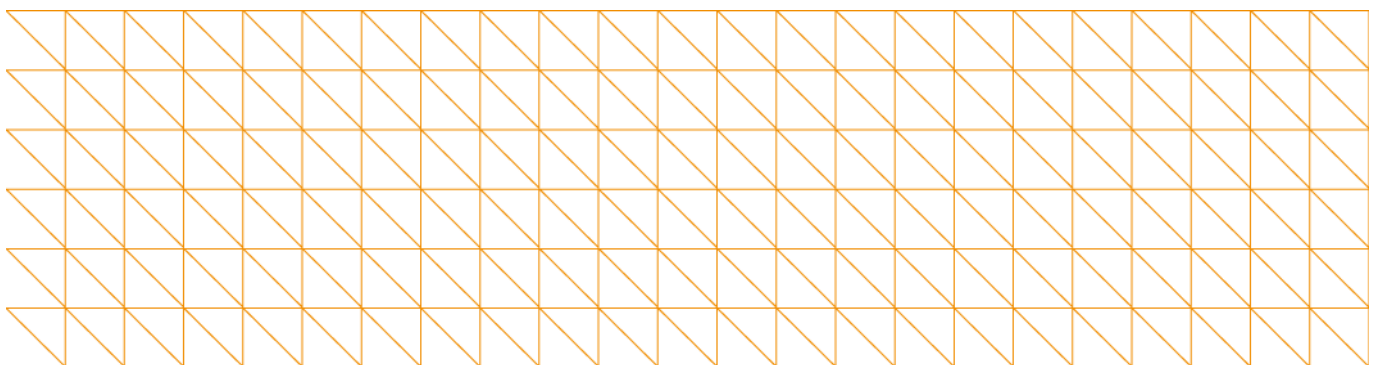




Punishment and Reform: Effective Probation Services

Summary of consultation responses

This summary is published on 9 January 2013





Ministry of
JUSTICE

Punishment and Reform: Effective Probation Services

Summary of consultation responses

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Contents

Background 3

Overview 4

Summary 5

Background

Below is a summary of the key themes that emerged from the responses to the *Punishment and Reform: Effective Probation Services* consultation. We have considered the responses in formulating the policy proposals set out in *Transforming Rehabilitation: a revolution in the way we manage offenders*, published as a consultation document on 9 January 2013.

In total we received over 280 responses from a variety of organisations, including all 35 Probation Trusts and individual members of staff and unions; Voluntary and Community Sector (VCS) and private sector organisations; sentencers, local statutory agencies such as police and local authorities, and some from members of the public, academics and parliamentarians.

Overview

Effective offender management and competition

There was general support from respondents for the key proposals around opening services up to competition, although probation trust staff and unions were not generally supportive. Concern was expressed about the proposal to separate the management of lower risk from higher risk offenders, because risk levels can change. We have taken the concern about risk management into account and have created a mechanism that recognises the dynamic nature of risk in developing the proposals set out *Transforming Rehabilitation*.

Effective Commissioning

There was general support for devolving commissioning responsibility and budgets to Trusts, although some respondents supported a more national approach, which could still be responsive to local needs. Many respondents also highlighted the need to build capacity and capability to enable Trusts to carry out this role. We have given further consideration to the balance between commissioning services at local and national levels and *Transforming Rehabilitation* sets out a proposal that we believe is more efficient and will be simpler to implement.

More diverse provision and professional standards

Many respondents welcomed the opportunities in the proposals for the private and the voluntary and community sectors, but made the case for the new delivery system to facilitate entry to the latter in particular. There was general support for a common set of professional standards for probation professionals across all sectors in the future model.

Strengthening local delivery

There was widespread support for local partnerships, which are already strong, between Trusts, police and local authorities. Most respondents felt that any decision about giving Police and Crime Commissioners (PCCs) commissioning responsibility for probation services should not be made until PCCs are more firmly established.

Summary

Effective offender management and competition (questions 1–4)

Probation Trusts were concerned that the proposal to split offender management on the basis of risk failed to recognise the dynamic nature of risk. They were concerned about the lack of continuity that would occur for offenders in these circumstances and the additional complexity and bureaucracy which would be introduced by the need for additional information exchange and the delays and risks to public safety that could occur if systems were not well integrated. Many of the Trusts stressed the importance of continuity of offender management in ensuring an effective relationship between the offender and offender manager and the difficulties that could arise if this was not maintained. The importance of a clear point of contact for the courts, police and other agencies was highlighted. Respondents also commented that the level of risk an offender is assessed to pose is not always an indicator of the propensity to reoffend, or the seriousness of the offence committed. Some raised concerns about the criteria for transfer between providers creating perverse incentives, in particular the conflict of interest for agencies between achievement of targets and proposing a change in risk status.

Whilst most Trusts advocated that offender management would be best delivered within the public sector, a number recognised that there was the potential to open competition in this area as long as the entirety of offender management was competed. One Trust suggested a phased approach, with different elements of the work done with offenders competed over time. Another Trust suggested that an integrated, co-located multi-provider service could deliver OM and compete lower risk licensees within the next 2–3 years, with the overall lead resting with the public sector probation but being competed in the medium-long term along with the management of higher risk offenders once the model had been evaluated.

Responses from unions and individual staff members were generally opposed to the policy of opening up to competition the management of offenders and believed that this should be a function directly provided by public servants. They argued that any high volume low risk interventions which are contracted should be under the direct supervision of public sector bodies driven by an ethos that supports wholly the protection of the public and rehabilitation of offenders. Responses emphasised that risk assessment for each offender should be undertaken by someone suitably skilled to do so.

There was general recognition that the proposals provided significant opportunities for many **Voluntary and Community Sector (VCS)** organisations. However reforms would need to be made as quickly as possible given the difficulties for many voluntary and community sector organisations to sustain themselves, particularly those that have already invested in submitting bids to deliver services.

There were mixed levels of enthusiasm for competing offender management amongst the VCS, although all agreed that provision of advice to the court should be retained within the public sector. Potential providers tended to be among the most in favour of competition. There were repeated concerns about how offenders would be managed given that risk is dynamic. A strong theme was accountability and many VCS bodies felt that this was not addressed enough in the consultation document. Another key theme was that service provision should be consistent. Those in favour of competition questioned why the management of higher risk offenders should be retained to the public sector, since the VCS already do some work with high risk offenders.

Among **private sector** respondents, there was general support for competing offender management, although some comments that this function would be best retained in the public sector. Concerns about segmenting offender management were widespread. There were concerns that this could fragment the system. The potential impact on public safety and sentencer confidence was discussed, and questions were asked about how the dynamic nature of risk would be managed. There was a general preference for competing all of offender management, or otherwise retaining all rather than splitting it.

There was a preference for integrating the full breadth of probation activity under regional contracts as this would be a more attractive offer to the market, create innovation and value for money, and would also facilitate payment by results. The potential to link competitions for prisons and probation as a single package in regional areas was raised.

The **Police** were chiefly interested to ensure that the proposals to compete offender management did not undermine local Integrated Offender Management (IOM) arrangements and the effective management of problematic and prolific offenders. Concerns were raised that the police might have to pick up some of the enforcement and compliance aspects of OM where a competed provider might withdraw their effort from an offender who had reoffended and had therefore failed to meet the binary success measure in a payment by results contract. The police were concerned that competed providers might have less incentive to work with non-statutory offenders who are often a priority group under IOM schemes.

Local Authorities focussed more on the principles of commissioning of offender management than on the split of high and low risk offenders. They questioned whether a new provider would be able to compete to the standards that are currently provided by the probation service. They were keen to point out the complexity of the work and the high level of expertise required to handle it. They stressed that offender management does not necessarily sit well with the profit making targets of the private sector. They were concerned that the priority should be to get the best deal for offenders rather than the cheapest service available and one suggested that there may be a need for regulation along the lines of OFSTED.

Some local authorities made reference to successful partnerships and multi-agency work including IOM that were already in place and emphasised the need to continue to align probation boundaries with other services to ensure

these partnerships continue to develop and flourish. One suggested that the Community Budget presents a model of how stronger integrated commissioning arrangements across public services could be achieved.

Effective Commissioning (questions 5–8)

Probation Trusts welcomed the proposal to devolve commissioning and emphasised that they already commission and co-commission services although there was recognition that this could go further. Most felt that national commissioning would be appropriate only for some services where economies of scale outweighed other considerations and effective local delivery could be demonstrated. Electronic Monitoring was the recurring example in this context with other services currently provided on a national basis, particularly ICT, estates and facilities management, criticised as lacking any opportunity for local flexibility. Some Trusts considered forming consortia to commission some services where economies of scale were needed. Most Trusts recognised that as commissioners they would need to develop greater procurement expertise and would look to NOMS/MoJ for support.

The trade union respondents preferred a local approach to commissioning and co-commissioning. They expressed particular concerns about large national contracts that, whilst offering economies of scale and some operational benefits, could exclude smaller organisations that may face difficulties in terms of finding sufficient money to compete effectively for such contracts. There was recognition though that contracting on too small a scale would jeopardise consistency of standards of service and potentially be clumsy to monitor effectively.

There was general support from the **VCS** for commissioning to take place at the most local level possible, except where there needed to be national standardisation, or economies of scale to be achieved (the most frequently given example was Electronic Monitoring.) A strong theme was that localism should not come at the expense of quality though. There were also questions raised about areas where local provision may not exist, especially rural areas. To involve the VCS, it was suggested that Trusts should devolve portions of budgets to fund or jointly commission smaller scale initiatives.

On the whole the VCS felt that potential providers should have to explicitly state how they would make special provision for women offenders. Some argued for the ring fencing of funding for women's services. A number of respondents referenced the Corston report and felt that its conclusions were still valid and important to take into account. The Prison Reform Trust argued strongly that having a central women's strategy would help protect women offenders. The proposals in CLINKS' Taskforce Report on commissioning for women offenders were also recommended.

There were mixed views from the **private sector** on the balance of local and national commissioning although a general preference that fewer Trusts would be preferable given the associated economies of scale and contract value which would be more attractive to the market. The point was frequently made that the importance of responding to local need does not necessitate local

commissioning – it is possible to meet specific local needs whilst commissioning at a larger scale. Several organisations suggested that with fewer commissioning Trusts local links could be maintained through Local Delivery Units. It was suggested that NOMS could initially retain the commissioning of services nationally before moving to a more local model that might involve local authorities and PCCs, if that was the preferred way forward.

Concerns were raised about separating commissioner and provider functions during a time of significant wider system reform. It was felt that this could impact negatively on the quality of competition and commissioning and the outcomes delivered, and would delay competitions. A common argument was that the proposals did not represent a full purchaser provider split as the Trusts responsible for commissioning would also be responsible for providing court advice, the management of higher risk offenders and key public interest decisions. If the separation is made, there was an emphasis that this must be genuine to engender market confidence. It was suggested elsewhere that rather than focus on a full purchaser provider split attention should be directed at developing appropriate provider vehicles.

To develop commissioning capability in Trusts it was recommended that a coherent commissioning framework is developed, to help commissioners balance the need to achieve good value for money with delivering effective, responsive services. Respondents also felt that specific outcomes for women offenders could be factored into the commissioning process and specifications as a way of ensuring their needs are met.

A broad theme from the **sentencer** responses was that they were not opposed to reform but wanted to ensure that whatever arrangements are in place they are effective and properly evaluated.

With regard to offender management, the main issue for sentencers was that, whatever the arrangements, they must retain confidence in local probation professionals to ensure that the sentence is delivered in a way that meets objectives and that breaches are dealt with robustly and swiftly. Concerns were raised about the proposal to split higher and lower risk offender management given the fluid nature of risk. The definition of “key public interest decisions” was queried. The National Bench Chairmen’s Forum argued that the management of offenders on licence should not be subject to competition as they often have complex needs and that, as Trusts would be making recall decisions they should also be managing those offenders.

The chief concern expressed by the magistracy was around consistency of service provision and avoiding a “postcode lottery”. There were differing views about the level at which services should be commissioned. Some argued that a national structure would be preferable to ensure equal access to services; while others supported a more local approach, such as through commissioning “hubs”, with only some services such as Electronic Monitoring commissioned nationally for consistency and best price. Concerns were raised about providers “cherry picking” or “creaming and parking” leading to service

becoming inconsistent. Providers would need to be scrutinised to ensure they delivered the service required.

There was some support for a full purchaser provider split to avoid conflicts of interest although it was recommended that there should be independent oversight of this process. One bench did not support a full split amid concerns that Trusts would have to join with the private sector to compete for services which could limit effectiveness and be costly to raise the necessary capability.

It was argued that Trusts would need to be provided with financial support, information and training to develop commissioning capability, with that support potentially provided by central Government.

The **Police** were chiefly concerned that commissioning arrangements enabled effective working and co-commissioning with the police and Police and Crime Commissioners once in place. **Local authorities** were generally keen that offender management services should be co-commissioned with other local services. Examples included housing, substance mis-use and mental health services and were keen that decisions around commissioning local services should be retained locally. There was a recognition that some high cost standardised services might be better delivered centrally.

Police authorities were in favour of a purchaser provider split to ensure an “ethical commissioning cycle” that best allocated resources to meet priorities. On separating purchaser and provider services some local authority respondents advocated a complete split with commissioning, assessment and referral retained by the probation trust and a new commercial entity created for service provision. Others identified that the split needed to be clear but that felt that ethical walls could be introduced within existing organisations.

Police bodies suggested that capability in Probation Trusts could be raised locally by drawing on the expertise of local authorities.

More diverse provision and professional standards (questions 9–12)

Probation Trusts were keen that the Probation Qualification Framework (PQF) should be retained but concerned that fragmenting the service may present a risk as it may not be possible to provide the full career path within any one organisation and this may lead to a lack of probation officers with a holistic view of the service. A number of Trusts re-iterated the proposal from the Probation Association and Probation Chiefs Association to establish a professional framework to incorporate the PQF and opportunities for continuous professional development, alongside a register of qualified staff and a lead body to oversee the framework and register. It was recommended that contracts should ensure that all providers comply with these requirements. Unions were concerned that private sector providers may not be prepared to offer the same level of training and development and that this may result in a less skilled service. There were also concerns raised that the opportunities available to staff may be reduced.

Most respondents felt that the **VCS** would need a significant amount of help to allow them to compete with the private sector. The importance of effective supply chain governance to ensure VCS involvement was raised by several respondents. Some argued that the VCS should be an addition to the public sector and not a replacement and that the VCS were going through unprecedented cuts of their own and are not in a fit state to take on work of this kind.

On payment by results, there was a strong bias against binary recording measures, and a belief that frequency, harm and interim progress towards stopping reoffending (such as getting a job, a house etc.) should be recognised. Respondents argued that rewarding smaller steps will allow smaller VCS to compete as it will aid cash flow and a return on their investment. A significant number of respondents commented that PBR was as yet unproven and that there was a risk contracts would be overly managed which might reduce innovation. There was also a belief that organisations involved in payment by results contracts would not share good practice if information was commercially sensitive.

The prime-sub provider model, with frequent reference made to the Work Programme, was highlighted as a way of providing a clear opportunity for voluntary and community sector bodies, as well as smaller and medium sized enterprises (SMEs), to become involved in local supply chains without exposing them to excessive financial risk. One organisation highlighted the National Citizen Scheme as a model where a commissioner approached large employers with a view to them becoming “integrators” managing a supply chain of SMEs to deliver the core service. It was suggested that competitions could require bidders to specify a preference or requirement for VCS and SMEs to be involved in delivery. The adoption of the Merlin standard for supply chains was recommended.

The time and support needed to develop mutuals was widely recorded. The need for a change in mindset in the public sector was raised, with buy-in from staff and unions essential. TUPE and pension issues were often highlighted as potential barriers to mutualisation. There was a feeling that the public sector should be able to compete but recognition that they might lose bids. Organisations supporting the development of social enterprises highlighted the importance of the competition process providing flexibility to allow the involvement of social enterprises, including as prime contractors.

There was support from the **private sector** for the potential benefits of a payment by results approach although a number of issues were raised about implementation. There was a feeling that greater evidence-sharing of what works to reduce reoffending would be needed to build provider confidence to invest under PbR arrangements. It was strongly recommended that the Government pursue measures other than the binary one – frequency and severity were proposed as alternatives, and interim outcome payments were also encouraged. Questions were asked about how variation in the risk of reoffending for different offender groups would be addressed. Payment intervals and high success thresholds were identified as barriers to smaller organisations engaging with payment by results. The freedom to control

service delivery and adopt a “black box” approach would be fundamental to PbR models. Providers would need sufficient levers and control to drive real changes (as per suggestion above that commissioning all probation and possibly also some custodial services would be preferable to the market).

There was clear support for the development of standardised and accredited set of skills for probation provider staff. It was suggested that this skill set should have a wide CJS focus and be broader than what is currently required of probation officers. Alternatively one respondent felt that current roles were over-qualified which might hinder the realisation of efficiencies. Clarity over staff roles and requirements under new structures would be essential. One respondent recommended the establishment of a professional register of qualified and approved practitioners, while another called for national regulation.

Concern was raised by **sentencers** that payment by results might lead to a conflict of interest between meeting the outcome for payment and ensuring robust compliance and enforcement of court orders.

Respondents perceived Probation Officers as professionals who needed a mechanism for continuous development of skill like any other professional group. There was some concern that the professional nature of the role may be diminished if probation officers are not able to develop the holistic set of skills as a result of providers being focussed on a narrower area of delivery.

It was suggested by the **Police** that commissioners could maintain a list of approved voluntary and community sector providers who could then be factored into contracts at bidding stage. Concerns were raised among local authorities and partnerships about the difficulties smaller and voluntary organisations have in producing bids and competing with larger private sector organisations.

The Police, as did other types of respondents, suggested that the frequency measure should also be supported as a measure for payment by results. Concerns were raised about cost of running and monitoring PBR schemes and the potential for “cherry-picking”.

Police authorities argued that the maintenance of the statutory probation inspectorate would be important to ensure the continued development of the probation profession. Some **local authorities** raised the issue of professional standards and whilst there was support for defined minimum levels of qualification and establishment of a professional registration body concerns were raised about the cost and resource implications this could have if voluntary and community providers were expected to work to these.

Strengthening local delivery (questions 13–15)

Many respondents felt that larger **Probation Trusts** could conflict with a more local delivery approach. Concerns were raised about how such Trusts would maintain links with key local partners including health and other rehabilitative services for offenders. The importance of Integrated Offender Management

approaches was raised in some responses. The importance of local co-commissioning was a common theme.

There was a considerable amount of scepticism about Police and Crime Commissioners shown by the **VCS**. They felt that they were an unproven commodity and they could have an inbuilt bias against community orders based on public perception. Many felt that neither local authorities nor PCCs had the necessary experience and training to take on the commissioning of probation services.

The private sector highlighted Local Delivery Units as an excellent building block for local delivery. As illustrated above, there was a common belief that commissioning did not necessarily have to be “local” in order to respond to local needs. Local authorities and Police and Crime Commissioners were seen as potentially suitable commissioner vehicles. However caution was expressed about moving to this model too early and there being a need to gain experience of commissioning first. There was also some concern about the potential for political drivers to influence decisions taken by local authorities and PCCs as local commissioners.

Sentencers highlighted the importance of their partnership with the probation service. Regular formal and informal contact enables sharing of innovative ideas to help offenders and challenges arising from sentencing. It was felt that resource constraints were already reducing the amount of contact between magistrates and probation and that further change could exacerbate this.

With regard to different models of oversight of probation services, concerns were expressed about the power invested in one individual and the potential political nature of the appointment of Police and Crime Commissioners.

The key point expressed by **Police** bodies was to ensure effective alignment between probation and police structures. There was a general view that it would be preferable for Police and Crime Commissioners rather than local authorities to take responsibility for probation services, as they had a remit to reduce crime, a democratic mandate, had roughly coterminous structures to Probation Trusts, and were well placed to co-ordinate a cohesive approach to the local delivery of criminal justice services.

Generally **local authorities** were not in favour of fewer larger Trusts as it could cause difficulties working across other Local Authority and PCC boundaries in future. There was a general consensus that commissioning with or through PCCs might be a possibility in time but concerns were raised about the political drivers that PCCs may be working to which may detract from the needs of offenders.

Equality Impacts (questions 16–17)

The importance of ensuring all providers adhere to the general public sector duties under the Equality Act was a common theme raised. Ensuring payment by results did not result in more problematic or vulnerable offenders receiving inadequate treatment because they are harder to rehabilitate was also

regularly pointed out. It was noted that 20% of offenders have learning difficulties this should be taken into account. Many voluntary and community sector bodies expressed concerns that staff who transfer from the public to the private sector need to be fully protected from any adverse effects, particularly to pensions.

Some argued that if these changes meant that the geographical distance that needs to be travelled by offenders increases – then this will disproportionately affect women (due to family commitments) and those with disabilities to travel and make necessary appointments. Others argued that everyone who has a protected characteristic should be given special mention by potential providers. Lesbian and bi-sexual women are over represented amongst women offenders; this should be acknowledged and researched if necessary.

The point was made that, statistically, private sector companies have (on average) less disabled people working for them than the public sector. It was felt that any potential providers should be properly vetted and held to account for their equality credentials.

It was suggested that the MoJ should specifically require Trusts to demonstrate how they are providing for the needs of BAME (Black and Minority Ethnic) offenders and other groups with protected characteristics in their areas.

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