

## Clinks' response to Ministry of Justice consultation: 'Transforming Rehabilitation: A revolution in the way we manage offenders'

February 2013

### About Clinks

Clinks is the national infrastructure organisation supporting Voluntary & Community Sector (VCS) organisations working with offenders and their families. Our aim is to ensure the Sector and all those with whom it works, are informed and engaged in order to transform the lives of offenders and their communities. We do this by providing specialist support, with a particular focus on smaller VCS organisations, to inform them about changes in policy and commissioning, and 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 over 500 members, including the Sector's largest providers as well as its smallest, and our wider national network reaches 4,000 VCS contacts. Overall, through our weekly e-bulletin Light Lunch, we are in contact with over 9,500 individuals and agencies with an interest in the Criminal Justice System (CJS) and the role of the VCS in the resettlement and rehabilitation of offenders.

We welcome the opportunity to respond to the Government's proposals on Transforming Rehabilitation.

### Introduction

Clinks' response has been informed by direct submissions from our members following a call for views on the consultation document in 'Clinks Light Lunch', and by feedback from participants in MoJ/NOMS consultation events. Clinks also chairs the Ministry of Justice Reducing Reoffending Third Sector Advisory Group (RR3) and in that capacity sought members' views at the most recent RR3 meeting in January 2013. The response has been underpinned by previous consultation processes for a series of RR3 'task and finish group' papers on commissioning and contracting, women and girls in the CJS and youth justice which, together with the consultation undertaken for the review of 'Effective Probation Services' in 2012, have done much to shape Clinks' thinking around Payment by Results (PbR) and competing services for different groups of offenders.

This response will address a selection of the consultation questions, sometimes grouping two questions together to address intertwining themes and issues. Given that Clinks' response inevitably addresses questions from the perspective of the Voluntary & Community Sector, the whole response should be considered under the overarching heading of Question C9: *"How can we ensure that the voluntary and community sector is able to participate in the new system in a fair and meaningful way?"*

Overall, Clinks welcomes many of the principles and intentions contained in the consultation document, particularly the proposal to involve VCS organisations as a key partner in service

delivery and to ensure that small and local providers are not disadvantaged in a more competitive market place. There are, however, a number of issues relating to implementation which we would like to highlight for consideration by MoJ and NOMS.

In light of the proposed pace of implementation for these new proposals, Clinks would stress that Government should treat the next few years as a transitional period in the provision of offender services. In order to support VCS organisations, MoJ and NOMS should therefore consider making transitional funding arrangements to help bridge gaps while the Sector adapts to new funding models, as well as building in mechanisms for continuous review and assessment of the new arrangements. Clinks looks forward to engaging in an iterative process with NOMS and MoJ around certain key themes following the consultation deadline.

### Developing the PbR model

Question C2: *“Which payment by results structure would offer the right balance between provider incentive and risk transfer?”*

Question C7: *“What steps would we take to ensure that lead providers manage and maintain a truly diverse supply chain in a fair, sustainable and transparent manner?”*

A major concern expressed by VCS organisations hoping to bid for the provision of offender services is that only very large, private contractors with access to large amounts of working capital will be in any position to make the necessary investment and accept the risk of contracts based on delayed payment.

The overwhelming majority of the Sector has an income of less than £500,000 per annum and the average VCS organisation held only 14 months of reserves in 2009/2010.<sup>1</sup> A lack of upfront service delivery fees, delayed payments, and the requirement to undertake significant levels of financial risk are therefore considerable barriers to potential VCS delivery partners hoping to enter into PbR arrangements as primes or sub-primes. A survey conducted by NCVO into the experiences of VCS providers in the DWP Work Programme found that the majority had experienced cash flow problems as a result of their participation and a large number claimed to be subsidising delivery from their organisation’s reserves. The crux of the problem appeared to be the delayed payment mechanism which, combined with the difficulty of predicting the number of referrals, made financial planning extremely challenging for subcontracted partners.<sup>2</sup>

<sup>1</sup> NCVO. 2011. *Payment by Results Discussion Paper*. p.7. Online: [http://www.ncvo-vol.org.uk/sites/default/files/Payment\\_by\\_Results\\_NCVO\\_Discussion\\_Paper.pdf](http://www.ncvo-vol.org.uk/sites/default/files/Payment_by_Results_NCVO_Discussion_Paper.pdf) [last accessed 14.2.2013]; NCVO, ‘How much does the Voluntary Sector hold as reserves?’, *NCVO UK Civil Society Almanac*. Online: <http://data.ncvo-vol.org.uk/almanac/voluntary-sector/assets/how-much-does-the-voluntary-sector-hold-as-reserves/> [last accessed 14.2.2013].

<sup>2</sup> NCVO. 2012. *The Work Programme: Perceptions and experiences of the Voluntary Sector*. pp.11, 14. Online: [http://www.ncvo-vol.org.uk/sites/default/files/sig\\_survey\\_june\\_2012\\_report\\_17.9.12.pdf](http://www.ncvo-vol.org.uk/sites/default/files/sig_survey_june_2012_report_17.9.12.pdf) [last accessed 14.2.2013].

Where possible, Clinks would recommend the implementation of a PbR model in which subcontracted VCS partners receive 100% of their delivery costs upfront, with the outcomes risk borne by the prime or an external investor. One example of this is the Social Impact Bond model (SIB) used in the PbR pilot at HMP Peterborough. Here, social investment funds are pooled in a Special Purpose Vehicle (partnership or limited company) which contracts with VCS providers to deliver innovative resettlement support to short term prisoners. The VCS providers are paid 100% upfront and all risk is carried by the investors, who also receive a return on investment from Government proportionate to the outcomes achieved.<sup>3</sup> **Clinks would support the wider implementation of this scheme in future competed contracts for offender services.**

Where it is not possible to implement the social investment model, contracts for offender services should pay the service fee/delivery costs upfront with a scalable amount at risk, proportionate to the size of the provider and its position in the supply chain. The upfront fee should be adequately priced to cover the cost of sentence or licence delivery, including any rehabilitative services included within these arrangements, and any TUPE obligations. **Clinks would recommend that no more than 20% of the total contracted fee should be left at risk**, subject to a percentage of the cohort reaching particular outcomes at pre-agreed intervals in the contract. This is the structure of the PbR pilot at HMP Doncaster, where the full payment is made to the prime each year with 10% at risk, to be repaid in the event of failure to reduce reoffending by the targeted amount. This release of working capital would allow a diverse range of providers to bid as primes or as subcontractors for PbR contracts within adult criminal justice services, or to participate in partnership consortia, while maintaining the incentive to achieve outcomes.

It is clear, however, that even a figure of 20% would represent an unfeasible level of risk for many VCS organisations. Wherever possible, **Clinks would recommend that subcontracted VCS partners carrying out discrete pieces of work should receive 100% of their delivery fee upfront and all outcomes-based risk should remain with the prime contracted partner.** The issue of risk transfer between primes and subs will be discussed in greater detail in response to the question on diverse supply chains below.

Even if such arrangements are theoretically possible within the new PbR structures, many VCS organisations have voiced scepticism about whether there will be any scope in practice to build innovative rehabilitation approaches into contracts. The ability of the Sector to adopt a flexible, user-centred approach is one of its key strengths. However, the cost of implementing 'core' delivery requirements in PbR contracts – satisfying basic court sentence requirements and provisions for offenders to be supervised by staff transferred under TUPE legislation – could leave providers with a relatively small amount of capital to invest in further rehabilitative work. Combined with high levels of financial risk if reoffending outcomes are not met, this could potentially disincentivise providers from using innovative or experimental approaches with niche groups or difficult-to-reach service users for whom the existing evidence base is lacking. **PbR arrangements therefore need to leave sufficient space for the funding and delivery of innovative**

<sup>3</sup> Social Finance. 2011. *Social Impact Bonds: The One Service. One year on*. Online: [http://www.socialfinance.org.uk/sites/default/files/sf\\_peterborough\\_one\\_year\\_on.pdf](http://www.socialfinance.org.uk/sites/default/files/sf_peterborough_one_year_on.pdf) [last accessed 14.2.2013].

rehabilitative services if they are to achieve any improved outcomes and contribute to the evidence base of ‘what works’ in reducing reoffending.

### Outcome measurements and access to data

The consultation document states that providers will be paid by results according to reductions in reoffending rates for their cohort. It states that:

*‘The binary measure aligns most closely with our overall aim of complete desistance. However, we are considering ways to adapt this measure to ensure that providers have the incentive to continue to engage with offenders after they have been reconvicted and subsequently return to the providers’ caseload.’<sup>4</sup>*

While this is welcome, Clinks would stress that ‘cherry picking’ is not the only potential hurdle posed by the binary measure of reoffending. The binary measure does not take into account the wide body of academic literature on desistance, which has repeatedly found that relapse is common in the journey away from crime, though this is often marked by a reduction in the frequency or severity of offending behaviour.<sup>5</sup>

Desistance research has also found that a number of intermediate outcomes are good proxy indicators of the likelihood of eventual desistance from offending. Services provided by VCS organisations are closely associated with the achievement of intermediate outcomes, such as improved family relations, access to accommodation, and improved employability. The most recent version of NOMS’ ‘Commissioning Intentions’ recognised the importance and value of a wide range of intermediate outcomes in rehabilitation services and indicated willingness to commission services which could deliver these.<sup>6</sup> **MoJ and NOMS should consider whether the use of the binary reoffending measure could be relaxed for organisations which specialise in delivering intermediate outcomes that are closely associated with eventual desistance from crime.** A set of acceptable leading and lagging indicators is needed to guide providers and help them to develop and present evidence that will be acceptable to commissioners.

It is important to note that the factors associated with reduced reoffending differ between different groups of offenders. For example, recent academic research has highlighted how cultural and ethnic differences affect the environment in which desistance takes place. One particular study found that, for Indians and Bangladeshis, desistance was characterised as a

<sup>4</sup> MoJ. 2013. *Transforming Rehabilitation: A revolution in the way we manage offenders*. p.18. Online: [https://consult.justice.gov.uk/digital-communications/transforming-rehabilitation/supporting\\_documents/transformingrehabilitation.pdf](https://consult.justice.gov.uk/digital-communications/transforming-rehabilitation/supporting_documents/transformingrehabilitation.pdf) [last accessed 19.2.2013].

<sup>5</sup> F. McNeill & B. Weaver. 2010. *Changing Lives? Desistance Research and Offender Management*. Scottish Centre for Crime and Justice Studies. Online: [http://www.sccjr.ac.uk/wp-content/uploads/2012/10/Report%202010\\_03%20-%20Changing%20Lives.pdf](http://www.sccjr.ac.uk/wp-content/uploads/2012/10/Report%202010_03%20-%20Changing%20Lives.pdf) [last accessed 14.2.2013].

<sup>6</sup> NOMS. 2012. *Commissioning Intentions Negotiation Document 2013-2014*. Online: <http://www.justice.gov.uk/downloads/about/noms/commissioning-intentions-2013-14-oct12.pdf> [last accessed 15.2.2013].

collective experience involving their families actively intervening in their lives. In contrast, Black and dual heritage offenders' desistance was a much more individualistic endeavour.<sup>7</sup>

**Clinks would therefore encourage NOMS to consider drawing upon the available academic evidence base to design a range of proxy outcome measures in PbR contracts, tailored to the specific offending 'triggers' and need profiles of the group receiving the intervention.**

The proposals to give non-statutory providers access to 'high-quality re-offending data' through the nationwide Justice Data Lab are very welcome, as access to this data has been a historic barrier for VCS organisations attempting to evidence their outcomes to commissioners. However, while access to aggregate reoffending data for their cohort will enable VCS providers to measure their success against the binary outcome measure, it does not allow organisations to evidence their success in achieving the intermediate outcomes outlined above. **Clinks would therefore encourage MoJ and NOMS to continue to explore the possibility of combining access to reoffending data with information held by other government departments on employment, benefits, and access to certain health services.**

Furthermore, even when statutory data on reoffending and other outcomes are made available to non-statutory partners, it will remain extremely difficult to attribute success to one particular intervention. Desistance research indicates that a number of services working in combination have a cumulative effect on an offender's thinking and circumstances, but that the individual themselves has ultimate control over their patterns of offending behaviour.<sup>8</sup> It is also unclear how the role of services not included in the particular PbR contract for which data are sought – for example health interventions in the community or in prison – will be accounted for.

**It is currently unclear who will be expected to bear the cost of access to the Justice Data Lab, or what the scale of charges to VCS organisations may be. Clinks would recommend that this is built into the upfront service fee element of PbR contracts, to ensure that VCS organisations are not deterred by the cost of evidencing their outcomes.**

Some of the discussions with VCS organisations that took place during the consultation period suggested that the binary outcome should only in reality be measured in relation to the contract performance of the prime provider; in terms of their success or failure in achieving reduced reconviction rates across their whole cohort. Other providers further down the supply chain should only be required to evidence their identified intermediate outcomes, not as the basis for payment but in order to demonstrate their commitment to continuous improvement in effectiveness and quality, and to contribute to the wider evidence base about 'what works'.

### Building a diverse supply chain: commissioning and capacity building

<sup>7</sup> A. Calverley. 2012. *Cultures of Desistance: Rehabilitation, reintegration and ethnic minorities*. Routledge.

<sup>8</sup> F. McNeill, S. Farrall, C. Lightowler, S. Maruna. 2012. 'How and why people stop offending: Discovering desistance', *Insights* 15. Online: <http://www.iriss.org.uk/sites/default/files/iriss-insight-15.pdf> [last accessed 20.2.2013].

As outlined above, the majority of potential VCS providers will not have resources to bid as primes, particularly if commissioning takes place across large geographical lots. Unless the opportunity arises to bid as part of a VCS-led consortium, then the majority of providers from the Sector will enter PbR arrangements as a sub-contracted partner to a private prime or larger sub-contractor. If the Government is committed to a truly mixed market in the provision of supervision and rehabilitation services, then it must implement measures to ensure that supply chains are built and maintained in a fair, transparent and sustainable manner.

Clinks endorses the recommendation of the RR3 paper 'Competition, Commissioning and the VCS' that commissioners and primes should not view VCS partners purely in a 'delivery' capacity and instead seek to engage with them as strategic partners from the earliest possible stages of planning.<sup>9</sup> The involvement of VCS partners of all sizes from the earliest possible design stages of the commissioning process will be vital in commissioners' analyses of local need and provision, particularly if NOMS adopts its proposed model of commissioning across sixteen geographical lots. These activities precede the specification and procurement stages of the commissioning cycle and it should therefore be possible to involve the Sector without giving any competitive advantage.

Access to information and guidance about the tendering process should be widely disseminated and made more easily accessible to the Sector. NOMS should make full use of its links with local and national VCS networks and infrastructure organisations to advertise capacity building and bidding opportunities as soon as they arise.

Potential partners will also require a simple mechanism to identify one another and enter into dialogue. This could, for example, take the form of market engagement events run by NOMS with input from local and national VCS infrastructure organisations.

Some VCS organisations have asked for funding to be made available along the lines of the Cabinet Office's 'Investment and Contract Readiness Fund', for VCS capacity building in each of the 16 Contract Package Areas, well ahead of engaging in the bidding and negotiation process. Focusing some capacity building activity within each of the 16 geographical lots would enable organisations to form networks, build relationships with key partners, and consider collaborative / consortium arrangements. Training should also be made available which supports organisations to be commercially-minded in their approach, to conduct an informed assessment of the potential risks and benefits of entering into PbR arrangements, and to understand the legal and contractual implications of sub-contracting within PbR contracts. This type of funding could also cover the cost of professional service fees for VCS organisations entering into partnership arrangements either with private primes or as part of a VCS-led consortium.

### **Maintaining a diverse supply chain: procurement and contracting**

While Clinks understands the need to make efficiencies across the CJS, it believes that the commissioning and procurement of high quality, sustainable services with a clearly defined role

<sup>9</sup> L. Frazer & C. Hayes, *Competition, Commissioning and the VCS*. RR3. Online: <http://www.clinks.org/assets/files/PDFs/RRTSAG/RR3%20Competition,%20Commissioning%20and%20the%20VCS.pdf> [last accessed 19.2.2013].

for all partners will provide the best chance of achieving the Government's desired outcome of reducing reoffending and therefore reducing overall spend. It is therefore imperative that procurement officials judge bids not merely on price but on quality and transparency.

Clinks is concerned by the reported experiences of a number of VCS organisations involved as subcontracted partners in the DWP Work Programme. Evidence from the welfare-to-work market shows that primes tend to defer as much risk as possible to subcontractors.<sup>10</sup> . This means that a significantly reduced amount is passed down the chain for service delivery and often represents an unsustainable level of financial risk for VCS organisations.

Some subcontractors have also stated that they were used as 'bid candy', having been characterised in bids by potential primes as 'delivery partners' after only very limited contact which did not subsequently translate into referrals or a paid role. It is disconcerting to note that, in NCVO's survey, one third of respondents had received no referrals at all from their Work Programme prime, and 15% had only received between one and ten. Organisations delivering 'specialist services' had been disproportionately affected by a lack of referrals.<sup>11</sup> The potential danger posed by this scenario for local VCS organisations and those working with minority groups is evident.

**Clinks would therefore urge MoJ and NOMS to publish a robust procurement framework and associated set of standards for competed offender services detailing processes to be implemented for the fair and transparent treatment of VCS organisations, along the lines of the refreshed Compact and DWP Merlin Standards.** These should also form part of the contract monitoring criteria applied by NOMS contract management staff, to ensure good stewardship of supply chains.

As stated previously, the preferred PbR contracting model for VCS organisations would require the prime partner or external social investor to bear the full outcomes-based risk of the contract. Where this is not possible, however, there should be requirement for primes to evidence a diverse supply chain and be open and transparent in detailing the level of risk and the estimated number of referrals which they intend to transfer to subcontracted partners. A minimum contract value for sub-contracted work could provide some protection for providers who may be disadvantaged by lower than anticipated referral rates.

There is a possibility that primes contractors may be incentivised to hold on to the provision of contract requirements which can easily be made cost-effective and pass on work with more outcomes-based risk further down the supply chain. This could disproportionately affect the rehabilitation aspects of sentence and licence requirements. **Clinks therefore endorses Social Finance's recommendation that, if risk is to be shared by all providers in the chain, the potential payment for the rehabilitation part of the contract needs to be sufficiently generous to incentivise prime providers to hold on to the risk associated with the requirement to reduce**

<sup>10</sup> NCVO, *The Work Programme*, p.12.

<sup>11</sup> NCVO. *The Work Programme*. p.10.

**reoffending.**<sup>12</sup> The procurement scoring process should also reward primes who have committed to a higher minimum spend on outcomes-based services.

Procurement officials should give preferential weight to bids in which potential providers can demonstrate experience in front line delivery of services to the groups they are working with. This should reduce instances where good work already being carried out in local communities is displaced by providers who are less expensive, but have little local knowledge or prior experience. The availability of experienced, skilled providers is particularly important in relation to certain groups of offenders, such as women, young adults, and offenders from black, Asian and minority ethnic (BAME) communities. Safeguarding experienced local providers in this way would help to overcome the potential loss of local capacity and responsiveness to local need threatened by the plan to commission services centrally through large geographical lots.

Clinks would also endorse the recommendation of RR3 that NOMS should obtain and regularly publish figures showing the proportion of front-line services for offenders and their families that are delivered in partnership with the VCS.<sup>13</sup>

#### Developing alternative models for greater VCS participation, including VCS consortia

Clinks welcomes the acknowledgement in the consultation document that VCS organisations do not necessarily have to enter into PbR arrangements under the sub-prime model and would recommend that NOMS and MoJ consider carefully ways to encourage the development of both VCS-led consortia and other Special Purpose Vehicles which enable the VCS to act as full partners in bidding for contracts.

Commissioners should note, however, that building an effective consortium or partnership is both complex and time-consuming. Organisations must identify partners that provide a good financial and cultural 'fit', secure trustee approval, and carry out the necessary due diligence procedures.<sup>14</sup> VCS organisations therefore require an adequate amount of lead-in time and notice of potential bidding opportunities in order to identify and work with potential partners and carry out the necessary managerial, financial, and legal processes.

The consultation document states that the emerging social investment market has the potential to provide VCS organisations with the resources to put together credible bids and form sustainable consortia and partnership arrangements.

<sup>12</sup> Social Finance. 2013. Response to MoJ consultation *Transforming Rehabilitation: A revolution in the way we manage offenders*.

<sup>13</sup> L. Frazer & C. Hayes. 2011. *Competition, Commissioning and the VCS*. RR3. p.10. Online: <http://www.clinks.org/assets/files/PDFs/RRTSAG/RR3%20Competition,%20Commissioning%20and%20the%20VCS.pdf> [last accessed 14.2.2013].

<sup>14</sup> Cabinet Office. 2008. *Working in a Consortium: A guide for third sector organisations involved in public service delivery*. pp.5, 8. Online: [http://www.ncvo-vol.org.uk/sites/default/files/groupdocument-Simon\\_Cope/Working\\_in\\_a\\_consortium\\_fnl.pdf](http://www.ncvo-vol.org.uk/sites/default/files/groupdocument-Simon_Cope/Working_in_a_consortium_fnl.pdf) [last accessed 14.2.2013].

While the social investment market is undoubtedly expanding at pace, it must be acknowledged that there can be no concrete predictions of how fast or far it will develop over the next few years. There have recently been suggestions from Big Society Capital (BSC) that demand could outstrip even the estimated 38% annual growth (between now and 2016) predicted in an earlier report. BSC have also noted that there is a need for a greater willingness among social investors to accept higher levels of risk if the market is to grow.<sup>15</sup>

While Clinks is positive about the possibility of increased social investment, and the potential of the SIB model to enable the participation of VCS providers in PbR contracts, this option must be viewed as one among a number of potential financial options over the next few years. It seems realistic to assume that the social investment market has the potential to support VCS involvement across some, but not all, of the proposed contract areas, and must therefore be treated as one among several possible mechanisms for encouraging greater VCS participation in the market.

Government should therefore take a twin-track approach to the emerging social investment market, firstly by assisting VCS and other social organisations to develop investible services and business models through mechanisms such as the Investment and Contract Readiness Fund. BSC has suggested that this could take the form of *sponsorship* of outputs and outcomes rather than straightforward grants.<sup>16</sup>

More broadly, Government should view social investment as part of an overall transitional period in the financing and contracting of supervision and rehabilitation for the next several years. **It may be some time before the social investment market is able to become a major player in financing VCS delivery of offender services across England and Wales. Clinks would therefore reiterate its recommendation that various forms of transitional funding should remain available to the Sector until at least 2015.**

Question C8: “What processes should be established to ensure that supply chain mismanagement is addressed?”

Many instances of supply chain mismanagement could be addressed by a robust procurement framework which emphasises transparency and quality over price in assessing bids. Such a framework could then be overseen and enforced by an independent arbiter, separate from Government.

It is crucial that there is an anonymous mechanism for VCS and other subcontracted partners to report instances of poor procurement practice and supply chain mismanagement. This could take

<sup>15</sup> Big Society Capital. 2012. *BSC Market Update - #1 – October 2012*. pp.2-3. Online: <http://www.bigsocietycapital.com/sites/default/files/pdf/BSC%20Market%20Update%20and%20Call%20for%20Ideas%2031st%20October%202012.pdf> [last accessed 14.2.2013].

<sup>16</sup> A. Brown & A. Swersky. 2012. *The First Billion: A forecast of social investment demand*. Boston Consulting Group & Big Society Capital. p.20. Online: <http://www.socialfinance.org.uk/sites/default/files/thefirstbillion.pdf> [last accessed 14.2.2013].

place through the existing Cabinet Office Mystery Shopper Scheme or a similar program which is specifically tailored to offender services.<sup>17</sup>

Question C: “We are minded to introduce 16 Contract Package Areas. Do you think this is the right number to support effective delivery of rehabilitation services? Do you have any views on how the Contract Package Area boundaries can be drawn?”

Question C13: “What else can we do to ensure the new system makes best use of local expertise and arrangements and integrates into existing local structures and provision?”

Written submissions from Clinks members, and the views expressed by VCS representatives at MoJ consultation events, have indicated considerable concern within the Sector regarding the potential size and scale of the proposed Contract Package Areas.

The possibility of large-scale commissioning raises serious questions about how commissioners will be able to accurately assess local need and existing local provision, retaining the important services carried out by small, grass-roots organisations. The vast majority of VCS organisations working in the CJS are locally based, so this is an issue of vital importance to the Sector. Local VCS organisations are well placed to reach and support the most marginalised service users and provide vital support for community reintegration. The potential impact of large-scale contracts on services for offenders with protected characteristics in the community – particularly women and BAME offenders – has arisen as a particular theme amongst VCS organisations in response to the *Transforming Rehabilitation* document, and will be discussed in greater detail in response to the question on equalities below.

It is not necessarily the case that, as the consultation document implies, commissioning across large geographical areas will lead to *‘the right balance between devolving responsibility and the need to make efficiencies from economics of scale’*. Recent research by Locality has indicated that the further away key decision makers are from the people actually using services, the less productive those services become. Rather, it suggests, re-organising services on a ‘human scale’ by centring commissioning and decision-making locally is often associated with better outcomes for service users with complex needs and corresponding value for money.<sup>18</sup>

Government therefore needs to consider how commissioners could maintain a strong sub-regional and local focus within their Contract Package Areas. The consultation document demonstrates good intentions in this respect, highlighting the need for commissioning decisions to be ‘informed by local intelligence’. However, it is not simply ‘intelligence’ that is required, but a mechanism for reconciling and responding to the varying and often radically different levels of local need and

<sup>17</sup> ‘Cabinet Office Mystery Shopper Scheme’. Online: <http://www.cabinetoffice.gov.uk/content/cabinet-office-mystery-shopper-scheme> [last accessed 15.2.2013].

<sup>18</sup> B. O’Donovan & T. Rubbra. 2012. *Public Services, Civil Society and Diseconomies of Scale*. Locality. Online: <http://locality.org.uk/wp-content/uploads/Public-Services-Civil-Society-and-Diseconomies-of-Scale.pdf> [last accessed 15.2.2013].

provision across a large geographical 'lot'. Differing rates of social exclusion and employment in local areas, for example, will affect their local reoffending rates. This could potentially cause difficulties in creating a fair outcomes measurement, and MoJ and NOMS should consider how reoffending rates across Contract Package Areas might be broken down so that providers are assessed fairly in PbR contracts.

The consultation document provides a very welcome acknowledgement of the importance and value of local partnership working arrangements, including Integrated Offender Management (IOM) and Multi Agency Public Protection Arrangements (MAPPA). However, large Contract Package Areas have the potential to create a very complex commissioner and provider environment, with myriad potential agencies and subcontractors working both with one another and with the same individual user. This could present considerable challenges to joined-up provision. Ensuring effective communication between key partners at the local level is particularly problematic when considered alongside the issue of reporting escalating risk and breach (discussed in more detail below).

Mapping Contract Package Areas onto the existing 42 PCC areas could, as the consultation document suggests, offer one way of enabling effective joint commissioning at a sub-regional level. Commissioners and prime providers could for example develop effective working relationships with the existing networks of VCS organisations established in each PCC area through the Safer Future Communities project.<sup>19</sup> MoJ and NOMS should note, however, that PCCs themselves encompass large, highly diverse geographical areas and face their own challenges in joining up their commissioning effectively with that of Probation Trusts, Local Authority Community Safety Partnerships, Directors of Social Services and Public Health, local IOM arrangements and Health and Wellbeing Boards. The introduction into this picture of prime contractors operating on such a large geographical scale seems likely to introduce a further layer of complexity into an already crowded picture.

Clinks would therefore urge MoJ and NOMS to consider other examples of innovative local partnership working and to build those models into its commissioning arrangements, alongside the main service delivery contracts delivered through the large geographical lots. For example, in the 1 Step Beyond project in West Mercia, West Mercia Probation Trust (WMPT) holds a budget which it uses for strategic commissioning in partnership with YSS, a local VCS organisations. The partnership helps smaller VCS organisations to bid for work and YSS plays a capacity-building role through training, engagement and developing sustainable funding streams. This has led to the creation of a series of projects, often aimed at specific groups of offenders and tailored to the individual user's need to secure the best possible outcomes.<sup>20</sup>

Commissioners should therefore consider earmarking a proportion of the contract payment to be devolved to fund small scale, locally commissioned pieces of work. In addition, primes could be

<sup>19</sup> Safer Future Communities. Online: <http://www.clinks.org/services/sfc> [last accessed 18.2.2013].

<sup>20</sup> Clinks .2012. *Commissioning Case Study: 1 Step Beyond*. Online: <http://www.clinks.org/assets/files/PDFs/Holding%20Page%20docs/1%20Step%20beyond%20case%20study.pdf> [last accessed 18.2.2013].

asked to evidence how they would comply with the Social Value Act, taking into account the impact of the nationally commissioned/prime contractor approach on local communities. The Cabinet Office report *Unshackling Good Neighbours* made this type of impact assessment one of its top ten commissioning recommendations:

*“Prime contractors should be required formally to consider the impact of their contracts on the neighbourhoods in which they are delivered. Particular consideration should be given to the impact on community venues, existing informal provision, local social capital, local volunteers, access and travel requirements of users, integration of provision and the role of communities in evaluating services with a view to strengthening these where possible. All government contracts should aim to leave neighbourhoods socially stronger than they found them.”<sup>21</sup>*

**Clinks would ask that MoJ and NOMS clarify as soon as possible the future structure of Probation services in England and Wales.** VCS organisations have stressed the importance of making key points of contact within Probation Trusts for early information sharing and future planning.

It would also be helpful to have a clear rationale for the number of Contract Package Areas to enable VCS organisations to understand the thinking behind the new commissioning structures, and what arrangements are being considered to mitigate against the loss of locally commissioned, small scale provision.

### Escalating risk and reporting breach

Question C10: *“How can we best use statutory supervision on release from custody to ensure that offenders engage with rehabilitation effectively?”*

The consultation document proposes that Probation should hold ultimate responsibility for public protection, including conducting initial risk assessments and reports for the court. Probation will also retain responsibility for ‘high risk’ offenders, including those subject to Multi-Agency Public Protection Arrangements.

Participants in consultation events have repeatedly pointed out that the level of ‘risk’ posed by offenders is difficult to conceptualise and not a static entity. ‘Risk’ as measured by OASys cannot provide a detailed insight into the individual circumstances and needs of an offender and the factors which will be most important in their desistance from crime. There is a case for a more nuanced approach to categorisation which does not assign a service user to a particular provider purely on the basis of whether they are deemed to be ‘low’, ‘medium’ or ‘high’ risk at the point at which they appear in court for sentence.

<sup>21</sup>

Cabinet Office. 2011. *Unshackling Good Neighbours*. p.25. Online: <http://www.cabinetoffice.gov.uk/sites/default/files/resources/unshackling-good-neighbours.pdf> [last accessed 15.2.2013].

There are a number of VCS organisations which have both lengthy track records and expertise in delivering services to a 'high risk' client base. For example, Circles of Support and Accountability have a key role in the management of sex offenders. In 2010 the Ministry of Justice published guidance for the VCS on the management of high risk offenders, largely in recognition of the considerable amount of work undertaken by the Sector in this area.<sup>22</sup> Clinks would recommend that the market for provision to 'high risk' offenders remains relatively flexible, in order to preserve some of the good work already being carried out in this area by VCS providers.

A significant number of Clinks Members have expressed concern at the proposed requirement for contracted partners to report instances of escalating risk and/or breach of sentence or licence requirements among service users. As noted above, partnership arrangements within the Contract Package Areas are likely to be very complex, with many contracts, contracted partners and statutory agencies working with the same individual offender. Commissioners will have to consider carefully how to implement effective communication channels and robust referral arrangements between different local providers so that Probation services receive timely and effective notice of escalating risk.

Participants in consultation events were particularly concerned by the proposed consequences of 'failure to engage' with new compulsory rehabilitative interventions, including the use of recall to custody as a last resort. A number of potential providers, while welcoming the intention to provide support for short sentence prisoners, have voiced concern about arrangements which may inadvertently lead to speedier returns to custody and an unintended increase in the short sentence prison population, and have stressed that Government should think creatively and flexibly about what is required to support this particular group in the uneven process of desistance from crime.

### Equality Impact Assessments

Question C17: *How can we use this new commissioning model, including payment by results, to ensure better outcomes for female offenders and others with complex needs or protected characteristics?*

Question C18: *What are the likely impacts of our proposals on groups with protected characteristics? Please let us have any examples, case studies, research or other types of evidence to support your views?*

**Clinks would recommend that NOMS and MoJ consider how Equality Impact Assessments could be strengthened and made more meaningful.** As part of the bidding process, potential primes should be asked to evidence awareness of the distinctive needs of groups who are deemed to

<sup>22</sup>

Ministry of Justice. 2010. *Guidance for the Voluntary and Community Sector: Working with NOMS to manage the risk of serious harm*. Online: [https://www.clinks.org/assets/files/NOMS-RiskofHarmGuidance-Oct10\(v2\)-web.pdf](https://www.clinks.org/assets/files/NOMS-RiskofHarmGuidance-Oct10(v2)-web.pdf) [last accessed 19.2.2013].

have protected characteristics under the Equality Act (2010), with specific reference to the following:

- Disability
- Race
- Sex
- Gender reassignment
- Age
- Religion or belief
- Sexual orientation
- Pregnancy and maternity
- Marriage and civil partnership.<sup>23</sup>

There is a danger that primes may refer to some or all of these groups in a tokenistic manner, or focus solely on the issues surrounding women or BAME offenders. Procurement officials should therefore afford significant weight to bids which begin to map out a concrete strategy and work plan for offenders with protected characteristics, proposing original or innovative pieces of work.

### Women offenders

It is important that NOMS builds on its previous investments in provision for women offenders and existing good work carried out at the local level. Clinks take the view that a tailored approach is required for women offenders, reflecting the call in the Corston Report and recent RR3 ‘task and finish group’ paper for a distinct, holistic and women-centred approach. The latter report called for a twin-track approach to services for women offenders, whereby funding for women’s services in each Contract Package Area should continue be ring-fenced at the national level.<sup>24</sup> Within each Contract Area, a significant proportion of funding for women’s services should then be earmarked for providing services at the local level, drawing on the expertise of specialist VCS providers and women’s community centres providing gender specific services.

There are significant concerns about the use of Payment by Results as an outcome measure for providers working with women offenders. **Clinks would recommend the development of a set of outcomes measures tailored to the distinctive risk and need profiles of female offenders.**

The recent Criminal Justice Joint Inspection Report on women in the CJS indicated a general lack of specialist knowledge by criminal justice professionals dealing with individual women.<sup>25</sup> **Clinks would therefore strongly recommend that potential primes are required to evidence how they**

<sup>23</sup> Equality Act .2010. Online: <http://www.legislation.gov.uk/ukpga/2010/15/contents> [last accessed 19.2.2013].

<sup>24</sup> C. Hayes & L. Frazer, *Breaking the Cycle of Women’s Offending: A system redesign*. RR3. Online: <http://www.clinks.org/assets/files/PDFs/RRTSAG/RR3%20Paper%20on%20Women%20-%20FINAL%20-%20EMBARGOED.pdf> [last accessed 21.2.2013].

<sup>25</sup> Criminal Justice Joint Inspection. 2011. *Thematic Inspection Report: Equal but different? An inspection of the use of alternatives to custody for women offenders*. Online: [http://www.hmcpji.gov.uk/documents/reports/CJJI\\_THM/OFFM/womens-thematic-alternatives-to-custody-2011.pdf](http://www.hmcpji.gov.uk/documents/reports/CJJI_THM/OFFM/womens-thematic-alternatives-to-custody-2011.pdf) [last accessed 20.2.2013].

would involve providers with specialist knowledge and experience in this area in their supply chains. The RR3 'task and finish group' report on women also contains a detailed range of recommendations on providing a more gender sensitive approach to female offenders.

### Diversity and BAME offenders

The consultation document is largely silent on the needs of diverse groups other than women. It is vital that other groups of service users are properly considered within devolved commissioning arrangements; for example, the needs of older, disabled, and foreign national service users could be at risk of further marginalisation where they are low in number at the local level.

The expansion of providers of offender services through commissioning provides a unique opportunity to make a significant change in the delivery landscape for BAME offenders. The persistence of direct and indirect racism in the CJS needs to be urgently addressed. 'Double Trouble', research commissioned by Clinks into the resettlement needs and experiences of BAME service users, highlighted that service providers must display an understanding and sensitivity towards cultural differences. It also emphasised the need to recognise and address the perceptions of discrimination and stereotyping within the Criminal Justice System; particularly the impact on BAME offenders' willingness and motivation to engage with services.<sup>26</sup>

The BAME VCS has the experience and local knowledge which is crucial to engage the BAME community, including offenders. **Clinks would recommend that a proportion of the budget in each contract area is earmarked for specialist services for BAME offenders.** Potential primes should also be required to evidence how they would involve providers with specialist knowledge and experience in this area in their supply chains.

*Do you have any further comments on our proposals for Transforming Rehabilitation in this document?*

### VCS and user voice

The degree to which offenders and ex-offenders have a voice in the design and delivery of criminal justice services is under-developed. Health and Social Care, for instance, engage users to a much greater extent in shaping services. The criminal justice VCS has a long tradition of involving service users who, if given appropriate support, are able to identify specifically the kinds of services and interventions that have made a difference to their lives.

Clinks has worked together with NOMS to research the extent to which offenders and former offenders are involved in designing and delivering criminal justice services and this has led to the commissioning of further research to look at this issue in more detail with a number of identified

<sup>26</sup>

Clinks. 2010. 'Double Trouble'? Black, Asian and Minority Ethnic offenders' experiences of resettlement. Online: <http://www.clinks.org/publications/reports/double-trouble> [last accessed 19.2.2013].

prisons and probation areas. Clinks has also worked with partners to develop guidance on service user involvement and delivering peer-to-peer services.<sup>27</sup>

**Clinks would recommend that NOMS incentivise providers bidding to deliver services to demonstrate how they are incorporating the ‘user voice’ in their services. Additionally, commissioners should be required to show how their processes have been informed by the views of offenders and former offenders.**

### Mentoring and volunteering

Clinks welcomes the Coalition Government’s plans to extend rehabilitative and resettlement support to prisoners serving sentences of 12 months or less. The proposals to use peer mentors also have the potential to be a force for real, positive change in the rehabilitation of offenders. There are, however, several points which Government should consider carefully in implementing these plans.

Volunteers are not a free resource, and will require funding to be made available for a programme of training and ongoing support. Government will also need to take steps to safeguard the wellbeing of both the mentor and service user. It is not necessarily the case that offenders serving sentences of less than 12 months will present a ‘low risk’ or less challenging behaviour than those serving longer sentences. **Clinks would therefore recommend that robust risk assessments are conducted prior to release from prison to assess an individual’s suitability for mentoring by an ex-service user.**

There will be some individuals who, as a result of their particular vulnerabilities or complex requirements, are not suitable candidates for rehabilitative support through peer mentoring. There may also be cases where there is no appropriate volunteer available with the requisite characteristics to support someone through the process of desistance. **Clinks would therefore recommend that alternative provision is made available to those who are not able to participate in the proposed mentoring scheme, which still involves one-to-one approaches wherever possible.**

### Alignment with other criminal justice services

The consultation document is somewhat unclear on how the proposed contracts for offender services in the community will align with other key commissioning bodies and contracted services, for example, provision in prison and youth services commissioning by the Youth Justice Board. The latter is particularly critical for services which focus on transitions to adulthood. Clinks would ask that MoJ and NOMS clarify their thinking around service alignment as soon as possible, to aid VCS organisations working in several different areas of the CJS with future strategic and financial planning.

<sup>27</sup>

Clinks. 2011. *Best practice in service user involvement in prisons and probation trusts*. Online: <http://www.clinks.org/assets/files/PDFs/Service%20User%20Best%20Practice%20Sept%202011.pdf> [last accessed 19.2.2013],

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