

Clinks briefing on the competition stage of the Transforming Rehabilitation reforms

September 2013

Introduction

The Transforming Rehabilitation programme is the Coalition Government's plan to reform the Probation Service in England and Wales by replacing existing Probation Trusts with a National Probation Service to manage high risk offenders, and forming Community Rehabilitation Companies that will manage low to medium risk offenders across 21 Contract Package Areas (CPA)¹. The Ministry of Justice (MoJ) has now announced the commencement of the competition stage of these reforms, and has published the following documents²:

- [A Pre-Qualification Questionnaire \(PQQ\)](#) for potential Tier 1 providers (sometimes referred to as 'primes'). This needs to be completed by 31st October, 2013.
- [Principles of Competition](#), which outlines the principles that will govern the delivery of the competition within the Transforming Rehabilitation programme, including market stewardship principles.
- [Target Operating Model \(TOM\)](#) which provides some details on how the reforms will be implemented and operate locally.
- A [summary of evidence on reducing reoffending](#) which assesses the level of evidence for various interventions, and which Clinks expects might be used by Tier 1 organisations when thinking about the kinds of services they need to include in their bids.

Clive Martin, Director of Clinks has [written a blog](#) outlining important information from these documents and his initial thoughts about how this will relate to Voluntary, Community and Social Enterprise (VCSE) Sector organisations.

This briefing builds on Clive's blog and outlines key information in three sections:

- Section 1: the contracting process
- Section 2: the delivery of services, in prisons and the community
- Section 3: what information we are still waiting for, or is currently unknown.

¹ For more detailed information about the reforms please see: Clinks (2013) Transforming Rehabilitation, Online: <http://www.clinks.org/criminal-justice/transforming-rehabilitation> [last accessed 25.09.2013]

² For more information visit: MoJ (2013) Competition, Online: <http://www.justice.gov.uk/transforming-rehabilitation/competition> [last accessed 25.09.2013].

Throughout this briefing we highlight what action, if any, Clinks Members should take. Please note that the timeline for the reforms has not altered dramatically as a result of the announcements³.

As more detail emerges, Clinks will continue to analyse what the reforms will mean for our Members, asking the following questions:

- Does it promote desistance and how will this be measured?
- Does it give a fair deal to the VCSE Sector?
- Will it ensure suitable services for equalities groups?
- Will it enable the involvement of service users and community members as volunteers in the design and delivery of services?

Section 1 - The contracting process

Tier 1 providers, likely to be mainly from the private sector, will be contracted directly by the MoJ to run Community Rehabilitation Companies (CRC) which will have responsibility for the provision of all supervision and rehabilitation services for low to medium risk offenders in each CPA.

Tier 2 and Tier 3 providers are likely to be made up principally of VCSE Sector organisations. They will be sub contracted or grant funded directly by Tier 1 providers. It is likely that most organisations will be sub contracted but there is potential for some grants. MoJ envisage that Tier 3 will be small, local organisations, with low annual turnover. However MoJ will not be defining the exact size or turnover that will define an organisation as Tier 2 or Tier 3. Potential Tier 1 providers will have to include details in their bids of how contracts and grants will work in the CPA.

At this stage it is unclear what the size or length of contracts or grants to Tier 2 and 3 will be. The payment mechanism remains a payment by results (PbR) model, but the detail of this and how the risk might be passed down to sub-contractors at Tier 2 or 3 is also still unclear.

Tier 1 Pre-Qualification Questionnaire

Potential Tier 1 providers are required to submit a Pre-Qualification Questionnaire (PQQ), the deadline for which is noon on the 31st October, 2013. This process will allow the MoJ to filter out potential prime providers whom they feel are unsuitable.

Tier 2 and Tier 3 Registration

MoJ is running a registration process for organisations interested in becoming Tier 2 and Tier 3 providers.⁴ This is separate from the Prior Information Notice (PIN) which

³ For more information, please see: Clinks (2013) *Transforming Rehabilitation*, Online: [http://www.clinks.org/criminal-justice/transforming-rehabilitation#What are the proposed timescales?](http://www.clinks.org/criminal-justice/transforming-rehabilitation#What%20are%20the%20proposed%20timescales?) [last accessed 26.09.2013].

organisations may have previously registered for and requires organisations to supply additional details about their work, geographic focus and capabilities. The deadline for registration is 31 October 2013.

Clinks interprets this new registration process as an expression of interest and recommends **that if your organisation is interested in being involved in a supply chain at either Tier 2 or Tier 3, you complete this process.** In working with Tier 2 and Tier 3 organisations that have completed the registration process, Tier 1 will have to use an Industry Standard Partnership Agreement (ISPA) and will not be able to ask them to enter into exclusive partnerships. This will ensure some protection in any supply chain involvement Tier 2 and Tier 3 have.

The registration database will be made available to Tier 1 providers after the PQQ phase of the competition process, which comes to an end on the 31st October 2013. Tier 1 will use this database to engage with potential Tier 2 and Tier 3 providers, but registering on the database does not guarantee supply chain inclusion. The database will not be maintained following the conclusion of the competition.

Competition and market stewardship principles

The MoJ has published principles of competition that are intended to ensure fair, transparent and sustainable behaviour within the competition process and supply chain. They have identified core market stewardship principles. Potential Tier 1 providers will be required, in their bids, to evidence how they will meet their obligations with regards to these principles. The MoJ have also committed to managing contracts to ensure they underpin and enforce these principles on an on-going basis.

Risk

The Principles of Competition document states that all contractual risk 'should be appropriately managed', within the supply chain. This should extend to not passing disproportionate levels of risk down to Tier 2 and Tier 3 providers. Also, volume fluctuations in referrals and intellectual property rights of providers should be appropriately managed. It is not clear, however, what 'appropriately managed' will mean in practice and how the MoJ is defining 'disproportionate' levels of risk.

Previously, Clinks has called for all risk entailed by PbR to be borne by Tier 1 providers and for VCSE organisations to have all delivery costs paid up front. Where this is not possible we have argued that no more than 20% of the risk should be passed down. We will continue to monitor how disproportionate levels of risk are defined.

Alignment of ethos in the supply chain

It is expected that in entering into contractual agreements, there should be understanding between Tier 1 and Tier2/3 providers of what is important to both parties and that this should form part of the contractual agreement. This may contribute

⁴ Ministry of Justice (2013) Tier 2 and Tier 3 Registration Form, Online: <https://consult.justice.gov.uk/digital-communications/931f5f69> [last accessed 25.09.2013]

to ensuring that the values of VCSE organisations can be maintained in their provision of services under these reforms.

Compact Principles

When working with VCSE organisations, the Government has agreed to follow the principles of the 'Compact'⁵. It is expected that Tier 1 providers and the supply chain will all follow these principles when engaging with VCSE organisations.

Visibility of participation

All members in the supply chain should have visibility of participation. This should include:

- Payment terms against contractual targets
- The volume of business handled by supply chain partners
- Fair apportionment to referrals in easier cases
- How the supply chain will adjust to changing volumes and demographics within each CPA
- Transparency of refresh or retendering of services

Contracts for Tier 1 providers will be for 7-10 years⁶ with an option to extend for a further 3 years. Sub contracts and grants are likely to be for shorter periods and the intention for transparency around refresh and retendering of service and the requirement to comply with the Compact gives some reassurance for VCSE organisations around this.

Recognition of good performance

The MoJ states that it is important that recognition of good performance is shared across the supply chain, which should also include the sharing of good practice. Good performance should receive an appropriate reward. It is unclear how such recognition will be made for organisations that are grant funded.

Market share restriction

Currently, it is intended that the market share will be restricted to 25% of the total contract value across all CPAs, with Tier 1 providers able to win multiple contracts up until this point. The MoJ reserves the right to amend the market share restriction and will confirm this detail at the Invitation to Negotiate stage (ITN) of the reform process.

⁵ HM Government (2013) The Compact, Online: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/61169/The_20Compact.pdf [last accessed 25.09.2013].

⁶ Ministry of Justice (2013) Contract Notice, Online: <http://www.justice.gov.uk/downloads/rehab-prog/competition/rp-ojeu-contract-notice-0913.pdf> [last accessed 25.09.2013].

Section 2 - the delivery of services

The newly established CRCs will manage low and medium risk offenders in the community and deliver resettlement services in resettlement prisons. The National Probation Service (NPS) will manage high risk offenders in the community.

Services in prisons

Resettlement prisons

The reforms aim to facilitate the release of 80% of adult male prisoners from a resettlement prison to their 'home' CPA.

Designated resettlement prisons in each CPA are as follows⁷:

- All adult male local prisons. This will enable those sentenced to less than 12 months in custody to be assessed in the same prison from which they will be released.
- All adult male open prisons. As there are only eight of these prisons across England and Wales, they will serve multiple CPAs.
- One or more category C prison. These are typically training prisons.

Resettlement services will only exist in designated resettlement prisons. Delivery of resettlement services in prisons will focus on the beginning and end of the custodial period for long term prisoners and throughout the sentence for short term/remand prisoners. (See below *Non resettlement prisons*)

Where a prisoner is due to be released and is not in a resettlement prison, the 'prison offender supervisor' will be responsible for contacting the CRC located in the prisoner's 'home' CPA to arrange for the provision of a resettlement service. It remains unclear as to how 'home' is being defined and how this will operate in practice for individuals who are homeless and live chaotic lives, meaning they are not based solely in one area.

Resettlement services may include support in custody and post release for the following:

- Finding accommodation
- Providing enhanced family support
- Assistance with retaining employment held before custody
- Financial advice
- Support for prisoners who have been victims of domestic violence, sexual abuse or have been sex workers.

⁷ Ministry of Justice (2013) List of adult male resettlement prisons by CPA, Online: <http://www.justice.gov.uk/downloads/rehab-prog/resettlement-prison-list.pdf> [last accessed 25.09.2013]

Resettlement services may also include signposting prisoners to services provided by other organisations, not in the CRC supply chain, both in custody and in the community. This could provide an opportunity for VCSE organisations that are not part of the CRC supply chain.

Non-resettlement prisons

The new supply chains will provide no resettlement services in prisons not designated as resettlement prisons. Existing provision and funding of mainstream and co-commissioned services, including those addressing health needs, substance misuse and provision of offending behaviour courses will remain in place. This raises concern as it is unclear what the extent of services or interventions for long term prisoners during the middle of their sentence will be or how existing services outside of mainstream provision will be able to maintain their funding and thus services.

Women and young adults

The women's custodial estate is currently under review, to be reported later in the year, and the future of the young adult custodial estate is also being considered. As such, proposals in relation to both of these groups will be released in due course.

Services delivered in the community

Rehabilitative activity

The Offender Rehabilitation Bill (subject to the approval of Parliament) will create greater flexibility in relation to rehabilitative requirements in Community and Suspended Sentence Orders. This means that some sentences will give CRCs considerable scope to compel offenders to engage in rehabilitative activity. Courts will determine, with the advice of the NPS, what requirements to impose in a community order or suspended sentence order. CRCs will make information available to the NPS about what rehabilitative services are available and this will shape the advice the NPS gives to the courts on sentencing.

As a result, referrals to Tier 2 and Tier 3 organisations may be a specific requirement of an order. CRCs can also choose to offer additional rehabilitative support on a voluntary basis where they believe doing so will contribute to a reduction in reoffending.

Cooperation with local services and other commissioners

CRCs will be required to participate in local Community Safety Partnerships (CSP). There is an expectation that CRCs will work collaboratively with police and crime commissioners (PCCs), Integrated Offender Management and Youth Offending Teams. MoJ is currently consulting with stakeholders about which other statutory bodies engagement should be mandated with.

PCCs and other commissioners, including other Government Departments, will be able to commission CRCs to deliver additional services in line with their own priorities. This could mean that sources of funding previously available to VCSE organisations will only be available to them through CRCs' supply chains.

Employment of ex-offenders

The CRC can use its discretion, following risk assessment, as to whether unspent convictions and/or an inability to provide a satisfactory employment reference should prohibit an individual from working for an organisation. This should give contractors and subcontractors sufficient freedom to employ, or use as volunteers, ex-offender mentors.

Risk escalation

In cases where an offender's risk has escalated from low/medium to high risk and their management has been transferred to the NPS, the individual in question will remain within the CRC cohort. This is for PbR purposes and should provide some incentive for the appropriate management of risk to public safety.

Young offenders and transitions to adulthood

The NPS and the Youth Offending Team (YOT) will be responsible for deciding whether an offender, sentenced as a juvenile but over 18 at the point of release should be supervised by a CRC, or the NPS, or whether they should remain with the relevant YOT. This decision will be a local one, based upon the needs of the young person.

Foreign National Prisoners

The NPS will retain responsibility for managing those who are detained pending deportation, including those from designated foreign national prisons or Immigration Removal Centres with leave to remain in the UK but with only a short period on licence remaining.

Section 3 - What we don't know

What documents are we waiting for?

Industry Standard Partnering Agreement

Tier 1 providers will be required to use an Industry Standard Partnering Agreement (ISPA) when entering into contracts with potential Tier 2 or Tier 3 providers who have registered with the MoJ. The MoJ is currently finalising this document, which will be published at the Invitation to Negotiate (ITN) stage of the competition process, along with contractual documentation. This documentation will embed the market stewardship principles robustly.

Payment mechanism

The 'straw man' payment mechanism outlines proposals for the payment of the Transforming Rehabilitation reforms. A final version of this will be published later in the competition process.

A summary of the known unknowns

Although the documents released as part of the competition phase for the Transforming Rehabilitation reforms have made it clearer as to how the reforms will work in practice, there are still some aspects that remain unclear. We have outlined these in the text above and provide a summary below:

- How will the grant funding of organisations operate in practice, what will be the value of these grants?
- What will be the length and value of contracts and grants awarded to Tier 2 and 3?
- What is a 'disproportionate' level of risk to pass down the supply chain? How will this be managed?
- How will grant funded organisations receive an appropriate award for good performance?
- What will be the extent of services or interventions available for long-term prisoners during the middle of their sentence?
- How will it be ensured that equalities groups, such as women and BAME offenders receive appropriate services to address their needs?
- Will VCSE organisations *not* in the supply chain be able to provide services in resettlement prisons? How will organisations delivering non mainstream services in non-resettlement prisons be able to maintain funding for the continuation of those services?

Feedback

Clinks welcomes any comments or queries about this briefing. We would especially like to hear the views of Voluntary, Community and Social Enterprise (VCSE) Sector organisations. Please contact either Jess Mullen or Nicola Drinkwater, details to the right.

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