

# Probation: Lessons from Japan.

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## **Introduction**

While research, literature and discussion is increasing, growing voluntary sector and volunteer involvement in a more heterogeneous criminal justice landscape remains understudied (Hucklesby and Corcoran, 2016, Tomczak and Albertson, 2016, Tomczak, 2014). Volunteers, drawn from the community, are significant in many countries. It is important to assess the impact of volunteers in promoting desistance from criminality and their relationship with rehabilitation professionals throughout the world. Drawing on material obtainable in English, this article explains the central, and generally accepted, place of volunteers in Japanese probation and rehabilitation and describes challenges they face. It is partly also based on discussions, loosely structured interviews and correspondence with professional probation officers ("PPOs"), Volunteer Probation Officers ("VPOs"), officials in the Ministry of Justice, workers in halfway houses, lawyers and university academics, all of whom generously gave their time during the writer's visits to Japan in 2016 and 2017. It cannot purport to be a scientific survey.

Before discussing Probation in Japan Probation in England and Wales will be turned to. Previously seen as a beacon attracting interest and study from overseas, probation in England and Wales has become more like a lighthouse warning others of dangers.

## **Probation in England and Wales.**

As part of the Transforming Rehabilitation Programme, the Coalition Government, made sweeping changes to the Probation System in England and Wales during 2014/15.

Under the leadership of the then Justice Secretary Mr Christopher Grayling, they were intended to: extend supervision to prisoners given short term sentences (ie more than one day); encourage innovation and more modern ways of working by “opening up the market to a wider range of providers”<sup>1</sup>; create new incentives for providers to achieve reductions in re-offending; and put more emphasis on managing higher risk offenders.

Before two pilot schemes had finished, and against the views of the relevant trade unions and others, the existing 35 independent Probation Trusts were replaced by the National Probation Service (“NPS”), part of Her Majesty’s Prison and Probation Service (“HMPPS”) and put under state control (made responsible for managing higher –risk offenders, advising courts, supporting victims and managing Approved Premises), and 21 privately owned Community Rehabilitation Companies ( “CRCs”). Their role was to supervise low and medium risk offenders and to manage unpaid community work schemes. CRCs were also made responsible for providing resettlement assistance to released prisoners “ through the gate” services. A proportion of CRCs income was made dependent on achieving reductions in offending.

Companies bid to manage CRCs. Eight were successful including Interserve, Sodexo (which runs the most), Staffline, Seetec and Working Links (now in financial administration).

### **How have the reforms fared?**

The consequences of the reforms have been assessed in Reports written by HMI Probation Inspectorate and the House of Commons Justice Committee and most recently the National Audit Office. Whilst some innovative practices were noted by the first two bodies ,and about 40,000 people

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<sup>1</sup> This idea was not a new. The Labour Government Home Secretary John Reid, announced in 2006 that probation would be opened to the private probation industry.

who would not previously have been monitored now receive some support and supervision after release (the adequacy of which, however, has been questioned), numerous serious shortcomings have been identified. Indeed the Chairman of the Justice Committee, Mr Robert Neil MP, expressed the view “We are unconvinced that Transforming Rehabilitation will ever deliver the kind of probation service we need.” The National Audit Office (“NAO”), in a Report published on 1<sup>st</sup> March this year (Transforming Rehabilitation: Progress Review), was severely critical of the reforms and considered they raised questions about the Ministry of Justice’s ability to make decisions. Amyas Morse, the head of the NAO said: “The ministry set itself up to fail in how it approached probation reforms. Its rushed rollout created significant risks that it was unable to manage. “Not only have these failings been extremely costly for taxpayers, but we have seen the number of people on short sentences recalled to prison skyrocket.”<sup>2</sup>.

### **What has gone wrong?**

CRC income has been smaller than envisaged when contracts between them and the government were negotiated. This is because community sentences ordered by the courts have reduced and this has been accompanied by a fall in requirements attached to both community and suspended sentences. Fewer community sentences are partly due to sexual and violent offences forming a greater percentage of those coming before the courts<sup>3</sup>. Because of their seriousness persons who commit sexual and violent offences are often regarded as unsuitable for community sentences. This trend, to some extent reflecting a shift in police investigation priorities, was not foreseen when CRC contracts were concluded and

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<sup>2</sup>The number of people recalled to prison has increased by 47% as a result of statutory rehabilitation being extended to those serving sentences of less than 12 months. The NAO found offenders serving short sentences often find it difficult to comply with license conditions and available supervision has not been appropriate to reflect the diverse needs of these people. Between January 2015 and September 2018, offenders on short sentences as a percentage of those recalled to prison rose from 3% to 36%.

<sup>3</sup> Violence against the person offences now make up an increased proportion of recorded crime (up from 16% in 2010 to 28% in 2017), and the proportion of recorded sexual offences has also increased (up from 1% in 2010 to 3% in 2017).

were not sufficiently allowed for commercially <sup>4</sup>. Another reason has been a collapse in confidence in community sentences, partly caused by lack of contact between the CRCs and the courts, following the reforms amongst judges and magistrates who have increasingly turned to short periods of imprisonment and fines. This has driven up numbers of vulnerable people imprisoned for less than a year, many of whom come out with even more problems than before incarceration.

Under the terms of the contracts supervision of prisoners released from gaol is a less profitable activity than managing community sentences.

Less income than envisaged led to failure to invest in programmes originally intended, substantial reductions in staff, sometimes of the order of a third, huge individual caseloads, which can well exceed a hundred, poor employee morale, and “supervision” often being little more than infrequent telephone calls. It is difficult to disagree with the view that such poor supervision makes it more likely offenders will commit new crimes. Other features identified by HMI Probation and the Justice Committee include: inadequate training of staff; poor decision making about managing breaches of conditions; not doing so when they should, or conversely taking proceedings where unnecessary resulting in people being returned to overcrowded prisons; provision of badly supervised and meaningless community work and failure to develop “through the gate” assistance with accommodation and employment for those leaving prison. Contrary to the expectations of those behind reform, contacts with voluntary organisations working to achieve rehabilitation have decreased rather than increased. Failures on behalf of CRCs were not dealt with by the government enforcement of contractual penalties but resulted in amendments to their contracts in 2017 and substantial additional payments to shore them up.

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<sup>4</sup> Drafters of the contracts had tested the impact of volumes reducing by 2%. Two years into the contracts, volumes were between 16% and 48% lower than anticipated.

The wisdom of classifying offenders ( in total around 268,000) as either low, medium or high risk, upon which rests whether they will be supervised by the NPS or CRCs, has been criticized for insufficiently recognizing levels of risk can alter. An offender assessed as low or medium risk may become a high risk and more suited to supervision from the NPS rather than CRCs. Transfer between the two has been handicapped by insufficient cooperation. The National Association of Probation Officers (“NAPO”) considers fragmentation of the service in England and Wales has contributed to increases in serious offences committed whilst under supervision.

Placing into financial administration February, 2019 of Wales CRC, Bristol, Gloucestershire, Somerset and Wiltshire CRC, and Dorset, Devon and Cornwall CRC, all run by Working Links (Employment) Limited, owned by Aurelius, a German-based asset manager, revealed not only a history of inadequate service but also unethical practices. Probation Inspectors visited the Dorset, Devon and Cornwall CRC in November 2018 and found staff were under-reporting risky offenders under a system that allocated resources according to one of four colour-coded risk ratings. Staff told inspectors they sometimes refrained from giving an offender a red risk rating — the highest level — because such offenders needed to be seen every week and so used up more resources. The inspectors also found an instance where, to meet performance targets, staff had marked an offender’s sentence plan as complete without ever even meeting him. Sentence plans are meant to be drawn up in conjunction with the offender. This behaviour might well be described as the antithesis of supportive, challenging relationships, seen as key to rehabilitation. In a [withering report](#), brought forward because of the Working Links administration and the announcement by the Ministry of Justice that its services would be taken over by Seetec (owner of Kent, Surrey and Sussex CRC), Dame Glenys Stacey, the Chief Inspector of Probation, said that the Working Links CRC responsible for Dorset, Devon and Cornwall was

“inadequate”, the lowest possible grade. “We have found professional ethics compromised and immutable lines crossed because of business imperatives,” Dame Glenys added. “The professional ethos of probation has buckled under the strain of the commercial pressures put upon it here, and it must be restored urgently.”

By March 2018, CRCs faced collective losses of £294 million over the life of the contracts, compared to expected profits of £269 million, increasing the risk of providers withdrawing services, performance deteriorating further and potentially multiple providers becoming insolvent.

Her Majesty’s Inspectorate of Probation found that CRCs have performed poorly overall, with nine out of 13 inspections assessing CRCs negatively for the quality of their work in reducing reoffending and protecting the public, and five negatively in administering sentences imposed by the courts.

The Justice Committee found the state run National Probation Service (“NPS”) to be performing relatively well in its tasks of supervising higher-risk offenders, advising the courts, and operating approved premises. However the National Association of Probation Officers (“NAPO”) point to a more than 50 percent rise in the number of rapes, murders and other serious crimes committed by offenders on parole since the probation reforms four years ago. They claim a “clear correlation” between the increase and the reforms, which it attributes to increased workloads, low morale and chronic staff shortages which have left the National Probation Service with more than 1,000 vacancies. In August 2018, its overall staff vacancy rate was 11%, and as high as 20% in London. The increase in NPS workload is partly explained by more violent and sexual offenders being convicted by the courts, a function of more police activity and prioritization of these areas.

During their seven year contractual relationship, the Ministry of Justice expected CRCs to reduce reoffending by 3.7 percent and calculated £10.4 billion of economic benefits would ensue. By March 2017, there was an overall 2.5 percentage point reduction in the proportion of reoffenders since 2011, however a 22% overall increase in the number of offences per reoffender was recorded. Only six of the 21 CRCs had consistently achieved significant reductions in the number of reoffenders. Variations in the CRCs' performance, the National Association of Probation Officers warned, could lead to a postcode lottery of probation services across England and Wales.

Last year, in the wake of the highly critical report by the House of Commons Justice Select Committee and several [blistering assessments](#) by Dame Glenys Stacey, chief inspector of probation, the Ministry of Justice announced major changes. Significantly all CRC contracts are to be ended in early 2020. The Ministry will explore how to replace them with a more effective commercial framework for probation services. In the meantime CRCs will be given an extra £170m by the government to raise standards, including that offenders are seen face-to-face at least monthly during the first 12 months of supervision and staff will do more to help offenders find accommodation and employment on release from custody <sup>5</sup>.

To foster closer co-operation between the NPS and CRCs, probation districts in England are to be geographically aligned. Currently there are 10 NPS and 21 CRC areas. Ties are to be strengthened with voluntary sector organisations, local authorities, and Police and Crime Commissioners. Lastly, the Ministry intends to introduce a standard training framework for staff across all probation providers and consultation on the implementation of a professional register will take place.

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<sup>5</sup>When the costs of ending CRC contracts in 2020, 14 months early, are added to additional money made available to stabilize CRCs, the NAO calculates the Ministry of Justice will pay at least £467 million than was bargained for in the original contracts which it, with some justification, describes as poor value for money.

The National Audit Office Report noted the Ministry has acted on many of the shortcomings in the reforms, including abandoning payment by results, but identified risks with its plans. For example, while the Ministry intends to align better probation regions, it will keep the division between the NPS and CRCs, meaning challenges remain to ensure these services work well together and with the wider system. The Ministry will also need to manage the risks of transitioning to the new contracts and existing providers withdrawing services or failing outright.

Whilst the government has warned that another fundamental re-organisation would bring more chaos, trade unions who represent probation workers, the opposition Labour Party and others call for the work undertaken now by CRCs to be performed once again by a unified public probation service. They question whether the protection of the public and rehabilitation of people with often very complex and diverse needs can be reduced to commercial relationships and key performance indicators. The government's intention to retain commercial contracting for probation services has been described as ignoring evidence of failure and putting ideology over facts. At a moral philosophical level some argue it is wrong that rehabilitation, long seen as a public activity, should be the focus of private profit.

The Head of the National Audit Office, in a forward to its Report, has called for the government to “pause and think carefully about its next steps so that it can get things right this time and improve the quality of probation services” .

The widely acknowledged parlous condition that Probation in this country now finds itself should prompt serious discussion about its future informed by careful study of successful models of probation elsewhere. I maintain we have much to learn from Japan, especially in the use of volunteers.

## **Some features of the modern probation system in Japan**

Although organized rehabilitation of offenders is clearly traceable to the late 19<sup>th</sup> Century, the present system arose after the Second World War (Rehabilitation Bureau , 2015 : 2-4; Watson, 2018) . As part of sweeping reforms of pre-war criminal procedure in Japan by the mainly American “General Headquarters of the Allied Powers”, which operated until 1951 ( Oda, 1999: 29-31; 423 .), the Offenders Rehabilitation Law 1949 introduced a modern rehabilitation system to protect society, promote the welfare of the public and aid the reformation and rehabilitation of offenders<sup>6</sup>.

There are 50 probation offices, 3 branches and 29 local offices throughout Japan (Akashi, 2015:5), administered by the Rehabilitation Bureau, one of six departments within the Ministry of Justice. A striking feature of the Japanese probation system is how few Professional Probation Officers (“PPOs”) are appointed compared to the large number of Voluntary Probation Officers (“VPOs”). Figures supplied by the Rehabilitation Bureau show that at the end of 2014 there were approximately 1,000 PPOs, employed as civil servants by the Ministry of Justice, in the field (additionally some 112 PPOs work for Regional Parole Boards) and over 48,000 VPOs, who support them by providing offenders with additional supervision and assistance. The foremost duties of PPOs in both adult and juvenile cases are supervision of probationers and parolees which requires close working with VPOs; inquiry into domestic circumstances for purposes of possible parole from prison or Juvenile Training School; aftercare for discharged offenders who apply for it (this may include financial assistance for accommodation, meals, transport and clothing (Rehabilitation Bureau , 2015 : 30); liaison with halfway houses run by voluntary organisations to obtain accommodation for

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<sup>6</sup> Article 1. The law relating to probation and parole is now contained in the Offenders Rehabilitation Act 2007, often referred to as the “Basic Law” , replacing both the Offenders Rehabilitation Law (1949) and the Law for Probationary Supervision of Offenders under Suspended Execution of Sentence (1954).

persons released from prison or Juvenile Training School; promoting crime prevention activities and investigation and application for individual pardons ( Rehabilitation Bureau, 2015: 32). A further important task is organising and conducting training for VPOs and staff in halfway houses.

An offender placed on probation or released on parole is required to report immediately to a probation office for an interview with a probation officer during which the way probation or parole supervision operates is explained. The probation officer then designs a treatment plan based on the interview, relevant records and an assessment of need and risk (Akashi, 2016: 31 -32). Unlike England and Wales, the United States, and many other countries, a range of actuarial and clinical assessment tools, the importance of which remains controversial, are not employed in quantification of risk of further offending and drawing up supervision and treatment plans. As well as general conditions that apply to all supervisees, including attending interviews and residing at an agreed address, special conditions may also be imposed such as avoiding contact with a certain person or group, attending a special programme on preventing sex offending, violence or stimulant drug taking and, since 2015, participating in social contribution activities, a form of community work (Rehabilitation Bureau , 2015 : 22).

The Director of the Probation Office assigns a VPO as the day-to-day supervisor of the offender. Regular meetings, two or three times a month, take place with the VPO, usually at his or her home, but visits to offenders' homes are also sometimes made. In accordance with the treatment plan, the VPO visits and works with the supervisee's family and provides guidance and practical support for him or her, often helping to obtain and keep employment. The VPO submits a monthly progress report to the PPO who, if

necessary, intervenes with the offender and can begin procedure to revoke parole or probation <sup>7</sup>.

If thought unsuitable to be assigned to a VPO, a parolee may be supervised directly by a PPO. In certain circumstances a parolee or probationer can be allocated to more than one VPO.

Another key task undertaken by VPOs is visiting the families of those serving custodial sentences to investigate their domestic circumstances. Information about family relationships, accommodation and employment prospects is then sent to PPOs who make it available to Regional Parole Boards. In the course of these duties VPOs write to prisoners or visit them to confirm information and ascertain their future plans. It is not unusual for a VPO who has already contacted a prisoner to be appointed as his or her supervisor on release.

In 2015, 18,203 juvenile probation orders were made and 3,460 adult probation orders by courts in Japan. During that year 2,871 juveniles (and 13,570 adults) were put on supervised parole. Related to reduction of reported crime, now at a post-war low, the number of newly placed supervisees has steadily decreased since 2009 when it stood at 48,488. However, by far the biggest fall, close to eight thousand (from 26,094 to 18,203), has been in juveniles on probation. Numbers of juvenile parolees reduced by nearly one thousand, from 3,869 to 2,871 (White Paper on Crime, 2016: Chapter 5, Section 2/1 ). In 2016 the overall number of persons supervised by the probation service was 71,441 comprising 18,444 adult parolees, 6,820 juvenile parolees, 13,764 adult probationers and 32,413 juvenile probationers <sup>8</sup>.

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<sup>7</sup> In 2014 4.6 percent of adult parolees had their parole revoked. Revocation occurred in 25 percent of those for whom probation had been ordered by the courts ( Akashi 2015 : 10) .

<sup>8</sup>Statistics for 2016 kindly provided in an email on 25<sup>th</sup> January, 2018 from Mr Morikawa of the Ministry of Justice, Tokyo.

As can readily be seen, young people placed on probation by the Family Court are the largest group supervised by the probation officers, amounting to nearly 45.5 percent of the probation service's caseload.

### **Volunteer Probation officers.**

Legally defined, VPOs are non-permanent government officials and remain private citizens. As such they are not prohibited from political activities or bound by the civil service code of ethics. The maximum age of appointment is 66. Although their term of office is two years, they can be continuously reappointed until a retirement age of 76. More than half all VPOs have served for more than eight years, nearly a quarter fifteen years and over a tenth twenty or above years (Minoura, 2015:3). They are not paid a salary but are entitled to be reimbursed for expenses necessary to perform their duties up to set limits in approved categories. VPOs are also eligible for compensation for injury sustained during their work. The scope of compensation was expanded in 2012 to include damage to property and injury to family members and damage to their property due to the acts of probationers, parolees or their families (Minoura, 2015 : 9 ). The Volunteer Probation Officers Act requires VPOs to be: highly regarded for their character and conduct; enthusiastic and have sufficient time to accomplish their necessary duties; financially stable; and healthy and active.

On the basis of information supplied by the VPOs' Association for the area covered by the office, or from other sources, the first stage in recruiting VPOs involves the probation office director listing candidates. Candidates are usually recommended by present VPOs. The director then seeks an opinion on each candidate's suitability from the VPOs' Screening Committee, established at each probation office under the VPO Act, made up of representatives of the courts, prosecutors, local bar association, correctional institutions, other public associations in the community and learned citizens. Candidates found to be

acceptable by the Committee are then recommended to the Minister of Justice for appointment (Minoura, 2015 : 3- 4 , Muraki, 2015 :2 -3 ).

The maximum number of VPOs permitted by the VPO Act is 52,500 nationwide. Statistics kindly provided by the Rehabilitation Bureau show that on the 1<sup>st</sup> January 2015 the actual number was 47,872 of whom 26% were women. Although 90% of appointments are filled the rate is decreasing, especially in urban areas<sup>9</sup>.

The average age of VPOs was 64.7 years<sup>10</sup>. The majority (51.4%) were 60 to 69 years old, followed by 70 years of age and above (28.5%), 50 to 59 years old (15.7%) and under 50 years (4.5%). Drawn from various occupational backgrounds, the largest group (27.1%) was persons in unpaid employment, including housewives, followed by employees of companies or other organisations (22.6%), members of religious professions (11.1%), persons in commerce service industries (9.2%), those working in agriculture, forestry or fisheries (7.6%), and other occupations, which included manufacturers, schoolteachers and those engaged in social welfare (Otsuka, 2015: 2).

VPOs are allocated to a "probation district" and become involved in activities within it. Probation districts are administrative areas created by subdividing the territory of each probation office. As of 1<sup>st</sup> January 2015, there were 886 probation districts. Probation officers are assigned to one or more probation districts. Acting as district case managers they are responsible for supervision of those on probation or parole within them.

VPOs in each probation district are required, by an amendment to the VPO Act in 1998, to establish a VPOs' Association (similar organisations existed in many areas on a

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<sup>9</sup> For example in Tokyo 80 percent were occupied - 3,507 out of the 4,375 places allocated to the jurisdiction Tokyo Probation Office (See Muraki, 2015: 12) .

<sup>10</sup> In 1953 the average was 53. By 1974 this had risen to 60. Women comprised 7 percent of the total number of Volunteer Probation Officers in 1953. In 1986 this was 20 percent ( See White Paper on Crime 2014, Figure 2-5-3-2).

voluntary basis beforehand). Associations each year hold a general meeting and elect a chairman, vice chair and board members. Their various activities include: providing assistance to individual VPOs from those who are more experienced; offering VPOs opportunities to meet others and “network”; training which may comprise holding seminars for newly appointed VPOs, organising case study meetings, visiting penal institutions and inviting police officers, school teachers and lawyers to deliver lectures; maintaining relationships with probation offices and other organisations such as local authorities; and organising community activities, publicity, social events and the circulation of a newsletter ( Otsuka, 2015: 4 -5 )

The Probation Office provides training for VPOs within its area. New appointees must attend an initial course which mainly covers basic information about the system of offender rehabilitation. This is followed by a course, run annually, for VPOs who have served less than two years, on basic treatment skills. VPOs of between two and four years experience, attend a training course, also presented each year, designed to reinforce their abilities of leadership and, like the previous course, to expand their practical knowledge and skills. Special training courses, delivered usually by probation officers specialising in these areas, are also taken on treatment for sex offenders, drug offenders and the mentally disordered. In addition to the training already outlined, guidelines issued by the Rehabilitation Bureau of the Ministry of Justice oblige Professional Probation Officers (“PPOs”) to provide regular training for VPOs at each probation district. Held about every three months, they cover various themes and are designed to develop VPOs knowledge and practical skills (Akashi 2016: 13; Otsuka, 2015:5; Muraki, 2015: 4-5.)

The Ministry of Justice has encouraged probation offices to establish Offender Rehabilitation Support Centers (“ORSCs”) to assist VPOs and their associations. By March 2015 some 345 were open. Funding for a further 42 was obtained in 2017 (Porporino 2017 : 2). Located in buildings rented from local government, or other public bodies, they are staffed on weekdays by experienced VPOs. VPOs' Associations may use ORSCs to hold meetings, cooperate with related agencies and consult with the public (Nukata, 2016a). If they wish, individual VPOs may conduct interviews at these locations, rather in their homes or those of probationers or parolees. Opposition from family members to visits by offenders and limited domestic space for interviews in large cities has been identified as discouraging some people from becoming or remaining VPOs ( Muraki, 2015 : 7-8 ). Provision of these centres may help recruitment and retention, enhance co-operation with local government and other bodies and help gain wider public understanding of VPOs’ work.

### **Halfway houses and other voluntary bodies.**

Halfway houses are an important feature of rehabilitation on Japan. They accommodate persons from prison or Juvenile Training School, who otherwise would not be eligible for parole because of they lack a place to live, and on probation and other persons released from prison or Juvenile Training School after the end of their sentence from which they did not obtain parole. The average stay is three months. Staff help residents cope with the sudden change brought about by release from a highly disciplined and regimented custodial regime, foster a sense of self-reliance and assist them to find housing and employment in co-operation with public employment offices and employers who are members of the Cooperative Employers Organisation (a national non-profit making body of employers willing to employ former offenders). Additionally, in recent

years social skills training and programmes for drug and alcohol abuse have been developed. The Ministry of Justice is currently carrying out training courses for halfway house staff on treating these conditions. Some halfway houses collaborate closely with Nihon DARC, a nationwide voluntary organisation which holds self-help meetings and provides residential and day centre treatment for drug addicts and alcoholics. Most halfway houses were established in the 1880s by volunteers (Rehabilitation Bureau,2015 : 7). They remain privately run and number 103 throughout Japan (For a map showing their geographical distribution see Akashi,2015: 7). Most are in urban areas.

Three halfway houses receive only juveniles, 19 house just adults, whilst 81 take both. Ninety house only men. Seven halfway houses exist exclusively for women and six provide accommodation for both men and women (A k a s h , 2 0 1 5 : 7) . On the 1<sup>st</sup> November 2015 the total halfway house capacity was 2,354 places. During the financial year 2014 some 8,237 persons were accommodated. Halfway houses took more than a quarter of prison parolees. A total of 710 persons were employed nationally in half way houses, an average of 6.9 staff in each. More than 60% of all employees were concurrently appointed as VPOs in 2015 (Akashi, 2016:17-18.). Further local VPOs and VPO Associations in the area often assist in various activities <sup>11</sup>. Practical help may also be provided by members of the Women’s Association for Rehabilitation Aid (“WARA”), a voluntary nationwide organisation with nearly thirteen hundred branches and a very large membership (See below).

The Ministry of Justice supervises half way houses. They receive 75 percent of their budget from the national government. Professional Probation Officers contact halfway houses and ask them to accept a particular parole candidate or probationer. Despite

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<sup>11</sup>At the Step Oshiage Halfway House, Tokyo, visited on 26<sup>th</sup> July ,2016, it was explained members of the local Volunteer Probation Officers Association provide various forms of entertainment including a twice yearly “curry feast” and that the Women’s Association for Rehabilitation collects clothes for residents and donates cooking and other food.

willingness to change and progress demonstrated by individuals in custody, it remains correct to say that, principally because of concerns about neighbouring residents, many halfway houses are hesitant to accept those convicted of sex and drug offences, violence, arson and members of organised crime groups. To help such categories of offenders the Ministry of Justice established National Centres for Offender Rehabilitation to provide temporary accommodation, coupled with intensive supervision and assistance in finding employment by probation officers. However, the total number of places at the four centres created is only 58. Plans to build another centre in Kyoto met with strong opposition from local residents. Since 2009, the Ministry of Justice has encouraged, with some limited success, halfway houses to widen the types of offenders they will accept<sup>12</sup>.

In addition to VPOs, and halfway houses other voluntary organisations give considerable support to adult and juvenile offenders and have close ties with the probation and rehabilitation system already described.

The Women's Association for Rehabilitation ("WARA") is a large organisation that conducts a variety of activities including promoting the idea of rehabilitation of offenders, support and encouragement for probationers and parolees, co-operation with VPOs, crime prevention measures, and assisting young mothers experiencing difficulty in raising their children. In 2015 WARA had 170,066 members and 1,293 branches (Akashi, 2016 : 19). It is almost a convention that the wife of a male appointed as a VPO will join WARA. Many women who are appointed as VPOs joined WARA earlier in their lives.

Big Brothers and Sisters Association ("BBS") is a youth organisation with 50 local branches, including in universities and high schools, and a membership of just over 4,500. Its

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<sup>12</sup> Because of an exceptionally good relationship with its neighbours, the Step Oshiage Halfway House in Tokyo, which has 38 places, visited on 26<sup>th</sup> July, 2016, is prepared to take persons whom other halfway houses might be reluctant to receive.

members try to relate to juveniles similar to a responsible older brother or sister to deflect them from crime. Members take part in “befriending activities”, such as sports, karaoke, barbecuing and talking and studying together, to gain their trust, give them a greater sense of stability and act as positive role models. BBS intervention is usually requested by Probation officers, who suggest the approach to be taken for each young person, but may be initiated directly by Family Courts or child guidance centers. (Osaki, 2013). Some BBS members are interested in becoming Professional Probation Officers or VPOs later in life. A number of VPOs interviewed expressed the hope that BBS will expand to counterbalance the increasing average age of VPOs, seen by some as an impediment to understanding young people .

“Co-operative Employers” is a national non-profit making voluntary body with nearly fourteen and a half thousand members who have said they are willing to employ former offenders (Akashi, 2016: 19). Construction firms account for about half, followed by the service industry, approximately 15 percent and manufacturing just over 13 percent. However, despite the large number of firms who claimed they were prepared to take former offenders, a survey conducted for the Ministry of Justice Rehabilitation Bureau in 2013 showed a mere 3.4 percent of the membership had done so. Following this the Ministry renewed requests to employers to employ former offenders. Membership of Co-operative Employers subsequently rose by nearly four and a half thousand. Amongst employers who have taken on convicted persons are former offenders. Since April 2015, employers may receive payment from the Ministry of Justice when they employ and support a probationer or parolee for a certain period. This scheme is expected to boost the number of parolees and probationers in work. More and more local governments are introducing schemes to employ probationers and parolees as temporary staff or to give preferential treatment in considering tenders to employers who hire them.

## **Strengths and Challenges.**

### **Strengths.**

The VPO system has undoubted strengths. Geographical proximity between supervisees and VPOs enables them, if necessary, to intervene rapidly. Social resources and practical assistance, including introductions, an important form of social capital, can be offered to supervisees. Supervisees and their families are frequently reported as seeing VPOs more like neighbours, and, particularly from the perspective of juveniles (the great majority of those supervised), similar to unthreatening and helpful uncles and aunts, rather than government officials. This may allow juveniles to be more responsive to VPOs. Many VPOs demonstrate genuine concern for supervisees, helping them regain respect, or acquire it for the first time, and identify with a law-abiding and pro-social culture. In contrast to PPOs who are moved to different offices every two or three years, they may provide continuity of support which sometimes, by informal mutual agreement, extends beyond the period of supervision bolstering stability in lives of former offenders (Akashi, 2016:15; Otsuka, 2015:4). Continuity of contact is contributed to by the fact that over half of VPOs have been in that role for more than eight years.

It is notable that the VPO system in Japan has been a major influence on probation services in other countries including Kenya, Malaysia, Philippines, Singapore, South Korea

and Thailand<sup>13</sup>. Debate exists about whether the VPO system, the main feature of Japanese community corrections, reduces offending and, if so, to what extent. This is partly fuelled by absence of “ what works” research. (Leaving aside speculation why, considerable methodical challenges would attend such a project.) It can, however, be said that the VPO system incorporates elements identified by research elsewhere as essential for successful volunteer initiatives in criminal justice including prioritising engagement and participation, practical assistance, tailoring to individual offender needs, continuity and good co-ordination ( Porporino, 2017).

### **Challenges.**

A general view exists that the number of probationers and parolees with diverse and complicated problems, including drug and alcohol addiction, aging, mental illness and developmental disorders has increased. Especially in large Japanese cities, family ties and local community bonds have weakened resulting in fewer supervisees receiving support from their families. Further making the task of rehabilitation more difficult is the prolonged economic recession limiting supervisees’ employment prospects (Minoura, 2015: 9-10).

### **Filling positions.**

Turning from what might be called broad external challenges to those internal to the VPO system, although 90 percent of VPO positions are filled, since 2008 there has been a slow but consistent decline, especially in urban areas (see figure 2-5-3-1, White Paper on Crime, 2014.). In Tokyo the percentage is about 80 (Muraki, 2015: 12 ). The average age of VPOs has risen to 64.7. Almost 80 percent of VPOs are over 60 and only 4.3 percent under

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<sup>13</sup> For details of volunteer probation officers in South Korea, Singapore, Philippines, Thailand and Kenya, please see Part IV, *Volunteer Probation Officers and Offender Rehabilitation*, Special Monograph Issued for the Third World Congress on Probation, Rehabilitation Bureau, Tokyo, Japan, September, 2017.

49. Approximately 60 percent of offenders are under 20 years old. The number of VPOs who retire within the first five years of their appointment has grown to almost 15 percent.

The chief reason put forward for the lack of younger people who apply to become VPOs is lack of time. Because of the persistent economic recession, persons employed by companies are increasingly expected to work unpaid overtime and often face long commuter journeys. The economic climate has made it harder for the self-employed to take time off. Persons who might have retired earlier work longer. In interviews with members of the Ota City (Tokyo) VPO Association it was stressed that the understanding of businesses should be cultivated so they would allow younger people time off to become VPOs. It was suggested that central and local government show a lead. A VPO interviewed in Kyoto thought attempts should be made recruit from civil servants who he believed had more time available than those in the private sector. A criminal procedure professor at Osaka City University thought that the government could legislate to give people a right to time off to be a VPO, although, given work pressures, he wondered how many people would exercise it.

### **Commitment, Recruitment and Retention.**

Although not widespread, there is criticism of the quality of some VPOs. It was reported the amount of commitment varies from the very highest to those who do the bare minimum. Much recruitment customary involved a VPO heading towards retirement requesting, sometimes repeatedly, someone known to him or her in the community to be a replacement. His or her name was sent to the President of the local VPO organisation and then onwards for consideration by the screening committee at the probation office. It was said that some who permitted their names to be put forward did so out of a sense of duty or obligation (*giri*) to the person who had nominated them rather than out of genuine desire to be a VPO. Accordingly, their dedication might have not be great and they retired early. Nomination and appointment of people who had led lives radically different from

supervisees may have resulted in difficulties relating to each other, an example given to the writer was of successful business women retiring in her late 50s who encountered such and resigned as soon as possible.

Because of greater movement of population and anonymity of modern urban life, weakening social bonds and personal relationships, the effectiveness of traditional methods of identifying suitable VPOs came to be seriously questioned.

From 2008, to obtain capable candidates and make the process of recruitment more transparent, some VPO Associations set up “VPO Candidate Information Meetings”. These involve local government officials, members of neighbourhood associations, child welfare workers and voluntary workers presenting information about persons who might be approached with a view to nomination. Since 2013 such meetings take place in all probation areas. Members of Ota City VPO Association considered this had led to a marked improvement. It was mentioned that female members of Parent Teacher Associations whose children were soon to leave school were quite frequently identified at meetings.

Suggestions have been made that in order to widen further the pool of potential VPOs advertisements should be placed in the press. An editorial in the Japan Times (12<sup>th</sup> December, 2012.) proposed the government should consider paying VPOs salaries to help increase recruitment and retention. This idea was strongly opposed by VPOs, as well as PPOs, interviewed in Kyoto and Tokyo who emphasised that the spirit of voluntary service was essential and thought that payment would alter the whole dynamic, including the way supervisees regard VPOs and their working relationship with PPOs, deter applicants and reduce retention.

One reason pinpointed for reduced recruitment is limited domestic space, especially in urban areas where apartments and houses are small, to hold interviews with supervisees.

Worry by family members about their visits is also a factor. Partly to deal with these concerns local VPO Associations were encouraged by the Ministry of Justice to open Offender Rehabilitation Support Centers (“ORSC”) where interviews can be conducted instead of at home. It was reported that about 20 percent of VPO interviews in the Ota probation district in Tokyo now take place at the ORSC. As previously mentioned, with an eye to recruitment and retention, a compensation scheme for VPOs and their family members who suffer injury or property loss has been introduced by the Ministry of Justice.

ORSCs act as a hub for local VPO Associations and raise their profile. Greater public familiarity with their work may lead to more interest in becoming a VPO. There was agreement amongst members of a panel of VPOs assembled to assist the writer that while knowledge of their work had increased, it was still not generally understood. One VPO referred to television drama portrayals of them as special people doing special things. He wished the reality of ordinary people doing ordinary things would be shown instead, so that watchers could believe they might become VPOs.

The number of cases undertaken by VPOs varies, but is usually subject to a maximum of five. At times in certain areas, where crime is very low, they may have none. Waiting for the first case, and long gaps between cases, may be unfulfilling and contribute to early retirement. To avoid this PPOs are now urged to allot supervisees to VPOs early in their career. If shortage of cases prevents this they are recommended to jointly assign a case to “veteran” and a new VPO so that the latter will gain experience and advice.

Lack of self – assuredness among new VPOs in dealing with supervisees has been identified as a reason for early leaving. Jointly allocating a case to a new and an experienced VPO may promote confidence. In those areas that have established ORSCs, the possibility of conducting interviews, with experienced VPOs on hand, may also positively contribute.

The majority of supervisees are under 20 years old. Difficulties do exist in relating to them because of age differences, although it was explained by VPOs interviewed it is possible to exaggerate them. Systematic training to help VPOs understand the younger generation has been proposed (Akashi, 2015:16).

Failure, said to be increasing, by supervisees of all ages to attend meetings may be frustrating and demoralising and may lead to early retirement.

Inability, because of work or other voluntary commitments, to keep up with training sessions may lead some VPOs to consider leaving. To prevent this, and increase training attendance generally, additional training sessions are provided at Tokyo Probation Office for persons who could not attend them in their local district. There is discussion about holding local training at the weekend and in the evening, but this presents difficulty for persons busy at those times (Muraki, 2015: 8).

The Offenders Rehabilitation Act, 2007 sought to clarify the roles of PPOs and VPOs to avoid over-dependence on VPOs and enable both to take advantage of their respective strengths. However, the relationship between the two has not since been free from critical examination. One academic reported some PPOs overzealously guard their cases and fail to pass on useful information, while another, said there was insufficient coordination between the two and referred to 70 percent of VPOs in a survey conducted in 2012 who said they wanted to deepen cooperation with professional probation officers (Japan Times 29<sup>th</sup> December, 2012.). VPOs interviewed in Ota said they would prefer PPOs to be moved to different parts of the country three rather than two years to allow greater continuity.

### **Supervising more serious drug offenders.**

Drug misuse in Japan is significantly lower than in many countries. However, offenders arrested for breaking the Stimulants Control Law have a high recidivism rate which increases with age. Since the Second World War drug taking has been dominated by stimulants – methamphetamine and amphetamine – “*kakuseizai*” or “*shabu*” in Japanese ( Wada, 2011:63-64 ; Sato, 2009: 151 -153).

Legislation which came into force in June, 2016 <sup>14</sup> enables courts to pass partially suspended sentences coupled with probation. The object of this law is reduction of repeat drug offending by adding probation supervision to custodial sentences. It is a recognition of the importance of sustained rehabilitation in the community, the role of probation in this and of the limitations of measures in the artificial conditions of prison. VPOs will in future supervise greater numbers of drug offenders released from prison.

VPOs interviewed in Kyoto and Tokyo during 2016 reported some anxieties about the uncertain number of offenders involved, periods they will require supervision, given probation in a partly suspended sentence can range from one year to five, and the possibility of supervising people who might be uncommunicative and behave erratically. There was, however, no disagreement about the concept of the new sentence as a means of rehabilitation in the community. Several spoke about the need to intensify efforts to recruit and retain VPOs, especially in the large urban areas where this is most difficult and the majority of drug offenders live. In this respect it was seen as helpful that many probation districts now have Offender Rehabilitation Support Centers where VPOs may meet and interview clients, rather than in their own home, or those of their clients, and can readily call on assistance and expertise from other VPOs. Working closely with PPOs in specific cases was seen as

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<sup>14</sup> For an exposition and commentary on the laws introducing partly suspended sentences and probation, please see *Waseda Bulletin of Comparative Law*, Vol.33 28-31 See also Watson, A (2017) . An enlarged role for probation in Japan to reduce drug offending. *Journal of Japanese Law*, 22 (43), 175-203.

important, as was, if necessary, supervision of demanding cases by more than one VPO. One VPO said that in his experience drug offenders were not particularly difficult to supervise and assist, but problems and re-offending began after probation and parole. He wondered what support could be given subsequently. All the VPOs agreed that it would be beneficial to have more training about drug addiction and methods of dealing with it from PPOs, hospitals and voluntary groups such as Drug Addiction Rehabilitation Centre (“DARC”), the largest drug rehabilitation organisation in Japan. It was suggested that certain VPOs could be selected and specially trained to supervise and assist drug offenders.

### **Consequences of a reduction in the age of criminal majority.**

The age of criminal responsibility in Japan is 14 whilst the age of criminal majority – when offenders are dealt with as adults – is 20, high by international comparison. The question whether the age of criminal majority should be lowered to 18 is currently before the Ministry of Justice Legislative Council (“MJLC”), a body which advises the government on policy and forms of legislation. It is also more widely discussed and debated in Japan (Watson, 2018). The age of 20, established by the Juvenile Act 1948, formed part of policies of welfare and educative rehabilitation towards juvenile delinquency, rather than strict criminal justice and punishment. Much influenced by contemporary thinking and practice in the United States, but from which it has now considerably departed, this social work approach was widely supported when the law was introduced. It is strongly anticipated the government will soon reduce the age of criminal majority to 18, amounting to the most significant alteration in juvenile criminal justice since 1948. Drivers for this controversial change include public perceptions that serious juvenile crime is increasing, whereas in reality it has fallen steeply over the last decade, a powerful victims movement, more general

punitive feeling towards young offenders, *genbatsuka* (becoming punitive), desire to harmonise criminal adulthood with that of voting age, reduced to 18 in 2015, and reforms of civil law setting, in a number of areas, as age of majority (Watson, 2018). Probation is a court sentence in its own right for those under 20. For adults it is only available if linked with either a suspended sentence of imprisonment or, since 2016, a partially suspended prison sentence. The majority of those who receive probation are juveniles and of them the greatest number are 18 and 19. Clearly, save for those who received adult suspended or partially suspended prison sentences, they would become ineligible for probation if 18 was the age of criminal majority. 18 and 19 year olds would also stop to attend Juvenile Training School (“JTS”), where the emphasis is on corrective education rather than punishment, and cease to be supervised by probation officers whilst on parole. (In 2015 approximately 41 percent of those sent to JTS were “senior juveniles” 18 and 19 years old (White Paper on Crime 2016, Part 3, Chapter 2, Section 4/1 ). For those whose offences are not considered sufficiently serious for imprisonment, the Ministry of Justice is known to wish to preserve the welfare spirit behind preventative measures, Juvenile Probation and attending JTS, not least because of what it sees as its effectiveness. As possible replacements for these measures it is considering, greater use of suspended sentences with probation, deferred sentences with supervision, residence at premises with supervision and monitoring; attendance at centers at weekends or evenings for activities, suspended prosecution linked to supervision and community work as a substantive sentence, rather than, at present, merely a condition that may be attached to probation by Professional Probation Officers. They would involve much input from the probation service with overall responsibility and allocation of cases by Professional Probation Officers and day to day work by Voluntary Probation Officers.

It was the view of a professor of criminal procedure and a member of the Legislative Council interviewed that as numbers on probation and parole have declined, especially over

the last decade, and because time would no longer be spent supervising probation and parole for 18 and 19 year olds, the probation service may have overall sufficient capacity and resources to manage the new sentences that have been suggested, although comprehensive training would be necessary before they were introduced and special attention would be necessary in some urban areas with existing pressures on caseloads and recruitment of VPOs.

### **Exception to a limited tradition of volunteering.**

Tens of thousands who become VPOs runs against the limited tradition of volunteering noted in Japan. A possible explanation for this major exception is that people may feel more comfortable doing so within a state rather than a voluntary organization. Through the Japanese Journal of Offenders Rehabilitation, the officer responsible for planning and co-ordination for Ota City VPO Association had knowledge of the creation of Community Rehabilitation Companies ( “CRCs”) in England and Wales to manage medium and low risk offenders, financial incentives payable to them if reoffending is reduced and their use of volunteers. In correspondence with the writer, in which he believed he spoke for most VPOs, he saw the profit element in CRCs as very different from the spirit of social service and the wish to bring security and safety to communities which motivates probation and volunteering in Japan (Nukata, 2016b).

### **Conclusion.**

The mainly volunteer probation system in Japan has distinctive features and many strengths. Highly developed, grounded firmly in society and used considerably, it is a form of community work that channels both human and social capital to support desistance from crime. Recruitment and retention of volunteer staff and the introduction of partially

suspended prison sentences coupled with probation present challenges. Others may arise if, as is expected, the age of criminal majority is reduced to from 20 to 18, concerning new community sentences to replace probation orders and Juvenile Training School for 18 and 19 year olds.

Mobilisation of tens of thousands of volunteers, mostly retired and in their sixties, a community in itself, to assist offenders in the community is impressive. Differences with Japan exist and should not be under-stated. Wholesale adoption of the Japanese probation service in England and Wales to manage and assist low to medium risk offenders would not be realistic. However, what greater contribution volunteers, not limited to senior members of society, could make and how they might be organised, is surely worthy of consideration, given that in this country a strong spirit of volunteering exists across age groups. Indeed the government may welcome further investigation in view of its stated objective of greater voluntary involvement in rehabilitation.

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