

October 2018



CLINKS
RESPONSE

Clinks' response to the Ministry of Justice's consultation Strengthening Probation, Building Confidence

About Clinks

Clinks is the national infrastructure organisation supporting voluntary sector organisations working in the criminal justice system (CJS). Our aim is to ensure the sector and those with whom it works are informed and engaged in order to enable people to transform their lives. We do this by providing specialist information and support, with a particular focus on smaller voluntary sector organisations, to inform them about changes in policy and commissioning, to help them build effective partnerships and provide innovative services that respond directly to the needs of their users.

We are a membership organisation with 500 members, including the voluntary sector's largest providers as well as its smallest. Clinks also manages the National Criminal Justice Arts Alliance, a network of over 900 artists and arts organisations who work to ensure arts and cultural opportunities are available to those in criminal justice settings. Our wider national network reaches 4,000 voluntary sector contacts. Overall, through our weekly e-bulletin Light Lunch and our social media activity, we have a network of over 15,000 contacts. These include individuals and agencies with an interest in the CJS and the role of the voluntary sector in rehabilitation and resettlement.

About this response

Clinks' submission has been informed by the views of attendees at four events, held in Bridgend, Bristol, London and York which Clinks hosted as part of the Ministry of Justice's (MoJ) engagement and consultation for the probation review. These events were attended by over 150 people representing 95 organisations. The discussions that took place at those events, including during sessions where the MoJ were present and a closed session at each where they were not, have fed into this response. The submission is also underpinned by previous Clinks research and consultation including our TrackTR research¹ and annual state of the sector reports².

The response addresses all but one of the consultation questions from the perspective of the voluntary sector. We have not addressed question 11 in detail because we do not feel this is of relevance to the voluntary sector. Given this, the whole response should be considered under the overarching heading of Question 14: "How can we better engage voluntary sector providers in the design and delivery of rehabilitation services for offenders in the community?"



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Throughout the response, in addition to our answer to Question 16: "How can we ensure that arrangements for commissioning rehabilitation and resettlement services in Wales involve key partners, complement existing arrangements and reflect providers' skills and capabilities?", where we feel that there is specific consideration of an issue in relation to the context in Wales we have indicated this.

Summary

Engaging with the voluntary sector

Given the challenges caused by the quick pace of change with which the Transforming Rehabilitation (TR) reforms were implemented, we would caution the MoJ that the current review risks facing similar issues.

Therefore while open dialogue and consultation has been welcome the voluntary sector in criminal justice believes that for true co-design to take place there must be further time for consultation, during which clarity must be provided on the extent of the change proposed and the resources available.

Engagement with the voluntary sector in the design of the new model needs to continue beyond the consultation period. This will provide reassurance and help to regain the sector's confidence as well as ensuring that the sector's views are sought throughout the process of refinement of what are currently very broad proposals to ensure that they are developed in the right direction.

Probation providers should be required to illustrate how they will treat the voluntary sector as an equal partner, ensuring effective data sharing and communications between the voluntary sector, prisons and probation services in order to facilitate a more integrated service.

We recommended in our final TrackTR report that as a minimum requirement, to nurture local partnerships, each probation region should develop a multi-agency network that brings together key partnership organisations to inform the design and delivery of services. Any multi-agency forums established should be open to organisations outside of, as well as within, the supply chains and those who can provide strategic advice as well as those who may deliver services³. Under the proposed model this should be led by the HMPPS senior leader in collaboration with senior level CRC and NPS staff. As part of this it will be vital to engage with specialist organisations to ensure that the needs of all cohorts are met.

Below is a summary of our recommendations.

Offender supervision

Staffing shortages, overreliance on temporary agency staff and unmanageable caseload levels have had a clear impact on the ability of probation services to deliver continuous supervision and build trusting relationships with individuals under their supervision. The probation review must set out an acceptable level of services to ensure quality and resources must be available for any future model of probation to ensure manageable caseloads and address staff retention issues in order to adequately deliver this level of service.

As a minimum probation providers should be required to ensure that people are aware of the conditions of their licence, the potential consequences of not meeting them, when their license period ends, what post-sentence supervision means and what



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happens when they do not meet post-sentence requirements. Expecting individuals to comply with a system that is not adequately explained to them is both unrealistic and unacceptable and this should be a clear part of an offender manager's responsibilities.

MoJ should consider an assessment based, tiered process, with more regular intensive support at the beginning of an order or license period, which tapers off depending on compliance, positive progress, needs and risks of individuals. This would require a clear and robust process for assessing the contact needs of an individual and for MoJ and Her Majesty's Prison and Probation Service (HMPPS) to be satisfied that it is correctly implemented throughout the life of the contracts. Organisations at the consultation events talked about using similarly tiered levels of contact with their service users and the sector may therefore be able to provide advice for how to assess need in this respect.

Clinks supports the Justice Committee's recommendation to repeal Section 2 of the Offender Rehabilitation Act in order to remove the 12 month blanket supervision period. Of the alternatives suggested by the committee we favour an assessment based approach which would be suitably flexible to respond to an individuals' needs and support their desistance.

Assumptions should not be made about whether the voluntary sector is content to play an enforcement role but either way, if they are contracted to provide support to individuals their knowledge of that individual should be taken into account in any decision about sanctions on the basis of engagement levels.

In response to the dynamic nature of risk we recommend that offender managers in Wales have mixed caseloads including low-medium risk and high risk service users in order to facilitate continuity.

Unpaid work requirements

There must be an improvement of the assessment of people eligible for unpaid work schemes at the pre-sentence stage, as has been suggested for Community Sentence Treatment Requirements, to ensure that courts have better advice on their suitability.

There must also be an improvement in the transparency around unpaid work schemes including recording and collating data on completion rates, time taken, amount and length of delays and cancellations.

Unpaid work placements need to be more meaningful; as well as providing opportunities for reparation, they must have a clear focus on equipping people with relevant experience and skills that are needed in the local economy. Unpaid work placements must be suitable to individual's needs, interests and previous work experience. Probation services should therefore take a broader view of employment beyond the traditional labour and 'unskilled' jobs made available. To provide a meaningful route to employment the required 20% of time for education and improving skills and employability is vital. There should be a clear monitoring process to ensure that this is properly utilised and of a sufficient quality.

Improved involvement of the voluntary sector could help address these issues. There are mixed views within the sector as to willingness to deliver activities which involve an enforcement role but that does not negate the sector's ability to feed into the design of such schemes or support them in ways similar to the support provided to probation services.



Engaging the courts and improving the use of community sentences

Any consideration of the effectiveness of pre-sentence advice must take into account and review the impact of speedy justice.

As a minimum pre-sentence reports (PSRs) must specify an individual's gender or any other characteristic protected under the Equalities Act (2010) or specific vulnerability and consider the specific needs of the individual in relation to this. Adequate time and resource must be allocated for the completion of PSRs and proactive steps should be taken to ensure voluntary organisations with expertise in supporting women are engaged in this process.

Attendees at our consultation events suggested that PSRs should also include assessments on the potentially negative impact of prison so that sentencers are aware of the impact of a short term custodial sentence when community sentences are also an option.

It will be vital that the National Probation Service (NPS) engage with the local voluntary sector in the development of the Effective Proposal Tool to ensure that it adequately reflects the support available in a local area. Difficulties in securing sustainable funding can mean the sector and the services available change quickly. The NPS needs to ensure they have mechanisms in place for staying up-to-date with this changing environment and updating the Effective Proposal Tool to ensure probation staff and sentencers are getting the most accurate information.

Engagement between Community Rehabilitation Companies (CRCs) and the courts should be directed towards raising awareness of potential community solutions with clear parameters to ensure that any potential conflicts of interest are mitigated against.

Structures should be established in each contract package area (CPA) to enable engagement between the voluntary sector, probation providers and the courts, thus providing greater visibility and understanding of available interventions and their impact.

A significant number of attendees at our consultation events also suggested adopting a presumption against the use of custodial sentences, as recommended by the Justice Committee which Clinks would support.

The equality impact

The MoJ must recognise the impact that the current model of probation has had on particular groups of service users and the organisations that provide tailored services to them. The needs of these service users must now be met; on legal grounds, under the public sector equality duty; moral grounds, on the basis of ensuring fair treatment; and in pursuance of reducing reoffending. The proposed HMPPS senior leader in each CPA should have a specific responsibility for supporting and monitoring CRC and NPS activity to meet the needs of service users protected under the Equalities Act (2010) or with particular vulnerabilities.

To ensure that adequate funding is available for women's services it should be appropriately ring-fenced within each CPA. The senior HMPPS leader in each CPA should be responsible for working with the CRC and other commissioners in the area to ensure that appropriate services are adequately commissioned.

It is imperative that the disproportional outcomes for black, Asian and minority ethnic (BAME) people in contact with the criminal justice system and the lack of specialist BAME services are addressed both with regards to future contracts as well as ensuring

that CRCs and the NPS are not allowed to ignore this issue during the remainder of the current contracts. As recommended in our final TrackTR report the MoJ must set out acceptable levels of services including an assessment of the services required to meet the needs of people protected under the Equalities Act or with particular vulnerabilities⁴. Future contracts must include contractual requirements to reflect this, specify reporting requirements with regards to equalities, and be appropriately monitored.

To ensure that in the future CRCs are identifying and addressing local needs and supporting to fill those gaps, the HMPPS leader in each CPA should have a specific responsibility to work with CRCs to monitor and support their engagement with the sector as a whole, but with an additional focus on particularly essential but vulnerable parts of it such as BAME organisations. Probation providers should also be expected to provide grant funding for small organisations that offer tailored services for BAME service users in recognition of the particular challenges this part of the voluntary sector have experienced.

Probation services should also be required to illustrate that they are meeting the distinct needs of young adults through the services they commission and the HMPPS senior leader in each CPA should have responsibility for monitoring this.

The voluntary sector should be viewed as a key potential partner in the design and delivery of holistic and flexible Community Sentence Treatment Requirements which effectively support people to address their health and social care needs, and desist from crime.

HMPPS Senior leaders in each CPA, CRCs and the NPS should engage with local Making Every Adult Matters Areas and Fulfilling Lives partnerships in their CPAs and consider how a multi-agency approach could better support probation services to meet the needs of service users with multiple or complex needs.

Resettlement

For short sentenced prisoners in particular, resettlement should start right at the beginning of a sentence not 12 weeks prior to release. For women, the majority of whom receive short term sentences, women-only resettlement provision and community residential units are vital.

Through the gate services should be re-specified to ensure that they are genuinely through the gate, properly joining up services delivered in the prison with those delivered in the community and doing more than simply signposting to services on the other side of the gate.

Staff skillset

Probation staff need better, more uniform training on the issues that women are more likely to face so they can adopt a gender-informed approach, including awareness of trauma and caring responsibilities.

Similarly as highlighted by the Lammy review⁵ and previous successive reports the lack of understanding amongst probation staff of some of the specific needs, cultural contexts and impact of experiences of racism and discrimination for BAME people in the CJS must be addressed. We also highlight the need for better understanding of the impact of maturity for the transitions to adulthood group and the impact of multiple needs.

Consideration should also be given to the skills and competencies needed across probation services particularly in relation to commissioning and partnership working. These skills will be vital to ensuring that recommendations we make throughout this response can be implemented.

Commissioning, market stewardship and service design

Significant concern was raised over the increased size of the CPAs. MoJ should make it a clear expectation of CRCs that locally responsive services *are* subcontracted and that smaller services will not be expected to deliver across the whole of the CPA.

In any future model of probation, if the split between CRCs and the NPS is to remain, each organisation must have its own commissioning function to allow it to purchase appropriate services. There should also be clear structures established to allow them to co-commission where they have common needs. In our TrackTR report we recommended that this change should be supported by the MoJ commissioning directorate and HMPPS working alongside the NPS⁶. This could be facilitated through the proposed HMPPS senior leader in each CPA.

Any future model should require probation providers, CRCs and NPS, to publish, ideally on a quarterly basis, full details of their supply chains including the names and company/charity numbers of tier two and three providers; the amount of funding passed down to sub-contractors; a summary of the service provided; and where appropriate the contribution these organisations have made to Key Performance Indicators. HMPPS should also conduct an annual audit of the supply chain which should collate anonymised feedback, assess experiences and aim to share good practice as well as highlight poor practice to learn from. The audit's findings should be public.

MoJ should learn from other examples, undertaking a full review of the prison education contract process, consulting with voluntary sector organisations involved in it as well as the Prisoner Learning Alliance, to ensure that learning is applied to any future model of this kind.

The Social Value Act should be used as a tool to drive probation services to take advantage of the wide range of existing and longstanding expertise that resides in the voluntary sector, including services tailored to particular service user groups or through innovative and creative interventions.

There was a common view across attendees that the 'black box' model of contracts currently in use should be abandoned as should the Industry Standard Partnership Agreement. Future contracts used to subcontract probation services must be simplified.

Clear guidance should be provided to CRCs and NPS about when it is appropriate to use grant funding or contracts. Clinks' publication *More than a Provider* and the Grants for Good Campaign Principles of Good Grant Making could be utilised as a basis for this.

We reiterate our recommendation from TrackTR that MoJ and HMPPS should develop (or commission) a mechanism to gather the views from a representative sample of probation service users and their families to assess the state of services on an ongoing basis. The analysis should be published and used to improve services⁷.

To ensure that co-commissioning partnerships are truly working towards shared priorities Clinks suggests that the MoJ develop a rehabilitation concordat that would fulfil a similar purpose to the women's concordat currently in development. This would set out clear principles regarding outcomes, priorities and commissioning practice which any co-commissioners would be invited to sign up to.

Of the three commissioning models presented at the consultation events, Clinks would favour the Dynamic Purchasing Systems (DPS) model of commissioning for Wales but suggest that HMPPS Wales must consider the issues we outline



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in response to question 14 and below, in partnership with voluntary sector organisations in order to co-design the most appropriate model.

Measures of success

Outcome measures should not focus solely on reoffending outcomes whether this be a binary or frequency measure but should take into account the wide range of factors that support someone on their journey towards desistance and distance travelled towards this.

The MoJ should develop new targets and outcomes measures with greater emphasis on the quality of work delivered and what it actually achieves. To do this, greater information is needed on the current targets and outcomes measures included in CRC contracts. The MoJ should convene a working group to assess current targets and outcome measures to develop proposals for improved measures. As a minimum requirement this group should involve MoJ, HMPPS, HM Inspectorate of Probation, CRCs, the NPS, voluntary sector organisations, Police and Crime Commissioners (PCCs) and other statutory services with responsibility for health, housing, education and employment outcomes. A mechanism should be built into this to test improved outcome measures with small voluntary sector organisations as they are developed.

MoJ should assess quality through new research grants. HM Inspectorate of Probation perform a vital function in assessing the quality of probation work. This should be complimented by more research into what 'good' looks like in probation services. The MoJ should support this development by setting up an annual grant fund for researchers to assess the broad range of rehabilitation and resettlement activities. The research papers should be published.

Response

CLINKS welcomes the MoJ consultation on the future of probation services. Between 2015 and 2018 CLINKS undertook a significant programme of research to explore the impact that the previous probation reforms had on the voluntary sector working in criminal justice. A key recommendation of this research was that the MoJ undertake an open consultation to design services in the future.

Along with the reports of the HMI Probation, Justice Select Committee⁸ and Public Accounts Committee⁹, our own TrackTR research found significant concerns with the delivery of probation services and in particular, the impact this was having on the voluntary sector, who reported being under represented, under pressure and under resourced¹⁰. We are therefore heartened to see recognition and acknowledgement of all of our findings in the consultation document.

We were disappointed that the consultation fell short of the period recommended under the Compact¹¹, which government has recently renewed its commitment to. This has posed some challenges in engaging the sector, especially over the summer period but we have nonetheless been encouraged by the very clear appetite of the MoJ to engage with the voluntary sector in an open dialogue.

While it is clear that MoJ recognise the challenges and failures of the current system, a clear vision for potential ways to address this is less obvious and many organisations in the sector have questioned whether fundamental change is possible while retaining the current model of probation services, particularly the split between services for low-medium risk offenders put to market, and services for high risk offenders retained in



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the public sector. In addition there is a lack of clarity about commissioning model is being proposed by the MoJ and this is leading to a perception amongst the sector that the current commissioning model will remain insubstantially changed.

There is a noticeable omission of any mention of future budgets in the consultation document. Our TrackTR research found that the underfunding of probation services was leading to a lack of investment in rehabilitation and resettlement services with half the voluntary led services funded by Community Rehabilitation Companies (CRCs) telling us that they are unsustainable, and one third subsidised by charitable reserves or other funding sources¹². Given this, there is real concern amongst the sector that the ambition to better engage with and involve the voluntary sector in the delivery of probation services cannot be achieved within current financial constraints. This concern echoes that raised by the sector in response to the female offenders strategy and begins to point to a concerning pattern of announcements of worthy ambition with little funds available to achieve it.

There is further frustration at what is perceived to be the subsidising of a failing system, through extra payments to CRCs between now and 2020, to enhance the quality of through-the-gate services, and to introduce minimum standards for face-to-face contact with offenders, that are unlikely to trickle down the supply chain. There is no additional money being made available to ensure the quality of services in the future, nor a proposal for a substantially different future commissioning model to ensure that supply chain partners are adequately resourced.

Given the challenges caused by the quick pace of change with which the Transforming Rehabilitation (TR) reforms were implemented, we would caution the MoJ that the current review risks facing similar issues.

The consultation period itself has been short, over the summer months which has put pressure on organisational time and capacity to engage full. There is therefore a need to ensure proper and ongoing consultation beyond this formal consultation process.

Organisations currently in supply chains are now facing uncertainty over the future of their contracts with little detail on transitional arrangements. Unless this is well managed the delivery of the services now and in the future is at risk.

Therefore while open dialogue and consultation has been welcome the voluntary sector in criminal justice believes that for true co-design to take place there must be further time for consultation, during which clarity must be provided on the extent of the change proposed and the resources available.

Question 1: What steps could we take to improve the continuity of supervision throughout an offender's sentence?

We welcome MoJ's recognition of the importance of continuous positive relationships and trust to supporting desistance. This is particularly important in supporting the significant number of people in the criminal justice system who have multiple and complex needs. Staffing shortages, overreliance on temporary agency staff and unmanageable caseload levels have a clear impact on the ability of probation services to deliver this.



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The probation review must set out an acceptable level of services to ensure quality, and resources must be available for any future model of probation to ensure manageable caseloads and address staff retention issues in order to adequately deliver this level of service.

In our consultation with the sector, organisations highlighted that in some cases, particularly given current constraints, the voluntary sector is the key component that is able to provide continuity and that the benefits of this are added to by the trusting relationships built by organisations who on the whole do not undertake an enforcement role. However it was felt that this was not adequately acknowledged and the sector not treated as an equal partner, with examples of offender managers sanctioning individuals for lack of engagement without contacting organisations providing support to those individuals and with whom engagement was being maintained. Organisations pointed to poor communication and data sharing as a significant barrier to maximising on the continuity they are able to provide to service users.

Probation providers should be required to illustrate how they will treat the voluntary sector as an equal partner, ensuring effective data sharing and communications between the voluntary sector, prisons and probation services in order to facilitate a more integrated service.

In addition Through The Gate services received considerable criticism for being disjointed and were often described as 'to the gate' rather than 'through the gate', with individuals falling through the gaps created by the confusion around responsibilities of different agencies and sectors and a lack of communication between them.

Through the gate services should be re-specified to ensure that they are genuinely through the gate, properly joining up services delivered in the prison with those delivered in the community and doing more than simply signposting to services on the other side of the gate.

Wales

The proposal to provide responsibility for the by National Probation Service (NPS) to provide offender management for all service users in Wales is also important to consider in relation to continuity of supervision and the dynamic nature of risk.

In response to the dynamic nature of risk we recommend that offender managers in Wales have mixed caseloads including low-medium risk and high risk service users in order to facilitate continuity.

Question 2: What frequency of contact between offenders and offender managers is most effective to promote purposeful engagement? How should this vary during a period of supervision, and in which circumstances are alternatives to face-to-face meetings appropriate? Do you have evidence to support your views?

Clinks shares the Justice Committee's position that remote supervision should not be used as the only means by which an offender is supervised. However the



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level of face to face contact needed will be dependent on an individual and their circumstances and will likely vary within the period of an order or license.

If the national minimum contact is set too rigidly it may lead to inappropriate or unnecessary levels of contact; with those with more complex needs being seen too infrequently and others possibly being seen too often. A minimum standard risks placing requirements on some people that are too restrictive and onerous which may lead to further punitive responses that would be counter-productive to their desistance and resettlement. For example attending meetings can be difficult for people with caring responsibilities, people in employment and people in more rural areas or further away from their supervising CRC (an issue which is likely to be exacerbated by larger CPAs). There is analysis to already suggest that recall rates for women (who the majority of caring responsibilities fall upon) for administrative purposes (i.e. missing appointments and keeping in contact) are high¹³ and there is a danger that minimum requirements will increase this further.

At our consultation events organisations raised concerns that a monthly minimum contact would divert focus onto the quantity rather than quality of contact preventing tailored and flexible working with individuals. A balance must be struck between no minimum level, which allows for providers to only undertake remote supervision, and a system that is too rigid to provide the individualised and responsive service conducive to desistance.

MoJ should consider an assessment based, tiered process, with more regular intensive support at the beginning of an order or license period, which tapers off depending on compliance, positive progress, needs and risks of individuals. This would require a clear and robust process for assessing the contact needs of an individual and for MoJ and HMPPS to be satisfied that it is correctly implemented throughout the life of the contracts. Organisations at the consultation events talked about using similarly tiered levels of contact with their service users and the sector may therefore be able to provide advice for how to assess need in this respect.

In addition at our consultation events examples were given of positive engagement and contact with the voluntary sector not being taken into account in decisions to sanction people for missing appointments. It was therefore felt that 'contact' and 'engagement' needed to be understood more widely and offender managers should communicate with all agencies involved in an individual's case before making a decision about levels of engagement and recall.

Some organisations suggested that the voluntary sector could replace the offender manager for license contact and act as the agency to ensure minimum frequency of contact and report back to the offender manager for them to enforce -non-compliance. The rationale for this was that individuals are often more willing to engage with the voluntary sector and maintain contact with an agency through which they are receiving other wrap around support. However other, often smaller organisations, were wary of undertaking roles too close to enforcement on the basis that they could undermine their ability to build that trust.

Assumptions should not be made about whether the voluntary sector is content to play an enforcement role but either way, if they are contracted to provide support to individuals their knowledge of that individual should be taken into account in any decision about sanctions on the basis of engagement levels.

Question 3: How can we promote unpaid work schemes which both make reparation to communities and equip offenders with employment-related skills and experience?

Well-structured unpaid work schemes could have a significant impact on increasing sentencers' confidence in suspended sentences and community orders and on the quality and success of such sentences with regard to supporting people to gain skills and experience relevant to employment, which we know is a key supportive factor in desistance. There are a number of practical actions that could be taken to contribute to this:

- **Improve the assessment of eligible people at pre-sentence stage, as has been suggested for Community Sentence Treatment Requirements (CSTR), to ensure that courts have better advice on their suitability.**
- **Improve the transparency around unpaid work schemes including recording and collating data on completion rates, time taken, amount and length of delays and cancellations.**

Unpaid work is not perceived as a key part of rehabilitation activity and has a tendency to be viewed as a punitive response. At our consultation events organisations raised concern that unpaid work opportunities were often not well tailored to individual needs and that the allocated 20% of time for education and improving skills and employability was not well utilised. Giving the same recognition to the importance of employment for those on community sentences as the Education and Employment Strategy has given for those in and released from custody would help to address this. For instance, providers could be supported to have better links with employers, as the New Futures Network is designed to do for prisons and also in considering how unpaid work could provide a route into apprenticeships.

In particular attendees highlighted that current contractors have little understanding of the needs of women and that it may not be appropriate for women to be in work placements with men.

Unpaid work placements need to be more meaningful; as well as providing opportunities for reparation, they must have a clear focus on equipping people with relevant experience and skills that are needed in the local economy. Unpaid work placements must be suitable to individual's needs, interests and previous work experience and probation services should therefore take a broader view of employment beyond the traditional labour and 'unskilled' jobs made available. To provide a meaningful route to employment the required 20% of time for education and improving skills and employability is vital. There should be a clear monitoring process to ensure that this is properly utilised and of a sufficient quality.

Improved involvement of the voluntary sector could help address these issues. There are mixed views within the sector as to willingness to deliver activities which involve an enforcement role but that does not negate the sector's ability to feed into the design of such schemes or support them in ways similar to the support provided to probation services.



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of voluntary sector organisations who support people with convictions into employment should be utilised by the MoJ. For instance, voluntary sector women centred services could advise on appropriate roles or potentially provide placements for women. Organisations such as Clean Sheet, New Leaf CIC, Offploy CIC, Tempus Novo, Working Chance and others provide a brokerage role; working with employers to encourage them to make vacancies accessible to people with convictions and supporting individuals with convictions to access those opportunities including supporting them to be 'work ready' and maintain employment.

There are additionally some opportunities MoJ might consider to get further feedback on unpaid work as part of bigger conversations with the sector about employment readiness and support. Managed by Clinks, The National Criminal Justice Arts Alliance (NCJAA) is a network of 900 artists and arts organisations who work to ensure arts and cultural opportunities are available to those in criminal justice settings. The NCJAA is working with the MoJ, DCMS and Arts Council England to explore how routes into the creative industries, a growing sector in the economy, might be made accessible to people with criminal records.

Similarly the Reducing Reoffending Third Sector Advisory group (RR3) includes expertise in employment and would be a route to exploring with the sector how unpaid work could be improved.

Question 4: What changes should we make to post sentence supervision arrangements to make them more proportionate and improve rehabilitative outcomes?

Clinks shares concerns regarding the proportionality of the 12 month supervision period including that it may be diverting limited resources away from those who most need them and driving further punitive responses that may not be conducive to desistance. Although HMI Probation have found that recall practices are generally sound¹⁴, as highlighted in our response to question 2 there is analysis to suggest that recall rates for women for administrative purposes (i.e. missing appointments and keeping in contact) are high¹⁵, indicating that people may be receiving punitive responses to having caring responsibilities, being in employment or living a significant distance from the CRC.

It is particularly concerning that, as outlined in the consultation document, there is often little difference between the supervision and support provided under licence and during the post-sentence supervision period and that offenders are not always told that their licence period has ended.

As a minimum probation providers should be required to ensure that people are aware of the conditions of their licence, the potential consequences of not meeting them, when their license period ends, what post supervision means and what happens when they do not meet post sentence requirements. Expecting individuals to comply with a system that is not adequately explained to them is both unrealistic and unacceptable and this should be a clear part of an offender manager's responsibilities.

Clinks supports the Justice Committee's recommendation to repeal Section 2 of the Offender Rehabilitation Act in order to remove the 12 month blanket supervision period. Of the alternatives suggested by the committee we favour an assessment based approach which would be suitably flexible to respond to an individuals' needs and support their desistance.

It may be possible for such an assessment to be combined with the assessment we suggest in response to question 2, for deciding the frequency of contact between an individual and their offender manager. Similarly this would require a clear and robust process for assessing supervision needs and for MoJ and HMPPS to be satisfied that it is correctly implemented.

Question 5: What further steps could we take to improve the effectiveness of pre-sentence advice and ensure it contains information on probation providers' services?

"Speedy justice" is a severe limitation to the provision and quality of PSRs. Recent analysis by the Centre for Justice Innovation¹⁶ has found that between 2012/13 and 2016/17 there was a 22% decrease in the number of new PSRs with the result that an increasing number of sentences (both community sentences and custody) are passed by the courts with no PSR. In parallel there have been significant changes in how PSRs are delivered to court, with an increasing proportion of PSRs delivered orally rather than in writing. The Centre for Justice Innovation conclude that since cases with PSRs are more than ten times more likely to receive a community sentence, the falling number of PSRs is strongly linked to the decline in community sentences.

We held a separate consultation with our members and their service users earlier this year, to inform the evaluation of the CSTR protocol programme. In this organisations highlighted the current pressure for courts to speed up the rate at which cases are dealt as a real barrier to setting up CSTRs, as courts are reluctant to adjourn cases to allow time for an assessment to be made. This is especially the case for people with mental health needs, where reports may take longer to arrange. In some cases voluntary sector staff were being asked to conduct telephone assessments with people to allow their case to be processed more quickly, which while possible, does not allow for a thorough comprehensive assessment. Linked to this, the participants also raised concerns that people are not always given sufficient time and information to fully understand and consent to the treatment requirements before the sentence is imposed. Having staff from liaison and diversion teams on hand to conduct assessments can be beneficial, but time pressures mean they will often have to prioritise seeing high need/high risk clients in custody suites, who would not qualify for a CSTR.

During consultation at Clinks Women's Networking Forum meeting in May 2017, to inform our submission to the All Party Parliamentary Group (APPG) on women in the penal system inquiry into sentencing, organisations echoed the concerns of HMI Probation with regards to the extent to which PSRs understand and explain the gender-specific needs of women and that in some cases they fail to specify an individual's gender at all¹⁷. Organisations also told us that there was a lack of PSRs being carried out and, of particular concern, that a woman's caring responsibilities are too often not taken into account by sentencers.

Organisations highlighted that the causes of women's offending are diverse and will be different for each woman. Organisations stressed it is important that time is taken to explore the reasons behind each woman's offending, to ensure she receives an appropriate disposal. It can often take significant time to build the trust needed before a woman feels



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in a position to disclose her experiences. Women's centres are experts in establishing these trusting relationships. However, the emphasis on "swift and speedy justice" has meant that voluntary organisations supporting women in the CJS are often unable to contribute to presentence reports partly due to having insufficient time to do so.

Similarly, the Lammy Review raises concerns about the impact of fast delivery PSRs and guidance discouraging the use of PSRs for certain offences on outcomes for individuals from black, Asian and minority ethnic (BAME) backgrounds¹⁸.

Any consideration of the effectiveness of pre-sentence advice must take into account and review the impact of speedy justice on this.

As a minimum PSRs must specify an individual's gender or any other characteristic protected under the Equalities Act (2010) or specific vulnerability and consider the specific needs of the individual in relation to this.

In some areas the introduction of the Transforming Rehabilitation reforms has led to decreased levels of voluntary sector involvement in court processes. PSRs are completed by National Probation Service (NPS) staff and Community Rehabilitation Company (CRC) staff but voluntary sector organisations directly commissioned by them are unable to contribute, as they had previously been able to. This leads to organisations being unable to contribute their considerable knowledge and understanding of service users' needs in court.

Adequate time and resource must be allocated for the completion of pre-sentence reports and proactive steps should be taken to ensure voluntary organisations with expertise in supporting women are engaged in this process.

Attendees at our consultation events suggested that pre-sentence reports should also include assessments on the potentially negative impact of prison so that sentencers are aware of the impact of a short term custodial sentence when community sentences are also an option.

There was significant discussion about the duplication across PSRs and the Basic Custody Screening Tools 1 and 2. Some suggested that consideration be given to combining elements of these in order to reduce duplication and provide sentencers with much greater detail of an individual's needs, circumstances and available services to address them, thereby increasing the likelihood of community sentences.

These suggestions would clearly have significant implications for the time needed to complete PSRs and would require a reduction in probation officers' current caseloads but there may be some principles contained here which could be considered and applied to the proposed 'Effective Proposal Tool'.

To ensure the proposed Effective Proposal Tool improves the consistency and transparency of PSRs it will need to have some minimum requirements that are always considered and included such as caring responsibilities, mental health, substance misuse, and abuse and trauma. There will need to be a monitoring process or audit of its delivery or quality.



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This monitoring process should be extended to cover PSRs as well as the tool itself and in order for this to happen all PSRs should be in writing rather than delivered orally.

It will also be vital that the NPS engage with the local voluntary sector in the development of the Effective Proposal Tool to ensure that it adequately reflects the support available in a local area.

This will be particularly important for reaching small and specialist organisations who provide tailored services to particular client groups, including those protected under the Equalities Act (2010). These organisations are often overlooked because they do not have the profile and capacity to raise awareness of their services and the needs of their client groups.

Clinks' State of the Sector¹⁸ and TrackTR research¹⁹ has shown that instability and funding pressures for voluntary sector organisations delivering probation-related services means that services often have to adapt and change their service design, form partnerships with other services and some (particularly smaller ones) are unable to stay afloat.

This means the sector changes quickly and the NPS needs to ensure they have mechanisms in place for staying up-to-date with this changing environment and updating the Effective Proposal Tool to ensure probation staff and sentencers are getting the most accurate information.

Question 6: What steps could we take to improve engagement between courts and CRCs?

Engagement between CRCs and the courts should be directed towards raising awareness of potential community solutions with clear parameters to ensure that any potential conflicts of interest are mitigated against.

In this context it is also entirely appropriate and necessary for there to be engagement between voluntary sector organisations supporting probation services and the courts, so that the courts and NPS better understand the services they deliver. The voluntary sector were previously involved in such fora, under the Probation Trust system, and there is no reason for this not to happen through the National Sentencer and Probation Forum but it should also take place at a local level.

Structures should be established in each CPA to enable engagement between the voluntary sector, probation providers and the courts, thus providing greater visibility and understanding of available interventions and their impact.

Such structures may also lead to a range of other beneficial engagement, some of which were suggested by event attendees including sharing of positive stories and outcomes with the court, and engaging the court with experts by experience either as individuals now involved in the delivery of services or through formalised 'user-led' training.

Question 7: How else might we strengthen confidence in community sentences?

In line with the issues of sentencer confidence in community sentences outlined in the consultation document, attendees at our consultation events pointed to a particular lack of understanding and confidence amongst magistrates of community solutions in general and felt that this was contributed to by a lack of training and high turnover. There was a perception amongst some attendees that the courts may see custody as a safe place and need more awareness raising on the harm short sentences cause alongside improved confidence in community sentences. In particular, custodial sentences have particularly poor outcomes for women, a large majority of whom have experienced trauma, including sexual and domestic abuse, suffer from mental ill health, are primary carers and/or have chronic substance misuse problems.

Wales

In Wales in 2017, a total of 572 women were sentenced to immediate imprisonment. There has been a 22% increase between 2012-2017 in Wales overall of women being sentenced to immediate imprisonment. Over the same five year period there has been a 41% increase in women serving short sentences²¹. Putting aside the important issue that short sentences have the worst reoffending outcomes and the impact of parental imprisonment, this is a particular issue in Wales due to the fact that there are no female prisons. As such the challenges highlighted in previous questions with regards to continuity of supervision and through the gate services are exacerbated for women in Wales. Therefore ensuring sentencer confidence in community options for women in Wales is particularly important.

A significant number of attendees also suggested adopting a presumption against the use of custodial sentences, as recommended by the Justice Committee which Clinks would support.

Question 8: How can we ensure that the particular needs and vulnerabilities of different cohorts of offenders are better met by probation? Do you have evidence to support your proposals?

The extent to which the needs of people protected under the Equalities Act or with particular vulnerabilities are currently met by probation services is unacceptable. This does not only amount to gaps in services, as outlined by the consultation document, but includes a number of other significant concerns that must be recognised and addressed in any future model for probation services:

- Specialist women's services are more likely to be subsidising services, to be sceptical about sustainability and less confident about contract management than other organisations in the CRC supply chains
- Women's organisations continue to highlight that probation services do not always recognise the need for gender specific services
- Small specialist services who are more likely to have expertise in responding to the needs of particular client groups are underrepresented in supply chains
- There are no specialist BAME services, that Clinks are aware of, included in CRC supply chains



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- The finding of the Lammy Review that CRCs have an inconsistent and tick box approach to the public service equality duty and annual equalities reports.²²

In addition Clinks' TrackTR research found that vulnerable groups were perceived to be the most negatively impacted by TR including people with particular financial need, homeless people, young adults, people with addiction problems and BAME people.²³

The MoJ must recognise the impact that the current model of probation has had on particular groups of service users and the organisations that provide tailored services to them. The needs of these service users must now be met; on legal grounds, under the public sector equality duty; moral grounds, on the basis of ensuring fair treatment; and in pursuance of reducing reoffending. The proposed HMPPS senior leader in each CPA should have a specific responsibility for supporting and monitoring CRC and NPS activity to meet the needs of service users protected under the Equalities Act (2010) or with particular vulnerabilities.

Women

As outlined in the consultation document, women centred provision is not available in every CRC and specialist women services that have been contracted by CRCs have faced a number of challenges. The Female Offenders Strategy sets out a clear aspiration for the needs of women in the CJS to be appropriately addressed. However the funds announced alongside it fall significantly short of the total needed to realise these ambitions. It is imperative that adequate resources are available to meet the needs of women under probation supervision.

Where there are not existing services there is a responsibility on CRCs, HMPPS and the MoJ to support the development of those services. There was much discussion at our consultation events about the best way to ensure adequate provision of women's services; whether CRCs should have a contractual requirement to commission women's services or if HMPPS should commission them directly at a national level. In considering these varying viewpoints we have taken into account:

- the fact that current CRC contracts include specific commitments for meeting the needs of women, they have a poor track record of commissioning gender-specific services;
- concerns around the lack of funding attached to the female offender strategy and its ability to meet women's needs; proposals to increase the size of CPAs;
- and recommend a middle ground.

To ensure that adequate funding is available for women's services it should be appropriately ring-fenced within each CPA. The senior HMPPS leader in each CPA should be responsible for working with the CRC and other commissioners in the area to ensure that appropriate services are adequately commissioned.

In considering the appropriate level of ring fenced funding thought should be given to the amount of resource available per person in the CPA and the figure for women should be at least equal to that for men, if not greater given what we know about their differing needs. We acknowledge there will be complexity in implementing such an approach and questions as to whether it should apply to all probation services including accredited programmes, unpaid work, approved premises, and court orders. In designing such a



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model MoJ will need to ensure that a balance is struck between ensuring that women are not prevented from accessing an appropriate service that is not gender specific and ensuring that generic services aren't the only option available. Therefore MoJ should explore this in further detail with the women's sector on a co-design basis.

Race

As already highlighted, Clinks' TrackTR findings show that small and specialist organisations are particularly underrepresented in CRC supply chains.²⁴ Furthermore, Clinks is unaware of any BAME organisations in CRC supply chains. Our 2017 State of the Sector survey found that organisations providing support tailored to BAME communities were more at risk of closure with 30% of respondents reporting this compared to 5% of all survey respondents.²⁵ This is a significant issue given that evidence suggests people from minority groups are more likely to engage with services led by people from the same groups. As the Lammy Review highlights, different BAME groups, such as Gypsy, Traveller Roma people, Muslim people and young black men may have specific needs or present certain issues with greater prevalence and may therefore require services that are sensitive to the cultural contexts and attuned to those needs.²⁶

The hope that CRCs would prioritise addressing disproportionality in pursuance of reducing reoffending and payment-by-results has not been realised. One year on from the publication of the Lammy Review which also highlighted these issues and made recommendations regarding improving contracting between CRCs and BAME organisations we have seen no change. While some activity has taken place to engage CRCs in discussion of these issues it is unclear exactly what the outcome of that activity is.

It is imperative that this issue is now addressed both with regards to future contracts as well as ensuring that CRCs and the NPS are not allowed to ignore it during the remainder of the current contracts. As recommended in our final TrackTR report the MoJ must set out acceptable levels of services including an assessment of the services required to meet the needs of people protected under the Equalities Act or with particular vulnerabilities .

Future contracts must include contractual requirements to reflect this, specify reporting requirements with regards to equalities and be appropriately monitored.

As with women's services a lack of local specialist organisations is not sufficient reason for probation providers not to support the development of such services. Probation services in their commissioning role have a responsibility to the wider ecosystem of voluntary sector organisations in their areas and must recognise that a historical lack of funding and engagement has led to an erosion of certain parts of the sector which must now be supported.

Probation providers should be expected to provide grant funding for small organisations providing tailored services for BAME service users in recognition of the particular challenges this part of the voluntary sector have experienced.

Furthermore participants at our consultation events suggested that CRCs must also be held to account under the Lammy review's principle of 'explain or reform'.²⁸ Given that disproportionate outcomes persist across CRCs there is an imperative upon CRCs to identify and address local needs including gaps in provision and support to fill those gaps.



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To ensure that this takes place in the future the HMPPS leader in each CPA should have a specific responsibility to work with CRCs to monitor and support their engagement with the sector as a whole, but with an additional focus on particularly essential but vulnerable parts of it such as BAME organisations.

Young adults

As highlighted by the Justice Committee's inquiry on young adults "there is overwhelming evidence that the criminal justice system does not adequately address the distinct needs of young adults" and that "there is a strong case for a distinct approach". Although there are good examples of distinct provision for young adults in many probation areas in England and Wales, overall provision is patchy and often contingent on local practitioner and senior management champions, who are not present everywhere.

The Transition to Adulthood Alliance (T2A) submission to the Justice Committee's inquiry into Transforming Rehabilitation highlighted that the reforms have led to a dramatic increase in the number of recalls to prison for this group and insufficient resettlement arrangements for young adults leaving custody.

Research suggests that the risk of non-compliance with order conditions is increased by the young age of the person.²⁹ Therefore it is vital that licence conditions are proportionate and adapted to take account of maturity and the distinct needs of this age group. Similarly a young adult-specific approach to through the gate services (with a focus on securing stable accommodation and long-term employment) should be implemented.

Three phases of T2A pilots between 2008-2017 have shown clear benefits to be gained from increasing opportunities for the involvement of the voluntary sector in the delivery of probation services for young adults.

Probation services should therefore be required to illustrate that they are meeting the needs of this group through the services they commission and the HMPPS senior leader in each CPA should have responsibility for monitoring this.

People with health and/or substance misuse problems

People in contact with the criminal justice system experience a high level of physical health, mental health and social care needs. We welcome the MoJ's ongoing commitment to developing an effective protocol for community sentence treatment requirements (CSTRs). In a separate consultation with our members and their service users earlier this year, to inform the evaluation of the CSTR protocol programme, Clinks found strong support for increasing the use of CSTRs. To be effective, the key requirements for treatment requirements were: achieving a balance between clearly structured requirements, and the flexibility to adapt to changes in a person's circumstances and well-being; offering holistic support to address individual needs; a focus on positive supportive relationships, including provision of peer support; and taking a positive approach to rewarding success and avoiding unnecessary breaches.

The voluntary sector should be viewed as a key potential partner in the design and delivery of holistic and flexible Community Sentence Treatment Requirements which effectively support people to address their health needs and desist from crime.



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Multiple needs

A significant number of people under probation supervision have multiple and complex needs. The Making Every Adult Matter Coalition, of which Clinks is a founder member, has shown how effectively coordinating services can have a significant impact on meeting the needs of this group.

HMPPS Senior leaders in each CPA, CRCs and the NPS should engage with local Making Every Adult Matters Areas and Fulfilling Lives partnerships in their CPAs and consider how a multi-agency approach could better support probation services to meet the needs of service users with multiple or complex needs.

Question 9: How could future resettlement services better meet the needs of offenders serving short custodial sentences?

Resettlement services are vital for all people leaving prison. For short term sentenced prisoners continuity and through the gate support is vital to mitigate against the hugely disruptive effect that a short term sentence can have on an individual's life. However given this detrimental effect, we emphasise our support for community solutions as opposed to short term sentences and welcome the emphasis elsewhere in the consultation on improving and increasing confidence in community provision.

As outlined in response to question 1 attendees at our events highlighted that through the gate support is weak and disjointed and does not provide the continuity of support through the prison gate that it was intended to. Concerns were raised that too often the prison and probation systems are viewed as separate entities undermining the principle of through the gate support. Many organisations highlighted the difficulties they face in accessing prisons to meet, assess and deliver support to service users despite working in or alongside CRC supply chains. Concerns were also raised that due to the overcrowding in the prison system many individuals are being released from institutions not designated as resettlement prisons meaning that they do not have the same resettlement support and services available to them.

For short sentenced prisoners in particular, organisations believed that resettlement should start right at the beginning of a sentence not 12 weeks prior to release. For women, the majority of whom receive short term sentences, women-only resettlement provision and community residential units are vital and we reiterate the points made in response to question 8.³⁰

The consultation document highlights that MoJ will clarify what CRCs are responsible for delivering, what they will seek to commission and what they will seek to influence partners to deliver. Given Clinks' TrackTR findings regarding the confusion that currently exists about what probation is responsible for and the disinvestment this is leading to³¹, this is particularly pertinent for through the gate services, which by their nature encompass a vast range of areas and need to work in partnership with other services. It may therefore be particularly helpful for clarification to be given with regards specifically to through the gate services.

Question 10: Which skills, training or competencies do you think are essential for responsible officers authorised to deliver probation services, and how do you think these differ depending on the types of offenders staff are working with?

Given the significant failures we have outlined in response to question 8 with regards to meeting the needs of offenders protected under the Equalities Act (2010) or with particular vulnerabilities, we suggest that attention should be given to ensuring that responsible officers understand and can meet the needs of these distinct groups.

Currently there is an inconsistent approach to recognising and addressing gender-specific needs. Organisations have previously told Clinks that many probation officers do not recognise the need for gender specific approaches and currently only one in four responsible officers has received training and guidance in relation to female specific case management.³²

Probation staff need better, more uniform training on the issues women are more likely to face so they can adopt a gender informed approach, including awareness of trauma and caring responsibilities.

Similarly as highlighted by the Lammy review and previous successive reports the lack of understanding amongst probation staff of some of the specific needs, cultural contexts and impact of experiences of racism and discrimination for BAME people in the CJS must be addressed. In our answer to question 8 we have also highlighted the need for better understanding of the impact of maturity for the transitions to adulthood group and the impact of multiple needs.

All these issues must also be considered in the context of caseloads. Regardless of their level of training, probation staff will not be able to deliver improved services without manageable caseloads.

Consideration should also be given to the skills and competencies needed across probation services particularly in relation to commissioning and partnership working. These skills will be vital to ensuring that other recommendations we make throughout this response can be implemented.

Question 11: How would you see a national professional register operating across all providers – both public and private sector, and including agency staff – and what information should it capture?

Clinks would be interested to understand the impact of such a register on voluntary sector organisations working in the CJS. As independent organisations it would clearly not be feasible to expect voluntary sector staff to be registered on such a register but consideration should be given to whether they might be able to access the training that might accompany it. We would also be interested to understand the implications for partnership, subcontracting, secondments and employment of people in the voluntary sector who previously held posts requiring registration.

Question 12: Do you agree that changes to the structure and leadership of probation areas are sufficient to achieve integration across all probation providers?

England

There was very much a consensus amongst attendees at our consultation events that ultimately the CRC/NPS split does not work and there was little confidence that reducing the number of CPAs to ten in order to match NPS areas would overcome this issue. There was significant feeling that CRCs and NPS needed to come together and see themselves as working towards a common goal and that matching their geographical areas of responsibility would not necessarily change communication and collaboration between them. The general feeling was that the main solution to this is to have one single organisation delivering probation services as is proposed for Wales. Failing this there may be some advantages to be gained from considering co-location of CRC and NPS services and inter agency contact.

There was a desire for more detail about the role of the HMPPS senior leader and what resources would be available to them to support integration across CRCs and the NPS, adequately hold CRCs to account, and have meaningful engagement with the number of voluntary sector and statutory partners across a potentially large CPA.

Significant concern was also raised over the increased size of CPAs. The organisations that had fewer concerns about this tended to be larger but even these organisations were sceptical about their ability to act as a prime provider across such large areas. For small organisations it was felt that increased CPA size could have a negative impact on localised services and that for many voluntary sector organisations delivering across such large areas would be impossible. It is unclear how this will address the problem, under the current arrangement, of small voluntary sector organisations being underrepresented in supply chains and could lead to small, specialist and local services being further squeezed out.

At our consultation events MoJ Officials responded to this concern saying that there would not be an expectation for services to deliver across the whole of the CPA. However as we have seen with the current contracts a lack of expectation of something has not prevented it from happening.

MoJ should make it a clear expectation of CRCs that locally responsive services are subcontracted.

In doing so the MoJ will also need to consider how, if CRCs are expected to contract in such a way as to ensure localised provision, that they can also ensure a consistent standard of delivery across a CPA region. This is likely to require some mapping of each CPA to consider the appropriate composite localities within them and the existing services present there. Clinks would be happy to assist MoJ to consider this but would suggest that local infrastructure charities and other services and commissioners should also be involved.

Wales

As outlined above at the events in England and Wales there was considerable support for the proposed model of a single organisation providing probation to all offenders in Wales. In particular this should address some of the challenges currently faced by voluntary sector organisations in Wales providing holistic services to individuals and finding themselves caught between different legislative frameworks

as they try to work in partnership with devolved and no devolved services.

Question 13: How can probation providers effectively secure access to the range of rehabilitation services they require for offenders, and how can key local partners contribute to achieving this?

In our final TrackTR report, Clinks recommended that the rate card system should be abandoned as it has been shown not to work.³³ Organisations attending our consultation events reiterated that the rate card system had not worked.

In any future model of probation, if the split between CRCs and the NPS is to remain, each organisation must have its own commissioning function to allow it to purchase appropriate services. There should also be clear structures established to allow them to co-commission where they have common needs. In our TrackTR report we recommended that this change should be supported by the MoJ commissioning directorate and HMPPS working alongside the NPS.³⁴ This could be facilitated through the proposed HMPPS senior leader in each CPA.

Clinks welcomes the MoJ's aspirations in restructuring the CPAs to provide greater opportunities for providers to come together and collaborate with other local commissioners so as to ensure greater commissioning of services and in a way that compliments the existing local landscape. However some organisations at our consultation events found the current proposals for how this will work lacking in detail and confusing, with some commenting that it was unclear 'who was in charge'. Our TrackTR research found that there is currently confusion about what probation is responsible for³⁵ and there is a risk that such an arrangement exacerbates this. There is therefore a need for more detailed proposals that explain how this would work in practice and an opportunity for the sector to engage with and feedback on these.

The proposals state that the HMPPS senior leader would play a key role in facilitating this co-commissioning but greater clarity will be needed around who is ultimately responsible for commissioning what. In addition further thought should be given to the resources needed to support this individual in their role if they are to properly engage with the wide range of voluntary and statutory partners in areas of the scale proposed by this consultation.

Question 14: How can we better engage voluntary sector providers in the design and delivery of rehabilitation and resettlement services for offenders in the community?

Clinks acknowledges the MoJ's recognition of the challenges faced by voluntary sector organisations under the current model of probation. However, many organisations at our consultation events questioned whether the degree and significance of these challenges were fully understood. As our research has shown the stated intention of the TR reforms to open up the delivery of core probation services to a wider range of services has been unsuccessful. The voluntary sector is significantly under represented, under pressure and under resourced in the delivery of current probation services.

The sector is concerned that unless the MoJ recognises the extent of these challenges and the need for a significantly different approach in the future, the solutions designed to address them risk falling short.



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Engagement with the voluntary sector in the design of the new model needs to be ongoing and continue beyond the consultation period. This will provide reassurance and help to regain the sector's confidence as well as ensuring that the sector's views are sought throughout the process of refinement of what are currently very broad proposals to ensure that they are developed in the right direction.

Organisations at our consultation events told us that there needed to be transparent processes and structures that enable organisations to raise issues and ask questions. The current situation was described as a one-way street in which they are required to provide significant levels of information but receive little information back.

In order to support better engagement with the voluntary sector, we recommended in our final TrackTR report that as a minimum requirement, to nurture local partnerships, each probation region should develop a multi-agency network that brings together key partnership organisations to inform the design and delivery of services. Under the proposed model this should be led by the HMPPS senior leader in collaboration with senior level CRC and NPS staff. As part of this it will be vital to engage with specialist organisations to ensure that the needs of all cohorts are met.

Transparency has also been an issue with regards to the make-up of the supply chain. It has been incredibly difficult under the current system to ascertain who is in the supply chain. This creates significant challenges for scrutinising the extent to which probation providers are engaging with the voluntary sector. It also has an impact on partnership working between voluntary organisations and on voluntary organisations sourcing funding from other sources.

Any future model should require probation providers, CRCs and NPS, to publish, ideally on a quarterly basis, full details of their supply chains including the names and company/charity numbers of tier two and three providers; the amount of funding passed down to sub-contractors; a summary of the service provided; and where appropriate the contribution these organisations have made to Key Performance Indicators. HMPPS should also conduct an annual audit of the supply chain which should collate anonymised feedback, assess experiences and aim to share good practice as well as highlight poor practice to learn from. The audit's findings should be public.

In considering future models of commissioning, the MoJ has proposed that one potential approach could be to set up separate frameworks or a Dynamic Purchasing System (DPS) at a national or regional level for the provision of rehabilitative services, such as accommodation support or provision of specific services for vulnerable groups. This model is currently being utilised in procurement of prison education services and there are also examples it being used by other government departments.

MoJ should learn from other examples, undertaking a full review of the prison education contract process, consulting with voluntary sector organisations involved in it as well as the Prisoner Learning Alliance, to ensure that learning is applied to any future model of this kind.



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There are clear advantages to a framework model or DPS. It would mean that voluntary sector organisations do not have to participate in numerous procurement processes and that all potential providers have clear and transparent information. However there are a range of issues it will not address. It will do little to ensure that the voluntary sector is properly involved in needs assessments and the design of services, or that such services are then tendered. Nor will it ensure that contract size is appropriate and will not have a negative impact on market diversity, or that both grants and contracts are considered. Neither will it ensure that commissioners consider the impact of competitive tendering on local relationships or referral pathways. Therefore while such models may provide a part of the solution MoJ will need to consider mechanisms and structures to also address these other issues.

As stated by the consultation, the under representation of the voluntary sector in current supply chains has in part been a consequence of the funding pressures CRCs have faced, thus stifling investment in rehabilitative provision and specialist service delivery. There has been a tendency in some areas for CRCs to bring services in house, whilst in other areas certain specialist services are simply unavailable. This includes services tailored to particular groups of service users or that provide specialist interventions, for instance through the arts. These organisations tell us that their engagement with probation services has decreased since the introduction of TR.

The Social Value Act should be used as a tool to drive probation services to take advantage of the wide range of existing and longstanding expertise that resides in the voluntary sector, including services tailored to particular service user groups or through innovative and creative interventions.

It is vital that any future model ensures that the public funds made available for it are properly directed towards rehabilitative services and specialist support for service users. There was however significant discussion at our consultation events about the best way in which to do this. Some attendees suggested that CRCs should be better incentivised, while others felt that there should be a contractual requirement to work with the voluntary sector.

There was a common view across attendees that the 'black box' model of contracts currently in use should be abandoned.

Organisations attending our consultation events voiced strong criticism of the Industry Standard Partnership Agreement (ISPA) used in current CRC supply chains citing it as a key barrier for the voluntary sector to be involved in probation services. Attendees fed back that the ISPA was too long and technical – requiring significant and expensive legal support in excess of that which the Cabinet Office provided resource for. It was felt that this was disproportionate to the levels of funding available, size of organisations and level of services provided. In addition it did not provide voluntary sector organisations with sufficient protection as small organisations would never have recourse to the legal resources needed to make any legal challenge based on the contracts. Examples were given of much simpler contracts used by other commissioners, for example MOPAC, for significantly sized contracts and from which MoJ could learn for the future.

The current Industry Standard Partnership Agreement should be abandoned and future contracts used to subcontract probation services must be simplified.



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were in receipt of grant funding from CRCs and there was a sense that the ISPA had encouraged CRCs to use contracts rather than grants. Although it may not have been the intention to discourage grant funding, if grant funding by CRCs is to be expected this must be clearly set out in future contracts.

Clear guidance should be provided to CRCs and NPS about when it is appropriate to use grant funding or contracts. Clinks' publication 'More than a Provider'³⁷ and the Grants for Good Campaign Principles of Good Grant Making could be utilised as a basis for this.

In addition to ensuring that commissioning processes do not negatively impact on the voluntary sector's ability to engage in the delivery of future probation services, there is also a need to consider how future probation providers will work in wider partnership with the sector beyond contracted relations. TrackTR revealed that a significant number of voluntary sector organisations receive referrals from CRCs and the NPS despite not being a part of the supply chains. In fact organisations are more likely to receive referrals if they are not in the supply chains, with up to 65% of organisations we surveyed through our TrackTR research regularly receiving referrals from probation providers. Many of these organisations would prefer to have formal grant-funded or contracted relations with probation providers and therefore receive payment for this work. However there are others whose values and ethos mean that they do not take government funding but who nonetheless should be valued and treated as equal partners by probation providers, in recognition that service users will receive a better service if support is appropriately coordinated between partners.

Any multi-agency forums established, as suggested above, should be open to organisations outside of, as well as within, the supply chains and those who can provide strategic advice as well as those who deliver services.

A number of organisations at the consultation events felt that ultimately their values and ethos could not be reconciled with those held by private providers of probation. This reinforces the findings of our TrackTR research which highlighted the erosion of partnership relations between CRCs and the voluntary sector.⁴⁰ The MoJ therefore have significant progress to make in ensuring that any future model improves these relationships. They may need to accept that if they are unwilling to review the model of putting probation services to the market, there could be an increasing number of voluntary sector organisations less willing to engage. This risks losing the significant levels of knowledge and experience in the sector.

Finally, the MoJ should not only be considering how to engage the voluntary sector in the design and delivery of future probation services, but also how to engage current and previous users of probation services- the experts by experience. While acknowledging that the MoJ had created resources to help them consult service users to inform their responses there was a sense that these resources came too late in an already short consultation timeframe. Clinks are aware that MoJ are also working with a number of organisations in the sector with specific expertise in this area to gather the views of services users to feed into the consultation. However we suggest that there should be an ongoing mechanism through which MoJ and HMPPS gather the views of service users.

We reiterate our recommendation from TrackTR that MoJ and HMPPS should develop (or commission) a mechanism to gather the views from a representative sample of probation service users and their families to assess the state of services on an ongoing basis. The analysis should be published and used to improve services.

Question 15: How can we support greater engagement between PCCs and probation providers, including increasing the co-commissioning of services?

A vast range of statutory agencies and commissioners have responsibility for services that are vital to supporting individuals' desistance. These include (but are not limited to) health, housing, Department of Work and Pensions (DWP) and Local Authorities. Attendees at our consultation events, therefore questioned why the focus for co-commissioning fell mainly on PCCs.

Attendees reported huge variation in the extent to which PCCs currently work with CRCs and the NPS and their knowledge and understanding of probation structure and responsibilities. Given this, concern was raised about how engagement might work in new CPAs which cover multiple PCC areas, particularly if those PCCs were of different political colours. Concern was also raised about whether the priorities of PCCs would sufficiently align with those of probation services, given that the political nature of a PCC role requires them to seek re-election, which may steer them away from potentially unpopular interventions.

To ensure that co-commissioning partnerships are truly working towards shared priorities Clinks suggests that the MoJ develop a rehabilitation concordat that would fulfil a similar purpose to the women's concordat currently in development. This would set out clear principles regarding outcomes, priorities and commissioning practice which any co-commissioners would be invited to sign up to.

Multi-agency partnerships of the kind suggested in response to question 13 have the potential to bring together not just probation providers and the voluntary sector but other agencies and commissioners to identify need, discuss shared priorities and develop potential solutions including co-commissioning opportunities.

Question 16: How can we ensure that arrangements for commissioning rehabilitation and resettlement services in Wales involve key partners, complement existing arrangements and reflect providers' skills and capabilities?

Clinks held a specific consultation event in Wales to consult the sector about the alternative proposals there. Attendees were more positive about the proposals for the structure of probation in Wales than their counterparts in England. Indeed more than one attendee in England asked the question that if a fully integrated service could be implemented in Wales then why not in England?

There are very few Welsh specific organisations in the current supply chain for Wales and this clearly needs to be addressed in any future model to ensure that appropriate and localised services are available to support the desistance of different cohorts. This is particularly important in Wales given the context of urban and rural areas, women returning from custodial institutions in England, and devolved responsibility for a wide range of other services that impact on desistance.



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Many of the issues outlined in response to question 15 will apply in Wales too, namely:

- The need for transparency of the supply chain, to allow scrutiny and to enable partnership working
- The issues that might be addressed through a DPS or frameworks model and those that will not
- The potential to use the Social Value Act to drive commissioning behaviours
- That due to complexity the ISPA should be abandoned and a simplified contract used for future commissioning
- That grants must be considered alongside contracts
- The need for multi-agency forums to facilitate partnership working, including with organisations that do not have contracts, and ensure that the voluntary sector can contribute to the design as well as delivery of services

Three potential commissioning models for engaging the voluntary sector in the delivery of probation were presented at the Welsh consultation event:

1. Traditional commissioning model: a single CRC being awarded a prime contract and responsible for sub-contracting services.

This was least popular of the models presented and the feedback is reflected throughout much of our responses to the previous questions.

In addition there was a feeling that the distinct geographical challenges in Wales make it difficult for an individual prime to commission sufficiently localised services.

2. Alternative model one: The Authority contracts for intervention services separately (e.g. unpaid work, accredited programmes/RARs and resettlement services). Those providers commit to delivering their specific services and subcontract elements.

Overall there was a mixed reaction to this model. Some thought it was largely the same as the traditional model - they saw the providers that would be responsible for delivering each intervention stream as 'primes' which would operate the same way as the existing CRC. There was a suggestion that this model could be more accessible for small voluntary sector organisations as they would not have to compete for recognition by a CRC with responsibility for the whole of probation services in Wales, with one pot of money. However it is unclear how this model would avoid the challenges of the current model and stronger scrutiny would be needed to hold providers to account.

Some preferred this model to the current one responding that it offers the potential for more focused, specialist work and for primes to becoming experts in their areas which is lacking in the traditional model. However effective communication between the providers of each stream would be key for the model to work effectively. Our earlier recommendation of multi-agency forums could fulfil this purpose.

Others were strongly opposed to it and said they wouldn't tender for probation under this model. Criticisms included that it would be barrier to joined-up working and limit holistic approaches and partnership working. There were also concerns about what this model meant for organisations that delivered services across the different streams and for individuals who may fall into more than one of the streams.



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3. Alternative model two: A DPS or framework of services that offender managers can call from.

The reaction to this model was largely positive but somewhat hesitant because it was so different to the current one and people felt they did not have much experience or knowledge about such a system. The key points outlined regarding DPS in response to question 14 are relevant here.

Clinks would favour the DPS model of commissioning for Wales but suggest that HMPPS Wales must consider the issues we outline in response to question 14 and below, in partnership with voluntary sector organisations in order to co-design the most appropriate model.

In addition organisations at the Welsh event fed back that to ensure success of this model support for partnership working would be needed to ensure the sector could work together to provide joined up services, facilitate input in the design of services as well as delivery, and ensure that organisations who work with the service group but chose not to take public money and would therefore not appear on the framework could be engaged as partner. Again, our previous suggestion of multi-agency forums could support this but given that there will be no HMPPS senior leader to oversee and coordinate this HMPPS in Wales should work with the voluntary sector in Wales and infrastructure organisations to consider how this would be best implemented.

This model could be more flexible and make it easier to fill gaps in service provision by pulling in services on small unit bases without having to commit to large contracts but there would be a need to balance this with ensuring that organisations had some guarantee of work volume and were not expected to mobilise at short notice.

Organisations also reflected on the way in which services would be selected from the framework. For the model to be successful it was felt that robust data on the needs of service users and potential interventions would be essential so that commissioning was not reliant on the individual knowledge and preference of offender managers.

Question 17: What should our key measure of success be for probation providers, and how can we effectively encourage the right focus on those outcomes and on the quality of services?

The MoJ's recognition that the Payment by Results mechanism has not driven the level of quality or innovation in services that were envisaged is particularly welcome. Clinks' TrackTR research found that a volume-based target driven culture is eroding partnerships with the voluntary sector who report that they are required to work towards unhelpful targets that are focused on volume and a lack of meaningful outcome driven targets.⁴¹ Organisations attending our events felt that payment-by-results had effected the culture of the whole system, impacting on motivation and behaviour throughout the supply chain and that it had stifled rather than driven innovation.

A common theme at our consultation events was that reporting requirements were excessive with too much focus on outputs. Attendees fed back that volume based targets are not appropriate for working with people who have complex needs as they are unable to capture the richness of interventions and the intensive support provided by many voluntary sector organisations. This supports Clinks' TrackTR finding that the holistic, trauma informed models designed by specialist women's services to meet complex needs do not always fit with the requirements and funding currently laid out by CRCs.⁴²

It was felt that reporting mechanisms were disproportionate to contract size, too onerous and prescriptive and particularly unsuitable for small specialist organisations with limited resources. Organisations felt that they were required to report on the wrong things and



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that the extent to which they were expected to do this meant that they were unable to record other important data such as protected characteristics of service users.

Outcome measures should not focus solely on reoffending outcomes whether this be a binary or frequency measure but should take into account the wide range of factors that support someone on their journey towards desistance and distance travelled towards this.

Organisations also expressed frustration at the systems they were required to use for reporting and the amount of resource this involved. In particular they highlighted the fact they are often only able to input data into the system and unable to run analysis from it. This means that many organisations are having to operate double reporting systems so that they are able to run reports and analyse the impact of their own services. We reiterate the recommendations from our TrackTR research⁴³:

The MoJ should develop new targets and outcomes measures with greater emphasis on the quality of work delivered and what it actually achieves. To do this, greater information is needed on the current targets and outcomes measures included in CRC contracts. The MoJ should convene a working group to assess current targets and outcome measures to develop proposals for improved measures. As a minimum requirement this group should involve MoJ, HMPPS, HM Inspectorate of Probation, CRCs, the NPS, voluntary sector organisations, PCCs and other statutory services with responsibility for health, housing, education and employment outcomes. A mechanism should be built into this to test improved outcome measures with small voluntary sector organisations as they are developed.

MoJ should assess quality through new research grants. HM Inspectorate of Probation perform a vital function in assessing the quality of probation work. This should be complimented by more research into what 'good' looks like in probation services. The MoJ should support this development by setting up an annual grant fund for researchers to assess the broad range of rehabilitation and resettlement activities. The research papers should be published.

Conclusion

Clinks welcomed the opportunity to work in partnership with the MoJ to host consultation events in order to ensure the sector's engagement in this consultation process and are pleased to be able to submit a response to this consultation informed by those events. We are hopeful that this signals the beginning of an ongoing process of co-design with the voluntary sector towards the development of an improved model of probation services which can fully take advantage of the skills and expertise in our sector in order to ensure the needs of all service users are properly met. To this end we encourage the MoJ to engage with the sector on an ongoing basis beyond the length of this specific consultation period, in order to get the sectors feedback as the proposals develop. We offer our support to help facilitate this.



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CLINKS

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