



House of Commons  
Justice Committee

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**Crime reduction  
policies: a co-ordinated  
approach?  
Interim report on the  
Government's  
Transforming  
Rehabilitation  
programme**

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**Twelfth Report of Session 2013–14**

*Report, together with formal minutes relating  
to the report*

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## The Justice Committee

The Justice Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Ministry of Justice and its associated public bodies (including the work of staff provided for the administrative work of courts and tribunals, but excluding consideration of individual cases and appointments, and excluding the work of the Scotland and Wales Offices and of the Advocate General for Scotland); and administration and expenditure of the Attorney General's Office, the Treasury Solicitor's Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers).

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## Summary

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The Ministry of Justice has embarked on a radical and controversial programme to change the scope and structure of community and prison-based probation and rehabilitative services, including opening up the provision of such services to a greater diversity of providers and the introduction of an element of payment for results achieved in reducing reoffending. The Transforming Rehabilitation reforms involve a substantial recasting of the way probation services are provided, and engender sharply differing views both among our witnesses and members of this Committee: some see them as the only means of extending support to short-sentenced prisoners and facilitating innovation through the involvement of private and voluntary sector providers in rehabilitative provision; others believe that the resulting transfer of functions away from the public sector, which will retain responsibility for high risk offenders, is either undesirable in principle, or too risky. We do not seek to resolve this difference in our report but to clarify how the system might operate and how risks will be managed.

We encountered broad support for the programme's aim to use efficiencies in the delivery of existing probation services to provide post-release supervision to short-sentenced prisoners, rectifying a long-standing anomaly in the system whereby those who tend to be the most prolific offenders currently receive no statutory support. We welcome the introduction of services for this group, but consider that care will need to be taken to ensure that any gains made in reducing reoffending by them do not come at the expense of the supervision of offenders on other sentences, and do not diminish the value of community sentences which are proven to be a cost-effective way of dispensing justice for non-violent offenders.

Witnesses in our inquiry, including some supportive of the proposed changes, had significant apprehensions about the scale, architecture, detail and consequences of the reforms—some of which are still to be determined and much of which has not been tested—and the pace at which the Government is seeking to implement them. In particular, our witnesses with professional experience of probation saw potential risks to the effective management of offenders arising from the Government's decision to split the delivery of probation services between a public National Probation Service dealing with the highest-risk offenders and the new providers who will be dealing with low and medium risk offenders. While there is some evidence base for aspects of the reforms, there is a question about how much they are indicative of the potential of the entire programme. The absence of piloting means that some witnesses lack confidence that the particular commissioning model and the novel payment by results mechanism proposed will work better than the existing system. The Government must recognise that any model introduced at the beginning of the new system is likely to require modification in the light of experience and must continue to be open to public and parliamentary scrutiny.

We recognise that, as well as the risks involved in change, there are also risks involved in not taking action to deal with the gaps and weaknesses in the present system. While the Government has undertaken to test the model with shadow state-run companies before

contracting the new arrangements out to new providers, there is a lack of systematic information about the risks they might encounter during implementation and full operational conditions and the steps that they will take to mitigate those risks. They also do not appear to have devised clear contingency plans in the event that the competition fails to yield a viable new provider for a particular area, or that a new provider subsequently fails. In such circumstances, it is not clear whether the Government will be able to implement or retain the supervision of short-sentenced prisoners, or whether this element of the programme is contingent on having a complete system in place.

The Ministry has high expectations of what can be achieved in the way of efficiency savings and extension of services through contracting out the management of low and medium risk offenders within existing resources. We wished to examine the affordability of the reforms, the initial costs of which are likely to be considerable but which might, over the longer-term, lessen as demand on the system falls, but we have been unable to determine whether sufficient funding is in place on the limited information that the Government has provided. Furthermore, a key question for the Government is how the focus on reducing reoffending will be maintained while the restructuring of the market that is necessary to create the desired efficiencies takes place.

# 1 The rationale and evidence base for the Transforming Rehabilitation reforms

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## Introduction to the Government's Transforming Rehabilitation reforms

1. The Government's Transforming Rehabilitation reforms involve a substantial recasting of the way probation services are provided, and are both radical and controversial. There are sharply differing views about this among our witnesses and among members of this Committee. Some members see them as the only available way of achieving the important policy objective of extending post-release supervision to offenders on short sentences, and as providing an opportunity for innovative work on rehabilitation by the private and voluntary sector while introducing a national probation service to handle those posing the greatest risk to the public. Other members of the Committee believe that so large a transfer of functions away from the public sector is either undesirable in principle or too risky, unlikely to deliver better results than the present system and, if it is done at all, it should only be after it has been piloted in part of the country. We do not seek to resolve that difference in this Report: our approach has been to collect evidence from a range of those with experience or knowledge in this field and to question Ministers and officials in order to clarify how the system might operate and how risks will be mitigated. In doing so we have also recognised that, as well as the risks involved in change, there are also risks involved in not taking action to deal with the gaps and weaknesses in the present system. We hope that this evidence and our analysis of it will assist the House.

2. The Coalition Agreement set out that the Government would introduce a "Rehabilitation Revolution". Paid for by the savings it generated and provided by independent providers, this would seek to tackle the root causes of offending, including homelessness, drug and alcohol dependency, mental illness and unemployment.<sup>1</sup> The Government announced in May 2013 that it would proceed with its *Transforming Rehabilitation* programme: a package of reforms to probation and rehabilitative services on which it had begun a consultation in January 2013.<sup>2</sup> The programme has four elements:

- a) Extending statutory rehabilitative support to the most prolific group of offenders: prisoners who have served sentences of less than 12 months;
- b) Opening up rehabilitation services to a diverse market of providers of probation services to low and medium risk offenders, while introducing a new payment mechanism to focus on reducing rates of reoffending;
- c) Creating a national public probation service focused on public protection; and,

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<sup>1</sup> HM Government, [The Coalition: our programme for government](#), May 2010, p 23

<sup>2</sup> Ministry of Justice, *Transforming Rehabilitation: a strategy for reform*, [Cm 8619](#), May 2013

d) Reorganising the prison estate to manage the flow of offenders from within prison, through the gate and into the community, reforming rehabilitation services and the designation of prisons to focus release into specific areas.

Through the reforms the Secretary of State for Justice, Rt Hon Chris Grayling MP, explained that he seeks to achieve: more flexibility in delivery through greater professional freedom; extension of the scope of rehabilitation to short-sentenced prisoners and “through the gate” from custody to community; more efficient services; greater diversity of providers; and collaboration with partners.<sup>3</sup>

3. We took evidence on the Transforming Rehabilitation proposals from the Secretary of State in a one-off session on 27 February, shortly after the consultation closed. In April we commenced a wider inquiry entitled *Crime reduction policies: a co-ordinated approach?* as part of which we sought to consider the proposed Transforming Rehabilitation reforms in terms of their cost-effectiveness and sustainability in the context of the Government's strategies for punishment and rehabilitation. In response to concerns expressed to us in written evidence about the pace and nature of change being brought about, we decided to expedite our consideration of the subject within our wider inquiry in order to produce this interim report. We took oral evidence from probation representatives, voluntary sector representatives, public policy experts and others specifically on Transforming Rehabilitation on two occasions (2 July and 12 November) and received an informal briefing from Ministry of Justice (MoJ) officials on 26 November. The Secretary of State and the Parliamentary Under-Secretary of State for Justice, Jeremy Wright MP, gave evidence on 4<sup>th</sup> December.

## The rationale for reform

### *Extending supervision to short-sentenced prisoners*

**4. The principal grounds for introducing these reforms are to use efficiencies in the delivery of existing probation services to extend statutory post-release supervision to those who have served prison sentences of fewer than 12 months: an extra 50,000 offenders. This feature of the Government's plans is intended to rectify a long-standing anomaly in the system—that those offenders who tend to be the most prolific and have particularly high reconviction rates receive no statutory support—and was welcomed unreservedly by our witnesses.**<sup>4</sup> Richard Monkhouse of the Magistrates' Association observed:

People who are on short-term custodial sentences need that help because they lead dysfunctional lives; they have accommodation, health and family

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<sup>3</sup> Oral evidence taken on [27 February 2013](#), HC (2012–13) 964

<sup>4</sup> London Councils ([PPC 05](#)) and ([PPC 20](#)); Probation Chiefs Association ([PPC 07](#)); Local Government Association ([PPC 11](#)); Prison Reform Trust ([PPC 13](#)); Magistrates' Association ([PPC 17](#)); Rob Allen ([PPC 21](#)); Q3 [Napoli]; Q5 [Mr Hadjipavlou]; Q59 [Ms Bourne; Ms Mountstevens]; Q113 [Mr Eccles]

problems; and simply leaving them at the prison door is not assisting any of that, so we are quite happy that that is happening.<sup>5</sup>

5. Most of the wider Transforming Rehabilitation reforms can be undertaken under powers to arrange provision of probation services already available to the Secretary of State under the Offender Management Act 2007, but legislation is required to extend rehabilitative services to short-sentenced prisoners. Consequently, the Offender Rehabilitation Bill was introduced in the House of Lords on 9 May, and when we considered this Report it was awaiting report stage in the House of Commons.

6. Such a reform has the potential to reduce the costs of reoffending. An NAO report on short term offenders in 2010 concluded that NOMS' inability to achieve its goal of reducing the risk of short-sentenced prisoners re-offending generated economic and social costs amounting to between £7bn and £10bn annually.<sup>6</sup> Since then Integrated Offender Management (IOM) schemes have been established, largely using existing resources, and are now "almost universal".<sup>7</sup> These schemes provide a partnership approach, between the police and probation, to dealing on a non-statutory, and therefore voluntary, basis with persistent offenders, many of whom serve repeated short prison sentences. Some are demonstrating extremely positive results and our witnesses wished to see these protected, or built on, in the new commissioning landscape.<sup>8</sup> The Government have acknowledged the importance of these local partnerships—the success of which provide supporting evidence for the benefits of taking a dedicated approach to this group of offenders—and will require new providers to demonstrate how they will "sustain and develop" such schemes in their area.<sup>9</sup>

7. The scope for benefits to accrue from the new provision for short-sentenced offenders in terms of reducing overall reoffending rates is borne out by evidence that they are the most prolific re-offenders. The latest information on comparative re-offending rates of those sentenced to less than 12 months in custody compared to those receiving longer custodial sentences or non-custodial sentences is contained in the Ministry's *2013 Compendium of re-offending statistics and analysis*, which notes that offenders sentenced to less than 12 months in custody had a higher one year re-offending rate than similar, matched offenders receiving

- a community order, of 6.4 percentage points for 2010;
- a suspended sentence order, of 8.6 percentage points for 2010;

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<sup>5</sup> Q8

<sup>6</sup> Report of the Comptroller and Auditor General, [Managing offenders on short custodial sentences](#), HC (2009–10) 431, p 4

<sup>7</sup> Q12 [Mr Hadjiplou]; National Policing Lead for Integrated Offender Management ([PPC 08](#))

<sup>8</sup> Association of Chief Police Officers ([PPC 08](#)); Two Police and Crime Commissioners cited results from examples in their areas: in Bristol crime had fallen by 58%, and in Sussex reconvictions were 78% lower than predicted. Q60; Qq71–72 [Ms Mountstevens; Ms Boume]; See also Probation Chiefs Association ([PPC 07](#)); Rob Allen ([PPC 21](#))

<sup>9</sup> Ministry of Justice, *Transforming Rehabilitation: a strategy for reform*, [Cm 8619](#), May 2013, p 30

- a 'court order' (either a community order or a suspended order), of 6.8 percentage points for 2010.

Offenders sentenced to less than 12 months in custody also had a higher re-offending rate than offenders given an immediate custodial sentence of between 1 and 4 years. The difference was 12 percentage points for 2010.<sup>10</sup> Probation Trusts have pointed out that they have been having success in reducing reoffending by those offenders whom they do have responsibility for supervising. There is a risk that the focus of these reforms on reducing reoffending by short-sentenced prisoners will destabilise the progress that has been made with other cohorts of offenders. It should also be noted, as we raised in our report *Women offenders: after the Corston report*, that it does not necessarily follow that lower risk offenders require a lower intensity of support.<sup>11</sup>

8. The potential for the extension of statutory supervision to those who have served fewer than 12 months in custody, together with the introduction of new providers, to lead to a change in sentencing behaviour was raised by several of our witnesses.<sup>12</sup> Our attention was drawn to an example in which there were unintended increases in the use of custodial sentences. The introduction of the detention and training order, a similar sentence for young offenders, led to a doubling in the youth custodial population. This indicates that the statutory extension of supervision to those serving short-prison sentences might increase sentencers' propensity to use such sentences, increasing demand on the prison system when a non-custodial option might prove more cost-effective.<sup>13</sup>

9. We explored this possibility with Richard Monkhouse, now Chair of the Magistrates' Association, who explained the potential impact on sentencer behaviour:

The main risk is one of trust and confidence. Sentencers, who deal with 95% of all cases that come into a courtroom, need to build up a relationship—which we have done with the Probation Service—both inside and outside court, and that does not happen overnight. One of the dangers is that where you are dealing with offenders who pass the custody threshold, magistrates have been managing to keep a lot of those out. Our custody imposition has come down significantly over the last 10 years because alternatives have been present. We do not want to see those alternatives go, and many of those alternatives are at local level, with local voluntary organisations.<sup>14</sup>

When we raised the potential for this with the Justice Secretary in February 2013, he stated:

“It is not impossible, but we do not want that to happen and we are going to work closely with magistrates and judges to ensure that it does not happen.

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<sup>10</sup> Ministry of Justice, [2013 Compendium of re-offending statistics and analysis](#), July 2013

<sup>11</sup> Justice Committee, Second Report of Session 2013–14, [Women offenders: after the Corston Report](#). HC 92, para 126. See also Magistrates' Association ([PPC 17](#))

<sup>12</sup> Criminal Justice Alliance ([PPC 06](#)); Prison Reform Trust ([PPC 13](#)); Q7 [Mr Monkhouse]

<sup>13</sup> DrugScope ([PPC 12](#)); Prison Reform Trust ([PPC 13](#))

<sup>14</sup> Q7

In many respects, people sentencing will see this as a positive benefit that will help turn lives around, but I do not want people to believe that it is a vehicle to create shorter sentences. We have to be careful to address that issue.”<sup>15</sup>

**10. Whilst the addition of resettlement support might make short prison sentences appear to the courts to be a more attractive alternative to community orders, this should not replace the focus on using community orders where appropriate for non-violent offenders. These are likely to remain a more cost-effective way of dispensing justice and avoid the disruption to families, employment, and housing arising from a short spell of imprisonment. Care will also need to be taken to ensure that any gains made with reducing reoffending by short sentenced prisoners do not come at the expense of the supervision of offenders on other sentences. *We ask the Ministry, in its response to this report, to set out how it intends to reduce the potential for the objectives of its reform to be undermined by an escalation in the number of offenders given short prison sentences as opposed to community sentences. The Government's response to this report should also set out the projected impact of the extension of rehabilitation to short sentenced offenders on the prison population and on associated costs.***

### ***Introducing competition to deliver more efficient and more effective rehabilitative services***

11. The Ministry intends to fund the extension of statutory rehabilitation services through savings released by increased competition and the introduction of payment by results. To facilitate this, they have decided to divide the management of existing probation services in accordance with the level of risk posed by offenders, putting out to competition 21 “contract package areas” to manage low and medium risk offenders, and establishing a national probation service to manage the most serious offenders and oversee services to the courts and aspects of public protection. The Secretary of State described for us his vision:

I am not proposing some great new rocket-science methodology. I am proposing a very simple principle, which is to trust the professionals and give them the freedom to get on with the job.<sup>16</sup>

He also clarified that he was not expecting great falls in reoffending:

My goal is to get an incremental change, year by year. This is not going to start on day one and, by day three, reoffending will suddenly be down by half. What we want is a consistent drop of a few percentage points at a time in the level of reoffending, particularly for those groups where there is a high level of reoffending.<sup>17</sup>

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<sup>15</sup> Oral evidence taken on [27 February 2013](#), HC (2012–13) 964, Q32

<sup>16</sup> *Ibid*, Q1

<sup>17</sup> *Ibid*, Q13

12. Some witnesses were supportive of plans to open provision of probation services to a diverse range of providers and of the principle of incentivising effective practice in reducing re-offending through the introduction of a new payment by results mechanism.<sup>18</sup> Despite this, some were not convinced that the approach the Government had adopted was the best means to achieve this. It was recognised that structuring contracts and the payment mechanism in the right way will be critical to incentivising the desired result whilst avoiding perverse behaviour on the part of new providers. The architecture of both of these will determine the range of providers that are able to seek to enter the market.<sup>19</sup> The first phase of competition, the pre-qualifying stage, closed at the end of November. We discuss the intricacies of the design of the payment mechanism in chapter 3 and the creation of the market in chapter 4.

13. The new proposals represented a significant departure from the direction of travel in changing the delivery of rehabilitation and probation services taken by the previous Ministerial team. That team had consulted on opening up competition and introducing payment by results, but had planned to do so by devolving commissioning arrangements for community rehabilitative services initially to Probation Trusts, and perhaps ultimately to local authorities or Police and Crime Commissioners.<sup>20</sup> We considered these proposals in our probation inquiry in 2011 and concluded that Trusts were best placed to lead local pilots for payment by results. We also expressed concerns that the Government's broader commitment to devolving commissioning to the local level did not fit with its plans to commission some probation services in large geographical lots. We argued that this would undermine links between probation and other participants in the criminal justice system, such as the police, courts, local authorities and local prisons.<sup>21</sup> These questions remain valid in the context of these reforms and we consider them further in chapter 2.

### ***Aligning the provision of community and custody based rehabilitative services***

14. The Government also wishes to create a “genuine ‘through the gate’ service”, whereby the new providers of probation services will work with all prisoners for three months before release as well as supervising them thereafter. The prison estate will be reconfigured to designate 85 local resettlement prisons.<sup>22</sup> New providers will be expected to deliver this pre- and post-release rehabilitative work alongside administering the sentence of the court for low and medium risk offenders serving community orders who make up the bulk of the

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<sup>18</sup> See for example Q42 [Mr Hadjipavlou]; Q44, 45 [Mr Lawrence]; Q164 [Ms Hall]; Local Government Association ([PPC 11](#)); DrugScope ([PPC 12](#))

<sup>19</sup> See for example Q42 [Mr Hadjipavlou]

<sup>20</sup> Ministry of Justice, *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*, [Cm 7972](#), December 2010, and Ministry of Justice, *Punishment and Reform: Effective Probation Services*, [Cm 8333](#), March 2012

<sup>21</sup> Justice Committee, Eighth Report of Session 2010–2012, *The role of the Probation Service*, HC519-I, paras 228 and 229.

<sup>22</sup> The Government wishes short-sentenced prisoners to serve their entire sentence in these establishments and longer sentenced prisoners to be in them for the last three months of their sentence. All women's prisons will become resettlement prisons.

existing probation caseload. This work serves other purposes of justice, including punishment, reparation, and retribution.<sup>23</sup>

15. The view of Napo, a trade union representing probation staff, is that while reducing re-offending is a vital part of probation work, it does not reflect the complexity of offender management services. They argue that reducing the risk of harm is also vital (even if non-harmful offending still occurs) but they fear that public protection is given no value under this model.<sup>24</sup> As well as delivering services themselves, Probation Trusts play a strategic role in meeting both the needs of the courts and their other statutory obligations within a complex array of local partnerships with local criminal justice agencies and other statutory agencies, for example, to commission, co-commission, and broker access to a range of other services.<sup>25</sup> We consider briefly the potential impact of the reforms on local partnership work to reduce crime in chapter 2, but will return to this subject, and the role of resettlement prisons, in more detail in our final report.

## The evidence base for the reforms

16. The Ministry's new proposals are a significant step up in scale in the outsourcing of criminal justice services. As a comparison, the majority of prisons are still publicly managed even though the private sector began to be introduced to the management of prisons through a staged process in the early 1990s. Concern was expressed by witnesses across the spectrum about the strength of the evidence base for various aspects of the reforms.<sup>26</sup> Probation stakeholders and magistrates felt that there was no evidence that the whole model proposed would work better than the existing system.<sup>27</sup> Ian Lawrence, General Secretary of Napo, a trade union representing probation staff, characterised the reforms as "...a recipe for disaster. They pose a massive risk to public safety, and are untried, untested and in our view ideologically flawed" and "destroying what works to put in place an experiment."<sup>28</sup> The Probation Chiefs Association similarly argued that "[the] high performing Probation Trust structure would be replaced by a system that is untested and where there is no evidence that it will perform better or deliver efficiencies as intended."<sup>29</sup> Richard Monkhouse of the Magistrates' Association observed "We have no evidence that anything [that is proposed] will work".<sup>30</sup> Other witnesses highlighted in

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<sup>23</sup> The purposes of sentencing are set out in the Criminal Justice Act 2003, [section 142](#)

<sup>24</sup> [PPC 31](#) (Napo)

<sup>25</sup> See e.g. Q5 [Mr Hadjiplavou]

<sup>26</sup> Q8 [Mr Monkhouse]; Q30 [Mr Lawrence]; Criminal Justice Alliance ([PPC 06](#)); Probation Chiefs Association ([PPC 07](#)); DrugScope ([PPC 12](#)); Prison Reform Trust ([PPC 13](#)); Howard League ([PPC 16](#)); Magistrates' Association ([PPC 17](#)); Rob Allen ([PPC 21](#)); Mr Underhill ([PPC 23](#))

<sup>27</sup> Q8 [Mr Monkhouse]; Q38 [Mr Hadjiplavou]; Mr Underhill ([PPC 23](#))

<sup>28</sup> Qq3, 24

<sup>29</sup> Probation Chiefs Association ([PPC 07](#))

<sup>30</sup> Q8

particular the shortage of evidence on the application of payment by results to the criminal justice arena and on what drives reoffending rates.<sup>31</sup>

### *Contracting out probation services*

17. Some feared that there were risks that the contracting element of the programme would lead to poor diversity of services, would limit innovation, and would deliver poor value for money, particularly in the light of the complexity of rehabilitative services currently provided or brokered by probation Trusts and their partners.<sup>32</sup> Tom Gash of the Institute for Government said there is “a very low evidence base about the benefits of putting things out to contract”. He explained that, at what he described as the “simple end of services”<sup>33</sup>, outsourcing can generate efficiency savings of between 10 and 20 per cent, with no diminution in quality, but with more complex services such as probation the costs and overheads of managing and monitoring contracts can be considerable.<sup>34</sup> Ian Mulheim speculated on whether outsourcing such complex services can engender innovation, or simply risk driving out quality. He explained: “Payment by results is supposed to be a way around that, by uniting the two and aligning the incentives, so that there is no divergence between quality and price for the provider and for the commissioner.”<sup>35</sup>

### *Contracting out electronic monitoring and community payback*

18. The Ministry has some experience of contracting out probation services, and in its consultation cited electronic monitoring and the community payback scheme in London as examples of this.<sup>36</sup> These are, on the face of it, relatively simple interventions in the context of the range of probation services, but both projects have apparently encountered difficulties.<sup>37</sup> The Justice Secretary told us that the community payback contract awarded to London Probation Trust and Serco had provided 40% efficiency savings which he hoped was indicative of what he could replicate in the broader reforms.<sup>38</sup> However, Napo told us that their members have complained about the quality of provision under this contract.<sup>39</sup>

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<sup>31</sup> Q38 [Mr Hadjipavlou]; Q113 [Mr Gash]; Q114 [Mr Eccles]; Probation Chiefs Association ([PPC 07](#)); DrugScope ([PPC 12](#)); Prison Reform Trust ([PPC 13](#)); Criminal Justice Alliance ([PPC 06](#))

<sup>32</sup> Centre for Court Innovation ([PPC 10](#))

<sup>33</sup> For example, facilities management and waste management

<sup>34</sup> Qq113–114. The Institute for Government had devised a series of tests to establish the validity of public service outsourcing under various scenarios. Probation scored highly in terms of difficulty on most tests.

<sup>35</sup> Q113

<sup>36</sup> In 2012, Serco and London Probation Trust were awarded a £37m four-year contract to supervise offenders in the capital on probation doing unpaid work in the community (Community Payback). The project, which has been in operation for 15 months, has similarities with the model for Transforming Rehabilitation as the Trust retains responsibility for public protection. The 40% savings figure advanced by the Secretary of State has been questioned: see [Probation officers face social media gag as outsourcing row rumbles on](#), The Guardian, 21 March 2013, downloaded 10 January 2014

<sup>37</sup> Q4 [Mr Lawrence]; Napo ([PPC 31](#)). The MoJ's electronic monitoring contracts with G4S and Serco ceased following investigations into overcharging.

<sup>38</sup> Oral evidence taken on [27 February 2013](#), HC (2012–13) 964, Q11. When we spoke to him again in December he clarified that he was confident that costs could be brought down. See Q179.

<sup>39</sup> Napo ([PPC 31](#))

Of particular relevance are criticisms about the lack of robust evidence when cases come to court for enforcement action and about poor record keeping. The separation of day-to-day supervision from public protection under the contract is a similar feature to that of the model for the Transforming Rehabilitation reforms. In order to assure ourselves of the operation of this project, we asked the Ministry for performance data. They stated: "Serco's performance has been improving month on month since the contract began in October. They are now meeting most of the key targets and out-performing the national average for Probation Trusts on key measures such as enforcement, successful completions and commencement within 7 days." Reconviction rates specific to the project are not collated.<sup>40</sup>

### **Payment by results pilots**

19. When we considered the application of payment by results to criminal justice in our report on probation we concluded that:

"[...] the payment by results models proposed are untested [...] and represent a significant departure from existing commissioning arrangements. Nevertheless, given the problems faced by the sector, there are compelling reasons to test the potential of a radically different approach."<sup>41</sup>

The Ministry was in the process of developing various pilots, including two pilot schemes involving contracting out community rehabilitation services, when the new Ministerial team decided to cancel those that had not commenced to review the direction of payment by results in autumn 2012.<sup>42</sup> The Secretary of State defended this decision:

On the evidence, there has been a debate. The Opposition has said, "Why don't you do all the pilots first?" I think that the process that they set up, initially in Peterborough and now in Doncaster as well, will take us much of the rest of this decade to see through to a conclusion, evaluating the data and coming up with an analysis. We are talking about the core principle of trusting the professionals and making them take a bit of the risk themselves, putting together a system that catches the best of public, private and voluntary: in the public sector, real skills in protecting the public against harm; in the voluntary sector, real skills in mentoring; and in the private sector, real skills in driving up value for the taxpayer so that we can reinvest money in the other 12-month group.

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<sup>40</sup> [PPC 33](#) (Ministry of Justice)

<sup>41</sup> Justice Committee, Eighth Report of Session 2010–2012, *The role of the Probation Service*, HC 519-I, para 211

<sup>42</sup> It was intended that the Probation Trusts involved would form joint ventures with private providers. Operationally, external providers would run these ventures and deliver rehabilitation services to offenders. Six pilots were cancelled: two prison based pilots at HMP Leeds and HMP High Down; two probation pilots in Wales and the West Midlands, and two community based innovation pilots.

The first formal results for the prison based pilots will not be available until mid-2014.<sup>43</sup> Yet we were told by the Secretary of State in February 2013 that the payment by results approach was “so obviously the right thing to do”<sup>44</sup>. The most significant change proposed is the application of payment by results to probation services which, as we noted above, has not been tested.<sup>45</sup> Probation stakeholders and many others in the criminal justice sector have criticised the Government’s approach.<sup>46</sup> However, Max Chambers of Policy Exchange, who had been involved in the pilots as a provider, argued that despite the cancellation of the six further planned pilots—which in his view were neither commercially viable nor of sufficient scale to be representative—the Ministry had already “tested to destruction” the options for payment by results through the pilot process and had learnt enough about how to scale it, including how to incentivise, how to procure, how to measure and how to pay.<sup>47</sup> In chapter 3 we explore this matter in greater detail.

### ***The impact of mentoring on reducing re-offending***

20. There are also questions about the extent to which there is a sufficiently robust evidence base for what constitutes effective practice in reducing reoffending.<sup>48</sup> The Ministry has been seeking to remedy this through the creation of a Justice Data Lab—an initiative which enables organisations working with offenders to establish their impact on reoffending by accessing central data—and the production of rapid evidence assessments to place in the public domain the best information about what works.<sup>49</sup> The rapid evidence assessment on the impact on reoffending of mentoring—which Mr Grayling told us he wishes to see more of as a result of the reforms—was inconclusive.<sup>50</sup> When we asked Mr Grayling about the evidential basis for mentoring he did not mention this study, but referred to the emerging results from the pilot at HMP Peterborough which he told us was now demonstrating a “very substantial decline in reconviction rates...well in excess of 20%.”<sup>51</sup>

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<sup>43</sup> Final results will not be available until this year. See Ministry of Justice, [Interim reconviction figures for Peterborough and Doncaster Payment by Results Pilots](#), June 2013.

<sup>44</sup> Qq21, 31

<sup>45</sup> Some of the ongoing pilots took a broader justice reinvestment approach: they aimed to incentivise local statutory partners to reduce demand on courts, legal aid, prisons and probation and, consequently, reduce the costs on the justice system. We will consider these more fully in our final report on the crime reduction inquiry.

<sup>46</sup> Qq30, 39 [Mr Lawrence]; Criminal Justice Alliance ([PPC 06](#)); DrugScope ([PPC 12](#)); Prison Reform Trust ([PPC 13](#)); Howard League for Penal Reform ([PPC 16](#)); Magistrates’ Association ([PPC 17](#)); Mr Allen ([PPC 20](#)); Mr Underhill ([PPC 23](#)); Ms Lawrie ([PPC 28](#)); Mr Michael ([PPC 30](#)); Napo ([PPC 31](#))

<sup>47</sup> Q113 [Mr Chambers]; Mr Oliver of 3SC similarly viewed the community-based pilots as “uninvestable” and “unworkable”. See Qq42–3.

<sup>48</sup> See for example Q13 [Mr Hadjipavlou]; Q114 [Mr Eccles]; Criminal Justice Alliance ([PPC 06](#)); Probation Chiefs Association ([PPC 07](#)); DrugScope ([PPC 12](#)); Prison Reform Trust ([PPC 13](#)); Howard League for Penal Reform ([PPC 16](#)); Mr Allen ([PPC 20](#)); London Councils ([PPC 21](#)); Mr Underhill ([PPC 23](#))

<sup>49</sup> [PPC 14](#) (Ministry of Justice)

<sup>50</sup> National Offender Management Service, [Intermediate outcomes of mentoring interventions: a rapid evidence assessment](#), October 2013

<sup>51</sup> Q181

21. There is some emerging evidence of promising results from some community-based and through-the-gate interventions that make a concerted effort to reduce reoffending by some short-sentenced prisoners. It should be noted however that these schemes are voluntary in nature, have not yet been running for sufficiently long to produce robust results, and represent only one aspect of the model proposed. Consequently, there is a question about how much they are indicative of the potential of the entire package of reforms. The absence of piloting of payment by results for delivering reductions in reoffending by those subject to probation services means that some lack confidence that the Government's reform programme will work better than the existing system.

### The scale and pace of the reforms

22. Our witnesses highlighted the challenges of the proposed timetable for implementation, both for potential providers and current practitioners.<sup>52</sup> We explore the relevance of the pace of reforms throughout our report as we consider each aspect of the programme. In general terms, Tom Gash characterised the Ministry's reforms as "probably the most ambitious outsourcing programme that the Government had ever embarked on".<sup>53</sup> On the other hand, Max Chambers noted that the process did not involve the creation of a whole new service, as the Work Programme did.<sup>54</sup>

23. The Secretary of State himself acknowledged that establishing the Transforming Rehabilitation programme was "a more complicated process" than the Work Programme, because of the reorganisation required within the probation sector.<sup>55</sup> Nevertheless, in response to concerns about the scale of the reforms and the absence of testing he said:

"This is not a big bang approach; it is an evolution, not revolution. The changes will take place over a period of at least a year, which will allow bedding in across the country. For example, the transition to inclusion of the under-12-month group builds up over an extensive period of time. Over the first six months, only offenders in the very low thousands are involved, so there is plenty of time for that new system to bed in."<sup>56</sup>

He also told us he wished to see the anomaly of the absence of support to the most prolific offenders resolved swiftly as it was too important a problem to delay and unfair on those who do not get the support they desire.<sup>57</sup> The Ministry states that implementing the new system in phases will allow time for providers to form bids, for the public sector to restructure with "minimal disruption to business as usual" and for new services to be set

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<sup>52</sup> DrugScope ([PPC 12](#)); Q114 [Toby Eccles]; Q114 [Tom Gash]; Prison Reform Trust ([PPC 13](#)); Clinks ([PPC 27](#)); Napo ([PPC 31](#)); Probation Chiefs Association ([PPC 06](#)); Q153 [Sue Hall]; Q153 [Mr Cox; Ms Hall]

<sup>53</sup> Q114

<sup>54</sup> *Ibid.*

<sup>55</sup> Oral evidence taken on [27 February 2013](#), HC (2012–13) 964, Q4

<sup>56</sup> Q178

<sup>57</sup> *Ibid.*

up.<sup>58</sup> We note that in a different context, talking about difficulties which had been experienced in relation to the Ministry's Shared Services Programme, rationalising provision of corporate services, Dame Ursula Brennan, the Permanent Secretary, told us in October 2013 that "When you have something really big and complicated, biting it off in bite-sized chunks is now thought to be a better way of going"<sup>59</sup>.

**24. Some of our witnesses were supportive of the underlying principles of the Government's Transforming Rehabilitation reform programme, in particular, the extension of pre and post-release support to short-sentenced prisoners, the introduction of an element of payment for outcomes sought, and opening up the provision of probation services to a greater diversity of providers. Nevertheless witnesses, including some supportive of the proposed changes, had significant apprehensions about the scale, architecture, detail and consequences of the reforms and the pace at which the Government is seeking to implement them.**

### Assessment of risks

25. Much of this report is concerned with a discussion of the risks which might, if they materialise, adversely affect implementation of the Transforming Rehabilitation programme. Evaluation and assessment of risks, which informs action taken to mitigate them as appropriate, is an essential part of the management of any major project, all the more so in a case such as this one, where operational failures might lead to an increase in the threat to public safety. At the same time we acknowledge that radical change presents more potential risks than minor change: this should not be an excuse for inaction. Before the Secretary of State gave oral evidence to us we asked to be provided with a copy of the latest version of the Ministry's internal risk register for the programme. This request was refused. When we pressed the Secretary of State on this refusal, he explained his position in the following terms:

It has never been the habit of any Government to make public risk registers. It is worth saying what a risk register is. It is simply a group of civil servants who at the start of a project sit down and work out everything that could possibly go wrong so that they take appropriate steps to make sure it does not. If you produce a risk register, it is a whole litany of potential disasters in the making, not ones that are likely to happen but ones we are working to make sure do not happen. This applies to every project in the public sector, whether it is a big IT or organisational change project. It is not a true reflection of the nature of the project; it is more a reference point to make sure we have thought of everything that could go wrong and have taken the steps to make sure it does not. It has never been the custom and practice of Governments to publish that. It is not a document on which you can base a

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<sup>58</sup> Ministry of Justice, *Transforming Rehabilitation: a strategy for reform*, Cm 8619, May 2013, p 33

<sup>59</sup> Oral evidence taken on [22 October 2013](#), HC (2013–14), 725, Q25

true assessment of the state of a project. It is an internal working tool, and I think it should remain such.<sup>60</sup>

26. Evidence we have taken in this report demonstrates that there is considerable consensus about the nature of the risks involved in implementation of the Transforming Rehabilitation project and we have used this evidence to arrive at our conclusions on the subject.<sup>61</sup> **No project on this scale is without risk, and we do not approach the question from the naïve standpoint that all risk can or should be eliminated. It is not satisfactory, however, that we are unable to inform our scrutiny of the programme with more systematic information from the Ministry about the major risks they have identified and the steps that they have taken and are taking to mitigate those risks. In order to reassure us we ask the Ministry, in its response to this report, to provide a narrative description of those risks which it considers most significant to the success of the programme as a result of the combination of their likelihood of occurring and their seriousness if they were to occur, and in relation to each of them to describe mitigations which have been put in place or are proposed.**

## Costs

27. When it comes to providing information about the likely costs of its rehabilitation revolution, particularly those arising from the extension of provision to short-sentenced offenders, the Ministry has been less than forthcoming. It believes it can reduce costs through competition, using those savings to pay for its new approach. We have seen no estimate of how much the Ministry would additionally need to save to afford the cost of implementing its proposals, including the structural reform required, or how quickly savings will be realised to fund the extension of twelve month's post-release statutory support to all prisoners. The latter will comprise two groups: those sentenced to less than 12 months in prison, who do not currently receive any support, and those sentenced to between 12 months and 2 years, who are currently supervised for a period equating to half their sentence. This will increase probation caseloads by up to 65,000 offenders.<sup>62</sup>

28. Some limited costs were included in a revised impact assessment for the Offender Rehabilitation Bill after the Government was criticised in the House of Lords about the quality of information on which peers were to be expected to support it.<sup>63</sup> In this impact assessment the Ministry states it has undertaken detailed modelling of the likely costs but considers it "inappropriate to release these costs, as they will be dependent on the outcome

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<sup>60</sup> Q184

<sup>61</sup> In its absence we have drawn on a reported leak of the initial Ministry risk register in an article in the Guardian and the joint Probation Chiefs Association and Probation Association risk register, as well as our evidence of the various risks of the reforms.

<sup>62</sup> The [Updated Offender Rehabilitation Bill impact assessment](#) explains that in addition to extending support those sentenced to less than 12 months, the Bill will also extend the supervision period for offenders released after serving custodial sentences of 12 months to ensure that all offenders will be subject to at least 12 months of statutory rehabilitation after release.

<sup>63</sup> Ministry of Justice, [Updated Offender Rehabilitation Bill Impact Assessment](#), June 2013

of competing offender services in the community. If we were to publish an estimated figure for the future costs this could put contractual negotiations at risk and prejudice the effectiveness of the competition.”

29. We sought further information from the Ministry on some of the costs of the programme that we did not consider would be commercially sensitive. The Department was unwilling to disclose the costs that had been expended on the Programme to date but assured us that these were being met from the current budget. As we note in chapter two, the Ministry has not yet determined the budget allocation for the two new entities. The projected running costs of the National Probation Service are in the region of £400 million per annum, representing 49% of NOMS' current probation budget.<sup>64</sup> The total value of the contract packages is reported to be between £5 and £20 billion, equating to up to £500 million per annum.<sup>65</sup>

30. Properties in the probation estate make up 10% of the current budget. NOMS anticipates that these costs will be shared between CRCs and the NPS until at least December 2015. The exact costs of exiting any properties that become surplus to requirements is unknown as this will depend on future operating models. Another large proportion of the existing budget is dedicated to staff costs. Some efficiency savings might be made through the streamlining of probation areas when the 35 Trusts are reduced to 21 CRCs, although there are also likely to be associated redundancy and restructuring costs.<sup>66</sup> The Ministry has budgeted for a redundancy package but was unwilling to disclose the size of this as they felt it would prejudice negotiations with potential providers. It did tell us however, that £4.15 million has been set aside for restructuring Probation Trusts. A further additional cost relates to the information technology required to underpin the reforms. The cost of rationalising numerous separate computer packages was considered by the Ministry to be commercially sensitive.<sup>67</sup> As we note in chapter two the twin structure of probation services is also likely to result in some inefficiencies in terms of duplication of effort, for example, in partnership work and case management.

31. When the Secretary of State announced to the House the reversal of his plans for prison competition in November 2012 he explained that benchmarking would instead be undertaken across the public prison estate to save £450 million over a six year period which could be used rapidly to expand the payment by results approach.<sup>68</sup> In evidence to us Mr Grayling clarified that any savings stemming from this would now be subsumed into departmental savings targets. Prisons currently hold a number of contracts which cover resettlement services that in the future will be provided by CRCs. We asked the Ministry for the current cost of resettlement services across the prison estate but were told that this

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<sup>64</sup> The probation budget for 2011–12 was £821 million

<sup>65</sup> See Ministry of Justice, *UK-London: services related to the detention or rehabilitation of criminals - Prior Information Notice*, May 2013. The costs of the National Probation Service will be in addition to this.

<sup>66</sup> Q168 [Ms Hall]; Ministry of Justice ([PPC 35](#))

<sup>67</sup> The Guardian leaked risk register estimated 2000 computer packages would need to be rationalised. See [Privatising probation service will put public at risk, officials tell Grayling](#), The Guardian, 24 June 2013

<sup>68</sup> Qq189–190

is not held centrally.<sup>69</sup> As we were preparing our report a Joint Criminal Justice Inspection report on prison based offender management was published which concluded that this was not functioning well and required a fundamental review. It stated that “Th[e] lack of progress [on our previous recommendations] is of particular concern as it casts doubt about the Prison Service’s capacity to implement the changes required under the Transforming Rehabilitation Strategy designed to reduce reoffending rates, especially for short-term prisoners.”<sup>70</sup> Mr Wright was confident that the Government’s plans would resolve the problems encountered by the Inspectorate.<sup>71</sup> The question remains as to whether this is realistic within the context of the resources that can be allocated to this aspect of the programme.

32. The Guardian reported on 24 June 2013 that the Ministry’s internal risk register assessed at 51% to 80% the risk that the reforms would fail to deliver the proposed level of savings.<sup>72</sup> When we put this to Mr Grayling, he assured us that the fact that the Treasury had approved the outline business case signalled that this was not so. He explained that whilst there were likely to be small savings, the programme is “not a money saving exercise”: rather it is about seeking to change the cost base of the criminal justice system in future by bringing down the rate of reoffending.<sup>73</sup> He anticipated that additional savings and additional reduced pressure on the system would begin to be seen in the “second half of the decade”.<sup>74</sup>

33. There is also likely to be a range of costs associated with the broader consequences of the programme, some of which are currently unknown. The impact assessment estimates additional costs of between £12 and £48 million per year stemming from increases in breaches of licence and supervision conditions. There will also be an additional burden to the police, estimated to cost up to £5 million per annum, as police time will be needed to deal with offenders who fail to comply with the conditions of supervision. On the other hand, no financial provision appears to have been made for any potential elevation in the use of custody by sentencers in the Government’s impact assessment for the Bill—indeed its judgment is that over time there will be a reduction in the number of offenders returning to the system with the potential to cut prison costs—although it states that it will monitor closely “any effect on sentencing practice, non-compliance and sanctions.”<sup>75</sup> There are other potentially unforeseen financial implications of the reforms, including, for example, escalation in referrals to other statutory services, the loss (or redeployment) of fundraised income from the voluntary sector, the unknown impact on existing co-

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<sup>69</sup> Ministry of Justice ([PPC 35](#))

<sup>70</sup> Criminal Justice Joint Inspection, [Third Aggregate Report on Offender Management in Prisons](#), December 2013

<sup>71</sup> HC Deb, 17 December 2013, [col 603](#)

<sup>72</sup> [Privatising probation service will put public at risk, officials tell Grayling](#), The Guardian, 24 June 2013

<sup>73</sup> Qq179, 187

<sup>74</sup> Oral evidence taken on [27 February 2013](#), [HC \(2012–13\) 964](#), Q28

<sup>75</sup> The summary of the [Updated impact assessment for the Offender Rehabilitation Bill](#) acknowledges that: “There will be court costs associated with breaches of this provision, and costs of providing sanctions for these breaches. These may include additional pressure on the prison population arising out of offenders being recalled to custody.” It does not specify or cost the volume of increase in the prison population anticipated.

commissioning partnership arrangements, and the risk of forfeiting the broader value of non-statutory services which enable the courts to divert the lowest risk offenders from community sentences.<sup>76</sup>

**34. On the limited information which the Government has provided, it is not clear to us whether sufficient funding is in place to meet the costs of transition to the new system and of statutory rehabilitation for those sentenced to less than 12 months in custody. For the Transforming Rehabilitation programme to meet its objectives, substantial improvement will be needed in relation to two other elements that are not currently working well: rehabilitative provision in custody, including through the gate supervision for all prisoners coming to the end of their sentence; and provision of requirements that can be attached to community orders, including mental health, drug, and alcohol treatment. The costs of making the structural reforms and efficiencies necessary to support the programme are also likely to be considerable. A key question for the affordability of these reforms is how new providers will fund all this now that NOMS plans to dedicate to them only the community based element of existing rehabilitation resources.**

**35. The Government is confident that over the longer term demand on the system will be lessened through these reforms, reducing in particular the economic and social costs of reoffending by short-sentenced prisoners (estimated to be between £7 billion and £10 billion a year). This would lead to the virtuous cycle of reduced reoffending and reduced public funding that is the ultimate policy goal. But in the absence of published projections of the likely reductions in reoffending or estimates of how this might impact on the future costs of the system, it is not possible to predict whether savings will be swallowed up by increased demand on the prison system and reduced funding of existing services by statutory partners and other funders.**

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<sup>76</sup> Q7 [Mr Monkhouse]; Q22 [Mr Oliver]; Q146 [Mr Gash]

## 2 The transition from Trusts to Community Rehabilitation Companies and the National Probation Service

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### The target operating model

36. The reorganisation of probation services to facilitate the reforms will see the 35 Probation Trusts dissolved in April 2014 and replaced with a National Probation Service (NPS) and 21 Community Rehabilitation Companies (CRCs). The Government has published a target operating model which explains how the system would work in practice once the reforms are fully implemented.<sup>77</sup> The CRCs, owned and run by those organisations that are successful in bidding to deliver services in a designated area under contract to NOMS, will manage the majority of offenders in the community—those sentenced to community orders or suspended sentence orders, and those subject to post-custody licence conditions or supervision requirements. Each CRC will be designated a small number of resettlement prisons which will release the vast majority of offenders to that area, and in those prisons the CRCs will be expected to deliver a pre-release resettlement service. The National Probation Service (NPS) will be a delivery arm of NOMS comprised of local delivery units which will directly manage offenders who pose a high risk of serious harm to the public—including those whose risk has escalated to that level during the course of their sentence—and those released from custody who have committed serious offences. They will also play a role in the management of all offenders, including conducting risk assessments, advising the courts on sentencing, responding to escalations in risk, and taking enforcement action. It is envisaged that the NPS will deliver some specialist interventions for the offenders it manages, but in general it will purchase interventions from CRCs.

37. The Ministry has planned for a staged transition process. Although the Government's plans will constitute a radical change in the probation system, Mr Wright reiterated to us that this was not a “big bang” approach, which he accepted would be “inherently risky”. He explained that there would be a period of time to enable the transfer of the case load and to make sure that the system is working as intended whilst both halves were still in public ownership.<sup>78</sup> We set out the Government's timetable for the phases of reform in Appendix 1.

38. Initial speculation was that there would be a 30:70 split in resource allocation between the new services, with the lion's share going to new providers, reflecting the fact that the highest risk offenders constitute only 30% of the existing probation caseload. However, whilst the Ministry estimates that the split in caseloads is likely to be in roughly this ratio, they were unable to detail exactly how the funding would be split, although they indicated

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<sup>77</sup> Ministry of Justice, [Target Operating Model: Rehabilitation Programme](#), September 2013

<sup>78</sup> Q240

that it was likely to be somewhere between 30:70 and 50:50, as the cost of supervising high risk offenders is greater than for those who are low risk.<sup>79</sup> The precise split in resource will not be clear until the competition process is completed.

39. As we noted in the previous chapter, the proposed delivery structure represents a significant departure from the existing system for operation of probation services. Our witnesses have highlighted three key design problems with the model related to: the risks of separating aspects of offender management; the potential impact on relationships between probation services and their local partners; and limitations in opportunities for staff development. We also consider in this chapter some practical considerations related to the process of apportioning the staff who are responsible for managing offenders to the two separate entities, and the capacity of trusts to maintain business as usual through the transition process.

## Public safety

40. Many of our witnesses had particularly serious misgivings about how one of the fundamental elements of the model—the division of the management of probation cases between those offenders deemed to represent the highest risk of harm and less dangerous offenders—will work without jeopardising public protection.<sup>80</sup> The target operating model proposes that if the risk assessment of an offender changes from low or medium to high, the public sector National Probation Service will assess the case and consider whether the management of the case should transfer from the CRC to the NPS.

41. Witnesses saw an apparent contradiction between the new model and what is known about the importance of the relationship between the offender and the supervising officer in desistance from offending. The assumed wisdom in probation practice is that there should be a single “offender manager” for an offender throughout the life of the order or licence.<sup>81</sup> Christine Lawrie, a former Chief Probation Officer and former Chief Executive of the Probation Association said:

The most effective risk assessment is an unbroken process involving periodic “actuarial” and continuous “clinical” monitoring, review and action by a single responsible person. The new arrangements make it impossible for this to happen in the contracted services.<sup>82</sup>

Sue Hall, Chair of the Probation Chiefs Association, explained the implications of this:

Where currently we have one simple model of an offender manager managing the offender’s entire journey through their order or licence, we

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<sup>79</sup> The National Probation Service’s assessments will determine whether someone is a high, medium or low-risk offender, so the exact proportions cannot be determined. Qq191–193

<sup>80</sup> See for example Q5 [Mr Hadjipavlou]; Q25 [Mr Lawrence]; Prison Reform Trust ([PPC 13](#)). See also A4E ([PPC 03](#)); Christine Lawrie ([PPC 28](#)); Napo ([PPC 31](#)); Martyn Underhill ([PPC 23](#)); Gillian Riley ([PPC 25](#))

<sup>81</sup> Napo ([PPC 31](#))

<sup>82</sup> Christine Lawrie ([PPC 28](#))

now potentially have a bureaucratic system to put in place that ensures that information moves between two sets of organisations. We all know that points of data and information transfer are potential points of risk.<sup>83</sup>

42. NAPO, the PCA and the PA all say they are gravely concerned about the implications of this split for safeguarding public safety.<sup>84</sup> The public sector will retain responsibility for public protection, but the day to day management of risk is likely to reside with the provider which will need to take decisions about when, for example, a change in behaviour or non-attendance requires an issue to be escalated to the national service. While it is not yet clear precisely where the split in caseloads will lie, it is likely that CRCs will be “managing a whole raft of offenders who are at risk of committing harm” including “domestic violence cases, complex mental health cases and child safeguarding cases”.<sup>85</sup> This, and the necessary escalation process to enable new providers to identify and notify the probation service if they believe the risk posed by an individual may have changed, will be determined during the next phase of implementation.<sup>86</sup> Probation stakeholders anticipated difficulties in creating a new interface between the contracted and the public sector as they estimate that 20% to 25% of the caseload will move across the sectors, in other words from low or medium to high risk and vice versa..<sup>87</sup>

43. The Probation Chiefs Association thought that the complexity of information exchange to keep track of changes in individual cases was likely to result in greater bureaucracy and to more public protection failures than under the current system.<sup>88</sup> Napo considered that risk changes needed to be acted on immediately in order to protect the public.<sup>89</sup> The potential complications that might stem from these observations were illustrated by the reported breakdown in the timely sharing of comprehensive information by the contractor which prevented probation staff from taking breach action in the community payback scheme in London mentioned in the previous chapter.<sup>90</sup> Our witnesses also anticipated difficulties with particular elements of probation work which will be retained by NPS, including that of victim liaison officers and advice to the parole board.<sup>91</sup> When the Chairman and Chief Executive of the Parole Board appeared before us on 17 December to give evidence on their work in general, we asked about the implications of the Transforming Rehabilitation reforms for the Board. They welcomed the greater focus on

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<sup>83</sup> Q156 [Ms Hall]

<sup>84</sup> Q156 [Ms Hall], Napo ([PPC 31](#)). See also Probation Chiefs Association and Probation Association risk register.

<sup>85</sup> The public sector probation service is retaining only offenders who are a high risk of *serious* harm.

<sup>86</sup> Q156 [Ms Hall]

<sup>87</sup> Q24 [Mr Hadjipavlou]; Napo ([PPC 31](#))

<sup>88</sup> Probation Chiefs Association ([PPC 07](#)). See also Q55.

<sup>89</sup> Napo ([PPC 31](#))

<sup>90</sup> See [PPC 31](#). Napo members have complained about offender projects being dosed without warning, of a lack of robust evidence when cases come to court for enforcement action, a lack of proper health and safety, lack of safeguarding procedures for those aged under 18 and a lack of proper record keeping.

<sup>91</sup> See Ms Riley ([PPC 25](#)); Napo ([PPC 31](#)) Victim liaison officers provide assurance to victims about aspects of the case management of offenders, and the Parole Board relies on evidence about risk management from probation practitioners who know the offender.

serious offenders by the NPS, and were confident in the advice they would receive from them, but were concerned about the likelihood of higher levels of recall on their caseloads.<sup>92</sup>

### ***Dual oversight in existing and future practice***

44. A key question which the Government must address is how these inherent difficulties can be minimised satisfactorily under the programme. When asked to explain how this dual oversight would work, the Justice Secretary said he envisaged it being “a simple process”. He told the House:

The national probation service team will be responsible for risk assessment. They will have a duty to carry out a new assessment when a person’s circumstances change, and it will be the duty of the provider to notify the team of any material change of circumstances. They will be co-located, and when an offender becomes a high-risk offender, they will be taken back under the supervision of the national probation service. This is about people sitting in the same office and working together, just as people work together in any office environment.<sup>93</sup>

When asked about this, Sue Hall replied:

Is there any model that mirrors what the target operating model will be? No, there is not. Will people be sitting in the same offices? Yes, they will, for about two years, but the process will allow prime providers to move out of MOJ offices in due course. On day one, we will all be in the same office, although we may have moved our chairs around a bit, but the fact is that you will have one national structure managing half, or 40%, of the staff and one local structure managing the other 60% of the staff. Those management structures are not aligned in a way that will make the development of local processes easy.<sup>94</sup>

45. Jeremy Wright MP, the Parliamentary Under Secretary of State for Justice with direct responsibility for the reforms, did not see what was proposed as a significant departure from existing practice:

“It is not the case now that necessarily the same individual deals with an offender when they are medium risk and high risk, and that the offender manager is the same individual and the person who determines breach.

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<sup>92</sup> Oral evidence taken on [17 December 2013](#), HC 917, Qq16–17

<sup>93</sup> HC Deb, 30 October 2013, [col 1001](#)

<sup>94</sup> Q163 [Ms Hall]. See also Q55 [Mr Johnson]

There are already interactions between individuals, and it is important that they continue.”<sup>95</sup>

Whilst Mr Wright acknowledged that the relationship between CRCs and NPS would be “crucial”, he was confident that risks would be minimised effectively for two reasons: first, there would be an expectation that there will be good communication between them as it will be mutually beneficial and, secondly, there would be contractual obligations on behalf of the CRCs to engage with the NPS.<sup>96</sup> The Secretary of State recognised that there was potential for a detrimental impact on public protection during the process of allocating cases between staff once they are repositioned into the two new entities, but felt that phasing the migration of some cases would manage this risk: “We can make modifications in the plans for an extended period [of transition] for those individual cases where there is a public safety issue. We are not going to compromise public safety.”<sup>97</sup>

**46. Research and professional experience suggest that those being supervised by probation benefit from having a single case manager. The changing dynamics of risk of harm in individual cases also require continuous case management to enable professional and objective assessment to be made, based on a direct relationship with an offender. Whilst under the present system offenders sometimes move between supervising officers much of the evidence we received pointed to there being additional risks over and above the current situation which will be challenging to remedy through contractual specifications. It is essential that arrangements are put in place to ensure very good lines of communication and cooperation between Community Rehabilitation Companies and the National Probation Service. Co-location will certainly help in the short term, but unless that is required through contractual terms there is no guarantee that it will happen in practice over the medium to long term, as the quest for efficiencies leads to the evolution of delivery models and reconfiguration of the probation service estate. It will be important for the Ministry to monitor this aspect of the new operational arrangements particularly carefully.**

### **Local partnerships**

47. The other aspect of probation stakeholders’ apprehensions about the new model is its potential to damage Probation Trusts’ existing work with local partner agencies which they see as crucial to reducing re-offending.<sup>98</sup> Police and Crime Commissioners, local authorities, and other criminal justice stakeholders shared these reservations.<sup>99</sup> As noted in our report on the role of probation, a key characteristic of rehabilitation is the wide range of local delivery partners involved.<sup>100</sup> These partnerships might not be an unqualified

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<sup>95</sup> Q182

<sup>96</sup> *Ibid.*

<sup>97</sup> Q195

<sup>98</sup> Q5 [Mr Hadjipa Vlou]; Q23 [Mr Lawrence]; Probation Chiefs Association ([PPC 07](#))

<sup>99</sup> London Councils ([PPC 05](#))

<sup>100</sup> Commissioning activity to reduce crime and re-offending is embedded in the work of a range of local partnerships (and their component agencies) including: community safety partnerships (CSPs) in England and

success but many, such as integrated offender management schemes, are demonstrating effectiveness.<sup>101</sup>

48. Our witnesses identified a number of unintended consequences of the reforms which might erode the close working links between local partners and frustrate efforts for them to work even more closely together.<sup>102</sup> In particular, they questioned whether the introduction of national commissioning against the trend of other Departments' programmes, changes to existing area boundaries for the delivery of probation services, and the introduction of new providers paid for by results might militate against proactive engagement, co-commissioning and the pooling of resources to develop more efficient and comprehensive services at local level.<sup>103</sup> The role of local authorities and police and crime commissioners as local commissioners also appeared to some of our witnesses to have been undervalued.<sup>104</sup> Richard Monkhouse of the Magistrates' Association feared that the new commissioning arrangements would undermine the contribution of local voluntary sector organisations that provide a net of non-statutory assistance to those whose offending does not (yet) warrant a community order signposted to them by the courts.<sup>105</sup>

49. Mr Grayling characterised this aspect of probation work as "simply organising resources that are already there locally from other public bodies."<sup>106</sup> Nevertheless, the Ministry appears to have been conscious of the need for new providers to integrate into and make best use of existing local structures from the outset, and has given particular attention to seeking to ensure that Multi-agency public protection arrangements (MAPPA) and Integrated Offender Management (IOM) schemes are preserved.<sup>107</sup> Participation in some statutory partnerships will be contractual, but for others prospective providers will be required to evidence how they will engage and this will be monitored.<sup>108</sup> For the majority of statutory partnerships the Ministry proposes that both new entities will need to be

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Wales, multi-agency public protection arrangements (MAPPA), Child Safeguarding Boards and local criminal justice boards (LCJBs). LCJBs were abolished by the government in April 2011 and funding ceased but they continue to exist in many areas. Probation's role in community safety partnerships was cemented by the Policing and Crime Act 2009 which made the trusts a 'responsible authority' sharing responsibility with other agencies for local targets to cut offending. According to the Probation Chiefs Association, other partnerships in which Probation Trusts are a lead agency include: Integrated Offender Management schemes featuring co-delivery of services with the police; Community Budget pilots and 'Total Place' initiatives with Troubled Families; Women Offender Community Schemes; Strategic engagement with Health and Well Being Boards; Resettlement, social housing and back to work projects; Victim Support and Restorative Justice; service user mentoring schemes; and youth offending teams. Probation Chiefs Association ([PPC 07](#))

<sup>101</sup> Q34 [Mr Johnson]; Probation Chiefs Association ([PPC 07](#)); National Policing Lead for Integrated Offender Management ([PPC 08](#)); Ms Mountstevens ([PPC 19](#)); Mr Underhill ([PPC 23](#)); Napo ([PPC 31](#))

<sup>102</sup> See for example, A4E ([PPC 03](#)); Criminal Justice Alliance ([PPC 06](#)); Prison Reform Trust ([PPC 13](#)); Mr Allen ([PPC 20](#))

<sup>103</sup> Local Government Association ([PPC 11](#)); London Councils ([PPC 21](#))

<sup>104</sup> See for example, Centre for Justice Innovation ([PPC 10](#)); DrugScope ([PPC 12](#)); Prison Reform Trust ([PPC 13](#)); Howard League for Penal Reform ([PPC 16](#)); London Councils ([PPC 21](#)); Ms Lawrie ([PPC 28](#))

<sup>105</sup> Q7

<sup>106</sup> Q15

<sup>107</sup> Ministry of Justice, *Transforming Rehabilitation: a strategy for reform*, Cm 8619, May 2013, p 29

<sup>108</sup> Ministry of Justice, *Target Operating Model: Rehabilitation Programme*, September 2013

involved, suggesting that there is likely to be some duplication of resource and the need for clear delineation of each entity's responsibilities.

**50. Probation is the lead agency in a range of local partnerships. In future there will be two probation services (the new National Probation Service and the contracted provider) in every locality delivering similar services side by side and sometimes via one another. Each will have to form working relationships with other local organisations, bodies and services for the delivery of the joint or complementary services which characterise effective local work with offenders. Ministers should recognise that there is a potential risk that this will lead to inefficient use of resources, and confuse accountability at local level. The Government proposes to give new providers accountability for reducing offending within community safety partnerships by mandating this in contracts and asking prospective providers for clarification of how they will preserve and develop existing partnerships: that is to be welcomed. It is important that Ministers put in place appropriate safeguards to ensure that new providers in the private sector appreciate the importance of working with existing local partnerships to reduce reoffending. We will consider the future prospects for local partnerships further in our final report in this inquiry.**

### **Practicalities related to splitting the service**

51. The first phase of the transition to the new model is the creation of the Community Rehabilitation Companies (CRCs) and the National Probation Service (NPS) which will replace the 35 existing Probation Trusts in April 2014<sup>109</sup>. The plans for creating the new structures are well underway, with the Ministry aiming for the transition of staff to Community Rehabilitation Companies and the National Probation Service to be completed by the end of January 2014. We understand that the intention is then to shadow run CRCs in the public sector until about November 2014, using the same buildings and IT equipment, whilst making refinements to the operating model, when they would be handed over to the new providers.

### ***Transition to the new model***

52. Probation stakeholders impressed on us the magnitude of change that they felt Trusts were being expected to manage in order to reorganise the service within very tight timescales. They are moving to a new state, involving Trust mergers and future changes to conditions of service, and being expected to wind down by April 2014—faster than initially anticipated. As well as these complex and demanding tasks, they must maintain “business as usual” and avoid standards of public protection slipping.<sup>110</sup> Sue Hall anticipated that there would be “quite a lot of upheaval” to ensure that staff end up in the right place, at the right time and, more critically, that offenders also know who their supervising officers are

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<sup>109</sup> This was originally anticipated to be occurring in October 2014.

<sup>110</sup> It was initially proposed that shadow arrangements would be operating from April 2014. Q154 [Ms Hall]. See also Q173 [Mr Cox]

to be.<sup>111</sup> Both she and Sebert Cox, Chairs of the Probation Chiefs Association and Probation Association respectively, felt that the pace at which they were being expected to make the transition was challenging and risky.<sup>112</sup>

53. The Ministry has put in place a number of measures in an effort to involve existing probation stakeholders in the transition process and to implement the reforms at a manageable pace. These include establishing a Ministerial Sounding Board to “hear directly from Trust leadership” and seeking input into defining the criteria that will be used to test readiness at each stage of transition.<sup>113</sup> The Ministry has developed a “Business and System Readiness” assurance process designed to:

[...] ensure that every aspect of the new service and the system reform being developed are thoroughly validated prior to proceeding with implementation; provide the programme and the business with the assurance that the system performs as expected in an environment that mimics implementation as closely as possible; support the “business as usual” function to ensure that structures and resources are in place to respond to the reforms as required.<sup>114</sup>

54. Despite these measures the pace of change appears to be making it difficult for civil servants to provide timely information to probation trusts to enable a difficult transition to go as smoothly as possible and to carry staff with them. Sebert Cox explained how it felt from his perspective as a Trust Chair:

[...] we are getting a lot of information—coming almost on a daily basis now—on the way it sees the programme operating [...] We also have a process of information flowing around but not in sufficient detail that allows us to be making the necessary changes to build the new structure”.<sup>115</sup>

Sue Hall’s view as a Trust Chief Executive was that:

There are issues in terms of capacity from the centre and about managing the staff transfer safely and well and in a way that does not demoralise and demotivate staff, so that performance does not deteriorate and so on. We have been very clear about the risks that the programme is currently running. We have been very plain in our discussions with the Ministry of Justice and have written to the Secretary of State outlining our concerns very directly. [...] It is reasonable to say that there is a big gulf between the way the programme is being experienced by trusts and the way I think it is being described at the centre. From a trust point of view, it feels unco-ordinated

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<sup>111</sup> Q153

<sup>112</sup> Q153 [Mr Cox; Ms Hall]; Qq172–175 [Ms Hall]. Letter from Probation Chiefs Association and Probation Association to Rt Hon Chris Grayling MP, 8 November 2013

<sup>113</sup> Ministry of Justice ([PPC 32](#))

<sup>114</sup> *Ibid.*

<sup>115</sup> Q152

and as if it is not keeping to the time scales that we will need if we are going to do our bits of the business.<sup>116</sup>

Neither Mr Cox nor Ms Hall felt that the concerns of Chairs and Chief Executives were being given sufficient weight by the Ministry of Justice and they felt many questions remained unanswered, despite their having written to officials on 10 October and the Secretary of State on 8 November, drawing his attention to their joint risk register (which had led them to conclude that the “risk of unsafe and unsatisfactory implementation is very high”).<sup>117</sup> This does not accord with the reassurances the Secretary of State gave us of the Ministry’s commitment to “giving Trusts all the information, resources, and support they need to successfully transition to the new system”<sup>118</sup>

55. The Probation Chiefs Association also warned of risks that “the existing professionalism, skills and public service motivation will be lost through the transition”.<sup>119</sup> There is some evidence to suggest that the programme is beginning to impact on Trusts’ performance in reducing reoffending, which fell for the last quarter. Sue Hall attributed this to: staff lacking certainty about their future; capacity in the system to manage the change; and staff leaving.<sup>120</sup> Several other witnesses noted the likelihood of a loss of expertise, including from Trusts Boards, senior management, and frontline staff.<sup>121</sup> The fact that a quarter of posts for the leadership of CRCs are unfilled is perhaps testament to the depth of feeling amongst the probation sector about these reforms, given that there are currently 35 Trust Chiefs.

56. We put to the Secretary of State the views of probation professionals responsible for managing the splitting of the service about the risks attached to the pace of transition. He said:

I do not think that is right. Every time you put a group of people through change it causes challenge and uncertainty, and that is unavoidable. We are doing our best to make sure that we take the process through as smoothly as possible. We have had some constraints on our ability to communicate plans in detail because of the negotiations that took place with the unions [...] One or two people in the probation service have said to you it is quite rushed. People in senior positions in the probation service have said to me they just want to get on with it from the point of view of staff; they want to know where they stand and end the uncertainty.<sup>122</sup>

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<sup>116</sup> Q172

<sup>117</sup> Letter from Probation Chiefs Association and Probation Association to Rt Hon Chris Grayling MP, 8 November 2013

<sup>118</sup> *Ibid.*

<sup>119</sup> Probation Chiefs Association ([PPC 07](#)); see also Prison Reform Trust ([PPC 13](#))

<sup>120</sup> Qq154, 157

<sup>121</sup> Q155 [Mr Cox]; Magistrates’ Association ([PPC 17](#)); Ms Lawrie ([PPC 28](#))

<sup>122</sup> Q195

57. He also explained that once the initial reallocation of staff had taken place by April 2014 there would be a “very long period of bedding down and transition” during which time the caseloads would be migrated and the systems—including the process of interaction between the two teams, for example on risk management—will be dry run, tested and modified to ensure they are “fit for purpose” before the new providers take ownership.<sup>123</sup>

***58. In our 2013 report on ALS and the interpreting and translation contract we concluded that the Ministry did not give sufficient weight to the concerns raised by professional stakeholders, and argued that had it done so, many of the operational problems experienced during the project's implementation could have been anticipated and avoided. It would be extremely unfortunate if the Ministry's desire to see this new tranche of complicated reforms designed and implemented quickly led to a similar situation developing. We have heard compelling evidence that neither Chief Executives nor Trust Boards feel confident that they are ready for the first stage of transition or that their concerns are being listened to.***

### **Agreement with the unions**

59. The Ministry wishes existing staff to be allocated to CRCs or the NPS by the end of January 2014. On 20th November 2013, the Unions, Probation Association (acting for Trusts) and the MoJ were unable to settle a National Agreement on Staff Transfer. There are differing interpretations of what transpired during the final negotiation meeting that resulted in the breakdown of talks. The Secretary of State told us that the Ministry:

[...] went as far as we felt we could in trying to take the unions with us. We worked very hard over an extended period to try to reach agreement with them on transitional arrangements. In the end, they decided they could not reach agreement with us, which is a shame because things like the quite generous voluntary redundancy package we were going to offer to back-office staff, who will lose their roles in the new set-up, will now not be available because we cannot do it without union agreement. It is a bizarre situation where the unions are blocking a quite generous redundancy package for their own members.<sup>124</sup>

60. The unions have publicly given a very different version of events. Napo's blog states that talks failed because: “On the last available day for negotiations, new information was presented by a senior MoJ Official which would have caused significant detriment to members. This prevented the NNC [National Negotiating Committee] from actually debating the substantive Framework Agreement which was on the table.”<sup>125</sup> Napo also

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<sup>123</sup> Q195; Q184

<sup>124</sup> Q195

<sup>125</sup> [NNC talks breakdown due to MoJ interference](#), Napo News, 21 November 2013

issued a statement that it would be seeking the intervention of ACAS.<sup>126</sup> During the Commons Bill Committee deliberations it was clear that the main concerns of staff relate in particular to the continuity of employment and pension provisions.<sup>127</sup> We asked the Ministers whether they would pause the process of staff transition but they stated that it was important to proceed to give staff certainty about their future positions.

***61. The explanations of the unions and the Ministry about why they were unable to come to an agreement about terms and conditions for staff under the new model differ. Regardless of what actually occurred, it is important that both sides resolve this difference of opinion through negotiation. It is highly unfortunate that agreement was not reached before NOMS commenced the splitting of staff, but we understand that negotiations on terms and conditions have resumed and we hope that outstanding issues can be resolved swiftly and satisfactorily.***

### **Retention of skills and development of staff**

62. A further concern relates to staff qualifications in the new probation landscape, in particular, in relation to the qualifications that will be required of staff employed by the new providers, and the implications of splitting the system for ongoing staff development. In our probation report we examined new arrangements that had recently been introduced for training probation staff—known as the probation qualifying framework—and concluded:

The success of any new commissioning model in protecting the public will be predicated on the existence of strong safeguards to monitor standards of professional expertise. Staff undertaking offender management work on behalf of other sectors will require the same high-quality qualifying training as probation professionals working for trusts in order to foster some consistency in the specialist skills required.<sup>128</sup>

63. With respect to these matters, the target operating model states:

“The new system will ensure that professional standards continue to be maintained, with probation professionals working in both the NPS and CRCs, and opportunities for placements and interchange between them. The NPS and CRCs will both be required to have suitably qualified and competent staff. The NPS will continue to use the Probation Qualification Framework (PQF) and CRCs will also be free to use the PQF should they choose to do so. It is envisaged that a new Institute of Probation will promote

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<sup>126</sup> [Transforming Rehabilitation - NNC talks break down after chaotic MoJ intervention](#), Napo News, 21 November 2013

<sup>127</sup> Offender Rehabilitation Bill [Committee: 4th sitting: House of Commons, 28 November 2013](#)

<sup>128</sup> Justice Committee, [The role of the Probation Service](#), Eighth Report of Session 2010–2012, HC 519-I, para 258

professionalism and provide a forum for sharing best practice across the probation profession in the public and market sectors”.<sup>129</sup>

The Secretary of State wanted to retain the skills of probation practitioners but also to bring in additional mentoring and support skills, in particular from the voluntary sector.<sup>130</sup> He told us that he did not wish to have proscriptive qualification requirements that would prevent “old lags” from being able to mentor offenders.<sup>131</sup>

64. The Ministry has agreed to provide some initial financial support to the Probation Institute—a joint initiative of the Probation Association, Probation Chiefs Association, Napo and UNISON which will be established in March 2014 to “safeguard professional standards and act as a centre of excellence”. However, despite its creation, Sue Hall observed: “[t]he only thing [new providers] will be required to do is to explain how levels of training and qualification are appropriate to the job they need to do.” She argued that giving new providers a choice in whether they have qualified probation officers was “a mistake” and called for a unified framework of qualified staff across both the CRCs and the NPS.”<sup>132</sup>

***65. Community Rehabilitation Companies will be managing considerable risk on a day to day basis, yet will not be required to have professionally qualified staff. This is a matter of considerable concern to us. We welcome the creation of a centre of excellence for probation, and we would hope that new providers will support their staff to gain suitable accreditation and qualifications through this Probation Institute. We nevertheless believe that they should be bound by a contractual requirement to have a minimum proportion of qualified probation staff related to the volume and risk levels of offenders supervised and to provide continuous training. This should not inhibit the Secretary of State’s desire to enable more ex-offenders to become involved in mentoring offenders currently under supervision, which we support.***

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<sup>129</sup> Ministry of Justice, [Target operating model: Rehabilitation Programme](#), September 2013, p 7

<sup>130</sup> Q180

<sup>131</sup> Oral evidence taken on [27 February 2013](#), HC (2012–13) 964, Q48

<sup>132</sup> Q156

## 3 The proposed payment mechanism

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### The application of payment by results to probation services

66. One of the key tenets of the reforms is that the contracts with providers will include a payment by results (PbR) element, where providers will be paid according to the rehabilitation outcomes they achieve. The Ministry set out the key design features of its proposed payment mechanisms for consultation with potential providers in May 2013. It proposes two elements: an upfront Fee For Service for mandated activities, and a payment by result element based on a series of offender “cohorts”.<sup>133</sup> Unlike other large-scale payment by results initiatives, the former will form the bulk of the payment to ensure that new providers can fulfil their statutory functions for the courts. The components of each element are set out in the box below.

#### *Fee for Service*

- Annual price paid in twelve equal payments made monthly in arrears
- Subject to an annual learning curve discount to drive continuous improvement
- Providers will bid against a predicted baseline volume range, weighted for sentence type and length
- At the end of each contract year, the payment would be reconciled to the actual volumes recorded, with a retrospective payment or clawback applied if actual volume is shown to have been outside the predicted range
- Deductions made for failure to deliver the orders of the court to specified time and quality

#### *Payment by Results*

- Binary and frequency measure with a binary “hurdle”
- Quarterly cohorts (to reduce the time lag) with annual top-up payment for genuine improvement against annualised targets
- Monthly ‘Foundation Payment’ of part of the providers profit component paid upfront for expected achievement of quarterly PbR targets
- Payment only for achieving demonstrable results, with clawback available for underperforming and higher payments for further improvements over minimum

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<sup>133</sup> Ministry of Justice, *Transforming Rehabilitation Programme - Payment Mechanism: Market Feedback and Development Considerations*, October 2013

requirement

- Large financial deductions / termination for increase in re-offending rates

Source: *Ibid*

67. The Ministry has not provided a full response to this consultation, which it states resulted in “significant feedback”, but has summarised some of the key points raised and some of the potential refinements to the model that they are considering.<sup>134</sup> The Ministry strongly advised potential providers not to use any information in the feedback document in any modelling of bids. A final version of the payment mechanism will be produced during the next stage of competition (the Invitation to Negotiate stage).

### Potential implications for providers' behaviour

68. Payment by results programmes are very sensitive to design, in particular to ensure the optimum balance between cost and quality. Our witnesses have highlighted a number of potential shortcomings in the proposed model of PbR, both for prime providers and for subcontractors. As we explored in our probation inquiry, there is a risk that providers may be incentivised by the performance metrics included in a payment by results mechanism to ‘game’ the system and therefore not provide the same level of service to all offenders. Accordingly, getting the choice of metrics right is crucial to the success of these reforms in reducing reoffending, maintaining public protection, and generating the innovations and efficiencies required to plug gaps in the system.

### Binary vs. frequency metric

69. One of the key elements of the payment mechanism that is still to be determined is the nature of the “results” component. If the Ministry utilises a simple binary measure of reoffending—which the Secretary of State said in February was his preferred option as it most aligns with his overall aim of ensuring that people stop offending—it would pay a provider when an offender can be proven to have stopped committing crime altogether.<sup>135</sup> In contrast, a frequency metric would measure success in terms of the reduction in the number of times an offender reoffends. The risk of using a simple binary metric would be that providers direct the majority of their resources at those offenders who are most likely to stop reoffending altogether (and indeed might have done so without any intervention). In recognition of the risks of gaming from using solely a binary metric the Ministry initially proposed in its “Straw Man” mechanism a hybrid measure, as set out in the box below.

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<sup>134</sup> Ministry of Justice, [Transforming Rehabilitation Programme - Payment Mechanism: Market Feedback and Development Considerations](#), October 2013

<sup>135</sup> Oral evidence taken on [27 February 2013](#), HC (2012–13) 964, Q30

There will be two measures for re-offending used to calculate the PbR payment:

Binary metric = measures the percentage of offenders that are convicted of an offence within a 12 month period.<sup>136</sup>

Frequency metric = measures the rate of offences committed by offenders within a cohort within a 12 month period.

The MoJ proposed that PbR payments would be allocated on the basis of performance against the binary measure and the frequency measure, with a percentage of the total funding available linked to each. However, to receive any PbR payment, a provider will have to have improved performance on the binary metric to a point of statistical significance within the given CPA, regardless of performance against the frequency metric. This reflects the importance placed on achieving complete desistance from re-offending.

Source: Ministry of Justice, Straw Man Payment Mechanism, May 2013

70. The need for providers to demonstrate statistically significant improvements in reoffending in order to be eligible for payments related to performance against the frequency measure is referred to as the “binary hurdle”. Our witnesses were overwhelmingly against the inclusion of this hurdle.<sup>137</sup> They felt its inclusion would create a likelihood that providers will prioritise this beyond the frequency measure, and not invest adequately in services for the harder-to reach i.e. those with complex and entrenched needs which are likely to be challenging, resource intensive, and require a disproportionate amount of staff time.<sup>138</sup> It was suggested that the mechanism should include a severity metric, or differential or escalated payments.<sup>139</sup> Clinks, a body which supports voluntary and community sector organisations working in the criminal justice sector, questioned how the model would incentivise the provision of services that prioritise intermediate outcomes i.e. those factors which have an impact on the road to desistance, even if they do not immediately lead to reduced reoffending.<sup>140</sup> The Ministry is now testing internally

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<sup>136</sup> A proven re-offence will be counted as any offence committed within a one year follow-up period, following an offender's entry into the cohort, which then attracts a court conviction or caution within that one year follow-up period or within a further six month waiting period to allow for cases to work their way through the courts.

<sup>137</sup> See for example Criminal Justice Alliance ([PPC 06](#)); DrugScope ([PPC 12](#)); Prison Reform Trust ([PPC 13](#)); Magistrates' Association ([PPC 17](#)); NCVO ([PPC 26](#)); Clinks ([PPC 27](#))

<sup>138</sup> Criminal Justice Alliance ([PPC 06](#)); DrugScope ([PPC 12](#)); Prison Reform Trust ([PPC 13](#)); Magistrates' Association ([PPC 17](#)); NCVO ([PPC 26](#)); Clinks ([PPC 27](#)); Q150 [Mr Chambers]. See also National Policing Lead for Integrated Offender Management ([PPC 08](#)).

<sup>139</sup> Criminal Justice Alliance ([PPC 06](#)); DrugScope ([PPC 12](#)); Prison Reform Trust ([PPC 13](#)); citing CBI and the Social Market Foundation

<sup>140</sup> Clinks ([PPC 27](#)). They noted that many VCSE organisations have developed services that take account of a 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'.

various options for adapting its approach to the metrics for reduced reoffending to mitigate these risks, including abandoning or revising the binary hurdle.<sup>141</sup>

### ***Incentivising investment and innovation***

71. Another question is whether the payment by results element will provide a satisfactory return to incentivise providers, and subcontractors, to deliver the innovations and additional services that will be required to accomplish decreases in reoffending. In addition to making efficiencies in existing probation services to fund the extension of statutory support to short-sentenced prisoners post-release, new providers are also expected to offer resettlement services to all offenders coming towards the end of their custodial sentences, and bolster existing rehabilitative services for those on community sentences.<sup>142</sup> Required levels of investment in such provision may well be substantial. During our probation inquiry we heard that there were longstanding gaps in provision which hinder the ability of sentencers to use the full range of requirements that can be attached to community orders to deal with offending behaviour, particularly for alcohol treatment and mental health treatment.<sup>143</sup> The shortage of suitable housing is also an enduring problem hindering rehabilitation.<sup>144</sup> In our report *Women offenders: after the Corston Report* we raised the question of whether a payment mechanism concentrated on reducing reoffending was the most appropriate to support the commissioning of the services that were required for many female offenders.<sup>145</sup>

72. The Secretary of State told us he wanted to see a “smart innovative approach” from prime providers which would be given the operational freedom and flexibility to innovate, but in return, that they should put some of their own resource on the line, to carry the risk of failure themselves, rather than the taxpayer.<sup>146</sup> For example, he expected that providers would wish to commission housing provision, which was currently difficult to achieve within the constraints of the public sector.<sup>147</sup>

73. A range of witnesses expressed reservations about whether the model and mechanism were calibrated correctly to achieve the Government’s aims.<sup>148</sup> The proportion of the

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<sup>141</sup> Ministry of Justice, [Transforming Rehabilitation Programme - Payment Mechanism: Market Feedback and Development Considerations](#), October 2013

<sup>142</sup> Oral evidence taken on [27 February 2013](#), HC (2012–13) 964. See Qq 14–16.

<sup>143</sup> Justice Committee, Eighth Report of Session 2010–2012, [The role of the Probation Service](#), HC519-I, paras 128–131

<sup>144</sup> Magistrates’ Association ([PPC 17](#))

<sup>145</sup> Justice Committee, Second Report of Session 2013–14, [Women offenders: after the Corston Report](#). HC 92, para 149.

<sup>146</sup> Q1; Q242

<sup>147</sup> Q194. Longitudinal research has found that prisoners who needed help with finding somewhere to live after release were more likely to be reconvicted (65%) in the first year, than those who did not need this help (45%) (Williams et al., [Accommodation, homelessness and reoffending of prisoners: Results from the Surveying Prisoner Crime Reduction \(SPCR\) survey](#), Ministry of Justice, 2012).

<sup>148</sup> Qq20–22 [Mr Oliver; Mr Johnson]; Qq45–46 [Mr Johnson]; Qq113–119 [Mr Ecdes; Mr Mulheim]. Criminal Justice Alliance ([PPC 06](#)); Local Government Association ([PPC 11](#)) [; DrugScope ([PPC 12](#)); Prison Reform Trust ([PPC 13](#)); London Councils ([PPC 21](#)); NCVO ([PPC 26](#)); Clinks ([PPC 27](#)); Napo ([PPC 31](#))

overall payment to providers that will constitute the PbR element is unknown, and will depend on the competition process, although there has been speculation that it will be in the region of between five and fifteen per cent, at least initially.<sup>149</sup> The public policy experts and one of the former private contractors that gave evidence to us shared the view that there was insufficient potential return in the PbR element of the contract and were sceptical about whether the mechanism could deliver a decrease in re-offending. Toby Eccles of Social Finance observed:

“The most obvious structural risk...is that we will end up with a cost-driven production, with no focus on rehabilitation in anything other than handing out some leaflets and hoping for the best because the cost envelope will not allow it [...] In terms of getting in the way of innovation, change and progress, getting the structure for this wrong from an outcomes point of view will mean that it becomes more difficult to work with those people [that are harder-to-reach] than it is at the moment.”<sup>150</sup>

In both Ian Mulheim’s and Richard Johnson’s analysis of the situation, this risk was high in light of the way the payment mechanism was initially constructed. Mr Mulheim observed:

Currently, the structure of the payment mechanism is completely perverse. It encourages cost cutting, and probably, increases in reoffending, which is the profit-maximising thing to do. At the moment, the incentives are completely topsy-turvy [...] The [MoJ’s] market feedback and development considerations that it put out recently it has acknowledged some of those problems. However, it has not yet gone nearly far enough towards addressing them. If we do not get that right, the whole payment by results approach is fundamentally flawed.<sup>151</sup>

Richard Johnson went as far as to say the model was entirely inappropriate for the behaviour that the MoJ were seeking to incentivise. He explained:

There are two forms essentially of PBR. This form is the simple form of cash on delivery. Instead of paying for a service up front, I am going to make sure that I get the service by paying for it when it is actually delivered. But people think what they are buying here is spend to save. In a spend-to-save model we are tapping into the £5 billion-odd that it costs us with our current rates of reoffending. That is a completely different sort of contract, procurement and service. In that model, you are looking to incentivise risk because there are big rewards, and those rewards come from, effectively, a profit share between the public sector purse in reduced reoffending costs and the provider of that service. What you cannot do in that spend-to-save model is

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<sup>149</sup> See for example Q114 [Mr Eccles]; Napo ([PPC 31](#)). Mr Grayling told us that he hoped to see it higher than 10% and expected organisations to be willing to ratchet up the proportion of the payment that would be put at risk over time as knowledge increases Q250–251.

<sup>150</sup> Q133

<sup>151</sup> *Ibid.* [Mr Mulheim]

try and introduce the notion of competition on price, because competing on price drives you back to this cash-on-delivery model—how cheaply you can deliver the service for me—rather than how much you can extend the social impact of this service, because an increased social impact delivers an increased saving to the public purse.<sup>152</sup>

The other former private contractor we spoke to, Max Chambers, explained that the notion that payments must be attributed to changes of statistical significance could theoretically result in a situation where providers could allow reoffending to drift up within that margin. On the other hand he doubted that this would be the case in practice.<sup>153</sup>

**74. It is no exaggeration to say that the efficacy of the payment by results mechanism which is finally adopted will be crucial to the prospects for success of the Government's ambitious plans for a reduction in reoffending through a rehabilitation revolution. Serious question marks hang over the design of the PbR mechanism itself, and the proportion of payment to providers which will depend on the results they achieve. It is likely that any model introduced at the beginning of the new system will need to be modified in the light of experience. We will return to the question of the Ministry's preferred model and other potential models of payment by results in our final report in this inquiry.**

### ***Financial sustainability***

75. There is a further risk that poor design of the model will result in contracts that are not financially sustainable. Our witnesses anticipated high reconfiguration costs, in terms of developing new delivery models and assembling complex supply chains, and believed that expectations of financial efficiencies would be likely to drive providers to focus first on maximising their gains from the upfront element of the payment by reducing their cost base.<sup>154</sup> For example, Richard Johnson thought that providers would focus on delivering services at the cheapest possible price.<sup>155</sup> Tom Gash proposed that this would be done “by changing staff terms and conditions or reducing their staffing within the probation services.”<sup>156</sup>

76. NCVO had recently commissioned an analysis of some voluntary sector providers' PbR contracts and found that the financial requirements, in terms of the working capital and cash flow needed to fund payment in arrears, have meant that providers have had to: subsidise their PbR work with other income from other sources, including their reserves; limit the amount of other services they can deliver; and seek loans to cover payment delays.<sup>157</sup> Pitching the incentives right will similarly impact on the subcontracting element

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<sup>152</sup> Q45 [Mr Johnson]

<sup>153</sup> Q150 [Mr Chambers]

<sup>154</sup> See for example Q18 [Mr Johnson]; Q146 [Mr Gash]; Clinks ([PPC 27](#)); NCVO ([PPC 26](#))

<sup>155</sup> Q17

<sup>156</sup> Q146

<sup>157</sup> NCVO ([PPC 26](#))

of service provision. As spending on rehabilitation within these contracts was likely to be limited due to the costs of restructuring, at least within the first few years of delivery, and both Clinks and the NCVO noted that this might impact on the durability of existing providers in the sector.<sup>158</sup>

77. The use of payment by results determines the size of contract package areas, which must be sufficiently large to identify results with confidence.<sup>159</sup> Ian Mulheirn believed that there remained risks that providers might not be able to make a sufficient difference to the numbers to prove to the Department statistically that they have made a difference, and that these risks were particularly big for providers in small areas.<sup>160</sup> We consider in chapter four the potential implications of provider failure.

### ***Testing the mechanism***

78. Witnesses expressed appreciation that the Ministry was consulting on the design of the payment mechanism and considering various refinements.<sup>161</sup> NCVO said: “[this] is a promising indication; too often in designing PbR models, the commissioner proceeds without this kind of market engagement, and ends up having to restructure a flawed contract whilst it is operational.”<sup>162</sup> Nevertheless, as described in chapter 1, many witnesses were uneasy about the limited evidence that exists on the cost-effectiveness and sustainability of adopting a payment by results approach in this context, and the lack of testing of aspects of the mechanism proposed.<sup>163</sup> Regardless of the final mechanism, DrugScope, among others, urged the Government to tread cautiously: “There is limited evidence on payment by results schemes [...] Gradual implementation would enable cross-governmental coordination of PbR learning and development [including from the drug and alcohol recovery pilots] and adaptation of programmes in the light of emerging evidence.”<sup>164</sup>

### ***Delay to implementation of payment by results***

79. There has been some speculation that there will be a delay in the implementation of the payment by results element of the contract fee. This possibility is signalled in the Ministry’s response to the “Straw Man” consultation. The Ministry initially proposed that Tier 1 providers would receive a so-called Foundation Payment for meeting their PbR targets, which it had been planning to pay upfront and then claw back if necessary, to compensate for the “substantial” time lag required to measure outcomes. Clinks supported this concept as they felt it was likely to minimise cashflow problems, especially to VCSE subcontractors

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<sup>158</sup> Clinks ([PPC 27](#)); NCVO ([PPC 26](#)). See also Q18 [Mr Johnson], Q170 [Mr Henman].

<sup>159</sup> Q122 [Mr Mulheirn]

<sup>160</sup> *Ibid.*

<sup>161</sup> London Councils ([PPC 21](#)); NCVO ([PPC 26](#)); Clinks ([PPC 27](#)); Q133 [Mr Mulheirn]; Qq149–150 [Mr Chambers]

<sup>162</sup> BWB and NCVO, *Payment by results contracts: a legal analysis of terms and process*, October 2013, p 22

<sup>163</sup> Criminal Justice Alliance ([PPC 06](#)); DrugScope ([PPC 12](#)); Mr Allen ([PPC 21](#)); Mr Underhill ([PPC 23](#))

<sup>164</sup> DrugScope ([PPC 12](#));

for whom delayed payments are particularly problematic.<sup>165</sup> However, consultation responses suggested that the prospect of clawback might have the opposite effect to that intended, by making providers more risk-averse. The Ministry is now instead considering an initial period at the start of the contracts before the PbR element would apply or allowing providers to “sculpt” the fee for service during the bidding process, which presumably means allowing them to negotiate receiving larger amounts upfront.<sup>166</sup>

80. Much of the detail of the final payment mechanism will be determined during the next stage of the bidding process. When we put the possibility of delaying the implementation of the payment by results element to the Minister he appeared to have discounted this prospect. He told us that this would kick in once the cohort of newly sentenced prisoners was large enough to warrant it, which he estimated would take approximately six months.<sup>167</sup> As well as revising the payment mechanism the Minister made it clear that the Ministry will expect the prospective providers to: demonstrate their ability to deliver a quality service; set out a minimum level of intervention that they will provide for every offender; and state the level of investment they are going to make in rehabilitation. He assured us that they would “not accept a situation where they decide to work with only some offenders and not the rest.”<sup>168</sup>

**81. The introduction of payment by results marks a major shift in the commissioning of rehabilitative services. Few of our witnesses argued with the premise of providers being rewarded according to their performance, but the approach remains novel, and the limited experience of its application, not only in the criminal justice sector but more widely, suggests that it can be beset with many challenges which the Government will need to overcome if it is to be a success.**

**82. We note that the Ministry appears receptive to comments on the design of the payment mechanism. In particular Ministers appear to recognise the hazards of providers “parking” the hardest to engage offenders and are considering the most appropriate ways of addressing this. The ultimate design of the mechanism will be vital to the success of the Government’s plans, and an ostensibly small change in the payments system could lead to a major change in provider behaviour and hence the outcomes of the programme as whole. In this context, we understand the motivation of Ministers in wishing to seek complete desistance from reoffending as an outcome but the system has to be one which incentivises providers to work effectively with all the offenders for whom they are responsible. We therefore agree with many of our expert witnesses that the binary hurdle should not be retained in the final payment by results mechanism.**

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<sup>165</sup> NCVO ([PPC 26](#))

<sup>166</sup> Ministry of Justice, [Transforming Rehabilitation Programme - Payment Mechanism: Market Feedback and Development Considerations](#), October 2013

<sup>167</sup> Qq252–259

<sup>168</sup> Q242

83. We also note with approval that the Ministry has subjected the proposed payment by results metrics to internal testing. It appears to us that officials have appreciated the potential perverse incentives that must be avoided. At the same time, while a “straw man” is of course designed to be knocked down, the degree of criticism encountered by the “straw man” mechanism implies that the extent of restructuring of the mechanism which may be required is extensive, especially taking into account the speed with which the changes are being wrought.

84. It appears to us that the risk of not achieving sufficient savings relates more to the level of savings that providers are able to achieve to reinvest in extending the reach of existing provision, and the quality of services that might prevail as a result, than the overall costs of the reforms per se. This, and the proposal to revise the payment mechanism to enable providers to receive more of the fee for service upfront in return for taking more risks later on, also suggests that the length of the contracts is the basis on which the Ministry and Treasury have concluded that the numbers will add up.

*85. We consider it important for the overall success of the reshaping of the rehabilitation landscape that the final payment by results mechanism, as determined during the contracting process, should be capable of further refinement and modification in the light of experience. The mechanism, and the metrics which it involves, must in addition remain open to parliamentary and public scrutiny, which must not be deflected by the fact that it is private sector providers who are delivering this essentially public service. The Ministry should explain in its response to this report how it will ensure reliable public accountability of the performance of providers of rehabilitative services under the new model.*

## 4 The creation of the market

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### Opening of competition

86. On 19 September 2013 the first stage of the competition was launched. This took the form of an invitation to potential lead contractors (Tier 1 providers) to submit Pre-Qualification Questionnaires by 14 November 2013 to enable the Ministry to establish which organisations are suitable to bid at this level. In addition to the Target Operating Model, the Ministry also produced a document which sets out the principles that will govern the delivery of the competition and their expectations for the conduct of prospective bidders in developing their supply chain.

The Government has identified three tiers of provider, each bearing different levels of financial risk:

- Tier 1 Providers: Organisations, consortia or mutuals able to bear a significant amount of financial risk who will take over the running of the Community Rehabilitation Companies (CRCs) as “going concerns”. Tier 1 providers will contract directly with the MoJ.
- Tier 2 Providers: This tier could encompass larger VCSE organisations, mutuals or other private sector organisations providing services at scale to Tier 1 providers on a subcontractor basis. Organisations within this tier are still likely to have a sizeable annual turnover and be required to bear an element of PbR risk.
- Tier 3 Providers: Organisations delivering small scale specialist services and interventions to Tier I and II providers, with limited, or no requirement to bear PbR risk.

### Developing a varied market

87. The 21 contract areas available through the competition are valued at between £5bn and £20bn over 10 years. The Ministry has been clear from the outset that it aims to have these contracts—which will be for 7 to 10 years with an option to extend for a further 3 years—delivered by a wide range of lead providers.<sup>169</sup> The Government’s agenda for this programme has been to design it with a view to increasing the diversity of the market for rehabilitation and resettlement services including the voluntary, community and social enterprise (VCSE) sector. The Secretary of State told us in February that he did not “automatically want to see a prime contractor, subcontractor model” but wanted to see “partnerships of equals as well”—for example, partnerships between voluntary sector

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<sup>169</sup> Oral evidence taken on [27 February 2013](#), HC (2012–13) 964, Q3

organisations or voluntary sector and private organisations and mutuals--and had sought to encourage the social investment sector to become involved.<sup>170</sup>

### ***The size and maturity of the existing market***

88. The majority of large justice sector contracts are currently being delivered by a few large private sector firms. Two of these firms, G4S and Serco, have withdrawn from the competition to operate as lead providers of rehabilitative services in the light of issues which have arisen in relation to other criminal justice contracts they hold: we consider this further in paragraphs 107 to 110 below. The market for contracted-out community-based offender services is also immature, which may restrict the number of organisations willing to bid as lead providers. By comparison, according to the Secretary of State, the competition for the Department for Work and Pensions' Work Programme built on 15 years' experience of what did and did not work in the welfare to work sector.<sup>171</sup> This Programme therefore operated in a mature market with a number of the successful providers having already been established to compete and bid for previous Welfare to Work schemes.<sup>172</sup>

### ***Capacity within the private, public, and voluntary sectors to bid as prime providers***

89. We encountered some scepticism as to whether there was a sufficient margin in the delivery of probation services and the configuration of the programme to allow a broader diversity of providers. In particular, it has been a matter of concern that the new contracts would only be within the reach of larger, often multi-national, organisations with significant financial reserves to draw upon, which have considerable experience in bidding for and securing similar contracts for provision of public services, and are able to support themselves pending the outcomes, and that this would operate to the detriment of the voluntary and community sector and existing state sector providers wishing to spin off to form mutuals.

90. The Government expects that existing Probation Trusts, which cannot bid in their own right, will form alternative delivery vehicles and mutuals designed by staff groups if they wish to continue to provide services to low and medium risk offenders. The Cabinet Office agreed to make available some funding from its £10 million Mutuals Support Programme to help ensure potential mutuals can compete effectively in the competition. There is also the prospect that social investors may be able to provide financial backing to support some voluntary sector and small and medium enterprise organisations to bid to become a lead provider.

91. The Institute for Government has recommended that the MoJ must 'steward the market' to prevent domination by a small number of players and ensure access to new

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<sup>170</sup> Oral evidence taken on [27 February 2013](#), HC (2012–13) 964, Q3; Q216

<sup>171</sup> Q250

<sup>172</sup> Q114 [Mr Gash]

providers.<sup>173</sup> The Ministry has taken a number of steps to diversify the supply base, including: facilitating access to Cabinet Office expertise and funding to build the capacity of prospective mutuals and voluntary sector prime contractors and subcontractors; reducing the size of some contract areas; making the bulk of the payment a fee for service and taking steps in the design of the payment mechanism to mitigate problems with cashflow (as discussed in the previous chapter); and limiting the amount of capital required for prime providers.

92. Our witnesses praised the efforts that the Government had made in this regard. For example, Tom Gash welcomed the fact that that they had capped the value and volume of work going to an individual provider, and the level of financial risk they would be required to bear.<sup>174</sup> Max Chambers believed that the need for both financial standing and direct experience of working with offenders would force partnerships.<sup>175</sup> Sue Hall said that eight potential mutuals had been very positive about the financial support they had received from the Cabinet Office to enable them to purchase consultancy.<sup>176</sup> NCVO and Clinks welcomed the support that had been given to voluntary sector potential primes via the Cabinet Office, the market stewardship principles, standardised contracts and the commitment to a mix of funding mechanisms for lower tiered providers.<sup>177</sup> On the other hand there was a desire on the part of some witnesses to see more detail, in particular about the payment mechanism and the nature of the contracts.

93. The Secretary of State was “encouraged” by the “very good mix of private and voluntary sector” organisations, often in partnership, and with a good geographical spread. Expressions of interest had been received from 35 lead bidders, representing more than 50 organisations. He observed that this included some “very good and substantial voluntary sector organisations” and “staff teams”, and stated that “a good proportion of the most substantial and attractive potential providers were partnerships”.<sup>178</sup> On 19 December the Ministry announced that thirty of these bidders had passed the pre-qualification questionnaire stage of the process. A further 800 organisations had expressed an interest in being involved at second tier level.<sup>179</sup> Clinks observed that of the 1700 organisations estimated to be currently working with offenders, fewer than 400 registered an interest in providing services under the programme; if indicative of the final number this would represent a considerable narrowing of the market.<sup>180</sup> We consider the wider value of the voluntary sector’s contribution to criminal justice services in paragraphs 33 and 48.

**94. We would be extremely concerned if the bidding process for prime providers were to be dominated by the very small number of large businesses which currently hold**

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<sup>173</sup> Institute for Government, [Making Public Service Markets Work](#), July 2013

<sup>174</sup> Q121

<sup>175</sup> *Ibid.*

<sup>176</sup> Q169

<sup>177</sup> NVCO ([PPC 26](#)); Clinks ([PPC 27](#)); Q169 [Mr Henman]

<sup>178</sup> Qq220–221

<sup>179</sup> Qq211, 219

<sup>180</sup> Clinks ([PPC 27](#))

**most of the major outsourcing contracts in the criminal justice system. Thirty bidders have gone through the first stage of the competition process and will be invited to tender. It remains to be seen if this will prove a sufficient number to provide satisfactory bids for a viable service in all 21 contract areas.**

## Confidence in the tender process

95. We have in the past repeatedly raised concerns about the capacity of the MoJ, and NOMS in particular, to manage contracts for outsourced services.<sup>181</sup> For example, we concluded in our probation inquiry that “[t]he experience of national contracts currently in place has not inspired confidence that NOMS understands its business sufficiently well to draw up robust contracts that meet the needs of future stakeholders.”<sup>182</sup> Parallels have been drawn, including by the Secretary of State himself, with the Work Programme. He told us in February that concerns about the outcomes of the Work Programme were “clearly misplaced” but acknowledged that there were lessons that could be learnt about the contracting process, particularly related to the frustrations of the voluntary sector—which he believed needed to be “more commercial”—and that the Government needed to do more to help them “form partnerships and access financial support”.<sup>183</sup>

96. A crucial aspect of trust in any competitive process is the level of transparency with which it is conducted. As we noted in the previous chapter, several elements of the programme are yet to be determined, including the payment by results mechanism and the proportion of contract value that will be performance related. Toby Eccles felt that there was an “inherent incumbency bias” related to the lack of information and knowledge about whether it would be worth bidding, which favours those who have been through lots of procurement processes before.<sup>184</sup> Tom Gash similarly believed that some of the smaller providers and the mutuals would struggle to get up and running and operational, while also putting in a bid in a process they have never gone through before at national level.<sup>185</sup> He described the benefits of a phased approach to competing services in overcoming this issue:

In any market creation reform you are much better off phasing these things. You would do an area of the country at one point; meanwhile, mutuals can start to develop and get themselves on to a sound footing. Then they can bid for the next round that comes out in a year's time. It has been the standard received wisdom that this is what you do when you are doing a major

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<sup>181</sup> See Justice Committee, Second Report of Session 2012–2013, *The budget and structure of the Ministry of Justice*, HC97-I and Justice Committee, Sixth Report of Session 2012–2013, *Interpreting and translation services and the Applied Language Solutions contract*, HC 645

<sup>182</sup> Justice Committee, Eighth Report of Session 2010–2012, *The role of the Probation Service*, HC 519-I

<sup>183</sup> Oral evidence taken on [27 February 2013](#), HC (2012–13) 964, Q3

<sup>184</sup> Q120

<sup>185</sup> Q121

national outsourcing programme, but there has been a decision not to do it in this case.<sup>186</sup>

97. The Secretary of State assured us that the number one criterion for assessing the bids will be quality. He said he will be looking for “credible, innovative plans to bring down reoffending” but acknowledged that they must also come within his as yet undisclosed budget.<sup>187</sup>

**98. The Ministry of Justice has a questionable track record in procuring quality services when seeking better value for money, most strikingly in relation to the language services contract. It appears that every effort has been made to learn from this but the assessment of quality during a bidding process is notoriously difficult, particularly where new providers are seeking to enter the market. Although the Minister wishes to ensure a balanced consideration of potential bids, an unavoidable consequence of the way this programme is designed is that one element of the competition will be about how cheaply providers can deliver the residual service to enable the maximum resource to be unlocked to “reinvest” in rehabilitative provision for short-sentenced prisoners and others in prison and after their release.**

### ***Protection for second and third tier providers***

99. Most voluntary, community and social enterprise sector involvement is likely to be at Tiers 2 and 3 of the new supply chains. To ensure that sub-contractors are protected from unfair levels of risk being passed down from the prime provider, the Ministry initially stated that it would require prime providers to commit themselves to principles laid out in the Merlin Standard which was created as a means of providing stewardship of the supply chain in the welfare to work sector.<sup>188</sup> However, there have been criticisms from the voluntary and community sector that despite this safeguard the Work Programme created problems for their organisations, in particular around the amount of cash flow sub-contractors received from prime providers, and the level of referrals. Mr Grayling rejected suggestions that providers from the sector had been treated as “bid candy” and said that this had not been reflected in any formal complaints from the sector about the commercial behaviour of prime providers.<sup>189</sup> Nevertheless, he indicated strongly that he would be prepared to take action if he felt there was such mistreatment under this programme.<sup>190</sup>

100. The Ministry has identified the following core market stewardship principles related to the supply chain: appropriate management of risk, including not passing financial risk down “disproportionately”; alignment of ethos of providers in the supply chain through contractual agreement to support sustainable relationships and build trust; visibility of

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<sup>186</sup> Q121

<sup>187</sup> Qq187–188, Q214–215

<sup>188</sup> Merlin Standard website, [About Merlin](#), downloaded November 2013

<sup>189</sup> Q255

<sup>190</sup> *ibid.*

participation; reward and recognition of good performance across the supply chain; and application of the principles of the Compact—a code of conduct that the Government has agreed to adopt in work with Third Sector organisations—by providers and their supply chain. They also intend to devise industry standard contracts for lower tiered providers.<sup>191</sup>

101. The key voluntary sector stakeholders that we heard from—Clinks, NCVO and 3SC—welcomed the Ministry's efforts to provide greater transparency in the contractual arrangements, but felt that further detail was required from the Ministry to give them full confidence that the programme would uphold the fair treatment of voluntary and community sector providers.<sup>192</sup> Oliver Henman of NCVO observed that the lack of clarity around the subcontracting arrangements was “quite alarming” given the pace of reform.<sup>193</sup> Clinks wished 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.”<sup>194</sup> The NVCO and Clinks shared the belief that some grant funding or up-front funding would be required to deliver more specialised community-based services to counter the risk that the use of PbR throughout supply chains would restrict the diversity of the market.<sup>195</sup>

102. The Secretary of State was heartened by the level of positive responses the Ministry itself had received about its engagement with the voluntary sector.<sup>196</sup> When we asked him to elaborate on what would constitute a disproportionate level of risk, he anticipated that some financial risk could be passed down but emphasised that it would need to be done transparently.<sup>197</sup> He also said that he “would have absolutely no compunction about terminating the contract immediately and re-letting it” if he felt that primes were not treating their counterparts, or subcontractors, appropriately.<sup>198</sup>

**103. The Ministry of Justice's market stewardship principles are designed to enable smaller organisations to have the confidence to take part in the contracting process so that their skills can be brought to bear in rehabilitation. We will be interested to see how these principles, in particular those related to the level of risk that will be passed down to lower tier providers, will be integrated into the contract management processes as well as the industry standard sub-contracts. It remains to be seen whether prime providers will agree to these as contractual obligations as the competition progresses, and how the Ministry will respond if they do not. It is also not clear to us whether, once the contracts have been let, there will be sufficient incentive for the**

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<sup>191</sup> Ministry of Justice, *Principles of Competition: Transforming Rehabilitation Programme*, September 2013

<sup>192</sup> Clinks (PPC 27) welcomed in particular 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.

<sup>193</sup> Q175

<sup>194</sup> Clinks (PPC 27)

<sup>195</sup> NCVO (PPC 26); Clinks (PPC 27); Q171 [Mr Henman]

<sup>196</sup> Q222

<sup>197</sup> Qq216, 225–6

<sup>198</sup> Q249

**Department to take appropriate action against the misuse of market power against partner providers or subcontractors.**

**104. Witnesses from a range of different perspectives felt that there is a risk that rehabilitation will be lost in the process of change and restructuring. A key question for the Government is how the focus on reducing reoffending will be maintained while the restructuring in the market that is necessary to create efficiencies takes place. There is insufficient detail about the final payment mechanism to determine whether there will be sufficient incentive for new providers to offer initial upfront investment or to reinvest their resources in rehabilitative services.**

### **Safeguarding against post-implementation issues**

105. As we have noted throughout our report, the ambitious nature of the Government's programme of reform poses a variety of risks. Tom Gash observed:

The interrelationships for probation and other parts of the public sector are enormously complex. Adding into that a particular additional separation between an in-house provider of probation services for higher-risk offenders and a contracted provider for other offenders is a type of complexity that is clearly different by an order of magnitude from that which we see in other areas. The provider market is extraordinarily immature. You are bringing in providers to manage these services that have not done it before, admittedly with a work force who are experienced and have experience of operating in this environment. To me, lots of the signals suggest that this is an incredibly complex programme, on a timeline that has not been achieved before.<sup>199</sup>

106. The Secretary of State set out what he considered to be some of the risks involved in the implementation of the programme:

The first is if we stopped supervising offenders during the transition process. That is not happening. We have been very clear about it to trust chiefs. Our probation officers are continuing to do a professional job with the people they are supervising. The second would be that we made an inappropriately hurried transition of case load. I have been very clear in setting the policy very early on. We will not do that; we will migrate people over an extended period. [...] The third point would be if we did a sudden transition from one organisation to another, so a different group of people took over the job one day from the ones doing it the previous day. [...] We are migrating a team of people who are already bedded in in the public sector, who have made the transition to the new arrangements within the public sector and who will continue to look after the same offenders the day after ownership changes as the day before. It will be an evolution, not a revolution. The fourth is the transition of information within the new system. We have specified that the same systems for risk assessment and case management will be used by

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<sup>199</sup> Q114

everybody in the probation service. Finally, we ensure that senior management teams are sufficiently equipped to manage the transition... We have put in place additional resource, through the expertise of the team who worked on the health service transition [...] to make sure there is additional resource to help the trusts with the transition.<sup>200</sup>

Jeremy Wright recognised that in relation to risk, at every stage of the project, the Ministry must make sure it does everything it can to smooth the transition process.<sup>201</sup>

### ***Probity and corporate renewal***

107. During our inquiry significant irregularities came to light in the electronic monitoring contracts held by G4S and Serco. Criminal investigations ensued and the Ministry has discontinued the contracts. Both companies involved hold many contracts in the justice sector. The Ministry made it clear that they would not be awarded probation services contracts if evidence of criminality is found.<sup>202</sup> Subsequently, both withdrew from bidding for these contracts as lead providers. The Secretary of State explained to the House that this did not necessarily preclude them from being involved in delivering rehabilitative services under the reforms:

[...] the Government has left open the possibility of either supplier, as part of their corporate renewal, playing a supporting role, working with smaller businesses or voluntary sector providers in order to support our objective of achieving a diverse market. Any proposals will be considered as part of a rigorous evaluation process, and will take account of the Government's wider assessment of the companies' progress in achieving corporate renewal.<sup>203</sup>

108. The fact that the Ministry finds itself in this unhappy position raises wider issues for the probation competition. The Ministry must satisfy itself that it has done as much as it can to prevent a similar episode from occurring. This will be necessary both in terms of anticipating and minimising opportunities for overcharging to occur under new contracts, and being confident that those organisations that hold such contracts will not countenance comparable mistakes.

109. Our evidence suggests that the Ministry has made it a priority to address these issues. The Secretary of State told the *Financial Times* that he expected to see both companies going through a process of "corporate renewal" if they wished to work with Government in the future.<sup>204</sup> Both organisations have replaced their senior management and are

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<sup>200</sup> Q241

<sup>201</sup> Q239

<sup>202</sup> [Investigated Serco and G4S can bid for new contracts, says Chris Grayling](#), The Guardian, 15 September 2013

<sup>203</sup> Written Ministerial Statement, [Ministry of Justice Contracts Update](#), 19 December 2013

<sup>204</sup> [Grayling calls for G4S and Serco revamps](#), The Financial Times, 20 August 2013

undergoing internal review.<sup>205</sup> We asked the Secretary of State to explain what, in his view, would constitute satisfactory 'corporate renewal' but he was reluctant to do so while the criminal investigations were ongoing.<sup>206</sup> He was confident that the level of interest from prospective providers was sufficiently broad for the Transforming Rehabilitation competition to proceed should the two organisations in question be precluded, if indeed they wish to bid.<sup>207</sup> In terms of getting the Ministry's own house in order, the Secretary of State commissioned an internal review of contract management, by one of its non-executive directors, "to make sure that it is absolutely fit for purpose".<sup>208</sup> The report of this review was published on 19 December 2013, as was that of a Cabinet Office review of existing contracts held by the two companies in question.

110. In the field of rehabilitation services, the MoJ proposes that new providers and the National Probation Service will be regulated through a combination of independent inspection by HM Inspectorate of Probation, internal audit, and the potential to involve the National Audit Office, as well as through NOMS' account management of CRCs and SLA oversight. They note that:

"Operational contract management will differentiate between the need for NOMS to have higher levels of assurance about delivery of sentences of the court and public protection, where there will be specific minimum standards and metrics, compared to the substantial freedom providers will be given to determine how they rehabilitate offenders and reduce reoffending."<sup>209</sup>

*We welcome the Ministry's endeavours to strengthen its contract management and oversight in the light of the electronic monitoring debacle. We will study the report of the internal review, which will assist us to hold the Ministry to account on this aspect of its administration. We also recommend that prior to the next stage of competition under the Transforming Rehabilitation programme the Ministry should publish a statement setting out its expectations of the integrity of prospective providers and the steps it will take in holding bidders to account for the probity of their activities. In our view, this should include greater transparency in their publication of financial and performance data, than has hitherto been the case. We shall return to the question of corporate renewal with the Secretary of State once criminal investigations and any subsequent legal proceedings have concluded.*

## Transparency

111. We encountered some concerns that the introduction of new providers seeking to outperform each other in reducing levels of reoffending might hinder the dissemination of

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<sup>205</sup> See for example Serco press release, [Serco announces the key elements of its corporate renewal programme](#), 25 October 2013; and G4S investors news, [EM contract update](#), 19 November 2013

<sup>206</sup> Qq217–219

<sup>207</sup> Q219

<sup>208</sup> Q218

<sup>209</sup> Ministry of Justice, [Target Operating Model: Rehabilitation Programme](#), September 2013, p 39

effective practice, which the programme has the potential to add great value to. Our witnesses proposed that unlike in other payment by results programmes where best practice was not necessarily shared because of issues of commercial confidentiality, providers would need to be incentivised or contractually obliged to exchange information on good initiatives.<sup>210</sup>

### **Contractual flexibility**

112. According to a report in *The Guardian*, the initial risk register, which this Committee has not seen, warned that there was a more than 80% risk that the programme would lead to "an unacceptable drop in operational performance" triggering "delivery failures and reputational damage".<sup>211</sup> Our witnesses gave us various observations about how the level of complexity and uncertainty within the programme could best be managed. Toby Eccles argued that with the Peterborough pilot, they had recognised the need to build flexibility into the contracts to enable the model to be tested and adapted over time.<sup>212</sup> Tom Gash believed that given the lack of certainty about how well different providers would hold up, either financially, or in terms of their service quality and service standards, there needed to be flexibility to shift who is providing over time to replace underperforming providers. He was therefore concerned that the length of contracts that the Ministry was intending to give was "excessively long" and would hinder this, and proposed that in the absence of a phased approach attention must be paid to "what service standards could trigger a change of provider and [...] how you would change a provider if they failed financially. Stress-testing and running some scenarios on that is vitally important before this begins. All scrutinisers should probably be thinking about getting assurances that that process has been gone through."<sup>213</sup>

113. Our witnesses speculated further about what would happen where there was evidence of under-performance. Max Chambers questioned whether the contract in question could go to a neighbouring provider or another provider, or to the national probation service.<sup>214</sup> Richard Johnson queried how quickly a drop in operational performance could be recovered, given the likely contraction of the service, and what the implications would be for public protection.<sup>215</sup>

### **Contingency planning**

114. We asked Ministers how they would deal with the possibility that no suitable bids are received for a particular geographical area. The Secretary of State believed that the strength of the market would not result in such an eventuality, but conceded that in that scenario

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<sup>210</sup> Q124ff [Mr Eccles, Mr Chambers, Mr Gash]

<sup>211</sup> [Privatising probation service will put public at risk, officials tell Grayling](#), *The Guardian*, 24 June 2013

<sup>212</sup> Q114

<sup>213</sup> Q123

<sup>214</sup> *Ibid.*

<sup>215</sup> Q55

there were several options. These included the possibility of a “slightly staggered transition” or the “ultimate fallback” of the public sector continuing to provide the service, providing it would be financially viable for them to take on the extra short-sentenced prisoners cohort.<sup>216</sup> Jeremy Wright MP explained that the most feasible way to fund the extension of statutory support was by releasing the savings through competition. He envisaged “formidable practical challenges” in having some parts of the system running and others not, in particular in creating difficulties for the courts if mandatory supervision for short-sentenced prisoners was not universally operational.<sup>217</sup> ***It is unclear whether supervision of short-sentenced prisoners for the whole of England and Wales would have to await the successful conclusion of bidding for all areas, and it is unclear what would happen to the programme for supervision of short-sentenced prisoners if one or more areas subsequently had to suspend operation of the contract. This issue must be clarified.***

115. Once a process of contracting out public services has been undertaken, there can be a strong predisposition towards inertia in the sponsoring Department in the face of underperformance by the contractor. This predisposition could be even greater if the continuance of short-sentenced supervision is dependent on contracts remaining in place in all areas. The Work and Pensions Committee made the following observation on the DWP’s approach to the cessation of contracts under the Work Programme: “DWP has asserted that it is prepared to use the ultimate sanction against poorly performing primes of terminating prime contracts. However, we are not convinced that this could be achieved without significant disruption to services. DWP needs to do more to explain how this sanction could be applied effectively, and any negative impacts mitigated.”<sup>218</sup> While the Secretary of State was clear that he would exercise his power to withdraw contracts if lead providers were not behaving appropriately towards each other or their subcontractors, he did not specify the circumstances in which he would use this power. Jeremy Wright explained however that inadequate performance would be managed through contractual arrangements.<sup>219</sup>

**116. The Ministry has high expectations of what can be achieved in the way of efficiency savings and extension of services through contracting out the management of low and medium risk offenders within existing resources. It seems entirely feasible to us that as the competition progresses and details are refined, the attractiveness of these contracts might wane, resulting in incomplete or inadequate provision in certain areas or types of service. None of the possible contingency plans proposed by the Ministry were very clear to us.**

**117. We received evidence about the risk of operational failure during the implementation of the programme. We note the Government’s efforts to test the model with shadow state-run companies before contracting these new arrangements out to new**

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<sup>216</sup> Qq213–215, 246

<sup>217</sup> Q212

<sup>218</sup> Work and Pensions Committee, First Report of Session 2013–14, [Can the Work Programme work for all user groups?](#), HC 162, p 5

<sup>219</sup> Q247

*providers, but these are regarded by some as artificial conditions. If the Ministry proceeds as planned it must be able to make modifications to all aspects of the system in the light of experience. For example, in drawing up contracts with new providers, we recommend it should ensure the payment by results metrics are open to modification in the event that unforeseen gaming by providers occurs. We also wish the Ministry to provide us, and potential providers, before the next stage of competition, with clarity about what service standards could trigger a change of provider and how a provider would be changed if they failed financially.*

## Conclusions and recommendations

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### Extending supervision to short-sentenced prisoners

1. The principal grounds for introducing these reforms are to use efficiencies in the delivery of existing probation services to extend statutory post-release supervision to those who have served prison sentences of fewer than 12 months: an extra 50,000 offenders. This feature of the Government's plans is intended to rectify a long-standing anomaly in the system—that those offenders who tend to be the most prolific and have particularly high reconviction rates receive no statutory support—and was welcomed unreservedly by our witnesses (Paragraph 4)
2. Whilst the addition of resettlement support might make short prison sentences appear to the courts to be a more attractive alternative to community orders, this should not replace the focus on using community orders where appropriate for non-violent offenders. These are likely to remain a more cost-effective way of dispensing justice and avoid the disruption to families, employment, and housing arising from a short spell of imprisonment. Care will also need to be taken to ensure that any gains made with reducing reoffending by short sentenced prisoners do not come at the expense of the supervision of offenders on other sentences. We ask the Ministry, in its response to this report, to set out how it intends to reduce the potential for the objectives of its reform to be undermined by an escalation in the number of offenders given short prison sentences as opposed to community sentences. The Government's response to this report should also set out the projected impact of the extension of rehabilitation to short sentenced offenders on the prison population and on associated costs. (Paragraph 10)

### The evidence base for the reforms

3. There is some emerging evidence of promising results from some community-based and through-the-gate interventions that make a concerted effort to reduce reoffending by some short-sentenced prisoners. It should be noted however that these schemes are voluntary in nature, have not yet been running for sufficiently long to produce robust results, and represent only one aspect of the model proposed. Consequently, there is a question about how much they are indicative of the potential of the entire package of reforms. The absence of piloting of payment by results for delivering reductions in reoffending by those subject to probation services means that some lack confidence that the Government's reform programme will work better than the existing system. (Paragraph 21)

### The scale and pace of the reforms

4. Some of our witnesses were supportive of the underlying principles of the Government's Transforming Rehabilitation reform programme, in particular, the extension of pre and post-release support to short-sentenced prisoners, the introduction of an element of payment for outcomes sought, and opening up the provision of probation services to a greater diversity of providers. Nevertheless witnesses, including some supportive of the proposed changes, had significant

apprehensions about the scale, architecture, detail and consequences of the reforms and the pace at which the Government is seeking to implement them. (Paragraph 24)

### Assessment of risks

5. No project on this scale is without risk, and we do not approach the question from the naïve standpoint that all risk can or should be eliminated. It is not satisfactory, however, that we are unable to inform our scrutiny of the programme with more systematic information from the Ministry about the major risks they have identified and the steps that they have taken and are taking to mitigate those risks. In order to reassure us we ask the Ministry, in its response to this report, to provide a narrative description of those risks which it considers most significant to the success of the programme as a result of the combination of their likelihood of occurring and their seriousness if they were to occur, and in relation to each of them to describe mitigations which have been put in place or are proposed. (Paragraph 26)

### Costs

6. On the limited information which the Government has provided, it is not clear to us whether sufficient funding is in place to meet the costs of transition to the new system and of statutory rehabilitation for those sentenced to less than 12 months in custody. For the Transforming Rehabilitation programme to meet its objectives, substantial improvement will be needed in relation to two other elements that are not currently working well: rehabilitative provision in custody, including through the gate supervision for all prisoners coming to the end of their sentence; and provision of requirements that can be attached to community orders, including mental health, drug, and alcohol treatment. The costs of making the structural reforms and efficiencies necessary to support the programme are also likely to be considerable. A key question for the affordability of these reforms is how new providers will fund all this now that NOMS plans to dedicate to them only the community based element of existing rehabilitation resources. (Paragraph 34)
7. The Government is confident that over the longer term demand on the system will be lessened through these reforms, reducing in particular the economic and social costs of reoffending by short-sentenced prisoners (estimated to be between £7 billion and £10 billion a year). This would lead to the virtuous cycle of reduced reoffending and reduced public funding that is the ultimate policy goal. But in the absence of published projections of the likely reductions in reoffending or estimates of how this might impact on the future costs of the system, it is not possible to predict whether savings will be swallowed up by increased demand on the prison system and reduced funding of existing services by statutory partners and other funders. (Paragraph 35)

### Dual oversight in existing and future practice

8. Research and professional experience suggest that those being supervised by probation benefit from having a single case manager. The changing dynamics of risk of harm in individual cases also require continuous case management to enable professional and objective assessment to be made, based on a direct relationship with an offender. Whilst under the present system offenders sometimes move between supervising officers much of the evidence we received pointed to there being

additional risks over and above the current situation which will be challenging to remedy through contractual specifications. It is essential that arrangements are put in place to ensure very good lines of communication and cooperation between Community Rehabilitation Companies and the National Probation Service. Co-location will certainly help in the short term, but unless that is required through contractual terms there is no guarantee that it will happen in practice over the medium to long term, as the quest for efficiencies leads to the evolution of delivery models and reconfiguration of the probation service estate. It will be important for the Ministry to monitor this aspect of the new operational arrangements particularly carefully. (Paragraph 46)

### Local partnerships

9. Probation is the lead agency in a range of local partnerships. In future there will be two probation services (the new National Probation Service and the contracted provider) in every locality delivering similar services side by side and sometimes via one another. Each will have to form working relationships with other local organisations, bodies and services for the delivery of the joint or complementary services which characterise effective local work with offenders. Ministers should recognise that there is a potential risk that this will lead to inefficient use of resources, and confuse accountability at local level. The Government proposes to give new providers accountability for reducing offending within community safety partnerships by mandating this in contracts and asking prospective providers for clarification of how they will preserve and develop existing partnerships: that is to be welcomed. It is important that Ministers put in place appropriate safeguards to ensure that new providers in the private sector appreciate the importance of working with existing local partnerships to reduce reoffending. We will consider the future prospects for local partnerships further in our final report in this inquiry. (Paragraph 50)

### Transition to the new model

10. In our 2013 report on ALS and the interpreting and translation contract we concluded that the Ministry did not give sufficient weight to the concerns raised by professional stakeholders, and argued that had it done so, many of the operational problems experienced during the project's implementation could have been anticipated and avoided. It would be extremely unfortunate if the Ministry's desire to see this new tranche of complicated reforms designed and implemented quickly led to a similar situation developing. We have heard compelling evidence that neither Chief Executives nor Trust Boards feel confident that they are ready for the first stage of transition or that their concerns are being listened to. (Paragraph 58)

### Agreement with the unions

11. The explanations of the unions and the Ministry about why they were unable to come to an agreement about terms and conditions for staff under the new model differ. Regardless of what actually occurred, it is important that both sides resolve this difference of opinion through negotiation. It is highly unfortunate that agreement was not reached before NOMS commenced the splitting of staff, but we

understand that negotiations on terms and conditions have resumed and we hope that outstanding issues can be resolved swiftly and satisfactorily. (Paragraph 61)

### Retention of skills and development of staff

12. Community Rehabilitation Companies will be managing considerable risk on a day to day basis, yet will not be required to have professionally qualified staff. This is a matter of considerable concern to us. We welcome the creation of a centre of excellence for probation, and we would hope that new providers will support their staff to gain suitable accreditation and qualifications through this Probation Institute. We nevertheless believe that they should be bound by a contractual requirement to have a minimum proportion of qualified probation staff related to the volume and risk levels of offenders supervised and to provide continuous training. This should not inhibit the Secretary of State's desire to enable more ex-offenders to become involved in mentoring offenders currently under supervision, which we support. (Paragraph 65)

### The proposed payment mechanism

13. It is no exaggeration to say that the efficacy of the payment by results mechanism which is finally adopted will be crucial to the prospects for success of the Government's ambitious plans for a reduction in reoffending through a rehabilitation revolution. Serious question marks hang over the design of the PbR mechanism itself, and the proportion of payment to providers which will depend on the results they achieve. It is likely that any model introduced at the beginning of the new system will need to be modified in the light of experience. We will return to the question of the Ministry's preferred model and other potential models of payment by results in our final report in this inquiry. (Paragraph 74)
14. The introduction of payment by results marks a major shift in the commissioning of rehabilitative services. Few of our witnesses argued with the premise of providers being rewarded according to their performance, but the approach remains novel, and the limited experience of its application, not only in the criminal justice sector but more widely, suggests that it can be beset with many challenges which the Government will need to overcome if it is to be a success. (Paragraph 81)
15. We note that the Ministry appears receptive to comments on the design of the payment mechanism. In particular Ministers appear to recognise the hazards of providers "parking" the hardest to engage offenders and are considering the most appropriate ways of addressing this. The ultimate design of the mechanism will be vital to the success of the Government's plans, and an ostensibly small change in the payments system could lead to a major change in provider behaviour and hence the outcomes of the programme as whole. In this context, we understand the motivation of Ministers in wishing to seek complete desistance from reoffending as an outcome but the system has to be one which incentivises providers to work effectively with all the offenders for whom they are responsible. We therefore agree with many of our expert witnesses that the binary hurdle should not be retained in the final payment by results mechanism. (Paragraph 82)

16. We also note with approval that the Ministry has subjected the proposed payment by results metrics to internal testing. It appears to us that officials have appreciated the potential perverse incentives that must be avoided. At the same time, while a “straw man” is of course designed to be knocked down, the degree of criticism encountered by the “straw man” mechanism implies that the extent of restructuring of the mechanism which may be required is extensive, especially taking into account the speed with which the changes are being wrought. (Paragraph 83)
17. It appears to us that the risk of not achieving sufficient savings relates more to the level of savings that providers are able to achieve to reinvest in extending the reach of existing provision, and the quality of services that might prevail as a result, than the overall costs of the reforms per se. This, and the proposal to revise the payment mechanism to enable providers to receive more of the fee for service upfront in return for taking more risks later on, also suggests that the length of the contracts is the basis on which the Ministry and Treasury have concluded that the numbers will add up. (Paragraph 84)
18. We consider it important for the overall success of the reshaping of the rehabilitation landscape that the final payment by results mechanism, as determined during the contracting process, should be capable of further refinement and modification in the light of experience. The mechanism, and the metrics which it involves, must in addition remain open to parliamentary and public scrutiny, which must not be deflected by the fact that it is private sector providers who are delivering this essentially public service. The Ministry should explain in its response to this report how it will ensure reliable public accountability of the performance of providers of rehabilitative services under the new model. (Paragraph 85)

### Capacity within the private, public, and voluntary sectors to bid as prime providers

19. We would be extremely concerned if the bidding process for prime providers were to be dominated by the very small number of large businesses which currently hold most of the major outsourcing contracts in the criminal justice system. Thirty bidders have gone through the first stage of the competition process and will be invited to tender. It remains to be seen if this will prove a sufficient number to provide satisfactory bids for a viable service in all 21 contract areas. (Paragraph 94)

### Confidence in the tender process

20. The Ministry of Justice has a questionable track record in procuring quality services when seeking better value for money, most strikingly in relation to the language services contract. It appears that every effort has been made to learn from this but the assessment of quality during a bidding process is notoriously difficult, particularly where new providers are seeking to enter the market. Although the Minister wishes to ensure a balanced consideration of potential bids, an unavoidable consequence of the way this programme is designed is that one element of the competition will be about how cheaply providers can deliver the residual service to enable the maximum resource to be unlocked to “reinvest” in rehabilitative provision for short-sentenced prisoners and others in prison and after their release. (Paragraph 98)

## Protection for second and third tier providers

21. The Ministry of Justice's market stewardship principles are designed to enable smaller organisations to have the confidence to take part in the contracting process so that their skills can be brought to bear in rehabilitation. We will be interested to see how these principles, in particular those related to the level of risk that will be passed down to lower tier providers, will be integrated into the contract management processes as well as the industry standard sub-contracts. It remains to be seen whether prime providers will agree to these as contractual obligations as the competition progresses, and how the Ministry will respond if they do not. It is also not clear to us whether, once the contracts have been let, there will be sufficient incentive for the Department to take appropriate action against the misuse of market power against partner providers or subcontractors. (Paragraph 103)
22. Witnesses from a range of different perspectives felt that there is a risk that rehabilitation will be lost in the process of change and restructuring. A key question for the Government is how the focus on reducing reoffending will be maintained while the restructuring in the market that is necessary to create efficiencies takes place. There is insufficient detail about the final payment mechanism to determine whether there will be sufficient incentive for new providers to offer initial upfront investment or to reinvest their resources in rehabilitative services. (Paragraph 104)

## Probity and corporate renewal

23. We welcome the Ministry's endeavours to strengthen its contract management and oversight in the light of the electronic monitoring debacle. We will study the report of the internal review, which will assist us to hold the Ministry to account on this aspect of its administration. We also recommend that prior to the next stage of competition under the Transforming Rehabilitation programme the Ministry should publish a statement setting out its expectations of the integrity of prospective providers and the steps it will take in holding bidders to account for the probity of their activities. In our view, this should include greater transparency in their publication of financial and performance data, than has hitherto been the case. We shall return to the question of corporate renewal with the Secretary of State once criminal investigations and any subsequent legal proceedings have concluded. (Paragraph 110)

## Contingency planning

24. It is unclear whether supervision of short-sentenced prisoners for the whole of England and Wales would have to await the successful conclusion of bidding for all areas, and it is unclear what would happen to the programme for supervision of short-sentenced prisoners if one or more areas subsequently had to suspend operation of the contract. This issue must be clarified. (Paragraph 114)
25. The Ministry has high expectations of what can be achieved in the way of efficiency savings and extension of services through contracting out the management of low and medium risk offenders within existing resources. It seems entirely feasible to us that as the competition progresses and details are refined, the attractiveness of these contracts might wane, resulting in incomplete or inadequate provision in certain

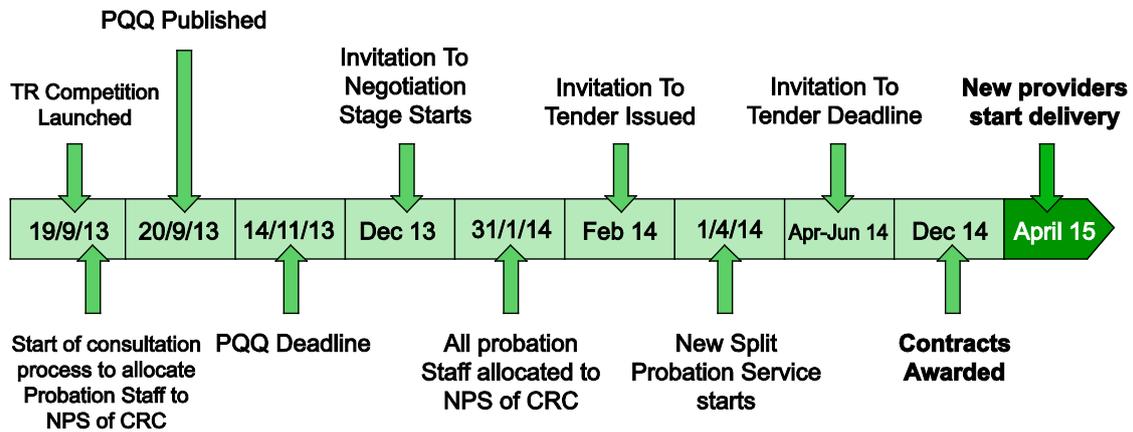
areas or types of service. None of the possible contingency plans proposed by the Ministry were very clear to us. (Paragraph 116)

26. We received evidence about the risk of operational failure during the implementation of the programme. We note the Government's efforts to test the model with shadow state-run companies before contracting these new arrangements out to new providers, but these are regarded by some as artificial conditions. If the Ministry proceeds as planned it must be able to make modifications to all aspects of the system in the light of experience. For example, in drawing up contracts with new providers, we recommend it should ensure the payment by results metrics are open to modification in the event that unforeseen gaming by providers occurs. (Paragraph 117)

# Appendix

## The timetable for reforms

**Figure 1 Ministry of Justice timetable for reforms**



Source: [Updated timeline for Transforming Rehabilitation](#), Russell Webster, downloaded 20 September 2013

# Formal Minutes

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**Tuesday 14 January 2014**

Members present:

Sir Alan Beith, in the Chair

Steve Brine	Mr Elfyn Llwyd
Mr Christopher Chope	Andy McDonald
Jeremy Corbyn	John McDonnell
Gareth Johnson	

Draft Report (*Crime reduction policies: a co-ordinated approach? Interim report on the Government's Transforming Rehabilitation programme*) proposed by the Chair, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 117 read and agreed to.

Summary agreed to.

A Paper was appended to the Report.

Question put, That the Report be the Twelfth Report of the Committee to the House.

The Committee divided

Ayes, 5

Noes, 1

Mr Christopher Chope  
Jeremy Corbyn  
Mr Elfyn Llwyd  
Andy McDonald  
John McDonnell

Gareth Johnson

Question accordingly agreed to.

*Ordered*, That the Chair make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Tuesday 21 January at 9.15am.]

## Witnesses

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The following witnesses gave evidence. Transcripts can be viewed on the Committee's inquiry page at [www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/inquiries/parliament-2010/penal-reform/?type=3#pnlPublicationFilter](http://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/inquiries/parliament-2010/penal-reform/?type=3#pnlPublicationFilter)

### Tuesday 2 July 2013

*Question number*

**Savas Hadjipavlou**, Business Director, Probation Chiefs Association, **Ian Lawrence**, General Secretary, NAPO, **Richard Monkhouse**, Deputy Chairman, Magistrates Association, **Martyn Oliver**, Chief Executive, 3SC, and **Richard Johnson**, independent consultant

[Q1-57](#)

### Wednesday 11 September 2013

**Rt Hon Alun Michael**, Police and Crime Commissioner, South Wales, **Katy Bourne**, Police and Crime Commissioner, Sussex, and **Sue Mountstevens**, Police and Crime Commissioner, Avon and Somerset; **Dr Alison Frater**, Head of public health and offender health for London, NHS England, **Dr Éamonn O'Moore**, Director for Health and Justice, Public Health England, **Councillor Claire Kober**, London Councils, and **Councillor Joanna Spicer**, Vice-Chair Safer and Stronger Communities Board, London Government Association

[Q58-112](#)

### Tuesday 12 November 2013

**Ian Mulheirn**, Associate Director, Oxford Economics, **Toby Eccles**, Founder and Development Director, Social Finance, **Tom Gash**, Director of Research, Institute for Government, and **Max Chambers**, Head of Crime and Justice, Policy Exchange; **Sue Hall**, Chair, Probation Chiefs Association, **Sebert Cox**, Chair, Probation Association, and **Oliver Henman**, Head of Partnerships, National Council for Voluntary Organisations

[Q113-177](#)

### Wednesday 4 December 2013

**Rt Hon Chris Grayling MP**, Lord Chancellor and Secretary of State for Justice, and **Jeremy Wright MP**, Parliamentary Under-Secretary of State for Justice, Minister of State for Prisons and Rehabilitation

[Q178-270](#)

## Published written evidence

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The following written evidence was received and can be viewed on the Committee's inquiry web page at [www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/inquiries/parliament-2010/penal-reform/?type=Written#pnIPublicationFilter](http://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/inquiries/parliament-2010/penal-reform/?type=Written#pnIPublicationFilter).

PPC numbers are generated by the evidence processing system and so may not be complete.

- 1 Professor Mike Hough and colleagues ([PPC 01](#))
- 2 A4e ([PPC 003](#))
- 3 Unilink Software Ltd ([PPC 04](#))
- 4 London Councils ([PPC 05](#))
- 5 Criminal Justice Alliance ([PPC 06](#))
- 6 Probation Chiefs Association ([PPC 07](#))
- 7 National Policing Lead for Integrated Offender Management ([PPC 08](#))
- 8 Richard Lomax ([PPC 09](#))
- 9 Centre for Justice Innovation ([PPC 10](#))
- 10 Local Government Association ([PPC 11](#))
- 11 DrugScope ([PPC 12](#))
- 12 Prison Reform Trust ([PPC 13](#))
- 13 Ministry of Justice ([PPC 14](#))
- 14 Big Brother Watch ([PPC 15](#))
- 15 The Howard League for Penal Reform ([PPC 16](#))
- 16 Magistrates Association ([PPC 17](#))
- 17 Centre for Mental Health ([PPC 18](#))
- 18 Police And Crime Commissioner For Avon & Somerset ([PPC 19](#))
- 19 Rob Allen ([PPC 20](#))
- 20 London Councils ([PPC 21](#))
- 21 Centre For Crime And Justice Studies ([PPC 22](#))
- 22 Martyn Underhill ([PPC 23](#))
- 23 It's Mine Technology ([PPC 24](#))
- 24 Gillian Riley ([PPC 25](#))
- 25 National Council for Voluntary Organisations ([PPC 26](#))
- 26 Clinks ([PPC 27](#))
- 27 Christine Lawrie ([PPC 28](#))
- 28 Prisoners Education Trust and Prisoner Learning Alliance ([PPC 29](#))
- 29 Police And Crime Commissioner for South Wales ([PPC 30](#))
- 30 Napo ([PPC 31](#))
- 31 Ministry of Justice ([PPC 32](#))
- 32 Ministry of Justice ([PPC 33](#))
- 33 Ministry of Justice ([PPC 35](#))