so on.

Policy Pointer

In the United Kingdom context, it has been usefully pointed out that while cross-agency collaboration may be found to be constructive, where it is evidenced as contributing to programme success, such co-operation can bring with it a significant organisational overhead, and that the keys to overcoming “the complexities of delivering effective inter-agency work include establishing an appropriate and committed leadership; achieving clarity of aims, objectives and professional roles; and determining action plans and evaluation measures.”¹¹⁴

111. Recommendation (2017)3, Rules 50-51 and 55.

112. Recommendation (2010)1, Rules 40-41.

113. Recommendation (2014) 3 of the Committee of Ministers concerning dangerous offenders, Rules 36 and 50.

114. Canton R. and Hancock D. (eds.) (2007), *Dictionary of Probation and Offender Management*, Willan Publishing, Cullompton, pp.143-144.

Nevertheless, although it may represent a signpost to caution, such a caveat is not a reason not to strive to ensure that such collaboration is achieved to the greatest extent possible. In addition, there can probably be little doubt that inter-agency co-operation is one key foundation to successful implementation of community sanctions and measures, as reflected in the Council of Europe standards, and international research evidence.

17. The offender's voice and perspective

An increasing level of attention is being paid in recent times to the “voice of the offender” in both the planning and delivery of community sanctions and measures. Much of the reason for this revolves around the concept of service user “expertise”. While paid professionals, for example, should and do have particular expertise, through their education, training, professional experience and role, it is increasingly recognised that lived experience – by those who have been on the receiving end of community based and other sanctions, for example, as well as having experienced adverse childhood and other life experiences – confers a certain level and type of expertise and empathy. Reference has already been made above (see section on community involvement) to the input by two men with direct service-user experience of probation and prison in Ireland, to the CDPPS conference in the Netherlands in 2017.

The lived experience of offenders or ex-offenders can be acknowledged and harnessed in a number of ways:

- ▶ in direct interventions with service users, their experience can and should be acknowledged;
- ▶ service users can be consulted more widely, in the context of “customer service surveys”, evaluation, research and for the design of strategic plans and service delivery, and
- ▶ service users may be directly employed or contracted to provide particular services for implementing agencies.

Practical tip

One example of a tool that can capture the lived experience of offenders under supervision is the Eurobarometer on Experiencing Supervision that includes different dimensions of the supervision experience beyond the satisfaction, such as: supervision and legitimacy, supervision and the quality of the relationship, supervision and breach and so on.¹¹⁵

115. For more details, please visit: Durnescu I. et al. (2018), “Experiencing offender supervision in Europe: The Eurobarometer-Lessons from the pilot study”, *Probation Journal* No. 65(1), pp. 7-26, <https://journals.sagepub.com/doi/pdf/10.1177/0264550517748360>

The ERCSM¹¹⁶ provides that:

Implementing authorities shall enable and encourage suspects and offenders to inform them of their experience of being supervised so that policies and practices can be improved. Where these authorities work with victims, their views shall also be sought.

Policy Pointer

An article by Nicola Barr and Gillian Montgomery,¹¹⁷ in the 2016 edition of the Irish Probation Journal, is particularly useful in this context. In it, the authors conclude that: while the quality of the worker-service user relationship is critical in fostering desistance from offending, little is known about the complexities of these interactions and that service user forums can help facilitate such dialogue, to inform positive practice changes. The authors of this article also explore practical opportunities for probation staff to develop this type of engagement, in general, but specifically in their own organisation.

116. Recommendation (2017)3, Rule 104.

117. Barr N. and Montgomery G. (2016), "Service User Involvement in Service Planning in the Criminal Justice System: Rhetoric or Reality?", *Irish Probation Journal* Vol. 13, pp. 143-155, [http://www.probation.ie/EN/PB/0/F4F44068A5007CAB8025805E002BD5D/F/\\$File/NicolaBarr_GillianMontgomery_IPJ.pdf](http://www.probation.ie/EN/PB/0/F4F44068A5007CAB8025805E002BD5D/F/$File/NicolaBarr_GillianMontgomery_IPJ.pdf)

18. Working with volunteers

Much of the history of probation work, and its various current manifestations across the world, has included valuable contributions by volunteers. This involvement might be either at the pioneering stage of a system's development, or through the ongoing involvement of community representatives in probation projects and programmes. It is worth recalling that in member states where there is a long history of probation and community sanctions and measures, the history of such programmes is often in volunteer movements, which frequently started off through the initiative of one individual or a small number of like-minded persons, sharing an interest and commitment to providing alternatives to custodial sanctions. The role and contribution of volunteers in different aspects of probation work is recognised and provided for, in the Council of Europe standards.

According to the Council of Europe Probation Rules:¹¹⁸

***Volunteer** means a person carrying out probation activities who is not paid for this work. This does not exclude the payment of a small amount of money to volunteers to cover the expenses of their work.*

The value and position of volunteers in probation work is recognised in provisions of the Council of Europe Probation Rules and the ERCSM. According to the Council of Europe Probation Rules, probation must remain the responsibility of public authorities even when services are delivered by volunteers or by other agencies; probation service management should develop and maintain good working relationships with other bodies, including volunteers, who should be appropriately and adequately selected, supported and resourced for their work.¹¹⁹

The ERCSM develop the thinking on the use of volunteers in probation and community sanctions more widely, specifically providing that recruitment of volunteers can enhance community involvement in probation work and that volunteers can make an important contribution in this work as well as emphasising the need for good selection and training. Implementing authorities should also ensure that they clarify volunteers' roles and responsibilities, provide professional support, and that they are insured in carrying out their

118. Recommendation (2010)1.

119. Recommendation (2010)1, Rules: 9, 31 and 34.

duties, as well as being reimbursed for any out-of-pocket expenses incurred in carrying out their work for the implementing authority.¹²⁰

The Rules overall emphasise the importance and value of using volunteers in probation work, allied to the overarching principle of ensuring that such volunteers are selected and supported in such a way as to ensure the highest standards in their contribution to the delivery of the most professional services. In some jurisdictions, volunteers work directly and extensively with offenders under supervision. In Japan, for example, as described in an article by Kato¹²¹ volunteer probation officers far outnumber their paid counterparts.

Practical tip

Although the involvement of volunteers has a significant cultural and professional dimension, working with volunteers or mentors has become a regular practice in many European countries. Examples from the United Kingdom or France for example can be a good inspiration for other European jurisdictions.

120. Recommendation (2017)3, Rules: 85 – 89.

121. ato S, (2018), "Probation in Japan: Engaging the Community", *Irish Probation Journal* Volume 15, pp. 114 – 136, [http://www.probation.ie/EN/PB/0/4B3BF8484A4F1E638025834E004BFD70/\\$File/Kato_Saki_IPJ.pdf](http://www.probation.ie/EN/PB/0/4B3BF8484A4F1E638025834E004BFD70/$File/Kato_Saki_IPJ.pdf)

19. Case record, data protection and confidentiality

Case recording is an important part of the work of any professional and probation work is no exception. Good record keeping assists in effective case planning and management, facilitates case review and evaluation and research. Furthermore, as the Council of Europe Probation Rules emphasise, apart from anything else, “Records are an important means of ensuring accountability”:¹²²

All probation agencies shall keep formal, accurate and up-to-date records of their work. These records shall typically include personal details of the individuals concerned relevant to the implementation of the sanction or measure, a record of their contact with the agency and work undertaken in relation to them. They shall also record assessment, planning, intervention and evaluation.

Council of Europe Probation Rules also emphasise the principles of *confidentiality* and *data protection*, as well as *accountability*,¹²³ for which provision should be made in national law, in relation to the need for professional record keeping. Regarding the accountability principle, records should be checked regularly by managers and must be available for inspection by appropriate bodies.

In addition, “probation agencies shall be able to give an account to the judiciary and other competent authorities of the work being undertaken, offenders’ progress and the extent of their compliance,” where and as appropriate. Service user access to probation records is also important, so that “offenders shall have access to case records kept about them to the extent that this is foreseen in national law and does not infringe the right to privacy of others. The offenders shall have the right to contest the contents of these records.”¹²⁴

While most, if not all, probation agencies require their staff to maintain written records and case notes on their work, many now employ electronic means to facilitate such recording, in case tracking and management

122. Recommendation (2010)1, Rules 88 and 90.

123. Ibidem, Rules 89-90

124. Ibidem, Rules 91-92

systems. Others still, such as those in Ireland, the United Kingdom and Latvia, enable probation workers to use their electronic case management systems to interface and communicate directly – to a greater or lesser extent – with those of other agencies, particularly (but not necessarily exclusively) within the criminal justice system, but also those of other bodies such as education and health departments, municipalities and housing providers, among others. In some jurisdictions, mobile applications have been developed or are being developed, which allow service users to interface and communicate directly with their supervision agency.

Example

In some cases, such as in Northern Ireland, the system in question allows service users to use the mobile “app” as a helpful self-development “tool” to assist them and their supervising officer in the on-going management of their supervision.¹²⁵

For many probation agencies, these types of case management systems are still in the future. Nevertheless, there are well established standards of record maintenance in place and implemented, to a greater or lesser extent, across most if not all jurisdictions. Since case recording is such a vital component of professional practice, as part of the appropriate management of personal data in the context of human rights standards as much as anything else, and for the allocation and management of organisational resources for example, it assumes critical importance across probation agencies the world over. Such recording is also vital for the collection and analysis of data, as well as to enable systematic evaluation and research to be undertaken in any jurisdiction.

125. More information about Changing Lives app, Sugar Rush Creative, <https://sugarrush-creative.com/projects/pbni>

20. Inspection and monitoring

The provision of community sanctions and measures, including probation and parole, while being based on law, benefit also from appropriate inspection and monitoring, in order to ensure that relevant standards of practice and governance are maintained, that citizens receive appropriate and consistent services, and that positive outcomes are maximised. Such oversight often begins with internal systems and structures for monitoring and ensuring the implementation of relevant interventions and programmes. Inspection and monitoring may also include international inspection and oversight, whether non-binding, such as that carried out by a range of researchers, academics and lobby groups, or such as that carried out in the prisons field by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). The latter type of international oversight and monitoring is not yet provided for in the probation field.

The ERCSM provides that:¹²⁶

National law shall provide for the regular inspection and independent monitoring of the work of the implementing authorities. Inspection and monitoring shall be carried out by qualified and experienced persons;

and that:

Implementing authorities shall be open to scrutiny and shall regularly submit general reports and feedback information regarding their work to the competent authorities. Implementing authorities shall also be subject to inspection and/or monitoring and shall co-operate fully with all such scrutiny. The findings of government inspections and of independent monitoring bodies shall be made public.

In addition to inspection, which tends to examine, evaluate and report on services and thematic issues, there should also be provision made for individual service users, their representatives, or other concerned bodies, to make complaints to designated bodies, where decisions or processes for example are perceived or experienced as unfair. The principles that should underpin such complaints mechanisms are set out in the ERCSM.¹²⁷

126. Recommendation (2017), Rules 13 and 92.

127. Ibidem, Rules 93 - 97

Some, but by no means all, European jurisdictions have established bodies to monitor, inspect and report on the implementation of community sanctions and measures. In some jurisdictions, while such monitoring and inspection exists in respect of custodial measures and sanctions, and even for policing services, the same is not the case for those managing non-custodial sanctions.

Policy Pointer

Clients in the Netherlands can complain about how the Probation Service there treats them to a national Complaints Committee. This Committee has three members, fully independent from the Probation Service. The president of this body is always a judge and all members are appointed by the Minister of Justice.¹²⁸

128. For more info, please visit the CEP website/Probation in Europe/Netherlands, https://www.cep-probation.org/wp-content/uploads/2018/10/2008Netherlands_The.pdf

21. Research and evaluation

Research and evaluation are important for a number of reasons. Probation agencies need to ensure that their statements of policy and practice are made available to other agencies, to service users and to the general public, both nationally and internationally, in order to promote confidence and improve probation standards and practices.¹²⁹ They should also contribute to the development of research on the effectiveness of community sanctions, as well as ensuring that they use evidence-informed practice themselves. The Council of Europe Probation Rules¹³⁰ specify that the relevant authorities shall provide the necessary resources to have rigorous research and evaluation carried out and that:

the competent authorities shall enhance the effectiveness of probation work by encouraging research, which shall be used to guide probation policies and practices.

In this regard, the important concept of evaluation is defined as "...a thorough review of the extent to which set objectives have been achieved" and "decisions are taken about what needs to be done next."¹³¹ Relevant authorities should also use interventions with offenders that are aimed at rehabilitation and desistance and are constructive, using a variety of methods based on interdisciplinary approaches and sound knowledge derived from relevant research. In addition, the media and wider public should be regularly informed about relevant research findings and significant changes to law and policy in this field should be based on sound research findings and evaluation.¹³²

It is widely recognised that good practice in delivering community sanctions such as probation, need to be based upon a sound evidence base regarding what works in reducing re-offending. The Council of Europe Probation Rules clearly state that probation policy and practice shall be as far as possible evidence based.¹³³ In considering this, there is a need for various outcome measures, and not only recidivism, although that is important. There is also

129. Recommendation (2010)1, Rule 108.

130. Ibidem, Rule 104

131. Recommendation (2010)1, Appendix II

132. Recommendation (2010)1, Rules 76-77 and 105-107

133. Ibidem, Rule 104

an importance and value in using existing administrative data for research and evaluation purposes, aside from the need to implement separate or stand-alone research projects.

Policy Pointer

It may be useful to designate someone in the organisation to take responsibility for the development of data and research. It is also useful to develop good research relationships with universities and other institutions where researchers work.

There are a range of international peer reviewed and similar publications dedicated to probation and related themes. Regarding journals specifically dedicated to probation *per se*, two of the most notable are the (British) Probation Journal and the European Journal of Probation. These are both publications requiring subscription for direct access. Alternatively, they can be accessed through appropriate academic and other libraries. The Irish Probation Journal is a free, open-access annual (since 2004) publication, dedicated to probation matters in Ireland and practice more widely. It is published each autumn jointly by the Irish Probation Service and the Probation Board for Northern Ireland, and all issues and articles are available on the two services' websites.¹³⁴

134. Irish Probation Service, <http://www.probation.ie/>
Probation Board for Northern Ireland, <https://www.pbni.org.uk/>

22. Relationship with the media

One frequent concern or complaint expressed, especially by those working in probation and the management of community sanctions, is the perception that wider society does not understand, much less appreciate, what community sanctions are, what those managing them actually do, and the public value such services provide to offenders, victims and wider society. There are a variety of ways in which those involved in the administration and delivery of community sanctions and measures can and do make their work better known and understood. These typically involve engagement with the various communications media. The increasing use of various social media has added to the range and immediacy of access to service stakeholders, including the wider public.

The reasons why it is valuable to have positive engagement with the media are at least twofold:

- ▶ in a context where the general public may otherwise know little if anything about community sanctions and measures, it can be helpful in terms of increasing general awareness and societal support for community sanctions and measures;
- ▶ in addition, it will frequently be necessary for the management of probation agencies to respond publicly to adverse publicity, for example following a high-profile case that may have “gone wrong”. In such situations, it can be helpful if the relevant agency has an established relationship and understanding with medial outlets.

Some jurisdictions may have press and media oversight mechanisms, including a press ombudsman, as well as complaints procedures. In addition, when press or media coverage is considered unfair or illegal, the courts can provide recourse for those who have been on the receiving end of unfair media coverage. Nevertheless, it is probably fair to say that it is insufficient to wait for negative comment and then make complaints; better to take a proactive approach and seek to promote the work and value of community sanctions in a positive way. Some probation organisations have dedicated media and communications resources. Others may not have the luxury of such dedicated resources. Either way, it is useful for organisations to consider and plan ahead on this issue.

The issue of communications and relationships with the media are addressed in a number of Council of Europe instruments. For example, the Council of Europe Probation Rules state that probation agencies should provide the media and the general public regularly with factual information about their work, including the role and value of agencies delivering community sanctions and measures, as well as publishing regular reports on developments in the field, and making statements of policy and practice of probation agencies available to other agencies, to service users and to the general public, both nationally and internationally, in order to promote confidence and improve probation standards and practices. The ERCSM make similar provision, stating quite explicitly that policy makers, legislators, judicial authorities and the general public should receive recurring information on the economic and social benefits accruing from a reduced recourse to imprisonment and on the advantages of community sanctions and measures and that there should be a declared public relations policy. The ERCSM also specify that the general public and judicial and other deciding authorities should receive regular information regarding how community sanctions and measures are delivered, so that they can understand and appreciate their value, as credible and effective responses to criminal behaviour.¹³⁵

It can be difficult for staff who have been trained to provide probation interventions and services for example, to be expected to interface with the communications media effectively and with confidence. Nevertheless, while communications experts may need to be engaged by probation organisations, either on a permanent or contract basis, it is increasingly the case that particular staff in the organisation may need to be helped, including receiving appropriate training and support, to develop some media communications skills and capability. This is because there is frequently no one better than a person directly involved in something, to “tell the story” of how things work. In addition, while it is necessary to be prepared to deal with the communications media when things go wrong, it is probably equally important to be continually “story-mining” positive material from the organisation and its activities, in order to avail of opportunities to tell those positive stories to the public, and probation’s stakeholders, and thereby build up some “social capital” in people’s understanding and appreciation of what probation does.

135. Recommendation (2010)1, Rules 106 – 108.
Recommendation (2017)3, Rules 101 – 103.

Policy Pointer

It would be helpful for probation organisations to develop public relations and communications policies that would adopt a pro-active attitude towards informing the public and shaping its positive attitude towards the organisation and to offender rehabilitation. It is always easier to defend the organisation in case of 'bad stories' when the public is informed already about what the probation service stands for and why and how it carries out its activities.

23. European dimension

The entire rationale for the present Guidelines, and indeed for the work of the Council of Europe in the area of penological co-operation, is to ensure appropriate shared standards and consistency of their adoption and application across the member states. This is on the basis that, while various good policies and practices can be developed at the level of individual organisations and member states, it is really only by collectively agreeing what works best, that standards can be raised across Europe. It follows that individual organisations and member states can both learn from, and contribute to, positive developments in our field. It is also therefore appropriate that individual member states actively participate in the generation of such standards and their implementation. The benefits of such transnational co-operation are recognised repeatedly in relevant Council of Europe instruments, and explicitly, for example in the preamble to the ERCSM:

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering the importance of establishing common principles regarding integrated penal policies among the member states of the Council of Europe in order to strengthen international co-operation in this field;

Noting the considerable development which has occurred in member states in the use of sanctions and measures whose enforcement takes place in the community;

Considering that these sanctions and measures constitute important ways of combating crime, of reducing the harm that it causes and of enhancing justice, and that they avoid the negative effects of remand in custody and of imprisonment;

Considering the importance attached to the development of international norms for the creation, imposition and implementation of these sanctions and measures...

In addition to the work of the Council of Europe, the European Union has introduced a number of Framework Decisions to support and enable co-operation in the field of criminal justice, including with regard to community sanctions and measures. Three such Framework Decisions are:¹³⁶

- ▶ Council Framework on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions;

136. Links to the Framework Decisions can be found under References.

- ▶ Council Framework Decision on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the EU, and
- ▶ Council Framework Decision on the application, between member states of the EU, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention.

Such Framework Decisions, agreed by the EU, and transposed into the national law of member states, bring co-operation in criminal justice matters, including the management of penal sanctions and community sanctions and measures, to a new level of structure in its practice.

As well as the more formal transnational structures and bodies, such as the EU and the Council of Europe, there are also now well-established networks in various aspects of penal sanctions and their management, both community-based and custodial. For example, the CEP¹³⁷ is a network of bodies which, according to information on its website, “aims to promote the social inclusion of offenders through community sanctions and measures such as probation, community service, mediation and conciliation. CEP is committed to enhance the profile of probation and to improve professionalism in this field, on a national and a European level.” CEP therefore promotes pan-European co-operation and stimulates the exchange of ideas on probation, “making” an important contribution to the development of community sanctions and measures.

Probation bodies across Europe also collaborate on a bilateral or multilateral basis, through a range of developmental projects, supported and funded through the Council of Europe, the EU, and others such as Norway Grants.

Policy Pointer

With such intensive European co-operation comes also an active exchange of tools, programmes, good practices and so on. While this type of exchange leads in most cases to progress, a word of caution should be sounded regarding the penal policy transfer practices. Copying a policy or practice from another jurisdiction, with no adaptation or validation (in case of risk assessment actuarial tools, for example), or without adequate consideration of professional and related cultural issues, may create ethical dilemmas

137. CEP was founded in 1981 as the ‘Conférence permanente Européenne de la Probation’. Since October 2013, CEP is an acronym of Confederation of European Probation. CEP website: <https://www.cep-probation.org>

and confusion among practitioners. Emulation – considering the principles behind an intervention and adapting them to the local context – may be a better strategy for effective penal policy transfer.¹³⁸

138. For more on the benefits and risks of penal policy transfer, see: McFarlane M.A. and Canton R. (2014), *Policy Transfer in Criminal Justice: Crossing Cultures, Breaking Barriers*, Basingstoke, Palgrave MacMillan.

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Appendix 1: Further Reading

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These Guidelines are designed for policy makers and for management and staff of agencies implementing community sanctions and measures, and especially those responsible for the provision of what are generally known as probation services. The aim is to promote the development and implementation of community sanctions and measures across Europe and to serve as a useful source for the establishment of relevant policy and practice. As a starting point and foundation, it has the relevant standards of the Council of Europe. These Guidelines are a result of a multilateral meeting on implementation of community sanctions and measures, held in Strasbourg, in November 2018, as part of the Council of Europe co-operation activities in the penitentiary field, implemented by the Criminal Law Co-operation Unit. The text is also available online at: <https://www.coe.int/en/web/criminal-law-coop>

www.coe.int

The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.



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