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RR3
Reducing Reoffending
Third Sector Advisory Group

Impacts of Covid-19 on the financial sustainability of the voluntary sector working in criminal justice

Introduction

This paper has been produced by the Reducing Reoffending Third Sector Advisory Group (RR3) special interest group (SIG) on Covid-19, to explore the impacts of the pandemic on the sustainability of the voluntary sector working in the criminal justice system. This paper was commissioned by the Ministry of Justice (MoJ) and HM Prison and Probation Service's (HMPPS) Third Sector Task Force.

The paper draws together evidence and insight collected by Clinks and the RR3 SIG, further exploring and illuminating those findings to better understand what Covid-19 means for the medium to long term financial sustainability of the voluntary sector working in the criminal justice system. Evidence has been gathered from leading voluntary sector experts across 12 meetings of the RR3 Covid-19 SIG, Clinks' surveys of the voluntary sector working in criminal justice and a series of national regional network events held by Clinks for voluntary sector organisations. This report took learning from nearly 40 events held by Clinks, attended by over 400 different organisations. The paper accompanies and sits alongside another RR3 paper produced for the Third Sector Task Force, *What does recovery look like?* which explores issues related to voluntary sector services in criminal justice returning to normal, or rather a new normal. The aim of this second paper is to provide further focussed attention to the issue of financial sustainability.

Summary of recommendations

To support the financial sustainability of the voluntary sector working in the criminal justice system, the RR3 Special Interest Group on Covid-19 makes the following recommendations:

1. Commissioners at the national and local level including, but not limited to MoJ's Contracts and Commercial Directorate and the newly appointed Regional Probation Directors, should engage with the voluntary sector at the earliest opportunity to understand the costs associated with delivering good practice to meet the needs identified. An alternative needs-led model could allocate funds based on identified need and quality of service, rather than price per head.
2. MoJ and HMPPS should recognise the importance of using discretionary public sector grants as low bureaucracy tools to provide sustainable grant funding for core costs. MoJ should work with the Cabinet Office to ensure that such grants are made available at the local level to small and specialist organisations working across the criminal justice system,

with particular attention to organisations that are led by and for black, Asian and minority ethnic (BAME) communities, organisations led by those with lived experience and organisations that deliver outcomes through arts and creativity.

3. In the recovery from the pandemic, funding should prioritise specialist services for people with protected characteristics. In recognition of the disproportionate impact of the criminal justice system and Covid-19 on BAME communities and the organisations that work to support them, a particular focus should be on ensuring funding streams for BAME-led, BAME-focussed services.
4. Emergency funding should be made available to voluntary organisations working in the criminal justice system to cover their costs where Covid-19 has disrupted their usual means to bridge shortfalls in funding for MoJ/HMPPS contracted services.
5. HMPPS should increase the budget available for family and significant other service contracts to reflect the identified needs of the prisoners, families and establishments, the real purchase price of family interventions and annual inflation rates. Commissioners should engage with voluntary sector organisations supporting families to understand the costs of meeting increased needs as a result of the lockdown and ensure that contracts reflect the additional costs of remobilisation and loss of income during this time.
6. The Cabinet Office should ensure that the lessons learned from recent commissioning programmes are embedded and applied to the commissioning of all future services through a set of specific guidance and principles on commissioning the voluntary sector. The voluntary sector should be engaged in designing this guidance. MoJ's Contracts and Commercial Directorate and local and regional criminal justice commissioners should use this guidance.
7. Voluntary organisations working under any public sector contract or sub-contract will need clear assurances that their funding is guaranteed and that contract management in these extreme circumstances will be sensible, consistent and proportionate.
8. If organisations are unable to fulfil contracts, due to a lack of staff and/or volunteers or by following government guidance on self-isolation or social distancing, MoJ and HMPPS should work with the Cabinet Office to guarantee that this would be treated as a relief event for contractual purposes. Reassurance should be given that organisations will be not face sanctions or contract termination for failure to provide the full service. Relief should continue as long as organisations are unable to deliver due to government restrictions.
9. We recommend that organisations should be allowed to retain underspend on contracted activities in order to fund the costs of remobilisation and to meet the greater need that is likely when lockdown measures begin to be eased.
10. Organisations with contracts for service delivery post-Covid-19 lockdown must be given sufficient time to remobilise and reasonable adjustments made to contract lengths and targets to enable organisations to meet outcomes.
11. MoJ and HMPPS should establish a clear plan in consultation with voluntary organisations to coordinate across the criminal justice system when services will be retendered following the crisis. This should be done with the aim of preventing gaps in provision and balancing a potential backlog in contracts, which could overwhelm organisations' capacity to engage, with the need to maintain a pipeline of funding opportunities to ensure the sector's sustainability.

12. In recognition of the current context and to enable maximum engagement from voluntary organisations, we recommend that government departments launching any commissioning processes during this time take the following steps:
 - a. Launch a qualification process which is simple with clear and accessible guidance
 - b. Engage with voluntary organisations to establish what market ready means in the current context and competitions to be postponed until the voluntary sector is ready
 - c. Allow an absolute minimum of four weeks for organisations to respond to any competition, and longer where competitions are complex and require partnership or consortia formation.
13. Sustainable grant funding is essential in order to support engagement of the voluntary sector in commissioning for the future probation system and to enable it to play a full role in the delivery of services in the aftermath of the pandemic. In order to ensure that grant agreements are light touch, they should be checked by charity law experts to ensure they do not constitute a contract and made in line with the principles set out by the Grants for Good campaign. Budget should be set aside for local leaders and middle managers to administer discretionary grants flexibly, as an alternative route to funding to provide capacity building for small organisations for whom pre-qualification may provide a barrier.
14. HMPPS should work closely with Regional Probation Directors to encourage them to engage with voluntary organisations as strategic partners in the design and delivery of services, rather than solely as suppliers.
15. MoJ and HMPPS should regularly ensure that they are engaging with BAME voluntary sector organisations to ensure consistent, timely information about changes that will impact their delivery and to ensure organisations understand the available support and how it applies to them.
16. HMPPS and individual prison governors must regularly engage with the voluntary sector on the progress in moving prisons through the stages of lockdown and clearly communicate the expectations on voluntary sector providers before a prison moves into a new stage. Similarly, the National Probation Service (NPS) and Community Rehabilitation Companies (CRCs) should engage with the voluntary sector to ensure they provide timely and consistent updates on the recovery of probation services and corresponding expectations for voluntary sector providers. All exceptional delivery models (EDMs) should be published to provide transparency about planning.
17. Clear guidance and information should be provided as early as possible on the changes made to the coronavirus job retention scheme, including any future changes, to enable organisations to understand how it will apply to them, to both plan services and phased returns to work. Information on ending the coronavirus job retention scheme must be provided at the earliest opportunity and enable a phased ending to support organisations to have contingency plans in place. This is particularly important for organisations working in prisons if the slower easing of lockdown continues to impact their ability to deliver full services.
18. The government must ensure that recovery planning for the criminal justice system involves a properly resourced cross-departmental approach, to ensure service users' needs are met in a holistic way. MoJ and HMPPS must work closely with the Department of Work and Pensions, Ministry of Housing, Communities and Local Government, the Department of Health and Social Care, the Department for Education and HM Treasury in order to ensure a joined-up response that meets the needs of some of the most marginalised people in society.

19. MoJ/HMPPS should identify and build upon good practice that has been established by local services during Covid-19 to ensure joined up responses for service users, particularly people facing multiple disadvantage. This should include engagement with Regional Probation Directors to ensure they facilitate join-up between local statutory and voluntary services, including through joint commissioning, to ensure that people in contact with the criminal justice system do not fall through the gaps in services at a time of greater demand.

Context: the role of the voluntary sector in criminal justice

Over 1,700 voluntary organisations work specifically in criminal justice, playing a unique and valuable role in prisons and local communities. A further 4,916 voluntary organisations work with people in the criminal justice system by nature of their work. These charities exist to support and advocate for some of the most stigmatised and excluded communities whose needs mainstream services often fail to meet.

Much of the criminal justice voluntary sector is rooted in local communities, enabling it to reach the most marginalised people who are often defined by statutory services as hard to reach. Voluntary organisations have an established track record of successfully engaging people from these communities, developing connections and designing services that are locally appropriate and relevant.

Many are set up and led by the communities they seek to support, bringing with them invaluable expertise, insight and community connections that enable those organisations to provide tailored support that better meets the unique experiences and needs of their service users.

The organisations that make up this sector are diverse, with a range of sizes and specialisms, but what they share is a dedication and commitment to improving outcomes for people in contact with the criminal justice system and transforming lives. However, Clinks' annual state of the sector research¹ highlighted that, prior to the pandemic, the criminal justice voluntary sector was already struggling for resource in a complex, competitive and changing commissioning environment whilst simultaneously trying to manage increasing caseloads and more complex and urgent needs of services users. Covid-19 has only exacerbated these long term trends, and as this report shows, a range of pressures have coalesced to challenge the sustainability of many organisations in the sector.

"In reality, closure of voluntary organisations means a loss of services within the criminal justice system that are needed if individual lives are to be improved. Losing the diversity of this sector will mean cohorts of people are again deemed too hard to reach and lose access to services tailored for them."

In the wake of this crisis, with the impact of lockdown and Covid-19 on wellbeing, access to services and the exacerbating effects of poverty and disadvantage, combined with the wider financial impact on society, people in contact with the criminal justice system will be among the hardest hit. Statutory services alone will not be able to respond to the heightened need. The need to ensure the sustainability of the voluntary sector working in criminal justice is therefore not just a matter of economics and business. What truly matters are the services that this sector provides.²

In reality, closure of voluntary organisations means a loss of services within the criminal justice system that are needed if individual lives are to be improved. Losing the diversity of this sector will mean cohorts of people are again deemed too hard to reach and lose access to services tailored for them.

Since this paper was first commissioned, the MoJ has launched the Dynamic Framework for the new probation model. The commissioning of services through the framework will determine whether the voluntary sector can play a central role in delivering rehabilitation and resettlement services, a hugely important consideration for the sustainability of many voluntary organisations. There are concerns with the qualification process, including over timelines, TUPE arrangements, IT requirements, contract values and the structural advantages afforded to larger providers. There are however opportunities in this simpler probation system, and this paper highlights in particular the positive role regional probation directors under the new model can play in supporting the sustainability of voluntary organisations, if they are given the resource and freedom to do so.

Clinks is working closely with MoJ and HMPPS to address the challenges during the recovery of probation services, commissioning of new services and the transition to a new model by June 2021. At the last two RR3 quarterly meetings, extended agenda items have been held on probation with Minister Lucy Frazer QC MP, and an RR3 probation Special Interest Group has also been convened. Probation reform is therefore an important context to this work and this paper will be sent to the probation review team for their consideration.

How the funding model of the voluntary sector working in the criminal justice system has affected organisations' ability to respond to the impact of Covid-19

The voluntary sector working in criminal justice is disproportionately made up of smaller charities. The latest available analysis shows that 29% of criminal justice specialist organisations have an income of less than £100k, compared to just 14% of organisations that are non-criminal justice specialists.³

As the voluntary sector working in criminal justice typically receives less public donations, it is more heavily reliant on grants from charitable trusts and foundations and contracts and a smaller, decreasing number of grants from government. Small specialist criminal justice organisations are more reliant on government grants than contracts and the smaller the organisation, the more reliant they are on grant funding from charitable trusts and foundations. This voluntary income has been in decline for a number of years. In addition, organisations rarely achieve full cost recovery on contracts and have to subsidise the delivery of these services with other funds and reserves. There are further challenges in accessing funding from trusts and foundations, where they feel the government should fund services. In response to this challenging funding environment many voluntary sector organisations in criminal justice have diversified their income through social enterprises, trading and fees for services.

Voluntary organisations working in the criminal justice system also have low reserves holding, on average, just 1.4 months' worth of reserves compared to an average of 6.3 months for the wider voluntary sector. This means criminal justice voluntary organisations are more vulnerable to external shocks.⁴ It is particularly concerning that 40% of organisations responding to Clinks' survey⁵ on the impact of Covid-19, said they were using reserves due to the crisis.⁶ For organisations with such little reserves, the impact on income could be particularly devastating to their sustainability. On the other hand, trusts and foundations are less likely to provide funding to organisations with larger reserves, which also risks excluding medium to large organisations from emergency support provided by these sources.

At the start of lockdown it was calculated that there would be a £4.3 billion loss of income over the first 12 weeks of lockdown for the UK voluntary sector. The Never More Needed campaign has calculated that even when taking into consideration the financial support that has been made available, such as the Coronavirus Job Retention Scheme, government grants, philanthropic contributions, sums raised at the Big Night In (which the criminal justice sector are less likely to have benefited from) and grants and foundations stepping up, that gap in funding could not be bridged, with a loss of business as usual income still in the region of £1 billion for the initial 12 week period alone (to the end of May 2020).⁷ Over the next year, based on research by NCVO and the Institute for Fundraising and the annual budget forecasts of organisations they surveyed, the voluntary sector is planning for a 24% drop in total income.⁸

The complex funding picture for the voluntary sector has created unique implications for the pandemic and its impact on organisations in this sector. It should also be understood in the context of the wider impact on the voluntary sector as whole, which is likely to increase reliance on certain sources of support, and could potentially further exclude criminal justice organisations.

Contracts

The government makes up the largest source of funding for the voluntary sector working in criminal justice. There has been an overall decrease in government funding, with a particularly sharp decrease in funding from central government. In recent years there has also been a change in the nature of this funding, with an increasing shift from grants towards competitively tendered contracts to deliver services. The majority of criminal justice specialist organisations with an income over £500,000 received government funding in the form of contracts.⁹

Contracts for voluntary organisations working in criminal justice have been historically underfunded, undermining the sector's ability to weather this crisis. For the past three consecutive years it has been reported that voluntary sector organisations in criminal justice have been unable to achieve full-cost recovery on the contracts they are delivering, with the majority having to subsidise the shortfall using other sources of funding (63%) or reserves (61%). The accumulated impact of this over a number of years may go some way to explaining the very limited reserves within the sector.

Relying on subsidy provided by voluntary sector organisations in order to deliver any public service must be avoided as it creates an unsustainable position, not just for the voluntary sector provider but also for beneficiaries and ultimately the taxpayer. It should be accepted as standard for public commissioners to ensure full cost recovery as it is for the voluntary sector.¹⁰

Example: CRC contracts for probation services

Contracts commissioned under the Transforming Rehabilitation (TR) reforms to probation are a notable example of underfunded contracts. TrackTR research, led by Clinks, found voluntary sector services funded by CRCs to be underfunded and unsustainable.¹¹ Half of the voluntary sector-led services responding to the surveys reported that this was the case. One in three believed that their funding agreement was at risk of failure before the end of the contract. Women's services in particular were more likely to report that the financial terms of their contracts with CRCs were unsustainable and more likely to have to subsidise the contracts.¹²

As Children England has highlighted in its eight principles for commissioning and procurement, public services are not products to be bought and sold as short-term commercial transactions.¹³ Treating them as such creates obstacles both to sustainability and performance, especially in a field like criminal justice where progress is incremental and long

term. Procurement decisions, including the appropriate funding mechanism, contract size and length, should always be based on prioritisation of social value over value for money.

Recommendation 1

Commissioners at the national and local level including, but not limited to MoJ’s Contracts and Commercial Directorate and the newly appointed Regional Probation Directors, should engage with the voluntary sector at the earliest opportunity to understand the costs associated with delivering good practice to meet the needs identified. An alternative needs-led model could allocate funds based on identified need and quality of service, rather than price per head.

Grants

“The smaller the organisation, the more reliant they are on grant funding from charitable trusts and foundations.”

The smaller the organisation, the more reliant they are on grant funding from charitable trusts and foundations. Voluntary income, which includes these grants, has been in decline for specialist criminal justice organisations for a number of years. In the nine-year period between the financial years 2008/09 and 2016/17, specialist criminal justice organisations experienced a 17% decrease in this important source of income. Added to this, there have been ongoing issues pre-dating the Covid-19 pandemic with a lack of grant funding that is long term and covers core costs, as well as challenges with trusts and foundations typically not providing funding for services they believe should be funded by the government. The impact of this and the vulnerable position it puts organisations in has been exacerbated by this crisis.

Example: Organisations led by and for black, Asian and minority ethnic (BAME) communities

Organisations that are set up to support particular cohorts, such as women or BAME communities, are more likely to be smaller and locally-led charities in need of support from trusts and foundations because they lack the resource to engage in competitions for, and manage, contracts.

The BAME-led sector have been hit hard by the highly competitive, contract-focused commissioning environment and a push for more generic services. It has left them squeezed out by larger organisations and companies who are better equipped to be successful at bidding and can offer more competitive prices. BAME organisations based outside of London are even more disadvantaged in accessing funding. Feedback from BAME organisations has highlighted how this has left BAME organisations feeling ‘under-valued’ and ‘fighting over the crumbs’.¹⁴

This situation has put the sustainability of a vital part of the voluntary sector working in criminal justice at greater risk during the pandemic. People from BAME communities are both disproportionately represented throughout the CJS, making up over a quarter (27%) of the prison population,¹⁵ rising to half (52%) of the youth custody population.¹⁶ Emerging evidence shows BAME individuals disproportionately impacted by Covid-19 in the UK and globally. The effect of these combined disproportionalities is acute. It is critical that during the recovery process, as part of a commitment to addressing racial disparities and unequal outcomes, specific consideration is given to meeting the needs of BAME individuals in contact with the criminal justice system. BAME voluntary organisations are crucial to this process because they are often best placed to provide bespoke and tailored wellbeing support.¹⁷

In response to the pandemic, funders have been redirecting funds towards front-line services responding to Covid-19. While this support is positive and has provided a lifeline for many organisations, there has also been feedback that organisations that are affected by the crisis but not providing services specific to the Covid-19 response, are being omitted from such support measures.

There is also growing concern about the short-term nature of this support, the impact on longer term funding behaviour by these funders and that we are heading for a cliff edge. Organisations have highlighted a lack of grant funding opportunities outside of the Covid-19 response being made available, with many existing opportunities and decisions about grants that were in the pipeline being put on hold until there is more clarity about the impact of the pandemic and recovery. This uncertainty makes it more challenging for organisations to plan their recovery and achieve secure and stable funding during this time. Organisations that have been surviving from short-term grant to short-term grant are particularly vulnerable in the current context and this is often a common feature in the funding picture of smaller organisations.

“Several grant funders have already closed their doors to new applications and some existing applications have been put on hold. There is clearly much uncertainty about the duration of this pandemic so we are cautious about new funding opportunities.”

Survey respondent

“Concerned that may funders seem to be pausing their application processes for emergency funding only. Difficult to plan for longer term funding for staff and retaining staff without these opportunities.”

Survey respondent

In surveys conducted by Clinks, organisations voiced concern that the full fundraising impact of Covid-19 will not be truly felt until further into the future as the impact unfolds over the coming months and years. This is driven by growing concern about economic recession as result of Covid-19 and the future financial position of trusts and foundations as they also recover from the pandemic, leading to a reduction in value of their endowments and less funding being available from these important sources further down the line. It has been estimated that overall there will be a 28% reduction in grants from foundations over the next 12 months.¹⁸

The MoJ recently announced £2.5 million funding for community services that divert women away from crime. It is imperative that this funding helps to cover core costs such as wages, rent and bills, as has been suggested by MoJ.¹⁹ The use of grants to cover costs of small and specialist organisations is very welcome, and something that should be made possible and encouraged at a local level.

Recommendation 2

MoJ and HMPPS should recognise the importance of using discretionary public sector grants as low bureaucracy tools to provide sustainable grant funding for core costs. MoJ should work with the Cabinet Office to ensure that such grants are made available at the local level to small and specialist organisations working across the criminal justice system, with particular attention to organisations that are led by and for black, Asian and minority ethnic (BAME) communities, organisations led by those with lived experience and organisations that deliver outcomes through arts and creativity.

“We are expecting to feel the financial impact later on – around 6-12 months. We have a good level of reserves now ... but we are worried about the longer term funding pipeline.”

Survey respondent

It is likely there will be increased competition for a more limited number of funding streams. This is also to be considered in the context of the wider impact of Covid-19 on the voluntary sector as a whole and the substantial loss of income over this time. The Institute for Fundraising and NCVO²⁰ predicts that over the next 12 months voluntary income including donations will fall by 40%, which will drive up reliance amongst the wider sector on (more limited) charitable income from funders. Organisations that exist to provide tailored local services and support to particular cohorts, for example to organisations that are led by and for BAME communities, are likely to feel the impact of this more acutely.

“Longer term fund raising for core items not covered by restricted funds will be hard fought following the pandemic and difficult to come by.”

Survey respondent

Recommendation 3

In the recovery from the pandemic, funding should prioritise specialist services for people with protected characteristics. In recognition of the disproportionate impact of the criminal justice system and Covid-19 on BAME communities and the organisations that work to support them, a particular focus should be on ensuring funding streams for BAME-led, BAME-focussed services.

Social enterprise and trading arms

Earned income, which includes fees for service as well as contracts, increased for specialist criminal justice voluntary organisations by 22% between 2008/09 and 2016/17.²¹ When the finances were broken down further, it revealed a significant shift in the way that specialist criminal justice organisations received income, particularly in the income received from individuals. In this context income from individuals is broken down into two types – fees for services and donations (i.e. income given freely by individuals, including donations and legacies).

In 2008/09 criminal justice specialist organisations received three fifths (60%) of their £144.6m income from individuals in the form of donations, and the rest of their earned income (40%) in fees for services. Eight years later in 2016/17, this trend has reversed with organisations receiving more than three quarters (76%) of their £150.1m income from individuals in fees and the remainder (24%) in donations.²²

This change in funding profile reinforces feedback received from criminal justice voluntary sector organisations. In response to declining grant funding and to bridge shortfalls in funding from contracts that don't meet core costs, organisations are adapting their services to enable them to receive fees for services, including adding a social enterprise element to their work or setting up trading arms.

Lockdown measures in prison and wider society, has meant that many of the trading arms and social enterprise activities that organisations have set up have been unable to operate or have had to operate at reduced levels. The Institute for Fundraising and NCVO found in its research of the UK voluntary sector that trading income has been the stream hit hardest by Covid-19, falling by 72%.²³ Of the organisations that took Clinks' survey that had a social

enterprise or trading element, 70% said that it was not able to operate. This is creating a shortfall in funding for organisations that rely on these to bridge contracts and grants. The impact on trading income is expected to continue, with a potential drop of 57% over the next 12 months for the wider UK voluntary sector.²⁴ This is likely to be exacerbated for those whose trading function relies on prisons where lockdown will be eased at a slower pace than wider society.

“...we have a significant funding gap. Usually we would fill that with grant funding, income from our social enterprise, individual and corporate donations but we are expecting very low or no income from those streams this year.”

Survey respondent

“With the closure of our social enterprises there is a significant loss to our income this financial year ... we expect the financial impact to the charity sector will be significant as the economic ripple effects of the pandemic come in the near future.”

Survey respondent

“We have limited reserves and have lost income streams for room rental and training activity.”

Survey respondent

Example: Prison family and significant other services

In 2017 HMPPS re-commissioned the majority of family and significant other service contracts across the male and female prison estates. Three-year (plus one) contracts were awarded to 11 organisations. However, the budget available for family service contracts is insufficient to cover costs. The male estate received a budget of £65/head and there was a budget of £135/head in the female estate.

The contract service specifications are unrealistic and unachievable within the constraints of such a minimal budget. This has created significant challenges for providers with staffing models and financial security, as well as safe and effective practice. Generating income to supplement a public contract can also deplete organisations resources to generate income for other areas of unmet need.

Most of the providers must rely on additional funding or income in at least 50% of the sites they work in to fully resource the family contract specifications. The majority of charitable trusts, who may be able to provide funding to enhance family services, do not provide funding to subsidise public sector contracts. Many rely on revenue from running a tea bar at prison visit centres, which have been closed during lock down.

This is an unsustainable model. The need to supplement the available budget places significant risk on the provider and has left family organisations acutely vulnerable at this time, needing that income to sustain the organisation, but facing months of being unable to run the tea bars and generate income during prison lockdown.

Recommendation 4

Emergency funding should be made available to voluntary organisations working in the criminal justice system to cover their costs where Covid-19 has disrupted their usual means to bridge shortfalls in funding for MoJ/HMPPS contracted services.

Recommendation 5

HMPPS should increase the budget available for family and significant other service contracts to reflect the identified needs of the prisoners, families and establishments, the real purchase price of family interventions and annual inflation rates. Commissioners should engage with voluntary sector organisations supporting families to understand the costs of meeting increased needs as a result of the lockdown and ensure that contracts reflect the additional costs of remobilisation and loss of income during this time.

The impact of commissioning arrangements and relationships

As the voluntary sector moved into this period of crisis, it did so after a series of poor commissioning arrangements and poor relationships with statutory funders, which has shaped the impact that the pandemic has had on the sector and will impact its future sustainability.

Examples: Transforming Rehabilitation and the prison education DPS

The Clinks-led research partnership on the impact of the TR reforms on the voluntary sector found that the volume based, target driven culture that the new commissioning arrangements created was eroding partnerships. This was further compounded by poor communication from commissioners, intensive contract monitoring and perceived gatekeeping by CRCs preventing direct communication between the voluntary sector and HMPPS and MoJ. This led voluntary organisations funded by CRCs to become increasingly pessimistic and negative about the arrangement and their relationship with CRCs. This, in turn, has led to a lack of confidence in the procurement, contract management and market stewardship by HMPPS.

More recently, commissioning under the Dynamic Purchasing System (DPS) for prison education has created a number of challenges for voluntary sector organisations delivering services in prison. Issues have included unrealistic contract lengths and mobilisation periods that services couldn't meet, confusion about what communication was possible with prisons, poor communication from HMPPS and MoJ, and uncertainty over budgets.

Narrow targets and key performance indicators (KPIs) create barriers for organisations' service delivery, limiting their flexibility and ability to adapt to changing environments and the changing needs of the people they serve. The principles drawn together by Children England for reforming the commissioning and procurement of public services suggests that public commissioners should instead be developing long-term relationships with relevant providers to ensure greater understanding of quality services and create a dialogue to determine the desired outcomes of a service, rather than imposing them en-masse through contract terms in a top-down manner.²⁵

There has been positive engagement from MoJ and HMPPS with the voluntary sector to resolve the issues identified in the procurement models for prison education and probation services to ensure improvements to both the prison education DPS and the commissioning of future probation services. There has also been positive engagement throughout the lifetime of the prison families and significant other contracts.

Recommendation 6

The Cabinet Office should ensure that the lessons learned from recent commissioning programmes are embedded and applied to the commissioning of all future services through a set of specific guidance and principles on commissioning the voluntary sector. The voluntary sector should be engaged in designing this guidance. MoJ's Contracts and Commercial Directorate and local and regional criminal justice commissioners should use this guidance.

Despite a positive response from MoJ and HMPPS to the issues the voluntary sector has raised in relation to recent commissioning programmes, these experiences have contributed to a lack of trust in prime and central government commissioning. It is in this context that organisations delivering under contract or sub contract have had to navigate the pandemic.

During the pandemic there has been a mixed picture with regards to the sector's experience of grant and contract management and the response of commissioners to the crisis. Clinks' survey on Covid-19 found that communication and flexibility of grant and contract managers had generally been positive, though more so from trusts and foundations than statutory funders:

- Trusts and foundations – of those that received funding from trusts and foundations, 73% agreed or strongly agreed that their grant managers had communicated clearly and been flexible in adjusting grant requirements
- Statutory funding – of those that received statutory funding, 57% agreed or strongly agreed that grant and contract managers had communicated clearly and been flexible in adjusting grant and/or contract requirements.

Through Clinks' dialogue with the voluntary sector, in its regional and thematic networking events and through feedback from the RR3 SIG, the experience has been more varied, with communication from central government being highlighted as being poorer.

“Health contract managers have been better than criminal justice. Supply chain management from CRC's has not evidenced good communication or flexibility.”

Survey respondent

Poor communication over contracts and grants

The communication and approaches to grant and contract management taken by commissioners has been inconsistent, leaving organisations unsure.

“Differs contract to contract. Most supportive and cognisant of the challenges. Others behaving as if there is no pandemic.”

Survey respondent

Feedback at the RR3 SIG meetings has highlighted that the response from HMPPS and some CRCs and local authorities in particular was slow to respond to the crisis nature of the situation, with at times poor communication and inconsistent information flow. For example, members of the RR3 SIG who work for contracted voluntary sector providers reported that were told to speak to their point of contact at HMPPS but when they do, staff haven't always known about changes to funding requirements or been of seniority required to inform organisations about changes.

“Very slow to communicate decisions to carry on as usual re payments and delay reporting schedules.”

Survey respondent

Survey responses show that as lockdown continues, organisations face the reality, particularly those that work in prisons, that they will be unable to deliver on their contracts for much longer than had originally been anticipated. There is now growing concern about how long any flexibility shown by contract and grant managers will last. Some organisations, for example those with prison education DPS contracts, still lack clarity about their contracts going forward leaving them approaching an uncertain position.

Information on changes to grant and contract requirements, funding guarantees and relief payments is time critical information that is necessary for organisations to put contingency plans in place, apply for emergency funding or financial support (if necessary) and ultimately to ensure their financial stability during this time.

As lockdown and social distancing measures continue, commissioners must ensure they communicate clearly with organisations and without delay. This is especially important as restrictions begin to be eased. Organisations will need clarity on the implications this has for their contracts and expectations of them.

Recommendation 7

Voluntary organisations working under any public sector contract or sub-contract will need clear assurances that their funding is guaranteed and that contract management in these extreme circumstances will be sensible, consistent and proportionate.

Relief for organisations under contract

Though, in some cases, organisations have been offered relief for contracts the conditions for accessing that relief are not suitable for many. For example, for contracted education DPS providers, relief will only be given to organisations that have not furloughed staff and who (where appropriate) are able to deliver some kind of adapted in-cell service.

Recent communication with MoJ also highlighted that in the weeks running up to July, organisations had still not received confirmation as to whether relief for education DPS contracts would be available beyond the end of June. With prisons still in highly restrictive lockdown preventing services from remobilising, it is important that this relief continues to be available and that decisions to continue relief are not left too late and communicated in advance with organisations so they are not left in uncertainty. Confirmation of relief is key to their financial position during this time and ensuring contingency plans are in place.

Recommendation 8

If organisations are unable to fulfil contracts, due to a lack of staff and/or volunteers or by following government guidance on self-isolation or social distancing, MoJ and HMPPS should work with the Cabinet Office to guarantee that this would be treated as a relief event for contractual purposes. Reassurance should be given that organisations will be not face sanctions or contract termination for failure to provide the full service. Relief should continue as long as organisations are unable to deliver due to government restrictions.

Relief payments are coming out of the annual HMPPS (business as usual) education budget. Whilst this support is welcome and vital for many organisations, there are concerns about the long-term impact on the department's budget and commissioning of services later in the financial year.

Remobilising and meeting targets

Organisations delivering under contract or sub-contract are also concerned that commissioners and prime contractors could use this period as an opportunity to claw back underspends on contracted activities. Similarly, there have been concerns that underspend by prisons during the crisis will be clawed back by central government, including underspend derived from the suspension of commissioning services through the education DPS.

This has implications for the remobilisation and long term sustainability of voluntary organisations, especially given that there is likely to be increased demand for their services after the crisis owing to the impact of Covid-19 on individuals and the lack of support available during this time. For those same reasons governors will need additional funding to respond to heightened and unmet needs after the crisis, and underspend can go some way to meet this.

Recommendation 9

We recommend that organisations should be allowed to retain underspend on contracted activities in order to fund the costs of remobilisation and to meet the greater need that is likely when lockdown measures begin to be eased.

Added to this are concerns that voluntary sector organisations will be expected to deliver on contracts without sufficient notice and in too short a period of time once restrictions are eased, raising significant capacity issues. Anecdotally we have heard from some organisations that prime contractors have not begun discussions about the impact on outcomes. A number of organisations are not confident that they can make up outcome targets following the crisis.

Recommendation 10

Organisations with contracts for service delivery post-Covid-19 lockdown must be given sufficient time to remobilise and reasonable adjustments made to contract lengths and targets to enable organisations to meet outcomes.

Commissioning processes and future opportunities

A number of commissioning processes for future services that were planned prior to the pandemic are now imminent. Covid-19 has disrupted the commissioning processes for new and future services, which has impacts for voluntary sector sustainability in different ways.

Some organisations are in the position where their contracts are up for tender, but capacity to engage in tendering processes has been significantly impacted. Some organisations are experiencing staff shortages, whilst others are focussing first on remodelling services in response to the crisis and then on restoring services once the crisis passes. Others face uncertainty about if and when services will be re-commissioned. For example, governors are not able to commission any services through the prison education DPS until lockdown in prisons eases. The impact of this on current services that were commissioned on a 12-month contract that is coming to an end in the next six months is unclear. This will apply to many organisations as the original maximum contract length that could be commissioned under the DPS.

MoJ and HMPPS need to carefully consider tendering timelines over the coming months in consultation with the voluntary sector and, if timelines change, inflationary costs of services must be taken into account.

Recommendation 11

MoJ and HMPPS should establish a clear plan in consultation with voluntary organisations to coordinate across the criminal justice system when services will be retendered following the crisis. This should be done with the aim of preventing gaps in provision and balancing a potential backlog in contracts, which could overwhelm organisations' capacity to engage, with the need to maintain a pipeline of funding opportunities to ensure the sector's sustainability.

In Clinks' survey many organisations have expressed willingness to engage in commissioning processes for new services, which provide important opportunities for organisations to secure delivery of services in the future and for many will have been factored into their business development plans for some time.

Most notably qualification for the Dynamic Framework (the procurement framework for rehabilitation and resettlement services under the future probation system) has now launched. An RR3 special interest group was convened to provide advice on this in the context of Covid-19. The group highlighted that, whilst voluntary organisations are more likely to be able to engage in a light-touch qualification process to be on the framework, this is an incredibly challenging time for organisations to engage in complex and intensive competitions for contracts to deliver services.²⁶

Many organisations are at reduced capacity because they have deployed resources to maintain service delivery or have furloughed business support staff. This will disproportionately impact the engagement of smaller organisations struggling with resource and financial pressures and must be taken into account by statutory providers when considering the timing of and process for commissioning during the pandemic.

Capacity has also been affected by the shortage of people being able to volunteer at this time. Clinks members at the regional forums have identified this as a significant issue. In some organisations, staff have filled voluntary roles, but some organisations are heavily dependent on volunteers delivering the bulk of their work and if this situation continues, the sustainability of these services will come under threat.

Recommendation 12

In recognition of the current context and to enable maximum engagement from voluntary organisations, we recommend that government departments launching any commissioning processes during this time take the following steps:

- a. Launch a qualification process which is simple with clear and accessible guidance**
- b. Engage with voluntary organisations to establish what market ready means in the current context and competitions to be postponed until the voluntary sector is ready**
- c. Allow an absolute minimum of four weeks for organisations to respond to any competition, and longer where competitions are complex and require partnership or consortia formation.**

This provides an opportunity to better utilise grants in the future probation model, reducing the bureaucracy and complexity of the commissioning process and ensuring a more light touch approach that would enable greater involvement of the voluntary sector, especially for smaller organisations, as they recover from this crisis.

Recommendation 13

Sustainable grant funding is essential in order to support engagement of the voluntary sector in commissioning for the future probation system and to enable it to play a full role in the delivery of services in the aftermath of the pandemic. In order to ensure that grant agreements are light touch, they should be checked by charity law experts to ensure they do not constitute a contract and made in line with the principles set out by the Grants for Good campaign. Budget should be set aside for local leaders and middle managers to administer discretionary grants flexibly, as an alternative route to funding to provide capacity building for small organisations for whom pre-qualification may provide a barrier.

There are also future opportunities for local commissioners to work with the voluntary sector as a strategic partner, rather than just a supplier. The voluntary sector has a role to play in supporting Regional Probation Directors in particular, to identify and understand local need, gaps in provision and to advocate behalf of their service users.

Recommendation 14

HMPPS should work closely with Regional Probation Directors to encourage them to engage with voluntary organisations as strategic partners in the design and delivery of services, rather than solely as suppliers.

Accessing financial support from the government

In response to the crisis, the treasury made available £70m in financial support to the voluntary sector, though none of this was specifically targeted at criminal justice organisations. The decision by the Department for Digital, Culture, Media and Sport not to approve MoJ's bid for funding for criminal justice charities was particularly disappointing. A portion of this funding has been made available to the wider sector through the National Lottery Community Fund grant programme. However, this is likely to be competitive and it is unclear how much funding will be awarded to charities working in the criminal justice system.

In this context, the £300,000 grant programme set up by HMPPS and managed by Clinks, was a welcome intervention. Grants awarded to small organisations through this programme will offer a vital source of income for many organisations. As widely acknowledged, this is a limited pool of funding, with eligibility criteria that excludes many. In the first four weeks, over 100 applications were made to the programme demonstrating the level of demand for short term emergency funding.

In addition to specific voluntary sector support, many voluntary organisations are eligible for other government support, such as the job retention scheme (the furlough scheme), loans and business rate exemptions. Responses to Clinks survey showed that many organisations have used the job retention scheme to some extent. 60% reported having furloughed staff, though 37% of these had furloughed less than half of their staff. Organisations that have furloughed staff may have furloughed:

- Prison based staff
- Business development staff due to commissioning processes being paused and barriers to fundraising
- Staff working in income generation arms of organisations but retaining staff on the delivery side.

The support offered has however not always been suitable or accessible for many organisations. 40% of organisations said they had not furloughed any of their staff at all. In response to whether they planned to use the government job retention scheme going forward, 38% said they were not sure and 38% said they would not be doing so. Additionally, only 9% of organisations said they had used other forms of financial support available from the government.

Reasons for not applying for support

Suitability

One of the reasons support measures put in place by the government were not taken up by voluntary organisations in the criminal justice system is suitability. Support in the main has been designed at bridging business interruption and has not been suitable for many criminal justice organisations that have faced high demand for their services in this time. Anecdotally, Clinks have heard substance misuse, accommodation and resettlement services in particular have continued to respond to high demand throughout the crisis and have retained their staff in most cases, and in some cases redeployed office staff to the front line to respond to such pressures.

It is important to note that charities and social enterprises in these positions have continued to operate while their income has been disrupted and their costs increased. Many organisations have faced a loss of income as trading arms cease to operate, the impact of which is compounded by additional costs of PPE and technology as they adjust their services. The years of underfunded contracts and low reserves mean voluntary organisations are not in a strong financial position to mitigate the impacts of this.

Barriers and eligibility

Some criminal justice organisations have needed government support but have faced barriers in accessing it:

- According to our survey, the largest barrier to organisations accessing support was failing to meet the eligibility criteria. This is due largely to organisations being unable to furlough staff whose posts are funded by statutory funding. This is particularly an issue for organisations working in the criminal justice system, who are far more reliant on statutory funding than the wider voluntary sector.
- Alongside this, Clinks have been informed by organisations that guidance around eligibility was broad and led to possible confusion, especially for those with mixed income streams, preventing some from accessing support they were entitled to.
- The lack of flexibility in the initial furlough scheme has also been cited by organisations as a barrier to accessing support. Many voluntary organisations were able to adapt to deliver a pared-down or remote service, but the furlough scheme didn't allow them similar flexibility. 61% of respondents to our survey said their service provision during lockdown had decreased, but 54% said they were able to continue to deliver some of their services remotely. Under the initial scheme, staff could not be part-furloughed, making it difficult for some organisations to adapt their services. It was welcome to see greater flexibility introduced by the government when it revised the scheme, but some further engagement may be needed to ensure smaller delivery organisations understand the changes and how they can benefit them.
- Business interruption loans were previously only open to charities if over half their income came from trading rather than grants, investments, fundraising or other sources. This will have excluded much of the criminal justice voluntary sector, which has a higher proportion of small organisations that are reliant on grants. It is welcome that the criteria for charities have since been changed. However, the previous restrictions, because they were designed with business in mind, may have prevented some voluntary organisations from accessing support when it was time-critical and they were in urgent need.

- There are also concerns amongst smaller organisations with few reserves and insecure income streams about their ability to commit to loan repayments.

Information and relationships

As well as practical barriers preventing organisations from applying for government support, organisations have told Clinks how a lack of clear information and engagement with certain parts of the voluntary sector, and the legacy of poor experiences of accessing government support, has prevented often small and specialist organisations accessing support.

- Clinks' survey results found that most organisations have not been fully confident in their understanding of what financial support is available from the government.
- Separate to the surveys, people leading BAME specialist organisations have reported that there is a lack of understanding amongst BAME organisations about how government support applies to charities working in the criminal justice system. They have expressed some frustration that there was little specific engagement from MoJ/ HMPPS to share such information.

Recommendation 15

MoJ and HMPPS should regularly ensure that they are engaging with BAME voluntary sector organisations to ensure consistent, timely information about changes that will impact their delivery and to ensure organisations understand the available support and how it applies to them.

- Experience of previous grants programmes and commissioning processes from central government have left small organisations feeling that funding from central government is not designed for them.
- Organisations responding Clinks surveys express uncertainty over contingency plans and when to apply for support because of not knowing plans for easing lockdown and remobilisation, particularly in prisons. Organisations with staff on the RR3 SIG are having challenging conversations with prisons, where governors have been pushing hard for voluntary organisations to return their staff and services to prison, without having first consulted with providers on the measures they are taking to ensure the safety of voluntary sector staff.
- The welcome publication of the national framework for prisons and the probation roadmap to recovery has helped address this to some extent, but there are still questions about the join-up between these documents and existing policies. RR3 SIG members were also pleased to have sight and provided feedback on some exceptional delivery models (EDMs) that will operationalise this framework. These need to be made public so all those operating in prisons and with probation services can see the recovery plans in detail.

Recommendation 16

HMPPS and individual prison governors must regularly engage with the voluntary sector on the progress in moving prisons through the stages of lockdown and clearly communicate the expectations on voluntary sector providers before a prison moves into a new stage. Similarly the National Probation Service (NPS) and Community Rehabilitation Companies (CRCs) should engage with the voluntary sector to ensure they provide timely and consistent updates on the recovery of probation services and corresponding expectations for voluntary sector providers. All exceptional delivery models (EDMs) should be published to provide transparency about planning.

The long-term impact of a short-term response

There is concern growing amongst organisations that emergency responses to the crisis in the short-term will impact the long-term sustainability of their organisations.

- Larger organisations have deprioritised business development and furloughed business development staff, which will impact their income generation over the coming months. Paused and delayed commissioning processes for services add to the anxiety of future income.
- For organisations that have furloughed their staff, there are concerns about remobilising. Organisations need information on changes to the scheme and flexibility in grants and contracts around this to plan phased returns to work. There are significant concerns that lockdown could restrict some activities, especially for those delivering in prison, longer than the support will last.

Recommendation 17

Clear guidance and information should be provided as early as possible on the changes made to the coronavirus job retention scheme, including any future changes, to enable organisations to understand how it will apply to them, to both plan services and phased returns to work. Information on ending the coronavirus job retention scheme must be provided at the earliest opportunity and enable a phased ending to support organisations to have contingency plans in place. This is particularly important for organisations working in prisons if the slower easing of lockdown continues to impact their ability to deliver full services.

- There is growing concern about potential future cuts in public expenditure to cover the costs of the Covid-19 response. As previously highlighted, the voluntary sector working in the criminal justice system relies on government funding, which was already in decline and most trusts have been reluctant to fund what they perceive to be public services that should receive statutory funding. This is leading to concern that smaller budgets will leave types of voluntary sector services, for example arts and cultural activities, deemed to be non-essential and deprioritised.
- State of the sector research highlights that voluntary organisations provide a diverse range of services to some of the most vulnerable in society to achieve a range of outcomes that apply across government. With a likely increased demand for social support of all kinds and with budgets likely to become even more constrained, joined up commissioning and a wide recognition beyond HMPPS and MoJ of the value of the criminal justice voluntary sector will be more important than ever.

Recommendation 18

The government must ensure that recovery planning for the criminal justice system involves a properly resourced cross-departmental approach, to ensure service users' needs are met in a holistic way. MoJ and HMPPS must work closely with the Department of Work and Pensions, Ministry of Housing, Communities and Local Government, the Department of Health and Social Care, the Department for Education and HM Treasury in order to ensure a joined-up response that meets the needs of some of the most marginalised people in society.

Recommendation 19

MoJ/HMPPS should identify and build upon good practice that has been established by local services during Covid-19 to ensure joined up responses for service users, particularly people facing multiple disadvantage. This should include engagement with Regional Probation Directors to ensure they facilitate join-up between local statutory and voluntary services, including through joint commissioning, to ensure that people in contact with the criminal justice system do not fall through the gaps in services at a time of greater demand.

Conclusion: Planning for the longer-term impact of the crisis

The historic funding model for the voluntary sector working in the criminal justice system has undermined the ability of many organisations to weather this crisis and provide much needed, effective support. In many cases, organisations already with low reserves and insecure futures have been hit with a reduction in income and increase in expenditure. Short term emergency funding and support has, to some extent, helped to pull organisations through the crisis. However, these emergency measures have not been accompanied by longer-term commitments, helping organisations to defer difficult decisions about viability, but not avoid them.

This is especially worrying as there is likely to be high degree of need in the coming year amongst people in contact with the criminal justice system, particularly from the impact of prolonged lockdown on the wellbeing of those in prison and the suspension of many activities, which is likely to continue in some form for many months. The recovery of voluntary sector services in prisons is desperately needed for people in prison, but it also goes hand in hand with the sustainability of the voluntary sector. Some organisations will only be sustainable when they are back delivering to people in prison and drawing down on their normal sources of charitable and statutory funding. The RR3 have written in greater detail about the path for recovery of services in our recent paper, *What does recovery look like?*

Members of the RR3 SIG with front line insight have detailed in an additional evidence paper, the financial, practical, emotional and health challenges people have been experiencing on release during this crisis and the lack of support they have received to address these challenges. This is all in the context of Clinks' state of the sector research showing that for the third year in a row, service user need was already becoming more complex and more urgent.

As wider society and the criminal justice system recover from the pandemic, there are concerns about the government tightening austerity measures to repay exceptional levels of borrowing during this crisis. This is likely to lead to further cuts to statutory services and less funding available for the voluntary sector, which was already facing a challenging funding environment. In this context, there is concern that support for people in the criminal justice system, at a time it is most needed, will be deprioritised and lack funding. Many voluntary sector organisations face the real prospect of going out of business without a prolonged period of dedicated financial support.

End notes

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Clinks supports, represents and advocates for the voluntary sector in criminal justice, enabling it to provide the best possible opportunities for individuals and their families.

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