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DOI: 10.1177/1468017306071176

The online version of this article can be found at:
http://jsw.sagepub.com/content/6/3/275
The Assessment of Risk in the National Probation Service of England and Wales

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Abstract

• Summary: This article focuses on the National Probation Service of England and Wales and explores the dominance of a particular approach to risk assessment. Reference is made to other areas of social work practice.

• Findings: The article starts with a description of probation practice in relation to the assessment of risk using the current risk/needs assessment tool, the Offender Assessment System (OASys). The article explores the distinction between risk of reconviction and risk of harm and the use of static and dynamic factors in assessment. It then moves to a consideration of issues arising in two areas. The first of these is the relationship between risk and concepts of proportionality and fairness within the justice system. The second area for consideration is some implications of the dominance of a particular form of risk assessment in the National Probation Service specifically in respect of the knowledge base of assessment; motivation; and the distinction between defensible and defensive judgements about risk made by individual practitioners.

• Applications: A preoccupation with the technicalities of risk assessment has encouraged the overshadowing of proportionality and the erosion of the rights of ‘risky’ offenders. A rights-based, rather than a risk-based, emphasis in criminal justice innovations might redress the balance. An approach which explores protective factors, rather than risk factors, is worthy of consideration.

Keywords assessment motivation probation proportionality risk
Introduction

Issues of risk assessment and risk management have become central issues of social work practice over the last two decades. Discrete areas of social work practice have the same aim of identifying ‘high-risk’ cases and managing them to reduce the potential risk. Resources follow the identification of individuals or situations as ‘risky’. The precise nature of the risk in question varies according to the practice setting, though generally assessments are concerned with the risk of harm which may befall an individual in their particular social situation. If a child, for example, remains in the family setting, is there a risk of harm through neglect or injury from others who have contact with that child? If an elderly person lives without support, might they be a risk to themselves as a consequence of declining physical or mental abilities? In respect of work with offenders within the statutory constraints of the National Probation Service of England and Wales (NPS) risk assessment is concerned not primarily with the harm that may befall an offender, but rather the harm the offender might cause other people. Risk assessment in this context focuses on the severity of an individual’s behaviour and on the probability of them being reconvicted, and takes a highly structured form in terms of both initial assessment and ongoing case management.

What is understood by ‘risk’ has changed over the centuries and current theorizing on risk offers several distinct perspectives on the meaning and application of the term (Lupton, 1999). Contemporary dictionary definitions of risk concern the likelihood of harm or other form of loss, thus as a noun ‘risk’ is ‘the chance or possibility of suffering loss, injury, damage, etc.; danger’ or ‘someone or something likely to cause loss, injury, damage, etc.’ As a verb ‘to risk’ is ‘to expose someone or something to loss, injury, danger, etc.’ or ‘to act or do something in spite of the chances of loss, danger, or some unfortunate consequences occurring’ (www.chambersharrap.co.uk).

However, this negative conceptualization of risk is quite recent. The concept of risk can be traced back hundreds of years, and historically risks were originally conceived of as being either good or bad. Giddens (1990) suggests that the notion of risk evolved in the sixteenth century when explorers set out on voyages across the world; whereas Parton (1996) states that the concept of risk emerged in the seventeenth century in the context of gambling, literally risking great gain or loss through the throw of the dice. Ewald (1991, quoted in Lupton, 1999: 5) explores its meaning in the Middle Ages; Alaszewski et al. (1998) summarize the non-English usage of the term in the ancient languages of Latin and Arabic. These earlier definitions of risk tended to view risk as referring to natural events, though by the nineteenth century risk was viewed as also residing in human beings (Ewald, 1991, quoted in Lupton, 1999: 6), a shift in the understanding of risk entirely consistent with developments in Enlightenment thinking.

In the latter part of the twentieth century the distinction between good risk and bad risk diminished, with risk now usually taken to mean a ‘bad’ risk. Yet
the distinction has not been entirely eliminated; thus risk-taking can be seen as highly desirable, and ‘good’, when associated with choice, for example in recreational activities such as betting and in the growth of interest in extreme sports. However, an approach to risk which sees risk-taking as a desirable enterprise is not widespread and ‘in social work, social care and probation, risk assessment is usually of “bad risks”, harmful events and behaviours to be limited or avoided’ (Kemshall, 2002a: 123).

In exploring risk in social work this article takes the example of the probation service and looks at how risk is understood in the specific context of assessing the behaviour of offenders. The authors of this article take the view that intervention in a probation context still contains elements of social work, broadly defined, in spite of both the introduction of separate training arrangements for probation officers (which only apply in England and Wales: in Scotland and Northern Ireland training is still unified) and a refocusing of the aims of probation intervention, which will be discussed in more detail below. (Support for this view can be found in Smith, 2001; Robinson, 2002.) In New Zealand since the mid-1990s all probation officers have been trained as social workers (Trotter, 2000).

There is an abundance of risk assessment and risk management literature written for probation specialists: we have written this article with a broader audience in mind. We start with a description of probation practice in relation to the assessment of offenders in general and then move to a consideration of issues arising in two areas. The first of these is the relationship between risk and concepts of proportionality and fairness within the justice system. The second area considered is the dominance of a particular form of risk assessment in the National Probation Service specifically in respect of the knowledge base of assessment; motivation; and the distinction between defensible and defensive judgements about risk made by individual practitioners.

Risk Assessment (and Risk Management) in the Probation Service

The last decade or more has witnessed a huge shift in probation practice. In summary, the contemporary probation officer now approaches his/her caseload as a case manager, assessing the intervention needed following a risk assessment using standardised risk assessment tools, then referring the offender to a partnership agency for specialised input, or requiring them to attend an in-house group work programme designed to address either their cognitive deficits in general terms (for example, Enhanced Thinking Skills programmes) or their specific offending behaviour (for example, Drink-Drive programmes). The content of these programmes and the probation staff delivering them are both accredited by the Home Office and the delivery is framed by the concept of ‘programme integrity’, that is, the material is delivered in a prescribed order, at a standard pace and with no deviation from the
accredited content. If an offender fails to comply with any aspect of the order, usually attending appointments, National Standards require the offender to be returned to court for noncompliance. (Lancaster, 2003: 29–30)

Thus the starting point for any aspect of probation intervention is an assessment of risk, and assessment at all stages of supervision is currently defined as one of the core tasks of the probation service. This is emphasized in A New Choreography, a strategy document for the NPS published in 2001, in which Stretch Objective 1 (of nine) is ‘more accurate and effective assessment and management of risk and dangerousness’ (National Probation Service, 2001: 9).

There are three broad themes which underpin this transition in probation practice: the reframing of crime control and penal policy; the managerialist reorientation of much of the public sector; and the development of the effective practice agenda. The reframing of crime control has occurred over the last 30 years with a shift from penal-welfarism and the rehabilitation of offenders as guiding principles to the need to manage risk and protect the public (Garland, 2001; Loader and Sparks, 2002). In terms of probation intervention, the needs of the offender have been replaced by protection of the public as a rationale for action. Public protection is now a statutory duty of the probation service (under the Criminal Justice and Court Services Act 2000) and in the Criminal Justice Act 2003 is given added authority as an aim of sentencing.

Acknowledging this change of emphasis and locating it within the broader reframing of crime control is not to suggest that there is anything linear, or sequential about it: i.e. rehabilitation of offenders has not stopped, and public protection has been on the probation service agenda since the time the service took on parole supervision in the 1960s. Public protection is very much a political and a managerial agenda: practitioners are still concerned about offenders as individuals (Farrow, 2004), and succeeding cohorts of trainee probation officers undertaking the Diploma in Probation Studies indicate that a belief in people’s ability to change is a primary motivating factor in choosing a career in the probation service (personal experience).

The second broad theme is managerialism. This refers to the developments of the 1980s and 1990s under both Conservative and New Labour governments which sought to reorganize the public sector by (for example) increasing accountability, developing consistency in service delivery, target setting, performance indicators, offering ‘value for money’, and increasing the centralization of policy making (Beaumont, 1995: 47–70; Nellis and Gelsthorpe, 2003: 238–9). The development of a national risk assessment tool as a measure of accountability and consistency is entirely congruent with other developments in probation practice, not least the development of the National Probation Service itself, and with developments in other areas of social work (see Adams, 2002). Managerialism has its critics, and an important feature is the way that the processes of supervision become an end in themselves, so the outcome of reducing offending is overshadowed by measurement of the processes involved. Are offenders seen the required number of times, are reports written or
supervision plans produced within the requisite number of days? Or targets are set which are divorced from rehabilitation – the number of community rehabilitation orders made, the number of offenders attending groupwork programmes – rather than being concerned with reduction or cessation of offending.

The third broad theme is the effective practice agenda, epitomized in probation practice by the emergence of the ‘What Works’ movement. This focuses on the employment of approaches with a proven record in reducing offending and has clear links with evidence-based practice – an increasingly familiar concept throughout social work, social care and the health sector (MacDonald, 2002). ‘What Works’ suggests that effective intervention should incorporate the principles of risk, need and responsivity. In the early literature this was stated as meaning that intensive intervention is more effective with offenders who pose a high risk of reoffending, appropriate treatment targets have to be identified, and ‘treatments’ have to be matched to the abilities and needs of the offender (Andrews et al., 1990, cited in Broadhurst, 2000: 118). There is a developing literature which questions ‘What Works’ as encompassing the most effective interventions for all offenders for all offences, and a recent literature review concluded that ‘it is too early to say what works, what doesn’t and what is promising (Merrington and Stanley, 2004: 17–18) They do, however, conclude that the risk principle – providing more intensive supervision for higher risk offenders – ‘is validated’ (p. 16). If this is correct, risk assessment then becomes crucial in targeting intervention at those offenders most likely to respond.

In turning to consider current risk assessment procedures it needs to be acknowledged that a variety of risk assessment tools have been developed for use within the probation service over the last two decades. The early ones were limited to assessing risk of custody and used only at the time a social enquiry (now pre-sentence) report was prepared. Assessing risk of custody was thus an assessment of the risk of something happening to the offender. During the 1990s, as developments briefly referred to above forced a reframing of the probation service rationale, a reconceptualization of risk took place, shifting risk from being understood as something an offender was subject to, i.e. custody, to something which was an attribute of offenders, i.e. risks associated with their future behaviour (Robinson, 2003a: 109). Focusing on risks associated with the behaviour of individuals, rather than with risks arising from the wider social, economic or political context, was a feature of social work intervention throughout the 1990s (Tanner, 1998, cited in Stalker, 2003).

Assessment tools developed in and for the probation service at this time attempted to assess someone’s risk of reconviction using ‘static’ information about an individual and their previous behaviour, for example date of birth, sex, age at first conviction, number of custodial sentences, number of previous convictions, type of offence and age when the current offence was committed. These were considered to give an objective measurement of someone’s risk in a given situation. Such assessment is often termed actuarial and is most familiarly used in the insurance industry.
Assessment based on static factors alone contained several weaknesses. The first weakness lay in the rather general nature of the assessment they produced. Thus actuarial risk assessment was helpful in determining which groups of offenders were most likely to be reconvicted – for example, 5 out of 10 offenders of that age, gender, with those convictions and this current offence will be reconvicted – the focus was not to determine which individuals within that group would be reconvicted. Another weakness concerned precisely what actuarial risk assessment was measuring – the risk being assessed was the probability of reconviction, not reoffending, and only 3 per cent of offences result in a caution or conviction (Barclay and Tavares, 1999) Actuarial risk assessment could not predict anything about the type or seriousness of offending in the future, and it offered little in terms of either suggesting an intervention which might help reduce offending or determining changes in levels of risk over time: there were also concerns about reliability in practice, as different practitioners appeared to interpret information about offenders in different ways (Robinson, 2003a: 115–17).

The introduction of non-static factors into the assessment helps overcome some of these weaknesses. These non-static factors have emerged from the What Works research and indicate attributes and lifestyle factors which can be associated with offending and which may be open to change. These aspects are known as dynamic risk factors and are currently considered to be accommodation; education, training and employability; financial management and income; relationships; lifestyle and associates; drug misuse; alcohol misuse; emotional wellbeing; thinking and behaviour; and attitudes (Home Office, 2002: 120). In the criminal justice context such factors are also referred to as criminogenic needs, that is ‘those needs or problems which research has shown to be directly related to the risk of reoffending’ (Robinson, 2002: 261), although this research is not without its critics. Kendall (2004: 76–7), provides a review which summarizes concerns about the studies underpinning What Works initiatives: inconsistent or contradictory research findings; quantitative methods which cannot take account of interpersonal dynamics within the groupwork programmes which form the bulk of the interventions; a publication bias in favour of large-scale studies with positive results; a short follow-up period in research terms; distortions due to crude categorization of dissimilar primary studies; small sample sizes; a heavy reliance on samples largely made up of young American males; and problems associated with relying on recidivism (or lack of it) as the indicator of programme success.

Focusing on criminogenic need as the basis of risk assessment is entirely consistent with developments in social work which look at the appearance of the client’s immediate behaviour to determine intervention rather than the causes of that behaviour (Howe, 1996): how clients manage their anger, rather than why they feel a loss of control. The point is well made in Gwyneth Boswell’s important contribution ‘Deconstructing Dangerousness’ (2002). Her research looked at a third of young offenders aged 10–17 who were in prison...
following grave crimes of violence (over 300 individuals), and she explored the extent to which these offenders described as ‘dangerous’ had unresolved issues concerning loss and childhood experiences. These, she concluded, were more relevant to their offending than apparently criminogenic factors such as lack of employment or excessive drinking:

what really makes them dangerous is the combination of factors which interact to make them violent, which may or may not still be present, or which may conjoin only once in a lifetime – for example, where, as is frequently the case, murder is committed within the confines of a family and is the product of particular interlocking dynamics at that time. (Boswell, 2002: 152)

The probation service has used several risk assessment tools during the last 10 years, details of which can be found in Beaumont (1999), and the current risk-needs-assessment instrument, rolled out across both probation and prison services during 2004–5, is the Offender Assessment System (OASys). It includes both an assessment of the likelihood of reconviction in respect of a specific offender based on static and dynamic factors, and an assessment of the risk of harm an offender poses to themselves and others.

All offenders undergo a general assessment of risk, provided by OASys, after which specialist assessments may take place. Specialist assessments are available for particular offences or characteristics as follows: sex offender; violent offender; basic skills; drug use; alcohol; mental health; dangerous and severe personality disorder; and domestic violence (Home Office, 2002). Specialist assessments for sex offenders and domestic violence cases would be triggered by the nature of the offence under consideration; issues such as drug use and mental health difficulties would emerge during the completion of OASys.

Looking at this process in more detail, in terms of risk of reconviction, OASys gathers information in the broad areas of static risk factors, and dynamic risk factors. Elements assessed as having a bearing on someone’s offending are reviewed regularly during supervision, as these features of someone’s life can change and contribute to a revision of the assessment of risk. The relative importance of dynamic factors in determining motivation to offend will vary between individuals, and their incorporation can assist in an assessment of risk based much more on the offender as an individual. Supervision can therefore be targeted at an attribute of the offender, or a lifestyle issue which may be open to change and which can therefore reduce their risk of reoffending.

An offender’s risk of serious harm is assessed in a separate risk-screening document, and the questions in this cover the detail of past offending, current offending and the following risk elements: harm to self; harm to others, including staff and prisoners; risk in respect of ‘escape/abscond, control or breach of trust’; and personal vulnerability (Home Office, 2002: OASys Harm Screening, 1). Additionally the initial OASys questionnaire, though assessing risk of
reconviction, asks at the end of each section whether the issue explored in that section – e.g. accommodation, relationships – leads to a risk of harm. If issues are identified as leading to a risk of harm then these are given priority in supervision even if they have a low score in terms of risk of reconviction. Both static and dynamic factors thus form part of the screening for serious harm.

The risk of reconviction (with each element in the assessment given a weighted score and totalled on a scale of 0 to 168) and the risk of harm (categorized as very high, high, medium, low) indicate the type and particularly the quantity of supervision, including levels of restriction of liberty, for example where they are allowed to live and work or with whom they are allowed to associate. Someone assessed as having a low risk of reconviction and harm might be seen by a probation services officer (i.e. non-Diploma in Probation Studies qualified staff) at the minimum frequency allowed under the National Standards that govern the NPS’s contact with offenders.

Higher risk of harm or of reconviction would attract the support of a probation officer, possibly group work intervention, or increased frequency of reporting, or electronic monitoring of an offender. This is often termed ‘dosage’ in the literature: measuring the amount of intervention according to the level of risk (McGuire, 1998).

Matters Arising

There are two particular areas upon which we would like to comment. The first concerns the relationship between risk and concepts of proportionality and fairness within the justice system; the second, the specific form of risk assessment favoured by the probation service, focusing on its knowledge base, motivation and the tension between making defensible and defensive decisions in the work of individual practitioners.

The relationship between risk and concepts of proportionality and fairness within the justice system has recently been explored by Barbara Hudson, who has written eloquently about the ‘threats to justice inherent in contemporary risk society’ (Hudson, 2003: 73). Proportionality and fairness are two key aspects of justice; that is, a person should be sentenced on the basis of the amount of harm their behaviour has caused, and secondly, there should be an equality of treatment before the law. Proportionality in sentencing is a characteristic of retributive, or ‘just deserts’, principles of punishment, and found clear expression in the Criminal Justice Act 1991. This sought to restructure sentencing practice with the intention that the seriousness of the offence committed was the prime determinant in deciding sentences: thus, people were to be sentenced on the basis of behaviour already demonstrated. Offences were ‘so serious’ that only a custodial sentence was justified or ‘serious enough’ to warrant community intervention; offender characteristics could mitigate the sentence, but only so far.
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Subsequent legislation reintroduced deterrence and incapacitation as sentencing considerations. The recent Criminal Justice Act 2003, to be implemented over the next four years, introduces a new sentence for public protection: adults who have committed specified sexual or violent offences and who have been assessed as dangerous will receive one of two new sentences for dangerous offenders, or a discretionary life sentence.

One of the findings of Managing Offenders, Reducing Crime (Carter, 2003) which was supported in the Government’s response Reducing Crime – Changing Lives (Home Office, 2004) was that there should be ‘a gradation in community sentences based on a risk assessment of offenders’ (Home Office, 2004: 12), with the most intensive supervision and monitoring reserved for the highest risk offenders. The ‘proportionality’ approach to sentencing of the Criminal Justice Act 1991, diluted by subsequent legislation during the decade following its implementation, has been dissipated entirely by this new legislation, clearly shifting from a retrospective ‘just deserts’ rationale to a prospective calculation about behaviour, particularly in respect of future risk of harm.

Proportionality is closely linked to the rights of offenders, and traditionally professionals in the criminal justice system have had this as a major concern. However, a particular development in the last decade has been the incorporation of a victim perspective into much criminal justice work, the NPS being no exception to this. This, together with the revised remit of public protection and ‘the powerful construction of communities as groups of potential victims’ (Hudson, 2003: 65), has shifted the focus away from the offender to such an extent that the erosion of the rights of offenders has happened with little comment or resistance. Hudson discusses this in terms of the emergence of a ‘zero sum’ approach to rights and restrictions in which the enhancement of the rights of one group of necessity leads to the diminution of the rights of another group. The difficult task of balancing the rights of groups or of individuals is overwhelmed by this rather more straightforward zero sum approach. But who, then, should have their rights diminished? In a risk society, the answer is also straightforward: those who are assessed as posing a risk. Thus ‘the tenor of the time is that some people – the risky – have no rights to liberty’ (p. 74) and that their rights ‘are forfeit to protect the rights of others’ (p. 65). An impressive illustration of the point is provided by the (then) West Yorkshire Probation Service’s Public Protection Policy: ‘the protection of the public is paramount in the handling of confidential information and takes priority over the rights of individuals with whom the police and the probation service come into contact’ (West Yorkshire Probation Service, 2000: section 3.1).

Elsewhere, in an address entitled ‘Human Rights, Public Safety and the Probation Service: Defending Justice in the Risk Society’, Hudson suggests that the dominance of risk, a loss of contact with proportionality in the quest to manage risk, and a slide towards risk control are all features of contemporary probation management and practice. In countering these, Hudson advocates a
‘positive rights agenda’ which necessitates looking at the balance of rights to be 
struck in actual situations. Innovations in criminal justice and/or crime preven-
tion should incorporate a rights audit:

Which rights, of which parties, are brought into question by the innovation?
Can rights be ranked in any way so that conflicts can be resolved?
Are some fundamental, some second order?
Are some immediate and certain, some distant and possible? (Hudson, 2001: 118)

Thinking in terms of rights also ensures concern for risks, as the rights of all 
members of the community would be considered, and these rights would 
inevitably encompass issues of public protection and community safety. Risk 
thinking, conversely, does not ensure concern for rights. The current OASys 
document represents risk thinking, and were any subsequent refinements to 
start from the premise of rights thinking this would at least engender some 
discussion about proportionality.

Proportionality is about determining a response to behaviour already 
committed. New ways of framing responses to crime look to the future to deter-
dine the level and type of intervention in the present. In Garland’s words; ‘the new 
criminologies tend to view crime prospectively and in aggregate terms, for the 
purpose of calculating risks and shaping preventative measures’ (2001: 128). This 
observation applies in social work more generally: for example, in child care, 
although the policy emphasis is child welfare, there is a possibility that limited 
resources mean only those children ‘at risk’ receive support, not those simply ‘in 
need’ (Waterhouse and McGhee, 2002). Intervention here is precisely about ‘calcu-
lating risks and shaping preventative measures’ with perhaps a pressure to direct 
resources towards those who may (possibly) be at risk from some future behav-
ior and away from those who may (actually) be in need in the present.

The second area for consideration concerns the nature of the risk assess-
ment tools adopted by the probation service. There is no question that the 
development of risk-needs assessments incorporating criminogenic needs helps 
overcome some of the weaknesses of an actuarial approach to risk assessment, 
as discussed earlier in this article. However, risk-needs assessments themselves 
have weaknesses, summarized by Robinson (2003a: 120): the length of time 
taken to complete the paperwork; concerns about deskilling/deprofessionaliza-
tion; and whether this assessment is appropriate for minority groups of 
offenders, as the norm in devising areas of need for inclusion in OASys has been 
young white men. Concerns around onerous paperwork and deskilling are 
perhaps familiar when any new structure of intervention is suggested, particu-
larly those which challenge practitioners’ clinical judgement, and will receive 
no further comment here. However, concerns about the research populations 
used to determine criminogenic need raise fundamental questions about 
whether OASys is appropriate for all offenders, particularly in respect of gender 
and diversity (Shaw and Hannah-Moffat, 2004). We would add three further 
areas that we would like to comment on in more detail: the epistemological
framework of assessment; the motivation of offenders; and defensive and defensible decision making of the practitioners.

Firstly, the knowledge base. The approach to risk contained within OASys illustrates the main features of the cognitive science approach to risk. These are that risk can be measured; that ‘probability’ and ‘hazard’ are the key elements in this equation; and that increasing the sensitivity of risk assessment tools ensures that ‘risk’ can be predicted with greater accuracy. Much of current criminal justice discourse concerns public safety and protection. The NPS claims expert knowledge in respect of who poses a threat to public safety, and this claim is enhanced by the use of scientific method to produce a consistency of assessment based on objective criteria. These assessment procedures thus help the NPS to ‘sustain its claim to a central place in responses to crime’ (Horsefield, 2003: 377) and, in our view, may go some way towards explaining the dominance of the cognitive science perspective in risk assessment and management in the NPS.

In the wider social work context there is a tendency for social workers, encouraged by neo-liberal philosophies, to view clients as rational agents who have a freedom of choice about their actions (Howe, 1996). Similarly, risk assessment tools developed within a cognitive science perspective use the typology of a rational choice offender, who will weigh up gains and losses before taking action, who will want to change errant behaviour once their ‘faulty’ thinking is understood. Such an offender is the key feature of classical criminology (Walklate, 2003). However, this classical rational approach to decision making is not the only way in which people make decisions. In an article written some years ago, but which is worthy of renewed consideration by criminal justice professionals, Tallant and Strachan (1995) review a model of decision making which shows that the way a person frames a situation determines how they treat risks. An important framing mechanism is in terms of ‘gains’ or ‘losses’. If an offender perceives his or her situation to be in the ‘domain of losses’, rather than the ‘domain of gains’, risk-seeking or risk-taking behaviour may be viewed as more acceptable. This helps explain why apparently irrational behaviour may actually be viewed as entirely rational by the person undertaking the behaviour. For example, in our own practice experience, a young adult offender lost the tenancy of his flat, so immediately resigned from his job. Upon enquiry, his rationale was that he would not be able to hold down a job without accommodation, a framing of the situation as being in the ‘domain of losses’. Framing it in the ‘domain of gains’ would have enabled him to view having a job as a way of securing alternative accommodation.

This idea of reframing has other possibilities: for example, within social work generally there has been a growing interest in the concept of resilience (Stalker, 2003). This suggests an exploration not only of risk factors in a given situation but also of protective factors. In the probation context this would suggest a focus not on factors which statistically put people at risk of being reconvicted, but on factors which individually protect them from reoffending.
Protective factors are not simply the reverse of risk factors: at the moment, the probation service attempts to reduce the latter rather than expand the former. Focusing on positives rather than negatives fits well with the imperative of motivation to which we next turn.

Alongside the gathering of dynamic information about a person’s situation, risk assessment tools retain a huge focus on static information. This largely concerns offending which has already happened. Information about past offending accounts for almost one-third of the weighted score in the OASys summary – current, previous, age at first conviction, custodial sentences, breach of previous sentences. This information gathering is based on the premise that past behaviour is considered to be an important predictor of future behaviour.

What this approach underplays is the importance of individual agency. Past behaviour is certainly implicated in recidivism, and the needs of an offender (in certain prescribed areas) clearly impinge, but what is overlooked is the amount of motivation an offender can bring to the task of remaining crime-free. OASys makes brief reference to motivation; amongst its 100-plus questions there is a single one on the subject: ‘Is the offender motivated to address offending?’ (Home Office, 2002: OASys Two, 18). What the motivation is, or might be, or how it might be applied, is not explored in any detailed way, and from this single response the probation worker completes a section in the supervision and sentence planning documentation, ‘Motivation, Capacity to Change and Positive Factors’ (Home Office, 2002: Supervision and Sentence Planning, 1).

This lack of a structure for assessing motivation at the risk assessment stage – which, after all, is going to determine the structure and content of probation service intervention – is problematic. The NPS has adopted several orthodoxies in respect of techniques and frameworks for intervention during the last decade. Amongst these are the cycle of change (Prochaska and DiClemente, 1982) and the companion strategy of motivational interviewing (Miller and Rollnick, 1991). The cycle of change is a psychologically based approach developed from clinical observation that individuals attempting to change addictive behaviour move along a cyclical, rather than a linear path; that there are clearly identifiable stages to the change process; and that assessing where an offender is on this cycle is critical to determining the most effective intervention or support. Motivational interviewing is a technique which has been developed separately but in practice is used in tandem with the cycle of change, and explores how to engender and sustain motivation in an individual. Both approaches have organizational sanction and have permeated practitioner consciousness as tools for assessing whether or not an offender can engage with and sustain changes to their behaviour, and how to motivate them towards so doing. Both are used as part of ongoing supervision but neither figures in the initial construction of intervention based on an assessment of risk.

Attempting to assess a qualitative concept such as motivation is not without difficulties. Motivation, however, is pivotal to desistance from offending,
probably more so than the minutiae of previous or current behaviour (Farrall, 2002). Anyone who has tried and failed to give up smoking will know that the difference between their last failure to change their behaviour and the next attempt is that ‘next time they will really mean it and want to do it’. Any observation that last time they failed in their endeavour, that their personal and social situation remains unchanged and that consequently they are likely to fail this time, would be regarded as unhelpful and probably patronizing.

The last issue looks at the practice of individuals within the NPS and explores the distinction between defensible and defensive decision making. The need to pursue defensible risk assessments is one of the driving forces behind the hunt for ‘quality, consistency and accuracy’ (Robinson, 2003a: 113) in risk assessment practice, and the apparent impartiality of a scientifically framed risk assessment is an important legitimating element. Furthermore, this is not only of strategic significance. Recent research into risk assessment tools indicated that practitioners ‘value the promise of consistency and “defensibility” in assessment practice’ (Robinson, 2003b: 38). Certainly formalized risk assessment offers a clearer rationale for the making of certain decisions and to this extent practitioners feel their decisions are validated and therefore defensible.

However, the dividing line between a defensible decision and a defensive decision is a fine one, not just in a probation setting, but throughout the whole of social work. In Kemshall’s opinion, ‘the emphasis upon public protection reflects a defensive attitude to risk and a growing precautionary principle, especially in relation to specific groups, like sex offenders, paedophiles and the mentally ill’ (Kemshall, 2002b: 104). The point is well illustrated by government proposals in the paper Managing Dangerous People with Severe Personality Disorder (Home Office, 1999). These allow for preventive detention, i.e. before an offence is committed, of individuals diagnosed with a severe personality disorder if they are assessed as posing a high risk of harm to others.

In the probation context such a cautious approach to decision making, coupled with a concern for risk reduction, can quite easily lead to an increasing number of individuals identified as high risk ‘to be on the safe side’. The OASys procedure, as we have seen, allows for some element of interpretation on the part of the practitioner. A concern for the consequences of underestimating risk can lead to decision making which is increasingly cautious and conservative, and may mean unnecessarily intrusive interventions are sanctioned. Tuddenham argues, from the perspective of a senior probation officer, that current practice is defensive, rather than defensible, and that the emphasis has shifted ‘from outcome to defensive process, where damage limitation and “taking all reasonable steps” becomes more important than whether someone commits an act of serious harm’ (2000: 179). Resisting such a ‘collapse into defensive practice’ is ‘the key issue’ for practitioners (Beaumont, 1999: 145). Such defensive decision making is reflected in the erosion of proportionality and the consequent diminution of the rights of the offender as discussed earlier.
Conclusion

All standardized risk assessment tools have a levelling tendency: they may be generally applicable to the generality of the client group but will always fail to be sensitive to the infinite variety of the human condition. This in itself is no reason to dismiss them, and they do at least provide some level of consistency of service and protection against the discriminatory tendencies of some workers. Practitioners in the probation context have acknowledged their helpfulness in respect of consistency, quality, professionalism and credibility (Robinson, 2003b). It is appropriate here, though, to acknowledge that a recent survey exploring risk of harm categorization of offenders in the NPS found a wide variation in the allocation of offenders to ‘high’ or ‘very high’ risk categories, and the author suggested that ‘this level of variation implies the existence of radically different interpretation between Probation Areas of the proper application of the OASys risk of harm categories’ (Coulbeck, 2004: 8), with even wider variations in the categorization of sex offenders.

There are concerns about the knowledge base underpinning risk assessment in terms of the dominance of the cognitive-behavioural approach. This approach may be particular to the contemporary NPS (Kendall, 2004), but the tendency to view clients as rational actors, making conscious decisions and understanding the consequences of these decisions, can be found throughout social work (Howe, 1996). How to incorporate motivation into any assessment resonates equally widely, and all intervention is problematic in this respect, with more attention needing to be given to the motivating effects of a strong worker-client relationship. The retreat into defensive decision making has to be a concern for everyone making decisions about vulnerable people or ‘dangerous’ individuals, and was identified in the mental health setting two decades ago (Fisher et al., 1984, cited in Langan, 1999).

For the moment, the NPS is completely committed to assessing risk as a way of organizing work with offenders and justifying interventions. Risk assessment is confirmed in statute and embedded in the structure of practice, and it offers some support to practitioners in a climate which demands increased accountability and consistency in decision making. The current risk assessment tool is in use in both a custodial and a community setting, and the restructuring of the NPS and the Prison Service into the National Offender Management Service has an assessment of risk as the organizing framework for managing offenders: future training structures will also be tied to this framework.

There are two examples given above which could change the tenor of risk assessment. One is Hudson’s suggestion of a rights audit in respect of future criminal justice innovations and the other is a focus on protective, rather than risk, factors in the assessment of individuals. Both are worthy of further exploration in the probation context.
References


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