Criminal Justice Joint Inspection
Arolygiad ar y Cyd Cyfiawnder Troseddol

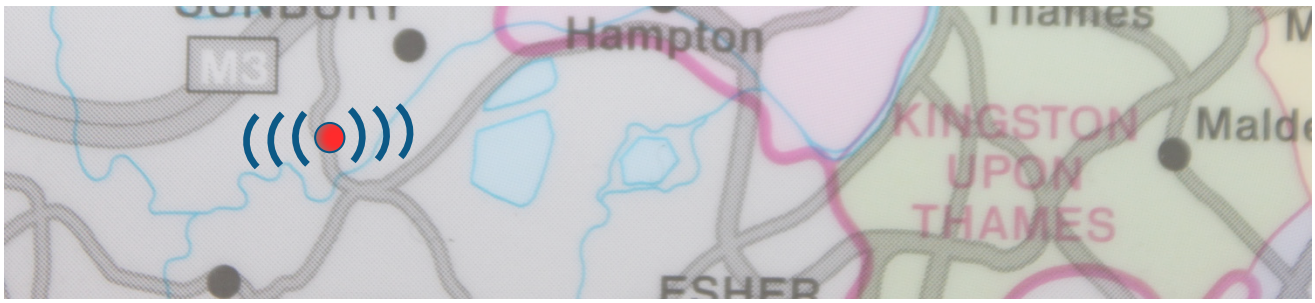
It's Complicated

The Management of Electronically Monitored Curfews

A follow up inspection

08/12

Executive Summary



Foreword by Liz Calderbank, HM Chief Inspector of Probation

Over the last six years, the use of court-ordered curfews has more than doubled. The maximum period of confinement is now likely to be extended from 12 to 16 hours per day, in an effort to increase public confidence in community sentences.

Depriving someone of their liberty is a serious matter, whether this is done by sending them to prison or confining them to their home. The period of detention, in whatever way it is applied, should therefore be proportionate to the seriousness of the offence. Sentencing may properly contain an element of punishment but to be effective in reducing offending, it should also promote change and reform.

It has become clear that electronically monitored curfews are now being used as an additional punishment for people convicted of minor offences that would not normally attract a prison sentence. Even at this level, however, punishment comes at a price. If the cost of electronically monitored curfews is to be fully justified, they need to be used more creatively and more effectively. This means providing targeted control and restriction and helping offenders to change their behaviour.

Our latest inspection shows that curfews applied in recent years have only rarely been used to best effect. In the vast majority of cases in our sample, the curfew was unrelated to the circumstances of the offence. We saw very few instances where it had been imposed specifically to stop the individual from doing something, or was part of a strategy to address their behaviour. Such an approach would require thorough assessment at the pre-sentence stage, something which now only appears to happen in a limited number of cases.

As in our earlier inspection, we remain concerned at the enforcement thresholds. Despite our previous comments, these continue to fall far short of what we think the public has the right to expect. We recognise that more rigorous thresholds, as we have advocated, could increase the numbers of minor offenders sent to custody for breach. A greater emphasis on compliance and the proposed introduction of other non-custodial options for breach, as proposed in the current sentencing review, would mitigate such an undesirable outcome.

This latest inspection also exposed continuing inaccuracies in information conveyed by courts to the probation service or the electronic monitoring provider. These inaccuracies are sufficiently serious to undermine the efficient management of cases – an even more urgent concern if the Government approves proposals to extend the number of external providers of probation services.

The matters raised in this report must be discussed and acted upon. Electronic monitoring, if used effectively, can be used both to punish and to promote change. Right now, it may do the former but rarely the latter.

A Inspection by HMI Probation

Report Summary

The inspection and the legislative background.

1.1 This follow-up inspection fulfils the commitment made by the Criminal Justice Chief Inspectors Group (CJCIG) to assess progress made against the published recommendations of the earlier report, A Complicated Business (2008). Both inspections were led by HMI Probation.

1.2 Electronically monitored (EM) curfews were introduced by the Criminal Justice Act 1991 although not immediately brought into force. Since 1999 certain prisoners with short sentences have been able to serve up to the last four and a half months of their custodial sentence in the community on Home Detention Curfew (HDC) with an EM curfew. Early release under this scheme is authorised by the prison governor. Court ordered EM curfews were made available in 2000; they have since been in widespread use and now form part of a community sentence.

The use of electronically monitored curfews

1.3 The use of court ordered EM curfews has more than doubled since 2006. This increase may be the result of a number of different factors, including increased sentencer confidence in EM curfews for the unambiguous purpose of punishment or to mark the breach of other sanctions. Conversely, and somewhat surprisingly when set against the backdrop of a rising prison population, the number of HDCs has, despite a recent small increase, steadily declined from over 40% to less than 20% of the total. This is part of a trend that has been evident since 2002-2003.

1.4 Although the overall number of curfews has increased significantly, changes to the contract in 2005 have led to a significant decrease in their unit cost. In 2010-2011 the total cost of EM was approximately £100M. This figure is slightly less than the annual cost for EM under the first contracts in 2004/2005 but for twice the amount of electronic monitoring.

1.5 It is apparent that, for some of the community cases, the curfew has added an element of control and punishment. In other cases it is unlikely that a sentence of imprisonment would have been imposed had the curfew requirement not been available. It is, of course, unproven whether EM is effective in preventing reoffending, and it is therefore a matter of judgement whether EM represents good value for money. To put the costs of EM in context, it represents about 10% of the total probation budget.

Findings

Community cases

1.6 For community cases, the Powers of the Criminal Courts (Sentencing) Act 2000 and the Criminal Justice Act 2003 require a court to obtain and consider information about the proposed address, including the attitude of persons likely to be affected by the enforced presence at the address of the offender, prior to imposing a curfew requirement.

1.7 In 2008 we found that 90% of community orders with EM curfews had been made following a pre-sentence report (PSR). In contrast, only 29% are now imposed with the benefit of a PSR or other report. We found many examples of EM curfews being imposed without any apparent consideration of information from an independent source. This raises concerns that the use of curfews may not be being targeted effectively or that they are being used in inappropriate situations, such as cases with domestic violence. In some cases the probation trust held information that should have been considered prior to sentence.

HDC cases

1.8 In this inspection we found that the assessment of home circumstances no longer appeared routinely to involve visiting the proposed address, meeting the residents of the address or the prisoner. Most judgements about the suitability of the address were now based on a telephone call from the probation trust to the family or friend living at the proposed accommodation. This is less than ideal as a contribution to the assessment process. However, it does appear to be a pragmatic response by probation trusts to the position that the prisoner will be released on HDC unless there are 'clear and substantial' reasons for refusal. There would be merit in considering whether there are efficiency savings to be made by the releasing prison completing the HDC assessment process themselves, particularly in the case of short sentence prisoners who will subsequently have no contact with the probation trust.

Communications from court

1.9 In 2008 we found that courts were sometimes using outdated forms and orders. One of the recommendations in the earlier inspection was that Her Majesty's Courts Service (HMCS) provide 'a set of clear, easy to use national forms, supported by clear instructions for their use and

by training. Their application should be mandatory and monitored'. We also noted that HMCS should ensure 'that greater oversight is exercised over court administrative procedures so that the orders issued by the court accurately reflect the sentence passed'.

1.10 Although a new form had been issued, not all courts were using it. Older versions of notification forms were still being sent to EM suppliers. Furthermore, the questions in the notification form remained ambiguous, so it was not surprising that we found inconsistency and inaccuracy in the way the form was used. We found several examples of forms where the sentence of the court was incorrectly recorded and others where it was unclear whether the role of 'responsible officer' was located with the probation trust or with the EM company. In many cases, the EM company was presented with information that was, at best, open to misinterpretation and, at worst, simply incorrect. These deficiencies caused significant problems where action was needed from the responsible officer, such as when the offender became subject to enforcement proceedings.

1.11 We also found several cases where the installation was not concluded in a timely manner as the information from the court was either unclear or was not sent to the EM company for several days after sentence.

Offender management

1.12 Despite both the aspirations of the offender management model and the recommendation in our earlier report that the National Offender Management Service (NOMS) should 'provide guidance to staff to ensure effective offender management by the integration of curfews into the sentence or intervention planning process', we saw little evidence that this had been achieved.

1.13 Previously we identified the possible cause of this lack of integration as a historical consequence of earlier legislation where curfew orders were indeed separate. This remains a possibility, although perhaps more significant factors might be the apparent increase in the proportion of orders made without a PSR, and the proportion of cases where the order was imposed as an additional punishment to an existing order.

1.14 Where multi-requirement orders operated without any supervision requirement, the role of the responsible officer remained unclear and the sentence operated without cohesion.

The enforcement thresholds

1.15 Despite the recommendation in our 2008 report that the Ministry of Justice (MoJ) should work to tighter and more transparent boundaries for the enforcement of curfews, but with more discretion in individual cases, the contracts and protocols established in 2005 have remained largely unchanged. The concerns that we had about the insufficient stringency of the thresholds, therefore, still remain. In particular, we feel that the fact that an offender on a 12 hour curfew could be absent for 11 hours 59 minutes and only trigger a "less serious violation" creates a gap between what the courts and public might reasonably expect and what actually happens.

1.16 The new arrangements for the delivery of EM from 2013 offer the potential to implement the necessary changes.

Enforcement

1.17 From the evidence held at the EM suppliers, over one-fifth of cases inspected had a less serious violation recorded against them. Thirty (37%) of the sample inspected had a more serious violation recorded against them.

1.18 The EM companies had largely complied with the recommendation of our 2008 report to 'ensure clearer communication to offender/case managers on breach, including a simple summary on all cases'. Probation trusts had, however, been less successful in following the recommendation that they should routinely inform 'the electronic monitoring companies of their decisions regarding enforcement, and record their reasoning, on those rare occasions when they decide against following the given advice on enforcement'.

1.19 Enforcement action was usually undertaken swiftly. Problems, where they existed, often stemmed from a lack of clarity over who was the responsible officer. This in turn was caused by the poor quality of the information received by the EM supplier from the courts.

Conclusion

1.20 EM is now clearly established within the criminal justice system, although its contribution to the management of offenders in the community appears increasingly confined to that of punishment and restriction, rather than as an integrated part of the sentence planning process. Whether such use is cost effective in reducing reoffending is a matter of judgement and further research.

Recommendations

The Ministry of Justice and the National Offender Management Service should:

- develop tighter and more transparent thresholds for enforcement, but permit the use of more discretion in individual cases.

HM Courts and Tribunals Service should:

- ensure that sufficient information about the proposed curfew address (including information as to the attitude of persons likely to be affected by the enforced presence of the offender) is available to courts when considering a curfew requirement
- improve communication of key information about each case to the relevant electronic monitoring company by providing a set of clear, easy to use national forms, supported by clear instructions on their use and by training for the relevant staff
- ensure that greater oversight is exercised over court administrative procedures so that the orders issued by the court accurately and clearly reflect the sentence passed by the court.

Probation trusts should:

- ensure that staff communicate effectively with electronic monitoring providers:
    - at the commencement of any order with a curfew requirement
    - where matters pertaining to any significant Risk of Harm arise
    - in response to all notifications relating to the need for enforcement action
    - ensure effective offender management by the integration of curfews into sentence planning where they act as the responsible officer.

The electronic monitoring companies should:

- ensure that all information and enquiries from offender managers are logged appropriately on their information systems and acted upon.

Contact us

The full inspection report was published on 14 June 2012. If you would like a hard copy of the report then please contact the Publications Team or you can download from our website - http://www.justice.gov.uk/about/hmi-probation/ .

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