



# **THE USE OF TECHNOLOGY AND ELECTRONIC MONITORING (EM) TO SUPPORT THE SUPERVISION AND MANAGEMENT OF OFFENDERS IN THE COMMUNITY**

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## **Abstract**

This paper sets out the position of the Probation Institute on the use of technology in supervision, support and monitoring of offenders in the community

## Introduction

The domination of technology over daily life, including criminal justice services, seems a world away from the development of radio frequency (RF) monitoring for Home Detention Curfews in the late nineties in England and Wales. The widespread ownership of mobile, and more recently Smart phones, development of global positioning (GPS), and options such as remote alcohol monitoring, and bi-lateral monitoring with victims of domestic abuse, have greatly expanded the range within which technology can support and reinforce community-based interventions.

This paper sets out the position of the Probation Institute on the use of technology in supervision, support and monitoring of offenders in the community. We will comment briefly on the use of electronic monitoring (EM) as a stand-alone option and on pre-trial measures, but the main focus of this paper is the use of technology in supervision by probation and rehabilitation services for those who are sentenced to community orders by the courts. A separate Position Paper will focus on the use of technology for supervision and monitoring of those on temporary, conditional and post release from prison.

The principles for the use of technology are no different from those that more generally underpin community sanctions and measures. However the level of intrusion is potentially significant through EM and other technology and therefore the principle of proportionality is particularly important.

The digital revolution and current government policy to place technology at the heart of services to citizens [1] has transformed the field and it is vital that sound penal and criminal justice policy drives the use of technology rather than vice versa. Penal measures can increasingly be supported by technology, which now facilitates most of our daily transactions and communications. But the principles of freedom and liberty are more clearly in focus with court-ordered sanctions and measures. Because of the rapidly developing field it is tempting to change direction with each new piece of hardware and software (e.g. GPS over RF). But this would run counter to good practice, which should be based on evidence-based methods. We consider technology as a means to an end, rather than an end in itself.

We issue this Position Paper now to demonstrate that it is possible both to frame a coherent strategy and to take measured steps to build these potentially exciting and facilitative tools into effective practice for supervision, support and monitoring. A systematic approach to research and evaluation of EM in particular has been lacking over the past 20 years, [2], [3]. It has developed apart from the probation service in England and Wales, due largely to its original political framing as a punishment, as opposed to the social work ethos of the probation service, who consequently distanced itself from it [4]. The Coalition government's approach set out in "Punishment and Reform" [5] reiterates the purposes of EM as punishment and public protection (a significant restriction of liberty on top of supervision). This contrasts with the more integrative approach developed in some other countries, e.g. the Netherlands, and also with Nellis's more neutral description: "a form of control, of regulating behaviour at a distance" [6].

Experience in this field lies largely outside the public service arena in England and Wales, although we note the recent review, evaluation and developments by the Scottish government, [7]. We need to learn from other countries and also from those private sector organisations who have run EM in England and Wales for 20 years, as well as from the Community Rehabilitation Companies, some of whom have considerable relevant technological experience. The Council of Europe has recognised the significance of EM by publishing recommendations and principles, [8]. We agree with Nellis that technology can be a *useful addition* to existing socially and psychologically positive ways of dealing with any suspect or offender. When used strategically in the framework of the criminal justice process, it can also help reduce the use of imprisonment, while ensuring effective monitoring and supervision of offenders in the community, and thus help prevent further crimes, [8] It can also be used creatively, [3], [7], to strengthen rehabilitative efforts.

### **Principle 1: Sentences of the court should be proportionate to the offence.**

There is some evidence that the *targeted* use of EM can be associated with a lowering of the prison population. However *high* levels of EM measures are often associated with high levels of imprisonment and it is clear, as with many other alternatives to prison, that considerable net-widening can occur, because it exists as an option for low and medium risk defendants. This has happened to some extent in England and Wales with stand-alone EM. EM should be targeted on those more serious offenders who are at risk of imprisonment, or subject to early release, where the extra restriction and oversight can provide assurance to the courts and protection to the public. EM should only be ordered after a comprehensive assessment that encompasses informed consent, the role of EM within a sentence plan and safeguarding issues. Assessments of suitability for EM should always be done with a view to setting out a proportional response to the offence. Appropriate training for assessors, as well as briefing by EM companies for staff and sentencers, is essential. Tailored and restrictive eligibility criteria can be helpful, [7].

Regarding other technology, such as bespoke applications on Smart phones that reinforce the learning and behaviours from, such as a group work intervention, this should simply form part of the intervention, to be used where helpful in reinforcing a new lifestyle and set of behaviours.<sup>i</sup> The same can be said of alcohol monitoring. The scope is considerable and we can learn from Health Service developments. However a balance should be struck between intrusion into the offender's life and that of their family, and the need to support and reinforce intervention and change programmes. Elements on the use of technological aids to programmes should be included in the relevant interventions training.

**Principle 2: Consent should be based on good briefing for offenders, their partners and families to enable an informed decision about participation.**

The principle of informed consent should be covered in relevant legislation. Feedback from service users demonstrates that offenders are frequently unsure what they are agreeing to, and information is not always provided in a thorough manner which checks the understanding of the person concerned. This includes the execution of the sentence including breach. Co-habitees should always be asked for properly informed consent, as well as property owners of rented accommodation.



**Principle 3: The impact on others should form part of the assessment and decision-making process.**

The overall impact of EM on offenders' families and others can be considerable. It is vital that risks to others involved with the offender or the victim are carefully considered and included in assessments. Specific guidelines are needed in the case of domestic abuse and sexual offenders. The new bi-lateral monitoring should be carefully piloted and evaluated before implementation, including feedback from victims and survivors. Informed consent from cohabitees is essential. Permissions from third parties need to be obtained and verified. This needs to be undertaken at the pre-sentence stage as an element of the Pre-Sentence report or other pre-sentence assessment.

#### **Principle 4: Fairness in the execution of the sentence, including the use of discretion and breach decisions.**

A fair and consistent approach is needed, both to the imposition of a community sentence which includes EM and to the implementation of that sentence, including breach. However this should not lead to a systematised and rigid assessment and/or response to violation. Fairness also means consideration of the individual's situation, with their needs and risks, and requires a graduated response to breach. Clear communication channels between all service providers is essential.

Professional discretion, when used in a reasonable and defensible way, can reinforce the requirements of the court without over-reacting to minor or one off technical violations. Research shows that integrating EM with the other objectives of supervision can develop its use as an additional support, particularly for those who have led very unstructured or chaotic lives, [3], [7], [9] Change is a gradual process and expectations should be clear but realistic. Flexibility and graduated changes to these orders can enhance and sustain motivation, [2].

Due to the separate development of EM in England and Wales, probation, rehabilitation and resettlement staff have yet to establish experience of good practice in this area. And service users often complain about inconsistency between officers regarding enforcement of orders. But if these tools are seen as adding value and extra control to supervision, then the use of discretion will develop in due course, as part of professional decision making. Officer training, supervision, peer discussion and user feedback are important to ensure that practice in this area achieves good quality.

#### **Principle 5: The importance of training and learning for identified levels of competence and of continuing professional development.**

Staff training should be provided on the assessment and the operation and enforcement of orders with requirements for EM and other forms of technology. As with drug and alcohol requirements, staff need to consider all the relevant factors outlined above, and require training in advising the court, in operating the orders and making decisions about breach when alerted by the relevant organisation. Peer support and supervision also play a key role in developing and supporting staff to make fair recommendations and decisions that are most likely to reduce the likelihood of harm and reoffending.

### **Principle 6: Equality and the avoidance of unfair discrimination.**

The need for consistency should not prevent consideration of any factors that may lead to discriminatory practice, including gender, age, religion, disability, race, colour, nationality, language and sexual orientation. The imposition of EM can have a serious impact on child care responsibilities, on a person with a hearing loss or mental health issues. There is enough flexibility within the legislation in England and Wales to vary the timing and hours of EM to take account of these aspects of offenders' lives, although the standard of 7 days a week from 7pm to 7am is currently routinely applied. Courts should be encouraged to use variation in disposals. No one should be ruled *out* of sentencing options on unfair grounds. This also applies to other technological aids to supervision, and the provisions of the Equality Act 2010 can, for example, be used to obtain suitable equipment and applications.

### **Principle 7: The right to privacy and data protection**

Data protection has become a key issue for all citizens, including those who appear in our courts. But the ease with which information from electronic devices can be collected and disseminated has particular implications for the probation, rehabilitation and resettlement services. The Probation Institute believes that information deriving from electronic devices and equipment in relation to offenders should be treated in the same way as other information collected during the course of supervision. As with other data sharing this should be based on legislation and Parliamentary regulation, not simply on individual department practice or agreements between criminal justice agencies and staff. Data collection, sharing and storage must all be tightly controlled.<sup>ii</sup>

Data sharing protocols should be developed between key agencies, including the police, probation and prisons, regarding the implementation of data legislation. These should cover all aspects of data, including EM data, and the provision of any collated data for monitoring and evaluation purposes. Offenders should be very clear about any data sharing that is not subject to their agreement.

### **Principle 8: Clear penal policy and purpose for the use of technology in community sentences.**

There are now two key sources of pressure on the probation, rehabilitation and resettlement services to make use of technology in supervising offenders without first establishing clear penal policy. The first is the availability and application of technology to all aspects of modern life and the possibilities therein, and the wider context of the "digital revolution". The second is cost. It is very tempting to cut costs through the use of devices such as voice and iris recognition, video and remote contact, and other systems which are computerised.

The Probation Institute believes that it is time to agree the purpose of the use of technology, both in relation to court options and to enhance community supervision, support and monitoring. It can be helpful in structuring the day and the week, enabling offenders to attend appointments and keep away from crime-prone situations, people and place. A remote reporting mechanism can be a useful option later in the order, interspersed with face to face contact to ensure that the situation remains stable. Additionally research has shown that

people are surprisingly open and responsive to computers in disclosing personal information, and it may be that additional remote reporting and use of technology can be a real boost to a change programme. It is also a useful means of additional contact with those in remote areas.

However it should be an adjunct to and not replace face to face supervision. The Probation Institute believes that interaction with a skilled and trained supervising officer lies at the heart of our services. The effectiveness of technology remains to be evidenced, though we believe that the potential may be significant. Policy has been informed largely by political and economic pressures and a general faith in the technology. The Probation Institute is very willing to work with the Ministry of Justice, Community Rehabilitation Companies and other partners to develop a comprehensive strategic approach to the use of technology in probation, rehabilitation and resettlement services.

### **Principle 9: Evidence-based practice and continuous improvement of services.**

The use of technology in probation is a neglected area of research. The recent work by Hucklesby et.al. demonstrates that across Europe EM has developed very differently in the countries under study. There is a paucity of published data, which mainly focuses on RF monitoring, and little in depth empirical research. Graham and McIvor [7] point to a general consensus in favour of an integrated approach to supervision but much more research is needed. The wider use of mobile phone applications in supervision has yet to be thoroughly evaluated.

Both research and evaluation are contingent on clear penal aims and purposes for the use of technology, as outlined above. As Nellis points out, even good research studies are hampered by an unclear purpose for the subject under scrutiny. In the UK, the organisational separation of the services and a lack of integrated practice and evaluation has hindered research and evaluation, which should be developed as a matter of urgency. This should include service users' experience and that of their families and others, including their victims, [10].



## Conclusion

Stand-alone EM has its place in the range of sentences and measures available to the court but should not be used for longer term desistance from crime, where a combination of requirements is preferred, [7]. Sometimes it is suitable as a disposal in individual cases where the offence is serious but there would appear to be little need for a probation intervention. This is a matter to be teased out in the assessment and through briefings for sentencers. It is a measure that has been used for short term, conditional and early release for nearly 20 years and for high risk offenders such as sex offenders after a period of face to face supervision with some success. It also has a place in pre-trial measures, but should be proportionate to the offence and only be used where the risks of absconding are high and it can enable the avoidance of a remand in custody. This can avoid net widening.

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<sup>i</sup> For example Brain in Hand assistive technology is an application developed from cognitive group work programmes which gives easy access to personalised support from a smart phone. Currently being pioneered with people with autism or mental health problems, the software helps the person remember activities, reduce anxiety and feel supported. It's accompanied by a telephone mentoring service to offer extra support when needed.

<sup>ii</sup> For example Germany's stringent data protection rules mean that all geographical data relating to EM are destroyed after two months unless it is required as evidence in a criminal case.