

## **RISK ANALYSIS AND THE NEW PRACTITIONER: MYTH OR REALITY?**

### **Abstract**

This article aims to contribute to an examination of the effects of the transition toward risk analysis in terms of the work of practitioners within the criminal justice system, in particular the probation service of England and Wales. The intention here is to focus on the impact this shift from traditional casework methods to risk assessment has had in terms of the image of the organisation, the image of the offender, and the impact on practice and interventions. It will be argued that the main effect is the deskilling of the practitioner. During this process practitioners have lost their therapeutic role oriented to whole person and their biography. They have lost the ability to tolerate ambiguity or suspend judgment. This article will argue they have become 'Taylorised' deskilled or re-skilled in order to accommodate those competencies embodied within risk assessment applying rules and criteria laid down by centralising bureaucracy. However this new practitioner's role will be shown to be full of contradictions.

### **The new orientation in probation**

This paper looks at aspects of the new orientation in probation, and in social work, away from traditional casework methods towards various methodologies of risk

assessment. The dynamics of this shift are by now fairly well discussed (Robinson 2003a, 2005, Kemshall 2003, Oldfield 2002). Such change may well form part of wider social and political changes which have been much discussed in the social sciences (Garland 2001, Lea 2002, Young 1999, 2003) The main aim here, however, is to identify, on the basis of a small pilot study<sup>1</sup> of the implementation of the OASys risk assessment tool currently in use in the English probation service, some of the contradictions and problems inherent in the operation of such techniques by probation practitioners.

The Offender Assessment System (OASys) is a joint Probation and Prison Services initiative which was designed primarily to replace previously existing instruments, which failed to fully meet the requirements of the two Services. OASys consolidated the fundamental changes in values and professional practice that have occurred within the Probation Service. These concern the focus on the protection of the public, the punishment of offenders, a decrease in crime and evidence based practice (Oldfield 2002, Bhui 2002, Robinson 2001). The two main principles it incorporates are adherence to evidence based practice (the so-called 'What Works' agenda) and the necessity to bring about a reduction in risk. In order to demonstrate effectiveness, which is defined as the ability both to predict risk and to implement programmes of intervention aimed at reducing risk, OASys is an actuarial and dynamic assessment tool which utilises a 300 page manual containing guidance notes for assessors. This makes clear, from the outset, its basic premise:

The assessment of the risk posed by an offender, and the identification of the factors which have contributed to the offending, are the starting points for all work with offenders. (Home Office 2002:1)

The deployment of OASys is part of a profound change in the tasks and methods of working of English probation. The general contours of these changes can be briefly summarised under the headings of the reorientation of the organisation and its accountability, the deconstruction of the client and the deskilling of the practitioner.

***The reorientation of accountability.***

A radical shift has taken place across the English criminal justice system and social services in notions of accountability. Basically the shift has been away from accountability to the client or offender towards the public. This shift has two dimensions. Firstly, there has been a strengthening of accountability to the public as taxpayer. From the 1990s the public services, including health care, social work and large areas of the criminal justice system, were increasingly viewed by government as large inefficient bureaucracies which consumed vast amounts of taxpayers money. Such expenditure had to be justified in terms of return on investment. The focus of accountability shifted to the taxpayer, mediated by government as the custodian of taxpayers investment. The new culture of public sector management involving performance targets, measures of efficiency and effectiveness, made its way into all areas (Cutler and Waine 1997, James and Raine 1998). The overriding concern was to ensure 'best value' in public expenditure. The accountability of both welfare and criminal justice professionals moved from a focus on the 'client' to a focus centring on the agency and on the taxpayer as both source of funds and potential victim of

crime and risk. In social work, as Froggett points out, accountability has been reframed as "a constraint wholly external to the work itself and oriented to the public interest as distinct from that of clients." (Froggett 2002: 68) The 'client' or 'offender' now becomes marginalised from this process and the main task of the profession is effective assessment and management of the 'problem'. As the role of professionals becomes the calculation and management of risk, trust, both of professionals and clients, is replaced by audit.

The second dimension is that of accountability to the public as actual or potential victim of harm caused by the clients of social service and criminal justice agencies. In the criminal justice system as a whole, the shift from a focus on the rights of the accused in favour of greater emphasis on the efficiency of the system in protecting the public and the victim has been noted with concern by civil libertarians (Belloni and Hodgson 1999, Kennedy 2004). Meanwhile in the traditional casework model, formerly deployed by both social work and probation, a great deal of accountability lay in the relationship between the practitioner and the client. Where the client was seen as a citizen with rights and needs but in need of therapy, guidance and rehabilitation then the relationship of trust between practitioner and client was crucial. (Vanstone 2004) The latter relationship has been displaced by a concern with the management of risk presented by the client to the public both as taxpayer and as potential victim.

### ***The deconstruction of the client***

The shift, both in probation and wider areas including social work, away from traditional client-based casework approaches, has been widely noted (Froggett 2002,

Goodman 2003, Hudson 2001, 2003, Kemshall 2003, Nellis 2004, Oldfield 2002, Robinson 2003a/b, 2005). Traditional relations of trust and accountability between client and practitioner involved work with the client as a whole person – who was a citizen with rights and needs – in terms of their own biographies and experiences. Thus, in probation various therapeutic or work-related strategies of rehabilitation aimed to help clients arrive at an understanding of their life in non-offending terms. (see Radzinowicz, 1958, Burnett and McNeill 2005, Smith and Vanstone, 2002, Vanstone 2004 )

It is, of course, necessary to avoid romanticising the traditional approach. Critics of traditional methods of probation practice argue that too much power lay with the 'expert' and not the client. (Vanstone 2004: 139) At a more general level Froggett characterises the flaws in the old welfarist approach:

The fantasy of a nation of free and equal citizens, which includes the masses, is preserved at the price of denying the personhood of those who present themselves to the health and welfare systems as subjects with real embodied needs-there are, after all, so many of them and the task is so huge that only by diminishing them does it become manageable. (Froggett 2002:55)

Nevertheless, among the most important assumptions of the welfarist approach was the belief that the needs of the client which drove them to crime were an integral part of their biography and self development up to that stage in their life. (Vanstone 2004:Chapter 4, Simon 1993: 104) It thus followed that any strategy aimed at steering the client away from a life of crime must necessarily start from a holistic

approach to the client, their biography and their environment. The logic behind the old casework strategy of 'advise, assist and befriend' was precisely the need to develop a one-to-one therapeutic relationship of mutual trust and suspended judgement between practitioner and client, on the basis of which the totality of the client's life trajectory could be problematised and reoriented. (Burnett 2004)

'the relationship is the soul of casework. It is a spirit which vivifies the interviews and the processes of study, diagnosis and treatment, making them a constructive, warmly human experience( Biestek 1961:134-5 cited in Vanstone 2004 ).

By working with the whole person it was able to tackle the often complex relationship between the offending and non-offending aspects of their lives and to relate these to the environment in which they were situated. Rehabilitation could be grasped as a life change and one that involved a complex reworking of the relationship between the individual offender and their community and environment. (Biestek 1961:3, Smith and Vanstone 2002:817)

Thus the role of the probation officer involved becoming the medium or channel for the mobilisation of individual capacities and community resources to enable the offender to make a 'better adjustment' i.e. prevent re-offending and support re-integration. (Burnett 2004:183) As Worrall and Hoy (2005) summarise the goals of the 'advise, assist and befriend' era were to change the whole personality through insight-giving , or changing the offender's environment through welfare assistance and community resources.(2005:137)

The shift to a risk orientation involves two components. Firstly the status of the client as citizen in need of reclamation and rehabilitation tends to be replaced by that of risk to the public. While such risks might seem amenable to careful calibration, in the extreme case they can be elaborated into notions of the threatening 'other' taking the form either of an *underclass* with alleged distinct cultural traits of fecklessness and criminality (Murray 1990, 1994) or of the rationally calculating 'welfare scrounger' and criminal entrepreneur (Van Dijk 1994). Either way, the client is a risk to be encountered and managed and, as welfare scrounger or criminal offender, is in direct competition for resources with the honest taxpayer.

Secondly, once established as alien 'other' with the therapeutic and biographical approaches backgrounded, the client can then be effectively deconstructed into manifestations of the various actuarially established indicators of risk. The contextual knowledge of the client is gradually replaced by the collection of disembodied data derived from various standardised indicators of risk. (see Castel 1991)

As Aas puts it:

Categorising human identity into axis grids and risk assessments is an act of de-construction of subjectivity. It is an act of taking unique whole individuals apart and then putting them together according to requirements of the system. Identity is deconstructed into separate factors that are then evaluated in order to acquire a 'score'. (Aas 2004: 387)

The categorisation and classification of client types becomes co-terminus with the classification of risks. What were previously indicators of citizens in need of assistance and rehabilitation: the young unemployed, those with mental health problems, young offenders, become indicators of risk and danger. (Fitzgibbon 2004, )

The most important shift is that the social situation of the offender is backgrounded in favour of a set of *characteristics of the offender* described as 'criminogenic needs' which are to be established by a 'tick box' approach rather than by an in-depth knowledge of the client, their biography and their interaction with the environment they have to cope with. The precise criminogenic needs in terms of which the individual client is constructed are identified from a complex of factors including previous and current offence(s), and the potential for harm to self or members of the public which such offences indicate. A number of background factors are included such as accommodation, education, employment, financial situation, relationships, lifestyle and associates, drug and alcohol misuse, emotional well-being, thinking and behaviour, attitudes, health and other considerations. The OASys system then allocates a score between 0-2 (2 being a serious problem) and then guides the practitioner to the level and type of intervention required by the offenders profile. (Home Office 2002)

The offender as a complex of criminogenic needs then needs training in cognitive skills to enable those needs to be managed. This is quite distinct from older welfare oriented strategies of rehabilitation. The emphasis is primarily in training offenders to adjust to their circumstances and keep quiet (i.e. cease to engage in criminality or risky behaviour). As Hannah-Moffat puts it:

"This construction of the offender leaves intact the presumption that crime is the outcome of poor choices or decisions, and not the outcome of structural inequalities or pathology. The offender's poor decisions were a consequence of an absence or of deficiencies in requisite skills, abilities, and attitudes necessary for proper informed decision-making." (2005: 42)

Offending is here portrayed in terms of *failure* to make rational choice rather than as the *outcome* of rational choice or, yet alone as a revolt against that very rationality of the social system which appears to have put the offender in his initial predicament. (Young 2003) Thus in the currently deployed OASys template criminogenic need scores will be enhanced if the client exhibits 'a great deal of antipathy towards legal system and agencies', 'justifies own behaviour by comparisons with misdemeanours of others', 'favours or excuses criminal behaviour regularly and with conviction', or 'expresses views supportive if offending at any time in interview' (Home Office 2002:109)

From a traditional casework standpoint, the issue is not whether criminal behaviour is condonable, but that it may be understandable in terms of the individual client's biography and social circumstances. The traditional probation officer may well have concluded not that the offender has a criminogenic personality but rather that he or she is in a social context in which certain types of criminality may be the norm and may be an adaptation to the situation in which individuals find themselves. This would then be the realistic starting point for a strategy designed to enable the offender to reorganise their life. Collective activities and the mobilisation of community resources aimed at demonstrating other solutions to social problems than criminality

would have been an essential part of such a strategy. The interventionist welfare state was an essential backdrop to the work of the probation officer or social worker. (Worrall and Hoy 2005, Vanstone 2004 ) Getting the offender to modify their criminogenic needs through cognitive therapy is quite different. Rather than working with the grain of an interventionist welfare state, the management of criminogenic needs approach is a substitute for, or contrast to, such intervention. As Hannah-Moffat points out, the offender's needs are generally defined in relation to the resources currently available in the area, rather than criminality being an indication of lack of resources.

Such thinking implies, for example, that in areas where unemployment is endemic, the payoff in identifying employment training among offender's needs may be smaller than in an area with extensive employment opportunities... This tautological, but pragmatic reasoning is different from past welfare enterprises that favoured more global interventions. (2005: 42-3)

Thus up to date, sophisticated and easily administered risk assessment tools as criminogenic needs analysis (Aubrey and Hough 1997) exhibit a marked failure to adequately contextualise the offender's relationship to their social situation. Offending is purely a characteristic of the offenders failure to make prudent decisions. There is no longer a social context to criminality. As Anthony Goodman puts it:

...the use of, and mechanical dependence on, actuarial risk-assessment scales in assessing individuals, decontextualises offending, its causation,

notions of fairness, oppression, indeed all the traditions of society, leaving the individual as simply an entity to be programmed, or at least to be trained solely in methods designed to stop their offending. (2003: 208)

***The deskilling of the practitioner:***

Thus the job of both the welfare and criminal justice systems is increasingly that of managing a social stratum identified and categorised in terms of various indicators of risk to the public. The role of the practitioner is transformed as part of this process. This is as true in social work as it is in probation. As Froggett, writing from a social work standpoint puts it: "This changed role has entailed a profound shift away from preventative, therapeutic and maintenance activities towards the management of risk." (Froggett 2002: 75) It is not that probation is losing its connection with social work. Both are being transformed by the new paradigm of risk management. The task of the probation practitioner becomes that of identifying the existence of criminogenic needs by a tick box approach to a list of factors which are taken for granted as indicators of risk of offending and harming the public. The traditional working method of the probation officer was talking on a one-to-one basis with offenders. Staff *provided a mixture of counselling, brokering, practical help and family work*. The essence of their role to provide a supportive relationship to facilitate change. (Burnett 2004:181)

The changed tasks of practitioners both enable and call for a process of deskilling which is the other side of the coin of the deconstruction of the client. If the latter is *deconstructed* such that the image of an integral person, with a life and a biography which needs to be understood in order to work out how to steer them away from

offending, is progressively lost, the former is *deskilled* into a formulaic ticker of boxes. With Aas we can say that

Knowledge formats define how professionals within the system should think and act...probation officers have to fill out formalised risk assessment instruments and replace their individual and professional narratives with highly structured forms of communication. (2004:382)

The loss of the therapeutic role and the orientation to the whole person and their biography involves a loss of the essential personal independence which was a key aspect of the day to day practice of both the traditional social worker and the probation officer. (Oldfield 2002) The professional skills of tolerance of ambiguity and suspended judgement are gradually lost. (Worrall and Hoy 2005) A process of 'Taylorisation'<sup>2</sup> occurs whereby the practitioner is wholly assimilated into the role of operative of the machine, mechanically applying the rules and criteria – for the assessment of risk – already set down in bureaucratic injunctions devised by others. The old skills of the practitioner and relations of trust with the client are recast as a set of indicators to be observed and classified by means of templates. In this way the probation practitioner becomes just another arm of the punishment and surveillance apparatus. The deskilling of the probation officer is no more clearly illustrated than by the fact that the risk analysis templates such as OASys can equally be implemented by prison officers. In the practical day to day working of the service there has developed a strong tendency towards the fragmentation of skills.

Thus, for example, staff *either* conducted assessments and wrote reports *or* delivered programmes, *or* managed 'public protection' (that is, high risk of harm) cases. This new style of delivering supervision was... based on a new understanding of offenders as 'actuarial subjects'.... to be assessed and then 'managed into' appropriate resources. (Robinson 2005: 309-10)

Meanwhile the cognitive therapy based programmes to which clients are referred on the basis of criminogenic needs assessment are increasingly administered by practitioners increasingly trained only in managing the programme and have no overall ability to give the client self esteem and see the programme in relation to the total life situation and biography of the client

A second axis of this process is the concentration of skilled staff on high risk offenders while those of lesser risk are increasingly supervised by non-qualified personnel. (Raynor 1998, H.M. Inspectorate of Probation 2002, Robinson 2005) Finally, this new relationship between practitioner and client also makes way for a macho culture in which the practitioner adopts the identity as manager of risks on behalf of the taxpayer and the potential victim of crime and against the clients and members of risk groups. The old tolerance of ambiguity is displaced by a process of bifurcation in which all bads and negative traits are firmly projected onto the client whose overwhelming characteristic is the inability to make prudent, non-criminogenic life choices and who therefore stands in need of attitude change.

***Transformative and non-transformative risk management.***

An important issue concerns the mutual interaction of the twin factors of deconstruction of the client and deskilling of the practitioner. It might be thought that they work more or less together. The rise of risk analysis and the management of criminogenic needs might, on the face of it, be thought to be simply facilitated by new division of labour and the decline of casework and the generic approach in probation mentioned above. However, and this will be the main argument of the remainder of the discussion, the fact that deconstruction of the client and the deskilling of the practitioner are two sides of the same coin does not mean they are mutually reinforcing in practice.

It is first of all necessary to be clear about what is involved in the assessment of criminogenic needs. The latter are established on an actuarial basis; that is to say that the various components of such needs, as for example drug or alcohol abuse, are established as criminogenic on the basis of a certain statistical probability of a certain level of such abuse being a predictor of criminal behaviour. The aim nevertheless is to *change the behaviour* of the individual who is identified as possessing such needs. The use of actuarial predictors as the basis for interventionist strategies aimed at individual change is thus quite different what Feeley and Simon (1992, 1994) have called the 'new penology' and 'actuarial justice'. One of the key features of the new penology was, they argued, the displacement of traditional welfare inspired rehabilitation of the offender by the simple aim of neutralising the risk potential of offenders by removing them from the scene—through incarceration—or other varieties of incapacitation so that they no longer constitute a danger to the public. An important corollary of such a strategy is that recidivism and re-incarceration rates are no longer seen as program failure—as it would be from the standpoint of

rehabilitation—but as indicator of effective control coordination. The important point is that risky groups are moving through a series of 'revolving doors' such that they are known and managed. From the standpoint of alternatives to custody, the type of measure that we might associate with such 'non transformative risk management' would be exclusion strategies such as the Curfew Order, the Anti-Social Behaviour Order, electronic tagging and surveillance. (Nellis 2004) The aim here is simply to exclude the individual from the spaces and places where they might be a risk to the public. In such a context the role of both the probation and prison officer becomes simply that of managing clients and ensuring they present as little threat to the public as possible.

However, while as noted above, the notion of criminogenic needs differs considerably from older welfare-inspired rehabilitation strategies, the purpose of identifying such needs is nevertheless to change the behaviour of the individual identified—on an actuarial basis—as having a high level of such needs. Thus Hannah-Moffat, in an extended discussion, argues that the "strategic alignment of risk with ... *intervenable needs* contributes to the production of a *transformative risk subject* who unlike the *'fixed or static risk subject'* is amenable to targeted therapeutic interventions" (2005: 31, see also O'Malley 2002) As Hannah-Moffat and others (see Hollin and Palmer 1994, Gendreau and Coggin 1996, May 1999, Raynor, Roberts, Kynch and Merrington 2000) have noted, the emergence of so-called 'third tier tools' designed to identify criminogenic need involved a process whereby actuarial techniques of risk assessment were enhanced and developed to incorporate dynamic factors seen as predictive of re-offending, for the purpose of assisting practitioners to determine treatment programmes aimed at behavioural change. OASys, the system currently in

use by the probation and prison services in England and Wales is designed specifically both to identify risk and to implement programmes of intervention aimed at reducing risk. (Horsfield 2003)

Thus despite the predominance of discourses of risk, individual rehabilitation—rather than simply 'management'—still remains a key aim of probation. What might be termed *transformative* risk management seeks to use the techniques of actuarially based risk assessments as a starting point for enabling individuals to self-manage their criminogenic needs. While the notion of criminogenic needs might be, as noted above, a flawed attempt to translate the complexity of individuals and their environments into a list of individual characteristics, and has largely abandoned the old inclusionary philosophy of the welfare state, at least it is still oriented to individual change. The identification of such needs can be seen as the result of the deconstruction and fragmentation of older, holistic, casework-based orientations to individuals and their situations. Nevertheless the attempt to deploy actuarially based techniques of risk assessment in the service of transformative strategies is, it will be argued, subject to a number of problems.

### **The implementation of OASys**

The small pilot study mentioned above, undertaken in a large metropolitan area, focused on the effectiveness of OASys as an assessment tool with regard to mentally ill offenders.

The Offender Assessment system (OASys) is implemented in the same manner to all offenders but certain sections of the assessment have been identified as significant

indicators of possible mental health or personality disorders.<sup>3</sup> It was of concern that when this system was devised there was no alert or tag to indicate when the identified sections were areas of concern, so inexperienced or over-stretched staff could miss the importance of a clustering of these factors.

By looking in depth at the case files and E-OASys (the online version of OASys) forms for certain offenders who had shown signs of mental illness problems, the research attempted to examine the consequences of the transition from casework to risk assessment for practitioners. The research examined both whether practitioners were deploying the risk assessment tools properly and also the validity of these tools in assisting professionals to assess and enable offenders to receive appropriate and risk reducing treatment and support. While conclusions from such a small study are necessarily conjectural, a reading of the case files suggested two directions for further inquiry. Firstly, whether the proper implementation of OASys requires the very traditional generic casework relations between practitioner and client that such systems were designed to, at least in part, replace. Secondly, whether the deskilling and specialisation of probation practitioners creates a de facto pressure towards *non-transformative* forms of risk management.

### ***Dependency on traditional casework skills***

Much criticism (NAPO 2004:5 cited in Worrall and Hoy 2005:154, Farrall 2004:202, Horsfield 2003)

of systems such as OASys has asserted that, apart from bureaucratic complexity, they in no way augment the practitioner skills required to implement transformative risk management by referring individuals to appropriate programmes which will enable

them to manage their criminogenic needs. One case from the research project illustrates this:

### **Case A**

This offender had committed a number of shoplifting and credit card offences in the past, mainly as means of gaining money to acquire drugs, i.e. cannabis and tranquillisers. There had been a history of depression in the past which had been treated by psychiatric prescribed drugs and attendance as an psychiatric outpatient. Although still prone to depressive illness, the offender had been able to successfully complete his court orders in the past despite re-offending. The current offence was again related to drugs usage and depression and involved fraudulently using a credit card to buy whisky in order to obtain cash for cannabis.

This mentally disordered offender was assessed and a thorough, accurate and extensive OASys assessment was completed and there was evidence of regular follow-up with reviews being completed as required, on time. The assessment and supervision of the case was carried out by probation officer with previous one-one relationship with that same offender. The practitioner referred to previous reports, assessments and case file records and used this evidence to inform the detail, in script form within the OASys. Interestingly some of the most detailed casework in the file pre-dated the introduction of OASys and therefore the transfer of this information into the assessment was crucial if the OASys was to be meaningful and accurate. There was also evidence of a close and ongoing working relationship and liaison with the local mental health services.

## *Discussion*

The observations in this case serve to emphasise points made by other critics. It is precisely because systems such as OASys present themselves not as techniques designed simply to allocate individuals to risk groups, but also to enable some rational process of transformative risk management by programme referral aimed at the management of criminogenic needs, that their effective implementation does not displace but is in fact dependent on, a strong residue of traditional casework skills. Several commentators (Robinson 2003a, 2003b, 2005, Kemshall 2003) have argued that such devices as OASys need a strong backup of such skills and time available for practitioners to familiarise themselves with the general situation faced by clients. Any idea of the new practitioner as deskilled operative, rapidly and easily administering a tick-box based assessment system needs, therefore, to be firmly resisted.

Techniques such as OASys might act as a supplement to casework skills and a check on consistency in their application. This would fit with the stated qualities of the '4 Cs', consistency, commitment, continuity, consolidation, identified in the National Offender Management model (NOMS) Offender Management Model (Home Office 2005: 6) However OASys cannot replace these skills. Practitioners must be able to understand the significance of offender needs and be able to prioritise interventions with all offenders, particularly those with mental health difficulties, in order to effectively monitor and reduce risk and refer individuals to proper treatment programmes. Without this professionalism the usefulness and effectiveness of the OASys assessment tool will be questionable. Robinson, on the basis of her own research is quite explicit:

Although less able to foster expertise in particular areas, generic models were valued in that they enabled practitioners to retain a working knowledge of all the various stages of the supervision process, as well as gaining experience of working with a range of offenders. Partridge also found that practitioners in generic contexts were better able to see the impact of their work on offenders by virtue of their 'end-to-end' involvement in the supervision process. These findings in respect of specialist practice are cause for concern, not least because there are ongoing questions about both morale and levels of stress among probation staff<sup>5</sup> which have been consistently overlooked by those responsible for the plethora of recent organisational and practice changes. (Robinson 2005: 312 see also Chui and Nellis 2003; Davies 2004)

Much other recent research and debate has emphasised the importance of individualised and participatory, contextualised assessments building on traditions of trust and rapport between practitioner and client to give the offender feelings of self-worth and positive recognised identity (see for example Rex 1999, Farrall 2002, Maruna 2001, McCulloch 2005). Professionalism defined as the ability to understand and build a knowledge of, and rapport with, the offender or other client to enable a meaningful exchange of information based on trust rather than purely data collection emerges as a precondition for the operation of the very techniques which were, at least in part, designed to replace it. Indeed many critics question whether such techniques as OASys add anything at all to the actual work of those aiming to help offenders change their behaviour. Thus Horsfield (2003) questions whether such systems add anything at all apart from a spurious scientificity. Most probation officers with any

experience, he argues, know precisely who is and who is not likely to commit further offences.

It may be that all this takes place with little or no enhancement of the predictive power of the risk assessment models used or any genuine increase in the knowledge base of those who work in those organisations and with people convicted of criminal offences." (Horsfield 2003: 378)

Robinson (2003a) makes the point that actuarial methods of risk assessment are "both based on and designed for use with groups or *populations* of offenders. This means that they cannot provide accurate predictions of risk in respect of individuals."

(Robinson 2003a: 116) This is a crucial point if the assessment of offenders is for the purposes of referral to transformative programmes. The score registered for an individual client on the various components of risk assessment scales still indicates simply that the client belongs to a group which has a *statistical probability* of certain types of behaviour. Whether that individual will engage in such behaviour is still a question of the individual judgement of the practitioner (Horsfield 2003) and, therefore, the better the practitioner knows the individual client the more accurate that judgement may be. Where the practitioner does not have an intimate knowledge of the client then the characteristics of the group may be translated into the characteristics of the individual. The *ecological fallacy*, well known to statisticians, observes that the characteristics of individuals cannot be inferred from the characteristics of areas or groups. In risk analysis there is thus the very real possibility of an *actuarial fallacy* whereby the behaviour of individuals is spuriously inferred from the behaviour of groups. The result is a tendency towards inflation taking the

form of over-prediction of dangerousness of individuals, such dangerousness being conflated with the risk characteristics for the group to which the individual has been allocated. (see Kemshall 2003).

Additionally, as regards mentally ill offenders, the likelihood of spurious identifications are reinforced by a dilution of the concept of serious mental illness itself which allows a wider definition of mental health problems (Fitzgibbon 2004) and thus increases the danger of clients being assimilated to this category and seen as dangerous. From a non-transformative risk management perspective such forms of inflation would simply artificially inflate the size of the population to be managed as risky, with a consequent squandering of resources. But such inflation is a crucial obstacle to any rational process of programme referral designed to help individuals to manage their particular identified criminogenic needs.

In short, actuarial indicators of risk cannot reveal much about how an individual will get out of crime. The idea is that if clients have been accurately assessed then the risk assessment techniques will help to get them on the appropriate programmes which will deal most effectively with their particular sets of criminogenic needs and stop or reduce offending. But if it is the case that no inference can be made from the *actuarially* established characteristics of the client regarding their *actual behaviour* then the whole notion of criminogenic needs is in danger of spuriousness. The actuarial fallacy is a fatal flaw at the heart of transformative risk management strategies. At the end of the day the only checks on the inflationary effects of the actuarial fallacy on the one hand, and the dilution of concepts of risk such as mental

illness on the other, are the traditional craft skills of the probation officer and his or her in-depth knowledge of the client. As Horsfield bluntly puts it:

I would suggest that the officer needs little help in deciding which of the available programmes of intervention is most suited to the young man across the desk and most likely to have a constructive impact on his 'criminogenic needs': it is the one he can be persuaded to attend and engage with. (Horsfield 2003: 375)

Maruna et al. (2004) in the Liverpool Desistance Study go further and make the point that the success or failure of programmes aimed at producing desistance is to a large extent determined by the issues not so much of appropriate programme referral based on the correct assessment of client as a risk but of stressing the client's strengths and future potential. One of the key differences between desisting and active offenders in the Liverpool Desistance Study was the lack of a future orientation,

Especially in efforts to reintegrate ex-prisoners back into society, it may make sense to balance such talk of risks and needs with an emphasis on the person's potential 'strengths'. (Maruna et al. 2004: 228)

Offenders have to come to terms with their past. The best way to do this may be to get them involved in evaluation of their own biographies and therapeutic techniques which again involve the 'whole individual' not just an artificial individual put together from ticked boxes in the manner described above by Aas (2004) and noted above. As McNeill adds in a comment on the Maruna study, desistance is not an event but rather

a process which is "rich and complex" and "inherently individualised" often contradictory and "not reducible to the simplicities of applying the right 'treatment' at the right 'dosage' to cure the assessed 'criminogenic needs' " (McNeill 2004: 244) McNeill makes the point that securing employment or becoming a parent may lift someone out of a criminal career but success in seizing the opportunity presented depends on subjective meanings assigned to such events. "Neither these events nor individuals' subjective interpretations of them are 'programmable' in any straightforward sense." (*ibid*) Once again a holistic approach to the client and their biography seems an important key to success. We are back to individualised casework and 'advise, assist and befriend'. As Vanstone in his final chapter entitled, *Back to Where we Started*, notes:

(t)he success of their work does depend on the principles underpinning effective practice but ... also on the ability to engage with the individual in a relationship founded on concreteness, empathy and commitment. ( 2004.157)

### ***The drift towards non-transformative risk management***

Thus there is a strong argument that effective programme referral aimed at enabling clients to manage criminogenic needs and desist from further offending requires a reservoir of traditional casework skills on the part of practitioners. Furthermore, where such skills are absent and where actuarially based risk assessments are administered under conditions of resource constraint, there is a tendency for clients to be allocated to general group programmes which are not factored to individual biographies. (Castel 1991: 281) There is a tendency to risk inflation which then reinforces the drift to non-transformative warehousing of risk groups. Risk inflation may occur through simple misreading and mishandling of data. Individuals may be

assigned to the wrong groups, inexperienced or overworked practitioners are likely to err on the side of over rather than under-estimation of risk. (Worrall and Hoy 2005)

This was the second suggestion from the research and is illustrated by two cases.

### ***Case B***

The offender had a chronic addiction to heroin and crack cocaine the origins of which appear to have been following the break up of her violent marriage and a spiralling series of losses involving work, her house, and latterly the care of first her younger son and then her daughter. This woman had been a high achiever despite being the victim of a viscous rape when a teenager. She had moved to England to escape the environment where the attack occurred had worked as an interpreter and had only offended in her late twenties to fund her escalating drugs addiction. The offence she had committed most recently was one of deception for which she was placed on a drugs treatment and testing order which she subsequently breached. She had a long history of depression and self harm with psychiatric treatment.

This case was an example of what occurs when there is a lack consistency and regular review or follow-up when the offender was transferred quickly between inexperienced practitioners. Multiple practitioners were involved in the supervision of this offender. She had a series of five probation officers who had supervised her over a 6 month period. As a result of this inconsistency highly important information in file ignored and never incorporated into the OASys documentation. *For example there*

*was no mention of her traumatic rape, or her divorce following domestic violence. Also there was no detail regarding her previous life and her relationships with her children now both in the care of the local authority.*

These events had been carefully considered in a detailed very old report, in the case file. These matters were never referred to or followed up in OASys assessments or reviews. The file was dense spanning 13 years and took the researcher over one hour to read. It was evident on examining the case file that there had been a long period where this woman had been offence free and this was when the offender had had a close one-one relationship with her probation officer. The escalation of missed appointments and breaches did appear to coincide with the changes in probation practice. This offender did end up with numerous short term custodial sentences. A clear example of the 'revolving door' syndrome described by the Revolving Door Agency (2002)

### ***Case C***

This final case involved young man who had experienced severe depression and had attempted suicide. The man, who was of Pakistani Muslim heritage, was convicted of possession of illegal drugs and an offensive weapon. The practitioner tended to make stereotypical assumptions concerning the oppressive nature of his family ties or focused on practical problems such as housing rather than addressing the concerns voiced by the offender during interview and noted in the Pre-Sentence Report which were about his suicidal feelings and despair. Finally the offender started missing appointments and was breached for failing

to comply to his rehabilitation order. This resulted in a six month custodial sentence.

This example showed a formulaic approach to the interview and OASys completion. Whilst certain issues were acknowledged, the practitioner then skipped over the details and even failed to incorporate the history of depression into the OASys. These omissions were such that the local Psychiatric services contacted the probation officer on mentally disordered offender's request. The practitioner had not noted deterioration in the offenders mental health despite seeing him regularly. Nor had they assisted in providing access to the appropriate help and services required by the offender. Even after these events these developments were not included in an OASys review and in fact these reviews were largely missing from file. This led to lack of appropriate support and finally the practitioner defensively inflated the risk estimation. This culminated in short period in custody for breach of the attendance requirements of rehabilitation order with all the implications for loss of family ties, employment and housing.

## **Discussion**

In both these cases the failure to properly complete assessments results in a drift to towards non-transformative strategies such as incarceration. In the cases considered in the pilot study, this occurred mainly through over-defensive assessments by practitioners and an inflation of risk estimates. In the research it was clear that the lack of experience of practitioners and the time constraints resulting from limited resources combined to hinder the proper exploration of the case files which could

supply the materials required for a more informed assessment. This was particularly the evident when, due to restructuring, resource limitations and specialisation of tasks in the team, cases were managed by a number of different officers over a short period. Many of the gaps in the case files occurred during transfer of case between team members and thorough reading of case file materials before the OASys assessment was completed was not evident. This was particularly significant in the case where as many as 5 probation officers had supervised one case over a 6 month period.

The consequence was that a space was created in which the subjective judgements and actions of the risk assessor could have a marked influence on the completion of these supposedly objective assessments. Many such judgements in fact distorted the assessments and led to an inflation of risk. Assessments were often inaccurate and defensive. Significant information was not transferred into the OASys initial assessment and regular reviews were either not done or merely magnified the gaps in information. For example the reading of some of the case files on mentally disordered offenders, revealed repeated overlooking and ignoring as insignificant, mental health issues affecting those clients. Issues such as previous suicide attempts, psychiatric treatment, and domestic violence were often highly significant to risk levels but were either not mentioned or only procedurally included with little accompanying analysis. Often assessments made previously in reports (PSRs) were not included particularly if they were risk issues regarding self –harm as opposed to harm to others. This was unfortunate as some of the most detailed casework in the files pre-dated the introduction of OASys and should have been included for a more complete assessment. It is of concern that many of the sample had little supplementary information to reinforce or expand on 'tick boxes' even though OASys does allow for

the building in of 'evidence', in script form, into the tool. This led, in turn to lack of appropriate support, the inflation of the risk estimates and the repeated incarceration of some of the sample. Cases degenerated into the 'revolving door' syndrome of short custodial sentences. This led to loss of family ties, employment and housing. This has been reported by other research (see Revolving Door Agency 2002)

The way in which the downgrading of older casework skills combines with the intensification of workloads to impede the ability to complete the risk assessments with any degree of reliability has been commented on by Milner and O'Byrne (1998) Other research has shown that an environment in which there is an institutionalised pressure to complete assessments under conditions of resource constraints and lack of training in traditional casework skills is conducive to all manner of subjective judgements creeping into assessments. For example, assessors frequently question their ability to clinically expand on the assessment and resort to 'just getting the job done' (Maynard-Moody et al 1990). Furthermore, characteristics of the assessors themselves, rather than the clients, may become a significant influence. Thus in some research examining risk and mental disorder (Ryan 1998), the gender of the assessor was found to be significant with female assessors more likely to rate patients more 'risky' than their male counterparts. This is of interest when one recognises the predominance of women in the probation service and other caring/social services dealing with those with mental health problems. With the new enhanced accountability forcing practitioners to make 'defensible decisions' (Kemshall 2003), those undertaking OASys assessments may over predict the level of dangerousness and potential risk when assessing the mentally ill, who are more vulnerable and fulfil many of the criminogenic factors by virtue of their mental

illnesses not their criminality. Thus mental disorder could have been wrongly identified or over concentrated on as an indicator of risk concerns due to stereotypes which have previously been exposed as prejudicial or detrimental to the offenders being supervised. (Peay 2002) Thus if the use of OASys risk assessments as tools for programme referral tend to fall back on traditional casework skills then the other side of the coin is that if those skills are, for whatever reason, not deployed, the risk assessment techniques tend to push clients towards non-transformative risk management strategies such as incarceration. Incarceration might be the end result of a succession breaches due to unsuitable programme referrals resulting from inflated risk assessments.

Repeated short term incarcerations as a result of inaccurate risk assessments reduces the effectiveness of programmes designed to help offenders out of crime, including where such programmes are organised within prison. The model of serial short term incarceration and other forms of 'revolving doors' brings us close to the non-transformative scenario originally outlined by Feeley and Simon in which the aim is simply that of knowing where offenders are and minimising their risky contact with the general public. All pretence at the reclamation of offenders, even within the limited perspective of 'managing criminogenic needs' is lost.

### **conclusion**

From what has been argued above, two conclusions seem in order concerning the implementation of risk assessment techniques such as OASys. Firstly, if such techniques are implemented under conditions of increasing resource and manpower constraints in probation, then they will be badly implemented. Secondly, they should be seen as a supplement to traditional casework skills rather than a replacement or

part of the process of deskilling of practitioners. If either or both of these conditions fail to apply then the likely consequences will be over-prediction of risk and dangerousness and the increasing consignment of wide sections of the poor to the category of the dangerous and risky 'other' on the social periphery. Social exclusion and criminality will be most likely reinforced rather than reduced.

By contrast, in my research it was clear that the reading of case files revealed far better risk assessments were undertaken when there was a consistent and sustained relationship built up with one probation officer/case manager. It is therefore ironic that an important impulse to the introduction of standardised risk assessment schemes such as OASys was the belief that traditional one-to-one relations between practitioners and clients led to subjectivity and unreliability. (Burnett 2004) Whereas in fact it is precisely the persistence of such relationships which underpins what semblance of objectivity such assessment schemes may possess.

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<sup>1</sup> This study, undertaken in 2005 in a large urban probation area, involved a close reading of case files and their accompanying eOASys assessments and reviews to ascertain the accuracy and effectiveness of the tool with regard to mentally disordered offenders.

<sup>2</sup> Frederick Winslow Taylor was the pioneer of 'scientific management' at the turn of the last century. Working with Henry Ford his aim was to appropriate the skills of the craft worker by breaking them down into a set of simple procedures or commands which could then be removed from the control of the worker and vested in the control of management. In this way the control of the production process would pass from worker to management. (see Braverman 1974)

<sup>3</sup> Therefore when undertaking examination of the OASys forms these sections were concentrated on as examples of the accuracy of the identification and assessment of mental health issues and the ongoing management of the case. These areas (sections in manual) included: history violence (2.2\*), victim impact (2.6\*), non-compliance medication & Psychiatric problem (2.10) , over-reliance relatives (5.5\*) , manipulative /predatory lifestyle (7.4\*) ,risk taking (7.5\*) , difficulties coping (10.1), Psychological problems (10.2), self harm (10.5), psychiatric problems (10.6), psychiatric treatment currently and or head injury, psychiatric history, special hospital, childhood behaviour problems (10.7\*), level of interpersonal skills (11.1\*), impulsivity (11.2\*), aggressive/ controlling behaviour (11.3\*). (\* indicates sections of the OASys manual which alert the assessor to the possibility of a personality disorder which does not preclude the dual diagnosis of mental health problems).

## **bibliography**

- Aas, K.F. (2004) 'From Narrative to Database: technological change and penal culture', *Punishment and Society* 6: 379-393
- Aubrey, R. and Hough, M. (1997) *Assessing Offenders' Needs : Assessment Scales for the Probation Service*, Home Office research study No. 166: RDSS(D) London : Home Office
- Belloni, Frank and Jacqueline Hodgson (1999) *Criminal Injustice: An Evaluation of the Criminal Justice Process in Britain*. London: Macmillan
- Braverman, H. (1974) *Labor and Monopoly Capital: The Degradation of Work in the Twentieth Century*, New York: Monthly Review Press.
- Burnett, R. (2004) 'One-to-one ways of promoting desistance. in search of an evidence base', in Ros Burnett and Colin Roberts (eds.) *What Works in Probation and Youth Justice. Developing evidence based practice*, Devon: Willan Publishing
- Burnett, R and McNeill, F. (2005) ' The place of the officer-offender relationship in assisting offenders to desist from crime', *Probation Journal* , 52(3) 221-242
- Castel, R. (1991) 'From Dangerousness to Risk ' in G. Burchell et al. (eds.) *The Foucault Effect . Studies in Governmentality*, Brighton: Harvester Wheatsheaf
- Chui, W.H. and Nellis, M. (2003) *Moving Probation Forward: Evidence, Arguments and Practice*, Harlow: Pearson Education Ltd.
- Cutler, Tony and Barbara Waine (1997) *Managing the Welfare State*. Oxford: Berg
- Davies, N. (2004) 'Probation staff use one word to describe the service: "Chaos" ', *The Guardian* 14<sup>th</sup> April
- Farrall, S. (2002) *Rethinking What Works with Offender : Probation, Social context and desistance from crime*, Cullompton: Willan Publishing
- Farrall , S. (2004) 'Supervision, motivation and social context', in G. Mair (ed) *What Matters in Probation*. Cullompton: Willan
- Feeley, M. Simon, J. (1992) 'The New Penology: Notes on the Emerging Strategy of Corrections and its Implications' *Criminology* vol 30 No 4. pp 449 -474
- Feeley, M and Simon, J. (1994) 'Actuarial Justice: the Emerging New Criminal Law' in David Nelken ed. *The Futures of Criminology* London: Sage publications
- Froggett, L. (2002) *Love, Hate and Welfare: psychosocial approaches to policy and practice*. Bristol: Policy Press

- Fitzgibbon, D.W. (2004) *Pre-emptive Criminalisation; Risk Control And Alternative Futures* NAPO ICCJ Monograph: London
- Garland, D. (2001), *The Culture of Control: Crime and Social Order in Contemporary Society*, Oxford: Oxford University Press.
- Gendreau, P. and Coggin, C. (1996) 'Principles of Effective programming', *Forum on Corrections Research* 8(3) 38-41
- Goodman, A. (2003) 'Probation into the Millennium; the Punishing Service', in Roger Matthews and Jock Young (eds.) *The New Politics of Crime and Punishment*, Cullompton: Willan Publishing
- Hannah-Moffat, Kelly (2005) 'Criminogenic needs and the transformative risk subject: Hybridisation of risk/need in penality' *Punishment and Society* 7(1) 29-51
- HM Inspectorate of Probation (2002) *Probation Service Workload Prioritisation: Report of an HMIP National Survey*, London: Home Office
- Hollin, C.R. and Palmer, E. (1994) *Assessing Prisoner Regimes: Report to HM Prison Service*, Birmingham: Birmingham University, School of Psychology
- Home Office (2002) *OASys User Manual v.2*, London: National Probation Directorate.
- Home Office (2004) *Reducing Re-offending National Action Plan*, London: Home Office Communications Directorate
- Home Office (2005) *The NOMS Offender Management Model*, London: Home Office (NOMS Offender Management Workstream Team
- Horsfield, A. (2003) Risk Assessment : Who needs it? *Probation Journal*, 50 (4), 374-379
- Hudson, B. (2001), 'Punishment, rights and difference: defending justice in the risk society', in K. Stenson and R. Sullivan (eds) *Crime, Risk and Justice*, Devon: Willan Publishing.
- Hudson, B. (2003) *Justice in the Risk Society*, London: Sage Publications.
- James, Anne and John Raine (1998) *The New Politics of Criminal Justice*. London: Longman
- Kemshall, H. (2003) *Understanding Risk in Criminal Justice*, Maidenhead: Open University Press
- Kennedy, H. (2004) *Just Law*. London: Chatto & Windus
- Lea, J. (2002), *Crime and Modernity*, London: Sage Publications

- Maruna, S. (2001) *Making Good: How ex-convicts reform and rebuild their lives*, Washington DC: American Psychological Association
- Maruna, S. Porter, L. and Carvalho, I. (2004) The Liverpool Desistance Study and probation Practice: Opening the Dialogue', *Probation Journal*, 51 (3) 221-232
- May, C. (1999) Exploring Reconviction Following a Community Sentence: The role of social factors, Home Office Research Study No. 192: RDSS(D) London : Home Office
- Maynard-Moody, S., Musheno, M., and Palumbo, D., (1990) 'Street-wise social policy; resolving the dilemma of street-level influence and successful implementation', *Western Political Quarterly*, 43;831-48
- McCulloch, T. (2005) ' Probation, social context and desistance: retracing the relationship', *Probation Journal*, 52 (1), 8-22
- McNeill, F. (2004) 'Supporting desistance in Probation Practice: A response to Maruna, Porter and Carvalho', *Probation Journal*, 51 (3) 241-247
- Milner, J. and O'Byrne, P. (1998) *Assessment in Social Work*, Basingstoke: Macmillan
- Murray, C. (1990) *The Emerging British Underclass*, London: Institute of Economic Affairs
- Murray, C. (1994) *Underclass: the Crisis Deepens*, London; Institute of Economic Affairs
- Nellis, M. (2004) 'The Electronic Monitoring of Offenders in Britain: A Critical Overview' in Julian Buchanan et al. (eds.) *Electronic Monitoring of Offenders: Key Developments*. NAPO ICCJ Monograph: London
- Oldfield, M. (2002) *From Risk to Welfare: Discourse , Power and Politics in The Probation Service*, NAPO ICCJ Monograph: London
- O'Malley, Pat (2002) 'Globalizing risk? Distinguishing styles of 'neo-liberal' criminal justice in Australia and the USA' *Criminal Justice* 2(2) 205-222
- Peay, J. (2002) 'Mentally Disordered Offenders, Mental Health and Crime'. in M. Maguire, R. Morgan and R. Reiner, (eds.) *The Oxford Handbook of Criminology*, Oxford: Oxford University Press, 746-794.
- Raynor, P. Kynch, J. Roberts, C. and Merrington, M. (2000) *Risk and Need Assessment in Probation Services: An Evaluation*, Home Office Research Study No. 211 RDS(D) London : Home Office
- Revolving Door Agency (2002) *The Circular*, Issue 26

- Rex, S. (1999) 'Desistance from Offending: Experiences of Probation' in *The Howard Journal* 38, 366-383
- Robinson, G. (2003a) 'Risk and Risk Assessment,' in W.H.Chui and M. Nellis, (eds.) *Moving Probation Forward*. London: Pearson, 108-129.
- Robinson, G. (2003b) 'Implementing OASys: Lessons from research into LSI-R and ACE' , *Probation Journal*, 50 (1), 30-40
- Robinson, G. (2005) 'What Works in Offender Management?' in *The Howard Journal* 44, No: 3 307-318
- Ryan, T. (1998)'Perceived Risks associated with mental illness: Beyond homicide and suicide', *Social Science Medical Journal* 46:287-297
- Simon, J. (1993) *Poor Discipline*, Chicago: Chicago Press
- Smith, D. and Vanstone, M. (2002) 'Probation and Social Justice' , *British Journal of Social Work* 32, 815-830
- Van Dijk, J.J.M. (1994) Understanding Crime Rates: On the interactions between the rational choices of victims and offenders, *British Journal of Criminology* Vol 34 (2) 105-21
- Vanstone, M. (2004) *Supervising Offenders in the Community . A History of Probation Theory and Practice*, Aldershot: Ashgate
- Worrall, A. and Hoy, C. (2005) *Punishment in the Community. Managing offenders, making choices*, (2nd edit.) Devon: Willan Publishing
- Young, J. (1999) *The Exclusive Society*, London: Sage.
- Young, J. (2003) 'Merton with energy, Katz with structure: the sociology of vindictiveness and the criminology of transgression', *Theoretical Criminology*, 7(3) 389-414