



1075 Meeting, 20 January 2010

10 Legal questions

10.3 European Committee on Crime Problems (CDPC) –

d. Commentary to Recommendation CM/Rec (2010) 1 of the Committee of Ministers to member states on the Council of Europe probation rules

In accordance with its *ad hoc* terms of reference adopted by the European Committee for Crime Problems (CDPC), the Council for Penological Co-operation (PC-CP)¹ addressed the structure, the role and the place of probation agencies in the European justice systems. The PC-CP was of the opinion that in order to encompass the large variety of agencies which implement community sanctions and measures, as defined in Recommendation n° R(92) 16 on the European Rules on community sanctions and measures and whose tasks may also involve other functions and responsibilities, the term “probation” should be defined as broadly as possible. The PC-CP was also of the opinion that as long as in many Council of Europe member states interventions with juvenile offenders are carried out by special agencies and that in addition Recommendation Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions and measures addresses the special needs of these, the latter should be excluded from the scope of the present Recommendation.

At the CDPC plenary meeting (12-16 October 2009), which approved the draft recommendation and forwarded it to the Committee of Ministers for adoption, some national delegations expressed concerns regarding the use of “shall” in its text rather than “should”. These delegations considered that in case “shall” is used, certain rules would be mandatory requirements which would be unrealistic on many occasions. They were of the opinion that these rules should encourage rather than impose standards of best practice as this would be more reasonable and practical in view of the differing probation practices which exist in Europe.

It should be noted in this respect that a number of other Committee of Ministers recommendations in the field such as Recommendation No. R (92) 16 on the European Rules on community sanctions and measures, Recommendation Rec(2006)2 on the European Prison Rules, Recommendation Rec(2006)13 on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse and Recommendation Rec(2008)11 on the European Rules for juvenile offenders subject to sanctions or measures use “shall” instead of “should”. The practice of defining a set of rules in an appendix to a recommendation, which is the case in the above mentioned texts, does in no way modify its legal nature. It is meant to send a strong political message to the national authorities as regards their policy and practice in the field.

It was therefore agreed to follow this established practice also in the case of the present Recommendation, which builds upon and is to be read together with Recommendation No. R(92)16, in order to urge member states to bring their national legislation and practice in line with the European standards in the area.

Part I: Scope, application, definitions and basic principles

Scope and application

While *probation* is not easy to define simply or precisely, it is a familiar term understood widely and internationally to refer to arrangements for the supervision of offenders in the community and to the organisations (probation agencies, probation services) responsible for this work. In many countries, the statutory supervision of offenders in the community is the main characteristic of probation. Probation also

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denotes *conditionality*: if people offend again or fail to comply with specified conditions, they may be taken back to court and be liable for punishment. The definition adopted in these rules emphasises especially the *statutory* basis of probation in the implementation of sanctions and measures in response to criminal offences; *supervision*, which involves guidance and support as well as control in appropriate cases; and the *purpose* of its work, which is to enhance both the social inclusion of offenders and community safety. The rules adopt the broad term *probation* to encompass the diverse range of work undertaken by probation agencies across Europe, taking account of different probation traditions, institutions and practices across the continent, not only in those countries where probation is well-established, but also where new services are emerging and being developed.

The term "Probation agencies" includes probation services and criminal justice social work services, whether organised at national, regional or local level. These rules apply to other organisations in their performance of the tasks covered in these rules, including other state organisations, non-governmental and commercial organisations.

Probation agencies are here defined with reference to their responsibilities and the tasks they undertake. Across Europe, probation agencies perform a wide and diverse range of tasks, reflecting the various origins and developments of probation practice in different countries, as well as legal, social and cultural differences. The definition refers explicitly to the most common 'core' tasks. These and other tasks are discussed in more detail later in the rules and commentary. While most probation agencies were originally established to work with offenders, in many countries the responsibility to work with victims as well has been assigned to these agencies. The general duties of states to victims of crime are set out in Recommendation Rec(2006)8 of the Committee of Ministers to member states on assistance to crime victims and in many countries probation agencies make an important contribution to fulfilling those duties.

Basic principles

1.

Probation agencies work as part of a system of criminal justice. They implement the decisions of the court and other authorities and work with other agencies to try to reduce crime. Probation agencies are distinguished by their emphasis on assistance, guidance and persuasion in working with offenders. Personal relationships are central to this. There is authoritative research evidence to show that strong professional relationships are effective in bringing about change in offenders' attitudes and behaviour. There is also evidence to suggest that relationships are more influential than any single specific method or technique.

The term *supervision* includes control in appropriate cases. Probation agencies do all they can to reduce reoffending and, where interventions providing help and support are insufficient to protect the public or are rejected by the offender, measures of control may also be necessary and are applied. At the same time, probation agencies never **just** deliver monitoring and control, even in circumstances where these may be a necessary part of supervision. In the belief that people can change, probation aims to achieve rehabilitation through working with offenders to help them and to encourage them to lead law-abiding lives. This includes creating opportunities for offenders, helping them acquire the skills they need to make good use of these opportunities and motivating them to do so. Social inclusion is a requirement of justice and is a key objective of probation practice. Probation's commitment to promoting social inclusion can contribute to reducing offending.

2.

Probation staff must always have regard to the human rights of offenders. A principle of *minimum intervention* should apply such that any curtailment of offenders' rights must be no more than is required by the seriousness of the offence and / or the risks posed. If an offender poses significant risks which are not directly related to the seriousness of the original offence or sentence, these should be addressed using other procedures relevant to their situation such as mental health procedures. Their human rights should not be jeopardised simply because of their offending behaviour. In the attempt to reduce the risks of reoffending and in particular any risk of serious harm, offenders' rights may sometimes have to be constrained. In particular, there are circumstances in which the right of *freedom of movement* may be limited and the *right to privacy* may also have to be curtailed. This rule accepts that offenders' rights may be limited in this way, but insists that respect for their rights is always a necessary consideration. Rights should be restricted no further than is required by a legitimate penal purpose. Respect for the rights of offenders is also a precondition for their social inclusion and supports their rehabilitation.

3.

In some jurisdictions, probation agencies offer services directly to victims of crime. Elsewhere, they often work in co-operation with other organisations or individuals who offer support to the victim. This rule requires probation agencies to protect the human rights of actual and potential victims and to have regard to their

interests in all their work. The responsibilities of probation agencies towards victims are set out in Part VI of these rules.

4.

This well-established principle of **non-discrimination** recognises that the services of probation are often designed and delivered to meet the circumstances of the majority of service users. It may not be assumed, however, that the same services are appropriate to everyone. For example, supervision arrangements that are thought to be suitable for men may not always be suitable for women. Unfair discrimination may also be based on other considerations, including sex, race, colour, disability, language, religion, sexual orientation, political or other opinion, nationality, social origin, association with a national minority, property, birth or other status. Since discrimination can often be indirect or even unwitting, agencies should be active in undertaking periodic reviews of their own policies and practices to make sure they do not have discriminatory consequences. Any new policy or practice should routinely be subject to some such 'equality assessment'. It is also unacceptable and unjust to exaggerate difference and to suppose that (for example) all minority ethnic groups have the same needs and are necessarily different from the majority. Since **everyone** has her / his sex, race, colour, language, etc., dealing with people on the basis of their membership of a group can often lead to unfair discrimination. To ensure that everyone is dealt with appropriately and equitably, services must take full account of **individual** circumstances and needs.

5.

This is a particular application of basic principle No. 2. The judicial decision should determine the restriction of rights appropriate in particular cases (the term *judicial* here includes the prosecuting authority who, in some jurisdictions, determines the nature and level of probation involvement, especially when such involvement takes the form of a measure rather than a sanction).

Rights may be restricted as punishment for offences and / or to protect the public. Where rights are restricted in order to protect the public from future offending, this must be guided by a proper and rigorous assessment of the risks that offenders pose, by making use of the best available methods of assessment (see Rule 66 and Commentary on that Rule). In giving effect to a judicial decision, the probation agency shall not restrict the rights of offenders beyond the necessary consequences and implications of the lawfully imposed sanctions or measures.

In some countries decisions may be taken by other authorities as well, for example the prison authorities. There should be provision to appeal to a court such administrative decisions.

6.

Wherever the offender's formal consent to probation involvement is required, probation staff must ensure that offenders understand their rights and the full implications of granting (or withholding) consent. This must be explained clearly to offenders and care must be taken to make sure that they understand. Even where consent is not formally required, probation staff shall do all they can to secure the offender's understanding of and, so far as possible, consent to any decisions that affect them. While the duty of probation staff to prevent offending will sometimes require them to take action against the offenders' wishes, this must be explained to offenders and the attempt made to gain their acceptance of the legitimacy of the decision. As well as being an ethical principle, this approach enhances the likelihood of co-operation.

7.

Although probation's involvement before guilt has been established is limited in some jurisdictions, in other jurisdictions the judicial authorities may instruct the probation agency to become involved *before* or *instead of* prosecution and trial. This principle states that defendants must be presumed innocent and therefore any probation intervention in such circumstances must depend upon their informed consent. Giving consent in this way must not be taken to be an admission of guilt. In this Rule, 'intervention' does **not** include providing information to judicial authorities – for example, by the preparation of a report.

8.

Probation agencies have many duties and, in particular, are involved in implementing judicial decisions, in public protection and in the supervision of offenders. Most, if not all, of their work therefore has significant implications for human rights. The agencies' responsibilities and tasks must accordingly be founded on a sound legal basis to establish their authority and their accountability.

9.

In some jurisdictions probation tasks are delivered by other agencies, including other public authorities, independent, charitable or non-governmental organisations. Commercial companies also sometimes participate in such work. This principle affirms that, independent of how services are delivered, the government or public authority retains the responsibility for ensuring that this is undertaken appropriately and in accordance with these Rules. Public authorities, therefore, may commission work to other organisations and individuals, but there must be robust and adequate systems of scrutiny and accountability to enable the public authorities to meet their responsibility to assure quality and standards.

10.

This principle affirms that probation work should be recognised as a key element in a just and humane criminal justice system. Such work requires considerable knowledge and skills and must be accorded a status that recognises its value and the expertise of practitioners. It is also clear that agencies must be adequately resourced to meet their responsibilities. Just as prisons are overcrowded in many countries, putting the rights of prisoners at risk and limiting the possibility of constructive work, probation too can be “overcrowded” in this way and this constrains its potential to protect the public and to work to rehabilitate offenders successfully.

11.

The deciding authorities should recognise and value the knowledge and skills of probation staff which can help them take just and effective decisions. Probation staff can offer information and opinion about the reasons for offending, the risks of re-offending, the risk of harm, the possible interventions that can reduce these risks and, in general, the specific consequences of different decisions in particular cases. In particular, probation staff can advise on an offender’s suitability for and likely compliance with community supervision. While Rule 11 requests the deciding authorities to respect the expertise and experience of probation agencies and to consider attentively the advice they offer, the Rule should in no way be interpreted as recommending interference with the independence of the judicial authorities which alone will decide whether and to what extent to use this advice.

In many jurisdictions probation staff can also report back to the competent authorities on the progress of their work and may, in some circumstances, seek further guidance or instruction from these authorities.

12.

Rule 1 affirms social inclusion as a guiding principle of probation practice. This Rule recognises that if the social inclusion of offenders is to be achieved, probation must work in close co-operation with a wide range of other agencies. Organisations may need the advice of probation to help them make sure that their services are readily and fairly accessible to offenders.

The complex needs of many offenders also call for co-ordinated and complementary inter-disciplinary work. The different skills and perspectives of a range of professions are an indispensable part of working with offenders in the community and promoting public safety.

13.

Probation agencies should appraise their work against the principles and standards set out in their national law. This can also be seen as an aspect of social inclusion – a way of ensuring that offenders’ rights are retained to the fullest extent consistent with the punishment and with community safety. The international community, through the Council of Europe, sets standards, grounded in human rights, which enables countries to compare their own practices with those of other countries and to use this as a check against disproportionate or otherwise unethical intervention. Recommendation No. R (97) 12 *on staff concerned with the implementation of sanctions and measures* in its Appendix II sets out many of these ethical standards.

14.

This can be seen as another aspect of accountability. Probation agencies must be accountable not only to the public authorities, but also to those who use their services. It is essential for the legitimacy of the agency that it should be responsive in this way to people who have been affected by its decisions and practices. Service users should be informed about how to complain and straightforward and impartial procedures should be made available. This is considered more fully in Part VII of these rules.

15.

This is a corollary of Rules 8 and 9. Since probation practice must be guided by law, there must be adequate systems of inspection and monitoring to ensure proper accountability. In this way, the authorities and the public can have confidence that probation work is being practised as it should be. This Rule also refers to independent monitoring, as, in addition to the routine inspection that managers should undertake as part of their duties, agencies must be open to question and scrutiny through independent inquiry. Transparent inspection by government agencies, as well as independent monitoring by an Ombudsman or human rights defendants are among the ways in which this may be achieved.

It is also important that probation agencies can, as appropriate, give account to the competent authorities about the way in which the agency is implementing decisions in particular cases. This may include, for example, 'progress reports' on individuals under supervision.

16.

The best probation practice should be evidence-led. In particular, practices should be researched to determine their effectiveness in achieving their stated objectives. Research should also investigate other consequences of policies and practices, some of which may be unintended. Research should be rigorous and impartial and the participation of universities and other centres of research can ensure impartiality and give authority to such inquiries. The findings of research should be made public as it is essential that research findings are used to guide the development of policy and practice.

17.

It is quite common to find that, in a number of countries, the public has little understanding of what probation agencies do. Probation rarely attracts public attention, for example, in the same way that prison does. This principle urges the responsible authorities and the probation agencies themselves to 'champion' probation – to work with the media to explain what probation tries to do, what it achieves and why it is important. Authorities should be imaginative and creative in the way in which they set about this task in order to enhance public understanding of and confidence in probation work.

Part II: Organisation and staff

Organisation

18.

Part II recognises the importance of organisation, staffing, management and resources in realising the principles of probation. Without this infrastructure, probation is unlikely to achieve its purposes or demonstrate its worth. Rule 18 affirms that a well-ordered and adequately resourced organisation is required if the importance and value of probation are to be recognised.

19.

Service delivery is managed in different ways in different countries. Whatever the arrangements and administration, policy and practice must be founded on clear rules and guidance, which should be regularly reviewed and updated as necessary. The status of such instructions should be made clear – for example, there are differences among laws and orders to be followed, guidance to be interpreted and applied and advice to be heeded. This should not preclude but rather encourage staff to use as appropriate their professional judgement in implementing these instructions.

20.

While many probation agencies are part of the public sector, this Rule recognises that there are private agencies (non-governmental, charitable and commercial) involved in the administration and delivery of probation tasks and services in many countries. Wherever services are commissioned in this way, the public authorities must ensure that they are undertaken by a proper organisation. Commissioning should inquire into the soundness and probity of the organisation concerned and procedures must be set in place to ensure adequate scrutiny and accountability. Standards of service delivery must be – and must be seen to be – equally high both in the private / independent sector and in the public sector.

Staff

21.

This Rule urges that probation staff should have a status and respect that reflects the value of their work, their skill and their knowledge. Just as the work of the probation agencies in general (see comment on Rule 10) is poorly understood, other professionals and members of the public often have an insufficient understanding of the distinctive expertise of probation staff. Sound management, adequate resourcing, rigorous staff selection procedures, high standards of professional education and training and a remuneration that reflects the skills and standing of staff are all necessary to make sure that probation agencies and their staff command appropriate levels of status, confidence, and respect.

It is to be noted that modern probation services often employ a very wide range of staff – including those responsible for different forms of service delivery, managers, support workers and administrators – and these rules apply to them all.

22.

Recruitment and selection shall be fair and rigorous and in all other ways respect the principles of good employment practice. Probation agencies should be as clear as possible about what qualities and characteristics are required and it is these that should be tested in the selection process. As well as intellectual abilities and appropriate educational level selection procedures should test for personal qualities including honesty, personal integrity, humanity, patience and tolerance. Procedures should test for candidates' potential to benefit from the initial training and knowledge to do the work required of them.

Recruitment and selection should respect the best principles of equality of opportunity. Equality of opportunity should go beyond the setting of quotas. Wherever certain groups are found to be under-represented in the workforce, agencies should try to find out why this is the case and take steps to remove any disincentives to application or obstacles to appointment so that all groups have a fair chance to gain employment. This implies some monitoring of applications and appointments as well as a review of the reasons in case staff leave the agency. The workforce should reflect the character of the community that it serves, contributing to the agency's legitimacy. Agencies should recognise the values and strength of a diverse staff group.

Since the defining values of probation include a belief in the possibility of personal change and the importance of social inclusion of former offenders, having a previous conviction or criminal record should not automatically bar applicants from appointment. Indeed ex-offenders can make a unique contribution to probation work because of their own experiences of offending, desistance (stopping offending and staying stopped) and the processes of criminal justice. In taking a decision about appointment, account shall be taken of (a) the nature and seriousness of the offence(s); (b) the length of time since the offence(s) took place; and (c) the applicant's attitude to their record.

23.

Different staff has different roles to play in probation and therefore different levels of education and training would be required. Access to education and training at different stages of their career should be made available to all staff in order to ensure the best quality of service provided. It should be linked to their tasks and responsibilities and useful for their professional development.

24.

The initial training curriculum shall be based on a clear understanding of the skills, knowledge and values required to do the work. Since there are different roles and different areas of expertise needed within the agency, all staff must have educational and training opportunities appropriate to their role. Attendance at training events or 'on the job' training, while often of value, are not enough: staff must be assessed to determine that they have achieved the standards required. It is also important that staff have access to qualifications that confirm the level of competence achieved. Since probation staff aspire to proper professional standing, these qualifications should be subject to processes of independent, external verification as a guarantee of their quality and should be recognised beyond the probation sector.

25.

Initial training should prepare staff to work reliably in their new professional role. In-service training should also be available to all staff. This is needed to take account of new legislation, policy, practices and other relevant developments. At the same time, there should be training to enable staff to move into new roles as the agency may require and to develop their own continuous professional development.

26.

Probation work involves making judgements and taking decisions. While the actions of staff are circumscribed by law and by agency policy, staff shall be trained and encouraged to exercise their professional judgement to take valid decisions whilst recognising the need for accountability.

27.

This Rule deals with the particular case of offenders who tend to commit particular kinds of offences (for example, sexual offences, violent offences) and / or whose offending behaviour is associated with persistent difficulties (for example, drug or alcohol misuse, offenders with mental health problems). Agencies may assign specialist roles to staff working with such specific cases. Specialist roles of this kind require particular skills and knowledge and agencies must ensure that staff are appropriately trained.

The extent to which work is devolved to specialised sections of the agency will vary from country to country. Even where specialist units exist, all staff should know enough about the needs of particular offenders to enable them to assess offenders, make referrals and liaise with these specialist units effectively.

28.

This Rule links closely with the basic principle contained in Rule 4 and recognises that training must attend to diversity and individualisation. Initial training should prepare all staff to work with diverse offenders and to take account of the distinctive skills needed to work with particular offenders or victims. For example, to work effectively with young people may require rather different skills from those needed to work with adults. Women may have particular needs as well. Research suggests, for example, that women offenders, more often than men, have been victimised in the past. They may also have a responsibility for the care of their children. Such considerations - which may, of course, also apply to some men - are likely to make a difference to the manner in which supervision is undertaken. Training should raise staff awareness of such possibilities and the implications for their practice.

Similarly, victims react to the offences against them in many different ways and, in its work with victims, probation staff must be trained to take this fully into account and meet their responsibilities accordingly.

The position of foreign nationals should especially be mentioned since they are often denied services available to own nationals. In some cases, for example, they are liable to deportation. Probation staff may have to liaise with their country of origin and such work often calls for particular, specialised knowledge and skill. This is discussed further at Rules 63-65 and the associated commentary.

In general, initial training should aim to increase the awareness of all staff of the importance of respecting and valuing diversity and adapting their work to meet the needs of service users.

29.

An adequate staff complement is essential to the agency's effectiveness and efficiency. If staff workloads are too large, then the probation agency will not be able to work as it should. Workloads should be assessed in a holistic way with an assessment made of the demands of individual cases and not simply on the number of cases or offenders under supervision. An overall shortage of resources constrains an organisation's potential and excessive workloads will prevent individual members of staff from achieving their best practice. This Rule appreciates that agencies may not have as many resources as would be ideal. If the workload of an individual staff member becomes excessive, then the importance of setting priorities becomes even more pressing. The Rule states that management has a responsibility to devise strategies to manage demand and to assign a reasonable and equitable workload to members of staff. Where this cannot be achieved because of pressure on resources, managers should be actively involved in advising staff about which tasks must take priority over others.

30.

It is essential that management staff provide leadership and guidance. Regular meetings between individual members of staff and their line managers should take place for supervision/ detailed case discussion. They

also allow the line manager to consider what the organisation needs to do to support staff in what is often extremely demanding and complex work. This includes encouragement, motivation, professional development and responsiveness to staff concerns, including by way of team counselling and case conferences. Staff can only perform to the expected standards when appropriately supported and where the organisation is well-ordered and well-managed.

Just as the probation agency is accountable to public authorities (Rules 8 and 15), individual members of staff must be in a position to account to their managers for their practice. One important part of this is keeping and updating records – a record of contact with the offender, of significant communications and decisions relating to their case. This will be retained on the case file and will be drawn upon as and when the agency reports back on progress to the judicial authority. Case records must be accurate and up-to-date and available for inspection by line managers. Case records will be subject to monitoring and may be used as evidence in the investigation of complaints. These matters are discussed more fully in Rules 88 – 92, in Part VII and in the associated commentary.

31.

This Rule states that, while all members of staff play a part in inter-agency work, managers have a distinctive responsibility to establish these working partnerships and to ensure that they are set on a sound basis. Effective liaison with other agencies (see Rule 12) can only occur where the management has developed clear and sound inter-agency protocols (e.g. agreements about exchange of information, referral methods). Similarly, as Rule 17 states, agencies must seek to promote understanding and appreciation of their work and while all staff contribute to this, managers must take a lead.

32.

Some issues are appropriately dealt with in individual meetings (see Rule 30 above), but consultation with the staff group is a critical responsibility for managers. Professional associations, trade unions and more informal arrangements may all have a contribution to make here in the effective liaison between staff and their managers. As well as consultation about conditions of work and employment, there must be opportunities for staff to influence the agency's policies in other respects as well: staff are uniquely placed to inform policy makers about the results of putting policies into practice and their experience is a large part of the evidence that should lead policy and practice (Rule 16).

33.

This Rule affirms that salary and conditions of service should reflect the standing of the profession (Rule 21), the particular set of tasks and responsibilities they are entrusted with and the expertise of managers and practitioners. Apart from appropriately high recruitment and selection standards, remuneration is also an important factor in retaining a good quality staff. The high standards of education and training required by probation staff will give them skills that make them suitable for employment in other professions and probation agencies must ensure that salaries and conditions of service, including pension schemes, are sufficient to retain the staff they have recruited and trained.

34.

This Rule applies to volunteers who work on behalf of probation agencies and not to those who, independently or in other organisations, work as volunteers with offenders. In many countries, probation evolved from voluntary work and volunteers still make an invaluable contribution to the work of the agency and to helping and supporting victims and offenders. At its best, the involvement of volunteers represents the participation of civil society in responding to crime, rather than handing over such work to professionals. Like professionals, volunteers can help offenders change their lives, can serve as a positive role model, and help offenders understand the harm done by offending. They can also work as mentors and can befriend offenders, offering a relationship that is valued all the more because it is less formal than an offender's relationship with a probation officer. Offenders often especially appreciate the time and commitment of people who are giving their support and advice without payment. Volunteers may assist probation staff in a range of practical tasks by agreement with the agency. Volunteers can also act as 'champions' of probation, helping society to better understand the aim of probation.

Since volunteers are working on behalf of the probation agency with offenders and / or victims to whom the agency owns a duty of care, there must be a process to test their personal suitability to work in this capacity. This must involve at least a personal interview with a member of staff and a criminal record check. As with employees (see Rule 22), having a previous criminal record should not prevent people from working in this role. The experience of ex-offenders can enable them to make a distinctive and invaluable contribution in their work with offenders and their appointment as volunteers demonstrates the agency's commitment to supporting desistance through successful social inclusion.

Volunteers must be adequately supported in their task.

Volunteers should not normally be asked to undertake work which demands the skills of employed staff or solely as a means of conserving the resources of the agency.

Volunteers, just like probation staff, have a duty to protect the public and their relationship with offenders therefore may not be completely confidential. (General principles of confidentiality and information exchange are set out in Rules 41, 88 – 92 and explained in the associated commentary). Offenders themselves, as well as staff and volunteers, must understand the rights and responsibilities involved in the working relationships.

Part III

Accountability and relations with other agencies

35.

Rule 35 refers to specific account to and liaison with the judicial authorities in respect of particular cases. These authorities are entitled to receive such information and only in this way will they be enabled to have confidence in probation. Although this Rule refers to particular cases, it also recognises the value of more general liaison, dialogue and discussion. For example, probation staff are often well placed to inform the judicial or prison authorities about the specific negative effects of custody, the way in which community service is carried out or the value of particular programmes of intervention. Equally, Courts and other authorities are encouraged to share appropriate information and participate in active dialogue with probation agencies.

36.

Probation agencies should produce regular reports providing information on their work. These reports should be published and be made available to judicial authorities, other authorities making decisions on offenders and the general public. The scope of the information to be provided should be defined by national law (see basic principle contained in Rule 8) in accordance with regulations concerning professional confidentiality. The reports should enable the competent authorities and the general public to make judgements about the overall performance of the probation agencies in achieving their aims.

37.

Offenders often have complex needs associated with their offending. Rather than trying to create or deliver all services to meet these needs, probation agencies should work in co-operation with other organisations which have the relevant expertise and resources. This includes not only agencies of criminal justice and law enforcement, but organisations of the wider civil society. Enabling fair access to services is a key component of social inclusion. This approach also allows probation agencies to concentrate their resources on their principal tasks.

Where appropriate, therefore, probation agencies shall work in co-operation with, for example, social services, victim support agencies, health services, private companies, employers and employment services, housing and training agencies, local communities, volunteers and religious and charitable organisations.

Effective inter-agency work is especially important in contributing to community safety. Some offenders pose significant risks to the public and these risks can most effectively be managed by agencies using their skills and knowledge in a complementary way. Examples of such co-operation include coordinated inter-agency public protection arrangements and projects to work with prolific and persistent offenders. Probation and police services often take the lead in implementing these arrangements, but will need to call upon the skills and resources of other agencies as well.

Information exchange is a central part of effective partnership work. Within the boundaries of principles of privacy and confidentiality, which in many countries are regulated by law, probation should be willing to give and receive information in a spirit of partnership with other agencies. Such information exchange is valuable both in specific cases and in general, helping to influence policies and practice. (See also Rule 41.)

38.

Probation agencies shall encourage and support community agencies to undertake their inherent responsibilities regarding taking care of offenders as members of society. This Rule should not be interpreted as imposing an obligation on probation agencies to sponsor private associations, but rather to help, advise and assist them in their work with offenders and, as appropriate, with victims of crime.

These organisations have a responsibility to deliver their services to all members of society, but they are not always sufficiently accessible to offenders or aware of their distinctive needs. Probation agencies can give expert advice about how these organisations can ensure that offenders and ex-offenders receive the service to which they are entitled and encourage them to make their services accessible and relevant. Probation agencies can act as a 'gateway' to these services by referring offenders to the appropriate organisation.

39.

In some countries, prison and probation form part of a single organisation. Even where this is not the case, the work of probation inevitably calls for close working relationships with the prison service. Probation staff in some countries deals with prisoners while in prison and not only for preparing their release. Probation is often responsible for supervision after release and probation staff should be actively involved in preparing prisoners for their release and in working towards their resettlement (see also Rule 7, the European Prison Rules and Recommendation Rec(2003)22 on conditional release (parole)).

40.

Partner agencies need a general framework to be set and agreed in order to achieve an appropriately high standard of intervention with offenders.

It will usually be necessary to set out clearly in writing the nature of the relationship between the probation agency and a partner organisation. The agencies will then be able to work to such a protocol and know what each party is entitled to expect, as well as what is expected of them. Where probation is commissioning work to another organisation, it incurs a responsibility to make sure that this organisation works effectively and justly. Accountability for the results achieved and, if appropriate, for the money spent is a minimum prerequisite of such relations.

41.

Rule 41 stipulates that inter-agency agreements should include protocols about the exchange of information, based on the relevant national data protection legislation. .

Principles of information exchange between probation agencies and other organisations and individuals shall be transparent, so that staff and service users understand the circumstances in which information must be communicated. It will be especially important that organisations and service users, including offenders, are clear about the circumstances in which information will be exchanged between the police and the probation agency in the interests of public protection or about the scope of medical or other professional confidentiality. Again, private companies, for example those involved in implementing electronic monitoring, will have to share information and this should be explicit in any inter-agency agreement.

Part IV

Probation work

Depending on the national legal system, probation agencies may be entrusted with one or more of the following tasks:

a) tasks involving supervision and guidance to offenders:

- alternatives to pre-trial detention;
- conditional non-prosecution;
- probation as an independent sanction imposed without the pronouncement of a sentence to imprisonment;
- full or partial suspension of the enforcement of a sentence accompanied by conditions;
- forms of early release from prison accompanied by supervision;
- conditional pardon;
- semi-liberty;
- house arrest;
- supervised prison leave;
- community service;
- probation orders regarding education, employment, place of residence, leisure-time activities; contacts and association with certain persons, avoiding certain places, etc;
- probation orders regarding administration of income and financial obligations;
- treatment programmes to be supervised by the probation service;
- intensive supervision of specific offenders (sex offenders, serious recidivists, offenders presenting risk to society);

- restriction of the freedom of movement (including the use of surveillance techniques) accompanied with other forms of intervention by the probation service;
- management of probation centres/hostels, halfway houses.

b) Tasks without supervisory element:

- general management and organisation of community sanctions and measures;
- pre-sentence reports (recommending to the prosecuting or judicial authorities whether or not to prosecute; what sanctions to choose; what measures and interventions the probation service may offer in each individual case);
- advisory reports (for parole boards, etc.);
- early help after arrest and during police custody;
- work with detained offenders to prepare their leaves, release, resettlement (in mental health institutions, pre-trial, prison, etc.);
- aftercare to former prisoners;
- work with the offender's family;
- restorative practices;
- assistance to victims (conflict resolution, compensation).

As set out above, probation agencies undertake a wide range of tasks in different countries.

Reports to courts and to other deciding authorities are covered by Rules 42-46. *Community Service*, known as unpaid work in some countries, is covered in Rules 47-52. The *community supervision of offenders* is covered in Rules 53-55. *Treatment programmes* is a term that covers a wide range of planned and systematic interventions, e.g. based on the principles of cognitive behavioural psychology, including: general offending programmes and programmes designed for specific offences / offenders (for example aggressive or violent offenders, substance abusers, perpetrators of domestic violence). *Intensive supervision* is often deployed to manage and reduce the risk presented by certain sex offenders, serious persistent offenders and others who pose a serious risk of harm to society. Work with the offender's family is covered in Rule 56, probation work with foreign nationals and nationals sanctioned abroad is covered in Rules 63-65. *Restriction of freedom of movement* can include the use of surveillance or monitoring techniques (including electronic monitoring – see Rules 57-58) which may be in place to support other forms of probation intervention. Rules 59-62 cover probation agencies' responsibilities for *resettlement and after-care*. *Work with victims* is covered in Rules 93-96. *Restorative justice practices* are covered by Rule 97.

Pre-sentence reports

42.

Any work relating to the preparation and presentation of pre-sentence reports must fully respect the procedural rights and safeguards provided by Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which affirms the presumption of innocence.

The principal purpose of a pre-sentence report is to help the court decide on the appropriate sentence (Similar reports are written in some countries to assist the prosecuting authorities to take their decisions). A pre-sentence report is neither a plea of mitigation nor part of the prosecution case, but offers independent information and opinion. It should be fair and impartial, in the sense that all relevant information shall be included whether to the advantage of the offender or not.

This Rule also requires probation agencies to communicate regularly with the judicial authorities about the circumstances in which reports are to be prepared. A report is neither possible nor necessary in every case, but clear criteria should be agreed between the deciding authorities and the probation agencies.

The policy is the responsibility of each jurisdiction, but there are some general considerations to be taken into account. For example, where a financial penalty or other less serious disposition is the likely outcome, a report is probably unnecessary; where a community sentence is being considered that would involve probation supervision, a report would comment on the nature and purpose of supervision and the feasibility of the offender's co-operation and successful completion; where deprivation of liberty is being considered, a report will help the court to see the true impact of this sentence on the offender and on others. Where the court is likely to impose an immediate custodial sentence, but is willing to consider alternatives, a report would be of particular value.

43.

The report shall be as up-to-date and accurate as possible. Reports are written in respect of specific offences and old reports that may have been retained on file should not normally be submitted again. Although interview(s) with the offender are an important source of information, report writers should use other sources as well to try to corroborate information. Courts should be enabled to distinguish between parts of the report merely presenting consistent information and data and parts where the author of the report is offering a professional opinion. The report shall be written in plain language; jargon and technical language should be avoided so far as possible.

44.

The offender's *involvement* here means that the purpose of the report, its significance and consequences must be fully explained to the offender. There may be circumstances in which the offender is unwilling to cooperate and this may have to be accepted. The member of staff responsible for the report should make sure that the offender understands the consequences of withholding co-operation and that this will be made clear to the court. The offender should be given an opportunity to express an opinion about the content of the report, although it is for the author of the report to decide on its final content. Offenders or their legal representatives have a right to challenge the content of the report in court.

While reports take many different formats, in accordance with law and practice in different jurisdictions. a typical report will begin with a statement about the sources of information on which the report is based (interviews with the offender and, for example, their family, case records, prosecution file, any other sources) and then may include:

- a) personal and social information about the offender which is relevant to an understanding of the offence or their previous record or to the sentencing decision and an offence analysis (how and why this offence took place; what the offender says about this and, for example, expressions of remorse);
- b) assessment of the likelihood of re-offending and risk of harm to the public – how likely it is that further offences may take place, how serious a risk this poses, what can be done about these risks and underlying problems (like family and employment issues), what protective / resilience factors and strengths are present that might reduce the risk;
- c) the feasibility and likely consequences of the different sanctions and measures that are under consideration – for example, the consequences of a custodial sentence, the nature and intensity of proposed interventions, the likelihood of the offender cooperating and completing the order etc;
- d) conclusion – in some cases, this may include a proposal of a particular course of action, although in some countries this is not seen as part of the author's role.

It is to be noted that the report will usually include the views of the offender: their attitude to the offence, their views about the likelihood of further offending, their likely response to the sanctions and measures that may be being considered. At the same time, it is important to appreciate that the report is an **independent** representation and that the offender's perceptions may be questioned by the author.

In those jurisdictions where probation works with victims and the author of the report has consulted the victim, the report may also include comment on the consequences of the offence for the victim(s), their present attitude to the offence and the scope for restorative interventions – for example, mediation between offender and victim.

Other advisory reports

45.

As well as pre-sentence reports, probation staff prepare other reports, especially in connection with proposals for early release from prison or other forms of detention. These reports will be based on a careful assessment in each individual case. Their distinctive contribution here will be to inform the authorities of the community context to which the prisoner will be returning, the risks and protective factors to be taken into account and how these will be managed, and the need to impose any particular conditions on the terms of release. The probation officer, working in the community, has an important contribution to make both in arranging and in verifying the proposed release plan. This may include liaising with people about accommodation and employment. It should be noted that these reports may be initial, follow-up or progress reports and their characteristics are discussed in greater details in Part V of the present rules.

The Commentary on pre-sentence reports (on Rules 42-45), explaining the need for rigour and impartiality, applies here too. The report shall be as up-to-date and accurate as possible. Reports are written in respect of specific applications and old reports that may have been retained on file should not normally be submitted again. Although interview(s) with the offender are an important source of information, report writers should use other sources as well to try to corroborate information.

Where there has been contact with the victim(s) of the original offence, their views should be reflected in the report. When their views are being sought, it is important that they should be made aware that while their views may be one important consideration, they will not be decisive (see Rule 95).

46.

As before, the offender's *involvement* here means that the purpose of the report, its significance and consequences must be fully explained to the offender.

There may be circumstances in which the offender is unwilling to cooperate and this may have to be accepted. The member of staff responsible for the report should make sure that the offender understands the consequences of withholding co-operation and that this will be made clear to the deciding authority. The offender should be given an opportunity to express an opinion about the content of the report, although it is for the author of the report to decide on its final content. Offenders or their legal representatives have a right to challenge the content of the report.

Community service

47.

Community service involves undertaking unpaid work for the benefit of the community as a response to an offence. In some countries, this sanction may only be imposed with the offender's consent; while in other countries it is for the court alone to decide upon this and the offender has to follow the judicial decision.

Community service has a number of legitimate objectives: to be proportionate to the offence(s), to aim at rehabilitation, reparation and social inclusion. It is not always easy to combine or to reconcile these objectives in a community service scheme. A guiding principle here is that undertaking labour for the number of hours specified by the court constitutes the punishment: work tasks are not in themselves intended to be punitive and e.g. do not have to be physically laborious. Tasks shall be chosen for their value to the community (as part of the reparation referred to in the Rule) and for the potential direct benefit to the offender in terms of the acquisition of new education/employment skills. There are research findings that suggest that where offenders find worth and meaning in what they are ordered to do they are more likely to complete the Order, to work well (to the advantage of the beneficiary) and are, arguably, less likely to re-offend. The rehabilitative aims of community service, then, are mainly achieved through the positive effects of undertaking worthwhile tasks. In some countries, it is also possible for offenders to be directed to participate in rehabilitative, treatment or educational programmes which count towards the number of hours they are required to complete.

The manner of implementation of community service shall support its positive aims. Tasks and the circumstances in which they are undertaken must respect the inherent dignity of offenders, in accordance with Rule 2 of these Rules, and avoid stigmatisation or exclusion. Uniforms that identify community service workers as offenders at work are unlikely to support reintegration. It is very commendable for community service schemes to publicise the work that has been done including the use of notices on former sites of work explaining the contribution that has been made by the offenders.

48.

Since community service constitutes real and/or symbolic reparation, work undertaken must be of genuine benefit to the community. Agencies shall seek out tasks in the community and shall strive to ensure that all community members have an opportunity to nominate appropriate tasks. In no circumstances shall this work be used for the profit of agencies or individual members of staff or for commercial profit. Although the position may vary in different jurisdictions, so far as possible community service must not displace people from gainful employment.

49.

Community service workers shall be subject to risk assessment like all others under probation supervision (see Rules 66-71 and associated commentary). Minimising risk to the community will be paramount in determining an appropriate work placement.

50.

Probation agencies have a responsibility to safeguard the health and safety of community service workers. General safety regulations should be respected and public liability insurance schemes should be arranged to indemnify offenders assigned to community work. Probation agencies and their staff should also be adequately insured in order to be able to address compensation claims in case of accident.

51.

Community service tasks can take many forms and agencies should be imaginative in identifying suitable work. Differences of ability and of personal circumstances should be taken fully into account to make sure that the scheme can accommodate anyone for whom this is considered to be an appropriate sanction or measure. In some jurisdictions, community service may be used as a direct alternative to custody and no one should be sent to prison solely because appropriate work tasks have not been found.

Probation agencies should be active in identifying those who might benefit from community service work and all communities should be able to see that they are potential beneficiaries of the scheme. For example, minority ethnic groups might be approached for their views about the type of projects that they would find valuable.

52.

As with other aspects of offender consultation, Rule 52 does not mean that offenders take the decision about the work they will undertake. Community service is widely recognised by offenders, as well as by the public, as a fair penalty and one aspect of this is that offenders should be consulted about it.

Offenders should therefore be asked about their skills and about any particular considerations (for example, employment and domestic responsibilities, health, disability, availability on holy days) that the agency should take into consideration. When the decision about placement is taken, the reasons for it should be explained carefully to the offender and their views must throughout be taken seriously. If people understand the value of their work, they will undertake it more willingly and give and gain more from it.

Such consultation should continue throughout the period of community service. Offenders should be asked about their experience of the work they are undertaking and this should form part of the periodic assessment which should be used to take decisions about how the remainder of the order is to be fulfilled.

Supervision measures

53.

Community supervision takes place in a number of different circumstances. While there are differences in the legal basis of these modes of supervision and, for example, in the consequences of non-compliance, the following rules prescribe general standards of supervision.

54.

The nature and intensity of the supervision (for example, the frequency of required reporting to the supervising officer) should depend on the individual offender and be subject to revision depending on changes in the offender's the personal circumstances and in progress towards the objectives of supervision.

Probation agencies shall do all they can to promote compliance with the formal requirements of supervision. This includes taking full account of personal circumstances that might make compliance more difficult and working with the offender to see how such difficulties can be overcome. For example, so far as possible, people should not be required to attend appointments that may conflict with their responsibilities as carers (including, but not only, parents of young children) or as employees. People who are homeless or itinerant may also face particular challenges in complying with some of the formal requirements.

55.

This Rule recognises that probation should arrange for relevant interventions to take place. These may be provided not only by probation staff, but by other agencies and individuals as well. The Rule offers some examples – educational or skills-related training and treatment, such as may be provided for people who need psychiatric help or treatment for misuse of alcohol or other drugs.

Control is a legitimate part of probation's purpose and offenders need to be seen regularly for probation to have an impact on the offender and to retain credibility with judicial authorities and the wider community. Control measures must at the same time:

- be proportionate to the likelihood of re-offending and to the degree of harm anticipated;
- support the processes of rehabilitation;
- be undertaken in a manner that enhances the offender's co-operation – this not only increases the chances of control being successful, but also increases self-control.

Work with the offender's family

56.

Sanctions and measures affect not only offenders, but also their families and dependents. This is especially likely where a custodial sentence has been imposed, but also in the case of other sanctions or measures. Where this is provided for in law, probation agencies should offer support, information, advice and assistance to families affected by the offender's crime and punishment. This may include providing information about the sentence (for example, where the sentence is to be served, visiting and contact arrangements, likely date of release), advising about any welfare benefit entitlements (especially where the family has been financially dependent upon the offender) and, in general, helping to maintain family contacts. Such work is of value to the family and to the offender, not least because family relationships are an important contribution to rehabilitation and desistance.

Electronic monitoring

57.

While traditionally probation has worked through personal relationships to bring about change, many jurisdictions in Europe are making increasing use of newer technologies. Electronic surveillance - especially the 'tagging' that can monitor the presence of an individual at particular times and places and the 'tracking' made possible through global positioning system technology - has a strong political appeal. It seems to dispense with any need for the offender's consent or active co-operation and suggests a possibility of comprehensive and up-to-the-minute information.

Electronic monitoring, in certain circumstances, can contribute to rehabilitation and support desistance by helping people to establish changes in their habits and lifestyles, but this is usually achieved by introducing some control and stability to allow rehabilitative programmes to have their effect.

Where monitoring is used as part of supervision, then, it should be in support of the work of rehabilitation. External control should be used as a means to develop self-control. Technology should not lead or determine the character of practice, but must be recruited to support the tasks of probation. Probation agencies should also be aware that this is an expanding (and lucrative) commercial 'market' and probation must ensure that it engages with the market in a manner that sustains its own integrity.

58.

Some methods of surveillance, including electronic monitoring, have the potential to intrude significantly on people's rights of privacy and perhaps other rights as well. Not only offenders, but in some circumstances their families and friends may be affected as well. This Rule insists on a level of surveillance and personal intrusion that is proportionate to the seriousness of the offence(s) and to the need for community safety.

Resettlement

59.

Basic principle 6 of the European Prison Rules (Recommendation Rec(2006) 2 of the Committee of Ministers to the member states) states "All detention shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of their liberty." In many countries, probation agencies are responsible for supervision of offenders after release. This Rule requires agencies who will be undertaking this role to work actively during the term of detention to prepare for release. This is likely to involve contact with the offender, by letter, visits, video conferences; liaison with the prison authorities; contact with friends or family to whom the offender might be returning; and approaches to community agencies that may need to offer services and support after release.

Successful resettlement work requires a case-management approach to ensure that the contributions of all responsible agencies are properly co-ordinated and managed. Positive changes and achievements made during the term of imprisonment are at risk of getting lost at the time of release and the need for continuity is paramount. Such continuity is most likely to be achieved where probation agencies have been involved in sentence planning and preparation for release. Probation agencies, in partnership with the prison service and the organisations, public and private, of the wider civil society, are well-placed to help ex-prisoners to meet the challenges of resettlement.

Resettlement work should not be confined to the assessment and management of risks and offending-related needs. Research suggests that desistance is often achieved by living a "good life". Since everyone must make their own decision about what is their conception of a good life, resettlement work should attend to the individual's own interests and aspirations, seek to support them in achieving their legitimate objectives and build on their strengths to help them to achieve their potential as law-abiding members of the community.

One key component of such a “good life”, for the majority of people, is gainful employment. This brings a legitimate source of income, law-abiding routines and social networks which support desistance and give compelling incentives to respect the law. Unsurprisingly, research shows a strong correlation between employment and desistance. In order to gain employment, however, offenders must not only have the required skills and motivation, but also opportunities to work. Ex-offenders, especially former prisoners, typically find it hard to get a job and win the confidence of employers. Probation agencies should therefore work actively to encourage employers in all sectors to give fair and reasonable opportunities of employment to ex-offenders.

60.

In many circumstances, release is subject to one or more formal conditions and the supervising agency, often probation, has a responsibility to ensure that the offender complies with these conditions. General considerations about enforcement and compliance are set out in Rules 86-88 and the associated commentary. The time of release often brings particular difficulties for offenders and probation agencies should do as much as they can to help offenders anticipate and deal with these problems in order to avoid relapse into offending. In some cases, too, offenders may pose a significant risk of causing harm and probation agencies must then work closely with other agencies to manage this risk. See also the commentary to Rule 37.

61.

As already stated in the commentary to Rule 59 above consistent finding of research in many countries shows that constructive work undertaken in prison is often lost on release. For example, learning from treatment programmes is not followed up and any benefits soon disappear. In general, the transition from prison to the community – “through the prison gates” – is often not well managed and communication between the prison authorities and those responsible for community supervision is typically a significant problem. If the probation agency has been actively involved before release (Rule 59), there is a much greater chance of this transition being managed more effectively. This Rule encourages probation staff to do all they can to build upon any constructive learning that has taken place during the period of detention. This is more likely to succeed where good case management systems are in place (see Rule 80).

Aftercare

62.

Desistance from offending has been described as a *process* rather than as an event and offenders may need continuing support and encouragement long after release. This Rule recognises that, once the formal period of post-release supervision has ended, the offender has no formal obligation to keep in touch with the probation agency. At the same time, where national law provides for this and where resources permit, probation agencies should offer support for as long as they can so that no one commits an offence because they feel they have nowhere to go for help. Provision should also be made where possible for the very large number of prisoners who are released from prison without any formal resettlement obligations, but who are often likely to need advice, assistance and encouragement.

Probation work with offenders who are foreign nationals and with nationals sanctioned abroad

63.

For a number of social, economic and political reasons, there has been an increase in the movement of people across the European continent. People arriving in other countries may be ‘in crisis’, having few resources and few or no contacts when they arrive in the country. Probation agencies have a strong ethical obligation to make sure that such vulnerable people are dealt with fairly and well. In some countries, however, non-nationals lack many of the legal rights of nationals and find themselves excluded from the services they need. This is a prominent challenge for many countries.

This Rule encourages probation agencies to provide accessible services to offenders who are foreign nationals in accordance with their national law. The type and extent to which such services are to be provided will depend on the national legal systems and on the individual situation of such offenders but the principle of equal treatment and non-discrimination should guide the probation agencies in this respect. Non-nationals typically have quite different needs and probation agencies must consider these carefully and strive to meet them properly. Probation's main objectives – for example, community integration, social inclusion, resettlement – have a quite different significance to people who have few or no connections within the country and, indeed, may be required to leave it because of their offence(s). There may also be language difficulties and agencies must make sure that there are adequate interpreting services in place. Probation agencies must ensure that their services are accessible and relevant to this vulnerable group.

64.

For member states of the EU, a Framework Decision has been adopted that allows for the transfer, in certain circumstances, of probation supervision from one jurisdiction to another – typically where offenders convicted in another country are returned to their own country for supervision. (Council Framework Decision on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention). For the Framework Decision to work as intended, there must be clear and effective communication between countries, both to establish systems of co-operation and to apply these to particular cases. The “issuing state” (the country where the sanction or measure is ordered) and the “executing state” (the country where the sanction or measure will be put into effect – normally the country of which the offender is national) must work together, in accordance with their national law and to the extent allowed by their resources, to make sure that the sanction or measure is implemented as intended by the judicial authority and that the offender receives the supervision required.

Although the Framework Decision is the principal means for effecting transfer within the EU, there are other specific agreements between member states of the Council of Europe (like the 1964 European Convention on the supervision of conditionally sentenced or conditionally released offenders, ETS No. 051) and this Rule applies here too.

65.

This Rule addresses the same state of affairs as Rules 63 and 64, but from the point of view of the state to which offenders are to return. Offenders and ex-offenders returning to their country of origin are also likely to be poorly supported and vulnerable and agencies must ensure that their needs are met.

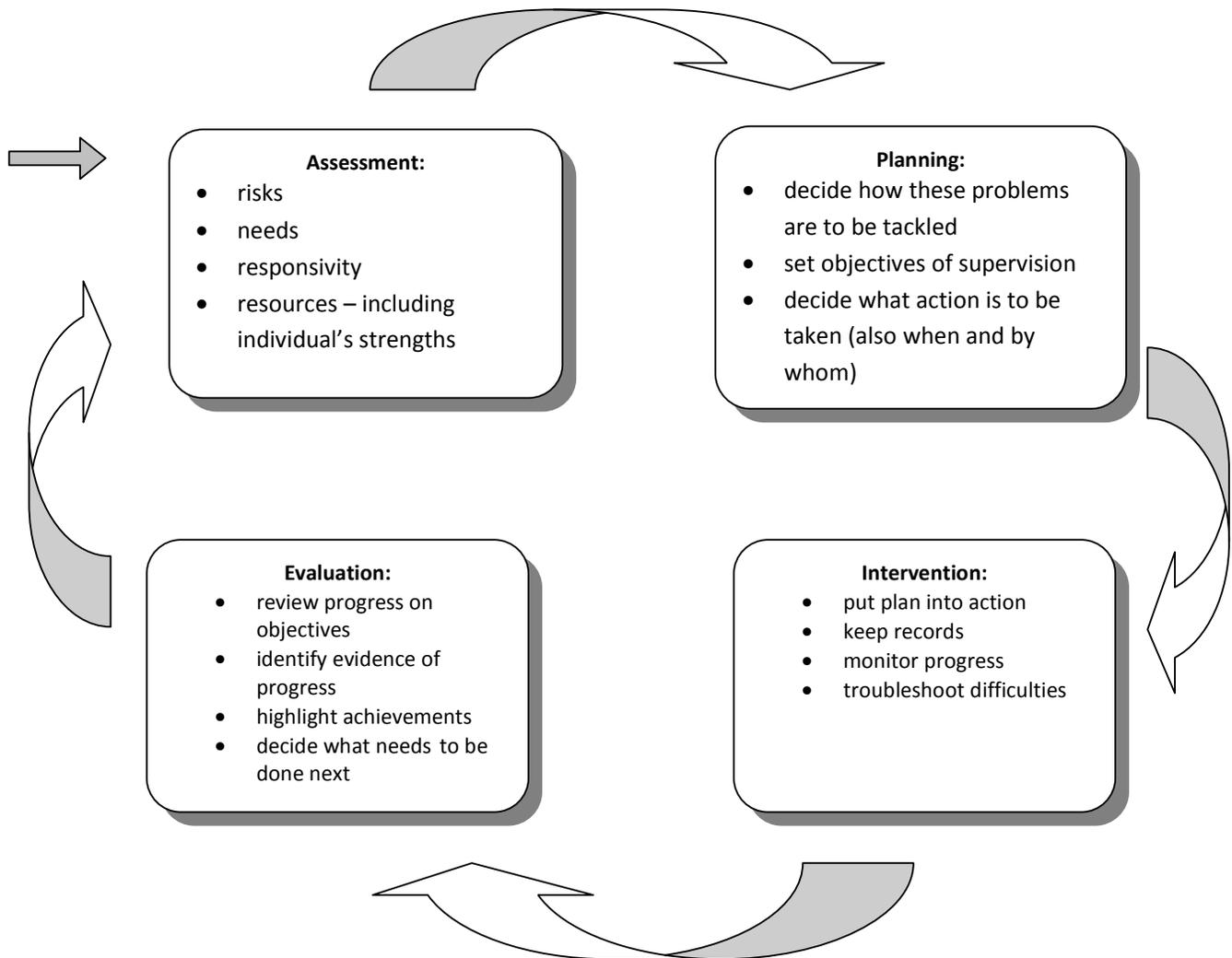
Part V

Process of supervision

The following section sets out a particular framework for understanding the process of supervision. It is important to state at the outset, however, that there are many different conceptions of this process. Some focus on the risks posed by the offender, the needs associated with those risks (criminogenic needs) and the importance of ensuring that the intervention is suitable for the individual concerned (“responsivity”). Other ways of approaching supervision may have a different focus. For example, they may place emphasis on helping and supporting offenders. One approach insists that there must be attention to the strengths and positive characteristics of people under supervision, not just their risks and needs. Those who have offended have legitimate aspirations and ambitions like everyone else and desistance is often achieved when an individual lives the “good life” they choose for themselves.

The significance of Rule 1 in the *Basic Principles* is very relevant here. The possibility of supervision rests on a sound professional relationship and the probation officer's priority must be to develop such a relationship, gaining the confidence of the person under supervision. Unless this can be achieved, the objectives of supervision are very much less likely to be met.

The process of supervision can best be shown in a diagram. It is shown as a cycle because once the cycle is complete, the process often begins again – and will continue for the whole period of supervision.



Adapted from Carole Sutton 'Aspire' in Rob Canton and David Hancock (eds.) (2007) *Dictionary of Probation and Offender Management*, Cullompton: Willan

Assessment

66.

This Rule does not interfere with the criteria provided by national law related to judging the need of carrying out assessments of offenders at different stages of the criminal procedure. It is there to guide the probation services themselves in their everyday work with offenders. The efficiency of the implementation of community sanctions and measures is greatly enhanced by prior assessment of each individual case. The Rule brings to the attention of the probation agencies some important principles in carrying out good assessment.

Assessment involves attention to:

- risk;
- need;
- responsiveness;
- resources – including the offender's own personal strengths.

Risk of further offending and the risk of harm, posed to the public and to staff employed by probation must be assessed. In addition other risks – for example, risk of self-harm and other aspects of vulnerability – must also be assessed. Needs or factors linked to offending ('criminogenic needs') must be assessed, while other needs – less directly related to offending but nevertheless important to the offender's chances of desistance – must be considered as well. Different people respond best to different modes of intervention and one requirement of assessment is to determine what intervention will be most accessible and relevant to that individual. The idea that all interventions and activities are run in a way which is accessible to offenders, encourages their full participation and takes account of their individuality is known as *the principle of responsiveness*. Assessment must also include a review of the resources that might be available to tackle the identified problems. The first resource here is the offender's own strengths and skills: a focus on personal strengths and those factors that make offending *less* likely is often a positive and valuable approach, although it must be balanced with a realistic appraisal of problems.

In forming an assessment, probation staff should draw on a diverse range of sources of information. This includes court reports, agency records and, in appropriate cases, information gained from other agencies or people who know the offender.

67.

The process of assessment – *how* it is undertaken – is as important as the outcome. The member of staff may have a very clear idea of the offender's problems, but offenders must be enabled to make the discovery for themselves. There are skills – for example, motivational interviewing – that may be used to help offenders recognise some of their difficulties. But supervision will not be successful unless there is sufficient agreement between the supervisor and the offender.

There is emerging research to suggest that desistance typically takes place in the context of achieving good lives. Assessment should therefore include attention to the individual's legitimate aspirations and identify and develop personal strengths. Assessment that attends only to risks and needs can overlook this. The idea of *self-efficacy* – individuals taking charge of their own lives – recognises offenders' responsibilities and their need to determine their own future behaviour.

68.

Assessment should be the product of discussion and exploration between staff and the offender. Where there is disagreement between them, this should be noted and may in itself be a focus of work, as we have seen in the commentary to Rule 67.

69.

Assessment should be undertaken periodically to check progress and to ensure its continuing accuracy and relevance. There are some key times during a period of supervision when this is especially required. Supervisors also need to be alert to the possibility of changes in offenders' lives that make a difference.

Since community safety is a priority for probation agencies, changes in the level and nature of risk should particularly be emphasised here. Once an assessment has been undertaken, it is easy to think that the level of risk has been established and fixed. This would be a mistake, however: risks and protective factors **change** – for example drug use, change in employment status or significant changes in personal relationships.

70.

Significant changes in the offender's life are obviously a time when assessment may need to be reviewed and revised, such as when an offender commits a further offence or there have been major changes in his or her personal circumstances. There are also some important 'milestones' during supervision when assessment needs to be reviewed in this way. These are specified in this Rule and include occasions when an offender is (for example) being considered for transfer to an open prison, for semi detention, electronic monitoring or conditional release or for home detention. In the same way, if the level of supervision is to be changed, formal conditions amended or an application made for early conclusion of the period of supervision these decisions must be taken in the light of an up-to-date assessment.

71.

Modes of risk assessment are usually distinguished as either 'clinical' (individual, person-by-person) assessment or 'actuarial' assessment, based on statistical techniques for assessing probability, where a probability 'score' (of re-offending, or of the risk of harm) is usually produced. Actuarial techniques, using 'static' factors (e.g. age, type of offence, criminal record, which cannot be changed) are said to be more reliable, but these are based on aggregates and have limitations in predicting the risk-levels of individuals. Actuarial techniques are also not always able to incorporate 'dynamic' factors (e.g. employment, substance abuse, which can be worked on and are amenable to change). For this reason, many jurisdictions have introduced assessment tools or instruments which try to assess both static and dynamic factors. These tools ensure that assessment is undertaken consistently with all offenders and require supervisors to focus on risks and needs that are known to be associated with re-offending. Where such instruments are used, it is essential that practitioners understand their significance and their limitations. Since actuarial methods can only generate statistical probabilities and can be seriously misleading if used uncritically, they must be used **with professional judgement**.

As has already been emphasised (see the beginning of Part V), it is important to take account of strengths as well as risks. A rounded assessment must recognise the individual's abilities and potential and not be preoccupied only with their offending behaviour.

Planning

72.

Supervision should be put into effect in a planned way. Once assessment has taken place, the supervisor, in discussion with the offender, must decide how the identified problems are to be tackled. Objectives must be agreed and set. Objectives should be **specific** and **measurable** (so that progress can be monitored). They must also be **achievable**: especially if a long period of supervision is anticipated and / or a number of problems are identified, the plan should be broken down into smaller number of 'steps' with realistic, short-term objectives. Offenders often have many complex problems that cannot sensibly be tackled all at once and may become disheartened if the work plan is over-ambitious. It is also a useful discipline to set a specific **time** by which these objectives should have been achieved. Progress can be reviewed at that point and either an achievement can be recorded (and celebrated) or supervisor and offender can explore the reasons why the objective has not yet been met.

73.

As with assessment, a work plan that the offender does not understand or (does not understand sufficiently well) agree with is unlikely to be implemented. Offenders may have misgivings about some of the plans proposed and this should be acknowledged and considered. (Perhaps the offender is not yet ready to make some of the changes required. In that case, further motivational work may be necessary.) The process of planning should in any case be negotiated as far as possible and explained in a way that the offender can understand.

74.

There must be a strong and natural connection between the assessment and the plan, as the commentary on Rule 72 explains. The plan sets out what is to be done about the problems identified and this includes setting out the specific interventions that will follow.

75.

Rules 69 and 70 emphasise the importance of regular reviews of assessment. In the same way, work plans must be adapted to any change in the assessment.

Interventions

76.

Interventions are structured and planned pieces of work with offenders aimed at their rehabilitation and their desistance from offending. The nature of the interventions by probation agencies shall depend on and be limited by the sanction or measure and the conditions imposed by the deciding authority. Interventions thus will often aim at social and family support through employment schemes, educational programmes, vocational training, budget management training and regular contact with probation staff, or will include *offending behaviour programmes*, often based on the principles of cognitive behavioural psychology. These latter are designed to reduce re-offending by helping offenders learn new skills that improve the way in which they think and solve problems. They help them cope with pressure, consider the consequences of their actions, see things from the perspective of others and act less impulsively. Programmes may be general (i.e. covering all kinds of offending behaviour) or specific to a particular type of offence or criminogenic characteristic (e.g. programmes for violent offenders or sex offenders; programmes for offenders who misuse drugs).

Typically interventions require offenders to give up their time and make other appropriate demands upon them - requiring them, for example, to reflect on their behaviour and to learn how they might make the necessary changes in their lives. This Rule holds, however, that participation in these interventions and compliance with the order of the judicial authority **constitutes the punishment** and the intervention itself should be constructive in character and intention rather than punitive. It is for the judicial authority to determine the appropriate amount of punishment in proportion to the offence committed and, in accordance with Rule 5, probation agencies should not make the experience more punitive than is necessary to implement the sanction or measure as ordered.

77.

Research shows that the most effective interventions are *multi-modal*, i.e. they use a range of different types of method calling for a corresponding range of professional skills and expertise. Some of these skills are provided by organisations and individuals with whom probation agencies work in partnership. Other skills will be deployed by probation staff themselves and Rule 27 refers to the specialised training that some staff will need.

Much probation work is undertaken with individual offenders. Many jurisdictions, however, make use of group work. The experience of learning alongside people in a similar situation can be very effective. Not all offenders are suitable for group work, however. Working with offenders in groups can also be an efficient use of resources, but it is the treatment needs of the offender that must be the paramount consideration in deciding on the appropriateness of their participation in a group work programme.

In setting up groups, probation staff should be aware of the possibility that groups can sometimes create opportunities for negative associations and influences. Due regard must be taken of the position of those who find themselves in a minority in a group. For example, the position of a woman on her own in an otherwise male group or of a person from an identifiable ethnic minority shall be considered and steps taken to ensure that they are in no way disadvantaged. Rule 5 in the Basic Principles insists that the manner of implementation should not impose any burden or restriction of rights greater than provided by the judicial or administrative decision and this principle should be kept in mind always when interventions are chosen and implemented. It is also necessary for probation agencies to ensure that their interventions should do no harm.

78.

Offenders must be prepared by their supervising staff member for the interventions in which they are to participate. Sometimes offenders will be unsure or even unwilling to attend and the supervisor will need to work hard to enhance their motivation. An offender who understands the reason for the intervention is very much more likely to attend and to gain from the experience.

79.

This is a corollary of Rules 37 and 77. Engaging services based in the community promotes social inclusion and also allows offenders to benefit from a broad range of expertise.

80.

This is an important principle of working with offenders. An inter-agency and multi-modal approach is most effective, but the involvement of different agencies – and often several staff within the same agency – can lead to confusion of roles. This Rule commends that there should be a single responsible member of staff who undertakes assessment, decides on the work plan and coordinates the interventions. Research has shown that the offender's experience of involvement with probation should be characterised by continuity, consistency, providing opportunities for consolidation and staff commitment. Without such coordination, the experience of supervision can be fragmented, disorganised and confusing for everyone – especially the offender. This case manager or offender manager, as the role is often called, will also be responsible for ensuring that the terms of the sanction or measure are fulfilled and for taking action in response to non-compliance.

Evaluation

81.

Evaluation of the progress by the individual offender is a continuing process throughout the period of supervision. The supervisor's and the offender's view of the period of supervision should be summarised, recorded and retained on the records of the agency. In some countries, reporting to the deciding authority on this progress must be done periodically, in others probation agencies only report at the end of the supervision or in case of a breach of conditions

82.

This Rule refers to the need for legal possibilities for staff to apply to the judicial authority to change the conditions of supervision. Where good progress has been made, where a condition no longer seems relevant or has proved impracticable, or where assessment indicates that a lower level of supervision may be used, the probation agency should be able to make application for the conditions to be amended or for the order to be ended early. This is partly a question of resources – resources should be focused on those offenders most in need of supervision – but it is also important to recognise and acknowledge formally that offenders have often made significant achievements during their supervision.

83.

The offender's experience of the value of the service received should be an important part of the (periodic and final) evaluation. Probation agencies should consider collating information from these evaluations to see if any general themes emerge, suggesting the agency's particular strengths and ways in which they might improve the quality of their services.

84.

Supervision shall be concluded properly with a full review and evaluation of what has been achieved, what has been less successfully managed and what might have been done differently, whether by supervisors or offenders, to have enhanced the value of the period of supervision. Very useful in this respect are the so-called exit interviews with offenders conducted by a person different from the case manager to gather independent evidence on the impact of supervision and the quality of service provision.

Enforcement and compliance

85.

This Rule recognises that probation agencies have a responsibility to give effect to the sanctions and measures ordered by the judicial or other deciding authorities. This shall be done as far as possible by persuading offenders of the value of co-operation and by treating them in a manner that gain their consent. There are research findings that show that people are much more likely to cooperate when they feel they are being dealt with fairly. A sense of unfairness can lead to resentment and a refusal to cooperate. It is true that for some offenders in some circumstances, the consequences of non-compliance will be very serious and may lead to a custodial sentence. Offenders must be made aware of this, but this must not be put to them as the only reason why they should comply. An explanation of the advantages of co-operation and other motivational skills can be used in these circumstances. Any obstacles to compliance should be identified and discussed and strategies put in place to enable offenders to do what is required of them.

86.

The nature of the sanction or measure must be fully explained to offenders: they must know what is expected of them. Consequences of non-compliance must be carefully explained. These typically include the possibility of a return to court to be sentenced or, in the case of early release from custody, recall to prison. Probation staff must ensure that those under supervision are aware of these possible consequences, although (as Rule 86 specifies) supervisors should not rely solely on threat of further sanction to gain compliance.

The Rule also refers to the duties and responsibilities of staff. Some probation agencies have made use of the idea of a contract or some less formal agreement between the agency and the offender – which should be explicit and may be in writing – which sets out not only what is required of offenders, **but also what they are entitled to expect in return.**

There are occasions when supervisors will offer advice to offenders – which they may or may not choose to accept. It is therefore important that probation staff should distinguish clearly between any legally required instructions they may give and any informal advice or guidance they may offer and make sure that the offender understands this distinction.

87.

Non-compliance must always be taken seriously and professional judgement exercised within the standards set by national law. Whenever an offender fails to do what is required, the probation agency must respond assertively and promptly. If an offender fails to report as instructed, the agency should get in contact as a matter of priority. At the same time, the supervisor shall inquire about the reasons for non-compliance – not all instances of non-compliance are a wilful disregard of the sanction or measure. Indeed there are many reasons why offenders may fail to comply, including confusion about what is required of them, a disorganised personal life (leading to missed appointments), and despair about the possibility of change. On the clear understanding that non-compliance is unacceptable, the supervisor shall discuss with the offender what shall be done to bring about compliance in the future. Non-compliance and the reasons for it must be recorded in the record.

In some circumstances, a failure to comply may be a sign of increasing levels of risk and, where this could lead to serious harm, the agency must give priority to responding to this non-compliance as a matter of urgency. In some circumstances, this may involve arranging (for example) for an offender to appear in court as soon as possible or to be recalled to prison.

Probation hopes to encourage and enable changes in people's lives. Some changes – notably obtaining regular employment – are likely to make a significant difference to the individual's future behaviour. At the same time, such changes can create challenges for compliance. For example, an offender who is at work all day may find it difficult to report to the probation officer. Probation staff should be alert to these possibilities and must be willing to make application to the judicial authorities to amend the requirements of the community sanction or measure where this seems appropriate.

Rule 10 of Recommendation No. R (92) 16 of the Committee of Ministers to the member states on the European rules on community sanctions and measures states "No provision shall be made in law for the automatic conversion to imprisonment of a community sanction or measure in case of failure to follow any condition or obligation attached to such a sanction or measure." Rule 87 in the present Rules requires probation staff to consider all the circumstances where non-compliance has taken place and not automatically to propose a custodial term or a recall to prison. On the contrary, probation staff should be imaginative in trying to suggest community sanctions and measures that might be more appropriate and with which the offender is more likely to comply.

Although there are differences between countries, the supervising officer may have to initiate breach proceedings – i.e. to take action which will lead to an offender's appearance in court because of a failure to comply with a sanction or measure. This process can put the probation officer in a prosecutorial (or quasi-prosecutorial) role, perhaps having to prove the non-compliance. Depending on the precise arrangements under national law, there may be some tension between this role and the more usual role of a probation officer. In some jurisdictions, the process has two stages: first, non-compliance (breach) is established; second, the judicial authority decides which sanction should now be imposed. In such cases, it may sometimes be difficult for an officer who has initiated proceedings and contributed to the case for the prosecution in the first stage to undertake the detached and independent role of author of a report for the court at the second stage. One way of managing this would be to ask another member of staff to write the report, but care must in any case be taken to make sure that the procedure is fair – and recognised as fair by the offender.

Recording, Information and confidentiality

88.

Keeping case records is a significant part of the work of probation agencies. Accurate, complete and up-to-date records - showing when, how and why certain events or activities occurred and decisions were made - are a pre-condition of effective accountability. Case records convey information within the organisation: in the absence of the supervising staff, for example, a sound and up-to-date case record is an indispensable resource to anyone else working with the offender. Records also communicate information between the agencies and authorities to whom they must give account (See Part VII). The record also ensures that work remains purposeful: setting out the basis of the assessment, supervision plans, interventions and an evaluation of their effect.

Records typically include personal information - name, date of birth, address, education, employment; a record of assessment and planning, reviewed regularly, setting out objectives and evaluating the effect of the work undertaken; a record of contact, recording attendance (or non-attendance) at the office, home visits and other significant activities. The file also retains information about an offender's previous convictions and earlier experiences of supervision or imprisonment.

89.

There are circumstances, usually allowed for in national law, when principles of confidentiality must give way to the need to share information among responsible agencies, particularly where there is a high risk of serious harm. The basis of information exchange must be clear and confidentiality must be respected as far as this is consistent with the need to ensure community safety.

90.

Records should be scrutinised by line managers to provide management information, including monitoring of adherence to law and policy. They are also an important source of information to independent inspectors or monitors

91.

Rule 35 refers to the responsibility of the probation agency to give account to judicial and other deciding authorities in particular cases. This Rule states that full and up-to-date case records are a reliable means of making sure that that the agency can meet that responsibility.

92.

Offenders have a right of access to their records. In some circumstances, however, the record may contain information that, if disclosed to the offender, might compromise the safety or well-being of another person. Such information may be withheld in accordance with national law. If the offender disputes the accuracy of the record, there shall be a process in place to respond to their concerns.

Part VI

Other work of probation agencies

Work with victims

93.

In many countries, victims of crime often report that they not feel well supported by the agencies of criminal justice, which typically give priority to detection and prosecution and, in general, focus their work on the offender rather than the victim. Indeed some victims say that their experience of the criminal justice system is so distressing that it is almost like being a victim again.

Probation agencies, in many (not all) countries, have for most of their history worked only with offenders and paid little or no attention to victims. For several reasons, attempts are now being made in many countries to improve this state of affairs. Some probation agencies are involved directly in offering support to victims; others work closely with other agencies (often NGOs) that provide this support; others again keep in contact with the victims of crime and provide information (see Rule 95).

Principles of non-discrimination and individualisation (see Rule 4) apply as much to victims as to offenders. Victims differ from one another in many ways and probation agencies must be sure to provide services to respond to this diversity. It is also to be emphasised that victims have a range of reactions to the crimes they have experienced, depending, for example, on the nature of the offence, their own psychological resilience, their personal circumstances and the level of support available to them (for instance from family or friends). Probation agencies must always take account of these considerations.

94.

In some countries, agencies, often NGOs, have been established to offer support to victims. This may take the form of counselling, practical support and other measures of assistance to help them deal with the consequences of the crime. Where national law provides, probation agencies shall do all they can to support this work and respond positively and cooperatively to approaches from victim support organisations. Probation agencies are often aware of sources of information and support and may be able to offer guidance, both in general and in particular cases.

95.

In some jurisdictions, probation agencies contact victims of serious crimes and keep them informed about the circumstances of the offender. Typically this will include informing them about the real effect of the sanction imposed – for example, how long a period the offender will serve in prison, the date of release, any particular conditions of release that might affect them (perhaps a condition not to contact the victim). There is certainly information that victims need to know and sometimes it is the probation agency that has the responsibility to make sure that they receive it. At the same time, probation staff must be aware of the offender's right to confidentiality and recognise that some information need not and should not be divulged. For example, a victim should not be told the offender's home address after release.

As well as giving information, probation agencies in some countries consult victims, especially when home leave or release is being considered, asking if they have any particular concerns - anything that, in the opinion of the victim(s), the deciding authority should take into account. A victim may prefer, for example, that an offender should not be permitted to live in the same neighbourhood. Where the views of victims are sought in this way, probation staff should make it clear to them that, while their preferences will be taken seriously and considered carefully, the deciding authority has a number of other factors to take into account. Consultation does not mean that the outcome will be one that the victim would have chosen.

96.

This Rule recognises that rehabilitation requires offenders to take responsibility for their own behaviour and this includes their recognition of the harm they have done. Blaming and direct accusation are more likely to elicit denial and defensiveness, so, like most aspects of probation work, increasing the offender's awareness of the harm done to the victim requires professional skill. Working to enhance victim awareness supports rehabilitation and allows victims to be assured that their distress will be recognised and respected in the work that probation agencies undertake with offenders.

Restorative justice practices

97.

The Commentary to Rule 93 stated that many probation agencies have traditionally focused on their work with offenders. Rule 97 refers to *restorative justice* interventions which typically involve work with offenders, victims and the community and indeed potentially with anyone affected by or with an interest in the crime that has taken place.

Restorative practices can take many different forms. At the same time, there are a number of common themes in such approaches. A United Nations Handbook explains "Restorative justice approaches and programmes are based on several underlying assumptions: (a) that the response to crime should repair as much as possible the harm suffered by the victim; (b) that offenders should be brought to understand that their behaviour is not acceptable and that it had some real consequences for the victim and community; (c) that offenders can and should accept responsibility for their action; (d) that victims should have an opportunity to express their needs and to participate in determining the best way for the offender to make reparation, and (e) that the community has a responsibility to contribute to this process." (Handbook of Restorative Justice programmes, Criminal Justice Handbook series, United Nations, 2006

Restorative approaches include mediation services – for example, mediation between victim and offender to explore how amends can be made and how those affected can manage the consequences of the crime. Mediation can also be used to prevent crime – for example by working to reduce neighbourhood disputes before they lead to crime. Recommendation Rec(99) 19 on mediation in penal matters sets out standards for mediation. Other restorative practices include Family Group Conferences and Sentencing Circles. It is also possible to bring a restorative perspective to other more formal criminal justice practices – for example, courts, panels, parole boards can also incorporate a restorative perspective. The United Nations Economic and Social Council's Resolution 2002 /12 *Basic principles on the use of restorative justice programmes in criminal matters* gives authoritative guidance on these approaches.

Where probation is involved in this way, particular care must be taken to make sure that both the offender's and the victim's interest and rights are fully respected. The evaluation of these interventions must not, for example, be undertaken solely with regard to the offender's reoffending, but must consider the benefits to the victim from such work. Certainly whenever the probation agency brings the offender and the victim together, every care must be taken to make sure that this does not become an occasion for further victimisation.

Restorative justice approaches call for distinctive skills and probation agencies should ensure that staff are trained to undertake such work appropriately.

Crime prevention

98.

This Rule refers to the need for probation agencies to share their experience and knowledge and to participate in partnerships with other organisations to reduce offending and make the community safer. It refers to work which is not targeted at particular offenders, but contributes to the general endeavour to prevent or to reduce crime. Probation's main contribution to community safety and crime prevention is through their work with known offenders to reduce the likelihood of their re-offending. In the course of their work, however, probation staff learn a great deal about the circumstances in which people come to offend, what slows down their desistance and what factors in the community make crime more or less likely. If, for example, probation staff become aware that many of the offenders under supervision are drug-users, this should prompt them to encourage other authorities (perhaps, in this case, the health service) to see if educational or treatment services could be devised to prevent offending – not only to reduce re-offending by offenders under supervision, but to prevent or discourage people from starting to offend in the first place. The causes of crime are complex and crime reduction correspondingly calls for the involvement of several agencies and disciplines working together. Probation agencies should participate actively in such endeavours.

Part VII

Complaint procedures, inspection and monitoring

99.

Probation agencies and their staff must ensure the offenders fulfil obligations that they may prefer to avoid. Probation supervision can make personal demands on offenders which they may sometimes resent or resist. Sometimes too probation staff have to take decisions which can lead to a court appearance or to a recall to prison. The nature of probation work, then, can lead to disagreement and dispute between staff and offenders and this is an aspect of the work that probation staff must learn to deal with. Sometimes disagreement can give rise to formal complaint.

There must be a clear procedure available for offenders and other service users who wish to complain. Many complaints can and should be resolved informally and at a low level, by explaining to the offender or other service user why a decision was taken, but where the complainant remains unsatisfied, there should be an effective opportunity to appeal to someone at a higher level within the organisation and in some circumstances to an independent authority.

It is to be noted that complaints can often be avoided by the agency explaining its role clearly and holding its position with consistency and fairness. If people know what is expected of them and what they may expect in return, complaint is much less likely.

100.

Those investigating complaints should be impartial and should avoid any assumptions that might prejudice the outcome of their inquiry. In some cases, it will be sufficient for the line manager of the member of staff who is subject to the complaint to undertake the investigation. In other circumstances, depending on the level of seriousness of the allegation, a more senior member of staff should investigate. There is a role too for an independent authority (for example, an Ombudsman) to respond to complaints, but normally this process should be invoked only when other mechanisms have failed to bring a satisfactory resolution. The independent authority may also be in a position to hear any appeal against the findings of the initial investigation.

Staff as well as complainants need to see that the procedure is fair and impartial. Independent on whether the complaint is found by the investigation to be malicious or vexatious, or to be well founded, the agency should respond to the complainant accordingly.

It is also important to distinguish between complaints against members of staff and, on the other hand, dissatisfaction with the agency's policy. For example, an offender may wish to complain about a decision to recall him to prison, but, if the agency is satisfied that this decision was taken and implemented properly, it should be prepared to support its members of staff.

101.

Those receiving complaints should inform the complainant of the process and, in due course, the outcome of their investigation. Any changes that will result from the investigation into the complaint should be explained to the complainant. Probation agencies should respond undefensively to complaints and use investigations as an opportunity to learn how to improve the quality of their service delivery.

102.

There should be systems in place to enable agencies to monitor the quality of their own practices and to check performance against the required professional standards. Staff should be encouraged to regard these processes as a device to improve the quality of service delivery and enable them to do their work as well as possible. Such reviews should focus not only on individual performance, but should also consider if staff are adequately resourced and supported in undertaking their work. Information regarding the number of complaints filed and processed in the course of the year should also be analysed regularly.

103.

Rule 15 and Part III emphasise the importance of probation agencies' accountability to the competent authorities. Arrangements vary in different countries and accountability can function at national, regional and / or at a more local level. In any event, the competent authority should ensure that robust systems are in place which allow them to satisfy themselves that the agency is undertaking its work as it should.

In addition monitoring from various independent monitoring bodies is very important for ensuring high quality of professional standards of probation work. In some countries this may be the ombudsman, in others national supervising committee, etc. No matter which form such bodies may take, this Rule requires them to be independent and well equipped to perform their monitoring tasks.

Probation agencies should use such inspection and monitoring systems as an opportunity to learn and to improve their practice.

The competent authority should also take the opportunity to learn more about the realities of probation practice and to advocate as necessary on the agency's behalf for changes in policy or in levels of resourcing.

Part VIII**Research, evaluation, work with the media and the public**

104.

Probation practice should be guided by evidence of effectiveness. One important criterion of effectiveness is *reduced reoffending*. There are research findings to show that where assessment can match the programme of intervention with the characteristics of the offenders, a reduction in rates of reconviction can be achieved in a measurable proportion of cases.

In recent years, the claims of the findings of *'what works'* have been especially influential. Many of these research findings originate in Canada and USA, although research has also been undertaken in England and Wales and other countries. Still other countries apply different probations methodologies, such as strength-based approaches or social work approaches. As they develop their own ways of gaining and interpreting evidence, countries can and should use evidence from other countries to develop their own practices, while remaining aware that *'what works'* in one country may not work as well in another.

Any probation methodology should always be seen as an open question. Established methods of intervention may need to be revised as research progressively illuminates the way in which they work and their consequences. New methods are likely to emerge and their effects should be investigated. To appraise the effectiveness of practice requires systematic research. Agencies can and should undertake this themselves, but will also need to call on the research expertise of other organisations, especially universities. Their involvement ensures independence and gives authority to an agency's claims to be effective. This Rule recognises the value of research and recognises that resources must be made available for this to take place as an investment in the improvement of services.

105.

Just as practice must be responsive to the findings of research, policy too should be informed in this way. Politicians in many countries are under considerable pressure to introduce effective measures to reduce crime. Policy initiatives should be supported by research, reason and argument and, while remaining sensitive to the legitimate expectations of the electorate, politicians should show leadership and try to avoid any temptation to propose simple solutions to complex problems.

106.

Probation agencies should work actively to explain their work to the public. This will include disseminating factual information as well as an explanation of the reasons why the agency operates as it does. The results of probation practice - and also the results of other sanctions, like imprisonment – should be discussed openly. Public confidence will grow through this understanding.

Examples of the achievements and successes of probation should be announced through the media: there is otherwise a risk that the public will only ever hear about probation in the context of an incident – for example a serious offence committed by someone under supervision.

It is not always easy to explain complex (and sometimes ambiguous) research findings and the media cannot always be relied upon to present these fairly. Nevertheless the agency must make the attempt. Among other things, the public must be helped to understand that while probation makes an invaluable contribution to community safety, it is impossible to bring about a society that is free of risk and neither probation work, nor any other criminal justice intervention, can achieve this. Disappointment is often a result of unrealistic expectation and while the public ought to have high expectations of the quality of its probation agencies they must remain realistic.

107.

This Rule is a corollary of the last one. Probation policy and practice develop and these developments should be explained to the public. It is also important that the public sees a probation agency as an active, responsive organisation which is always keen to enhance the quality of its work.

108.

The standing of probation and public confidence will be enhanced by a clear and realistic statements of its purposes and a transparency about its work. This Rule further emphasis the value of international exchange of ideas and practices. Countries can learn from one another's experience – not only from successes, but also from mistakes.