Compliance through Discussion: The Jersey Experience

Peter Raynor

The background: Compliance, enforcement and toughness

The enforcement of compliance with community sentences has been a topic of vigorous discussion in England and Wales since the early 1990s. A series of studies showed enforcement to be less consistent and less rigorous than a strict interpretation of the law would require (H. M. Inspectorate of Probation 1995; Ellis et al. 1996). Together with a high level of political interest since the 1990s in the processes and outcomes of probation supervision, this led to enforcement becoming a major target (sometimes the major target) of the National Probation Service created by amalgamation of over 50 local services in 2001. In the very clear account provided by Robinson and Ugwudike (2012) we see how successive editions of the ‘National Standards’ for the supervision of offenders from 1992 to 2000 increasingly constrained the discretion of probation officers to accept probationers’ reasons for imperfect compliance; this resulted in increases in breach proceedings and the return of probationers to court for more punitive resentencing under the 2003 Criminal Justice Act if as few as two appointments were missed without an acceptable excuse (Home Office 1992, 2000; Ministry of Justice 2011; National Offender Management Service 2007). Targets were set for the proportion of orders to be subject to enforcement action, and, although an additional target for compliance (based on the proportion of orders satisfactorily completed) was introduced in 2004, it is clear that far more thought was given to how to ensure enforcement than to how its presumably intended result, better compliance, might actually be encouraged. Politicians liked to make a lot of noise about enforcement to demonstrate their own toughness (one Home Secretary used to announce ‘I am the Enforcer!’) and a focus on compliance did not have the same attraction.

Probation managers who wanted their careers to flourish had to pay attention to this new climate, and embraced the enforcement agenda to some degree in order to achieve prescribed targets. However, the driving force behind these
developments usually came from politicians and senior civil servants, who often seemed to have a limited grasp of the complexities of supervising disorganized offenders, and of the actual lifestyle of many of the people who found themselves under probation supervision. By way of example, the author was privileged to attend an invited Home Office seminar on enforcement in the late 1990s, at which an exasperated senior official asked in all seriousness ‘Why can’t they put their appointments in their diaries like normal people do?’ With official attitudes driven by this sort of thinking, it is not surprising that many practitioners resorted to rule-bending and turning a blind eye in order to retain what they regarded as a reasonable degree of discretion which allowed them to behave fairly toward the people they were supervising (Ugwudike 2008). The risks entailed by this approach were that rule-bending, if engaged in too obviously, might not be a good prosocial example to people under supervision, and that the perceived legitimacy of the service or the criminal justice system might be weakened if its own staff did not seem to comply with its rules. Strict enforcement, on the other hand, may have been fine in theory, but led in practice to fewer successful completions and more imprisonment, without any convincing evidence that it improved offenders’ behaviour (Hearnden and Millie 2004). Nor did it protect the service from more politically driven ‘reforms’. Most importantly from the point of view of this chapter, there was no evidence that stricter enforcement generally led to better compliance, and no convincing reason why an approach based mainly on punishment and deterrence would be likely to lead to better compliance by offenders of the kind who typically came under probation supervision.

In the meantime, academic discussion of compliance lent little support to official policy. Readers of this book will be familiar with Bottoms’s (2001) typology of four kinds of compliance: instrumental/prudential (to achieve something else which I want, or to avoid something I don’t want), normative (because I ought to), constraint-based (because I’m prevented from doing anything else) and habit or routine (because I usually do – I don’t really think about it). To these we can add a distinction between formal compliance (sticking to the rules) and substantive compliance (using the Probation Order to make progress toward changed attitudes or behaviour or desired prosocial life goals, and eventually, perhaps, to desistance from offending). Other writers (e.g. Robinson and McNeill 2008) point out that reasons for compliance can be dynamic and change over time. To this we might add that they are non-exclusive and two or more may influence people in combination. It is also argued that over-strict attempts to enforce formal compliance might actually get in the way of substantive compliance, because they cause authorities to appear oppressive and unreasonable. Their expectations and demands have less perceived legitimacy as a result, leading to reductions in normative motivation to comply.