

# **Supporting Drug-using Individuals on Probation Through the Lens of Vulnerability Theory and an Ethics of Care**

**By**

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*I confirm that the work submitted is my own and that appropriate credit has been given where reference has been made to the work of others.*

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## **Abstract**

This thesis is concerned with the role of vulnerability and how it can be operationalised within the probation service to strengthen support for drug users. Currently, it is an ambiguous concept, with no universal understanding or consistent approach. When considering the position of the drug user under supervision, support is inadequate, and drug treatment is rooted within coercive measures. Vulnerability Theory (VT) has been adopted as a conceptual tool to challenge the position of the probation service and the role they play in responding to vulnerability. The probation service is equipped with the necessary skills and experience, providing support across social welfare and the community, occupying a space where they can make meaningful change to negate the life-threatening consequences for the drug user under supervision. To do so, there must be a widespread acknowledgement of vulnerability, facilitated by a more expansive government that takes responsibility for both the drug user under supervision, and the strain on the probation service that hinders their ability to individualise responses. This thesis analyses the lack of clarity within policy, which reinforces problematising assumptions around the liberal subject. Policy must appreciate the differences in embodiment and respond based on the individual. Producing the vulnerable subject in this context requires adaptation to VT, integrating an ethics of care which embeds therapeutic practice and is built upon a person-centred collaborative model. This requires joint working, a focus on whose voice counts and ultimately reinforcing probations foundational values 'advise, assist, befriend'. This thesis highlights the value in problem-solving models, finding that they can adopt both VT and an ethics of care, if they remove the coercive measures and emphasise agency and collaboration. This directs attention to the individual, contributing to the growing literature calling for better support for drug users under supervision.

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Abbreviation	
AP	Approved Premises
ATR	Alcohol Treatment Requirements
CJS	Criminal Justice System
CRS	Commissioned Rehabilitative Services
CSTRs	Community Sentence Treatment Requirements
DRR	Drug Rehabilitation Requirement
MHTR	Mental Health Treatment Requirement
OMiC	Offender Managers in Custody
PSC	Problem Solving Court
SUI	Service User Involvement
TJ	Therapeutic Jurisprudence
TR	Transforming Rehabilitation
VT	Vulnerability Theory

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## Introduction

### *Todd James Salter*

Mr Salter was released from prison in July 2019. As a result of the exposure to substances whilst in prison, he began using illicit drugs. Upon his release, accommodation was not secured and as a result he has to stay with family, causing strain on his familial relationships. He wished to overcome his drug habit, but he and his family struggled to obtain the support needed. The probation officer assigned did not know that there was an option to refer Mr Salter onto ASPIRE drug and alcohol service and did not know that any referrals could be made to have him assessed. Salter had complex needs and required mental health support as well as drug rehabilitation. These co-occurring needs were not recognised, there was a lack of collaborative working between agencies overall, and subsequently adequate support whilst under supervision was not provided. As a result, Mr Salter was driven to committing criminal acts to get arrested or recalled so that he could secure treatment in prison. Due to Mr Salter's suffering, he hanged himself outside a police station in October 2019.<sup>1</sup>

Todd Salter's case is a prime example of a lack of personalised support, continuity of care, engagement with health services and accountability. His case is not an isolated occurrence but indicative of a systemic problem, demonstrating the profound unrecognised and unmet vulnerabilities of the drug user on probation.<sup>2</sup> The difficulties and obstacles that drug users are facing under supervision can have fatal consequences, and further measures are imperative. Consequently, this thesis calls for enhanced proactive support embedding VT and an ethics of care to do so.

Vulnerability is inherent to the human condition, universally experienced yet manifested differently in each individual.<sup>3</sup> People on probation are arguably some of the most vulnerable in society, facing disadvantage in almost every index of need and an increased risk of death.<sup>4</sup> Whilst we are all constantly vulnerable to harms such as drug misuse,

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<sup>1</sup> HM Coroner Nicola Mundy, 'Todd Salter: Prevention of future deaths report' (Courts and Tribunals Judiciary, 2021) <[https://www.judiciary.uk/wp-content/uploads/2021/08/Todd-Salter-Prevention-of-future-deaths-report-2021-0281\\_Published.pdf](https://www.judiciary.uk/wp-content/uploads/2021/08/Todd-Salter-Prevention-of-future-deaths-report-2021-0281_Published.pdf)> accessed 31 July 2025

<sup>2</sup> Loraine Gelsthorpe, Nicola Padfield and Jake Philips, 'Deaths on Probation: An Analysis of Data Regarding People Dying under Probation Supervision' (The Howard League for Penal Reform, 2012) <<https://howardleague.org/wp-content/uploads/2016/05/Deaths-on-probation.pdf>> accessed 31 July 2025

<sup>3</sup> Martha Albertson Fineman, 'Vulnerability and Inevitable Inequality' (2017) 4 Oslo L Rev 133

<sup>4</sup> Gelsthorpe and others (n 2)

homelessness, and criminalisation, this is impacted by our resilience, or in other words, our ability to respond to these harms, which can be mitigated through resources that are distributed through social institutions. Vulnerability here is used in the colloquial sense, and Fineman's VT will be further elaborated on within this thesis, distinguishing between these basic conceptions of vulnerability and VT throughout.

Nearly 50% of those on probation have experienced drug misuse.<sup>5</sup> Drug misuse in this context can be summarised as use of drugs which is 'having a harmful effect on a person's life, and those around them...with significant impairment of health and social functioning'.<sup>6</sup> With increasing concerns surrounding drugs, strategies such as 'From Harm to Hope' have been implemented to protect the vulnerable.<sup>7</sup> However, although there have been calls within drug policy to protect the most vulnerable.<sup>8</sup> Vulnerability remains a contested concept, with many different interpretations and a lack of clarity within government strategies. Martha Fineman's work has been pivotal in the clarification of vulnerability, and her VT will underpin this thesis. VT will be utilised as a conceptual tool to consider how the probation service can better understand and respond to the drug user on probation. VT will be placed within an ethics of care model, seeking to establish whether the current approaches to supervision are adequate in responding to, and providing resources for, the drug user on probation, and whether this is delivered carefully.

This thesis adopts a theoretical lens, Fineman's VT, as the analytical framework when considering the quality of support for the drug user under supervision. VT has been selected due to its inherently social nature, which considers the connected and interdependent nature of vulnerability. Due to VT's appreciation of dependency, this theory not only aligns with probation's initial values of 'advise, assist, befriend' but also allows for an analytical

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<sup>5</sup> HM Chief Inspector of Prisons, *Annual Report 2019-20* (HC 856, July 2020) 33

<sup>6</sup> Joy Barlow, Di Hart and Jane Powell, *Adult drug and alcohol problems, children's needs* (2<sup>nd</sup> edn, National Children's Bureau 2016)

<sup>7</sup> Department of Health and Social Care, 'From Harm to Hope: A 10-year Drugs Plan to Cut Crime and Save Lives' (HM Government 2021)

<[https://assets.publishing.service.gov.uk/media/629078bad3bf7f036fc492d1/From\\_harm\\_to\\_hope\\_PDF.pdf](https://assets.publishing.service.gov.uk/media/629078bad3bf7f036fc492d1/From_harm_to_hope_PDF.pdf)> accessed 31 July 2025

<sup>8</sup> '2017 Drug Strategy' (Home Office, 2017) <

<[https://assets.publishing.service.gov.uk/media/5a82b5a2e5274a2e87dc2966/Drug\\_strategy\\_2017.PDF](https://assets.publishing.service.gov.uk/media/5a82b5a2e5274a2e87dc2966/Drug_strategy_2017.PDF)> accessed 31 July 2025

framework that appreciates the relational nature of supervision. To operationalise VT within probation work, Dominey's thick approach has been positioned and analysed within problem solving courts (PSCs). VT and thick supervision have further been linked to an ethics of care, whereby all three models embody core themes of empathy, respect and support. Drawing upon research surrounding these three schools of thought, it has been argued that a combination of these approaches can add value to treatment by encouraging joint work, continuity of care, flexibility in practice and individualised holistic approaches to treatment. In essence, VT provides an opportunity to challenge the position of the probation service, given their strategic position to promote rehabilitation and ultimately confer resources to develop one's resilience.

### **Deaths Under Supervision**

Mortality rates among those under probation supervision is much higher than the general population.<sup>9</sup> People under supervision include those on suspended sentences, community orders and supervision following release from custody. Individuals' circumstances differ, yet generally people on probation are often deprived, marginalised or vulnerable and likely to have social and healthcare needs.<sup>10</sup> These needs are complex and intersecting and often require dual diagnosis and treatment. In particular, mental health concerns are experienced in the majority of drug users (70%).<sup>11</sup> Many complex factors can contribute to the death of an individual under supervision as 'vulnerability is manifested differently in individuals'.<sup>12</sup> However, it can be suggested that treatment and the availability of support play a considerable part in the prevention of these deaths. Some key areas of concern are a lack of support provided for mental health issues<sup>13</sup>, inaccessible community health services and

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<sup>9</sup> Jake Phillips, Loraine Gelsthorpe and Nicola Padfield, 'Non-custodial Deaths: Missing, Ignored or Unimportant?' (2017) 19(2) Criminology & Criminal Justice 160

<sup>10</sup> Coral Sirdifield and others, 'Probation Healthcare Commissioning Toolkit: A resource for commissioners and practitioners in health and criminal justice' (Community and Health Research Unit, University of Lincoln 2019) <<https://bpb-eu-w2.wpmucdn.com/blogs.lincoln.ac.uk/dist/9/8124/files/2019/03/Offender-Health-Commissioning-Toolkit-Full-Version-2h4lln7.pdf>> accessed 31 July 2025

<sup>11</sup> Public Health England, 'Better care for people with co-occurring mental health and alcohol/drug use conditions: A guide for commissioners and service providers' (Public Health England 2017) <[https://assets.publishing.service.gov.uk/media/5a75b781ed915d6faf2b5276/Co-occurring\\_mental\\_health\\_and\\_alcohol\\_drug\\_use\\_conditions.pdf](https://assets.publishing.service.gov.uk/media/5a75b781ed915d6faf2b5276/Co-occurring_mental_health_and_alcohol_drug_use_conditions.pdf)> accessed 31 July 2025

<sup>12</sup> Fineman (n 3)

<sup>13</sup> Mundy (n 1)

accommodation on release<sup>14</sup> and failure to recognise the vulnerability of drug users.<sup>15</sup> As such, unrecognised vulnerability can be, and is, a matter of life and death for some.<sup>16</sup>

However, it is difficult to understand the extent of the problem at hand, as those who die under supervision often receive less attention than those who die in custody.<sup>17</sup> This is despite these deaths usually occurring soon after prison.<sup>18</sup> Drugs and alcohol are common risk factors associated with these deaths,<sup>19</sup> and it is estimated that 1 in every 2000 injecting heroin users may die within 2 weeks of leaving prison due to overdose.<sup>20</sup> Further, between 2011 and 2021, the ONS found that out of 8,385 deaths of people under supervision, 2,801 were drug-related deaths, which includes suicide.<sup>21</sup> This means that the risk of a drug-related death to those under supervision is 16 times more likely than in the general population.<sup>22</sup> There is a lack of available data on deaths under supervision and an absence of a legal duty to investigate these deaths, making it difficult to identify the issues or learning points.<sup>23</sup> In 2013, the Prevention of Future Deaths reports were introduced to raise concerns and require action to be taken based on the deaths of individuals, including those under supervision, encouraging public scrutiny. However, whilst there are full investigations into some deaths of those under supervision, it only concerns those who die in approved

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<sup>14</sup> HM Coroner Emma Serrano, 'Darren Docherty: Prevention of future deaths report' (Courts and Tribunals Judiciary 2024) <<https://www.judiciary.uk/prevention-of-future-death-reports/darren-docherty-prevention-of-future-deaths-report/>> accessed 31 July 2025

<sup>15</sup> HM Coroner Thomas Osborne, 'Lee Boden: Prevention of future deaths report' (Courts and Tribunals Judiciary, 2015) <<https://www.judiciary.uk/prevention-of-future-death-reports/lee-boden/>> accessed 31 July 2025

<sup>16</sup> Isabelle Bartkowiak-Theron and Nicole Asquith, 'The Extraordinary Intricacies of Policing Vulnerability' (2021) 4(2) *Australasian Policing: A Journal of Professional Practice and Research* 43

<sup>17</sup> Philips and others (n 9)

<sup>18</sup> Ghazala Sattar, 'Home Office Research Study 231: Rates and Causes of Death among Prisoners and Offenders under Community Supervision' (Home Office Research Studies, 2001) <<https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=fc1d71c2a085847327c2ac092ddfc58caf77f2ff>> accessed 31 July 2025

<sup>19</sup> ibid

<sup>20</sup> Tim McSweeney and others, 'Reducing Drug Use, Reducing Reoffending: Are Programmes for Problem Drug-using offenders in the UK Supported by the Evidence' (The UK Drug Policy Commission 2008) <[https://www.ukdpc.org.uk/wp-content/uploads/Policy%20report%20-Reducing%20drug%20use,%20reducing%20reoffending%20\(summary\).pdf](https://www.ukdpc.org.uk/wp-content/uploads/Policy%20report%20-Reducing%20drug%20use,%20reducing%20reoffending%20(summary).pdf)> accessed 31 July 2025

<sup>21</sup> Lauren Revie, Emrys John and David Mais, 'Drug-related Deaths and Suicide in Offenders in the Community, England and Wales: 2011 to 2021' (Office for National Statistics 2023) <<https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/deaths/bulletins/drugrelateddeathsandsuicideinoffendersinthecommunityenglandandwales/2011to2021>> accessed 31 July 2025

<sup>22</sup> Revie and others (n 21)

<sup>23</sup> Philips and others (n 9) 170

premises (AP).<sup>24</sup> Consequently, those who do not secure a place in an AP do not receive the same level of scrutiny. This differs from custody, where an investigation is always carried out. This may be due to the more obvious duty of care for those in custody than those under supervision in the community.<sup>25</sup> Arguably, deaths in prisons have a more 'direct impact on the people surrounding the person who dies, both for staff and fellow prisoners/detainees.<sup>26</sup> In addition, there is much more media attention placed on deaths in prison as this is perceived as a failure<sup>27</sup> whereas deaths under supervision often go unnoticed, especially if contact with services is not maintained.

The probation service has been labelled the 'Cinderella' of the criminal justice system, meaning they are underfunded and generally less visible.<sup>28</sup> These increasing pressures and lack of resources have led to the neglect of deaths among people under supervision, meaning the service is falling short of its full potential.<sup>29</sup> The probation service faces staffing issues and heavy caseloads due to being in a period of mass supervision.<sup>30</sup> Damaging organisational changes such as Transforming Rehabilitation (TR) (an attempt to privatise probation) have also negatively affected the service and undermined the quality of probation work.<sup>31</sup> TR left probation services underfunded and fragile, leaving them in a worse position than before the reform.<sup>32</sup> Despite additional restructuring through unification, this has still negatively impacted working conditions for probation practitioners expected to tackle a "never-ending, continuous workload".<sup>33</sup> Further, the impact of mass supervision has been detrimental to the service, coming to the fore due to the evolution of

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<sup>24</sup> Jake Phillips, Loraine Gelsthorpe and Nicole Padfield, 'Deaths While under Probation Supervision: What Role for Human Rights Legislation?' (2019) 90(3) *The Political Quarterly* <[https://onlinelibrary.wiley.com/doi/epdf/10.1111/1467-923X.12746?saml\\_referrer](https://onlinelibrary.wiley.com/doi/epdf/10.1111/1467-923X.12746?saml_referrer)> accessed 31 July 2025

<sup>25</sup> Philips and others (n 9)

<sup>26</sup> *ibid*

<sup>27</sup> *ibid*

<sup>28</sup> Gwen Robinson, 'The Cinderella Complex, Punishment, Society and Community Sanctions' (2016) 18(1) *Punishment & Society* 95

<sup>29</sup> Chief Inspector of Probation Martin Jones, 'Speech to National Association of Probation Officers AGM' (HM Inspectorate of Probation 2024) <<https://hmiprobation.justiceinspectorates.gov.uk/news/speech-to-national-association-of-probation-officers-agm/>> accessed 31 July 2025

<sup>30</sup> Fergus McNeil, *Pervasive Punishment: Making sense of mass supervision* (Emerald Publishing Limited 2019)

<sup>31</sup> Matt Tidmarsh, 'Legacies of Change: Probation Staff Experiences of the Unification of Services in England and Wales' (2024) 64(2) *The British Journal of Criminology* 468

<sup>32</sup> House of Commons Committee of Public Accounts, *Transforming Rehabilitation: Progress Review, Ninety Fourth Report of Session 2017-19 (HC 2017-19, 1747)*

<sup>33</sup> Tidmarsh (n 31) 481

probation work and the extended post-release supervision introduced by the Offender Rehabilitation Act 2014. This means that probation work has expanded, widening the penal net, increasing social control and putting substantial pressure on the probation service, affecting the quality and availability of treatment. Consequently, there have been persistent issues with the availability of support within the probation service, in particular for drug users.<sup>34</sup> Notably, the 2025 HM Inspectorate of Probation annual report found ongoing challenges, concluding that the service cannot respond effectively, with low rates of intervention to address drug and alcohol misuse.<sup>35</sup> Mass supervision has exacerbated vulnerabilities due to a lack of resources, meaning personalised support has been much harder to deliver and maintain. Further, widening the net has meant that those who would not ordinarily be under supervision must navigate the pains of community penalties such as stigma, liberty deprivation and welfare issues.<sup>36</sup> This can then lead to alienation, and arguably, alienation can lead to a person feeling at their most vulnerable.<sup>37</sup> This thesis suggests a framework that will support the probation service in responding effectively to the drug user on probation. By doing so, the analysis affirms the state's responsibility to navigate the relationship between the vulnerable subject and the probation service, as an asset conferring institution.

## Outlining the argument

Whilst this thesis acknowledges the complexity and ambiguity around the term vulnerability,<sup>38</sup> it ultimately finds that vulnerability defines our humanity.<sup>39</sup> Different perspectives produce different resolutions; therefore, to maintain a consistent approach, Fineman's VT is adopted throughout. This thesis positions the probation service as an asset

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<sup>34</sup> Charlie Brooker and others, 'Community Managed Offenders' Access to Healthcare Services: Report of a Pilot Study' (2009) 56(1) Probation Journal 45

<sup>35</sup> HM Chief Inspector of Probation, 'National Inspection – April 2025' (HM Inspectorate of Probation 2025) <<https://hmiprobation.justiceinspectorates.gov.uk/document/national-inspection-april-2025/>> accessed 31 July 2025

<sup>36</sup> David Hayes, 'The Impact of Supervision on the Pains of Community Penalties in England and Wales: An Exploratory Study' (2015) 7(2) European Journal of Probation 85

<sup>37</sup> Sean Coyle, 'Vulnerability and the Liberal Order' in Martha Albertson Fineman and Anna Gear (eds), *Vulnerability: Reflections on a New Ethical Foundation for Law and Politics* (Ashgate Publishing Limited, 2013)

<sup>38</sup> Barbara Misztal, *The Challenges of Vulnerability: In Search of Strategies for a Less Vulnerable Social Life* (Palgrave Macmillan 2011) 41

<sup>39</sup> Bryan S Turner, *Vulnerability and Human Rights* (The Pennsylvania State University Press, 2006) 1

conferring institution, arguing that they are best placed to compensate for the varied and complex vulnerabilities of the drug user on probation. This can be attributed to the fact that the probation service can drive change due to its contact with a significant number of individuals within the CJS, currently managing nearly a quarter of a million cases.<sup>40</sup> This means that it can confer both opportunities and resources to support drug users to adapt when facing adversity. This can be delivered through continuity of support, essential for those who have experienced trauma.<sup>41</sup> As the essence of the service involves four social worlds; corrections, social welfare, treatment and the community,<sup>42</sup> it holds the power and position to make meaningful change. Given the social context in which both the probation service and VT are placed, if the probation service drew upon VT, considering inequalities and harms caused over the whole life course, and the embodied experience of vulnerability, it would have the capacity to improve the life chances of drug users.

The discussion will begin by outlining the theoretical framework of VT in chapter one, exploring Fineman's VT in depth, considering how it can be operationalised within the probation service. Fineman's VT is inherently more inclusive than currently conceptualised, interpreting vulnerability as an embodied experience that can be affected by the resources available to build resilience.<sup>43</sup> The concept of the vulnerable subject will be explored, moving away from the traditional liberal subject by acknowledging the individualised and collective nature of vulnerability. This will reflect on the existing inequalities that are often overlooked, presuming that people have equal opportunities.<sup>44</sup> Further, the discussion will focus on resilience generally defined using terms such as stability in dynamics (returning to your normal state after a shock) and adaptivity (adapting to a new normal after experiencing a

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<sup>40</sup> Ministry of Justice, 'Offender Management Statistics Bulletin, England and Wales Quarterly: January to March 2025' (Ministry of Justice 2025) <[https://assets.publishing.service.gov.uk/media/688a6d4cb223ff124d388906/OMSQ\\_Q1\\_2025.pdf](https://assets.publishing.service.gov.uk/media/688a6d4cb223ff124d388906/OMSQ_Q1_2025.pdf)> accessed 5 August 2025

<sup>41</sup> Ministry of Justice, 'Process Evaluation of Intensive Supervision Courts Pilot: Interim Report' (Ministry of Justice 2024) <<https://assets.publishing.service.gov.uk/media/6785311af029f40e50881712/process-evaluation-intensive-supervision-courts-pilot-interim-report.pdf>> accessed 7 August 2025

<sup>42</sup> Matt Tidmarsh and Ian Marder, 'Beyond Marketisation: Towards a Relational Future of Professionalism in Probation after Transforming Rehabilitation' (2021) 17(2) *British Journal of Community Justice* 22

<sup>43</sup> Martha Albertson Fineman, 'The Vulnerable Subject: Anchoring Equality in the Human Condition' (2008) 20(1) *Yale Journal of Law & Feminism* 1

<sup>44</sup> Martha Albertson Fineman, 'The Vulnerable Subject and the Responsive State' (2010) 60 *Emory Law Journal* 251

shock), overall concentrating on our ability to bounce back or recover from adversity.<sup>45</sup> Increasing recognition of the concept of resilience has led to the emergence of the resilient subject in criminal justice policy. However, power and potential harms within social structures must be evaluated to create effective environments where resilience can be fostered.<sup>46</sup> This concept of resilience has been interpreted by Fineman, but instead of focussing on the individual's response to harms, it shifts responsibility to the collective. It considers the impact that institutional failures have on the ability to withstand harms, which can influence or contribute to the misuse of drugs.<sup>47</sup> This provides a framework to analyse how probation, as an asset conferring institution, can support drug users under supervision. The concept of vulnerability in a historical context is then explored, appreciating how these perspectives have impacted the significance of the concept itself, traditionally dooming people as helpless victims of an inevitable fate.<sup>48</sup> This approach ignored the social construct in which vulnerability is built, and has historically resulted in isolating the vulnerable, associating this with victimhood. This context provides insight into the evolution of vulnerability and the movement towards penal-welfarism, pivotal in rehabilitation for the drug user on probation. Nevertheless, chapter one finds that contemporary criminal justice measures continue to rely on general, colloquial understandings of vulnerability, which consider the 'vulnerable' as 'others'. This approach reinforces exclusion and marginalisation, sustaining the myth of invulnerability that Fineman's VT challenges, since all individuals are constantly vulnerable.

Chapter two proceeds to establish how vulnerability is operationalised within contemporary drug policy. Vulnerability is not a new term, but it now carries a more important political currency, increasingly being drawn upon in the field of drug policy.<sup>49</sup> The approach to vulnerability in English drug policy endorses disciplinary mechanisms to regulate the

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<sup>45</sup> Otto Hudec, Aura Reggiani and Monika Siserova, 'Resilience Capacity and Vulnerability: A Joint Analysis with Reference to Slovak Urban Districts (2018) 73 Cities 24

<sup>46</sup> Willem de Lint and Nerida Chazal, 'Resilience and Criminal Justice: Unsafe at Low Altitude' (2013) 21(2) Critical Criminology 157, 172

<sup>47</sup> Martha Albertson Fineman, 'Equality, Autonomy, and the Vulnerable Subject in Law and Politics' in Martha Albertson Fineman and Anna Grear (eds), *Vulnerability: Reflections on a New Ethical Foundation for Law and Politics* (Ashgate Publishing Limited, 2013)

<sup>48</sup> Misztal (n 38) 42

<sup>49</sup> Kate Brown and Emma Wincup, 'Producing the Vulnerable Subject in English Drug Policy' (2020) 80 International Journal of Drug Policy <<https://www.sciencedirect.com/science/article/pii/S0955395919301987>> accessed 1 August 2025

behaviour of those who are vulnerable, underplaying complex and intersecting inequalities.<sup>50</sup> Much of the policy in place has exclusionary effects which limit the support available to the drug user on probation due to the lack of clarity on who is vulnerable, on what basis and with what effects.<sup>51</sup> Brown and Wincup's work focuses on who is included within these vulnerability classifications, which overlooks vulnerability as a universal condition, a misalignment with VT, and an example of vulnerability being used in its general, colloquial form. This results in the identification of vulnerable groups, often assuming those outside these groups are invulnerable. Understanding the vulnerable subject in this way targets specific populations, failing to account for the whole life course perspective that has influenced drug misuse and subsequently criminal behaviours.<sup>52</sup> This chapter argues that vulnerability must be considered in a wider social context, looking beyond drug misuse to other areas of social policy.<sup>53</sup> It must consider the varied, intersecting and layered vulnerabilities that the individual faces, in acknowledgement of the embodied experience. Subsequently, this chapter draws upon Therapeutic Jurisprudence (TJ) as the foundations for effective drug intervention. It argues that by focussing on the emotional and mental well-being of the drug user on probation, we can respond to vulnerability through adopting a problem-solving approach. TJ has manifested within Problem-Solving Courts (PCSs), and these can be a mechanism by which VT can be deployed, offering a space to empower vulnerability and depart from traditional punitive measures. The chapter concludes by highlighting the gaps in policy when responding to the complex, often dual needs of those under supervision.

The final chapter reframes probation work through adopting an ethics of care model. 'Care is said to be one of humanity's most fundamental moral foundations'<sup>54</sup> and is central to ethical alignment in practice. The focus within this chapter is predominantly on the rehabilitation and recovery of drug misusers, calling for treatment provisions that do not simply attempt to maintain control.<sup>55</sup> Whilst some of the current approaches display elements of care, they

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<sup>50</sup> Brown and Wincup (n 49) 2

<sup>51</sup> Ibid 4

<sup>52</sup> ibid

<sup>53</sup> ibid

<sup>54</sup> Rob Canton and Jane Dominey, 'Punishment and Care Reappraised' in Loraine Gelsthorpe, Perveez Mody and Brian Sloan (eds), *Spaces of Care* (Bloomsbury Publishing 2020)

<sup>55</sup> Royal College of Psychiatrists, *Substance Misuse Detainees in Police Custody Guidelines for Clinical Management* (4th edn, CR 169, 2011)

can be intrusive, condescending and mask deeply rooted elements of punishment.<sup>56</sup> Coercive elements of care can be described as the ‘dark side of care’, increasing social control and contradicting the rehabilitative ideal.<sup>57</sup> This chapter firstly addresses this concept of state intervention and how the state can provide thick supervision, without overreach. This means that the state must be responsive to the structures that empower a vulnerable subject. This discussion, therefore, calls for a more equitable distribution of assets and privilege across society and evaluates/redefines what constitutes equal opportunity.<sup>58</sup> This means hearing the voices of the vulnerable and managing relationships within society based upon this, justifying Fineman’s call for a more active state.

The next section considers probation as a caring institution, focussing on the supervisory relationship, advocating for an approach that encourages flexibility in practice and ultimately becomes embedded within a person-centred approach. This is then modelled within PSC’s considering how thick supervision can be developed, focussing on continuity of care and positive relationships.<sup>59</sup> However, the current framework is yet to fully align with TJ due to the coercive nature of drug treatment programmes imposing greater restrictions on those under supervision.<sup>60</sup> This element of coercion in drug treatment is controversial and this is shaping further restrictions on those who can often be deemed low-risk within the Criminal Justice System (CJS).<sup>61</sup> Arguably without consent, or with the threat of further sanctions, this form of treatment could be an abuse of human rights.<sup>62</sup> Whilst these programmes categorise themselves as quasi-compulsory, valuing consent, some programmes are enforced without consent, and often the consequences of refusal result in harsher sentencing increasing pressure to comply.<sup>63</sup> Whilst this does not necessarily affect the chance of succeeding on these programmes, it does raise significant ethical concerns about individual liberty and

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<sup>56</sup> Canton and Dominey (n 54)

<sup>57</sup> *ibid*

<sup>58</sup> Jennifer Sarrett, ‘A Vulnerability Inspired Universal Design of Justice’ (2021) 24 *Punishment & Society* <<https://journals.sagepub.com/doi/full/10.1177/1462474521989806>> accessed 5 August 2025

<sup>59</sup> Jane Dominey, ‘Probation Supervision as a Network of Relationships: Aiming to be Thick, not Thin’ (2019) 66(3) *Probation Journal* 283

<sup>60</sup> Tim McSweeney and others, ‘Twisting Arms or a Helping Hand? Assessing the Impact of “Coerced” and Comparable “Voluntary” Drug Treatment Options’ (2007) 47(3) *British Journal of Criminology* 470

<sup>61</sup> *ibid*

<sup>62</sup> Alex Stevens and others, ‘On Coercion’ (2005) 16 *International Journal of Drug Policy* 207

<sup>63</sup> Alex Stevens and others, ‘Quasi-compulsory Treatment of Drug Dependent Offenders: An International Literature Review’ (2005) 40(3) *Substance Use & Misuse* 269

choice over health care.<sup>64</sup> Best practice should uphold the rights of the individual and ensure programmes are not more intrusive, avoid widening the net and adopting a partnership approach, recognising the potential for their wider social impact.<sup>65</sup> As probation remains the component of the CJS most closely aligned with care, there is scope to adopt ethics of care and VT to respect agency, collaborate to encourage rehabilitation and provide personalised treatment provision, without reinforcing the abstinence ideal.

This thesis therefore outlines how Fineman's VT can be adopted and adapted within the probation service to enhance the support and treatment provision currently provided by both probation practitioners and external agencies. The thesis will focus on how VT should be understood within the CJS, and its transformational abilities when applied in practice through the supervisory relationship. Ultimately, this requires a change in how we view deviance, and a renewed commitment to problem-solving models. Through mobilising VT and an ethics of care within probation, this thesis contributes to the growing body of literature that calls for greater personalisation in responses to drug treatment, and the prevention of deaths of those under supervision.

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<sup>64</sup> Stevens and others (n 63) 276

<sup>65</sup> John Collins, Winifred Agnew-Pauley and Alexander Soderholm (eds), *Rethinking Drug Courts: International Experiences of a US Policy Export* (London Publishing Partnership 2019)

## Chapter One:

### Vulnerability Theory: A Conceptual Tool to Understand the Person Under Supervision

#### **1.1. Introduction**

‘Vulnerability is the most essential feature of the human condition.’<sup>66</sup>

Vulnerability is an elusive concept, increasingly difficult to define. The meaning of vulnerability has been shaped by the ‘historical, political, socioeconomic and disciplinary context in which it is used’.<sup>67</sup> Vulnerability has often been associated with fragility and weakness, leading to criticism for its damaging and stigmatising effects.<sup>68</sup> However, this thesis focuses on Fineman’s attempts to rebut this presumption, identifying universal fragility, meaning that no one is completely independent.<sup>69</sup> Given that no one is truly invulnerable, the chapter will explore what this realisation means for persons on probation. Further, vulnerabilities such as community influences, socio-economic status and attainment can increase the risk of an individual’s contact with both the criminal justice system (CJS,) and drugs, resulting in their involvement with the probation service.<sup>70</sup> Thus, VT provides a mechanism to recognise and address the intersecting factors that have impacted a person’s contact with the CJS and analyse what is often perceived as a ‘problem group’. Ultimately, recognition of vulnerability will provide the groundwork for an argument that calls for equitable distribution of resources within the probation service. Moreover, utilising VT will provide a useful framework for understanding social responsibility and the role of the state<sup>71</sup>, as it is ‘the nature of the state which shapes the nature of crime control’.<sup>72</sup>

In the first instance, Fineman’s work will be considered and the concept of the vulnerable subject. Fineman has identified the vulnerable subject as ‘the embodiment of the realisation that vulnerability is a universal and constant aspect of the human condition.’<sup>73</sup> Available

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<sup>66</sup> Peadar Kirby, *Vulnerability and Violence: The Impact of Globalisation* (Pluto Press 2005) 169

<sup>67</sup> Kate Brown, *Vulnerability and Young People: Care and Social Control* (Bristol University Press, 2015) 3

<sup>68</sup> Guy Wishart, ‘The Sexual Abuse of People with Learning Difficulties: Do We Need a Social Model Approach to Vulnerability?’ (2003) 5(3) *The Journal of Adult Protection* 14

<sup>69</sup> Fineman (n 43)

<sup>70</sup> David P Farrington, *Understanding and Preventing Youth Crime* (Joseph Rowntree Foundation 1996)

<sup>71</sup> Nina Kohn, ‘Vulnerability Theory and the Role of Government’ (2014) 26(1) *Yale Journal of Law and Feminism* 1, 4

<sup>72</sup> Stanley Cohen, *Visions of Social Control: Crime, Punishment and Classification* (Polity 1985) 272

<sup>73</sup> Fineman (n 47)

resources shape this vulnerability, which impacts our ability to endure internal and external ‘shocks’.<sup>74</sup> This can be alleviated through asset conferring institutions that provide resources and coping mechanisms, ‘assets’ to build resilience.<sup>75</sup> A vulnerability analysis can be utilised here to understand the vulnerable subject on probation, the availability of resources and how these resources are distributed. Following this, attention is given to Fineman’s work on equality, outlining the confines of the autonomous individual and the liberal subject. It is not enough to treat everyone equally, since the same treatment of individuals with very different constraints can replicate disadvantage.<sup>76</sup> The chapter concludes by exploring the historic context of vulnerability within the CJS and the probation service, acknowledging the gradual increase of state intervention due to the focus on penal-welfarism. It recognises how this has materialised and influenced criminal justice responses with a gradual movement away from punishment-orientated strategies, shifting focus to rehabilitation and probation’s early values of ‘advise, assist, befriend’. Despite this formal attention paid to vulnerability, we are yet to see an approach that mirrors Fineman’s VT, considering the embodied, universal experience. In summary, this chapter contends that implementing Fineman’s vulnerability analysis will provide a new framework for asset conferring institutions, such as the probation service, to understand and respond to vulnerability for drug users on probation. This moves towards individualised care rather than formal equality models.

## **1.2 Vulnerability Theory**

Fineman finds that no one is truly invulnerable; instead, vulnerability is inherent to the human condition.<sup>77</sup> We are all susceptible to positive and negative changes which affect our vulnerability, for example, illness, addiction, accidental injury, etc. Those who are perceived as vulnerable are often seen as ‘others’, due to people disassociating themselves with fragility. However, Fineman attempts to remove the stigma attached to vulnerability.<sup>78</sup> Her work has criticised the mainstream legal subject and contests a focus on formal equality, focussing on the inherent vulnerability of the human condition. The legal subject has many

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<sup>74</sup> Kirby (n 66)

<sup>75</sup> ibid

<sup>76</sup> Sandra Fredman, ‘Substantive Equality Revisited’ (2016) 14(3) International Journal of Constitutional Law 712, 729

<sup>77</sup> Fineman (n 47)

<sup>78</sup> Kohn (n 71) 10

different interpretations, but its master identity is that of a rationalist individual<sup>79</sup> concerned with human autonomy and independence.<sup>80</sup> It emphasises the right to liberty, asserting that individuals can make their own choices and manage their own resources. The state and the law should then work around this to ensure that individuals maintain this freedom, whilst providing adequate support/intervening at the appropriate level. The legal and theoretical subject is a traditional starting point when considering ‘the ordinary person’, but this is reductive and fails to understand the complicated nature of the human condition and the influence of social structures.<sup>81</sup> Fineman moves away from the general assumptions of the legal subject and diverts attention to dependency. She argues that dependency is inevitable, and we are all dependent on different social institutions throughout our lives, rejecting the rigid categories outlined in antidiscrimination-based provisions.<sup>82</sup> Accordingly, the universal vulnerable subject is introduced, a shared and constant vulnerability, defined as the ‘actual lived experience and human condition’.<sup>83</sup> This portrays a more accurate universal figure which realises vulnerability as an intrinsic, inevitable characteristic of the human condition.<sup>84</sup>

Vulnerability is experienced differently for each person, dependent on their exposure and responses to risk over their lifetime. Considering the drug user on probation, there are various internal and external factors that can impact the individual and their interaction with the CJS. Whilst drug misuse is generally not associated to a single cause, it is closely linked to structural factors such as poverty and social exclusion.<sup>85</sup> Further, problematic drug use has been associated with levels of education and employment,<sup>86</sup> poor relationships with family,

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<sup>79</sup> Jana Norma, *Posthuman Legal Subjectivity: Reimagining the Human in the Anthropocene* (Routledge 2022) 103

<sup>80</sup> Ngaire Naffine, *Law's Meaning of Life: Philosophy, Religion, Darwin, and Legal Theory* (Hart, 2009) 181

<sup>81</sup> Fineman (n 47)

<sup>82</sup> *ibid*

<sup>83</sup> Fineman (n 43)

<sup>84</sup> Anna Greal, ‘Vulnerability, Advanced Global Capitalism and Co-symptomatic Injustice: Locating the Vulnerable Subject in Martha Albertson Fineman and Anna Greal (eds), *Vulnerability: Reflections on a New Ethical Foundation for Law and Politics* (Ashgate Publishing Limited, 2013)

<sup>85</sup> Darren Hill and Petra Salisbury, *A Bitter Pill to Swallow: Exploring and Understanding Drug Misuse in the UK* (Routledge 2022)

<sup>86</sup> Linda Bauld and others, ‘Problem Drug Users’ Experience of Employment and The Benefit System’ (Department for Work and Pensions 2010)<  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/214409/rr-ep640.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/214409/rr-ep640.pdf)> accessed 5 August 2025

peer influence<sup>87</sup> and mental health difficulties<sup>88</sup> amongst other factors. When control over substance misuse is lost, this can lead to involvement in the CJS,<sup>89</sup> and the strong link between substance misuse and criminal behaviour has long been established.<sup>90</sup> Involvement within the CJS exposes individuals to further risks, such as the increasing availability of drugs in prison,<sup>91</sup> and the impact of supervision/anxiety has been linked to being recalled/sent to prison.<sup>92</sup> This has been described as living “under a constant threat”.<sup>93</sup> As socially excluded people have recurrent contact with state bureaucracy, and in particular probation practitioners are likely to see these individuals on a regular basis, the probation service have can ensure these relationships are positive.<sup>94</sup> However, socially excluded people experience a fear factor here,<sup>95</sup> and as a result, social exclusion can be exacerbated. Engagement with the CJS can create barriers to reintegration into society, facing issues with securing housing and treatment needs.<sup>96</sup> Therefore, engagement with the CJS increases exposure to potential harms, which can exacerbate vulnerability by limiting access to resources that can foster resilience. This can ultimately lead to deterioration of the supervisee's mental state.<sup>97</sup> This emphasises the complex and differing risks that the drug user on probation faces, demonstrating the actual lived experience. As such, it is the reality of the whole life course perspective that VT centres on. As these risks can increase exposure to potential harms,<sup>98</sup> we

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<sup>87</sup> Patrick Mille and Martin Plant, ‘The Family, Peer Influences and Substance Use: Findings from a Study of UK Teenagers’ (203) 8(1) Journal of Substance Use 19, 22

<sup>88</sup> Ben Metcalfe, ‘Supporting People with Co-occurring Mental Health Issues, Alcohol and Drug Use’ (2024) 27(2) Mental Health Practice 34; Sarah Hartz and others, ‘Understanding how People with Mental Health difficulties Experience Substance Use (2016) 51 Substance Use & Misuse 318, 325

<sup>89</sup> Emma Chorlton and Ian Smith, ‘Understanding how People with Mental Health difficulties Experience Substance Use’ (2016) 51(3) Substance Use & Misuse 318, 325

<sup>90</sup> Dame Carol Black, ‘Review of Drugs: Executive Summary’ (Home office, 2020) <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/897786/2/SummaryPhaseOne+foreword200219.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/897786/2/SummaryPhaseOne+foreword200219.pdf)> accessed 6 August 2025

<sup>91</sup> Charlie Taylor, ‘Drugs and disorder: worrying time for prisons’ (HM Inspectorate of Prisons, 2024) <<https://hmiprisons.justiceinspectorates.gov.uk/news/chief-inspectors-blog-drugs-and-disorder-worrying-times-for-prisons/>> accessed 6 August 2025

<sup>92</sup> Zarek Khan, The Challenges of Re-entry for Men and Woman under Probation Supervision’ (2023) 70(4) Probation Journal 350, 354

<sup>93</sup> Joan Durnescu, ‘Pains of Probation: Effective Practice and Human Rights’ (2010) 55 (4) International Journal of Offender Therapy and comparative Criminology 530

<sup>94</sup> Judicial College, ‘Equal Treatment Bench Book’ (July 2024 May 2025 update) <<https://www.sentencingcouncil.org.uk/wp-content/uploads/Equal-Treatment-Bench-Book.pdf>> accessed 6 August 2025

<sup>95</sup> ibid

<sup>96</sup> Khan (n 92)

<sup>97</sup> Lawrence Burke and Helena Gosling, *An Introduction to Penology: Punishment, Prisons & Probation* (SAGE, 2023) 312

<sup>98</sup> Kirby (n 66)

must rely on the resources available to build our resilience to both internal and external factors.

### **1.2.1 Resilience**

Resilience is a vital asset in promoting social justice as it provides the individual with the ability to adapt, withstand and survive. Fineman has developed this concept through derivative dependency, finding that those who care for others are rendered reliant or dependent on access to sufficient material, institutional and physical resources to be able to care successfully.<sup>99</sup> It is then the role of the state and the agencies to which its authority is delegated, such as the probation service, to consider how to justly distribute these resources to manage vulnerability. This has shaped Fineman's conceptualisation of resilience.

Resilience is developed from institutions and relationships and put simply, is the resources that we get throughout our lives. These resources do not have to be material assets as one would traditionally imagine; instead, it can include security, comfort and love. Resilience is affected through assets provided by societal organisations. These have been identified by Kirby and developed by Fineman and include; physical assets, human assets, social assets, environmental assets and their existential assets.<sup>100</sup> Fineman's interpretation of resilience aims to highlight inequalities within services provided and advocates for more resources to be available. This requires a proactive response to resilience.

Physical assets provide physical or material goods; they are the ownership of assets, for example the distribution of wealth and property/land.<sup>101</sup> These assets affect an individual's economic position. The concept here is there must be an ability to realise these assets in monetary terms.<sup>102</sup> Whilst human assets differ from physical assets, they do still affect material well-being. They can be defined as 'innate or developed abilities to make the most of a given situation'.<sup>103</sup> Within this category are education, health and employment systems. There are obvious synergies between health and education as adults with higher education live healthier and often longer lives than those who are less educated, highlighting

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<sup>99</sup> Martha Albertson Fineman, 'Vulnerability and Social Justice' (2019) 53(2) Valparaiso University Law Review 341, 362

<sup>100</sup> Fineman (n 47)

<sup>101</sup> Kirby (n 66)

<sup>102</sup> *ibid* 64

<sup>103</sup> *ibid* 60

significant disparities within these groups.<sup>104</sup> Human assets allow us the ability to accumulate material resources and contribute generally to the development of a human being.<sup>105</sup> Kirby has identified vast inequalities in the distribution of human assets within both developed and developing countries and highlights that these inequalities are only deepening.<sup>106</sup>

Social assets are the networks we create and the relationships that are built. For example, the family is a significant institution that provides societal assets, especially for children.<sup>107</sup> Collectives are now often created through the identification of protected characteristics such as race, gender, age and ethnicity.<sup>108</sup> It is through social assets that peoples entitlement, enfranchisement and empowerment is achieved.<sup>109</sup> In a broader sense, any communal get together that is based on mutual help<sup>110</sup> and creates a sense of community and belonging would suffice for this category. Moreover, environmental assets are often judged to be less significant due to the constant focus on economic values.<sup>111</sup> These assets concern the physical conditions of the natural environment, all essential for survival.<sup>112</sup> Here we can consider the context of external factors and physical conditions in which we find ourselves.<sup>113</sup> This environment has been affected and altered by human activity.<sup>114</sup> These assets are turbulent due to climate change, changes in the food we eat, and the spread of new diseases, such as COVID.<sup>115</sup> Finally there are existential assets, this refers more broadly to our beliefs, be it through an established religion, culture, and art. Here, Fineman states that these assets help us to understand our place within the world and see meaning in our existence.<sup>116</sup> These assets confer a wider benefit, it allows us the capacity to truly connect with ourselves, others and life itself creating mutual belonging.<sup>117</sup>

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<sup>104</sup> Anna Zaiacova and Elizabeth Lawrence, 'The Relationship Between Education and health: Reducing Disparities Through a Contextual Approach' (2018) 39 Annual Review of Public Health 273

<sup>105</sup> Fineman (n 47)

<sup>106</sup> ibid 64

<sup>107</sup> Fineman (n 47)

<sup>108</sup> ibid

<sup>109</sup> Kirby (n 66) 72

<sup>110</sup> ibid 72

<sup>111</sup> ibid 77

<sup>112</sup> ibid 69

<sup>113</sup> Fineman (n 47)

<sup>114</sup> ibid

<sup>115</sup> Kirby (n 66) 69

<sup>116</sup> Fineman (n 47)

<sup>117</sup> John Welwood, *Towards a Psychology of Awakening* (Shambhala Publications 2000)162

No individual is born resilient, we start by relying on the family, which then progresses through to the education system, health care, employment systems and so on. These assets should then in theory function in interlocking and overlapping ways creating various possibilities of opportunities and support.<sup>118</sup> Arguably, the probation service is an asset which can both confer resilience and increase harms, as outlined above. The probation service does not appear to align so rigidly with the categories outlined but instead displays wider characteristics of the societal organisations. Probation work traverses four social worlds, corrections, social welfare, treatment and the community.<sup>119</sup> Positioned between these areas, the probation service can support in securing housing, alongside integration into the community, helping with employment (development of skills and education), providing treatment for substance misuse and so on, providing a space for meaningful change in offenders.<sup>120</sup> Further, probation work is inherently social as probation is reliant on relationships, be that with probation officers, clients, external organisations and their communities.<sup>121</sup> This highlights the relational and human aspects of probation supervision, valuing empowerment, mutual help and respect.<sup>122</sup> These constant mutual interactions provide a space where both personal agency and social circumstances can be considered, deriving from social work values.<sup>123</sup> These are invaluable assets that the probation service offer, demonstrating how ideally situated they are to confer resilience to the drug user on probation. They can therefore become a' representation of how a good society should relate to those of its members who are struggling'.<sup>124</sup>

However, power and privilege impact these assets as individuals are positioned differently.<sup>125</sup> This means that systems can interact in ways which further disadvantage those less privileged creating disparities and inequality.<sup>126</sup> More generally we can consider white middle-class privilege and reference to living in a 'man's world'. There are also inevitable disadvantages conferred by race gender and ethnicity that some can simply manoeuvre past

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<sup>118</sup> Fineman (n 47)

<sup>119</sup> Tidmarsh and Marder (n 42) 23

<sup>120</sup> ibid

<sup>121</sup> ibid

<sup>122</sup> Rob Canton, 'Probation as Social Work' (2024) 71(3) Probation Journal 214

<sup>123</sup> ibid

<sup>124</sup> ibid 233

<sup>125</sup> Fineman (n 43)

<sup>126</sup> ibid

to excel.<sup>127</sup> However, Fineman argues that privilege and disadvantage are not tethered to identity and it is much more complex than historic discrimination.<sup>128</sup> For example, education can negate poverty when combined with supportive family networks<sup>129</sup> and family connections can affect access to good schools/jobs which shapes earnings/material assets in adulthood.<sup>130</sup> This ‘Great Gatsby Curve’ covers a various inequalities that affect children’s access to opportunities.<sup>131</sup> In conjunction, health conditions such as obesity and depression can affect academic performance and this adversely affects females rather than males.<sup>132</sup> Institutions can then widen these disparities.<sup>133</sup> Harris identified that women are not oppressed exclusively on gender, but that race, class and sexual orientation are all factors affecting webs of advantages and disadvantages.<sup>134</sup> When these resources are distributed unequally, this then creates further inequality, affecting how an individual can withstand negative change and thrive in society. Utilising a vulnerability analysis here ‘provides a means of interrogating the institutional practices that produce identities and inequalities in the first place’.<sup>135</sup>

Equality and human rights legislation have been a focal point of critique within VT. When exploring vulnerability, it is often a term associated with people who have been exposed to discrimination, exclusion, and disadvantage. This encourages equality-focused, discrimination-based models, which have influenced responses to criminality (often leading to a reactive approach) and legislation such as the Equality Act 2010. The conventional approach to equality often follows the notion of treating likes alike, focussing heavily on prohibiting direct discrimination, i.e. a person being treated less favourably due to a protected characteristic.<sup>136</sup> Equality laws are often legitimised through furthering liberal goals of individualism and autonomy, referring to the liberal subject. This is referred to as

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<sup>127</sup> Fineman (n 43)

<sup>128</sup> ibid

<sup>129</sup> ibid

<sup>130</sup> Miles Corak, ‘Income Inequality, Equality of Opportunity, and Intergenerational Mobility’ (2013) 27(3) *Journal of Economic perspectives* 79

<sup>131</sup> Ibid 80

<sup>132</sup> Weili Ding and others, ‘The Impact of Poor Health on Academic Performance: New Evidence Using Genetic Markers’ (2009) 28(3) *Journal of Health Economics* 578

<sup>133</sup> Fineman (n 43)

<sup>134</sup> Angela Harris, ‘Race and Essentialism in Feminist Legal Theory’ (1990) 42(3) *Stanford Law Review* 581

<sup>135</sup> Fineman (n 43) 16

<sup>136</sup> Equality Act 2010, s 13

formal equality, or ‘equality before the law’, focussing on fairness and consistency.<sup>137</sup> However, Fineman argues that a focus on equality can be problematic as a formal equality model fails to address inequalities and privilege produced by institutions.<sup>138</sup> She argues that the autonomous individual is unrealistic and, in its place, focuses on being human. The vulnerable subject seeks to reject vulnerability as a term that stigmatises certain populations and instead recognises a universal individuality.<sup>139</sup> Vulnerability must be understood as ‘particular, varied and unique on the individual level’.<sup>140</sup> When clustering individuals into vulnerable populations, it asserts differences from the general population, which becomes both over- and under-inclusive.<sup>141</sup> It becomes under-inclusive by narrowing the recognition of vulnerability, ignoring its universal application, and over-inclusive by assuming everyone in these categories are equally vulnerable, overlooking individual differences. These discrimination-based models minimise state action by only ensuring fair treatment to all, a generalised method, rather than taking a more active role in creating a just society for the individual.<sup>142</sup> This is particularly difficult for the drug user on probation as ‘probationers, by and large, are a relatively disempowered and socially excluded category of citizens, notwithstanding the greater variations among them in terms of age, gender, ethnicity, offence type and so on’.<sup>143</sup>

Vulnerability and probation are inherently linked to human rights, as a probation service that is concerned with social justice must frame human rights as significant, paying attention to the specific needs of probationers.<sup>144</sup> Whilst the vulnerable subject has derived from a human rights perspective, VT places much more emphasis on humanity and the reality of the human condition, calling for a transformative framework that prioritises the individual rather than the collective. Disadvantage persists within our current framework, which often affects particular groups such as women, people with disabilities and ethnic minorities.<sup>145</sup>

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<sup>137</sup> Sandra Freeman, ‘Equality: A New Generation?’ (2001) 30 Industrial Law Journal 145

<sup>138</sup> Fineman (n 43)

<sup>139</sup> Grear (n 84)

<sup>140</sup> Fineman (n 47)

<sup>141</sup> *ibid*

<sup>142</sup> *ibid*

<sup>143</sup> Fergus McNeil, ‘Making Criminology Work: Theory and Practice in Local Context’ (2000) 47(2) Probation Journal 108, 112

<sup>144</sup> David Smith and Maurice Vanstone, ‘Probation and Social Justice’ (2002) 32(6) British Journal of Social Work 815

<sup>145</sup> Fredman (n 76) 729

Subsequently, formal equality fails to adequately respond to the complex and individualised harms experienced, and instead an approach that recognises vulnerability through disparities in asset conferring institutions needs to be adopted, which recognises disadvantage and responds accordingly.<sup>146</sup> This needs to consider the structural disadvantage and deeply embedded social inequalities that have limited opportunities and access to sufficient resources for some time. As such, these broader categories outlined provide the basis for the individualised responses needed, giving guidance on how to direct the resources needed. Improving the resilience that probation can confer is essential for this thesis as delinquency and crime are often driven by responses to stress or strain.<sup>147</sup> The privileges outlined above - such as family networks, community affluence, education and health - are all relevant to those who use drugs and commit crime. Resolutions must be based on real life solutions to achieve social justice,<sup>148</sup> accommodating difference to achieve structural change.<sup>149</sup>

Nonetheless, there is contention surrounding Fineman's theory and autonomy. Fineman finds that autonomy must be fostered, and ultimately it is not something we are born with, but instead it is something we can lose, and ultimately do when our decision-making abilities are impacted. To some extent, VT appears to suggest that autonomy cannot be prioritized over safety and security.<sup>150</sup> This could insinuate that VT 'does not favour policies that protect autonomy'.<sup>151</sup> However autonomy and security should be able to work in tandem, as having autonomy to act independently is protective in itself.<sup>152</sup> Autonomy is paramount as people are often best placed to know what makes them safe and secure allowing them to act in their own interest.<sup>153</sup> Autonomy is valued within this thesis, as the drug user on probation must feel they have agency, given that effective treatment fuelled by self-motivation can determine the outcome for individuals on treatment programmes.<sup>154</sup> Further, a sense of

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<sup>146</sup> Fineman (n 43) 1

<sup>147</sup> Mackenzie Kushner and Abigail Fagan, 'The Effects of Victimization on Offending: An Examination of General Strain Theory, Criminal Propensity, Risk, Protection and Resilience' (2023) 18(6) An International Journal of Evidence-based Research, Policy and Practice 1009

<sup>148</sup> Smith and Vanstone (n 144)

<sup>149</sup> Fredman (n 76)

<sup>150</sup> Kohn (n 71) 14

<sup>151</sup> ibid

<sup>152</sup> ibid

<sup>153</sup> ibid

<sup>154</sup> Ministry of Justice (n 41) 60

control has positive effects on physical and psychological well-being.<sup>155</sup> Fineman finds these concepts to function separately, and focuses on autonomy being idealised. If this perspective is adopted, it could result in policies that do not consider the impact they may have on an individual's autonomy, or how this could actually contribute to safety and security.<sup>156</sup>

Fineman's argument here is that through privileging autonomy, negative behaviour and imbalances in resources have manifested.<sup>157</sup> If the value here is undermined, and the state are required to take a more active role, amounting to excessive paternalism, this could then be detrimental to individuals' safety and security. However, this does not mean that those on probation can exercise complete autonomy, it is in itself a form of control, but instead we must differentiate between the justifications for constraining autonomy.<sup>158</sup> Fineman's justification is clear, we should not privilege autonomy where it perpetrates resource imbalances, but instead we should infringe autonomy only 'where the person whose autonomy is being sacrificed is the supposed beneficiary of the infringement'.<sup>159</sup> As such, drug misuse and mental health conditions often impact an individual's ability to make effective decisions, and a person's autonomy should only be infringed when they are benefiting from this, for example, treatment programmes, something explored further when this thesis evaluates PSCs. Nonetheless, as relationships are inherently unequal within wider society and in particular between probation practitioners and supervisees, we must consider this power imbalance when valuing autonomy within frameworks for drug users.<sup>160</sup>

In addition, Fineman's interpretation and attempt to create substantive equality are somewhat contradictory. The overarching argument here is that a 'targeted approach to vulnerability is undesirable because they construct relationships of difference'.<sup>161</sup> Kohn argues that when Fineman argues for specific protections (e.g. for older adults) the concept moves away from the substantive model she seeks to create, to a formalistic equality model based on identity and characteristics.<sup>162</sup> As such, Fineman's suggestions for reform are

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<sup>155</sup> Richard Schulz and Jutta Heckhausen, 'Aging culture and Control: Setting a New Research Agenda' (1999) 54(3) *The Journals of Gerontology* 139

<sup>156</sup> Kohn (n 71) 14

<sup>157</sup> *ibid* 22

<sup>158</sup> Kohn (n 71) 22

<sup>159</sup> *ibid* 21

<sup>160</sup> Fineman (n 43)

<sup>161</sup> Kohn (n 71) 12

<sup>162</sup> *ibid*

contradictory to her criticism of formal equality, demonstrating the difficult balancing act in recognising vulnerabilities, yet ensuring this approach is not ‘identity-based’. Therefore, VT has some limitations when applied to the design of social welfare laws or policies given they may be both under-inclusive and over-inclusive.<sup>163</sup> That is not to say the theory cannot provide a useful tool for identifying vulnerability and how social structures impact this, but practically more consideration and guidance must be provided to identify exactly how we provide resilience and protect vulnerabilities.<sup>164</sup> This may instead be a move away from debating how legislation can be moulded, given it cannot naturally be individualised, to a focus on the provision of services within probation and how VT can be embedded within these institutions.

Moreover, criticism of VT examines the extent to which the state can intervene due to being in a market-driven society. This neoliberal form, the current and common type of capitalist state, conceptualises the state as a social relation.<sup>165</sup> As the neoliberal state favours markets, it can often see collective approaches as a threat to a profit-making economy, supporting the capitalist systems upon which it is built.<sup>166</sup> This means that the state is reshaped to serve market interests, and the relationship between the state and economy is socially constructed. Therefore, Coyle argues it is the demands of the economy that control the government.<sup>167</sup> Neoliberalism undermines the concept of resilience, implementing models of self-reliance and privatisation, which we have already seen at play with the CJS with the introduction of TR. Coyle therefore contests that to some extent the state is trapped by a globalised market, and it lies outside the power of the state alone to instigate the social change this thesis calls for.<sup>168</sup> Building resilience and appreciating universal vulnerability is a very slow learning process, and it is not a continuous uninterrupted move forward.<sup>169</sup> Changes in welfare states create new challenges, and with the increasing pressure societies must consider new ways to respond to vulnerability.<sup>170</sup> This requires regard to both the

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<sup>163</sup> Kohn (n 71)

<sup>164</sup> ibid 13

<sup>165</sup> Christos Boukalas, ‘A State Without a Future: Neoliberal Despotism, Crisis-fighting, and government through fear’ (2023) 16(3) *Journal of Political Power* 322

<sup>166</sup> Craig Berry, ‘The Substantive State? Neoliberal State Interventionism Across Industrial, Housing and Private Pensions Policy in the UK’ (2021) 26(2) 242

<sup>167</sup> Coyle (n 43)

<sup>168</sup> ibid

<sup>169</sup> Misztal (n 38) 222

<sup>170</sup> ibid

historical and contemporary approaches to vulnerability within the CJS, and how this has underpinned the distribution of resources.

### **1.3 The Changing Landscape of Vulnerability Within the Criminal Justice System**

Academics are engaging with vulnerability to make sense of a range of social issues and inequalities, both in the wider sense, and more specifically within the CJS. With this increasing use comes the requirement for a clearer understanding of what this means if societal well-being is to progress.<sup>171</sup> It is important to explore who is traditionally seen as 'vulnerable' both historically and in recent years within the CJS. When exploring the notion of vulnerability within the CJS, definitions have changed and adapted as society has progressed, and within different disciplines comes different understandings. However, there is no consensus within the CJS on the definition of vulnerability under the law.<sup>172</sup> There are broader labels, such as people who are poor or sick are vulnerable, to British White Working Class being perceived as a vulnerable group.<sup>173</sup> In addition, fragile and emotional aspects of human lives are often labelled as vulnerabilities.<sup>174</sup> Given that politicians have previously pledged to 'improve the health of vulnerable groups'<sup>175</sup>, it is essential that we consider the individual embodied experience and how we can effectively account for vulnerability.

Refining vulnerability using Fineman's VT is important to avoid the concept losing its force.<sup>176</sup> Otherwise there is significant risk of further entrenching inequality, injustice, and stigmatisation through lack of recognition and support.

#### **1.3.1 The History of Vulnerability Within the Criminal Justice System**

The concept of the autonomous individual, i.e. the liberal subject, has significantly impacted responses to criminal activity within the CJS and explains why we have historically responded to crime with severe punishment. How we interpret responses to crime has changed due to the influence of theorists such as Foucault, who recognised the importance

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<sup>171</sup> Misztal (n 38) 15

<sup>172</sup> Judicial College (n 94)

<sup>173</sup> Misztal (n 38) 2

<sup>174</sup> *ibid*

<sup>175</sup> Denis Campbell, 'Andrew Lansley Aims to Tackle Health of Vulnerable with Better NHS Care' (*The Guardian*, 2010) <<https://www.theguardian.com/politics/2010/nov/29/andrew-lansley-health-vulnerable-nhs>> accessed 6 August 2025

<sup>176</sup> Carol Levine, 'The concept of Vulnerability in Disaster Research' (2004) 17(5) *Journal of Traumatic Stress* 395

of social welfare and social regulation.<sup>177</sup> However, historical approaches to criminality did not value these factors and instead punishment was at the forefront, assuming that people used their decision-making culpabilities to commit crime. The aim was to bring shame, remorse and guilt, with capital (and corporal) punishment being the common response.<sup>178</sup> At this time, crime was a ‘central metaphor of disorder and the loss of control in all spheres of life’.<sup>179</sup> Punishment was a means to control social order and was aimed to be as harsh as possible. Victorian approaches to criminality were constructed around individualism. This individual responsibility and the notion of the free and equal subject constructed the basis of liberal theory, which failed to consider contributing factors influencing criminal behaviours.<sup>180</sup>

Approaches evolved, progressing from a wholly discretionary system to a more consistent approach, with the introduction of imprisonment as a means of surveillance and social control.<sup>181</sup> Whilst this was deemed the ‘civilization’ of punishment, it simply made punishment less visible, causing both mental and physical strain.<sup>182</sup> This system focussed heavily on the ‘dangerousness’ of the individual, moving punishment away from harming the body towards altering the offender through the internal prison regime.<sup>183</sup> With deterrence moving to the forefront, adequate supportive modes of treatment were non-existent, leading to what was described as prisons full of ‘lunatics’.<sup>184</sup> This created a criminal class who were labelled a problem group and deemed the least productive of society, often due to mental ‘weakness’, further entrenching the liberal subject.<sup>185</sup> This recognition of ‘lunatics’/mental health concerns, was the first acknowledgement of what today we would identify as vulnerability. Individuals were sent to asylums, a way to deal with the vulnerable due to the lack of understanding of how to treat individuals, which led to overcrowding and inhumane mistreatment.<sup>186</sup> These approaches did nothing to deter, and so attention

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<sup>177</sup> Michel Foucault, *Discipline and Punish: The Birth of the Prison* (Penguin 1979)

<sup>178</sup> V.A.C Gatrell, *The hanging tree: Execution and the English People 1770-1868* (OUP 1996)

<sup>179</sup> Martin Wiener, *Reconstructing the Criminal: Culture, Law and Policy in England, 1830 – 1914* (CUP 2008) 11

<sup>180</sup> David Garland, ‘The Birth of the Welfare Sanction’ (1981) 8(1) *British Journal of Law and Society* 29

<sup>181</sup> Foucault (n 177)

<sup>182</sup> Victor Bailey, ‘English Prisons, Penal Culture, and the Abatement of Imprisonment, 1895-1922’ (1997) 36(3), *Journal of British Studies* 285

<sup>183</sup> Foucault (n 177)

<sup>184</sup> John Howard, *The state of the prisons in England and Wales* (William Eyres 1780/1784)

<sup>185</sup> Helen Johnston, *Crime in England 1815-1880: Experiencing the Criminal Justice System* (Routledge 2015) 156

<sup>186</sup> Andrew Scull, *Museums of Madness: Social Organisation of Insanity in Nineteenth Century England* (Viking 1979)

gradually shifted towards rehabilitation, influencing debates about how to respond to criminality. This recognised the need for direct therapeutic intervention rather than discipline, creating a more welfarist response.<sup>187</sup> With criminality becoming a social question, the changing aims of the CJS influenced the introduction of ‘penal-welfarism’ by David Garland (1985) and a shift to individualisation. This was moulded around the British welfare state and how this reshaped criminal justice. The welfare state meant that the government became more interventionist, responsible for security and welfare provision as the social contract between the people and the government changed. Whilst the value of rehabilitation was acknowledged, the experience of criminalisation did not necessarily change, with the reoccurring influence of deterrence (as a means of control) continuously at play. With increasing government involvement, prisons became a bureaucratic centralised system imposing on prisoners with a regime that focussed on regulation, monitoring and increased centralised control.<sup>188</sup> This echoes ‘the centralizing, ‘power hoarding’, impulse that predominates within English political culture.’<sup>189</sup>

This new interest in law and order from governmental parties influenced ‘penal-welfare’ practices such as the introduction of probation as a state function, parole and supervision of offenders. A penal welfare system was created, a hybrid criminal system involving welfare as well as punishment (supposedly integrating care with control). This led to the creation of the probation service in 1907, via the Probation of Offenders Act 1907, promoting a process of normalisation through inspection, surveillance and personal contact.<sup>190</sup> This required the probation practitioner to ‘advise, assist and befriend’ transforming the punitive regime into a more complex system of support that acknowledged wider factors contributing to criminality, de-valuing the notion of individual responsibility.<sup>191</sup> A notifiable shift towards the vulnerable subject, and although not yet fully appreciated, is a significant step into understanding the complexities of the human condition.

Welfare practices expanded the role of the state, considering factors such as unemployment and poverty, changing the perception of the individual to someone as a product of their

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<sup>187</sup> Wiener (n 179) 12

<sup>188</sup> Johnston (n 185) 107

<sup>189</sup> Harry Annison and others, ‘Making Good?: A Study of How Senior Penal Policy Makers Narrate Policy Reversal’ (2024) 64 *The British Journal of Criminology* 726, 740

<sup>190</sup> Garland (n 180) 39

<sup>191</sup> *ibid* 40

background and experiences, instead of simply a product of their moral weakness and choices.<sup>192</sup> This meant that the CJS began differentiating between individuals, treating them according to their specific characteristics.<sup>193</sup> Ultimately creating a space to work with those under supervision. Introducing support through interventions such as; social programmes, education, employment and counselling, whilst still holding those responsible for their actions by attaching these conditions to court orders.<sup>194</sup> This combined liberal legalism of due process and proportionate punishment with a commitment to rehabilitation and welfare.<sup>195</sup> It aimed to divert those heading for prison, i.e. the school of crime, and instead transform the lives of some of the most marginalised in society. Advise, assist and befriend underpinned the probation service, demonstrating an institutional attempt to build resilience, emanating aspects of a caring institution. Whilst objectives have altered, and the notions of probation and its values are continuously under question (with provisions moving towards punishment in the community and setbacks for rehabilitation, explored in later chapters), this approach is arguably the start of a journey in caring for the probation service.<sup>196</sup> Whilst probation work does not simply have one clear aim, these underlying values have fostered an understanding that probation is connected to ‘participation, communitarianism and collectivism’.<sup>197</sup>

These changes led to the gradual accretion of power to the centre across the criminal justice system.<sup>198</sup> There has also been ongoing discussions and contention about how and whether the government should be distributing resources to this level.<sup>199</sup> When considering the welfare measures put in place, support often comes with restrictions, conditions, and disciplinary elements, which ultimately becomes a form of social control.<sup>200</sup> This increases ‘containment and coercion’ and as Cohen argues, rather than diverting those away from the CJS it has widened the net of social control.<sup>201</sup> This means that whilst diversion programmes

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<sup>192</sup> Garland (n 180) 41

<sup>193</sup> ibid 42

<sup>194</sup> ibid 41

<sup>195</sup> David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (OUP 2002)

<sup>196</sup> Basil Hylton, ‘Probation: A Journey in Caring’ in Roger Statham (ed) *The Golden Age of Probation* (Waterside Press, 2014)

<sup>197</sup> Annison and others (n 189) 740

<sup>198</sup> Tim Newburn, *Criminology* (3rd edn, Routledge 2017) 110

<sup>199</sup> Kohn (n 71)

<sup>200</sup> Nancy Fraser and Linda Gordon, “Dependency” Demystified: Inscriptions of Power in a Keyword of the Welfare State’ (1994) 1(1) Social Politics 4

<sup>201</sup> Cohen (n 72)

aim to support the vulnerable subject through therapeutic interventions, they can ultimately bring more people into the system who may not have interacted with the CJS otherwise. Subsequently, these programmes can increase intensity of intervention and regulation, creating denser nets, as well as supplementing rather than simply replacing previous control mechanisms, producing different nets.<sup>202</sup> However, arguably widening the net of social control is a direct and logical result of restructuring, with an aim of expanding treatment and rehabilitative resources in the community.<sup>203</sup> Nevertheless, there must be a balance between individual rights and regulation by the state, with rehabilitative programmes valuing autonomy.

### **1.3.2 Contemporary Criminal Justice and Vulnerability**

Despite these changing perceptions and a shift towards individuality, we have yet to reach a universal response to vulnerability. VT recognises that vulnerability is constant and universal, and that no one is invulnerable. What is therefore required is an acknowledgement of resilience, or lack thereof, to create responses that adequately account for vulnerability. Contemporary criminal justice responses have to some extent been built upon the foundations of penal welfarism and individualisation, which have impacted responses to criminality dependent on individual needs. Nonetheless, whilst some efforts have been made to acknowledge vulnerability, albeit in its more colloquial sense, within both judicial guidance and the police's definition, they only partially capture the importance of resilience, with some recognition of an inability to protect oneself from harm.

The 'Equal Treatment Bench Book' outlines factors that the courts should consider when assessing vulnerability. This judicial guidance requires (amongst other things) the courts to consider whether an individual suffers from a mental disorder, physical disorder or is undergoing medical treatment and their social and cultural background.<sup>204</sup> Further, in outlining the vulnerability of adults, the guidance recognises substance misuse as a concern.<sup>205</sup> The Police and Criminal Evidence Act also attempts to define vulnerability. It

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<sup>202</sup> James Austin and Barry Krisberg, 'NCCD Research Review: Wider, Stronger and Different Nets: the Dialectics of Criminal Justice Reform' (1981) 18(1) *Journal of Research in Crime and Delinquency* 165

<sup>203</sup> Kenneth Polk, 'When Less Means More: An Analysis of Destructuring in Criminal Justice' (1987) 33(3) *Crime & Delinquency* 358, 376

<sup>204</sup> Judicial College (n 94)

<sup>205</sup> *ibid*

contains a somewhat rigid definition of a vulnerable adult as someone who has a mental health condition or mental disorder.<sup>206</sup> The burden is placed upon relevant officers to consider on a case-by-case basis whether the individual could be vulnerable, but this is predominantly based on the protected characteristics in the Equality Act 2010.<sup>207</sup> However, the College of Policing have taken further steps to develop a more holistic approach with the introduction of the ‘national vulnerability action plan’, defining someone as vulnerable if as a result of their situation or circumstances, they are unable to take care of or protect themselves from harm.<sup>208</sup> Within their action plan, they aim to protect, support, safeguard and manage risk by recognising and responding to vulnerability, identifying layers of complexity such as drug/alcohol use.<sup>209</sup> Whilst this is a significant move towards a united approach to vulnerability within the police, it is yet to fully mobilise Fineman’s work, given that it still categorises the vulnerable in a way that reinforces the illusion of invulnerability.<sup>210</sup> Moreover, only some forces adopt this definition, and as such, even with legislative guidance there is lack of consistency around how vulnerability is operationalised within wider institutions of the CJS.<sup>211</sup> Overall, whilst these definitions somewhat appreciate the vulnerable subject, they have yet to appreciate the structural qualities of resilience and the important role societal institutions play in shaping it.

Despite a common understanding that people in contact with probation are vulnerable<sup>212</sup> there is no evidence that the probation service have adopted a vulnerability lens like the police have attempted. There is recognition of individual need, for example, it has been acknowledged that those suffering from mental illness display more risk factors compared to non-disordered supervisees.<sup>213</sup> There has also been appreciation of the structural issues that can disproportionately affect individuals, and the probation service utilise Risk of Serious Harm (RoSH) assessments to estimate the risk of harms both to the individual and to

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<sup>206</sup> Police and Criminal Evidence Act 1984, Code C

<sup>207</sup> *ibid*

<sup>208</sup> National Police Chiefs Council, ‘National vulnerability action plan (NVAP) revised 2020-2022 v 2’ (College of Policing 2021) <<https://www.npcc.police.uk/SysSiteAssets/media/downloads/publications/publications-log/2019/national-vulnerability-action-plan-2020-2022.pdf>> accessed 6 August 2025

<sup>209</sup> *ibid*

<sup>210</sup> Laura Farrugia, *Exploring Vulnerability in the Criminal Justice System in England and Wales* (Routledge 2025)

<sup>211</sup> Charlie Brooker, Coral Sirdifield and Rebecca Marples, ‘Mental Health and Probation: A systematic Review of the Literature’ (2020) 1 *Mind and Law* <<https://doi.org/10.1016/j.fsiml.2019.100003>> accessed 6 August 2025

<sup>212</sup> Burke and Gosling (n 97) 313

others.<sup>213</sup> One of the key questions asked here to understand who is at risk, includes 'how vulnerable are they?'.<sup>214</sup> This focuses on who the most vulnerable are, and does consider drug use as a relevant factor; however this approach collectivises vulnerability. Further, risk based approaches can diminish the rights of those on probation, and there are calls for rights-based rather than risk-based approaches that explore protective factors rather than risk factors.<sup>215</sup>

Community-based treatments appear to somewhat acknowledge individual need. These Community Sentence Treatment Requirements (CSTRs) include 3 areas of support; Mental Health Treatment Requirement (MHTR), Drug Rehabilitation Requirement (DRR) and Alcohol Treatment Requirement (ATR). Community-based treatment aims to prevent the revolving door of crime by creating individualised treatment and interventions.<sup>216</sup> Such individualised support is essential given mental health is a significant concern and 'the prevalence of substance problems among people suffering from severe mental disorders is high'.<sup>217</sup>

However, CSTRs are often underutilised<sup>218</sup> and have been unsuccessful in reducing the number of custodial sentences. In fact, statistics show an increase in those remanded in custody since the introduction.<sup>219</sup> In addition, community health services often judge mental health needs to be too complex, struggling to meet their clinical needs.<sup>220</sup> These community-based treatments have also been found to alienate individuals and have led to

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<sup>213</sup> Public Protection Group, 'Risk of Serious Harm Guidance 2020' (HM Prison & Probation Service 2023) <[https://assets.publishing.service.gov.uk/media/652cf8c9697260000dccb834/Risk\\_of\\_Serious\\_Harm\\_Guidance\\_v3.pdf](https://assets.publishing.service.gov.uk/media/652cf8c9697260000dccb834/Risk_of_Serious_Harm_Guidance_v3.pdf)> accessed 6 August 2025

<sup>214</sup> ibid

<sup>215</sup> Elizabeth Lancaster and Jeannie Lumb, 'The Assessment of Risk in the National Probation Service of England and Wales' (2006) 6(3) Journal of Social Work 275

<sup>216</sup> Ministry of Justice and Public Health England, 'The Impact of Community-based Drug and Alcohol Treatment on Re-offending' (Ministry of Justice; Public Health England 2017) <<https://assets.publishing.service.gov.uk/media/5a829ff0e5274a2e8ab587fa/PHE-MoJ-experimental-MoJ-publication-version.pdf>> accessed 6 August 2025

<sup>217</sup> Paulo Menezes and others, 'Drug and Alcohol Problems Among Individuals with Severe Mental Illness in South London' (2018) 168(5) British Journal of Psychiatry 612

<sup>218</sup> HM Inspectorate of Probation, 'A Joint Thematic Inspection of Community-based Drug Treatment and Recovery Work with People on Probation' (HM Inspectorate of Probation 2021) 11 <<https://cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/32/2025/03/Drug-treatment-recovery-thematic-v1.1.pdf>> accessed 6 August 2025

<sup>219</sup> 'Criminal Justice System Statistics Quarterly (CJSQ) England and Wales, Year Ending June 2024' (Ministry of Justice 2024) <<https://assets.publishing.service.gov.uk/media/673df5654ebce30ac7baef30/criminal-justice-statistics-june-2024.pdf>> accessed 6 August 2025

<sup>220</sup> Burke and Gosling (n 97)

further stigmatisation creating a higher risk of entering the CJS.<sup>221</sup> As such, individuals with mental health and/or substance misuse are over-represented within the justice system.<sup>222</sup> Individuals are often seen as ‘ticking time bombs’ who are responsible for violent crime,<sup>223</sup> demonstrating a failure to understand the unmet needs here, and the assets that the probation service can confer if they are to appreciate the vulnerable subject. Once inside the CJS these concerns tend to worsen, and despite being deinstitutionalised, mental health concerns have become stigmatised, and individuals are seen as dangerous rather than vulnerable.<sup>224</sup> The concept of dangerousness is said to be caused by varied factors such as; exposure to mental health conditions and violence from those with mental health conditions as well as how the media reports crimes that have been committed by vulnerable individuals.<sup>225</sup> It has also been established that newspapers are more likely to describe mental health conditions within the context of dangerousness/violence rather than on treatment or recovery.<sup>226</sup> This public opinion has had a significant impact on the development of policies.<sup>227</sup> As a result, recognition of vulnerability within the CJS tends to focus on the ‘vulnerable victim’ who requires a special response in the criminal justice system, instead of the vulnerable suspect.<sup>228</sup> This is also represented within the equal treatment guidance, which briefly makes reference to a vulnerable ‘offender’ but spends the majority of the vulnerability discussions on the vulnerable witness or victim.<sup>229</sup>

Whilst the concept of vulnerability in the broader sense is somewhat acknowledged, the probation service does not appear to adopt a vulnerability analysis that considers the complex, varied and unique vulnerabilities of those on probation.<sup>230</sup> Without VT, there is a lack of recognition of the intersecting risk factors and the need to build resilience holistically to account for this. Even with progression through deinstitutionalisation and the

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<sup>221</sup> Andrew McCulloch, Matt Muijen, and Heather Harper, ‘New Developments in Mental Health Policy in the United Kingdom’ (2000) 23 International Journal of Law and Psychiatry 261

<sup>222</sup> Farrugia (n 210) 23

<sup>223</sup> *ibid* 5

<sup>224</sup> Farrugia (n 210) 23

<sup>225</sup> *ibid* 4

<sup>226</sup> Patrick Corrigan and others, *Newspaper Stories as Measures of Structural Stigma* (2005) 56(5) *Psychiatric Services* 551

<sup>227</sup> McCulloch and others (n 221)

<sup>228</sup> Brown (n 67) 10

<sup>229</sup> Judicial College (n 94)

<sup>230</sup> David Hughes and Angela King, ‘Vulnerability Through a Legal Lens: A Comparative Jurisdictional Analysis of the Law of Confessions and Vulnerable Suspects’ (2024) 88(3) *The Journal of Criminal Law* 182

introduction of community treatment, these are underutilised and refer to specific people. As vulnerability within the probation service is not considered a universal experience, those who need support will undoubtedly fall through the net. This will be explored further in chapter two, considering whether contemporary policy provisions can adequately support the drug user on probation. If Fineman's vulnerability analysis were to be adopted, the basic tensions between penal aims and welfare aspirations may be addressed.<sup>231</sup> This could also provide clarity to the opposing aims of the police function, social work mission and the offenders' rights and public interest.<sup>232</sup> If we are to admit that we are all vulnerable, and therefore those on probation are not simply deviants, but instead are individuals who are dependent and need support to build resilience, we can build a system of care, rather than exclusion and marginalisation.

#### **1.4 Conclusion**

A widespread acknowledgement of vulnerability is needed to develop social justice. Fineman's theory of vulnerability is the starting point in this thesis, which will be used as a conceptual tool to create substantive equality in probation practice, supporting the drug user on probation. Whilst responding to people based on their vulnerability can be controversial due to the association with fragility and weakness, Fineman's theory looks to overcome that through the recognition of universal vulnerability. It appreciates that there are many internal and external influences that affect vulnerability. If we are to be responsive to the vulnerable subject, we must align a different set of values than those traditionally associated with the Liberal Subject.<sup>233</sup> This would require movement away from the autonomous individual and instead requires a focus on connection and interdependence.<sup>234</sup> Fineman's theory argues for a more expansive governmental responsibility for social welfare and can be utilised to develop the support available for people on probation suffering from substance misuse. It can suggest an alternative foundation upon which to restructure societal institutions ....and 'invites a reimagining of the human of Human Rights Law.'<sup>235</sup> This

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<sup>231</sup> Garland (n 195)

<sup>232</sup> ibid

<sup>233</sup> Fineman (n 47)

<sup>234</sup> ibid

<sup>235</sup> Martha Albertson Fineman and Anna Grear, 'Vulnerability as Heuristic- An Invitation to Future Exploration' in Martha Albertson Fineman and Anna Grear (eds), *Vulnerability: Reflections on a New Ethical Foundation for Law and Politics* (Ashgate Publishing Limited, 2013)

thesis will focus on how VT can be embedded within the provisions of probation services.<sup>236</sup> Whilst VT appreciates that there are many internal and external influences that affect vulnerability, some which are completely out of our control, it also recognises that it is possible to anticipate and plan for some factors that lead to negative changes. This means that probation must consider the assets conferred within their institution, acknowledging the dependency of the drug user, and their ability to negate the life-threatening consequences of drug use through application of the complex nature of vulnerability. This conceptual tool and the requirement for a proactive approach to resilience allows us to challenge the position of social institutions and the role they play in responding to vulnerability. If Fineman's conceptual tool is adopted and the resources needed to create resilience are distributed equally, this will allow individuals to live and aspire towards happiness despite their vulnerability.<sup>237</sup>

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<sup>236</sup> Kohn (n 71) 23

<sup>237</sup> Fineman (n 43)

## Chapter Two

### Framing Vulnerability Through Policy

#### 2.1 Introduction

Human vulnerability has frequently been ignored or marginalised in political philosophy.<sup>238</sup> However, universal vulnerability means that we are inherently dependent on the provision of care by others, and it is essential that this is reflected in policy provisions for drug users on probation. As established in chapter one, often the solution has been portrayed as structural, assigning inequalities to groups, then implementing blanket approaches based upon this, which fails to recognise that the vulnerable subject is in fact an embodied experience.<sup>239</sup> Whilst vulnerability is universal and constant, we must simultaneously understand it to be particular, varied and unique to the individual.<sup>240</sup> Instead policy must appreciate the differences in embodiment and respond based on the individual, which will prevent group responses often utilised in equality-based models.

This chapter will scrutinise how effective the probation service, as an asset conferring institution, are at fostering and strengthening resilience. The discussions will consider references to vulnerability in policy, as there are multiple interpretations of the term vulnerability in both political and ethical contexts.<sup>241</sup> The thesis highlights how vulnerability is operationalised in various forms, yet is markedly inadequate in reflecting VT or appreciating the constant, lived experience and the important role of resilience. This chapter opens by reviewing the support mechanisms available to those within the CJS, considering the disparities between support available whilst in custody in comparison to in the community. This will consider the implications of TR, highlighting the key concerns within the probation system. Barriers such as dual diagnosis, will be outlined considering the multifaceted vulnerabilities the service must respond and adapt to within the evolving probation landscape. Subsequently, the next section explores contemporary drug policy reform and the influence of Dame Carol Black. In particular, it focuses on the 'From Harm to Hope' strategy,

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<sup>238</sup> Fineman (n 3) 142

<sup>239</sup> Fineman and Grear (n 235)

<sup>240</sup> Fineman (n 47)

<sup>241</sup> Veronique Pin-Fat, 'On the Condition of Being Open' in Victoria Browne, Jason Danely and Doerthe Rosenow (eds), *Vulnerability and the Politics of Care: Transdisciplinary Dialogues* (London British Academy 2021)

demonstrating the progress that has been made since 2021, yet, there is much more to be done.<sup>242</sup> Scrutinising existing approaches frames the discussion for chapter three which will consider the relationship between vulnerability and care, as care can manifest in ambiguous ways, which may include elements of coercion in the context of probation work.<sup>243</sup> The chapter then reflects on the philosophical foundations of TJ and the alignment this has with Fineman's VT. The chapter goes on to consider how PSCs can act as a vehicle to deliver TJ due to its holistic approach to support through a focus on problem-solving, collaboration and joint working. Chapter two lays the foundations for an analysis on the ways in which we can improve support for drug users on probation, as often these are individuals who are powerless to control their circumstances and are reliant on the provision of services.<sup>244</sup> Here, the vulnerability analysis can be thought of as what constitutes ethical legislative behaviour and with this in mind, analysis based upon VT can attempt to create a more self-conscious and aware egalitarian political culture.<sup>245</sup>

## **2.2 Approaches to Support Under Supervision**

Arguably, correctional institutions provide care, alongside control, when an individual's social safety net has collapsed.<sup>246</sup> Consequently, the Criminal Justice System is often utilised as a setting to provide drug treatment<sup>247</sup> as it offers the opportunity for continued engagement with people under supervision. As outlined, it can be argued that probation is an asset conferring institution that can call upon resources to compensate for vulnerability and create resilience. It can either create or impede opportunities.<sup>248</sup> This section explores what support is currently available to drug users on probation and how policy provisions have been introduced and adapted to address key concerns.

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<sup>242</sup> Home Office, *From Harm to Hope: First Annual Report 2022-23* (CP 906, 2023)

<sup>243</sup> Victoria Browne, Jason Danely and Doerthe Rosenow, *Vulnerability and the Politics of Care: Transdisciplinary Dialogues* (London British Academy 2021)

<sup>244</sup> Coyle (n 43)

<sup>245</sup> Fineman (n 47)

<sup>246</sup> Browne and others (n 243) 2

<sup>247</sup> Clinical Guidelines on Drug Misuse and Dependence Update 2017 Independent Expert Working Group, 'Drug Misuse and Dependence: UK guidelines on clinical management' (Global and Public Health 2017) 128 <

[https://assets.publishing.service.gov.uk/media/5a821e3340f0b62305b92945/clinical\\_guidelines\\_2017.pdf](https://assets.publishing.service.gov.uk/media/5a821e3340f0b62305b92945/clinical_guidelines_2017.pdf) accessed 7 August 2025

<sup>248</sup> Fineman (n 47)

The support provided for those on probation is noticeably different from those in custody. This is arguably due to the less obvious duty of care placed on probation. This duty of care is somewhat contentious, given that there is a 'correctional continuum', meaning prison and probation services overlap significantly, questioning the justification for such disparity in resources.<sup>249</sup> Generally, there is more guidance available for treatment provision in prison than in the community (for example the 'blue book'<sup>250</sup> and the 'orange book'<sup>251</sup>), and treatment in prison is often prompt with most individuals starting treatment within 3 weeks of arrival.<sup>252</sup> However, only 36% of people in custody who exited treatment in 2022 to 2023 completed their treatment and were free of dependence.<sup>253</sup> This could be due to the ongoing debate about whether prisons are the right setting to facilitate recovery from drug use.<sup>254</sup> In addition, those who are imprisoned for drug-related crimes often serve short sentences, meaning they have limited time in prison treatment and poor handovers to probation service/community treatment.<sup>255</sup> Discharge from treatment and/or prison leaves an individual particularly vulnerable.<sup>256</sup> Accordingly, if prison leavers are unable to access services, then the risk of death is simply displaced to the community.<sup>257</sup>

Those under supervision are no longer in the care of the prison service in the same way they were in custody.<sup>258</sup> Instead, they become the responsibility of probation practitioners who are required to assess, supervise and rehabilitate those under supervision.<sup>259</sup> The timely provision

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<sup>249</sup> Cohen (n 72)

<sup>250</sup> Royal College of Psychiatrists (n 55)

<sup>251</sup> Clinical Guidelines on Drug Misuse (n 247)

<sup>252</sup>Office for Health Improvement & Disparities, 'Official Statistics: Substance Misuse Treatment in Secure Settings: 2022 to 2023' (Office for Health Improvement & Disparities 2024) <  
<https://www.gov.uk/government/statistics/substance-misuse-treatment-in-secure-settings-2022-to-2023/alcohol-and-drug-treatment-in-secure-settings-2022-to-2023-report--2>> accessed 7 August 2025

<sup>253</sup> *ibid*

<sup>254</sup> Taylor (n 91)

<sup>255</sup> Black (n 90)

<sup>256</sup> Clinical Guidelines on Drug Misuse (n 247) 16

<sup>257</sup> Jake Phillips, Loraine Gelsthorpe and Nicola Padfield, 'Reducing not Displacing Risk: Report from a Seminar on Working Together to Prevent Non-natural Deaths after Custody' (Equality and Human Rights Commission 2017)

<[https://www.researchgate.net/publication/322520209\\_%27Reducing\\_not\\_displacing\\_risk%27\\_Report\\_from\\_a\\_seminar\\_on\\_working\\_together\\_to\\_prevent\\_non-natural\\_deaths\\_after\\_custody](https://www.researchgate.net/publication/322520209_%27Reducing_not_displacing_risk%27_Report_from_a_seminar_on_working_together_to_prevent_non-natural_deaths_after_custody)> accessed 7 August 2025

<sup>258</sup> Ministry of Justice, 'Deaths of Offenders in the Community, England and Wales, 2020/21' (Ministry of Justice 2021) 2 <

[https://assets.publishing.service.gov.uk/media/61797bbae90e07197867ec39/Deaths\\_of\\_Offenders\\_in\\_the\\_Community\\_2020-21\\_bulletin.pdf](https://assets.publishing.service.gov.uk/media/61797bbae90e07197867ec39/Deaths_of_Offenders_in_the_Community_2020-21_bulletin.pdf)> accessed 7 August 2025

<sup>259</sup> *ibid*

of a broad range of high-quality interventions is key to successful probation delivery.<sup>260</sup> The role of a probation practitioner often focuses on referrals to other health services, showing their somewhat limited control over the provision or quality of support on referral.<sup>261</sup> A focus on access to sufficient resources is essential in responding to vulnerability<sup>262</sup> as ‘vulnerability requires care, and care alleviates vulnerability’, or in other words, works towards building resilience to survive harms suffered.<sup>263</sup> However, recent reforms such as Transforming Rehabilitation (TR) have to some extent undermined the quality of the provision available for those under supervision.

## **2.2.1 Transforming Rehabilitation**

Due to an increasing focus on rehabilitation, reoffending and attempts to make the system more cost effective, the probation service underwent major structural reform, in 2014. TR was a major overhaul of the probation system, which split services into public and private (the National Probation Service and Community Rehabilitation Companies). These private services were primarily outcome-based, payment by results models. TR implemented ‘through the gate’ services aiming to ensure that all people leaving prison would receive an element of continuous rehabilitation support from custody into the community.<sup>264</sup> The strategy also outlined that the payment by results providers would work in partnership with other services to ensure broader life issues are managed that have contributed to their offending, such as drug misuse.<sup>265</sup> Through the gate attempted to remedy past failures by focussing on all individuals on release from prison<sup>266</sup>, which is to some extent a recognition of Fineman’s universal vulnerability. However, these services were under-funded and did not operate as expected, arguably doing ‘little more than signposting and form-filling’.<sup>267</sup> The efforts were

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<sup>260</sup> HM Inspectorate of Probation ‘The Interventions Landscape for Probation Services: Delivery, Challenges and Opportunities’ (2024) 4 <<https://cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/32/2024/03/Research-and-Analysis-Bulletin-The-interventions-landscape-for-probation-services-delivery-challenges-and-opportunities.pdf>> accessed 7 August 2025

<sup>261</sup> Coral Sirdifield, Thomas Parkhouse and Graham Law, ‘Testing and Refining an Approach to Identifying Health and Social Care Needs in Probation’ (2024) 71(4) Probation Journal 387

<sup>262</sup> Fineman (n 3) 143

<sup>263</sup> Browne and others (n 243)

<sup>264</sup> Ministry of Justice, *Transforming Rehabilitation: A Strategy for Reform* (Cm 8619, 2013) 4

<sup>265</sup> *Ibid* 16

<sup>266</sup> Matt Cracknell, ‘From the ‘Seamless Sentence’ to ‘Through the Gate’: Understanding the Common Threads of Resettlement Policy Failures’ (2021) 17(2) British Journal of Community Justice 86

<sup>267</sup> House of Commons Justice Committee, *HM Inspectorate of Probation Annual Report: Oral Evidence* (HC 2171, 2019) Q26

criticised for little continuity between prison and probation staff, lack of resettlement needs being addressed and generally a confusion around post-release arrangements.<sup>268</sup> As a result, the services were rated inadequate as the transition from prison to the community was far from seamless.<sup>269</sup> Due to the criticisms of the existing model an additional £22 million in funding was awarded in 2019 for an enhanced through the gate system, aiming to provide a personalised and well-coordinated approach to individuals' needs.<sup>270</sup> However, pre-existing failures remained, and TR was regarded as "irredeemably flawed"; the reforms were abandoned, reverting responsibility to the NPS.<sup>271</sup>

Despite the demise of the formal TR project, through the gate services still exist, but they are now facilitated by Offender Managers in Custody (OMIC). The aims are to address offending-related factors and the barriers to reintegration into the community.<sup>272</sup> Nevertheless, challenges persist, and in 2022 HM Inspectorate of Probation found that the model was 'simply not working' pre-release due to inflexibility, lack of understanding and ineffective communication.<sup>273</sup> These are all essential components in effectively addressing vulnerabilities that are varied and unique, with responses needing to be tailored according to the individual harms experienced. Adopting a vulnerability centred model requires a collective approach, which heavily relies on good communication, however the OMIC failed to address the culture of poor communication between departments in the CJS.<sup>274</sup> Further to this, in 2023 another report on post-release reached similar conclusions, finding the service was disappointing and did not lead to any sufficient improvements in factors linking to reoffending such as drug misuse.<sup>275</sup> This was a result of failure to identify and respond to risk factors, with

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<sup>268</sup> Cracknell (n 266) 94

<sup>269</sup> House of Commons Justice Committee, *Transforming Rehabilitation: Ninth Report of Session 2017-19* (HC 482, 2018)

<sup>270</sup> HM Chief Inspector of Prisons (n 5)

<sup>271</sup> Dame Glenys Stacey, 'Report of the Chief Inspector of Probation' (HM Inspectorate of Probation 2019) <<https://webarchive.nationalarchives.gov.uk/ukgwa/20190917185210/https://www.justiceinspectorates.gov.uk/hmiprobation/corporate-documents/report-of-the-chief-inspector-of-probation/>> accessed 7 August 2025

<sup>272</sup> 'HM Inspectorate of Probation, 'Probation Service- Specific Types of Delivery' (HM Inspectorate of Probation 2021) <<https://hmiprobation.justiceinspectorates.gov.uk/our-research/evidence-base-probation-service/specific-types-of-delivery/custody-and-resettlement/>> accessed 7 August 2025

<sup>273</sup> Tony Kirk and others, 'Offender Management in Custody- Pre-release' (HM Inspectorate of Probation and HM Inspectorate of Prisons 2022) <<https://cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/32/2025/03/OMIC-joint-thematic-inspection-report-v1.0.pdf>> accessed 7 August 2025

<sup>274</sup> *ibid*

<sup>275</sup> Tony Kirk and others, 'Offender Management in Custody- Post-release' (HM Inspectorate of Probation 2023) 31 <<https://cloud-platform->

recommendations focussed on improvements with continuity of care for substance users and working with local partners.<sup>276</sup> As VT would deduce, drug misuse and reoffending rates are a societal failing rather than an individual one.<sup>277</sup> Hence, drug users' vulnerabilities must not be perceived as personal fault, but rather failures of the state to respond and support them, as evidenced in the shortcomings outlined.

### **2.3 Key Concerns**

People under supervision are expected to access treatment for substance misuse in the same way as the general population, despite greater exposure to harms which can affect one's resilience.<sup>278</sup> Those under supervision who struggle with drug misuse often have complex needs. Attempting to coordinate different services is often incredibly difficult given the probation service is understaffed and underfunded.<sup>279</sup> Further, access to high-quality treatment has been undermined by TR and the privatisation of treatment.<sup>280</sup> In 2020 Dame Carol Black conducted a review of drugs, focussing on the CJS, and found that the "vulnerable" (being used here in its broader sense) have been exploited, and drug deaths in 2018 were the highest on record.<sup>281</sup> The report identified significant issues in local government funding and found that previous governments have de-prioritised drug treatment and recovery, concluding that we need to transform our approach to treatment.<sup>282</sup> In particular, she found that the transition to the community was unsuccessful, with only a third of people referred for community treatment going on to receive it within 3 weeks, with this reduced to only one in ten for non-opiate users.<sup>283</sup> Furthermore, the use of substances increases exposure to harm for those within the CJS and drug use within prisons is ever-increasing.<sup>284</sup> These individuals often serve short prison sentences and cycle in and out of prison, meaning even if placed on

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<sup>276</sup> Kirk and others (n 275) 8

<sup>277</sup> Fineman (n 3) 142

<sup>278</sup> Kevin Ball, 'What Does Dame Carol Black's Review of Drug and Alcohol Misuse Services Mean for Probation Services' (2022) 14(3) European Journal of Probation 282

<sup>279</sup> HM Inspectorate of Probation 'Spending Review Presentation' (HM Inspectorate of Probation 2025) <<https://webarchive.nationalarchives.gov.uk/ukgwa/20250224122643/https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2021/09/Spending-Review-representation.pdf>> accessed 7 August 2025

<sup>280</sup> Ball (n 278)

<sup>281</sup> Black (n 90) 3

<sup>282</sup> ibid

<sup>283</sup> Black (n 90) 16

<sup>284</sup> ibid

treatment programmes, they may only receive support for a matter of weeks, which is then not continued on release.<sup>285</sup> The report summarises that even if the funding required is raised for treatment, a holistic approach to recovery is required that is not solely treatment focussed but considers circumstances that increase risk such as housing and employment.<sup>286</sup> These are factors which significantly affects a person's resilience and often exacerbate vulnerabilities.

After Black's review, in 2021 the HM Inspectorate of Probation found that the probation service was still providing disappointing work with drug users with too few people receiving any help to tackle drug misuse.<sup>287</sup> When referrals have been made, the quality of services are deemed poor, and funding is continuously reducing.<sup>288</sup> Generally there is still a poor transition to the community and individuals do not continue to receive drug treatment on release from custody.<sup>289</sup> This has contributed to a lack of confidence in the probation service and with the pressures ever increasing, the service is continuously overstretched.<sup>290</sup> Ultimately this means vulnerabilities related to drug use are missed. These negative findings are further reinforced in their 2024 report which found that around half of cases did not receive sufficient quality of intervention or services from the probation service, with significant gaps in accessing mental health and substance misuse services.<sup>291</sup>

### **2.3.1 Dual Diagnosis and Support**

The complex needs and vulnerabilities of drug misusers who have coexisting mental health concerns are poorly understood.<sup>292</sup> This may be due to the lack of training for probation officers for both mental illness and drug use, meaning issues are often missed.<sup>293</sup> Missing these factors can increase the risk of death by suicide whilst on probation.<sup>294</sup> For context,

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<sup>285</sup> Black (n 90)

<sup>286</sup> ibid

<sup>287</sup> HM Inspectorate of Probation, '2021 Annual Report: Inspections of Probation Services' (HM Inspectorate of Probation 2022) 37 <<https://cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/32/2025/02/FINAL-Probation-Annual-Report-2021.pdf>> accessed 7 August 2025

<sup>288</sup> ibid

<sup>289</sup> Ibid 9

<sup>290</sup> Justice and Home Affairs Committee, *Corrected Oral Evidence: Community Sentences* (HL 2023, 17-30) Q18

<sup>291</sup> HM Inspectorate of Probation (n 260)

<sup>292</sup> Jesse Young and others, 'Dual Diagnosis of Mental Illness and Substance Use Disorder and Injury in Adults Recently Released from Prison: A Prospective Cohort Study' (2018) 3(5) *The Lancet Public Health* 237

<sup>293</sup> Coral Sirdifield, Charlie Brooker and Rebecca Marples, 'Suicide and Probation: A Systematic Review of the Literature' (2020) 1 *Forensic Science International: Mind and Law*

<<https://www.sciencedirect.com/science/article/pii/S2666353820300059>> accessed 7 August 2025

<sup>294</sup> ibid

Weaver et al found that up to 75% of drug service users reported an existing mental health problem and up to one third had multiple co-morbidity issues, meaning they reported multiple psychiatric conditions alongside their ongoing drug misuse.<sup>295</sup> People with a dual diagnosis are consequently more likely to have difficulties with education, employment, accommodation, relationships, general health and neurological damage.<sup>296</sup> In addition, people in prison with a history of mental health disorders experience worse outcomes on release such as substance misuse and continued criminal activity, with dual diagnosis clients having a 40% higher risk of reincarceration.<sup>297</sup> It is therefore of critical importance that effective re-entry programmes and social support are available for those transitioning from prison to the community.<sup>298</sup> Adopting a vulnerability lens for dual diagnosis can transform support, enhancing responses to complex needs through joint work and an inherently integrated approach that responds holistically, appreciating the embodied experience of the vulnerable subject.

As identified in Black's report, those who are seeking rehabilitative support need access to specialist treatment. However there has been a prolonged shortage of funding with some local authorities seeing treatment services expenditure being reduced by up to 40%, meaning supervisees are often being confined to one service (often drug treatment) which is time-limited and small scale.<sup>299</sup> As such, in many cases dual treatment requirements are neglected. Due to the complex nature of dual diagnosis, responsibility for treatment overlaps between health and social care services, drug treatment services and services provided in prison and the probation service more generally.<sup>300</sup> It can be difficult to assign responsibility to an institution who can adequately respond to these vulnerabilities and people often fall between services, or get referred back and forth, extending inequalities

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<sup>295</sup> Weaver and others, 'Comorbidity of Substance Misuse and Mental Illness in Community Health and Substance misuse Services' (2003) 183 *British Journal of Psychiatry* 304

<sup>296</sup> Vanessa Crawford, Ilana Crome and Carmel Clancy, 'Co-existing Problems of Mental Health and Substance Misuse ('Dual Diagnosis'): A Review of Relevant Literature' (2003) 10(1) *Drugs: Education, Prevention and Policy* 1

<sup>297</sup> Sacha Kendall and others, 'Systematic Review of Qualitative Evaluations of Re-entry Programs Addressing Problematic Drug Use and Mental Health Disorders Amongst People Transitioning from Prison to Communities' (2018) 6(4) *Health and Justice* <

[https://pmc.ncbi.nlm.nih.gov/articles/PMC5834412/pdf/40352\\_2018\\_Article\\_63.pdf](https://pmc.ncbi.nlm.nih.gov/articles/PMC5834412/pdf/40352_2018_Article_63.pdf) accessed 7 August 2025

<sup>298</sup> *ibid*

<sup>299</sup> Black (n 90) 6

<sup>300</sup> DH/ Offender Health, 'Best Practice Guidance: A Guide for the Management of Dual Diagnosis for Prisons' (Ministry of Justice, Department of Health 2009) <

<https://www.drugsandalcohol.ie/11865/1/DualDiagnosisPrisons.pdf> accessed 7 August 2025

within institutions.<sup>301</sup> The increased risk factors associated with dual diagnosis clients are significant as they have a higher risk of suicide and this vulnerability must be planned for using risk assessments, maintaining close and continued communication between services and implementing an individualised care approach.<sup>302</sup> Whilst most services are designed to care for just one problem<sup>303</sup> Sirdifield et al found that conducting assessments during probation demonstrate that there is a need to commission services that are designed to support people with complex needs.<sup>304</sup>

These co-occurring conditions are vulnerabilities that can contribute to offending behaviour. Attempts for treatment can be provided through the use of a MHTR that can be used in conjunction with a DRR on a community sentence.<sup>305</sup> This offers an opportunity to improve justice outcomes, but this does not come without requirements, with non-compliance resulting in possible recall.<sup>306</sup> MHTRs are often underutilised but this is beginning to change. In 2023 the use of MHTRs increased by 34% and is linked to the scaling up of availability in this requirement,<sup>307</sup> possibly due to efforts such as the Community Sentence Treatment Requirement Programme launched in 2017 which aimed to ensure greater use of such requirements.<sup>308</sup> Even so, the use of MHTRs in conjunction with DRRs is not one of the most frequently used combinations of requirements for community orders and suspended sentences in 2024,<sup>309</sup> showing the lack of recognition of the potential benefits, or perhaps the missed dual diagnosis on sentencing.

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<sup>301</sup> 'Reducing Re-offending by Ex-prisoners' (Social Exclusion Unit 2002) 74 <<https://www.bristol.ac.uk/poverty/downloads/keyofficialdocuments/Reducing%20Reoffending.pdf>> accessed 7 August 2025

<sup>302</sup> DH/ Offender Health (n 300)

<sup>303</sup> Anna Richards, 'Health and Social Care Needs Assessment of Adults Under Probation Service Supervision in the Community: A Guidance Document' (Public Health England 2020) <[https://assets.publishing.service.gov.uk/media/5e7b2803e90e0706ee64a78e/Probation\\_HSNA\\_Guidance.pdf](https://assets.publishing.service.gov.uk/media/5e7b2803e90e0706ee64a78e/Probation_HSNA_Guidance.pdf)> accessed 7 August 2025

<sup>304</sup> Sirdifield and others (n 261)

<sup>305</sup> Ministry of Justice, *A Smarter Approach to Sentencing* (White Paper, CP 292, 2020) 40

<sup>306</sup> Ibid 41

<sup>307</sup> HM Prison and Probation Service 'Offender Management Statistics Quarterly: July to September 2024' (HM Prison and Probation Service 2025) <<https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-july-to-september-2024/offender-management-statistics-quarterly-july-to-september-2024>> accessed 7 August 2025

<sup>308</sup> Ministry of Justice (n 305)

<sup>309</sup> HM Prison and Probation Service (n 307)

There has also been the introduction of a new partnership pathway to respond to Black's concerns. It brings services together, such as the NHS and charities to provide both mental health and substance misuse support for a least 6 months.<sup>310</sup> Whilst this is a very new initiative, with little results, progress so far appears positive.<sup>311</sup> This initiative demonstrates an attempt to integrate institutions using a collective approach, responding to multiple needs of those under supervision. This is a significant step in recognising the need for a vulnerability lens that appreciates embodied differences of vulnerability and how one risk factor can influence another.

However, whilst the partnership pathway and MHTR demonstrate some progress, acknowledging the interconnecting nature of complex vulnerabilities, support remains inadequate.<sup>312</sup> Services are designed to address one need and there is a requirement for those on probation to have services that cater for more complex needs.<sup>313</sup> A vulnerability lens in this context is vital as the concept of vulnerability itself considers the complexities of the human condition.<sup>314</sup> To account for this, the probation service would need to address unmet needs which may impact the individual and their success on treatment programmes. The provision of practical support such as housing, employment and education have a direct impact on the success of rehabilitation for dual diagnosis clients and can provide resources to build resilience, and ultimately foster autonomy.<sup>315</sup> This means the wider circumstances of the individual must be accounted for, not simply addressing the drug dependency and mental illness alone. In effect, we must challenge the position of societal institutions wider than the probation service alone, calling for partnership between these asset-conferring institutions, considering their capacity to compensate for vulnerabilities and build individual resilience. This integrated approach should emphasise the value of building social relationships and identity within support services.<sup>316</sup> This would require continuity of

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<sup>310</sup> 'New Partnership to Trailblaze Approach to Mental Health and Substance Use' (*Staffordshire Newsroom*, 2023) <<https://www.staffordshire.gov.uk/Newsroom/Articles/2023/06-June/New-Partnership-to-Trailblaze-Approach-to-Mental-Health-and-Substance-Use.aspx>> accessed 7 August 2025

<sup>311</sup> Home Office (n 242) 19

<sup>312</sup> 'Dual Diagnosis: A Challenge for the Reformed NHS and for Public Health England' (UK Drug Policy Commission, Centre for Mental Health and DrugScope 2012)<<https://www.ukdpc.org.uk/wp-content/uploads/dual-diagnosis-a-challenge-for-the-reformed-nhs-and-for-public-health-englal.pdf>> accessed 7 August 2025

<sup>313</sup> Sirdifield and others (n 261)

<sup>314</sup> Grear (n 84)

<sup>315</sup> Kendall and others (n 297)

<sup>316</sup> Fineman (n 3)

individualised care to address the varied risk factors associated with dual diagnosis, in particular re-entry into the CJS. Individualising care to consider the embodied experience could ensure successful reintegration into the community, long-term distance from substance use and crime, and improved psychological health.<sup>317</sup> This would establish a connection between the intersecting, different needs of this individual, making space for a whole life course perspective to be adopted, which confers resources and develops resilience.

### **2.3.2 Drug Rehabilitation Requirements and Commissioned Rehabilitative Services**

The DRR is the primary means for sentenced individuals to address identified drug misuse within a community sentence.<sup>318</sup> As outlined in chapter one, the use of DRRs has historically been low. Only 5,501 people started a DRR as part of a community sentence in 2021 to 2022.<sup>319</sup> That is compared to roughly 70,000 individuals who received a community sentence within that time.<sup>320</sup> The 2021 probation reform programme acknowledged this gap, aiming to make greater use is made of DRRs as part of community sentences.<sup>321</sup> This has been realised to some extent, with figures published in 2025 showing an increase in DRRs (16% for community orders and 24% for suspended sentence orders).<sup>322</sup>

To be eligible for a DRR, the individual must: be dependent on illegal drugs, require and would benefit from treatment, be able to access and attend treatment and be willing to comply.<sup>323</sup> The eligibility requirements and supporting documentation do not make any reference to vulnerability, just that the approach is tailored to individual need. The DRR is an

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<sup>317</sup> Jarrod Gilber and Benjamin Elley, 'Reducing Recidivism: An Evaluation of The Pathway Total Reintegration Programme' (2015) 30 (4) *New Zealand Sociology* 15

<sup>318</sup> Ministry of Justice, 'National Offender Management Service Annual Report 2011/12: Management Information Addendum' (Ministry of Justice 2012) <<https://assets.publishing.service.gov.uk/media/5a7c6494ed915d696ccfc790/noms-annual-report-2011-12-addendum.pdf>> accessed 7 August 2025

<sup>319</sup> Office for Health Improvement & Disparities and Ministry of Justice 'Official Statistics: Pathways Between Probation and Addiction Treatment in England: Report' (2023) <<https://www.gov.uk/government/statistics/pathways-between-probation-and-addiction-treatment-in-england/pathways-between-probation-and-addiction-treatment-in-england-report>> accessed 7 August 2025

<sup>320</sup> 'Criminal Justice System Statistics' (Justice Data 2025) <<https://data.justice.gov.uk/cjs-statistics/cjs-sentence-types>> accessed 7 August 2025

<sup>321</sup> HM Prison & Probation Service 'The Target Operating Model for Probation Services in England and Wales Probation Reform Programme' (2021) <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1061048/MOJ7350\\_HMPPS\\_Probation\\_Reform\\_Programme\\_TOM\\_Accessible\\_English.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1061048/MOJ7350_HMPPS_Probation_Reform_Programme_TOM_Accessible_English.pdf)> accessed 7 August 2025

<sup>322</sup> HM Prison and Probation Service (n 307)

<sup>323</sup> Criminal Justice Act 2003, s 209

intensive approach to tackling drug misuse and requires drug reviews at intervals of no less than one month.<sup>324</sup> The statute requires the individual to attend a review hearing<sup>325</sup> and a report must be made including test results which also reviews the treatment the being received.<sup>326</sup> DRRs may last from six months to three years and must be approved by the probation service.<sup>327</sup> Whilst the statute provides clarity on requirements and sanctions, there has been little guidance provided as to what 'best practice' might look like in terms of DRRs.<sup>328</sup> Nonetheless, the guidelines in the statute are rigid regarding attendance at meetings etc to prevent relapse, but this relies heavily on the cooperation of those on the programme. The figures for completion are low with 45.8% dropping out of treatment between 2021 to 2022 and only 29.2% successfully completing treatment,<sup>329</sup> notably lower than those who complete treatment in prison. In conjunction, issues with continuity of care are prominent, often with a lack of referrals to another drug service when the DRR community sentence is finished.<sup>330</sup> Non-compliance can also result in breach proceedings which are decided on a case-by-case basis, though there is limited guidance on when someone may be referred for a breach.<sup>331</sup> This overlooks the various, complex reasons for failure to comply, reinforcing punitive measures, which ignores the underlying causes of non-compliance and the effects of drug dependency, an approach at odds with a vulnerability analysis.

Furthermore, the introduction of Commissioned Rehabilitative Services (CRS) has attempted to support substance use with a framework based on holistic support. CRS claims to address various needs, including housing, wellbeing, employment and social inclusion, and establishing and maintaining family relationships (amongst other things).<sup>332</sup> The services take

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<sup>324</sup> ibid s 210 (1) (a)

<sup>325</sup> ibid s 210 (1) (c)

<sup>326</sup> ibid s 210 (1) (e)

<sup>327</sup> Criminal Justice Act 2003, s 209

<sup>328</sup> Aaron Pycroft and Suzie Clift, *Risk and Rehabilitation: Management and Treatment of Substance Misuse and Mental Health Problems in the Criminal Justice System* (Policy Press 2012) 91

<sup>329</sup> Office for Health Improvement (n 319)

<sup>330</sup> Pycroft and Clift (n 328) 95

<sup>331</sup> Commissioning Group, 'Supporting Community Order Treatment Requirements' (National Offender Management Service 2014) <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/426676/Supporting\\_CO\\_Treatment\\_Req.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/426676/Supporting_CO_Treatment_Req.pdf)> accessed 7 August 2025

<sup>332</sup> HM Prison and Probation Service, 'Guidance Judicial Brochure: Commissioned Rehabilitative Services' (HM Prison and Probation Service 2025) <<https://www.gov.uk/guidance/judicial-brochure-commissioned-rehabilitative-services>> accessed 7 August 2025

an individual approach to each person's needs, utilising specialist partners to provide specific services, focussing on continuity of care.<sup>333</sup> This requires the probation practitioner to identify the needs of the individual and refer them to the approved partner. However, CRS referrals have been described as 'cumbersome and counterintuitive' for staff, who receive no communication on waiting times and often have referrals rejected without explanation.<sup>334</sup> CRS meetings are enforceable, and the service providers have highlighted levels of resistance, identifying these individuals as some of the most difficult people to engage.<sup>335</sup> In addition, as these services are referred out, the probation practitioner's role in the provision of the support is limited. Often CRS interventions are not always up to standard due to failures in responding to referrals or lack of engagement.<sup>336</sup> Since CRS support is outsourced and is provided by various services depending on the region, it is challenging to assess continuity or accountability. Further, services are oversubscribed and waiting lists unmanageable.<sup>337</sup> Probation practitioners require clarity on what services are delivered and how to refer and monitor these provisions, ensuring that CRS meets the needs of people on probation.<sup>338</sup> Whilst the aims of CRS reflect a genuine commitment to support, with a framework that appears to move towards a vulnerability analysis, in practice they have caused frustration to staff and must be managed better.<sup>339</sup> Nonetheless, an approach built upon similar foundations could be effective. Taking account for social relationships and identity is crucial in appreciating that we are social beings embedded in social institutions and relationships.<sup>340</sup> It seems that there is more to be done in the provision of these services, and the probation service should take an active role in ensuring CRS is developed.<sup>341</sup>

## **2.4 Contemporary Policy to Reform Probation**

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<sup>333</sup> Ingeus 'Three years of Transforming Lives Commissioned Rehabilitative Services in Action 2021-2024' (2024) 22 <<https://ingeus.co.uk/INGEUS/media/Documents/Ingeus-CRS-Three-Years-of-Transforming-Lives-Report.pdf>> accessed 7 August 2025

<sup>334</sup> Ball (n 278)

<sup>335</sup> Ingeus (n 333)

<sup>336</sup> HM Inspectorate of Probation (n 260) 20

<sup>337</sup> HM Inspectorate of Probation, 'HMIP Regional Review Letter to RPD v1.1' (hm Inspectorate of Probation 2022) <<https://cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/32/2025/02/KSS-HMIP-Regional-review-letter-to-RPD-v1.0.pdf>> accessed 7 August 2024

<sup>338</sup> ibid

<sup>339</sup> HM Inspectorate of Probation (n 337)

<sup>340</sup> Fineman (n 3) 143

<sup>341</sup> HM Inspectorate of Probation (n 337)

There has been ongoing change in policy/responses to crime and drug use over the last decade, including the introduction of committees such as the ‘recovery committee’.<sup>342</sup> They aim to support and prevent drug and alcohol use, demonstrating a growing awareness of the challenges that persist.<sup>343</sup> Additionally, in response to Black’s review on drugs, the ‘From Harm to Hope’ strategy has been introduced. This implemented a 10-year drugs plan to cut crime and save lives in 2021, investing £533 million to substance misuse treatment.<sup>344</sup> With a focus on protecting the most “vulnerable”, in this sense, vulnerability has been employed generally, assigning vulnerability only to certain groups, and not conceptualising the concept through VT or within any theoretical framework. This strategy is the first of its kind to commit the whole government and public services to work together and share responsibility to creating a safer, healthier society.<sup>345</sup> It has introduced the Joint Combating Drugs Unit (JCDU) to deliver these outcomes, focussing on how local areas should undertake these aims to improve services and identify challenges, in particular focussing on the evaluation of treatment and recovery. The strategy includes a ‘sharp’ focus on the CJS and drug-related crime with continuity of treatment and the transition from prison to the community being a priority.<sup>346</sup> The delivery of this strategy will focus on breaking drug supply chains, delivering a world-class treatment and recovery system and achieving a shift in the demand for recreational drugs.<sup>347</sup> This new focus on treatment could also have a positive impact on reoffending rates and more generally, offer value for money.<sup>348</sup> Nevertheless, there are ongoing gaps in the strategy, with risks of further stigmatising people who use drugs as inherently criminal through the use of ‘tough consequences’ and an absence of the voices of people living with substance misuse, which is essential if autonomy is to be protected.<sup>349</sup>

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<sup>342</sup> Recovery Committee, ‘What Recovery Outcomes Does the Evidence Tell Us Ee Can Expect’ (Advisory Council on the Misuse of Drugs 2013) <[https://assets.publishing.service.gov.uk/media/5a7c25e4e5274a1f5cc76171/Second\\_report\\_of\\_the\\_Recovery\\_Committee.pdf](https://assets.publishing.service.gov.uk/media/5a7c25e4e5274a1f5cc76171/Second_report_of_the_Recovery_Committee.pdf)> accessed 6 August 2025

<sup>343</sup> Recovery Committee (n 342)

<sup>344</sup> Department of Health and Social Care (n 7)

<sup>345</sup> *ibid*

<sup>346</sup> Home Office (n 242) 7

<sup>347</sup> Department of Health and Social Care (n 7)

<sup>348</sup> Phil Bowen and others, ‘Enhancing the Criminal Court Response to Substance Misuse: An Evidence and Practice: Briefing’ (Centre for Justice Innovation 2020) <[https://justiceinnovation.org/sites/default/files/media/documents/2020-08/substance\\_misuse\\_briefing.pdf](https://justiceinnovation.org/sites/default/files/media/documents/2020-08/substance_misuse_briefing.pdf)> accessed 7 August 2025

<sup>349</sup> Alex Stevens, ‘New Prospects for Harm Reduction in the UK? A Commentary on the New UK Drug Strategy’ (2022) 109 International Journal of Drug Policy <<https://doi.org/10.1016/j.drugpo.2022.103844>> accessed 7 August 2025

Black's review and the introduction of this strategy are no doubt significant steps in the movement towards harm reduction and better drug treatment within the CJS.<sup>350</sup> However, the gaps outlined must be addressed and success will undoubtedly depend on the recruitment and retention of staff.<sup>351</sup>

The 'Reducing the Harm from Illegal Drugs' 2023-24 paper found that the strategy has led to positive change, with increased recruitment of drug workers and police diverting individuals to treatment for drugs rather than prosecution.<sup>352</sup> There is also evidence that some local areas are already making improvements to continuity of care through developing partnership approaches, identifying issues and engaging people in prison early.<sup>353</sup> Given the encouraging progress so far, it is expected that the 'From Harm to Hope' strategy should positively impact the treatment drug misusers receive and deliver Black's recommendations. Nonetheless, Black highlights that there is more to be done, and we should look beyond drug-specific interventions to the wider factors.<sup>354</sup> This is crucial because drug users are often in their current situation due to societal failings, such as the failure of one system (e.g., education), which then has a ripple effect on other systems, ultimately leading to their current circumstances. If we can look to these wider factors and take a life course perspective considering an individual's prospects, rather than simply treating the substance use now, the probation service can attempt to compensate for this resource deprivation through their supervisory relationship. Building resilience focuses not only on one asset, but multiple assets working together, such as physical and social to ensure better outcomes. Whilst it is not possible to fully recover from these failings, it is important to note that with a focus on the actual human experience, we can create a space where individuals can build resilience<sup>355</sup> and stop seeing them as fatalistically determined to be drug users channelling in and out of the CJS.

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<sup>350</sup> Stevens (n 349)

<sup>351</sup> Ball (n 278)

<sup>352</sup> House of Commons Committee of Public Accounts, *Reducing the Harm from Illegal Drugs: Eleventh Report of Session 2023-24* (HC 72, 2024) 10

<sup>353</sup> Home Office (n 280) 23

<sup>354</sup> *ibid* 4

<sup>355</sup> Fineman (n 3)

Much of the plan focuses on stopping supply of drugs on the streets, but drug-related harm remains a significant issue in prisons, having a knock on effect to probation<sup>356</sup>, with around half of prisoners addicted to drugs.<sup>357</sup> Whilst this strategy recognises the need to improve inter-agency coordination, recommendations from the ACMD to improve the custody-community transition have not been implemented.<sup>358</sup> Moreover, the strategy fails to adequately address the concerns raised within dual diagnosis due to the lack of focus on joining support services such as mental health and drugs.<sup>359</sup> Within the strategy there is reference to 'vulnerable adults' and 'vulnerable groups' demonstrating some recognition of individuals at heightened risk. The strategy outlines assets such as social assets that prevent individuals being drawn into drug misuse, i.e. building resilience, aligning to some degree with VT. However, much of the references to vulnerability identifies those who experience drug addiction, mental ill health or learning disabilities but does not go as far as VT to recognise universal vulnerability, as it highlights that they will be seeking to safeguard more than 4,000 vulnerable people only.<sup>360</sup> This approach fabricates those outside of these groups as invulnerable. These references to invulnerability must be eliminated as they reinforce 'defensiveness and individualism as well as social hierarchies based on ideals of independence and self-sufficiency'.<sup>361</sup> Instead if vulnerability is recognised as a shared condition, then a model of care can be adopted which focuses on mutual interdependence and reciprocity.<sup>362</sup>

In conjunction with the 'From Harm to Hope' strategy is the probation reform programme, published in 2021 it seeks to place rehabilitation at the heart of probation adopting a new strapline 'assess, protect and change'.<sup>363</sup> This model seeks to more accurately identify probationers' needs, manage risks which may impact resilience, and promote change by empowering supervised individuals to build positive relationships and integrate themselves in

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<sup>356</sup> Adam Holland and others, 'Analysis of the UK Government's 10-Year Drugs Strategy—A Resource for Practitioners and Policymakers' (2023) 45(2) *Journal of Public Health* 215

<sup>357</sup> Ministry of Justice and others, 'Addiction Crackdown sees Huge Rise in Prisoners Getting Clean' (Ministry of Justice, HM Prison and Probation Service and The Rt Hon Dominic Raab 2023) <<https://www.gov.uk/government/news/addiction-crackdown-sees-huge-rise-in-prisoners-getting-clean>> accessed 7 August 2025

<sup>358</sup> 'Custody-Community Transitions' (Advisory Council on the Misuse of Drugs, June 2019) <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/902762/CMD\\_Custody\\_community\\_transitions\\_report\\_June\\_2019.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/902762/CMD_Custody_community_transitions_report_June_2019.pdf)> last accessed 31 July 2025

<sup>359</sup> House of Commons Committee (n 352) 10

<sup>360</sup> Department of Health and Social Care (n 7) 22

<sup>361</sup> Browne and others (n 243) 8

<sup>362</sup> *ibid* 8

<sup>363</sup> HM Prison and Probation Service (n 321)

rehabilitative activities.<sup>364</sup> However, this new strapline places greater emphasis on a public protection agenda that elevates functions of surveillance, control and exclusion.<sup>365</sup> Whilst rehabilitation is central, it is placed in the context of public protection. Probation practitioners see good probation work and rehabilitation in the context of social work, but the increasing focus on public protection is somewhat at odds with this.<sup>366</sup> Continuous structural changes such as the introduction of assess, protect and change mean that key questions such as 'what probation is' and 'what it does' are ongoing, with uncertainty around what its fundamental values truly are.<sup>367</sup> Within this business strategy there are references to vulnerability through 'vulnerable groups', narrowing the scope of vulnerability as an exceptional condition, rather than a shared one.<sup>368</sup> The overarching design principle includes 'inclusive design', aiming to meet a range of specific and diverse needs including those who are vulnerable or have protected characteristics under the Equality Act 2010.<sup>369</sup> This approach has been constructed using an equality-based model, one that as outlined in chapter one, can often lead to treating likes alike and fails to address inequalities produced by institutions. Fineman often seeks to address the question, 'can different treatment be justified', and this is exactly what this chapter has sought to answer.<sup>370</sup> As we all manifest our vulnerabilities differently, the only appropriate approach possible of success is differential treatment.

## **2.5 Therapeutic Jurisprudence Manifested Through Drug Courts**

One approach that could be better embedded within policy, diverting away from outcome-based provisions (as TR adopted), and towards treatment-based support, is through TJ. TJ acknowledges the law itself as a therapeutic agent, meaning the legal system plays an important role in contributing to non-therapeutic outcomes, which impacts the mental and emotional well-being of those within the CJS.<sup>371</sup> This interdisciplinary theory brings together psychology and the social sciences to understand how the law can reduce its anti-therapeutic effects, and enhance therapeutic values, whilst still valuing processes and other justice

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<sup>364</sup> HM Prison and Probation Service (n 321)

<sup>365</sup> Annison and others (n 189) 738

<sup>366</sup> *ibid*

<sup>367</sup> Annison and others (n 189)

<sup>368</sup> Browne and others (n 243) 8

<sup>369</sup> HM Prison and Probation Service (n 321)

<sup>370</sup> Fineman (n 3) 145

<sup>371</sup> David Wexler and Bruce Winick, 'Therapeutic Jurisprudence' in *Therapeutic Jurisprudence: Principles of Addiction* (4th edn, 2008)

values.<sup>372</sup> It seeks to address the wide gulf between law on paper and law in action, finding it is an organism that can change and adapt based on the development of society.<sup>373</sup> In its wider use, TJ can be interpreted as a transformative theory in our legal system which encourages empathy and compassion, subsequently challenging the traditional approaches to deviance.<sup>374</sup> One way in particular this is achieved is by considering legal actors, i.e. judges, as therapeutic agents, and directing 'the judge's attention beyond the specific dispute before the court and toward the needs and circumstances of the individuals involved in the dispute'.<sup>375</sup> This means that the focus shifts to the cause of the behaviour, adopting a more interventionist role, rather than focussing so heavily on punishment, which ultimately, for drug users often results in a revolving door of short prison sentences.<sup>376</sup> This diverts attention to the emotional and psychological impact of the CJS process, encouraging a more holistic process. Further, TJ provides a platform for vulnerability to be reflected within the CJS as it looks at the individual, acknowledging both individual and structural vulnerabilities as well as appreciating the impact institutions and legal actors within the CJS have on reproducing these vulnerabilities, further enhancing disadvantage.

Discussions on implementing therapeutic approaches have been continuous in the criminal justice system. This is due to a 'belief that problems associated with drug-related offending behaviour may require social or therapeutic rather than legal solutions'.<sup>377</sup> A therapeutic lens focuses on the rehabilitation of drug using individuals on probation, which will seek to move the focus onto problem-solving rather than the punishment-for-punishments-sake orientation.<sup>378</sup> This problem-solving, treatment-based approach sees rehabilitation as an intrinsic part of the process.<sup>379</sup> This has the potential to consider the root causes of criminality and provide treatment and support based upon this, a tailored approach to

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<sup>372</sup> Wexler and Winick (n 371)

<sup>373</sup> Bruce Winick, 'The Jurisprudence of Therapeutic Jurisprudence' (1997) 3 Psych. Pub. Pol. And L. 184

<sup>374</sup> Anthony Hopkins and others, 'At the Heart of Sentencing: Exploring Whether more Compassionate Delivery of Sentencing Remarks Increases Public Concern for People who Offend' (2022) 30(2) Psychiatry, Psychology and Law 459

<sup>375</sup> Kelly Richards, Lorana Bartels and Jane Bolitho, 'Children's Court Magistrates' Views of Restorative Justice and Therapeutic Jurisprudence Measures for Young Offenders' (2017) 17(1) Youth Justice 22

<sup>376</sup> *ibid*

<sup>377</sup> European Monitoring Centre for Drugs and Drug Addition, 'EMCDDA Papers: Alternatives to Punishment for Drug-using Offenders' (Luxembourg Publications Office of the European Union 2015) <file:///C:/Users/eduaco/Downloads/TDAU14007ENN.pdf> accessed 7 August 2025

<sup>378</sup> Pycroft and Clift (n 328) 153

<sup>379</sup> Kathryn Sammon, 'Therapeutic Jurisprudence: An Examination of Problem-solving Justice in New York' (2008) 23(3) Journal of Civil Rights and Economic Development 923

criminal justice responses. Therapeutic models move away from primarily punishment focussed systems, providing a space to address the social and personal issues that place the individual in a revolving door of reoffending.<sup>380</sup> This provides a space where we can recognise and celebrate the progress made of those navigating the CJS, leading to successful social reintegration and moves beyond the traditional conception of crime.<sup>381</sup> This would enable a process that accounts for the ways vulnerability is manifested in different individuals. Vitally, it allows us to shift the narrative of desistance from one that is 'marked by the immediate cessation of criminal behaviour for one that understands desistance as a process that might include changes at behavioural, emotional, social and environmental levels'.<sup>382</sup> This illustrates a strong link to Fineman's vulnerability analysis, focussing on the social context in which vulnerability is placed. One approach that appears to embody foundational aspects of TJ with some proven success regarding rehabilitation is drug courts, which encourage the participation of the person under supervision and could be one mechanism in which VT can be delivered.<sup>383</sup>

Traditional courts tend to use a one-size-fits-all approach, as they have been built upon the foundations of the liberal subject, assuming that we are rational, self-reliant decision makers. This ignores structural inequality, overlooking the actual lived experience of the human condition, in other words, the vulnerable subject. Despite attempts to address vulnerability, through what Timmer notes as a "quiet revolution" within the European Court of Human Rights (ECtHR) (which is increasingly utilising vulnerability reasoning), the Courts are yet to fully align with a vulnerability analysis.<sup>384</sup> This fails to address the complex and interconnected social and psychological issues that have contributed to the individual's offending behaviour.<sup>385</sup> A manifestation of TJ is drug courts, which seek to promote emotional, mental and physical well-being and provide a space for a vulnerability analysis. These courts, commonly labelled as PSCs, have the potential to fully embrace Fineman's vulnerability analysis by addressing criminal wrongdoing in a novel way, with rehabilitation

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<sup>380</sup> Jane Donoghue, *Transforming Criminal Justice? Problem-solving and Court* (1st edn, Routledge 2014) 31

<sup>381</sup> Catalina Doppelmann, Amalia Valdes-Riesco and Carolina Vaillagra, 'Therapeutic Jurisprudence and The Desistance Paradigm: Theoretical and Practical Convergences for Social Reintegration' (2022) 82 International Journal of Law and Psychiatry < <https://doi.org/10.1016/j.ijlp.2022.101790> > accessed 7 August 2025

<sup>382</sup> Doppelmann and others (n 381)

<sup>383</sup> *ibid*

<sup>384</sup> Fineman and Grear (n 235)

<sup>385</sup> *ibid*

being an intrinsic part of the process and a place where vulnerability can be embedded. Drug courts were introduced in the late 1980s<sup>386</sup> and predominantly provide treatment and drug testing, amongst other services, to those under supervision.<sup>387</sup> These courts have achieved notable success in lowering rates of repeat offending and substance misuse, and have been implemented in various forms worldwide.<sup>388</sup> They can increase engagement with community orders and outcomes<sup>389</sup> owing to judges training in case management which allows them to take responsibility for the rehabilitation of the individual.<sup>390</sup> Ultimately, these courts can respond to both specific vulnerabilities and universal vulnerability, instead of the ECtHR current approach, which focuses on responding to particular vulnerabilities.<sup>391</sup>

There is a lack of information on drug courts in the UK, which makes it difficult to measure their success. In addition, the full requirements of the traditional PSCs have not been fully established in the UK.<sup>392</sup> However, a recent pilot of 3 courts with problem-solving components known as the Intensive Supervision Courts (ISC) launched in 2023. This is testing a model of community sentence management between probation and the courts.<sup>393</sup> It is a multi-agency delivery of support, relying heavily on effective communication between departments. The process identifies eligible individuals who must consent to the order and agree to a tailored treatment plan, demonstrating how autonomy and targeted intervention within the CJS can work in tandem.<sup>394</sup> Individuals are then ‘fast-tracked’ to intensive intervention delivered by a multidisciplinary team, including probation practitioners.<sup>395</sup> This involves consistent dialogue between the multiagency team sharing progress reviews.<sup>396</sup> Two of these focus on substance misuse and include intensive intervention programmes that

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<sup>386</sup> Anna Grace Kawalek, *Problem-Solving Courts, Criminal Justice, and the International Gold Standard* (Routledge 2021) 4

<sup>387</sup> Trevor Bennett, Katy Holloway and Mike Maguire, *Understanding Drugs, Alcohol and Crime* (Mcgraw-Hill Education 2005) 138

<sup>388</sup> Kawalek (n 386)

<sup>389</sup> ‘Breaking the cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders: Response from Drugscope’ (Drugscope 2010) <[https://www.drugwise.org.uk/wp-content/uploads/BREAKING\\_THE\\_CYCLE\\_consultation\\_DrugScope\\_Response.pdf](https://www.drugwise.org.uk/wp-content/uploads/BREAKING_THE_CYCLE_consultation_DrugScope_Response.pdf)> accessed 7 August 2025

<sup>390</sup> Monica Miller, ‘A Qualitative Analysis and Eleven-factor Typology of Hypothesized Factors Encouraging or Discouraging the Development of Problem Solving Courts in Various Countries (2020) 16(2) *Journal of Experimental Criminology* 79

<sup>391</sup> Fineman and Greal (n 235)

<sup>392</sup> Ministry of Justice (n 305) 55

<sup>393</sup> Ministry of Justice (n 41)

<sup>394</sup> The concept of consent within PSCs/ISC is contested and will be analysed in chapter three.

<sup>395</sup> Ministry of Justice (n 41)

<sup>396</sup> *ibid*

address social and health issues through judicial monitoring and cross-governmental efforts.<sup>397</sup> It is the first to use a legislative framework to test the PSC approach.<sup>398</sup> This requires supervision from the probation service combined with support from local services overseen by an ISC judge.<sup>399</sup> This involves a substantially more intrusive role of the judge.<sup>400</sup>

Individuals on the ISC are provided with tailored, personalised support that addresses the specific factors that have contributed to their offending behaviour.<sup>401</sup> This ensures dedicated support through a range of service providers, overseen by a single judge who monitors progress, building a relationship that is fundamental to the individual's journey through the ISC.<sup>402</sup> However, the workload for ISC is greater than expected, core partners have to contribute to processes, and as the probation service provides intensive supervision here, they are struggling with the pressures and caseload.<sup>403</sup> They have to connect with wider health services and this creates more work for probation staff, who are already working in a pressured environment.<sup>404</sup> Nonetheless, outcomes are positive, there has been more assessment and focus on mental health, positive relationships are being built amongst judges and individuals and overall engagement is good.<sup>405</sup> Drug and alcohol intake has reduced amongst some people, reoffending has somewhat reduced, and ISCs appear to be an effective diversion from custody.<sup>406</sup>

The implementation of PSCs has not been without controversy, given their dramatic departure from traditional approaches to criminality<sup>407</sup> with opposition claiming that problem solving judges are 'simply glorified social workers'.<sup>408</sup> However, probation work embodies social work, and if problem solving judges can further entrench these values, this

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<sup>397</sup> Aikaterini Mentzou and Natasha Mutebi, 'Problem-solving Courts' (UK Parliament Post 2023) <<https://researchbriefings.files.parliament.uk/documents/POST-PN-0700/POST-PN-0700.pdf>> accessed 7 August 2025

<sup>398</sup> Ministry of Justice (n 41)

<sup>399</sup> *ibid*

<sup>400</sup> Natasha Bakht, 'Problem Solving Courts as Agents of Change' (2005) 50 *Crim L.Q* 244

<sup>401</sup> Ministry of Justice (n 41)

<sup>402</sup> *ibid* 6

<sup>403</sup> *ibid* 26

<sup>404</sup> Ministry of Justice (n 41)

<sup>405</sup> *ibid* 46

<sup>406</sup> *ibid* 57

<sup>407</sup> Ben Kempinent, 'Problem-solving Courts and the Defense Function: The Wisconsin Experience' (2010) 62(5) *UC Law Journal* 1349

<sup>408</sup> Bakht (n 400) 252

can only strengthen the support provided.<sup>409</sup> As the ISC's continue to develop, it is expected more findings will emerge to support the use of a problem solving approach. What can be deduced so far is that they attempt to depart from traditional punishment focussed models, manifesting TJ by reducing the antitherapeutic effects of the CJS. The ISC encourages dignity through recovery using a treatment-based model, offering a transformative model to addressing vulnerability. Whilst positive results are collected, pressures on probation practitioners and the feasibility of widespread initiatives such as the ISC must be considered if the treatment provisions for drug users are to be re-modelled based upon this. The wider application of PSCs and how these programmes can be developed in an unequivocally caring way is explored further in chapter three. However, it is evident that VT would thrive in such a setting, that already seeks to address factors contributing to offending in a holistic way.

## **2.6 Conclusion**

The resources for dealing with problems of living are not exhausted by your own strength but possess a social dimension.<sup>410</sup> Drug users on probation are dependent on the support provided within the probation service, often being the only source of support that many receive. Their needs are a collective issue, deeply connected to social support, community and external resources.<sup>411</sup> To appreciate this, it requires an erosion of the liberal subject as historically adopted, and the implementation of policy that considers the vulnerable subject. Despite limited evidence of good practice, such as the 'From Harm to Hope' strategy and the ISC pilot which attempt to recognise vulnerability<sup>412</sup> the probation service has made little progress in appreciating and accounting for the vulnerable subject in both policy and practice. Whilst there are numerous references to vulnerability in much of the policy outlined, this often refers to groups of individuals, without acknowledging universal vulnerability and as such, assumes those outside these groups are invulnerable. This suggests that drug users are 'responsible, rational, self-controlled and autonomous people'<sup>413</sup> which VT contests, finding that an individual's decision-making abilities may be impaired when societal institutions fail

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<sup>409</sup> Canton (n 119)

<sup>410</sup> Coyle (n 43)

<sup>411</sup> Fineman and Grear (n 235)

<sup>412</sup> HM Inspectorate of Probation (n 260)

<sup>413</sup> Kari Lancaster, Karen Duke and Alison Ritter, 'Producing the 'Problem of Drugs': A Cross National-Comparison of 'Recovery' Discourse in Two Australian and British Reports' (2015) 26(7) International Journal of Drug Policy 617, 620

them, by not providing the resilience they need to withstand such harms. Consequently, the provisions in place do not adequately acknowledge existing inequalities that are accentuated within the CJS, placing little attention on the network of connections or the social dimension of VT.

This emphasises both the lack of consistency across policy regarding responses to vulnerability, as well as lack of clarity on the definition, reinforcing problematising assumptions often based upon equality models and the concept of the liberal subject. This widens the gap in support, with too few people receiving the essential treatment needed for drug use and increasing barriers for those regarding dual diagnosis. Subsequently, this thesis advocates for a wholly personalised approach, ensuring the probation service provides an effective framework for fostering resilience among drug users within the CJS. Policy provisions can embed resilience assessment, using this as a tool that can account for uncertainty and complexities of the individual under supervision.<sup>414</sup> The probation service is ideally situated here given their strategic position, being embedded within government strategies, public protection and welfare and rehabilitation. Their training, skills, knowledge and experience mean that they can act as a bridge between stringent governmental policies and flexibility, adapting their approach to vulnerability in practice.<sup>415</sup> Probation practitioners are not simply responsible for administrative processes, but are capable of positively engaging with the individual to break the cycle.<sup>416</sup> This means they can be responsive to lived experience of the drug user due to their firsthand experience with these individuals, ensuring their voices are heard, which is currently neglected in contemporary policy. However, such transformation calls for an active state, ensuring the probation service and individuals have access to sufficient resources to mitigate vulnerabilities (although it can never be fully extinguished).<sup>417</sup> This will be explored in chapter three.

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<sup>414</sup> Simin Davoudi, 'Resilience: A Bridging Concept or Dead End?' (2012) 13(2) *Planning Theory and Practice* 299

<sup>415</sup> House of Commons Justice Committee, *The Role of the Probation Service: Eighth Report of Session 2010-12* (HC 519-I 2011) 35

<sup>416</sup> *ibid*

<sup>417</sup> Fineman and Grear (n 235)

## Chapter Three:

### Reimagining probation through the lens of vulnerability: A caring approach for drug users

#### 3.1 Introduction

‘Since its early days probation has explained itself in terms of help and support, describing itself as a caring profession’.<sup>418</sup> This gives probation work moral significance, grounded upon ethics and values.<sup>419</sup> However, values that symbolise care such as ‘advise, assist, befriend’ have been minimized, with formal supervision models moving to the forefront, reducing practitioner autonomy.<sup>420</sup> Furthermore, whilst the CJS has attempted to implement policies based primarily on rehabilitation, the effects of the economy alongside efficiency and bureaucratic rationality, have created a disconnect with what is functionally reasonable and what is morally right.<sup>421</sup> This contributes to the ongoing struggles between criminal justice sanctions and health interventions, such as drug treatment programmes.<sup>422</sup> Arguably, this is due to the underlying purposes of the CJS re-emerging, grounding new provisions upon control, punishment and public protection.<sup>423</sup> The probation service has never been and is unlikely to be free of political notions that place punishment at the heart of the CJS.<sup>424</sup> As a result probation practitioners’ work is heavily influenced by these punishment policies and practices, constraining the rehabilitative effects.<sup>425</sup> Balancing both rehabilitation and punishment creates ethical challenges.<sup>426</sup> Further, the experience of supervision is not solely influenced by the supervisor but also by external agencies, meaning that to categorise probation as a caring institution, we must cast the net wider to include all those involved in providing treatment and support.

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<sup>418</sup> Jane Dominey and Rob Canton, ‘Probation and the Ethics of Care (2022) 69(4) Probation journal 417

<sup>419</sup> *ibid*

<sup>420</sup> Matt Tidmarsh, *Professionalism in Probation: Making Sense of Marketisation* (Routledge 2021) 22

<sup>421</sup> Phillip Whitehead, ‘Shine Like a Jewel’: Kantian Ethics, Probation Duty and Criminal Justice’ (2016) 8(2) European Journal of Probation 51

<sup>422</sup> Carly Lightowlers ‘Reinforcing the Abstinence Ideal: Criminal Justice Developments’ (2024) 31(5) Drugs, Education, Prevention and Policy 499

<sup>423</sup> *ibid*

<sup>424</sup> Philip Bean, *Probation and Privatisation* (Routledge 2019) 171

<sup>425</sup> Tony Ward and Karen Salmon, ‘The Ethics of Punishment: Correctional Practice Implications’ (2009) 14(4) Aggression and Violent Behaviour 239

<sup>426</sup> *ibid*

As community sentences are a vital vehicle in providing help to drug users on probation,<sup>427</sup> this chapter begins by exploring the role that the state can play in the development of this support. It considers how the state should respond to universal vulnerability, advocating for state responsiveness, which is not overreaching or authoritarian.<sup>428</sup> Beyond this, the chapter explores whether probation can be categorised as a fundamentally caring institution, drawing upon the ethics of care, a concept which appreciates mutual vulnerability.<sup>429</sup> This discussion centres around the key characteristics that probation work must display to align with an ethics of care model, namely flexibility of practice, autonomy in treatment provisions and ultimately placing caring at the heart of probation.<sup>430</sup> It supports Fineman's differential treatment for distinctly manifested vulnerabilities, considering differently situated individuals in society and their access to resources.<sup>431</sup> The discussion will then narrow its focus, considering supervisory relationship, advocating for thicker support, focussing on networks and joint work.<sup>432</sup> This is placed in the context of PSCs, which may operate as a stepping stone towards the wider realisation of the vulnerable subject under supervision. Whilst PSCs currently display some elements of thick supervision, they focus too heavily on coercive control and punitive practice. It is hoped that through adopting an ethics of care model within PSCs, this will result in probation embedding therapeutic practice which is person-centred and collaborative.

### **3.2 An Active State Responsive to Universal Vulnerability**

Through adopting a vulnerability analysis, this thesis aligns with Fineman's work, calling for a more responsive state, as vulnerability can play a central role in the development of political strategies.<sup>433</sup> Fineman adopts a nuanced, subtle understanding of the state, one of which is based above all on law.<sup>434</sup> VT highlights the important role the state plays and the responsibility placed upon them to ensure asset conferring institutions, such as the

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<sup>427</sup> Dominey (n 59) 290

<sup>428</sup> Fineman and Greal (n 235)

<sup>429</sup> Browne and others (n 243) 8

<sup>430</sup> Dominey and Canton (n 418)

<sup>431</sup> Rachel Anne Fenton, 'Assisted Reproductive Technology Provision ad the Vulnerability Thesis: From the UK to the Global Market' in Martha Albertson Fineman and Anna Greal (eds), *Vulnerability: Reflections on a New Ethical Foundation for Law and Politics* (Ashgate Publishing Limited, 2013)

<sup>432</sup> Dominey (n 59)

<sup>433</sup> Coyle (n 43)

<sup>434</sup> ibid

probation service, promote resilience. It thus follows that those in positions of strength or power should take more responsibility in alleviating suffering associated with our universal vulnerability<sup>435</sup>, as the state is somewhat inactive.<sup>436</sup> This does not seek to reinforce the concept that ‘the powerful care for the powerless’; as already outlined, we are all universally vulnerable and susceptible to harms. Instead, it asks for a state which takes responsibility for mediating the relationship between the vulnerable subject and asset conferring institutions to ensure public goods are distributed according to values that are social and not corporate.<sup>437</sup>

As Loader and Walker highlight, the state can be a civilizing force instrumental in ensuring collective security.<sup>438</sup> This reinforces that a responsive state is essential in creating and maintaining an effective social welfare system, and whilst this requires comprehensive governmental responsibility, state intervention ‘should not claim too much’.<sup>439</sup> Accordingly, the state ‘remains indispensable to any project concerned with optimizing the human good of security’<sup>440</sup> and is a necessary presence which is engaged in creating social identities through its symbolic power and cultural authority.<sup>441</sup> Loader and Walker advocate for a ‘thicker’ approach which works collectively for mutual good, arguing that the state is vital in generating trust and solidarity.<sup>442</sup> This considers the relationship between the individual and the state and identifies the central concerns around increasing security measures.<sup>443</sup> Further, if we are to advocate for increased state responsiveness, we must also consider whether the responsive state would remain suitably restrained.<sup>444</sup> Loader and Walker explore the perception of the state as a meddler within the CJS, who can become invasive.<sup>445</sup> They highlight that the fear of overreach is often due to increased control and surveillance measures, which can become pervasive.<sup>446</sup> This can be interpreted in the context of

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<sup>435</sup> Browne and others (n 243) 5

<sup>436</sup> Coyle (n 43)

<sup>437</sup> *ibid*

<sup>438</sup> Ian Loader and Neil Walker, *Civilizing Security* (CUP 2007)

<sup>439</sup> *ibid* 173

<sup>440</sup> *ibid* 143

<sup>441</sup> Ian Loader and Aogan Mulcahy, *Policing and the Condition of England: Memory, Politics and Culture* (OUP 2003)

<sup>442</sup> Loader and Walker (n 438)

<sup>443</sup> *ibid*

<sup>444</sup> Fineman and Grear (n 235)

<sup>445</sup> Loader and Walker (n 438)

<sup>446</sup> *ibid*

treatment provision within probation work, which often adopts significant control mechanisms which often undermine autonomy and the aims of rehabilitation.<sup>447</sup> This has been heavily influenced by the politics around punishment, and Loader and Walker's work instead encourages a movement away from approaches that are influenced by such political agendas.<sup>448</sup> They advocate for a more 'civilised' model, which supports a tamed version of security, one of which is grounded upon principles of collaboration and community.<sup>449</sup> This they identify as 'anchored pluralism' in which the state identifies and allocates resources for the public good.<sup>450</sup> It is, however important to note that the concept of a responsive state can only limit certain forms of vulnerability as it is an embodied experience and not exclusively structural.<sup>451</sup> Therefore, vulnerability will not be eliminated through an active state but instead appreciated and empowered through supporting genuine resilience.<sup>452</sup> This indicates that a vulnerability analysis can be a useful construct around which to structure social policy<sup>453</sup> and the ways in which we approach treatment for drug users on probation.

It could be argued that the power of the state to mitigate effects of the market, which affect how vulnerability is manifested, is somewhat limited due to being situated in a globalised economy.<sup>454</sup> This means that the concept of an active state is uncertain as arguably the state is just one system of capitalist interactions and is by no means free from market and profit controls, questioning Fineman's concept of a wholly active state that is free from the market.<sup>455</sup> Whilst Loader and Walker argue that the state is not one of many, but instead is the pivotal, leading player, their ability to invoke change can be impacted by other actors.<sup>456</sup> The integration and increasing involvement of private entities working with the public sector (apparent within the probation service) alter the relationship between the state and society.<sup>457</sup> Yet, private and public institutions within the probation service are essential, as

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<sup>447</sup> Loader and Walker (n 438) 35

<sup>448</sup> ibid

<sup>449</sup> ibid

<sup>450</sup> ibid 193

<sup>451</sup> Coyle (n 43)

<sup>452</sup> ibid

<sup>453</sup> Fineman (n 47)

<sup>454</sup> Coyle (n 43)

<sup>455</sup> Gear (n 84)

<sup>456</sup> Loader and Walker (n 438)

<sup>457</sup> Harriet Diana Musoke, 'What does Privatization mean for Women in Uganda?' in Martha Fineman, Ulrika Andersson and Titti Mattsson (eds) *Privatisation, Vulnerability and Social Responsibility: A Comparative Perspective* (Routledge 2017)

supervisors are not trained to provide the treatment required for drug dependent people on probation, and outsourcing can offer greater efficiency due to specialised skills and services.<sup>458</sup> Whilst this can dilute accountability, Fineman argues the state is accountable for vulnerabilities created both externally and internally.<sup>459</sup> Ultimately, whilst further clarification on Fineman's version of the responsive state would be desirable,<sup>460</sup> the state should at least hold responsibility for managing the relationships between private and public entities, ensuring the vulnerable subject is heard and the lived experience is appreciated. Thus, they are in the best position to overcome difficulties in partnerships between the state, market and civil society agencies.<sup>461</sup> Accordingly, this chapter advocates for the state to adopt a thick supervision model. In the context of probation work, this seeks to prioritise the relationships between welfare professionals and its clients.<sup>462</sup> Firstly, the discussion explores the capacity for care within probation work, before moving on to Dominey's concept of thick supervision.

### **3.3 Probation as a Caring Institution**

Care is a central aspect of human life, a concept which is complex and multidimensional.<sup>463</sup> The philosophy of care directly interlinks with the vulnerability analysis, being perceived as complimentary and harmonious in responding to vulnerability.<sup>464</sup> Caring includes everything that we do to maintain, continue and repair a world,<sup>465</sup> mirroring Fineman's life course perspective as well as the overall aims of probation work. However, there is a considerable link between care and global justice, and arguably some of the inequalities faced today are often in the area of care.<sup>466</sup> As caring has extended beyond the general caring profession, it should be seen as a matter of global politics<sup>467</sup> which requires an assessment into how

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<sup>458</sup> Musoke (n 457)

<sup>459</sup> Fenton (n 431)

<sup>460</sup> Gear (n 84)

<sup>461</sup> Hans Boutellier and Ronald Van Steden, 'Governing Nodal Governance: The 'Anchoring' of Local Security Networks' in Adam Crawford (ed) *International and Comparative Criminal Justice and Urban Governance: Convergences and Divergences in Global, National and Local Settings* (CUP 2011)

<sup>462</sup> Matt Tidmarsh, *Probation Governance, Identity and Practice: Making, Unmaking, Remaking* (1<sup>st</sup> edn, Routhledge Forthcoming)

<sup>463</sup> Sandra Laugier, 'Politics of Vulnerability and Responsibility for Ordinary Others' (2016) 17(2) *A Journal of Philosophy and Social Theory* 207, 218

<sup>464</sup> Browne and others (n 243)

<sup>465</sup> Joan Tronto, 'Creating Caring Institutions: Politics, Plurality and Purpose' (2010) 4(2) *Ethics and Social Welfare* 158, 160

<sup>466</sup> Laugier (n 463) 219

<sup>467</sup> Browne and others (n 243) 13

effective institutions – here, the probation service - are at providing good care or not.<sup>468</sup> This requires a therapeutic approach that places the concept of caring as fundamental to probation work, rather than perceiving it as extra or additional to the other responsibilities within supervision work.<sup>469</sup> In considering how to support drug users on probation, it is essential to analyse whether probation functions as a caring institution, looking at the relationship between vulnerability, care and the ethics of care.

Creating a caring institution requires three elements to be satisfied; the purpose of care, a recognition of power relations and the pluralistic tailoring of care to meet individuals' needs.<sup>470</sup> These building blocks have been built around the model of the family, which has traditionally been viewed as a caring unit. However simply mimicking the family will not suffice, as caring in institutions must be viewed differently, focussing on the power imbalance and politics of care, ensuring there are clearly defined purposes for delivering care.<sup>471</sup> It follows that communication ethics must be adopted to ensure collaboration, essential to a thick model of support.<sup>472</sup> Caring has been built around those who are “vulnerable”, in the broadest understanding of the term, and requires tailored support, justifying Fineman's vulnerability analysis calling for differential treatment based on individual needs.<sup>473</sup> As probation work is currently built upon rigid practices and guidelines, it can prevent a wholly pluralistic approach by limiting or restricting diversity of ideas and through enforcing uniformity. As such, we can consider how the ethics of care can transform probation work for both individual supervisors and agencies providing treatment services by valuing variety and flexibility and recognises that meeting individual needs requires balancing competing values.

### **3.3.1 The ethics of care**

The ethics of care is built upon moral underpinnings and focuses on meeting the needs of those for whom we take responsibility.<sup>474</sup> It recognises that we are all dependent on care

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<sup>468</sup> Tronto (n 465)

<sup>469</sup> ibid

<sup>470</sup> ibid 162

<sup>471</sup> Ibid 465

<sup>472</sup> ibid 167

<sup>473</sup> Robert E Goodin, *Protecting the Vulnerable: A Re-analysis of our Social Responsibilities* (University of Chicago Press, 1985)

<sup>474</sup> Virginia Held, *The Ethics of Care: Personal, Political and Global* (OUP 2005) 10

and is underpinned by our moral responsibility to provide this care reconceptualising this as something that is not just expected within the family unit, but that there are greater social and political advantages of adopting an ethics of care model in a wider institutional context.<sup>475</sup> Within this context, an ethics of care seeks to address, rather than neglect, moral issues often associated with unequal or dependent relations and focuses on the concept of the person as relational, rather than self-sufficient.<sup>476</sup> This moves away from liberal politics that sees the person as an autonomous relational person and instead characterises people as interdependent.<sup>477</sup>

The ethics of care model has been closely associated with research surrounding vulnerability, and arguably it has changed the way we view vulnerability to ensure greater focus on responding to the 'ordinary' human condition,<sup>478</sup> or in Fineman's words, our universal vulnerability. There are core similarities in these concepts and the foundations of the two approaches appear to be built on similar grounds.<sup>479</sup> Both care ethics and vulnerability emphasise the importance social relationships and networks, and the impact this can have on the individual.<sup>480</sup> The focus on dependency has been explored in Fineman's work considering resilience, or derivative dependency and how asset conferring institutions can enable us to withstand harms or extend disadvantage through power and privilege.<sup>481</sup> Similarly VT can be positioned within the ethics of care model as it appreciates the confines of the liberal subject, demanding a movement away from the autonomous individual to instead appreciate our universal vulnerability justifying differential treatment based on individual need.<sup>482</sup> Therefore, adopting an ethics of care model and aligning this with Fineman's VT seeks to go beyond the idea of care as exceptional and instead considers mutual vulnerability.<sup>483</sup>

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<sup>475</sup> Held (n 474) 13

<sup>476</sup> ibid 11

<sup>477</sup> ibid 11

<sup>478</sup> Laugier (n 463) 208

<sup>479</sup> Erinn Gilson, *The Ethics of Vulnerability: A Feminist Analysis of Social Life and Practice* (1st edn, Routledge 2013) 3

<sup>480</sup> Dominey and Canton (n 418)

<sup>481</sup> Fineman (n 36)

<sup>482</sup> ibid

<sup>483</sup> Browne and others (n 243) 8

Looking through the lens of vulnerability and the ethics of care, this would appear to offer the ability to recognise the position of the drug user on probation, appreciating the lived human experience. It is essential to consider how the probation service can adopt such an approach and consider a whole life course perspective in providing care (here treatment support and services). Probation work has long been recognised for its moral and ethical significance and has described itself as a caring institution, an institution that provides help and support.<sup>484</sup> Whilst the values within the probation service have undergone significant changes, moving from terms such as 'advise, assist, befriend' to 'enforcement, rehabilitation and public protection' (appearing to concentrate its focus on control), it has traditionally been built upon the foundations of social work values.<sup>485</sup> The aim is to deliver justice to those on probation, whilst remembering to ensure the values of humanity, decency and tolerance are upheld,<sup>486</sup> with arguments for an framework based on human rights discourse.<sup>487</sup> The connection to social work has been recognised through the emphasis on safeguarding the vulnerable; however, these values may have become less visible due to focus on 'what works' rather than 'what's right'.<sup>488</sup> This is because the probation service are continuously working on creating a balance between care and control.<sup>489</sup> This has been an ongoing struggle, with care and control at odds with each other due to the difficulties in placing care within punitive approaches.<sup>490</sup> This is prominent within the supervisory relationship.

The supervisory relationship is key to embedding an ethics of care model. Supervising people in the community is arguably what probation work is all about, and it is at the heart of both the ethics of care and the probation service.<sup>491</sup> Supervision within the probation service, and more specifically interventions for drug using individuals on probation, requires a substantial focus on developing meaningful relationships between practitioners, clients and external agencies.<sup>492</sup> When meaningful relationships have been established,

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<sup>484</sup> Dominey and Canton (n 418)

<sup>485</sup> ibid 418

<sup>486</sup> David Garland, *Punishment and Modern Society: A study in Social Theory* (University of Chicago Press 1993)

<sup>487</sup> Loraine Gelsthorpe and Rod Morgan (eds), *Handbook of Probation* (Willan Publishing 2007) 485

<sup>488</sup> Dominey and Canton (n 418) 418

<sup>489</sup> Gelsthorpe and Morgan (n 487) 490

<sup>490</sup> Dominey and Canton (n 418) 423

<sup>491</sup> Ibid

<sup>492</sup> Trish McCulloch, 'Probation, Social Context and Desistance: Retracing the Relationship (2005) 52(1) Probation Journal 8

probationers are likely to engage more.<sup>493</sup> Framing this in the context of a dual diagnosis client, supportive relationships, continuity of care, personalised approaches and practical support are all essential ingredients to effective interventions.<sup>494</sup> This highlights the importance of interpersonal skills, crucial in building robust bonds with case managers, emphasising pro-social relationships and providing continued resources, which can ultimately influence outcomes for individuals within the CJS.<sup>495</sup> Relationships established within this context are often described as a therapeutic alliance.<sup>496</sup> Effective relationship building requires 'core conditions' such as empathy, respect, warmth and genuineness.<sup>497</sup> These relationships must be developed with practitioners who are caring and attentive to the people they supervise.<sup>498</sup> If these relationships are built upon care, rather than this being a passive process, then this can create a space for change and encourage positive outcomes for desistance.<sup>499</sup>

Yet, adopting these conditions can display tensions between 'befriending' and 'supervising', and a probation practitioners role is extraordinarily complex due to this focus on building trusting relationships and enforcing orders.<sup>500</sup> However, Canton argues that the relationship between care and control is often misunderstood, the two are not opposed but instead are interconnected and necessary.<sup>501</sup> Probation work can emanate both warmth and firmness, something that has been perceived as positive within supervision, suggesting that 'an authoritative approach is appreciated when in a supportive context'.<sup>502</sup> Subsequently this requires a balancing act, ensuring care and control work together, 'as working care-fully is likely to encourage compliance with legal requirements'.<sup>503</sup>

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<sup>493</sup> Peter Beck and Emma McGinnis, 'An Exploration of the Relationship Between Probation Supervision and Desistance: A Systematic Narrative Review' (2022) 19 *Irish Probation Journal* 97, 112

<sup>494</sup> Kendall and others (n 297)

<sup>495</sup> *ibid*

<sup>496</sup> Fergus McNeil and others, '21<sup>st</sup> Century Social Work: Reducing Re-offending: Key Practice Skills' (Social Work Inspection Agency 2005) 24 <[https://strathprints.strath.ac.uk/38070/1/21st\\_c.pdf](https://strathprints.strath.ac.uk/38070/1/21st_c.pdf)> accessed 8 August 2025

<sup>497</sup> *ibid*

<sup>498</sup> Dominey and Canton (n 418) 426

<sup>499</sup> *ibid*

<sup>500</sup> Justice and Home Affairs Committee, *Cutting Crime: Better Community Sentences 1<sup>st</sup> Report of Session 2023-24* (HL 27 2023) 220

<sup>501</sup> Canton (114)

<sup>502</sup> Beck and McGinnis (n 493) 109

<sup>503</sup> Canton (n 119) 221

A constraint to this effective supervisory relationship is the fact that people on probation are often classified as 'involuntary clients' - that is, individuals who are the recipients of welfare services but have not chosen to receive this service, typically they are mandated through a court order such as a DRR.<sup>504</sup> It may even be that these people are opposed to receiving the support but only take part because their attendance is mandatory, questioning how successful these programmes can be if the individual does not wish to receive that support. There is certainly a scale for involuntary clients; some are partially involuntary, returning to custody simply for support, whilst others choose to drop out of a DRR because they are opposed to the treatment and, as such, are on the more obvious end of involuntary. This means that probation practitioners' work is somewhat limited, and they can often face difficulties around welfare versus social control.<sup>505</sup> Supervision must work both ways, with service users feeling committed to their relationship with their supervisor.<sup>506</sup> Guidance on best practice when dealing with involuntary clients relies on a problem-solving approach.<sup>507</sup> Therefore, the value of PSCs will remain a focal point of this thesis, offering a single problem solving process for the individual to navigate rather than a fragmented system that requires multiple referrals to various services.

Furthermore, the ethics of care requires flexibility in supervision. Agency is key when considering the work of probation practitioners, and embracing co-production and participation can encourage individual, social and cultural transformation.<sup>508</sup> However, probation work generally displays a lack of individual agency. Assumptions are usually made by those in power who decide and allocate treatment based on their assessment of needs, rather than encouraging personal agency for those who receive the care.<sup>509</sup> This means that those dependent on drugs are often not trusted to have an input into their own care, which results in rigid approaches that remove the availability for people to determine their own needs.<sup>510</sup> In addition, the outsourcing of treatment means that individual choice is often

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<sup>504</sup> Chris Trotter, *Working with Involuntary Clients: A guide to Practice* (4th edn, Routledge 2023) 2

<sup>505</sup> Ibid 2

<sup>506</sup> Dominey and Canton (n 418) 425

<sup>507</sup> Trotter (n 504) 84

<sup>508</sup> Ruth Armstrong and Amy Ludlow, 'Whats so Good about Participation? Politics, Ethics and Love in Learning together' (2020) 13(2) *Methodological Innovations* <

<https://journals.sagepub.com/doi/epub/10.1177/2059799120927339> accessed 8 August 2025

<sup>509</sup> Tronto (n 465) 160

<sup>510</sup> ibid

removed and displaced onto different agencies providing support services.<sup>511</sup> This can result in individuals feeling disempowered, often reinforcing dependency.<sup>512</sup> This lack of agency means that people who need care can be marginalised<sup>513</sup> making it difficult to create meaningful relationships that need to be built on mutual trust. This demonstrates a lack of management of the relationships between private and public entities, where the state has failed to foster an environment where all perspectives are valued.

The outsourcing of support services makes it difficult for probation practitioners to embody a flexible approach, as much of the delivery of support services is beyond their control. This impedes their opportunity to reflect on the changing nature of vulnerability through a whole life course perspective. Further hindering this is the disconnect between services, with agencies generally working separately, and little communication between key parties who fail to share information.<sup>514</sup> This means that the way vulnerability has accumulated is not considered in the wider sense, with support often only addressing one particular need, for example substance use. Nonetheless, probation practitioners are often not trained drug and mental health workers and so the value of probation work and consequently the rehabilitation of those under supervision, is directly related to the use of other services and resources.<sup>515</sup> This means value must be placed on effective communication. As treatment provisions can possibly accentuate vulnerability, it is paramount that detailed information is shared as to not embed further disadvantage.

An approach that places value on the preferences of supervisees is crucial, moving away from risk assessments that exclude service users from decision-making regarding their own health and well-being.<sup>516</sup> As both care ethics and VT look for a system that responds based on individual need, there must also be a movement away from a wholly standardised model within the probation service to allow room for agency and for differential treatment.<sup>517</sup> Fineman's argument that a one size fits all strategy does not lead to substantive equality is

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<sup>511</sup> Dominey and Canton (n 418)

<sup>512</sup> Susan Baines, Chris Fox and Caroline Marsh, 'Co-creating Rehabilitation: Findings from a Pilot and Implications for Wider Public Service Reform' (2022) 69(4) *Probation Journal* 452

<sup>513</sup> Tronto (n 465) 163

<sup>514</sup> Dominey (n 59)

<sup>515</sup> Bob Broad, *Punishment under pressure* (Jessica Kingsley Publishers 1991) 23

<sup>516</sup> Dominey and Canton (n 418) 426

<sup>517</sup> *ibid*

evident within the probation service, often finding interventions like this do not work.<sup>518</sup> If the assessment of needs becomes more person-centred, allowing the individual to contribute to the narrative built,<sup>519</sup> it would give scope for the person on probation to identify their own needs and work with supervisors on how to best support them.<sup>520</sup> This works towards desistance through personalised approaches tailored to recognise individual risk factors.<sup>521</sup> More specifically, supervisors and external agencies could adopt a strengths-based method which explores in a collaborative manner the individual's abilities and their circumstances, rather than solely focussing on the immediate issue that requires the intervention e.g. drug dependency.<sup>522</sup> This revolves less around the outcome, aiming to remove the punitive measure in PSCs, and instead concentrates on 'how to do things'.<sup>523</sup>

This means supervision would no longer be passive, but instead the supervisee can play an active part, empowering the individual by looking at the skills and resources they currently have and how the practitioner can assist in developing these to get them to where they want to be with their rehabilitation.<sup>524</sup> This shifts the focus onto what is meaningful for the individual, rather than what the practitioner has assumed is meaningful. Service User Involvement (SUI) is gradually being adopted across the probation service, with key benefits at both a personal and organisational level.<sup>525</sup> These benefits include facilitating self-efficacy, feeling more self-assured as they have been given a position of responsibility as part of the SUI approach.<sup>526</sup> Social benefits, which highlight the importance of networks and communication, confer a sense of belonging and motivate people under supervision to be more social.<sup>527</sup> Furthermore, there are professional development opportunities embedded

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<sup>518</sup> Baines and others (n 512)

<sup>519</sup> Samantha Baron and Tony Stanley, 'Strengths-based approach: Practice Framework and Practice Handbook' (Department of Health & Social Care 2019) 36 <<https://assets.publishing.service.gov.uk/media/5c62ae87ed915d04446a5739/strengths-based-approach-practice-framework-and-handbook.pdf>> accessed 8 August 2025

<sup>520</sup> Dominey and Canton (n 418) 427

<sup>521</sup> Baines and others (n 512)

<sup>522</sup> ibid

<sup>523</sup> Baron and Stanley (n 519)

<sup>524</sup> ibid

<sup>525</sup> HM Inspectorate of Probation, 'Service User Involvement in the Review and Improvement of Probation Services' (Research & Analysis Bulletin September 2019) <<https://cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/32/2025/03/Service-user-involvement-in-the-review-and-improvement-of-probation-services.pdf>> accessed 8 August 2023

<sup>526</sup> ibid

<sup>527</sup> ibid

within SUI, which involve the allocation of various roles, such as taking part in council meetings and presenting proposals.<sup>528</sup> This meant that individuals became more comfortable in professional environments, received training in various areas, and had opportunities to gain qualifications.<sup>529</sup> SUI can support desistance from crime due to the various benefits outlined, offering them the ability to develop a non-criminal identity.<sup>530</sup> Fundamentally, SUI can support recovery from drug use by offering a positive focus and facilitating access to resources that strengthen individual resilience and promote autonomy, enabling those under supervision to make better, informed choices.<sup>531</sup>

Whilst TR undermined much of this SUI work, it is re-emerging and challenges such as personal commitment, lack of acceptance and difficulties in engaging others are being addressed.<sup>532</sup> Further, calls have been made for policy provisions such as the 'From Harm to Hope' Strategy to integrate SUI as an essential component, as meaningfully involving service users sets new standards for drug services across the board.<sup>533</sup> Positioning the individual in a role of responsibility, adopts a collaborative approach that advocates for agency, and displays the foundations of TJ and an ethics of care by seeking individualised responses to offending behaviour. As such, drug users on probation can, and should, have the opportunity to shape their experience of supervision, striving towards practice that appreciates the lived experience of the vulnerable subject. Ultimately, SUI advocates for a responsive state that ensures policies and practices are VT informed, through championing the voices of those who rely on them, providing an opportunity to respond to specific, individual needs.

Adopting co-creation in practice does not come without its challenges due to its complex and demanding nature<sup>534</sup> and questions of power, impact and purpose.<sup>535</sup> As we are in a period of mass supervision, there is a lack of resources and time to create meaningful relationships using co-creation.<sup>536</sup> Practitioners have enacted a risk-oriented and regimented

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<sup>528</sup> HM Inspectorate of Probation (n 525)

<sup>529</sup> ibid

<sup>530</sup> ibid

<sup>531</sup> ibid

<sup>532</sup> ibid

<sup>533</sup> Ball (n 278)

<sup>534</sup> Dominey and Canton (n 418) 426

<sup>535</sup> Armstrong and Ludlow (n 508)

<sup>536</sup> Matt Cracknell, 'Running on the Treadmill: Practitioner Experiences of Mass Supervision' (2022) 14(2) European Journal of Probation 109

form of practice to cope with increasing workloads, hindering their ability to respond to individual needs.<sup>537</sup> In light of this, adopting the ethics of care and VT requires a rethinking of assessment, sentencing and training of staff,<sup>538</sup> with a particular focus on skills of; engagement, developing relationships, curiosity and communication.<sup>539</sup> The probation service's ability to confer assets is dependent on building these strong relationships with its clients<sup>540</sup> and as such, implementing an ethics of care should be a priority. This will affirm values of care within the probation service, go beyond a standard business plan and demonstrate a commitment to be responsibly creative and persistent in care.<sup>541</sup> This would need to be a holistic approach that protects freedom and establishes a robust culture of care, which in practice focuses on reducing risk rather than displacing risk.<sup>542</sup>

### **3.4 Approaches to supervision: Thick, Thin and Problem-Solving Courts**

One model that appears to be built upon therapeutic foundations, emphasising the importance of building meaningful relationships, is 'thick supervision' which as Dominey outlines, requires strong networks and purposeful links.<sup>543</sup> Dominey's approach resonates with the work of Loader and Walker, aligning with the notion that 'thick' support i.e. working collectively, builds trust and solidarity.<sup>544</sup> Thicker, more supportive interventions have long been supported, with findings that continuity of contact can be effective within probation work due to the increasing separation of responsibilities.<sup>545</sup> This model centres on joint work, ensuring that the supervisor and other contracted agencies collaborate to provide effective holistic support. This is tiered with ensuring that the both the supervisor and key worker have a relationship with the supervisee, and prioritises the resources and willingness to support people in the community.<sup>546</sup> Dominey's work outlines that thick supervision has the ability to deliver quality probation work through embedding community (building social

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<sup>537</sup> Cracknell (n 536) 111

<sup>538</sup> Baines and others (n 512) 453

<sup>539</sup> Canton (n 119) 226

<sup>540</sup> Tidmarsh and Marder (n 42)

<sup>541</sup> Philips and others (n 9) 172

<sup>542</sup> Ibid 174

<sup>543</sup> Dominey (n 59)

<sup>544</sup> Loader and Walker (n 438)

<sup>545</sup> Peter Raynor and Mike Maguire, 'End-to-end or End in Tears? Prospects for the Effectiveness of the National Offender Management Model' in Mike Hough, Rob Allen and Una Padel (eds) *Reshaping Probation and Prisons* (Policy Press 2006)

<sup>546</sup> Dominey (n 59) 291

capital) and a human-centred approach.<sup>547</sup> This encourages ethical engagement grounded upon core values such as care and trust to support desistance.<sup>548</sup> Thick supervision is perceived as 'good practice leading to positive outcomes such as health, well-being, and community involvement as well as reducing reoffending'.<sup>549</sup> By contrast, thin supervision is an office based approach which lacks wider links to other agencies or the community.<sup>550</sup> Treatment providers and supervisors work in isolation, with supervisors taking on a role that is more managerial, without the element of support and help, as this is to be left with those providing the specialised treatment. The networks established in thick supervision are then lost, resulting in a disconnect between how supervision interacts with the wider community. Thin supervision persists within the probation service, despite evidence that probation projects are more effective when displaying 'thick' models of support i.e. collaboration between probation and other organisations.<sup>551</sup>

In practice, people on probation often find that their supervision falls somewhere between thin and thick.<sup>552</sup> A barrier in adopting thick supervision is the separation, or lack of effective joint working between supervisors and treatment services. These different agencies are perceived as working separately, with little evidence of communication between supervisors and key workers.<sup>553</sup> Given that continuity is an essential feature of effective supervisory relationships, a holistic joint approach is key.<sup>554</sup> Hence, thick supervision and the creation of meaningful relationships cannot be implemented by supervisors alone. It requires collaboration with practitioners, which does not come without challenges. Firstly, it requires all practitioners to be person-centred adopting certain qualities and skills, such as empathy and warmth<sup>555</sup> as well as therapeutic genuineness.<sup>556</sup> This has been recognised by practitioners, who recognise that quality supervision is underpinned by social work values.<sup>557</sup> This requires a high degree of training for such a mix of complex skills and personal

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<sup>547</sup> Dominey (n 59) 291

<sup>548</sup> ibid 296

<sup>549</sup> ibid 298

<sup>550</sup> ibid 292

<sup>551</sup> Raynor and Maguire (n 545)

<sup>552</sup> Dominey (n 59)

<sup>553</sup> ibid

<sup>554</sup> McNeil and others (n 496) 37

<sup>555</sup> Beck and McGinnis (n 493)

<sup>556</sup> McNeil and others (n 496) 3

<sup>557</sup> Scott Grant and Fergus McNeil, 'What Matters in Practice? Understanding 'Quality' in the Routine Supervision of Offenders in Scotland' (2015) 45(7) The British Journal of Social Work 1985

qualities<sup>558</sup> which should be a greater priority in delivering effective interventions.<sup>559</sup> Thick supervision must also appreciate and address the power imbalances within this network through clear identification of roles and boundaries within each relationship, whilst being responsive to the individuals' lived realities, or in other words, individual vulnerability.<sup>560</sup> Whilst the probation service is yet to adopt thick supervision entirely, certain initiatives such as PSCs convey the potential to reflect Dominey's work, offering a meaningful contribution towards the realization of VT.

It can be asserted that PSCs display elements of thick supervision due to their problem-solving therapeutic foundations identified in chapter two. This includes their focus on bespoke support that addresses specific factors relating to their offending behaviour, as well as recognising the increased risk factors relevant to different individuals and combining support services to address these needs. Given the increasing alignment to VT that this model adopts, and the fact that a problem-solving approach is one of the core correctional practices for rehabilitative work,<sup>561</sup> this section will consider to what extent PSCs can and do, deliver support that is both thick, and caring. This example of thick supervision in practice can serve as a precursor for a more integrated approach to vulnerability within probation work, ensuring continuity of care and a more holistic approach to treatment.

PSCs often deliver treatment in a correctional context, occurring within the context of punishment.<sup>562</sup> Arguably, this is due to theories of punishment, claiming that punishment is the natural response to crime and the most effective method in the overall reduction of criminal activity.<sup>563</sup> However, traditional punishment focussed initiatives seek to label those on probation as 'offenders' which resultantly means individuals often surrender their dignity and autonomy due to the emphasis on close monitoring and community safety.<sup>564</sup> PSCs have 'faced probation restructuring, court reforms and the impact of austerity, all of which have

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<sup>558</sup> McNeil and others (n 496) 40

<sup>559</sup> Raynor and Maguire (n 545) 31

<sup>560</sup> Beck and McGinnis (n 493) 110

<sup>561</sup> Raynor and Maguire (n 545)

<sup>562</sup> Ward and Salmon (n 425)

<sup>563</sup> *ibid* 244

<sup>564</sup> *ibid*

undermined their ability to provide holistic-community based support'.<sup>565</sup> This has limited the scope of treatment programmes within PSCs and blurred the lines between treatment and punishment. Drug users within PSCs are often dependent due to social disadvantage and limited ability to withstand harms shaped by power and privilege imbalances in asset-conferring institutions. As such, they should be granted agency in their participation in treatment programs. In turn, it is important to consider to what extent these programmes engage in punitive measures.

As outlined in chapter 2, PSCs seek to embed TJ within their model, attempting to move away from outdated and ineffective punitive measures. Treatment programmes within PSCs meet ethical standards similar to those within mental health practice, and arguably do not involve punishment in any meaningful sense.<sup>566</sup> This is open to critique as the way these treatment programmes function appears to depart from a wholly therapeutic practice and is arguably conceptualised as a form of punishment in itself.<sup>567</sup> Therefore, whilst PSCs reduce the emphasis on punishment for punishment's sake, they still carry punitive measures, relying on coercive control. This sustains the embedding of the liberal subject, reinforcing the belief that individuals have a choice in their drug use, and can make rational, self-informed decisions to abstinence. However, VT acknowledges the restrictions on an individual's ability to make rational, informed decisions when their autonomy is constrained through a lack of resources, which impact resilience.

In establishing the thick supervision model, a key theme that emerged was legitimacy and enforcement.<sup>568</sup> It was established that people on probation often comply with the requirements of their supervision to avoid enforcement/ returning to court.<sup>569</sup> This demonstrates coercive punishment rather than agency, which contradicts the idea of therapeutic alliance and is a common theme recognised amongst those under supervision. For example, Beck et al also found supervision to be a punitive experience, which adopted a

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<sup>565</sup> Carly Lightowlers and Benefer Nicole, 'Assessing the Viability of Problem-solving Courts for Criminalised Women' in Isla Masson and Natalie Booth (eds) *The Routledge Handbook of Women's Experiences of Criminal Justice* (1<sup>st</sup> edn, Routledge 2022)

<sup>566</sup> Ward and Salmon (n 425)

<sup>567</sup> *ibid*

<sup>568</sup> Dominey (n 59)

<sup>569</sup> *ibid*

controlling surveillance approach.<sup>570</sup> Whilst surveillance-based practices have been found effective towards desistance, this can also act as a barrier when it becomes too punitive.<sup>571</sup> It is important to note that the probation service, the CJS more widely, and the encouragement of the responsive state are all somewhat built upon coercion, often working with involuntary clients. As such, this discussion seeks to highlight how elements of coercion can be limited through flexibility in practice, collaboration and genuine consent.

These punitive measures have been recognised as one of the contributing factors for the failure of the first drug courts in the UK and highlight the gap between PSCs fully embodying the values of TJ. This has been due to the heavy focus on abstinence, with a punishment versus reward system often adopted, which can often fail to address the wider issues associated with drug misuse and how this interlinks with the offending behaviour displayed.<sup>572</sup> This is even though we know a focus on improving social contexts can be an effective approach to supervision.<sup>573</sup> Whilst consent is gained within most PSCs and in particular the ISC introduced in chapter two, the risk of a custodial sentence plays a significant role here.<sup>574</sup> They rely heavily on the threat of sanctions to ensure individuals comply, which somewhat lacks genuine consent.<sup>575</sup> This is also apparent within the new ISC pilot which encourages a sanction-based process, threatening custody if individuals do not comply.<sup>576</sup> This means that the competing aims of treatment and punishment can become a barrier to adequate support, and arguably, as Carr outlines, these types of support are punishment under the guise of treatment.<sup>577</sup> This can place considerable burdens on the individual, which can have detrimental consequences, hindering their recovery and undermining their health and wellbeing.<sup>578</sup>

In addition, these forms of control also have detrimental effects on the individual due to the perceptions of substance misuse on probation. Often, alcohol and drugs can be seen as

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<sup>570</sup> Beck and McGinnis (n 493)

<sup>571</sup> *ibid*

<sup>572</sup> John Collins and others (n 65) 117

<sup>573</sup> McCulloch (n 492)

<sup>574</sup> Ministry of Justice (n 41)

<sup>575</sup> Toni Carr, 'Governing Addiction: The Alcohol and Other Drug Treatment Court in New Zealand' (PhD thesis, University of Wellington 2020)

<sup>576</sup> Ministry of Justice (n 41) 7

<sup>577</sup> Carr (n 575)

<sup>578</sup> *ibid*

aggravating factors and carry stigma.<sup>579</sup> For example, participants in a New Zealand study found that the court and treatment providers within drug courts often frame them as irresponsible and label them a criminal.<sup>580</sup> In addition, using the pain analysis (i.e. this is subjective but broadly explores what causes unpleasant experiences within probation), those within the CJS already feel significant levels of shame<sup>581</sup> and judgement,<sup>582</sup> which can result in resisting rehabilitation and further suffering. Moreover, interventions from external agencies can cause pains to individuals due to hostility within their interactions, with findings that they are picking on certain individuals.<sup>583</sup> These interventions often target particular groups and can reinforce socio-cultural disadvantage.<sup>584</sup> This supports a one-track approach that means those who misuse substances must accept the consequences, rather than considering the failure in the systems of the individual's whole life course that have contributed to these offending behaviours, reinforcing a blame-based system. Whilst it is inevitable that supervision will cause various pains and gains, it is essential that stigma (which is entirely negative), process pains, and pains of external agencies are reduced to ensure we respond adequately to complex vulnerabilities.<sup>585</sup> It is essential that interventions reflect the wider community, as well as the social and personal contexts in which they are placed.<sup>586</sup>

This focus on punitive measures, as well as the removal of agency, is expanding its reach. For example, for people on probation who have been found to misuse alcohol the Alcohol Abstinence Monitoring Requirement (AAMR) has been introduced, a transdermal bracelet which monitors an individual's alcohol consumption.<sup>587</sup> This could potentially lead to the introduction of a similar tag for drug monitoring, forms of control that increase stigma and humiliation. Increasing intrusion can cause pains to those on probation due to the deprivation of liberty as well as a reduced sense of autonomy and privacy.<sup>588</sup> Conversely,

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<sup>579</sup> Lightowlers (n 422)

<sup>580</sup> Carr (n 575)

<sup>581</sup> Hayes (n 36)

<sup>582</sup> McNeil (n 30)

<sup>583</sup> Hayes (n 36)

<sup>584</sup> Lightowlers (n 422) 502

<sup>585</sup> Hayes (n 36)

<sup>586</sup> Stephen Farrall, *Rethinking What Works with Offenders: Probation, Social Context and Desistance from Crime* (Willan Publishing 2002)

<sup>587</sup> Daniel Hodges, 'Preparing Courts for Sobriety Tags' (*Inside HMCTS*, 20 May 2021) <https://insidehmcts.blog.gov.uk/2021/05/20/Preparing-courts-for-sobriety-tags/> accessed 8 August 2025

<sup>588</sup> Hayes (n 36)

there is little evidence that these forms of control reduce offending, as often they produce similar results to other community orders.<sup>589</sup> This reinforces the abstinence ideal, as Lightowlers outlines and represents a departure from a therapeutic technique, instead showing how punitive ideals are fostered and embedded within drug courts.<sup>590</sup> These mechanisms are likely to display traits correspondent to punitive measures such as hostility and resentment, instead of constructive approaches to punishment which focus on compassion and understanding.<sup>591</sup> This contradicts the key parts of probation work and TJ which should rely on voluntary compliance and helping relationships.<sup>592</sup> Therefore, so long as CJS initiatives mirror wider control imperatives, the treatment provisions currently in place for drug using people on probation is likely to be somewhat ineffective.<sup>593</sup>

This thesis argues for a renewed commitment to these programs with an emphasis on moving away from punitive coercive measures. However, long-term implementation of PSC's rely on the availability of community services, collaboration across governmental departments and collaborative multi-agency specialist programmes of treatment and supervision.<sup>594</sup> Given their dramatic departure from traditional forms of sentencing<sup>595</sup> successful implementation will require cultural changes and support towards innovation within the judiciary.<sup>596</sup> The surveillance strategies identified within PSCs which concentrate on monitoring, are in opposition to supportive relationships as they fail to place holistic assessment of needs at the heart of the initiative.<sup>597</sup> This means that surveillance focussed programmes such as this, can also be categorised as non-supportive.<sup>598</sup> Although PSCs display some elements of a therapeutic framework, they need significant modification,<sup>599</sup> and with new pilots still embodying these punitive values such as the ISC, we are yet to see a

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<sup>589</sup> Adele Harrison and others, 'Alcohol Abstinence Monitoring Requirement: Final Impact Evaluation' (MOPAC 2020) <[https://www.research.herts.ac.uk/ws/portalfiles/portal/36309686/aamr\\_final\\_impact\\_report.pdf](https://www.research.herts.ac.uk/ws/portalfiles/portal/36309686/aamr_final_impact_report.pdf)> accessed 8 August 2025

<sup>590</sup> Lightowlers (n 422)

<sup>591</sup> Broad (n 515) 23

<sup>592</sup> Ibid 19

<sup>593</sup> ibid 193

<sup>594</sup> Jennifer Ward, 'Problem-solving Criminal Justice: Developments in England and Wales (2018) 14(3) Utrecht Law Review 7

<sup>595</sup> Kempinent (n 407)

<sup>596</sup> Mentzou and Mutebi (n 397)

<sup>597</sup> Jason Ditton and Roslyn Ford, *The Reality of Probation: A Formal Ethnography of Process and Practice* (Avebury 1994)

<sup>598</sup> Beck and McGinnis (n 493)

<sup>599</sup> John Collins and others (n 65) 118

significant shift. Whilst Fineman argues for increased state intervention, this does not necessarily mean increased control, and the limitations of punitive policies in crime reduction have been consistently flagged.<sup>600</sup> Instead, PSCs should adopt a thick concept of supervision which is based on interaction, trust and mutual concern.<sup>601</sup> This paves the way for broader probation initiatives to develop, ensuring that supervision in the community is not grounded in punishment practices but instead champions collaboration within the supervisory relationship and values genuine consent. This means that 'even the most controlling practices, can and should be undertaken care-fully'.<sup>602</sup>

Whilst the introduction of voluntary treatment programmes would be beneficial here, removing practices built upon punishment is essential.<sup>603</sup> People on probation are often involuntary clients, at times unable to identify their dependency or acknowledge the need for treatment.<sup>604</sup> It is hard to see how a wholly voluntary framework could be effective but a balance can be drawn, with drug court, and consequently wider probation practices having a built-in system of support, coordination and collaboration to create a consensual treatment plan.<sup>605</sup> The supervisory relationship plays a key role here in identifying harmful drug use and supporting/recommending/and diverting clients to relevant treatment. The probation service has a significant opportunity to provide meaningful support, given their ability to work closely on an individual basis, support that is generally not feasible in the other departments of the CJS. This means that probation practitioners can be flexible. They can align with care ethics and moral practice by allowing individuals to assess their own needs and respond based on this.<sup>606</sup> This requires both reflective practice and a transparent approach to decision-making.<sup>607</sup> To positively influence engagement and retention rates within drug treatment, a therapeutic alliance must be built.<sup>608</sup> The development of these relationships relies heavily on the frequency and amount of time spent with supervisee, with

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<sup>600</sup> Broad (n 515) 23

<sup>601</sup> Loader and Walker (n 438)

<sup>602</sup> Canton (n 119) 221

<sup>603</sup> Carr (n 575)

<sup>604</sup> Trotter (n 504) 2

<sup>605</sup> John Collins and others (n 65)

<sup>606</sup> Dominey and Canton (n 418) 427

<sup>607</sup> *ibid* 428

<sup>608</sup> Petra Meier, Christine Barrowclough and Michael Donmall, 'The Role of therapeutic Alliance in the Treatment of Substance Misuse: A critical Review of the Literature' (2005) 100(3) 304

limited contact negatively affecting their relationship which can compound vulnerability.<sup>609</sup> For this relationship to function at its highest potential, perceptions towards drug use within the probation service embody care. The probation service must move away from the problematisation and negative assumptions of drug use, which are often associated with violence.<sup>610</sup> In accounting for vulnerability, it must be appreciated that not all drug use is voluntary, and these individuals are not more culpable or responsible than those who do not use drugs.<sup>611</sup> Whilst approaches vary, and in some cases, drugs are seen as mitigating factors, there is no consistent approach, and some can be regarded as selfish and reckless if drug use is linked to their offending behaviour.<sup>612</sup> This means drug use is not in itself recognised as a form of vulnerability.<sup>613</sup> Therefore, the probation service and practitioners must be guided by TJ to address the practical, social, psychological and emotional barriers associated with drug use, recognising this as a product of overlapping and interconnected vulnerabilities.<sup>614</sup> This can be delivered through collaborative intervention, empathic listening and non-judgemental attitudes.<sup>615</sup> Intervention that addresses these wider social issues is more likely to have long-lasting effects on offending behaviour.<sup>616</sup>

### **3.5 Conclusion**

As probation supervision has expanded its reach, it has become more punitive and managerial.<sup>617</sup> This has meant rehabilitative measures that should embody therapeutic practice, such as PSCs and drug treatment programmes delivered through external agencies, have adopted coercive measures to reinforce the abstinence ideal.<sup>618</sup> This falls short in

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<sup>609</sup> David Best and others, 'Fitting a Quart into a Black Box: Keyworking in quasi-coercive drug treatment in England' (2010) 17(4) Drugs, Education, Prevention and Policy 370, 379

<sup>610</sup> Carly Lightowlers and Karen Duke, 'The Framing of Contemporary Violence in Policy in England and Wales: An examination of the Contributing Roles of Alcohol and Illegal Drugs' (2024) 41(4) Nordic Studies on Alcohol and Drugs 448

<sup>611</sup> Carly Lightowlers, 'Intoxication and Sentencing: A Review of Policy, Practice and Research' (Sentencing Academy, January 2022) 7 < <https://livrepository.liverpool.ac.uk/3177574/1/Intoxication-and-Sentencing.pdf> > accessed 8 August 2025

<sup>612</sup> *ibid*

<sup>613</sup> Lightowlers and Duke (n 610)

<sup>614</sup> Lightowlers and Nicole (n 565)

<sup>615</sup> Metcalfe (n 88)

<sup>616</sup> Broad (n 515) 23

<sup>617</sup> Matt Tidmarsh, "'We'll Always go Back for More"? Probation, Precariousness, and Professional Identity' (2025) International Journal of the Legal Profession < <https://www.tandfonline.com/doi/epdf/10.1080/09695958.2025.2455986?needAccess=true> > accessed 8 August 2025

<sup>618</sup> Lightowlers (n 422)

recognising the complex and interlinked factors that can both hinder the ability to build resilience and impact the capacity to respond effectively to the drug user on probation. This can further exacerbate vulnerability when making assumptions about the clients' needs and ultimately reinforces the concept of the liberal subject. This means that drug users are seen as deserving of punishment if they do not comply, ignoring the constraints that are outside of their control. Ultimately, whilst the need for an ethics of care has been recognised for some time, it has still not been embedded into current practice.<sup>619</sup> With multiple agencies working separately to provide services within probation work, there is a lack of joint working, elements of thin supervision are present and building meaningful relationships is increasingly more difficult. If flexibility and transparency are embedded within the supervisory relationship, the probation service can deliver support that is person-centred. This requires joint working, ensuring that the supervisee sees their supervisor and external agencies as working together to provide care. As PSCs already display some elements of therapeutic work (a focus on problem solving and individual needs), if they are to embed an ethics of care within this, ensuring agency is valued and stigma is removed, they can act as one mechanism in which to deliver thick support to all drug users on probation. It is essential that any punitive measures that may remain within PSCs co-exist positively with rehabilitation, ensuring they do not undermine their rehabilitative capacity. This can then model best practice for probation work, acting as a reference point for future programmes. As such, 'the person engaged in rehabilitation must be treated as a moral subject and not as a material object to be manipulated or adjusted'.<sup>620</sup> Though it is appreciated that probation work is limited due to funding and capacity challenges, any movement forward for drug users on probation, albeit gradual, must place significant value on whose voice counts.<sup>621</sup> While completely eradicating punitive attitudes or processes may be difficult within the CJS, the probation service has the capacity to act as 'the small island of decency and humanity in the criminal justice system'.<sup>622</sup>

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<sup>619</sup> Gelsthorpe and others (n 2)

<sup>620</sup> Ferus McNeil, 'Punishment as Rehabilitation' in Gerben Bruinsma and David Weisburd (eds), *Encyclopaedia of Criminology and Criminal Justice* (Springer 2014)

<sup>621</sup> Armstrong and Ludlow (n 508)

<sup>622</sup> Bean (n 424) 173

## Conclusion

‘The provision of healthcare to people serving a community sanction is clearly inadequate’.<sup>623</sup> The delivery of treatment in this context has faced ongoing challenges in relation to resources.<sup>624</sup> Given the increased risk factors those under supervision face, combined the minimal attention paid to the deaths of drug users on probation, a greater commitment to support is crucial.<sup>625</sup> This thesis has introduced VT as a promising framework to shape probation work (and wider criminal justice agencies) and prevent these deaths, through the promotion of agency, linking ‘vulnerability to an enhanced capacity to care’.<sup>626</sup> Therefore, transformative proposals must make space for the voices of people who use drugs, instead of continuously enclosing them from policy deliberations.<sup>627</sup>

Chapter one explored the appeal of a vulnerability perspective and its ability to enhance social policies and offer new insight into risks, and our ability to withstand such risks.<sup>628</sup> Whilst this thesis appreciates the ambiguity of vulnerability, it is widely understood to be an inherently shared condition, and ‘harmful use of vulnerability can exacerbate inequality and oppression’.<sup>629</sup> Fineman’s VT provided clarity here, acting as a platform on which practices within the probation service can be built. This requires consideration of the varied and unique embodiment of vulnerability, finding that the vulnerable subject is not a victim but simply the natural state of being.<sup>630</sup> As the vulnerable subject is dependent on resources to respond to and withstand harms, the discussion finds that the probation service can confer these assets due to its ability to mediate, compensate and lessen vulnerability of those on probation.<sup>631</sup> This means that they are well-placed to support drug users by helping them to overcome adversities and provide resources to address structural disadvantage. If the probation service adopts an approach that considers the varied, lived and individual

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<sup>623</sup> Jake Philips, Nicola Padfield and Loraine Gelsthorpe, ‘Suicide and Community Justice’ (2018) 6(14) *Health and Justice* <<https://doi.org/10.1186/s40352-018-0072-7>> accessed 8 August 2025

<sup>624</sup> Melissa Bull, ‘A Comparative Review of Best Practice Guidelines for the Diversion of Drug Related Offenders’ (2005) 16(4) *International Journal of Drug Policy* 223

<sup>625</sup> Philips and others (n 623)

<sup>626</sup> Browne and others (n 243) 9

<sup>627</sup> Stevens (n 349)

<sup>628</sup> Misztal (n 38)

<sup>629</sup> Erin Gilson, ‘The Problems and Potentials of Vulnerability’ in Victoria Browne, Jason Danely and Doerthe Rosenow (eds), *Vulnerability and the Politics of Care: Transdisciplinary Dialogues* (London British Academy 2021)

<sup>630</sup> Fineman and Grear (n 235)

<sup>631</sup> Fineman (n 47)

conditions that have hindered their ability to foster individual resilience in the first instance, they hold the ability to at least somewhat mitigate the fatal consequences of drug misuse whilst under supervision.<sup>632</sup>

Chapter two continued to highlight the inconsistencies surrounding vulnerability in policy. The concept of vulnerability has been considered for some time in wider policy provisions, often displaying a difficult relationship with power, and can be used a means of establishing obedience.<sup>633</sup> This creates a divide between the vulnerable and invulnerable (or the myth of invulnerability).<sup>634</sup> The changing landscape of vulnerability means that it has been difficult to adopt a universal approach to the vulnerable subject. Policies often adopt an equality-based stance, currently the only universal understanding of vulnerability, with little to no acknowledgment of the embodied experience. Despite this emergence of the vulnerable subject in drug policy, it refers to vulnerable groups, failing to consider the structural disadvantages and social marginality that has impacted those at risk or engaged in drug use.<sup>635</sup> This means that policy must consider differences, accounting for the lived, whole life course perspective of the vulnerable subject. However, understanding the vulnerable subject on probation is complex, with individuals often needing dual diagnosis treatment and support, requiring substantial resources and training. A starting point at least is to consider how vulnerability is experienced, reducing stigma and instead considering the harms in which the drug user on probation suffers.<sup>636</sup> This means diverting away from negative perceptions of drug use and deviance which assume the individual is autonomous and voluntary in their addiction, and instead recognising drug use as source and product of vulnerability.<sup>637</sup>

‘Orienting the state to be responsive to the vulnerable subject requires dedication to a different set of values than those traditionally built around the liberal subject.’<sup>638</sup> Chapter three calls for an active state but remains cautious when considering its scope and the risk of

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<sup>632</sup> Willem de Lint (n 4) 161

<sup>633</sup> Rahul Rao, ‘The Terror of Invulnerability’ in Victoria Browne, Jason Danely and Doerthe Rosenow (eds), *Vulnerability and the Politics of Care: Transdisciplinary Dialogues* (London British Academy 2021)

<sup>634</sup> *ibid*

<sup>635</sup> Brown and Wincup (n 49) 23

<sup>636</sup> *Ibid* 25

<sup>637</sup> Lightowlers and Duke (n 610)

<sup>638</sup> Fineman (n 47)

undue paternalism and state overreach.<sup>639</sup> With mass supervision ever present, and increasing displays of punishment practices, it is essential that vulnerability influences social policy, without increased control. However, this thesis found that approaches to drug treatment are built upon control, reinforcing the abstinence ideal.<sup>640</sup> Current practice departs from a therapeutic approach and implements punitive reinforcement, risking harsher sentencing and questioning how effective these punishment-based practices are.<sup>641</sup> Instead we must move beyond vulnerability simply being addressed in drug policy and instead embed caring into everyday practice. In light of this, chapter three frames Fineman's VT within an ethics of care model. The probation service arguably is an organisation within the CJS that provide care, and they must do so 'in a caring way in difficult circumstances'.<sup>642</sup> This goes beyond practitioners traditional duty of care, centring their work 'around the moral salience of attending to and meeting the needs of others for whom we take responsibility'.<sup>643</sup> Dominey's concept of thick supervision, adopting a joint, person centred approach that values agency provides a clear foundation for this.<sup>644</sup> Support for the drug user on probation must not be shaped by standardised practices but should account for the individual, their circumstances and their right to choice over their health care.<sup>645</sup> This means care givers, i.e. probation practitioners, should be given adequate resources to provide this care. However, placing caring at the centre of probation does not come without its challenges.<sup>646</sup> The probation service is struggling, they feel heavily constrained and suffer staff shortages and gaps in services.<sup>647</sup> The HM Inspectorate of Probation have concluded that leadership, staffing and services all require improvement,<sup>648</sup> meaning that the resources and opportunities required for such a transformation are limited.<sup>649</sup>

Questions arise concerning whether probation is best placed for care when the concept of caring seems to fit poorly with the underpinnings of criminal justice.<sup>650</sup> How this interacts

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<sup>639</sup> Loader and Walker (n 438)

<sup>640</sup> Lightowlers (n 422)

<sup>641</sup> *ibid*

<sup>642</sup> Dominey and Canton (n 418) 428

<sup>643</sup> Philips and others (n 9) 173

<sup>644</sup> Dominey (n 59)

<sup>645</sup> Dominey and Canton (n 418)

<sup>646</sup> *ibid* 428

<sup>647</sup> HM Chief Inspector of Probation (n 35)

<sup>648</sup> *ibid*

<sup>649</sup> Dominey (n 59)

<sup>650</sup> Dominey and Canton (n 418)

with punishment, and whether criminal acts deserve care are substantive points for debate.<sup>651</sup> Whilst these appear to be relevant concerns, the concept of an ethics of care model contests this. Care and caring are fundamental to the human condition and the ethics of care finds the notion of care to be a universal shared responsibility. As outlined within this thesis drug users on probation have complex needs. Their vulnerabilities are often completely exposed when on probation, being at their most fragile, and it is essential they do not become “invisible humans”.<sup>652</sup> That is to say, ‘it is bad enough that the world in which we live has so much deprivation of one kind or another...it would be even more terrible if we were not able to communicate, respond and altercate’ for all.<sup>653</sup> As ‘caring and consistent relationships create the space for change’<sup>654</sup> we must recognise those within the CJS as fellow citizens and human beings, in which opportunities for development must be meaningful.<sup>655</sup> Vulnerability can be defined by responsiveness, and effective responses can only be delivered if we make space for people to voice their experience of vulnerability.<sup>656</sup> This requires a greater focus on the initial probation values of advise, befriend and assist,<sup>657</sup> and requires sufficient flexibility which should be underpinned by moral justification.<sup>658</sup> As vulnerability is intertwined with care, adopting care ethics within probation encourages a practice which promises to align with both ethical practice and the motivations which inspire probation staff, bringing integrity to probation work.<sup>659</sup> If probation work diverts its attention to care, as this thesis calls for, it will ‘require a fundamental rethinking of what it means to be a law enforcement agency’ and how we perceive and respond to deviance and drug misuse.<sup>660</sup> Beyond this, ‘drug diversion involves, at its core, cooperation and partnership between criminal justice, treatment, education and social/welfare sectors.’<sup>661</sup> Unless this

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<sup>651</sup> Dominey and Canton (n 418) 420

<sup>652</sup> Laugier (n 463)

<sup>653</sup> Amartya Sen, *The Idea of Justice* (Harvard University Press 2009) 415

<sup>654</sup> Dominey and Canton (n 418) 425

<sup>655</sup> Sharon Dolovich, ‘Creating the Permanent Prisoner’ in Charles J Ogletree and Austin Sarat (eds) *Life Without Parole: America’s New Death Penalty* (New York University Press 2012)

<sup>656</sup> Gilson (n 479) 177

<sup>657</sup> Philips and others (n 9) 174

<sup>658</sup> Bean (n 424) 155

<sup>659</sup> Dominey and Canton (n 418) 429

<sup>660</sup> Karen Mills, ‘Reducing Drug-related Deaths: The Responsibility of NOMS?’ (2004) 51(4) Probation Journal 407, 412

<sup>661</sup> Bull (n 624)

becomes a united approach, collectively adopting a clear stance on vulnerability such as Fineman's VT, political responses will not be effective and systemic change will not occur.

Future research can build upon this work by exploring in further detail the causes of deaths of those on probation, ensuring these deaths are given the attention they deserve.

Availability of more data would allow an in-depth study of the vulnerabilities that the drug user on probation faces. This could be through the collection and analysis of empirical research, focussing on the shocks/risks associated with drug use and the impact of probation supervision. Findings of this quality could shape policy and influence the probation service's response when accounting for vulnerabilities, through using an approach that embodies an ethics of care. Nonetheless, systemic transformation requires an approach that is extended beyond probation work, considering all asset conferring institutions and their ability to 'mediate, compensate and lessen our vulnerability'.<sup>662</sup>

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<sup>662</sup> Fineman (n 47)

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