

The Future Management of Offenders (3.12.25, Birmingham)

For reasons I cannot really explain, and without betraying the fundamental independence of my role, I feel a particular affection for the work of His Majesty's Prison and Probation Service. Despite them being poison chalices, possibly, I have gladly accepted three commissions on prisons and probation: resulting in my report on Multi Agency Public Protection Arrangements (MAPPA) in 2020, on Terrorism in Prisons in 2022, and my report on Separation Centres, delivered this year but awaiting publication.

Why do I feel this affinity? Well, I suppose I am a criminal barrister by background, and sit a few weeks a year as a part time criminal judge. Perhaps that attracts me to business behind-the-curtain– what happens after the sentence, what happens after the release, the bit that people perhaps take for granted. The fact that prisoners, including most terrorist prisoners, will one day be released.

But I also find myself drawn to the complexity of the system.

Prisons and probation are wrapped up in a certain internal logic which can seem impenetrable to the outsider, but explicable within.

This complexity is doubled when you get to counter-terrorism and all the bodies and agencies and government departments that have a finger in the pie. This means that different voices get heard in managing terrorist offenders, which is a good thing, but sometimes means there is room for improvement by simplifying things.

I started my MAPPA review in early 2020 in the heart of Covid lockdown. It was immensely satisfying to consider and get my head round a system which was both fundamentally sound and, when it came to terrorist offenders, could be materially improved.

At this stage I had been Independent Reviewer for less than a year. Of course I had experience of terrorism-related litigation as a barrister, and also had done several high profile court cases for the Ministry of Justice (for example, about smoking in prisons). But as we know litigation – and dare I say it, costly public inquiries - often reveal very little about how public services truly function and can be improved.

It is a testament to the openness of MoJ, HMPPS, the Joint Extremism Unit that they were willing to be so open with me, an outsider; an experience I have found in my prison reviews too.

The motivating circumstance for my MAPPA appointment was Usman Khan's attack at Fishmonger's Hall, followed shortly after by Sudesh Amman's attack in Streatham. These were individuals, on licence, out in the community and known to present a risk. In

the time-honoured fashion I set out to ask, with the benefit of hindsight, what could have been done better.

When I look back at that report, delivered over 5 years now, there are really two things that stand out, or actually one thing with two aspects. The thing in question is the dynamic between power and information.

The first aspect was this. When I surveyed all the agencies involved in managing the risk of terrorist offenders there was a misapprehension. The reputationally powerful agencies were Counter Terrorism Policing (CTP) and MI5. But the agency with the real power indeed an extraordinary power which went far beyond anything that CTP or MI5 could dream of, was the Probation Service which enjoyed the power to recall a person to prison on the grounds of not being of good behaviour. It was probation and no one else that could say, this terrorist offender belongs back in prison because he cannot be safely managed on licence because we can see as professionals rationally and without prejudice that something is not quite right. That's the power aspect.

Then there's the information aspect. I found that CTP and MI5 often had crucial information about risk, for example through covert operations, but the HMPPS, who had the power, did not have that information. I vividly recall the silent presence of two police officers at a MAPPA meeting I went to. After the meeting, I introduced who they were and why they were there. They demurred. It only some weeks later when I had received the necessary permissions to receive the operationally sensitive information that those two officers were carrying that I understood why they were there. But they had been unable to share that information at the MAPPA meeting. This led to my recommendations about core groups, and the need for security-cleared probation officers, that so officers did not sit on information but could share it.

Even aside from sensitive information there was other information that was not being shared. I think it is perhaps no exaggeration to say that of almost everything I've influenced as Independent Reviewer, I am most proud of subsections (4A)-(4G) of section 325 Criminal Justice Act 2003. What these dull sounding subsections achieved was a clear information gateway for all agencies including Duty to Cooperate Agencies.

And here I think my ignorance, that I've already mentioned, was an advantage. As an ignoramus I could ask the questions – can you share information? Why not? Is data protection a factor? In what way? What would make things better? And as a lawyer I had the confidence not to be taken in by suave assurances from data protection experts that the law was not a problem and fears had been exaggerated. The truth is the law didn't work, and I'm glad it was reformed. In fact, if I'm ever asked, what's the best advice you've been given, along with cock-ups being more likely than conspiracy, it's that simple point: don't be afraid to ask the stupid question.

Well so far I've talked about MAPPA past. I cannot be the only person at this conference who has or will invoke the Christmas Carol – possibly but controversially I suggest Dickens' greatest work – and talk about MAPPA yet to come.

When like Scrooge we face the gravestone and brush away the snow to see the words engraved, what do we read? Let me suggest a few: violence fixated individuals; neurodivergence; cuts to services; the retreat online. The remedy – our version of Scrooge's saving promise to honour Christmas in my heart and try to keep it all the year – must be innovation.

I want to start with what I call the retreat online, by which I mean the increasing share of digital over in real life on the part of all of us, including offenders.

It is certainly relevant to violence fixated individuals and lone actor terrorists. The facts are familiar – individuals, who struggle to fit in, possibly because of autism, who often lack purpose and companionship, find online communities with rigid rules about virtue and evil, some of which promote violence as a solution. Most of us are immune to violent imaginings but some people are drawn towards it; and some of these – Rudakubana, Nicholas Prosper to name two extreme cases – will act upon it.

This leads to central questions that need answering in the context of convicted terrorist offenders. How confident are we that we understand the role of the internet – in pre-sentence reports, in risk assessments, in post-release strategies? What does healthy re-engagement with the internet, post-release, look like? What does supervision even look like?

I am acutely aware that I opine about online matters without having any understanding of what why the internet has such a malign effect on a certain group of people but not everyone else. I have barely any understanding of how children use the internet, except I know they ask AI for advice on their hair and their relationships, and have been told that 'below the line' comments by "real people" are trusted when mainstream journalist are not.

I think the understanding and exploitation of digital life will also be important for what the government calls Violent Fixated Individuals, although I have my doubts about that name until we understand more about how those individuals themselves perceive the violence – is it violence for the sake of violence or something else? Of course the online dimension will affect the management of every released offender.

Please don't get me started about the Online Safety Act making the UK the safest place to be online. I do know a thing or two about that, and let's just say the rhetoric doesn't match reality. There will be terrorism content or child sex abuse material online; offenders will find it on small platforms; they will use VPNs.

So when you supervise a released offender, how do you relate to their digital lives?

There are two aspects to this. Firstly, their life is lived partly online. If you don't discuss with them their online life, you are only getting part of the picture, and I am not only thinking about child sex offenders. Any offender might be developing wonderfully pro-social habits in real life, but the reverse online. They might be saying all the right things to their community probation officer or ideological mentor and then trashing them in a groupchat. This seems to me basic – the relationships people form online will be very important, especially if they already find real life connections difficult or are isolated.

I recognize that for some offenders they won't have that option because of licence conditions or Serious Crime Prevention Orders or Terrorism Prevention Investigation Measures. But at some stage they will reemerge into the digital world – how do you prepare them for digital reentry?

If probation officers do speak to offenders about their online use, are there pro-social interests online that can be recommended? If people have gone down the rabbit hole online, downloaded terrorist manuals, exchanged pictures of weapons, drawn up attack plans, the remedy may perhaps still lie online, with a different online interest. Probation officers will know about benefits, housing, charities, support hubs; but do they really know all the positives that the internet has to offer. Is there a role for ex-offenders in online support groups?

The second reason to discuss digital life is AI. It is quite foreseeable that Grok, or ChatGPT, Claude, Meta AI, a AI girlfriend, or a chatbot created on character.ai, may be asked about what a probation officer has said. We all like to ask for a second opinion. Or at least to carry out online research. Imagine a terrorist offender has a debate with a theological mentor provided by HMPPS, in which a verse of Koran is discussed and reference is made to a particular school of interpretation. That's going to be checked out. How do you compete with the internet for trust and authority and availability?

Perhaps a probation officer makes suggestions about repairing a family relationship – should the offender write a letter or not? AI will have a view about that.

This is not doomsterism. Flipping the point, perhaps HMPPS can create a pro-social chatbot, the probation Pro-Bot, trained to give advice and support and even companionship to released offenders. Or an ideological mentor bot. I say this with all seriousness in an era of cuts and pressures. It need not be a replacement for real life contact but a supplement to it. Last week I had a go at creating my own very probation officer chatbot on a free software tool. I initially tried on my HO account and got a very prompt email saying I was engaging with a prohibited site but thought I was doing so innocently. The chatbot wasn't at all bad, and it took me 5 minutes.

If not a pro-social chatbot, it cannot be too long before AI-enabled monitoring software, assuming it is installed as part of licence conditions, can provide a summary of what a released offender has been looking at and flag up any worries. It seems to me this would

generally be a proportionate intrusion into a released offender's private life, especially if it allowed the offender access to technology which would otherwise be prohibited. One of the difficult balances with released terrorist offenders is that necessary restrictions on internet use should not if possible cut them off from genuine parts of modern life, especially if an offender needs an app to enter the gig economy.

More generally technology does offer wonderful ways for individuals to have contact with probation, or with their families. I don't know how much terrorist offenders use Teams to speak to probation officers but it would appear that there are great possibilities of access and flexibility.

I don't think I can look any further ahead than a probation chatbot! But in the more immediate future, MAPPA will need to deal with State Threat offenders. Many of these will come into state threat activity because they were recruited or offered themselves online.

I'll make two final observations. The first is that HMPPS and probation staff in particular have a wonderful opportunity to see how terrorist prisoners, so many of whom went down the online rabbit hole, have been changed on their release by having no or hardly any access to the internet whilst in prison. This will generate I think an extraordinarily useful set of observations about how the internet does and does not shape human behaviour.

The second and closing observation is to big up MAPPA as a template for other difficult problems. Of course there is nothing unique about multi-agency working but modern MAPPA has been forged out of real life and sometimes urgent experience of managing some of the most dangerous individuals. It has developed flexibility, it has won unique trust within the system (I am thinking here about the trust that exists between some MAPPA members and the most secret part of the system), and has secured trust and exercised influence in the outside world. MAPPA management can be a seal of quality: the very fact of MAPPA management may make the difference to whether a released offender is allowed on a university course or not.

In conclusion, I am sure MAPPA will rise to the next challenges, and I wish MAPPA and all who sail in her all the very best for the next 25 years.