

## Clinks briefing on 'Transforming Rehabilitation: A strategy for reform

May 2013

### Introduction

The Ministry of Justice (MoJ) and National Offender Management Service (NOMS) have now published a response to the consultation document *Transforming Rehabilitation: A revolution in the way we manage offenders*, published in January 2013.<sup>1</sup> This document takes into account the 598 formal responses received to the consultation document, as well as discussion at a number of consultation events for stakeholders and providers.

The consultation response provides further detail on the Government's plans to complete the provision of rehabilitative services for offenders. It confirms the implementation of a national commissioning function, the formation of a single National Probation Service and the creation of 21 Contract Package Areas, rather than the 16 proposed in the original consultation document. It also outlines a number of measures designed to facilitate the participation of Voluntary and Community Sector (VCS) organisations in service delivery, proposals to facilitate greater 'through-the-gate' support and plans to introduce mandatory rehabilitative support for short sentenced offenders.

This briefing provides a summary of the headline issues and new proposals in the consultation response document. Please contact Katie O'Donoghue, Policy Officer ([katie.o'donoghue@clinks.org](mailto:katie.o'donoghue@clinks.org)) if you have any thoughts or comments on the new proposals which you would like to share with Clinks.

### Part I: Reducing Reoffending

#### *Opening up the market – scope of provider responsibilities*

Under a reformed system of offender supervision, market providers will have responsibility for providing supervision and rehabilitative services to service users who are:

- Sentenced to community order or suspended sentence order;
- Sentenced to a custodial sentence, including those discharged from short custodial sentences;

The public sector Probation Service will continue to manage service users who pose a high risk of serious harm to the public. Its particular responsibilities are outlined in more detail below.

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<sup>1</sup> Ministry of Justice. 2013. *Transforming Rehabilitation: A Strategy for Reform*. Online: <https://consult.justice.gov.uk/digital-communications/transforming-rehabilitation/results/transforming-rehabilitation-response.pdf> [last accessed 15.5.2013].

In **custody**, commissioned providers will offer a resettlement service for all offenders in custody before their release. This may include support in finding accommodation, family support, mentoring and financial advice.

In the **community**, providers will be responsible for the day-to-day management of the majority of offenders. They will be responsible for delivering the requirements of community orders, suspended sentence orders and licence arrangements.

The response states that providers will deliver these requirements under specifications which are

*“clear about ‘what’ the service outcomes are but which give providers flexibility to determine ‘how’ services should be delivered.”<sup>2</sup>*

### *Facilitating VCS involvement in service delivery*

The response acknowledges that VCS organisations are often best placed to deliver services which meet local need. It reiterates that government would like to see VCS organisations delivering services as part of various different arrangements, including supply chains, partnerships, and consortia bidding as lead contractors.

One particular area of concern for VCS respondents was the suggested figure of 16 Contract Package Areas. A number of organisations felt that these areas would be too large to implement services which could reflect local variations in need adequately. The response therefore announces a revised figure of 21 Contract Package Areas, which will be discussed in more detail below.

The response also outlines a number of mechanisms to facilitate VCS involvement in service delivery.

Before competition begins:

- A £500,000 grant to build VCS capacity to participate in market competition. £150,000 of this has already been awarded for the production of an action plan to help VCS organisations overcome barriers to participation in contracts;
- Cabinet Office masterclasses to help VCS organisations to strengthen their commercial skills and bid for public sector contracts;
- MoJ and Cabinet Office will carry out a mapping exercise to develop a database of VCS organisations involved in the delivery of rehabilitation services;
- Government will examine how social investment – as seen in the Social Impact Bond model at HMP Peterborough - can increase the variety of organisations participating in service delivery.

Transition to competition:

- A database of VCS organisations delivering offender services will be made available to facilitate networking and partnership working, helping lead providers to build diverse supply chains;

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<sup>2</sup> MoJ. 2013. *Transforming Rehabilitation: A strategy for reform*. p.10.

- Potential lead providers will be expected to provide evidence of how they would build and sustain partnership working with local organisations;
- MoJ will ensure that Compact Principles are used to inform the development of the competition process, the service specification and the contractual terms and conditions<sup>3</sup>;
- MoJ will work with the emerging social investment market and Trust Funders to ensure that capital can be directed to facilitate VCS providers' involvement in service delivery.

To support sustainable partnerships going forwards:

- MoJ will develop two industry standard contracts, one for lead organisations and one for supply chain partners. These will incorporate MoJ Market Stewardship Principles, to be developed in discussion with smaller and VCS organisations.

### *Risk transfer*

Regarding the issue of transfer of financial risk to subcontractors, the response states that,

*"Providers will not be prohibited from signing sub-contracts with partners which transfer financial risk but the extent to which they do so will be transparent. It will also be considered as part of the bidding process in terms of sustainable supply chain management."*<sup>4</sup>

### *Statutory rehabilitation for short-sentenced offenders*

The response confirms previously announced plans to extend rehabilitative support to offenders serving short sentences. Government will introduce legislation so that engagement with rehabilitative services is mandatory over a 12 month period for all prisoners released from short custodial sentences of up to two years.

While a number of consultation responses pointed out the difficulties raised by mandatory requirements to engage in services – noting that programmes might be more effective where offenders participated voluntarily – Government maintains the view that high reoffending rates among short sentenced offenders justify the introduction of statutory legislation.

### *Through-the-gate provision*

The response outlines plans to reform the geography of the prison estate so that offenders released from custody receive meaningful through-the-gate provision. Where possible, the same provider will support the induction of the offender into custody, provide them with resettlement support before release, meet them at the prison gates and continue to provide a package of rehabilitative support in the community.

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<sup>3</sup> Cabinet Office. 2010. *The Compact*. Online: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/61169/The\\_20Compact.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/61169/The_20Compact.pdf) [last accessed 15.5.2013].

<sup>4</sup> MoJ. 2013. *Transforming Rehabilitation: A strategy for reform*. p.18.

Each Contract Package Area will contain a small number of designated 'resettlement prisons' to facilitate a smooth transition back into the local community. It is hoped that most short term prisoners will serve the entirety of their sentence in one of their home area's resettlement prisons. Longer sentenced prisoners will spend a minimum of three months before release in their home area's resettlement prison.

All offenders released from custody who claim Jobseeker's Allowance will have mandatory access to the DWP Work Programme from 'Day One' of their release from prison.

### *Flexibility and changes to community sentence framework*

Many consultation responses expressed concerns that reform of offender supervision would lead to the implementation of 'one size fits all' approach. Provider contracts will therefore be designed to ensure that partners have 'as much flexibility as possible' to tailor rehabilitative services to the needs and characteristics of the individual service user.

In addition to the recent requirement that all community sentences contain a punitive element, Government will introduce legislation to amend the community sentencing framework to provide greater flexibility in how rehabilitation is delivered:

- The current supervision requirement and activity requirement will be combined into a new single rehabilitation activity requirement;
- There will continue to be a separate accredited programme requirement, but providers can also choose to deliver accredited programmes as part of the rehabilitation activity requirements;
- Accredited programme requirements and attendance centre requirements will be amended to allow for greater flexibility as to where they take place.

### *Payment mechanisms and incentives to reduce reoffending*

Providers' level of payment will be dependent on the reductions in reoffending which they achieve. Contracts will combine both 'fee for service' elements and 'payment by results' (PbR) elements. The latter is intended to provide financial incentives to deliver agreed reoffending reductions across the whole offender cohort.

Numerous respondents commented that PbR and the use of a binary outcome measurement could possibly create perverse incentives for providers to 'cherry pick' and not engage with the most difficult-to-engage offenders.

Government has therefore refined its payment mechanism so that providers are not incentivised to neglect the most difficult offenders. To receive the full success payment, providers will need to achieve both an agreed reduction in the number of offenders who go on to commit further offences **and** a reduction in the number of further offences committed by the cohort for which they are responsible.

### *Access to data*

Government will publish a summary of current research into what works to reduce reoffending, to be shared with VCS and other providers to help them plan new service delivery. This will be released in summer 2013 to assist providers who are preparing bids.

The MoJ Justice Data Lab - which allows non-statutory organisations to access data which will assist them in demonstrating their effectiveness - is now live. This provides organisations with reoffending data specific to the group of offenders they have been working with and, where possible, produces a comparable reoffending rate for a suitable control group of offenders.<sup>5</sup>

### *Women offenders*

The response recognises that women offenders differ from their male counterparts in several key respects, often exhibiting both different patterns of offending and much more complex needs. Despite acknowledging the widespread support among consultation responses for ensuring that providers are commissioned to deliver services tailored to the specific needs of women offenders, it states that:

*'Having considered all options it remains our intention to commission all rehabilitation services across geographical areas under a single contract rather than competing services separately for different offender cohorts. This will enable us to minimise duplication across the system and deliver services at reduced cost. However, we will expect providers to articulate and respond to the particular needs of women offenders where these differ from men and may be more complex.'*

Since the publication of the *Transforming Rehabilitation* consultation, MoJ has published its *Strategic Objectives for Female Offenders*, containing plans for a new Ministerial Advisory Board for women in the criminal justice system.<sup>6</sup> It is hoped that this, alongside NOMS review of the women's custodial estate to be published in the summer, will raise awareness and disseminate good practice regarding the treatment of women offenders amongst new providers.

### *Restorative justice*

Government is currently considering how to incorporate Restorative Justice into its planned reforms and will set out further details in due course.

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<sup>5</sup> Ministry of Justice. 'Justice Data Lab'. Online: <http://www.justice.gov.uk/justice-data-lab> [last accessed 15.5.2013].

<sup>6</sup> Ministry of Justice. 2013. *Strategic objectives for female offenders*. Online: <http://www.justice.gov.uk/downloads/publications/policy/moj/strategic-objectives-female-offenders.pdf> [last accessed 15.5.2013].

## Part II: Protecting the Public

### *Responsibilities of the new National Probation Service*

The response announces plans to reorganise existing Probation Trusts into one new National Probation Service.

As previously announced, the key responsibilities of the public sector Probation Service will include:

- Carrying out risk assessments of all offenders;
- Direct management of those offenders who pose the highest risk of serious harm to the public and who have committed the most serious offences, including those subject to Multi-Agency Public Protection Arrangements (MAPPA);
- Providing pre-sentence advice to the court and advising the Parole Board on release decisions;
- Providing victim liaison services for all the cases to which it applies (currently offender sentenced to 12 months or over for a violent or sexual offence);
- Responsibility for the Approved Premises it already manages.

### *Managing risk*

In response to the proposal that the provision of services for low-medium risk offenders be opened up to competition, many consultation responses pointed out that risk is dynamic and questioned how continuous provision could be maintained between different providers when the risk levels of an individual offender escalates.

The consultation response therefore outlines a number of measures to ensure that risk escalation is managed effectively by all partners:

- The lead partner is contractually obliged to refer cases of risk escalation to the public sector Probation Service;
- Where the Probation Service feel that, though the criteria for high risk are not met there could be quick escalation to the high risk category, it can specify a number of triggers which would constitute a significant change in circumstances and would require a further risk assessment;
- For those cases which are finely balanced between the medium and high risk of serious harm categories, the Probation Service will be able to carry out renewed risk assessments at given times;
- In instances where the Probation Services receives intelligence that an offender's risk of serious harm may have escalated to high, it can undertake an immediate reassessment of the risk the offender poses.

Where a case escalates to high risk of serious harm, it will become the responsibility of the public sector Probation Service, which will then decide how the case is handled in future.

### *Breach*

A number of consultation responses expressed concerns at the potential for perverse incentives in breach decisions.

Issuing a warning can be the responsibility of either the Probation Service **or** the contracted provider. However, the public sector Probation Service will advise on action in relation to potential breaches beyond a first warning and will retain exclusively the ability to provide information to court in order to enforce the breach.

### Part III: Making the System Work

#### *Transforming the current Probation Service*

As outlined above, the current system of individual Probation Trusts will be reorganised into a single National Probation Service, managed directly by MoJ through NOMS. It is expected that the majority of staff currently performing probation roles will transfer to new providers.

Below the national level, structures will be created to maintain co-terminosity with Police and Crime Commissioner (PCC) and Local Authority Boundaries. A Local Delivery Unit network will be maintained to provide information on local need and to maintain strategic relationships with delivery partners.

#### *New commissioning function*

As in the original consultation document, Government proposes to outsource the provision of offender services using a national commissioning function.

MoJ/NOMS will be responsible for commissioning rehabilitation services, and this function will be informed by engagement with co-commissioning partners at the national, PCC and Local Authority levels, and by Probation Service Local Delivery Units at the local level.

#### *Contract Package Areas*

As noted above, the number of Contract Package Areas has been increased from 16 to 21.

Several Contract Package Areas map onto PCC areas and care has been taken to ensure that areas do not cut across either PCC or Local Authority boundaries and that they align as closely as possible with the DWP Work Programme contract areas. There will be one distinct Contract Package Area for Wales.

A map showing the geographical boundaries of the Contract Package Areas may be found on p. 48 of the consultation response.

#### *Integration with existing structures and partnerships*

New providers will be expected to work collaboratively with PCCs, and several contract package areas map directly onto PCC areas. During the competition process, it is expected that PCCs will engage potential providers and help them to understand local need and alignment of strategic priorities. MoJ/NOMS will also look to PCCs to provide information on Integrated Offender Management (IOM) arrangements.

Potential providers will also be expected to preserve and build on the good work already being carried out by other agencies and partnerships, including Youth Offending Teams (YOTs) and Community Safety Partnerships (CSPs). To this end, there will be a



requirement for all bidders to evidence how they would sustain and develop local networks and partnerships, including IOM.

### *Effective governance*

MoJ and NOMS will carry out a contract management function, which will include monitoring providers' local partnership working.

There will continue to be an independent Inspectorate of Probation, inspecting both the public sector Probation Service and contracted providers.

### *Timetable for implementing reform*

Government is committed to ensuring that market providers are delivering services from Autumn 2014. A detailed plan of phased implantation may be found on pp. 34-35 of the consultation response document.

## Feedback

Clinks welcomes any comments or queries about this briefing via the online [Clinks Network](#) or by emailing Katie O'Donoghue, Policy Officer ([katie.o'donoghue@clinks.org](mailto:katie.o'donoghue@clinks.org)).

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