

A Complicated Business

*A joint inspection of electronically
monitored curfew requirements,
orders and licences*

October 2008

Joint inspection by HMI Probation, HMI Court Administration and
HMI Constabulary

Foreword

Electronically monitored curfews are a valuable sentencing option for courts, and a useful mechanism for early release from custody in appropriate cases. They are capable of making a powerful contribution to the effective management of sentenced offenders. In this joint inspection we assessed how well such curfews were implemented in practice (hence we excluded curfews for bail-only purposes).

The specific role of electronically monitoring the curfews is undertaken by two private companies who have to liaise closely with the courts and all the other agencies involved in managing and enforcing supervision of individuals serving their sentences in the community.

Given that a curfew might sound at first like a very straightforward concept it seems somewhat surprising to report that the information protocols and contracts that govern this provision are long, complicated and hard to understand clearly. Nevertheless, although we found a few deficiencies (in our view) in complying with the contracts, these findings were less of a concern for us than the wider strategic issues.

Specifically, we found that enforcement policy with court-sentenced curfews is significantly different both from the way other community requirements are enforced and from what the courts and the public might reasonably expect. We therefore advocate a major re-think of the current approach to enforcing curfew cases, leading instead to what might be dubbed a 'Smart' approach to compliance and enforcement practice. This would be located in the context of best offender management practice as a whole, being an approach that is neither excessively nor insufficiently stringent.

More generally too, we found a missed opportunity to integrate electronically monitored curfews into mainstream offender management practice, as at present they operate as something of an anomaly within the National Offender Management Service. Yet curfews have the real potential to become a more closely integrated part of a better coordinated offender management system.

Meanwhile, with the electronic monitoring companies mainly carrying out what is expected of them broadly to the required standard, we have a criminal justice provision for sentenced offenders where currently the system is, in our opinion, largely *'meeting the contract but missing the point'*.

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Glossary of abbreviations

Asset	The assessment tool used by Youth Offending Services/Youth Offending Teams
CJCIG	Criminal Justice Chief Inspectors' Group
EM	Electronic monitoring/electronically monitored
EMT	Electronic monitoring team (in NOMS HQ)
FDR	Fast delivery report for a court
G4S	Group 4 Securicor
HDC	Home Detention Curfew
HMCS	Her Majesty's Courts' Service
HMI Constabulary	Her Majesty's Inspectorate of Constabulary
HMICA	Her Majesty's Inspectorate of Court Administration
HMI Probation	Her Majesty's Inspectorate of Probation
ISSP	Intensive Supervision and Surveillance Programme
Libra	HMCS's national case management and accounting information technology system
MAPPA	Multi-Agency Public Protection Arrangements
NAO	National Audit Office
NOMS	National Offender Management Service
OASys	Offender Assessment System (for adult offenders)
PID	Personal Identification Device (also known as the 'tag')
PSR	Pre-sentence report for a court
PNC	Police National Computer
PPO	Prolific and other Priority Offender
PRS	Post-Release Section, now amalgamated into the Public Protection Casework Section in the Ministry of Justice
Risk of Harm	Risk of Harm to others
SDR	Standard delivery report for a court
YJB	Youth Justice Board
YOS/YOT	Youth Offending Service/Youth Offending Team

1. SUMMARY

The strategic framework for electronically monitored curfews

Background

- 1.1 Electronically monitored curfews were first introduced by the Criminal Justice Act 1991⁶. The Act allows offenders to be 'tagged' with a personal identification device and confined to a specified address for up to 12 hours a day for a period not exceeding six months. Any attempt to leave the address is registered by monitoring equipment installed within the home and followed up by the electronic monitoring company. Such 'violations' can result in the offender being returned to court and re-sentenced or, if subject to a Home Detention Curfew, sent back to prison. Forcible removal of the tag also constitutes a serious 'violation' of the order leading straight to breach action.
- 1.2 The legislative framework for electronically monitored curfews has evolved steadily since 1991. Home Detention Curfews currently provides for suitable adult prisoners serving short sentences to spend up to the last four and a half months of their custodial sentence in the community and, under the Criminal Justice Act 2003⁸, an electronically monitored curfew can now be used as one of a number of requirements attached to a community order for adults.
- 1.3 The position for children and young people under the age of 18 differs from that for adults. A curfew order can currently be made, either as a stand alone order or in conjunction with other community penalties, on any child or young person above the age of ten who has been convicted of an offence which did not have a sentence fixed in law. Curfew conditions can be attached to a community rehabilitation order; electronic monitoring can also be used to ensure compliance with any requirement of a community order or licence.

The curfew as part of the offender management model

- 1.4 The community order forms part of the offender management model implemented by the National Offender Management Service and is based on the concept of an integrated seamless approach to work with offenders. Whilst the sentencing purposes most clearly addressed by a court when imposing an electronic monitoring curfew are punishment and public protection (control) through the restriction of liberty, the community order makes it possible to consider the electronically monitored curfew as part of a broader sentencing package in which different requirements are placed on the individual offender in accordance with their level of offending and Risk of Harm to others. The offender is, of course, not physically prevented from leaving their address during the curfew period, but instead becomes subject to sanctions should they violate the curfew.

The contract and protocols

- 1.5 The current contract for electronic monitoring curfews was first negotiated by the National Offender Management Service in 2004 with two companies, *Group 4 Securicor* and *Serco*, for implementation from April 2005. Two information protocols^{14&15} were published, describing the various processes required of all the parties concerned, including the courts, police, probation and youth offending services. However, in October and November 2005 respectively, shortly after the publication of the protocols, both the contract and the protocols were amended. The revised versions of the protocols were not widely publicised, although the National Offender Management Service did issue a brief guide on 'frequently asked questions' to practitioners in 2006.
- 1.6 The October 2005 changes marked a return to the *thresholds* (for violations) which had operated from 1999 to March 2005. Whereas prior to 2005 an offender might be missing for the whole of the curfew period before triggering breach action, the contract changes in March 2005 had introduced the concept of a four-hour threshold for violations but were swiftly amended because of concerns about the projected rise in the breach rate for Home Detention Curfews.
- 1.7 In our view, this process was insufficiently stringent and left a gap between the way in which curfews were enforced compared with other community order requirements. It also left a gap between the enforcement practice that the courts and public might reasonably expect and the enforcement practice in reality. This was not particularly a public protection issue, because the great majority of offenders subject to curfews were not assessed as high Risk of Harm to others; instead the issue was the consistent and reasonable implementation of a punishment imposed by a court.
- 1.8 The protocols also contained a number of inaccuracies, particularly in relation to the issue of youths. The protocol for community orders made no mention of the importance of the courts informing the electronic monitoring companies of a newly sentenced case before 1500 hours on the day of sentence. This timescale was significant as they were accountable under the terms of their contract for installing the equipment by the second night of sentence only where they received notification by 1500 hours on the first day.

Getting orders started

- 1.9 We found that electronically monitored curfews were imposed for a wide range of offences and that in most cases offenders were assessed as low Risk of Harm to others. It was apparent that courts usually saw such curfews principally as a punishment, although they also occasionally used curfews for a specific crime reduction or rehabilitative purpose. We also saw some useful examples of curfews being used as a sentence for breach of existing community penalties, as they were rightly seen as an appropriate way to enable the completion of the existing order while imposing a tangible additional punishment for the breach. In a small number of cases curfews were being used creatively to address patterns of offending behaviour.

The importance of effective assessment

- 1.10 The vast majority of court imposed curfews followed the preparation of a pre-sentence report for the court, either a standard delivery report usually delivered in 15 working days, or a fast delivery report undertaken on the day of the request. However, a balance had to be struck between the promptness of an assessment and its quality. There was not always the opportunity, where the report was a fast delivery report, to check the offender's address or home circumstances and gain the consent of other residents. Home visits were undertaken in just over a quarter of community orders for adults and half of all youth cases. In a similar vein, we found no examples of the court contacting the offender/case manager following an application by the offender to vary addresses. In a small but nevertheless disquieting number of cases, this lack of communication led to the offender being monitored at an unsuitable address.

Assessment in Home Detention Curfew cases

- 1.11 The processes to assess suitability for release on Home Detention Curfew were more robust than in community cases, probably because it was possible to predict and plan for the potential start of the curfew (the date of release) well in advance. Home visits were undertaken in nearly half of all Home Detention Curfew cases.

Communication issues

- 1.12 There were both national and local information exchange protocols between the various agencies and the electronic monitoring companies covering the circumstances when, what and how communication between them would take place. Unfortunately we found many instances of when such communications did not take place as specified.
- 1.13 The main method of communication between the court and the electronic monitoring supplier was a three page form produced by HM Courts' Service in 2005, which was poorly designed and is currently being revised. Whilst it made reference to the agency responsible for supervising the case, the terminology used was often misleading and not always understood by court staff. As a result, the responsible agency/officer for the curfew was often not identified, an omission which would have major implications for any subsequent enforcement action.
- 1.14 Although the form allowed for relevant concerns about the offender's Risk of Harm, or other issues such as preferred language and the need for an interpreter, to be passed on to the electronic monitoring company, we found very few examples where this was in fact done. As a result, it was sometimes not possible for the electronic monitoring companies to make a realistic assessment of any risks to their staff or prepare them to engage positively with an offender with special needs. Use of the form was not mandatory, and we found it in only just over a third of the cases inspected.
- 1.15 Court staff responsible for completing and sending the information forms and orders had received little or no training about electronic monitoring curfews, and few were aware of the guidance and protocols provided by HM Courts' Service. Accordingly, we found a number of cases where the information in the court

orders passed to probation and/or Youth Offending Services/Teams was incomplete or misleading; there were even occasional errors in recording the sentence imposed. These deficiencies were potentially confusing both to the offender and to those responsible for their supervision, and could give rise to difficulties in cases where the need for enforcement later arose.

- 1.16 The contract required that the electronic monitoring equipment be installed by the second night of sentence in those cases where the company had been informed of the curfew by the court by 1500 hours on the first day. This was achieved in the great majority of cases in our sample (92%), though fell short of the service level required in the contract – an ambitious 99%. We noted, however, that about a third of all court-sentenced offenders were not monitored on the first night of their curfew, i.e. on date of sentence.

Offender management

- 1.17 Despite its potential, we saw only a few cases where electronic monitoring was being used to make a positive contribution to offender management. Even where a curfew was part of an order with other requirements, most offender/case managers tended to view it as a separate punishment outside their jurisdiction. This was disappointing. We had hoped to find the curfew being used positively to help offenders break long-established patterns of behaviour as part of an integrated package of interventions.
- 1.18 Unless the case was identified as a '*prolific or other priority offender*' or subject to '*multi-agency public protection arrangements*', no information was sent to the offender/case manager about any minor violations until the offender reached the threshold for breach action. Whilst this was in accordance with the contract and protocols (and had been agreed to keep the information flow between the respective parties within manageable proportions), such information could have been used, in certain cases, by the offender/case manager to challenge the offender so that they might amend their behaviour. Although the electronic monitoring companies were willing to supply information on individual cases, we found only a few instances where it had been requested.
- 1.19 We did however come across a small number of examples of good practice that demonstrated how a curfew could be used to make a positive contribution to offender management and showed what could be achieved where offender/case managers worked proactively with the electronic monitoring companies.

Enforcement

The enforcement of community penalties

- 1.20 The problems caused by weaknesses in the arrangements for starting orders often manifested themselves if, and when a case reached the enforcement stage when it was important to identify quickly who was responsible for taking the breach action – the offender/case manager or the electronic monitoring company. Unfortunately we found that even we – with the benefit of physically visiting the electronic monitoring company offices, the probation or Youth Offending Service/Team and

the sentencing court – were not always able to identify definitively whether a case had, or ought to have had an offender/case manager. If enforcement action needed to be taken, this lack of clear information led to delays in both the issuing of warning letters and instigating breach proceedings.

- 1.21 The formats used by the electronic monitoring companies to pass information about violations to offender/case managers were not easy to understand; the details of any violation were often complex and the summaries provided were sometimes unclear. Most offender/case managers found it difficult to interpret the relevant information correctly and were on occasion slow to enforce the curfew requirement. Furthermore, few were aware of the current *thresholds* for enforcement, a key strategic issue to which we return further below.
- 1.22 The cumulative effect of all these issues was that court-sentenced curfewed offenders reached the point of requiring breach action in at least a third of all such cases. This '*rate of requiring breach*' was, to our knowledge from other inspections, broadly comparable with that for other forms of community supervision. It should not be assumed that a 'high rate' is necessarily 'bad', but since electronic monitoring curfews were generally for a shorter period (six months maximum) than most other community requirements, the '*rate of requiring breach*' should perhaps have been lower than this.

The enforcement of Home Detention Curfew cases

- 1.23 The management of those Home Detention Curfew cases where the curfew was the only requirement was less complicated, and was generally processed effectively. However, complications of a different kind arose in those Home Detention Curfew cases that also had an offender manager as, in a striking contrast to all other aspects of the offender management model, the offender manager was not the officer responsible for taking breach action in these cases.
- 1.24 We found a couple of examples of Home Detention Curfew cases where Enforcement was carried out too stringently rather than insufficiently stringently. In these cases offenders were recalled to prison by the Post-Release Section following the receipt of information from the electronic monitoring company, when a more thoughtful approach, as might have been provided by an offender manager, could well have enabled the offender to complete the licence with an acceptable level of compliance.

Overall assessment

- 1.25 Enforcement of any community order or licence is never as straightforward a matter as many people first imagine, because in real life with each case a series of judgements have to be continually made about what is 'reasonable' (e.g. Was this 'reasonable' compliance? Was this a 'reasonable excuse' for not complying?) Although we found in the Home Detention Curfew instances above a few examples of overly assiduous enforcement, where it benefited no-one to return the offender to prison, our overall main finding for the enforcement of electronically monitored curfews was that it was insufficiently stringent. In this respect it differed significantly both from other community requirements and from what, we believe, the courts and the public might reasonably expect.

- 1.26 The underlying problem was the existence of the formal but opaque '*thresholds*' for enforcement. For reasons outlined in Chapter 6, the rules for all electronically monitored curfews were that an offender needed to accumulate a total of more than two hours' absence from their place of curfew before they were deemed to have committed a 'less serious violation' – normally leading to a formal warning. A 'more serious violation', normally resulting in breach action, required either a second less serious violation, or a single absence from curfew covering the whole relevant curfew period (typically 12 hours). This '*threshold*' was problematic in that whilst the impression was created that curfewed offenders were given very little rope, they were formally allowed a surprising amount, although they were not told exactly how much they actually had.
- 1.27 The intention of this approach was to avoid breaching too many cases, while also avoiding publicising to offenders the fact that curfews were not as strict in practice as they might first appear. Ironically, we nevertheless found that a high proportion (a third) of court-sentenced electronically monitored curfew cases still reached the point of requiring breach action. This was comparable with the figure for other forms of community sentences, even though curfews were of shorter duration. It suggests that having a fixed but insufficiently stringent '*threshold for violations*' that is also opaque both to offenders and to offender/case managers, does not reduce the number of cases needing to be breached. When individuals under supervision want to test their boundaries, and you give them plenty of rope but don't tell them where the end of that rope is, it is not surprising if many of them reach the end of that rope.
- 1.28 As an alternative we advocate what might be dubbed a 'Smart' approach to enforcement practice – an approach that is purposeful while being neither excessively nor insufficiently stringent. Current mainstream offender management practice usually achieves this: with other orders or licences, offenders are, more often than not, carefully managed through their sentences so that they achieve a good level of compliance.
- 1.29 Effective offender/case management will both promote compliance by offenders and achieve appropriately stringent enforcement when it is needed. It will also Help, Change and/or Control the offender according to the needs of the individual case. Such practice was unfortunately the exception rather than the rule in the large representative sample of electronically monitored curfew cases that we examined for this inspection. This was because in most instances, for a combination of different reasons, curfew cases were not handled in practice with a real 'offender management' approach.
- 1.30 Overall, we found a missed opportunity to integrate curfews into mainstream offender management practice; at present they operate as something of an anomaly within the National Offender Management Service, but have the potential to become a more closely integrated part of a better coordinated offender management system. Meanwhile, with the electronic monitoring companies mainly carrying out what they are required to do to an adequate standard, we currently have a criminal justice provision for sentenced offenders where the system is, in our opinion, largely '*meeting the contract but missing the point*'.

Recommendations

The Ministry of Justice and the National Offender Management Service Agency should:

- ▶ review and revise their offender management strategy by:
 - ensuring that the electronically monitored curfew is fully integrated into offender management practice
 - developing a 'Smart' approach to compliance and enforcement, working to tighter and transparent boundaries, but with more discretion in appropriate individual cases
 - reviewing specifically the role of the offender/case manager in the enforcement of Home Detention Curfew cases.

The National Offender Management Service Agency and the Youth Justice Board should:

- ▶ provide guidance to staff to ensure effective offender management by the integration of curfews into the sentence or intervention planning process.

Probation areas and Youth Offending Services/Teams should:

- ▶ integrate the electronically monitored curfew into their management of each applicable case by ensuring that:
 - relevant information about the offender's vulnerability or Risk of Harm to others is passed to the electronic monitoring company at the earliest opportunity
 - the Multi-Agency Public Protection Arrangements/Prolific and other Priority Offender status is always clearly communicated to the electronic monitoring companies
 - offender/case managers develop best practice in managing the compliance and enforcement element of each individual case, including when applicable, routinely informing the electronic monitoring companies of their decisions regarding enforcement, and record their reasoning, on those rare occasions when they decide against following the given advice on enforcement.

HM Courts' Service should:

- ▶ improve communication of key information about each case to the relevant electronic monitoring company by:
 - providing a set of clear, easy to use national forms, supported by clear instructions for their use and by training. Their application should be mandatory and monitored
 - ensuring that greater oversight is exercised over court administrative procedures so that the orders issued by the court office accurately reflect the sentence passed by magistrates and judges.

The electronic monitoring companies should:

- ▶ ensure clearer communication to offender/case managers on breach, including a simple summary on all cases
- ▶ review their procedures to protect and safeguard their staff in light of the findings of this report.

The Association of Chief Police Officers should:

- ▶ consider changing the Police National Computer operating procedures to include a flag or warning signal on the front page of an offender's record to show that the individual is subject to an electronically monitored community order.

2. STRUCTURE OF THE INSPECTION AND THE REPORT

- 2.1 This inspection was agreed by the Criminal Justice Chief Inspectors' Group (CJCIG) and formed part of the Joint Inspection Business Plan 2007/2008¹. Its terms of reference were:

"to assess the effectiveness of electronically monitored (EM) curfews in managing offenders in the community whether as a requirement of a court order or of conditional release from custody, and to test the achievement of the desired purpose in individual cases of deployment".

- 2.2 The inspection was led by Her Majesty's Inspectorate of Probation (HMI Probation), with support from Her Majesty's Inspectorate of Court Administration (HMICA) and Her Majesty's Inspectorate of Constabulary (HMI Constabulary). It was the first independent criminal justice joint inspection of EM curfews.
- 2.3 Some of the issues in the report build on earlier joint inspection findings, particularly *A Summary of Findings on the Enforcement of Community Penalties from three Joint Area Inspections*² and *Getting Orders Started*³, published in March and September 2007 respectively. The inspection was also informed by an enquiry, conducted by HMI Probation and published in September 2005⁴, into the supervision of Peter Williams, a young offender who committed a murder whilst subject to a curfew. In addition, reference was made to the report compiled by the National Audit Office (NAO), *The Electronic Monitoring of Adult Offenders*⁵, published in February 2006 on offenders subject to Home Detention Curfews (HDCs) and adult curfew orders.

Methodology

- 2.4 Our aim in conducting this inspection was twofold. Firstly, we wanted to assess how well the restriction on liberty was being applied through an EM curfew for the purposes of punishing the offender. Secondly, we also wanted to explore the extent to which the EM curfew was being deployed in accordance with the principles of offender management to reinforce work to help, change and control the offender. The inspection therefore focused on convicted offenders and not on those on bail.
- 2.5 We devised a set of criteria for the inspection, based on the requirements set out in the contract and protocols, relevant guidance and national standards. The criteria covered the objectives of EM curfews, the pre-curfew assessment process, the start of the curfew, the inter-relationship between EM curfews and offender management, enforcement, outcomes and leadership.
- 2.6 A scoping exercise was undertaken that defined the number and types of cases that would be inspected. We then decided to undertake fieldwork in each of the five EM contract regions. The following probation areas were chosen from each of

the regions: County Durham, Kent, London, North Wales and South Yorkshire. A Youth Offending Service/Youth Offending Team (YOS/YOT) located within each of the probation areas was then also selected for fieldwork. These were: Durham, Kent, Islington, Conwy & Denbighshire, and Sheffield.

- 2.7 We asked the two EM companies, *Group 4 Securicor (G4S)* and *Serco* to identify the last 100 cases subject to EM curfews that started prior to 1 October 2007 in each of the selected areas. We also contacted the relevant probation areas and YOSs/YOTs and asked to be notified of any cases not identified by the EM companies and any that were of particular interest.
- 2.8 A file reading tool was developed specifically to inspect the case records. The same tool was used to inspect the record held by the EM company, the offender/case manager (where there was one) and, where the cases had originated in a court, the relevant court files. The use of a single tool to inspect the separate aspects of the same cases allowed us to capture data from different parts of the process and compare them.
- 2.9 The tools and methodology were piloted in November 2007 in Norfolk with the help of all the inspected bodies. Fieldwork for the inspection was undertaken in January and February 2008.
- 2.10 We inspected a sample of 286 cases (excluding bailees) subject to curfews from EM contract regions. The curfews had all started in August and September 2007 and the cases displayed the following characteristics:
- ▶ three-quarters had an identified probation or YOS/YOT offender/case manager
 - ▶ one in five had been released under HDC
 - ▶ none had been released under parole licence
 - ▶ one in five cases were youths, the remainder being adults
 - ▶ 90% of cases were male
 - ▶ race and ethnicity details were recorded in all cases with an offender/case manager, with nearly 90% of the sample classified as White British
 - ▶ where recorded, the EM company records also indicated that 98% of those subject to curfew were White British; however, no details were available in 28% of cases overall.
- 2.11 The sample was therefore of both a sufficient minimum size and also representative of sentenced offenders subject to a curfew, to allow conclusions to be drawn about the quality of work undertaken with them nationally.
- 2.12 In addition to the file reading, we also gained the views of sentencers and legal advisors in the courts we inspected, and interviewed:
- ▶ senior officials within the National Offender Management Service (NOMS) agency and Ministry of Justice

- » the electronic monitoring team (EMT) in NOMS
- » staff from the EM companies
- » senior NOMS staff with responsibility for enforcement and in the Post-Release Section (PRS), now part of the Public Protection Casework Section
- » senior members of the Youth Justice Board (YJB)
- » practitioners from probation teams and YOSs/YOTs
- » relevant police and HM Courts' Service (HMCS) staff were also interviewed.

2.13 Nineteen offenders (17 adults and two youths) were interviewed by telephone.

Terminology

2.14 The management of offenders subject to EM curfews within the criminal justice system employs many terms not in common usage or with a specific meaning within the EM process. Where possible, this report uses the technically correct terms and seeks to explain them within the text.

2.15 But for the purposes of consistency, in this report we use the term **offender/case manager** to denote the member of probation or YOS/YOT staff responsible for the overall supervision and management of the individual being supervised.

2.16 Similarly, we use the term **court-sentenced curfews** to denote within one phrase all the various cases where the offender, whatever their age, is serving an EM curfew as all or part of a sentence directly ordered by a court. It is often useful to distinguish this group of cases from those who are curfewed as a requirement of their post-custody licence, the great majority of whom are on HDCs.

3. THE STRATEGIC FRAMEWORK FOR ELECTRONICALLY MONITORED CURFEWS

EM curfews – the technology

- 3.1 All EM curfews have certain similarities. The offender is '*tagged*' with a personal identification device (PID) and required to stay within the confines of an address for up to 12 hours a day for a specified length of time not exceeding six months. The PID is commonly worn on the ankle. A monitoring device (usually utilising mobile phone technology) is fitted in the home which registers the presence of the PID. If it goes out of range of the monitoring device, this fact is communicated to the EM company control centre, who then attempt to contact the offender and ask for an explanation. If the explanation is not considered acceptable, the offender is considered to have violated their order and could be returned to court and re-sentenced or, if subject to a HDC, sent back to prison.
- 3.2 Although the PID is robust and not easy to remove, it can be cut off and is designed to break at a certain strain for safety reasons. If, however, the PID is damaged in this or any other way, the monitoring centre is alerted and instigates an enquiry. Its forcible removal constitutes a serious violation leading straight to breach action.

The legislative background

- 3.3 EM curfews were introduced by the Criminal Justice Act 1991⁶, although not immediately brought into force. The use of the adult curfew order as a community penalty was first piloted in July 1995; the order was then consolidated in the Powers of the Criminal Courts (Sentencing) Act 2000⁷ and subsequently implemented across England and Wales.
- 3.4 HDCs began in January 1999 and evolved to allow suitable prisoners with short sentences to serve up to the last four and a half months of their custodial sentence in the community on an EM curfew. HDCs are authorised by the prison governor, and both the prisoner and their proposed release address have to be assessed as suitable by the probation area before they can be agreed.

The curfew as part of the offender management model

- 3.5 In April 2005 a new community order was created under the Criminal Justice Act 2003⁸ which enabled the EM curfew to be used either as a single requirement to the new sentence, or as one of a number of requirements, thereby replacing the previous adult curfew order.
- 3.6 The community order forms part of the offender management model implemented by NOMS and is based on the concept of an integrated seamless approach to work

with offenders. It makes it possible to consider the EM curfew as part of a broader sentencing package in which different requirements can be placed on the individual adult offender in accordance with their level of offending and Risk of Harm to others. Whilst the stand alone curfew requirement retains its role as a sentencing option for the purposes of punishment, when employed as part of a package of interventions the curfew can also be used to support work to help an offender establish a more stable lifestyle and desist from offending.

Legislation relating to children and young people

- 3.7 At the time of the inspection, the position for children and young people under the age of 18 was different from that for adults. The Powers of the Criminal Court (Sentencing) Act 2000 allowed a curfew order to be made, either as a stand alone order or in conjunction with other community penalties, on any child or young person above the age of ten who had been convicted of an offence which did not have a sentence fixed in law. The Criminal Justice and Court Services Act 2000⁹ also provided for curfew conditions to be attached to a community rehabilitation order and for EM to be used to ensure compliance with any requirement of a community order or licence.
- 3.8 In contrast to adults, these orders were not repealed by the Criminal Justice Act 2003 and curfews were still currently available for children and young people either as a stand alone curfew order, as part of a community penalty, as a requirement of an Intensive Supervision and Surveillance Programme (ISSP) or a condition of a detention and training order following release from custody.

The national context

- 3.9 Until 2004/2005 the majority of sentenced offenders subject to EM curfews were released under HDC. In 2004/2005, however, the proportion of offenders sentenced to a curfew at a court overtook HDCs. The majority of EM curfews on sentenced offenders are now imposed on adults at the magistrates' court, although the table below includes youth cases.

Table 1: Increase in court sentenced curfews and HDCs
Source: EMT NOMS

	Court	Post-release
2002/2003	11,342	23,844
2003/2004	18,296	23,515
2004/2005	25,702	21,285
2005/2006	30,727	20,669
2006/2007	38,583	16,294
2007/2008	49,760	15,339

- 3.10 Table 1 shows that following the peak of the use of EM curfews for post-custodial releases in 2002/2003, the number subsequently declined year on year. In

contrast, the use of court-ordered EM curfews has grown each year with the number of cases nearly doubling in the last four years.

- 3.11 By way of context, we note that four years ago the NAO could observe in its report on EM curfews⁵ that there was a strong financial business case for curfews because the cost of a curfew compared very favourably with that of custody – and at that time most EM curfews were for early release from prison. Now, the position is different. In broad terms the total sum spent directly on the contracts has remained in the region of £80 million. However, on the one hand, the cost-per-curfew has decreased substantially as a consequence of the changed contracts introduced in 2005, although the total number of curfews started each year has increased by over 50%. On the other hand it is hard to see that many of the current court-sentenced curfew cases would have been sentenced straight to prison without the EM curfew provision – it would now be a somewhat heroic assumption to argue that such cases are a direct saving compared with the costs of imprisonment. Such an argument with HDC cases carries much more weight, of course.

What can the courts and the public reasonably expect?

- 3.12 In all our work, we give careful consideration to what the courts and the public might reasonably expect in the supervision of offenders in the community. As was stated in our inspection report on Probation Approved Premises¹⁰, we do not believe that it is possible to eliminate all risk to the public when supervising an offender in the community, and we do not criticise public servants or others for failing to achieve the impossible. We do, however, consider that when a sentence is passed on an offender, both the courts and the public have a right to expect that the requirements of that sentence will be properly carried out.
- 3.13 In common with the requirement of unpaid work (for example), EM curfews have a clear and unambiguous purpose. In the case of unpaid work, a specific number of hours must be worked without reward. For an EM curfew, the offender has to remain at a specific address for a defined number of hours each day over a period not exceeding six months.
- 3.14 Although these parameters are clear, EM curfews have been subject to unrealistic public expectations. They do not, as is sometimes implied, provide '*custody in the community*' and they only apply to the time specified by either the court or (in the case of HDCs) the prison governor, perfectly properly leaving the offender at liberty to move freely outside the curfew period.
- 3.15 Even during the specified curfew period, they do not impose any form of physical constraint. The PID is not a tracking device and only enables the EM company to know whether the offender is at the curfew address. The offender is not therefore physically prevented from leaving their home during the curfew period, although they would be subject to sanctions if they did so. Similarly, it is physically possible for the offender forcibly to remove the PID from their ankle, although, again, not without consequences, i.e. the offender could be returned to prison or re-sentenced by the court.

- 3.16 If used effectively, however, the EM curfew can be more than just a punishment. It can provide an opportunity for offenders to break with former associates and re-establish relationships with their families. It can also support good intentions to give up offending and any associated behaviours, such as drug misuse and heavy drinking, and introduce a level of stability into chaotic lifestyles.
- 3.17 In common, therefore, with those living at Probation Approved Premises, offenders subject to EM curfews are *'not locked up, but subject to rules'*⁴¹. These rules, however, need to be set at a level which achieves the intended purpose, is sensibly enforced, and thereby maintains public confidence.

The sentencing purposes of EM curfews

- 3.18 Although the Criminal Justice Act 2003 makes reference to protecting the public, reducing and deterring crime, and reforming and rehabilitating the offender, the sentencing purpose most clearly addressed by the court when imposing an EM curfew is to punish the offender. This is achieved through the restriction of liberty by the requirement to remain in a defined place for the set period. How onerous the sentence will be is determined by the number of hours for which the curfew is imposed, the length of time for which the curfew applies and the circumstances of the individual offender. For some people, being confined to their home every evening for a limited period would be a minor inconvenience; for others, it would be a major imposition. In accordance with the offender management model, for public protection purposes an EM curfew also offers the possibility of a degree of control, in as much as the offender is aware that any absences from the home will be known to the authorities. As already discussed, the offender is physically able to violate the curfew, but breaking the rules will have consequences.
- 3.19 The purpose of an HDC, as given in the prison guidance¹², is to manage the transition from custody back into the community more effectively. Here, the EM curfew can play a similar role in relation to a community order by supplementing relevant conditions in the licence. All HDC cases, where the original sentence was more than 12 months custody, are under the supervision of an offender/case manager. Cases where the original sentence was less than 12 months are not subject to any such form of oversight and here the purpose of the curfew could be compared with that of the stand alone requirement in community orders where its main intent is to impose some continuing restriction on liberty.

EM provision – the contract and protocols

- 3.20 EM is currently commissioned by the Ministry of Justice from two companies, now *G4S and Serco*, who operate across five regions covering England and Wales. Three of the regions are managed by *G4S* and two by *Serco*. The current contract was first negotiated in 2004 and implemented on 1 April 2005; further changes were then made in October 2005. It is overseen by the EMT in NOMS. The details of the contract, which are commercially sensitive and not in the public domain, are contained in 25 documents totalling 291 pages.

- 3.21 The April 2005 contract introduced a number of changes to EM, although those relating to enforcement were swiftly amended (see paragraphs 3.27 - 3.31). It also established 17 reportable service levels which are monitored by the EMT and, if not met, can result in the EM company incurring a financial penalty. These service levels cover issues such as computer failure, equipment installation and the attendance of the suppliers' staff at court.
- 3.22 National information protocols for the delivery of EM were then agreed between the various parties to set out clear expectations of the different agencies involved and published as appendices to Probation Circular 23/2005 *New Electronic Monitoring Contracts* in March 2005¹³. There were two protocols – one for community orders with EM requirements¹⁴ and one for HDCs (including prisoners released on licence)¹⁵.
- 3.23 The protocols (totalling 148 pages) described the various processes that must be undertaken by each of the parties concerned, including courts, police and probation. They contained helpful flow charts to enable each and all of the parties to be clear about what was expected of each of them.
- 3.24 Despite their length, the protocols also contained a number of inaccuracies and omissions, particularly in relation to the issue of youths, which may have been due to the new EM contracts, HMCS and the Criminal Justice Act 2003 all being implemented in April 2005. The protocol relating to community orders clearly stated that it did not cover arrangements for the electronic monitoring of individuals sentenced under previous legislation, which would include all children and young people, but then continued to maintain that an offender aged 16 or over may be sentenced to a community order. This was incorrect and whilst it may be seen as a relatively minor error, it raised doubts about the status of the protocols in relation to youths.
- 3.25 Similarly, the protocol for community orders did not emphasise the importance of timely communication between the courts and the EM companies at the start of sentence. This was significant because the suppliers were only held to account under their contract for a prompt 'by second night' installation if the notification was received before 1500 hours.
- 3.26 The YJB did not update the protocols¹⁶ that they had previously published, in September 2004, to explain the effect of the new contract on practice, although it did produce an enforcement flow chart in 2006, which it published through a series of roadshows held in conjunction with the EM companies. Whilst this document reflected the more recent changes, it contained inaccurate information about the thresholds for enforcement, describing a less serious violation as any absence *up to* two hours, rather than one or more absences *amounting to* a period of two hours or more.

Amendments to the contract and protocol

- 3.27 But in October and November 2005 respectively, shortly after their publication, both the contract and the protocols were amended. The key changes for offender

management practice relate to the enforcement of curfews and the revised version of the contract and its protocols describe the thresholds for:

- ▶▶ **a less serious violation** as “*one or more curfew violations whose total length amounts to a period of two hours [or more]*”. Any unacceptable absences from the curfew address, even for relatively short periods of time, for example less than five minutes duration, are therefore recorded and accumulated to give an overall total across the entire curfew period
- ▶▶ **a more serious violation** as either a) a second less serious violation; b) an absence for a whole curfew period; c) damage to the monitoring equipment or d) threats to staff.

Two less serious violations or a single more serious violation lead to breach action.

- 3.28 The definition of a more serious violation as the entire curfew period marked a return to the thresholds which operated from 1999 to March 2005. The contract changes in March 2005 had introduced the concept of a four-hour threshold for a more serious violation but were amended shortly afterwards because of concerns about a projected rise in the number of requests for HDC recall. A decision was therefore taken to revert to the previous threshold of the whole curfew period.
- 3.29 Even allowing for the fact that the majority of offenders subject to EM curfews were considered only to pose a low Risk of Harm to the public, the existence of the thresholds, in our view, created a gap between the perception and the reality of stringency of punishment provided by EM. This approach differed markedly from that generally adopted by NOMS of continually tightening the enforcement of other forms of community supervision of offenders.
- 3.30 The November 2005 version of the protocol was not widely distributed and is still not available on the relevant probation website, although the original version has not been removed. NOMS did, however, issue a brief guide and document addressing ‘*frequently asked questions*’ covering enforcement in 2006 to practitioners, which is available on the website.
- 3.31 In our judgement, the failure to publicise the later revisions to the contract and the protocol contributed to the confusion in the enforcement process that we found during this inspection.

Conclusion

- 3.32 Despite the best efforts of the two EM companies to communicate the curfew requirements, the failure to publicise the changes to the protocol meant that not only were offenders unclear about the rules which applied to them but, perhaps more significantly, so were the offender/case managers who were responsible for enforcing those rules, and the court staff who set the orders up. The process thus lacked clarity and, consequently, was flawed.

- 3.33 Although recent legislation placed the curfew requirement within the offender management model, the way in which the requirement was implemented and managed set it apart from other interventions in working with offenders. The re-establishment of the whole curfew period as the more serious violation maintained what we consider to be an insufficiently stringent process. This left a gap between the way in which curfews were enforced compared with other community orders, and it also left a gap between the level of enforcement practice that the courts and public might reasonably expect and that practice in reality.

4. GETTING ORDERS STARTED

Preparation for sentence

Assessment of the offender's home and family circumstances

- 4.1 The Powers of the Criminal Courts (Sentencing) Act 2000⁷ place an obligation on the court to ensure that the proposed curfew address is suitable for EM prior to passing sentence. To this end, courts can ask for an assessment by the probation area or YOS/YOT prior to the imposition of an EM curfew. These assessments are based on Offender Assessment System (OASys) for adults and Asset for youths. According to the information protocol for community orders¹⁴: *"The pre-sentence report (PSR) may include recommendations for a curfew period. This advice will be based on the risk that the subject may reoffend in these periods and will take into account the rehabilitation needs and other requirements that may be imposed on the subject"*.
- 4.2 We found that 90% of court imposed curfews followed the preparation of a PSR, either a standard delivery report (SDR) usually delivered in 15 working days, or a fast delivery report (FDR) prepared on the day of the request. However, a balance had to be struck between the promptness of an assessment and its quality, and when the report was a FDR there was not always the opportunity to check out the offender's address or home circumstances and gain the consent of other residents where appropriate.
- 4.3 Home visits were undertaken at the assessment stage in 28% of community orders and half of HDC and youth cases. Many of the probation and YOS/YOT staff interviewed said that they could not always make as thorough an assessment as they would wish. Particular concerns included the inability to make contact with children's services departments and domestic violence units, so it was not possible to verify if vulnerable children were known to live at the given address, or if there had been incidents of domestic violence that had not resulted in a conviction.
- 4.4 Some areas had designed their own checklists to ensure that relevant issues were considered. These varied in quality and were not always used.
- 4.5 About a third of all curfews imposed by the court had not been recommended by the PSR author. These were usually cases where the curfew requirement was added to a range of other interventions, presumably for the purposes of further punishing the offender through the restriction of liberty. There were, however, several instances where the curfew was made, although the PSR had specifically argued against its imposition, usually on the grounds that the offender would either be placed at risk or put others at risk.
- 4.6 In 16% of community cases the offender changed address during the curfew period. Although the offender was required to inform their offender/case manager

if they varied their address, they had to apply directly to the court to do so. Whilst this was generally for a legitimate reason, there was no evidence, from the cases inspected, of the court contacting the offender/case manager (where there was one) to confirm the new address or taking steps to ensure that an assessment had been made of its suitability. In two of the cases inspected this breakdown in communication led to the offender being monitored at an unsuitable address without the consent of the householder. Both these cases involved domestic violence where the new address was the home of the offender's previous victim; the orders should not have been varied in our opinion without, at the very least, some form of risk assessment being undertaken.

- 4.7 The sample also included several cases where EM curfews were made on youth cases where the child was in local authority accommodation. These cases sometimes proved difficult to manage and required frequent communication between the residential staff and the EM companies as the young person often needed to be moved from room to room for operational purposes and could otherwise be considered to be in violation of their order.

Profile of cases with a curfew requirement

- 4.8 In three-quarters of the community orders cases with an offender/case manager, which had been made in the magistrates' courts, the purpose of sentencing had been clearly recorded and, in the majority of instances, related to punishment. Rehabilitation was also often cited.
- 4.9 Generally, EM curfews were imposed for a wide range of offences, as shown by the cases across the whole sample:
- ▶▶ 33% had been convicted of offences of violence against the person
 - ▶▶ 11% motoring offences
 - ▶▶ 11% burglary
 - ▶▶ 8% theft
 - ▶▶ 7% robbery
 - ▶▶ 6% criminal damage,
 - ▶▶ 23% fell into the category of 'other offences' including failing to send a child to school.
- 4.10 We did, however, find a small number of cases where a curfew requirement was being used creatively to address a specific pattern of offending.

Practice example of curfews being used to address specific patterns of offending

In some areas, EM curfews were used to tackle alcohol-related weekend antisocial behaviour; curfews were tailored to prevent offenders leaving home at times when they had previously committed offences.

- 4.11 EM curfews were also sometimes made following enforcement proceedings in other community penalties. Curfews were rightly recognised, and used, as an appropriate way to enable completion of the existing order while imposing a tangible additional punishment for the breach. We also found a small number of examples showing how they could be deployed productively to promote compliance with other current supervision requirements.

Practice example of a curfew being used to support another community requirement

An offender/case manager proposed a weekend only curfew in a case where an offender had breached a Sunday unpaid work requirement as he stayed out all night and could not get up in the morning.

- 4.12 Most of the cases examined, where there had been a clear assessment using OASys or Asset, were on offenders presenting a low or medium Risk of Harm to others:
- ▶▶ 49% were assessed as presenting a low Risk of Harm
 - ▶▶ 46% were assessed as a medium Risk of Harm
 - ▶▶ 5% were assessed as a high or very high Risk of Harm.
- 4.13 For curfews imposed without a PSR, no formal assessment of Risk of Harm had been undertaken. For cases without an offender/case manager, this information was not recorded.
- 4.14 The average length of a community-based EM curfew in the inspection sample was three months; 12% were less than one month long.

HDCs

- 4.15 The processes to assess suitability for release on HDC were more robust than in community cases, perhaps because it was possible to predict and plan for the potential start of the curfew (the date of release) well in advance. In nearly all instances, the request for an assessment was made significantly in advance of the proposed release date and many probation areas had allocated staff to this task who understood the importance of the process and adhered to the timescales set. Although home visits were not routinely carried out, checks were made with the police and children's services. Telephone contact with other residents at the proposed curfew address was considered essential.

Communication at the start of the sentence

- 4.16 Many of the points to emerge from this inspection were consistent with those previously identified in our joint inspection report *Getting Orders Started*³, on assessing the arrangements for starting community orders.

Installation of EM equipment

- 4.17 The protocol¹⁴ states that the EM equipment should be fitted by midnight on the first day of operation of the requirement; if the offender is absent at the first installation attempt, another must be made within 24 hours of the start of the first monitoring period and, if unsuccessful, must be reported as a breach of the order.
- 4.18 The contract sets out a service level requiring the EM companies to install the equipment by midnight on the second night of operation of the curfew in 99% of cases where notification was received by 1500 hours on the first day. As this is a contractual issue, it is not spelled out in the protocol. It was therefore hardly surprising to find that the importance of sending the EM information form to the supplier before 1500 hours was not widely understood by all relevant court staff. Although representatives of the EM companies had visited courthouses to emphasise the importance of early notification of the order, it appeared that in many cases this had not been properly communicated to administrative court staff.
- 4.19 We read the files held at the offices of the EM companies. We found that of the relevant 220 court-sentenced cases, in 119 instances the EM company had been notified by 1500 hours on the day of sentence. Some late notifications by courts were to be expected (though not as many as we identified here) because courts often finish late in the day – we also found examples of ‘next day notifications’ and of late changes or clarifications of address.
- 4.20 Of the 119 cases, seven were never started (most going to breach proceedings), including one where we were unable to identify the start date of the curfew requirement. Analysing the remaining 112 cases, all of which had been notified ‘on time’ (and excluding those where the curfew did not start on date of sentence):
- ▶▶ 65 (58%) were fitted on the same day (first night of curfew)
 - ▶▶ 37 (33%) were fitted by midnight on the next day
 - ▶▶ 4 (4%) were fitted two days after the start date
 - ▶▶ 1 (1%) was fitted three days after the start date
 - ▶▶ 5 (4%) were fitted four days or more after the start date.
- 4.21 Hence we found that 91% of our sample was installed within the prescribed timescale (by midnight on the second night of curfew).
- 4.22 A significant proportion of cases – about a third – were not monitored on the first night of sentence, mainly because the notifications were received by the contractors late in the day. We found that only in one of the five regions we visited (London) was the contractor particularly successful at installing the equipment on the day of sentence itself (despite the late notice cases); the pattern of ‘second night’ installations was fairly evenly spread over the other four regions. Geography and logistics may have helped to bring about this achievement in London.
- 4.23 Where the EM curfew was part of a HDC, the curfew usually started at 1500 hours on the first day and 1900 hours thereafter. In contrast with the court-sentenced

cases, in all but two of HDC cases induction was completed on the first night of the curfew; the two outstanding cases were inducted the next night. In our judgement, it was again likely that the opportunity to plan ahead with HDC cases enabled all involved to manage such cases more efficiently.

- 4.24 There were no significant differences in starting the curfew between adults and youth cases or between offender/case managed cases and single requirements. Where the subject was a youth, the EM company had to deploy two members of staff to complete the induction, one of whom must be a female. Examination of the individual cases evidenced that this condition was complied with in less than two-thirds, although we were informed that this was essentially a recording issue; details of both members of staff involved were contained in other files held by the EM companies. We would suggest that this matter is rectified and that in future the case files show the names of both individuals concerned.

Communication between the courts and EM companies

- 4.25 The main method of communication between the court and the EM company was a three page form produced by HMCS in 2005. This form was being revised at the time of the inspection. It had been designed to be used with other supporting documentation and to accompany the court order. Guidance on the completion of the form had been produced, but did not appear to have been widely circulated and was not referred to in any of the courts visited. Use of the form was not mandatory, nor was its implementation monitored. It was found in only in a third of the cases inspected and, even when used, all three pages were rarely completed. This was regrettable as the third page of the form addressed relevant issues such as preferred language and the need for an interpreter, as well as allowing for comments on the individual's Risk of Harm status. A copy of the community order (or other order in the case of youths) was forwarded to the EM company in just under a third of all cases examined. None of the courts visited had transmitted information on the cases included in the inspection sample by using email.
- 4.26 Although the form made reference to the supervising agency, it did not require the court to identify the responsible agency/officer for the curfew. We found that even though we had the benefit of physically visiting the EM company offices, the probation or YOS/YOT offices and the sentencing court, it was not always possible to identify definitively whether a case had or ought to have had, an offender/case manager. There were several cases that were treated as if there was no offender/case manager when in fact, there had been one. The converse was also true, with the EM company believing there was an offender/case manager when, in fact, there was not. Although these issues did not have major implications for the start of the order, they caused problems if enforcement action needed to be taken later on.
- 4.27 Court staff had received little or no training on the information form, leading to confusion and inconsistency in its completion. Many courts continued to use outdated forms, whilst some had devised their own versions. A number of these had been developed in liaison with the EM companies and provided for the delivery of vastly improved information, such as the details of the offence and full

sentence. However, none of the forms seen conveyed all the details necessary for the EM companies to implement the end-to-end curfew process safely and effectively. In most cases the form was completed by hand; the address was both legibly written and inclusive of a postcode in only two-thirds of the cases inspected.

Communication between the EM companies and the court

- 4.28 The information protocol¹⁴ required the EM companies to acknowledge receipt of the faxed information form and both used an automated system. No record was kept of the transaction, however, and as the response did not contain any details from the original fax, it was impossible to reconcile with the court records.
- 4.29 Direct contact between the EM company and the court at the start of the order was relatively frequent, but generally only occurred to check out factual information or where there was a query about the legality of the order, for example the court asking for a 12 month curfew requirement.

Communication of Risk of Harm to others

- 4.30 The information protocol stated that if “the court has been informed by the probation service that it has concerns that the subject or some other person living at the EM address has a history of violence it will inform the supplier of any potential risks”. Whilst we would expect such issues to arise in only a small proportion of cases, we found that such communications were even less frequent than we expected.
- 4.31 Although court staff could use the information form to communicate information about the individual offender in terms of their risk status or level of vulnerability, it was rarely fully completed. We found very few examples of additional material being received by the EM company in relation to Risk of Harm issues. As a result, it was difficult for them to make a reasonable assessment of any risks to their staff that might be posed by the offender at the installation visit.
- 4.32 Evidence from a number of sources suggested that there was information about individual cases that could usefully have been passed on to the EM companies but generally this was not done. Examples of useful relevant information included details of the offence type, aggravating factors such as racist behaviour and offences against women, and any concerns about the offender’s mental health.

Practice example of the failure to communicate information on Risk of harm to others

Court papers identified an offender convicted of possession of a knife as suffering from depression and paranoia. A community order with one requirement for an EM curfew was made. No information on risk was made available to the EM company.

- 4.33 Although required by the information protocol, we found only a very few examples of the offender/case manager contacting the EM company at the start of the

curfew requirement. Some of the areas visited had agreed detailed information exchange protocols with the EM companies covering the circumstances when contact would be made. Unfortunately many staff were unaware of their existence.

- 4.34 In the absence of specific information from courts about the individual offender, the EM companies made a more general assessment of the risk posed to their staff on the geographical information available. Issues considered included the quality of street lighting and ease of access to the property. Evidence about certain postcodes, known or assumed, to indicate areas where staff might be at higher risk, was also taken into account. Whilst this approach provided the EM companies with much valuable information about the potential environmental risks facing their staff when visiting offenders' homes, the failure on the part of a number of courts and some offender/case managers to communicate information about level of risk posed by the individual offender could not be considered acceptable.
- 4.35 We did, however, find some examples of offender/case managers passing on useful information to EM company staff.

Practice example of good communication between an offender/case manager and the EM company

An offender manager became aware of an increasing Risk of Harm to others presented by an offender with deteriorating mental health. Appropriate action was taken to manage the risk, and the EM company was advised that two members of staff should undertake any visits and be aware of the nature of the risk.

Communication with offenders

- 4.36 The courts visited reported that in all cases a pronouncement of the requirements of the sentence was made by the sentencer.
- 4.37 We found no standard procedures for the court administrative team to inform the offender of the detail of the curfew, and arrangements varied from court to court. Although offenders were required to sign the information form so that they could be identified as the correct person by the EM staff fitting the PID, only 68% of information forms seen during the course of the inspection contained a signature. Indeed, a revised version used by some courts and generated by the *Libra* system did not require the offender to sign.
- 4.38 Good quality information leaflets for offenders from both EM companies were found in a few of the courts visited, but did not appear to be universally available.
- 4.39 Of the 15 offenders interviewed during the course of the inspection who were subject to a community disposal, only eight (53%) said that the court had made any attempt to explain to them why they were being made subject to an EM curfew. All remembered being given written information about the curfew and said that they understood what would happen to them if they breached the order. Offenders were not aware of the 'real' thresholds that would trigger breach action.

We learned that it was a matter of policy that offenders should not know these as it was believed that they might exploit the additional latitude provided by them.

Court orders

- 4.40 Information contained on the court orders, given to probation and the YOS/YOT, was incomplete or misleading in a significant number of cases.
- 4.41 The only documentation the court was required to pass to the probation area or YOS/YOT in connection with the curfew was a copy of the court order. Arrangements for forwarding these documents varied from court to court. They were most usually made available by being placed in a 'probation tray' within the court. In most instances probation or YOS/YOT staff were said to be present in court at the time of sentence and sentencing outcomes were relayed to the relevant staff through internal communication.
- 4.42 We found copies of the original order on the probation file in the majority of cases. However, probation areas were less likely to receive an amended order where the curfew had been added to an existing order following enforcement action. Close inspection of orders retained on probation and court files indicated that insufficient care had been taken to ensure that the sentence passed by the court had been accurately recorded in a significant number of cases and we found few quality assurance systems for curfew administration. There were many examples of curfew orders being made on adults (not available since the implementation of the Criminal Justice Act 2003) and curfew requirements on youths (not implemented in the Criminal Justice Act 2003). A common error was the contradictory statements about the intended length of the curfew period.
- 4.43 Court staff often failed to take out unnecessary wording from the sentence order template, such as the general obligations placed on offenders to keep in contact with the probation area which left it unclear whether the offender was to be subject to supervision by the probation area or not. In certain cases, the templates used by courts to generate paper copies of orders contained information clearly not pertinent to the offender in question. These deficiencies were potentially confusing to the offender and those responsible for their supervision. There was also the potential for difficulties should the need for enforcement arise.
- 4.44 We found other inconsistencies in the format of orders, both within and between areas, which had the potential to cause misunderstanding. Documentation produced under the new court system *Libra* was often not properly completed, particularly with reference to supervision by the probation area. Some templates contained a separate 'tick box' to indicate that the curfew requirement was to be EM. This tick box was not located immediately below the curfew requirement or necessarily on the same page and so was easily overlooked. We found a number of instances where it had not been ticked, although an EM curfew appeared to have been imposed.

Communication between the court, police and EM company

- 4.45 The information protocol required the courts to send a copy of the order and information form to the police, but it would appear from the cases scrutinised in the inspection that this rarely happened. All courts had systems in place for the police to view court results to enable them to update the Police National Computer (PNC). The fact that the order was recorded on the PNC did not mean that this information was readily available in local police station operation rooms for intelligence purposes.
- 4.46 Both suppliers issued a new subjects report on every offender to the police each week as required. The purpose of the list was for the police in each area to identify if the subjects were Multi-Agency Public Protection Arrangements (MAPPA) or Prolific and other Priority Offender (PPO) cases. One supplier passed this information in the form an *Excel* spreadsheet for each police force area which enabled them to identify easily the offenders residing in its area. The other EM company used a *Word* document which was thought by recipients and inspectors alike to be unhelpful. The practice of sending information on all cases to all forces is unnecessary. Each police force should normally only receive information on offenders residing in its area.
- 4.47 Only one of the police areas inspected routinely returned information on the MAPPA and PPO status of offenders to the EM company. Most police areas had not fully understood the purpose of the information request from the EM companies and had not responded to them about the status of offenders in its areas.
- 4.48 As a result of the poor information from courts on the MAPPA and PPO status of offenders, and the lack of clarity concerning the requests to the police for information, there was a considerable discrepancy between the data held by the EM companies and the offender/case managers. Although 30 cases appeared to be either PPO or MAPPA cases from information held on the probation and YOS/YOT files, only six such cases could be identified on the EM company records.

Conclusion

- 4.49 It was possible to see the potential benefits that EM curfews could make to the supervision of offenders, particularly when used creatively to address particular patterns of offending, or as a sentence for breach of another form of community supervision. However, the effectiveness of the curfew, whether as a community order requirement under the offender management model or in working with children and young people, was often undermined by poor communication at the start of sentence between the respective agencies and the EM company. This created later difficulties in enforcing the curfew.

5. CONTRIBUTION TO OFFENDER MANAGEMENT

Introduction

- 5.1 This section relates solely to those cases where there was an offender/case manager. Where an EM curfew is the sole requirement of a community order, a stand alone curfew order for a youth or an HDC following a sentence of less than 12 months imprisonment, there is no expectation that the offender will be worked with constructively to address their offending behaviour. But in the remaining cases, the ones covered in this section, there is such an expectation.

Curfews and offender management – some unrealised potential

- 5.2 In light of the changes brought about by the Criminal Justice Act 2003⁸, we had hoped to find the curfew being used alongside other requirements to create an integrated package of interventions, as envisaged by the offender management model. We believe that such an approach has considerable potential and, if properly incorporated into the supervision process, can help offenders break long-established patterns of behaviour, desist from offending and lead more stable lives. We were therefore looking for cases where either the offender/case manager was using a curfew as a useful control measure with a high Risk of Harm offender, or/and was using it as a stabilising measure to help an offender to change and learn new behaviours (as well as administering it for its punishment purpose).
- 5.3 Under the offender management model, the curfew should be included as an integral part of the sentence plan drawn up by the offender/case manager, in discussion with the offender. The sentence plan must contain clear objectives and include all the requirements specified in the order. It should be reviewed on the completion of each requirement.
- 5.4 It was therefore disappointing to find that in almost all of the cases inspected, offender/case managers tended to view the curfew as a separate punishment outside their jurisdiction. There were probably a number of contributory factors for this attitude: it may have been a historical consequence of the earlier legislation, where curfew orders were indeed separate; it could also have been a reflection of many offender/case managers' lack of confidence in the complex enforcement arrangements; or it could be that the involvement of the EM companies somehow put curfews in a separate box in the minds of many offender/case managers, absolving them of any ownership of responsibility for the management of curfews.
- 5.5 We found that:
- ▶ only 25% of cases had incorporated the curfew into a supervision plan
 - ▶ there were few examples of the curfew being used to support rehabilitative objectives

- ▶ in most cases there was minimal or no contact between the EM company and the offender/case manager
- ▶ the sentence plan was rarely reviewed on completion of the curfew.

Practice example of an offender/case manager's passive approach to supervising a curfew

"I leave the curfew business to the contractor; they will let me know if I need to do anything".

Offender/case manager

Liaison between the EM companies and offender/case managers – missed opportunities

- 5.6 Unless a case was identified as a PPO or subject to MAPPA, there was no expectation that the offender/case manager would be informed of violations until they reached the threshold for enforcement. This was in accordance with the contract and protocol and had been agreed to keep the flow of information between the EM companies, probation areas and YOSs/YOTs to a manageable level. As expected, we found many examples of minor violations being followed up by the EM company but, as they did not reach the threshold for breach action, no information was sent to the offender/case manager.
- 5.7 In certain specific cases, such information would have been useful; it would have enabled the offender/case manager to challenge the offender about the minor violations, warn them that they were approaching a point where enforcement would be necessary or assist them to change their behaviour.
- 5.8 The EM companies were, however, willing to supply such information to the offender/case manager in individual cases on request and we found a small number of examples of good practice which demonstrated how it could be used to good effect.

Practice example of good integrated work

A YOT offender/case manager asked for, and received a full report each Monday morning and used the results to praise the young person for complying and reinforce good behaviour. Any violations were also identified, swiftly ensuring issues were dealt with before there were serious consequences.

- 5.9 Both the EM companies had made considerable efforts to improve communication with offender/case managers which was said to have achieved some success, particularly with the YOTs/YOSs. One had employed staff in every area to act as customer liaison officers whose sole purpose was to focus on compliance issues. Other staff, known as interagency officers, were responsible for liaison with all agencies across the criminal justice system. Where these staff were in post, offender/case managers reported relations between themselves and the EM companies had improved. The other company provided monthly reports to the

heads of agencies in each area, visited individual teams and provided training as required. All these measures were commendable and needed to be sustained to impact more fully on offender/case managers' practice.

Conclusion

- 5.10 It was apparent that the EM curfew could make a significant contribution to offender management in many cases. It was therefore disappointing to find that its potential was not being fully realised and exploited by probation and YOS/YOT staff.

6. ENFORCEMENT OF THE SENTENCE

The role of the responsible officer

- 6.1 Each EM curfew has a 'responsible officer' for enforcement. If the curfew is part of a community order or penalty with other requirements, or in the case of a youth, made on a day when other orders were also made, an offender/case manager from probation or the YOS/YOT is the responsible officer. If the curfew is a single requirement of a community order, or for a youth, a curfew order with no other order being made, the EM company is responsible for all enforcement actions.
- 6.2 In the case of HDCs, there is an offender/case manager only where the original sentence of imprisonment is over 12 months. In these cases, an offender/case manager is responsible for all aspects of the offender's supervision except the EM curfew which is enforced by the PRS on the basis of information received from the EM company, often without reference to the offender/case manager. Such an arrangement is not consistent with the offender management model promoted by NOMS, where the offender/case manager is otherwise always the officer responsible for taking breach action when it is needed.

The enforcement process

- 6.3 Regardless of which agency acted as the responsible officer for enforcement, the EM company is required to investigate the circumstances of any apparent violation of the curfew. This is initially done by the company's monitoring centre staff. If the offender is not recorded as being at the correct address by the PID at the start of the curfew, or went out during the curfew, attempts are made to contact them by telephone on their return.
- 6.4 On establishing contact with the offender, the monitoring centre staff will ask them to explain the apparent violation and will, if necessary, investigate the reason given. Examples of acceptable reasons for absence include being held by the police, being detained in hospital or accompanying a dependant person to hospital. If there is not an acceptable reason for absence, the offender will be informed that they are in violation of the curfew and that the absence has been logged.
- 6.5 The length of any absence is recorded by the EM company and added to all previous absences to give a total accumulated time in violation. Enforcement action is required when violations meet certain *thresholds*. When single or cumulative absences exceed two hours, but do not amount to the whole curfew period, the threshold for a less serious violation has been reached and a final warning is then issued.

- 6.6 In fairness to the EM companies, it appeared that they usually took the action they were required to take in response to each absence by the curfewed offender, normally as above in the form of a telephone call to the individual on their return. But although they could tell the offender that the absence had been logged, the policy was that they could not in practice advise the offender when they were about to cross the *threshold* where breach action would be taken or a formal warning issued.
- 6.7 This approach contrasted with the arrangement for enforcing other court-sentenced community requirements, where national standards prescribe that the offender receives a formal warning on the occasion of the first 'unacceptable failure' to attend, and that breach action is to be taken on the occasion of the second unacceptable failure. In such cases the communication to the offender is in principle crystal clear after the first unacceptable failure that 'the next unacceptable failure will mean breach action'. With curfew cases the offender is left much less clear where they stand in relation to potential breach action; we saw examples of cases where the offender had several short absences with (correctly, according to the rules) no formal action taken in response until perhaps a sixth or seventh short absence triggered action as the accumulated two-hour threshold was crossed.
- 6.8 With cases where there was an offender/case manager, the EM company was not required to notify the officer of any violations unless the offender was a PPO or subject to MAPPA – this meant that in most cases the offender/case manager did not know in many instances that their cases were starting to accumulate a number of minor absences. This was not good 'joined-up' offender/case management.
- 6.9 When either a formal warning or breach action was required, it became essential for the EM company to know the details of the offender management arrangements. It was at this point that the problems caused by any earlier failure by the court to communicate effectively with the EM company, as identified earlier in this report, manifested themselves.
- 6.10 The lack of clear information about the responsible officer inevitably undermined the integrity of the enforcement process and led to delays in issuing warning letters and instigating breach proceedings. We found a number of cases where breach proceedings were started by the EM company, but had to be withdrawn when it was found that the case was the responsibility of either the probation area or YOS/YOT.

Practice example of the consequences of poor communication between the court and the EM company

The EM company had contacted the court to confirm whether a curfew order was stand alone or part of a supervision order. It was informed on 07/08/07 that the order was stand alone. When a serious violation occurred on 24/08/07 breach proceedings were instigated by the EM company. These then had to be withdrawn on 15/10/07 as it transpired that the original information from the court had been incorrect – the responsible officer was the YOT offender/case manager.

Information exchange

- 6.11 Where there was a probation or YOS/YOT offender/case manager, that officer was dependent on the EM company for information about breach of the curfew. With a few exceptions, the offender/case manager usually did not know of developing problems of non-compliance – in most instances they only knew once the relevant threshold had been crossed. Sometimes this news only arrived after a short delay, as the EM company acted only once the violation to trigger breach action had been confirmed, a process which could take up to five days – but then the company was required to communicate within 24 hours.
- 6.12 The formats used to convey detailed information about enforcement to the offender/case manager varied between the two companies. It was generally provided in two parts: a cover sheet was used to indicate to the offender/case manager the suggested action, with a second sheet containing more detailed account of the violation. The cover sheet also clearly asked the offender/case manager to inform the EM company of any action taken.
- 6.13 The notification from *Serco* simply stated the action required. It generally provided a 'violations details' pack that contained a partial printout of the full record and had to be read from the bottom of the last page to the top of the first, rather than in the normal way. Although this pack could be understood with training and practice, in reality most offender/case managers found it difficult to interpret the relevant information correctly. There was no simple summary of when the thresholds had been reached. Most offender/case managers dealt with the enforcement of a curfew requirement relatively infrequently and said that they found these detailed breach reports confusing.
- 6.14 The other company, *G4S*, usually provided offender/case managers with a clear accumulated time violation sheet where there had been multiple minor violations, but there were examples where this was not done. In some cases, they provided a '*curfew activity report*' instead of the usual summary; this was not user friendly and, again, not easily understood.
- 6.15 The following is a typical example of information received by an offender/case manager advising a less serious violation had occurred and that a warning letter was required. Unfortunately, in this example, it was not made clear that the less serious violation threshold was reached on 16 January 2008 rather than on 19 January 2008.

Practice example of a record of violations	
Date of violation	Violation length
02/11/2007	0.05.53
03/11/2007	0.33.44
10/11/2007	0.06.23
29/11/2007	0.14.48
10/12/2007	0.07.10
14/12/2007	0.05.54
31/12/2007	0.05.46
06/01/2008	0.09.59
11/01/2008	0.05.56
14/01/2008	0.08.22
15/01/2008	0.03.53
16/01/2008	0.12.53
19/01/2008	1.02.57
Time violation total	3.03.38

- 6.16 The complexity of the process is demonstrated by the case example given below which suggested that staff within the EM companies themselves do not always understand the thresholds for enforcement. Not only was the less serious violation reached by the first absence, but the second violation also met the threshold, therefore itself becoming a more serious violation requiring court action. Each of the third and fourth violations were less serious violations individually, but as there had already been two less serious violations, they should have been treated as more serious violations. The impression given is that of another offender who is, at best, testing out the limits of their curfew or, at worst, totally disregarding the restrictions placed upon them.

Practice example of information received by an offender/case manager advising, erroneously, that a less serious violation had occurred and a warning letter was required.	
28/2007	19.00-21.34
01/2008	23.47-07.00
02/2008	00.19-07.00
03/2008	23.26-07.00

Response by offender/case managers

- 6.17 Regardless of the supplier, offender/case managers often found the information on enforcement confusing and did not understand the enforcement process. We found that they were generally unaware of the current thresholds for enforcement, partly owing to the lack of clarity about the revised protocols. Furthermore, as already described, the details of any violation were often complex and the summaries provided were sometimes unclear.

- 6.18 Overall, the majority of offender/case managers did not work in partnership with the EM companies either in promoting compliance or in enforcing the orders – only rarely did we find ‘joined-up’ offender management in practice. Similarly, we found that it was often not possible to reconcile the records of outcomes of enforcement activity held by the EM company and the offender/case manager. This was frequently a consequence of the offender/case manager failing to inform the EM company of their decision to take no action, issue a warning or start breach proceedings.
- 6.19 In October 2007 action was taken by the EM companies, in conjunction with the EMT in NOMS, to improve the flow of information from offender/case managers where they were taking no action in response to receiving breach information. Senior managers in probation were sent lists of cases where the EM company was waiting for information from the offender/case manager. At the time of the inspection there was some evidence that these actions had begun to have an impact.

Enforcement action where there was an offender/case manager

- 6.20 We found it difficult to confirm a precise figure for the number of court-sentenced cases under the supervision of an offender/case manager who breached their curfew during the course of the order, due to the differences in the recording in the files held by the EM companies, the probation teams and YOSs/YOTs, and the courts. But it was clear to us that at least a third of these cases reached the point of requiring action for breach of the curfew requirement. This rate of requiring breach action was comparable to those we had found with other community requirements in the course of our Offender Management Inspection programme.
- 6.21 We were surprised that the rate was this high, given that the curfew requirement was relatively short, in no cases exceeding six months. Our scrutiny of case files showed, moreover, that some offender/case managers were slow to enforce curfew requirements, not always for good reasons, and unlike with other forms of community supervision, they infrequently worked to promote the offender’s compliance with the curfew. However, it should also be noted that there are many other reasons why a case requiring breach might not formally be breached in practice, most notably when the offender is convicted of a fresh offence. We found that a quarter (21/88) of the relevant sub-sample had been convicted for breach by the time their order ended.
- 6.22 As is often the case, the offender management records revealed the complexity of the lives of many of those under supervision. There were a number of cases where the EM company records indicated that there had been a serious violation requiring enforcement action, although investigation by the offender/case manager had indicated that there was an acceptable reason for the absence including domestic violence, enforced homelessness and mental health difficulties. These cases could be resolved in an acceptable manner where the offender/case manager exercised proper discretion and also communicated clearly and openly with the EM company.

Enforcement action in stand alone cases

- 6.23 According to our scrutiny of the EM companies' files, a quarter (16/64) of the offenders subject to a curfew as the sole requirement of a community penalty were convicted of breach of the curfew. Again, we consider this a high figure given the fact that curfews last for six months or less. The current policy of having fixed but opaque thresholds for violations does not appear to achieve the aim of keeping breach rates low.

Enforcement of HDC cases

- 6.24 HDC cases were more consistently enforced once the relevant thresholds had been crossed. Our examination of case files revealed that about 10% (6/54) of HDC offenders were breached for non-compliance with their curfew arrangements and recalled to prison. HDCs were for a shorter period (maximum of four and a half months), and the breach process was faster, bypassing the courts, with the sanction being a return to a very recent experience of prison.
- 6.25 In HDC cases, the EM company referred all violations to the PRS at the Ministry of Justice who determined the action to be taken. Whilst the EM company would issue warnings for HDC cases, decisions on recall were taken by the PRS regardless of whether or not there was an offender/case manager in the case. As offenders on HDC were formally serving their sentence in the community, and therefore the logic was that all breaches of the curfew that met the threshold for enforcement should result in a return to custody, offender/case managers were not required to contribute to, or comment on the decision to recall an HDC case.
- 6.26 In all of these cases, the EM company acted promptly to inform the PRS leading to a swift recall in nearly all cases. Unfortunately the EM company was not as good at liaising with the offender/case manager, where there was one. In a number of these cases the offender/case manager was not informed that a warning had been issued or when a more serious violation had occurred.
- 6.27 We saw examples of HDC cases, however, where offenders were recalled by the PRS following the receipt of information from the EM company, when a more thoughtful contribution, which might be provided by an offender/case manager, could have enabled the offender to complete the licence with an acceptable level of compliance. Although all cases recalled appeared to have violated the conditions of the curfew, we felt that in two cases a warning, with the licence allowed to continue, would have been a more appropriate outcome. Appropriate intervention by an offender/case manager might have enabled this.

Practice example of HDC enforcement action which could have benefited from offender/case manager contribution

An offender called the monitoring company before the start of the curfew to say that he had been thrown out of his accommodation by his father, could not return but had found alternative accommodation. Rather than treating this as a request to vary the address, the EM company informed the PRS that there had been a more serious violation. The man was recalled to prison the next day. The offender/case manager was informed after the event.

The police and the enforcement of EM curfews

- 6.28 The role of the police in enforcing EM curfews is limited. In the event that an offender subject to a curfew is identified by the police on the street, they have not committed an offence by not being at home and cannot therefore be arrested immediately. The police would need to inform the responsible officer who would have to instigate breach proceedings and thereafter call the police officer to give evidence or produce a witness statement.
- 6.29 Although the fact of the curfew in relation to a community order is recorded as a conviction on the PNC as a matter of record, this information is not readily available on the front page of an offender's local record. As this is the police database routinely referred to by beat officers when checking a suspect (for example), they will be unaware that an individual was subject to a curfew.

Conclusion

- 6.30 Good enforcement practice, employing what we would call a 'Smart' approach to compliance and enforcement, is much harder to define and achieve than many people first imagine. It is very easy to develop practices that are too inflexibly stringent, or which are not stringent enough – both extremes need to be avoided. The aim of Smart compliance and enforcement practice is that as many offenders as possible complete their community sentences or post-custody licences while maintaining a good standard of compliance with the requirements imposed on them. It makes use of tight boundaries but with discretion in appropriate individual cases.
- 6.31 In contrast, the enforcement policy with curfews rested on the flawed system of having fixed but opaque *thresholds* for violations. Even when the offender had crossed these thresholds the effectiveness of the enforcement process for curfews in community penalties relied on the communication of complex information and good engagement by offender/case managers and by other key personnel, based on an understanding by each and all of the overall process. But the quality of the information, from that received from courts at the start of the orders to the exchange of information between the EM companies and the offender/case managers, was in practice often inadequate. This, coupled with the lack of an offender management approach taken by many of the offender/case managers in our sample, led the court-sentenced curfews to be enforced in a less than robust manner.

- 6.32 The enforcement process with HDCs usually worked much more smoothly following violation. But if anything, as exemplified in two of the cases we examined where the exercising of individual discretion might have led to a more sensible outcome, enforcement could prove to be too inflexibly stringent.
- 6.33 Effective offender management should both promote compliance by offenders and achieve appropriately stringent enforcement when needed. It should also help, change and/or control the offender according to the needs of the individual case. This balance can, we believe, be achieved by the development of the Smart approach to compliance and enforcement, working to tighter boundaries but with more discretion in appropriate cases. We therefore recommend that it be adopted by the Ministry of Justice and NOMS Agency as part of their offender management strategy.

7. ADDITIONAL FINDINGS

'Doorstep' curfews

- 7.1 Although outside the remit of the inspection, during the course of the fieldwork the issue of non EM curfews was raised with us on several occasions.
- 7.2 Whilst there is a presumption that court-sentenced curfews will be EM, sentencers do have the discretion to make a curfew order or requirement without EM. These orders are known colloquially as 'doorstep' curfews as they can only be enforced by the offender/case manager, or other nominated person, visiting the curfew address periodically during the curfew period. These orders or requirements are extremely difficult for offender/case managers to deal with.
- 7.3 Offender managers felt that there was no way for them to discharge their responsibilities in an effective manner. Although it would be possible to visit the offenders address periodically during the curfew period, it could only reasonably be expected during the early hours of the evening. Even this was largely impractical as few offender/case managers worked into the evening period when curfews were likely to be in force. Clearly not answering the door after a certain time could simply indicate that the offender was asleep, rather than not in, so breach would therefore be difficult to prove.
- 7.4 It would be possible for offender/case managers to liaise with the local police to make the 'doorstep' checks, although it would be difficult to arrange in practice, and the same problems over enforcement would persist.
- 7.5 Overall, it is hard for us to see 'doorstep curfews' as having more than very marginal value in practice.

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