



Prison Reform Trust Briefing for Opposition Day Debate on the Future of the Probation Service

**House of Commons
30 October 2013**

The Prison Reform Trust has concerns regarding the impact of the proposals to compete out the management of low and medium risk offenders, compromising around 70% of the current probation caseload, to the private and voluntary sector. Providers will be commissioned nationally in 21 contract package areas to deliver resettlement and rehabilitation services; and paid on a payment by results basis according to their success at reducing reoffending. The public probation service will be significantly reduced and reconfigured as a national service focussed on the supervision of high risk offenders. The start of the first phase of competition was announced in September and the changes are expected to be fully operational by Autumn 2014.

While the government hopes that the reforms will improve efficiency and drive innovation in approaches to reducing reoffending, a principle reason for the proposals is to cover the costs of extending statutory supervision to 50,000 short sentenced prisoners. The Offender Rehabilitation Bill, currently before Parliament, will make provision for a mandatory 12-month statutory supervision period to be imposed on anyone sentenced to custody for over one day and up to two years. The government has made clear that meeting the costs of extending supervision to this group is reliant on the savings generated by the outcome of the competition process.^[1]

Over 300,000 offenders will be affected by the reforms: the vast majority being those serving community sentences, but also those leaving prison after short sentences and those held in the 70 newly designated "resettlement prisons" reaching the end of their sentence. Access to rehabilitation services in resettlement prisons will be largely shaped by the new probation providers. While the focus on rehabilitation is welcome, the proposed changes to the probation service have given rise to a number of concerns, including

1. The government is dismantling a public service which has demonstrated success at reducing reoffending, particularly for those serving community sentences. Ministry of Justice figures show that court orders (community orders and suspended sentence orders) are more effective (by nearly seven percentage points) at reducing one-year proven reoffending rates than custodial sentences of less than 12 months for similar offenders.^[2] The highest reoffending rates (58 per cent) are found among those on short-term prison sentences who have no contact with probation at all.

2. The government should be building on best practice and evidence of what works to reduce reoffending. Probation Trusts have shown leadership in engaging in innovative multi-agency and cross-sector partnerships with police, prisons, health and local authorities.

^[1] https://www.gov.uk/Government/uploads/system/uploads/attachment_data/file/208171/updated-rehabilitation-Bill-impact-assessment.pdf

^[2] Table A1, Ministry of Justice (2013) 2013 Compendium of reoffending statistics and analysis, London: Ministry of Justice

Integrated Offender Management (IOM) arrangements have focused on improving safety, wellbeing, personal responsibility and reducing reoffending in local areas. Real results are being achieved; for example recent research into the IOM scheme in Sussex, led by the local Probation Trust, showed that over a two year period the proportion of offenders reconvicted was reduced by 57 per cent and the frequency by 69 per cent. It is unclear how these successful partnerships will be developed and sustained under the government's reforms.

3. The scale and pace of change. The reforms are taking place at considerable speed and without provision for effective Parliamentary scrutiny and oversight. There is a lack of transparency and proper information regarding the costs of this massive change programme.^[3] As the outgoing Chief Inspector of Probation, Liz Calderbank, has said: *"the scale and pace of the change is considerable and we are concerned as an inspectorate, that it is taken forward and implemented without any drop in performance"*.^[4]

4. The benefits of outsourcing are unproven and carry significant risks. The influential independent think tank, The Institute For Government, published a report^[5] in July 2013 in which it called on the Government to pause its outsourcing programme and urgently introduce some safeguards in order to ensure value for the taxpayer and to avoid further mistakes which, it said, would have damaging effects on public confidence. Chief findings were:

"...the need for government to see itself as a 'steward' of markets in public services. This necessitates an active role in setting the 'rules' and incentives for actors in the system, as well as the willingness to adjust them if they prove ineffective. The need for such a role is only likely to increase given far-reaching reforms currently underway in more challenging and complex services such as probation and health.

"This requires:

- *building capabilities in new areas*
- *developing strategies to mitigate the inherent risks of using market mechanisms in certain services*
- *assigning the functions necessary to support effective oversight*
- *re-engineering the commissioning and procurement process to place greater emphasis on ongoing learning and adaption, collaboration with providers and co-ordination with related services*

"This is by no means an exhaustive set of solutions and many more are offered in the main body of this report. We hope that the evidence and ideas highlighted will stimulate the improvement in government's oversight of public service markets that is urgently needed."

5. Payment by results is untried in the justice system and could have unintended consequences. The independent think tank, the Social Market Foundation, published a report^[6] in August 2013 in which it urged a rethink of probation reform on the basis of the MoJ's published Payment by Results "straw man" model. The report's author, Ian Mulheirn, a former economic advisor to HM Treasury and a proponent of Payment by Results, said in his executive summary:

^[3] Ibid.

^[4] <http://www.justice.gov.uk/news/press-releases/hmi-probation/hm-inspectorate-of-probation-changes-must-be-implemented-carefully>

^[5]

http://www.instituteforgovernment.org.uk/sites/default/files/publications/Making_public_service_markets_work_final_0.pdf

^[6] http://www.smf.co.uk/files/7413/7603/8981/20130808_PBR_paper_FINAL.pdf

“We use a financial simulation to examine the MoJ’s proposals as they look to an investor considering the chances that they will make a return on their investment in rehabilitation services. This demonstrates the problems posed by statistical uncertainty around measured levels of reoffending. Our results, using generous assumptions, show that:

- *Under the MoJ’s proposed payment structure, providers risk making losses if they spend money on rehabilitative services*
- *Providers can only be confident of being rewarded for their efforts if they achieve reductions in reoffending that are larger than the available evidence suggests is achievable, even with greater resources than are likely to be on offer under the new scheme*
- *The payment mechanism encourages providers to cut spending on services and allow reoffending to drift marginally upwards*
- *The proposed regime therefore creates strong perverse incentives: the opposite of how a PbR scheme should operate*
- *As they stand, the plans would offer poor value for money for taxpayers and should be radically revised before the scheme is rolled-out*

Prisons and Rehabilitation Minister Jeremy Wright dismissed the findings as “utter nonsense”, saying that the public would expect probation PbR targets to be challenging. But Richard Johnson, a former Managing Director of Serco Welfare to Work and now consultant on procurement and service delivery, agreed with Mulheirn’s analysis, adding:

“I am not sure contractors will frame their own modeling in the same terms or language, but their conclusions will be the same as the SMF. The contracts, as currently proposed, will not incentivise investment in the extension/transformation of services to reduce reoffending. The SMF report clearly demonstrates that there is inadequate potential reward to attract such investment. There is also a paucity of robust statistical data on which any business case to investors could be constructed. A small number of pilots might have provided such data, instead of this rapid national rollout. The MoJ must seriously consider this SMF modeling and their suggestions for changes to the payment structure. There is no denying the need to tackle recidivism rates, but hasty, commercially naïve contracting will have the opposite effect.”

6. Fragmentation and the management of risk. The Probation Chiefs Association and Probation Association have expressed concern that the proposal to split provision for high and medium/low risk offenders between the public and private/voluntary sectors could lead to a fragmented service which compromises accountability and puts public safety at risk. The former HM Chief Inspector of Probation, Liz Calderbank, criticised the government’s plan in her formal submission to the Transforming Rehabilitation consultation.^[8] She warned that to break up assessment, review and coordination of all cases would compromise public safety. (Previous inspection reports, such as one into tagging - where there was confusion about who was responsible for taking breach action, have pointed to problems where accountability for the case was unclear. This type of confusion could be far more widespread in a multiple provider environment.)

The former Chief Inspector said:

“The interface between the dynamic management of risk of harm and the PbR model, with its focus on reducing reoffending, in our view creates an inherent tension.

^[8] <http://www.justice.gov.uk/downloads/about/hmiprob/transforming-rehabilitation-response.pdf>

We do not believe that this tension can be successfully managed within the framework proposed. Any lack of contractual or operational clarity between the public and private sector providers will, in our view, lead to systemic failure and an increased risk to the public.”

7. Impact on small voluntary sector organisations and vulnerable groups. Many small and specialist voluntary sector organisations do not have the capacity to bid for contracts and nor would most charity trustees sanction the risk of delayed or non-payment. It is unclear how they will survive in the new payment-by-results commissioning environment in which they must hope to be chosen as, at best, a third tier partner or sub-prime.

Vulnerable groups in the justice system, such as women and young adults, will be disproportionately affected by the proposals. Probation in partnership with other statutory services and voluntary organisations has developed knowledge and expertise in working with these groups which could be lost in the transition to the national commissioning of probation services. For instance, specialist service providers working with women offenders are likely to be disproportionately disadvantaged under the new commissioning arrangements. This is because the small number of women offenders means it is difficult to produce statistically significant evidence in support of gender-specific interventions when making the case for their services to first-tier contract holders. These organizations are likely to become Tier 3 providers, sub-contracted or grant funded by Tier 1 providers. It is unclear how these arrangements will work, or whether these small organisations will be able to sustain themselves under these funding arrangements.

It also unclear whether organizations that work with women offenders will be able to work with vulnerable women as well and help prevent them entering the criminal justice system in the first place. The report by the National Audit Office for the Justice Committee highlighted the impact on women’s centres of the continuing uncertainty over their funding.^[9] That report also emphasized that measuring reductions in reoffending fails to recognize distance travelled by individuals and wider benefits to society such as the improved health of the users of women’s services.^[10]

8. The rise in breach and recall. As a result of introducing mandatory statutory supervision for short sentenced prisoners, the government estimates that around 13,000 offenders will be recalled or committed to custody, giving a prison place increase of around 600 additional places.^[11] The rise in numbers of recalls will place additional strain on an already over stretched and under-resourced prison service.

9. Impact on prison population management. At a time when the prison service is experiencing unprecedented cuts, the development of resettlement prisons is having a marked impact on population management. Reorganisation of prisons has led to an increased practice of mixing young people, many of whom are vulnerable, with adults in prisons across the country. Concerns have been raised, most recently by the Independent Monitoring Board at HMP/YOI Portland, who have drawn attention to increased levels of violence, increased drug use within the prison, and a 50% increase in self-harm amongst young people within one year of mixing young people with adult prisoners.^[12]

^[9] <http://www.nao.org.uk/wp-content/uploads/2013/05/Funding-of-Womens-Centres-in-the-Community.pdf>

^[10] Ibid, p.16

^[11] https://www.gov.uk/Government/uploads/system/uploads/attachment_data/file/208171/updated-rehabilitation-Bill-impact-assessment.pdf

^[12] Press release on HMP/YOI Portland IMB 2012-2013 Annual Report