



## **Consultation: Strengthening probation, building confidence**

### **Voluntary sector roundtable**

19 September 2018

Representatives of voluntary sector organisations who have contracts with at least one Community Rehabilitation Company (CRC) were invited to a roundtable with the Ministry of Justice (MoJ) as part of the MoJ's market engagement for the review of probation. The roundtable was chaired by Clinks Chief Executive Officer, Anne Fox.

The purpose of the meeting was to receive feedback from the sector about their experience of the current probation system, including: bidding for contracts, working with CRCs and the National Probation Service (NPS), and the impact of the Transforming Rehabilitation (TR) reforms on their organisations and the delivery of their services. Attendees were asked, based on their experiences, their thoughts on the MoJ's proposals for the probation system.

The purpose of this note is to give is to provide an overview of the key points that arose in the course of the discussions.

### **Engaging and understanding the voluntary sector**

There was a sense that engagement with the voluntary sector felt tokenistic and that there is an overall lack of understanding about the sector.

- *Consultation:* Although there has been an open consultation on the proposals for the probation system, there was a perception that there were many crucial points that will have a significant impact on the sector that appear to have already been decided and were not up for discussion. For example the number, size and boundaries of the new Contract Package Areas (CPAs). These will impact the sector in terms of who can feasibly bid for prime contractor status at that scale, and the capabilities of organisations to deliver services across the CPA. Likewise, the new enhanced through-the-gate specification is expected to be in the new contracts, which will affect the design, financing, resourcing and delivery of services.
- *Relationships:* Expectations of voluntary sector services and the level of engagement with organisations has been inconsistent both within single CRCs and across the different CRCs. The voluntary sector representatives have found that over the course of their contracts with CRCs, their relationship and engagement with them varied depending on the Chief Executive in post and the expectations that person had of voluntary sector services.
- *Conflicting objectives:* There were concerns raised around the dissonance between the mission, charitable objectives and values of voluntary sector organisations and that of the CRCs who are ultimately driven by saving costs.

- *Misconceptions of the sector:* Members of the meeting felt there is a misconception that voluntary sector organisations are less capable of managing large contracts and less able to deliver on them. The revenue/reserve requirements placed on contracts are prohibitive to the voluntary sector because they are considered not to be financially secure enough despite organisations reporting that they were delivering on much larger contracts prior to TR reforms.

## Accountability and protecting the sector

It was felt that there was a lack of protection for voluntary sector organisations going into contracts and a lack of accountability for CRCs in the way they engaged and commissioned the voluntary sector and managed contracts with them.

- *Responsibility and accountability:* There should be more accountability on prime contractors if there are gaps in services or if the services that have been commissioned are unable to meet the volume of need. The responsibility is on the prime contractors because they have not provided organisations with enough funding to deliver their services or they have not commissioned enough specialist services.
- *Smaller organisations:* There was no accountability to ensure CRCs use smaller providers that struggle to deliver economy of scale. The reduction in the number of CPAs means the CRCs will be responsible for covering larger regions, which could make it even harder for smaller organisations to be involved.
- *Exclusivity agreements:* It was felt as though the sector was taken advantage of during the bidding stages because there weren't sufficient protections in place, for example organisations received a lot of pressure to sign exclusivity agreements.
- *Managing risk:* There was not enough support and preparation for organisations previously used to grant funding, now taking on larger payment-by-result (PBR) contracts that come with much larger risk - and how to manage these.
- *Transition periods:* Members of the meeting recalled receiving letters of intent from providers but when it came to the mobilisation stage the providers were not in a position to see them through, and there was no-one from the MoJ to contact until 18 months later. There needs to be more safeguards or protections in place for the organisations when transitioning to the new contracts.
- *Current contracts:* Questions were also raised as to whether there will be any guidance by the MoJ to prime contractors about exiting contracts, early termination and extensions. How do organisations know where they stand or whether to trust what they are being told by CRCs? Organisations need to know what guidance has been given to the prime contractors and how it should be applied for the voluntary sector, to know where they stand and have recourse to challenge behaviour by prime contractors or (mis)interpretations of the guidance.
- *Renewing Industry Standard Partnering Agreement:* In the course of the discussion it was clear that the sector has received varying and confusing messages about the Industry Standard Partnering Agreement (ISPA) and the renewal of ISPA from different sources. If there will be an alternative to ISPA it must be finished before competitions are launched. Last time there were multiple changing versions, which caused confusion and insecurity for the voluntary sector who don't where they stand and what is required of them. The MoJ should also be checking up to ensure they have been signed.

## Communication

The lack of communication was raised as a particular issue that underlines many of the problems that the current probation system is facing. This is a multi-faceted issue that applies not just to CRCs and the NPS, but to the communication between MoJ and the voluntary sector, between criminal justice agencies and within the voluntary sector itself.

- *Keeping the sector informed:* MoJ need to communicate better with the voluntary sector and keep them better informed of changes and updates - particularly for those in supply chains - including alerting the sector to big changes that will affect its funding, service design and delivery.
- *Communicating issues:* There should be a forum or point of contact within the MoJ to raise issues with. Going through other agencies or stakeholders creates more confusion, and answers and solutions get lost in translation.
- *Competitive mentality:* There must be more transparency for the sector. Clinks' research has shown that the TR reforms and the current model of commissioning encourages unhelpful competitiveness within the voluntary sector. Commercial rules prevent the sector from talking to each other which means organisations are unable to share their experiences and understand whether the issues they are experiencing are also being faced by other organisations, or just something being leveraged against one. This also prevents them from sharing solutions, working collaboratively and having a united voice. The new proposals do not appear to address this, so it will continue to drive the same behaviours and market mentality as the previous model.
- *Confidentiality and anonymity:* There needs to be a confidential and anonymised way of flagging issues with the MoJ without fear of breaking commercial rules or repercussions from their prime contractor. There should also be chances to meet the contract management team – both with and without their prime contractor present.
- *Communication with CRCs and within them:* There needs to be more clarity from the MoJ to the CRCs and to other stakeholders as to what falls under the remit of probation services. There also needs to be better communication within the CRCs to probation staff about their responsibilities and the responsibilities of voluntary sector services. It was generally felt that CRCs and probation staff lack clarity around their roles and responsibilities and what they were culpable for. CRCs and their staff need a better understanding of what the voluntary sector does and its remit, roles and responsibilities. They need to understand how the CRC feeds into that, when it is appropriate to refer and to who, and where they are still responsible.
- *Probation and prisons:* There is a cultural difference between probation and prisons which prevents them from working and communicating effectively together. Prisons have their own expectations of what probation services should deliver and what its responsibilities are, which doesn't necessarily match the probation service's idea of its role and responsibilities and what it should be delivering. This makes it harder for the voluntary sector who often have to work with and answer to both.

## Funding and contract specifications

Funding has been insufficient to deliver high quality services to the volume demanded. Contracts were also overspecified, preventing organisations from offering services that can adapt to meet individuals' complex needs.

- *Reduced funding:* Organisations reported being commissioned for services at far less than the cost of what they were running at before TR. Organisations have struggled to deliver quality services to the volume expected of them with such limited funds.
- *Funding subsidisation:* Clinks' evidence from their TrackTR research found that there has been a high level of funding subsidisation by voluntary sector organisations to enable them to continue to deliver sufficient probation services that the allocated funding from the CRC or NPS doesn't cover.
- *Service design:* Contracts were over-specified, restricting what services organisations were able to offer and how they could adapt these. Despite having models of delivery that organisations knew were effective for their service users, contracts often specified different delivery requirements, such as group work instead of funding for one-on-one support. Where organisations reverted to their previous service design for the benefit of their service users, it has put even greater strain on delivering the volumes designated in the contracts with such limited funds.
- *Complex needs:* The current availability of funding means contracts are skewed towards some services more than others. Different cohorts of individuals cost different amount of money because they need different levels of intervention, but the funding for services doesn't reflect this. Further to this, members of the meeting argued that for those with complex needs and facing multiple disadvantage, silo commissioning (i.e. separate commissioning for housing, employment, drug misuse, etc.) does not work. The more silos and providers, the more complex the system becomes and the more likely it is that vulnerable individuals will disengage or fall through the gaps in the roles and responsibilities of the various providers. On this, Anne Fox (Clinks) stated that commissioning should be needs-led rather than risk-led, because needs and risks do not necessarily follow the same trajectory.
- *Referrals:* Meeting volume targets is also reliant on CRCs and the NPS and ensuring their staff make referrals. Voluntary sector services take a financial hit when probation staff - for various reasons - do not send through referrals, regardless of whether the organisation itself is in a position to deliver those services. The inconsistencies amongst probation staff in engaging with and referring to voluntary sector organisations makes it harder to plan, staff and budget for services.
- *Assessing service users:* There have been suggestions that commissioning for the Basic Custody Screening Tool 2 (BCST) will be removed from the new model. This will also affect the funding and design of services. Organisations will lose funding from this but in reality services will still need to do an assessment of service users even if it is not using the current BCST2.
- *Onerous requests:* In their experience, the group has found that requests by prime contractors of the voluntary sector are unrealistic and disproportionate to funding. For example requiring full cost flows for the whole of a large organisation for just a small contract.
- *Measuring outputs:* It was felt that under TR, and because of contract requirements, organisations wasted a lot of time and resources on monitoring meaningless outputs and volume-driven targets. For example organisations were monitored based on their volume of BCST assessments. These were also published publically which created a bad environment for the voluntary sector and put a strain on relationships with providers. New contracts will need to consider how they record more meaningful outcomes for services.

- *Funding for through-the-gate:* There were concerns that the current proposals on enhancing and improving through-the-gate (TtG) will not solve the strategic issues with TtG. There are design flaws in the system and having someone based in prisons is not the sole answer. TtG funding is focused on services delivered 'in the gate' and not mirrored in the community. Local Authority funding has been reduced, affecting community funding, but this issue has not been taken seriously as it is assumed CRCs are responsible for delivering TtG services. It means that TtG services stop at the gate and are not seeing people through release and in their transition to the community.

## Commissioning model

The current commissioning model was thought to be far too complex and lacking in transparency. The commissioning process needs to be kept simple and accessible. The MoJ should be clear about what services they need and what they will be paying for.

- *Payment by results:* The group felt that the MoJ needs to get rid of the binary reoffending hurdle. It was found to be too complex and confusing and prevented voluntary sector services from working with high-risk and complex individuals. A simpler model would be to have a fee for services for 'offender management' that meet the requirements of the court, and a separate pot of money carved out for resettlement services and interventions with long-term outcomes of reducing reoffending.
- *Complexity:* The complexity of the bidding documents create unnecessary barriers for voluntary sector services looking to bid. The documents are far too long and the essential information is always too complex, never in the same place and hidden in pages and pages of a document. The MoJ need to consider how they present the information in an accessible way.
- *Dynamic Purchasing System:* A dynamic purchasing system (DPS) has previously been suggested as an alternative commissioning model. However a DPS will not provide a solution to all the problems experienced in the current system. A DPS doesn't work for all voluntary sector organisations. It is resource intensive to keep bidding, doesn't provide continuity, and means that organisations can only fund and plan for short-term services.
- *Good example:* The mechanism used under the current HMPPS ESF Co-financing organisation programme (CFO/CFO3) was raised as a good example of one that works well in terms of clarity about which providers are in the supply chain and what they are specifically delivering.

## Rate card

There has been hardly any uptake of rate card. Even where it is used, it is still problematic for voluntary sector services because spot purchase is much harder to manage. The NPS currently deliver a lot of services in-house and if they want to access services they will often not go through the rate card.

- *Engaging the sector:* The rate card was not designed in partnership with the voluntary sector. The NPS were not part of the original commissioning conversations, so the CRCs decided what went on the rate card, rather than liaising with the voluntary sector about what services are needed for medium-high risk individuals and the sufficient funding to deliver those.

- *NPS referrals:* Some organisations reported that despite not commissioning their services through the rate card, the NPS continued to access the service and send referrals through it. In some areas the NPS send more referrals through rate card despite the fact that CRCs commissioned the service.
- *Using the rate card:* One organisation reported that they have managed to make the rate card system work in some areas but this has required a lot of work and input from the CRCs. Though uptake of the rate card has improved, in some areas this has effected the planning of their services and funds. In one area the NPS is renegeing on payments and the organisation has not been paid for services that they can evidence has been delivered. Because of the loopholes in the system, the organisation is now out of pocket and now needs to raise a dispute with the CRC, which will cost more resources.

## Bidding for prime contractor status

The group were asked about the interest and feasibility of voluntary sector organisations bidding for prime contractor status. In particular, they were asked to discuss what conditions the sector would need to bid for prime contractor status and what would prevent voluntary sector organisations from doing so. The risk involved, the complexity of the system and lost resources from previous experience were all barriers identified.

- *More clarity:* The MoJ need to provide a more confident and clear specification of what will be required from the start – they should not be allowing the voluntary sector to have their time and resources wasted on creating bids that can't be seen through because the original specification was unclear, as was the case for some organisations when the TR reforms were first introduced.
- *Parent company guarantee:* Voluntary sector organisations were excluded by the requirement for a parent company guarantee. Many organisations also lost money because they couldn't come up with the parent company guarantee (and were not willing to) but it was not made clear that it was essential for bidding for prime contractor status.
- *Risk:* Bidding for prime contractor status for many still poses too great a risk. Reviewing the system now doesn't undo the impact that TR has had on the sector. Many organisations are in a different place than they were before TR because of the reforms and some of them are already running at a loss and would not be in a position to bid for prime contractor status.
- *Bidding for funding:* There were restrictions in place that prevented organisations from both bidding to be part of multiple supply chains and bidding to become a prime contractor at same time.
- *Mission drift:* Concerns were raised again around the conflicting objectives of the voluntary sector and CRCs, and the concern that prime contractor status may lead to mission drift for voluntary sector organisations.
- *Consortia:* There may be interest, particularly from smaller organisations, to be involved in a consortium prime.

MoJ are processing the responses to the open consultation and they will consider the issues raised in this meeting as well as they continue to develop their proposals. The MoJ will publish feedback to the consultation responses and stakeholder engagement events in due course.