



Ministry of
JUSTICE

Transforming Rehabilitation

A revolution in the way we manage offenders

January 2013

Consultation Paper CP1/2013

Consultation start date: 9 January 2013

Consultation close date: 22 February 2013



Transforming Rehabilitation

A revolution in the way we manage offenders

Presented to Parliament

by the Lord Chancellor and Secretary of State for Justice

by Command of Her Majesty

January 2013

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About the consultation questions in this document

- To:** This consultation is aimed primarily at probation professionals, service providers, the judiciary, victims, service users and other stakeholders. We also invite members of the public to respond.
- Questions:** Consultation questions are asked in Part B and Part C of the document. The questions are numbered B1–B3 and C1–C19.
- Duration:** From 9 January 2013 to 22 February 2013
- Enquiries (including requests for the paper in an alternative format) to:** Transforming Rehabilitation consultation
Ministry of Justice
8.25, 102 Petty France
London SW1H 9AJ
020 3334 2477
transforming.rehabilitation@justice.gsi.gov.uk
- How to respond:** Please send your response by 22 February 2013 to:

Transforming Rehabilitation consultation
Ministry of Justice
8.25, 102 Petty France
London SW1H 9AJ
transforming.rehabilitation@justice.gsi.gov.uk
- Additional ways to feed in your views:** Responses to this consultation exercise can also be submitted online via <https://consult.justice.gov.uk/digital-communications/transforming-rehabilitation>. A series of events involving key stakeholders will also take place.

For further information please use the 'Enquiries' contact details above.
- Response paper:** A response to this consultation exercise will be published at: <http://www.justice.gov.uk>

Purpose of the document

This paper sets out the Justice Secretary's proposals for Transforming Rehabilitation.

It describes the Government's intended approach to driving down the rate of reoffending and delivering better value for the taxpayer. We need a criminal justice system which punishes offenders properly, protects the public and supports victims; this system also needs to reform offenders so that they do not go on to commit further crimes. By reducing reoffending we can ensure there are fewer victims of crime, that our communities are safer and that less money is spent on repeat offenders passing through the system again and again.

Our reform proposals focus on the rehabilitation of adult offenders managed in the community, including support and services provided to prisoners in preparation for their release. They include those sentenced to community orders or suspended sentence orders, and those released from prison. They should be seen alongside the important work required in prison to rehabilitate offenders, reduce their risk to the public and prepare them to lead constructive lives on release.

In **Part A: Strategy for Transforming Rehabilitation**, we describe our plans for reforming offender management services to deliver better rehabilitation outcomes and value for money.

- In *'The Coalition: our programme for government'*, the Government committed to introducing a 'rehabilitation revolution' that will pay independent providers to reduce reoffending. This document sets out how we will fulfil that commitment.
- In the December 2010 *'Breaking the Cycle'* Green Paper, we stated our intention to extend the principles of payment by results to all providers of services for offenders by 2015 and improve the rehabilitation of offenders. This document sets out how we intend to extend payment by results across rehabilitative services in the community.
- In the March 2012 *'Punishment and Reform: Effective Probation Services'* consultation, we proposed changes to the way probation services are commissioned and delivered. In this document, we respond to that consultation and set out how our proposals have developed further.

In **Part B: Extending our Reform Programme**, we ask for views on further proposals which could support our reforms. We would welcome a wide range of views on the proposals in this section of the document. Responses should reach us by 22 February 2013 by one of the consultation routes set out at the front of this paper, under the section entitled 'About the consultation questions in this document'. We have already consulted on the principles behind many of the proposals in this document, but wish to undertake now a shorter,

focused consultation since the revised package of measures contains some significant differences from the previous proposals. Many of the underlying themes and issues however, are the same, and the consultees are the same group.

In **Part C: System Specification Questions**, we set out the detailed issues we will discuss with current practitioners, sentencers and potential providers as we finalise the operational design of this system. We will be running a programme of engagement with key stakeholders to gather views. Views on these issues can also be sent to the address above.

Ministerial Foreword

The Coalition Agreement set out an ambitious programme of social change, even at a time of financial constraints. The Government has already embarked on major reforms to welfare and education to tackle the challenge of endemic welfare dependence and educational underperformance, particularly in deprived areas. We now need real reform of the criminal justice system to tackle the unacceptable cycle of reoffending.

Reoffending has been far too high for far too long. Despite significant increases in spending on probation under the previous government, almost half of those released from prison still go on to reoffend within 12 months, and there has been little change in reconviction rates over the past decade. We simply can't carry on the same way hoping for a different result.

We need a tough but intelligent Criminal Justice System that both punishes people properly when they break the law – and also supports them to get their lives back on track, so they don't commit crime again in the future.

Offenders often lead chaotic lives: Broken homes, drug and alcohol misuse, generational worklessness, abusive relationships, childhoods spent in care, mental illness, and educational failure are all elements so very common in the backgrounds of so many of our offenders. And right now, we are failing to turn their lives around. In fact, those released from short-term sentences, who have the highest reoffending rates get no support on release at all.

Transforming rehabilitation is my top priority. We will reform the way in which offenders are managed in the community in order to achieve a steady year on year reduction in reoffending. We will increase our focus on rehabilitation and deal with offenders' broader life management issues. And for the first time in recent history we will also extend rehabilitation to prisoners released after short sentences. My vision is very simple. When someone leaves prison, I want them already to have a mentor in place. I want them to be met at the prison gate, to have a place to live sorted out, to have a package of support set up, be it training or drug treatment or an employability course. I also want them to have someone they can turn to as a wise friend as they turn their lives around.

Given the challenging financial context, we will need to increase efficiency and drive down costs to enable us to extend provision to those released from short-term sentences. We therefore intend to begin a process of competition to open up the market and bring in a more diverse mix of providers, delivering increased innovation and improved value for money. To ensure that the system is properly focused on reducing reoffending and deploying more effective interventions, providers will in future only be paid in full when they reduce reconviction rates in their area.

We will not take any risks in protecting the public and the public sector. Probation Service will retain ultimate responsibility for public protection and will manage directly those offenders who pose the highest risk of serious harm to the public – this group will include cases subject to Multi-Agency Public Protection Arrangements. They will also continue to carry out assessments of the risk of serious harm posed by each offender, advise the courts and Parole Board and handle most¹ breach cases. The Probation Service performs a vital role in protecting the public and managing risk – I am determined to preserve that.

The great majority of community sentences and rehabilitation work will, however, be delivered by the private and voluntary sectors, who have particular expertise in this area. I am also keen to ensure that probation professionals currently within existing structures have scope to play a full role in the new rehabilitation provision. Our reforms will make use of local experience, and integrate with existing local structures. We want to introduce a system which allows for closer alignment of the variety of services which offenders use, through co-commissioning with other government departments, Police and Crime Commissioners, and local authorities.

These reforms will make a significant change to the system, delivering the Government's commitment to real reform. Transforming rehabilitation will help to ensure that all of those sentenced to prison or community sentences are properly punished while being supported to turn their backs on crime for good – meaning lower crime, fewer victims and safer communities.



Chris Grayling
Lord Chancellor and Secretary of State for Justice

January 2013

The need to Transform Rehabilitation

The offender management system exists to serve a number of purposes: to punish criminals and support them to reform, to protect the public from further harm caused by offenders, and to support victims and witnesses of crime.

Whilst there is much that the system does well, there is no masking the fact that it is failing in one of its primary purposes. Too many offenders go through the justice system, serve their sentence and simply pick up where they left off. The statistics bear this out. For adult offenders convicted or released from custody in the year to December 2010, the percentage that reoffended within just 12 months was:²

- 57.6% for prisoners sentenced to under 12 months, with 17,560 re-offenders committing 83,107 further offences;
- 35.9% for prisoners sentenced to 12 months or more (excluding Imprisonment for Public Protection and life sentences), with 9,170 re-offenders committing 28,244 further offences; and
- 34.1% for those starting a court order³ – 49,636 re-offenders committed 157,796 further offences.

The evidence⁴ suggests that even those ex-prisoners who do not reoffend within the first year will often go on to commit further offences. For adult offenders released from custody in 2000, 45.8% reoffended within a year and this had risen to 66.1% within three years and 72.5% within five years.

The implications of this failure are startling. The National Audit Office has estimated the cost of reoffending by recent ex-prisoners as being somewhere between £9.5 billion and £13 billion.⁵

It is clear that a fresh approach to rehabilitation is needed. We need a revolution in how we work to prevent offenders from reoffending.

We need to go straight to the heart of the issue and encourage the development of services designed to support offenders to overcome the barriers that prevent them turning their lives around.

There is a raft of reasons why offenders commit crimes and each individual has a different story. However, many share a similar history and elements such as homelessness, drug and alcohol dependency, mental illness and

² Proven re-reoffending statistics quarterly publication, Ministry of Justice.

³ Court Orders include pre-Criminal Justice Act 2003 community sentences, new community orders and suspended sentence orders.

⁴ Compendium of reoffending statistics and analysis 2012.

⁵ Managing offenders on short custodial sentences, National Audit Office, March 2010.

unemployment are all too common. A study in 2005/06 showed that only about one third of prisoners reported being in paid employment in the four weeks before custody and 13% of prisoners reported never having had a job. 15% percent of these prisoners reported being homeless before custody and 25% were estimated to be suffering from anxiety and depression.⁶

We need to do more to get prisoners back onto the right track, with only 10% in employment at any point during the 13 weeks following their release and 48% claiming out-of-work benefits in the same period.⁷ We need a system where one provider has overall responsibility for getting to grips with an offender's life management skills, co-ordinating a package of support to deliver better results. In addition, some of the most prolific re-offenders receive little or no support on release from prison and this needs to change. We need to achieve this in a way that is affordable within the context of the Ministry of Justice's commitment to deliver annual savings of over £2 billion by 2014/15 and looks forward to the next Spending Review.

Our proposals aim to achieve a number of outcomes which we think will help us to address high reoffending rates and increase efficiency and value for money:

1. **Greater flexibility in delivery:** It is for the courts to decide on a sentence for an individual offender. After sentencing, however, the delivery of offender services has historically focused too closely on process rather than the impact on offender rehabilitation. We want to incentivise providers to innovate and to make best use of approaches and services that have demonstrated they can work to reduce reoffending. We will remove unnecessary bureaucracy and increase the scope for professionals in our proposed new structure to use their discretion to focus on delivering the support and services needed to turn an individual away from crime. Providers will be freed to do what works to rehabilitate offenders, and incentivised to deliver real results with part of their contract payment dependent on reducing reoffending.
2. **Extending the scope of rehabilitation:** We need to reach as many offenders as possible with our rehabilitative services, and especially those most likely to reoffend. Nearly 58% of offenders sentenced to less than a year in custody reoffend within a year of release, yet the system currently provides few opportunities to make them address their reoffending. We want to extend rehabilitation services to make those who go in for short

⁶ Results from the Surveying Prisoner Crime Reduction (SPCR) survey, Ministry of Justice, 2012 – figures apply to adults serving between one month and four years.

⁷ Offending, employment and benefits – emerging findings from the data linkage project, Ministry of Justice, 2011. Employment data is from HMRC's P45 data. P45 employment spells often have estimated start or end dates. In addition, P45 employment spells do not usually record employment paid at levels below tax thresholds, self-employment or cash-in-hand informal economy work. Therefore care must be taken in interpreting findings relating to employment outcomes. Figures apply to prisoners released in 2008.

sentences but reoffend time and again part of our approach, and to provide a statutory basis to require them to engage.

3. **More efficient services:** We need to free up funding to provide rehabilitation for those who need it most, and at a time when the Ministry of Justice (MoJ) is committed to playing its part in supporting deficit reduction. We propose to introduce a widespread programme of competition, and invite providers from the private and voluntary sectors to bid to deliver the majority of current probation services. We will award contracts to those providers who demonstrate that they can deliver efficient, high-quality services and improve value for money. The recent competition to run Community Payback services in London demonstrated this potential, with the final contract due to return estimated savings of £25m over the four-year life of the contract, representing a 37% reduction in the cost of the service.⁸ We will also explore how we can drive down unit costs further across the system.
4. **Greater diversity of providers:** Probation staff make a fundamental contribution to protecting the public, including from the most dangerous offenders in the community, and we want to retain the wealth of experience that currently resides within the Probation Service. We will put in place a system which benefits from the innovation and versatility of private and voluntary sector providers, local expertise and the skills and experience of probation professionals to support the rehabilitation of offenders as envisaged by the Offender Management Act 2007.
5. **Collaboration with partners:** We need to build on and preserve the good work already done by agencies who work together to manage offenders in the most effective way (e.g. under Multi-Agency Public Protection Arrangements (MAPPA) or Integrated Offender Management (IOM)) and to encourage strong partnership working at a local level. Our system will enable co-commissioning for a range of offender services.

The proposals that follow in this document describe how we intend to deliver a revolution in the way rehabilitation services are delivered.

⁸ http://www.parliament.uk/documents/commons-vote-office/July_2012/13-07-12/17-Justice-CommunityPayback.pdf

Part A: Strategy for Transforming Rehabilitation

In the March 2012 *'Punishment and Reform: Effective Probation Services'* consultation, we proposed changes to the way probation services are commissioned and delivered. We have considered the responses generated by that consultation in developing the current strategy. We will publish separately a summary of the responses received.

The case for change and the principles and rationale for extending competition of probation services and effective offender management remain compelling. We also continue to see the public sector probation service as vital to ensuring the protection of the public and retaining key public interest decisions for all offenders.

In commissioning offender services, as we acknowledged in the earlier consultation, it is important to find the right balance between devolving responsibility and the need to make efficiencies from economies of scale. We have reviewed the model for local commissioning proposed in that document and have concluded that a more effective model is to procure such services nationally in a number of geographical lots, to achieve the best price and a consistent commissioning approach across the country. It is important, though, that commissioning decisions are informed by local intelligence.

Whilst previous consultation responses have helped inform the current strategy and many of the themes are the same, there are some key delivery differences to our proposed model from that in the original consultation and we are considering the package afresh. If you wish to refer us to your previous response we ask that you make that clear as we will not otherwise assume that to be the case.

This section of the document describes our plans for reforming offender services in light of the new commissioning model to deliver better rehabilitation outcomes and value for money.

Summary of Proposals

The core features of our plans for reform are as follows. Each is described in further detail in the subsequent sections.

- **Section 1 – Competing services in the community:** The majority of community-based offender services will be subject to competition. Through competition, we will open service delivery to a much more diverse range of providers and achieve efficiencies, while retaining an important role for the public sector probation service focused on protecting the public and delivering other core functions reserved to the public sector, such as providing advice to court.
- **Section 2 – Providers who tackle the causes of reoffending:** Providers will be commissioned to deliver community orders and licence

requirements, and will be incentivised to reduce reoffending. They will be paid by results according to achieving reductions in reconviction rates. We want providers to tackle the causes of reoffending – for example, by providing mentors and signposting to services aimed at employment, accommodation, training and tackling addiction, to help offenders turn their lives around. We will encourage providers to harness local expertise through working with local and specialist voluntary and community sector (VCS) organisations.

- **Section 3 – Extending rehabilitative provision to more offenders:** By delivering services more efficiently we plan to extend rehabilitative provision to offenders released from short custodial sentences of less than 12 months. The vast majority of these offenders currently have no statutory licence or rehabilitation provision but have the highest reconviction rates. We intend to make sure they receive targeted rehabilitative interventions, and extend statutory supervision to ensure they engage with these programmes.
- **Section 4 – The public sector role and public protection:** The public sector probation service will retain responsibility for public protection. They will continue to carry out assessments of the risk of serious harm posed by each offender and advise the courts and Parole Board. Working in partnership with the police and others, the public sector will manage directly those offenders who pose the highest risk of serious harm to the public – this group will include Multi-Agency Public Protection Arrangements (MAPPA) cases where the public sector will continue to work with police forces in assessing and managing risk.
- **Section 5 – Effective partnership working between providers and public sector:** Providers of competed services will work closely with the public sector. In particular, we will put arrangements in place so that in cases where the risk of serious harm escalates, providers will notify the public sector probation service and take appropriate further action to safeguard the public.
- **Section 6 – Efficient structural design:** We will design the structure of this new system to be as efficient as possible. We will commission delivery of competed services over geographical areas through a national commissioning function to avoid undue complexity and duplication. The new contract package areas will be aligned to Police and Crime Commissioner (PCC) and local authority boundaries and support interaction with other local services, grouping individual police force areas where necessary. The public sector probation service will also be organised in the most efficient manner for delivery of its new responsibilities.
- **Section 7 – Integration with local partnerships:** We will design this system to make use of local expertise and to integrate into existing local structures. We need to align rehabilitative services with the role played by PCCs so that our new market model will facilitate co-commissioning with them and other commissioners of public services. Potential providers will have to evidence how they would sustain local partnerships as part of the bidding process. There will also be significant scope for the VCS to deliver

front-line rehabilitation services and to form genuine partnerships to enter the competition process.

- **Section 8 – Affording the reformed system:** We will design a system which is affordable under spending constraints, consistent with the Government's priority of tackling the deficit. We aim to achieve efficiencies through competing services and driving down the unit costs of service provision and use these to fund transition costs and extending rehabilitative provision. In the longer term, reductions in reoffending have the potential to deliver benefits across the criminal justice system and society more broadly.

Section 1: Competing services in the community

We will compete services delivered under the majority of our current spend in the community, with contracted providers responsible for rehabilitating offenders and delivering community order and licence requirements.

The majority of rehabilitative and punitive services in the community will be opened up to a diverse market of providers. We currently spend around £1 billion on delivering these services. Through competition and payment by results, we will introduce more efficient and effective services, specifically targeting a significant reduction in reoffending rates. This will deliver a tough but intelligent justice system, aligning proper punishments with an integrated programme of support to help offenders reform.

The vast majority of offenders in the community, including both those on community orders⁹ and those released from custody, will in future be managed on a day-to-day basis by contracted providers. The exception will be those offenders subject to MAPPAs and others judged to pose a high risk of serious harm to the public. We estimate that there is the potential for competed providers to manage an annual caseload of c.265,000 offenders, but that the public sector will provide intensive oversight of other offenders who pose a higher risk of serious harm.

Successful bidders will be responsible for delivering requirements of community orders or licence conditions. They will also be incentivised through payment by results to tackle offenders' life management problems and reduce reoffending. For offenders leaving prison, providers should work with them 'through the prison gate', engaging them before their release into the community and maintaining continuous support. This should be linked with the important role that prisons play in the rehabilitation of offenders and in reducing their risk of harm, including efforts to increase the number of prisoners working while in custody.

We have already competed some probation services, either at a national level (e.g. Electronic Monitoring contracts) or within a Probation Trust (e.g. London Community Payback). These services will be available to new providers as per the terms and geographic coverage of existing contracts. We will also determine how best to integrate these services in the longer term with the new market model.

We will be working to build a strong market for this competition and we will continue to work closely with the market to test out key principles and ideas.

⁹ For this document, 'offenders on community orders' are defined as adult (aged 18+) offenders sentenced to either a Community Order or Suspended Sentence Order.

Our engagement plan includes consultation with a wide range of providers from different sectors.

The design of a service underpinned by good performance data and robust counterfactuals is central to ensuring good value for money contracts for the taxpayer which deliver real improvements in services. We need to be sure about what good performance looks like and reward this, and we need to have robust measures in place to manage poor performance. We will be consulting with providers, practitioners and wider stakeholders to build our understanding of how best to achieve this across these services. We will also be looking at the best lessons from contract and performance management from across Government. These will be fed into the design of competition and contractual structures.

There will be a strong emphasis on creating a diverse and sustainable market for future provision which continues to bring in and attract new providers, fosters innovation and rewards providers who are delivering outcomes, whilst disincentivising poor performance. We will be using the consultation period to explore further options that can help deliver this.

It will be crucial that providers work closely with all local partners to ensure that the service delivered to achieve the reducing reoffending outcomes are aligned with other local services, whoever the commissioner – for example PCCs, local authorities or NHS commissioners. We will require providers to evidence how they would embed services with local partnerships as part of the bidding process, and in particular IOM partnerships

For all offenders, the public sector probation service will retain its key role in providing advice to courts on sentencing options, and will retain overall responsibility for ensuring that risk of harm to the public is effectively managed. This will include retaining direct offender management responsibility for those considered to pose the highest risk of harm. The future role of the public sector probation service is discussed in further detail at Section 4.

Fig. 1 Proposed allocation of functions for different offender groups

	Market	Public Sector
Low / Medium Risk Offenders	<ul style="list-style-type: none"> • Paid by results to rehabilitate offenders Methods likely to include ‘through the gate’ mentoring, and supporting access to accommodation / employment / training / substance misuse treatment, in addition to delivery of sentence / licence requirements • Inform public sector probation service of available and suitable interventions to inform advice to court on sentencing options / licence conditions • Ensure that escalating risk of serious harm is identified and managed in conjunction with the public sector probation service • Notify the public sector probation service or court of breaches of community orders, suspended sentence requirements and licence conditions 	<ul style="list-style-type: none"> • Accountable for public protection • Initial risk assessment of offenders • Advice to court and Parole Board on sentencing / licence conditions • Advice on return to court and recall to custody in cases of breach of order or licence conditions • Engage with providers, advising on managing risk and responding to escalating risk of serious harm
High Risk Offenders	<ul style="list-style-type: none"> • Deliver community order requirements and rehabilitative interventions where commissioned to do so 	<ul style="list-style-type: none"> • Accountable for public protection • Initial risk assessment and advice to court and Parole Board as above • Direct offender management, working with MAPPA and other partners

Section 2: Providers who tackle the causes of offending

We will pay providers to deliver community orders and licence requirements, and also incentivise them through payment by results to reduce reoffending.

In addition to delivering the sentence of the court, providers will be free to utilise other interventions aimed at reducing reoffending, drawing on existing best practice and partnering with expert local organisations. We want to see a market model that supports a wide range of lead providers, and partnerships which bring in the particular skills of local and specialist organisations.

One issue on which respondents to the '*Punishment and Reform: Effective Probation Services*' consultation were almost universally agreed was that the effective interventions delivered by small and medium-sized enterprises (SMEs) and the VCS must be preserved within the system. We recognise the significant expertise and dynamism of many VCS providers and that they have a crucial role to play in embedding work with offenders into local initiatives and communities.

We are keen to see partnerships between VCS organisations, or private and VCS providers, coming forward to compete for contracts. The emerging social investment market has the potential to ensure that VCS bidders have the financial resources to put together credible bids and form genuine partnerships with the private sector. We will continue to engage with the social investment market to ensure that the contracting process is compatible with this kind of financing. Smaller VCS organisations will not be excluded either – we will take steps to ensure they can form part of sub-contracting arrangements which are managed fairly and sustainably.

While we will need to contract with entities capable of bearing the financial and operational risks associated with offender services in the community and the introduction of payment by results, it will also be open to those currently in the public sector to design prospective mutuals or develop appropriate partnerships with other organisations to bid to win contracts for service delivery. It is envisaged that only if and when these bids have been successful will any employee-led entities or partnerships be formally set up. This is to guarantee continuity of service in probation during the transition to new arrangements, and also to ensure that those public sector probation professionals who do come together to enter the bidding process are not disadvantaged if they are ultimately unsuccessful.

The Ministry of Justice and the Cabinet Office will work together to support leaders and staff in Probation Trusts in exploring the options and feasibility of participating in the design of appropriate partnerships and independent entities in advance of competitions. The Cabinet Office will design a package of support for those who wish to explore this option, including access to the Cabinet Office's £10m Mutuals Support Programme.

Public sector organisations – for example, the police – may be able to engage directly in and be rewarded for the delivery of additional services, provided we can mitigate any potential conflict of interest and ensure propriety in the use of public money.

We will require lead providers to commit to supply chain management principles aligned with those identified by the Merlin Standard. We will ensure that under payment by results arrangements, disproportionate levels of financial risk are not passed down to VCS and SME providers, and ensure sustainable funding streams and support access to social investment. To support the VCS to operate under a payment by results framework in the future, the National Offender Management Service (NOMS) is investing £150k of grant funding in 2012/13 to develop a capacity-building action plan for the sector. A further grant of £350k will then be available in 2013/14 to execute the plan.

There are a range of factors that lead individuals to crime. In addition to delivering the sentence, we want to see providers tackling offenders' broader life management issues – for example by helping them find accommodation, employment and access training and other public services, as well as by addressing their attitudes, thinking and behaviour, and by connecting them to mental health, drug and alcohol treatment programmes.

We want these reforms to be effective for all offenders. We will ensure that the specific needs and priorities relevant to female offenders are recognised and addressed within our overall payment by results approach. Probation Trusts are required by the NOMS Commissioning Intentions document to demonstrate how they will ensure appropriate provision of women's services. They already work with other providers, such as the VCS-led Women's Community Services, to address the rehabilitative needs of female offenders serving community orders. For all female offenders other than those who pose a high risk of serious harm, the responsibility to deliver rehabilitation services will be transferred to the new market providers and will be included in the overall payment by results approach.

We will continue to consider the potential impact of our proposed reforms on other offenders with complex needs and protected characteristics.

We want to see offenders desist completely from committing crime, to reduce the number who return to the system. This will cut prison and probation costs, reduce court backlogs and allow for savings on legal aid provision. We will apply payment by results, only paying providers in full if they achieve a sufficient reduction in reoffending. Additional outcome payments may be made if the agreed reduction is exceeded – we want providers to focus relentlessly on rehabilitating offenders. We will spend taxpayers' money on what works to reduce reoffending and on the most effective services, but we will not reward services that fail.

Responses to the *'Punishment and Reform: Effective Probation Services'* consultation highlighted the risk that payment by results based on a simple

binary desistance measure could encourage providers to concentrate efforts on the offenders least likely to reoffend.

The binary measure aligns most closely with our overall aim of complete desistance. However, we are considering ways to adapt this measure to ensure that providers have an incentive to continue to engage with offenders after they have been reconvicted and sentenced and then subsequently return to the providers' caseload.

We intend to develop our payment structures to incentivise providers to deliver effective services for all offenders, even the most problematic repeat offenders.

Section 3: Extending rehabilitative provision to more offenders

We will use competition and other savings to extend our rehabilitative approach to offenders released from short custodial sentences who currently receive no statutory licence or rehabilitation provision but have high reconviction rates.

There are currently few rehabilitative services that are provided through the criminal justice system to offenders released from custodial sentences of less than 12 months, and yet they are amongst the most highly prolific offender groups. Of the short sentenced offenders released from prison in 2010 as a whole, 57.6% reoffended within a year, with these re-offenders committing an average of 4.73 further offences over that period. Offenders sentenced to less than 12 months spent an average of 2.2 months in prison¹⁰ so there is little opportunity to reform offenders from this group in prison. The dedication and pooled expertise of IOM arrangements has served to control the impact of the worst offenders in local areas. Our proposals will bolster these efforts by including short sentenced prisoners released from custody within a provider's caseload, and providing a statutory basis for intervention.

We will give the courts the necessary powers to impose short custodial sentences which will now include supervision on release from custody. We will ensure the supervision period for all offenders will be of sufficient duration to support meaningful rehabilitative work with offenders, following the essential punishment element provided by the custodial part of the sentence.

In order to support compliance, there must be consequences for offenders who will not engage with efforts to rehabilitate them. In these cases, we want to strike a balance between enabling rehabilitation to continue and ensuring that non-compliance is addressed. We will introduce a scale of available measures, to provide a range of options for challenging offenders who fail to engage with providers. This will include consideration of the option of custody as a last resort.

There will be cost pressures from extending rehabilitative interventions to offenders released from short custodial sentences and in transition to the new system. We believe these costs can be balanced by competing services to release efficiencies and drive down unit costs across the system. In the longer term, a reduction in reoffending rates has the potential to deliver reductions in demand on the justice system as a whole.

¹⁰ For the period April to June 2012 and including time spent on remand.

Case Study: Social Impact Bond pilot project

For a six year pilot, the Ministry of Justice has contracted with Social Finance to deliver rehabilitation services to adult male offenders sentenced to less than 12 months' imprisonment and discharged from HMP Peterborough. This provides a unique opportunity to engage with a group of prisoners whose reoffending rate is high and who currently receive no statutory probation when released from prison.

Under the pilot, Social Finance has commissioned St Giles Trust and other organisations to work intensively with 3,000 prisoners, both inside Peterborough prison and after release, to help them resettle into the community. The first full cohort results from the pilot will be available in 2014. A report into the implementation of the pilot interviewed key people involved in the pilots. They stated that:

'Through-the-gate care meeting offenders, following that through, being there to support them, that is the right thing to do.'

Deputy Director, HMP Peterborough

'The benefits are that we actually do make a real difference in reoffending ... it will work with a group of offenders which [are] identified as our biggest gap and our biggest priority to try and do something about.'

Regional Manager for Commissioning, NOMS East

Section 4: The public sector role and public protection

The public sector probation service will retain responsibility for public protection. For the highest risk offenders, this will mean direct offender management responsibility. For all other offenders, the public sector will have responsibility for ensuring contracted providers are effectively managing the risk of harm posed to the public. The public sector deserves recognition for the professional standards it has demonstrated in protecting the public from serious harm, and we intend to maintain and build on that expertise.

For all offenders, the public sector probation service will continue to provide advice to court on sentencing options, conduct initial risk assessments, and be accountable for ensuring that the risk of harm that offenders pose to the public is properly managed. The manner in which it discharges that responsibility will differ according to the offender and the risk of harm that they are considered to represent. The more specialised nature of this work and the focus on serious harm will require a highly skilled, focused and professional public probation service.

When a community order is made or an offender is released from prison on licence, an initial risk assessment will be carried out by the public sector probation service. This will identify the level of risk the offender poses to the safety of the public. Those considered to be at high risk of causing serious harm will continue to be managed directly by the public sector probation service, as now. Offenders who fall within MAPPA each year will also continue to be managed by the public sector MAPPA partners as now.

All other offenders will be managed by contracted providers, but the public sector probation service will continue to have responsibility for ensuring the risk of harm to the public posed by these offenders is properly managed. This means the contracted provider will be required to have effective arrangements in place for managing risk and for informing the public sector of escalating risk of serious harm where necessary, as the level of risk posed by offenders is dynamic. The probation service will maintain an appropriate level of contact with the providers in relation to these cases. The relationship between the probation service and contracted providers is discussed further in Section 5.

Section 5: Effective partnership working between providers and the public sector

There will be close interaction between providers of competed services and the public sector. Probation professionals will have an important role to play in both parts of the system. Many current probation professionals will have a role to play working in the competed services, where they will have an increased focus on the rehabilitation of offenders. And some will continue to work in the public sector to manage any risk of serious harm posed by offenders, and to respond to offenders who breach their licence conditions or community order requirements.

Under our proposals, we expect that probation professionals will work in the public, private and voluntary sectors, protecting the public and delivering rehabilitation services using their considerable skills and experience in working with offenders. We are clear that we will maintain this expertise and a strong probation profession. All providers in the new market will be required to sustain appropriate skills for these services with effective training and accreditation comparable to the high standards in place today.

We will look at the most appropriate way of ensuring professional standards are maintained. We will draw on the responses from the previous consultation to develop an appropriate approach to maintaining professional standards and assuring the quality of training and accreditation which will apply across the public, private and voluntary sectors. Some have suggested a professional body or institute to support practitioners in upholding these standards and we seek further views on this in the consultation questions at the end of the document.

It will be important that HM Inspectorate of Probation plays a role in independently inspecting offender management and the work done by providers in all sectors, ensuring that standards are upheld and helping to support continuous improvements in practice.

The public sector probation service will advise the court on sentencing, and will need a clear understanding of what rehabilitative services providers can offer, and what sentence will best facilitate these. It will work with contracted providers to manage the risk of serious harm posed by offenders, for which the public sector will remain accountable. It will also be an essential source of advice on risk management for contracted providers, who will need to ensure their staff are trained to identify and act on triggers which may indicate escalating risk of serious harm.

The public sector and contracted providers will work together to handle cases where offenders breach the requirements of their sentence or licence. Clarity on the parameters and triggers for referral back to the public sector for risk management and also breach and recall decisions will be essential. Providers

will report material breaches of community orders, suspended sentence requirements and licence conditions to the public sector, who will then advise the court or Secretary of State. It is the case now that straightforward breach cases involving offenders serving a standalone curfew requirement are dealt with directly by the contracted provider. As we develop our new system, we will consider the applicability of similar arrangements under our proposals.

We are absolutely clear that close relationships between the public sector and contracted providers will be vital to make the reformed system work effectively. Close communication and sharing of information between all those involved with an offender will be crucial. We will need ICT systems that enable information to be shared easily and will work with all parties to develop the best cost-effective approach for implementation.

Section 6: Efficient structural design

We will design the structure of this new service to be as efficient as possible. We will commission contracts over geographical areas through a national function, to avoid undue complexity and duplication in the commissioning process and to align these with other services where possible. The public sector will be organised in the way which will best enable it to deliver its core functions.

We believe a national commissioner function, informed by intelligence on local needs provided by local delivery agencies will ensure our proposals are deliverable, affordable and demonstrate maximum value for money.

We propose to commission delivery of 'bundled' services within geographical contract areas. We are minded to introduce a structure of 16 contract package areas that takes account of both existing partnerships and the needs of the market. Our premise is driven by the need to achieve economies of scale and avoid undue complexity and duplication, whilst also ensuring each area is large enough for us to be able to measure significant changes in reoffending rates and to facilitate payment by results. The areas also need to be large enough to support effective 'through the gate' provision, given that prisoners will often be held at prisons that are outside the immediate area to which they will be released.

We want to introduce a system which allows for closer alignment and integration of the variety of services which offenders use through co-commissioning. Our proposed configuration aligns with Police and Crime Commissioner and local authority boundaries whilst supporting the integration of police and offender rehabilitation services now and in the future. In order to achieve sufficient scale we will consider, where necessary and where the market suggests, to group individual police force areas within one contract package area. We will also seek to align commissioning boundaries as far as possible with services provided by other Government departments, for example the Work Programme. In designing the lots we would look to providers to give evidence of the best fit with both local needs and existing cross-boundary collaboration arrangements.

The final contract package areas will be subject to engagement with the market, with probation and with partners. We will also consider the arguments for alternative configurations, including smaller geographic areas, if the issues outlined above can be addressed.

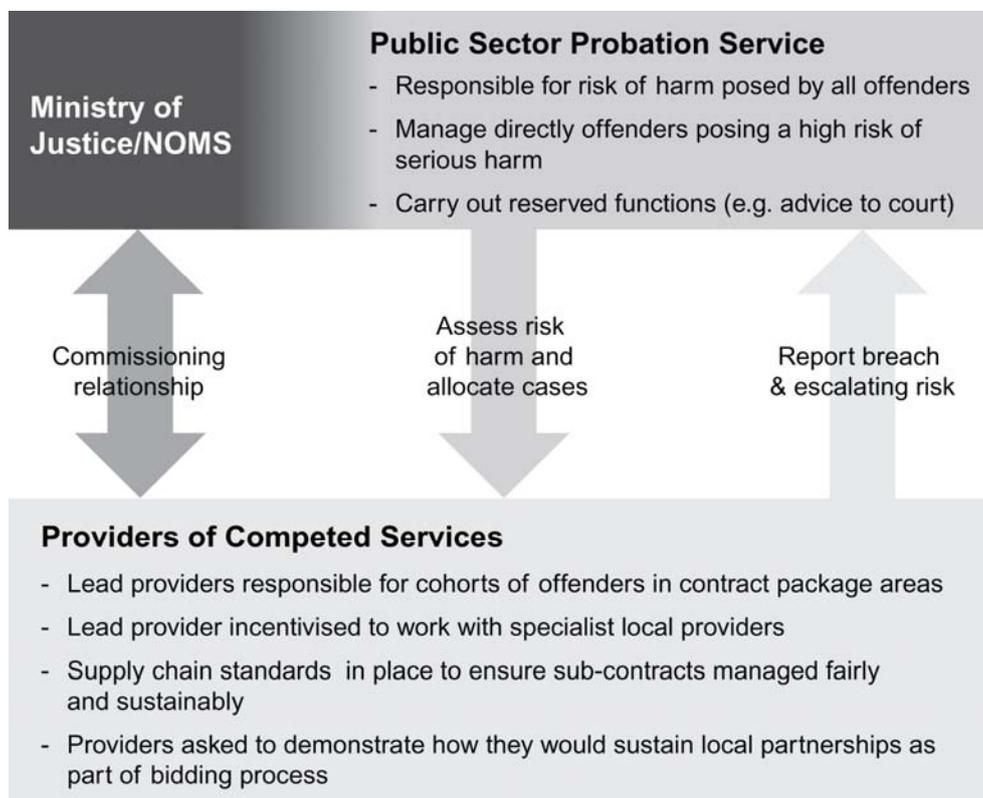
We expect most contracts to cover geographical areas larger than the current Probation Trusts. The public sector will be organised in the most efficient manner for delivery of its new responsibilities – this will require fewer Trusts or a different structure (such as a single national probation trust or direct delivery on behalf of the Secretary of State). We intend to begin the transition

to the new operating structure in 2013. We invite views on the most effective structure for delivering these responsibilities.

Our intention to commission contracts through a national function is a change from the proposals outlined in the *'Punishment and Reform: Effective Probation Services'* consultation document, which suggested devolving commissioning responsibilities to Probation Trusts. We heard arguments for and against this approach in the responses received. Some respondents expressed concern that national contracts might overlook local variations and characteristics, and that they could exclude smaller organisations unable to meet the costs of bidding for such contracts.

However, the point was also made that responsiveness to local needs does not necessitate local commissioning, as diversity can be recognised as part of commissioning at larger scale, provided the new system embeds local delivery and local partnerships in a sustainable way. Having considered responses, we have decided that effectively commissioning locally responsive services whilst also realising the greatest efficiencies possible can best be achieved through a national commissioner function provided that it is informed by local delivery systems and public sector probation partners providing intelligence on local needs.

Fig. 2 Representation of the redesigned offender management system



Section 7: Integration with local partnerships

We will design this system to make best use of local expertise, and to integrate into existing local structures, including statutory ones such as those that underpin MAPPA and Youth Offending Teams. Potential providers will have to evidence how they would sustain local partnerships in contracts. We will ensure that the public sector probation service has local leads in place, and the redesigned system will support the effective operation of local IOM arrangements.

To achieve reductions in reoffending, it will be of paramount importance that commissioning of rehabilitation services is informed by intelligence on local needs. Providers will also need to work closely with all local partners and ensure that the service delivered is aligned with other local services.

We want to build on the local knowledge and links that currently exist within Probation Trusts. Through the commissioning function, we will encourage providers to draw on local expertise through partnering and sub-contracting, particularly with the voluntary and community sector and local delivery agencies. We will work to ensure that these contracts are managed fairly and sustainably, so that the broadest range of organisations possible can play their part in Transforming Rehabilitation.

In the process of selecting the future providers, the Ministry of Justice will include as part of the formal evaluation a requirement that providers evidence how they would sustain and develop local networks and partnerships and in particular existing IOM arrangements. Providers will have an element of their funding at risk, with full payment dependent on their success at reducing reoffending. It will be in their interests to nurture local partnerships and to make use of services commissioned by other organisations that help to deliver these results.

PCCs bring an opportunity for collective local leadership to galvanise police, local authorities, the Crown Prosecution Service and courts to work together to prevent crime and reduce reoffending. Our rehabilitation services need to be responsive to these changes and by designing contract package areas which align with the PCCs' police force boundaries we want to ensure that measures to reduce crime and rehabilitate offenders can be integrated effectively to achieve the best results.

PCCs will also play a crucial role locally by holding local partners to account via the Community Safety Partnerships and we envisage that the public, private and voluntary sectors might form part of these partnerships. PCCs will also commission services at a local level with other local agencies (for example, local health commissioners).

We intend that our new market model will facilitate co-commissioning with PCCs. It will complement and be accessible for other commissioners of public

services, many of which are directly relevant to the objective of reducing reoffending, such as substance misuse, mental health, accommodation, family relationships, employment and skills.

Some of the root causes of offending such as broken homes, drug and alcohol misuse, generational worklessness, childhoods spent in care, mental illness and educational failure impact on other Government departments, not just the Ministry of Justice.

Our proposals for reform will need to complement existing mainstream provision, including the employment support offered by the Department for Work and Pensions through the Work Programme and mainstream and specialist health services.

Informed intelligence on local needs from existing local delivery agencies, including police and probation professionals across all sectors will be vital in making this system work effectively. We want to utilise this expertise as we transform our approach to rehabilitation.

The dedication and pooled expertise of IOM partnerships has helped control the impact of the worst offenders in local areas. We are committed that, in making these changes, we will not disrupt effective local multi-agency working arrangements, including MAPPA and IOM arrangements, as well as relationships with Youth Offending Teams which are so important for those who transition from the youth to the adult system.

Providers will also be required to hold a core minimum data set for the cohort of individuals in their geographic area and this data will increase all commissioners' ability to target provision against need at a local level. We will work with partners across Government to identify the core data requirements in order to ensure that the minimum data requirements are set out for all providers in the future market model.

To help support the proposed reforms, we will be launching a nationwide 'Justice Data Lab'. Providers will have access to high-quality reoffending data specific to the group of offenders they have been working with. This will allow them to focus on what works, better demonstrate the effectiveness of their approach and ultimately reduce reoffending in their area.

We will work with the Information Commissioner, providers and other interested groups to ensure that data sharing is done in a way that is secure and protects the rights of those whose data is shared (including victims), building on the work that is already underway to develop a Code of Practice for the sharing of data in relation to electronic monitoring of community order requirements.

Section 8: Affording the reformed system

We need to ensure that delivery of these proposals is affordable and will demonstrate maximum value for money.

As part of the Government's fiscal commitments, the Ministry of Justice needs to make substantial savings. The settlement for the 2010 Spending Review period requires savings of over £2 billion by 2014/15. The bulk of those savings will be generated through efficiencies. Efficiencies will be roughly evenly split between frontline and back-office efficiencies, with remuneration freezes, court closures and better fine enforcement making up the remainder of the efficiency savings.

However, we believe that reform can allow us to achieve better outcomes and achieve savings in the longer term.

While there will be pressures from extending enforceable rehabilitative interventions to offenders released from short custodial sentences and in transition to the new system, we believe these costs can be balanced by competing services to release efficiencies and driving down unit costs across the system.

In the longer term, a reduction in reoffending rates has the potential to deliver reductions in demand on the justice system as a whole. The department will develop the policy and implementation proposals to ensure their affordability and consistency with the Government's plans for deficit reduction.

Part B: Extending our Reform Programme

Achieving the most with Government spending on offenders

The factors that lead an individual into a life of crime are myriad, and differ from case to case. For some, it may be a combination of debt, unemployment, a lack of skills and homelessness. For others, anti-social attitudes, poor thinking skills and irresponsible or impulsive behaviour, mental health issues, drug or alcohol dependency may be significant factors.

It follows, therefore, that there is no single solution that will support the rehabilitation of every offender and providers will need to address the problems that each offender faces on an individual basis. This will often mean facilitating access to a range of public services provided by other Government departments and agencies.

Our approach should help bridge that gap and connect offenders to these crucial services locally. However, given the impact on other Government departments, we would like to use this consultation to build on existing collaboration between departments and explore how to align incentives for the new rehabilitation providers to support the delivery of or access to specialist and mainstream provision across a range of public services.

The Department for Work and Pensions and the Ministry of Justice are already piloting an approach where sustainable employment and reducing reoffending outcomes have been joined up by combining a Ministry of Justice payment to the Work Programme funding.

A further example could come from formalising ‘through the gate’ services for the first time for the under 12 month custodial sentence group. Our proposals could offer commissioners of local drug and alcohol recovery services the opportunity to join up provision in such a way as to provide a through care service for an individual as they recover from their addiction and as they desist from crime. This could reduce the overhead for case management of the individual, offering savings to the public purse. Similar examples could be found across a range of social justice outcomes such as, skills, accommodation, family relationships and mental health.

We are interested in views as to whether improving the alignment and co-ordination of cross-Government expenditure on offenders, and strengthening incentives for joint working, could lead to improved rehabilitation outcomes, and if so, how best to do this.

Question B1: How can we maximise the results we get from our collective Government and public sector resources?

Question B2: How can we use the reform of offender services in the community to enhance the broader range of social justice outcomes for individuals?

Building new flexibility into the delivery of community orders

Since the implementation of the Criminal Justice Act 2003, there has been a single community order for offenders aged 18 or over that can now comprise up to 14 requirements depending on the offence and the offender. These requirements include: community payback, where offenders do unpaid work, curfews which are electronically monitored, activity and programme requirements designed to tackle offending behaviour and drug, alcohol and mental health treatment requirements.

Typically, the more serious the offence and the more extensive the offender's needs, the more requirements there will be. Most orders will comprise one or two requirements but there are packages of several available where required. The court tailors the order as appropriate and is guided by a pre-sentence report.

We have already proposed in the Crime and Courts Bill, currently before Parliament, to ensure that every community order contains a punitive requirement unless there are exceptional circumstances. It will be important that the Court specifies what the punishment is.

There is evidence to suggest that community orders can serve to have a rehabilitative effect on offenders. We intend to build on this to ensure community orders achieve even greater levels of rehabilitation. We want to ensure that there is sufficient flexibility in the sentencing framework to allow contracted providers to deliver the sentences imposed by the court in a way that is most effective in reducing reoffending. It is for the courts to decide on a sentence for an individual offender. However, we want to ensure that providers have ability to deliver community order requirements in a way that maximises the rehabilitative impact on the offender.

In this way we are keen to build on the flexibility we have already provided to offender managers when considering community orders. Under changes introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, the courts can impose a community order with a requirement that the offender attends an accredited programme but the offender manager has discretion within this remit from the court to ensure the particular programme is the one most appropriate for that offender. We want to explore whether there are other areas where providers could be given more discretion to tailor particular requirements imposed by the court to particular offenders as their risks and needs change over time.

Question B3: Should any additional flexibility be built into the community sentencing framework to strengthen the rehabilitative impact of community orders, and the reintegration of offenders into society?

Part C: System Specification Questions

This section sets out a series of detailed questions on which we wish to obtain the views of current practitioners, sentencers, potential providers and other stakeholders as we finalise the operational design of this system.

Details of how to respond to the consultation can be found at the front of this paper, under the section entitled 'About the consultation questions in this document'. The deadline for responding to this consultation is 22 February 2013.

Contract specification

Question C1: We are minded to introduce 16 Contract Package Areas. Do you think this is the right number to support effective delivery of rehabilitation services? Do you have any views on how the Contract Package Area boundaries should be drawn?

Question C2: What payment by results payment structure would offer the right balance between provider incentive and financial risk transfer?

Question C3: What measurements and pricing structures would incentivise providers to work with all offenders including the most prolific?

Question C4: How should we specify public sector oversight requirements in contracts, to avoid bureaucracy but ensure effective public protection arrangements?

Question C5: We want to incentivise through the gate provision, but some prisoners will disperse to a different part of the country following release. How can we best account for that in contract design?

Question C6: What mechanisms can be used to incentivise excellent performance and robustly manage poor performance to ensure good value for money?

Supply chain management

Question C7: What steps should we take to ensure that lead providers manage and maintain a truly diverse supply chain in a fair, sustainable and transparent manner?

Question C8: What processes should be established to ensure that supply chain mismanagement is addressed?

Question C9: How can we ensure that the voluntary and community sector is able to participate in the new system in a fair and meaningful way?

Legislative changes

Question C10: How can we best use statutory supervision on release from custody to ensure that offenders engage with rehabilitation effectively?

Question C11: How can we ensure consequences for non-compliance are effective, without building in significant additional cost?

System design

Question C12: Given our proposals for the commissioning structure and the proposed responsibilities of the public sector, what kind of delivery structure would be most appropriate for the public sector probation service?

Question C13: What else can we do to ensure the new system makes best use of local expertise and arrangements, and integrates into existing local structures and provision?

Question C14: Police and Crime Commissioners will play an integral role in our reforms. How best can we maximise their input/involvement and that of other key partners locally?

Question C15: How can we ensure that professional standards are maintained and that the quality of training and accreditation is assured? A professional body or institute has been suggested as one way of achieving this. What are your views on the benefits of this approach and on the practicalities of establishing such arrangements, including how costs might be met?

Question C16: What role can the Inspectorate of Probation best play in assuring effective practice and a high standard of service delivery?

Equality implications

Question C17: How can we use this new commissioning model, including payment by results, to ensure better outcomes for female offenders and others with complex needs or protected characteristics?

Question C18: What are the likely impacts of our proposals on groups with protected characteristics? Please let us have any examples, case studies, research or other types of evidence to support your views.

Proposals for Reform

Question C19: Do you have any further comments on our proposals for Transforming Rehabilitation in this document



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