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Beyond the Prison Gate:  
Licencees' Perceptions of the  
Legitimacy of Power Holders

A thesis submitted for the degree of Doctor of Philosophy

School of Law

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# ABSTRACT

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In England & Wales, the number of people leaving prison subject to a period of supervision in the community has almost doubled in the last decade. The significant and consistent upward trend in the number of people 'on licence' has been accompanied by another notable trend: an increasing number of people being recalled to prison for breaching the terms and conditions of their licence. Yet, despite these two important trends, there has been a dearth of research on post-custodial supervision.

This thesis explores post-custodial supervision from the perspective of those on licence. In particular, it explores licencees' perceptions of the legitimacy of probation and hostel workers, and considers how these perceptions were shaped. Understanding licencees' perceptions of the legitimacy of power holders is important, since previous research has consistently identified a relationship between people's perceptions of power holder legitimacy and their willingness to comply with rules and cooperate with those in power.

Empirical fieldwork was conducted in three Approved Premises in England, including periods of observation and interviews with hostel residents and members of hostel staff. Based on this fieldwork, I identified two fundamental sources of power holder legitimacy: procedure-based and outcome-based legitimacy. Overall, I argue that licencees' perceptions of procedure-based legitimacy were pivotal, since they formed the basis of constructive relationships between licencees and power holders (e.g. probation and hostel workers). In turn, these relationships could play a significant role in helping licencees to reintegrate into their communities, thus contributing to licencees' perceptions of power holder outcome-based legitimacy.

The thesis rides on a tide of legitimacy research that has already served to illuminate the fields of policing and other forms of penal sanction. While research to date has primarily utilised quantitative data to explore perceptions of legitimacy, the current research highlights the role that qualitative data can play in this regard. The thesis aims not only to increase our understanding of a neglected area of penology, but also to contribute to the development of theories of legitimacy.



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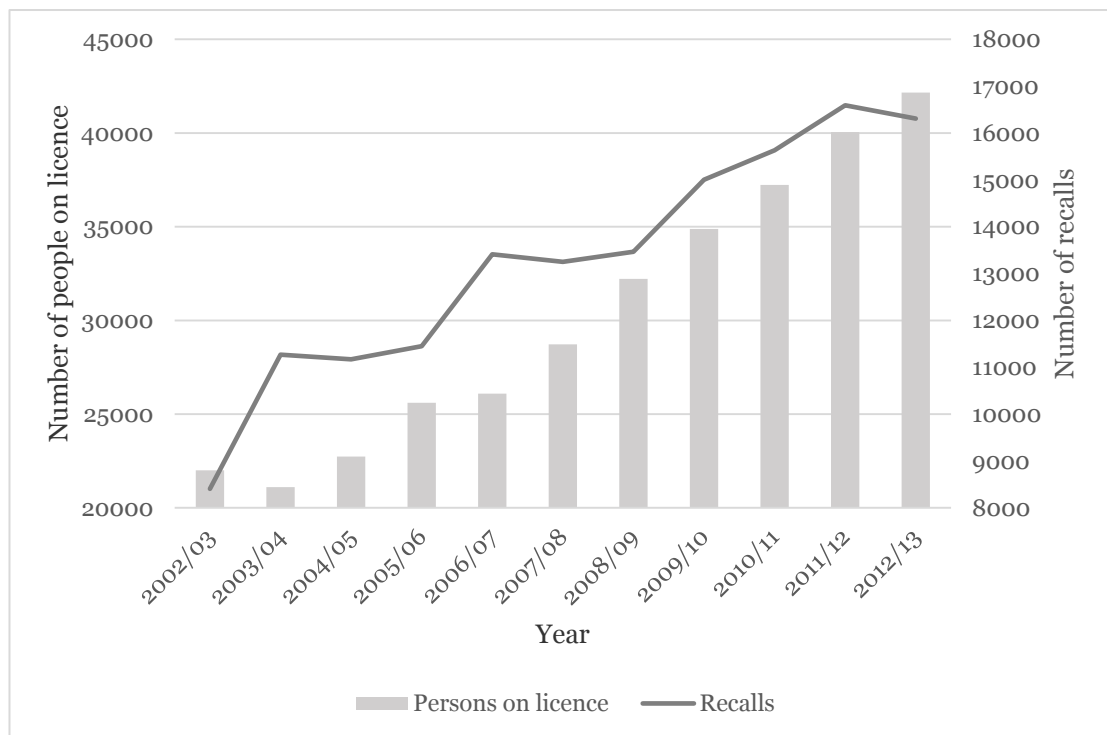
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# Chapter One

## INTRODUCTION

In England and Wales, the number of people leaving prison subject to a period of supervision in the community has almost doubled in the last decade (Ministry of Justice, 2015b). The significant and consistent rise in the number of people ‘on licence’ during this time has been accompanied by another notable trend: an increasing number of people being recalled to prison for breaching the terms and conditions of their licence (see Figure 1.1).

*Figure 1.1: Number of people on licence and number of licence recalls, England & Wales, 2002-2013*



Source: Ministry of Justice (2014b), Table 5.1; Ministry of Justice (2014c), Table A4.13

Yet, despite these two important trends, there has been a dearth of research on post-custodial supervision. While numerous studies have examined penal sanctions (such as imprisonment and community penalties) from the perspective of those subjected to these sanctions, little is known about the post-custodial licence period from the perspective of those on licence. It is important to fill this gap in the

literature because, as I will argue throughout this thesis, there are good reasons for listening to the voices of those subjected to penal sanctions.

Since the early 1990s, an important trend has also occurred in the field of criminal justice research. A seminal study by Tyler (1990) on legitimacy and policing led to a considerable expansion in the amount of research utilising the concept of legitimacy, particularly during the last ten years. One of the main reasons for the increasing popularity of this concept is that studies have consistently demonstrated a link between people's perceptions of the legitimacy of power holders, and the likelihood that people will comply and cooperate with those in power (Hough et al., 2010; Jackson et al., 2012; Tyler, 1990; Tyler and Huo, 2002).<sup>1</sup> By using theories of legitimacy to inform relevant policy and practice, governments in a number of US states have secured more efficient and effective policing by encouraging higher levels of public compliance and cooperation with the police (see Mazerolle et al., 2011, 2012, 2013; Myhill and Quinton, 2010; Wheller et al., 2013).

As with policing, the concept of legitimacy has the potential to improve our knowledge and understanding of penal sanctions. In relation to supervision in the community,<sup>2</sup> cooperative and constructive relationships between licencees and their probation workers are more likely to materialise, the more that licencees perceive these power holders to be legitimate. This is important, given that successful reintegration and lower rates of reoffending are associated with high quality relationships between probation workers and their clients (Burnett and McNeill, 2005; Raynor et al., 2014; Shapland et al., 2012; Weaver and Barry, 2014; Wood et al., 2015). Moreover, if policy and practice in this area were underpinned by theories of legitimacy, this could potentially contribute to reduced rates of recall, since the implications of extant research on legitimacy are that licencees would be more likely

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<sup>1</sup> Some of Foucault's ideas about power have problematised the use of terms such as 'power holders' and 'power subjects'. Foucault (1982[2010]) argued that power should not be conceptualised as an entity that can be held by certain parties, but as a relationship in which the dominant rarely control the dominated in an absolute or straightforward way. With Foucault's objections in mind, I have been mindful not to create an overly simplistic depiction of people who, in an absolute sense, either hold or lack power. Yet, I think the terms 'power holder' and 'power subject' have helped me to provide a clear and accurate analysis of the empirical data generated by the current research. While the 'power holders' involved in the research (e.g. probation and hostel workers) might dislike being described in this way, I think it is worth highlighting that licencees often portrayed themselves as people who were relatively powerless, compared with probation and hostel workers who were 'in control'. My use of the terms 'power holders' and 'power subjects' throughout this thesis, therefore, provides a means of conveying licencees' accounts in a way that closely reflects their own experiences and views.

<sup>2</sup> The term 'supervision in the community' is intended to incorporate all forms of post-conviction community sentences, as well as post-custodial sanctions; the justification for choosing this label over others is discussed in Chapter Three.

to comply with their licence conditions, the more that they perceive those conditions and the power holders responsible for their implementation to be legitimate (see Dai et al., 2011; Sunshine and Tyler, 2003; Tyler, 1990, 2010; Tyler and Huo, 2002).

Put simply, this thesis explores the post-custodial licence period from the perspective of those on licence, and through a lens of legitimacy. In doing so, it begins to fill a gap in the criminal justice literature that contains numerous studies on people's experiences and views of imprisonment and community sanctions, but a paucity of studies on post-custodial supervision. The thesis rides on a tide of legitimacy research that has already served to illuminate the areas of policing and other forms of penal sanction. It aims not only to increase our understanding of a neglected area of penology, but also to contribute to the development of theories of legitimacy.

## **1.1 Setting the scene**

In England and Wales at the end of January 2015, the prison population stood at 83,680 (Ministry of Justice, 2015c). The vast majority of these people will be released from prison subject to a post-custodial licence.<sup>3</sup> In a literal sense, a licence is a document containing a number of conditions by which a released prisoner is expected to abide for a specified period of time. Until recently, all licencees were assigned a probation worker who supervised them for the duration of their licence period. As a result of the Offender Rehabilitation Act 2014, however, Community Rehabilitation Companies are now responsible for supervising licencees deemed to pose a low or medium risk of serious harm. Furthermore, provisions of this Act, which came into force on 1<sup>st</sup> February 2015, extend post-custodial supervision to people receiving sentences of less than 12 months' imprisonment; previously, these people would have been released at the halfway point of their sentence without supervision (see HC Deb, 2015; Ministry of Justice, 2015a). The effect of this change will be to dramatically increase still further the number of people on licence in future years.

The goals of the licence period, as defined in legislation, are as follows: i) the protection of the public, ii) the prevention of re-offending, and iii) securing the successful reintegration of the prisoner into the community (Criminal Justice Act

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<sup>3</sup> The precise proportion of people who will be released on licence will depend on Parole Board release decisions for those serving indeterminate sentences, as well as re-release decisions for those who have been recalled to prison for breaching their licence.

2003, s.250 (8)). Some commentators, however, have offered a more cynical view of 'early-release' licence schemes, suggesting that their purpose is primarily pragmatic: to reduce the cost of the criminal justice system by decreasing the amount of time people spend inside prisons (Cavadino and Dignan, 2007; Cox et al., 2014; Morris and Beverly, 1975). Given the significant difference between the cost of community supervision and imprisonment – the average annual cost per person supervised on licence is £2,620, whereas the average annual cost per prisoner is £34,766 (Ministry of Justice, 2013b, 2013c) – it seems inevitable that resource considerations will be major factors that influence the decisions of policy makers in this area.

Every person on licence is subject to six or more licence conditions. The six standard licence conditions include the following requirements: to attend regular supervision sessions with a probation worker, to notify a probation worker of any changes to accommodation arrangements or employment, and to be 'well behaved' (Ministry of Justice, 2015a; see Appendix I for a full list of standard licence conditions). If a probation worker does not think that these six conditions are sufficient to achieve the goals of the licence period in a particular case, they are authorised to recommend additional individualised conditions which are signed and formally authorised by the governor of the prison from which the licensee was released (HM Prison Service, 2012). Over thirty additional conditions are listed in the relevant Probation Instruction (Ministry of Justice, 2011). These conditions are divided into a number of categories, including: i) prohibited activity requirements (e.g. not to own or possess a mobile phone with a photographic function); ii) prohibited contact requirements (e.g. not to seek to approach or communicate with a particular person); iii) programme requirements (e.g. to comply with any programmes that aim to address alcohol, drugs, gambling, solvent abuse, or anger problems); and iv) exclusion requirements (e.g. not to enter specific geographic areas) (see Appendix II for full details of additional conditions).

Despite all licencees being subject to the same six standard conditions, therefore, the onerousness of an individual licence can vary significantly depending on the addition of bespoke conditions. Probation workers can seek to employ additional conditions only in cases where these are necessary and proportionate to the risk of serious harm posed by the licensee. Moreover, wherever possible, additional conditions should constitute the least onerous and intrusive means of addressing risk (Ministry of Justice, 2011: 6). Consequently, it is high-risk licencees who are subject to the most onerous post-custodial licence conditions. All of the licencees



who participated in the current research, for example, were required to live in Approved Premises<sup>4</sup> on their release from prison – the sites in which I conducted the fieldwork for the current research – due to their high-risk status.

Aside from an increasing number of people on licence, another important trend has occurred in relation to rates of recall. Between 1999 and 2004, the number of licencees recalled to custody each year increased from 1,272 to 11,268 – an increase of 786 percent (Ministry of Justice, 2014c). While the increase in recall rates was less pronounced over the following decade, the number of people recalled to prison nevertheless increased from 11,268 in 2004 to 17,515 in 2014 (Ministry of Justice, 2015b). If a person breaches their licence – either by committing a further offence or violating one of its conditions – then (s)he faces the possibility of being recalled to prison; the subsequent duration spent in prison depends on the type of recall that has been initiated.<sup>5</sup>

Recalls to prison are undesirable for a number of reasons. First, they mark an immediate failure to achieve one of the key purposes of the licence period: the successful reintegration of someone back into the community. Recalls also have the potential to significantly damage people’s future prospects of achieving this goal, since they can cause major disruption to any positive progress that has been achieved in areas such as accommodation, employment, personal relationships, and substance abuse. Therefore, recalls can cause a great deal of anger and resentment on the part of someone on licence, particularly if this person regards the reason underpinning the recall to be a relatively minor ‘technical’ breach of licence conditions, as opposed to the commission of a further offence. Moreover, recalls impose a significant burden on public resources. As noted above, the cost of imprisonment is significantly higher than the costs of post-custodial supervision, aside from the additional costs of the administrative and quasi-judicial work of Parole Board members, who are responsible for hearing appeals and making decisions regarding re-release.

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<sup>4</sup> Approved Premises are hostels that provide an enhanced level of supervision for people released from prison on licence; discussed further in Chapter Three.

<sup>5</sup> At the time of writing, there were three different types of recall: i) fixed term recall (returned to prison for 28 days before being released to serve the remainder of the sentence on licence); ii) standard recall (case sent to Parole Board automatically after 28 days; release is either immediate, a release date is set within one year, or no release decision is made and a review of the case is made within one year); and iii) extended sentence recall (case sent to Parole Board within 14 days; release is either immediate, a release date is set within one year, or no release decision is made and a review of the case is made within one year) (HM Prison Service, 2005).

Padfield and Maruna (2006) ruled out the possibility that recently increasing recall rates are due to any substantial change in the behaviour of people on licence (c.f. Reitz, 2004). Similarly, whilst they drew attention to the ‘almost impossible situation’ people typically faced when leaving prison – with those released typically having ‘little more than a bus pass, £50 in gate money and a colossal stigma’ – they suggested that this was not a new conundrum faced by released inmates (Padfield and Maruna, 2006: 337). Instead, they highlighted the adverse release conditions that licencees have faced historically, as the following quotations illustrate:

*When one thinks that this prejudice and marking of discharged prisoners robs them of any chance of gaining a living, and in many instances forces them back against their will into a dishonest career, one can realize how truly tragic the situation is.*

Booth (1903: 119)

*The released offender confronts a situation at release that virtually ensures his failure.*

McArthur (1974: 1)

Padfield and Maruna suggested some alternative causes of the sharp increase in recall rates between 1999 and 2004, with the main contributor being a change in enforcement practices (c.f. Solomon, 2005). In particular, they highlighted that the recall process has shifted from a court-based process which included all the associated due-process requirements, to an executive procedure that saves the state significant time and resources. Furthermore, the development of intensive surveillance technologies (e.g. electronic monitoring and urine testing) and closer cooperation between criminal justice agencies (e.g. the probation and police services) has sharply improved detection capabilities in relation to licence violations (Nellis and Chui, 2003). Finally, they stressed the substantial transformation of the probation service’s traditional social service orientation into one that focuses predominantly on managing risk and protecting the public.

A freedom of information request that I made regarding recalls in two prisons<sup>6</sup> during the last two years revealed some telling statistics about the reasons

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<sup>6</sup> The selection of these two prisons was based on the fact that the majority of the licencees involved in the current study had been released from these institutions. The Ministry of Justice rejected an earlier freedom of information request relating to recalls across the whole prison estate on the grounds that it would take a disproportionate amount of time and resources to collate these data. It is impossible to know whether these figures are

underpinning recalls (see Table 1.1, below). The two recall portraits for each prison are broadly analogous; there were four main reasons for recalling licencees to prison. The fourth most common reason was a licencee being ‘out of touch’ with their probation worker. The third was licencees’ failure to reside in approved accommodation.

*Table 1.1: Number and rate of reasons for recall in two prisons in England & Wales, 2012-13<sup>7</sup>*

<b>Reason for Recall</b>	<b>Prison A</b>			<b>Prison B</b>		
	2012	2013	<b>Total</b>	2012	2013	<b>Total</b>
Accumulated Absences	- -	6 1%	<b>6</b> <b>1%</b>	- -	- -	- -
Curfew	7 2%	8 2%	<b>15</b> <b>2%</b>	- -	- -	- -
Equipment tamper	9 3%	7 2%	<b>16</b> <b>2%</b>	- -	- -	- -
Failure to reside	48 14%	49 12%	<b>97</b> <b>13%</b>	15 15%	20 19%	<b>35</b> <b>17%</b>
Failed induction	- -	- -	- -	- -	- -	- -
Loss of accommodation	- -	- -	- -	- -	- -	- -
Out of touch	41 12%	42 10%	<b>83</b> <b>11%</b>	16 16%	15 14%	<b>31</b> <b>15%</b>
Poor behaviour	126 37%	178 43%	<b>204</b> <b>40%</b>	34 34%	50 47%	<b>84</b> <b>41%</b>
Travel abroad	- -	- -	- -	- -	- -	- -
Further charge	101 30%	124 30%	<b>225</b> <b>30%</b>	20 20%	21 20%	<b>41</b> <b>20%</b>
<b>Total Recalls</b>	<b>341</b>	<b>416</b>	<b>757</b>	<b>89</b>	<b>107</b>	<b>196</b>

Source: Ministry of Justice (2014d)

representative of national recall statistics in 2012-2013. Nevertheless, they do provide useful contextual information when thinking about licencees’ accounts of the recall process in the current research.

<sup>7</sup> The blank cells represent values of fewer than five people; these figures were removed from the data in order ‘to prevent the disclosure of individuals’ (Ministry of Justice, 2014d).

The second was the commission of a further offence, which accounted for around one in three recalls in Prison A and one in five recalls in Prison B. Notably, the most common reason for recall was 'poor behaviour' – this accounted for the recalls of around two in five people in both prisons.

A publication by the Ministry of Justice (2011: 5) notes that the scope of the standard 'good behaviour' licence condition has been left open in order to cover 'the majority of eventualities' and 'the majority of risks in the community'. It is worth bearing these reasons for recall in mind, particularly given that many licencees felt that they could be recalled for 'almost anything' – a factor that had significant implications for their perceptions of the legitimacy of their probation workers (see Chapter Six).

## **1.2 Justifying the use of a lens of legitimacy**

There are two main reasons which supported the adoption of a lens of legitimacy in the current research. First, to recap on a point outlined above, studies have found that people's willingness to comply and cooperate with power holders are significantly linked to their perceptions of the legitimacy of those in power (Tyler, 2006b; Tyler and Huo, 2002). Tyler (2004) has argued that the public's voluntary compliance with the police is crucial to the effective exercise of police authority because other mechanisms of compliance, for example incentives or physical coercion, are lacking in this context. Typically, there are no tangible benefits bestowed on people who cooperate with the police, nor, in the majority of cases, can sanctions be imposed on individuals for withholding cooperation. Similarly, in the context of post-custodial supervision, people's voluntary compliance with their licence conditions is crucial to the effective functioning of the licence period. As several licencees pointed out to me during the fieldwork inside Approved Premises, people often felt that it was easy to 'get away' with violating the conditions of their licence, since surveillance of their behaviour was limited:

*Dan: At the end of the day, how does [my probation worker] know if I'm sticking to the licence conditions? I can go [to meetings] and say 'Yes, look, I've done this, this week. I haven't been near this person', or whatever, but at the end of the day, how is my probation officer to know that? He has only got my word for it.*

Resident (Hostel B)

Recall was undoubtedly a ‘terrifying’ prospect that imposed a heavy mental toll on many licencees (see Chapter Six). However, a substantial body of research on theories of deterrence has revealed that people’s decisions about rule adherence or violation are influenced to a much greater extent by the likelihood of being caught and punished than by the expected severity of punishment (Nagin, 2013a; Nagin, 2013b; von Hirsch et al., 1999). The importance of licencees’ voluntary compliance with licence conditions is significantly amplified, therefore, given the significant possibility that breaches of licence conditions will go undetected.

Aside from the important link between licencees' perceptions of the legitimacy of power holders and their willingness to voluntarily comply and cooperate with those in power, there is another important justification for adopting a lens of legitimacy. Penal sanctions ought to be subjected to a high degree of scrutiny because they represent such severe forms of a state's intrusion into the lives and liberties of its citizens. However, given that licencees have violated societal norms by breaking the law, it is understandable that one might question whether such scrutiny should take the form of putting licencees' experiences and views of sanctions under the spotlight. In particular, one might question the relevance of the likes or dislikes of the people being punished, given that punishment should, by definition, consist of some degree of suffering or deprivation (Murtagh, 2012a, 2012b). A key strength of theories of legitimacy, however, is that they avoid precisely the type of perspective that would focus on licencees’ self-interested preferences. Instead, a lens of legitimacy focuses attention squarely on what people think is fair or unfair, right or wrong, or, in the words of Tyler (2006a: 376), what is ‘appropriate, proper, or just’.

The vast majority of the licencees with whom I spoke throughout the duration of the fieldwork accepted that the licence period required them to do things that they did not want to do – things that they did not like. Similarly, they understood that they were required to refrain from doing things that they otherwise would have liked to have done, had they not been on licence. Nevertheless, this did not necessarily result in the licence period or the power holders responsible for its implementation being perceived as illegitimate; in other words, perceptions of legitimacy operated in a manner that was detached from rational calculations of self-interest. Whilst the content and implementation of criminal justice sanctions ought not to be directed by the self-interested preferences of people who break the law, the same should not be said about these people's perceptions of the legitimacy of these sanctions. Clearly, this is a normative statement with which one could reasonably disagree. It is my hope, however, that the insight provided by this thesis into the perspectives of those

on licence will convince readers that licencees' accounts are worth listening to, both because of the links between voluntary cooperation and perceptions of legitimacy, and because increasing the legitimacy of penal sanctions in the eyes of those subjected to these sanctions ought to be considered as a desirable end in and of itself.

### **1.3 A roadmap for the thesis**

The next chapter of this thesis will introduce the reader to theories of legitimacy as they have been used and developed in previous research. Because the literature on legitimacy is voluminous, the review centres on legitimacy research in the field of criminal justice. I conclude the chapter by explaining how the ideas developed in relevant studies are utilised in the current research. In Chapter Three, I review previous research on supervision in the community, while providing an historical account of the development of these forms of penal sanction in England and Wales. The chapter builds upon some of the ideas presented in Chapter Two by considering how the findings from previous research on supervision in the community might be interpreted through a lens of legitimacy.

The fourth chapter provides a discussion of research methodology and ethics. I use this chapter to provide a more detailed explanation of how I delineated the boundaries of the current research and identified particular aims and questions to address. I also discuss the specific research methods used in the fieldwork, as well as issues relating to access and research ethics. In Chapter Five, I begin to draw on data generated by the fieldwork. Because it is intended as a stepping stone to the subsequent chapter, I limit my discussion of theory at this point in the thesis, and focus on providing the reader with an insight into life inside Approved Premises. Accounts of hostel life are told primarily from the perspective of those on licence, but some of the views of hostel workers are also introduced in this chapter.

Chapter Six provides the most substantive analysis of the fieldwork data. It centres on licencees' perceptions of the legitimacy of power holders, and considers how these perceptions were shaped. I suggest that it is useful to distinguish between two fundamentally different sources of power holder legitimacy: legitimacy based on the procedures used by those in power, and legitimacy based on the outcomes for which power holders were responsible. Whilst I argue that power holders would do well to address the issues underpinning both of these sources of legitimacy, I propose that

procedure-based legitimacy is of particular importance, since outcome-based legitimacy is largely dependent upon it.

In the final chapter, I summarise the key findings from the research and consider their implications for theories of legitimacy. Since the majority of legitimacy research in the field of criminal justice has been quantitative, I also explore the main benefits and drawbacks of qualitative research on legitimacy. Finally, I conclude with a section that looks ahead toward the changes to post-custodial supervision ushered in by recent legislation, and consider the implications of these changes when viewed through a lens of legitimacy.

# Chapter Two

## LEGITIMACY

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The effectiveness and longevity of power relations often turns on the extent to which the subjects of these relations perceive them to be legitimate (Weber, (1918a[1968], 1918b[1968])). For this reason alone, the concept of legitimacy is one that has attracted the attention of researchers studying a wide variety of relationships of power. Consequently, a vast literature now exists on the subject of legitimacy that spans numerous academic disciplines. For two reasons, this chapter will focus specifically on reviewing the most relevant legitimacy literature in the field of criminal justice. First, this is because the sheer volume of research on legitimacy is too expansive to review in a single chapter. Secondly, the current research was informed primarily by criminal justice literature, as opposed to legitimacy literature in other fields. Before I review the relevant literature, however, I will outline a distinction between two fundamentally different conceptions of legitimacy, only one of which is utilised in the current research.

### **2.1 Normative versus empirical legitimacy**

Although the evaluation of power relations is central to both empirical and normative legitimacy, the precise nature and purpose of these evaluations are fundamentally distinct. Whilst the most commonly used terms for drawing this distinction are 'normative' and 'empirical' (Beetham, 1991; Hinsch, 2008; Snacken, 2011), it is worth noting that other terms have been used, including: 'objective' and 'subjective' (Fuchs and Schlenker, 2006; Moore and Braga, 2003; Strike, 2003; Taylor, 1985; Tyler, 2002), 'prescriptive' and 'descriptive' (Steffek, 2003), and 'top-down' and 'bottom-up' (Jackson, 2011).

#### ***2.1.1 Normative Legitimacy***

Normative legitimacy refers to the extent to which a power relation satisfies a particular standard or set of standards. This approach typically encompasses two distinct stages. The first stage requires philosophical deliberation and the identification of certain criteria which then provide a framework for legitimacy evaluations. This is followed by a second stage involving a particular power relation being evaluated in accordance with the degree to which it satisfies these criteria.



One prominent normative conception of legitimacy was provided by David Beetham, a political and social theorist. In *The Legitimation of Power*, Beetham (1991: 9) was critical of Weberian-inspired empirical approaches to legitimacy (discussed below), highlighting their tendency to empty the concept of any ‘objective reference or moral content’. Therefore, he created a normative framework for the purposes of evaluating the legitimacy of state authority.<sup>8</sup>

Beetham’s framework consists of three main dimensions. Noting that an authority is unlikely to fully satisfy each of these criteria, he matched each dimension of legitimacy with a corresponding form of non-legitimate power:

*Table 2.1: Legitimacy criteria and forms of non-legitimate power*

Criteria of Legitimacy	Form of Non-legitimate Power
i) Conformity to rules (legal validity)	Illegitimacy (breach of rules)
ii) Justifiability of rules in terms of shared beliefs	Legitimacy deficit (discrepancy between rules and supporting beliefs, absence of shared beliefs)
iii) Legitimation through expressed consent	Delegitimation (withdrawal of consent)

(From Beetham 1991: 20)

Beetham’s approach shifts the focus away from the perceptions of the subjects of a particular power relation, and instead involves an evaluation of legitimacy by the researcher him/herself, based on predefined criteria identified by the researcher. It is precisely the perceptions of those subject to power relations, however, that constitute the core of empirical legitimacy.

### ***2.1.2 Empirical legitimacy***

Researchers studying empirical legitimacy are typically interested in identifying the extent to which those involved in a particular power relation perceive that relation to be legitimate. These perceptions are considered to be important, because of their

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<sup>8</sup> It is worth noting that Beetham argued his framework could be applied to a broad range of power relations beyond the state.

potentially significant behavioural consequences. In particular, perceptions of legitimacy might influence the extent to which the subjects of a particular power relation comply and cooperate with its established rules and the *ad hoc* decisions made by the power holders within these relations of power. The German sociologist Max Weber (1918a [1968], 1918b [1968]) provided an influential account of legitimacy that has had an enduring influence over empirical approaches to the concept. To state that a power holder was legitimate, he argued, was to make a claim about power subjects' beliefs in the legitimacy of this power holder: 'the basis of every system of authority, and correspondingly of every kind of willingness to obey, is a belief, a belief by virtue of which persons exercising authority are lent prestige' (ibid.: 382). Weber's approach to the concept has inspired work in a number of academic disciplines. One discipline which now contains a large body of research on empirical legitimacy is organisational studies (see Bitektine, 2011; Johnson, 2004; Meyer and Rowan, 1991; Meyer and Scott, 1983; Peeters et al., 2014; Scott, 1991; Scott and Meyer, 1991; Singh et al., 1986; Suchman, 1995). Although I do not draw on the organisational literature in this thesis, Suchman has provided a definition of empirical legitimacy that is particularly succinct and worth noting:

*Legitimacy is a generalised perception or assumption that the actions of an entity are desirable, proper or appropriate within some socially constructed system of norms, values, beliefs, and definitions.*

Suchman (1995: 574)

Writing from a social-psychological perspective, Tyler provided a similar definition of empirical legitimacy:

*[Legitimacy is] the belief that authorities, institutions, and social arrangements are appropriate, proper, and just.*

Tyler (2006a: 376)

Weber, Tyler and Suchman all regard empirical legitimacy as the most desirable source of power because it produces more stable power relations than relations that are based on either physical coercion, the threat of sanctions, the promise of rewards, custom, or habituation (c.f. Bottoms, 2001; Zelditch, 2001). This goes to the heart of one of the central strengths of power relations based on legitimacy: they encourage *voluntary* compliance and cooperation which flows from internalised moral values (reflected in the use of the terms 'appropriate, proper, and just' in the above definition). Compliance or cooperation based on sanctions or rewards, on the

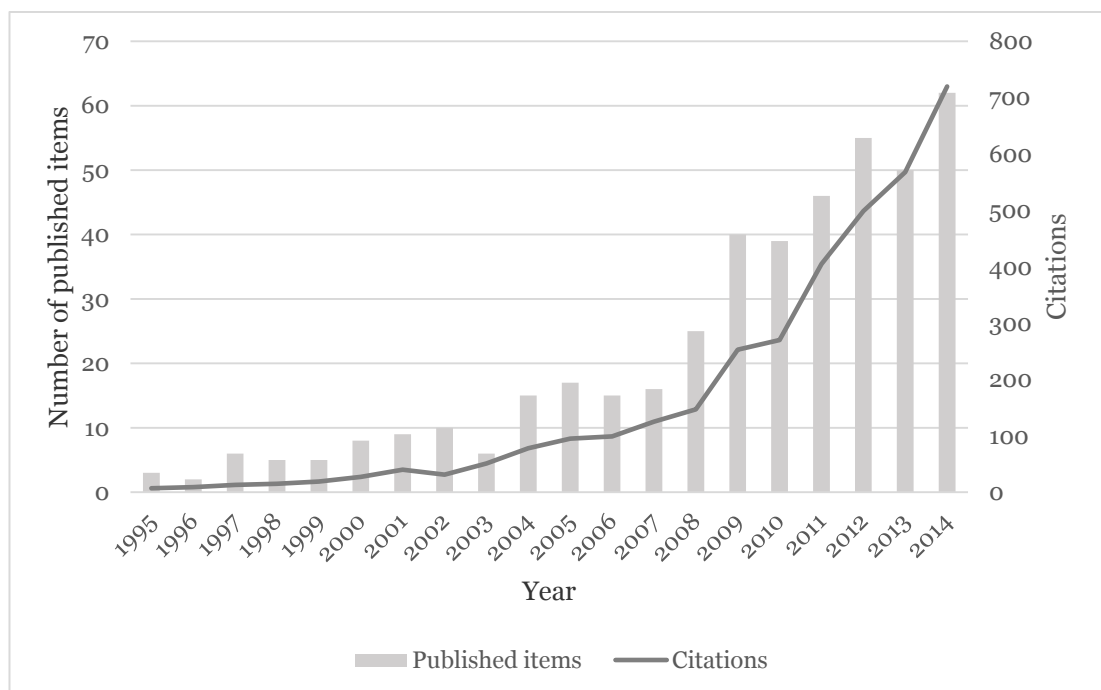
other hand, depends on power holders convincing their subjects that it is in their self-interest to obey certain rules and decisions. This state of affairs can impose a heavy burden on power holders in terms of the resources required to threaten or entice their subjects into compliance or cooperation. Crucially, if the continuous and effective deployment of resources to threaten or entice power subjects ceases, then these subjects are liable to cease being compliant or cooperative (Tyler et al., 2007; Tyler and Fagan, 2008).

The current research was designed to explore the experiences and views of people on licence. Therefore, it is the concept of empirical legitimacy that is utilised in this thesis. References to 'legitimacy' from this point onward are intended as references to empirical legitimacy.

## 2.2 Research on legitimacy and criminal justice

Since Tyler (1990) conducted his seminal study on legitimacy and policing, there has been a considerable expansion in the amount of criminal justice research utilising the concept of legitimacy, particularly over the last ten years (see Figure 2.1, below).

*Figure 2.1: Number of published works on the topic of legitimacy in the fields of criminology and penology, and number of citations, 1995-2014*



Source: Web of Science (2014)

I will begin this section by reviewing research on legitimacy and policing, before discussing research on legitimacy in the context of penal sanctions, subdividing the discussion into that which concerns imprisonment and that which concerns supervision in the community. The literature is presented in this way for two reasons. First, the structure is broadly chronological, with research on penal sanctions drawing upon earlier research on policing. Second, since the approaches to the concept of legitimacy taken by researchers in the context of policing have tended to be relatively similar to one another, but different to those taken in the context of penal sanctions, it makes sense to use a structure that bands together similar approaches to the concept.

### ***2.2.1 Policing***

In the last twenty-five years a substantial body of research examining police legitimacy has accumulated. Researchers working in this area have tended to examine public perceptions of police legitimacy, and attempted to identify the key factors that shape these perceptions. Typically, the research has been social-psychological, and therefore has tended toward a micro-level focus on people's subjective perceptions of policing. The principal source of the current body of literature on police legitimacy can be traced back to the seminal 'Chicago Study' conducted by Tyler (2006b, originally published in 1990). This study sought to examine and explain why people obey the law, by utilising quantitative data generated through highly structured telephone interviews with randomly selected members of the public in Chicago. These interviews consisted of a series of questions which required participants to provide answers using a Likert-scale of predefined response options (e.g. strongly agree, agree, disagree, or disagree strongly; Tyler, 2006b: 183). This study, which now sits alongside a substantial body of further studies conducted by Tyler and other researchers (discussed below), addressed two primary questions: i) to what extent are public perceptions of police legitimacy related to compliance with the law and deference to police decisions?; and, ii) what factors shape public perceptions of police legitimacy?

#### **Legitimacy and compliance/cooperation**

Tyler (1990) found that public perceptions of police legitimacy were significantly related to self-reported compliance with the law and deference to police decisions, thus providing empirical support for his theory of legitimacy. The study ultimately

created both the impetus for further research in this area and a methodology that has been closely emulated in a number of subsequent empirical studies that will be discussed in this section. For example, Tyler and Huo's (2002) research, which focused primarily on public-police relations in California, provided additional support for Tyler's (1990) findings. However, Tyler and Huo proposed that public perceptions of police legitimacy are linked not only to compliance with the law, but also to the public's willingness to cooperate with the police.

Subsequent studies have reiterated the distinction between compliance and cooperation and provided further evidence linking police legitimacy to public cooperation with the police (e.g. Skinns, 2011; Tyler and Fagan, 2008; Tyler, 2009; Hough et al., 2010; Gau, 2011; Hough and Sato, 2011; Kochel et al., 2013). Tyler (2004) has argued that the public's voluntary cooperation with the police is particularly desirable because the police are often not in a position to reward the public for their help in police investigations. Therefore, given the apparent lack of instrumental incentives for members of the public to cooperate with the police, normative motivation emerging from positive perceptions of police legitimacy can be crucial in enabling the police to exercise their authority effectively (ibid.).

One notable exception to the positive link typically found between legitimacy and cooperation was found in a study conducted by Reisig and Lloyd (2009). Their research focused on policing in Jamaica, and utilised a survey of Jamaican adolescents, which found that the relationship between adolescents' perceptions of police legitimacy and cooperation with the police was weak and statistically insignificant. Instead, evaluations of 'procedural justice' (discussed below) were found to have a significant link to adolescents' cooperation with the police. Reisig and Lloyd downplayed their findings by suggesting that the way in which they had operationalised their concept of legitimacy might have been limited, and therefore responsible for this discrepancy (for further discussion of the 'problems' associated with the operationalisation of concepts in quantitative research on legitimacy, see Chapter Seven).

Research also indicates that the strength of the relationship between legitimacy and compliance or cooperation might vary between different groups of people. So, for example, based on research conducted in the United States, Tyler and Huo (2002) suggested that the link between legitimacy and compliance/cooperation might be weaker for members of minority groups than for members of majority groups. Moreover, members of minority groups also tended to express less favourable

evaluations of legal authorities more generally, compared to members of majority groups (ibid.). It is worth noting, however, that a more recent study by Tyler and Fagan (2008) indicated that there was no significant difference between ethnic groups in relation to their perceptions of police legitimacy, and the links between these perceptions and their willingness to cooperate with the police.

### **Factors that shape perceptions of legitimacy**

The positive and significant relationship between public perceptions of police legitimacy and compliance or cooperation with the police prompted researchers to examine the potential factors that might shape public perceptions of police legitimacy (these factors are often referred to in the literature as ‘antecedents’). These factors have been identified through the use of quantitative data analyses, which reveal the statistical relationships between the dependent variable (perceptions of police legitimacy) and a number of predictor variables. Numerous empirical studies, which broadly emulate the methodology discussed above in relation to Tyler (1990), have identified procedural justice as the most significant antecedent of public perceptions of police legitimacy (Dai et al., 2011; Ferdik et al., 2014; Gau, 2011; Hough et al., 2010; Kochel et al., 2011; Mazerolle et al., 2011, 2012, 2013; Murphy, 2015; Murphy et al., 2008; Murphy and Tyler, 2008; Reisig and Lloyd, 2009; Reisig et al., 2014; Sunshine and Tyler, 2003; Tyler, 1990, 2001a, 2003; Tyler and Fagan, 2008; Tyler and Huo, 2002; Tyler and Wakslak, 2004; Wolfe, 2011).

### **Procedural justice**

Procedural justice (also referred to as ‘procedural fairness’, see Sunshine and Tyler, 2003; van der Toorn et al., 2011) has typically been divided into a number of component parts. Tyler (2003), for example, divided the construct into two core components. The first is the extent to which the police treat the public with dignity and respect (c.f. Tyler and Lind, 1992; Tyler and Smith, 1998; Tyler, 2000, 2003; Tyler and Blader, 2003; Tyler, 2006a). According to the relational model of procedural justice, it is particularly important for power holders to treat power subjects with dignity and respect, since most people care a great deal about the status they are accorded by those in power (de Cremer and Tyler, 2005a). The second core component is quality of decision-making. This has been subdivided into a number of factors such as the police’s perceived motivation, honesty, bias and

ethicality, public opportunities for representation, and opportunities for correcting errors (Tyler, 2006b: 137). While this component is important because it provides an indication about the status accorded to power subjects by power holders, there is a further instrumental reason underpinning its significance: people seek the opportunity to voice their opinions because this potentially allows them to influence the decisions made by those in power (Tyler et al., 1985).

Tyler (2006b) found that when the public perceived the exercise of police authority as satisfying these two core components of procedural justice – treatment with dignity and respect, and quality of decision-making – this helped to shape positive perceptions of police legitimacy. This, in turn, encouraged behavioural self-regulation and voluntary compliance with the law, as well as cooperation with the police (Tyler, 2009). It is worth noting that research indicates that procedural justice is likely to play a greater role in shaping perceptions of legitimacy in situations whereby people feel relatively uncertain about the outcomes they might receive from power holders, or in situations whereby outcomes are likely to be undesirable. Brockner and Wiesenfeld (1996; c.f. De Cremer et al., 2010), for example, found in their meta-analytic review of 45 studies of procedural and distributive justice that perceptions of procedural justice were more significantly linked to evaluations of power holders when outcome ratings were low. Given that the outcomes received by licencees are often undesirable (i.e. licencees would prefer *not* to have to abide by the conditions on their licence), it might be inferred that procedural justice evaluations might be particularly important in terms of shaping licencees' perceptions of the legitimacy of power holders.

A number of alternative antecedents of perceptions of legitimacy have been tested in research to date, including distributive justice, trust, outcome dependence and effectiveness.

### **Distributive Justice**

In short, distributive justice (also referred to as 'outcome fairness' or 'distributive fairness', Adams, 1965; Reisig and Lloyd, 2009; Siegrist et al., 2011) concerns the perceived fairness of the distribution of benefits or burdens that power holders allocate to power subjects (Brockner and Wiesenfeld, 1996; Tyler, 2006b). For example, Reisig and Lloyd (2009) operationalised their distributive justice construct by asking participants if they believed the police provided better services to the rich than they did to the poor (c.f. Tankebe, 2009; Tyler and Fagan, 2008). It is worth

noting that several studies have found that the relationship between people's perceptions of distributive justice and their perceptions of power holder legitimacy to be weak or statistically insignificant (e.g. Sunshine and Tyler, 2003; Tyler, 2006b; Tyler and Huo, 2002).

## **Trust**

Researchers have also tested the relationship between perceptions of trust and power holder legitimacy, but precise conceptualisations of this relationship have varied. Mazerolle et al., (2010), for example, viewed trustworthy motives as one of a number of dimensions of procedural justice, which, in turn, might shape perceptions of legitimacy. Levi et al. (2009), on the other hand, argued that perceptions of trust are different from perceptions of procedural justice (c.f. Tyler and Huo, 2002). Instead, they operationalised the concepts of trust and procedural justice separately and found that both constituted significant antecedents of perceptions of legitimacy.<sup>9</sup> A third approach was adopted in a study conducted by Sunshine and Tyler (2003), in which the researchers conceptualised trust as one of three dimensions that were used to measure perceptions of police legitimacy. The relationship between trust and legitimacy, therefore, seems far from straightforward and far from being settled in the legitimacy literature on policing.

## **Outcome dependence**

This construct, identified by van der Toorn et al. (2011), concerns the extent to which people perceive that they are dependent on a power holder for whatever outcomes the power holder has control or influence over (see Berscheid et al., 1976; Clark and Wegener, 2008; Fiske and Neuberg, 1990; Kunda, 1990). In the context of policing, for example, this may relate to people's dependence on the police for combating crime rates in their local area. Van der Toorn et al. (2011) found a positive and statistically significant link between perceptions of police legitimacy and perceptions of outcome dependence. To my knowledge, however, this link has yet to be replicated in further empirical studies.

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<sup>9</sup> Levi et al.'s (2009) study focused not on policing, but on state governments.



## **Effectiveness**

Finally, effectiveness concerns the extent to which people perceive a power holder to be achieving their intended goals or purposes, for example, the extent to which the public perceive a particular police constabulary to be adequately tackling crime in the local area. Effectiveness is a relatively contentious antecedent because certain researchers have argued that, being an instrumental consideration, it is a factor that operates independently from perceptions of legitimacy (Tyler, 2003; Tankebe, 2009). Other researchers, however, have pointed out that police effectiveness need not be conceptualised solely as an instrumental consideration. Instead, effectiveness could be framed as one aspect of normative expectations (Comaroff and Comaroff, 2007; Johnson, 2007; c.f. Hough et al., 2010). For example, while it is possible that a person might consider police effectiveness to be important because an effective police force is perceived as protecting their own self-interest (e.g. arresting and charging someone who had stolen their property), it is also possible that the same person might instead consider effectiveness to be important because arresting and charging people who break the law is the *raison d'être* of a police force. In other words, as a public body, the police service ought to be achieving certain goals; consequently, the less it achieves these goals, the worse that people's normative evaluations of the police will be (regardless of self-interested considerations).

While Tankebe (2009) originally viewed perceptions of police effectiveness as distinct from public perceptions of police legitimacy in his study on policing in Ghana, he later developed his position and conceptualised effectiveness as one of four dimensions of police legitimacy in his study of policing in England (Tankebe, 2013). In both studies, effectiveness was found to be significant – with regard to the former in terms of predicting cooperation with the police, and with regard to the latter in terms of shaping public perceptions of police legitimacy. In contrast, a study by Kochel et al. (2013) in Trinidad and Tobago found that effectiveness was not significantly related to willingness to report crime to the police, nor did effectiveness exert an indirect effect on crime reporting via perceptions of legitimacy.<sup>10</sup>

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<sup>10</sup> I would argue that the indicators used to measure police effectiveness in this study were highly suspect. For example, one of the indicators of perceptions of effectiveness seemed to be aimed more at measuring perceptions of procedural justice: 'I respect the way police use their authority' (Kochel et al., 2013: 912); I discuss the operationalization of concepts in quantitative research on legitimacy further in Chapter Seven.

In summary, while procedural justice had typically been found to play the dominant role in shaping people's perceptions of police legitimacy, there is some evidence that other factors, such as distributive justice, trust, outcome dependence and effectiveness might also play a significant role. Taken together, these antecedents cover a broad range of factors that might potentially shape people's perceptions of police legitimacy. Nevertheless, there is no reason in principle why alternative or additional antecedents could not be theorised and tested in future empirical research.

### **2.2.2 Penal sanctions**

The development of research on legitimacy and penal sanctions has been relatively sporadic and fragmented compared to the growth of research on legitimacy and policing. However, a lens of legitimacy has much to offer researchers studying penal sanctions. Indeed, Sparks (1994: 26) has argued that the notion of legitimacy 'delimits in large measure the very arena within which penological debate must take place'. For Sparks, one of the main strengths of adopting a lens of legitimacy is that it encourages continual scrutinising of the status quo, nudging researchers to imagine alternative possibilities in the penal field and reach toward them. People have tended to focus their attention either on legitimacy and imprisonment, or on legitimacy and supervision in the community. Therefore, this review will address these two objects of inquiry in turn.

#### **Imprisonment**

The concept of legitimacy emerged in research on imprisonment in England and Wales during the mid-1990s (e.g. Sparks, 1994; Sparks and Bottoms, 1995). While its emergence in this context may have stemmed partially from the concept's recent foothold in research on policing (e.g. Tyler, 1990), its rise to prominence was also pre-empted by Lord Justice Woolf in 1991. In a report commissioned by the Home Office in response to the Manchester (Strangeways) prison riots that took place in 1990,<sup>11</sup> Lord Woolf (1991: para. 9.24) stated that prisoners' actions were, 'a response to the manner in which they were treated' and the feeling of 'a lack of justice' within prisons. Consequently, he advised the (then) Home Secretary, Kenneth Baker, that serious attention should be paid to both the *quality* of material standards of living in prison – for example, in relation to dry cells, sanitation and food – and also to *fair*

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<sup>11</sup> For a detailed account of the Strangeways riots, see Carrabine (2004).

procedures, which included explaining any decisions that affected prisoners, as well as enabling prisoners' voices to be heard (ibid.). These factors bear a striking resemblance to the components of procedural and distributive justice that were discussed in the previous section on policing.

Sparks, Bottoms and Hay (1996) cited Woolf's report as a key influence on the perspectives that they adopted during their fieldwork in two maximum security prisons in England. Although their research primarily focused on 'the problem of order' within these prisons, they found that the concept of legitimacy ultimately played a key role in explaining their findings – legitimacy turned out to be 'not just any old concept but a protean one that crops up here, there, and everywhere' (Sparks and Bottoms, 2008: 92).<sup>12</sup> However, their approach to studying legitimacy was somewhat different from that discussed in the previous section on policing. They adopted a sociological approach which included an examination of the structural features of prison regimes such as accommodation, services and activities. This contrasted to the central focus on public perceptions of police officer behaviour which had characterised the policing literature.

In a paper which drew on Beetham's (1991) conception of normative legitimacy, Sparks and Bottoms (1995) argued that a prison regime should be considered illegitimate if it fails to meet commonly expected standards in terms of accommodation, services, or activities; this is analogous to Beetham's second dimension of legitimacy concerning the justifiability of rules in terms of shared beliefs. Sparks and Bottoms (1995) argued that a lens of legitimacy encourages a nuanced understanding of social phenomena that prevents the complexities of social behaviour from being reduced to relatively straightforward calculations of self-interest, as is the case, for example, in theoretical models based on rational choice theory (e.g. Becker, 1976; Taylor, 1988).

Sparks and his colleagues identified four facets<sup>13</sup> of legitimacy that influenced social order in prisons, although they often neglected to make clear which 'objects' of legitimacy they were referring to; for example, prison as an institution, specific prison regimes, particular prison staff, or particular prison rules. Referring to Tyler's (1990) research, they concur that fair procedures are likely to be a central concern for people in prison. However, they suggested that consistent outcomes

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<sup>12</sup> A number of publications stemmed from this fieldwork (e.g. Sparks, 1994; Sparks and Bottoms, 1995; Bottoms, 2002; Bottoms, 2003; Sparks and Bottoms, 2008).

<sup>13</sup> The intended meaning of the term 'facets' is unclear, although it appears broadly analogous to the term 'antecedents' discussed in the above section on policing.

(analogous to the concept of distributive fairness), might also play an important role in shaping prisoners' perceptions of legitimacy. They argued that in prisons – where news travels fast – prisoners might constitute a 'special population' as they are more likely than members of the public to be aware of one another's outcomes, such as decisions about privilege levels (discussed below) (Sparks et al., 1996). Moreover, they suggested that the quality of the behaviour of members of prison staff might be important, although it remains unclear how this facet of legitimacy should be distinguished from procedural fairness. Finally, they argued that if accommodation, services, and activities did not meet shared expected standards, then this also might pose a threat to legitimacy.

These facets of legitimacy, Sparks and his colleagues argued, could either work in tandem or against one another. For example, while prisoners might perceive prison officers as acting in a procedurally just manner, they might still perceive the prison regime to be illegitimate if certain outcomes, such as privilege levels, are experienced as inconsistent, or if prison conditions fall below commonly expected standards. The implication is that in order to maintain stable degrees of social order in prison it might be necessary to move beyond a narrow focus on procedural justice concerns (as suggested by Tyler, 1990) and instead address a broader range of antecedents of legitimacy evaluations.

Although some qualitative research has touched on the topic of legitimacy and prisons (e.g. Sparks et al., 1996; Liebling et al., 1997), as Bottoms (2001) acknowledged, arguments about legitimacy in this context have been in large part theoretical postulations based on inferences from empirical research on legitimacy in other contexts, such as policing. In other words, the systematic and large amount of empirical studies on legitimacy and policing had not then been matched in the context of prisons; and nor has it to-date.

Some years after his research on social order in prisons, Bottoms (2003) found the concept of legitimacy to be useful when writing a paper containing some theoretical reflections on a penal policy initiative that he and other colleagues had evaluated during a period of empirical fieldwork in an English prison (see Liebling et al., 1997). The initiative was an Incentives and Earned Privileges (IEP) policy, which constituted an attempt to influence the behaviour of inmates by offering them certain incentives for 'good' behaviour. Bottoms provided a valuable theoretical insight into the way in which legitimacy might be conceptualised, proposing that:

*There were . . . two kinds of legitimacy at issue . . . : the internal legitimacy of the new prison policies (including IEP) vis-a-vis the subject group (the prisoners), and the external legitimacy of altered prison policies vis-a-vis the wider audience of citizens at large.*

Bottoms (2003: 186)

Although Bottoms used the internal-external distinction to distinguish between prisoner and public perceptions of the legitimacy of a particular prison policy, the distinction could apply to various groups of people, however delineated, in relation to any object of legitimacy. Not only was this an interesting theoretical proposal, but it also had important practical implications for the ways in which power holders might go about enhancing their perceived legitimacy in the eyes of different stakeholder groups. For example, Bottoms argued that the national government that pushed forward the IEP policy might have considered the external legitimacy of the policy (i.e. its legitimacy in the eyes of members of the public) to be largely dependent on whether the policy would be successful in terms of reining in the previous privilege levels of prisoners; this was based on the government's assumption that the public were in favour of relatively austere privilege levels for prisoners.

In contrast, the IEP policy was likely to lack internal legitimacy (i.e. legitimacy in the eyes of the prisoners), since prisoners were unlikely to perceive the reining in of privilege levels to be appropriate, proper, or just. Bottoms (2003) suggested that the internal legitimacy of the IEP policy may have depended more on the procedural fairness of the scheme, for example, that it was fully differentiated from the formal prison disciplinary system, and that the official evaluation procedures of the IEP scheme were fair. Although he noted that prisoners had expressed some dissatisfaction with the way the IEP policy reined in existing privilege levels, he also argued that this sense of unfairness was outweighed by the procedural fairness of the policy which resulted in relationships between prison officers and prisoners showing significant improvement during the time of the IEP policy's implementation. This finding provided support to Tyler's (1990) assertion that evaluations of procedural justice should be considered to be the central factor that shapes people's perceptions of power holder legitimacy.

Quantitative empirical research conducted by Franke et al. (2010) examined the links between procedural justice and perceptions of legitimacy in both a boot camp<sup>14</sup> and a prison in the United States. Franke and his colleagues primarily relied on data collected through self-report surveys, with the questions broadly similar to those found in legitimacy studies on policing (e.g. Sunshine and Tyler, 2003). Their findings accorded closely with Sparks and Bottoms' (1995) recommendations regarding prisons in England and Wales, in that they suggested that both prisons and boot camps could enhance their internal legitimacy by addressing a range of issues, including: fair treatment of inmates, inmate safety, programme effectiveness, and preventing contraband (ibid.). One of the key conclusions to be drawn from this research was that prisoners' perceptions of the legitimacy of the courts, the police, the correctional system, and the justice system as a whole are all inherently interconnected. This has potentially significant implications for understanding the dynamics of legitimacy that operate within post-custodial supervision – the implication being that if the legitimacy of any one part of the justice system is to be safeguarded, then, ultimately, legitimacy must be built up and maintained within them all (discussed further in Chapter Six).

One of the leading prison researchers in England and Wales, Alison Liebling (2004), has also found the concept of legitimacy useful for the evaluation of prison regimes.<sup>15</sup> Her research is primarily concerned with penal practices and penal values, and how these are often central in shaping the quality of prison life for both prisoners and prison staff. Liebling attempts to move beyond a narrow conception of prison quality and performance and seeks to evaluate prisons within a moral framework. In her early work, she thought it necessary to 'move beyond' the concept of legitimacy and its preoccupation with power relations, consequently constructing the concept of 'moral performance'. Liebling argued that this concept was capable of providing a broad framework for the evaluation of prison regimes, which had the treatment of individuals at its heart. The framework incorporated 'broader questions of personal development, psychological well-being, the delivery of pain, interpersonal treatment outside the flow of power, and meaning' (ibid.: 475).

Although Liebling suggested that her framework moved beyond the concept of legitimacy, in principle, there seems to be no reason why questions of personal

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<sup>14</sup> Boot camps regimes tend to be modelled on basic military training, and are thus characterised by mentally and physically 'demanding' tasks (Franke et al., 2010).

<sup>15</sup> Liebling worked closely with Bottoms, leading the research team which evaluated the IEP policy discussed above (see Liebling et al., 1997).

development, psychological well-being and the delivery of pain cannot fall within an evaluative framework based on the concept of legitimacy. Moreover, there is no *a priori* reason why these issues may not play a central role in an individual's perceptions of the legitimacy of power holders. Indeed, in an article discussing legitimacy and procedural justice in prisons, Jackson et al. (2010: 8) made the seemingly paradoxical statement that the 'moral performance' of a prison moves us beyond the idea of legitimacy by bringing in 'a range of relational and quality of life issues, including safety, dignity, humanity, respect, opportunities for personal development, and so forth – all of which may themselves be important to the construction and reproduction of legitimacy'. But if these issues are 'important to the construction and reproduction of legitimacy', then it is not apparent how a consideration of these issues would take us beyond the idea of legitimacy.

In any case, the concept of legitimacy has played an increasingly important role in Liebling's research. In a description of events similar to that provided by Sparks and his colleagues (1996), Liebling (2013) noted that although she did not explicitly set out to operationalise the concept of legitimacy or explore theories of legitimacy during the course of her research on high security prisons, she was drawn into doing so after her fieldwork had led her in that direction. Although the term 'procedural justice' is uncommon in *Prisons and Their Moral Performance*, one of the core messages of Liebling's research is that the procedures used by prison staff during the exercise of their authority were paramount in shaping prisoners' perceptions of power holder legitimacy (Liebling, 2004). Liebling (2013) concluded her recent discussion on legitimacy in the context of high security prisons by warning that, due to political motivations and financial pressures, the 'legitimacy turn' in criminal justice – stimulated initially by the Woolf Report in 1991 – appeared to be in reverse.

Crewe (2011) has also utilised the concept of legitimacy in his research on prisons. In particular, he focused on the relationship between legitimacy and 'soft power', which refers to 'those aspects of treatment and regulation that are accomplished directly through staff–prisoner relationships, and indirectly through the policies that officers assist or put into effect' (ibid.: 456). He argued that soft power may induce prisoners to feel that they are 'harnessed' in the prison's process of governance, forcing them to regulate all aspects of the self. For some, this perceived erosion of their freedom may contribute to a strong sense of illegitimacy. Crewe also questioned the generalisability of policing research, such as Tyler's (1990), to the prison context. In particular, he suggested that it may be relatively difficult to foster

'interior legitimacy' in prisons (a notion that appears analogous to 'internal legitimacy', Bottoms, 2003) by concentrating solely on aspects of procedural justice. Crewe argued that this is partially due to the significant disparities of power within prisons, which result in prisoners being denied the opportunity to voice their opinions to the same extent as free citizens outside the prison gates (c.f. Blader and Tyler, 2004). He highlighted that prisoners only rarely have the opportunity to meet with key decision-makers, such as psychologists and Parole Board members, and even in these instances their voices may be taken much less seriously than is the case in public-police encounters. Therefore, Crewe (2011: 466; c.f. 2009) concluded by noting that although procedural justice is always more desirable than procedural injustice in prisons, it might have a relatively minor role to play in terms of shaping prisoners' perceptions of power holder legitimacy.

### **Supervision in the community**

Despite being applied to policing and imprisonment in the 1990s, the concept of legitimacy remained largely absent from research on supervision in the community during this decade. Beginning with a theoretical paper by Bottoms (2001) on legitimacy and compliance, however, there has been a recent surge in the application of the concept of legitimacy in this area (e.g. Digard, 2010; Hucklesby, 2013; McNeill and Robinson, 2013; Nellis, 2013; Robinson and Ugwudike, 2012; Wodahl et al., 2011).

Bottoms (2001) outlined the instrumental value of legitimacy in relation to both short-term compliance with the requirements of supervision in the community, and long-term compliance with the law. He argued that legitimacy should be conceptualised as forming one component of a broader category of 'normative compliance', which, in turn, fell within a typology of four principal categories of compliance (see Table 2.2, below).

In short, instrumental compliance is based on the operation of incentives and disincentives, which appeal to a person's self-interested concerns. Constraint-based compliance relates to either: i) the limitations of the human body to perform certain physical tasks, ii) the physical restriction of one's opportunities for non-compliance, or iii) structural constraints, which may occur, for example, when a person is intimidated to the extent that their compliance is based on the fear of coercive power inherent in the structure of a power-based relationship. Compliance based on



habit or routine occurs when someone's actions are guided to such an extent by previous patterns of behaviour that compliance essentially occurs unthinkingly.

Table 2.2: Typology of Compliance

<p><b>A) Instrumental/prudential compliance</b></p> <ul style="list-style-type: none"><li>(a) Incentives</li><li>(b) Disincentives</li></ul> <p><b>B) Normative compliance</b></p> <ul style="list-style-type: none"><li>(a) Acceptance of/belief in norm</li><li>(b) Attachment leading to compliance</li><li>(c) Legitimacy</li></ul> <p><b>C) Constraint-based compliance</b></p> <ul style="list-style-type: none"><li>(1) Physical restrictions or requirements on individuals leading to compliance<ul style="list-style-type: none"><li>(a) Natural</li><li>(b) Imposed</li></ul></li><li>(2) Restrictions on access to target</li><li>(3) Structural constraints</li></ul> <p><b>D) Compliance based on habit or routine</b></p>
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From Bottoms (2001: 90)

The final mechanism in Bottoms' compliance typology is normative compliance, which is divided into three sub-types. One sub-type is broadly analogous to personal morality, which Bottoms categorises as 'normative self-policing'. This is based upon the acceptance of, or belief in, a social norm. Another sub-type is 'attachment', which is closely connected to Hirschi's (1969) social control theory. It consists of the normative decision to behave in a manner that is consistent with the social beliefs or values held by a person, social group or institution to which an individual feels 'attached'. Most important in terms of the current research, however, is normative compliance based on legitimacy. Although Bottoms argued that legitimacy is closely related to attachment – in that both derive from perceived social bonds – he suggested that these compliance mechanisms should be distinguished because the

former refers to a perceived obligation to those in formal authority, whereas the latter refers to an obligation that is of a more personal nature.

Some further theoretical work on legitimacy by Bottoms and Tankebe (2012) is worth noting at this point in the chapter, although their paper did not focus on supervision in the community. The authors argued that legitimacy has a dialogic nature, consisting of both claims to legitimacy by power holders, and responses to these claims by power subjects. They reject Barker's (2011) contention that power holders working at ground level are less likely to devote time and energy toward establishing and maintaining their legitimacy than the 'rulers at the centre' (Bottoms and Tankebe, 2012: 153). In the sphere of criminal justice, Bottoms and Tankebe argue that it is front-line professionals who must pay most attention to their perceived legitimacy, since these people have the most frequent and direct encounters with those who might contest their legitimacy on a day-to-day basis. In order to fully understand the dynamics of legitimacy within the sphere of criminal justice, they suggest that it is particularly important for researchers to examine power holders' responses to cases in which power subjects challenge or question their legitimacy (in Chapter Six, I provide examples of this type of analysis).

Informed by Bottoms' (2001) theoretical work on compliance, McNeill and Robinson (2013) coined the term 'liquid legitimacy' to represent the ways in which legitimacy might 'ebb and flow' during the lifespan of supervision in the community. Based on the idea that 'it is as difficult to enable legitimacy to flow into a community sanction as it is easy to let it ebb away', the word 'liquid' therefore reflects the fragility of offenders' perceptions of legitimacy (ibid.: 133). A central argument that the authors highlight in this paper is that compliance with supervision in the community might vary not only in terms of quantity, but also in terms of quality. In this regard, McNeill and Robinson suggest that offenders' perceptions of the legitimacy of supervision in the community are important in moving beyond 'formal compliance' to a more desirable type of compliance: 'substantive compliance'. Briefly, substantive compliance refers to an active form of engagement with the conditions that underpin a community sanction. Formal compliance, on the other hand, denotes mere technical (minimal) conformity to such requirements (for further discussion of these compliance types, see Robinson and McNeill, 2008). Echoing Rex's (1999) concern with probationer-probation officer relationships, McNeill and Robinson (2013: 122) argued that the relationships between probationers and those responsible for the implementation of supervision in the community constitute the 'key site or resource' for enhancing legitimacy.

In a paper discussing offenders' perceptions of the legitimacy of electronic monitoring (EM), Hucklesby (2013) highlighted that EM stands apart from other forms of community sanction precisely because it does not encourage people to actively engage in substantive compliance. Provided that people formally comply with their curfew hours, Hucklesby (ibid.: 144) argued out that they are 'free' to 'drink, take drugs or offend within the confines of staying in during specific times'. Nevertheless, she suggested that offenders' perceptions of legitimacy might still be important in terms of securing formal compliance with curfew restrictions. For example, when people felt they had been treated fairly or leniently by the courts, they were more likely to perceive the courts as legitimate and this, Hucklesby claimed, might play a role in offenders' decisions to comply with curfew orders. She referred to the importance of both procedural and distributive justice in shaping perceptions of legitimacy, but also highlighted that many offenders cited instrumental reasons for adhering to their curfews, for example, the threat of further punishment in the event of a curfew breach. Hucklesby (ibid.: 148) stated that the findings from her research provided support for the procedural justice hypothesis of Tyler and Huo (2002), referring to the personal accounts of participants who highlighted that their compliance with EM was influenced by their interactions with monitoring officers – negatively, if they perceived that their monitoring officer had treated them badly, and positively, if they perceived that their monitoring officer had treated them well.

Expanding on Bottoms' distinction between internal and external legitimacy (outlined above), Robinson and Ugwudike (2012) highlighted the tensions that can occur between different groups that might have diverse ideas about the legitimacy of supervision in the community. The authors drew attention to the recent focus on enforcement in probation – appropriated by senior managers in the probation service – which served as a key strategy aimed at increasing the external legitimacy of supervision in the community. They argued, however, that this pursuit of external legitimacy resulted in a conflict with the values and opinions of both probation workers and those subjected to community sanctions. In other words, satisfying the normative expectations of sentencers and members of the public meant simultaneously creating discontent among probationers and probation workers. Citing the research of Murphy (2005) and Hearnden and Millie (2003), Robinson and Ugwudike argued that if tougher enforcement was experienced by offenders as unreasonable or unfair, then this could potentially undermine the perceived

legitimacy of supervision in the community and generate lower rates of compliance, manifested in higher rates of sanction breach.

Digard's (2010) research has also highlighted the tension generated by stakeholders' competing expectations of penal sanctions. Although his paper is relatively short and the empirical research on which it is based (twenty interviews with recalled licencees) did not specifically focus on legitimacy, it is noteworthy because it is the only paper at the time of writing which focused specifically on legitimacy and post-custodial supervision. The author cited research by Paternoster et al. (1997) and Tyler (2003) in order to make sense of licencees' evaluations of breach procedures and the licence recall system. In particular, he highlighted licencees' perceptions that they had inadequate opportunities for representation during licence breach proceedings, that certain licence conditions were ambiguous, and that significant decisions were often made by offender managers (as opposed to members of the judiciary), who often lacked sufficient authority to make decisions of this magnitude in the eyes of those on licence.

Digard suggested that his qualitative interviews with sex offenders supported previous empirical findings (e.g. Tyler, 2003; Paternoster et al., 1997) which linked procedural justice to legitimacy, and legitimacy to compliance. Ultimately, however, he concluded by warning against a narrow focus on licencees' perceptions of the legitimacy of the recall system. Such a focus, he argued, might inadvertently impact on the system's ability to provide an adequate response to changes in a licencee's risk. These concerns allude to the problem of balancing the goals and purposes of supervision in the community, such as reintegration based on help and support, and public protection based on monitoring and control (discussed further in Chapter Six).

## **2.3 Summary and conclusion**

During the last twenty years the concept of legitimacy has featured increasingly in criminal justice research. This has been the case particularly in the field of policing, but also in relation to penal sanctions. Researchers have produced valuable theoretical work on legitimacy and supervision in the community (see Bottoms, 2001; Robinson and McNeill, 2008; Robinson and Ugwudike, 2012), and this work has informed many aspects of the current research, including the selection of appropriate research questions and aims, as well as decisions regarding data

collection and analysis. There remains, however, a dearth of empirical studies on supervision in the community that utilise the concept of legitimacy.

Whilst the literature discussed in this chapter informed the current research, it did not dictate its direction. In other words, extant ideas were used as a springboard for thinking about useful questions and aims to address, as well as offering potentially useful ways to make sense of the empirical data generated by the fieldwork. Where these ideas were unsuitable for application in the current research – if, for example, certain concepts which had been used in previous research did not ‘fit’ the empirical data generated by the fieldwork – I did not rigidly insist on interpreting the data to suit a predefined conceptual framework. Instead, I discarded extant concepts, or modified them based on data that emerged from the fieldwork (see further Chapter Four).

A second body of research also served to inform the direction of the current study, namely, research on people’s experiences and views of supervision in the community. I will review this literature in the following chapter, before moving on to discuss the topics of research methodology and ethics.

# Chapter Three

## **SUPERVISION IN THE COMMUNITY:**

### **A BRIEF HISTORY AND PREVIOUS RESEARCH**

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Supervision in the community has a long and varied history in many countries throughout the world. Although forms of supervision in the community have undergone significant changes in England and Wales throughout the twentieth century, the pace of change has arguably been at its fastest in recent decades. Major changes are currently being implemented under the Coalition Government's criminal justice reform initiative, Transforming Rehabilitation (see, for example, HC Deb, 2015; Ministry of Justice, 2015a). In light of these radical reforms, it is particularly important that research explores the experiences and views of people who are subjected to supervision in the community. A recent policy and research initiative – The Offender Engagement Programme (see National Offender Management Service, 2011; Rex, 2012) – reflects growing interest in research of this nature. However, as I will discuss in this chapter, research centring on people's experiences and views of supervision in the community remains somewhat patchy.

While the current research focused squarely on post-custodial supervision, the scope of this chapter has been expanded to include other types of supervision in the community, since these share much in common. The concept of legitimacy has rarely been used explicitly by those who have conducted research in this area. Nevertheless, I applied a lens of legitimacy throughout this chapter with the aim of exploring what previous studies might implicitly reveal about people's perceptions of the legitimacy of supervision in the community, and of the power holders responsible for its implementation. This task was somewhat speculative, not least because I did not have access to the primary data produced by these studies (e.g. full interview transcripts and field notes). Generally, however, I found that the language and ideas associated with the concept of legitimacy were well suited to further making sense of people's experiences and views of their supervision. In any case, I hope that this exercise will provide the reader with a useful preliminary insight into the role that a lens of legitimacy can play in this area.

The literature is reviewed chronologically. While I could have used a thematic structure – based on themes such as the supervisor-supervisee relationship, the perceived purposes of supervision in the community, and structural obstacles to

reintegration – this would have involved neglecting the interconnections between themes, whilst also fragmenting individual studies that were not designed to explore these issues in isolation. A further reason for adopting a chronological approach to the research was that it complemented the provision of a short history of supervision in the community. This history is intentionally brief and centred on key changes that should provide a useful backdrop to the research findings reviewed in this chapter (for more comprehensive histories of supervision in the community, see Bochel, 1976; Jarvis, 1972; Raynor and Robinson, 2005). The review is Anglo-centric, since these studies are most relevant to the current research. However, reference is also made to a small number of studies conducted in countries outside of England and Wales.

The chapter has four main sections. The first and second sections provide a history of supervision in the community between 1895 and 1997, and relevant research during this period, respectively. The third section then continues the history from 1997 to the present day, and the fourth section provides a review of research conducted since 1997. Finally, a summary and overall critique of the literature concludes the chapter.

Before beginning, I would like to explain why I have chosen to use the term 'supervision in the community' over its alternatives. Robinson and McNeill (forthcoming) have provided a useful discussion of the benefits and drawbacks of terms such as 'community corrections', 'probation', 'community sanctions and measures', 'non-custodial penalties', and 'alternatives to prison', all of which raise a unique set of issues. 'Community punishment', they conclude, is the least problematic among these terms, as well as the most provocative and stimulating in the context of their edited international collection of papers on this subject. However, I have chosen to use the term 'supervision in the community', since sanctions falling within this category have not been explicitly defined as 'punishment' in a legal sense in England and Wales for much of their history (see, for example, the pre-1991 Probation Order, Robinson and McNeill, forthcoming). This term is intended to incorporate all forms of post-conviction community sentences, as well as post-custodial sanctions.

### **3.1 A brief history of supervision in the community: from welfarism to punitive populism, 1895-1997**

The origins of supervision in the community can be traced back to the nineteenth century and the Church of England Temperance Society, whose work involved the provision of help and support in the community to people who had fallen into crime through drunkenness (Vanstone, 2004). During the same period, people leaving prison were offered help on a voluntary basis from a small number of Discharged Prisoners' Aid Societies (DPAS) (Maguire et al., 2000). Whilst DPAS did sometimes provide small sums of money to discharged prisoners, they focused on helping people to find satisfactory employment and accommodation (Radzinowicz and Hood, 1990). At the end of the century, the Gladstone Committee Report on prisons challenged the prevailing orthodoxy by promoting the penal philosophy of reformation alongside deterrence (Gladstone, 1895: para. 47). While the Report did not prescribe a detailed model for reforming criminogenic behaviour, it was nevertheless significant because it promoted the belief that delinquent behaviour was amenable to change (Raynor and Robinson, 2005). Therefore, the Report marked the first steps toward a reformation rationale that fundamentally underpinned supervision in the community until the mid-twentieth century.

The Probation of Offenders Act 1907 laid the foundations for the modern probation service. It contained a key statement of purpose – to ‘advise, assist and befriend’ the supervisee (s. 4(b)) – that served to reinforce the typically welfarist nature of probation work, at least until recent decades (Bottoms and McWilliams, 1979). The Act introduced the probation order as an official penal sanction available to the courts, specified the duties of probation officers, and enabled the courts to vary probation conditions and deal with people who breached their orders (Ignatieff, 1978). As a result of the Criminal Justice and Administration Act 1914, the courts were further enabled to attach a condition of residence to probation orders; consequently, the number of hostels for offenders began to expand (Wincup, 2003; Reeves, 2008). During the 1920s, the replacement of part-time probation staff with full-time staff, alongside the introduction of formalised training procedures, led to the establishment of a ‘truly’ professionalised probation service (Dawtry, 1958; McWilliams, 1985; c.f. Home Office, 1922).

After the Second World War, there was increasing public and political support for a more comprehensive system of post-release supervision and support than the ‘voluntary side line’ provision hitherto offered by DPAS and probation workers



(Maguire et al., 2000: 236; c.f. Bochel, 1976; King, 1964; Vanstone, 2004). At the same time, there was a general political shift toward welfarist ideals, with the principle that state-led intervention should provide all people with a basic, minimum standard of living being established (Timmins, 2001). A broad public consensus around the principles of welfarism and the values of liberal humanism provided probation practitioners with the support and confidence to undertake individualised casework with their clients (Nellis, 2007). Probation workers' responsibility for the aftercare of people released from prison (upon request by the prisoners themselves) was put on a statutory footing following the enactment of Criminal Justice Act 1948.

The 1950s and 1960s marked the high-tide of what has been referred to as the 'rehabilitative ideal' and an era of penal welfarism, in which it was commonly held that the 'causes' of crime could be isolated and remedied under a treatment model of penal intervention (Allen, 1959; Garland, 2001). This climate fostered a number of major changes in the probation service. For example, a report by the Advisory Council (1963) recommended that probation officers ought to be seconded to every prison in order to serve in the capacity of 'welfare officers' (Whitfield, 2001). This change took effect from 1966 amid considerable apprehension within the probation service, due in part to the tension between the organisation's goal of keeping people out of prison, while simultaneously contributing to the improved functioning of the prison estate (ibid.). Moreover, Osler (1995) has highlighted that many probation officers were initially reluctant to work with people who had been released from prison, due to the likelihood that they would be much less co-operative than their traditional base of voluntary clients. Still further, because of their time in prison, licencees were more likely than probationers to face barriers to employment and accommodation that made meaningful supervision difficult to achieve (ibid.).

Another landmark change was brought about by the introduction of parole following the implementation of the Criminal Justice Act 1967, which gave the probation service the responsibility of assisting in the parole selection process, alongside the supervision of parolees (Jarvis, 1972). Further responsibilities were introduced by the Criminal Justice Act 1972, and the Criminal Courts Act 1973, both of which empowered the probation service to provide and manage hostels, which up until then had been administered by voluntary organisations (Haxby, 1978; Reeves, 2008). Despite difficulties with funding and a lack of suitable properties to convert into hostels, the hostel estate nevertheless expanded significantly over the following decades (Reeves, 2008; Wincup, 2003).

Another major development came with the introduction of the community service order in 1972, regarded by some as ‘one of probation’s greatest successes’ (e.g. National Probation Service, 2007: 3). Community service was the brainchild of the Advisory Council on the Penal System that had been set up in 1966 (Pease, 1980). By working alongside non-offender volunteers, the Council hoped that those subject to these sanctions would benefit from developing a greater sense of social responsibility (Harding, 2013). As I discuss later in the chapter, however, the content and purpose of this form of supervision in the community has moved a long way from the original architects’ intentions.

The treatment model of criminal justice – as it had become known – was subject to significant challenges in the 1970s from, for example, ‘new’ criminologists (e.g. Taylor et al., 1973, 1975) and labelling theorists (e.g. Becker, 1963). The most damaging attack, however, came from a meta-analytic review of empirical research on the effectiveness of treatment interventions in terms of reducing reoffending rates (Martinson, 1974; c.f. Brody, 1976; Lipton et al., 1975; Martinson, 1979). Martinson’s now infamous declaration that ‘nothing works’ provided a heavy blow to the prevailing orthodoxy that probation could make a significant difference to the likelihood that a person would return to crime. An Intensive Matched Probation and After-Care Treatment (IMPACT) study in the UK, designed to evaluate the effect of small caseload supervision on reoffending rates, served only to reinforce these findings (Folkard et al., 1976). Despite challenges to the ‘nothing works’ doctrine (e.g. Palmer, 1975; Gendreau and Ross, 1979, 1987), the Home Office was reluctant to engage with further research into the ‘effectiveness’ of probation for many years (Raynor, 2008).

No clear or unifying penal philosophy filled the vacuum left by the decline of the rehabilitative ideal and the demise of penal welfarism (Bottoms, 1977; Bottoms and McWilliams, 1979; Raynor and Vanstone, 2002). Consequently, supervision in the community came to be regarded as a pragmatic means of controlling the prison population by diverting people from custody. As the 1980s progressed, the government viewed the close association between the values and practices of probation work and social work with unease. The Criminal Justice Act 1991 reflected this, encompassing a backwards-looking, retributive, ‘just deserts’ approach to criminal justice that focused on matching the severity of the punishment with the seriousness of the crime committed, rather than aiming to achieve consequentialist goals such as rehabilitation or deterrence.

The Act also introduced a key change to post-custodial supervision. A person's release from prison became mandatory and automatic, but conditional, at the half way point of all determinate sentences of imprisonment between one and four years (see Maguire et al., 1996). This resulted in the probation service working with larger numbers of involuntary clients, a development which placed even greater pressure on the service's resources. Maguire (2007: 402; c.f. McGarva, 2008) argued that an 'increasingly impersonal, rule-bound and bureaucratic' supervision process ensued – a trend reinforced by the introduction of the first set of comprehensive National Standards for the supervision of offenders in the community in 1992 (Home Office, 1992). Among other things, these standards sought to increase consistency in supervision through the provision of national, standardised targets (Fitzgibbon et al., 2010).

A three year plan for the probation service, published by the Home Office (1992), made use of a new, fashionable, and distinctly managerial language, emphasising not values, but commitments and responsibilities (Gelsthorpe, 2007). The short-lived promise to move probation centre-stage in the late 1980s (see Patten, 1988) was soon replaced by Michael Howard's declaration in 1993 that 'prison works'. The politicisation of criminal justice and accompanying discourse of 'punitive populism' meant that the *raison d'être* of supervision in the community shifted away from providing an alternative *to* punishment and toward providing alternative *forms of* punishment (Durnescu, 2012; Hudson, 2003; Robinson and McNeill, 2004). 'Compliance' and 'enforcement' became buzzwords in the policy literature on supervision in the community (Smith, 2005; McKnight, 2009). The importance of 'contracts' and negotiated agreements with people sentenced to supervision in the community – which had been lauded in probation theory and training during the 1980s – was undermined by the Crime (Sentences) Act 1997, which abolished consent for probation orders in England and Wales (Raynor, 2014). Ultimately, the 1990s witnessed an emphatic shift away from the values of due process and a just deserts approach to criminal justice, and a move toward the prioritisation of crime control and the management of risk (Gelsthorpe, 2007; Kemshall, 2002).

Whilst the election of a Labour government in 1997 brought some hope for stability, this was to prove unfounded as the probation service was subjected to a further period of 'unremitting change' (Burke and Collett, 2010: 232). Before these changes are discussed, I will review chronologically the most relevant research on people's experiences and views of supervision in the community prior to 1997.

## **3.2 Early research on people's experiences and views of supervision in the community**

### ***3.2.1 Studies from England and Wales***

In one of the earliest published studies of people's experiences of supervision in the community, Pease et al. (1975) interviewed 27 research participants at two stages of their time subject to community service orders: i) at the commencement of the orders, and ii) after they had completed at least 30 hours of community service. The research aimed to track changes in people's attitudes as they progressed through their orders (although they only managed to interview 10 of the original 27 participants at the second stage). Pease and his colleagues found that the majority of people felt that a community service order was a fair response to their offending, and were grateful for the chance to avoid custody. While people appeared to have a basic understanding of why they had been given a community service order, the researchers argued that more information outlining the aims and goals of community service orders should have been provided. Generally, people seemed to get on well with their supervisors and appeared in particular to appreciate the interest that supervisors showed in their progress. A majority felt that their experience of community service had been worthwhile and believed that community orders were more constructive sanctions than terms of imprisonment. Of the people interviewed following the completion of their orders, over half discussed their relationship with their supervisors (despite not being asked directly about this issue), and almost all spoke in positive terms about this relationship.

While this study predated much of the literature on legitimacy (see Chapter Two), and Pease and his colleagues were not directly interested in the concept, their research nevertheless centred on issues that could be considered key from a legitimacy perspective. For example, their recommendation that people should be kept more fully informed about the reasons why they were given a community service order, links well with the literature on legitimacy and procedural justice and one of the key messages that emanates from this research – namely, that power holders ought to take steps to ensure that their subjects are kept clearly informed about the rationales which underpin their authority (e.g. Dai et al., 2011; Gau, 2011; Hough et al., 2010).

Likewise, Davies' (1979) study of probation can be closely linked to ideas developed within the legitimacy literature. His interviews with 49 people on probation

produced both qualitative and quantitative data. In light of the history of supervision in the community that was provided in the previous section, it is interesting to note that the welfarist approach to supervision in the community still seemingly dominated frontline probation practice at this time. When asked which type of occupational professional a probation officer most closely resembled, the majority of participants thought that their officers resembled social workers; a quarter cited teachers as the closest profession (c.f. Day, 1983 and Willis, 1981, in which most people similarly believed that the primary purpose of probation was to provide social welfare, help and assistance). Although people generally expressed positive views about probation, challenges to the 'rehabilitative ideal' at the time of this research (noted above) were mirrored by their perceptions of the role that probation played in reducing reoffending. For example, 37 per cent of probationers thought that probation made no difference to them, and 78 per cent thought that probation was generally irrelevant to their needs (c.f. Mantle, 1995, in which two thirds of probationers felt that probation had reduced their likelihood of reoffending 'very much' or 'considerably'). Of those who felt that probation had had a positive impact on their likelihood of reoffending, three quarters spoke in positive terms about their probation worker, whereas of those who felt that probation had no impact on their likelihood of offending, less than half spoke positively about their probation worker.

These findings make sense when viewed through a lens of legitimacy. To recap, research on legitimacy suggests that the more a person perceives a power holder to be legitimate, the more likely they will be to comply and engage with the decisions made by that power holder. The attitudes and behaviour of the participants in Davies' study essentially mirror this relationship – the more that people perceived their probation officer to be legitimate, the less inclined they were to commit further offences. Although the findings represent people's *attitudes*, (and therefore do not constitute direct evidence that positive staff-client relationships result in *behavioural* change), the links between procedural justice, legitimacy and compliance (that are well-established in legitimacy studies in other contexts e.g. Jackson et al., 2010; Murphy, 2005; Tyler, 2006, Tyler and Huo, 2002) provide plausible mechanisms through which one might expect relationships between attitudinal variables to translate (to some extent) into behavioural changes – in other words, that there will at least be some link between what people say and what people do (see further Raynor et al., 2014).

Although the sampling method for a study by Varah (1981) is somewhat sketchy – ‘over a hundred’ people serving community service orders in Warwickshire were given questionnaires, with the reported findings being drawn from 100 completed questionnaires – the results of the research are nevertheless worth considering. Some of the more notable findings include: i) 67 per cent of people who participated in the study suggested that they would be prepared to engage in voluntary work following the completion of their orders; ii) 76 per cent did not view community service as a ‘let-off’; and iii) when asked to compare imprisonment with community service, of the 55 who had served a term of imprisonment, 11 participants expressed opinions along the lines of the following response:

*Prison is negative, costly and destructive, both to society and to the prisoner, whereas community service is positive, constructive and enhancing for society and offender alike . . . it also makes good economic sense.*

Varah (1981: 122)

From a legitimacy perspective, Varah’s study serves to highlight some important issues. It evidenced the fact that people resented sentences of imprisonment because they were seen as fundamentally lacking a constructive penal rationale. While this might have significant consequences for people’s compliance with prison authorities in particular, McNeill (2009) has suggested that negative perceptions of power holders in one part of the criminal justice system might impact on perceptions of power holders more generally (discussed further below, and in Chapter Six). An indication of the impact of positive perceptions of legitimacy on future behaviour is provided by some people’s claims that their experience of community service made them more inclined to become involved in further voluntary work in the community after their orders had ended. Again, these findings are limited because of their reliance on subjective reports of perceptions and intentions (as opposed to evidence of actual behaviour), but nevertheless, they provide some indication that perceptions of legitimacy might have implications for people’s short-term *and* long-term compliance with the law and engagement with prosocial groups.

In order to evaluate the first two years of automatic conditional release (ACR) in England and Wales (see previous section), the Home Office commissioned a study by Maguire et al. (1996). Maguire and his colleagues drew on several sources of data, including interviews with 42 people who had been released from prison via ACR. The researchers explicitly acknowledged the limitations of their sampling method,

which involved a 'considerable degree of attrition' (ibid.: 68). This was due in large part to participants not keeping to their scheduled appointments with their probation officers, which consequently precluded the possibility of interviews being conducted at these times. Ultimately, it is reasonable to assume that the interview data generated by this study is likely to contain a positive bias, because those people who attend their supervision appointments are more likely to hold favourable views of supervision than those who do not. While this does not undermine the results of the research *per se*, it does caution against assuming that these views are reflective of the wider population of people who were subject to ACR.

Among the most interesting points to emerge from Maguire and his colleagues' study was that almost half of the sample thought that post-release supervision had been 'introduced to help', whereas only 26 per cent thought its purpose was to control, and even fewer (10 per cent) thought that supervision was introduced in order to punish. Despite 'help' being the dominant perceived purpose of ACR, only 38 per cent of people rated supervision meetings as 'helpful' overall and only 40 per cent reported receiving any practical help from their probation officers. These statistics represented a significant cause for concern given the likelihood (due to the sampling bias discussed above) that a somewhat more negative picture probably applied to the licencee population as a whole. Fully 36 per cent of the sample thought that their probation officer 'should have done more' – a view that would almost certainly undermine the perceived legitimacy of ACR and the power holders responsible for its implementation.

In a study conducted by Ford et al. (1997), self-completion questionnaires were distributed to people either on probation (n=70) or subject to a post-custodial licence (n=23). The questions were designed to elicit people's views about: i) the extent to which their practical problems were dealt with by probation officers; and ii) how helpful or unhelpful the probation service had been in addressing their psychosocial problems. In contrast to most research in this area, this study utilised a random stratified sample, with an additional benefit of containing a relatively low rate of attrition (93 of the 106 questionnaires that were originally distributed were returned successfully and used in the data analysis). This meant that the authors of the study were able to claim with some confidence that their findings were likely to be representative of the wider offender population. Of particular relevance to the current research was the finding that hostels were viewed somewhat negatively by participants – only 29 per cent disagreed with the statement: 'it's no good going into a probation hostel because the others will encourage you to do other jobs which

leads to more trouble'<sup>16</sup> and only 74 per cent perceived probation hostel staff as being helpful, compared to 95 per cent in relation to probation officers.

The research raised a further concern in relation to people's perceptions of the usefulness of probation officers in addressing their practical problems. For example, in relation to employment, 57 per cent of participants either disagreed or were unsure about the statement: 'jobs are hard to find, but with the probation officer's contacts they can often put people in the way of work or a course'. Similarly, with regard to accommodation, less than half of participants disagreed with the statement: 'the probation officer is no help in finding accommodation when the going gets difficult'. Such scepticism regarding the ability of probation officers to help with these practical problems might be considered particularly problematic for the probation service in light of the widespread belief that probation officers *ought* to provide effective help in these areas – 72 per cent thought that a probation officer's job was to help with employment or training, and 70 per cent thought it was to help with accommodation.

The limited access that the probation service has to resources that might alleviate their client's practical problems such as accommodation and employment is troubling from a legitimacy perspective, particularly since 'effectiveness' has been cited as a key antecedent to perceptions of legitimacy in other contexts (see, for example, Tankebe, 2009, discussed in Chapter Two). Nevertheless, Ford and his colleagues implicitly highlighted a promising alternative pathway for the probation service to bolster its legitimacy. They found that 86 per cent of participants thought that 'respect goes a long way, and you get fair play from the probation officer', while 73 per cent *disagreed* with the statement that 'it's no use talking to the probation officer; the bottom line is they can't be trusted'. Moreover, 81 per cent agreed that 'the probation officer is a good safety valve; people can talk to him/her and get things off their chest'. Taken together (and in conjunction with the studies already discussed), these findings lend support to the case that probation officers would do well to focus on issues associated with the concept of procedural justice. In contrast to the provision of help in relation to practical problems, procedural justice appears to provide both an effective and *efficient* (resource-friendly) approach for power holders to enhance their legitimacy in the eyes of those subject to supervision in the community – 'efficiency' being increasingly important in a climate of dwindling resources in public sector services (see Evans, 2012; Nash, 2012).

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<sup>16</sup> Although I would argue the phrasing of this survey item qualifies it for the status of a 'leading question' (see Bradburn et al., 2004).



### ***3.2.2 Studies from outside England and Wales***

In a study that aimed to identify effective community service practice in Scotland, McIvor (1992) explored, among other things, people's experiences and views of community service. McIvor acknowledged that since her participants were required to volunteer for questionnaires and interviews, this probably resulted in 'slightly' higher rates of satisfaction being reported than would have been the case in the wider population of people performing community service. Nevertheless, the sub-sample of 134 participants was well matched with the general population of people serving community orders across a range of background characteristics, including age, gender, employment history, previous convictions, and the length of the current community service order.

The findings from McIvor's survey were generally very positive. For example, 87 per cent of people felt that community service had been a worthwhile experience, while 69 per cent asserted that they had learnt new practical or interpersonal skills. More specifically, participants stated that they had gained the following from community service: i) skills (24 per cent of sample); ii) work experience (19 per cent); iii) increased understanding of others (11 per cent); iv) increased confidence (10 per cent); v) deterrence from offending (10 per cent); vi) increased self-awareness (6 per cent); and vii) a sense of usefulness/purpose (6 per cent). Somewhat remarkably, 100 per cent of the sample reported that their relationship with their placement supervisor was, at a minimum, 'good' (with 77 per cent describing the relationship as 'very good'). The importance of a positive supervisee-supervisor relationship was recognised by 95 per cent of participants, with only 5 people reporting that it was unnecessary for supervisors and supervisees to get on well during the course of community orders. The value of a good relationship was also a prominent feature of McIvor's interview data, which highlighted the positive contribution that supervisors could make to people's motivation and commitment to their community service.

Translating these accounts into language associated with the concept of legitimacy, it is possible to view these findings as representing relatively positive accounts of participants' perceptions of the effectiveness, distributive justice and procedural justice of their community orders. Participants saw their community service orders as effective in the sense that they provided an opportunity to take something away from the experience that might help them lead law-abiding lives upon completion (either in the form of practical skills, interpersonal skills, or simply the acquisition

of work experience). They also perceived their orders as distributively just since they considered the sanction to be a fair and proportionate response to their offending behaviour. Finally, they regarded community service as just in a procedural sense due to the establishment of positive supervisee-supervisor relationships, built and maintained on mutual trust and respect during the course of the orders. Given the relationship established in previous research between perceptions of legitimacy and perceptions of procedural justice, distributive justice and effectiveness, it is reasonable to assume that the people who participated in this study would have attributed a relatively high degree of legitimacy to community service orders and their supervising officers. And, as one would expect from the findings produced by previous research on legitimacy, such positive perceptions of legitimacy should have encouraged people to actively engage in the work that formed part of these orders. Indeed, this appears to be the case: almost two-thirds of the agencies questioned as part of the study expressed the view that the work completed during the course of the orders had been very useful, while the majority (59 per cent) stated that they were 'very happy' with the quality of work that had been provided (McIvor, 1992: 118).

Ditton and Ford (1994) attempted to follow up 86 probationers in their study of probation in Scotland. Ultimately, they conducted interviews with only half of their sample due to people either declining to be interviewed, being breached and taken into custody before contact could be made, disappearing, or repeatedly failing to turn up for their interviews. Despite their interviewees being well-matched with the wider offender population on factors such as age, gender, court area and offence type, this rate of attrition undermines the extent to which the sample might be considered representative and generalisable (a similarly positive bias to that identified in McIvor's study is likely to apply to Ditton and Ford's data). The authors found that a detailed knowledge and understanding of the requirements of the probation order, as well as breach procedures and penalties, was lacking in relation to the majority of participants. Of those who did exhibit knowledge in these areas, this was the result of repeat experience within the criminal justice system, rather than due to the proactive provision of information by individual probation workers. Nevertheless, about half of all participants displayed a high degree of commitment to their probation orders (whether or not they were aware of the specific requirements). Only a few people did not meet with their social worker regularly by appointment, although the place of meeting was somewhat more varied – usually

the home or the social work office, but sometimes other locations were used, for example, local cafes or other public places.

The majority of participants described probation as more helpful than they had expected, due in part to the flexibility and friendliness of the social workers responsible for its implementation. More specifically, people seemed to value the social worker as somebody they could trust and discuss their problems with, as the following response neatly encapsulated:

*It gives me peace of mind knowing he's there if anything goes wrong . . . I just need to pick up the phone and he will be able to help me out.*

Ditton and Ford (1994: 34)

Beyond having someone who they could trust and talk to, probationers also highlighted the practical help that could be provided by social workers in the form of, for example, finance, employment and accommodation. Other probationers seemed to value the advice that their social worker could offer, and the encouragement that they gave to confront any obstacles that probationers might face. The researchers concluded that for many of the probationers they interviewed, their social worker's attitude towards them was equally as important as the content of the support and advice offered. Although only a minority of probationers expressed a negative view of their social workers, it is worth noting that such negativity stemmed mainly from complaints about the content of supervision, for example, that it consisted of social chit-chat with no useful focus. Another complaint from probationers stemmed from the failure of social workers to follow up on their promises, particularly in terms of providing help with practical matters.

Ditton and Ford's findings lend particular support to proponents of procedural justice, who regard procedural aspects of authority as central in building positive perceptions of legitimacy. Indeed, their study suggested that the most highly valued attributes of social workers were: i) the ability to listen; ii) being trustworthy; iii) communicating through straight-forward dialogue; and iv) being sympathetic and accepting – attributes that bear a remarkable resemblance to the components of procedural justice identified by Tyler (2006; c.f. Blader and Tyler, 2003; Gau, 2011; Hough et al., 2010).

Finally, McNeill's (2009) analysis of probationers' oral histories from the 1960s raises a particularly interesting issue from a legitimacy perspective, namely, the

extent to which people's perceptions of the legitimacy of one power holder might affect their perceptions of the legitimacy of other power holders, both inside and outside the criminal justice system. McNeill suggested that some probationers' perceptions of unfair treatment gave rise to enduring feelings of resentment, which not only served to taint immediate supervisor-supervisee relationships, but also damaged relations with, and perceptions of, authority more generally. This finding raises concerns about people's compliance and engagement with power holders in the context of the current research, since there seems to be a strong possibility that licencees' perceptions of the legitimacy of probation and hostel workers might already have been (adversely) shaped by their interactions with other power holders in the criminal justice system (e.g. the police, the judiciary, or the prison service). Conversely, it also raised the promising possibility that positive perceptions of the legitimacy of certain power holders in the criminal justice system might serve to bolster the legitimacy of others. In other words, while the different power holders involved in the distribution and implementation of criminal justice might be conceived by practitioners and academics as being relatively distinct units, it may be that people perceive these units in a more generic sense – as 'criminal-justice-authorities'.

### **3.3 A brief history of supervision in the community (continued): from punitive populism to managerialism, 1997-present**

When New Labour was elected into power in 1997, it came with the intention of 'modernising' criminal justice. Instead of basing its policy on political dogma, the Labour Government declared that it would take an evidenced-based 'what works' approach to crime and punishment. This would involve, among other things, the development of the Effective Practice Initiative and the subsequent implementation of a number of Pathfinder projects that were designed to translate theory and principles into effective practice (see Robinson and Crow, 2009). 'Modernisation' also entailed an increasing focus on risk management and the promotion of strategic co-ordination and closer collaboration between the probation service and other organisations, such as the police, the prison service and local authorities (McLaughlin et al., 2001). Standardised risk-assessment tools were imported or developed to predict the likelihood of reoffending, for example, the Offender Group Reconviction Scale (OGRS), the Level of Service Inventory Revised (LSI-R) and the subsequent Offender Assessment System (OASys) (see HM Prison Service, 2003).

These tools, which served to sort people into categories reflecting levels of risk, facilitated the matching of the probation service's resources to a person's supposed risk of harm, while simultaneously recasting the probation officer as a 'pivotal (risk) 'knowledge broker'' (Robinson, 2002: 9).

This new-found preoccupation with risk fed into a critical *Thematic Review of Approved Hostels* in 1998 (HMIP, 1998). The report, entitled 'Delivering an Enhanced Level of Community Supervision', set down a clear rationale for the hostel estate in managing the risk posed by high risk offenders. In order to improve, hostels needed a national rationalisation in terms of how they were organised and where they located. Furthermore, uniformity was to be injected into a hostel system which until that point had been characterised by an inconsistent nature and scope. Finally, and most important in the context of the current research, the hostel estate was to focus primarily on providing enhanced supervision for high risk prisoners released on licence, departing from the previous focus on bailees and people subject to community penalties.

The Criminal Justice and Court Service Act 2000 resulted in the creation of a National Probation Service (NPS), with 42 areas matching existing police areas, fully funded by the Home Office. While the creation of a national organisation provided the potential for a stronger, unified voice for the service on the national, political stage, it was also simultaneously made susceptible to a greater degree of centralised control (Burke and Collett, 2010). Indeed, Nellis and Goodman (2009) have argued that managerial energies in the probation service around this time were increasingly directed upwards towards the National Probation Directorate, and away from 'peripheral' frontline practice. The arrival of another centralised criminal justice organisation was soon to follow in the form of the National Offender Management Service (NOMS), which was created following the proposals made in Carter's review of 'correctional services' (Home Office, 2003). NOMS was designed to bring together the prison and probation services, thereby enabling the seamless, end-to-end management of all offenders, in service to the ultimate goal of public protection (Home Office, 2003; Raynor and Vanstone, 2007).

The creation of NOMS also laid the foundations for 'contestability' in criminal justice – the development of a market for offender-related services which was intended to improve effective service delivery (Home Office, 2003). In relation to supervision in the community, this meant that the probation service would be drawn into competition with the private, voluntary, and community sectors over bidding

for contracts to deliver certain many of its services (Burke and Collett, 2010). The central principle of cooperation that existed between the probation service and the private and third sectors was therefore replaced by a climate characterised by competition (for example, see the Offender Management Act 2007, which firmly established commissioning and contracting out in a sphere previously reserved for the probation service). Alongside the promotion of contestability came the introduction of the concept of offender management, which in theory meant that a single professional would have overall responsibility for the entire sentence plan for each individual offender. In practice, this involved probation officers being recast as 'offender managers', in charge of brokering interventions and services for each of their cases (King, 2010).

The potentially damaging effect that the purchaser-provider split might have on probationer-probation officer relationships was highlighted by Robinson and Dignan (2004), who argued that the face-to-face contact time between officer and probationer would likely decrease as a result of these changes. Personal relationships between probation officers and probationers were further devalued by the spread of actuarial technologies which gave primacy to the concept of 'risk' and the principle that resources should be matched to people's supposed levels of risk (e.g. Robinson, 2001, 2002; c.f. Feeley and Simon, 1992). Other technological innovations such as advancements in electronic monitoring served to reinforce the trend toward risk management (Nellis, 2011).

The enactment of the Criminal Justice Act 2003 ushered in more significant changes for the content and implementation of supervision in the community. One key change was the introduction of the new 'community order'. This was designed to bring together and simplify the supposedly complex system of several disparate forms of community sanctions that had developed piecemeal over several decades. The generic community order allowed sentencers to choose between, and combine, any number of twelve different requirements, which broadly reflected the previous individual community sanctions that the orders replaced. The Act also had substantial implications for post-custodial supervision, making it easier to recall prisoners on licence and turning release from custody into an automatic process at the half-way point of all determinate sentences of twelve months or more (Burke and Collett, 2010). Ultimately this led to increasing numbers of people being supervised by the probation service on licence in the community (Padfield, 2010).

The Act also introduced the term ‘dangerous offenders’ into legislation, which further reinforced the focus on public protection as a central aim of criminal justice. The increasingly managerialist<sup>17</sup> approach to criminal justice was accompanied by the belief that offenders should be perceived as separate entities from the majority of the public who were ‘safe’ and law-abiding, in other words, offenders were to be regarded as dangerous *others* (Burke and Collett, 2010). Consequently, it became important to ‘responsibilise’ offenders during the course of a penal sanction – a term that, in practice, meant people fully accepting the (sometimes severe) consequences for any failure to abide by the terms and conditions of their sanction (e.g. see Ministry of Justice, 2010a).

An ‘offender management model’ was implemented by the probation service in 2005, further reinforcing a managerialist approach that centred on risk assessment (Robinson, 2005, forthcoming). Based on an OASys assessment of their risk status, people were allocated to one of four tiers that involved varying levels of supervision (NOMS, 2006). People on the lowest tier (and therefore deemed to pose the lowest risk) were to receive ‘punishment’, those on the second tier were to receive ‘punishment and help’, those on the third tier were to receive ‘punishment and help’, as well as being expected to ‘change’, and finally, those on the highest tier were to receive ‘punishment and help’, were expected to ‘change’ and would also be subject to ‘control’.

Despite the ascendancy of managerialism, however, the twenty-first century also witnessed a continuation of attempts to ‘toughen up’ supervision in the community (Robinson, forthcoming). For example, in 2008, a report was published by the UK Cabinet Office proposing to rebrand ‘unpaid work’ as ‘community payback’ (Casey, 2008). The idea was to emphasise the punitive credentials of this sanction by making it particularly unpleasant and shaming, for example, requiring those performing community payback to wear high visibility vests that marked them out as offenders (Maruna and King, 2008). Furthermore, as a consequence of the Crime and Courts Act 2013, courts were mandated (apart from in ‘very exceptional circumstances’) to attach a ‘punitive requirement’ to all community orders for adults, such as a fine, curfew, or exclusion zone requirement (Ministry of Justice, 2013d). Connected to these attempts to make supervision in the community more

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<sup>17</sup> Managerialism is an ideological principle which operates on basis that society is made up of organisations, businesses, and other groups. Social decisions are therefore based on the interactions of the managers of these social units, as opposed to being based on the opinions of individuals who work within these units or who are affected by them (McLaughlin and Murji, 2012; O’Reilly and Reed, 2010).

punitive, there has been a simultaneous lowering of tolerance in cases of noncompliance with these sanctions (Robinson and Ugwudike, 2012; Robinson, 2013).

While the term ‘rehabilitation’ has become a prominent feature in the policy literature on community sanctions in recent years following the Conservative-Liberal Coalition Government’s programme, ‘Transforming Rehabilitation’ (TR), current modes of rehabilitation have evolved a long way from their initial forms in early-mid twentieth century probation practice (Robinson, 2008; c.f. Ministry of Justice, 2013f; National Audit Office, 2014). In its current guise, the government has promoted rehabilitation on the grounds of its potential to protect the public from further victimisation, rather than on the previous welfarist principles of helping to provide people with opportunities to reform and reintegrate into the community (Robinson, 2008). At its core, however, the purpose of TR appears to have been the introduction of the private and voluntary sectors into the delivery of supervision in the community, as opposed to any substantive ideas about ‘transforming’ modes of rehabilitation *per se*. The rationale behind the rollback of the public sector and its replacement with a payment by results (PbR) system of contracts is supposedly to stimulate competition and innovation in this area. On 1st June 2014, a single ‘National Probation Service’ replaced the previous 35 individual Probation Trusts and became responsible for the management of people deemed to be ‘high risk’ (NOMS, 2014a). The remaining population of people subject to supervision in the community are managed by one of 21 ‘Community Rehabilitation Companies’ (CRC) depending on their geographical location.

A second key pillar of TR, particularly pertinent given the context of the current research, is the extension of post-custodial supervision to people serving sentences of imprisonment of less than twelve months. The reoffending rate of this population is typically higher than that of populations serving over twelve months imprisonment (63 per cent one year proven reoffending rate, see Ministry of Justice, 2013e). The Ministry of Justice (2013f) has attributed this, in part, to the fact that people serving these prison sentences are currently released with no post-custodial supervision. Consequently, TR’s proposals state that all those sentenced to a term of imprisonment of less than twelve months will serve half of this term in prison and half subject to a post-custodial licence. Furthermore, all people sentenced to less than two years’ imprisonment will be subject to a ‘supervision period’ for the purpose of rehabilitation. The conditions imposed on people as part of this supervision period will be more limited than those as part of their licence, since the



former is intended solely to further the purpose of rehabilitation and will not form part of the custodial term (see Ministry of Justice, 2013f). The National Probation Service is set to deal with *all* licence breaches and will have the power to distribute warnings, ask the relevant prison governor to vary the licence conditions, or recall the licensee back to custody. Breaches of the supervision period, on the other hand, will be dealt with by the courts, who will have the power to impose a fine, unpaid work, a curfew, or recall the offender back to custody for a period of up to fourteen days (ibid.).

Before reviewing recent research on supervision in the community, it is worth outlining the current portrait of the hostel estate, given its relevance to the current study. Although historically hostels served as places of residence for bailees awaiting trial, as noted above, they have primarily been reserved for people on licence since the *Thematic Review of Approved Hostels* in 1998 (HMIP, 1998; c.f. NOMS, 2014b). In 2014, there were 101 hostels in England and Wales, the vast majority of which were managed by probation trusts, and a small minority by voluntary management committees (NOMS, 2014b). In total, they provide around 2,200 bed spaces, of which 112 were reserved for women. As the primary purpose of hostels is to provide enhanced supervision for high risk licensees, hostel residents have typically been convicted of serious sexual or violent offences, or are considered to be ‘prolific and other priority offenders’ (ibid.).<sup>18</sup>

Aside from helping to manage risk, hostels are also intended to provide a supportive and structured environment to aid people to adapt from prison to community life (ibid.). This involves, among other things, support with finding suitable move-on accommodation, help with employment and education opportunities, and advice concerning finance, health, and personal relationships. Licensees who are subject to a hostel residency requirement typically move into a hostel immediately following their release from prison, and usually for a period of around three months, although this depends largely on whether suitable move-on accommodation can be arranged during this period.

In summary, there have been major and varied changes in field of supervision in the community since New Labour came to power in 1997. For this reason, Robinson (forthcoming) has argued that attempts to identify distinct phases in the recent history of supervision in the community are untenable. Although I refer to the

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<sup>18</sup> ‘The definition of a prolific and other priority offender (PPO) is an offender whose volume of offending has caused significant impact in a local community’ (NOMS, 2014a).

period 1997 to the present as being characterised by a shift from populist punitivism to managerialism, I do not intend to obscure the fact that other significant narratives – such as those relating to rehabilitation and punitiveness – have also been running alongside this shift. Nevertheless, I would argue that the move toward managerialism and the introduction of private and third sector organisations into criminal justice is the dominant trend among these three narratives, as indeed it is in other areas that were traditionally reserved for the public sector, such as social work (see Rogowski, 2011), health (see McWilliams and Manochin, 2013), and education (see Ladwig et al., 2014). While the extent to which penal sanctions are aimed at punishment or rehabilitation might well fluctuate in future years depending on the political climate, there seems to be something inexorable about the trend toward a managerialist approach to supervision in the community, and, as will be discussed in the final chapter of this thesis, these trends might well have significant implications for licencees’ perceptions of the legitimacy of those in power.

### **3.4 Recent research on people’s experiences and views of supervision in the community**

#### ***3.4.1 Studies from England and Wales***

One of the earliest large-scale studies commissioned by the Home Office under New Labour was conducted by Mair and May (1997). The study aimed to explore and evaluate the views of people who had been sentenced to either probation or a combination order. Over 1,000 people were randomly drawn from 22 probation areas and interviewed. In particular, Mair and May examined people’s experiences of probation, including their perceptions of how helpful it had been in tackling their problems and decreasing the likelihood of preventing further offending. The authors suggested that there was general evidence of positive attitudes toward probation, with respondents being particularly positive about their relationships with their probation officers. Although employment and factors associated with offending behaviour were the most commonly discussed issues in supervision sessions, no respondent believed they had been given their current community sentence to prevent them from reoffending. A majority of respondents, however, thought that probation had contributed to their understanding of their own offending behaviour and would therefore help them to live law-abiding lives in the future. A salient finding, particularly given the political context of efforts to make community

sanctions appear 'tougher' (e.g. Home Office, 1998), was that participants already considered probation to hold a significant 'punitive bite', particularly in terms of the restrictions it placed on people's liberty.

As part of the same research drive, the Home Office commissioned a research project to examine the state of voluntary aftercare in England and Wales (Maguire et al., 1997). The researchers interviewed 105 prisoners serving prison sentences of less than twelve months and found that most voiced concerns over expected difficulties with accommodation, employment and finances on release. These difficulties were exacerbated by the fact that a significant proportion of people considered there to be no one who would help them to address these issues. Taken together, the research by Mair and May, and Maguire et al., point toward some promising sources of legitimacy for those power holders delivering supervision in the community. In particular, both studies highlighted the significant and widespread problems faced by many, including obstacles that related to employment, substance abuse, accommodation, relationships and finance.

Given that the people who participated in the study conducted by Maguire and his colleagues often felt they had no one to help them with these issues, power holders involved in the delivery of supervision in the community seem well-placed to capitalise on these sources of legitimacy, via the provision of focused, practical help in these areas. Translated into the language of legitimacy, providing support in these areas is likely to result in people perceiving the *effectiveness* of power holders more positively, which in turn would feed into positive evaluations of their legitimacy (see Tankebe, 2009).

Rex's (1999) research sought to elicit the views of 60 probationers in relation to their experiences of probation, as well as the views of 21 of their probation officers. The vast majority of the study's participants (88 per cent) understood that probation was intended to reduce the likelihood of them reoffending. However, only two-thirds of participants believed that probation had actually reduced the likelihood of them committing further crimes (c.f. Mantle 1995, who also found that two thirds of offenders believed that probation had reduced the likelihood of reoffending 'very much' or 'considerably'). On the basis of this research, Rex argued that good supervision should be active and participatory, since this would garner better levels of offender engagement. This, in turn, would produce more positive experiences for probationers, which would contribute to a decreased likelihood of reoffending. Although no statistical data was provided in support of this point, Rex suggested

that such links were plausible and often clearly articulated by probationers in their narrative accounts.

Consistent with the research already discussed, Rex found that people tended to value probation officers who provided practical advice relating to employment, accommodation, relationships and substance use. Although the point has already been made a number of times, Rex's research provided further support for the idea that focusing on assistance with key practical problems would be likely to increase offenders' perceptions of the legitimacy of supervision in the community and the power holders responsible for its implementation. However, another important point can also be drawn from this research, namely, that legitimacy might depend not only on *what* probation officers do, but also *how* they do it. This accords with both McIvor's (1992) and Davies' (1979) studies noted above, which highlighted the importance of procedural justice issues in relation to the supervisor-supervisee relationship. For example, active, participatory relationships that involve high levels of client engagement are likely to satisfy several key criteria of procedural justice that have been well established in other research, including the opportunity to express one's views and be treated with dignity and respect (Tyler, 2006; Hough et al., 2010).

Although longitudinal research conducted by Farrall (2002; c.f. Farrall, 2004; Farrall et al., 2014) exploring the issue of 'what works with offenders' did not draw on the concept of legitimacy explicitly, it nevertheless lent implicit support to the theories associated with this concept. The study constituted a valuable contribution to the literature in this area for a number of reasons. First, it had a longitudinal design that was apt for investigating processes of change. Second, its primarily qualitative, in-depth approach via interviews with probationers and their probation officers served to open up the 'black box' of criminal justice interventions to address questions such as *why* and *how* particular factors – e.g. employment, personal relationships, drug and alcohol addiction, probation supervision and reoffending – interact with one another. And third, the study had a relatively large sample size of 199 probationers, meaning that the findings from his research might be considered more representative of the wider population than several of the other studies discussed above, which involved fewer participants. The research focused on the identification of particular obstacles to desistance and the ways in which these obstacles were negotiated by people on probation. It also provided some indicators of people's experiences and views of probation itself. So, for example, three quarters of participants expressed the opinion that their probation officers had been helpful,

94 per cent believed they had been treated fairly by their officer, and two thirds rated their overall experience of probation as 'positive' (Farrall, 2002).

Farrall identified a number of obstacles facing people on probation: i) drugs/alcohol; ii) friends/family; iii) personal characteristics; iv) social problems; v) finances; and vi) other. Probationers tended to identify fewer obstacles to desistance than their probation officers and there was a marked lack of consensus between probationers and their officers concerning what these obstacles actually were. Although over 50 per cent of probationers stated that their probation worker had helped them to confront the obstacle(s) that had been identified, no statistically significant relationship could be found between their successful resolution and any particular type of intervention or help from probation officers. Farrall explained this finding by arguing that:

*. . . much probation work is negated by aspects of the probationers' lives, is aimed at tackling obstacles which are enduring and therefore very difficult to address or that the proposed solutions and the manner of their delivery appeared to be irrelevant to the needs of the probationers.*

Farrall (2002: 116).

Consequently, he argued that the key factors in explaining the likelihood of obstacles being successfully resolved (and likewise, the chances of a probationer desisting) were instead probationers' personal motivations and their personal and social contexts. Although these appeared to be the dominant factors in explaining the resolution of obstacles and desistance from offending, Farrall nevertheless found support from his quantitative data that probation workers who provided 'some' or 'a lot' of help to probationers in terms of overcoming the obstacles that they faced could at least improve the chances of success – 72 per cent of obstacles were overcome when probation officers provided 'some' or 'a lot' of help, whereas only 58 per cent of obstacles were overcome when probation officers provided 'little' or 'no' help at all (Farrall, 2002: 161; Farrall et al., 2014).

Viewing Farrall's research through a lens of legitimacy, one could conclude that by centring on factors such as a probationer's 'thinking skills', probation workers lost legitimacy in the eyes of their clients. This is because many probationers felt that cognitive behavioural programmes were irrelevant to their individual needs. Probation workers could, however, bolster their legitimacy in the eyes of probationers by focusing on the provision of individualised, practical support to

solve key problems, for example, with obstacles related to employment, accommodation, substance abuse and finance (Farrall et al., 2014).

Commissioned by the Home Office, a study by Calverley et al. (2004) investigated concerns about discrimination (overt or otherwise) against minority ethnic groups by exploring the experiences and views of black and Asian probationers. Encouragingly, when asked if they felt they had been treated fairly by their supervisor, 86 per cent of the participants in this study felt that they had. Participants suggested that the characteristics of probation workers that made for good supervisory relationships included: being easy to talk to/a good listener (27 per cent of the whole sample); being understanding and sympathetic (27 per cent), and understanding the particular experiences, feelings and needs of a black or Asian person (20 per cent). These factors not only accord with the findings of other research in this area (see Broussine and Wakefield, 1997; Davies, 1979; Mair and May, 1997; Rex, 1999), but also bear a close resemblance to aspects of procedural justice (Tyler, 2006b; Tyler and Huo, 2002).

Only 3 per cent of probationers in the study by Calverly and his colleagues felt that a necessary quality of a good supervisor was that they were black or Asian. The researchers also found no evidence that the perceived helpfulness of supervision, or whether an order was breached, was related to the ethnicity of the supervisor. The things that probationers most valued about supervision were being given support and advice with practical problems and needs (21 per cent), closely followed by having someone to talk to (17 per cent). The conclusions drawn by Lewis et al. (2007), who analysed part of the same dataset as Calverly and his colleagues, mirrored these findings. They found that the three things people most wanted help with following their release from prison were: i) employment/education (28 per cent); ii) having someone to talk to (28 per cent); and iii) support with housing (20 per cent). These studies lend further support to the argument that a focus on practical problems is likely to increase the legitimacy of power holders in the eyes of people subjected to supervision in the community. Furthermore, Calverley and his colleagues' findings indicated that the factors which shaped power holders' perceived legitimacy in the eyes of ethnic minority probationers closely mirrored the factors that shaped the legitimacy perceptions of probationers more generally.

Mair and Mills' (2009) research involved interviews with 16 people who were subject either to a community order or suspended sentence order (SSO). Overall, the study portrayed a positive picture of people's experiences and views of community

orders and SSOs. Most participants considered themselves to be in a better position toward the end of their orders than when they had started, for reasons including reduced drug use, gainful employment, the obtainment of educational qualifications, or simply from receiving a general 'push in the right direction'. Supervision was described as useful in terms of having someone to speak to, as well as having someone who could help with access to services relating to employment or accommodation. Those who were most positive about the potential for their orders to reduce the likelihood of them reoffending tended to be drug users, since these people could receive help to tackle their drug addictions. Most other offenders were more sceptical about the impact of their order on the likelihood of their reoffending, often highlighting personal motivation as the most important factor in the desistance process. Nevertheless, the researchers argued that supervisors could play a valuable role by stimulating an individual's personal motivation to desist from offending. If probation officers were to stimulate change, however, then it was crucial that they developed positive and participatory relationships with their clients during the course of the order.

The conclusions drawn by Mair and Mills in this study reinforce many of those found in earlier research, discussed above. From a legitimacy perspective, however, one particularly important finding was identified in this study that perhaps has not been highlighted in other studies: the sense of *obligation* that offenders expressed in relation to their supervising officers with whom they shared a positive relationship (c.f. Rex, 1999). For example, one participant explicitly stated that he had chosen to take part in the study because his supervisor had asked him to, and that he felt he should show the same respect to his supervisor as his supervisor had shown to him. This could be interpreted as an archetypal example of legitimacy theory in action – the respect shown to a client by their supervisor constituted a procedurally just relationship of power, which contributed to the client's positive perceptions of the legitimacy of their supervisor. In turn, this encouraged a sense of obligation on behalf of the client to comply and engage with the decisions made by their supervisor. While in this case the specific request made by the supervisor was to participate in the study currently being discussed, it could reasonably be assumed that other decisions or requests were likely to have been followed because of the same sense of perceived obligation on the part of the person in question.

Although data analysis is still in its infancy, it is worth noting a recent Ministry of Justice initiative designed to capture a national overview of people's views of supervision in the community – the 'offender management feedback questionnaire'

(Ministry of Justice, 2010b). The questionnaire was distributed on an annual basis to people on licence and those serving community orders in England and Wales. Its primary function is to generate quantitative data about people's experiences of supervision in the community; 23 out of the 24 substantive questions on the survey were closed questions with predefined response options. The questions covered a range of issues that bore a striking resemblance to the types of question found in quantitative research on policing and legitimacy. For example, the statement, 'My probation officer generally tells me of the reasons behind his/her decisions', which required a tick-box response on a Likert-scale, was similar to an archetypal question used in policing research to measure people's perceptions of procedural justice (see NOMS, 2010; c.f. Tyler, 2006b). The survey, however, is not designed to explore people's perceptions of the legitimacy of supervision in the community. Instead, it will be used to track year-on-year changes in people's experiences of these sanctions, as well as to examine whether there is any relationship between people's experiences of supervision in the community and the likelihood that they will reoffend.

Appleton's (2010) research, involving interviews with life-sentence offenders who were either living in the community on licence post-release (n=28) or who had been recalled to custody following a period spent on licence (n=9), explored the issue of 'life after life imprisonment'. The majority of her sample (89 per cent) perceived the primary purpose of post-custodial supervision to be the reduction of reoffending. While many offenders believed there was little or no tension between the care and control functions of probation supervision, four people (11 per cent of the sample) thought that the role of the probation service had significantly shifted away from 'advising, assisting and befriending' and moved toward operating as a controlling-arm of the state, focused squarely on public protection. Although only expressed by a small minority of offenders, these views are nevertheless significant, particularly given the emphasis placed on the importance of a good supervisory relationship by the majority of participants. Participants valued having a supervisor who they could trust and speak openly with – an opinion well reflected in the following statement:

*The important thing is having someone there who you respect and can trust – someone you can turn to . . . I can phone [my probation officer] up and say, 'Look I've got a problem, can you help us out with it?' You know, and now I keep her informed of everything that goes wrong.*

(Male, age 44; Appleton, 2010: 113)



Ironically, therefore, a tight focus on the functions of control and public protection (at the expense of an 'advise, assist and befriend' role) could inadvertently lead to less control and a greater risk to the public if offenders become disengaged with the supervision process and unwilling to speak openly with their probation officer (see further Chapter Six). Such a possibility was alluded to in the following statement:

*There are people who would talk to a probation officer if they considered them to be a friend, but if you consider them to be an executive arm of the state who can get you recalled then I think it's probably going to act negatively.*

(Male, age 62; Appleton, 2010: 109-110)

In any case, the interview data produced in this study firmly indicated that offenders valued a good relationship with their supervisor, which could be built on the following supervisor qualities: respectful, experienced, honest, trustworthy, encouraging, supportive, flexible, reliable, patient, understanding, knowledgeable, and being a good listener. As with findings from previous research, these qualities closely mirror those that are associated with the concept of procedural justice (see Tyler and Huo, 2002).

A paper by Digard (2010; discussed briefly in the previous chapter) adopted an explicit focus on legitimacy in order to explore the experiences and views of people who had committed sex offences regarding post-custodial supervision. The article was based on Digard's PhD research, which highlighted, among other things, the problems created by the current post-custodial licence breach procedures and consequent licensee recalls to prison. Digard drew on the work of Paternoster et al. (1997) and Tyler (2003) in order to highlight licencees' negative evaluations of the recall system, which damaged their assessments of its procedural justice. In particular, the study drew attention to licencees' inadequate opportunities for representation in the case of breach proceedings, the ambiguity of certain licence conditions, and the fact that decisions were made by probation workers (as opposed to members of the judiciary), who licencees often felt lacked sufficient authority to make decisions of this importance. Digard concluded that his data supported previous findings from empirical research that linked people's perceptions of procedural justice with their perceptions of power holder legitimacy, and perceptions of legitimacy with subsequent compliance and engagement with authority (e.g. Tyler, 2003; Paternoster et al., 1997).

Another study that explored the issue of compliance with supervision in the community was conducted by Ugwudike (2010), in which she sought to examine how interactions between supervisors and probationers influenced probationers' compliance with community penalties. The study included observations of interactions, informal discussions, and interviews with 25 probationers serving either 'old-style' probation and combination orders, or 'new-style' community orders (see above for an account of the development of different forms of supervision in the community).

Drawing on Bottoms' typology of compliance (see Chapter Two), Ugwudike suggested that deterrence theories alone could not provide an adequate explanation for probationers' compliance with the terms of their community sanctions. Instead, compliance was also based on instrumental and normative considerations which included probationers' perceptions of the legitimacy of their probation officers. In order to garner and protect their legitimacy, however, Ugwudike argued that probation officers needed flexibility to exercise their professional discretion with regard to the enforcement of the conditions of supervision in the community. Moreover, she highlighted the potential interconnections between different compliance mechanisms, suggesting that although instrumental considerations initially encouraged positive supervisor-probationer relationships, once these relationships had been well established, this led to further normative compliance based on personal attachment and legitimacy. She warned against the use of rigid, prescriptive systems of enforcement, such as those imposed by National Standards (NOMS, 2007), because they threatened to undermine the perceived legitimacy of probation officers and consequently decrease the likelihood that probationers would comply and engage with their orders.

Bottoms and Shapland's (2010) longitudinal study involved interviews with young adult males on probation who were regarded as persistent offenders. Participants were interviewed up to four times during a five year period, with the first interview being conducted when the participant was aged between 19 and 23. The data generated by this study portrayed a somewhat negative picture of people's perceptions of probation when compared to the research discussed above, although this might be attributed to the study's sampling frame – young adult, persistently offending males. When asked to reflect on their last three years of probation, 49 per cent of participants said that they had found it 'not at all useful' (15 per cent 'very useful', 20 per cent 'fairly useful' and 16 per cent 'a little useful'). Such negative responses were associated with people's beliefs that the content of supervision

meetings was superficial and lacking a clear or constructive purpose. Participants suggested that they would value having consistent contact with the same supervisor – someone who would listen to what they said and provide support and advice with practical problems. In the context of the findings from other studies discussed above, the views provided by probationers who participated in this research were not particularly exceptional. However, their relatively negative perceptions of the ‘usefulness’ of probation might be considered a cause for concern since this study is one of the most recent examinations of people’s experiences and views of supervision in the community.

Finally, Padfield (2013) conducted an empirical investigation that explored the injustices of the recall process for licencees who were subjected to it, as well as the significant resource burdens that recalls entailed. Of the 46 recalled prisoners that she interviewed as part of the research, 33 had been recalled for an alleged fresh offence. Many, however, denied the allegations, insisting they had been ‘stitched-up’ (ibid.: 1). In some of these cases, official charges were never initiated, and in others, charges were subsequently dropped or people were acquitted at court. These people were angered by the fact that, despite lacking a sound basis for the recall that had been initiated, they remained in custody. More generally, interviewees expressed their frustration at the lack of information provided to them regarding the details of their recall, as well as the unreliability of information concerning the progress of their appeals or the time it would take for their case to be heard and decided. Furthermore, some people felt that their likelihood of reoffending was exacerbated by the conditions on their licence and the fact that they had been recalled.

Padfield’s findings raised a variety of concerns regarding prisoners’ perspectives on legitimacy. First, there seemed to be a lack of outcome justice regarding the recall decision itself, with many licencees challenging allegations concerning fresh offences or believing that the technical breaches of their licence conditions did not warrant recall to custody. Second, the recall process seemed to lack basic elements of procedural justice, such as the provision of accurate and timely information to people who had been recalled. And third, the effectiveness of recall decisions in terms of their ability to reduce the likelihood of people reoffending was also questioned by those who had been recalled. Taken together, it seems likely that these issues must have posed a significant challenge to the legitimacy of the recall process, as viewed through the eyes of licencees.

### ***3.4.2 Studies from outside England and Wales***

Drawing on the findings of two studies which examined the processes and outcomes of post-release supervision and probation in Scotland (McIvor and Barry, 1998a, 1998b), Barry (2000) suggested that licencees were more likely to talk about practical problems, for example, employment, accommodation, and personal relationships, than their probation counterparts. Unsurprisingly, therefore, many licencees felt that supervision was overly focused on addressing offending behaviour, at the expense of support and advice with these practical problems. Both groups agreed on what the aspects of a good supervisor-supervisee relationship were, citing factors such as trust, openness, caring and friendship. A majority of participants also stressed the importance of supervisors getting to know their clients' background, problems, interests and aspirations. This enabled supervisors to provide practical support and personal advice that was tailored to the needs of the individual, rather than implementing generic interventions that sought to tackle 'offending behaviour'.

In a study designed to explore the extent to which probation helped to address people's social problems, McCulloch (2005) interviewed a small sample of probationers (five males and one female) and their probation workers in Scotland. She found that while probation workers used talking methods, referrals to other agencies and direct help to tackle probationers' social problems, these attempts tended to produce improvements rather than resolutions. Drawing on participant narratives, McCulloch argued that more effective probation interventions required 'a more collaborative, integrated and re-integrative approach to probation assessment and intervention than is currently in place' (ibid.: 20). The researcher further highlighted that while probationers stated they would appreciate more direct help in tackling their social problems (e.g. obstacles relating to employment and accommodation), they did not *expect* such help to come from probation workers, given that probationers knew these people were severely restricted by a lack of time and resources. Instead, probationers tended to emphasise the value of 'being listened to', as this helped them to form a clear understanding of their problems, as well as promoting positive relationships between probationers and their supervisors. Probationers stated that when probation officers listened to their views, this demonstrated a level of respect that helped to build active and participatory relationships, which then meant that probationers were more inclined to engage with directive methods of supervision.

McCulloch's findings fit neatly into a conceptual framework based on theories of legitimacy. The satisfaction of procedural justice criteria – probation officers listening to the views of their supervisees and treating them with respect – led probationers to credit their probation officers with high degrees of legitimacy, which in turn made them more likely to actively engage with the decisions made within the context of a participatory supervisor-supervisee relationship. McCulloch's study, as with so much of the research already discussed, indicated that a potential source of legitimacy for power holders might be found in the provision of support and advice concerning key practical problems. However, unlike other research, the study also suggested that the failure to provide practical assistance in these areas might not necessarily lead to negative consequences for perceptions of power holder legitimacy, since probationers did not necessarily *expect* to receive direct help from their probation workers with these issues.

Armstrong and Weaver (2010) sought to compare the views of people subjected to either short sentences of imprisonment or supervision in the community in Scotland. In order to do this, they interviewed 35 people: 22 were serving prison sentences of six months or less, and thirteen were serving a community-based sanction. Among those serving community sanctions, they found that people seemed to value a personalised supervisory process, for example, in terms of one-to-one conversations between themselves and their supervisor, since this meant that help and support could be tailored to their individual needs (c.f. Weaver and Armstrong, 2011). Furthermore, they argued that the concept of 'payback', which is often integral to community sanctions, had a twofold value. On the one hand, 'paying back' meant giving something back to the community to rectify the 'wrongs' of their offending behaviour. On the other hand, payback was valued because it allowed people to take something away from the experience, for example, in terms of an increased sense of self-worth and self-esteem.

When comparing the impact of prison and supervision in the community on people's lives, the researchers found that those subjected to supervision in the community tended to rate the impact more positively than those subjected to sentences of imprisonment (Armstrong and Weaver, 2010). Although Armstrong and Weaver suggested that prison sentences could have a positive impact on some people, they argued that it was impossible to anticipate which people these sentences might benefit. Therefore, the authors concluded that prison was an expensive and unpredictable tool for generating reflection and change in people's behaviour. These findings reflect those also found in research conducted by Varah

(1981, noted above), and reinforce the argument that prison is likely to be perceived as relatively low in legitimacy compared to other penal sanctions that are delivered in the community.

Finally, Durnescu (2011) adopted a similar analytical perspective to that of Sykes (1958), in order to study the 'pains of probation'. He conducted in-depth interviews with 43 probationers in Romania, which aimed at eliciting the subjective experiences of probationers, with a particular focus on the aspects of probation which people would most like to avoid – in other words, the aspects that people experienced as most 'painful'. A thematic analysis of these interviews suggested that there were eight main types of deprivations and frustrations: i) deprivation of autonomy, ii) pain of reorganising the daily routine around the sanction, iii) deprivation of private or family life, iv) deprivation of time, v) financial costs, vi) stigmatisation effects, vii) forced return to the offence, and viii) life under a tremendous threat.

Overall, the pains of probation were primarily emotional and economic, rather than physical. Deprivation of autonomy, for example, was one of the most common pains of probation and encompassed requirements such as reporting regularly for probation appointments, informing probation workers about details regarding accommodation, income and employment, and restrictions on travelling abroad. These 'pains' may impact on probationers' perceptions of the legitimacy of probation because, in part, they run counter to the principle of rehabilitation. For example, citing the work of Farrall (2002, 2004), Durnescu argued that social capital (which includes the support of family members) might play an important role in the desistance process. Research on offender reintegration (e.g. Laub and Sampson, 2003; Farrall, 2002) also indicates a link between satisfactory employment and the process of desistance. Therefore, probation requirements which undermine a probationer's ability to interact with family members or engage in meaningful employment might result in probationers attributing rather less legitimacy to these sanctions or to those power holders responsible for their implementation.

The pain of 'life under a tremendous threat' refers to the possibility of people being sent to prison if they fail to comply with the requirements of a probation order or commit further crimes. Durnescu argues that probationers' fear is amplified by a number of penal mechanisms, such as warning letters that highlight the conditions and obligations of a probation order and the consequences of noncompliance. This pain is particularly applicable to the post-custodial licence period in England and

Wales, during which time licencees have faced high recall rates for breach of licence conditions (see Ministry of Justice, 2013e). It is unclear, however, how this pain might impact on licencees' perceptions of power holder legitimacy. On the one hand, research on outcome dependence suggests that the power to send or recall licencees to custody for breach of the conditions of their community sanctions might improve licencees' perceptions of the legitimacy of power holders (see van der Toorn et al., 2011). This is because the more power a power holder has over its subjects (or, in other words, the more that subjects' 'outcomes' are dictated by a particular power holder), the more likely these subjects will be to attribute legitimacy to that power holder (ibid.; discussed in Chapter Two). On the other hand, however, Digard (2010; noted above) argued that the procedural injustice of the recall system had a negative impact on licencees' perceptions of the legitimacy of the licence period and those responsible for its implementation (the effect of the recall process on licencees' perceptions of the legitimacy of probation workers is discussed in Chapter Six).

In order to ameliorate the pains of probation identified in Durnescu's study, he proposed that probation practices should be designed around two different, albeit complementary, perspectives: human rights and the Good Lives Model (GLM; see Maruna, 2001). In brief, Durnescu argued that penal interventions should be aimed at identifying obstacles that hinder the attainment of people's primary goods (such as autonomy, positive self-evaluation and the satisfaction of a number of physiological needs). Furthermore, he suggested that the GLM's strength-based approach, and focus on socially acceptable ways of living, promotes a more positive relationship between supervisor and supervisee, based on respect and collaboration, as opposed to threats and risks, which is embodied by the alternative risk-needs-responsivity model (see Andrews and Bonta, 2003). It is worth reiterating that a supervisory relationship characterised by respect and collaboration matches up well with the criteria identified in the procedural justice literature, such as dialogue, transparency, and respect (see Tyler and Huo, 2002). Aspects of the GLM approach, therefore, appear promising when viewed through a lens of legitimacy.

### ***3.4.3 Research on Approved Premises***

Before concluding this chapter, it is worth devoting some space to reviewing the extant research on hostels. As is the case with the licence period, there is a dearth of research on people's experiences and views of residing these places. Given the centrality of hostels to the current research, I will briefly discuss some of most

relevant studies, despite the fact that few of them have focused on residents' perspectives.

A notable exception is Reeves's (2011) doctoral research, which explored licencees' perceptions of the role played by hostels during the post-custodial licence period. Reeves used a single case study approach that involved interviews with residents (n=24) and staff (n=17), fifty-seven periods of observations inside a single hostel (lasting between three and fourteen hours), and observations of Multi-Agency Risk Assessment Committees over a period of twelve months. The interview data showed that licencees were rather more sceptical of the rehabilitative and reintegrative functions of the hostel than the staff members who worked there. Reeves argued that the main reason for the discrepancy between resident and staff accounts of the hostel's purpose was that residents did not perceive external rehabilitative programmes as being connected to their hostel residency. Furthermore, residents often neglected, or were unaware of, the more subtle and continuous reintegrative efforts on the part of hostel staff, for example, the application of pro-social modelling techniques (see Loney et al., 2000).

Although residents and hostel staff both typically considered the central function of the hostel to be the supervision of those on licence, residents had somewhat more negative perceptions of the nature of this supervision. Staff viewed supervision as complementing the purposes of rehabilitation and reintegration via the provision of help and support. Residents, on the other hand, perceived supervision primarily as a controlling mechanism, through which they were managed rather than supported. Finally, a number of residents expressed the view that hostels were merely centres of accommodation, focused on ensuring compliance with internal hostel rules, as opposed to working more generally and constructively toward what they perceived as the probation service's main aims of reducing risk, aiding rehabilitation and reintegration, and protecting the public.

Viewed through a legitimacy lens, Reeve's study raises a number of important issues. For example, the divergence between resident and staff accounts with regard to the purpose of hostels is a cause for some concern because of its potential to affect licencees' perceptions of the legitimacy of hostel workers. This is particularly likely given that residents' perceptions of the role of the hostel were somewhat more negative than those of members of hostel staff, with residents often considering the role of members of staff and the hostel's internal rules as being unhelpful and conflicting with the goals of the probation service. Licencees therefore seemed



inclined to perceive hostel workers as lacking in legitimacy, a factor which would have impacted negatively on licencees' compliance with staff decisions and hostel rules.

Reeves offered a remedy for this situation, closely paralleling the sort of advice typically found in the legitimacy literature. She argued that licencees should be engaged in all of the hostel's rehabilitative and reintegrative processes, which would involve, among other things, the provision of clear and adequate information concerning the hostel's multiple goals. It is interesting to note that Reeve's solution to a lack of perceived hostel effectiveness was not to improve the hostel's effectiveness *per se*, but to ensure that residents were made aware of how the hostel was already working towards the achievement of its goals – a solution more akin to the satisfaction of procedural justice criteria. This raises the issue of the interrelation between factors that might shape people's perceptions of power holder legitimacy (discussed further in Chapter Six).

In 2007, Her Majesty's Inspectorate of Probation conducted an inquiry into the hostel estate, following a Panorama broadcast that was heavily critical of the 'enhanced supervision' provided by these facilities (HMIP, 2007). While the inquiry critically examined the role and purpose of hostels, assessing in particular the work of Avon and Somerset Probation Area, it did not include any substantive focus on residents' experiences and views. A Criminal Justice Joint Inspection into hostels published the following year involved periods of observation and interviews with residents in eight hostels (HMI Probation et al., 2008). However, the report offered only a cursory insight into the subjective perspectives of those residing and working in these hostels. Instead, the primary aim of the inspection seemed to be to offer an impartial and 'objective' evaluation of the hostels under scrutiny. It is worth noting that the inspectors found that members of staff in some hostels were behaving as if 'under siege', seeking the company of colleagues in staff offices over engagement with residents in communal areas (*ibid.*: 50). Consequently, relationships between residents and members of staff in these hostels were poor, with residents complaining of boredom and perceiving hostel workers as being uninterested in offering them help and support.

A further Criminal Justice Joint Inspection in 2011 focused specifically on the use of alternatives to custody for female offenders (HMI Probation et al., 2011). During the course of this inspection, three hostels for women were visited, with inspectors drawing relatively positive conclusions about staff-resident relationships and the

help and support provided to residents. Barton's (2004) research on hostels for women produced similar findings. Drawing on periods of observation and interviews with residents and members of hostel staff, Barton found that residents generally appreciated the help and support provided by hostel workers, with some considering the hostel to be a 'home from home'. However, others were less positive, highlighting in particular the lack of a clear function of the hostel and purpose underpinning their residency.

Research by Wincup (1996) on mixed sex hostels indicates the potential significance of issues related to the concept of distributive justice. Wincup found that male residents felt aggrieved since they perceived that outcomes were not distributed fairly between the two sexes. For example, women had access to televisions in their personal rooms, whereas men did not, and women were exempt from group meetings, whereas men were not. Although there were good reasons for this differential treatment – for example, the potential for female residents to feel intimidated around large groups of males, particularly if they had previous experience of domestic abuse – nevertheless, these perceptions of distributive injustice seemed to strain staff-resident relations and damage the legitimacy of hostel workers in the eyes of male licencees.

A seminal study on hostels in England and Wales involving a sample of over 300 residents was conducted almost half a century ago by Sinclair (1971). Sinclair's key argument was that the ultimate success of hostel residents, in terms of their rehabilitation and likelihood of reoffending, depended primarily on a hostel's regime type, as well as the leadership style of hostel wardens. The most successful hostels had regimes which Sinclair described as paternalistic, combining emotional warmth with clear expectations and boundaries around appropriate behaviour. The least successful reversed this paternalistic approach, with discipline being harsh and ineffective, and hostel wardens displaying a disinterested and unsupportive stance toward residents. Burnett and Eaton (2004) highlighted that these findings cannot be simplistically transferred into a modern-day context, given that hostels in the 60s and 70s were primarily reserved for young offenders between the ages of 15 and 21. Furthermore, the large degree of discretion afforded to hostel wardens that enabled them to make significant changes to regime styles no longer exists, with legislation and national standards severely restricting the authority of hostel managers in the twenty-first century (see, for example, Ministry of Justice, 2014a; NOMS, 2014b).

### **3.5 Summary and critique of the literature**

This chapter has reviewed studies centring on people's experiences and views of supervision in the community. Reviewing individual studies chronologically has been a worthwhile exercise, since it has allowed for a relatively detailed level of analysis. Nevertheless, it is now worth reflecting, and highlighting some of the more general themes by taking a holistic view of the literature.

First, I would like to address a couple of points about the methodologies that have typically been employed by researchers in this area. Studies have predominantly collected qualitative data, obtained primarily through interviews, and, to a lesser extent, through periods of observation. Although several studies have involved statistical analysis of quantitative data (e.g. Farrall, 2002; Varah, 1981), the primacy of qualitative approaches to exploring people's experiences and views of supervision in the community is unsurprising, given the complexity of this subject matter. While qualitative research is useful for unpacking and understanding complex phenomena, however, it has some notable limitations. One issue is that of generalisability, which is closely linked to the small samples typically used by qualitative researchers, due to the level of resources required to conduct interviews or observations (e.g. Davies, 1979, n=49; Pease et al., 1975, n=27; Rex, 1999, n=60; c.f. Farrall, 2002, n=199 – a particularly large sample size in this context). This raises the issue of the extent to which the findings from a particular sample can be considered representative of a larger population. While quantitative studies rely on measures of statistical significance to calculate the likelihood that the results obtained might be down to 'chance', qualitative studies, on the other hand, must either make no claims to generalizability, or limited claims based on processes of logical inference -- foundations that are relatively tenuous compared to their quantitative counterparts.

Second, there is a dearth of research that focuses on women's experiences and views of supervision in the community (although, see Hedderman et al., 2011, Sharpe, 2011). This marks a notable gap in the literature, and it is regrettable that the current research – which focuses solely on the experiences and views of male licencees – has not served to fill it. Nevertheless, notwithstanding the fact that empirical research in this area should be considered a priority, I would speculate that many of the findings from the current research on men's experiences and views of supervision in the community would apply similarly in relation to women.

Third, studies have typically treated 'offenders' as a homogenous group, with no distinction being made between people who have committed different types of offence, or who have different histories of offending (e.g. in terms of the number of convictions or types of crime previously committed). While it is not clear how this might impact on people's experiences and views of supervision in the community, it is possible that these factors could contribute to some of the variation in the data generated by previous studies. For example, in the research conducted by Mair and Mills (2009), some participants' perceptions of the effectiveness of supervision in the community seemed to be linked to their offence type and offending history: several people stated that their sanctions had had no impact on the likelihood of them reoffending because their crime had been a 'one-off'. Therefore, they felt that they would experience and view supervision in the community differently compared with people who had longer and more frequent offending histories.

Fourth, as an inherent result of the voluntary nature of participation in these studies, there is likely to be some bias in the findings and conclusions that have been presented in this chapter. As several researchers have explicitly pointed out in their work, bias is inevitable since data is predominantly drawn from people who: i) demonstrate relatively 'compliant' behaviour (either in relation to the terms of supervision in the community or the law more generally); ii) hold relatively positive views of supervision in the community; and iii) have relatively good relationships with, or positive views about, their supervising officers (see Ditton and Ford, 1994; McIvor, 1992). This is based on the reasonable assumption that a person's experience of supervision in the community will be associated, to some extent, with their willingness to participate in these studies. While this is an inevitable aspect of conducting qualitative research in this field, there are ways to mitigate potential data bias. For example, researchers might conduct extended periods of ethnographic research in which they observe the everyday behaviour and interactions of people, either in Approved Premises (a method employed in the current research) or in local probation offices. By spending extended periods inside Approved Premises, I became acquainted with people who held relatively negative views about the licence period, and the informal connections that I established with these people made their subsequent participation in interviews more likely (discussed further in Chapter Four).

Fifth, with the notable exception of Farrall (2002; c.f. Farrall et al., 2014), studies have typically provided a snap-shot view of a particular time and place, preventing a more detailed analysis of the processes of how things change, and why things

change. Although this is another significant weakness of much of the literature in this area, it is understandable that limitations on time and resources often preclude researchers from adopting longitudinal research designs.

Finally, although one can retrospectively adopt a lens of legitimacy to further interpret the findings and conclusions presented in previous research in this area, these studies were not primarily designed to explore people's perceptions of legitimacy. This is not a criticism of the research *per se*; however, it does mean that particular questions and issues relating to the concept of legitimacy and legitimacy theory remain underexplored – something that the current research aims to address.

### **3.6 Conclusion**

Despite the limitations outlined above, there is a great deal of value in the research that has been conducted in this area. Although there is nothing inherently bad about studies which produce contradictory findings, it is somewhat reassuring and useful that most of the research that centres on people's experiences and views of supervision in the community has produced similar conclusions. I would like to highlight two particularly noteworthy sites of consensus.

First, the participants in these studies expressed in almost unequivocal terms that what they would like and need most is help with practical issues, such as accommodation, employment, education, finance, personal relationships and drug and alcohol misuse. These factors closely match the correlates of offending identified by other research in criminology (see, for example, Social Exclusion Unit, 2002). Therefore, it seems sensible to argue that supervision in the community would do well to focus on these issues. Moreover, throughout this literature review, I have highlighted that a focus on these practical problems is likely to improve people's perceptions of both the legitimacy of supervision in the community and the power holders responsible for its implementation. This is a potentially worthwhile endeavour because of the links that are well-established in the legitimacy literature between perceptions of legitimacy and compliance/engagement with power holders and the law (Tyler, 2006; Tyler and Huo, 2002; Hough et al., 2010).

Second, in unequivocal terms, research participants have highlighted the importance of constructive supervisor-supervisee relationships. While this might depend, in some part, on the content of supervision (which, as has already been

argued, should focus on the resolution of key practical problems), there are also strong indications that positive relationships can be fostered by criteria that are somewhat unrelated to the content, or outcomes, of supervision. Several studies have emphasised the importance of criteria that are closely linked to those identified in the procedural justice literature, for example, a supervisory relationship that is characterised by honesty, openness, trust, a willingness to listen, respect, and so on (Rex, 1999; Davies, 1979; McIvor, 1992; Ditton and Ford, 1994; Calverley, 2004; Mair and Mills, 2009; Bottoms and Shapland, 2010).

In conclusion, forms of supervision in the community in England and Wales have undergone significant change in recent decades. While I would argue that one of the key benefits of studies in this area is their potential to inform the development of relevant policy and practice, I would also emphasise a second valuable role of research that explores people's experiences and views of penal sanctions. Foucault (1977) argued that being denied the opportunity to speak for oneself – to have one's voice subjugated by another's – is a great indignity. Providing people with the opportunity to voice their experiences and views, therefore, goes some way toward limiting the indignity already experienced by people at the hands of the criminal justice system. The principle that researchers should listen to the voice of those being studied was championed by the Chicago School as far back as the 1920s (Short, 1997). Although researchers working in this area have already done much to further the goals of informing policy and practice – while ensuring that people's voices have not gone unheard – nevertheless, I think it is important that people's experiences and views of penal sanctions are given the continuous level of attention that they deserve. Consequently, the current research aims to supplement existing studies in this area and contribute to this research agenda.

# Chapter Four

## METHODOLOGY AND ETHICS

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*Research is often a 'messy' practical activity which does not follow a predictable sequence or adhere to clean conventional guidelines. The stages or phases therefore become rather jumbled . . . the formulation of the research problem . . . may resemble a rather haphazard, 'evolution' characterised by a series of oscillating phases of relative confusion and clarity . . . there is no reason to suppose that decisions about what the research topic is and the central problems to be addressed can be disentangled from more general questions about the theoretical framework or the methods of data collection.*

Layder (1998: 28-30)

At the outset of the current research, I had read the work of several authors who had stressed the importance of research questions and aims guiding a researcher's choice of study design and methods (see Maxwell, 1996; Punch, 2009; Taylor, 2002; White, 2013). I found that the practicalities of 'doing' research, particularly in the field of criminal justice, however, seemed to drag me into situations that made adherence to this principle problematic. While I would maintain that this has not had an adverse impact on the overall quality of the research, it has made it difficult to construct a methodology chapter that provides a truly authentic account of the research process as it actually unfolded. At times, the structure of this chapter might imply a certain chronology of discrete stages in the research that masks their true, overlapping nature. This is the by-product of an effort to provide a comprehensible account of the research methodology, rather than an attempt to disguise the 'messy' unfolding of these stages in reality.

The chapter will begin by introducing the research questions, aims and objectives that the current research sought to address. This is followed by an explanation of the research strategy and design that I adopted in order to tackle these questions and aims. Next, I discuss the process of gaining access to the fieldwork sites – Approved Premises (referred to from this point onwards as 'hostels', as this was the term typically used by the people who worked and resided in these places), before providing a brief description of the three hostels involved in the research. In the next section, I consider the main ethical issues that arose during the course of the

fieldwork. Discussed next are the research methods utilised in the fieldwork, namely, periods of observation and semi-structured interviews. The penultimate section then briefly outlines some demographic information about the people who participated in the research. Finally, I consider the analytical approach to the data generated by the fieldwork, including, in particular, a focus on the theory-data relationship.

## **4.1 Research aims and questions**

In epistemological terms, the current research falls within the broad umbrella of interpretivism (see Van Note Chism et al., 2008; Weber, 2004; Williams, 2000). More specifically, it is underpinned by a constructivist perspective which assumes that people attribute different meanings to phenomena based on their unique experience of the world around them. Consequently, the current research is not intended to piece together a singular 'objective reality', but instead aims to explore the multiple subjective realities that are constructed by each individual (see Sandberg, 2010). To illustrate this point, consider a particular licence condition, for example, a restriction on alcohol consumption. To someone who is concerned about their drinking and its connection to their offending behaviour, this condition might be reasonably well received. To another person, however, a rigid licence condition requiring absolute abstinence might be regarded as unrealistic, because the challenge of reducing alcohol consumption is typically a protracted process with inevitable 'failures' along the way. To others still further, it might be regarded as an unreasonable intrusion into their lives, particularly if they feel that alcohol has no connection to their offending. In any case, the essential point is that seemingly similar phenomena can mean different things to different people (for further discussion, see Crotty, 2003; Denzin and Lincoln, 2005; Merriam, 2002).

With this in mind, the research focused, at its core, on licencees' subjective experiences and views of being on licence. However, I considered this too broad an area of research; consequently, I thought about ways of narrowing the focus. Given that I was interested in applying and developing theories of legitimacy in the context of the post-custodial licence period, a good option seemed to be to focus on licencees' experiences and views of a particular 'object', or 'objects', of legitimacy.

While on licence, people are subjected to multiple forms of power that are implemented by a variety of different power holders (see Table 4.1, below). I did not want to decide in advance – based on my own thoughts and interests – which of



these objects of legitimacy ought to constitute the main focus of the research. Instead, I decided that the identification of an appropriate focus would best be guided by what licencees seemed most concerned about during the initial stages of the fieldwork (which consisted of periods of observation and interviews, discussed below).

Table 4.1: Objects of legitimacy in relation to the post-custodial licence period

<b>Object of legitimacy</b>	<b>Relevant examples for current research</b>
Persons	Individual members of probation or hostel staff
Roles	Offender manager; hostel key-worker
Decisions	Recall decisions; decisions to amend licence conditions
Rules	Hostel rules; licence conditions
Organisations	The probation service; the police service
Systems	The criminal justice system
Sanctions	The post-custodial licence

I found that one object of legitimacy was discussed by licencees more frequently than any other, namely, probation and hostel workers – people who I have termed, ‘power holders’. This is not to say that other objects of legitimacy did not matter to licencees. People often discussed specific licence conditions, ‘probation’ (i.e. the probation service) in general terms, and sometimes shared their views about the ‘the system’ in a broad sense (i.e. the criminal justice system beyond the licence period). Where appropriate, I have integrated these views into the analysis of the following chapters. However, in order to retain a tight focus on a particular set of aims and questions, I have restricted the analysis in the forthcoming chapters primarily to the subject of licencees’ perceptions of power holder legitimacy.

With these points in mind, I ultimately settled on the following central research questions:

- 1) What are licencees’ perceptions of the legitimacy of power holders?
- 2) How are these perceptions shaped?

To recap on some points made in previous chapters, it is worthwhile addressing these questions for a number of reasons. One reason is that we know little about these issues since there is a lack of research in this area (see Chapters Two and Three). Second, the answers to these questions could inform policy and practice in a

way that would improve relationships between licencees and power holders. This would not only encourage more constructive supervision focused on reintegrating licencees into the community, but also could generate better rates of compliance with licence conditions and consequently lower rates of recall. Third, as discussed in previous chapters, I think it is important to understand licencees' perspectives on legitimacy because we ought to be concerned about this issue in and of itself, regardless of the instrumental benefits noted above.

While these were the primary research questions that I set out to answer, there were two secondary research questions that I also wanted to address:

- 3) To what extent, and in what ways, is qualitative research useful for studying people's perceptions of legitimacy?
- 4) What are the implications of the research for theories of legitimacy?

Since the majority of criminal justice research using the concept of legitimacy has been quantitative, I thought it would be useful to reflect on the benefits and drawbacks of using the concept within a qualitative research approach. Finally, given that most theories of legitimacy in the field of criminal justice are underpinned by quantitative research conducted in the context of policing, I thought it was important to consider how these theories might be adapted to the context of post-custodial supervision, based on the empirical data generated by the fieldwork. These secondary questions are addressed in the final chapter of the thesis.

## **4.2 Research strategy and design**

It is difficult to classify the current research as falling within a particular type of research strategy. Denzin and Lincoln (2005) offered the notion of 'blurred genres' to describe research that falls between, or combines, a number of strategies. The current research is a good example of a blurred genre, as it involves elements of a basic interpretive study and ethnography. Basic interpretive studies in the social sciences are typically designed to understand how people make sense of their lived experiences (Merriam, 2002). In a broad sense, the overall purpose of the research was to understand how licencees made sense of their time on licence, particularly in relation to their interactions with probation and hostel workers.

In some ways, however, the fieldwork also resembled an ethnography. For example, it involved observations that were conducted inside hostels. Studies have often been

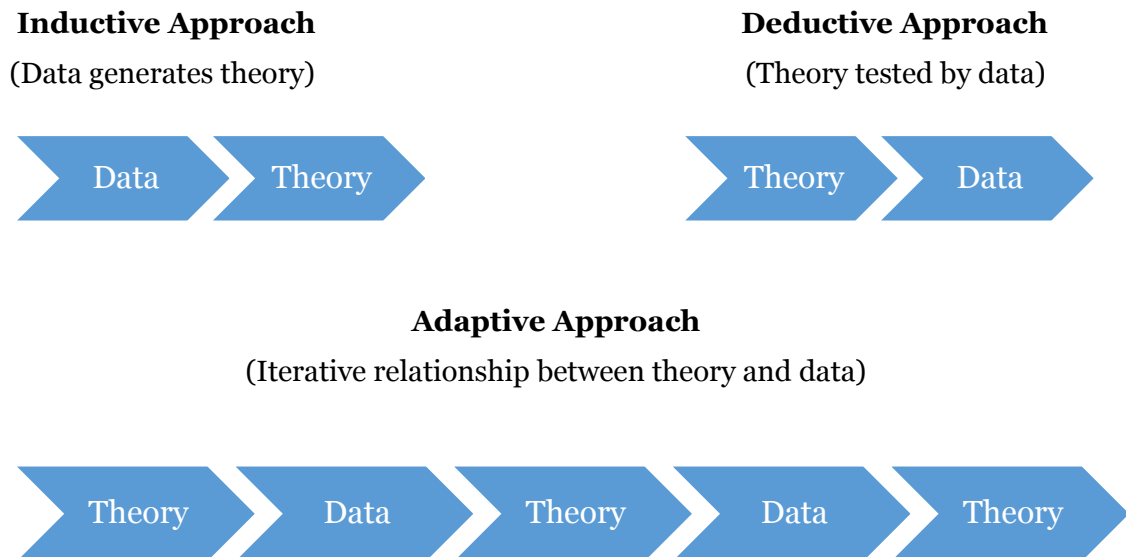
classified as ethnographies based solely on the fact that they have involved periods of observation (Van Note Chism et al., 2008; Sandberg, 2010). Furthermore, the research was characterised by several other common features of ethnographies, including the fact that participants were studied in a ‘natural setting’, the research design evolved as the study progressed (as opposed to being pre-defined), and data collection occurred over an extended period of time using more than one data collection technique (Punch, 1998). However, to be ‘truly’ ethnographic, Punch argued that the behaviour of a group should be understood via reference to the culturally shared meanings within that group; the emphasis that ethnographies typically place on ‘culture’ (i.e. the shared languages, behaviours and social practices that characterise a particular group) was not a central feature of the current research (discussed below).

Another important part of the current study’s design was determining the role that theory would play in the research. In this regard, an approach advocated by Layder (1998) – ‘adaptive theory’ – provided a fundamental source of guidance. Adaptive theory, according to Layder, provides an alternative to, or middle-way between, the full-scale adoption of a theory building approach based on inductive reasoning, and a theory testing approach based on deductive reasoning. It begins with the premise that theorising has a constructive role to play during every part of the research process. In contrast, advocates of pure inductive approaches such as ‘grounded theory’ eschew prior conceptual schemes since they risk skewing the creation of new conceptual ideas and theory (see Glaser and Strauss, 1967; Strauss, 1987; Strauss and Corbin, 1990). I acknowledged these warnings by being open and sensitive to the possibility that emerging data might ‘fit’ with extant theoretical frameworks and conceptual schemes. As a result, the theoretical frameworks and conceptual schemes that served as starting points were continuously refined or discarded in order to accommodate emerging data (see Figure 4.1).

A key strength of adaptive theory lies in its ‘accretive nature’ (Layder, 1998: 156). Layder argues that a grounded theory approach is potentially wasteful, because, by disregarding all extant theory, this approach neglects valuable resources that can encourage a greater level of theoretical creativity and imagination. Instead, therefore, he proposes that researchers should utilise extant theories throughout the duration of the research process, by creating a dialogue between emerging empirical data and theory. In this way, research is neither solely intended to test theory (deductive research), nor generate theory (inductive research), but instead aims to

continuously develop and reformulate theoretical ideas throughout the duration of the research.

Figure 4.1: The theory-data relationship in research



Following the principles of adaptive theory, initial decisions about which theories to use in a particular research project may be made via a number of routes, which include ‘thinking through the implications of extant theory and bodies of knowledge (including focal and adjacent substantive areas) . . . and engaging in theoretical elaboration’ (Layder, 1998: 152). I adopted this approach by considering theories of legitimacy developed in the fields of policing and penal sanctions, and engaging in theoretical elaboration about the possible application and refinement of these theories for use in the context of post-custodial supervision.

### 4.3 Enter Approved Premises

During the early stages of formulating the research design, strategy, aims, and questions, I was convinced of the importance of collecting qualitative data about licencees’ experiences and views of being on licence, as well as the potential value of theories of legitimacy. However, I did not initially intend to conduct the research with hostel residents. These fieldwork locations were essentially drawn into the research due to their usefulness in terms of gaining access to people on licence – a process that turned out to be neither quick nor straightforward (discussed below). The introduction of hostels into the research was a welcome development for a number of reasons. Conducting fieldwork inside hostels opened up the possibility of

triangulating research methods, namely, semi-structured interviews with periods of observation (see Bryman, 2008; Denzin, 1989). These observation periods provided ample opportunities to speak informally to licencees, which provided a valuable source of data in and of itself, as well as a useful means of establishing rapport with people prior to semi-structured interviews. The inclusion of hostels also introduced another group of power holders into the scope of the research alongside probation workers, namely, members of hostel staff.

### ***4.3.1 Gaining access***

At the time of writing, the National Offender Management Service (NOMS) had a structured application process for people intending to conduct research with clients and professionals falling within the remit of the prison service and probation trusts. This was a daunting prospect because of the uncertainty surrounding how long the application process would take, as well as the uncertainty around the ultimate success or failure of these access negotiations. Given the time constraints of PhD research – particularly the prospect of my funding running out within three years – I decided that the most sensible course of action would be to try to find a way of gaining access to people on licence without the requirement of completing a NOMS research application.

One option that seemed to hold particular promise was gaining access to people who had been required by the terms of their licence to live in hostels on their release from prison. I hoped that, because some hostels were managed independently (i.e. not managed directly by a Probation Trust), it might be possible to obtain approval for the research without applying through the NOMS research application process. I had recently visited one such hostel and spoken to the manager during a period of informal shadowing with a probation worker. Consequently, I contacted the manager of this hostel – referred to from this point onwards as ‘Hostel A’ – and arranged a face-to-face meeting to discuss the proposed research. While the manager was happy to support the research, he pointed out that I would need NOMS approval, given that hostel residents were also clients of the probation service. Despite my failed attempt to evade the NOMS application process, I decided that this avenue of access was still the best option since the application would have the support of the manager of Hostel A.

At this point, I also decided to request access to a second hostel. This was primarily because I was unsure about how much time it would take to collect an adequate

amount of data (discussed below). Consequently, I decided that the addition of a second research site would be sensible in terms of helping me to collect enough data within a restricted timeframe. While the NOMS research application was pending, I contacted the general manager of the hostels within the relevant Probation Trust, who kindly provided the contact details of several hostels in the area. I discovered that some hostels catered for specific 'groups' of people, for example, those convicted of sexual offences, young people, or females. While Hostel A housed male licencees only, it did not discriminate on the basis of age or offence-type. I decided that the second hostel should be similar in this regard. By broadly matching the group of licencees in each hostel, this mitigated the possibility of any significant differences between the data collected in these hostels being attributable to differences in people's gender, age or offence-type. After contacting the manager of the second hostel – referred to from this point onwards as 'Hostel B' – I arranged a face-to-face meeting, and was given permission to use this hostel as a second research site.

About four months into my six months period of fieldwork, I decided to suspend the research in Hostel B. I will not provide details at this point of the thesis, as the reasons for suspending the research in this fieldwork site are discussed in Chapter Five. The suspension of fieldwork in this hostel led me to negotiate access to a third hostel, referred to from this point onwards as 'Hostel C'. Although I had already been collecting data for four months by the time I suspended fieldwork in Hostel B, I felt that the involvement of licencees from a third site could only serve as a constructive addition to the research. Moreover, I was familiar with two residents who had recently moved from Hostel B to Hostel C, and thought that speaking to these people about their experiences and views of residing in both hostels might be particularly interesting, given their ability to compare their experiences across the two sites.

### ***4.3.2 Hostel A***

Hostel A opened as a boys' home in 1932, before making the transition to a hostel for adult probationers in 1969 at the request of the Home Office. Initially, only people between the ages of 19-25 could reside in the hostel, although this age restriction has now been lifted and the hostel is used for anyone over the age of 18. At the time of writing, Hostel A primarily housed high-risk licencees who had been convicted of serious sexual or violent offences, or were considered to be prolific and

other priority offenders (PPOs). The precise number of residents falling into each offence category changes over time, depending on referrals by the probation service.

At the time of the fieldwork, the majority of hostels were managed by probation trusts. Hostel A, however, was one of a small number of hostels managed by a voluntary management committee (VMC). The hostel could accommodate a maximum of 25 residents; 21 in single rooms and four in double rooms. In terms of staff, there was one manager, four residential officers, four assistant residential officers, two cooks, and one cleaner. The hostel was located around two miles from a major city centre. There was nothing that noticeably marked the building out as a hostel for released prisoners. Its main entrance led into a large central room, in which there was a seating area that could accommodate around ten residents. Opposite the main entrance was a door to the staff reception. The staff area was divided into a number of rooms, including a main reception, usually staffed by one or two assistant residential officers, a large office in which the residential officers were based, and another office for the hostel manager. There was also a small staff kitchen and staff toilet in this area.

There was a lounge area for residents which had around 15 seats, a large television set, and a pool table. All residents' private rooms were located on the upper floors of the hostel. The main entrance was secured via an electronic locking system, controlled from the staff reception area. Residents were not required to sign in and out of the hostel; however, they were obliged to hand in their room keys to the reception when they left the hostel premises. Residents were therefore 'buzzed' in and out by a member of staff who could identify the resident via a CCTV monitoring system. There were multiple CCTV cameras within the hostel and around the outer-premises.

### ***4.3.3 Hostel B***

Hostel B opened in the early 1990s. During its first years of operation, it provided a place of residence for people on bail. It was then transformed into a specialist unit for people who had been convicted of sexual offences. As with Hostel A, at the time of writing, Hostel B primarily housed high-risk licencees who had been convicted of serious sexual or violent offences, or PPOs.

In contrast to Hostel A, Hostel B was run by a probation trust. It could accommodate a maximum of 24 residents, 16 in single rooms and 8 in double rooms. The staff included one manager, four residential officers, three assistant residential officers, two cooks, and one cleaner. It was a purpose-built building, located less than a mile from the centre of a small town. The staff office of Hostel B was located next to the main entrance, which meant that residents were 'buzzed' into the Hostel after being identified directly by a member of staff (as opposed to via the use of CCTV in Hostel A). The main entrance led into a long corridor, from which there was access to the reception of the hostel and a sizeable recreational room with seating for around 15 residents and a large flat-screen television. The hostel also had a second recreational room with a pool table, another small room with a flat-screen television, and a kitchen and dining area. All residents' rooms were located on the upper floors of the hostel.

#### ***4.3.4 Hostel C***

Hostel C was managed by a probation trust. I arranged access to this hostel toward the end of the fieldwork following the suspension of research in Hostel B (noted above). I visited on only two occasions in order to conduct three interviews with residents, and one interview with a member of staff. I have little knowledge of the physical structure of the building, as I did not attempt to conduct periods of observation at this site. By the time I had negotiated access to this hostel I had conducted over 100 hours of observation across Hostels A and B, and completed 27 interviews with residents and members of staff. The data collected from the four interviews in this hostel served primarily to reinforce ideas generated by the fieldwork in Hostels A and B. By this point, I felt that I had enough data to answer the research questions noted at the outset of this chapter, and that I was close enough to a data saturation point (see below). Consequently, I decided to end the fieldwork after two visits to this hostel.

## **4.4 Ethics**

Before I could begin the fieldwork, I was required to apply for ethical clearance from the University of Sheffield's School of Law. This involved outlining the risks of research causing physical or psychological harm to participants, and considering ways in which to mitigate these risks. For example, despite the interview schedule not focusing specifically on issues that one would ordinarily consider to be sensitive,



I anticipated that there was potential for my discussions with licencees to inadvertently touch on sensitive topics. For example, in a small number of cases, interviewees began to speak about their experiences of being physically and sexually abused as children. In order to minimise the risk of distress, I had planned to employ a number of measures in these scenarios, such as asking people if they would like to take a break from the interview, reiterating to participants that they did not have to speak about any particular issues if they did not want to, and advising participants that they could end the interview at any time. In practice, however, none of these measures were necessary. Before long, we had returned to issues that were less sensitive, and participants showed no outward signs of distress. Nevertheless, the potential for our discussions to cause some degree of psychological harm was an issue of which I remained continuously aware during the fieldwork.

It was also important to take all reasonable steps to gain the informed consent of research participants. One preliminary mechanism for doing this was to ask members of hostel staff to inform residents in advance that I would be conducting observations and interviews in the hostel. During a weekly hostel meeting – which all residents were required to attend – members of staff informed hostel residents about the research. Nevertheless, despite knowing that there would be a researcher in the hostel, on several occasions, residents mistook me for another resident. On these occasions, I immediately informed people that I was a researcher. With some notable exceptions, discussed further in the following chapters, most people seemed to be unfazed by the presence of a researcher in the hostel, speaking openly about their probation workers, members of hostel staff, the police, and their opinions of licence conditions and hostel rules. Whenever it seemed appropriate, I would explicitly ask residents if they were comfortable with their opinions being included in the research; residents agreed to these requests without exception.

Before each semi-structured interview, I provided participants with an information sheet outlining the scope and details of the study, including its potential outlets such as the thesis, journal articles, and conference presentations. The sheet provided participants with my contact details, including a phone number and an email address, as well as the contact details of my supervisors. It also made clear that their participation in the study was entirely voluntary, meaning that they could withdraw from the research at any time; I did not receive withdrawal requests from any participants. I also assured people that their identity would be anonymised using pseudonyms, so that they could not be identified in publications or presentations. However, I did stress to participants that should they reveal any information to me

that suggested other people or themselves were at risk of serious harm, then this information would be shared with my supervisors, and if necessary, appropriate criminal justice agencies such as the probation service and the police. However, at no point during the fieldwork did I need to take such action. I requested that each interview be digitally recorded so that I would have a detailed and accurate account of our conversations, but gave participants the option of me taking hand-written notes of our discussions instead. All participants agreed to have the interviews digitally recorded. I assured participants that all recording devices and any hard copies of transcriptions would be kept securely locked in a filing cabinet in the University of Sheffield's School of Law.

## **4.5 Research methods**

*Rather than laying out a fixed design in advance, qualitative researchers develop tentative plans and make adjustments as findings suggest new directions. A study that began with interviews as the primary method of data collection might turn to observation as well; one that anticipated being situated at only one site might move to others, all based on decisions made in process.*

Van Note Chism et al. (2008: 17)

I anticipated that the answers to the central research questions would be complex and context-dependent – two factors that pushed me in the direction of collecting qualitative, as opposed to quantitative, data. Before access negotiations had introduced hostels into the research design, I had intended to use semi-structured interviews as the sole method of data collection. I envisioned conducting these interviews with licencees sometime after their supervision sessions with probation workers. However, as the extract from Van Note Chism et al. (2008) highlights, the flexibility of a qualitative research design can afford researchers the opportunity to include additional data collection methods as the course of a research project progresses. During the initial visit to Hostel A, the manager suggested that the best way to encourage people to participate in interviews might be to spend prolonged periods of time inside the hostel. Consequently, I decided to use this opportunity to conduct periods of observation. Before I discuss these methods in more detail, I will provide an account of the sampling strategy, which ultimately determined the duration of the fieldwork.

### ***4.5.1 Sampling strategy***

I used a combination of sampling strategies, including snowball sampling, maximum variation sampling, and convenience sampling (Patton, 2002). Whenever possible, I utilised a snowball sampling technique that involved recommendations from current participants about other residents who might be interested in participating in the research. This usually resulted in me interviewing the friends and acquaintances of people I had already interviewed. Had I relied solely on this sampling strategy, homophily may have produced a biased sample, skewed around one particular 'type' of person (McPherson et al., 2001). Consequently, I also adopted some of the principles of maximum variation sampling (Bryman, 2008), by identifying licencees with varied demographics (for example, a range of different ages and ethnicities) and offending histories. Moreover, I deliberately interviewed and spent time with people who appeared to hold both positive and negative attitudes toward probation and hostel workers.

Members of staff in the hostels were instrumental in directing me toward residents who they perceived as holding particularly positive or negative opinions about being on licence. Although I actively avoided pressurising residents into participating in the research, people who appeared to have particularly negative relationships with their hostel and probation workers became amenable to interviews after I had spent time speaking with them informally. Indeed, only on two occasions did a resident decline my request for an interview: once when I asked someone for a repeat interview – he felt that he would have nothing further to offer – and once when a member of staff approached a resident on my behalf – the resident refused as he believed I was an undercover police officer (discussed further in the following chapter). I regard this as a notable strength of the current research, particularly given that previous studies using self-completion questionnaires have typically suffered from biased response patterns due to those with negative attitudes toward power holders being less likely to respond than those with positive attitudes (e.g. Ditton and Ford, 1994; Maguire et al., 1996; McIvor, 1992; Pease et al. 1975).

Although I made an effort to ensure the sampling strategy resulted in maximum variation of respondents, it was also partly based on convenience. For example, I included any resident who showed a willingness to participate, either in terms of their readiness to spend time with me during observation periods, or in terms of them spontaneously offering to be interviewed. Ultimately, I continued to collect data until I thought that I had reached a saturation point – a point at which no new

themes or ideas seemed to be emerging from the fieldwork. Moreover, I was comfortable that the amount of data I had collected was sufficient to answer the research questions noted above.

I also invited the managers of Hostels A and B to be interviewed, as well as all members of hostel staff. This decision was prompted by a theoretical paper, in which the authors convincingly argued that a comprehensive consideration of perceptions of power holder legitimacy necessarily involves exploring both the perceptions of power subjects, *and* claims to legitimacy made by power holders themselves (Bottoms and Tankebe, 2012). Both managers expressed a willingness to be interviewed, as well as seven members of staff (three from Hostel A, and four from Hostel B).

#### ***4.5.2 Observations***

I decided to conduct periods of observation inside hostels for two main reasons:

- i) I hoped it would provide an interesting and useful additional source of data alongside the data generated by qualitative interviews. In this sense, the addition of observations as a component of the research methods acted as a form of methodological and data triangulation that enabled me to cross-check data from these two sources, and study licencees' perceptions of power holder legitimacy from more than one standpoint (see Bryman, 2008; Denzin, 1989; Rothbauer, 2008).
- ii) I anticipated that the time spent conducting observations would help me to establish a rapport with hostel residents, thereby increasing the likelihood that people would consent to being interviewed.

During one period of observation, I was present in a hostel when a resident was informed of a decision to recall him to custody based on an allegation that he had breached one of the terms of his licence. While the details of this event will be reserved for Chapter Six, it is worth highlighting that this provided a valuable, first-hand insight into the way that power holders enforced the conditions of the post-custodial licence – an insight which I would not have had, had I relied solely on data from qualitative interviews.

Applying Gold's (1958) typology of roles in sociological field observations, I typically found myself adopting the role of 'participant-as-observer' (c.f. Adler and Adler,

1987). This involved telling people within the hostel that I was researcher, actively engaged in field-work at all times. As noted above, residents were informed about this in advance by the hostel managers during a weekly hostel meeting attended by all hostel residents. I found out after a relatively short space of time inside the hostels, however, that this mechanism of communication far from guaranteed that residents would recognise me as a researcher. At several times during the observations, for example, residents in both hostels asked me what prison I had been released from. Short of announcing that I was a researcher every time I walked into a room in the hostel, or of interrupting conversations between residents to ensure they were aware of this, there was no guarantee that residents were not occasionally under the impression that I was also a resident in the hostel. At no point did any resident retrospectively ask me to exclude any data that I had collected during the observations. Indeed, the vast majority of residents I spent time with seemed pleased that somebody was interested in listening to their experiences and views, albeit many were deeply sceptical that anyone would ultimately care about what they had to say.

I ensured that the observations took place on all days of the week, and that they took place throughout different times of the day. Taken together, the observations occurred between the hours of 7:30am-1am; since the vast majority of residents were asleep between 1am-7:30am, there was very little to 'observe' at these times. In total, I conducted about 50 hours of observation in Hostel A, and 50 hours in Hostel B. While I did not conduct any observations in Hostel C, I did conduct four interviews, three with residents and one with a member of hostel staff. The observations periods were spent in a number of ways. Much of my time was spent sitting with people in communal living spaces, listening to conversations between residents, or speaking to residents myself. This would often lead to a game of pool or darts, computer games, or board games. I also ate evening meals with residents in the hostel dining rooms. Other activities included going for walks with residents to nearby shops and cafes for lunch, shadowing hostel workers during room checks, attending an alcohol awareness session run by Hostel B, and escorting a resident to a nearby hospital appointment. Overall, I used the observations to speak to residents and hostel workers about issues relevant to the current research, as well as to directly observe staff-resident interactions.

The observations were not entirely unstructured, as the data generated by them was influenced by my prior knowledge of theories of legitimacy (Mulhall, 2003; Sandberg, 2010). Following guidance provided by Layder (1998), I used concepts

developed in previous research, such as procedural and distributive justice, as ‘orienting’ concepts, which indicated potential patterns and frameworks for understanding and interpreting data. So, for example, during the observations, hostel workers would frequently speak to me about their own ‘style’ of interaction with residents – personal interactions being a factor that some researchers have conceptualised as one of two core dimensions of the construct of procedural justice (see Chapter Two). Because procedural justice has repeatedly been linked to perceptions of legitimacy, I considered these comments to be potentially significant, and therefore recorded them in my observation notes. It is worth highlighting, however, that the initial stage of data collection and coding was not rigidly fixed – I did not perpetually ‘force’ data into predefined constructs (see Glaser, 1994). When the data did not seem to fit with constructs drawn from previous research, I modified or discarded them. Although the constructs of procedural and distributive justice were useful as initial orienting devices that kick-started the theoretical imagination, they did not feature in the final theoretical framework because I created adaptations of these constructs that I considered more useful for understanding, interpreting and communicating the data (see Layder, 1998: 110; discussed further in Chapter Six).

As well as providing a useful source of data, I would argue that the observations also improved the quality of the subsequent interviews in three ways. First, as has been noted above, the time spent during the observations was useful in establishing a rapport with residents, which increased the likelihood of them agreeing to participate in interviews. Secondly, the observations helped to create and refine the questions in the interview schedule, so that I focused on issues that appeared important to residents from the perspective of what I had seen and heard during the periods of observation. Thirdly, during the interviews themselves, the rapport I had established with residents during the periods of observation seemed to encourage people to be open and forthcoming with their responses from the outset of the interview, whereas it took me rather longer to reach this state of openness when interviewing residents with whom I had had no prior contact.

### ***4.5.3 Interviews***

Although the data generated by the observations turned out to be more valuable than I had initially anticipated, my interviews with people on licence nevertheless produced the core body of data in terms of answering the research questions and

aims. In total, I conducted 31 interviews with residents and members of hostel staff – 21 with residents (twelve in Hostel A, eight in Hostel B, and three in Hostel C), and ten with members of hostel staff (four in Hostel A, five in Hostel B and one in Hostel C). Before discussing my experience of conducting these interviews, I will explain how I constructed and developed the interview schedule.

The schedule for the interviews with licencees was divided into two main sections – one focusing primarily on life inside hostels, and the other more specifically on the post-custodial licence (see Appendix III). This was based on the assumption that residents would distinguish between, for example, the rules of living in a hostel and the conditions attached to their licence. This assumption was borne out by the data generated by the observations and interviews. These two sections were then subdivided into three sections, based on three topics that I thought were central to licencees' perceptions of the legitimacy of power holders. So, for example, the first sub-section of both main sections focused on the *content* of the hostel rules and licence conditions that licencees were expected to abide by. This section linked closely with issues relating to the concept of outcome justice, i.e. the fairness of the content of rules or the decisions made by those in power. The second sub-sections focused not on the content of rules and decisions, but on their *implementation* by power holders. This section linked closely with issues relating to the concept of procedural justice, i.e. the fairness of the procedures used by power holders. The third sub-section focused neither on the specific content nor the implementation of rules and conditions, but the on the perceived *aims* of those in power, and the extent to which residents thought power holders achieved these aims.

The schedule for interviews with members of hostel staff was divided into four sections. The first section consisted of introductory questions, designed to elicit people's views about their role in the hostel. The second section focused on work with residents, and the third section about working with other agencies, such as the probation and police services. The closing question invited members of staff to imagine that they were managers of the hostel for a day, and asked whether there was anything in particular that they would like to change. The schedule for the two interviews with the hostel managers closely mirrored the general staff schedule, but closed with a question inviting them to describe a particular success story with a hostel resident (see Appendices IV and V).

Alongside decisions relating to the general structure of the interview schedules, I also had to decide how best to operationalise the concept of legitimacy and other

associated concepts, for example, procedural justice, distributive justice, and effectiveness. My starting-point for this decision was an examination of how this had been done by researchers in previous studies (for a detailed discussion of this issue, see Chapter Two). Although this was a useful exercise, a number of factors prevented me from simplistically adopting approaches that had already been developed. The most significant reason for departing from these approaches was that prior studies had typically sought to operationalise these concepts for use in quantitative research (e.g. Sunshine and Tyler, 2003; Tyler, 2006b; van der Toorn et al., 2011). This meant that the questions used in these studies were relatively direct and closed, for example, 'Indicate agreement with the statement: I consider the procedures used by those in authority to be just', with respondents replying using a Likert-type (agree-disagree) scale (Jackson, 2011). There are two main limitations to operationalising the concept of procedural justice in this way. The first is that respondents might not interpret certain notions used in these questions, such as 'justice', in the same way. This is problematic because, in turn, it is impossible to know whether any differences between responses are a reflection of the different ways in which certain notions have been understood, or whether differing responses actually reflect differing views about, for example, the procedures used by those in authority.

This issue aside, there is another limitation to studying procedural justice in this way, namely, that it prevents respondents from expanding on, or explaining, their answers. While reducing someone's responses to a numeric digit provides researchers with the opportunity to perform statistical analysis on their data-sets, it fails to capture a more detailed exploration of why people hold these views, or how these views are formed. A further problem with this approach is that these sorts of questions are rarely phrased in a 'neutral' manner. Therefore, reframing the way in which a question is asked might have a significant influence on the responses that are generated (Tversky and Kahneman, 1981). If a minor tweak of a question can result in significantly different responses being given, then this arguably undermines the confidence that one can have in the findings and conclusions based on these data.

With these issues in mind, I decided to take a different approach to operationalising the concept of legitimacy and other associated concepts. My approach could be described as relatively indirect when compared to the directness of the questions used in previous research on legitimacy. For example, in order to elicit people's perceptions of the legitimacy of power holders, previous research has used questions



such as, 'Indicate agreement with the statement: 'Most police officers are honest'' (Tyler, 2006b). By way of comparison, the questions that I asked were along the lines of, 'Could you tell me a bit about your probation officer?' Subsequently, because of the qualitative nature of the research, I could probe further into these issues by asking follow-up questions such as, 'Why do you think this?' or, 'Could you give me an example of that?' This style of questioning allowed me to get more in-depth accounts of people's experiences and views than quantitative research methods would have allowed.

The interviews were designed to be in-depth, in the sense that the initial questions were phrased in an open-ended manner, and, where appropriate, were followed up with relevant probing questions. The questions were therefore either, i) specified in advance, or ii) ad hoc responses to the statements made by the interviewee within the course of the interview. In order to improve the quality of this latter group of questions, I created a list of prompts before the interviews were conducted, by anticipating potential responses to the initial questions, and subsequently listing some useful follow-up questions that might help to further explore the issue (see Appendices III, IV and V). Although the final version of the interview schedule contained a large number of predefined questions (28 questions, excluding potential prompts), the interviews were not rigidly administered. Instead, the order of the questions varied, depending on how each interview progressed. The amount of time spent discussing each issue also varied, depending on how forthcoming an individual was regarding that particular issue. Provided that the material being discussed seemed relevant in some way to the research, I usually allowed interviewees to talk at length without being interrupted (see Sandberg, 2010). During the early stages of the research, however, I allowed some discussions to run into areas that were relatively unrelated to the research topic or the initial questions I had posed. In one interview, for example, I spent around thirty minutes debating the political and social values of the English Defence League. After the experience of conducting several interviews, however, I became increasingly confident about redirecting the flow of the interviews back into areas more pertinent to the research.

Some issues that I initially suspected might be important in terms of shaping licencees' perceptions of the legitimacy of power holders did not come to light during the fieldwork. For example, based on the findings of previous studies (e.g. Calverley et al., 2004), I expected that a probation worker's age, gender or ethnicity might be linked in some way to licencees' perceptions of their legitimacy. However, when asked open questions about their probation workers or members of hostel

staff, these factors were not raised by licencees (with the notable exception of one person, who believed that his Asian probation worker discriminated against him based on ethnicity). I decided that the best way of establishing what mattered to licencees, was to concentrate attention on subjects that emerged in the course of licencees' own accounts of their time on licence. I am confident, therefore, that licencees considered the subjects discussed in the following chapters to be genuinely important to them, as opposed to issues that they were not concerned about, but which had been forced into discussions based on my own inclinations about what mattered (see Becker, 1958).

It did not take me long to realise that arranging interviews for future hostel visits, or even for later times during a particular visit, was an unreliable scheduling strategy. Residents often changed their plans and left the hostel during the time for which an interview had been arranged. In one case, a resident was recalled shortly before the interview was due to be conducted (see Chapter Five). Therefore, I found that the most successful method of securing interviews was to conduct them as soon as possible following a resident's expression of their willingness to participate.

## **4.6 Demographic information**

Had the research been quantitative, aside from collecting data from a larger sample, I would have attempted to obtain precise information about a number of factors such as a participant's age, ethnicity and previous convictions, so that these factors could be controlled for in subsequent statistical models. However, given the qualitative nature of the research, I did not think that this type of information was crucial to the analysis, nor did I have access to residents' case files in order to verify these details. Nevertheless, from my discussions with members of hostel staff and the licencees who participated in the study, I do have a loose knowledge of some demographic details that I think are worth noting.

To recap on the sampling strategy, which included maximum variation sampling, I attempted to speak to people who seemed on the surface to display a range of opinions about being on licence, as well as to people with varied demographics. Therefore, in terms of age, the sample ranged from young licencees in their early twenties, to those in their late sixties. While the majority of the licencees who participated in the research were white (a reflection of the large proportion of white people in the hostels at the time of my observations), I also spoke to black (n=2) and Asian licencees (n=4). Licencees had been convicted of a broad range of offence

types, including property offences, arson, sexual offences and violent offences. All licencees who participated in the study were male. Of the members of hostel staff who participated in the study, five were female and five were male. Eight members of staff were white, one was Asian and one was black. The ages of staff ranged from early twenties to late fifties.

## **4.7 Data analysis**

Data analysis began from the moment I started collecting data; it was not a process that occurred solely after the fieldwork had ended. Therefore, elements of data analysis have already been discussed in this chapter, since they were intimately connected to the process of data collection (e.g. the use of orienting concepts, see above). In order to encourage a systematic analysis of the data, I transcribed all interviews into the software package 'NVivo' shortly after they had been conducted. Coding of the transcripts began after the first interview and was informed by my knowledge of extant theories of legitimacy.

One of the fundamental principles of adaptive theory is that researchers cannot approach data analysis from an atheoretical perspective (Layder, 1998). In other words, all approaches are theory-laden to some degree – an argument that runs counter to that of grounded-theorists, who call for an empiricist approach to data collection and analysis (see Glaser, 1998; Strauss, 1987). For this reason, Layder (1998: 57) viewed a 'clean slate' approach as being somewhat naïve and essentially wasteful, arguing instead that a more effective way of analysing data is to 'target the theoretical pertinence of data as soon as possible'. Such targeting involves an explicit acknowledgement of the theoretical baggage brought to fieldwork by every researcher – baggage that stems either from prior reading or from other exposures to extant theoretical ideas. In relation to the current research, I had brought along a great deal of 'theoretical baggage' to the fieldwork (see Chapter Two).

I began by coding the data using first-order concepts based on the 'common-sense thinking' of the research participants (Schutz, 1962: 59). These first-order concepts were then grouped into second-order constructs that were further abstracted from the empirical data. Initial concepts and theoretical ideas were not regarded as final and unalterable, but as subject to being 'modified, abandoned, confirmed or retained as required by the unfolding of new data' (Layder, 1998: 58). Consequently, concepts and theoretical frameworks were continuously reworked as part of an iterative movement between data and theory. Despite their potential fluidity,

concepts used in the early stages of the research were crucial in the preliminary organisation of the data and in stimulating theoretical creativity (Layder, 1998). To reiterate a point noted above, initial concepts such as procedural justice and distributive justice were ultimately adapted into concepts that better represented the data, for example, procedural-based legitimacy and outcome-based legitimacy (see Chapter Six).

## **4.8 Conclusion**

This chapter has addressed the methodology of the current research, as well as the main ethical issues that it raised. Stated briefly, the current research was designed to collect qualitative data using periods of observation inside hostels and semi-structured interviews with hostel residents and members of staff. The role of theory was informed by Layder's (1998) adaptive theory, which advocates an iterative approach of continually moving between theory and data.

While the previous chapters have focused on extant literature and research that I read prior to conducting the empirical fieldwork, the following chapters centre on the data generated by this fieldwork. I have divided the analysis into two main parts. The first is a largely atheoretical chapter that draws on data from the fieldwork observations to provide a preliminary insight into life inside hostels. The most substantive analysis of the empirical data is provided in Chapter Six, which engages closely with the theoretical work on legitimacy discussed in Chapter Two, and relates back to the extant body of research on supervision in the community reviewed in Chapter Three.

Finally, Chapter Seven provides some reflections on, and implications of, the research, focusing in particular on the comparative strengths and weaknesses of qualitative and quantitative research on legitimacy. The thesis concludes by noting the changes to post-custodial supervision that are currently being enacted under the Coalition Government's criminal justice reform programme, 'Transforming Rehabilitation', and considering the implications of these changes when viewed through a lens of legitimacy.

# Chapter Five

## LIFE INSIDE APPROVED PREMISES

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Approved Premises occupy a strange position between prisons and the community – a position that people on licence often described as being ‘halfway’ between the two. Unlike prisons, there are no bars on the doors; there are no guards to maintain order. The term for a resident’s private space is a ‘room’, not a ‘cell’. During daytime hours, residents are free to enter and leave the hostel as they please. Yet, unlike other licencees living in the community, hostel residents are subject to a number of conditions that place further restrictions on their liberty. In the past, hostels have been a place of residence for young offenders, people on bail, and people on probation. Presently, however, they are predominantly reserved for people on licence, and more specifically, those people whom the probation service considers to pose a high risk of serious harm to the public (Ministry of Justice, 2014a). According to the Ministry of Justice’s (ibid.) Approved Premises Manual, the primary purpose of hostels is to provide people on licence with ‘an enhanced level of supervision to reduce the risk of harm to the public’.

The aim of the current chapter is to familiarise the reader with hostel life, particularly from the perspective of those on licence. As I have discussed in Chapter Four, the periods of observation inside Hostels A and B allowed me to build rapport with hostel workers and residents; in turn, this increased the quality and quantity of data that was generated by subsequent interviews. They were also, however, a valuable source of data in themselves. This data provides the primary material that I have used to write this chapter. By considering both hostel life in general, as well as key incidents that occurred during the periods of observation, I intend this chapter to provide a useful complement to the remaining chapters of the thesis.

### 5.1 An overview of hostel life

Residents used and viewed hostels in different ways. In return for a weekly rent of about £30, residents had a private room with a single bed, the use of communal bathrooms, and access to basic kitchen facilities that they could use to make breakfast and lunch. The hostel managers employed chefs to provide evening meals. Not all residents took advantage of the evening meal that was included in their weekly rent – people with jobs, families, or groups of friends that lived nearby, for

example, might leave the hostel early in the morning and not return until late at night. For the most part, residents would spend their time inside the hostels chatting with one another, playing computer games, playing pool or darts, or watching television. Some residents had particular hobbies, such as gardening, woodworking and chess. In terms of constructive activities, both hostels made some efforts at working positively with groups of residents. In Hostel A, some members of staff organised day-trips away from the hostel, which proved to be popular. In Hostel B, weekly singing sessions were made available to residents (although a lack of interest sometimes meant that these classes failed to materialise).

In terms of their restrictive capacities, the hostels imposed standard curfews on residents running from 11pm to 7am. Probation officers, however, would often attach more stringent curfew times to a resident's licence, particularly during their first weeks of living in the hostel. There was a prohibition on residents entering other people's rooms, and residents were generally discouraged from having 'too close' an association with one another. There was a ban on the possession and consumption of alcohol on the premises, and staff expected residents to be of 'good behaviour', which included, for example, being polite to other residents and staff and not making excessive noise. All residents were required to attend weekly hostel meetings, in which staff would announce any major news, and provide residents with the opportunity to raise any issues with other residents or staff. Furthermore, all residents had to attend regular one-to-one meetings with a designated member of hostel staff, referred to as their 'key worker'. Staff in Hostel B also organised and implemented programmes for residents that focused on, for example, alcohol abuse or managing finances.

## 5.2 An unpredictable environment

*Lisa: A lot people are just very volatile. Things can be fine one minute, and the next all hell's breaking loose . . . every shift is different.*

Member of staff (Hostel B)

During the morning of my first observation in Hostel A, I received an insight into the volatility of hostel life. A member of staff, Sue<sup>19</sup>, had said she needed to do a couple of jobs around the hostel, leaving me in the staff office with two young residents. While I was pretending to read, Ryan, a resident, asked me how long I had

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<sup>19</sup> Pseudonyms have been used throughout this thesis to protect the identity of participants.

been working in the hostel. This gave me the opportunity to explain that I was a researcher conducting research on what people thought about life on licence and living in hostels. A phone rang and, since I was unsure whether a member of staff in the adjoining office would take the call, I decided to leave it ringing.<sup>20</sup> I was scolded by Connor, the second resident: 'You can't just fucking leave it ringing, mate – what if it's something important for one of us?!' The phone stopped ringing, and Connor muttered some expletives. Shortly after, Ryan used the hostel phone to contact the benefits agency. After Ryan had spent about fifteen minutes on hold, a phone in the second staff office started ringing and Peter, a member of staff, answered it. Ryan's line went dead, and he shouted through to the adjoining office:

Ryan: *What the fuck? Have you just cut me off?*

Peter: *Don't talk to me like that, mate.*

Ryan: *I'm not your mate.*

Peter: *Well I'm not your mate, either.*

Ryan: *Dickhead.*

I took out my notepad and started writing my first observation note: 'potential procedural justice issues: communication problems this morning between one member of staff and a resident'. Sue returned to the office and proceeded to explain to Ryan that it must have been a fault at the other end of the line. Ryan calmed down and redialled the number for the benefits agency. He found out that he had provided them with the wrong address for the hostel, which had resulted in the benefits agency delaying his payments. He explained to Sue that he needed to visit a town some miles away that afternoon for a job interview at a 'mate's business' and asked if he could borrow some money for a taxi. It was hostel policy to provide small emergency loans to residents, but Sue did not seem convinced that Ryan really had a job interview. She pointed out that he already owed the hostel a substantial amount of money in unpaid rent and previous loans. Ryan was incensed:

*But I need it! How else am I gonna get to the interview? Aren't you supposed to be helping us to find jobs?! [Ryan turned to me]. This is a joke - are you getting all this down, mate? This ain't fair . . . fuck this; I'll just go and get myself recalled then! Get me a bag so I can pack my stuff. I'm leaving. They can recall me if they want, I don't care.*

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<sup>20</sup> There were three staff offices in Hostel A, all adjoining one another: one relatively small main staff reception office, one back office where senior and administrative staff worked, and the manager's office.

Ryan's monologue lasted for several minutes, but he did not end up packing his bags. Sue informed me that he had already threatened to leave the hostel on numerous occasions. Ryan disappeared to his room. When he reappeared in the staff office about an hour later, he seemed to have calmed down and apologised to members of staff for his aggressive behaviour. Ryan, Connor and I played pool for the rest of the afternoon. Whenever possible, I directed the discussion towards their experiences of being on licence. Their opinions about the licence period were mixed and at times contradictory. Their 'snap' or default responses seemed to be that the licence period was 'shit' or 'pointless'. However, as our conversations progressed, they would often explain how probation workers or members of hostel staff could be caring people, who were doing a good job in supporting them on a personal level or helping them with practical tasks such as securing move-on accommodation or employment. It is worth noting that this shifting between subcultural and more conventional narratives has been reported by other researchers conducting observations with offenders (see Dean and Whyte, 1958; Sandberg, 2009, 2010).

After an afternoon of chatting and playing pool, I felt that Connor, Ryan and I were getting on well. Although their answers to my questions were often limited, they both agreed to do an interview during my next visit. I left the hostel that day feeling as though I had made a reasonable start to the empirical research. The next week, I returned for my second observation. Shortly after arriving, I asked Sue how the two residents were getting on. There was some good news. Connor had moved out of the hostel and into his own private accommodation, a move that he had been expecting for some time. However, there was also some bad news. Shortly after my last visit, Ryan had stolen a television from one of the rooms in the hostel, absconded, promptly been arrested, and was now back in prison. I found this difficult to believe, since it had only been a few days since Ryan and I had been playing pool in the hostel. Sue could see it bothered me, but warned that this probably would not be the only recall to occur during my research. In any case, I was back to square one in terms of recruiting willing volunteers for interviews.

### **5.3 Sharing space**

Formally, the hostels were divided into a number of public and private spaces. Residents had their own rooms, which other residents were not supposed to enter. The staff had their own offices, which residents could enter, but only with the permission of a member of staff. The hostel chefs had private kitchens, although



residents had access to shared dining areas, which provided basic cooking devices, including microwaves and kettles. There were several other shared areas, such as living rooms, games rooms, hallways and bathrooms. In practice, however, the shared/private distinction was more fluid. There was a tacit sub-division of some shared areas into spaces for different groups of residents. In Hostel B, for example, residents who had not been convicted of sexual offences preferred to crowd into a small television room, rather than sit in the larger room that was used by sex offenders. Residents entered other residents' bedrooms, but were careful not to be caught by members of staff. The most important divide for the purposes of this research, however, was that between the staff office and the rest of the hostel.

Members of staff in Hostel A were proud of the open-door policy that they operated – one member of staff told me that this was the only such policy in the hostel estate. This meant that residents were free to enter and leave the office during most times of the day and night; staff locked the door on the rare occasions that they needed to have private conversations. Many residents took advantage of this policy and wandered into the office in the hope of having casual conversations with the member of staff on duty. This could make it difficult for staff to make progress on their administrative tasks, as prolonged conversations with residents could place high demands on people's time, energy and patience. Nevertheless, the staff in Hostel A regarded this as time and energy well spent and seemed motivated to maintain positive and constructive relationships with residents:

*Greg: I think here compared to other hostels we are slightly more relaxed, for example, with the open door policy . . . the reason I chose this hostel is that I knew . . . on the whole, they have a good reputation for working with residents in a really positive way.*

Member of staff (Hostel A)

The efforts of members of staff to make themselves available did not go unnoticed by residents, who often spoke positively about hostel staff:

*KIR: Yeah, I was going to say, what are the staff here like?*

*Paul: Brilliant, brilliant. Yeah, brilliant. Jane, she's a wonderful woman – she helps me out all the time . . . the staff are brilliant here, they're all here to help us.*

Resident (Hostel A)

*Chris: My first impressions of the staff is that they're really good, really helpful . . . [they] just genuinely seem to want to help people, which I think realistically is half the battle.*

Resident (Hostel A)

Whilst the conversations between residents and staff in Hostel A were often casual and not necessarily related to any specific problems a resident was having, these interactions provided members of staff with regular opportunities to offer advice and support. For example, one morning shortly after I had arrived the hostel, Alex (one of the youngest residents) entered the staff room and revealed that he had a job interview later that day for some work with a local charity. Although I found that people on licence (particularly younger licencees) were loath to admit that they were worried or concerned about anything, it was clear that Alex was feeling anxious about the interview. Vicky, the assistant residential officer on duty, told Alex that this was good news and asked if he would like her to run through what the interview might involve; Alex keenly took Vicky up on the offer. They spent about half an hour in the interview room in the hostel discussing what the interview might involve, before Alex headed off for his appointment. Later that day Alex returned to the hostel, proudly announced that the manager of the charity had offered him a job and thanked Vicky for her help and advice.

The significance of Vicky's help in this particular case is not the point I want to highlight. Alex might well have been successful in his job interview without any assistance from hostel staff. More important, however, was the positive and constructive climate that existed between staff and residents in the hostel. In part, I think this was a result of the open staffroom door policy, which provided continuous opportunities for staff and resident to interact. It also depended, however, on front-line staff having and outwardly displaying high levels of commitment and motivation to their roles. In part, these high levels of commitment and motivation were maintained because staff members were proud to operate an open-door policy and considered it an integral part of providing help and support to residents.

There was plenty of evidence from my observations and interviews that staff members in Hostel B were similarly keen to help and support residents. The opportunities for them to provide this help and support, however, were rather more limited. Unlike Hostel A, Hostel B did not operate an open-door policy. Instead,

staff invariably closed the door and residents were required to knock and wait until they were invited in. During one of the weekly hostel meetings, a member of staff reiterated this policy to residents. They were told this was necessary because staff might be in the process of discussing private or sensitive information, or because documents containing residents' personal information might be visible on their desks. Shortly after the meeting I overheard residents commenting on this policy in the communal living room. Most thought the policy was more about staff wanting to exert their authority and control over them, rather than something that genuinely concerned the protection of private and sensitive information. Regardless of the validity of the residents' argument, the effect was that people typically only entered the staff office if they had something specific to discuss. From the time I spent in the office, the purpose of the majority of residents' visits seemed to be either to take prescription drugs that staff held securely in the office, or to hand in or collect the keys to their rooms (every time a resident left the hostel they were required to leave their keys in the staff office). Therefore, visits were short and purposeful, as compared to the prolonged and spontaneous interactions that occurred between staff and residents in Hostel A. An extract from my interview with Stan encapsulates the climate between staff and residents in Hostel B:

*Stan: We've got all these fire alarms, but we've got no other contact with staff . . . [they] come out for residents' meetings . . . they come out to manage and facilitate things. But unless they want to speak to you personally they're not going to intrude in your life.*

*KIR: And is that a good thing?*

*Stan: What isn't good is this sense of discontinuation. They want to be full of friendliness, but sometimes it doesn't come across that there is . . . and it's to do with this narrow little corridor down here . . . there's no real space to gather together.*

Resident (Hostel B)

The 'narrow little corridor' that Stan referred to, separated the staff office from the residents' communal lounges and dining area. It discouraged casual association between staff and residents and seemed to serve as a boundary between space that belonged to staff and space that belonged to residents.

The closed-door policy also affected how I conducted the observations in this hostel. I spent the majority of my time in the communal living room, since this was where I had the best opportunity to socialise with residents (in contrast to the observation

periods in Hostel A, which I typically spent in the staff office). After spending extended periods with residents in the communal areas – on the other side of ‘the door’ - I felt that the staff perceived me to be siding with the residents. At no point did any member of staff say or do anything explicit to make me feel this way, rather, this seemed more a consequence of the implicit signals given off by the office door policy itself. This is not to suggest that casual and prolonged conversations never took place between staff and residents in Hostel B; I vividly remember one member of staff joking with me that he had just ‘escaped’ from an hour-long conversation with a resident, which had focused on nothing in particular. On the whole, however, staff seemed more content to enjoy the peace and quiet afforded by a closed office door, than to expose themselves to a continuous stream of potentially demanding interactions with residents (c.f. HMI Probation et al., 2008, discussed in Chapter Three). As will be discussed in the following chapter, the difference in staff door policies and the resulting climate between staff and residents made a significant difference to residents’ perceptions of the legitimacy of members of hostel staff.

## **5.4 Surveillance and trust**

Though not necessarily indicative of the degree of trust between particular members of hostel staff and residents, several aspects of hostel life implied a general lack of trust. First, there were closed-circuit television cameras (CCTV) in both hostels that operated throughout the day and night, covering many parts of the hostels, including the main entrances, hallways, lounges and kitchen areas. Screens that streamed live images from the CCTV were visible in the staff offices. The staff in Hostel A used the CCTV primarily as a means to identify people who wanted to enter the hostel. If they recognised the person as a resident, they would press a button in the office that would unlock the door; if they did not, they would speak to the person over an intercom to find out the purpose of their visit. In Hostel B, the staff office had a window that allowed members of staff to identify directly any person who wanted to enter the hostel. As in Hostel A, members of staff in Hostel B had to press a button in the staff office to allow people to enter the premises. While having a secure entry system to the hostels was understandable, some residents thought the process of buzzing in was degrading and should have been replaced by other systems that better preserved people’s autonomy:

Mitchell: *It's like this policy of having to stand there and wait every time you want to come in . . . you only do it once, but imagine how it makes you feel if you're doing it twenty times a day, every day of the week.*

KIR: *Hmm.*

Mitchell: *They keep telling you it's time to start behaving like a responsible adult, but what responsible adults do you know that are treated like that?*

Resident (Hostel A)

Stan: *I think it [buzzing in] is rather childish really. I know it's a secure environment, but we could have a lock with a code. I think that would give a bit of dignity back to it, for the inmate. And it would stop that annoyance of the staff being disturbed.*

KIR: *Annoyance for the staff or the residents?*

Stan: *Both!*

Resident (Hostel B)

Aside from being under the continuous gaze of CCTV, residents also had their rooms searched by staff on a regular basis. In Hostel B, room-searches were weekly and timetabled for midday, when the majority of residents would be outside the hostel. I accompanied Lisa and Henry (two members of staff) on a sweep of room searches during my first period of observation. The primary targets of the room searches were drugs, alcohol, razors, and pornography. In all, the staff found some used needles that one resident had thrown out of his window, razors in two rooms, and some prescription drugs in another (residents were supposed to hand in all prescription drugs to the staff office in order to decrease the risk of overdose and prevent residents from trading the drugs with other residents).

Lisa logged the illicit items on a database that shared information with other criminal justice agencies, such as the police and the probation service. She informed me that staff would question the residents concerned about these items, but that they would probably receive nothing more than 'a slap on the wrist'. From casual conversations with residents, I knew that most seemed aware that these room searches took place and were careful not to leave any contraband goods in their rooms. Nevertheless, during one of my periods of observation in Hostel A, a room search resulted in Tim, a young resident, being recalled to custody after a phone was found under his mattress – Tim had a condition on his licence prohibiting him from possessing or using any device with access to the internet (discussed further in Chapter Six).

Before staff finished their shifts, they would provide brief, systematic reports of each resident's behaviour and attitudes to the next member of staff on duty. Certainly, in most cases, members of staff recorded very little about each resident. Nevertheless, residents perceived that their behaviour was under close and constant scrutiny and were aware that hostel staff and probation officers were sharing information about them with other criminal justice agencies. One resident, Jeff, expressed the sense that monitoring in the hostel was pervasive:

*Jeff: Everything I do here, every day . . . if I go for a piss, it all gets jotten down. Or whatever, it all gets jotten down, and it all gets feeded back to your probation officer. So when I go and see her next week, she'll probably know something I don't . . . what everybody does in here gets jotten down.*

*KIR: Why is that?*

*Jeff: I don't know. No one gives feedback to you.*

Resident (Hostel A)

Jeff's perception of how much hostel staff sought to monitor residents' behaviour was not the most extreme example I encountered during my research. One resident in Hostel B was adamant that authorities had wired the whole hostel with secret cameras and microphones in order to record residents' every move and conversation. A couple of residents spoke to me about their suspicions that hostel staff had persuaded certain residents to spy on one another and report back any important information. I found out during my final interview that they had good reason to be suspicious:

*Manager: He was good to have around actually was Steve . . . when he thought that other people were out of line he'd come and tell us, and he was really useful to get information about what was going on that wasn't immediately obvious.*

Hostel Manager

When I met people for the first time it was common for them to suspect that I was part of this monitoring and information sharing agenda, with many suspecting that I was secretly working for the police or the probation service. For example, I was relatively well acquainted with one resident, Aaron, after playing several games of chess with him over a number of visits to the hostel. We had spoken at length about our backgrounds and our plans for the future and I thought a good level of trust had developed between us. Nevertheless, during one of my final visits to the hostel,

Aaron, a resident who I often played chess with, had spotted an item in the back pocket of my jeans and asked me what it was. When I told him it was just a writing pad that I sometimes used to jot down notes, he remained sceptical and suspected instead that it was a device for secretly recording conversations in the hostel. I showed him the notepad and told him that I was surprised at his suspicion, given how much time we had spent together. He laughed, explaining to me that lots of people (i.e. criminal justice professionals) pretended to be his friend, but that this 'friendship' was only superficial; therefore, it was 'better to be safe than sorry'.

While I managed to convince the majority of people that I was indeed a researcher and not a secret member of the police or probation service, one resident became so suspicious of my presence that my research in the hostel became unfeasible. In order to provide an authentic account of what happened, I have provided a copy of my observation notes during the relevant incidents:

Notes from my seventh observation period (Hostel B):

*Nick and four others left the hostel after dinner. I asked Stan [a hostel resident] where they were going. He said they were up to no good and would be back before long. Nick came back to the hostel about half an hour later with a couple of other residents. They were off their heads on some kind of drugs – I don't think it was weed . . . I'm guessing a type of amphetamine. Nick came into the kitchen and I could sense that he was on edge. He asked me if I was some sort of spy for the police. I thought that this was pretty weird, as I'd spoken to Nick earlier that day and played pool with him the last time I was in. I think he might have been on edge because he was obviously high on drugs and might have been paranoid that I would tell the hostel staff or his probation officer. He said he didn't like that I was hanging around the hostel in the evening and that it was bad enough having CCTV cameras watching his every move in the hostel.*

*He was getting quite aggressive with his body language, and pulled up a chair for me to sit down, asking me to explain what I was doing there. Two other residents in the kitchen had stopped what they were doing and were now watching to see what was going on. By this point I was feeling pretty on edge too, and, feeling pressured, I said something about trying to understand what it was like living in a hostel and being on licence. Nick was angry at the idea that I could get a 'real' sense of what these things*

were like, just from visiting the hostel a few times and speaking to residents. He said that he was desperate to be able to take off his 'jacket of life' (gesturing to his hoodie) and hang it on me, so that I could know for a brief moment how it felt to leave his family every night and return to the hostel. He said that he had lost all control over his life when he was sent to prison. Even now that he had been released, he felt that he still had no control over his life, as other people watched and recorded his every move and had the power to alter his licence conditions or send him back to prison.

When I explained that I wasn't there to spy on residents, he said that he had seen me speaking to the staff for long periods of time in their office and therefore knew I was passing on information to them about residents. I tried to explain that I was spending time in the hostel so that I could listen to the views of residents about the hostel and the licence period, but that this also included hearing what members of staff had to say about working in a hostel. At this point, I thought the best thing to do was to leave as soon as possible. I apologised to Nick for any offence I'd caused, and left. I think it was likely that the drugs had increased Nick's sense of paranoia, but maybe there was also a chance it had removed his inhibitions to say how he was really feeling.

Notes from my eighth observation period (Hostel B):

Janet [a member of hostel staff] told me that Nick and a group of residents had spoken to her about their concerns that I was spying on them for the police. Nick seems to be a bit of an alpha male with a group of residents, and I think he's told them to watch what they say around me, in case it gets back to their probation officers. Janet had tried to reassure them that I was a student, but they weren't convinced. She suggested that I speak to the hostel residents on my next visit, ideally during one of the weekly meetings when lots of them will be together...

Notes from my ninth observation period (Hostel B):

When I walked into the weekly meeting this morning, as soon as Nick saw me, he got up and walked out, gesturing to two of his friends to leave with him. At the end of the meeting, I explained what I was doing to the rest of



*the residents. Some of them asked how they could be sure I wasn't working for the police, and that I wouldn't tell their probation officers about what they said to me during the interviews. I said there didn't seem to be much that I could do, but that I could show them my student card – they said (I think jokingly) that those could easily be faked. Despite this, three of the residents came up to me after the meeting and said they would do an interview. However, it was soon apparent that they were suspicious of whether I would reveal what they were saying to hostel staff or their probation officers. Whenever we discussed topics that required them to talk about their probation officers or the hostel staff, their answers were limited and closed. I did another interview a couple of hours later, but again the resident wasn't willing to talk openly on the subject of his probation officer or the hostel staff.*

*I'm not sure whether it's a good idea to continue research in the hostel. Nick seems to be getting increasingly agitated by my presence here and there's too much suspicion among other residents that I'm spying on them for the police and probation.*

After the ninth observation, I contacted Richard, the manager of Hostel B, to explain the situation. Richard was shocked to hear about what had happened and offered to arrange a three-way meeting between Nick, himself, and me, in an attempt to rectify the situation. I was grateful to Richard for the offer, but thought this had the potential to exacerbate the situation; I decided, on balance, that the right thing to do would be to put my research in Hostel B on hold. During my final interview in this hostel, I asked Craig (a resident), if he knew why Nick had become so suspicious of my presence. He told me not to take it personally and defended Nick's position, arguing that it made sense for people to exercise caution around someone claiming to be 'on their side'. Although I had never used these terms, I think residents' interpretation of someone claiming to be interested in listening to their point of view equated to being 'on their side'. Craig explained that professionals in the criminal justice system had monitored and documented much of their behaviour for many years. In this context, he argued, the suspicion that I might be part of this monitoring exercise was just as plausible as my claim that I was interested in listening to the experiences and views of people on licence. I thanked Craig for his time, but, perhaps unsurprisingly, his responses had been somewhat guarded during our interview and the data, aside from indicating something about his own suspicions and distrust of authority, was of limited use.

The episode with Nick raised an important issue, namely, the lack of trust that some residents had in power holders, including myself.<sup>21</sup> Not believing that I was a student researcher, detached from the machinery of the criminal justice system, was a reflection of my lack of legitimacy in the eyes of residents. But while residents principally lacked trust in me, their suspicions also implied a lack of trust in other hostel staff, who had vouched for my identity as a student researcher. Lacking legitimacy, I found it difficult to perform the function of researcher in the hostel. Likewise, in the following chapter, I will argue that when power holders, such as members of hostel staff or probation officers, lacked legitimacy in the eyes of licencees, this made it difficult for them to perform their jobs effectively.

## **5.5 Conclusion**

To reiterate a point made at the outset of this chapter, residents' experiences and views of hostels varied significantly. Some people spent minimal time inside the hostels, returning only when their curfew hours required them to do so. Others spent the majority of their time inside the hostel, leaving only to attend appointments with external organisations, such as drug treatment agencies, the probation service, or the job centre. The quality of relationships between residents and hostel workers also varied significantly, both within and between hostels. This depended not only on the specific people residing in the hostel at any one time, but also on the regime type in each hostel – for example, in terms of the staffroom door policies in operation – as well as the individual approaches taken by hostel workers towards the supervision of residents.

I want to end this chapter by reflecting on an important point raised by Nick during our altercation. When I tried to explain the purpose of my research, Nick responded with anger and incredulity. He detested the idea that I could gain an adequate insight into his and others' experiences and views of being on licence by spending time in the hostel as an observer or by conducting interviews with residents. At one point, he seemed desperate for me to be able to 'see' his thoughts and feel his emotions – something that he conveyed powerfully by using the metaphor of wanting to remove his 'jacket of life' and hang it on me. Nick's challenge seemed to undermine a core aim of my research – to understand and communicate licencees' experiences and views – and I left the hostel that night feeling dejected. At the time

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<sup>21</sup> It is important to note that the majority of residents placed a great deal of trust in me, particularly once I had spoken to them on a number of occasions during the observations, see Chapter Seven.

of writing this chapter, however, several months have passed and I have tried to take a more optimistic view of the situation. The type of challenge made by Nick, I believe, should provide researchers with a powerful incentive to help bridge the gap between the experience of people who have been on the receiving end of penal sanctions and those who have not. Despite the inherent limitations of outsider attempts to understand and communicate the experiences and views of those on licence, I hope the current research goes some way toward bridging this gap.

This chapter has served to offer an insight into life inside Approved Premises, particularly from the perspective of those on licence. I hope it will serve as a useful backdrop to the rest of the thesis. The following chapter provides the most substantive analysis of the empirical data generated by the fieldwork. It centres on licencees' perceptions of the legitimacy of probation and hostel workers, and considers how these perceptions were shaped.

# Chapter Six

## THE LEGITIMACY OF POWER HOLDERS

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This chapter explores licencees' perceptions of the legitimacy of power holders. Although I have already outlined the reasons why these perceptions are worth exploring, I think briefly recapping on these points would be useful at this point of the thesis. First, it can reasonably be inferred from previous research on legitimacy that licencees would be more likely to establish cooperative relationships with probation and hostel workers, engage in supervision, and comply with licence conditions, if policy and practice were underpinned by theories of legitimacy (see Dai et al., 2011; Sunshine and Tyler, 2003; Tyler, 1990; Tyler and Huo, 2002). Furthermore, increasing licencees' perceptions of the legitimacy of power holders has the potential to contribute to more successful reintegration and lower rates of reoffending, given that these outcomes have been linked to the quality of relationships between probation workers and their clients (Burnett and McNeill, 2005; Raynor et al., 2014; Shapland et al., 2012; Weaver and Barry, 2014; Wood et al., 2015).

Second, it is my contention that penal sanctions ought to be subjected to a high level of scrutiny because they represent such severe forms of a state's intrusion into the lives and liberties of its citizens. People on licence often felt that they lacked a voice; during their time inside the criminal justice system they had been conditioned to 'put up and shut up' (see below). This, I would argue, provides a powerful incentive to listen to the experiences and views of those on licence (Foucault, 1977). However, given that licencees have broken the law and violated societal norms, it is understandable that one might question the extent to which licencees' experiences and views of punishment merit attention. In particular, what licencees like and dislike about their punishment might be considered beside the point, given that punishment, by definition, ought to consist of some degree of suffering or deprivation (Murtagh, 2012a, 2012b). As noted in Chapter One, however, a key strength of a lens of legitimacy is that it avoids precisely the type of perspective that would focus on licencees' self-interested preferences. Instead, legitimacy theories focus attention squarely on what people think is right or wrong, fair or unfair, or, in the words of Tyler (2006a: 376), 'appropriate, proper, or just'. Whilst one might reasonably disagree with the following normative contention, I would argue that whilst the content and implementation of criminal justice sanctions ought not to be

directed by the self-interested preferences of people who break the law, the same ought not to apply to people's perceptions of the legitimacy of these sanctions.

These two lines of argument provide the fundamental rationale for conducting the current research; I hope that after reading this thesis, the reader will find them convincing.

Bearing these points in mind, the current chapter provides the most substantive analysis of the empirical data generated by the fieldwork. It explores licencees' perceptions of the legitimacy of power holders, whilst drawing on and developing the theories of legitimacy discussed in Chapter Two. Ultimately, it offers a conceptual framework for understanding how licencees' perceptions of power holder legitimacy were shaped. The chapter also reflects on the similarities and differences between the findings from the current research and those of previous studies on supervision in the community.

I begin by outlining a fundamental distinction between two sources of legitimacy: legitimacy based on the procedures used by those in power, and legitimacy based on the outcomes for which power holders were perceived by licencees as being responsible. I discuss each of these sources of legitimacy in turn, before considering whether either 'mattered most'. Whilst I argue that power holders would do well to address the issues underpinning both of these sources of legitimacy, I propose that procedure-based legitimacy is of particular importance, since outcome-based legitimacy is largely dependent upon it.

First, however, I would like to outline some initial ideas about the operationalisation of the concept of legitimacy. I took Tyler's seminal definition of the concept as my starting point:

*Legitimacy is the belief that authorities, institutions, and social arrangements are appropriate, proper and just.*

Tyler (2006a: 376)

Using this definition as an orienting device for the initial data analysis, I identified two potential sources of power holder legitimacy: procedure-based legitimacy and outcome-based legitimacy. Consequently, I posited the following two definitions:

*Procedure-based legitimacy refers to the degree to which licencees perceived the procedures used by probation and hostel workers to be appropriate, proper and just.*

*Outcome-based legitimacy refers to the degree to which licencees perceived the outcomes for which probation and hostel workers were responsible to be appropriate, proper and just.*

This approach is different to that taken by quantitative researchers, who have typically defined and operationalised the concept of legitimacy as the ‘obligation to obey’ and/or as ‘trust in authority’ (Bottoms and Tankebe, 2013; Tyler, 2006b; Tyler and Huo, 2002). However, I regarded ‘obligations to obey’ and ‘trust in authority’ to be possible *consequences* of perceptions of legitimacy. In other words, the more that a person perceives a power holder to be legitimate, the more likely they are (all other things being equal) to trust that power holder, or to feel an obligation to obey them. In the current chapter, I do not focus on the consequences of perceptions of legitimacy, but on legitimacy perceptions themselves – in other words, on the extent to which licencees perceived the procedures used by power holders, and the outcomes for which power holders were perceived to be responsible, as appropriate, proper and just. I have reflected in more detail on the difference between my approach and that taken by quantitative researchers in the final chapter of the thesis, which compares qualitative and quantitative approaches to the study of legitimacy.

## **6.1 Procedure-based legitimacy**

The role of procedures in terms of shaping people’s perceptions of the legitimacy of power holders has been well established in other contexts. For example, Tyler and Huo (2002) found that when members of the public perceived the police to be procedurally just, they were more likely to perceive the police to be legitimate (c.f. Tyler, 2006b; Mazerolle, 2013). Furthermore, Sparks et al. (1996) argued that prisoners’ perceptions of the legitimacy of prison procedures can have a significant effect on the degree of order within prisons (c.f. Liebling, 2013).

As noted in Chapter Two, procedural justice has typically been conceptualised as a multi-dimensional construct. Tyler and Huo (2002), for example, argued that perceptions of procedural justice were based on two main components: i) the quality of decision-making, and ii) the quality of treatment. Tyler (2006b) further divided

procedural justice into a number of more specific components, including neutrality, lack of bias, honesty, efforts to be fair, politeness, and respect for citizens' rights. Based on the fieldwork data, I identified the following components of the procedures used by power holders which seemed to matter most to people on licence: i) the provision of information, ii) dignified treatment, and iii) being listened to. Each of these aspects is discussed in turn.

### **6.1.1 The provision of information**

In order to appreciate the significance of the provision of information to licencees, it is worth reflecting on their collective recent experiences of imprisonment. Prior to being on licence, all licencees had spent a significant amount of time in prison. Although imprisonment is not the focus of the current research, the topic often came up in informal conversations, as well as during formal interviews. I was surprised to discover that many licencees found life relatively difficult being 'out' on licence, compared with being locked up inside prisons. Throughout this chapter, I have refrained from citing every relevant extract from the data to illustrate particular points. Nevertheless, in this instance, it is worth outlining the views of five residents, because these views provide an important context for the rest of the chapter:

*Adrian: Thing with prison is, it's easy – it's so easy. You don't have to do anything. You don't have to worry about anything. Out there you might have a wife, kids, have bills to pay, you might have a job to do – all that kind of stuff. But prison – easy. Everything is done for you! It is better to be free, but you can understand why so many people struggle in the community and just go back to prison.*

Resident (Hostel C)

*Jeff: [Prison] is easy. You've no worries: 'Yes sir, no sir, three bags full'. Shut me door, boom, 'See you tomorrow' . . . You've got a routine – get up, go to work, hour in bed, back up, work, tea, association, eight o'clock, boom. None of this, you know, 'you've got job club, probation . . . you've got more worries out here than you've got in there.*

Resident (Hostel A)

*Ben: You get people what are like, have been in jail that long they get used to being locked away and that. So then when they come out they can't cope*

*with it. Like me, I'll be honest with ya, when I first came out of jail, it took me a good four, five month and that to get used to being back out, because of all the stress of having to run about, sort benefits out, go for appointments, go for meetings, you know, stuff like that. And I used to think, you know, be better in jail – everything's done for ya, you got that routine.*

Resident (Hostel B)

*Gary: All I've known since being a young lad is prison . . . so when I got to [the hostel] the first night I was like, 'Don't wanna be here; I can't handle this' . . . I suppose it was a bit of a minor panic attack really . . . it's a strange experience, but you can't explain that to everybody.*

Resident (Hostel A)

*Dan: At the end of the day, [licencees] are coming out and they're finding it hard to adjust – hard to stick to the rules . . . going to meet their probation officers and that, and all the hassle that comes along with probation. They'd rather just stay in prison, use up the end of their time, get out, and have no licence.*

Resident (Hostel B)

It is important to note that there were no examples of licencees suggesting that they 'enjoyed' prison. The crucial point that many people made, however, was that it provided an 'easy' and 'simple' life. This contrasted sharply with the relative complexity and uncertainty that licencees faced when they were released from prison. While much has been written about people's increasing levels of existential insecurity in late-modern societies (see, for example, Bauman, 2006; Bauman and Haugaard, 2008; Giddens, 1990), licencees are arguably among the most insecure and vulnerable groups of people in these societies. Many of those involved in the current research, for example, were uncertain about where they would be living in the coming weeks and months, were unsure about whether they would be able to obtain employment in the near future, had volatile relationships with family and friends, were prone to drug and alcohol abuse that they themselves feared could make their behaviour unpredictable, and, above all, the threat of recall left many in a state of constant anxiety. Moreover, they had recently left behind an environment which contained none of this uncertainty.



Viewed in this context, it is understandable that licencees placed a particularly high premium on the provision of information. If power holders provided timely and accurate information about decisions which could have profound effects on a licencee's liberty – for example, decisions about changes to the content of licence conditions – then this could provide a significant source of legitimacy for those in power. Conversely, if this information was denied, delayed or inaccurate, this could lead to a rapid loss of legitimacy.

One of the most common examples of the significance of information related to licencees' hostel residency requirement, which many people did not find out about until close to their time of release. One licencee was so incensed that his probation officer had provided him with inaccurate and untimely information, that before our interview could begin, he insisted on getting this issue off his chest:

*Paul: Well before you start, I will say, when you're in jail, you're getting closer to your time to be released, and you're told your licence conditions by your probation, which all change when you get out. It's different – you're looking forward . . . I was told I'd go straight home. Then I got told that part of my licence conditions was to live in an Approved Premises . . . when I've got a perfectly good house to go home to. So, if you can do anything, it's err, work on, stick to the things you get told.*

Resident (Hostel A)

Certainly, Paul was unhappy about the content of his residency requirement – being required to live in an Approved Premises on his release from prison. The manner in which his probation officer had imposed this licence condition, however, had greatly intensified his frustration. In particular, Paul resented that his probation officer had told him one thing – that he could return home on his release from prison – only for him to do something else – insert a hostel residency requirement onto his licence close to his time of release. From a number of my discussions with licencees, it seemed that Paul's experience was not uncommon:

*Dan: [Hostel Y] was where I was originally going to go, but seven days before I was due to go there they changed it and sent me [to Hostel A]. Something to do with them being full up, or not having the space available at the time. But [my probation officer] knew months in advance when I was due to be released, and he was telling me months in advance that I was*

*going to this hostel, every time I had meetings. And then a week beforehand, I find out I'm not going to [Hostel Y], so that didn't help.*

Resident (Hostel A)

*Gary: [I knew] that my only avenue was going to be through Approved Premises. But yeah, I've known lads back in prison where I were, where they've got tag, waiting to go, and then that night while they're waiting they've been told instead of going to their address, they've got to go to [a hostel].*

Resident (Hostel A)

*James: My probation officer changed, like, three months before I got out of prison and I'd been with him for about four and a bit years . . . he was always saying that he thought I'd be able to go straight back to my Mum and Dad's house. But just as I were getting out all that changed, and they said you're going to have to go to an Approved Premises.*

Resident (Hostel A)

While James was disappointed to find out about the unexpected insertion of a residency requirement onto his licence, this had a limited impact on his perceptions of the legitimacy of his probation officer. In large part, this is because he attributed the change to his release plans to him being assigned to a different probation worker. Paul, however, reflected rather differently on what had happened in his case. Because the addition of a residency requirement had been decided by the same probation officer who had previously told him he would be able to return straight home, Paul was less prepared to forgive the inaccuracy of the initial information that his probation officer had provided. The legitimacy deficit created by this initial negative experience contributed to the development of a hostile relationship between Paul and his probation officer, which in turn led to Paul's disengagement from the supervision process (discussed below).

Another example of the importance of the provision of information emerged during one of the observation periods in Hostel B. When I arrived at the hostel to begin a period of observation early one morning, the hostel manager asked me whether I would be willing to accompany a resident, Mark, to an appointment at a local hospital. I had already spoken to Mark on numerous occasions and was more than happy to go with him to his appointment. On our walk to the hospital, we chatted at length about his plans for the future, and I was sad to discover that Mark had

recently contracted HIV – the reason for his appointment at the hospital. As we were walking back to the hostel, Mark received a text message from a friend, Peter, who had moved from Hostel B into Hostel Y the previous week (Hostel Y was considered to be more suitable because it provided additional support for people with mental health needs). Because of Mark’s own mental health needs, he was also due to go to Hostel Y sometime in the next few days. Mark became visibly upset as he read the text message, so I asked him what was wrong. In his text, Peter had explained that their probation workers had met together and decided to prohibit Mark and Peter from associating with one another. Mark agreed to do an interview with me when we got back to the hostel, during which he discussed his feelings about this development:

*Mark: I just found out that me and Peter can't mix.*

*KIR: Was Peter told why?*

*Mark: No. He got told this morning through his probation officer that his probation officer and my probation officer have decided, for whatever reason, that we can't mix . . . but the thing is, I need someone to walk round Town P (the town where Hostel Y was located) with me because I can't read or write. And I really need someone to go with me because I can't remember what is said . . . now, all of a sudden, he's not allowed to show me a new area, where things are.*

*KIR: Has anyone spoken to you about it?*

*Mark: No. I've just found out from Peter. I wouldn't know if he hadn't mentioned it . . . [my probation officer] should have told me before. She knows we would ring each other up, so therefore she should have told me straight away.*

Resident (Hostel B)

I tried to ask Mark about some of the other things that were listed on the interview schedule, but the issue with Peter was weighing heavily on his mind, and the conversation kept returning to this subject:

*KIR: So have you ever broken any of the conditions of the licence you're on?*

*Mark: No, not yet. Thing is, at the end of the day, if I go to [Hostel Y], and [the hostel staff] are not willing to walk around Town P with me, I'll refuse to go to the police station because I don't know where to go. But if I refuse to go to the police then I'll get recalled. I just feel like saying, 'Fuck it, I'm not going!' I'm better off here because I know this area. I'm used to the staff*

*. . . me going there I'd have to start all over again . . . I find it hard to cope with new things. If they don't want to keep me here, and I don't want to go to [Hostel Y], then I'd probably end up back in prison.*

Resident (Hostel B)

Even after the interview, Mark continued to tell me how anxious he was about moving to a new environment without anyone to support him. Indeed, Mark's high level of anxiety was the reason I had accompanied him to his hospital visit earlier that day. He was clearly concerned about losing the person who he had expected would help him adapt to life in a new town and a new hostel. He was equally upset, however, about the *manner* in which this decision had been communicated to him – that he had found out about the restriction from his friend, rather than from his probation worker. Mark felt strongly that his probation worker should have contacted him, given that she knew that he and Peter were in regular contact. Moreover, this was particularly important, given that the rationale for this restriction seemed unclear. Mark said some harsh words about his probation worker during our interview, and it was clear that his perception of her legitimacy had been severely damaged by this incident. When I returned to Hostel B two weeks later, I found out that Mark had indeed moved on to Hostel Y, but that his time there had been cut short; he had been recalled back to prison (unfortunately, I never found out the precise details of Mark's recall).

The importance of providing information to residents was highlighted in a number of my interviews with members of hostel staff. The most vociferous advocate of ensuring residents were given accurate and up-to-date information was Brian:

*KIR: And in terms of getting [hostel workers] to work from the same page, is there anything you would want to emphasise?*

*Brian: So, in terms of sharing information, we should be open and honest with residents. One of the worst things you can do is withhold information from somebody. Obviously, sometimes, you might have to do this. But when you're making a decision, you can keep a resident more informed while you're doing it. And being honest, so: 'You are sat here because of this; you have acted in a certain way, and these are the consequences of your actions'. Just be honest and explain the reasons to people. If you do that, you are more likely to get a better reaction because people say, 'Well actually, he is being straight with me. He has told me exactly why that has happened, and I know what to do to try and not be here in the*

*future' . . . if we're going to work positively with people then that is what I'd encourage.*

Member of Staff (Hostel A)

It was no coincidence that Brian was one of the most highly thought of and respected members of staff that I encountered during the fieldwork. During an early period of observation, I witnessed him leaving the staff office to socialise with residents in the communal areas. Brian was a terrible darts player, losing graciously on numerous occasions. However, he used these opportunities to develop his relationships with residents. Whilst he acknowledged the importance of providing information to residents, he was also well aware of the importance of treating residents with dignity and respect.

### **6.1.2 Dignified treatment**

While uncertainty about the future characterised many licencees' lives, two other defining characteristics were licencees' perceptions of their own lack of social status, and their low levels of self-esteem (see further Oser, 2006; Marshall et al., 2009). In my interview with Stan, he explained that people's experiences of imprisonment and living in a hostel served to decrease their self-esteem and perceptions of their social status:

*Stan: It's not the lack of money that is degrading – it's the lack of confidence that is degrading. [Hostels] just sap the confidence out of people; you must have noticed? . . . [prison] teaches them they don't count, they don't matter – they're just a number in the box.*

Resident (Hostel B)

Stan's assertions reflected the views of several other licencees, who seemed acutely sensitive to aspects of their treatment, such as a power holder's tone of voice, or the particular words or phrases used by those in positions of power. Although Stan was more self-assured than most residents, on numerous occasions he discussed how interactions with power holders had left him feeling inferior:

*Stan: [A member of hostel staff] was telling me who I had spoken to, and how I had spoken to them, but she wasn't in the conversation previously; she hadn't any record of the conversations, so she didn't know. She was just caring over the situation in a far too, erm, 'probationary way'.*

KIR: *What's a probationary way?*

Stan: *'We're superior. We know best.' As offenders, we need to say, 'Ok, we're going to behave as well as we possibly can', not have it thrust upon us: 'That is how it is; you must think this'.*

Resident (Hostel B)

In our interviews, some hostel workers highlighted their own annoyance at other staff members who were too domineering in their interactions with residents, arguing that this created a barrier toward the development of positive staff-resident relationships:

Helen: *We went and did training; probation were rolling out this desistance thing. Some people come to work and still believe that [residents] are criminals and we need to make sure they are not a threat to society . . . erm, and that's all the job is – to control them . . . it is about staff adapting, because residents react to how they are treated. If your style of work is: 'You should do this; you should do that; why aren't you doing this?', rather than enquiring, and seeking, and negotiating, and trying to engage people, then you are undermining things for everyone.*

Member of staff (Hostel A)

One of the things that bothered Stan most was how licencees were treated by those in positions of power. Essentially, he felt that the criminal justice system infantilised those inside it, by stripping people of responsibility, and treating them like children. Indeed, several other licencees spoke in terms of the indignity of being made to feel like children:

KIR: *What didn't you think was fair when you got to [the hostel] then?*

Jack: *Not having my own medication in my possession, and things like that. I'd have to go to them every so often and ask for my medication, that sort of thing. Makes me feel a bit childish. They take it off me.*

Resident (Hostel C)

Paul: *Like I say – it's puppets on a string. [Probation] are the puppet-masters, we're the puppets.*

Resident (Hostel A)

Bradley: *Sometimes [hostel workers] treat you like a kid who just needs a good telling off. Just because you've committed a crime doesn't mean that*

*your opinions don't count. But they think, 'we're in charge, what we say goes', but that's not right.*

Resident (Hostel A)

Arguably, practices such as the confiscation of medication existed for a good reason. The intention here, however, is not to debate the relative merits of these practices, but to highlight that the way they were experienced and interpreted by licencees could have significant implications for licencees' perceptions of the legitimacy of those in power. Although many licencees seemed to enjoy having conversations with hostel staff, Bradley (above) was someone I rarely witnessed chatting to staff in their office. And although Jack (above) was on good terms with the staff in Hostel C by the time of our interview, this had not always been the case. According to Jack, his first few weeks in the hostel were characterised by a deep sense of distrust of hostel workers (although he admitted that hostel workers themselves had done nothing to prompt his cynicism):

*Jack: I've got to be honest, at first it were murder – hated it . . . I thought the only reason [the staff] were here was to get me recalled. That's how I looked at it.*

As time had passed, however, Jack noticed that the staff in the hostel would often enquire about how he was feeling, and ask whether there was anything they could do to help him. The decency and respect that members of staff showed toward Jack seemed important in helping to shift his initial negative attitudes toward them:

*Jack: I thought they were all a bunch of fucking bastards, but they weren't. Every morning, 'Hello Jack, how you doing?' and, 'You alright, Jack?' They really seemed to care, and I thought, 'Yeah, these are actually good people', you know?*

*KIR: Just from saying 'good morning' and asking how you were?*

*Jack: Yeah, it makes you feel like someone cares about you, looking out for you and that . . . eventually I learnt . . . they're not there [to get me recalled] . . . that meant that if my head is not right or whatever, I can get one of the staff now and say, 'I'm feeling a bit low, any chance you can spare me ten minutes together?'*

One of my own interactions with a member of hostel staff sensitised me to the importance of treating people with dignity and respect. The best way to

illustrate this experience is to provide a copy of my fieldwork observation notes:

Notes from observation seven (13.05.13):

*After I had conducted my interview with James [a hostel resident], I went back to the office to let the staff know I had finished using the interview room. Brian [a member of staff] had finished his shift and been replaced by Adam, a member of staff who I hadn't yet met. A couple of residents were in the office speaking to him. When I entered, they stopped talking and waited to see what I wanted. I held out my hand to Adam and introduced myself. He tutted, reclined in his chair, and started shaking his head. It felt horrible. After a couple of seconds, I realised that he had assumed I was a new resident in the hostel. I told him that I was the person doing research, and his attitude seemed to shift . . . he said something like, 'Oh ok! Sorry. How's it going mate?' We spoke for a while about what my research was about, and I decided not to ask about why he had refused the offer of a handshake.*

*I wonder how much of an indication this is of a divide between hostel staff and residents? Would other hostel staff have reacted in the same way, or is Adam just somebody who doesn't have much respect for residents? Or maybe shaking hands just isn't the 'done thing'. Maybe I'm making a bit much of this in my head, but at the time it felt massive – it felt like Adam had absolutely no respect for me. I know some residents have talked about how prison staff and probation officers sometimes give out a sense that they're superior, but I never really grasped how hard this must be to take when you're the one that's being made to feel inferior.*

This was an isolated incident with one member of staff, and certainly does not reflect generally on the interactions I witnessed between hostel workers and residents. Nevertheless, it was a significant moment in the fieldwork because it made me aware of an important point: things that seemed relatively trivial to power holders (I am fairly confident that Adam did not give the incident a second thought) might play a far more significant role in shaping the experiences and views of those on licence. This point was highlighted by a number of residents, such as Stan, who suggested that the 'small things' really did matter:



*Stan: They just don't get it; they really don't get it – that their little behavioural ticks get in the way . . . so often it's a case of just a patronising sort of slur in the voice . . . and [residents] respond to it. And the staff wonder what's happening – well that's what's happening.*

Resident (Hostel B)

I think it is worth noting one more example in this section that comes from the fourth period of observation in Hostel A. The reader might recall a brief reference in the previous chapter to Tim, a young resident, who was recalled to prison after hostel workers found a phone hidden underneath his bed. I think of all the things I observed during the fieldwork, for a number of reasons, Tim's recall was one of the most memorable. Tim had been convicted of a sexual offence against an underage girl. As a result, he had a condition inserted onto his licence that prohibited him from possessing an electronic device that could access the internet. Presumably, this condition was intended to reduce the risk of him contacting the victim of the offence, or any other underage girls. During previous visits, Tim had spent quite a lot of time speaking to hostel workers in the staff office, which had given me the opportunity to speak to him as well. His cheek and sarcasm went down well with some members of staff, and not so well with others.

The morning of the observation had been relatively uneventful, but around 1pm, a member of staff informed me that a phone had been found underneath Tim's bed. Members of staff had searched his room after he had left the hostel, following a tip-off from another resident that Tim was using the device to communicate with people on a dating website. When hostel staff discovered the phone, they had informed Tim's probation officer, who decided to initiate the recall process. When he returned to the hostel later that evening, a member of staff told him what had happened, and informed him that police officers would be coming to arrest him in the morning and escort him back to custody. Tim became distressed. He protested that he had not used the phone for any untoward activities and requested that someone check the phone to verify this. A member of staff told Tim that the matter was out of their hands, and that he would need to pack his belongings immediately.

Tim was told he would not be allowed to sleep in his own room that night. Instead, he had to move into an empty room on the ground floor of the hostel. As he was being escorted back to his room, he asked me if I would go with him, and I agreed. When we got to his room, a member of staff handed me a pair of white gloves and, along with Tim, we began packing up his belongings into black bin-liners. I knew

from my experience of accompanying hostel workers during previous room searches that they usually wore gloves in order to protect themselves from hazardous objects, such as used drug needles. I was almost certain, however, that Tim was not a drug addict, and the image of myself and the member of staff wearing white gloves and shovelling Tim's clothes and personal possessions into black bin liners was unpleasant – to state the obvious, it felt like we were treating Tim's possessions as rubbish. The process lasted almost thirty minutes and, for the most part, it was conducted in silence. At one point, Tim broke the silence to let the member of staff know how he was feeling:

*Tim: I know I'm going to get put back in prison, but all this seems very harsh.*

*Member of staff: That's something you should have thought about before you broke your licence conditions.*

*Tim: I know. I just think, all this, it's very harsh. I just don't think it is necessary. That's all I wanted to say.*

Tim seemed close to tears. He questioned why he needed to pack up all of his belongings and move into an empty room on the ground floor, and asked whether he would be able to take his television, X-Box, or music system with him to pass the time, as he did not anticipate he would be able to sleep well that night. He was told that moving into an empty room was for his own protection. A member of staff later told me that they needed to prevent the possibility of Tim attempting to hang himself with wires from electrical devices. When we had finished bagging up Tim's possessions, the three of us walked down to the empty room in the hostel. The member of staff remembered something that she needed to do, leaving Tim and me alone in the room. For a few minutes, we chatted about what had happened and what was going to happen – Tim was clearly angry and resented how the situation had been handled. Although I could not record our conversation, I scribbled notes down shortly afterwards to keep a record of what was said:

*KIR: Are you ok?*

*Tim: Not really. When I come out of prison next time I'm having nothing to do with any of them. They pretend to be on your side, but they're not; they can't wait to catch you out. This morning everyone was my friend. I thought I was doing really well. I know I wasn't supposed to have a phone, but everyone has phones. Older people don't get it.*

*KIR: I don't know mate, you know I can't really say anything.*

Tim: *Yeah, but I wasn't doing anything bad with it. I was just using it to message friends; hopefully they'll see that. I felt really good today, and now . . . I don't think I've done anything to deserve it. They'll say I knew it was on my licence conditions, so it's my own fault. I suppose they've got a point, but it doesn't work like that. I knew I shouldn't have been using a phone, but what kind of life is that? I have to live my life.*

KIR: *I'm sorry about having to bag all your stuff up like that.*

Tim: *I can't take it with me to prison anyway mate, I just think all this is very harsh, don't you?*

The member of staff returned to the room. I felt drained, so I made an excuse to leave the hostel and return home. Reflecting on this incident, it seemed that although Tim questioned the fairness of the recall decision itself, he was also upset about the *manner* in which it had been implemented. He seemed upset about the process of packing his belongings into black plastic bags, and questioned the rationale of being moved into an empty room overnight; he interpreted this as further unwarranted punishment for his licence breach, rather than a measure to protect his own safety. In the space of a couple of hours, Tim had gone from viewing his probation and hostel workers as valuable sources of support for rebuilding his life after leaving prison, to people who cared little for his well-being. Tim's recall to prison would of course only be temporary. It seemed unfortunate that the positive relationships he had established with members of hostel staff and his probation officer – which were proving important in helping him adjust to life in the community – were unlikely to remerge on his re-release from prison. Tim had declared that next time, he would have 'nothing to do with any of them'.

### ***6.1.3 Being listened to***

In some ways, listening is related to the concept of 'dignified treatment'. However, licencees valued it to such an extent that it deserves to be isolated for discussion. For example, when I asked licencees what sort of probation or hostel worker they would want in an ideal world, a 'good listener' was the most commonly cited attribute. Fundamentally, there were two reasons why licencees thought it was important for probation and hostel workers to listen to their views – one was instrumental, and the other, largely symbolic. First, some licencees thought that if power holders listened to their views they would be more likely to make fair and effective decisions based on accurate information. This resonates with the control model of procedural

justice offered by Thibaut and Walker (1975), which posits that people judge the fairness of procedures by the extent to which these procedures provide them with some influence or control over the likelihood of receiving a fair outcome. Gary, a resident in Hostel A, highlighted the important role that listening could play in terms of improving decision-making in relation to licence conditions:

*Gary: Although I completely understand and get that the authorities make the final judgement . . . that, I would say, would be the main thing: for everybody to sit around a table, and discuss openly, and get the inmate involved . . . for an inmate to see, and say, 'Do you know what, I'd rather he put that on [my licence] as well, and put that on, and put that on' . . . and then somebody formulating, listening to everybody, and saying, 'Right, this is what we're gonna do . . . You've had your voice heard, she's had her report, and he has had his'. But that don't happen – it doesn't happen. Because that's when the rifts start, because [licencees] will think, 'Well, what you got that on me for? But yet you haven't put it on him, and he has not got it. Yet he has done this, and he ain't got that licence condition'. And that is when all the waves start.*

Resident (Hostel A)

Gary thought that if power holders listened to licencees, they would make better decisions, resulting in fewer arguments and better working relationships. In other words, listening was important because it had an instrumental role in producing better outcomes. Despite National Standards promoting offenders' active engagement with the assessment and planning of the licence period (see NOMS, 2007), when asked whether they had had any input into the creation of their licence conditions, licencees stated without exception that their views had not been listened to. Furthermore, licencees generally agreed with Gary that they ought to have some sort of inclusion in the decision-making process regarding the creation of licence conditions. One of the most concerning things about my discussions on this subject was that licencees thought there was 'no chance' of them being granted any role or voice in decision-making processes:

*KIR: Would it be a good idea for probation to speak to people before they decide on those conditions?*

*Adrian: Naa, never gonna happen . . .*

KIR: *Do you think it would be useful if it did happen?*

Adrian: *Yeah, but no chance [laughs].*

Resident (Hostel C)

KIR: *Did you get asked about the conditions on your licence before they were decided on?*

Scott: *There was no discussion; you just get told.*

John: *I don't think it'd make a difference cause they'd still do what they want anyway.*

KIR: *Do you think it would be worth doing if it did make a difference?*

John: *Yeah.*

Scott: *It is just not gonna happen, is it?*

Residents (Hostel A)

Many licencees found the prospect of involvement in decision-making to be beyond the realms of possibility. This, I would argue, was a telling indicator of licencees' general sense of disempowerment that had developed and become embedded during their time inside the criminal justice system.

Interestingly, licencees did not express a similar desire to have their voices listened to when it came to the content of hostel rules. One likely reason for this was that these rules were the same for all licencees. While some hostel rules did indeed seem to suffer from a legitimacy deficit in the eyes of licencees, this did not result from a lack of input into their creation. Instead, the legitimacy of hostel rules was dependent on the perceived fairness, or effectiveness, of the content and implementation of the rules themselves – things that I will discuss in the following section on 'outcome-based legitimacy'.

The data on 'listening' also provided support for the relational model of procedural justice, outlined by Tyler and Lind (1992; c.f. Lind and Tyler, 1988). This model posits that people care about issues related to procedural justice because they provide indications about one's status, for example, whether one is respected by those in positions of power. This seemed particularly applicable in Ben's case, one of the more volatile residents in Hostel B. During a weekly hostel meeting, Ben had stood out from the other residents by vociferously refusing to partake in a session on drug and alcohol abuse that the hostel was running later that afternoon. Ben had said that he 'ain't fuckin' doin' no programme' because he had already done it in prison; he was not going to sit through 'all that shit again' (ultimately, Ben did

attend the programme which, judging by his active participation, he seemed to quite enjoy; discussed further below). I soon learned that Ben had a short temper and hated being told what to do. He found it particularly hard to get along with relief staff (people who covered regular staff if they were unable to attend their shifts), complaining that they always told him what to do without listening to what he had to say – something that he considered to be a clear sign of disrespect. During our interview, Ben singled out two power holders as people with whom he had a particularly good relationship. One of these people was his solicitor:

*KIR: So why is your solicitor so good?*

*Ben: I don't know. I think what it is, is that he seems to sit there and listen, and he don't judge ya. Whereas other people will turn round and say, 'Well, he shouldn't be doing that; he shouldn't be doing this' . . . obviously I've used the same solicitor for years and that, so he's got to know me and that.*

Resident (Hostel B)

The thing that Ben valued most about his solicitor was that he would always take the time to listen to what Ben had to say – something that often made his solicitor the first port of call when he needed help with something specific, or when he simply wanted to vent his frustrations. This created a layer of trust between Ben and his solicitor that acted as cement for a relationship which endured over a number of years.

Another person whom Ben had a good relationship with was Alan, a hostel worker. I also got on well with Alan, and had spoken to him on a number of occasions about Ben's challenging behaviour:

*Alan: Yes, he can be difficult, and a lot of the staff in here think he's a nightmare! But to be honest, all you have to do is let him talk, and he'll settle down. He just hates it when people tell him what to do and don't let him speak – he's insecure, that's all it is. Most of these lads have issues around feeling emasculated – letting them put their views across is a way of making sure they don't feel you're walking all over them. You can end up making the same decision as you were going to, but just letting them know you've listened to them can make a difference.*

Member of staff (Hostel B)

The value that licencees placed on being listened to was a key reason why the different staff office door policies (discussed in Chapter Five) had such a significant influence on licencees' perceptions of the legitimacy of hostel workers. The open door policy for the staff office operated by Hostel A signalled that hostel workers took residents' concerns seriously and cared about residents' well-being. This care and concern was reflected in residents' positive appraisals of staff in this hostel, as noted in Chapter Five. While many residents in Hostel B also spoke highly of the members of hostel staff, their views were somewhat more mixed. The closed door policy for the staff office provided a physical and symbolic boundary between hostel workers and residents that limited the degree to which residents felt that members of staff were willing to listen to their concerns. It is worth noting that when I asked residents in Hostel A how they found living in the hostel, their answers often contained a comparative element. For example, during one of my first conversations with Jeff, a resident in Hostel A, he was keen to highlight that whatever people thought about the hostel, it was better than any of the alternative hostels:

*KIR: So what's it like living here?*

*Jeff: It's alright pal. Nothing wrong with the staff here mate; much better than being down the road in Hostel Y. This is one of the best places in the country – you ask anyone here and they'll tell you the same.*

I found support for Jeff's claim throughout the duration of the fieldwork. It is worth highlighting that during one of the observations in Hostel A, the manager chaired an hour-long meeting in which all residents were invited to express their concerns and grievances about life in the hostel. The meeting was well attended, and several issues were raised. The manager proposed some solutions and residents seemed to leave the session feeling satisfied that their views had been noted and that steps were being taken to respond to their concerns. Whatever grievances residents in Hostel A had about the licence period more generally, the legitimacy of hostel workers seemed to be well established and protected by the fact that they were openly willing to listen and respond positively to the residents' needs and concerns.

In summary, the data from the fieldwork suggested that the act of 'listening' played a crucial role in shaping licencees' perceptions of the legitimacy of both probation and hostel workers. While some licencees regarded listening as important because they thought they were more likely to receive fairer outcomes from power holders who listened to their views, listening was arguably more important because it

provided licencees with an indication of the extent to which those in power were prepared to treat them with consideration and respect.

## **6.2 Outcome-based legitimacy**

Licencees' perceptions of the legitimacy of power holders also depended on the outcomes for which these power holders were perceived as being responsible – for example, the content of licence conditions and hostel rules, and decisions concerning the consequences of breaches of these conditions and rules. I will argue that licencees were concerned with both the *fairness* and *effectiveness* of outcomes. In other words, if outcomes were perceived to be fair and effective, then power holders would be endowed with some degree of legitimacy. Conversely, unfair or ineffective outcomes threatened to undermine their perceived legitimacy.

Much of the literature on legitimacy and policing has downplayed the importance of outcomes in terms of shaping public perceptions of police legitimacy (e.g. Sunshine and Tyler, 2003; Tyler, 2006b; Tyler and Huo, 2002). In the context of prisons, however, Sparks et al. (1996; c.f. Jackson et al., 2010) have argued that both procedures and outcomes matter. Outcomes are significant in the prison environment due to prisoners being in close physical proximity to one another, and therefore acutely aware of the outcomes received by other prisoners. Similarly, the close proximity of licencees to one another inside hostels meant they were often aware of the outcomes received by other residents.

Although the distinction was not always clear cut, I found it useful to distinguish between two types of outcome. In general terms, outcomes either related to help and support, or to monitoring and control. I will discuss each type of outcome in turn, before considering the extent to which the purposes of help and support, and monitoring and control, complemented or conflicted with one another in practice.

### **6.2.1 Help and support**

While people on licence had different opinions about how much help and support they received from power holders in practice, they were unanimous in their opinions that probation and hostel workers ought to provide them with some level of help and support. One could argue that this finding was the inevitable result of people's self-interested preferences for a licence period that provided help and support, as opposed to one that centred on measures designed to monitor and control their



behaviour. This, however, would constitute only a partial explanation. The data indicated that there were at least three reasons why licencees believed that the licence period ought to include some measure of help and support. The first, cited by a minority of licencees, was that sentences of imprisonment left people in a worse position after they were released from prison than they had been in prior to their incarceration. For example, while I was playing pool with Graham, a resident in Hostel A, he bemoaned the fact that people often lost their homes after receiving a prison sentence. He believed that his homelessness played an important role in his probation worker's decision to insert a hostel residency requirement on his licence, despite his insistence that he could live with friends until he found his own property. Consequently, he thought that the criminal justice system ought to provide support to licencees after they had left prison, particularly in terms of helping them to find suitable accommodation.

The majority of licencees, however, did not voice opinions along the lines of Graham's; and yet most still believed that the criminal justice system ought to provide them with some form of help and support. The second reason for these normative expectations, I would argue, was that professionals working in the criminal justice system repeatedly told licencees that this was one of the core purposes of the licence period. Stan highlighted this point at the beginning of our interview, before I had chance to ask the first question:

*Stan: We are given expectations in prison that quite often aren't achievable . . . we are given expectations about the quality of training, quality of education, the quality of computing skills given as courses, and enablement and entitlement to work outside in the community.*

Resident (Hostel B)

Stan explained to me that prisoners were regularly told that they would receive all manner of help and support *after* they had been released, often in order to distract people from how little provision was offered to them inside prison. Furthermore, during the observations, I frequently heard hostel workers telling residents that the licence period was intended to provide them with help to resettle back into the community – a message reiterated by members of staff during our interviews:

Neil: *It [the purpose of the hostel] is about rehabilitation and helping over a very short, pressed period of time with acute issues around post-release from custody; things like sorting out accommodation, money.*

Manager (Hostel A)

Stephen: *What we work with them on is things like accommodation, employment, health, well-being, and just chatting to them. Find out where they're going, what they're doing, trying to help them more, trying to help them get back into the community.*

Member of staff (Hostel B)

Greg: *What we're really more about is getting somebody who is previously disenfranchised the support that they need, and focusing on the positive things that they can do to change, and that sort of thing.*

Member of staff (Hostel A)

With probation and hostel workers continually conveying these messages to licencees, it is unsurprising that licencees' perceptions of the legitimacy of these power holders came to rest, in part, on the quality of the help and support that was provided to them.

Finally, licencees thought that power holders ought to provide them with help and support because they regarded this as a means to further ends, such as the reduction of reoffending and the successful reintegration of people back into the community:

Jack: *The people on the street, I reckon probably eighty per cent of them will be straight back in prison. But people come to [this hostel], they help us with benefits, you know, things we're not used to . . . a lot of these people teach you various little things, so without these places there would be no hope for people like us.*

Resident (Hostel C)

Dan: *I think reoffending rates would go up if there wasn't somebody there to give you the support. If somebody comes out of prison after a life sentence and hasn't got that support there, then they're going to find it very difficult.*

Resident (Hostel A)

Therefore, there were a number of reasons why licencees expected power holders to provide some level of help and support to people on licence, and the perceived legitimacy of those in power depended, in part, on their ability to satisfy these expectations. While I have made use of the rather broad category of 'help and support' for analytical purposes, licencees typically spoke about the purposes of the licence period in more specific terms. For example, people expected probation and hostel workers to provide personal advice and support, as well as practical assistance, with things such as accommodation, employment, and benefit applications. In relation to the former, some licencees thought it was important to have someone supportive to talk to about personal issues, whatever these might be:

*Stan: [Probation] is positive; it's a support. If you're feeling vulnerable and going to behave badly, or going to fall into crime again, go and talk to your probation officer . . . they should be there for everything, absolutely everything under the sun – principally about themselves, the family, relationships, the employment, the career, the training, whatever they're doing.*

Resident (Hostel B)

*Paul: A good member of staff is a person who listens if you've got any problems. Probation officers need to, err, someone like yourself or Jane, who can sit and listen, help you . . . there should be a time and a date to go down to probation just to see how you are. [They] should be asking questions like, 'How's life? How's your house? How's your wife?'*

Resident (Hostel A)

*Mark: They are there if you need them; it depends what you need them for.*

*KIR: What sort of stuff would people need help for?*

*Mark: Somebody to talk to – if you need someone to talk to, they are there.*

Resident (Hostel B)

Most licencees thought that it was important to establish a good relationship with their probation officer or hostel key worker. Whilst a certain level of bravado possibly prevented some licencees from openly expressing the value of having someone to talk to about their problems or concerns, the periods of observation provided plenty of evidence of its importance to licencees. In Hostel A, for example, I witnessed a number of ex-residents returning to chat with members of staff. Helen, a member of staff in this hostel, spoke about this in our interview:

Helen: *What we have here is residents who say, 'I'm not coming back here, it's a shit hole; I'll never come back here'. And then three weeks later, they'll be coming back. A lot of it, I think, is loneliness.*

The legitimacy that hostel workers built and maintained in the eyes of residents resulted in the establishment of trusting and supportive staff-resident relationships that sometimes continued beyond the time that residents left the hostel. Some residents felt a deep sense of gratitude toward members of hostel staff. In Hostel B, for example, an ex-resident sent a card to the hostel manager to express his appreciation for the time that members of staff had spent providing him with support and advice.

The desires of licencees to receive such help and support meant that they could feel let down by their probation workers if their meetings were cut short, or consisted of superficial conversation:

Dan: *Sometimes I think he's too busy. You get a set time to go there, and they try to rush you out quickly – looking at his watch, and saying, 'We haven't got much longer left'.*

Resident (Hostel A)

Stan: *A lot of the probation officers don't wish to know either because it takes time: 'See, if I've got [a licencee] telling me all the things about the training course, I'm not going to get through extra people'. So there are time constraints, pressures of numbers.*

Resident (Hostel B)

Others, however, made it clear that they did not need or want personal advice and support from hostel or probation workers:

John: *It's just a waste of time for some people.*

Scott: *Yeah. Some people just want to get out and get on with their life.*

Residents (Hostel A)

Believing the licence period to be a waste of time, both John and Scott disengaged from their probation appointments and hostel key worker sessions, displaying only a minimal level of 'formal compliance' (Robinson and McNeill, 2008, see further Chapter Two) with power holders:

Scott: *She's like my fucking mum – she does my head in. 'Do this, do that' – I don't want to; just fuck off! You just have to blag 'em. Feed them a load of bullshit.*

For licencees like John and Scott, there was very little that their probation workers could have said or done that would have established any meaningful degree of legitimacy, because they resolutely did not want or think that they needed any support. Most probation officers, however, had the opportunity to garner some level of legitimacy by providing licencees with practical forms of help and support:

Gary: *This is what these places are all about – they're supposed to be to help you with your move-on plans. So while you're here, it's to put everything in place, so when you step outside that front door, not only have you got a flat, but all your furniture is in place. All your move-on plan is catered for.*

Resident (Hostel A)

Adrian: *You just have to turn up [to probation]: 'Alright, how you doing?' You're done.*

KIR: *Could [probation] be helpful?*

Adrian: *I don't know really. As long as they get you a house, somewhere to live; we all need a roof over our heads.*

Resident (Hostel C)

KIR: *So what are the most important things at the moment for you then?*

Mark: *Getting a flat. Getting on with my life again.*

Resident (Hostel B)

Licencees often pinpointed accommodation as the single most important issue for people on licence. However, people seemed dependent on a small number of housing associations to secure their move-on accommodation, with the demand far outstripping the supply. This forced people into a 'bidding' process that essentially meant adding their names to a long waiting list of applicants. When I asked members of hostel staff if there was anything proactive that people on licence could do to speed up the process of accessing social housing, they told me there was nothing – it was simply a 'waiting game'. Paul felt frustrated by this process, and complained that his probation worker's desire for control was stalling his search for suitable move-on accommodation:

*[My probation officer] is not helping – he’s a hindrance. He’s a big hindrance. I could do things better myself. I could get myself a private flat, but he wants me to bid, so I’m bidding.*

Resident (Hostel A)

Although in theory residents could apply for private accommodation – aside from bidding for properties through Housing Associations – Paul believed that his probation worker had objected because the worker lacked control over this alternative process. Rob, a resident in Hostel B, was also disappointed about the lack of help he had received from hostel workers in terms of arranging suitable move-on accommodation:

*Rob: I thought they were supposed to help you with housing, but they ain’t even filled the, you know, council forms. [My key worker] is on about moving me to Hostel Y, but I don’t want that, I want my own place. I don’t wanna go backwards, I wanna go forwards, and like, I’m just like, confused. Because nobody has even done the council thing yet, you know what I mean?*

Resident (Hostel B)

I was sceptical about the possibility of hostel workers neglecting to process the relevant forms. After checking with a member of hostel staff later that day, I found out that all of the relevant forms had been completed. The discrepancy might have been due to a failure to inform Rob that the forms had been processed. However, I think it was more likely that Joanne (Rob’s key-worker) had informed him, but that Rob did not believe this to be the case. A common problem in this regard was that the process of arranging move-on accommodation was beset by confusion and uncertainty. On their release from prison, licencees are typically told that the maximum time they will be required to reside in a hostel will be three months. However, many of the licencees in Hostel A and Hostel B had already been residing in these hostels for longer than three months. No one I spoke to seemed sure about where or when they would be moving, and this seemed to cause people a great deal of anxiety and frustration.

Finding employment was another major process with which many licencees thought their probation worker ought to help them. Dan, for example, was frustrated by the ineffectiveness of his probation worker in terms of providing help with employment:

Dan: *I don't think personally that [probation workers] help you that much. I don't think there's that much actual help for ex-offenders, which I'm not bleating at, don't get me wrong. I know I've committed a crime, I've been in jail for it, and I know it's difficult, but I still don't think there is enough help there in terms of getting a job, which pushes people back into possibly crime and whatever.*

Resident (Hostel A)

Most licencees were realistic about the possibility of obtaining employment. Chris, a resident in Hostel A, for example, thought that it was 'extremely difficult' for licencees to find work, particularly given that it is 'hard enough for people without a criminal record'. However, several licencees felt that the additional licence conditions that their probation workers had attached onto their licences further reduced their chances of securing a job:

Dan: *I want to work. That's what I like, and that's what I'm used to. But with the licence conditions, it doesn't help. I can work around some of them, but not all of them – like the hours. I prefer to work nights, but because my curfew is seven until seven, I can't really work nights.*

Resident (Hostel A)

Tony: *There aren't many jobs about, but being on licence it's even harder. I can't go near the centre of Town Y, so that's a load of jobs I can't do. Then there are the curfews with this place, and all the appointments we've got to go to.*

Resident (Hostel B)

Dan's frustration had been intensified by the fact that his expectations had been raised by power holders, such as prison officers and prison-probation officers, while he had been in prison:

Dan: *They say they're there to help me get work and that, which is important to me. Before I came out of prison, [my probation worker] said there are people who work with ex-offenders who will help you get a job, but I don't seem to be getting much help.*

Resident (Hostel A)

Several licencees reiterated a similar message about being given high expectations while they were in prison with regard to the provision of post-release help and support. When licencees were released, therefore, probation workers, such as Dan's, found it difficult to satisfy these raised expectations. Nevertheless, some licencees described how useful their probation worker had been in terms of helping them to find employment:

*KIR: And did you find this job on your own or did you get help from anyone?*

*Mitchell: Well [my probation worker] was the one that initially told me about it and helped me with the application. It's given me something to get out of bed for in the mornings, so yeah, I really appreciate that.*

Resident (Hostel A)

Mitchell spoke highly of Sarah, his probation officer, stating that he valued their meetings because she would always 'go the extra mile' to help him with any problems he raised. Similarly, the reader might recall from Chapter Five that Alex, a young resident in Hostel A, had received help from Vicky, a member of hostel staff, to prepare for a job interview. During an observation, Alex returned to the hostel, announced that the interview had been successful, and promptly thanked Vicky for her help. The fact that Vicky offered to take time out of her day in order to help Alex prepare for his interview seemed to mean a great deal to him. Indeed, during subsequent observations, Alex made clear to me his appreciation for the help and support that members of hostel staff provided to residents.

Conversely, one licencee, Paul, thought that his probation officer posed a barrier to his attempts to secure employment:

*Paul: I can get a job now, but he wants me to do things his way; get a job his way. He is taking things off other people. I would rather be doing things at my pace than at his pace, so why take other people's work if they can do it faster?!*

Resident (Hostel A)

Paul was keen to find work, but suggested that his search for a job was being stalled by his probation worker's insistence that he first enrol on a 'Construction Skills Certificate Scheme'. Although Paul acknowledged the benefits of this scheme, he felt that this was not the only way he could gain employment. As was discussed in the



previous section on procedure-based legitimacy, the legitimacy of Paul's probation worker was significantly undermined by procedural issues, such as his probation worker failing to provide him with timely and accurate information, and his seeming unwillingness to listen to Paul's point of view. Additionally, however, Paul's perceptions of the legitimacy of his probation worker were shaped by his failure to help Paul make progress in important aspects of his life, such as obtaining accommodation and employment. In contrast, hostel workers secured a measure of outcome-based legitimacy that Paul's probation worker seemed to lack:

*Paul: It's well worth the £28 charge a week. There's a chef, Debbie, she's great. You've got a TV in your room, a digie box – anything you want, it's there for you. It's laid back; it's a very nice place to be. When you leave you can come back and still do cooking programmes, go caving, come back and still be part of it. I've been to Whitby on days out and stuff!*

Resident (Hostel A)

Members of staff in Hostel A enjoyed a high level of legitimacy in Paul's eyes, due in part to procedure-based legitimacy which stemmed from them treating him with dignity and respect, and listening to his views. However, as the extract above indicates, Paul made it clear that outcomes were also important. Members of staff in Hostel A regularly arranged day trips away from the hostel and ran programmes to help residents with important life skills, such as cooking. Residents were aware that these opportunities were not 'standard practice' across all hostels. Therefore, these activities provided an important source of outcome-based legitimacy, from which many members of staff in the hostel benefited.

In Hostel B, on the other hand, there seemed to be much less in the way of structured activities for residents. It is important to highlight that this was primarily due to the greater level of resources available to Hostel A (which was owned and run by a charity) compared with Hostel B (which was publicly financed and run by a Probation Trust). However, some members of staff in Hostel B did make an effort to help and support residents by providing programmes for residents that related to issues such as drug and alcohol abuse, and money management. During one period of observation in Hostel B, I attended a programme on alcohol and drug abuse that lasted about an hour. The programme was well attended by about half of all residents, and seemed to be well organised and delivered. Moreover, of the residents who attended, most seemed reasonably engaged during the session – for example, several people volunteered answers to the organisers' questions. However, when I

spoke to residents after the programme had finished, the vast majority gave unfavourable accounts of their experience:

*KIR: What did you think of the alcohol programme?*

*Mark: It was crap to me; I already know it all.*

*KIR: Has [the hostel] run any other programmes?*

*Mark: They've done the money thing, but that was pointless because I've lived by myself since I was fourteen, so I know how to budget my money.*

Resident (Hostel B)

*KIR: Do you think the [alcohol programme] in here last week will make any difference to people's behaviour?*

*Stan: No. It needs to be more hard hitting. And you don't need the staff bellowing on. There's too much information on those slides, too much illegible print.*

Resident (Hostel B)

While most residents were critical of the session itself, the primary problem was that hostel workers had portrayed the session to residents as mandatory, thereby coercing them into attendance. Although the session did not start until 2pm, many residents told me that it was not worth them leaving the hostel that morning and trying to get back in time for the session (as outlined in Chapter Five, some residents preferred to spend their days with friends and family outside the hostel). This created resentment on the part of residents, who spent several hours that day sitting around in the communal areas waiting for the session to start. Although frustrating for many residents, this was good news from a research point of view, as it allowed me to speak to people who otherwise spent little time inside the hostel. Contrary to the good intentions of members of staff, most licencees regarded these sessions as onerous demands on their time, as opposed to useful opportunities to obtain help and support. Activities that should have bolstered the legitimacy of hostel workers actually had the opposite effect: licencees perceived members of staff to be coercive and controlling, and this generated negative attitudes that would do nothing to augment their perceived legitimacy.

Many licencees expressed a desire to become proactive agents during the licence period. In other words, they did not want to abdicate responsibility for certain tasks, such as obtaining employment and move-on accommodation:

Stan: *The system isn't sufficiently responsive. I'm not criticising the staff – they work within the bunches of practices we're using. I can think of other, more effective managerial systems that would put the onus back on me, off of the staff, and make me feel good about it.*

Bradley: *People have got to want to help themselves. It's no good probation doing everything for you. They can offer encouragement and that, but at the end of the day, that person has got to stand on their own two feet.*

Resident (Hostel A)

Dan: *[Probation officers] are here to guide you to the right places. They're not here to ring up and get you a flat or whatever – that's down to us. But they're there to guide you.*

Resident (Hostel A)

As Stan pointed out, 'the system' seemed to afford few opportunities for licencees to take on the role of active agents. The process of securing move-on accommodation, for example, essentially consisted of licencees adding their names to long lists of applicants, and then waiting. Certainly, the power of probation officers and members of hostel staff to help licencees to secure accommodation and employment was systematically restricted by macro-level limitations on the availability of housing and jobs. Nevertheless, as has been discussed above, licencees had often been told that they would receive a substantial degree of help and support with these things upon their release from prison. Consequently, many licencees expected probation and hostel workers to provide effective help and support in these areas. However, in Paul's case, his probation worker's reported desire for control meant that he aggressively discouraged Paul from being proactive, both in relation to accommodation and employment. Paul and Rob's cases both showed that if power holders failed to satisfy licencees' expectations regarding help and support, this could have significant consequences for the perceived legitimacy of these power holders. Conversely, Alex's and Mitchell's cases provided good examples of the legitimacy that power holders could garner when they provided effective help and support to people on licence.

## **6.2.2 Monitoring and control**

Unsurprisingly, most licencees did not hold favourable opinions of hostel rules, licence conditions, or decisions by power holders which were designed to monitor and control their behaviour. However, probation and hostel workers could protect their legitimacy in the eyes of licencees by ensuring that these outcomes were perceived as fair and effective. In other words, when outcomes were perceived as fair and effective by licencees, they did not necessarily have a negative impact on licencees' perceptions of the legitimacy of power holders. It is useful to distinguish between two types of outcome-based legitimacy: the first, 'outward-facing', and the second, 'inward-facing'.

Outward-facing outcome-based legitimacy concerns the extent to which licencees perceived the outcomes that affected them as being fair, viewed in the context of the outcomes received by others around them. This concept has much in common with distributive justice, which concerns the fairness of the distribution of benefits and burdens (Vermunt and Tornblom, 1996). In this regard, the enforcement of one outcome in particular was highlighted by a number of licencees: the hostel rule prohibiting the possession or consumption of drugs on hostel premises. One resident, for example, was aggrieved that other residents seemed to continually 'get away' with being heavily intoxicated whilst inside the hostel:

*Resident: Why are people coming back staggering all over the place, and others are stoned out of their head, and yet nothing ever gets done? It's supposed to be that everybody is treated the same.*

*KIR: Do they stop some people from doing it then, and others not?*

*Resident: Well, the ones who have got it on their licence will get breathalysed, so obviously the ones who haven't got it on their licence are taking advantage of the fact that it is not on there, and they're getting pissed out of their heads.*

This rule was regarded as important by many residents, but particularly those who were trying to abstain from using drugs and alcohol. The resident in question thought that it was unfair that hostel workers enforced the 'no drugs or alcohol' rule on residents who had a licence condition monitoring their drug or alcohol consumption, but ignored violations by other residents who did not have a specific licence condition relating to the use of drugs and alcohol. At first, I was sceptical about the accuracy of the resident's assertion that 'nothing ever gets done' in

response to cases of intoxication inside the hostel. But it seemed from my discussions with hostel workers that this was indeed a tricky issue for them to manage:

*Member of staff: It is a problem. What you could do is try to police it [drug taking], and try to stamp it out. But then that will damage the relationship that the link workers are trying to build with the resident, because then you have more mistrust. Because if they believe that they're getting away with something, then when it comes to having meetings, they're a bit more open-minded; a bit more amenable to what is being said.*

Essentially, members of staff thought that by exercising their discretion over the enforcement of this rule they could better preserve their legitimacy in the eyes of residents, and build better quality relationships with residents. This, in turn, would encourage residents to use members of staff as a source of help and support, and better enable hostel workers to communicate effectively with residents. In many cases, however, hostel workers' use of discretion to enforce the no drugs or alcohol rule backfired. Because they could not be open with residents about why they chose not to enforce this rule – namely, that they wanted to keep certain residents ‘on side’ – this meant that residents were left to draw their own conclusions about the reasons underlying non-enforcement:

*Resident: I find it laughable, because one of my good friends used to get drugs brought in every Wednesday. The staff knew they couldn't stop it, so they just left him alone.*

*KIR: So the rules here are that you aren't allowed to do drugs on the premises?*

*Resident: Yes, but there's no checking. The staff make themselves a very easy time by not checking.*

Most residents assumed that the reason hostel workers failed to implement this rule was because enforcement required too much effort – members of staff simply could not be bothered. As I have already highlighted, however, my discussions with hostel workers indicated that this was not the case. Although every member of hostel staff seemed willing to address the problem of alcohol and drug use in the hostel, they either could not envisage a feasible way to enforce this rule, or thought that trying to enforce it would lead to a serious breakdown of staff-resident relationships.

Mark, a resident in Hostel B, drew my attention to another hostel rule that staff enforced inconsistently:

*Mark: You're supposed to clean up the dining room – you get a cleaning rota. But what is the point of doing a cleaning rota if the staff aren't going to follow it through? It's down to them to check to see if people are doing the cleaning – it's alright just writing the bloody names on.*

*KIR: So what happens if people don't do the cleaning?*

*Mark: It doesn't get done – the staff don't say anything. It's daft if they're not going to check it! It's like most stuff in here – staff supposed to be checking stuff and they don't.*

*KIR: What other stuff are staff supposed to check?*

*Mark: Like smoking stuff that people aren't supposed to. And people going in each other's rooms; but they do, and nothing gets done.*

Resident (Hostel B)

Again, when residents ignored the hostel rule about cleaning the kitchen, members of hostel staff often thought it better to attempt to preserve their own legitimacy in the eyes of these residents by avoiding conflict and overlooking the rule breach, rather than challenging the breach and upholding the rule. I knew from observation periods in Hostel B that Mark was not the only resident who felt this way about the enforcement of the hostel cleaning rule. During my time in the communal lounge, I overheard several residents complaining about the state of the kitchen when those whose turn it was to do the cleaning decided against performing this role. While members of hostel staff may well have smoothed relationships between themselves and 'offending' residents by turning a blind eye when cleaning duty was neglected, this had the knock-on effect of damaging relationships with licencees who obeyed the rules. Essentially, protecting legitimacy in the eyes of some residents meant sacrificing legitimacy in the eyes of others.

Another type of outcome-based legitimacy could be described as 'inward-facing' – in other words, as relating to whether licencees perceived outcomes as being fair or effective in the context of their individual circumstances (i.e. regardless of the outcomes received by others). One somewhat amusing example – referred to as the notorious 'Jam Gate' incident – was described by a member of staff in Hostel B during our interview:

Richard: *We had, well I say it's silly, it wasn't silly when it happened . . . a resident, [Luke], asked for jam to put on his toast in an evening. But you're not allowed jam on your toast in an evening; you're only allowed it at breakfast time – that's the rule. So the two members of staff refused to let him have any jam, and he made a nuisance of himself for three-quarters of an hour – I think threatened violence. He wasn't actually violent, but was threatening it. It was quite intimidating, I think, and it ended when they eventually let him put some jam on his toast. And discussing that with other members of staff, not only did everyone agree that they would have given [Luke] the jam in the first place, but said, 'Well actually, I did give him jam the other day'. So staff were basically setting up the staff who said no, even though they were well within their rights to say no.*

Member of staff (Hostel B)

In the interviews with hostel staff, a number of people raised the problem of outcome consistency between staff members. Elaine and Michael, for example, thought that residents' perceptions of their legitimacy were damaged by senior members of staff who often undermined and reversed their decisions:

Michael: *See this is something as well – residents will come in and ask us a question, and we'll say, 'No; definitely, no.'*

Elaine: *I'm going to stop saying that . . .*

Michael: *And [the resident] will go and see [a more senior member of staff] and they'll say, 'Oh yeah, certainly'. And the [senior member of staff] won't say, 'Oh, what do you think?' We have no back up from [our seniors] whatsoever; none at all. And [we're] pulling our hair out.*

Members of staff

Essentially, when senior members of staff reversed a particular decision, this signalled to licencees that the less senior power holder had inappropriately exercised their authority by making a bad decision. Whilst this directly served to undermine licencees' perceptions of the legitimacy of these members of staff, it could also damage a hostel worker's own sense of their legitimacy; the dialogic nature of legitimacy (see Bottoms and Tankebe, 2012, discussed in Chapter Two) could therefore lead to a further decline in licencees' perceptions of the legitimacy of these hostel workers.

Inward-facing outcome-based legitimacy did not solely concern the consistency of outcomes distributed by power holders. The effectiveness of the outcome could also be regarded as important by licencees. A good example of this was provided in my interview with James, a resident in Hostel A. When he first arrived at the hostel, his probation worker subjected him to strict curfew times that entailed a substantial degree of monitoring and control of his behaviour. These measures, however, did not impact negatively on James's perceptions of the legitimacy of his probation worker, because he regarded these as important mechanisms for reducing the likelihood of him consuming large quantities of alcohol and reoffending:

*James: When I came out of [prison] I had to be back at [the hostel] at seven o'clock at night. But now I'm back to standard hostel curfew – seven-eleven (7am-11pm); it's not too bad. I see why they do, because when I first came out, like going out and that, it were getting to like half six and I'd had a couple of pints, and that's why it's nice to like go from seven, to eight, to nine, to ease yourself back in. Even now on eleven, I can't go out on a big one sort of thing.*

Resident (Hostel A)

Similarly, Jack's probation officer inserted a restrictive condition on his licence that required him to abstain from drinking alcohol. Again, this did not impact negatively on Jack's perceptions of the legitimacy of his probation officer because he regarded the restrictions as proportionate to the risk of him becoming intoxicated and committing further offences:

*Jack: There's certain things I wouldn't like 'em to do, like breathalyse me, but that'd be stupid on my behalf. Right, because if they didn't breathalyse me I'd go out and have quite a few cans in a day, bump into the odd person . . . I've never had strict licence like now. This strict licence works – it stops me going out and getting pissed out of my head. What do you do to drink? Shoplift. Do this, that, whatever.*

Resident (Hostel C)

Like Jack and James, Gary's probation worker had also imposed a licence condition on him that served to restrict his alcohol consumption. Gary, however, argued that there was no link between alcohol consumption and his previous offence. Consequently, the insertion of this condition on Gary's licence served to undermine his perceptions of the legitimacy of his probation worker:



Gary: *I can go into a pub, but I can't drink. I'm not happy about that because my offence wasn't committed through alcohol. I'm only going to go out with my support group, so it's not like I'm suddenly going to go out with a load of strangers and get pissed. And my support group would know not to let me get like that. I don't want to go out and get drunk anyhow, but if I go out to a restaurant for a meal with people, obviously everyone's having a glass of wine or whatever, and I have to have a drink of pop.*

Resident (Hostel A)

Although Gary thought his probation worker's decision to restrict his alcohol consumption was unjust, he felt unable to raise this issue in open discussion:

Gary: *Having something imposed on you, which you don't think is quite right . . . because what the system obviously learns you very early on is to keep your mouth closed – shut up and put up . . . you just say, 'Yeah, I'll do that, I'll do that'. But inside, you're screaming, 'No! I don't want to do that. Why should I be doing that?!' Because if you don't do this, then you won't get that. And they don't say that to you because they've got people by [the balls].*

Resident (Hostel A)

Gary's probation worker might have considered the restriction on Gary's drinking in public to be a relatively minor infringement on his liberty. Gary, however, made it clear that it impacted significantly on his ability to socialise with his friends and family. Moreover, the powerlessness of his situation – of feeling unable to challenge this decision – caused Gary a great deal of frustration; he considered it more prudent to live in silent resentment than to question his probation worker's decisions (see Thurston, 2002: 213).

Other licencees also highlighted their reluctance to speak out against power holder decisions that they perceived to be unjust:

Stan: *There are loads of little objections from the [residents], and staff will tell you to simply write them down so you can make a list and show the manager. But they're afraid to do it. Now that's because they've been told you don't bring a complaint to an officer – just follow what you're doing and you should be doing alright, well sorry . . .*

Resident (Hostel B)

Ineffective or unfair outcomes, therefore, could pose a dual threat to the perceived legitimacy of power holders. First, the ineffectiveness or unfairness of outcomes in itself undermined the perceived legitimacy of those in power. And second, the perceived injustice of not being able to challenge ineffective or unfair decisions further threatened power holder legitimacy.

Another good example of inward-facing outcome-based legitimacy was inadvertently raised in the previous section on procedure-based legitimacy. The reader might recall that Mark, a resident in Hostel B, had been told that he could no longer associate with one of his close friends, Peter. Aside from his resentment of its mode of communication (see above), the content of this decision was also perceived by Mark to be unjust. To recap, Mark had mental health problems, which meant that new experiences caused him a great deal of anxiety. While he was living in Hostel B, he had befriended another resident, Peter, who accompanied him whenever he left the hostel. Peter had recently moved to a new hostel, to which Mark was also due to move shortly thereafter. Their probation workers, however, had met together and decided that their friendship posed an increased risk of them both reoffending. Consequently, they decided to prohibit Mark and Peter from associating with one another.

I spent several hours with Mark during the day on which he learned about this decision. It would be hard to exaggerate the distress it had caused him. I listened to Mark vent his frustration, as he repeatedly described how he felt about this decision. He struggled to make sense of the fact that, up until that point, he had regarded his probation worker as a valuable source of support. This source of support now seemed to be the source of his problems. Mark insisted that he would rather be recalled to prison than face the anxiety of moving to a new hostel and city without support; and by the time of my next visit to Hostel B, I found out that Mark had indeed been recalled to custody (see above).

Adrian's case provided a further example of the consequences of perceived unfair outcomes on licencees' perceptions of the legitimacy of power holders. Adrian had become disillusioned with the licence process ever since his probation worker had recalled him to prison after about a year of him being on his previous licence. It was a sunny summer's day, and Adrian had decided that he wanted to take a holiday. He took a trip to a popular seaside destination with a couple of his friends, but failed to inform or request permission for the holiday from his probation worker. When he returned after two weeks (consequently missing one of his supervision

appointments), he discovered that his probation worker had decided to recall him to custody:

*Adrian: It were a spur of the moment thing – first week in August. Sun were shining, a bit like today. I had money in me pocket, and so I went to Town Y for a few weeks. I thought they'd recall me, but I thought maybe 28 days. I didn't think they'd give me two years for that! But yeah [sighs] . . .*

Resident (Hostel C)

Adrian did not strike me as a particularly impulsive person, so I was surprised that he had risked being recalled in this way. I asked him why he had not simply asked for permission to go on holiday:

*You have to apply, but it's too many questions. I'm 36 years old – I'm not asking to go on holiday; I'm a grown man.*

Adrian's objection to asking his probation worker for permission to going on holiday chimes with Durnescu's (2011) study on the pains of probation in Romania – in particular, the deprivations of autonomy and private life (see Chapter Three). His perceptions of the legitimacy of his probation worker collapsed after this incident. As had happened in Paul's case noted above, Adrian decided it would be better for him to disengage from the supervision process, exhibiting only a minimal level of formal compliance:

*Probation is just box-ticking. You just have to turn up: 'Alright, how you doing?' – you're done.*

The vast majority of licencees perceived the recall process to be highly unfair. The consequence of this for licencees' perceptions of the legitimacy of probation workers was significant and widespread. The majority of licencees had heard stories about what appeared, at least on the surface, to be unfair recall decisions:

*James: I guarantee you more people are in jail because of breach than they are because of committing offences. My pal got caught for doing a joint about that big [gestures with his hands, symbolising a small roll-up]. They kicked the door through, and they nicked him, and recalled him.*

*KIR: For having a spliff?*

James: *Just for having a spliff, yeah – that’s what happens. If they see you fucking about, or doing something they don’t like, they’d just recall you straight away.*

Resident (Hostel B)

Ben: *It has got a bit stupid with the licences now, because slightest thing now, they can recall you for like, if you’re five minutes late for your probation, for your appointment, if your probation wants to be a twat and recall you then you’re snookered, he’s gonna recall ya, and there’s not a lot you can do. There’s more danger from recall than from me actually [committing a crime] and being recalled.*

Resident (Hostel B)

Jack: *I don’t agree with [recall] at all. Some of these guys, all they’ve done is slept at a girlfriend’s house and they’re recalled. No, that’s wrong.*

Resident (Hostel C)

Tony: *It’s scary how easy they can recall you. Like, one slip and that’s it; prison is full of recalls.*

Resident (Hostel B)

Graham: *I think [my recall] was very unfair; I think I was treated very badly. I had to spend the next four years in jail for walking away from a hostel. I didn’t commit a crime. I didn’t break a law. I broke the rules of the hostel by walking away and not coming back – I spent the next four and a half years inside for that.*

Resident (Hostel A)

It is possible, of course, that some of these accounts of recall were exaggerated, not entirely accurate, or at least represented only a partial account of what had actually happened. A couple of licencees suggested that people’s concerns about recall were overhyped:

James: *The jail I was in before I came out, C Cat, there were a lot of people coming back on recall. And you heard all these stories about being recalled for being late for a meeting or whatever, and I were thinking, ‘You don’t get recalled for being late to a meeting – it’s a myth’.*

Resident (Hostel A)

Gary: *You're only going to get recalled to prison if you're breaking the rules of your licence conditions. All these people what say I was sent back because I was late [for a probation appointment] – it's not true.*

Resident (Hostel A)

However, in relation to licencees' perceptions of the legitimacy of power holders, the degree to which licencees' fears about recall were justified or misplaced is somewhat beside the point. As I discussed in Chapter Four, the purpose of this fieldwork was not to uncover a positivistic singular truth or reality, but to explore the multiple subjective realities of the people who participated in the research (Sandberg, 2010). The point was that the vast majority of licencees did fear recall, and that in many cases this had a significant impact on their perceptions of the legitimacy of those in power. This issue will be discussed further in the following section that explores the extent to which outcomes that related to help and support, and those that related to monitoring and control were consistent or conflicting in practice.

### ***6.2.3 Consistent or conflicting outcome types?***

As noted in Chapter Two, previous research, such as Appleton's (2010) study on lifers, suggested that people subjected to supervision in the community, on the whole, did not perceive there to be a conflict between the 'care' and 'control' functions of supervision. Moreover, in statute, the three fundamental purposes of post-custodial supervision – i) the protection of the public, ii) the prevention of re-offending, and iii) securing the successful reintegration of the prisoner into the community (Criminal Justice Act 2003, s.250(8)) – sit alongside one another as if there was no conflict between them. Similarly, hostel workers are charged with the responsibility of delivering 'a range of services (to include health, education, life skills, employment and resettlement services) in the interests of effective rehabilitation', whilst at the same time being required to focus on the primary aim of 'protecting the public from offenders or bailees deemed to pose a high or very high risk of harm' (National Probation Directorate, 2005: 2). In a Parliamentary debate in the House of Lords during the 1980s, a time when the government was pushing for a greater focus on compliance and enforcement in community sanctions, the Earl of Longford provided a defence of the pursuit of multiple purposes:

*I do not know that the task of a probation officer who is supervising an ex-prisoner is totally different from the task of a probation officer who is befriending or helping an ex-prisoner who is not under supervision. It is different, but it is not wholly different. We know that a good schoolmaster is the tutor and also the friend of his pupils. I do not know that one can draw too sharp a line between supervision and friendship in the case of prisoners.*

HL, Deb (1984)

I would argue, conversely, that one ought to draw a sharp line between the tasks of help and support, and monitoring and control. Moreover, I think that the schoolmaster-pupil analogy is misplaced because it obscures some important points of divergence. If a pupil reveals to his teacher that he is having problems with his learning, he is not punished for his openness and honesty. Licencees, on the other hand, are liable to be punished by their probation workers for being open and honest about their problems. Indeed, ample evidence for this came from my interviews with both licencees and hostel workers. Stan and Tony, for example, highlighted the following issues:

*Stan: If you're feeling vulnerable and going to behave badly, or going to fall into crime again, go and talk to your probation officer. But people think, 'Oh, I can't do that.'*

*KIR: Why not?*

*Stan: Well, because they'll get nicked again, they assume.*

*KIR: Right, you mean recall?*

*Stan: Yes, recall. Everyone is terrified of recall.*

Resident (Hostel B)

*Tony: You're on licence because [probation] want to keep an eye on you – make sure you're not a risk to anyone. You're told where you can go, where you can't go, what times you have to be at different places, who you can see and who you can't see. If you need help with something, but you think probation are there to restrict you, then you're not going to ask for it, are you?*

Resident (Hostel B)

These points, discussed in the abstract by Stan and Tony, were further supported by some concrete cases. Paul (discussed above), initially made an effort to be open and honest with Harry, his probation worker. He explained that he was not finding the

transition from life in prison to life in the community easy, but he appreciated the help he was getting from members of hostel staff. Paul recounted the details of the night before his supervision meeting, telling Harry that he had been out drinking with an old friend. By the end of the night, they had ended up somewhat 'bladdered', and Paul was concerned that his friend had developed a drinking problem. Not long after the meeting, Paul received word that Harry had decided to insert a condition on his licence stating that he was no longer allowed to drink alcohol. This condition was to be enforced by regular breathalyser tests in the hostel. In addition, Paul's home visits, which allowed him to see his severely ill partner, were withdrawn (allegedly because Paul had visited his home outside of the agreed times – something that both Paul and some members of hostel staff disputed). Furthermore, Paul was banned from doing some local stand-up comedy gigs in a local pub, because of the risk that he posed by being away from the hostel late at night. Because of these things, Paul began to think that his probation worker was motivated by a desire to make his life as difficult as possible:

*Like I said, [probation workers] can do what they want basically. I imagine them sat having their dinner and stuff, all talking, like they do in normal jobs and stuff, and one asking the other what they're doing, and [my probation worker] saying, 'Ah, I've got this lad by the balls – making him jump through hoops and stuff'; you know, [my probation worker] can do all sorts. One day he might want me to fill a diary sheet in – what I'm doing all day. What I'm up to and stuff – pointless! That's not letting a man live.*

Resident (Hostel A)

Consequently, Paul decided it would be better for him to regard his supervision sessions as potential barriers to his reintegration, rather than as sources of help and support. As a result, he became determined not to give his probation worker any reason to attach further restrictive conditions onto his licence:

*Paul: When I go tomorrow, 'Hello to [probation worker], how are you?' shake his hand, 'Nice day you're having?' I'll smile and nod, and answer his questions. I shit on myself the first couple of weeks, I really shit on myself.*

*KIR: In what way?*

*Paul: Just telling the truth, answering his questions.*

It is worth noting that the interactions between Paul and his probation worker seemed to breed a more pervasive cynicism towards power holders in general.

Although Paul and I seemed to get on well with each other, he paused at one point during our interview to seek reassurance:

*I mean, I've told you some things – you're not gonna hurt me for them, are you?*

I reassured Paul that everything he had said to me during our informal conversations and formal interview would be anonymised, but it was clear that he had become deeply sceptical about the motivations of those in positions of power. Paul was by no means the only licensee to question the motivations of power holders. Consider Adrian's case (discussed above), in which his probation worker recalled him to custody for going on holiday without his permission. Until his recall, Adrian believed that the primary purpose of the licence period and his supervision sessions was to help and support his reintegration. Post-recall, however, he considered supervision to be a monitoring and control exercise, designed to 'trip up' those on licence:

*Adrian: You try and keep your nose clean don't you? You know, you try your best. But some people, well, some probation officers, can be a bit all over you. They tie your legs together and expect you to walk – they're just waiting for you to fall.*

Resident (Hostel C)

As noted above, Adrian, like Paul, became sceptical of the motivations of power holders, and found it difficult to trust those in positions of power. When I suggested to him that the licence period was viewed by some people as an important source of help and support, he replied:

*But they're really just there to make you toe the line aren't they? Just to make you stick to whatever is on your licence; just to monitor you.*

The fact that probation and hostel workers were perceived as pursuing multiple purposes meant that licensees inevitably made judgements about which purpose(s) power holders were most driven to achieve – the vast majority of the time this was not perceived to be help and support. And licensees were not the only people who perceived there to be some tension between these purposes. Brian, a member of staff, highlighted the problem from a power holder's perspective:



Brian: *It's not even clear between staff what they want the message of the hostel to be – whether it's somewhere to enforce or whether it's somewhere to enable. And it's about creating that balance, and getting everyone to believe the same thing, and it's difficult to do. Do you want power, or do you want to enable people? And because of that, people may act in a certain way toward certain residents that might cause friction. There might be conflicting messages from staff, and it becomes difficult for residents to accept what the hostel is trying to do for people. If a member of staff says they're trying to help someone, and then another member of staff is working against that, then it becomes difficult. There are trust issues that arise again – it's a sort of loop really.*

Member of staff (Hostel A)

It is important to note that Brian was highlighting a problem that existed between hostel workers and residents – he was not referring to problems experienced by probation officers *per se*. Nevertheless, there is good reason to suspect that the tension between help and support, and monitoring and control was even more pronounced for probation workers than it was for hostel workers (c.f. Harris, 1980; Skeem et al., 2007). Probation workers, for example, had much 'sharper' tools of control and enforcement than members of hostel staff. While probation workers could recall licencees back to custody, or insert additional restrictive licence conditions, hostel workers did not have these powers. As illustrated by Stan's and Tony's comments, it was these coercive powers that made licencees wary of placing their trust in probation workers, and turning to them as sources of help and support.

Aware of the tension between these outcomes, Brian was pragmatic about his interpretation of the role of 'enforcer':

Brian: *It can be difficult to balance these things [support and control] . . . enforcement doesn't have to be telling someone 'you have to do this, and that', enforcement can be working with somebody saying, 'This is what your condition is, do you see why you have it? Erm, do you think that acting a certain way will make things better for you?' And it's just how you approach it. It can be difficult, because some people are a lot more focused on . . . for example, I could say, 'If you don't eat at this time you're not going to have a meal', and that creates a lot of friction and trust issues in the hostel, and it can have really negative effects.*

Member of Staff (Hostel A)

As noted above, in terms of licencees' opinions of individual members of hostel staff, Brian was by far the most widely praised worker in either of the hostels. He had a good relationship with the vast majority of residents, who often turned to him for help and advice. It is significant that Brian noted the tension generated between the tasks of monitoring and control, and help and support, and prioritised the latter in such a way as to establish and maintain his legitimacy in the eyes of hostel residents. Importantly, this did not involve neglecting the tasks of reducing risk or protecting the public. However, it did involve reconceptualising the ways in which these goals were best achieved.

Brian was not the only member of staff to speak about the tension between these outcomes:

*Helen: There are some members of staff – it tends to be members of staff who have worked here longer – their relationships with residents can seem to be more based around power and control rather than negotiation with residents. On the whole, I don't think it's conducive toward effective relationships.*

Member of staff (Hostel A)

Both probation and hostel workers, and residents, therefore, perceived there to be a tension between the tasks of helping and supporting licencees, and monitoring and controlling their behaviour. This tension had the potential to undermine the perceived legitimacy of power holders, since licencees faced the dilemma of trusting people who simultaneously wielded significant sanctions that could severely curtail their liberty. This dilemma was aggravated by the fact that licencees typically perceived power holders as prioritising the goals of public protection and risk reduction over those of rehabilitation and reintegration (see, for example, Gary's, Ben's, John's and Adrian's comments, noted above).

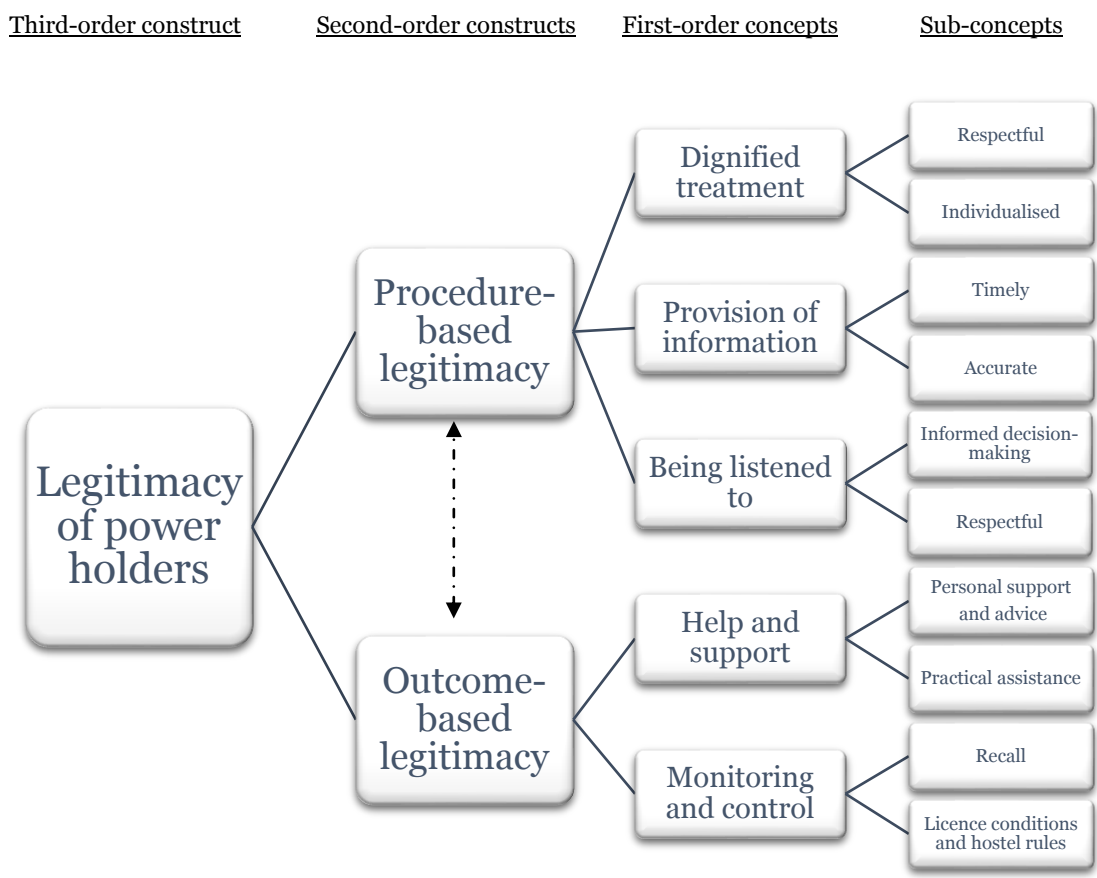
It is worth highlighting the distinction between these findings and those in a study conducted by Maguire et al. (1996), which suggested that a greater proportion of licencees viewed the licence period as helping, rather than controlling. There are a number of reasons that might account for this discrepancy. The positive sampling bias in Maguire and his colleagues' study is one obvious candidate (see Chapter Three). Alternatively, perhaps there has been a genuine shift in frontline probation practice, between 1996 and the present day, towards the prioritisation of the goals of monitoring and control over those of help and support (this also seems plausible in

light of the recent policy developments, see Chapter Three). In any case, since the licencees in the current study often believed that power holders' ultimate concern was to protect the public through monitoring and control, rather than to support their reintegration into the community, it is not difficult to see why people like Adrian believed that power holders were simply 'waiting for licencees to fall'.

### 6.3 What matters most?

In order to effectively communicate my analysis and interpretation of the data generated by the fieldwork, I have distinguished between two sources of power holder legitimacy – procedure-based and outcome-based legitimacy – and isolated these sources for the purpose of discussion (see Figure 6.1). In practice, however, the two were interlinked.

Figure 6.1: Conceptual framework: licencees' perceptions of the legitimacy of power holders



At this point in the chapter, I would like to explore the relationship between procedure-based legitimacy and outcome-based legitimacy. More specifically, I will

consider whether one of these sources of legitimacy might be deemed to be more important than the other.

A good starting point is the observation that perceptions of procedure-based legitimacy and outcome-based legitimacy tended to ‘move together’. In other words, if a licensee perceived a particular power holder to have a high degree of outcome-based legitimacy, then it was likely that he also perceived this power holder to have a high degree of procedure-based legitimacy. The link between low degrees of procedure-based legitimacy and low degrees of outcome-based legitimacy appeared to be even stronger. I will illustrate these points with some examples.

The reader might recall from earlier in the chapter that Jack’s attitudes toward members of hostel staff had shifted significantly during his time in Hostel C. When he first entered the hostel, he ‘hated it’, thought the staff were ‘a bunch of fucking bastards’, and believed that their primary motivation was to get him recalled. Before long, however, members of hostel staff had managed to increase their legitimacy in Jack’s eyes, largely by performing simple, considerate acts, such as asking how he was feeling when they first saw him in the morning. As Jack came to perceive hostel workers as increasingly legitimate and trustworthy holders of power, his interactions with these people became more friendly and frequent. This, in turn, provided hostel workers with valuable opportunities to offer help and advice to Jack, whether in the form of emotional support, or assistance regarding accommodation and job applications. Essentially, therefore, legitimacy based on procedures provided solid foundations for building further legitimacy based on outcomes – something that was reflected in my interview with Jack:

*Jack: They are my carers . . . they’re caring for me. Yeah, and I can’t wait to see the end result of it all.*

*KIR: Do you think it makes a difference having them here then?*

*Jack: Yeah – 24 hours, of course mate, yeah . . . something’s not well upstairs [Jack’s mental state] – bumph, they’ll help ya! You know what I mean? Without these places, there would be no hope for people like us.*

Resident (Hostel C)

This process – procedure-based legitimacy facilitating the development of supportive relationships, which in turn facilitated further legitimacy based on outcomes – was well captured by Brian:

*I think the best way of reducing risk and increasing the chances of public protection is spending time with residents and treating them respectfully in the first place. If you put in the groundwork and communicate properly with people, you're going to be able to have a much better relationship. And by having that, you can talk about their issues in much more depth, and be able to help with lots of different things.*

Member of staff (Hostel A)

The converse of this relationship – procedure-based illegitimacy leading to outcome-based illegitimacy – was also evident in the research. Take Paul's case, for example (discussed above). As Paul approached his release date from prison he expected to be returning to his family home, because this is what his probation worker had informed him would happen. On his release, however, his probation worker told him he would be required to reside in a hostel. In other words, Paul had been provided with inaccurate information by his probation worker (one of the three main components of procedure-based legitimacy that I identified). Subsequently, the relationship between Paul and his probation worker deteriorated, to the point at which Paul felt that he was being made to 'jump through hoops' by someone who enjoyed having him 'by the balls'. As a result, he decided to feign engagement in the supervision process by 'smiling' and 'nodding'. This effectively precluded the possibility of his probation worker garnering any meaningful degree of outcome-based legitimacy, since it denied him the opportunity to hear about Paul's problems or concerns, and respond appropriately with help and support.

So far, I have argued that perceptions of procedure-based legitimacy and outcome-based legitimacy tended to move in tandem. There were, however, some instances in which licencees' perceptions of procedure-based legitimacy and outcome-based legitimacy did not mirror one another. An interesting example of this was provided by the relationship between Rob and Joanne, his key-worker in Hostel B (discussed above). Rob spent most of our interview bemoaning the lack of progress that had been made in relation to his move-on plans. The reason for this, he thought, was that Joanne had not bothered to fill in the relevant council application forms. And yet, despite this, Joanne seemed to retain a high degree of legitimacy in Rob's eyes:

*Joanne is like a mother, you know what I mean? She's like a mother. At least she cares, know what I mean?*

Resident (Hostel B)

For Rob, the fact that Joanne seemed to care for him was more important than the fact that he perceived her to be ineffective at organising his move-on accommodation. He seemed to value Joanne's guidance, and heeded her advice not to hang around with certain residents whom she regarded as troublesome:

Rob: *Like, she told me not to hang about with certain people, you know what I mean?*

KIR: *Yeah.*

Rob: *Them who do drugs – so I don't . . . they go out every day nicking stuff – I do without.*

Likewise, Bradley (discussed above) was disappointed by the lack of support he had received from his probation worker, Paula, in relation to finding employment. Nevertheless, Bradley appeared to regard Paula as a relatively legitimate power holder:

KIR: *Are you working at the moment?*

Bradley: *Not since I've come out [of prison]. I thought that would be something Paula would help me out with, but she hasn't done much to be honest.*

. . .

KIR: *And what do you think about Paula?*

Bradley: *Can't complain mate. She's always been good with me, you know, speaks to me like I'm a decent person; not like some of the staff in here. She's wise; if she says something, I listen to her – we rub along well together.*

A good level of procedure-based legitimacy, therefore, could act as a useful layer of insulation against instances of outcome-based illegitimacy. This was particularly important given that, in practice, power holders had much less control over outcomes than they did over procedures. For example, while those in power could not guarantee finding employment or accommodation for their clients, they did have control over the way in which they interacted with people on licence, and the extent to which they provided licencees with accurate and timely information.

Finally, what of the instances in which power holders were perceived by licencees as having a high degree of outcome-based legitimacy and a low degree of procedure-based legitimacy? I was unable to find any examples of this occurring in practice.

This might have been due to the relatively small sample of licencees involved in the current study. I would argue, however, that it was not merely down to chance that I failed to find any examples of low levels of procedure-based legitimacy and high levels of outcome-based legitimacy. This relationship seemed unlikely, since low levels of procedure-based legitimacy were generally associated with negative and infrequent contact between power holders and licencees. This, in turn, made the achievement of positive outcomes much less likely than in cases that were characterised by positive relationships and high levels of procedure-based legitimacy. In other words, the relationship between procedure-based legitimacy and outcome-based legitimacy appeared to be largely unidirectional. Stated simply, procedure-based legitimacy could affect levels of outcome-based legitimacy via good quality staff-resident relationships based on high levels of trust.

The importance of relationships in relation to supervision in the community has been highlighted in previous research (e.g. Dowden and Andrews, 2004; Grant and McNeill, 2014; Healy, 2012; King, 2013; McNeill, 2006, 2009; Raynor, 2008; Rex, 1999, 2002; Robinson, 2005; Sorsby et al., 2013; Taxman and Ainsworth, 2009; Trotter, 1993, 1996). Good quality relationships give power holders ample opportunities to work toward desirable outcomes, whereas bad quality relationships do not. In this sense, when I argue that procedure-based legitimacy ‘mattered more’ than outcome-based legitimacy, I do not mean to imply that outcomes were ultimately unimportant – far from it. Outcomes such as securing suitable accommodation and employment, increasing licencees’ self-esteem, and improvement in licencees’ relationships with family members and friends, were all desirable and admirable goals. The point, however, is that power holders were most likely to make a positive contribution to the achievement of these outcomes when they focused on establishing and maintaining a good level of procedure-based legitimacy. It is worth noting that the vast majority of probation and hostel workers seemed to have established a good level of procedure-based legitimacy in the eyes of those on licence. Nevertheless, I would argue that the pivotal significance of procedures should be emphasised, since there were numerous examples in my fieldwork of licencees *not* being given accurate and timely information, *not* being listened to, and *not* being treated with dignity and respect.

There is another reason for highlighting the pivotal nature of procedure-based legitimacy, independent of the relationship between the two sources of legitimacy. Licencees were unequivocal in their expectations regarding appropriate, proper and just (i.e. legitimate) procedures, whereas they were more ambivalent in their views

about outcomes. A number of licencees, for example, simply accepted the content of monitoring and controlling outcomes because they felt – given their crimes – that these outcomes were deserved:

*James: It is what it is, innit? Everything's there for a reason, you know what I mean? If you don't like it then don't commit crime – that's the way I look at it. If you're committing offences and that, that's why they put it there – tough shit.*

Resident (Hostel B)

*Dan: At the end of the day, I've been sentenced, and therefore I've had to live by the conditions that come out of that sentence – and that's what I do.*

Resident (Hostel A)

Moreover, when it came to outcomes that related to help and support, many licencees felt that this was not an issue for which power holders should be held ultimately responsible:

*Bradley: People have got to want to help themselves; it is no good probation doing everything for you. They can offer encouragement and that, but at the end of the day, that person has got stand on their own two feet.*

Resident (Hostel A)

*Dan: They're here to guide you to the right places. They're not here to ring up and get you a flat or whatever – that's down to us.*

Resident (Hostel A)

This is not to imply that licencees' perceptions of the legitimacy of power holders was not shaped in part by outcomes; the section above on outcome-based legitimacy clearly indicates otherwise, particularly in relation to decisions regarding recalls. Nevertheless, on the whole, licencees had far higher and unequivocal expectations regarding the procedures used by those in power. Without exception, licencees wanted power holders to listen to their views, treat them with dignity, and provide them with accurate and timely information. As noted above, the instrumental value of listening was important to licencees, since, at the very least, they wanted their views to inform decisions about outcomes. Perhaps more importantly, however, the components of procedure-based legitimacy were significant because they provided a



reflection of licencees' social status, and, more specifically, the willingness of power holders to treat licencees with consideration and respect. This finding corroborates a conclusion drawn by Brockner and Wiesenfeld (1996; discussed in Chapter Two): that the procedures used by those in power are particularly important in situations in which people are subjected to unfavourable outcomes – hostel rules, licence conditions, and decisions to recall licencees to custody being good examples of such outcomes.

Procedure-based illegitimacy was particularly damaging for those in power since bad experiences, it seemed, were more likely to be remembered than good ones (a finding that mirrors that of research in the context of policing, e.g. Brandl, 1994; Rosenbaum et al., 2005). A member of staff highlighted this point during our interview:

*Brian: There are trust issues with people who might have been considered helpful, for example a hostel worker – people who actually want to be able to help – and accepting that help is difficult because of [licencees'] past experiences with authority. It's a shame because you don't always remember the good experiences straight away; it's a lot easier to remember the bad experiences. It could be a custody officer being rude to them, or a police officer being rough with someone, and that sticks with people. And when you're in prison there is a lot of time for people to relive those experiences. You spend a lot of time by yourself, and they can add up in your mind, and things can become worse over time, and it creates that barrier.*

Member of staff (Hostel A)

Brian not only suggested that bad experiences were likely to overshadow good experiences, but also that licencees' perceptions of a particular hostel worker could be affected by the behaviour of other members of staff:

*KIR: If you could be manager for the day, is there anything you would change?*

*Brian: I would make sure every member of staff was appraised. If you're not going to appraise people and give them working points on a regular basis, then it doesn't matter how much commitment you get from certain people, that is going to be affected by someone not working from the same page.*

This point was supported by the attitudes of one particular resident in Hostel A, Paul. Paul's negative attitudes toward his probation worker translated into a more generalised loathing of 'probation'. I can vividly recall Paul catching me in the corridor during one of my last visits to Hostel A, to say: 'Have you figured out that all probation are shit yet? Make sure you get that in your report.'

Other members of staff aside from Brian were aware that their personal legitimacy in the eyes of residents depended, at least in part, on the actions of other power holders. Helen, for example, highlighted that if interaction with residents was not consistent between members of staff, then things could get 'very messy':

*Helen: We're very intolerant of each other's practices: 'Oh, he did that, and he knew the person would react like that, so why did he say it?' . . . 'Well, someone had to challenge it' . . . 'But do you have to challenge it in that way?' . . . It all gets very messy. But we don't sit down together and discuss how we can change our practices.*

Member of staff (Hostel A)

While the perceived legitimacy of each hostel worker seemed inextricably connected with the perceived legitimacy of other members of staff, Brian's suggestion that bad treatment by power holders in other parts of the criminal justice system could impact on the perceived legitimacy of those responsible for the implementation of post-custodial licences was perhaps more troubling (c.f. Baker et al., 2013; Franke et al., 2010; McNeill, 2009). The work of hostel and probation workers involves contact with licencees *after* these people have interacted with many different groups of power holders during their time inside the criminal justice system. It is reasonable to assume that these interactions are likely to have involved a number of negative experiences (see, for example, Crewe, 2009; Liebling, 2004; Nurse et al., 2003). Probation and hostel workers, therefore, may have to work hard to overcome the legitimacy deficits passed on by other power holders 'earlier down the line' (c.f. McNeill and Robinson, 2012).

## **6.4 Conclusion**

In this chapter, I have discussed licencees' perceptions of the legitimacy of power holders, and explored how these perceptions were shaped. I have argued that legitimacy was shaped both by licencees' perceptions of the procedures used by power holders, and the outcomes for which power holders were perceived as being

responsible. In much of the analysis, I have not distinguished between licencees' perceptions of the legitimacy of probation workers and their perceptions of the legitimacy of members of hostel staff. Largely, this is because licencees' perceptions of the legitimacy of these two groups of power holders were shaped in much the same way. However, as noted above, some of the differences between these groups, for example, their powers of enforcement, had an important impact on licencees' perceptions of their legitimacy. Overall, procedure-based legitimacy was pivotal for shaping licencees' perceptions of, and interactions with, both groups of power holders. Not only did licencees have high expectations in relation to the procedures that power holders ought to use, but positive perceptions of procedure-based legitimacy were also integral to the development of positive perceptions of outcome-based legitimacy.

Finally, it is important to highlight that the issues discussed in this chapter do not represent an exhaustive breakdown of all the potential influences on licencees' perceptions of power holder legitimacy. For example, it may be that perceptions of legitimacy were also affected by other factors, such as licencees' own levels of 'self-control' (see Wolfe, 2011). The data generated by my fieldwork reflects licencees' own perspectives on the legitimacy of power holders. It is entirely possible that these perspectives overlooked some important factors that affected licencees' perceptions of power holder legitimacy. One of the primary motivations for conducting the current research, however, was to provide licencees with a voice – to listen openly to their experiences and views. Consequently, throughout the fieldwork, data analysis, and write up, I have attempted to remain 'close' to the accounts provided by licencees. Whilst this may have resulted in certain issues that were potentially important in shaping legitimacy perceptions being neglected, I regard this as a price worth paying.

# Chapter Seven

## REFLECTIONS AND IMPLICATIONS

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This concluding chapter is divided into four main parts. First, I provide a brief summary of the key findings from the current research. Secondly, I consider the relative strengths and limitations of the current qualitative approach to research on legitimacy, compared to the dominant quantitative approach in the field of criminal justice. Thirdly, I look ahead to some of the major and immanent policy changes on the horizon that are set to affect the content and delivery of post-custodial licences in England and Wales. Finally, I highlight what I regard as some of the most fruitful avenues for future research in this area.

### 7.1 Summary of findings

The current research explored licencees' perceptions of the legitimacy of power holders, focusing in particular on how these perceptions were shaped. Based on the data generated by periods of observation and in-depth interviews, I have argued that procedures and outcomes played an important role in shaping licencees' perceptions of power holder legitimacy. I found it useful to distinguish between outcomes that related to help and support, and those that related to monitoring and control. While power holders could not necessarily gain legitimacy via outcomes that monitored and controlled licencees' behaviour, crucially, they could lose it. Therefore, in order to protect their legitimacy in the eyes of those on licence, it was important that power holders implemented monitoring and control outcomes that were perceived by licencees as fair and effective. Also in relation to monitoring and control outcomes, I found it useful to distinguish between two types of outcome-based legitimacy: 'outward-facing' and 'inward-facing'. Despite the awkward wording of these labels, they represent a relatively simple distinction. Outward-facing simply meant that people judged the fairness of outcomes in relation to the outcomes received by others around them. Inward-facing, on the other hand, meant that people judged the fairness of outcomes in accordance with their own circumstances (regardless of the outcomes received by others). When outcomes were seen as unfair (either in an outward or inward-facing sense) or ineffective, this posed a significant threat to the perceived legitimacy of those in power.

In contrast, outcomes that helped and supported licencees could play a useful role in fostering positive perceptions of power holder legitimacy. When licencees perceived their probation and hostel workers as being helpful or supportive, either in terms of offering personal advice and support, or in terms of help with more practical issues such as employment or accommodation, then this served to bolster the legitimacy of these power holders. If probation and hostel workers were perceived as unhelpful then this *could* serve to undermine their legitimacy, but usually not to the extent that legitimacy could be undermined by unfair or ineffective monitoring and control outcomes. For example, a recall decision that was perceived as being unfair was typically more damaging to the perceived legitimacy of a power holder than a power holder's failure to provide effective help with issues such as accommodation or employment.

However, the procedures used by probation and hostel workers were also crucial in terms of shaping licencees' perceptions of their legitimacy. While licencees were equivocal about the extent to which they expected power holders to help and support them, they were unequivocal in their expectations about what constituted fair and appropriate procedures. In particular, positive perceptions of power holder legitimacy could be strengthened or undermined by the extent to which those in power provided licencees with accurate and timely information, listened to them, and treated them with dignity and respect.

While procedures and outcomes both 'mattered' in a simplistic sense, I would argue that power holders should be primarily focused on procedure-based legitimacy. This is because the former often provided an integral stepping-stone to the latter. In other words, without procedure-based legitimacy it was very difficult for power holders to establish any degree of outcome-based legitimacy. The mechanism underpinning the link between procedure-based legitimacy and outcome-based legitimacy was the quality of relationships between licencees and their probation and hostel workers (c.f. McNeill and Robinson, 2013). For example, when probation workers were successful in garnering positive perceptions of procedure-based legitimacy, this encouraged the establishment of constructive staff-resident relationships, which, in turn, enabled probation and hostel workers to work towards the achievement of fair and effective outcomes. Therefore, while outcomes were ultimately important, it would be a mistake to overlook the fundamental role of procedures in the dynamics of power holder legitimacy.

### **7.1.1 Implications for theories of legitimacy**

Theories that seek to explain power subjects' perspectives on power holder are inescapably context dependent. For example, take the contrast between theories of police legitimacy and the theory presented in this thesis regarding licencees' perspectives on the legitimacy of probation and hostel workers. Research on policing has consistently found that procedures, not outcomes, shape public perceptions of police legitimacy (see Bradford et al., 2013; Jackson et al., 2013; Tyler, 2006; Tyler and Huo, 2002). However, this is not the case in relation to licencees' perceptions of the legitimacy of power holders, where outcomes clearly played an important role. I will offer some thoughts on the potential reasons for this divergence, although they are inherently speculative.

Given the fact that the police service is publicly funded, perhaps members of the public hold particularly high expectations when it comes to the way that they should be treated by police officers – people demand a level of respect that, if denied, impacts heavily on their perceptions of police legitimacy. If the members of the public are treated well during their encounters with police officers, they may be willing to forgive instances of poor performance. Consider, for example, a case in which police officers had treated a victim of crime with decency and respect, listened to their concerns and done all they could to catch the perpetrator but ultimately failed. In this case the victim might well appreciate the efforts of police officers and forgive their failure to catch the perpetrator, particularly given their positive personal contact with the officers involved in the case.

In the context of the post-custodial licence period, procedures also matter. But outcomes are likely to play a more important role in this context than they do in relation to policing. While a high level of procedure-based legitimacy might provide a level of insulation for probation officers against some 'failures' concerning outcomes – e.g. failures to help licencees find suitable move-on accommodation – some outcomes are so important to licencees that they are likely to outweigh any power holder legitimacy based on procedures. For example, a recall that is perceived as unjust, or a licence condition that is perceived as unfair and ineffective, might result in a power holder's legitimacy being wholly undermined in the eyes of a licencee.

To recap on the point made above, therefore, the crucial point is that theories of legitimacy are inevitably context-dependent. The factors that shape power subjects'

perceptions of power holder legitimacy in one context are not necessarily the same as those that will shape perceptions of legitimacy in others. While research on legitimacy in certain contexts can provide useful starting points for research in other areas, processes of inference from one context to another can never provide an adequate substitute for empirical data.

## **7.2 Comparing qualitative and quantitative approaches to the study of legitimacy**

Compared to the proliferation of quantitative research on legitimacy in the field of criminal justice in recent years (e.g. Bottoms and Tankebe, 2012; Cherney and Murphy, 2013, 2014; Jackson et al., 2012; Mazerolle et al., 2013; Murphy and Cherney, 2012; Papachristos et al., 2012; Reisig et al., 2014; Tankebe, 2013), only a relatively small amount of qualitative research has been conducted that utilises the concept of legitimacy (e.g. Digard, 2010; Liebling, 2013; Ugwudike, 2010). Therefore, I think it would be useful to provide some reflections on the main strengths and limitations of the approach that was taken in the current research. I have also provided a critique of the quantitative approach to studying legitimacy because the introduction of a comparative analysis helped to highlight the strengths and limitations of the qualitative approach.

### **7.2.1 Privileging participants' perspectives**

One of the main strengths of the qualitative approach to research on legitimacy is its potential to privilege the perspectives of participants by listening openly to their views. This was a particularly noteworthy strength of the current research, since many licencees reported feeling powerless, infantilised and ignored. During interviews, although I sought to ask several questions that had been formulated in advance, participants took the lead in the vast majority of our discussions. I spoke far less than the interviewee, and only directed the interview as and when it was appropriate with regard to the flow of the conversation. Indeed, in a number of cases, licencees spoke about the topics on the interview schedule without me having to raise them explicitly, since these were things that licencees seemed keen to discuss.

There were only two instances of people declining my request for an interview. One person to decline was Nick, who seemed to be generally untrusting of people in

positions of power (see Chapter Five). The other was Chris (see Chapter Six), whom I had already interviewed the week before, but whom I wanted to speak to again in order to follow up on a number of points that had been raised in the previous interview. Therefore, the 'response rate' (loosely defined) in the current research was relatively high, compared to the survey response rates in quantitative research on legitimacy (for example, 45 per cent in Gau et al., 2012, and 60 per cent in Tankebe, 2013). This is a particularly important point to highlight given that the current research included the perspectives of licencees who would most likely exclude themselves from quantitative research by choosing not to a complete self-completion questionnaire. Indeed, the reader might recall from Chapter Three that several researchers explicitly acknowledged that their findings might contain a 'positive bias' due to the fact that relatively disengaged offenders were unlikely to respond to questionnaires (see, for example, Ditton and Ford, 1994; Maguire et al., 1996; McIvor, 1992). In the current research, on the other hand, I made a concerted effort to involve licencees who seemed to hold relatively negative views about the licence period (in addition to licencees who held relatively positive views). This approach was facilitated by hostel managers and members of hostel staff, who (due to spending extended periods of time with the hostel residents) knew which people were relatively (dis)satisfied with their time on licence.

I suspect the high 'response rate' in the current research was due in part to the effect of a greater level of social pressure that was exerted via my face-to-face requests, compared to the lower levels of social pressure that were exerted via the impersonalised distribution of self-completion surveys. However, I was keen to stress to participants that they were under no obligation to speak to me and that there would be no consequences for declining to partake in the research. Therefore, I think that the relatively high level of participation in the research was largely a reflection of its qualitative and participant-driven nature.

I expect that many residents would have regarded the task of completing a closed-question survey as something of a chore. Indeed, advice from the literature on survey design recommends strict limits on the number of questions to include on survey forms because participants are likely to lose interest in answering survey questions; longer questionnaires, for example, have been linked to lower response rates (Galesic and Bosnjak, 2009). Furthermore, respondents' level of engagement with questionnaires appears to deteriorate with time – the answers to open-ended questions appear to shorten and become more uniform the later an item is positioned in the questionnaire (ibid.). In many of my interviews, on the other hand,



participant's engagement in our discussions remained at a high level throughout, with a number of participants stressing that they were enjoying the opportunity to voice their opinions:

*Stan: Yes. And I'm really enjoying this because it's meant I've got so much stuff off my shoulders - so what else?!*

Resident (Hostel B)

*KIR: Ok, only a couple more questions...*

*Mitchell: You're alright, I'm in no rush to get away, mate.*

Resident (Hostel A)

While a high level of participant engagement was arguably a desirable goal in and of itself, this level of engagement also brought further benefits in terms of encouraging the generation of considered, contextualised data.

### **7.2.2 Moving beyond 'snap' and decontextualized responses**

The reader may recall from Chapter Six that during one of my first conversations with hostel residents, I was surprised at the extent to which their views seemed to lack consistency. The licence period could be 'shit' or 'pointless' in one moment, but in the next, residents could be explaining how much they appreciated their probation officer's help and support. Licencees' 'snap' or default responses seemed to mask relatively complex opinions regarding the licence period and the power holders who were responsible for its implementation. This would seem to pose a problem for the closed-question surveys used by some quantitative researchers since the data they produce may not provide an accurate representation of the breadth or depth of participants' opinions (c.f. Sandberg, 2010). Moreover, closed-questions tend to enquire only about participants' views in general, which as Flyvbjerg (2001: 114) has argued is 'often empty and banal' compared to the 'deep, concrete detail [in which] genuinely important interrelationships are expressed'.

Responses concerning abstract situations might not adequately capture a participant's views in any single concrete situation. In other words, quantitative research tends to produce only a decontextualized snapshot of social reality (Bowling, 1993: 232). Because licencees were relatively engaged in the current qualitative research, on the other hand, this meant that I could move beyond their snap or default responses by asking follow up-questions that probed deeper into

concrete experiences and views. Further probing of participants' responses might be considered particularly important given the potential for misinterpretation of particular questions. For example, Farrall et al. (1997) found that participants frequently misunderstood the focus of a specific closed question on a quantitative research instrument, but were able to give more nuanced answers during semi-structured interviews. The likelihood of questions being misunderstood during in-depth interviews in the current research was minimised precisely by the fact that issues were discussed in depth.

Another limitation of quantitative research on legitimacy is that data is typically collected at only one point in time.<sup>22</sup> Admittedly, it would be a stretch to describe the current research as longitudinal, since a large proportion of the data came from one point in time, namely, during a single in-depth interview. However, time was naturally embedded in licencees' accounts of historical events and processes in a manner that quantitative surveys would find it difficult to capture. Moreover, interview data was supplemented by data from informal conversations with a number of licencees and hostel staff that took place during multiple hostel visits (the entire duration of the fieldwork lasted about six months). This provided me with the opportunity to identify any significant changes in the experiences and views of the residents with whom I had multiple instances of contact. In a number of cases this was significant, given that views did change significantly between visits (see, for example, Tim's and Mark's cases, discussed in Chapter Six).

### **7.2.3 Questions and aims**

Although both qualitative and quantitative research is useful for studying legitimacy, these approaches are suited to answering different questions and addressing different aims. Researchers conducting quantitative studies on legitimacy in the field of criminal justice have typically focused on policing, and sought to address variants of two main questions:

- i) What is the relationship between perceptions of police legitimacy and certain types of 'desirable' behaviour, such as cooperation or compliance?

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<sup>22</sup> Although longitudinal quantitative research can make use of multiple data collection points, this is not typical in the quantitative literature on legitimacy (although see Tyler, 1990, which involved two waves of data collection).

- ii) To what extent are certain factors (e.g. procedural justice, distributive justice, effectiveness) linked to perceptions of police legitimacy?

By providing answers to these two questions, quantitative researchers have typically concluded two things. First, the more legitimate the police are perceived to be, the more likely it is that people will: i) cooperate with officers (Sunshine and Tyler, 2003), ii) assist in cooperative crime-control efforts (Murphy et al., 2008; Tyler and Fagan, 2008), iii) offer information they had about crimes or suspected offenders (Kochel et al., 2011; Tyler, 2010), iv) accept officers' decisions (Tyler and Huo, 2002), v) obey the law (Mazerolle et al., 2012; Tyler, 2006b), vi) comply with officer commands (Gau and Brunson, 2010; McCluskey et al., 1999), and vii) participate in community policing efforts (Reisig, 2007). Second, if the police intend to increase the extent to which they are perceived as legitimate, they should act in ways that people perceive as procedurally just (Gau, 2014; Tyler, 2006b; Tyler and Huo, 2002). Findings from this type of research are based on the statistical links between a number of predefined concepts, such as legitimacy, procedural justice and distributive justice. Quantitative research, therefore, can provide a useful indication of what factors shape perceptions of legitimacy, and the likely behavioural consequences of these perceptions. It is less useful, however, for exploring how and why certain factors shape legitimacy perceptions, or how and why legitimacy perceptions influence behaviour. Quantitative researchers may offer theoretical explanations for the relationships that they find, but their survey-based research is typically limited to identifying *which* statistical links exist between predefined constructs, as opposed to examining *why* these links exist.

Qualitative research, on the other hand, is well suited to exploring how and why certain factors might be linked to perceptions of legitimacy. In other words, it is useful for providing a detailed insight into the possible causal relations between concepts. Following a qualitative approach to the current research, the links between certain factors and licencees' perceptions of legitimacy are not ultimately grounded in statistical tests; instead, they are based on the researcher's reasoning and interpretations of the in-depth personal accounts provided by people on licence. By observing and speaking at length with licencees about their experiences and views of forms and relationships of power, the qualitative approach to studying legitimacy generated a large amount of context-rich data that reflected the complexity and nuance of participants' lived experiences.

Both quantitative and qualitative data therefore have valuable roles to play in the study of legitimacy. The utility of each of these forms of data, I would argue, depends largely on the questions a researcher wishes to answer. If a researcher is primarily interested in confirming or refuting relationships between predefined factors – for example, between perceptions of procedural justice and perceptions of legitimacy, or between perceptions of legitimacy and behavioural compliance – then quantitative data is well suited to these tasks. However, if a researcher wants to explore how or why concepts are related, or thinks that concepts should be grounded in empirical data (as opposed to *a priori* theory), then qualitative data is arguably better suited to these tasks. Ideally, of course, methodological triangulation could be used to address these different types of question simultaneously.

#### **7.2.4 Research focus**

Another important difference between quantitative studies on legitimacy and the current study was that I had less control over the type and scope of the data that the fieldwork generated. In the context of the current research, I had the opportunity to focus on any number of possible sources of power. These included: i) the criminal justice system, ii) the probation service, iii) the prison service, iv) the police, v) the licence period, vi) hostel regimes, vii) individual prison officers, viii) individual probation officers, ix) individual members of hostel staff, x) licence conditions, xi) hostel rules, and so on. By the time that the empirical research had begun, I had not committed myself to studying any specific object of legitimacy in this list. Prior to the periods of observation, I had visited a hostel while shadowing a probation worker, and a prison while shadowing a prison-based probation worker. During these visits, I had spoken informally to people on licence (or about to be released on licence) and had begun to get an idea about which objects of legitimacy seemed most important to licencees. I found that certain forms or relationships of power were discussed and seemed to matter more than others. Licencees typically spoke most about individual probation and hostel workers, which consequently became the primary focus of this thesis. During the periods of observation, my field notes increasingly focused on these objects of legitimacy and their centrality was reinforced by the questions that I identified for the interview schedules (see Appendices III, IV and V).

Quantitative researchers, on the other hand, typically predefine the focus of their research in advance of data collection.<sup>23</sup> The researcher typically employs closed survey questions to measure people's perceptions of legitimacy and associated concepts. This approach restricts the manner in which participants can respond, for example, requiring participants to select one of a set number of answers indicating the strength of their agreement or disagreement with a particular statement (see Tyler, 2006; Tankebe, 2013). Therefore, researchers can accurately anticipate both the amount and type of data that their studies will generate, depending on the design of their research instruments and the sample involved in the study. This is important because their data analysis – which involves the calculation of statistical relationships between variables – is dependent on gathering a sufficient amount and type of data. In contrast, I could not (and had little desire to) predict the amount or scope of data that the current study would generate – as noted in Chapter Four, I planned to continue collecting data until I had reached a 'saturation point'.

Despite attempting to focus on licencees' perceptions of the legitimacy of power holders, however, it was inevitable that the observation periods and interviews would produce data that related to other objects of legitimacy. While I would sometimes direct conversations by asking licencees what they thought about a particular power holder, other topics would arise, such as what they thought about the probation service in general, or the police, or imprisonment, or the licence period. Because I was interested to hear licencees' views about these subjects, I rarely cut people short at these points by suggesting that we return to the core focus of the research. Furthermore, licencees usually seemed in no rush to end our informal conversations or interviews. I would argue that I gathered a better quality of data by waiting to discuss licencees' views of power holders as the natural course of our conversations progressed, than I would have done by rigidly insisting that we speak only about particular topics.

One problem facing qualitative researchers is the decision regarding what to do with data about subjects that fall outside the core focus of the research. In the context of the current research, while this did not pose a problem in terms of answering the research questions *per se*, it did raise the issue of how (if at all) to incorporate these 'supplementary' data into the thesis. As the reader can see from Chapters Five and Six, I decided that it would be better to retain a relatively tight focus on the

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<sup>23</sup> Although in principle nothing prevents quantitative researchers from conducting preliminary qualitative research before collecting quantitative data.

perceived legitimacy of power holders, rather than try to include substantial amounts of data relating to other objects of legitimacy.

I would argue that having the option to choose the forms and relationships of power that seemed to matter most to the subjects of a particular research project is a significant strength of the qualitative approach. If people have strong views about the legitimacy of a particular form or relationship of power, but care relatively little about the legitimacy of others (or have little to say in relation to these), then I think this provides a sound preliminary indication of the usefulness and value of a particular research project – it would seem imprudent to conduct research on a subject about which participants care little, or have little to say, particularly if there are other subjects about which participants care a great deal or have plenty to say. Had I adopted a typical quantitative approach to the current research, I would have chosen between a number of potential objects of legitimacy without any guidance from the periods of observation. There is nothing, however, to prevent researchers following a primarily quantitative approach from conducting preliminary qualitative research to explore which objects of legitimacy might provide the best focus for the main study. In this regard, I would argue that qualitative research has the potential to provide good foundations for quantitative research on legitimacy. This applies not only to the selection of a valuable research focus, but also to the creation of an appropriate conceptual framework.

### **7.2.5 Concept operationalization**

As outlined above, quantitative research on legitimacy has typically involved testing the statistical associations between a number of constructs<sup>24</sup> that have been preselected and predefined by the researcher. Large samples are used in order to maximise the likelihood of producing statistically significant results (in other words, results that are not the result of ‘chance’). Quantitative researchers are faced with difficult choices about how to operationalise and measure their constructs. For example, constructs are often treated as latent variables in quantitative research – in other words, as variables which cannot be measured directly, but can be ‘discovered’ via proxy factors. In a recent study, Gau (2014) concluded that there were significant problems with established approaches to measuring perceptions of legitimacy as a latent construct. Typically, researchers have used two factors to measure legitimacy

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<sup>24</sup> The terms ‘concept’ and ‘construct’ are often used interchangeably (Hox, 1997). I follow the definitions provided by Hoy (2009) and regard concepts to be less abstract than constructs; the latter I take to be relatively complex and composed by multiple concepts.

perceptions – ‘obligation to obey’ and ‘trust’ (see Gau, 2011; Reisig et al., 2007; Sunshine and Tyler, 2003; Tankebe, 2009; Tyler and Huo, 2002). Using both exploratory factor analysis and confirmatory factor analysis, however, Gau found that these two factors ought not to be combined into the same scale because they lack convergent validity. In other words, these factors seem to be measuring different things. Therefore, Gau warns that future research should not measure legitimacy as a composite of trust and perceived obligation to obey, and states the need for researchers ‘to revisit the operationalization of legitimacy and to decide (a) what items best represent this theoretical construct; and (b) whether or not the construct is unidimensional’ (Gau, 2014: 204). Bearing in mind that quantitative studies on legitimacy in the field of criminal justice have been accumulating for almost 25 years since the emergence of Tyler’s seminal study on police legitimacy in 1990, such fundamental issues with the theorisation and measurement of legitimacy seem somewhat disconcerting.

Similarly, the construct of procedural justice has also been treated as a latent variable by researchers such as Jackson et al. (2013) and Kochel et al. (2013: 914), who write about ‘perceptions of procedural justice’, with the latter stating that higher levels of respondents’ perceptions of procedural justice ‘were associated with an increased probability of reporting one’s victimization to the police’. Because these perceptions cannot be empirically observed or measured, researchers have avoided questions such as, ‘how procedurally just do you think the police are?’ Questions that employed the term ‘procedural justice’ would not be readily understood by research participants because people presumably tend to think about things in more specific, concrete terms. Therefore, researchers have endeavoured to find survey items that *reflect* (or in Gau’s words, ‘represent’) the construct of procedural justice. Reflective models, however, are based on a particular type of relationship between constructs and survey items. This relationship can be illustrated using a hypothetical example. Reflective models imply that variation in the construct (e.g. variation in a person’s perceptions of procedural justice) causes variation in the items used to measure the construct (e.g. variation in a person’s perceptions of how often the police use insulting language). This is a strange proposition; the more plausible causal direction would seem to be the other way around. This is why some researchers have argued that the reflective model of construct measurement is unsuitable for measuring constructs such as procedural justice (see MacKenzie et al., 2005; Jonathan-Zamir et al., 2013). Writing in the field of applied psychology, Mackenzie et al. (2005) have argued that constructs such as procedural justice ought

to be measured using formative models. Formative models are based on the assumption that variation in the items used to measure a construct would cause variation in the construct itself. So, for example, how often a person perceives police officers to use insulting language might cause variation in that person's perceptions of procedural justice.

The relationship implied by the formative model between the items used to measure constructs and the constructs themselves seems to be more logical than the relationship implied by the reflective model, at least, that is, in relation to constructs such as procedural justice and legitimacy. Moreover, formative models contain no requirement that the items used to measure a construct must have a strong, positive, inter-correlation (see Coltman et al., 2008). In relation to policing, this seems appropriate given that there is no reason, in theory, why the items used to measure perceptions of procedural justice ought to correlate. For example, people might well perceive the police to frequently use insulting language, but at the same time perceive them to rarely use excessive force. Chin (1998: ix) has identified a simple question that can be used to test whether a construct ought to be measured using a formative or reflective model: 'Is it necessarily true that if one of the items (assuming all coded in the same direction) were to suddenly change in a particular direction, the others will change in a similar manner?' If one answers no to this question, then the construct is formative. Given that there is no fixed connection between 'insulting language' and 'excessive force' (i.e. these items will not necessarily change in a similar manner), it seems that formative models provide a better approach to measuring the construct of procedural justice than reflective ones. Based on the data from the qualitative fieldwork of the current research, however, I would argue that significant problems remain with the formative model. Therefore, I will return to the use of these models after discussing the way that constructs were used in the current research.

Adopting a qualitative approach to the study of legitimacy, my use of constructs was very different to that used by researchers in quantitative studies. The fieldwork observations and interviews generated a large mass of context-rich data. Therefore, the purposes of developing a conceptual framework were twofold:

- i) To help understand and explain relationships and patterns within this mass of data.
- ii) To help organise and communicate my findings to the reader.



Following guidance provided by Schutz (1962: 59), I based my first-order concepts on the 'common-sense thinking' of the participants in the research. This resulted in the creation of five concepts, all of which were used in the previous chapter, namely: i) the provision of information, ii) dignified treatment, iii) listening, iv) help and support, and v) monitoring and control. Due to the limited level of abstraction from empirical reality, I am confident that most licencees would have recognised these concepts as being broadly reflective of the way they made sense of their own experiences and views of power holders. Most licencees, for example, discussed the extent to which power holders provided them with information, were helpful and supportive, took the time to listen to their views, and spoke about how power holders exercised the tasks of monitoring and controlling their behaviour. These first-order concepts were useful for both of the purposes outlined above, namely, to help understand and explain relationships and patterns within the data, and to help organise and communicate my findings to the reader. The second and more abstract level of my conceptual framework involved two second-order constructs: procedure-based legitimacy and outcome-based legitimacy. These constructs were used primarily to help organise and communicate my findings. I would argue that the combination of these first and second-order concepts and constructs resulted in the creation of a conceptual framework which avoided an overcomplicated theoretical landscape, without being overly simplistic (see Figure 6.1).

Unlike researchers following a quantitative approach to research on legitimacy, I was not required to make *a priori* assumptions about the number or scope of the concepts and constructs that were ultimately used in the current research. Based on empirical data, I allowed concepts and constructs to 'emerge' during the course of the fieldwork and analysis. However, this is not to imply that I deliberately overlooked predefined concepts and constructs. As was discussed in Chapter Four, the adaptive theory approach advocated by Layder (1998) provided the basis of the relationship between theory and data during the research. Therefore, I considered the usefulness of pre-existing concepts and constructs for organising and making sense of empirical data, but was willing to discard or modify them if they did not fit the data. Perhaps this is best illustrated by an example.

Consider the second-order constructs of 'procedure-based legitimacy' and 'outcome-based legitimacy' used in Chapter Six. Previous research on legitimacy has involved a variety of constructs, which I have outlined in Table 7.1.

Table 7.1: Constructs used in previous research on legitimacy

<b>Procedure-based Legitimacy</b> (current research)	<b>Outcome-based Legitimacy</b> (current research)
<i>Procedural Justice</i> (Folger, 1977; Tyler, 2006b; Tyler and Huo, 2002)	<i>Distributive Justice</i> (Deutsch, 1985; Folger, 1977; Tyler, 2006b; Tyler and Huo, 2002)
<i>Procedural Fairness</i> (Welsh, 2004)	<i>Distributive Fairness</i> (Welsh, 2004; Krawczyk, 2011; Rode and Le Menestrel, 2011)
<i>Legitimacy</i> (Franck, 1990; Rawls, 1971)	<i>Justice</i> (Franck, 1990; Rawls, 1971)
<i>Input Legitimacy</i> (Scharpf, 1999; Keohane and Nye, 2001)	<i>Output Legitimacy</i> (Scharpf, 1999; Keohane and Nye, 2001)
	<i>Outcome Justice</i> (Singer, 1990; Gramatikov and Klaming, 2011)
	<i>Outcome Fairness</i> (De Cremer et al., 2010)
	<i>Effectiveness</i> (Tankebe, 2013)

While there is a degree of overlap between these constructs, they are certainly not identical. Researchers might find it useful to make a distinction between, for example, distributive fairness, which relates to perceptions of the fairness of the distribution of resources to power subjects by power holders, and outcome justice, which refers, among other things, to perceptions of whether a particular power-subject ‘deserves’ a particular outcome, regardless of the outcomes received by others.

Initially, I noticed that three of my first-order concepts – provision of information, dignified treatment and being listened to – bore a close resemblance to aspects of procedural justice (Folger, 1977; Tyler, 2006b; Tyler and Huo, 2002), procedural fairness (Welsh, 2004), and input legitimacy (Scharpf, 1999; Keohane and Nye, 2001). These constructs, therefore, seemed to provide some potential for developing the conceptual framework of the current research. Furthermore, the other two first-order concepts – help and support, and monitoring and control – both concerned ‘outcomes’, and therefore seemed to relate to constructs such as distributive justice (Deutsch, 1985; Folger, 1977; Tyler, 2006b; Tyler and Huo, 2002), distributive fairness (Welsh, 2004; Krawczyk, 2011; Rode, 2011), outcome fairness (De Cremer et al., 2010), outcome justice (Singer, 1990; Gramatikov and Klaming, 2011),

outcome legitimacy (Scharpf, 1999; Keohane and Nye, 2001) and effectiveness (Tankebe, 2013). However, on reflection, I noticed that there was a significant degree of overlap between some of these constructs. For example, it was often difficult to disentangle issues that related to outcome fairness from issues that related to effectiveness. The interview with Gary provided one good example:

*Gary: I can go into a pub but I can't have a drink. I'm not happy about that because my offence wasn't committed through alcohol, yet it's on there . . . I know people who commit their offence on drink, and it's not on their licence . . . it's not like I'm suddenly going to go out with a load of strangers and get pissed.*

Resident (Hostel A)

It seemed that Gary was concerned about both the fairness and effectiveness of his licence condition that prohibited him from drinking. He felt that it was unfair because he had not been intoxicated while committing his offence, and yet a condition restricting his alcohol consumption had been imposed on him. Other licencees, however, had committed their offences while intoxicated, but had not been made subject to licence conditions restricting their alcohol consumption. In addition, he also questioned the effectiveness of this condition in terms of its likelihood of reducing the risk of him reoffending – with or without this licence condition, he maintained that he had no intention of going out and ‘get[ting] pissed’. In some cases, the divide between the fairness and the effectiveness of outcomes became blurred, as licencees spoke about fairness and effectiveness simultaneously. For example, James seemed to think the imposition of a licence condition which restricted him from entering certain areas was unfair *because* it had no impact on his likelihood of reoffending (in other words, because of its ineffectiveness; see Chapter Six).

For these reasons, I decided that it would be useful to create an overarching construct concerning outcomes, which embraced both the notions of fairness and effectiveness. Thus, the construct of ‘outcome-based legitimacy’ provided a valuable tool for organising the data presented in Chapter Six. The use of this construct, however, is not novel. Scharpf (1999), for example, made a similar distinction in relation to the legitimacy of democracies when he distinguished between ‘input-oriented legitimacy’ and ‘output-oriented legitimacy’. The latter of these constructs, however, referred predominantly to the effectiveness of governmental performance,

whereas ‘outcome-based legitimacy’ (as I define it in the current research), refers to effectiveness *and* fairness.

### **7.2.6 Summary**

Compared to qualitative research on legitimacy, quantitative research has two clear strengths. First, good quantitative research is relatively ‘reliable’. Quantitative studies use large sample sizes and adopt clear and straightforward approaches to data collection, typically through the use of standardised survey instruments. This means that a researcher could replicate any study on legitimacy in the field of criminal justice and in all likelihood generate similar findings (unless circumstances significantly change between the times at which the studies were conducted). Second, and relatedly, quantitative research provides firm ground for generalisation beyond the specific population involved in the study itself because large and randomised samples of a particular population provide a good basis for generalisation to the wider population (Baker and Kramer, 2003). Nevertheless, the quantitative approach also has some limitations. Typically, quantitative researchers do not come into direct contact with their research participants, and develop only a superficial connection with their lived experiences. Instead, researchers’ knowledge of their participants’ experiences and views is usually confined to number of preselected response options on a questionnaire.

In contrast, the quality of qualitative research on legitimacy depends largely on the researcher’s connection with their participants. The direct and dialogic nature of the connection between researcher and participant in qualitative studies can afford the researcher the opportunity to move beyond participants’ snap responses, which can be largely taken at face-value in quantitative studies. This allows qualitative researchers to explore what typically seem to be (at least in the context of the current research) relatively complex experiences and views. Admittedly, context-rich data makes it difficult for qualitative researchers to address the issues of research ‘reliability’ or ‘generalizability’ (Barbour, 2001; Bryman, 2008; Newman and Benz, 1998). Nevertheless, a responsive research process that evolves dynamically, a process that values and respects the context-rich complexity of participants’ lived experiences, and a process that engages with and privileges participants’ perspectives, is something that I would argue more than compensates for these limitations.

## 7.3 Looking ahead

In June 2014, under the Coalition Government's programme, Transforming Rehabilitation (TR), the probation service was split in two. Probation workers were allocated either to a new National Probation Service (NPS), or a Community Rehabilitation Company (CRC). Those working for the NPS – a public sector organisation – are now responsible for the supervision of high-risk offenders, who account for around 30 per cent of the caseload of the old probation service. The remaining 70 per cent of people deemed to be medium or low-risk are supervised by one of 21 regional CRCs. The amount of money paid to CRCs will depend partly on their success in reducing rates of reoffending – a system referred to as 'payment by results' (PbR). The rationale behind these changes is that an increased level of responsibility and involvement for the private, charity and social sectors in supervision in the community, coupled with contracts that link performance levels with pay, will boost innovation in this area and drive down rates of reoffending.

The track record of PbR models in other areas such as health and welfare, however, is less than impressive (see, for example, Shahid and Tindall, 2013). Questions have been raised about the evidence base that supposedly underpins these radical shifts in service delivery. Although CRCs were initially lauded as a means of better utilising the experience and initiative of the third sector, none of the 21 regional contracts was awarded to a consortia led by a third sector organisation. The 'real winners', as highlighted by Frances Crook of the Howard League for Penal Reform, were the private companies, Sodexo and Interserve, which picked up half of all government contracts (Crook, 2014).

The Government believes that savings achieved through the use of CRCs will help fund the post-release supervision of short-term prisoners. On 1<sup>st</sup> February 2015, therefore, further radical provisions from the Offender Rehabilitation Act 2014 came into force that shape the content and delivery of supervision in the community, including post-custodial supervision. Under previous legislation, people serving less than twelve months' imprisonment were released at the halfway point of their sentence without supervision (Criminal Justice Act 2003). As a result of the Offender Rehabilitation Act 2014, however, any person who committed their offence on or after the 1<sup>st</sup> February 2015, and who is sentenced to a determinate sentence of imprisonment of more than one day, will serve half of their sentence in custody, and half in the community on licence (Ministry of Justice, 2015d). In addition, all people sentenced to less than two years' imprisonment will now be subject to a period of

supervision following the end of their licence period. The duration of a person's post-sentence supervision period will be the difference between twelve months, and the amount of time they have spent on licence in the community; all people serving short sentences will therefore spend a total of twelve months on licence and subject to post-sentence supervision (ibid.: 2).

In light of the findings presented in this thesis, it is worth considering how these changes might affect licencees' perceptions of the legitimacy of power holders who are responsible for post-custodial supervision. In relation to the 30 per cent of high-risk licencees supervised by the NPS, it is possible that little will change. In relation to the 70 per cent of medium and low-risk licencees, however, a number of points are worth noting.

First, the 'punitive bite' of short-term sentences (those of less than two years) will soon be much more severe under the provisions of the Offender Rehabilitation Act 2014. Many people who would have previously 'walked free' after serving half of their sentence in custody, will now be subjected to a lengthy period of supervision, during which they will be expected to abide by a number of conditions that restrict their liberty, or face recall to custody. Frances Crook (2014) has argued that this 'compulsory support' will set people up to fail, and consequently bring about a significant increase in rates of recall. The veracity of this argument will soon be put to the test with empirical data on licence recalls. Even if CRCs do succeed in securing licencees' formal compliance with post-custodial licence and supervision conditions (and recall rates do not significantly increase), I anticipate that CRC employees will find it difficult to establish positive and constructive relationships with licencees; in other words, encouraging licencees' substantive compliance with post-custodial supervision might prove futile (see Robinson and McNeill, 2008). Primarily, this is because such radical changes to the content and implementation of short-term sentences will almost certainly not be well received by those subjected to these sanctions (see Allen, 2015).

Secondly, given the soon-to-be established connection between the fulfilment of reoffending targets and the level of payment that CRCs will receive from government, reoffending rates are likely to take centre stage to a greater extent than ever before. On the face of things, this might not appear to be a negative development. Considered in the light of the findings presented in the current research, however, the situation is less straightforward. Much will depend on how

Grayling's call for a 'relentless focus on rehabilitation' (Ministry of Justice, 2013f) – measured solely by changes in rates of reoffending – will translate into practice.

The innovation that Grayling expects of CRCs could of course be propelled in a number of directions. One option for CRCs would be to focus on the provision of meaningful help and support in order to increase the likelihood of licencees' successful reintegration. If CRCs can successfully utilise their links with organisations in the private, charity and social sectors, then it is certainly possible that licencees could benefit from a better provision of services, such as housing, and drug and alcohol treatment, as well as increased opportunities in relation to employment. Consequently, licencees' perceptions of power holders' outcome-based legitimacy could move in a positive direction. This would be one way in which CRCs might attempt to achieve their reoffending rate targets in order to receive full remuneration for their work.

On the other hand, another option that might appear tempting to CRCs would be to focus squarely on the intermediate goals of monitoring and control, in an attempt to reduce the likelihood that licencees will reoffend. While this would not undermine licencees' perceptions of the legitimacy of power holders *per se*, the findings from the current research suggest that any monitoring and control of licencees' behaviour must be perceived by licencees as fair and effective, if power holders' legitimacy is to be protected (see Chapter Six). Given the potential for the PbR system to generate a myopic focus on the reduction of reoffending rates, it seems plausible that efforts to monitor and control licencees' behaviour might go beyond the bounds of fairness and effectiveness as perceived by licencees. As noted in the previous chapter, this could prove counter-productive in terms of reducing the likelihood that licencees will reoffend, since an over-emphasis on monitoring and control measures might well discourage licencees from engaging positively in the supervision process. For example, if licencees disengage from supervision by refusing to be open and honest with the people responsible for delivering post-custodial supervision, this could increase the chances of certain 'risks' going undetected by CRC personnel.

Besides these issues concerning outcome-based legitimacy, licencees' perceptions of the procedure-based legitimacy of power holders could be pivotal in the ultimate success or failure of the CRCs. If CRC workers focus myopically on reducing reoffending rates, they risk neglecting important aspects of procedure-based legitimacy. For example, many people in the current research suggested that if the licence period was going to reduce their likelihood of reoffending, then it was

important to establish a relationship with their probation worker based on trust; such trust often needed to be built up over prolonged and regular periods of personal contact with the same supervisor. People highlighted that if they had a supervision session with a different probation worker – if, for example, their probation worker was ill or had moved to a different location – then they considered their contact sessions to be a waste of time, since the stand-in officer did not know them well enough to offer meaningful help and support. Licencees valued probation workers who took the time to get to know them, by listening to what they had to say. It remains to be seen whether CRCs will endeavour to achieve the same level of positive and constructive relationships between licencees and their supervisors that was achieved by the old probation service, or whether a relentless focus on reoffending rates might lead to personal relationships between licencees and supervisors being side-lined. The findings from the current research suggest that the latter would be short-sighted. If licencees perceive CRC personnel as lacking procedure-based legitimacy, it will be difficult for these power holders to obtain positive outcomes, since licencees might well choose to disengage from the supervision process and rail against the terms and conditions of their licence.

Of course, the ideas presented here are inherently speculative since much will depend on how CRCs go about fulfilling their contracts. The jury will soon be out on the success or failure of the changes implemented by the Government's TR programme – whether, for example, CRCs will manage to reduce the reoffending rates of medium and low-risk licencees to levels significantly lower than those achieved by the old probation service. While I can see the potential for licencees to receive better access to services and opportunities concerning housing, employment, and drug and alcohol treatment, I think there is a high probability that the PbR system will lead CRCs to focus too heavily on monitoring and controlling licencees' behaviour, while neglecting important aspects of procedure-based legitimacy. If this happens, I predict that licence breach rates are liable to increase and licencees are likely to disengage further from the supervision process – both of which could more than cancel out the potential benefits referred to above.

## **7.4 Future research**

The participants in the current research had spent years imprisoned in an environment that they typically described as 'easy', yet monotonous. Looking ahead, they faced difficult challenges that involved moving away from a prison climate



characterised by dependency, into a community characterised by relative insecurity and uncertainty. The post-custodial licence period provided an important bridge between these environments. Probation and hostel workers have the opportunity to provide valuable help and support to licencees as they transition from prison to the community. By exploring licencees' experiences and views, researchers have the potential to contribute to good practice in this area. Yet the post-custodial licence period remains under-researched, particularly compared to the number of studies that focus on other areas of criminal justice, such as imprisonment and policing.

The current research has been small-scale and focused narrowly on licencees' perceptions of the legitimacy of probation and hostel workers. It involved fieldwork in only two hostels out of a total of over 100 hostels across England and Wales, and involved only a small fraction of the total population of licencees released from prison every year. Therefore, it is difficult to gauge the extent to which the findings from the current research might apply to hostels more generally, or the wider population of people released from prison who are not required to live in hostels. However, I would argue that judgements regarding the applicability of research to other contexts are ultimately best made by those who are familiar with these contexts – not the author of the initial research (see Misco, 2007; Stake, 1982, 1983). Bearing this point in mind, it would be useful to conduct further studies with people on licence who are not required to live in hostels, particularly those deemed by the probation service to be medium or low-risk, in order to explore any (dis)similarities.

There are other aspects of the post-custodial licence period that merit attention. While the current research involved interviews with members of hostel staff, it did not involve interviews with the probation workers responsible for the content and implementation of licence terms and conditions. I found that the views of members of hostel staff were useful in providing a richer and more rounded understanding of licencees' perceptions of power holder legitimacy, because, as has been argued by Bottoms and Tankebe (2012), perceptions of legitimacy involve both claims by power holders as well as the recognition or rejection of these claims by power subjects. Therefore, I would argue that further studies in this area would benefit from the participation of probation workers, as well as licencees.

Future research could also focus on aspects of the licence period that are less directly related to probation supervision. For example, licencees are often asked to partake in certain programmes as conditions of their release, such as drug and

alcohol abuse treatment programmes or cognitive behavioural programmes. I spoke only briefly to licencees about these programmes because they were not the focus of the current research. Nevertheless, given that licencees' views about these programmes were mixed, it might be useful to explore how and why certain programmes were deemed by licencees to be helpful or unhelpful, and how this might influence licencees' perceptions of the legitimacy of, for example, the licence period.

Whether the primary purpose of the post-custodial supervision is taken to be the protection of the public, the rehabilitation and reintegration of people back into the community, or whatever else, I would argue that a good understanding of how best the licence period can achieve these goals depends in large part on communicating directly with the people subject to this supervision and the people responsible for its delivery. One of the things that struck me most while conducting the current research was the widespread scepticism on the part of licencees that someone was interested in seeing things from their perspective. In one resident's words, during their time inside the criminal justice system, people had been conditioned to 'put up and shut up' – to believe that their opinions had no value, and that it was not in their interests to voice these opinions to people in positions of power. The current research afforded one opportunity to redress this situation with a small number of people on licence; I hope that future research will extend this opportunity to many more.

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# **APPENDICES**

## **APPENDIX I**

### **STANDARD LICENCE CONDITIONS**

- i) To keep in touch with your supervising officer in accordance with any instruction you may be given;
- ii) If required, to receive visits from your supervising officer at your home/place of residence (e.g. an Approved Premises);
- iii) Permanently to reside at an address approved by your supervising officer and notify him/her in advance of any proposed change to address or any proposed stay (even for one night) away from that approved address;
- iv) Undertake only such work (including voluntary work) approved by your supervising officer and notify him or her in advance of any proposed change;
- v) Not to travel outside the United Kingdom unless otherwise directed by your supervising officer (permission for which will be given in exceptional circumstances only) or for the purpose of complying with immigration/deportation;
- vi) To be well behaved, not to commit any offence and not to do anything which could undermine the purpose of your supervision, which is to protect the public, prevent you from re-offending and help you to re-settle successfully into the community.

Source: Ministry of Justice (2011)

## APPENDIX II

### ADDITIONAL LICENCE CONDITIONS

Any additional condition must be necessary and proportionate and where the sentence is an indeterminate sentence or an extended sentence must have a causal link to the index offence.

Offender Managers should evidence that all conditions are reviewed on a regular basis. Conditions can be removed or altered (if necessary with approval of the Parole Board) if an offender is making progress and their risk of harm has sufficiently decreased.

REQUIREMENTS	LICENCE CONDITIONS
<b>1. Contact Requirement</b>	<p>(a) Attend all appointments arranged for you with [... INSERT NAME ...], a psychiatrist/psychologist/medical practitioner and co-operate fully with any care or treatment they recommend.</p> <p>(b) Receive home visits from [insert name] Mental Health Worker.</p>
<b>2. Prohibited Activity Requirement</b>	<p>(a) Not to undertake work or other organised activity which will involve a person under the age of ..., either on a paid or unpaid basis without the prior approval of your supervising officer;</p> <p>(b) Not to use directly or indirectly any computer, data storage device or other electronic device (including an internet enable mobile telephone) for the purpose of having access to the Internet or having access to email, instant messaging services or any other on line message board/forum or community without the prior approval of your supervising officer. You must allow a responsible officer reasonable access, including technical checks to establish usage.</p> <p>(c) Not to own or possess or permit in your address any computer without the prior approval of your supervising officer.</p> <p>(d) Not to own or possess more than one mobile phone or SIM card without the prior approval of your supervising officer and to provide your supervising officer with details of that mobile telephone, including the IMEI number and the SIM card that you possess.</p> <p>(e) Not to own or possess a mobile phone with a photographic function without the approval of your supervising officer.</p> <p>(f) Not to own or use a camera without the approval of your supervising officer.</p>
<b>3. Residency Requirement</b>	<p>(a) To permanently reside at (name and address e.g. an approved premises) and must not leave to reside elsewhere, even for one</p>



	<p>night, without obtaining the prior approval of your supervising officer; thereafter must reside as directed by your supervising officer.</p>
<b>4. Prohibited Residency Requirement</b>	<p>(a) Not to reside (not even to stay for one night) in the same household as any child under the age of ... without the prior approval of your supervising officer.</p>
<b>5. Prohibited Contact Requirement</b>	<p>(a) Not seek to approach or communicate with [INSERT NAME OF VICTIM AND/OR FAMILY MEMBERS] without the prior approval of your supervising officer and/or the name of appropriate Social Services Department.</p> <p>(b) Not to have unsupervised contact with children under the age of .... without the prior approval of your supervising officer and [INSERT NAME OF APPROPRIATE SOCIAL SERVICES DEPARTMENT].</p>
<b>6. Programme Requirement</b>	<p>(a) To comply with any requirements specified by your supervising officer for the purpose of ensuring that you address your alcohol/drug/sexual/gambling/solvent abuse/anger/debt/prolific/offending behaviour problems at the [NAME OF COURSE/CENTRE].</p> <p>(b) Participate in a prolific or other priority offender project (PPO) [SPECIFY WHICH] and, in accordance with instructions given by or under the authority of your supervising officer attend all specified appointments with your supervising officer and any other agencies for the purpose of ensuring that you address your offending behaviour for the duration of the programme.</p>
<b>7. Curfew Requirement</b>	<p>(a) Confine yourself to an address approved by your supervising officer between the hours of [TIME] and [TIME] daily unless otherwise authorised by your supervising officer. This condition will be reviewed by your supervising officer on a [WEEKLY/MONTHLY/ETC] basis and may be amended or removed if it is felt that the level of risk that you present has reduced appropriately.</p> <p>(c) Confine yourself to remain at [CURFEW ADDRESS] initially from [START OF CURFEW HOURS] until [END OF CURFEW HOURS] each day, and, thereafter, for such a period as may be reasonably notified to you by your supervising officer; and comply with such arrangements as may be reasonably put in place and notified to you by your supervising officer so as to allow for your whereabouts and your compliance with your curfew requirement be monitored [WHETHER BY ELECTRONIC MEANS INVOLVING YOUR WEARING AN ELECTRONIC TAG OR OTHERWISE].</p>

<p><b>8. Exclusion Requirement</b></p>	<p>(a) Not to enter the area of [CLEARLY SPECIFIED AREA], as defined by the attached map without the prior approval of your supervising officer.</p> <p>(b) Not to enter [NAME OF PREMISES/ADDRESS/ROAD] without the prior approval of your supervising officer.</p> <p>(c) Not to enter or remain in sight of any [CHILDREN'S PLAY AREA, SWIMMING BATHS, SCHOOL ETC] without the prior approval of your supervising officer.</p>
<p><b>9. Supervision Requirement</b></p>	<p>(a) On release to be escorted by police to Approved Premises.</p> <p>(b) Report to staff at [NAME OF APPROVED PREMISES/POLICE STATION] at [TIME/DAILY], unless otherwise authorised by your supervising officer. This condition will be reviewed by your supervising officer on a [WEEKLY/MONTHLY/ETC] basis and may be amended or removed if it is felt that the level of risk you present has reduced appropriately.</p> <p>(c) Provide your supervising officer with details [SUCH AS MAKE, MODEL, COLOUR, REGISTRATION] of any vehicle you own, hire for more than a short journey or have regular use of, prior to any journey taking place.</p> <p>(d) Notify your supervising officer of any developing intimate relationships with women/men.</p>
<p><b>10. Non-Association Requirement</b></p>	<p>(a) Not to contact or associate with [NAMED OFFENDERS/NAMED INDIVIDUAL] without the prior approval of your supervising officer.</p> <p>(b) Not to contact or associate with a known sex offender other than when compelled by attendance at a Treatment Programme or when residing at approved premises without the prior approval of your supervising officer.</p> <p>(c) Not to contact directly or indirectly any person who is a serving or remand prisoner or detained in State custody, without the prior approval of your supervising officer.</p> <p>(d) Not to associate with any person currently or formerly associated with [NAME OR DESCRIBE SPECIFIC GROUPS OR ORGANISATIONS] without the prior approval of your supervising officer.</p>

## APPENDIX III

### INTERVIEW SCHEDULE: PEOPLE ON LICENCE

#### **Section A – Living in Approved Premises**

A1) How long have you been here in [AP]?

A2) Do you know how much longer will you be staying here for?

A3) Where were you before you arrived here?

A4) Where do you plan to go when you leave?

A5) Could you tell me a bit about what it's like staying here?

*[Do you like staying here? Why? Why not?]*

A6) Could you tell me a bit about the rules they have here?

*[What do you think of the rules? Are the rules fair? Are the rules the same for everyone? Is this fair? What happens if you break these rules?]*

A7) What do you think the main purposes of this hostel are?

*[To help you with things like employment and accommodation/to protect the public/to have someone checking up on you/to reduce the number of people in prison/to reduce the likelihood of you reoffending]*

A8) Do you think living here helps to achieve these purposes?

*[Why? Why not?]*

A9) Do you think the hostel should be trying to achieve other things?

*[If so, what? Why? How should it try to achieve them?]*

A10) Could you tell me a bit about the staff who work here?

*[What are they like? Is there anything you particularly like about the staff? Is there anything you particularly don't like?]*

A11) What makes for a good hostel worker?

*[Friendly, honest, strict, easy-going, a good listener, breaks/bends the rules.]*

A12) If you could change three things about this hostel, what would you change?

*[Why would you change these things? What effect would these changes have?]*

#### **Section B – Being on licence**

B1) Have you been on licence before?

*[If yes, I'd like to speak about your previous experiences of being on licence later in the interview, but for now, I'd like to talk about the licence you're on at the moment].*

B2) How long is your licence for?

B3) Could you tell me what conditions you have on your licence?

*[Have you seen a copy of your licence? Do you have access to a copy of your licence?]*

B4) Do you know how those conditions were decided?

*[Who decided them? Did you have any say in what the conditions of your licence would be? Do you think you should? Who should?]*

B5) What do you think about these conditions?

*[Are they fair? Does everyone have the same licence conditions? Is this fair?]*

B6) Could you tell me a bit about what it's like being on licence at the moment?

*[How does being on licence affect you? How do you feel about this? Does your licence period affect any other people (e.g. family, friends)? In what ways? How do you feel about this?]*

B7) What do you think the main purposes of your licence period are?

*[Do you think that your probation officer is more there for help and support, or for enforcing the conditions of your licence, or both? Do you think this is the way it should be?]*

B8) Do you think your licence period achieves these purposes?

*[Why? Why not?]*

B9) Do you think the licence should be aimed at achieving other things?

*[If other purposes, then which? Why? How should it try to achieve them?]*

B10) Have you received a warning (either verbally or in writing) about breaching your current licence? If yes, could you tell me about it? If no, do you know if anyone else has received a warning?

*[What was the reason(s) for the warning and what happened? Do you think that all people would get a warning for this sort of thing?]*

B11) Have you ever bent or broken the conditions of your licence and managed to get away with it?

*[Remind interviewee that all information provided is confidential. If so, could you tell me about what happened?]*

B12) What would be a 'good reason' for, say, missing an appointment with your offender manager?

*[Would your offender manager agree?]*

B13) Could you tell me a bit about the recall process for people on licence?

*[What would you have to do to breach your licence and get recalled to prison? Is this the same for everybody? Do you think being recalled to prison for these sorts of things is fair?]*

B14) Would you mind telling me a bit about your current offender manager?

*[What is he/she like? What do you think your offender manager is there for?]*

B15) What makes for a good offender manager?

*[Friendly, honest, strict, easy-going, a good listener, breaks/bends the rules]*

B16) Imagine you could get away with breaking the conditions on your licence without receiving a warning or being recalled – do you think it would be ok to ignore the conditions, or do you think you should stick to them anyway? Why?

B17) What are the main reasons why you stick to the conditions of your licence?

*[Fear of recall; don't want to let down family/friends; don't want to let down key workers/offender managers]*

B18) The Government are making plans for private companies and voluntary organisations to supervise people on licence, instead of the probation service. A large part of their pay would depend on whether or not people reoffend. Do you have any views about these plans?

*[Do you think they are a good idea or a bad idea? Why?]*

B19) If you could change three things about being on licence, what would you change?

*[Why would you change these things? What effect would these changes have?]*

### **Section C – Concluding questions**

C1) (To those who have indicated that they have been on licence before (B1)): Could you tell me a bit about your previous experience of being on licence?

*[What were the conditions on your previous licence? How did you feel about them? Could you tell me about your previous offender managers? How does your current experience on licence compare with these previous experiences?]*

C2) Overall, do you think it is a good or a bad thing that people serving prison sentences spend a period on licence after they leave prison? *[Why/Why not?]*

C3) Is there anything you'd like to talk about that we haven't already discussed?

**Thank you for your time.**

## **APPENDIX IV**

### **INTERVIEW SCHEDULE: HOSTEL STAFF**

#### **Section A – Introductory questions**

- A1) Could you tell me how long you have worked here at [AP]? And in what capacity?
- A2) What did you do before you worked at [AP]?
- A3) What attracted you to this kind of work?
- A4) How would you describe the role?
- A5) What are the most important aspects of your role?
- A6) What are the most challenging aspects of your role?
- A7) Can you think of a challenging situation that you have faced in the hostel? Could you tell me what happened and how you handled it?

#### **Section B – Working with residents**

- B1) What are the main hostel rules that residents are expected to abide by?
- B2) How are the rules communicated to residents?
- B3) Are the majority of residents on licence?
- B4) How are staff made aware of residents' specific licence conditions?
- B5) Are there ever conflicts between hostel rules and licence conditions?
- B6) Are you a Key Worker for residents here?
- B7) What does this involve? How do you find this aspect of your work?
- B8) What do you see as the main challenges that residents face?

*[e.g. Drugs – do residents have access to support with drugs? How does this work?; Relationships – does the hostel get involved in family/friendship relationships? Is home-leave something that is supposed to help with these things? Employment – do most residents seem to want to find employment? What support is in place to help residents with employment?]*

- B9) How would you describe relationships between staff and residents here generally?
- B10) Could you tell me a bit about what happens if a resident breaks one of the hostel rules?

*[For example, if they are half an hour late for their curfew?; Does the same thing happen to all residents, or do the staff have discretion to deal with people differently depending on the circumstances?]*

B11) Could you tell me a bit about what happens if a resident breaks one of the conditions on their licence?

*[For example, if they fail a drugs test?; If they fail to turn up for a three-way meeting?; Do offender managers consult with staff in Approved Premises about recall decisions? Do you think they should? Do you think most recall decisions are fair, or not?]*

### **Section C – Working with other agencies**

C1) Could you tell me a bit about how the police are involved with [AP]?

*[Do you think AP and the police work well together? Do you think you share the same goals?]*

C2) Could you tell me a bit about how probation is involved with AP?

*[Do you think [AP] and the probation service work well together? Do you think you share the same goals? (What are the main goals of [AP]/the probation service?); What happens if you disagree with the decisions made by probation officers that affect residents here?]*

C3) As I understand it, the probation service makes the initial decision about who should live in [AP]. If you were in charge of choosing which people should live here, are there any particular groups of people who you would focus on?

*[e.g. licencees who have been in prison for a long time; licencees who haven't already got a home; licencees who have committed particular offences; licencees who have particular problems e.g. drug offences; Do you think probation sometimes choose the wrong people to come here? If so, which people and why?].*

### **Section D – Closing questions**

D1) If you could be the manager for the day, is there anything in particular that you'd like to change?

*[e.g. Any aspect of your role? Any of the rules of the hostel? Or the consequences for breaking rules?]*

D2) Finally, is there anything we haven't discussed that you'd like to talk about or think is important?

**Thank you for your time.**

## APPENDIX V

### INTERVIEW SCHEDULE: HOSTEL MANAGERS

#### **Section A – Introductory questions**

- A1) Could you tell me how long you have worked at [AP]?
- A2) And could you tell me a bit about what you did before you worked here?
- A3) What attracted you to this kind of work?
- A4) How would you describe your role?
- A5) What would you say are the best things about your job?
- A6) What would say are the worst things about your job?
- A7) What would you say is the main purpose, or purposes, of [AP]?
- A8) How easy, or difficult, is it for the hostel to achieve these purposes?  
*[Are there any barriers that you think make it difficult for you to achieve these purposes?]*
- A9) What do you think are the main pressures on you, as a manager of an Approved Premises, if any?  
*[Is there much oversight from your Probation Trust/Voluntary Management Committee? Particular targets? Budget constraints?]*
- A10) When you started working here, were there any particular changes that you thought needed to be made from the way the hostel had previously been run?

#### **Section B – Working with residents (rules, discretion and enforcement)**

- B1) Could you tell me a bit about the rules of the hostel?
- B2) How compliant are residents with the hostel rules?
- B3) How much discretion is there in terms of enforcing the hostel rules?  
*[Do all residents face the same consequences when breaking a hostel rule, or does it depend on the particular resident/circumstances of the rule-breaking?; Do staff behave differently when enforcing rules? What is your role in relation to enforcing the rules?]*
- B4) Have you ever decided to change a hostel rule (for any reason)?  
*[Which rules? Why?]*
- B5) Are you a Key Worker for residents here?
- B6) How do you find this aspect of your work?



B7) Could you tell me a bit about residents licence conditions?  
*[What sort of conditions do residents have on their licence? What are the conditions designed to do?]*

B8) On the whole, do you think that residents' view their licence conditions as fair?  
*[Do you think residents' licence conditions are fair?]*

B9) How much discretion is there in terms of enforcing licence conditions?  
*[Do all residents face the same consequences when breaking licence conditions, or does it depend on the particular resident/circumstances of the licence breach?]*

B10) Do you think most recall decisions are fair, or not? Why?

B11) How would you describe relationships between staff and residents?

B12) What would you say are the main grumbles, or sources of dissatisfaction among residents?

B13) How are these handled?

### **Section C – Working with staff/other agencies**

C1) If there was such a thing as 'the perfect' residential officer, what sort of qualities do you think they should have?

C2) What are the main grumbles/sources of dissatisfaction among staff, if any?  
*[How are these dealt with?]*

C3) Could you tell me a bit about how the probation service is involved with [AP]?

*[Do you think [AP] and the probation service share the same goals? (What are the main goals of [AP]/the probation service?); What happens if you disagree with the decisions made by probation officers that affect residents here?]*

C4) As I understand it, the probation service makes the initial referrals about who should live in [AP]. If you were in charge of choosing which people should be referred to here, are there any particular groups of people who you would focus on?  
*[e.g. licencees who have been in prison for a long time; licencees who haven't already got a home; licencees who have committed particular offences; licencees who have particular problems e.g. drug offences; Do you think probation sometimes choose the wrong people to come here? If so, which people and why?].*

### **Section D – Closing questions**

D1) Can you think of something particularly positive that has happened recently in [AP]? (Maybe a particular 'success story' with a resident, or something involving multiple residents). What happened?

D2) Is there anything else you would like to discuss?

**Thank you for your time.**