

October 2020



CLINKS
RESPONSE

The Justice Committee inquiry on the future of the probation service

About Clinks

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

We are a membership organisation with over 500 members, including the voluntary sector's largest providers as well as its smallest. Our wider national network reaches 4,000 voluntary sector contacts. Overall, through our weekly e-bulletin Light Lunch and our social media activity, we have a network of over 13,000 contacts. These include individuals and agencies with an interest in the CJS and the role of the voluntary sector in rehabilitation and resettlement. Clinks manages the National Criminal Justice Arts Alliance (NCJAA), a national network of over 800 artists, arts organisations and criminal justice practitioners using creative approaches to reduce reoffending. We also support a network of women's centres and specialist women's services working in the CJS.

Clinks also chairs and coordinates the Reducing Reoffending Third Sector Advisory Group (RR3), a formal voluntary sector advisory group to the Ministry of Justice (MoJ) and HM Prison and Probation Service (HMPPS), consisting of 17 senior voluntary sector leaders. This RR3 has set up a special interest group (SIG) on probation, to provide a formal avenue to channel voluntary sector advice to HMPPS, ahead of the planned implementation of the new probation model.

About this response

We welcome the opportunity to respond to this inquiry and particularly welcome the committee's clear interest in the experiences and views of the voluntary sector. This response brings together a rich body of existing evidence, including our extensive work over the past few years to both monitor the impact of Transforming Rehabilitation and to influence the new model of probation.

Following publication of our TrackTR research we were invited by the MoJ to sign a non-disclosure agreement ahead of the launch of the consultation on the future of probation so that we were best placed to advise on engagement with the voluntary

sector during the consultation period. We have since been able to work closely with the HMPPS probation review team to provide advice and guidance as the model has been developed. We very much welcome this engagement by the probation review team and recognise it as part of their commitment to ensuring a role for the voluntary sector in the future model.

Since the launch of the consultation on the future of probation we have held consultation events, meetings and roundtables with the voluntary sector all of which inform the recommendations made in this submission. Recent engagement with hundreds of separate organisations across many events, includes:

- A series of events to support voluntary organisations to understand the dynamic framework and build partnerships. In total, since 24 June 2020, we have held 14 probation support events, which over 300 organisations booked onto.
- Meetings of the RR3 special interest group on probation convened in April and August 2020 to discuss issues around the dynamic framework.¹ The meetings were attended by 23 senior leaders from the voluntary sector and several civil servants from MoJ and HMPPS.
- A meeting of the RR3 special interest group on Covid-19 convened in July 2020 to discuss issues faced by voluntary organisations currently in Community Rehabilitation Company (CRC) supply chains.² The meeting was attended by 12 senior leaders from the voluntary sector, representing organisations who collectively hold current contracts with at least 16 of the 21 CRCs.³
- Quarterly meetings of the RR3 leadership group convened in March and June 2020 with a focus on probation reform, both of which were attended by Lucy Frazer QC MP, Minister of State, Ministry of Justice and 20 senior voluntary sector leaders.^{4,5}
- Information from voluntary sector members collected through our broader engagement work, including a series of surveys of the sector during Covid-19,⁶ and 23 regional meetings booked onto by 150 separate organisations since April 2020.

Summary of recommendations

1. Regional Probation Directors must ensure engagement with service users and voluntary organisations in both the transition planning and the annual business cycle planning. This should include both giving organisations and service users representation on strategic boards and wider consultation to ensure representative views of service users and voluntary organisations are gathered.
2. The Justice Committee should seek clarification on how joined up working between the NPS and other statutory services with responsibility to provide services to people under probation supervision will ensure a role for the voluntary sector in this provision.
3. There should be budget set aside within the new model of unpaid work and accredited programmes to enable the NPS to commission voluntary sector services to support delivery where their expertise would be valuable.
4. The Justice Committee should seek further detail on the development of plans for the Regional Outcomes and Innovation Fund, its scope and the resource that will be available to Regional Probation Directors through it.
5. The Target Operating Model should be updated to provide further detail on how the future probation service it will tackle race inequality in the criminal justice system and this should be done in consultation with BAME-led organisations and service users.

6. Clarity is needed around what investment will be made to support the Female Offender Strategy under the probation review programme, what elements of the strategy this investment will specifically support and where the remaining investment for the full delivery of the strategy will come from.
7. The MoJ should set specified targets to increase the provision of full written pre-sentence reports, especially for those at risk of short-term imprisonment, BAME people, people facing multiple disadvantage and women.
8. We encourage the Justice Committee to seek clarification from MoJ and HMPPS about the status of the roll-out of the OMiC model and the readiness of the OMiC model to play an integral role in resettlement planning from June 2021.
9. For future commissioning, the MoJ should be able to work with the Cabinet Office and consult with potential bidders, to identify commissioning systems that fit their requirements and the needs of organisations with the expertise to bid to deliver services.
10. Grants should be the default funding option for voluntary sector organisations, and guidance should be developed on what circumstances a commissioner would choose a contract over a grant.
11. Budgets should be set aside from the dynamic framework for each Regional Probation Director and their team to administer a light-touch grants programme, awarding grants under £10,000 to cover core costs of small and specialist organisations in their area addressing local need.
12. HMPPS should engage with BAME-led organisations and BAME service users in the development of call-off specification and encourage Regional Probation Directors, especially those in areas with diverse populations, to commission these services at the earliest point possible.
13. The risk-based approach to external communications by MoJ and HMPPS must be revised, in order to ensure vital operational information is shared as widely and as quickly as possible. All operational guidance should be published publicly by default, in a way that is easily accessible for voluntary organisations, service users and their families, and members of the public.
14. The MoJ and HMPPS should better hold CRCs to account on information flow through their supply chains and to the market stewardship principles in their contracts. MoJ and HMPPS should set out clearly how prime contract holders will be held to account on information flow to their supply chains under the future model.

Response

Question 3: What are your views on the new model of probation? What do you like about the new model? What do you dislike?

Clinks welcomed the decision by the MoJ in 2018 to end CRC contracts early and to consult on a new model of probation.⁷ Clinks has detailed at length how Transforming Rehabilitation has left the voluntary sector in criminal justice under represented, under pressure and under resourced.⁸ We have been extremely pleased to see The Justice Committee acknowledge many of these issues in previous inquiries.⁹

We believe that the decision made last year to reunify probation under a much simpler and clearer structure led by the National Probation Service (NPS), provides an opportunity to build a more stable probation system with much greater involvement from the voluntary sector.

The role of the voluntary sector

We welcome the acknowledgment by the government of the challenges that Transforming Rehabilitation has presented to the voluntary sector and the particular commitments that have been made in relation to ensuring a role for the voluntary sector to work alongside the National Probation Service.¹⁰

We are pleased to understand that the investment in working with partners to provide rehabilitative services will be significantly greater than it is currently by the time we reach years three and four of the future model (£120 million in 2023/24). However, we are concerned that in the first year of the new model this resource may in fact be slightly less than current levels (£37 million in for the first 9 months, equivalent to around £50 million for a full year). This risks that the policy intention to involve the voluntary sector may not be fulfilled and that the sector loses skills and expertise, due to having to make redundancies only to have to ramp up the work force again in future years.

In addition, as outlined in response to question eight we have some significant concerns regarding the commissioning model being used to ensure involvement of the voluntary sector and the extent to which it can fulfil this policy commitment.

A unified probation service

Under the current system, voluntary sector organisations have experienced significant challenges relating to the interface between CRCs, the NPS and themselves as well as other services. Bringing all probation provision back under the responsibility of the NPS will be a major step towards improving the fragmentation that exists in the current probation system.

The geographical footprint of the newly formed probation regions, under the leadership of Regional Probation Directors, and of the smaller probation delivery units within them also provides opportunities for improved join up between probation services and other local services and for co-commissioning. This provides the potential for much greater partnership working with the voluntary sector as both a strategic and delivery partner.

We support plans for an ongoing business planning cycle that each year assesses service user need and service provision, and culminates in an annual published plan to help steer commissioning and decision-making by regional NPS leadership. Through these structures, Regional Probation Directors have an opportunity to show strategic leadership in their region and to coordinate multi-agency working between probation services and local agencies such as local authorities, Police and Crime Commissioners, Violence Reduction Units, public health bodies, CCGs, Job Centres and voluntary sector services.

The new structure of regional teams and published annual plans has the potential to create a much more transparent and accountable public service. As part of the business cycle, regional NPS leadership will be expected to co-design and review services with stakeholders, and this will be essential in supporting probation to be more responsive to changing local needs. Both voluntary organisations and service users must be involved in these processes if they are to be effective, and involved in the interim in transition planning.

Recommendation 1

Regional Probation Directors must ensure engagement with service users and voluntary organisations in both the transition planning and the annual business cycle planning. This should include both giving organisations and service users representation on strategic boards and wider consultation to ensure representative views of service users and voluntary organisations are gathered.

Working with partners to deliver effective rehabilitation

We very much welcome the acknowledgement of the need for Probation Practitioners to access specialist services that address specific criminogenic needs or the needs of particular cohorts and of the knowledge and expertise within the voluntary sector to design and deliver these services.

We broadly support the need areas and broad outcomes identified for rehabilitative services. We recognise that where there are gaps, for instance with regards to physical and mental health, this is in recognition of the responsibility and role other statutory services hold and that interventions, such as Mental Health Treatment Requirements, will also be supported by Probation Practitioners. However we are concerned that this might lead to the exclusion of voluntary sector organisations, and their specific knowledge and expertise, working in this area in either delivery opportunities or strategic discussions, due to a lack of clarity as to who would be responsible for engaging and commissioning them.

Recommendation 2

The Justice Committee should seek clarification on how joined up working between the National Probation Service and other statutory services with responsibility to provide services to people under probation supervision will ensure a role for the voluntary sector in this provision.

Unpaid work and accredited programmes

We largely welcome the decision announced in June 2020 that accredited programmes and unpaid work will be delivered by the NPS under the new model. The majority of voluntary sector organisations were excluded from competing for the Probation Delivery Partner contracts to deliver accredited programmes and unpaid work as the contract sizes were too large. Delivery by the NPS will help to further simplify the system and reduce the resource and capacity MoJ and HMPPS must commit to contract management and monitoring.

Nonetheless, there is skill and expertise within the voluntary sector in delivering structured programmes and a small number of larger voluntary organisations did commit time and resource to participate in the Probation Delivery Partner competition and it is regrettable that this has been wasted. It is now unclear to what extent the NPS will have resource to bring in additional expertise to support in-house provision of accredited programmes and unpaid work. The voluntary sector could play an important role in supporting the delivery of these services, and we encourage MoJ and HMPPS to set out how this may be achieved, whether through the dynamic framework or an alternative commissioning processes.

The loss of Probation Delivery Partner contracts is also likely to increase interest amongst large private organisations in the opportunities of winning contracts under the dynamic framework, where their economies of scale and considerable business development capacity puts them at a competitive advantage over many voluntary organisations. See our response to question eight for further detail.

Recommendation 3

There should be budget set aside within the new model of unpaid work and accredited programmes to enable the NPS to commission voluntary sector services to support delivery where their expertise would be valuable.

Regional Outcomes and Innovation Fund

We also very much support the plans for a Regional Outcomes and Innovation Fund which will focus on interventions that improve outcomes, address complex needs, support early intervention and diversion and support long term desistance – all important areas of focus to support wider system outcomes. This funding is additionally welcome as the voluntary sector has developed a significant amount of knowledge and expertise in these areas but support and resource for this has tended to be through voluntary funders such as trusts and foundations rather than government.

Details of this fund and the criteria for it have however been limited. It is disappointing that the latest iteration of the Target Operating Model does not provide more clarity on the scope of the Regional Outcomes and Innovation Fund or resource available for it.

Recommendation 4

The Justice Committee should seek further detail on the development of plans for the Regional Outcomes and Innovation Fund, its scope and the resource that will be available to Regional Probation Directors through it.

Equalities

It is welcome that there will be a dedicated equalities manager post in each NPS area. We hope that the equalities manager post will be of sufficient seniority to provide strategic leadership to ensure the probation service delivers on its other welcome commitments to rigorous data collection and the principle of explain or reform, recommended by the Lammy Review as well as its Public Sector Equality Duty in order to make meaningful improvements to disparities in the criminal justice system.

Addressing race inequality

The Regional Probation Directors for each NPS division have overarching responsibility for the relevant recommendations of the Lammy Review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic (BAME)¹¹ individuals in the criminal justice system. The Lammy Review recommendations however were written in the context of the current probation model and are therefore not fully applicable to the new model. We hope the plans for the new model will be updated to require probation to take responsibility for implementing the spirit of the Lammy review and not limit its work on addressing racial disparity to those specific recommendations.

Recommendation 5

The Target Operating Model should be updated to provide further detail on how the future probation service it will tackle race inequality in the CJS and this should be done in consultation with BAME led organisations and service users.

Additional concerns around how race inequality will be addressed through the commissioning process are set out in response to question four and question eight.

Meeting the specific needs of women in the CJS

The Regional Probation Director will also have responsibility for the delivery of the Female Offender Strategy in their area. Initially £5 million funding was made available for the implementation of the strategy which fell far too short of the amount needed. Since then, MoJ have made a further £2.5m funding available to women's organisations to support core costs. Grant funding for core costs is an extremely positive development which has the potential to support the long term sustainability of the specialist women's sector. However the timeframe for applications and for when the money must be spent, alongside a requirement to demonstrate how organisations meet Regional Probation Director area priorities which creates a clear tension with the supposed purpose of funding core costs, have been barriers to women's organisations applying for these funds.

Recommendation 6

Clarity is needed around what investment will be made to support the Female Offender Strategy under the probation review programme, what elements of the strategy this investment will specifically support and where the remaining investment for the full delivery of the strategy will come from.

Additional concerns around how the specific needs of women will be met under the new probation model are set out in response to question four and question eight.

Other protected characteristics

There are a number of groups with protected characteristics who represent vulnerable cohorts within the CJS who are not specifically referenced in the Target Operating Model.

Older people in prison represent the fastest growing group in the CJS and will require a significantly different approach to resettlement. Clinks' report, *Flexibility is Vital*,¹² highlights the specific needs of older people in the CJS which continue to go under acknowledged and unmet. It also points to a number of examples of good practice in this area involving the voluntary sector that could support the development of an improved approach for older people on licence in the new probation model. Omitting consideration of how to best meet this group's needs, risks the model being inappropriate for one of the largest and most vulnerable cohorts of service users in the future.

Question 4: Does the new model address the issue of confidence in community sentence options?

Pre-sentence reports

Throughout the development of the probation model, a key concern of the voluntary sector has been the need to improve the provision of pre-sentence reports, to address a worrying decline in their quality and frequency of completion.¹³ This is hugely important to ensure sentencers are better informed of an individual's circumstances and to improve sentencer confidence that effective community options, often provided by the voluntary sector, are available that better allow people to address the underlying causes that have led them into contact with the criminal justice system. This can be particularly important for certain cohorts of people, such as people facing multiple disadvantage, who may have committed an offence in the context of substance misuse, poor mental health or homelessness.

Women in the criminal justice system have often faced more severe and complex challenges in their lives than men, including experiences of abuse and trauma, which can be particularly complex to address and disclose if women have dependents or are in an abusive relationship. Pre-sentence reports that better take into account the difficulties in women's lives and the challenges around disclosure can help inform more empathetic decisions on sentencing and help the MoJ meet its commitments on improving pre-sentence reports under the Female Offender Strategy.¹⁴

Pre-sentence reports could also play an important role in addressing the disparity in sentencing outcomes of BAME people, a well-evidenced¹⁵ symptom of structural racism in the criminal justice system. Clinks members have consistently raised concerns with us that young BAME people in particular are not considered for community sentences that would divert them from custody, because of sentencers' perceptions that young BAME people present a higher level of risk than their non BAME peers.¹⁶ As highlighted by the Lammy Review, pre-sentence reports have a role to play in addressing this, by supporting magistrates and judges to better understand the lives of individuals with very different social and ethnic backgrounds to their own.¹⁷

It is therefore welcome that the March 2020 Target Operating Model included a commitment for additional resource for pre-sentence reports, particularly for women and for individuals from black, Asian and minority ethnic (BAME) communities. However, we are concerned that the Target Operating Model does not reconfirm the aim stated in the previously published Draft Operating Blueprint, specifically to reduce the percentage of pre-sentence reports given orally so that fuller reports could be provided.¹⁸ We recognise the clear challenges presented as a result of the competing aims to improve the provision of fuller pre-sentence reports whilst simultaneously trying to reduce delays within the justice system and speed up court processes, issues that have only be exacerbated by the backlog created by Covid-19. We hope that more progress can be made between HMPPS and HM Courts and Tribunals Service (HMCTS) to achieve stronger commitments on this issue, while ensuring that full information is provided to courts on the individual circumstances of each person facing sentencing.

Recommendation 7

MoJ should set specified targets to increase the provision of full written pre-sentence reports, especially for those at risk of short-term imprisonment, BAME people, people facing multiple disadvantage and women.

The Target Operating Model also states intentions to develop a 'digital service catalogue' that can be accessed by probation practitioners providing advice to courts as well as those in the community. The aim of the catalogue is to provide current information on the services available, including through the dynamic framework and co-commissioned services or 'universal services' that can be freely accessed in the community. This is to better inform the advice that probation practitioners are able to provide the courts about which community interventions are available. We welcome this attempt to make more visible the range of community options available as an alternative to custody.

Question 5: The new model aims to strengthen integration between prisons and probation by integrating through-the-gate roles, processes and products with sentence management. What is your view on this? Do you anticipate any gaps/challenges?

The emphasis in the new probation system on improving the consistency of support that people receive is welcome, and having a single, clearly defined and accountable probation officer for each individual has the potential to reduce the number of 'hand-offs' during a person's journey. Important commitments in the Target Operating Model are also made to offer enhanced pre-release planning and post-release support to people leaving prison. We also welcome the commitment to establish short sentence teams in each NPS area that will focus on managing and mitigating the disruption caused while someone is in prison for a short period of time. This includes where possible sustaining services, employment and/or welfare and housing, and shortening the gap between when a person is released and the necessary community services for them are in place.

There are real questions however as to whether probation officers will have the capacity and expertise to reach-in and provide intensive resettlement support to every person in prison before release, considering the majority of staff already say their caseloads are too high.¹⁹ There are also outstanding concerns as to how this will work in practice. It may be impractical for probation staff to 'reach-in' to someone in prison who may be a considerable distance from their resettlement destination. This will be particularly challenging when supporting women, who are held on average 64 miles from home, though for many the distances are far greater. In HMP Eastwood Park, where women from South Wales are commonly sent, 20% of women are over 150 miles from home.²⁰

One of the few areas where we have received positive feedback under Transforming Rehabilitation has been with regards to the Enhanced Through the Gate model and the benefit of having CRC staff and providers responsible for this provision based together in prisons. There is a concern however that the new 'reach-in' model will damage the improved coordination between prisons, probation services and voluntary sector providers and lead to greater fragmentation.

The Offender Management in Custody (OMiC) model will have a central role in resettlement planning from June 2021 but the extent to which this model has been fully implemented and embedded across the prison estate is unclear. As we understand it, the roll out had not been fully completed prior to the Covid-19 pandemic and lockdown has resulted in further challenges to its implementation. We have been told by voluntary organisations currently providing through the gate services that neither they nor many governors fully understand the resettlement proposals and how they will work in practice.

Recommendation 8

We encourage the Justice Committee to seek clarification from MoJ and HMPPS about the status of the roll-out of the OMiC model and the readiness of the OMiC model to play an integral role in resettlement planning from June 2021.

Question 8: Does the new model offer a level playing field for small and specialist voluntary and third sector organisations in regard to the commissioning? Given the challenges in the previous model, how will a new national service secure input from smaller providers? What impact has Covid-19 had on this, if any?

The impact of Covid-19 on capacity to engage with commissioning

In April 2020, Clinks convened a meeting of the RR3 probation SIG to provide advice to the MoJ and HMPPS on the capacity of voluntary organisations to engage in the commissioning process for probation services in the context of Covid-19.²¹ The group highlighted that this is an incredibly challenging time for organisations to engage in complex and intensive competitions for contracts. Some attendees described being at reduced capacity because they have deployed resources to maintain service delivery or have furloughed business support staff. Organisations of all sizes were affected, but it was felt smaller organisations were particularly struggling with the resource and capacity needed to compete. These concerns have been repeatedly raised through Clinks' surveys and engagement with hundreds of organisations through regional network events.

Many voluntary organisations are also heavily dependent on volunteers delivering the bulk of their services, but in our survey conducted in July 2020, 48% of respondents said that the number of volunteers that support their organisation has decreased during the Covid-19 pandemic, impacting their ability to provide services.²² Where possible, staff have been forced to plug gaps, creating reduced capacity in head office and business development functions.

The MoJ and HMPPS made assurances to the RR3 probation SIG that the qualification process for the dynamic framework would be as simple as possible and that they would engage with the voluntary sector to ensure that the market was ready before beginning call-off for any services. Unfortunately, these assurances have not been met to the extent we would have hoped. Organisations are struggling to engage with equivocal information in a complex qualification process and call-off has begun without a clear assessment of the readiness of voluntary organisations to engage. This creates serious concerns as to the role of the voluntary sector, specifically small and specialist, in the future probation model.

Covid-19 has also impacted on the capacity of the MoJ and HMPPS, with both a heightened workload to respond to the crisis and officials with operational experience being pulled from central functions into front-line work. This has, in part, led to a reduced number of call-offs for day one services, meaning finance benefit and debt and addiction and dependency services will not be commissioned, as originally planned, to be in place for day one of the new model. In addition a tighter timeline for the commissioning of the remaining day one services has contributed to the challenges the voluntary sector faces.

The complexity of the dynamic framework

Despite assurances that the qualification process for the dynamic framework would be light touch, organisations have reported to us that the system is too complex. A significant issue highlighted by voluntary organisations, is that the process and the MoJ e-sourcing portal itself is extremely difficult to navigate. It is designed with commercial commissioning in mind and uses commercial language and terms that are not familiar to the voluntary sector. The use of such commissioning processes and portals has become a cross governmental feature that has significant implications for the wider voluntary sector but specifically the voluntary sector working in criminal justice which is disproportionately made up of smaller organisations less equipped to engage in such processes.

Recommendation 9

For future commissioning, the MoJ should be able to work with the Cabinet Office and consult with potential bidders, to identify commissioning systems that fit their requirements and the needs of organisations with the expertise to bid to deliver services.

There is still much that can be done by the MoJ and HMPPS to improve user experience of the portal. For example, some of the language used in the documents is unfamiliar and vague. Some clarification documents are hard to find and don't provide sufficient clarity. Documents are also being updated, creating confusion for people dealing with changing information. It is welcome that when we have fed this back to the MoJ and HMPPS, they have committed to reviewing the naming of documents, the language used, and ensure that clarification questions provide a useful answer. They have also suggested that they might be able to pause qualification following the current call-offs, to check and refresh all the documents so they are as clear as possible for all organisations looking to qualify for services post day one.

It's important to note that it is not just small organisations that have reported concerns about the complexity of this process to us, though they are likely to be the worst hit. Even large providers, with significant existing footprints and experienced business development teams, have reported that the system is too complex. The structure of the call-offs is also daunting, with multiple competitions running simultaneously and the stretched resources of those wishing to bid for multiple contracts.

Some larger voluntary sector providers who are keen to involve small and specialist partners in service models, have also reported that the onerous nature of the dynamic framework has meant many small organisations are not in a position to collaborate and explore sub-contracting opportunities as material sub-contractors, weakening the bids of large providers and further creating barriers for small and specialist organisations to deliver services under the new model. Others have fed back that small organisations are so daunted by the dynamic framework they are resigning themselves to only playing a small part in supply chains so that they don't need to register independently.

There are a number of requirements that are particularly onerous and seem disproportionate for small organisations including IT requirements and credit reports. The IT requirements are understandably a requirement in order to protect the personal data of service users, but some small organisations have expressed concerns that the IT accreditation process will be too lengthy and costly for them, bringing into question the viability of their participation in the probation system. Clinks are working with the MoJ to explore what support might be provided to organisations in this respect in order to create a level playing field. We have made less progress in raising concerns regarding the use of credit reports, designed for commercial organisation to show the financial health of voluntary sector organisations for which they are not necessarily appropriate. Such reports are an additional cost for small organisations have no choice but to incur at bidding stage.

There is a real risk that given the complexity of the commissioning model, many organisations simply won't participate. According to the MoJ, as of 26 August, 150 organisations have completed Selection Questionnaires and a further 120 organisations have registered their interest on the dynamic framework portal. Of the 150 who have completed Selection Questionnaires, at least 60% of these are voluntary organisations. While on the face of it these numbers seem healthy, they represent a very small proportion of the voluntary

sector working in criminal justice. Clinks estimates there are over 1,700 voluntary organisations working in the criminal justice system across England and Wales and we estimate that approximately half to two thirds of these organisations work with people in the community under probation supervision and would therefore be in a potential position to offer services that fall under the dynamic framework commissioning process.²³

Contracts over grants

Clinks are supportive of the reunification of probation services and the opportunity it presents to address the issues of the current model and ensure a stable and secure role for the voluntary sector working alongside probation services. Throughout the design process of the new model, Clinks has worked closely with the probation review team and the MoJ contracts and commercial team to advise on how to best commission voluntary organisations. We also submitted a set of commissioning principles to the MoJ and HMPPS in September 2019,²⁴ which included suggestions for contract lots to cover smaller geographical areas, the widespread use of grants, and the involvement of the voluntary sector in the design and delivery of services. We have also worked closely with the Prisoners Education Trust, as part of the Prisoner Learning Alliance, to feedback to the MoJ on the learning from the prison education DPS and ensure this is utilised in the design of the commissioning model for future probation services.²⁵

Underlying all our advice has been the desire to see the barriers to engaging with commissioning structures for small voluntary sector organisations acknowledged and processes put in place to mitigate these barriers and create a level playing field. We have highlighted that many small specialist voluntary organisations are unfamiliar with commercial processes and language, given that their expertise and resource is focused on service delivery. They therefore require simpler processes, more proportionate to the resource they have available in order to engage with commissioning processes, with sufficient timescales to ensure that they are able to participate in competitions and mobilise and deliver services.

Ultimately, bidding for and managing contracts will always be complex, and not suitable for many organisations and services. Clinks have therefore strongly advocated for a greater use of grants across the whole commissioning process of the future probation model. The voluntary sector working in criminal justice is more heavily reliant on grants and the smaller the organisation, the more reliant they are on grant funding.²⁶ Grant funding however both from government and trusts and foundations has been in decline for a number of years. Covid-19 is likely to worsen this, as the economic impact of the pandemic on the value of the future endowments of trusts and foundations is estimated to lead to a 28% reduction in grants from foundations over the next 12 months.²⁷

In theory, commissioners will be able to commission services through the dynamic framework using both grants and contracts, and this is welcome. In reality however, throughout the design of the model the focus of the MoJ and HMPPS has been on contracting and there appears to be continued confusion amongst commissioners about what constitutes a grant and where the use of grant funding is more appropriate. We continue to have concerns that the model gives preference to contracts over grants presenting a significant barrier to the involvement of small and specialist organisations.

Recommendation 10

Grants should be the default funding option for voluntary sector organisations, and guidance should be developed on what circumstances a commissioner would choose a contract over a grant.

With many voluntary organisations struggling for capacity to engage in the complex dynamic framework at all, it is also important that grants are made available to organisations who may otherwise miss out. Relatively small public sector grants under £10,000, aimed at covering the core costs of vital local voluntary services, offer a low bureaucracy and cost-effective tool to reduce reoffending. Regional Probation Directors and middle managers in their teams should be empowered to administer such discretionary grants in a flexible way, to meet local need and as an alternative route to funding small organisations.

In order to do this, budget should be set aside from the dynamic framework and allocated to Regional Probation Directors specifically for use in giving grants. This could potentially be done through the Regional Outcomes and Innovation Fund. This should be informed by their annual plans and compliment the work being delivered by organisations through the dynamic framework. The rules of giving grants under £10,000 must also be clarified, and the MoJ and HMPPS should work with the Cabinet Office to provide clear guidance to Regional Probation Directors on what they are able to give and how. Separately, the MoJ and HMPPS should work with the voluntary sector to create specific guidance for Regional probation directors on grant giving, in line with the principles set out by the Grants for Good campaign.

Recommendation 11

Budgets should be set aside from the dynamic framework for each Regional Probation Director and their team to administer a light-touch grants programme, awarding grants under £10,000 to cover core costs of small and specialist organisations in their area addressing local need.

Contract values and volumes

Underfunded contracts are a common and serious issue for many in the voluntary sector. 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%).²⁸ This is also true for voluntary organisations delivering services in CRC supply chains. A third of voluntary organisations who participated in Clinks TrackTR research said they subsidised their services delivered through CRC supply chains by charitable reserves or other funding sources.²⁹ The accumulative impact of underfunded contracts over a number of years has been the reduction of voluntary sector reserves, financial instability of many voluntary organisations and a sector less able to weather the storm of Covid-19.³⁰

Disappointingly, there have been serious concerns as to whether the proposed contract values for the dynamic framework competition are sufficient for providers to develop effective delivery models. Overall the total funding streams for commissioned services will be greater than they are currently, by year 3 and 4 of the new model. However we are concerned that in the first year the total investment in service delivery, once mobilisation costs are set aside, is potentially less than it is now.

Values for some contract lots are significantly lower to those proposed in initial market warming materials in 2019, and in some cases are lower than existing contract values. Values are based on projected demand for services and the volume of people accessing those services, but voluntary organisations have reported that in some instances projected volumes are significantly lower than those they current work with. Conversely for women's services, volumes are much higher which is welcome as this should ensure more women receive a holistic and gender

specific service. This appears however to be driving down unit costs, which some voluntary organisations suggest is significantly lower than what is required to deliver a holistic service.

The RR3 special interest group on probation reform has raised this issue with the probation review team and we are currently in dialogue about it, in particular to better understand the eligibility criteria that has been used to determine volumes. However it is an important concern to highlight because incorrectly projected values and volumes threaten voluntary organisations' ability to participate in the dynamic framework competition. So many organisations are in such a financially insecure position, they can simply not afford to continue delivering contracts that are inadequately funded. It is vital that the new probation model reverses the trend of underfunded contracts, and the MoJ and HMPPS ensure that all services commissioned through the dynamic framework are fully resourced.

The decision to structure contracts under the dynamic framework on a model where volumes will be 'ramped up' over the course of the contract is concerning and could well be hugely damaging to the quality of services providers are able to deliver. Under the proposed model, contracted services from June 2021 will be delivered to a reduced number of people in the first year, before ramping up over the course of the contract to full service delivery in year three and four.³¹ Given that there will be no fewer service users from day one of the system, it is difficult to understand the logic of this structure. Additionally, some proposed volumes for year one are actually lower than service currently being delivered, but nowhere has it been evidenced that there will be a reduction in demand from June 2021.

This model will have very real consequences for voluntary organisations in relation to staffing. Given the reduced volumes for year one, fewer staff are likely to be needed across the sector than currently leading to redundancies and a loss of skill and expertise. Providers will then need to recruit new staff as services ramp up over years two, three and four of the contract.

Larger contracts and supply chain protections

Covid-19 has also limited the ability of the MoJ to run the number of competitions they had previously hoped to, and therefore forced them to reduce the number of day one services. Under previous plans, additional competitions for dependency and recovery, and finance, benefit and debt were to be run. These will now be commissioned by Regional Probation Directors in the same way as the other service categories that do not form part of day one services. This will have an impact on the ability of the new model to provide the holistic and interconnected range of interventions that people under probation supervision require. For instance, accommodation outcomes are significantly inter-related with finance, benefit and debt and reliance on non-criminal justice specialist services in this area in day one will likely impact initial outcomes in other areas.

All competitions were initially proposed to be commissioned at Police and Crime Commissioner level, which Clinks warmly welcomed. However, the contract size for accommodation and employment, training and education services have increased to the regional level. This will present challenges to ensuring that small, local and specialist organisations are appropriately involved, and wider geographical scales will further entrench some of the competitive advantages enjoyed by large private organisations.

In addition, larger contracts are likely to lead to prime contractors developing supply chains in order to deliver their work. The experience of working with primes over the course of Transforming Rehabilitation has inevitably created anxiety amongst small organisations about how they will be protected in supply chains. We are pleased

therefore to see a number of supply chain protections, which we have advocated for, published as part of the market warming materials. We hope that such protections can help larger providers build stronger and more sustainable supply chains and that supply chain organisations are fully protected and supported in the event of prime failures.

Specialist services for women

Throughout the development of the commissioning process, Clinks has advocated alongside specialist women's organisations for a specific contract lot for women's services for day one and we are pleased this is being commissioned. The complexity of the process again however has been raised by the women's sector, threatening the success of this otherwise welcome development. There has been particular concern and confusion for example over the qualification process for women's services and whether organisations need to provide case studies of their track record across all need categories and report outcomes across all need categories. Women's organisations are struggling with the resource and capacity to manage such onerous process and navigate confusion.

Challenges for women's organisations are also exacerbated by the timeframe for qualification coinciding with the process for bidding for the £2.5m grant funding programme.³² As set out above, Clinks are extremely welcoming of the provision of grants for core costs but the process is disproportionately complex, and being linked to Regional Probation Directors priorities and with tight timelines for spend creates tensions with the supposed aims of covering core costs. This is at a time when the combination of the impact of Covid-19 and the fact that most women's organisations have a female staff force, with increased childcare responsibilities during summer months, is already putting the sector under strain.

Services for people from BAME communities

The Target Operating Model specifies that practice and service design should take into account "the realities and impact of discrimination" and that performance measures will include a new target to record protected characteristics. It is particularly welcome to see improved language used around cultural competence and recognition of discrimination and its impact. We are also pleased to see requirements for providers bidding to deliver services under the dynamic framework to illustrate how they will meet the needs of BAME people, recognise the need for people to receive services free of fear of stereotyping and discrimination and provide a culturally competent service. The strength of these requirements and the way they will be assessed through a commercial process remains unclear however, creating concern these commitments will ultimately be superficial.

In addition, we are pleased to see a specific service need category included for BAME service user. However, there is a lack of clarity and detail around what this intends to achieve and for whom and what will be covered by any future contract call-off in this category. This requires further development and clarity. We would hope that the inclusion of such a category will recognise:

- That BAME people are not a homogenous group and the intersection of ethnicity, faith, culture and age makes social identities multi-faceted and shifting: the experiences and need of individuals within these groups will vary
- That the lived experience and therefore needs of BAME people under probation supervision will likely have been impacted by experiences of racism and discrimination
- That BAME-led organisations working with BAME communities within which they have relationships, credibility and conferred authority, have specific knowledge and skill in this area that other organisations do not have.

Clinks has also called for this specific need category for BAME service users to be a day-one lot and we are disappointed not to see this. Due to the issues raised above and the fact that BAME specialist organisations tend to be more financially vulnerable than others,³³ BAME specialist organisations are far less likely to be able to compete for day one services and therefore more likely to only be involved as subcontractors. There is an especially strong case for day one BAME specialist services to be commissioned in areas with more diverse populations.

To address both structural racism and unequal outcomes for BAME people in the criminal justice system, it is vital that BAME-specialist services are resourced and prioritised. A contract-lot for day one services would have been an important step in this, and would have provided an important signal to BAME organisations, communities and service users that the government is prepared to act on their concerns.

Recommendation 12

HMPPS should engage with BAME-led organisations and BAME service users in the development of call-off specification and encourage Regional Probation Directors, especially those in areas with diverse populations, to commission these services at the earliest point possible.

Question 13: What impact is the transition having on the voluntary/third sector organisations already providing probation services?

Information flows

HMPPS is working to recover the existing probation service from an exceptional model of delivery imposed by Covid-19, while simultaneously transitioning to a new model by June 2021. This presents a very challenging context for both private providers and voluntary organisations in existing supply chains to deliver their services and plan for the near future. To compound this complexity, local lockdowns pose the threat of non-linear and geographically variable recovery, making it near impossible to plan for how services will operate from one month to the next.

In this context, information flow is essential, but a significant problem facing voluntary organisations currently delivering probation services is that of insufficient and inconsistent information. A lack of clarity at the national level has been partly to blame. For example, the Probation roadmap to recovery³⁴ created confusion when it was first published, as it was unclear whether it is solely directed at the NPS, or intended for CRCs too.³⁵ The document also failed to refer to the National Framework for Prison Regimes and Services it was published alongside, and there is no mention of how recovery plans take into account the transition to the new probation reform programme. This document failed to provide the national strategic clarity it hoped to, and this has only helped increase confusion at the operational level.

HMPPS is also far too cautious in their approach to sharing basic operational information that should be publicly available. The RR3 Covid-19 SIG throughout the pandemic has urged HMPPS to publish its policies on early release from custody and exceptional delivery models across both prisons and probation, so that they are easily accessible to voluntary organisations, service users and service users' families. Our requests however have been repeatedly pushed back despite the documents not holding any obviously sensitive information. Clinks has recently struck a compromise to share EDMs if organisations directly

request them, but this process is still more complicated than it needs to be. The risk averse nature of HMPPS communications stems the flow of vital information in a period of crisis.

Recommendation 13

The risk-based approach to external communications by MoJ and HMPPS must be revised, in order to ensure vital operational information is shared as widely and as quickly as possible. All operational guidance should be published publicly by default, in a way that is easily accessible for voluntary organisations, service users and their families, and members of the public.

In part due to poor information flow from above, the information voluntary organisations delivering probation services receives has become dependent on the quality of that organisation's existing relationship with respective CRCs. This has been a major issue during Covid-19 and the recovery process, and continues to be so in relation to the transition to the new probation model with basic information not being passed down supply chains. As primary contract holders, CRCs carry a responsibility to flow information down their supply chains, but often this is not done and the mechanisms for HMPPS to monitor the extent to which CRCs fulfil this role appear insufficient.

Poor information flow from national and local levels pose a real challenge to voluntary organisations in both the recovery and the transition process. In order to plan for the delivery of services through recovery, and plan for the transition process as contracts come to end, organisations routinely need clear information and guidance, with good notice in cases where they are expected to recover or restore their services, and similarly good notice where local lockdowns might affect the delivery of their services.

Recommendation 14

The MoJ and HMPPS should better hold CRCs to account on information flow through their supply chains and to the market stewardship principles in their contracts. MoJ and HMPPS should set out clearly how prime contract holders will be held to account on information flow to their supply chains under the future model.

Conclusion

Transforming Rehabilitation has had an enormously damaging impact on the voluntary sector's confidence in the ability of the MoJ and HMPPS to commission services in a sustainable and effective way. Much of the optimism that had tentatively been restored by the decision to reunify probation, and the clearly stated and very welcome policy intentions around improving engagement with the voluntary sector, has been diminished through the experience of navigating a hugely complex procurement process. As it stands, we do not believe that the new model offers a sufficiently level playing field for small and specialist voluntary sector organisations, and there is a real risk that many organisations simply won't participate. The impact on service provision in each area could be devastating, particularly in certain localities where the number of organisations who can viably deliver each lot is very few, for example in Wales.



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In the wake of this Covid-19 crisis, there will be heightened need amongst people in contact with the criminal justice system. The impacts of lockdown in prisons on the wellbeing of service users and their access to services will be carried with them into the community. The wider financial impact of Covid-19 on society will make it is even harder for people under probation supervision to access employment and establish a secure future for themselves. Statutory services alone will not be able to respond to this heightened need. The voluntary sector in criminal justice is never more needed, and Clinks is committed to working with the government and the committee to ensure the sector has a secure and sustainable future in delivering essential services under the new model.

End notes

1. Clinks (2020). *Summary note of the RR3 Special Interest Group on Probation*. Available at: www.clinks.org/publication/summary-note-rr3-special-interest-group-probation
2. Clinks (2020). *Notes from the RR3 special interest group on Covid-19- CRC contract management*. Available at: www.clinks.org/publication/notes-rr3-special-interest-group-covid-19-crc-contract-management
3. Merseyside CRC, Cumbria & Lancashire CRC, West Yorkshire CRC, South Yorkshire CRC, Humberside, Lincolnshire & North Yorkshire CRC, Staffordshire & West Midlands CRC, Derbyshire, Leicestershire, Nottinghamshire & Rutland CRC, Norfolk and Suffolk CRC, Bedfordshire, Northamptonshire, Cambridgeshire & Hertfordshire CRC, Essex CRC, Kent, Sussex & Surrey CRC, London CRC, Thames Valley CRC, Bristol, Gloucestershire, Somerset & Wiltshire CRC, Dorset, Devon & Cornwall CRC, Wales CRC.
4. Clinks (2020). *Notes from the RR3 quarterly meeting June 2020*. Available at: www.clinks.org/publication/notes-reducing-reoffending-third-sector-advisory-group-rr3-meeting-11
5. Clinks (2020). *Notes from the RR3 quarterly meeting March 2020*. Available at: www.clinks.org/publication/notes-reducing-reoffending-third-sector-advisory-group-rr3-meeting-10
6. At the time of writing, Clinks had conducted five surveys on the impact of Covid-19 on the voluntary sector in criminal justice system since the start of the pandemic. The data presented in this paper is taken from Clinks' fifth survey conducted in July 2020 with 98 respondents.
7. Clinks (2018). *Response to Ministry of Justice's consultation Strengthening Probation, Building Confidence*. Available at: www.clinks.org/publication/ministry-justices-consultation-strengthening-probation-building-confidence
8. Clinks (2018). *Under represented, under pressure, under resourced*. Available at: www.clinks.org/publication/under-represented-under-pressure-under-resourced
9. Justice Committee (2018). *Transforming rehabilitation inquiry*. Available at: https://publications.parliament.uk/pa/cm201719/cmselect/cmjust/482/48207.htm#_idTextAnchor065
10. Ministry of Justice (2020). *Government to take control of unpaid work to strengthen community sentences* (press release). Available at: www.gov.uk/government/news/government-to-take-control-of-unpaid-work-to-strengthen-community-sentences
11. We acknowledge that the term BAME can be problematic as it refers to a group of people who are far from homogenous. The intersection of race, ethnicity, faith, and culture makes social identities multi-faceted and shifting: the experiences of individuals within these groups will vary. Wherever possible, we seek to be specific when describing groups of people but at times use the term BAME – albeit reluctantly – to describe inequality and discrimination across groups when necessary.
12. Clinks (2019). *Flexibility is vital*. Available at: www.clinks.org/publication/flexibility-vital
13. Centre for Justice Innovation (2018). *The changing use of pre-sentence reports*. Available at: <http://justiceinnovation.org/portfolio/changing-use-presentence-reports>
14. Ministry of Justice (2018). *The Female Offender Strategy*. Available at: www.gov.uk/government/publications/female-offender-strategy
15. Sentencing Council (2020). *Investigating the association between an offender's sex and ethnicity and the sentence imposed at the Crown Court for drug offences*. Available at: www.sentencingcouncil.org.uk/publications/item/investigating-the-association-between-an-offenders-sex-and-ethnicity-and-the-sentence-imposed-at-the-crown-court-for-drug-offences
16. Clinks (2019). *Sentencing in England and Wales*. Available at: www.clinks.org/publication/sentencing-england-and-wales
17. Ministry of Justice (2017). *The Lammy review*. Available at: www.gov.uk/government/publications/lammy-review-final-report
18. HM Prisons and Probation Service (2019). *The proposed future model for probation: a draft operating blueprint*. Available at: www.gov.uk/guidance/strengthening-probation-building-confidence
19. HM Inspectorate of Probation (2019). *2018/2019 inspections of probation services: summary report*. Available at: www.justiceinspectors.gov.uk/hmiprobation/inspections/20182019probationsummaryreport
20. Prison Reform Trust (2017). *Why focus on reducing women's imprisonment?* Available at: www.prisonreformtrust.org.uk/Portals/0/Documents/Women/whywomen.pdf
21. Clinks (2020). *Summary note of the RR3 Special Interest Group on Probation*. Available at: www.clinks.org/publication/summary-note-rr3-special-interest-group-probation
22. Clinks (2020). *Three months in: the impact of Covid-19 on services delivered by the criminal justice voluntary sector* (blog). Available at: www.clinks.org/community/blog-posts/three-months-impact-covid-19-services-delivered-criminal-justice-voluntary
23. Of respondents to our 2019 State of the Sector survey, 67% worked with people in the community who had received a custodial sentence, 60% provided through the gate support and 52% worked with people in the community who had received a community sentence. See: www.clinks.org/sites/default/files/2019-11/clinks_state-of-the-sector-2019_FINAL-WEB.pdf
24. Clinks (2019). *Commissioning principles to enable the voluntary sector to deliver services in the future probation model*. Available at: www.clinks.org/publication/commissioning-principles-enable-voluntary-sector-deliver-services-future-probation
25. Francesca Cooney (2019). *The impact of changes to prison education commissioning* (blog). Available at: www.clinks.org/community/blog-posts/impact-changes-prison-education-commissioning
26. Clinks (2019). *The state of the sector 2019*. Available at: www.clinks.org/publication/state-sector-2019



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27. Institute of Fundraising and NCVO (2020). *Impact on the charity sector during coronavirus – research report June 2020*. Available at: www.institute-of-fundraising.org.uk/library/impacton-the-charity-sector-during-coronavirus-research-report
28. Clinks (2019). *The state of the sector 2019*. Available at: www.clinks.org/publication/state-sector-2019
29. Clinks (2018). *Under represented, under pressure, under resourced*. Available at: www.clinks.org/publication/under-represented-under-pressure-under-resourced
30. Clinks (2020). *Impacts of Covid-19 on the financial sustainability of the voluntary sector working in criminal justice*. Available at: www.clinks.org/publication/impacts-covid-19-financial-sustainability-voluntary-sector-working-criminal-justice
31. For example, indicative contract values for the accommodation service category in London are: £545,000 in 2020/21; £1.2m in 2022/23; £1.7m in 2023/24; and £1.8m in 2024/25.
32. Clinks (2020). *£2.5m funding for specialist women’s services* (blog). Available at: www.clinks.org/community/blog-posts/ps25m-funding-specialist-womens-services
33. Our State of the Sector research shows that BAME-led organisations are responding to greater service user need and urgency alongside being in more financially vulnerable and unsustainable positions than other organisations in the sector.
34. Ministry of Justice and HM Prisons and Probation Service (2020). *COVID-19: Probation Roadmap to Recovery*. Available at: www.gov.uk/government/publications/covid-19-probation-roadmap-to-recovery
35. Clinks (2020). *What recovery should look like – update from the RR3 Special Interest Group on Covid-19* (blog). Available at: www.clinks.org/community/blog-posts/what-recovery-should-look-update-rr3-special-interest-group-covid-19

CLINKS

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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