

## Payment by results: What does it mean for voluntary organisations working with offenders?

### Introduction

Clinks has coordinated a consultation with our members and other Voluntary and Community Sector (VCS) organisations on the implications of payment by results for the Criminal Justice System (CJS). In this paper, we bring together these perspectives to contribute to the preparation of the rehabilitation Green Paper.

‘Payment by results’ has been presented as the new financial mechanism for delivering the Coalition’s criminal justice reform package. The Ministry of Justice has committed to cutting £2bn from its annual £9bn budget and it is clear that all agencies in the sector will have to strive to deliver more for less. So far, it is unclear at what level payment by results will operate and how it will affect commissioning and procurement. For the VCS working with offenders, payment by results poses opportunity but also tremendous risk.

It is vital that the Ministry of Justice considers how to ensure the VCS can figure in the rehabilitation revolution. What is clear is that neither payment by results nor Social Impact Bonds (SiBs) will offer an all encompassing solution. The rehabilitation revolution will need a highly sophisticated funding model to include the multiplicity of private companies, social enterprises, VCS organisations of various sizes and new investors that will be operating in the CJS. The rationale of payments by results is not without flaws when applied to the VCS and implementation will have to be flexible.

Section 1 of this paper begins by defining payment by results and surveying examples of past and present practice. In Section 2, Clinks delineates some of the hazards associated with payment by results and raises some questions that are particularly

pertinent from the perspective of small and medium sized VCS organisations. Section 3 draws together some recommendations for the rehabilitation Green Paper from the Clinks VCS consultation.

### Section 1: Setting the scene

Payment by results would create a financial incentive for public, private and VCS providers that can prove a reduction in reoffending. In the words of David Cameron, payment by results is ‘rewarding people for work well done’.<sup>1</sup> It is a system of outcome-based commissioning, which transfers the financial risk or reward to the service provider. Many commentators welcome payment by results as a shift away from ‘micro-managing *processes* and towards defining the desired *outcomes* to be achieved’.<sup>2</sup>

In opposition, the Conservative Party laid out plans for applying payment by results to offender rehabilitation in its Green Paper *Prisons with a Purpose*:<sup>3</sup>

*all institutions in the system – prisons, the probation service, public, private and voluntary agencies – will have one clear incentive: to stop individuals re-offending once they have left prison. If they are successful, they will be able to earn*

<sup>1</sup> David Cameron. 30<sup>th</sup> July 2010. *Civil Service Live 2010 - The Prime Minister's Keynote Speech*. Online: <http://network.civilservicelive.com/pg/pages/view/374357>

<sup>2</sup> Social Market Foundation. March 2010. *Prison Break: Tackling recidivism, reducing costs*. Online: [http://www.smf.co.uk/assets/files/publications/smf\\_prison\\_break\\_web.pdf](http://www.smf.co.uk/assets/files/publications/smf_prison_break_web.pdf)

<sup>3</sup> Conservative Party Policy Green Paper No. 4. 2008. *Prisons with a purpose: our sentencing and rehabilitation revolution to break the cycle of crime*. Online: [http://www.conservatives.com/Policy/Security\\_Agenda.aspx](http://www.conservatives.com/Policy/Security_Agenda.aspx)

*more money. If they are not, they will still receive payments to cover their costs*

A two tier payment tariff was proposed, with a basic tariff to be paid at regular intervals and a premium tariff to be paid only where the ex offender does not reoffend within a fixed period following release. In this paper, it was suggested that higher payments would be made for offenders assessed as particularly likely to reoffend.

Payment by results and criminal justice reform:

Payment by results was featured in the Coalition Agreement and is placed firmly on the political agenda:<sup>4</sup>

*we will introduce a 'rehabilitation revolution' that will pay independent providers to reduce re-offending, paid for by the savings this new approach will generate within the criminal justice system.*

In his first keynote speech as the new Secretary of State for Justice, Ken Clarke reinforced this commitment:<sup>5</sup>

*Outside bodies would have clear financial incentives to keep offenders away from crime. And success would be measured perhaps by whether they find and keep a job, find housing and so on – whether they become functioning members of society – but above all by whether they are not reconvicted within the first few years of leaving prison.*

<sup>4</sup> Cabinet Office. May 2010. *The Coalition: Our Programme for Government*. Online: [http://www.cabinetoffice.gov.uk/media/409088/pfg\\_coalition\\_on.pdf](http://www.cabinetoffice.gov.uk/media/409088/pfg_coalition_on.pdf)

<sup>5</sup> Ken Clarke. 30<sup>th</sup> June 2010. *The Government's vision for criminal justice reform*. Online: <http://www.justice.gov.uk/sp300610a.htm>

Ken Clarke's list of desirable outcomes suggests that the VCS might be rewarded for a number of different steps in the journey to successful rehabilitation – employment and accommodation, for example. But the question is begged, how does one go about measuring whether ex offenders have 'become functioning members of society'?

The Ministry of Justice is currently consulting on payment by results, with a view to developing options for contracting out rehabilitation services to third parties.<sup>6</sup> The concept of the SiB appears to be very much in vogue. The Peterborough Pilot – funded by the Social Impact Partnership – has been very prominent in public speeches and reform plans so far.

What we do not know yet is how payment by results will be operationalised for the large volume of work that the Coalition envisages the VCS undertaking, given that most of the sector lacks capacity to operate in a system of payment in arrears. For payment by results to be accessible to the VCS, a financing vehicle will be needed to bridge the gap between upfront delivery and outcome-based funding.<sup>7</sup>

### The Peterborough Pilot

The Social Impact Partnership is one such vehicle; providing upfront funding for service providers from social impact investors. The investors have an agreement with the Ministry of Justice, which has contracted to pay them a return on positive outcomes.<sup>8</sup>

<sup>6</sup> Ministry of Justice. July 2010. *Draft Structural Reform Plan*. Online: <http://www.justice.gov.uk/about/docs/moj-structural-reform-plana.pdf>

<sup>7</sup> Yes Minister. 13<sup>th</sup> August 2010. Richard Johnson on structuring the Work Programme to change society. Online: <http://yesministerltd.wordpress.com/2010/08/13/richard-johnson-on-structuring-the-work-programme-to-change-society/>

<sup>8</sup> See [http://www.socialfinance.org.uk/services/index.php?page\\_ID=15](http://www.socialfinance.org.uk/services/index.php?page_ID=15)

The service providers are thus shielded from financial risk, all of which is borne by the investors.

The Peterborough Prison pilot is being administered by Social Finance and will involve St. Giles Trust, Ormiston Trust, YMCA and other VCS organisations delivering a range of resettlement interventions. The programme will provide support for 3,000 short term prisoners over six years. If rates of reoffending drop by at least 7.5%, the bond investors will receive a return for their investment based on the savings made.<sup>9</sup> It is hoped that this method of financing will be an effective source of non-Governmental finance for social initiatives that typically struggle to attract public funding. SiBs were not designed for routine interventions but to attract investors to fund new innovative and preventative measures.

Social Finance has recently received £5 million from the Big Lottery Fund to develop three further pilots.<sup>10</sup> Pilots of this model undoubtedly provide an opportunity for VCS organisations to prove their social and financial worth and to develop their evidence base. However, a great deal of working capital is required. The current Social Finance partnership is set to raise £4.9 million. Although the project is currently oversubscribed by funders<sup>11</sup>, it can be anticipated that when social investment bonds are rolled out on a much larger scale, sourcing funders may become increasingly difficult. Calculating the outcomes metric and satisfying legal criteria are enormously

<sup>9</sup> Social Finance. March 2010. *Social Finance launches first Social Impact Bond*. Online: [http://www.socialfinance.org.uk/downloads/Social%20Impact%20Bond%20March%202018\\_FINAL%20\(2\).pdf](http://www.socialfinance.org.uk/downloads/Social%20Impact%20Bond%20March%202018_FINAL%20(2).pdf)

<sup>10</sup> Third Sector. Sept 2010. *Social impact bond pilot is likely to be oversubscribed*. Online: <http://www.thirdsector.co.uk/news/rss/article/1026251/Social-impact-bond-pilot-likely-oversubscribed/>

<sup>11</sup> Civil Society. August 2010. *Government trial to encourage private capital into the social sector set to exceed investment target*. Online: <http://www.civilsociety.co.uk/finance/news/content/7110/first-trial-to-encourage-investment-into-the-voluntary-sector-set-to-be-oversubscribed>

time consuming and expensive processes. Given that the current pilot has a six year life span, concrete evaluative evidence of its progress will not be available for some time.

SiBs have recently been presented as a prototype for funding the criminal justice sector. Clinks believes, however, that caution is required given the probable limitations on available working capital. From our consultations with charitable trusts interested in funding CJS missions, it seems clear that trusts will be keen to await the results of the Peterborough Pilot before committing further capital. This model will not provide a universal alternative for the VCS to replace grant and contract income from the MoJ/NOMS and other public sector commissioners on a national scale. Statutory funding of services both in the form of payment by results, contracts / Service Level Agreements and grants will be required to deliver upon the promise of the rehabilitation revolution.

## Payment by results in welfare provision

Payment by results is not a new concept. It has operated in areas of the National Health Service since 2000 and was introduced to the Department of Work and Pensions (DWP) and the Legal Services Commission in 2008. The Government now intend to extend its application in its wide-ranging public service reform package.<sup>12</sup> Experience from past practice demonstrates that the devil is in the detail. When public service contracts are put out to tender, the format of the payment scheme and management of the supply chain are critical to an organisation's capacity to deliver.

VCS experience of payment by results in DWP welfare to work programmes is highly

<sup>12</sup> NCVO. August 2010. *Public Sector Funding- Findings and Emerging Recommendations*. Online: [http://www.ncvo-vol.org.uk/sites/default/files/Paper\\_4-Public\\_Sector\\_Funding.pdf](http://www.ncvo-vol.org.uk/sites/default/files/Paper_4-Public_Sector_Funding.pdf)

illuminative. The payment structures have included a service fee paid monthly, which remains consistent throughout the programme, and an outcome payment payable on achievement and evidencing of individual outcomes.<sup>13</sup> Unlike the Peterborough Pilot, under this model providers have had to adapt to a system of part-funding in arrears, and have been required to demonstrate outcomes before receiving full payment. Under the Flexible New Deal, the service fee was 20% of the total fee but this was increased to 40% to assist with the economic downturn.<sup>14</sup> DWP operates a prime contractor model, which means that most VCS organisations involved are engaged as subcontractors.<sup>15</sup>

A recent survey of VCS experiences of subcontracting in the delivery of DWP/Job Centre Plus contracts suggests that there are many lessons to be learnt.<sup>16</sup> Organisations have talked about the expectation that the VCS would provide the 'free' half of service delivery. One organisation reported having to hand back two contracts because outcome-loaded payments made it impossible for them to deliver. This summer, in the DWP online consultation on its payment by results model, concerns were voiced about large organisations 'parachuting in' for a short time and over-focusing on one outcome when many of the

users had multiple needs.<sup>17</sup> One organisation requested more rigorous subcontracting records to be held, having been penalised when they had over-performed on a contract because the prime provider had failed to deliver. Complaints were raised that the evidence required was so rigorous that organisations struggled to receive payment, for example where a person was in work but could not provide the written form of evidence needed by DWP.<sup>18</sup> These criticisms have been supported by the Work and Pensions Committee which described the system as 'bureaucratic and unpopular'.<sup>19</sup>

These reviews of DWP past experience demonstrate the potential flaws in the rationale of payment by results. A DWP research report on outcome-based contracting published in 2010 found little success in promoting flexibility and innovation from prime providers:

*There was little evidence that prime providers were developing in-house provision to enhance the quality of customer services. Instead, partner agencies were increasingly used to address specialist service needs. Service innovation on the part of prime providers was largely focused on reducing operational costs and achieving performance efficiencies.<sup>20</sup>*

<sup>13</sup> Department of Work and Pensions. April 2010. *Provider Guidance: Funding Guidance*. Online: <http://www.dwp.gov.uk/docs/pg-part-4.pdf>

<sup>14</sup> House of Commons Work and Pensions Committee. March 2010. *Management and Administration of Contracted Employment Programmes*. Online: <http://www.publications.parliament.uk/pa/cm200910/cms/elect/cmworpen/101/101.pdf>

<sup>15</sup> ACEVO. February 2009. *Welfare to Work: the third sector's role*. Online: <http://www.acevo.org.uk/Document.Doc?id=42>

<sup>16</sup> Pentagon Partnership. Spring 2010. Survey of third sector organisations' experiences of the sub / prime contractor model in the delivery of DWP /Jobcentre Plus contracts. Online: <http://www.pentagonpartnership.org.uk/documents/survey.pdf>

<sup>17</sup> To see further discussion, <http://www.dwp.gov.uk/consultations/2010/the-work-programme-your/payment-model/>

<sup>18</sup> See also 'OBC and Service Administration', DWP. May 2010. *The influence of outcome-based contracting on Provider-led Pathways to Work*. Online: <http://research.dwp.gov.uk/asd/asd5/rports2009-2010/rrep638.pdf>

<sup>19</sup> House of Commons Work and Pensions Committee. March 2010. *Management and Administration of Contracted Employment Programmes*. Online: <http://www.publications.parliament.uk/pa/cm200910/cms/elect/cmworpen/101/101.pdf>

<sup>20</sup> DWP. 2010. *The influence of outcome-based contracting on Provider-led Pathways to Work*. Online: <http://research.dwp.gov.uk/asd/asd5/rports2009-2010/rrep638.pdf>

In early September 2010, a National Audit Office evaluation reported that most third sector subcontractors under Pathways to Work were expected to lose money. The Parliamentary Committee of Public Accounts endorses the new 'Merlin' Standards as a guard against unfair treatment of subcontractors.<sup>21</sup>

In light of these experiences it is imperative that the MoJ recognises that payment by results as a blunt mechanism will not deliver the rehabilitation revolution. A more sophisticated financial model, that is sensitive to different agencies operating in this field, will be required.

### Strengths of the VCS

The VCS working with offenders has a great deal to offer the rehabilitation revolution, both in terms of highly specialised services and emotional intelligence. Despite the prospective pitfalls of the payment by results model, a focus on outcomes clearly provides opportunities for the VCS. The Coalition has demonstrated a strong commitment to localism (see Clinks 'Localising Justice' discussion paper<sup>22</sup>). An outcomes-based approach aims to release the sector from bureaucratic processes and over regulation and to introduce a new framework for service delivery:

*In opposition, the Conservatives argued that the sector had been underused, undervalued and controlled like a 'mini public sector' and proposed to reduce burdens, interference, bureaucracy and wastefully complex initiatives, and to*

<sup>21</sup> House of Commons Parliamentary Committee of Public Accounts. Sept 2010. *Support to incapacity benefits claimants through Pathways to Work*. Online: <http://www.publications.parliament.uk/pa/cm201011/cmslect/cmPubacc/404/40402.htm>

<sup>22</sup>

<http://www.clinks.org/assets/files/PDFs/Localising%20justice.pdf>

*promote longer term contracts based on payment by results.*<sup>23</sup>

The new outcomes-focused model could facilitate greater freedom and space for innovation and, in principle, may be a useful development for the Sector. However, as the hazards described in Section 2 indicate, a solid infrastructure will be needed to support the sector. The DWP Work Programme contracts due to be awarded in January 2011 will have a duration of seven years. The opportunity to access longer contracts would be welcomed in the CJS, offering the possibility of following offenders over a longer period on their journey to rehabilitation.

What is critical to the VCS is how the model of payment by results will look on the ground. In a period of great financial insecurity and with the impending Spending Review, a realistic and enabling approach is required to support the VCS transition to new forms of finance.

### Section 2: Questions for payment by results

#### Who will deliver the payment by results programmes?

The Conservatives' plans in its *Prisons with a Purpose* Green Paper anticipated small organisations forming partnerships with large VCS organisations and private companies:

*As a result of our rehabilitation revolution, the larger voluntary organisations and private companies, who have access to capital, will have greater incentives to involve smaller charities, who*

<sup>23</sup> Third Sector Research Centre. July 2010. *Briefing Paper 20: The third sector delivering public services: an evidence review*. Online: <http://www.tsrc.ac.uk/LinkClick.aspx?fileticket=I9gruXn%2FBN8%3D&tabid=712>

*have the experience, commitment and local community involvement to make the programmes work<sup>24</sup>*

The model that the Coalition has in mind is far from fully formed. However, it is likely that prime providers – private companies and large VCS organisations – will be expected to take on and bear the risk of large contracts. For small and medium sized organisations, subcontracting may be the only viable option for participating in the payment by results environment. In this case, it is important to consider the record of subcontracting in the sector and relationship between private sector and the VCS.

The localism agenda suggest that much public funding will be pooled at a far more local level, through place-based budgets. This poses an opportunity for the development of local VCS consortia that would be welcomed.

### **What will the supply structure look like?**

Subcontracting models pose a risk to the autonomy and accountability of smaller VCS organisations. Operating beneath a prime contractor will mean a change in strategic direction for many organisations, particularly given the imperative to demonstrate outcomes in order to receive a financial return. A danger is that levels of competition will squeeze out smaller VCS agencies, with prime contractors opting for partnerships with private sector providers and larger VCS organisations. One solution would be for Government departments to make payment by results contracts conditional upon the prime provider subcontracting with a minimum number of small VCS providers for delivery.

<sup>24</sup> Conservative Party Policy Green Paper No. 4. 2008. *Prisons with a purpose: our sentencing and rehabilitation revolution to break the cycle of crime*. Online: [http://www.conservatives.com/Policy/Security\\_Agenda.aspx](http://www.conservatives.com/Policy/Security_Agenda.aspx)

Many Clinks member are apprehensive about subcontracting relations. Those with prior experience report lengthy time frames and considerable bureaucracy in reaching a contractual agreement. There are particular concerns about the level of evaluation required by prime providers. This requires resources and expenditure to be diverted away from services users and into administration. A clear and detailed code of conduct would be required to regulate prime and subcontractor relations, possibly resembling the DWP Merlin Standards.

It is vital that alternative local partnership models are considered, following a less hierarchical structure. If VCS partnerships are to compete in this environment, contract designs must not put disproportionate financial and evidential burdens on the provider.

### **Who will bear the risk?**

Fundamental to payment by results is the transfer of risk from Government bodies to independent providers. It is widely recognised that it will be untenable for smaller VCS organisations to take on this kind of risk. For large, scaleable contracts (national and regional) the model now gaining acceptance within the CJS would be to attribute the success or failure of interventions to the prime contractor, so that they or their social investors would bear the risks of deferred payment, and smaller sub-contractors would not be expected to wait to recover their costs. This scenario requires that VCS organisations of all sizes engender investor confidence in their programmes in order to secure funding. This is likely to intensify pressure on VCS organisations to provide a strong evidence base.

### **What will an acceptable evidence base look like?**

With the emphasis on outcomes, organisations will need to prove that their

activities effect reductions in reoffending. Help with measuring outcomes was one of the key imperatives that came out of our consultation. The rigours expected are likely to cause serious capacity problems for many VCS organisations, as shown by the recent Third Sector Research Centre evaluation of the sector:<sup>25</sup>

*To be able to take part in the competitive market, [Third Sector Organisations] will need to be able to prove their effectiveness, yet many smaller organisations will not have the money, expertise or capacity to collect data demonstrating outcomes, particularly where longitudinal effects are required.*

An outcome measure that is cheap, easy to use and, most importantly, *versatile* will be essential to the VCS in demonstrating its results. VCS voices are calling for subsector infrastructure bodies, such as Clinks, to provide an outcomes toolkit for their members. Organisations urge Commissioners to be involved in monitoring and evaluation right from the design stage to ensure that the outcome measurements are robust and meet Commissioners' requirements. It is essential that the principle of proportionality is applied to evidence requirements, in terms of size of organisation providing the service, level of funding and length of contract.

Critical data needs to be more accessible to multiple agencies to make it possible to track the success of programmes with individual offenders. A reduction in red tape is essential to organisations proving their effectiveness. There should be recognition that hard outputs can be difficult to evidence. For example, one resposdee reported difficulty collecting evidence from

<sup>25</sup> Third Sector Research Centre. April 2010. Working Paper 34: *The role of the third sector in work with offenders: the perceptions of criminal justice and third sector stakeholders*. Online: <http://www.tsrc.ac.uk/LinkClick.aspx?fileticket=jpl0uVVN90w%3D&tabid=670>

employers where offenders were concerned about prejudice of continued contact with CJS services.

### Who should be paid?

Beyond capacity, there are clearly empirical problems with evidence collection in this Sector. How will it be possible to isolate the impact of one particular agency working with an offender? The burden of proof will be difficult to discharge where multiple organisations are working with an individual. This indicates that pure outcome-loading may be a clumsy approach to rewarding VCS organisations' interventions with offenders and their families. . Clinks welcomes an approach that focuses on 'what works', and the move away from micro managed contracts, but we need a system that can truly reward innovative local projects. This includes paying for evolving user-led local interventions that do not yet have a robust evidence base.

### How will payment by results be operationalised at local level?

The Government will need to consider how it is going to involve myriad smaller organisations working in the CJS at local level. It remains to be seen how payment by results will affect local micro-commissioning. Small VCS organisations, operating under traditional charitable governance arrangements, have neither the capacity nor the reserves to wait for full recovery of their service delivery costs. The ability of the Big Society Bank and sources of social finance, such as Charity Bank, to provide the levels of investment capital and loan finance that will be required to fund a wholesale transfer of public services to the VCS currently remains uncertain. NCVO raise the possibility of trusts and foundations developing a 'joint working capital fund' to help with cash flow problems.<sup>26</sup>

<sup>26</sup> NCVO. August 2010. *Paper 6- Trusts and Foundations- Findings and Emerging Recommendations*. Online: <http://www.ncvo->

Many organisations have raised concerns about their capacity to access new funding arrangements, particularly where regional primes are looking for subcontractors: 'how will they know we are here?' Infrastructure will be key to ensuring networking and collaboration in local areas. Resources such as Clinks *Working with Offenders Directory* offer an effective way to ensure that local organisations are visible in the rehabilitation revolution. It should be required, as part of the tendering process, that all bids present a map of providers operating in the local area. This would provide an incentive for prime providers to make the most comprehensive survey of the locality.

## Where is the risk and reward ratio?

For VCS organisations, many of which operate with little or no reserves, receiving full payment in arrears is not going to be viable. A more sophisticated model of payment by results will be required if the system is to be accessible to organisations of small or medium size. Our consultation revealed that feasibility of VCS participation will rely on a number of points:

1. A blended approach to payment by results is absolutely necessary. Most organisations would require the bulk of the payment to be on inputs. The percentage of the total payment provided upfront for inputs is likely to determine ability to participate.
2. The payment scheme should involve output payments over the length of the contract and bonus outcome payments upon successful completion.
3. For many local organisations working with offenders, payment by results may not be a workable model. Organisations could look at subcontracting at a fixed rate from a prime provider.

Operating in this climate is going to place real pressure on the VCS, both financially and culturally. Levels of investment from charitable trusts are relatively small and so the sector will need to look for larger investors. To attract investment, projects must be low risk and high reward. Adequate piloting and monitoring are required before these conditions will be fulfilled and the Government needs to consider how it will provide a bridge for the VCS in the meantime.

The Compact Agreement should continue to be a touchstone for the Green Paper consultation. A draft Renewed Compact was published on 20<sup>th</sup> September 2010 and maintains, as a core principle, the importance of recognising and valuing the independence of Civil Society Organisations.<sup>27</sup> The Renewed Compact aims to 'ensure relevance to major challenges facing the community and voluntary sector, such as spending cuts and budget reductions'. This adds weight to the principle that commits public sector bodies to paying money in advance of expenditure where there is a clear need.

Clinks members have stressed the need for alternatives to payment by results. In recognition of the diversity and value of the VCS, multiple funding streams are essential.

## Which results?

The social investors in the Peterborough Pilot will be paid for just one outcome:

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[vol.org.uk/sites/default/files/Paper\\_6-Trusts\\_and\\_Foundations.pdf](http://vol.org.uk/sites/default/files/Paper_6-Trusts_and_Foundations.pdf)

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<sup>27</sup> Compact Voice. Sept 2011. *Draft re-negotiated Compact for consultation*. Online: [http://www.compactvoice.org.uk/sites/default/files/resources/20100920\\_renewed\\_compact\\_draft.pdf](http://www.compactvoice.org.uk/sites/default/files/resources/20100920_renewed_compact_draft.pdf)

reducing reoffending. Developing a metric for work with offenders is likely to be a problematic process. For much of the VCS, particularly the most localised, 'reducing reoffending' is not their single or necessarily even one of their core objectives. Much VCS work focuses on transforming the process of rehabilitation, addressing multiple needs and/or providing a highly specialised service. The path to desistance is complex and merely measuring reoffending on a binary scale is inadequate. Local partnership models will be essential to providing a holistic service. Integrated working requires excellent management and infrastructure to avoid service users with more complex needs falling through the gaps. Very few small and medium sized VCS organisations would otherwise be considering trying to prove a 'reduction in reoffending'. This really calls into question the efficacy of restricting the metric to one outcome.

Many organisations have spoken about the value of reducing the level of crime committed by an individual as well as the rate at which that individual is convicted. Payment by results should be sophisticated enough to recognise a relative reduction in criminal behaviour. Additionally, the charitable trusts that we consulted emphasised their own interest in factors other than reconviction, for example the extent of local engagement in a project.

Social Return for Investment approaches may prove useful here. Outcomes such as improved self esteem, gains in confidence and greater employability may be harder to measure but play a vitally important part in reducing reoffending. With a new focus on payment by *results*, there will be greater pressure to prove soft outcomes. Measurement tools such as the Outcomes Star are believed by Clinks members to offer a useful and meaningful representation of the individual service user's journey. Policy makers will need to consider how these sorts of outcomes can be included in the metric or risk marginalising very valuable work.

Ken Clarke has signalled that the agenda, in this time of austerity, is to reduce the number of people in prison by providing cheaper alternatives to custody. There seems to be a growing understanding that payment by results cannot be implemented in the CJ system in the same manner as in the DWP, not least because the outcome savings for the MoJ are not explicit. Overcrowding in prisons suggests that even if reoffending is reduced, the prison population is still likely to reach full capacity. Therefore, the logic of payment by results can only be operationalised if it is complemented by the sentencing review.

## How can cherry picking be avoided?

In our consultation, we heard reports of organisations cherry picking offender groups deemed 'easier to help' to boost their results. The Committee on Work and Pensions found evidence of 'creaming and parking' in Pathways to Work programmes; staff concentrating on participants who were closest to the labour market to optimise outcome payments.<sup>28</sup> Organisations must not be permitted to operate selectively in identifying their cohort.

A number of solutions have been offered to prevent cherry picking. Some form of differential payment is essential, with providers receiving a higher payment for more prolific offenders. Higher payments should be awarded for work with offenders with particularly complex needs, in recognition of the greater expense and time required to achieve results.

## How will rewards be calculated?

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<sup>28</sup> House of Commons Work and Pensions Committee. March 2010. *Management and Administration of Contracted Employment Programmes*. Online: <http://www.publications.parliament.uk/pa/cm200910/cmslect/cmworpen/101/101.pdf>

A critical question will be how large the reduction in reoffending has to be and even more fundamentally, compared to which group? The latter question will be particularly important when considering how to pay agencies for preventative work. As interventions are rolled out and scaled up, it will be more difficult to source a representative control group. Learning from Pathways to Work, commissioners and providers must not to be over-optimistic about possible results.

Greater clarity will be needed about the length of time that an organisation must work with an offender before they can claim a successful result. For VCS organisations that have previously focused on immediate outcomes or short-term programmes, this will require strategic change and adaptation to a very different funding landscape, all of which will be organisationally challenging and potentially costly.

### **How will highly specialised services be protected?**

With the anticipated proliferation of new sources of social finance, there is much concern about payment by results failing to incentivise specialised areas of work. For example, investors may be disincentivised from investing in women's services because women constitute such a small proportion of the offender population. Creating a situation in which specialist women's organisations have to subcontract from large generic organisations runs counter to the effectiveness, ethos and independence of the specialist organisations. Opening up the market may be essential at this time but the market needs to be geared to distribute capital across all areas of the prison estate. Commissioning will have to be tailored for particular groups and result metrics adjusted to attract investment and the Government will have to play a central role in incentivising specialised work. The effectiveness of tailor-made care plans could

be undermined in an environment defined solely on statistically significant results.

### **How will the Sector's unique value be rewarded?**

The Government must consider what the language of financial incentive and risk will mean for the Voluntary and Community Sector. Small and medium VCS organisations are not motivated by primarily financial principles and payment by results may not have a positive impact on behaviour at the local level. Risk appetite will be very low at the local level where organisations have little or no reserves. Our members expressed worries that new contracts would have an adverse impact on effectiveness, with organisations spending more time on evaluation and outcome measurement than service delivery. Budgeting for the possibility of failure is likely to force down quality, with organisations having to budget for the risk. The rationale of payment by results may be deeply flawed in its application to the VCS; with the risk of stifling creativity and paralysing new operations. There is a place for payment by results with private companies and large national organisations but the diversity of sector should be recognised. Solutions contained in the Green Paper should be sensitive to the fact that payment by results may mean penalising small VCS organisations for external vicissitudes of the offender's life, factors they have little control over. For the small and medium VCS working with offenders, the MoJ should be thinking in terms of *enabling* rather than *incentivising*. Payment by results should include recognition of interventions with softer outcomes that have developed organically within the VCS to address identified needs and gaps in statutory provision. It is critical to the rehabilitation revolution that the Government bank the unique value of the VCS for future users.

## Section 3:

### Recommendations

- There should be multiple streams of finance available to engage organisations with different levels of risk appetite and capacity, including blended payment by results and grant funding. The rehabilitation revolution should be founded on a recognition of the diversity of the VCS working in the CJIS.
- Financial and evidential burdens should be guided by the principle of proportionality. Relevant factors are size of provider, amount of funding and length of contract.
- An outcome measure that is cheap, easy to use and, most importantly, versatile will be essential to the VCS in demonstrating its results. Commissioners must be involved in conception from the design stage.
- A detailed code of conduct for subcontracting that protects the independence of the VCS is essential. There needs to be investment in infrastructure to map the local terrain and assist in partnership-building and collaboration.
- Payment by results must include incentives and tailored payment packages for specialised services such as those provided by women-specific and BAME-specific organisations.
- The sentencing review must align with the financial model so that real savings can be made and this money can be diverted away from the prison estate.