



## **Prison Reform Trust response to the Ministry of Justice consultation Punishment and Reform: Effective Probation Services**

The Prison Reform Trust is an independent UK charity working to create a just, humane and effective penal system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, government and officials towards reform.

The Prison Reform Trust's main objectives are:

1. reducing unnecessary imprisonment and promoting community solutions to crime
2. improving treatment and conditions for prisoners and their families

### **1. What are the key issues in competing the management of offenders and how should they be resolved? For example, where should we strike the balance in deciding how far to compete offender management?**

Of prime importance is the need to determine which functions should remain in the public sector. The consultation paper recognises that advice to the courts, including assisting with the identification of the most appropriate sentences for offenders and prosecuting their breaches, has to remain free of any potential conflict of interest. The public sector would also retain responsibility in the case of all offenders for initial assessments of risk. Finally, the proposal would keep in the public sector responsibility for monitoring, and presumably supervising with all that this has traditionally involved, offenders who pose the highest risk including the most serious and violent offenders. This reflects the value of multi-agency public protection arrangements (MAPPA), with Probation the lynchpin and the close collaboration between Probation, the police and a range of other agencies in working with prolific and serious offenders.

The Prison Reform Trust is strongly of the view that, in addition to advice to courts and initial assessments of risk, offender management of all community sentences and post-custody licences should remain in the public sector. This would provide the infrastructure for a seamless service, ensuring that offenders were subject to appropriate supervision and oversight where their level of risk changed. It would also provide the continuity of supervision

that many regard as essential to offender engagement, aiding maturity and desistance from crime.

In an article, *The future of Probation*,<sup>1</sup> an edited version<sup>2</sup> of which was published in *Society Guardian*, on 23 May 2012, Geoff Dobson, (who is company secretary to the Prison Reform Trust and was a chief probation officer and chaired the association of chief officers of probation), said that the current proposal fails to stand up to several vital tests:

First, it sees risk as a static concept, failing to recognise that circumstances can change abruptly and the risk posed by an individual can increase markedly overnight. Thus someone who is deemed to be of low or medium risk could suddenly become high risk, but staff in the contracted organisation may not be equipped to recognise that and, even if they did, would then presumably need to arrange a hurried transfer back into the public sector. This could be a bureaucratic nightmare with public safety under threat. The Probation Chiefs Association has recommended that the public sector retain the offender management role for all those who are subject to court orders and post-custody licences. This eminently sensible suggestion would overcome the problem and would provide the infrastructure for a seamless service. It would also provide the continuity of supervision that many regard as essential to offender engagement, aiding maturity and desistance from crime.

Second, it fails to understand the complexities of accountability in the criminal justice system. Those with responsibility for supervising a court order are not only answerable to their paymasters, but also to the courts for the manner in which they fulfil their duties. If a judge or magistrate has concerns about the supervision of a contracted out court order, with one or more organisations involved, who do they ask to appear before them? Again, if the public sector retains the offender management role, having carried out the initial and any subsequent assessments, responsibility is clear.

Third, these changes as set out in the consultation paper would involve a massive personnel upheaval for a key part of a criminal justice system that is already under considerable strain. Under these proposals work with the bulk of the quarter of a million offenders supervised by the Probation Service would be out-sourced. Presumably this could require thousands of staff to be subject to transfer by TUPE to private and voluntary sector bodies and others,

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<sup>1</sup> Dobson, G (2012), *The future of probation*, London: Prison Reform Trust. Available at <http://www.prisonreformtrust.org.uk/PressPolicy/News/vw/1/ItemID/154>

<sup>2</sup> Dobson, G (2012), *The problem with privatising probation services*, *The Guardian*, 22 May. Available at <http://www.guardian.co.uk/society/2012/may/22/problem-with-privatising-probation-services>

given the purchaser / provider split, to transfer to new organisations which could include staff mutuals and social enterprises. The resources required to deliver such a change are undoubtedly considerable.

So what is the case for this huge overhaul? The paper cites reoffending rates as the reason for wholesale reform. It tells us that half of all adult offenders reoffend within a year of leaving custody and that the figure rises to three quarters for those sentenced to youth custody. It states that reoffending by offenders sentenced to less than 12 months in prison is estimated to cost the economy up to £10 billion annually, noting that these prisoners are not eligible for statutory supervision. Crucially however, it does not use its own research to highlight the far superior performance of those sentenced to community sentences when compared to people released from short prison sentences. Community sentences for 18-24 year olds outperform prison sentences by 12.8 percentage points in reducing reoffending. Even when offenders of all ages are closely matched in terms of criminal history, offence type and other significant characteristics, the performance gap remains a robust 8 per cent. A lesson to be drawn from this substantive research could be to promote through evidence and investment the further development of Probation's work, much of it in partnership with other organisations, in delivering court orders.

## **2. What arrangements will best enable Probation Trusts to take effective action against offenders who breach their sentence in cases where they do not directly manage the offender?**

Ensuring that the public sector retains the offender management role for all those who are subject to court orders and post-custody licences would enable effective and appropriate action to be taken promptly and with immediate access to relevant, up-to-date information. On the one hand, it is important in response to technical breach of license to consider increased use of supervision. On the other, where there is serious risk of reoffending, prompt, authoritative action by probation would need to be taken.

## **3. What is the best approach to competing the management of prisoners released into the community on licence?**

Probation Trusts should commission services and facilities that are shown by evidence to best support the offender management function in helping offenders to achieve desistance and reduce their reoffending.

**4. How can we best ensure that greater competition for probation services enhances local partnership arrangements, such as Integrated Offender Management?**

By establishing commissioning arrangements that are equipped to establish partnerships based on evidence as to 'what works' in helping offenders to achieve desistance and reduce their reoffending. Such a model, if underpinned by offender management remaining in the public sector, will avoid the sort of fragmentation of services that can put public safety at risk. A Probation Service with the full range of offender management responsibilities, would ensure that efficient and effective relationships were maintained with the courts, police, prisons, local authorities, health providers and commissioners and other key public sector bodies, as well as the voluntary and private sectors.

**5. What would be the right balance between commissioning services at local and national levels and how can we best achieve that balance?**

Commissioning should be undertaken as locally as possible to maximise use of local community resources. Where the demand for a high priority service is insufficient at a local level, then inter-area, regional or national commissioning should be undertaken.

**6. What are the main issues in separating the Trust commissioner role from the provision of competed services? How can these best be resolved?**

If the offender management role for all community sentences and post-custody licences remains in the public sector, the problem is resolved. Indeed, the offender manager becomes a key source of information about the services that are required to supplement the public sector role in enhancing effectiveness.

**7. How can we support Trusts to develop the commissioning and procurement capability they will need in the future?**

Guidance from other sectors will be of value in developing systems that ensure probity and an evidence based approach. Research and information from offender managers will inform the contract specifications. Comparably inexperienced commissioners dealing with highly experienced bidders may have unintended and costly consequences for government.

A strategic approach to commissioning could be supported through:

- Working with internal and external partners to identify need issues, gaps and resources;

- Identifying new ways of developing services using best practice;
- Service reviews to identify improvement opportunities;
- Gathering evidence to support decision makers;
- Co-production of services with users, professionals and voluntary, community and faith sectors; and
- Identifying and making joint commissioning recommendations with other key agencies that deliver services for the client group.

**8. How can we best ensure that the specific needs of women offenders are taken into account in commissioning services?**

By developing and publishing a strategy for women offenders which designates clear and specific leadership at national and local levels and by giving women offenders proper priority in the allocation of resources, bearing in mind the factors that contribute to their offence histories and the consequences for dependants of incarcerating women. Requirements for the provision of women-only services with appropriate child care must form a major part of commissioning services for women, very many of whom will have suffered from sexual abuse and domestic violence. There is considerable scope to build on the success of local women's centres.

**9. How can we best encourage and support small and medium sized enterprises and the voluntary sector to participate in competitions to provide probation services?**

By ensuring that commissioning remains at as local a level as possible; by focusing on quality of provision, rather than an approach based simply on economies of scale; by developing justice reinvestment models; and by scrutinising the tendering process to ensure that it is not conducted in such a way that materially disadvantages SMEs and the voluntary sector, or reduces them to mere "subprime" contractors.

**10. How can we best support public sector staff in the creation of mutuals and other models for delivering probation services?**

If the offender management role for community sentences and post-custody licences remains in the public sector, this will remove the immediate impetus for a purchaser/provider split.

**11. What are the most effective ways to extend service improvements and innovation through payment by results?**

Payment by results should mean commissioning services and facilities that are shown to be the most relevant and effective. The contract should then ensure that these are delivered as required. Arrangements for payment by results should be made in such a way so as not to preclude SMEs and voluntary organisations by requiring them to take on unrealistic levels of financial risk.

**12. How can we best support the continued development of probation professionals consistent with our proposals for reform?**

By creating a public sector core that will enable probation professionals to deliver a seamless service, with continuity of responsibility for the supervision of all those who are subject to community sentences and post-custody licences. This would in itself enhance staff morale. Training and support for the offender management role would focus particularly on assessment of risk and need, report writing, case management and partnership work and should draw on the success of the integrated offender management.

**13. How can we best strengthen local probation delivery arrangements and the local leadership and skills base?**

By creating a coherent, secure and significant role for the public sector. Clarity and relevance of function will provide the basis for delivery, leadership and the necessary skills base.

**14. How might we improve partnership working and local co-commissioning, especially if we have fewer, larger Trusts?**

A strong public sector with sound information and research functions at the heart of local arrangements will underpin both partnership working and local commissioning.

**15. What are the main issues for local authorities or Police and Crime Commissioners potentially becoming more accountable over time for probation services?**

Research in Lewisham by IPPR and the Centre for Criminology, University of Oxford has shown the potential for probation to become a local authority function.<sup>3</sup> Experience in Scotland can also be considered. However, the prospect of continual change can in itself lead to low morale among staff and a sense of fragility in partnership arrangements. The pace of change requires careful consideration. The efficacy of Police and Crime Commissioners has yet to be demonstrated.

**16. What do you consider to be the impacts of these proposals on those with protected characteristics under the Equality Act 2010 (race, sex, disability, sexual orientation, religion and belief, age, marriage and civil partnership, gender reassignment, pregnancy and maternity)?**

A fragmented service will often impact adversely on those who are most vulnerable. A seamless service with a strong public sector at the core can help to ensure that proper attention is given to diversity by establishing core competencies in assessment, offender management and commissioning arrangements. A requirement and structural arrangements to ensure close working with local authorities, primary care trusts and the new health and wellbeing boards would help to ensure a coordinated, appropriate and fair response to those with protected characteristics under the Equality Act 2010. Equalities awareness training, and training in protected characteristics such as disability and gender, should be a mandatory for offender managers, offender supervisors and staff involved in supervising offenders and in delivering interventions.

**Young adults**

Given the nature of their offending, young adults aged 18-20 years-old are one of those groups most likely to be affected by the central proposal to open to the market the management and supervision of lower risk offenders.

The Prison Reform Trust recognises that many charities and private companies are already successfully commissioned by Probation Trusts to provide education, training, treatment and electronic monitoring of young adult offenders, and we particularly support the innovative pilots established in Birmingham, South London and West Mercia by the Transition to Adulthood Alliance to provide wraparound support that enhances the chances of successful resettlement. However, we note that most Probation Trusts are in the early stages of efforts

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<sup>3</sup> Lanning, T, Loader, I & Muir, R (2011), Redesigning Justice: reducing crime through justice reinvestment, London: IPPR. Available at <http://www.scribd.com/doc/61540557/Redesigning-justice-Reducing-crime-through-justice-reinvestment>

to re-establish a more bespoke service for young adult offenders and have concerns that transferring responsibility to private providers will result in good work being lost.

We also note that the creation of individual Youth Offending Services within local authorities has been a crucial factor in the significant reduction in the number of children committing offences and being sentenced to custody over the past few years. The YJB has provided the focal point for the co-ordination and dissemination of best practice by courts, councils and the police, but it has been the “in-house” YOS teams that have taken on direct responsibility to ensure those children at risk of falling into a pattern of offending behaviour are diverted from that outcome. This multi-agency approach has the potential to be successfully applied to young adult offenders as well, but we are not yet persuaded that private providers have the skills or experience to take on these new challenges.

Interestingly, the recent final report of the Riots Communities & Victims Panel identified the number of 18-25 year-olds caught up in last summer’s disturbances and recommended a new approach for young adults in the criminal justice system. It specifically endorsed T2A’s proposal that teams dedicated to young adults be formed through merging the resources and expertise of YOSs and probation, as well as London Probation Trust’s new specialist team in Croydon. Among, the panel’s recommendations is one that all Probation Trusts take a specialist approach to dealing with young adults within the next two years.

**17. Are you aware of any research and statistical evidence that will need to be considered as part of our equality analysis? Please supply the evidence sources along with what effect they are considered to have on these proposals.**

The following Prison Reform Trust applied research studies have identified needs and responses that require priority attention in the new commissioning framework:

- Women’s Justice Taskforce (2011), Reforming Women’s Justice, London: Prison Reform Trust. Available at <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Women's%20Justice%20Taskforce%20Report.pdf>
- Out of Trouble <http://www.outoftrouble.org.uk/>
- Talbot, J (2008), No One Knows: Report and final recommendations, London: Prison Reform Trust. Available at <http://www.prisonreformtrust.org.uk/Portals/0/Documents/No%20One%20Knows%20report-2.pdf>



- Farrant, F (2001), Troubled Inside: Responding to the Mental Health Needs of Children and Young People in Prison, London: Prison Reform Trust. Available at [http://www.prisonreformtrust.org.uk/Portals/0/Documents/Troubled\\_Inside\\_Children.pdf](http://www.prisonreformtrust.org.uk/Portals/0/Documents/Troubled_Inside_Children.pdf)
- Rickford, D & Edgar, E (2005), Troubled Inside: Responding to the Mental Health Needs of Men in Prison, London: Prison Reform Trust. Available at [http://www.prisonreformtrust.org.uk/Portals/0/Documents/Troubled%20Inside\\_Men%20report%20corrected.pdf](http://www.prisonreformtrust.org.uk/Portals/0/Documents/Troubled%20Inside_Men%20report%20corrected.pdf)
- Rickford, D (2003), Troubled Inside: Responding to the Mental Health Needs of Women in Prison, London: prison Reform Trust. Available at <http://www.prisonreformtrust.org.uk/Portals/0/Documents/TROUBLED%20INSI%20-%20WOMEN%20.pdf>
- Edgar, K & Rickford, D (2009), Too Little Too Late: An Independent Review of Unmet Mental Health Need in Prison, London: Prison Reform Trust. Available at <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Too%20Little%20Too%20Late%20-%20a%20review%20of%20unmet%20mental%20health%20need%20in%20prison%20.pdf>
- Prison Reform Trust (2008), Doing Time: The Experiences and Needs of Older People in Prison, London: Prison Reform Trust. Available at <http://www.prisonreformtrust.org.uk/Portals/0/Documents/doing%20time%20good%200practice%20with%20older%20peop.,pdf>
- Cooney, F & Braggins, J (2010) Doing Time: Good practice with older people in prison - the views of prison staff , London: Prison Reform Trust. Available at <http://www.prisonreformtrust.org.uk/Portals/0/Documents/doing%20time%20good%200practice%20with%20older%20peop.,pdf>
- Bath, C & Edgar, K (2010), Time is Money - financial responsibility after prison, London: Prison Reform Trust and UNLOCK. Available at [http://www.prisonreformtrust.org.uk/Portals/0/Documents/Time%20is%20Money\\_8a\\_Layout%201.pdf](http://www.prisonreformtrust.org.uk/Portals/0/Documents/Time%20is%20Money_8a_Layout%201.pdf)
- Edgar, K et al (2012 forthcoming), Out for Good, London: Prison Reform Trust

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