

## Keynote address Whitfield, delivered by John Scott

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### ELECTRONIC MONITORING : ETHICS, POLITICS AND PRACTICE

Most developments in criminal justice follow a fairly predictable long-term pattern. They develop over time, become integrated in mainstream approaches -- as happened with prison and most community penalties -- and while there have been genuine innovations like community service, most refine or adapt rather than do something really new. It becomes a process of incremental change based on research, or experience, or changing practice, rather than a complete step change or a new direction.

Electronic monitoring changed all that and has produced both problems and opportunities of a very different kind. I am not going to go back over a history that many of you know already -- and, indeed, have yourselves helped to shape -- but I do want to try and assess where we are now and what we ought to do about it, in relation to the three headings I have been given : ethics, politics and practice.

This is not an end of term report -- it can't be, when schemes in Europe are at such different stages and have adopted such different starting points. But there are common threads, one of which I think is very apparent : the growth of electronic monitoring has been very largely politically driven -- much more than most criminal justice developments. It means it is also politically more vulnerable, too. If we want to develop best practice we have to take that starting point into account.

I accept that it is a very general point, but one which I hope you can relate to your own national circumstances. Learning from your illustrations of how it has worked is one of the things this conference is best at doing. I hope to provide some sort of a framework which you can make sense of and develop over the next two days.

My experience of previous events here has been that learning points have often been unexpected - they have little to do with the size of schemes, how long they have been established or even what their stated aims are. They have been insights gained from the detail of how you operate schemes -- valuable learning points which have helped to build up the bigger European picture. When I am advising on new schemes I make no apology for stealing good ideas, wherever I can find them. So perhaps I should start by saying thank you for the ideas and practice in Sweden, France, Switzerland and Holland -- among others -- which I have adapted for use elsewhere.

There are plenty of European jokes which depend on national stereotypes and, even though it may be very bad taste, I shall tell one now. It's about the difference between heaven and hell, both of which are apparently entirely European. In heaven, the police are British, the mechanics German, the cooks French, the lovers Italian and the whole place is impeccably run by the Swiss.

Hell, unfortunately, has exactly the same nationalities but in rather different roles. In hell the

police are German, the mechanics French, the cooks British, the lovers Swiss and the whole place is run by Italians.....

I would like to apologise to all those nations not represented, as well as all those who are! But there are one or two things to take from the joke, as well as the unreliability of national stereotypes. One is simply that difference and diversity make things more interesting; a second is that we -- whether EM schemes or nations -- tend to be better at some things than others. Finding that out and using the information back in our own schemes was the very simple aim that started these events. It still is -- and I think the opportunities, as well as the need, are just as great now.

Let me explain. My first point was that politics was the main driver for the rapid growth of EM. That's not a surprise. Almost everywhere, politics has become the driver for change in criminal justice systems as a whole. The more politicised policy has become, the less independent research is used, the more rapid and unpredictable the rate of change becomes

New initiatives can -- and in England and Wales we have discovered, do -- disappear as quickly as they have been invented. Elsewhere in the world, the use of "sunset clauses" in criminal justice is growing. This means that legislation automatically ceases after, usually, five years, unless the new measure introduced has proved itself -- usually with independent research -- on both effectiveness and cost effectiveness tests.

We could do with it, incidentally, in England and Wales where we have had almost continuous criminal justice legislation for a decade; new acts of Parliament before the old ones have been properly introduced and, astonishingly, a consultation exercise on a whole new sentencing framework which would replace one introduced only two years ago.

The point to emphasise is that, in a world where crime is at the top of the political agenda, nothing is here to stay unless it can prove itself to both politicians and the public. I am not saying that EM is currently vulnerable -- it isn't -- but I am saying that it has to develop and change to keep justifying its existence and that is why the best practice and research agendas remain so important to all of us. Politics won't sustain EM in the long-term. Good practice will.

Rather than just preaching this doctrine, Ruud Boelens and I have been discussing whether it would be worth doing something practical to keep the momentum going between these conferences and help the many people involved in EM who are not able to be here. What we have in mind is an independent website on which information, research, best practice, minimum standards and, indeed, any EM related issues could be shared. It would give links to national schemes, to handbooks and practice manuals and to both published and unpublished research. Who would it be for? We think for professionals, policymakers, students and researchers. We have made an initial approach to the EU and to the United Nations Criminal Justice Reform Unit and had an interested response. But the people who would make it work -- or not -- are yourselves, so we would be pleased to hear your views at any time over the next day or so and we will keep you in touch with the results in due course. Any help, ideas, or suggestions would be really welcome.

In the same way that politics won't go away, neither will ethical issues. The early development of EM was, quite rightly, dominated by ethical issues -- not just human rights issues but probation

attitudes to it, the impact on families and so on. It was a healthy debate and it has largely subsided as understanding has grown on all sides. The importance of consent, the need for good explanation to offenders and families alike have been accepted and generally built-in. What has received less attention is the way technology intervenes in relationships. The impact on families, especially where the tag is fitted to a juvenile or young adult offender, hasn't been much addressed as far as I know, except in Scotland and New Zealand but there are some worrying messages from both countries. In Scotland they came from parents who found themselves in the role, as they saw it, of "unpaid warders or prison guards" and the resentment that they felt in this role. In New Zealand, the pressure on partners and the burden of responsibility for the sponsoring adult which the scheme requires was equally worrying. These issues are not going to go away -- they are real issues -- and we badly need a better understanding of the dynamics which, after all, do affect directly success or failure on the tag.

The other relationship in which the tag intervenes is, of course, the relationship with the supervising officer, especially where a community penalty or a period on licence or supervision runs in conjunction with the tag. Like much else to do with EM there is no clear picture on this.

I discovered, quite early on, that for some volatile young offenders, EM is a very good partner for the social worker. It offers an impersonal, impartial authority; it is always consistent and you know exactly where you are with it -- which isn't always the case with a human supervisor. So it takes away a lot of the conflict centred on authority in supervision relationships, including boundaries, and enables one-to-one work to be more profitable and effective. But there are equally many probation officers who find working alongside the tag more difficult. They complain that it is inflexible, doesn't have an element of trust that can be used positively and provides a period of all or nothing control which makes the period after the tag has been removed more difficult and often more risky. We have a long way to go before we understand how to get the best from EM and how to deal with these issues.

New generation systems, too, will bring new ethical challenges. Satellite tracking has already done so and with five US states already having established legislation for "lifetime" tracking for serious sex offenders this is likely to be an ongoing issue. The National Association of Criminal Defence Lawyers is already mounting its own research to challenge such a draconian extension, pointing out that there are a quarter of a million sex offenders on licence or supervision in the USA at any one time and that the current reconviction rate of 7% over five years is unlikely to be improved by long-term satellite tracking. (Incidentally, you can find everything, from low tech to high-tech solutions in the USA, often in the same State. My current favourite from Fort Wayne in Texas, involves their own sex offender tracking programme. The Sheriff there is training school bus drivers to recognise recently released sex offenders -- by providing them with pictures of the offenders to keep in their cab.. If any of them are seen hanging around bus stops they get reported. It will be fascinating to see if the bus driver initiative can improve on the seven percent reconviction rate.)

More seriously, web sites are now springing up looking for evidence to challenge recalls on GPS and radio frequency tracking. GPS "drift" where the plots shown on the map are subject to a margin of error and -- sometimes -- are simply wildly inaccurate, is well-known. It hasn't gone away and remains an occasional problem for schemes -- and an absolutely crucial problem for someone whose liberty is at stake. I was involved last year in a case where a sex offender in

England was recalled to prison because the GPS record said he had been at a swimming pool, thus breaking the conditions of his licence. It took six weeks of denial --while he stayed in prison-- that anything could be wrong before it was established beyond doubt that he was actually at a railway station some 400 yards away and that it was a mapping or recording error. We have to be alert to the messages this sends out, the concerns of individuals and our approach to the crucial balance between public safety and private freedoms if EM generally is going to retain public confidence.

And, finally, we can expect to be confronted with serious ethical issues soon about the extent to which we are prepared to sanction surveillance and control. Behaviour altering drugs for offenders, and implants working in conjunction with tagging schemes, are only two. The Electronic Privacy and Information Centre ( EPIC) publishes regular updates on different levels of privacy protection and enforcement. The top two countries at protecting their citizens are, currently, Germany and Canada. The bottom three -- two of which already have very extensive EM programmes -- are the United Kingdom, Malaysia and China. And incidentally, we now have 12 million CCTV cameras operating in Great Britain -- one for every five of our citizens. We do still need to remember the conclusion of the book "Nation of Meddlers" "the more we ask government to meddle in the lives of others, the closer we get to creating an apparatus that will, in all likelihood, eventually meddle in our own."

I have several times linked good practice and research in this speech , and that has been deliberate. The crucial question facing all European criminal justice systems at present is one of desistance. The offenders who cost us the most, who do the most damage, who fill the prisons and destroy confidence in crime policy generally are the prolific and repeat offenders. The absolutely crucial questions are centred on --what helps them to stop? Can we find a way of stopping them sooner? What makes a difference in starting the process of desistance? Like everything in criminal justice there is no single, simple answer -- but I believe that EM may provide one answer and if it can do so, and demonstrate it, and build on it, then good practice and freedom from political interference will be the result.

This is not an issue for contractors or supervising agencies alone -- both have a part to play. A mature EM system is not necessarily the one with the most sophisticated technology. I would define it's characteristics as follows:

# a scheme where the relationship to the other forms of available community supervision is clear; when the elements of compliance, punishment and rehabilitation have been integrated and are properly understood -- and where partnerships are used to improve the overall picture .

# where technology is appropriate to risk -- and that might well include a range of options from voice verification to satellite tracking

# where best practice is identified, monitored and published. Almost all publicity at present is negative and we do have to counter that. Some of you may have a good deal to offer on how best to achieve this.

# where the scheme makes an impact on reoffending -- perhaps -- but certainly on desistance. There is a difference because desistance can be a gradual but vital process while reoffending,

which concentrates on a single event, is the only thing which is currently considered. I think we need more sophisticated studies than we have now and I hope that our resident academics can take this great big hint !

So to sum up on all three topics --

# practice is still a matter of sharing ideas, what works, who has tried what and with what results. There is a wealth of expertise in his room to draw on and I hope that other possibilities for developing good practice, like a website, will also be discussed.

# ethics -- have been sensibly and responsibly handled so far -- but I think more difficult issues are coming up and we cannot ignore them. Incidentally , I would like to pay tribute to Dominik Lehner for the work he has done over the years to keep ethical concerns on our agenda here.

# and lastly politics-- the most difficult of the three. One commentator has suggested that the UK government lacks the capacity for strategic thinking on EM. And last year I was reading a piece in the London Times by the Chairman of the International Biometrics Foundation which concluded; "technology cannot compensate for unintelligent government policy." The message is clear. We cannot afford merely to be shaped by government policy. We have to try and shape it, as much as we can, and healthy growth in EM is going to be much easier to maintain if we get this and the practice and ethical issues right.

I rather like things which go in groups of threes, like the title I was given. We have songs in English about three kings, three ravens and Three Little Maids from School; in English you can be three sheets to the wind and very happy with it and there are of course the three graces --even if we counteract those with seven deadly sins. I wish we had three days for these discussions too, but let's make the best of all we've got. I'm certainly looking forward to the rest our agenda—and , I hope , have given you something to start us off..

Dick Whitfield