

Probation Rules under probation – Professional fundamental guidelines in relation to financial resources

Jöerg Jesse

*Director General, Prison and Probation Administration, Ministry of Justice,
Mecklenburg - Western Pomerania*

INTRODUCTION

In this article I want to compare the Probation Rules with the fundamental professional convictions of the German probation organisation, the DBH, from the point of view of the administration. What aspects of the Rules do we find in our own quality standards, and where do our standards reproduce the Rules?

The method I have used is to take one's own situation as the starting point, and to view one's own quality standards as a benchmark for comparison with the Rules. At the same time, however, the impact of the economic crisis is at the centre of our debate. This means that we not only need to compare the Probation Rules with our own national or regional expert standards; we must also view them alongside the restriction of financial pressure and cutbacks.

In other words, we must size up the Rules against two sets of criteria: on the one hand against our own underlying professional standards – do the Rules correspond to these standards and do they represent a certain level of quality? – and on the other hand we must apply this benchmark in the restrictive context as well. What aspects of the Rules can still

be implemented in the context of slimmer financial and human resources? Which quality standards can and should definitely be maintained if fewer resources are available? Which shifts occur within the spectrum of tasks? Do we need to set new priorities? If this is the case, how can we make efficient use of and maximise the resources that are still available?

I fully understand that both the question of quality and that of restrictions are assessed differently from country to country. To this extent the approach here, which only allows for a comparison of the Rules with our German situation, may only serve as one example. However, it is possible for similar hypotheses to be formulated in other countries as well, and we can assume that there will be a certain degree of overlap.

At the basis of the analyses are ten hypotheses. They are important for our work. I believe that they describe important standards in our probation services. These hypotheses emerged from a dialogue between those responsible for this area within the administration and those working in the field. They represent the point currently reached in our discussion.

Ten hypotheses

Fundamentally, our discussion of the Rules against the backdrop of our own quality standards has led to the conclusion that the Rules constitute a good step in the right direction. If Europe is to grow together, it needs this kind of professional reference point.

Just as with the Prison Rules, the Probation Rules are restricted by the fact that they must take due account of countries spanning half the globe from the North Cape to Sicily and from Iceland to Siberia. There is therefore a strong systemic trend towards finding the lowest common denominator. Overall, we can work well with the Rules. As will become evident from this evaluation, there are a few points where we would like to have seen a bit more courage on the part of the authors in the form of some precise statements. At other points, however, there are indeed some astonishingly specific and precise statements to be found. This means that our appraisal varies from hypothesis to hypothesis. I will start with a point that has left us unsatisfied.

Hypothesis 1: “The organisational structures of probation services enable central processes of governance”

Professional standards

Which organisational structure is probation tied into, and how is probation itself organised? Which hierarchies exist?

There is astonishingly little to be found in the Rules concerning these questions. In only eight out of over a hundred points do elements exist which constitute a potential match for this hypothesis, and these eight points say very little. The Rules remain vague, apart from the following requirements:

9. Probation shall remain the responsibility of the public authorities, even in the case when services are delivered by other agencies or volunteers

which is also not a direct statement on organisational structures, and

8. Probation agencies, their tasks and responsibilities, as well as their relations with the public authorities and other bodies, shall be defined by national law

which emphasises the legislative foundations of our work. For us, having a structure which is transparent and governed centrally is very important. It took us a long time to arrive at a clear and effective form of organisation. Maybe this discussion is not taking place in other European countries, but we found at least that the Rules had little to say on the issue of structure and organisation.

Influence of cutbacks

In an environment where resources are being cut, it is questions regarding organisation in particular which start becoming important. The fewer resources that are available, the more clarity is required in organisational structures as to which services are to be provided as a minimum standard. Explicit priorities are required in order to secure an adequate standard of quality for the tasks which have to be performed. More energy will be required in order to maintain existing structures and to avoid further organisational downsizing. This requires clear leadership and clearly defined goals.

In summary, we would like to have seen the Rules providing a clearer and less ambiguous position on questions regarding the organisational structures behind probation services.

Hypothesis 2: “Clearly defined tasks and the ability of probation staff to participate in administrative decision-making are highly significant in probation work”

Professional standards

Who assigns work to whom? What influence does professional practice have on decisions taken by the administration?

Aside from well-known official “customers” – the courts, public prosecution services and superiors within the organisational structures of probation services – unofficial sources of work, for example

relatives, employers and other support and control agencies within the network, also play a role. These all influence the way that people on probation live their lives, and thus have an impact on what is achieved during the probation period. Probation staff have to coordinate all of these expectations and balance them out against the expectations of the offender himself. Finally, their professional estimations of the risks and chances bring all of these facets together in order to form a binding probation work plan, which in turn is crucial for shaping the probation period. In the Rules there is no distinction between official and unofficial workloads, nor is there any mention of their significance for practitioners. For us in practice, dealing with these questions is constantly an important topic for in-service training and coaching, where the aim is to make probation staff more secure as individuals in the roles they play.

Sixteen rules deal with questions of planning, involvement, decision-making, documentation and agreement. As already mentioned, number 8 highlights the importance of having a legal basis for the work carried out. Number 55, for example, mentions the tasks of control and support.

The interweaving of assistance and control is nothing short of definitive of the job that probation staff do. They are responsible for both:

- On the one hand, they present their clients with support options, which these are then free to take or leave;
- On the other hand, they must exercise controls, which form the basis of the working relationship, in order to ensure that conditions are complied with.

However, one thing is decisive: the criminal offence is the occasion which forcibly brings probation staff and offenders together. Being sure of this circumstance has required a considerable change in the way some of our probation staff think: professional maxims of social-worker-like action within the justice system must be accompanied by recognition of the fact that the criminal offence has to be the focus of judicial social work (similar to the way that debt is for debt advisors, addiction is for addiction counsellors, etcetera), and that the

approach taken is to be geared toward this accordingly. In this context, the formulation of binding service standards both for the area of assistance and for that of control was one of the biggest tasks that we had to set ourselves.

Influence of cutbacks

In the event of financial cutbacks, the question of workload and assignments will hardly change for probation services. These are questions of substance, which appear to be largely independent of resources.

Hypothesis 3: “The procedures in probation work are planned, implemented and documented within the framework of a standardised approach”

Professional standards

For us, the standardisation of our work is a fundamental quality. Which questions illustrate hypothesis number 3? How can our approach be made transparent and comprehensible? How do we ensure consistent quality with such discernable differences between individual members of staff?

We wanted to be able to provide answers to these questions, and for this the Rules are pleasingly specific. Nineteen rules deal, among other things, with the following issues:

- Professional standards (nr 13)
- Supervision (nr 53)
- Systematic and thorough assessment of the case in hand (nr 66)
- Assessing and evaluating individual cases as an ongoing process (nr 69)
- Carefully maintaining and updating files as proof of action (nr 90):

Here the Rules take a stand, show some edge, and demonstrate their strengths. This is the part that our practitioners found to be the best. They felt that such precisely worded international standards provided them with support and underpinned their work. These formulations have provided tailwind for our staff.

Influence of cutbacks

However, it is to be feared that especially under pressure in a situation where we are running ever lower on resources, it will no longer be possible to adhere to certain professional standards. We need adequate personnel, both in terms of quantity and quality, especially for our work with offenders who require particular monitoring. Only then can a differentiated professional approach in line with national and international standards be expected.

To summarise, in terms of the quality of procedure, it is to be feared that cutting resources will lead to a reduction in quality, if not an increased risk to security.

Hypothesis 4: “Probation staff use clearly defined methods and instruments in order to complete their tasks”

Professional standards

This hypothesis actually takes hypothesis three to a more specific level and deals with questions such as: Which instruments of risk minimisation are available to probation services? How is the effectiveness of methods and interventions professionally secured and tangibly described?

The Rules contain a further nine points which correspond to this quality requirement. For example:

77. Probation agencies should be able to use a variety of methods based on an interdisciplinary approach and sound knowledge derived from relevant research.

Rules nrs. 72 - 75 deal with the significance of planning probation work. If one considers that these methods are supposed to be applied in the most diverse of countries, these rules are impressively specific. Our respect goes out to the authors.

Influence of cutbacks

But even the implementation of a “variety of methods” is jeopardised if probation services are hit by considerable spending cuts. Ultimately, a differentiated, methodological approach requires resources in extremely diverse areas. For example,

the creation of technical conditions such as electronic monitoring, as is mentioned in rule nr 57.

Often, however, the time factor also plays a large part, for example if clients who require particular monitoring need to be contacted on a more frequent basis so that staff can work more intensively with this target group.

Those who bear political responsibility will make explicit demands not to make savings in high-risk cases. The cuts will then come to the surface via the reduction of contact with first-time offenders. However, by working intensively with these people, it might have been possible to prevent them from turning into “professional offenders” in the first place.

Hypothesis 5: “The role of affected persons, offenders, their rights, needs and ability to participate are central to probation work”

Professional standards

In addition, the perspective of victims and their role in working with the perpetrators must also be dealt with.

We believe that this is an area of conflicting priorities in the profession, which emerges with each and every contact with clients, and which can never be hidden. The Rules deal in 23 points with the perpetrators and in 5 points with issues relating to the victims. The key ideas here are as follows:

- Participation
 - in the assessment (rule nr 67)
 - in the work plan (rule nr 73)
 - in interventions (rule nr 78)
 - in supervision (rule nr 85)
- 1 Considering individual characteristics, circumstances and needs of offenders (rule nr 4)
- as well as in rule nr 54:

54. In order to ensure compliance, supervision shall take full account of the diversity and of the distinct needs of individual offenders.

- Working with families (rule nr 56)
- Transparency of procedure, motivational work (rule nr 6)
- Access to files (rule nr 92)
- Assisting victims, victim's perspective and
- Work with victims (rules nrs. 93 - 97)
- and restorative justice practices in Rule 97:

97. Where probation agencies are involved in restorative justice processes, the rights and responsibilities of the offenders, the victims and the community shall be clearly defined and acknowledged. Appropriate training shall be provided to probation staff. Whatever specific intervention is used, the main aim shall be to make amends for the wrong done.

We believe that the Probation Rules bear hallmarks similar to the Prison Rules in this respect. If we read between the lines here, then we recognise the sentenced person, as well as his rights and concerns about potential abuses of power by the administration. This is understandable if the aim is to create equal standards for all on the basis of human rights.

Our practitioners felt however that there is too little active focus in this section of the Rules on a clientele that to some extent is highly problematic. Leaving aside the vital focus on questions of care and assistance, we feel that the Rules fall a little short of incorporating a critical view of the offender. We believe that it is not about having a "positive relationship", as is specified in rule number 1:

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

Instead, what is required is an empathic interest on the part of probation staff in their clients' lives, accompanied by the necessary professional distance. The focus for us is on creating a durable working alliance, within which an interest in the offender as a person comes to the surface in the work done with him, and not in the development of "positive relationships". Moreover, clients are quick to identify the desire of probation staff to see them in an exclusively positive light, and this desire is satisfied. Our experience has shown that the number of complaints about "well meaning" probation staff of this sort is higher than about the others.

Influence of cutbacks

Fundamental questions of ethics and of shaping the working relationship, whilst at the same time involving the victim, will not be influenced directly by spending cuts. Nevertheless, rule nr 29 in particular very much emphasises the necessity of having sufficient personnel and underlines this as the fundamental basis for providing effective services. This rule stipulates that conditions must be created which allow individual members of staff to provide offenders with effective and humane supervision, guidance and support.

For this reason, savings in the area of personnel would have a qualitative impact in the medium and long term on how offenders are dealt with.

Hypothesis 6: "The highly responsible job of probation worker requires the best choice in ethical and professional quality, as well as training and ongoing in-service qualification"

Professional standards

This entails the following questions: How are staff qualified to meet professional requirements? How can assistance and control be exercised professionally side by side? How is the personality of each client taken into account with regard to the task of assistance and control? Are there any standards for selecting candidates in the context of job applications? Does the in-service training on offer ensure that staff feel like they are up to the job, even though the requirements made of them are constantly changing?

In 18 rules we can find almost all of the points mentioned here: In nr 21, the Rules stipulate, for example, the following about targeted selection of personnel, and adequate remuneration:

21. Probation agencies shall act in a manner that earns the respect of other justice agencies and of civil society for the status and work of probation staff. The competent authorities shall endeavour to facilitate the achievement of this aim by providing appropriate resources, focused selection and recruitment, adequate remuneration of staff and good management.

In rule nr 13 the rules stipulate that all activities and interventions must correspond to the highest international ethical and professional standards. They also contain the expectation, that personnel have access to in-service training (rule nr 25).

Influence of cutbacks

What impact do financial cutbacks have in the area of personnel? Less money means less purchasing power: this means a smaller staff in numerical terms, as well as the possibility of a lower qualified staff, which is also cheaper. Both would lead to a reduction in quality. This means that fewer members of staff, or in the worst case scenario less qualified members of staff as well, will require stronger management, leadership and motivation. I make reference here to our first hypothesis regarding the creation of suitable organisational structures for central processes of governance. It is highly likely that cuts in personnel will necessitate a higher level of controllership, as the result of which it might become clear that staff require further qualification. This means that savings in personnel in probation services would subsequently entail a – by no means negligible – number of costly measures in other areas (organisational structures/management, controllership, in-service training, methodical action, et cetera).

Hypothesis 7: “The use of probation resources is geared towards the actual need”

Professional standards

How are performance, workload and quality configured transparently and comparably? In this respect, the Rules go far beyond our demands.

Of the 15 points in the Rules that deal with resources, we found our point, namely a focus on intelligent use of resources in organising personnel, especially reflected in nr 82.

82. Evaluation shall also reflect the extent to which the agreed work plan has been defined, put into effect and produced its intended consequences. Probation agencies shall be able to apply to the deciding authority to alter or end the supervision, when appropriate.

With this we had in mind a system where work is organised on a differentiated basis to the most diverse degrees of intensity. We measure the specific workload according to frequency of contact, specialisation and intensity, and no longer count only the number of cases. The Rules, however, go far beyond our somewhat limited view of resources. In this respect we proceeded far too restrictively from our own situation, and only thought about how best to deal with the resources available to us.

The Rules, however, deal not only with the intelligent use of resources, as is the case on our part, but with the provision of resources for the work of probation services as a whole. Among other things, the Rules stipulate the following:

10. Probation agencies shall be accorded an appropriate standing and recognition and shall be adequately resourced.

18. The structure, status and resources of probation agencies shall correspond to the volume of the tasks and responsibilities they are

entrusted with and shall reflect the importance of the public service they implement.

104. Probation policy and practice shall be as far as possible evidence based. The authorities shall provide the resources necessary for rigorous research and evaluation.

This far more comprehensive view of resources is impressive, and showed us that our way of looking at things was much too narrow. However, a broad view, such as that contained within the Rules, is important and reasonable if the goal is to achieve largely uniform standards in Europe.

Influence of cutbacks

If we are to be considerably shorter on resources, pretty much all areas of probation will be in danger, a different meaning as they will serve to maintain the system. In this respect, cooperation with partners outside of the justice system, for example with the use of volunteers, might suddenly no longer just serve to complement the work of professionals and to allow society to take responsibility – they could become fundamental necessities in performing the functions of the state. The entire organisational level in probation services, especially management, would have to invest more energy in measures to maintain and strengthen the system, and would therefore have less capacity to deal with the processes that relate directly to clients. With this, we could expect to see a shift in focus within the task spectrum, occurring out of necessity, to the detriment of work with offenders who are on probation.

Hypothesis 8: “Cooperation is highly significant in probation work”

Professional standards

The necessity of cooperation in order to ensure the social integration of offenders is very impressively described, especially in rule nr 12:

12. Probation agencies shall work in partnership with other public or private organisations and local communities to promote the social

inclusion of offenders. Co-ordinated and complementary inter-agency and inter-disciplinary work is necessary to meet the often complex needs of offenders and to enhance community safety.

For us, no single state institution alone can be responsible for the reintegration of offenders – not the prisons, nor the probation services – and not even the two together, no matter how good cooperation is between the two. The reintegration of offenders is a job for society as a whole.

Probation services are required, however, to be active in seeking out, reinforcing and maintaining partnerships. Cooperation is the key to success if integration is to work. First of all, cooperation within the justice system must function smoothly, but even here things are often in a sorry state. Alongside this, cooperation with external partners and volunteers must be expanded to create a stable structure. In this connection I mean cooperation for example with NGOs, other government departments, local authorities, police, the health system and job centres.

Rule nr 35 mentions the involvement in the transition from custody to freedom, but regrettably not the transition from probation to imprisonment; we feel it is very important that binding regulations are also provided for the transition to prison. Furthermore, the Rules stipulate:

- the development of inter-agency agreements (rule nr 40)
- and the coordination of cooperation (rule nr 80)

I name but 3 out of 28 rules that deal with the large field of cooperation and reintegration. It is very good to see that there is no other issue which the Rules deal with at so many points than this one – in fact, in approximately 25% of all entries. Ultimately, successful integration is the goal that we all have in common.

However, even though the number of entries mentioning the need for cooperation with other institutions is high, the Rules are lacking a certain emphasis in this area. This – in our opinion significant – need for forms of cooperation that are institutionalised and firmly installed in procedure, has

not been elaborated on. The need to involve probation staff in the admissions procedure in prisons is missing entirely.

It thus remains at the discretion of probation staff to decide whom to work with, if at all, and how this is to be done. We would like to have seen the Rules providing binding stipulations here. It is hard work involving people in this societal task of integration who, although they all share responsibility, do not want to accept such responsibility themselves. If reintegration is to work, all these actors need to be brought around one table. The Rules could have had a supportive effect in this area in those countries which are working on inter-agency solutions, and for example want to transfer more responsibility to local authorities.

Influence of cutbacks

What kind of impact would we have to anticipate in this area in the context of shrinking financial resources? I have already spoken about a possible change in the significance of working with other actors in order to ensure that state tasks are fulfilled. But engaging in cooperation, especially with actors external to the justice system, also requires having enough time to look beyond the boundaries of one's own sphere of competency, while at the same time playing a very direct role in committees and being active in the community.

Maintaining partnerships, establishing contacts and making them commit themselves to agreements in a binding manner are things that, as a rule, are not accounted for time-wise in our job descriptions for probation staff, meaning that these tasks must often be performed in addition to case-work or, alternatively, in addition to leadership tasks. However, if we want cooperation to be characterised by quality and continuity, we need the resource of time. Working with other actors helps supplement the limited options that professionals have. Often, we only notice properly that this is missing when it is gone. We should be concerned that with financial cuts, procuring resources and ensuring that tasks are completed will constitute so much of a priority that the energy for cooperation will either be "burned" in other areas, or will be fought over in order to maintain the system. Both developments seem to be realistic possibilities.

Hypothesis 9: "The effectiveness of work needs to be reviewed via internal processes of controllership and, where possible, via external evaluation and academic support"

Professional standards

How do we ensure that clearly defined standards are put into practice?

Rule nr 102 mentions reliable systems for monitoring the work carried out in practice, and in nr 99 they stipulate clear, accessible and effective assessment procedures.

It is good to see that several points also deal with evaluation. For example nr 84 deals with the final evaluation and nr 104 deals with thorough research and evaluation. Nr 105 deals with revision which, the Rules stipulate, must be based on scientific knowledge and research.

Influence of cutbacks

Our experience has shown that when resources are restricted, evaluation and accompanying research are the first areas to "feel the squeeze", and hardly any money remains available to us in this area as it is. Although internal controllership is not directly affected by these cuts, I anticipate that if resources are cut any further, stronger controllership will be necessary. In the medium term, the relationship between actual probation work and controllership could shift to the disadvantage of probation work, since more energy would need to be invested in maintaining the system. This means that we will need to expand internal controlling processes. To this extent, cuts to resources will lead to a reappraisal of controllership.

Hypothesis 10: "The public is aware of probation work as an institution, and this institution represents its interests"

Professional standards

How do probation services inform the public about their own work? Do they stimulate expert discussion and processes of change? Do they communicate with political decision-makers?

This includes the entire spectrum of publicity: information materials, papers written by experts, internet presence, open days, handling the media, TV reports on the work of probation services, representing the interests of these services via active communications with the public, initiating expert conferences, et cetera.

Fourteen rules mention these points, for example nr 106 about regular information and nr 108 on publication of statements on policy and practice.

In my opinion, the PR perspective is adequately reflected in the Rules.

Influence of cutbacks

However, all the cost-effective aspects of publicity work come under pressure as a result of financial cuts. Often, the finance Ministries only view publicity as “nice to have” anyway. We will inevitably face considerable cuts in this area.

The more our ability to communicate and to present our important work to the public is reduced, the smaller our lobby will become. The necessity and significance of our work, not least for the safety of society, will then only be discussed when spectacular cases of reoffending occur. A cynic would say that this form of public perception has so far proven to be the best producer of results when it comes to increasing resources. To describe this phenomenon in probation and corrections in Germany, we say: “it takes something to happen before something is done”.

CONCLUSION

Faced with economic reality, we will need to use the options available, or indeed those that remain available to us in the most efficient way possible, in order to ensure that as little quality as possible is lost. Quality is best maintained with well-trained personnel. This is why we should only make savings in staff quality as a last resort. Coping with fewer members of staff is still easier than slashing qualifications. Well qualified personnel can better absorb financial cuts than those who are poorer qualified.

The Probation Rules are a good and positive step. Great respect and many thanks should be paid to the authors for completing this demanding task. Taking a critical view of the Rules and commenting on them is important in order to ensure that they remain a cause for debate and critical dialogue. With this article I have wanted to make a contribution to this discussion.

It is even more important, however, that we bring the Rules to bear in the course of our day-to-day activities, and that we each flesh them out, as and where we can. By doing this, we will be able to improve the quality of probation services in Europe on a step-by-step basis, despite the change in conditions.

The text of the European Probation Rules is available online at <http://tinyurl.com/5tu2oks>

The associated Commentary is at <http://tinyurl.com/6d9wz7l>