

Clinks response to the Justice Committee inquiry into Crime Reduction Policies: A Co-ordinated Approach? November 2013

About Clinks

Clinks is the national infrastructure organisation supporting Voluntary, Community and Social Enterprise (VCSE) Sector organisations working with offenders and their families.

Founded in 1993 and registered as a charity in 1998, we have over 600 Member organisations, including the Sector's largest providers as well as its smallest.

Our vision is of a vibrant and independent VCSE Sector working with informed and engaged communities to enable the rehabilitation of offenders.

Summary

1. The Government's Transforming Rehabilitation agenda has been designed with a view to increasing the diversity of the market for rehabilitation and resettlement services including the Voluntary, Community and Social Enterprise (VCSE) Sector. Clinks is concerned to ensure that this happens in practice, and that the proposals offer fairness and genuine opportunity for the Sector.
2. Our outstanding questions as we await the next stage of the competition, focus on transparency in the contractual arrangements that will govern the Sector's involvement with the new providers. We would like to see clear stipulations on matters such as risk transfer, fluctuations in referral volumes, support for organisations that work towards longer-term desistance from crime, and services for equalities groups. We are also interested in the development of the payment mechanism, in particular the mitigation of possible cashflow problems, and how to reward reduced reoffending in a way that does not risk sidelining those service users with the most complex needs.
3. Finally, we seek to draw the Committee's attention to wider questions about the future of the Sector in criminal justice, and how this will be supported and facilitated, both in service delivery outside the new supply chains, and as an independent voice for best practice, emerging policy issues and long-term criminal justice reform.

Transforming Rehabilitation and the VCSE Sector

4. Clinks welcomes the opportunity to contribute evidence to the Committee's inquiry into crime reduction policies, and particularly its scrutiny of the Transforming Rehabilitation (TR) agenda.
5. The VCSE Sector plays a significant role in providing rehabilitation and resettlement services; the Centre for Social Justice estimates that there are a total of 1,475 organisations in the Sector in England, whose primary service user group is offenders, ex-

offenders and their families¹. According to the Third Sector Research Centre, the number of these organisations working in both England and Wales, but with only offenders as their main beneficiary group, is 1, 743.²

6. The Ministry of Justice (MoJ) clearly envisions involvement of the Sector in the new services, for example when specifying in 'A Strategy for Reform' that their aim is to attract 'a diverse range of **new rehabilitation providers**, so that we get the best out of the public, voluntary and private sectors, at the local as well as national level'³.
7. However, Clinks is of course concerned to ensure that this happens in practice, especially given that fewer than 400 organisations registered for the original Prior Information Notice as having an interest in providing services under TR; if indicative of the final number, this would represent a considerable narrowing of the market. In our and our members' experience, greater involvement of the Sector does not happen automatically simply because services are opened up to new providers; it requires a firm steer to commissioners and Tier 1 organisations (i.e. lead or prime providers).
8. As part of the information published when the competition formally launched in September 2013, the MoJ issued a Principles of Competition document setting out their vision of how market stewardship will work⁴. This document is of particular interest to Clinks, given that most VCSE Sector involvement is likely to be at Tiers 2 and 3 of the new supply chains. We particularly welcome the stated commitments to 'not passing risk down supply chains disproportionately', the acknowledgement that alignment of ethos is vital in building relationships of trust, and the explicit obligation on the new providers to adhere to the Compact principles when working with the Sector.
9. We recognise that further information is due to be published at the next stage of the competition, and that the MoJ explicitly state that the contract documentation will embed these principles robustly. However, there are several outstanding questions that we consider to be of particular importance for ensuring fairness and genuine opportunity for the Sector, and which we therefore hope are of interest to the Committee.

Risk Transfer

10. Financial risk is of course a central part of any Payment by Results (PbR) system. As mentioned, Tier 1 providers will not be able to pass 'disproportionate' risk down the supply chain. Since VCSE organisations do not enjoy the same level of financial resilience as large private organisations, we believe this is an essential safeguard for ensuring fair contracting between the different sectors. However, it is not yet clear what the definition of 'disproportionate' will be. Clinks has consistently argued that a maximum of 20% of the contractual fee to a VCSE provider should be left at risk, and that this should be flexible according to organisational capacity relating to risk. At the very least, we believe that the amount of risk at the lower tiers should not be allowed to exceed the amount held by the Tier 1; in our view this would constitute very poor practice and would damage the credibility of the MoJ's commitment to the Sector.

¹ <http://www.centreforsocialjustice.org.uk/UserStorage/pdf/Pdf%20reports/probationnew.pdf>

² <http://www.birmingham.ac.uk/generic/tsrc/documents/tsrc/working-papers/working-paper-57.pdf>

³ <https://consult.justice.gov.uk/digital-communications/transforming-rehabilitation>

⁴ <http://www.justice.gov.uk/downloads/rehab-prog/competition/moj-principles-of-competition.pdf>

11. In any case, Clinks is keen to see firm commitments, and ideally a cap on risk transfer, stipulated as part of the formal documentation. We hope that the forthcoming Industry Standard Partnering Agreements (ISPAs), which will govern the relationship between Tier 1 and Tiers 2 and 3 and are due to be published at the next stage, will clarify this issue. We would value the support of the Committee in seeking this level of transparency.
12. As well as financial risk, there is also the risk of volume fluctuations, as the number of referrals to Tier 2 or Tier 3 organisations could dip owing to factors beyond their control. Again, the key consideration here is transparency: Clinks would like to see the ISPAs include clear commitments on not penalising the Sector unduly if the number of referrals dips, as well as outlining how Tier 1 providers will handle fluctuations in the volume of referrals.

Grants and intermediate outcomes

13. Clinks was pleased to see reference in the competition documentation to the use of grants as a way for Tier 1 to finance work with VCSE organisations at Tier 2 or 3. We are now seeking further information on what these will look like in practice, and, in particular, whether the MoJ will seek to use them to ensure support for those interventions which work to promote longer-term desistance from crime.
14. Many VCSE organisations have successfully services that take account of academic desistance theory, in which primary desistance, meaning any lull or gap in offending, however short-lived, is distinguished from secondary desistance, which refers to a more deep-seated change in an individual where they develop an identity as a 'non-offender'.
15. The journey towards secondary desistance is highly individualised and very likely to involve relapses; for this reason, the Sector places significant emphasis on the importance of intermediate outcomes: those factors which have an impact on the road to desistance, even if they do not immediately lead to reduced reoffending. These include the attitudes and behaviour of service users, and factors like their mental health, wellbeing, family relations and employment and accommodation. The National Offender Management Service (NOMS) recently published a rapid evidence assessment on intermediate outcomes which suggests that there is in many cases already a clear link with reduced reoffending over the longer term⁵. Yet at present, there is no guarantee that Tier 1 providers will work with services that promote these outcomes if they are unable to show that they reduce reoffending within the fixed time limits of the PbR mechanism.
16. Moreover, for some forms of intervention it is clear that more evidence is needed; this can only be obtained if services are there to be assessed, and it is not clear how else this will be ensured if Tier 1 is not encouraged to invest in them.
17. Clinks would like to see a firm requirement on Tier 1s to consider this investment as part of their offer, including through grants. By definition, organisations which promote

⁵ <https://www.gov.uk/government/publications/rapid-evidence-assessments-on-intermediate-outcomes-and-reoffending>

intermediate outcomes are not the most obvious partners for providers who are only required to focus on reducing reoffending in the short term. Clinks therefore believes the MoJ should commit to looking specifically at this when considering what level of PbR risk to accept in the successful bids. This would offer a financial incentive to Tier 1s potentially interested in exploring intermediate outcomes to do so, without being overly prescriptive.

Payment mechanism

18. Clinks does not propose to devote a large proportion of this response to the proposed payment mechanism, particularly given that it is still under review. However, there are two areas of particular interest to us, which are the foundation payment and the binary hurdle, both of which the recent 'Market Feedback and Development Considerations' document indicated could be removed.
19. The Foundation Payment refers to the amount that Tier 1s would expect to receive for meeting their PbR targets, which the MoJ had been planning to pay upfront and then claw back if necessary. This proposal had the potential advantage of minimising cashflow problems, especially to VCSE subcontractors for whom delayed payments are particularly problematic. The MoJ are now instead considering an initial period at the start of the contracts before the PbR element would apply. If this plan is indeed adopted, Clinks is concerned to ensure that Tier 2 and 3 are given the benefit of this window too. Again, we would want to see this stipulated in the formal agreements.
20. The current payment mechanism will assess reoffending by looking at both binary (the total percentage of reoffending in a cohort) and frequency measures (the number of reoffences per individual in the cohort). Clinks has welcomed the inclusion of the frequency measure, to ensure that there is no incentive for Tier 1s to maximise profits by working only with those offenders whose needs are easiest to meet and side-lining the more complex cases; this is sometimes referred to as 'creaming and parking' or 'cherry-picking'. However, the mechanism also includes a binary hurdle, meaning providers will not receive their PbR reward at all if they do not achieve a reduction on the binary measure. Clinks believes that this still creates a risk that providers will prioritise the binary measure far beyond the frequency measure, and not invest adequately in services for the harder-to reach. For this reason, we strongly advocate its removal.

Equalities groups

21. Again related to the question of robust documentation, there are as yet few stipulations about protected characteristics under the Equalities Act⁶, the specific needs of these groups and how new providers will be required to meet their needs.
22. Clinks is aware that each bid will be judged as to how they meet the needs of all the communities in each contract package area and that they will be assessed on their understanding of the offender populations in that area. With regards to women, for

⁶ In the Equalities Act, those with protected characteristics include age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

example, the MoJ has recently stated that bids will go through a 'robust evaluation process that will assess the extent to which potential providers are offering innovative and effective rehabilitation services to female offenders'.⁷ After contracts are awarded, the MoJ will monitor provision to ensure key outcomes are met.

23. Clinks is supportive of this process, but would like to see services for different equalities groups explicitly specified in the contracts, to ensure that they are actually delivered.

Beyond TR

24. To conclude, Clinks would like to draw the Committee's attention to some wider questions about the future of the VCSE Sector and criminal justice. Some of these still concern service delivery: for example, what opportunities will the formation of the new National Probation Service offer for VCSE organisations working with high risk prisoners? In addition, the MoJ have specified in the Target Operating Model (TOM) that the new providers will be responsible for delivering all services in resettlement prisons; will VCSE organisations not in the supply chains be able to continue their work in the resettlement prisons? And, if rehabilitation activity is to be limited to resettlement prisons, will there be a role for the VCSE Sector in non-resettlement prisons, or will they be cut off from working with prisoners on longer sentences until the final months of their sentence?
25. Finally, we would ask the Committee to consider the Sector's vital role as an independent voice for best practice, emerging policy issues and long-term criminal justice reform - will this continue to be supported and facilitated? The Committee will be aware of the controversial Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Bill, which some critics argue will prevent many in the VCSE Sector from engaging with government policy in the run-up to elections at all. Clinks has taken the view⁸ that there is a particular need for such engagement where criminal justice is concerned, given that offenders' lives often lack the stability required to register and vote - and those in prison are explicitly prevented from doing so. We will therefore be seeking clarity on what opportunities there will be for the VCSE Sector to continue its record of speaking directly to government, both nationally and locally, without being restricted either by excessive limits on campaigning activity, or by any commercial considerations that might arise from their relationships with Tier 1 organisations.

⁷ Ministry of Justice (2013) Government response to the Justice Committee's Second Report of Session 2013-14: Female Offenders, Online
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/252817/response-isc-female-offenders.pdf (accessed 19.11.2013)

⁸ <http://www.clinks.org/community/blog-posts/justice-policy-after-party-0>



supporting voluntary organisations that
work with offenders and their families

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