



House of Commons
Justice Committee

The role of the Probation Service

Eighth Report of Session 2010–12

Volume I

Volume I: Report, together with formal minutes

Volume II: Oral and written evidence

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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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The Reports of the Committee, the formal minutes relating to that report, oral evidence taken and some or all written evidence are available in a printed volume. Additional written evidence may be published on the internet only.

Committee staff

The current staff of the Committee are Tom Goldsmith (Clerk), Emma Graham (Second Clerk), Hannah Stewart (Committee Legal Specialist), Gemma Buckland (Committee Specialist), Ana Ferreira (Senior Committee Assistant), Anna Browning (Committee Assistant), Henry Ayi-Hyde (Committee Support Assistant), and Nick Davies (Committee Media Officer).

Contacts

Correspondence should be addressed to the Clerk of the Justice Committee, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 8196 and the email address is justicecom@parliament.uk

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Summary

Probation is an essential part of the criminal justice system and at its best the probation service delivers community sentences which are tough, challenging offenders to change their offending lifestyles.

The probation service has undergone extensive change over the last decade, and there is more change to come. We broadly support that change, but we want to see incorporated within it the policies advocated by our predecessor Committee in its Report on Justice re-investment, particularly with regard to strengthening community rehabilitative provision in order properly to manage high risk offenders.

It seems staggering to us that up to three-quarters of probation officers' time is spent on work which does not involve direct engagement with offenders and we call on NOMS and individual trusts to increase the proportion of their time that probation staff spend with offenders.

It is a concern that probation trusts have laboured under a tick-box culture, and we call on NOMS to provide trusts with greater autonomy. Specifically, there needs to be speedy progress towards rectifying problems with national contracts for estates management and IT provision and trusts need greater flexibility. It is imperative that NOMS consults trusts properly when planning the introduction of competition to the provision of contracts; this seems not to have been done with regard to the recent community payback tendering exercise, and we do not think that the large and incoherent groupings used for those contracts are appropriate vehicles for future commissioning initiatives. Trusts also need greater financial autonomy and, specifically, the power to carry-over a small proportion of their budgets from year-to-year.

There needs to be a more seamless approach to managing offenders: prisoners are shunted between establishments and continuity of sentence planning is not treated as a priority. The MoJ and NOMS need to ensure that the end-to-end management of offenders is a reality and not just an unachieved aspiration.

The creation of NOMS was described to us as a "takeover" of the probation service by the prison service. It has not led to an appreciable improvement in the 'joined-up' treatment of offenders; its handling of the community payback exercise has not inspired confidence; and it has not proved itself proficient at running effective national contracts. Therefore, the MoJ should commission an externally-led review of NOMS and be prepared to take radical steps to redesign its structure and operation.

It is unacceptable that sentencers' hands are tied by the unavailability of certain sentencing options because of inadequate resources. This makes very clear the urgent need to focus scarce resources on the front-line and to continue to bear-down on inefficiencies and unnecessary back-room functions. The Government needs to clarify what it means by more robust community sentences, and the outcomes they are designed to achieve. Setting out clearly what community sentences are attempting to achieve, demonstrating that they are implemented effectively, and challenging a naïve confidence in the effectiveness of short custodial sentences will help gain public confidence, but calls for leadership and

courage from politicians and sentencers. There is a risk that the recent public debate on sentencing policies with regard to short custodial sentences could undermine the Government's proposed reforms.

There is significant scope to increase the contribution of private and voluntary sector organisations to the delivery of effective offender management and rehabilitation and payment-by-results offers a potential mechanism for putting the system on a sustainable footing. The models proposed are untested in criminal justice but there are compelling reasons to test the potential of a radically different approach. Large scale payment-by-results commissioning may achieve savings, but economies can also be accrued at a local level. The Government needs to strike a careful balance between opening up the market to new providers and enabling trusts to operate effectively as local strategic partners, facilitating local solutions to local problems.

The Ministry of Justice needs to recognise the importance of prisons in its proposals for a new devolved commissioning model and link the commissioning of both prison and probation more closely to the communities they are designed to protect. The separation of prison places from the commissioning of every other form of sentence provision has a distorting effect on the options available to sentencers. The responsibility for delivering the sentence of the courts should belong to a single offender management local commissioning body. Furthermore, the MoJ needs to develop a measure that enables the effectiveness of prison and community sentences to be compared more robustly.

We shall continue to monitor the performance of the Ministry of Justice and of NOMS as the current reforms bed in over the course of this Parliament.

1 Introduction

Why probation?

1. The effective use of probation is an essential part of the criminal justice system. Probation services are provided by 35 probation trusts across England and Wales. These trusts are responsible for overseeing offenders released from prison on licence and those on community sentences. On 31 December 2009, 241,500 offenders were under supervision. Probation staff also prepare pre-sentence reports for sentencers to enable them to choose the most appropriate sentence. In 2009, the Probation Service prepared 218,000 such reports. The provision of such a service is not cheap: the initial 2010–11 budget allocation for delivery of probation services (before changes made in the June 2010 emergency Budget and the Spending Review settlement) was £884 million.¹

2. The derivation of the word probation is from the Latin *probatio*—a time of testing, or proving. That derivation remains relevant because, at their best and most robust, community sentences run by the probation service will test offenders, challenging them to change their offending lifestyles and to confront difficult issues. Such sentences, when properly carried out, bear little resemblance to the hackneyed and lazy depiction of non-custodial sentences as a ‘soft touch’. Indeed, evidence we heard from ex-offenders suggested that some people would rather go back to prison than have to serve a community sentence and have committed offences in order to do so.² One of the key challenges for the system is to make sure that all non-custodial sentences are appropriately rigorous and demanding.

3. The probation service which manages those sentences has undergone extensive change in recent years: following the creation of NOMS which brought together prisons and probation in 2004, the previous Government carried out a programme of reform, converting probation boards into probation trusts, which are contracted by the Secretary of State to provide and commission local probation services. This was to be followed by the introduction of competition for some aspects of delivery. In addition, the concept of “end-to-end offender management”—first proposed by Patrick (now Lord) Carter in 2003—has evolved considerably since the Offender Management Act 2007 was passed. By April 2010, after a demanding and rigorous process of demonstrating their suitability, all probation areas in England and Wales had become probation trusts.

4. The current Government has made it clear that further dramatic changes will be made to the punishment and rehabilitation of offenders, with a view to:

- making punishments demanding, robust and credible;
- improving how we reform offenders to keep the public safe, cut crime and prevent more people from becoming victims; and

1 Ev 167, paras 5–6

2 Qq 77, 94

- making offenders pay back to victims and communities for the harm they have caused.³

5. In view of the centrality of probation to an effective criminal justice system, the extensive changes which have been made to the system in recent years, and the prospect of further significant reform to come, the Committee decided to undertake an inquiry into the role of the probation service. We were particularly interested in receiving evidence which addressed the following questions:

- Are probation services currently commissioned in the most appropriate way?
- How effectively are probation trusts operating in practice? What is the role of the probation service in delivering "offender management" and how does it operate in practice?
- Are magistrates and judges able fully to utilise the requirements that can be attached to community sentences? How effectively are these requirements being delivered?
- What role should the private and voluntary sectors play in the delivery of probation services?
- Does the probation service have the capacity to cope with a move away from short custodial sentences?
- Could probation trusts make more use of restorative justice?
- Does the probation service handle different groups of offenders appropriately, i.e. women, young adults, black and minority ethnic people, and high and medium risk offenders?

6. We issued our terms of reference in July 2010 and subsequently received more than 80 submissions of written evidence, from a wide range of individuals and organisations. We held 12 oral evidence sessions, hearing from: commissioners, providers and users of services; partners (such as the police, and health care providers); and ministers and officials. In addition to sessions at Westminster, we took evidence in Brighton, which helped us get a useful snapshot of how things are working in one area on the ground. We visited the London Probation Trust and heard about their Diamond Project and saw some of their community payback work. We also held an e-consultation, and the key issues emerging from it are described in the annex to this Report. We are very grateful to everyone who gave us written or oral evidence and to those who contributed to our e-consultation. We are particularly grateful to Helen Boocock, a former member of the Probation Inspectorate, and Professor Robert Canton, Head of Research in Community and Criminal Justice at De Montfort University, Leicester, who served as Specialist Advisers to the inquiry.

3 Ministry of Justice, *Breaking the Cycle: Effective Sentencing, Punishment, Rehabilitation and Sentencing of Offenders*, Cm 7972, December 2010

Context

7. In its January 2010 Report, *Cutting crime: the case for justice reinvestment*,⁴ our predecessor Committee encouraged the then Government to look at criminal justice through a lens that reflected the costs and benefits of existing policy and to reconsider sentencing, enforcement practices and existing efforts to reform offenders in an effort to reduce the huge growth in the criminal justice budget. The Committee extensively rehearsed the strong fiscal reasons for tackling re-offending more effectively and concluded that any new Government could not continue to allow the resources needed for probation, and wider community rehabilitative provision, to be diverted into the spiralling costs of imprisonment.

8. The Report concluded that:

- There should be significant strengthening of community rehabilitative provision to enable probation to focus on the management of high risk offenders. The underlying needs of many persistent offenders who cause the most problems to local communities could be managed more coherently in the community. Prison resources could then be focused on higher risk offenders and, when they left custody, there would be better community provision for resettlement. All of which would improve effectiveness in reducing re-offending, improve public safety and reduce the prison population.
- The lack of probation staff at a senior level in NOMS suggested a lack of advocacy on behalf of probation for better resources. There was no evidence to suggest that bringing together prisons and probation had yet had a positive impact; in fact the available evidence on the financial outcomes of the merger pointed to the contrary.
- There was a very strong financial case for investing substantial resources in more preventative work with: former offenders; those with drug and alcohol problems; people with mental ill-health; and young people on the outskirts of the criminal justice system or those who had been in custody.
- Punishment provided no assurance of preventing further crimes, and if other purposes, including reform and rehabilitation and reparation to victims, were given higher priority, sentencing could make a much more significant contribution to reducing re-offending, to helping victims recover from those crimes that had taken place and to improving the safety of communities.
- The overall system seemed to treat prison as a ‘free commodity’—even if not acknowledged as such—while other interventions, for example by local authorities and health trusts with their obligations to deal with problem communities, families and individuals, were subject to budgetary constraints and might not be available as an option for the courts to deploy.
- The Government should go much further in reducing the numbers of entrants and re-entrants to the criminal justice system. More emphasis must be placed on ensuring that the criminal justice system is effective in reducing re-offending, diverting people into

4 Justice Committee, First Report of Session 2009–10, *Cutting Crime: the case for justice reinvestment*, HC 94-I

appropriate support and embracing wider shared responsibility for reducing offending by tackling underlying causes within local communities and by early intervention in the lives of those who are in danger of falling into criminality from an early age.

- Resources must be shifted into targeting the reduction of re-offending on a much broader scale, taking a whole systems approach, which applied the best available research evidence to determine the most appropriate allocation of resources both between prisons and probation and outwith the criminal justice system.

9. The current Government appears to have accepted much of the Committee’s analysis and we consider in this Report some elements of the strategy outlined in the green paper *Breaking the Cycle*, published in December 2010, that seeks to control the use of custody by placing a greater focus on reducing re-offending and policies that are most likely to prevent existing offenders from creating more victims. In particular we focus on the proposed new arrangements for commissioning probation services, reforms to strengthen community sentences and the Government’s pledge to provide frontline professionals with: greater discretion in how they manage offenders; fewer targets for providers; and less prescription in the way that different agencies work together. The Government wishes to introduce a ‘rehabilitation revolution’ that will pay independent providers and existing probation trusts to reduce reoffending, paid for by the savings this new approach could generate within the criminal justice system.

10. Following the publication of the green paper we issued a further call for evidence on relevant proposals:

- What are the relative merits of payment by results and place-based budgeting models as means to encourage local statutory partnerships and other agencies to reduce re-offending? What can be learnt from the implementation of payment by results models in health and welfare reform? What results should determine payment in applying such a model to criminal justice?
- What freedoms would probation trusts like to have to enable them to manage offenders and reduce re-offending more effectively?
- The Government proposes a lead provider model and suggests that commissioning for the delivery and enforcement of sentences and for efforts to reduce re-offending will not be separated. What is the appropriate role for probation in such a model?

11. As we concluded this inquiry the Government issued its response to the consultation on the green paper. In that response, the Secretary of State said that “community sentences have not won public confidence as a punishment” and that the Government would “overhaul the way community sentences are used. Offenders will serve longer hours, carrying out purposeful, unpaid activity which benefits the local community, over the course of a working week of at least four days. We will make more use of electronic tagging and longer curfew. Community sentences will not be pushed as a replacement for prison sentences—instead, tougher, better community punishments will help stop offenders in their tracks earlier to stop them committing more crime.”⁵ Further reforms are planned,

5 Ministry of Justice, *Breaking the Cycle: Government Response*, Cm 8070, June 2011, p 1

including the publication of a competition strategy for prisons and probation and the introduction of new business models, including social enterprises, co-operatives and mutuals, to the public sector.

Recent developments

12. In this section we explore the recent history of Government initiatives and associated developments relating to the probation service.

A national probation service

13. Until 2001, the 54 Probation Services had been independent bodies corporate. Probation officers had originally been appointed by their local courts. As the Services evolved, Probation Committees, constituted mainly by Justices of the Peace, were not only employers but, through and with the Principal (later Chief) Probation Officer, were responsible for policy and direction. Local authorities were represented on the Committees, partly because of the financial contributions they made to probation, but also in recognition of the local interest in and responsibility for the work of the Services and their accountability to the communities they served.

14. In 2001 a National Probation Service for England and Wales was created in the Criminal Justice and Court Services Act 2000 and its first Director, Eithne Wallis, appointed. Accountable to the Secretary of State, the Director was tasked to offer clear leadership to bring about greater consistency and rigour in policy and practice. These reforms were happening as the probation service appeared to be gaining confidence in its effectiveness, partly as a result of the “what works” debate, which seemed to suggest that if programmes were implemented as designed and targeted at the right offenders, a measurable reduction in reconvictions could be shown to be achieved.

The Carter Report

15. In March 2002, the then Government asked Patrick Carter (later Lord Carter of Coles) to review correctional services in England and Wales. The Carter review mainly took place inside government, with little wider consultation. The resulting report, *Managing Offenders, Reducing Crime: A new approach*, published in January 2004, had two guiding ideas: one was the need to break down ‘silos’ between prison and probation; the second was the introduction of what Carter referred to as “greater contestability, using providers of prison and probation from across the public, private and voluntary sectors” which he felt would lead to a more effective delivery of services.⁶ The report also emphasised the need for the “end-to-end management” of offenders. It proposed the creation of a National Offender Management Service and the Government accepted the idea enthusiastically, establishing NOMS in 2004. 14,000 staff subsequently moved to NOMS Headquarters, although the Prison Service and the Probation Service also retained their headquarters.

6 Patrick Carter, *Managing Offenders, Reducing Crime: A new approach*, London, 2003, p 34

Creation of the NOMS agency and probation trusts

16. While NOMS was established in 2004, in order fully to realise the objectives of the Carter review, further reform and legislation was required. The statutory duty to arrange provision of probation services was the responsibility of local Probation Boards and this stunted the growth of contestability. However, the Offender Management Act 2007 transferred this responsibility to the Secretary of State who was thus empowered to commission most services directly, not only from public sector providers, but also from the private and voluntary sectors.

17. Following a further report from Lord Carter, on 1 April 2008, the National Offender Management Service was established as an agency, merging the Prison Service and NOMS in its earlier iteration. The then Justice Secretary said that the new agency would:

allow NOMS to build on this success and take forward Lord Carter's proposals for streamlining management structures and reducing overhead costs. We will bring NOMS and the Prison Service together, and streamline the headquarters so as to improve the focus on frontline delivery of prisons and probation and improve efficiency. The chief executive of the restructured NOMS will run public prisons and manage performance across the sector, through service level agreements and formal contracts with probation boards and trusts, private prisons and other service providers. Having commissioning and performance management for both prisons and probation in a single organisational structure will further drive forward joined-up offender management and deliver essential savings. The new Director General for Criminal Justice and Offender Management Strategy will set the strategic direction for offender management and regulate the increasingly diverse range of providers and work with the judiciary on the proposals for a sentencing commission.⁷

18. The 2007 Act also triggered the process by which probation boards have transformed into probation trusts. For boards to do so, they had to demonstrate high performance against a number of assessed areas, including leadership, performance management, local engagement and effective resource use. The first six of the current 35 trusts were established in April 2008.

Community orders and licences

19. The reforms underway at this time were not restricted to the organisation of the probation service. Changes were also made to the types of sentences that service was expected to enforce. The Criminal Justice Act 2003, implemented in April 2005, changed community sentences significantly. The community rehabilitation order (previously the probation order) and community punishment (initially called community service) were abolished and replaced with a single community order which can be given for up to three years. On a community order, supervision by the probation service can be combined with any of 11 other possible requirements and some, for example, unpaid work, curfew and certain programmes, can "stand alone" without supervision. Requirements can be constructive, for example, drug or alcohol treatment or restrictive, for example, prohibited

7 HC Deb, 29 January 2008, c8 WS

activity and curfew. Restrictive requirements or conditions are used most often in licences. Requirements can also be intended primarily for punishment and/or reparation, for example, unpaid work. The Act also introduced the suspended sentence order upon which the court may impose the same range of requirements. (The difference between this and a community order is that an immediate custodial sentence should follow any breach, although in practice this is by no means always the case.) Prisoners are released on licence if they are under 21 or are serving a sentence of over 12 months and aged 21 and over. There is a standard set of 6 conditions in most licences. They specify the requirement to have contact with, and receive visits from a named offender manager, reside at an address detailed in the licence, and only take approved work, not to travel outside the United Kingdom and to be of good behaviour. They may have a number of additional conditions added at the request of their offender manager or the Parole Board. Prisoners on release may have conditions imposed upon them, usually for public protection, that they object to, including place of residence. There is considerable professional skill required to work with someone who resents their conditions.

20. The requirements or conditions attached to community orders or licences can include any of the following (which may also be imposed with electronic monitoring):

- supervision;
- unpaid work—between 40 and 300 hours. Originally called and often still referred to as Community Service, this has been re-branded as Community Payback by NOMS but is still technically called unpaid work;
- attendance centre—under-25s only, 12–36 hours duration. Not available in many areas;
- curfew—which must be imposed with electronic monitoring;
- exclusion—(more often used with licences) relates to exclusions from a specified place or area, e.g. named public houses, swimming pools, etc.;
- prohibited activity—(more often used with licences) offenders can be prevented from undertaking certain activities, e.g. not to undertake work or other organised activity which will involve contact with a person under a specified age, not to use directly or indirectly a computer, not to own a phone with a photographic device, etc.;
- specified activity—requirement lasts up to 60 days, e.g. basic or life skills or employment, training and education (ETE);
- residence—specifies a named address and period of time (up to 36 months for community orders) where they should live, e.g. approved premises, hostel or rehabilitation centre;
- mental health treatment—treatment with a named medical practitioner;
- alcohol treatment;
- drug rehabilitation; and

- programme—requirement to include attendance at a nationally accredited programme of work which addresses offending behaviour, e.g. attendance at a general offending behaviour programme or a more specific programme such as a community-based sex offender programme.

The following conditions relate to licences only:

- offence-related work;
- non-association—can be used to prevent offenders associating with other known offenders;
- contact—e.g. contact with a named psychiatrist;
- prohibited contact—e.g. ‘not to seek to approach or communicate with named person’;
- prohibited residency—prevents an offender living at specific addresses and with specific people, e.g. children under a certain age; and
- bespoke condition—in exceptional circumstances these can be added with the agreement of the Licence Release and Recall Section of NOMS.

New local governance arrangements

21. Since Lord Carter’s report urging the different parts of the criminal justice system—and in particular prisons and probation—to work closer together in rehabilitating offenders and protecting the public, the local framework for reducing crime and re-offending has been considerably strengthened. Our predecessor Committee concluded that the development of new local commissioning processes, coupled with national guidance on best practice, had had limited success in encouraging mainstream providers to fund provision to address offending-related needs in the community.⁸ On the other hand, they believed that there was considerable promise in new arrangements to provide stronger mechanisms for greater investment in community provision. The Policing and Crime Act 2009, implemented in April 2010, gave community safety partnerships and their component agencies, including probation services, statutory responsibility for reducing re-offending. We consider in this Report emerging evidence of the positive impact that this has had on partnership practices.

Post-election re-organisation of NOMS

22. NOMS will be reorganised again in 2011–12, building on interim changes, already implemented, which have reduced the number of Director posts by seven and restructured senior management along functional lines from April 2011.⁹ Four new national directors will be responsible respectively for: commissioning services; managing public sector

8 HC (2009–10) 94

9 Ministry of Justice, *National Offender Management Service Business Plan 2011–2012*, April 2011

prisons; managing contracts in probation and with the private/third sector; and delivering central system-wide services. NOMS aims to focus its resources on the front-line, cutting back office costs by at least a third over the period of the Spending Review. By 2014–15 NOMS is seeking to achieve a reduction of 37% in HQ and central services expenditure and efficiency savings of around 10% in front-line services in prisons and probation trusts. Further savings will be achieved through reductions in capacity as the population allows. HQ reductions have been frontloaded to reduce the burden on the front line ahead of policy changes which are anticipated to reduce the prison population from 2012–13 onwards.

23. NOMS has eight business priorities for 2011–12, relating to its agendas for transformation and operational delivery:

1. Rehabilitation—Breaking the Cycle.
2. Re-balancing capacity.
3. Commissioning and competition.
4. Organisational restructure.
5. Delivering the punishment and orders of the courts.
6. Public protection.
7. Reducing re-offending.
8. Improving efficiency and reducing costs.

24. NOMS will be responsible for the implementation of the competition strategy referred to above. In the meantime, NOMS is continuing to “press ahead” in using competition to help deliver more cost effective services. It has begun the process of launching community payback competitions; the first contract will be awarded by November 2011 and work on the remaining five contracts in 2012. In terms of the delivery of offender management services, the NOMS Agency’s role will be to:

- commission services;
- manage public sector prisons;
- manage contracts in probation and with our private/third sector providers including private prisons; and
- deliver central system-wide operational services.

Wider public service reform

25. In November 2010, Cabinet Office Minister Francis Maude proposed that the public sector, including probation services, should develop co-operatives and mutuals to “challenge traditional public service structures and unleash the pent-up ideas and

innovation that has [sic] been stifled by bureaucracy".¹⁰ The Ministry of Justice intends to explore the scope for new business models to give public sector workers greater independence in managing the services they deliver, citing the examples of social enterprises, co-operatives and mutualisation and NOMS will provide support to probation trusts and staff groups interested in developing these new models.¹¹ While some of our witnesses welcomed these opportunities, we did not focus on these issues in our inquiry in view of the more immediate uncertainty around governance arrangements for probation trusts as they currently exist.

The longer term direction of reform

26. There are numerous similarities between the current Government's stated aims and those of the previous Government when it was seeking to develop a market for the provision of correctional services. In 2004 the then Government stated that it did not matter whether the public, private or voluntary sector provided services as long as they were cost-effective.¹² At the heart of NOMS was the premise that the market depended on a purchaser-provider split i.e., the separation of the management of offenders from the provision of services. In a similar vein, the current Government wishes to test where the private, voluntary or community sectors can provide rehabilitative services more effectively by 2015 but proposes a different model of commissioning which will allow the management of offenders to be open to competition. In addition, *Reducing Crime, Changing Lives*, envisaged that the market would enable services to be purchased based only on their cost-effectiveness in reducing re-offending. The current Government is also seeking to introduce payment by results for probation trusts and other providers for certain aspects of probation work.

10 *New rights and support for staff mutuals*, Cabinet Office press release, 17 November 2010

11 Ev 171

12 Home Office, *Reducing Crime, Changing Lives*, January 2004, p 14

2 The role of the probation service

The purpose of probation

The development of the probation service

27. The probation service has its origins in the late nineteenth century when a philanthropist, Frederic Rainer, donated to enable voluntary support to be provided to offenders appearing before police courts in London. The Probation of Offenders Act 1907 provided for the statutory foundation of the probation service and made it possible for Magistrates' Courts to appoint probation officers who were paid by the local authority. The Act required probation officers to 'advise, assist and befriend' those under supervision.

28. The probation service has since seen many changes (the most recent of which we described above), some of which have been reflected in the training arrangements for probation officers. For example, for most of the twentieth century, probation officers underwent the same professional education as social workers, but this was set aside in the mid-1990s when the Government decided that social work was an inappropriate way to understand the work of the service; the emphasis of the profession, reflected in the training curriculum, changed towards enforcement, rehabilitation and public protection. This was further cemented in the Criminal Justice Act 2003, which defined the purposes of sentencing as: the punishment of offenders; crime reduction; the reform and rehabilitation of offenders; the protection of the public; and the making of reparation by offenders to persons affected by their crimes. Nevertheless, staff continue to emphasise the original values of probation, especially belief in the possibility of personal change, scepticism about the value of prison as the way to reduce crime, respect for diversity and the importance of professional relationships in enabling change.¹³

29. The role of probation officers has shifted from solely providing a service to offenders in the community through the courts to providing through-care (in prison) and after-care (post-release supervision) to those who have received custodial sentences. At one time, magistrates' courts in particular expected what would today be regarded as a high level of staff to advise the Bench and provide reports; the Magistrates' Association regretted the current level of staffing in some courts.¹⁴

30. Whilst the remit of the probation service and the way it is structured and governed have changed over the years, the supervision of offenders to prevent reoffending has always been at the centre of its work, even if it has not always been an explicit aim. The outgoing Chief Inspector of Probation, Andrew Bridges CBE, emphasised this:

What I would highlight is that there is far more continuity than there is change. I am not saying there has been no change at all, but even though there is a lot of group work and accredited programmes now—and don't forget there was group work being done 30 years ago—nevertheless, the heart of probation practice, and youth offending practice for that matter, is about using one's influencing skills in a one-to-

¹³ For example, Ev w64

¹⁴ Ev 219; Q 557

one relationship. You are trying to use a relationship to achieve a purpose: the relationship isn't the end in itself. You are trying to get individuals to want to change and to make changes to themselves. You are often doing it with offenders whose probability of change is very low, with the really difficult ones. Anybody who had been a practitioner 40 years ago would still recognise that now, I would say.¹⁵

The current role of the probation service

Assessment and advice to courts

31. Napo, the trade union and professional association for family court and probation staff, emphasised that probation work starts in court: “The probation service provides impartial, accurate, reliable, skilled and professional advice to assist the courts in making their decisions. Information is provided in writing and verbally and offers alternatives to custody wherever this is assessed as appropriate.”¹⁶ Probation Officers provide pre-sentence reports—oral, fast delivery and standard delivery reports, differentiated by the depth and detail of their assessment and the amount of time required for preparation—for court to assist sentencers in determining the most suitable method of dealing with an offender. In recent years, however, to try to reduce demand, sentencers have been encouraged not to ask for a full or standard delivery report unless absolutely necessary as they are an expensive resource and are the main impediment to equitable workload management. There was a significant change in approach to writing reports for courts in 2009 following the publication of probation circular 06/2009, *Determining pre-sentence report type*: an instruction to ensure that standard delivery reports are only used where it is not possible to provide sufficient information to meet the needs of the court within the fast delivery report format. Probation trust budgets were immediately reduced in 2009 on the assumption that most reports would follow the guidance.

32. Witnesses who had recently been supervised by the probation service complained about not being given the time to understand what was happening at the start of an order. For example, one ex-offender referred to “information overload” and described his experience of what seems to have been sentencing following an oral pre-sentence report: “My worst [experience] is the court room being adjourned and me having five minutes to tell my whole life story to a probation officer in a room beside the court, for that to go in front of the judge and then to sentence me on the five minutes I had been given with the probation officer.”¹⁷ The Magistrates’ Association told us how the process ought to work: “the quality of reports and assistance that is now given in the courts has significantly developed over the years and it is now possible if we are lucky enough to have a probation officer in court....to engage in a dialogue and debate with the probation officer, the defendant and defendant’s representative about what might be appropriate penalties, punishments or disposals that could be used in the courts.”¹⁸

15 Q 299; see also Ev w64

16 Ev 84

17 Qq 2; 43

18 Q 557

Offender management

33. The Chief Executive of the Staffordshire and West Midlands Probation Trust summarised the core elements of probation business: “More than any other agency or organisation the probation service links the different elements that make up good offender management (high quality assessment, robust management of contact and behaviour, and well-targeted interventions) and provides the link for other organisations to work in an integrated manner.”¹⁹ This emphasises one of the most fundamental changes to the role of the probation service in recent years: the introduction of end-to-end offender management for the supervision of offenders on community sentences and for those serving custodial sentences, both while they are in prison and after release. We look at this in more detail in Chapter 3.

Supervision of community orders and licences

34. The Magistrates’ Association sees the post-court role of probation staff as to: coordinate a sentence; monitor progress; ensure compliance; and monitor and report breaches.²⁰ As part of the coordination of a sentence, offender managers retain oversight of the various interventions that are required by the courts or that may assist the offender in tackling the factors that contribute to their offending. Offenders can be required to undertake programme requirements by the courts. For a time, beginning in the late 1990s, accredited programmes—designed on the basis of research on how best to influence people’s attitudes and thinking—were seen as the main type of intervention to reduce re-offending and the way in which the probation service would demonstrate its effectiveness. Some programmes are generic (i.e. suitable for most offenders), while others were designed for particular types of offence (for example, sex offending or violence) or offender (e.g. Women’s Acquisitive Crime Programme). Professor Kemshall mentioned the value of such programmes in managing some of the most serious offenders.²¹

35. Cambridgeshire and Peterborough Probation Trust (CPPT) told us that: “There is currently a lack of clarity about what the term “Offender Management” means, and CPPT believes that offender management should mean the effective engagement of probation staff with offenders to impact positively on their offending behaviour, achieving a reduction in offending behaviour. Within NOMS it seems that currently offender management is seen as primarily an administrative process, within which the offender manager is responsible for overseeing and sequencing interventions with the offender. This, in our opinion, ignores the capability and potential of offender managers to engage positively with the offender to reduce their offending behaviour. The professional base, training, skills, knowledge and experience of probation staff put them in the best position to supervise offenders effectively.”²² This is echoed by the Probation Chiefs’ Association.²³

19 Ev w5

20 Ev 219

21 Q 647

22 Ev w93

23 Ev 156

The offender manager's relationship with offenders

36. According to the Ministry of Justice, there is clear evidence that it is the degree of offender engagement and the quality of the relationship that makes a difference with offenders and reduces reoffending.²⁴ Yet we have seen evidence which appears to support the point made by CPPT above the overly-administrative approach to engaging with offenders: Napo cited a leaked “restricted” MoJ report which outlines the results of a 2008 survey of direct contact with offenders which found that probation staff spend only 24% of their time in contact with offenders. Of the remainder, 41% of time was spent engaged in computer activity and 35% in non-computer activity for example drafting correspondence and reports, meetings and other administration. One probation officer said it was their impression that for every 15 minutes spent in fact-to-face contact, 15-30 minutes was spent recording it. The survey found that, increasingly, the main issue of bureaucracy and red tape refers to OASys (see below) and the amount of time spent on non-computer work.²⁵ Matthew Lay of trade union UNISON, which represents probation staff, emphasised that “if staff are going to engage more effectively with offenders in terms of face-to-face engagement, they have to have the time to do that.”²⁶

37. When we asked Barrie Crook, Chief Executive, Hampshire Probation Trust and Learning and Development lead for Probation Chiefs’ Association, whether it was correct that an offender might only be seen for ten minutes at an appointment, he replied: “That might be very true of someone who is perhaps a tier 2 offender, who may be in the middle of their order, for example, and might not need a great deal of time, but with a tier 4 case coming out of prison with MAPPA implications, an officer could spend several hours in that week working around that particular case, so I think it is extremely difficult to generalise.”²⁷ However, Andrew Bridges explained that much non-contact time was likely to be spent on work connected with managing a case which could be as productive as the face-to-face contact: “the two thirds or three quarters of people who do the work well may have limited time but they are using it very purposefully. The really good ones don’t need a lot of time to achieve a lot of purpose.”²⁸

38. We heard evidence from four witnesses with direct and, in some cases, ongoing experience of being supervised by an offender manager; they discussed with us their relationship with their offender manager. One witness expressed succinctly how positive an experience working with an offender manager can be, leading directly to rehabilitation:

I’ve had a couple of probation orders and I’ve had ones from one end of the spectrum to the other. I’ve had one where I’ve actually built up a rapport with somebody and they’ve actually looked into my needs and actually built, you know, the probation order around the needs of myself to help me get better and that has

24 Ev 167

25 Ev 184; Ministry of Justice, *Objective 11—Offender Management Direct Contact Survey of Probation Boards and Probation Trusts*, December 2008

26 Q 378

27 Q 166

28 Q 304

actually got me to the stage where I'm at now. But I've also been given appointments where I've gone in, "Hi, I've signed in".²⁹

Another was unhappy that hers was too much like a friend and not sufficiently assertive.³⁰ However, Jonathan Ledger, the General Secretary of Napo, did not believe that the example of an offender manager being too much like a friend was typical:

The idea of being soft is a misrepresentation of the general way staff indeed have to work these days in the context of enforcement and accountability. However, as you know, there has also been an increasing return to the concept of those one-to-one relationships and the key abilities and skills you need in order to develop relationships with the people with whom you work and for whom you have responsibility.³¹

39. Research on the process of desistance—the process by which offenders come to stop offending and to develop useful lives in which offending has no place—commonly discovers the value of professional relationships in supporting this process.³² Encouragement and personal concern can help people to recognise opportunities to change when they occur and boost motivation at times when offenders lose hope in the possibility of changing. Authority and challenge also have their place, but are most effective when the offender recognises the practitioner's concern for them as a person and a belief in the possibility that they can change. Ex-offenders often speak of the value of a probation officer's practical help in identifying and resolving obstacles to desistance, but especially emphasise the sense of personal interest and concern, of partnership and cooperation and even of a sense of loyalty and personal commitment to the probation officer that helped them to go straight.

40. We accept that probation officers have to do a certain amount of work which does not involve dealing directly with offenders. However, it seems to us staggering that up to three-quarters of officers' time might be spent on work which does not involve direct engagement with offenders. No-one would suggest that it would be acceptable for teachers (who also have to do preparatory work and maintain paperwork) to spend three-quarters of their time not teaching. The value which really effective probation officers can add comes primarily from direct contact with offenders. While we do not want to impose a top-down, one-size-fits-all standard, it is imperative that NOMS and individual trusts take steps to increase the proportion of their time that probation staff spend with offenders. The MoJ and NOMS should state explicitly whether they support this aspiration; if they do, they should tell us how they intend to achieve it.

National standards: discretion and professional judgment

41. Offender management has been subject to a great deal of prescription from the centre; it is currently supported by a comprehensive set of national standards, which set out in

29 Q 10

30 Q 23

31 Q 371

32 For example, Ev 196; 156; 203; w125;180; 229

detail the frequency and timing of the minimum amount of contact with offenders of particular levels of risk. This represented the opposite of the laissez-faire approach adopted by the probation service until the 1990s when individual probation officers decided how often to see their ‘cases’. The impact of central prescription is acknowledged by the Ministry of Justice which noted: “[c]hanges that have been made in recent years have improved overall performance and the quality of risk assessment and management. However, one consequence has been an increase in bureaucracy and over-reliance on processes. There has been a tendency to focus more on meeting process standards than on delivering outcomes, such as a reduction in reoffending.”³³

42. The standards have recently been significantly streamlined—with the intention of providing trusts and offender managers with greater freedom to exercise professional discretion—and will be implemented by April 2012. This follows a period of piloting in Surrey and Sussex Probation Trust of a model that seems closer to how probation officers used to work. Sonia Crozier, the Chief Executive of the Trust, explained:

What we have learned over the year of running what has been called the “Professional Judgment Project” is that the probation staff feel more in control. They feel they have been given the right to apply common sense in terms of how resources are allocated, and they can also be more responsive to the offenders, so if people’s circumstances change, they can either up the contact because it seems clear that more contact is required or they can make a sensible decision to reduce contact if in fact there is clear evidence that progress is being made. The appropriate use of discretion depends not only on common sense, but also on training, experience and guidance from colleagues.³⁴

43. The Probation Association supports the new approach. Its Chief Executive told us that “The coalition Government have grasped that outcomes rather than processes have to drive the system—very much so. We have a sense that although it may take time, there is an open mind and a willingness to start to trust trusts to manage their own businesses and not have to be told in mind-bending detail how to do it. With professional practice, we know best. We have efficient ways of delivering things.”³⁵

44. West Yorkshire Probation Trust considered that the removal of rigid standards would result in a substantial saving in resources and the public would be better served as there would be more face-to-face work with the offenders.³⁶ Although the new standard potentially gives discretion back to professionals, it seems unlikely that trusts will not issue their own set of standards in order to use their resources most effectively. The outgoing Chief Inspector posed a question about this: “To illustrate the point, there are certain offenders under supervision who are in the relatively low seriousness level. National standards at the moment say you have to see them 16 times in 16 weeks. In future, are you

33 Ev 167

34 Q 493

35 Q 339

36 Ev w144

going to set a local standard? What are trusts going to do about that? The new freedom is also a new problem. We will have to see how that unfolds.”³⁷

45. Sue Hall of the Probation Chiefs’ Association explained how she thought the standards would work in practice:

Revisions to national standards were recently announced on the regulatory requirements that probation officers work to. That gives them a much more professional judgment, so they will be able to use their judgment to decide whether they review the progress an offender is making on their order. My hope—I think this would be the same for all the probation chiefs—is that our high-risk, prolific offenders will get a higher level of contact and service, but judgment will be used. If there is a low-level offender and he’s doing all right—coming in and complying—the time will not be put into doing a timely piece of work on review because that is what the book says. Judgment will be used, so some resource will be released in that direction.³⁸

46. According to the Chief Executive of the Surrey and Sussex Probation Trust, some probation officers have almost had to be re-trained to exercise this judgment with confidence: “We are also able to give some very clear indicators of things that trusts will need to put in place to bridge that generational gap and give freedoms to a whole generation of probation officers who were trained in a very rule-based approach.”³⁹ The generation gap refers to staff in post before the prescriptive standards were imposed. Participants in our e-consultation generally welcomed the change but some raised concerns about the capacity of more recently trained staff to exercise the degree of professional judgment required. We consider below the training and recruitment implications of the new national standards.

47. While the level and type of contact with offenders should depend on the individual’s assessed needs and risks, rather than on the preferences of the practitioner, we welcome the increase in professional discretion provided by the streamlined national standards, and the assurances of many of the professionals concerned that this will allow them to do their jobs better and more efficiently.

The management of risk

48. The role of probation practitioners has, to an extent, shifted from one of coaxing change in people to the “management” of risky people. The Offender Assessment System (OASys) is a national system for assessing the risks and needs of an offender in terms of the likelihood of reconviction, risk of harm to the public, and offending-related factors—known as ‘criminogenic needs’—such as poor educational and employment skills, substance misuse, relationship problems and problems with thinking and attitude. The assessment informs probation’s sentencing advice to the courts and is used in the offender management of sentenced offenders to help practitioners to make decisions about

37 Q 294

38 Q 335

39 Q 500

managing risk and tackling offending-related needs. OASys is a complex tool designed to help offender managers to: assess how likely an offender is to be reconvicted; identify the factors associated with an offender's own offending; assess the risk of harm an offender presents to others and of self-harm; link assessments with supervision and sentence plans; indicate the need for further specialist assessments; and measure how an offender changes during their sentence. It is also used to record the sentence plan and, in appropriate cases, the risk management plan.

49. Witnesses and participants in our e-consultation broadly viewed OASys as a useful tool, but some felt that it was cumbersome and time-consuming to use, despite attempts that have been made to streamline it.⁴⁰ UNISON told us how OASys was viewed by practitioners: “we have had dialogue in the past about whether [it] could be made more user-friendly and some of the processes could be adapted to make it more streamlined. But I think there is generally support, particularly amongst our members, for the concept of OASys and what it delivers in terms of effective risk management and analysis of that risk.”⁴¹ Professor Kemshall highlighted that OASys is not always completed accurately: “OASys can still be inconsistently applied across all the trusts, and even, indeed, within a trust. Although it is still an important [key performance indicator] for probation, one could see the use of that KPI as driving that quality up, hopefully.”⁴²

50. OASys is only a tool and probation officers in particular are trained to elicit and analyse information using OASys to guide them and then to make a judgment about what action to take. The outgoing Chief Inspector made a statement that quantified Professor Kemshall's impression: “We look at how often the right thing has been done with the right individual in the right way at the right time. We exercise qualitative judgment as to whether it has met the high level of quality we are looking for. Our measurement is about how often that is done. Nearly three quarters of the time, the work we are looking at is meeting the high level of quality we are looking for. That is quite a creditable achievement under difficult circumstances.”⁴³ If OASys is not completed accurately and thoroughly ‘the right thing’ is unlikely to happen as it will not have been planned.

Work with victims and restorative justice

51. The probation service has a statutory responsibility under the Criminal Justice and Court Services Act 2000 to keep the victims of certain offences informed about the progress of the sentence of the perpetrator of the offence against them. All victims or their families, in cases where there is a custodial sentence of 12 months or more for a sexual or violent offence, must be offered contact. Victim liaison officers are probation service officers who, in well run schemes, work closely with offender managers to ensure that they are kept up to date with changes. In particular, victims are informed about potential release dates. When plans are being made for the prisoner to be released the victim is invited to comment on them. For instance, if they fear they may be at risk of a further assault an exclusion or prohibited contact condition can be added to the licence.

40 See e.g. Ev 184; w26; w125; 144; 180. See also Ev 231

41 Q 364

42 Q 647

43 Q 302

52. Despite this being one of the five stated purposes of sentencing, direct reparation to victims is rare. Restorative justice approaches were highlighted by our witnesses as an example of means to increase diversion from prosecution, make more creative use of community requirements and improve public confidence. Restorative justice is a concept that encompasses a range of approaches, including community payback; victim contact, such as a letter of apology; mediation, including direct contact between offender and victim; and direct reparation to the victim in cash or in kind. Our evidence suggested that there is considerable scope to expand the use of restorative justice for the victims of offenders on community sentences and under the supervision of probation services on post-custody licences. Witnesses highlighted a lack of post-sentence community-based restorative justice provision; approaches tend to be limited to reparation, for example, through community payback, or available on an ad hoc basis, for example, as part of a specific activity requirement attached to a community order or within intensive alternative to custody schemes.⁴⁴

53. There are particular gaps in the provision of opportunities for face-to-face restorative justice between victims and higher-risk offenders, possibly as a result of their resource-intensive nature.⁴⁵ The absence of nationwide provision not only denies victims who wish to meet the offender the opportunity to do so, but foregoes the opportunity for offenders to take responsibility for the harm they have caused, the impact of which may improve engagement and commitment to reform.⁴⁶

54. Thames Valley Restorative Justice Service stated that post-sentence restorative interventions should be considered, timed and sequenced as an integral part of supervision planning or sentence management processes and noted that the appropriate time to intervene must be a matter of judgment rather than rigid timetabling.⁴⁷ Some witnesses called for a formal restorative justice option for offenders under supervision, for example, a specific sentencing requirement.⁴⁸ Magistrates would also welcome more opportunities to use restorative justice, for example, as part of the sentence of the court.⁴⁹ Conversely, there are difficulties in making direct restoration enforceable so, in order to avoid misleading courts and victims by making restorative justice a court-ordered intervention, provision in Thames Valley is centred on a “presumption in favour of participation” for every offender on a community sentence.⁵⁰ Thames Valley Probation Trust considered that the area’s model for the delivery of restorative justice could be nationally replicated.⁵¹

55. Probation trusts are well placed to facilitate the delivery of restorative justice through effective partnerships with specialist organisations—the voluntary and community sector has particular expertise in this area—although the gaps identified above are unlikely to be plugged by the adoption of payment by results models. Northumbria Probation Trust

44 Ev 184; 173; w 35; w52; w85; w89; w99

45 Ev w6; 196

46 Ev w35; w41; w48; Ev 200; w103

47 Ev w35

48 Ev w41; w44; 216; w99

49 Q 590 [Mr Thornhill]

50 Ev w35

51 Ev w52

explained that NOMS' appraisal of the costs expected to be incurred in work with victims under the Specification, Benchmarking and Costs programme allows little scope for trusts to expand into more sophisticated restorative justice approaches;⁵² practitioners need to be highly trained so restorative justice is not a cheap response to crime.⁵³ While there is some evidence of the cost-effectiveness of restorative justice initiatives in reducing re-offending,⁵⁴ levels of victim satisfaction and community confidence are higher and Napo argued that these outcomes should be given greater weight when determining whether such schemes are worthy of investment.⁵⁵

56. We believe that restorative justice has the potential to be used more widely within the probation service and we think that HM Chief Inspector of Probation might usefully undertake some work into the current use of the approach and suggest how best practice might be disseminated. Basing commissioning on payment by results in reducing re-offending risks overlooking the importance of the rights of victims and the obligations of offenders towards them. The Government must give more consideration to how best to incentivise restorative justice measures to increase their availability so that every victim can be offered the chance to take part in restorative justice. There should also be an expectation that every offender should be faced with the consequences of their crime, and should, where possible, be offered the chance to make amends to the victim.

Working with particular groups of offenders

57. Most offenders are male: women make up around 14% of the probation service's caseload and 5% of the prison population. There is evidence to show that even though most may not get caught, a surprisingly large proportion of men have at least one recorded conviction for a notifiable offence. With exceptions, women's offending is often a symptom of vulnerability that has led to abusive relationships or substance misuse, much more often than is the case for men. Since the publication of the Corston report in 2007 there has been cross-governmental activity aimed at changing women's experience of the criminal justice system and, in particular, keeping most of them out of prison. Those organisations that submitted evidence to us about this were negative about the capacity of probation trusts to deliver a differentiated service to women.⁵⁶ This extract from the Griffins Society is representative:

Women are particularly badly affected by supervision that focuses primarily on risk management instead of on providing help, support and guidance. The importance of positive relationships for women's ability to engage well with supervision tends to be

52 Ev w85, see also Ev w133

53 Ev w99; 200; w114

54 For example, the Transition to Adulthood Alliance commissioned Matrix Evidence to conduct cost-benefit research on the diversion of young adults from community sentences into pre-court restorative justice conferences, see Ev 200. See also Ev w133.

55 Ev 184; w44; w52; w80

56 Ev w89

overlooked by probation services, except in probation areas where women’s centres provide holistic help and supervision for female offenders.⁵⁷

58. While there are examples of effective practice—for example, we heard in Brighton about a women’s project, Inspire, where supervision in such a centre is provided as a Specific Activity Requirement—access to women’s centres remains patchy.⁵⁸ In addition, where women pose a higher level of risk, they may be placed on mixed-sex programmes or programmes far from home, both of which discourage compliance.⁵⁹

59. The Griffins Society cited research by Plechowicz which explored the benefits of the attention given to relationships in the supervision of women at a women’s centre in Wales.⁶⁰ Women offenders commented positively on the warmth and personal concern shown by their key workers. All felt these qualities enabled them to engage in supervision and benefit more from it than from the comparatively sterile relationships they had with their offender managers. Plechowicz concluded that “if the probation service wishe(s) to work more productively and effectively with its female clients, major changes will need to be made to current high caseloads, and less emphasis placed on current targets, to allow offender managers to have the time required to develop positive relationships with their cases”. This was consistent with the view of Women in Prison, a voluntary organisation, and reiterates the importance of achieving effective relationships with offenders, as noted above.⁶¹

60. The probation service’s approach—where resources tend to be directed towards dealing with offenders who present the highest degree of risk—can fail adequately to support women offenders. The approach recommended by Baroness Corston for the provision of holistic services that address all women’s needs is still a long way from being realised, even through this would greatly increase the effectiveness of probation work in diverting women from further offending. Rather than requiring extra resources, it would save public money by reducing the prison population and its associated heavy social costs.

61. While most offenders are white, there remains a disproportionate number of offenders, particularly in prison, with a black or minority ethnic [BME] background. Clinks told us of the good work done by the voluntary and community sector (VCS), noting that “community-based [BME] organisations are effective at engaging with black offenders who may find it difficult to trust and relate to predominantly white organisations”, but struck a note of caution, stating that “this part of the VCS is typically fragile and under-funded and often fails to attract the support that other parts of the VCS enjoy.”⁶²

62. A number of probation trusts told us that, while efforts were made, there was more to be done in this regard. For example, Cambridgeshire and Peterborough Probation Trust

57 Ev w13; see also w134, 153

58 Q 492; see also Ev w21; w89

59 Ev w89

60 Ev w13

61 Ev w118

62 Ev 196

Board told us that it “works with partners to deliver effective services to different offender groups. It is vital that the Trust engages well with partners and community groups to ensure that the needs of all offenders are met. This is particularly important for the “hard to reach” group of offenders, particularly [BME] offenders. In CPPT there are effective arrangements in place for the Trust to engage with partners and community groups. It can never be said that an optimum performance in this regard has been achieved.”⁶³ Similarly, the South Yorkshire Probation Trust told us that “Whilst we have made tremendous progress in responding to the needs of black and minority ethnic offenders, we accept that there is still progress to be made.”⁶⁴

63. Most offenders are aged between 18 and 25. However, there is a growing number of much older men, typically ‘lifers’ and those convicted of sex offences against children and serving long sentences who are still subject to supervision past the age of 65 for whom there are few criminal justice resources.⁶⁵ There is also a need to improve provision of end-to-end offender management for foreign national offenders.⁶⁶

64. The Transition to Adulthood group told us about the particular challenges faced by young people in the criminal justice system:

Community sentences are proving disproportionately challenging for young adults to complete. Currently, young adults often receive the most punitive community sentences. Curfews, banned activities and unpaid work are common, making it harder not to breach the order, but lack the necessary support for young adults to fulfil the requirements.⁶⁷

65. Both the Transition to Adulthood Group and the Criminal Justice Alliance pointed to the lack of resources for dealing with substance misuse in some areas as a substantial barrier to young people stopping their involvement in crime.⁶⁸ Humberside Probation Trust highlighted that relatively small numbers meant that separate group provision for BME and young adult offenders was not feasible.⁶⁹

66. The people supervised by the probation service do not make up a homogenous group and have varied and complex needs. Interventions, for example, accredited programmes, have been developed to meet the needs of the majority: young, white men. Although some trusts do try to offer specialist services for others or to refer people into resources provided by others it appears to us that this is very much a work in progress. It is another area which we think might benefit from the scrutiny of HM Chief Inspector of Probation. Also, the Government should ensure that it considers the needs of minority groups when moving towards payment-by-results: contractual

63 Ev w93

64 Ev w125

65 Ev w134; w151

66 Ev w55

67 Ev w107

68 Ev w89

69 Ev w95

arrangements will need to ensure that appropriate services are provided for all offenders, and not just those who fall into the most common demographic.

Recruitment and training of offender managers

67. As with any business or organisation, to do its work successfully the probation service needs to recruit, train and retain the right people. Lesley Thompson from the North West Probation Training Consortium summarised the values and skills employers look for in recruiting probation officers:

What we are looking for are values in equality and diversity, and a belief that an individual can change. We are looking for good communication skills, the ability to relate to others and the ability to engage with offenders. We are looking for good analytical skills and the ability to make judgments, to work with partners and to work in partnership with other people.⁷⁰

68. Mark Mitchell from the University of Portsmouth said that an important skill required by offender managers was confidence in their judgment and in their relationship with offenders.⁷¹ This might apply particularly to Probation Service Officers who, as yet, are not professionally qualified; however, through training, supervision and experience they can develop the required confidence with the cases they manage. This point was supported by Barrie Crook of the Probation Chiefs' Association: "I think staff supervision and practice supervision are very important, particularly in terms of the element of judgment, because that kind of coaching is often the best way to help someone to reflect on their own judgment, looking at particular cases they may be handling or case material".⁷²

69. Jonathan Ledger of Napo described the skills he believed were required to work with offenders: "If you do not now know how to engage with people, how to get alongside them, you are very unlikely to start to be able to challenge them and make demands of them in terms of the behaviour they are presenting and actually effect change. You need those skills where you have the empathy and you know how to communicate with people [...] "Tough" is sometimes misrepresented somehow as being distant and hard. But we do not need that; we need people who can get alongside others and then challenge and have some impact on people's attitudes and behaviour."⁷³ Professor Kemshall had a similar perspective from her experience of training probation officers: "I think there is a misunderstanding about the challenges faced within the job. You need high resilience because there can be a lot of failure. Sadly, people do come back. People don't always do what you think is right for them and, for some people, change is a very long journey; but also some people have done some terrifically awful things that have to be faced, talked about and changed."⁷⁴

70 Q 174

71 Q 180

72 *Ibid.*

73 Q 371

74 Q 685

New probation qualifying training

70. Probation officers are offender managers with qualifications in probation studies—or equivalent—who may undertake a range of statutory duties regarding the assessment and supervision of offenders. Probation service officers (PSOs) are not qualified probation workers. In recent years there has been a marked change in the make-up of the probation service workforce. Significantly, according to a study by Oldfield and Grimshaw, between 2001 and 2006–07 there was a 12% increase in probation officers (POs) and a 53% increase in the number of probation service officers (PSOs).⁷⁵ A new national probation qualifying framework (PQF) for training probation staff was introduced in April 2010, replacing the Diploma in Probation Studies which had been in place since 1998. The framework, which combines academic and work-based learning, has two routes to qualification as a probation officer. One enables PSOs or other candidates to study for a two year honours degree and one year probation specific national vocational qualification while remaining in their jobs. The other route, for those with a relevant degree, for example, criminology, criminal justice or community justice, shortens the training period to 15 months. It also provides for a minimum accredited qualification for new PSOs. Existing PSOs are expected to have obtained this qualification within 3–5 years. Trusts, Napo and UNISON overwhelmingly welcomed the new framework and its ability to encompass the development of both probation officer and probation service officer grades.⁷⁶ Humberside Probation Trust expected that it would produce high quality probation officers—as the previous arrangements did—noting the importance of the retention of a higher level academic qualification.⁷⁷ UNISON applauded its emphasis on “on the job” training.⁷⁸

The benefits and limitations of the new training arrangements

71. As we noted above, the Government has begun a process of enabling frontline staff to exercise a greater degree of professional judgment, the first stage of which has been to reduce the volume of national standards to which they are required to adhere in their supervision of offenders. The Professional Judgment pilot hosted by Sussex and Surrey Probation Trust exposed a “generational gap”, whereby recently trained officers had been taught to adopt a predominantly “rule-based approach”.⁷⁹ John Steele, Chair of the Trust explained: “The nature of what makes a good officer has changed. It used to be the person who ticked all the boxes and got everything in on time. Now you’re looking for slightly different skills and a slightly different approach.”⁸⁰ During the pilot this was managed by encouraging staff to record what they do, and what their thought process was, rather than tick boxes.⁸¹ We heard that the new training arrangements are designed to strike a balance between enabling staff to fulfil the administrative requirements of the role as well as

75 Oldfield, M. and Grimshaw, R, *Probation Resources, Staffing and Workloads 2001–2008 (revised edition)*, London, 2010: Centre for Crime and Justice Studies

76 Ev w6; w18; w26; 156; w44; w48; w80; 216; w85; w95; w103; w125; Q 400 [Mr Ledger and Mr Lay]

77 Ev w95

78 Q 400

79 Q 500

80 *Ibid.*

81 *Ibid.*

building effective relationships with offenders and honing professional judgment.⁸² Barrie Crook, Chief Executive, Hampshire Probation Trust and Learning and Development lead for Probation Chiefs' Association, believed that the supervision element of the training was valuable in enabling staff to gain the self-awareness confidently to exercise professional judgment;⁸³ this is in addition to assessments of judgment that are made at recruitment stage and as trainees develop and practice their skills through the training itself.⁸⁴

72. There appears to be a good balance in the new training arrangements between providing staff with the skills to understand and interpret risk and to challenge and motivate offenders. The quality both of the recruitment process and of supervision arrangements within individual trusts are of utmost importance in ensuring that newly trained staff will have the confidence to operate safely in the context of fewer national standards, and in preventing probation trusts from becoming equally constrained by being too risk averse.

73. Mr Wilkinson and Ms Thompson envisaged that the new arrangements would make workforce planning easier.⁸⁵ Mr Wilkinson explained: "My ambition here is that we will have a cadre of people in the service—PSOs in the service—that are ready to become probation officers. They are properly trained, they are ready and they are still working as PSOs, but when there is a probation officer vacancy, they can be moved into that and such like. So you have got an internal talent pipeline rather than having to anticipate three years hence your probation officer needs, as used to be the case under the diploma, and having to take an educated guess about how many staff you would need in three years' time."⁸⁶ However, Mr Lay was more sceptical, suggesting that there was little incentive for a PSO to undertake training to become a PO in the absence of a guaranteed job.⁸⁷ The Probation Association and Probation Chiefs' Association also expressed concerns about the length of time it would take to train PSO staff.⁸⁸ There are also workload considerations, both in terms of the PSO's own duties and those of their supervisors.

74. While witnesses acknowledged that it is early days in the implementation of PQF, there are some indications that fewer than anticipated staff are taking advantage of the new arrangements, perhaps because they see limited opportunity for progression in the current financial environment⁸⁹ or because of heavy workloads. Christine Lawrie, Chief Executive of the Probation Association, explained the impact of budget cuts meant that some areas had been unable to recruit new entrants.⁹⁰ The decisions that some trusts have taken to prioritise the retention of qualified probation officers over probation service officers will also undoubtedly have an impact. Napo expressed frustration regarding the Unions', NOMS' and trusts' inability to reach national agreements on national quotas to facilitate

82 Qq 179–180

83 Q 180

84 Q 179

85 Q 183 [Ms Thompson]; Q199 [Mr Wilkinson]

86 Q 199

87 Q 400

88 Ev 173; Ev 156

89 Q 400 [Mr Lay]; Q 402 [Mr Ledger]

90 Q 336; see also Ev 156

workforce planning and protected study time, both of which were left to local discretion.⁹¹ The impact of budget cuts on trusts' prioritisation of training and study time may be reflected both in low take-up nationally and in high attrition rates in some areas, for example, London.⁹² Professor Kemshall believed that the recruitment process could be strengthened to reduce attrition rates because in her experience some trainees misunderstand the challenges faced within the job, including the resilience required to deal with disappointment and failure, and the mismatch between direct work with offenders and the administration and bureaucracy required.⁹³ London Probation Trust suggested that there is scope for strengthening the PQF by widening the participation of professionals from other sectors and for increasing the level of multi-disciplinary delivery of training within the PQF.⁹⁴ The Criminal Justice Alliance argued that there was a need for probation staff to receive mental health and learning disability awareness training.⁹⁵

75. Although the new probation qualifying framework was designed to open new routes to qualification there are concerns that it will not deliver a steady flow of qualified probation service officers and probation officers. There is a significant risk of a shortfall of trained probation officers in future as budget cuts have impacted on the take-up of training and trusts and the Government needs to have regard to this.

Post-qualification and management training

76. Post-qualification training is predominantly the responsibility of individual trusts, although training arrangements for accredited programmes are organised nationally. Although all probation trusts have training programmes in place, our evidence suggested that there is a lack of consistency in access to professional development training.⁹⁶ According to the Probation Chiefs' Association, this may be partly attributed to trusts' need to focus on preparing staff to implement the plethora of Government initiatives that have affected probation in recent years.⁹⁷ The Probation Chiefs' Association and Humberside Probation Trust raised difficulties with the national training arrangements for accredited programmes which were not thought to be sufficiently flexible to meet local needs.⁹⁸

77. Some trusts did not have problems with the existing local arrangements, for example, Northumbria Probation Trust welcomed the ability to run a range of non-accredited courses based on locally identified needs,⁹⁹ trusts have also capitalised on their ability to "sell" their expertise to other professionals, for example, by providing risk assessment

91 Q 400

92 Q 400; Q 404. It should be noted that training issues in London may not be typical of other trusts.

93 Q 686

94 Ev w99

95 Ev w89

96 Ev 156; 173; w38; w48. In June 2010, HM Inspectorates of Constabulary and Probation recommended better training for staff working with high risk sex offenders.

97 Ev 156

98 Ev 156; w95

99 Ev w85; see also Ev w95

training to the police and prisons.¹⁰⁰ Nevertheless, the absence of a national post-qualification training framework was raised as a particular concern by numerous trusts as well as the trade unions.¹⁰¹ Mr Wilkinson, Head of HR, NOMS, was clear that he saw this as the responsibility of individual trusts.¹⁰² On the other hand, Mr Woods of Skills for Justice and Lesley Thompson, Director of the North West Training Consortium¹⁰³ saw the qualifying training framework as a useful basis for further development, for example, by “grafting on” specialist accredited training.¹⁰⁴ Professor Kemshall made some observations of the benefits of such an approach: “it would help if we could see a clear pathway of building competence...within the workforce. We should not accept that, after the training period, [a trained officer] enter[s] on day one and [is] equipped to do everything. That is clearly not the case. [New officers] need to learn a range of skills and competencies to deal with more challenging types of offender and offence types and more challenging types of risk throughout [their] career [...] an awful lot of in-service training is by self-selection...and much of that training is then not assessed in terms of competence on the job.”¹⁰⁵

78. Trusts, the Probation Association and the Probation Chiefs’ Association also raised concerns about shortcomings in leadership and management training arrangements, with potential implications both for succession planning and for trusts’ ability to meet their responsibilities as joint local commissioners.¹⁰⁶ Bedfordshire Probation Trust stated that the service as a whole has adopted a “piecemeal attitude” to management training.¹⁰⁷ Resources for management and leadership development have not yet been devolved to trusts, yet probation staff had not been a focus of NOMS’ senior management development training.¹⁰⁸ The Probation Chiefs’ Association and the Probation Association shared a belief that a proportion of NOMS’ national resources for leadership development should be allocated to trusts.¹⁰⁹

100 Ev w85

101 Ev w26; w48; 216; Q 406 [Mr Ledger]

102 Q 207

103 Regional training consortia (comprised of area probation boards) were responsible for delivering the training in collaboration with a contracted university provider under the previous training arrangements. Only two regional consortia still exist as probation trusts have devised other collective arrangements for the delivery of training in other areas.

104 Q 189; Q 207

105 Q 683

106 Ev 173; 156; w93; w95

107 Ev w122

108 Ev 216; w93; w95

109 Ev 173; 156

79. The new probation qualifying framework should be used as basis for building a national system of accredited training for post-qualification development, including leadership and management training, so that there is a consistent quality of training available to trusts and to any new providers of probation services. If significant commissioning responsibilities are given to trusts—a policy which we question later in this Report—then it will be necessary for NOMS to devolve an appropriate allocation of its resources for management and leadership to enable trusts to purchase the training, contract management and governance skills required.

3 NOMS and national governance

80. In this chapter we consider the national governance of the probation service and in particular assess whether NOMS provides effective and efficient support for local probation services and ask whether it has succeeded in bringing prisons and probation closer together.

National commissioning of probation services and performance framework

81. NOMS has developed a tight grip on the probation service which is illustrated in its performance framework. We received universally negative comments about the drivers in the framework, currently called the Probation Trust Rating System (PTRS), which is viewed as an unnecessary example of micro-management that pushes trusts into activity that militates against positive outcomes for offenders.¹¹⁰ For example, West Yorkshire Probation Trust told us: “The majority of the targets relate to timeliness, volumes or other tick boxes. Very few bear a relationship to reducing reoffending, which in any event is measured separately. Even the domain heading public protection is a misnomer, as the targets within that domain only have a loose connection with protecting the public from serious offenders. This therefore is an example which the collection of data has become an end in itself, which is only tenuously connected with what the public or government might reasonably expect from the probation service.”¹¹¹

82. These comments from the London Probation Trust are echoed in all of the trust submissions: “Probation trusts have been held to account by a series of performance frameworks e.g. Integrated Probation Performance Framework (IPPF), Probation Trust Rating System (PTRS). These are made up of a range of mainly process measures that in many cases record the time it takes to undertake activities e.g. complete OASys in 15 days, and very few outcome measures. The lack of focus on quality is compounded by measures such as “complete high risk OASys in 5 days”—these are the most difficult and complex cases and yet there is much less time to undertake a proper assessment. Trusts acknowledge that timeliness measures are important but to have a framework based on so many such measures which can drive perverse performance is frustrating. Several of the measures require a great deal of recording, chasing and auditing e.g. number of offenders who sustain employment for 4 weeks. Time spent on counting would better be spent actually helping offenders into work.”¹¹²

83. The worst excesses of this tick-box, bean-counting culture should be curbed by the introduction of the streamlined national standards we considered in chapter 2, which effectively abolish most of the targets currently in the PTRS. However, the new standards are inconsistent with another symptom of micro-management within NOMS, namely the outputs of the Specification, Benchmarking and Costs (SBC) programme. These detail the components of every aspect of prison and probation work, times it if possible and allocates

¹¹⁰ Ev 85; w122; w144

¹¹¹ Ev w144; see also Ev 194

¹¹² Ev w147

a cost to it. The Probation Chiefs' Association questioned the fit between the SBC programme and its impact on their ability to deliver an effective service: "Probation trusts, in recent years have already achieved substantial efficiencies. However, some of the processes informing these efficiencies (for example the Specification Benchmarking and Costing Programme) need to take more account of the effectiveness of services delivered."¹¹³ The impact of the SBC programme on service specifications and thus trust budgets is such that there must be a question about how much real discretion trusts will have to allow offender managers to exercise theirs in their work with offenders.¹¹⁴

84. Probation trusts have laboured under a tick-box culture, imposed on them via NOMS's Probation Trust Rating System. We welcome the fact that this culture is to be weakened by the introduction of streamlined national standards which should allow trusts greater discretion. However, it has been raised with us that the Specification, Benchmarking and Costs programme continues to constitute a form of micro-management from the centre, and we call on NOMS to re-assess this programme to see how the burdens it imposes on trusts can be lessened and those trusts provided with greater autonomy.

NOMS and national contracts

85. When the National Probation Service was established a number of national contracts around estates and facilities management and IT were introduced. NOMS has subsequently let two contracts for direct work with defendants and some convicted offenders: electronic monitoring (tagging) and the Bail Accommodation Support Scheme (BASS). All of the submissions that addressed these contracts, including from partner agencies who witness the outcomes, were negative about the cost and operation of the national contracts.¹¹⁵ The Probation Association summed these up: "The current system of commissioning has three tiers—national, regional and local. Probation is a relatively small "business" and such multiple layer commissioning processes carry the risk of fragmentation and disconnection in provision. This is already a problem in relation to national contracts for estates and facilities management, where probation trusts must use services commissioned by NOMs and the Home Office from private sector providers who deliver on a sub-national structure. The poor value for money of these contracts has been recognised and NOMS is currently taking remedial action. We would not want similar experiences with other provision, for example, direct work with offenders where the public may be at risk from commissioning failures."¹¹⁶

86. David Chantler, Chief Executive of West Mercia Probation and Assistant Chief Constable John Long of Avon and Somerset Police gave examples of how inflexibility of the estates contract continued to impede service development and the ability to reduce costs by pooling local partnership resources.¹¹⁷ In West Mercia and Avon and Somerset they wished to close or reduce the size of probation premises in order to co-locate staff in

113 Ev 156

114 Ev w26; w80; w88; 184 (annex)

115 Ev 184; 173; w26; w85; w147

116 Ev 173

117 Qq 701–702

either one stop multi-agency shops or with the police. Protracted negotiations had as yet been unproductive. When we questioned the Minister about this he did not indicate any likelihood that property management would return to probation trusts.¹¹⁸

87. Similar concerns were raised about the IT contract. Heather Munro, the Chief Executive of London Probation Trust, captured some of the frustration: “Because we have a national infrastructure the needs of individual trusts are often not met because small areas have different needs to large areas. The ability to innovate is severely constrained, for example, it would be good to develop hand held devices for staff on community payback placements or out on home visits. This would be much more efficient and when trusts are facing competition it seems to give other providers an advantage.”¹¹⁹

88. There could have been value in the national contract had the promise of a national prison and probation database and single case record for each offender come to fruition. As it was C-NOMIS (community) was abandoned and only P-NOMIS (prison) achieved as the costs spiralled out of control.¹²⁰ The prison service therefore has its database and OASys but cannot share it with probation. This was to have been a crucial building block for achieving end-to-end offender management. The probation service still has to pay the costs and is charged above market prices for basic IT equipment. While individual trusts do not want to re-invent the wheel and to create their own individual bespoke systems, we were told that they needed an efficient and responsive service to be provided by central suppliers. Christine Lawrie from the Probation Boards Association said “I don’t think we want to go back to owning our own systems, we do want trusts to be treated as proper clients. The money is top-sliced from trusts’ budgets, and we want to be able to have a proper client function so that we get what we need from what are very expensive systems.”¹²¹

89. The Northumbria Trust put forward an option that looks efficient and practical and would meet trust needs: “[i]n relation to ICT, we accept the need for an overarching strategy across the wider Ministry of Justice and the potential benefits of economies of scale but the current national contract does not fit with an approach in which trusts are expected to be responsive to locally identified needs and work collaboratively with local partnerships. In our view, future contracts should agree key specifications within a framework which allows local flexibility through a range of approved suppliers. Such an approach would, in our view, maximise the benefits of large scale procurement whilst at the same time allowing trusts to select services that are most suited to local needs.”¹²²

90. The contract for the maintenance, cleaning and refurbishment of the probation estate has generated much publicity over the years. Examples were submitted by Napo: “two carpenters travelled from Birmingham to North Wales to look at a cupboard, only to confirm that it needed a new door and then go away without fixing it. A painter travelled from Manchester to South Wales to carry out work; he bought the paint at B&Q when he

118 Q 735

119 Ev w147

120 Ev 184

121 Q 337

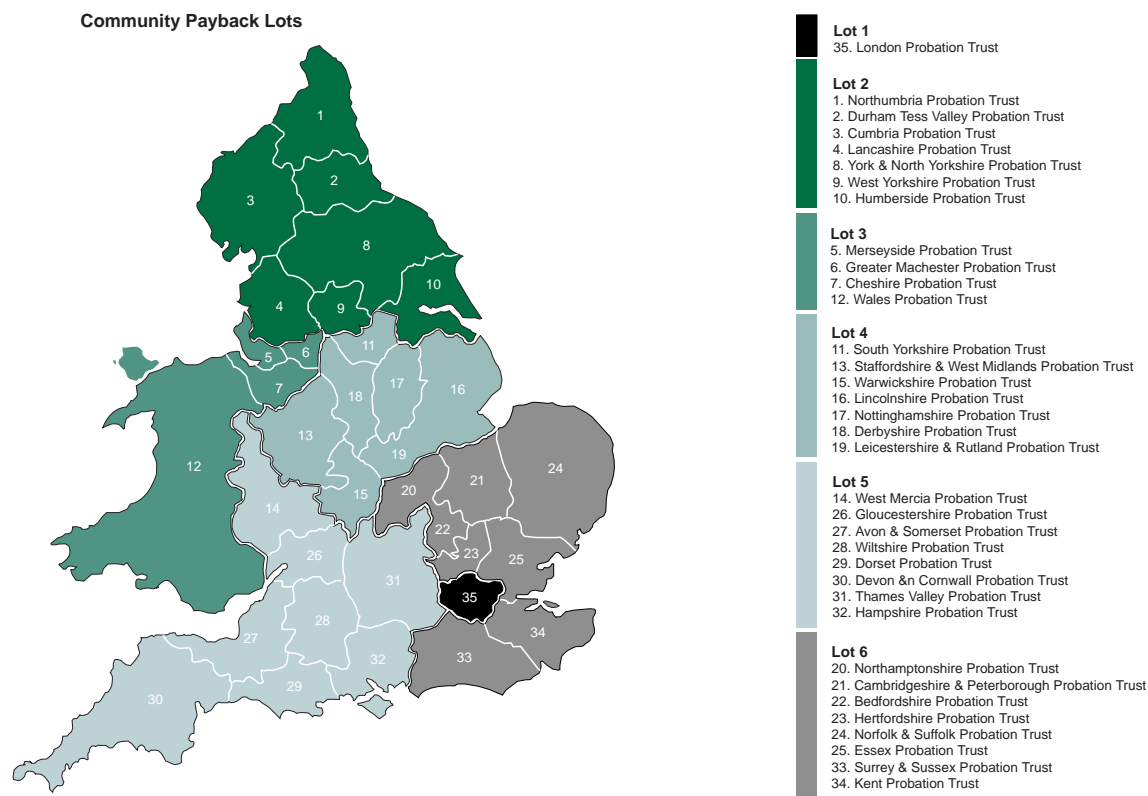
122 Ev w85

got there, discovered it was too late to start the job, stayed overnight and did the work the next morning. On another occasion a plumber travelled from Birmingham to Norwich to mend a toilet seat.”¹²³

91. The 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. Trusts need the freedom to make their own arrangements for property and maintenance, including the ability to co-locate with partners or with other trusts. This will be necessary if the Government’s intentions for joint working are to be realised. Probation trusts have lost confidence in the ability of the national IT system to meet their needs. Both the management of risk and the development of evidence-based policy and commissioning require that there is an effective national system used by prisons and probation. In our view, NOMS should identify those systems that work well for individual trusts with a view to adapting a successful system for national use.

The tendering process for community payback

92. Confidence in NOMS’s ability to commission and manage large-scale contracts has not been strengthened by the ongoing competition in which organisations—probation trusts, private sector firms and consortia—are bidding for the contracts to run community payback. Criticisms of the competition have centred on both the manner in which information about it has been communicated, and the decision to tender for six, very large, cross-regional ‘lots’.



Source: Ministry of Justice

93. Christine Lawrie of the Probation Association explained: “To start with, there was no consultation with probation about whether community payback should be competed, and how it might be done. This was an entirely NOMS internally driven process...[subsequently][...] all the messages were that as long as trusts were performing well—most were—they need not concern themselves with what competition would look like. It was therefore a surprise to be invited to a briefing in November, and to receive subsequent letters later in November, to say that the decision had been made that there would be an open competition for which other providers could compete.”¹²⁴ And finally, after being told that competition would be trust based, it was announced that the bids were for six lots across England and Wales that cross regional boundaries. The wide geographical basis of the contracts means that local charities and not-for-profit organisations operating at local level fear that they will be excluded from the tendering process.¹²⁵

94. When asked to explain the logic behind the shape of the lots, Martin Copsey of NOMS told us: “The answer to that is that there is probably no ideal design in terms of lots. What we try to do in lot construction is to have roughly equal proportions of volume of activity. The ambition through that and through the competition process would be to deliver a number of outcomes.”¹²⁶ No account appears to have been taken of the experience of earlier contracts or of the ability of probation trusts to compete for very large contracts across more than one region.

95. The Minister explained to us the basis on which the decision about the community payback lots had been made:

There is an issue about trading off a number of different factors against each other in trying to produce the appropriate competitive lots. The truth is that there is not a right answer that would best meet this. If we had insisted that localism was an appropriate commissioning base, you might be tempted to run 35 different competitions based around each probation trust. That would have been beyond the capacity of the Ministry of Justice to manage and beyond the capacity of the market to invest in.¹²⁷

96. Regardless of the merits of introducing competition for the provision of services, it is imperative that NOMS communicates its plans to trusts in a timely and genuinely consultative way. This seems not to have been the case with the community payback tendering exercise, and NOMS should do a ‘lessons learned’ exercise once the competition is completed to make sure that any mistakes are not repeated in future exercises.

97. The very large and incoherent groupings created for the community payback contracts would not be appropriate vehicles for commissioning other probation initiatives, and would undermine links between probation work and other participants

124 Q 343; see also Ev 177; 194

125 Q 344

126 Q 747

127 Q 746

in the criminal justice system, such as the police, courts, local authorities and local prisons.

Financial management

98. There is a general agreement that going through the process of obtaining trust status successfully has strengthened the business capacity of those who manage local probation services. The outgoing Chief Inspector told us that: “the process of making everybody go through this trust application has made a lot more of the areas become better, better-organised, better-managed organisations than they were before.”¹²⁸ The Ministry of Justice has said that “[t]he latest published results show that probation met or exceeded all but one of its KPIs, including its contribution to joint prison and probation indicators.”¹²⁹

99. Trusts were promised ‘freedoms’ in both the first and second waves of trust applications. However, instead of freedoms we heard evidence of organisations tied to inflexible contracts which mean that NOMS controls activity down to small details, inhibiting trusts’ ability to respond to local needs, as we saw in relation to the existing national contracts.¹³⁰ There is no recognition that the characteristics of local communities and crime and therefore of the agencies that serve them differ and that they need to be free to respond to them. However, the single most frustrating issue about the contract according to several respondents related to budget management. The London Probation Trust told us that: “One of the biggest barriers to good management of the budget has been the lack of any year end flexibility. There were periods in the past when trusts could have limited flexibility e.g. 2 or even 4% carry forward or overspend, this was removed several years ago. This makes financial planning extremely difficult particularly in times of reducing resources so, for example, a Trust cannot make savings in one year to carry forward to help manage further cuts in the year ahead. Any underspend is given back to NOMS.”¹³¹ This is very different to the freedoms enjoyed by trusts in the NHS.

100. West Yorkshire Probation Trust gave further details of how trusts are treated: “Very little is delegated and comparatively small payments require approval from NOMS or sometimes even the Treasury. For example, in order to settle an Employment Tribunal claim, the Trust Chief Executive is given a delegation of only £3K (almost useless), the Regional Director of Offender Management was given a delegation of only £30K (a bit more useful). Everything else needs approval from central NOMS. This involves not only the submission of legal advice (the assumption seems to be that trusts would not know how to take legal advice without the system) but also the preparation of business cases in the correct format, and while approval is nearly always forthcoming, the time and bureaucracy creates an industry in itself.”¹³² This centralising approach to managing budgets is consistent with the NOMS approach to performance management. In addition, trusts have to find resources to manage VAT and Corporation Tax which they did not do before trust status.

128 Q 295

129 PB 36

130 Ev w6; 184; 173; w18; w26; 156; w74; w80; 216; w85; w93; w95; w99; w103; w110; w122; w125; w144; w147

131 Ev w147

132 Ev w144

101. Hertfordshire gave an example of how trusts might use greater freedom to manage their own budget: “The scope for joint commissioning with local providers could be increased considerably if the Trust had the capacity to carry over under spend for longer term investment. Such a freedom would significantly increase the opportunity for longer term planning and joint commissioning. This will also promote value for money and opportunities to achieve greater efficiency savings to reinvest for improved service delivery.”¹³³ Such joint commissioning might support, for example, intensive alternative to custody projects or integrated offender management work.

102. Trusts need to be given greater financial autonomy and, specifically, the power to carry over a small proportion of their budgets from year to year. We have also received evidence that they do not have sufficient autonomy in terms of how they can spend that money, and that relatively trivial amounts of expenditure can require consent from the centre. The overwhelming impression we have formed is of trusts being over-regulated and unable to fulfil local needs because of the top-down, centralising tendencies of NOMS. NOMS reflects the command and control structure and culture of the prison service and is not responsive to diversity of local needs; it has yet to make the shift from being the managers of trusts (the legacy of the National Probation Service and early NOMS) to being a commissioner from the trusts (and others), which calls for a different kind of relationship.

End-to-end offender management

103. The national Offender Management Model, published by NOMS in 2006, sets out in detail how offenders should be managed (although it is mostly about process rather than content in its detail). The model differentiates between management and supervision and management and interventions. The theory is that highly trained probation officers assess need and prepare a sentence plan which in most cases is delivered by other personnel or agencies. In addition, it gives responsibility for the management of individual offenders who are serving prisoners to community based “offender managers”. The rationale for this was explained by Martin Narey, the first head of NOMS: “What I wanted to do was give probation officers much more authority and influence over what happened to their offender when they were in prison, rather than the Prison Service, which I led for seven years, taking them over and doing what they thought was best. I thought that from the moment someone arrives in prison, unless they were a very long-term prisoner, the probation officer as the offender manager should be preparing for their release and making sure that the things that happen to that prisoner while inside, as far as the resources allow, contribute to a successful release.”¹³⁴ So the role of offender supervisor was created in custody and in probation offices, fulfilled by prison officers in prisons and probation service officers in the community.

104. All offenders subject to community orders and licences are managed according to the Offender Management model. No more than a small proportion of the prison population is currently classed as ‘in scope’ for offender management as there are too many prisoners and too few resources to implement it for all yet. This means that, in the main, only Prolific

133 Ev w139

134 Qq 365, 461

and Priority Offenders (PPOs), those serving an indeterminate sentence and those assessed as posing a high risk of harm ought to have a community based offender manager during the custodial part of their sentence and an offender supervisor in prison. The offender supervisor role is quite separate from the personal officer role—a role much more familiar to prison officers—and this causes duplication. In our predecessor Committee’s Report *Role of the prison officer*, the role was defined thus: “The role of Offender Supervisor in custody uses the skills of the prison officer to engage and motivate offenders towards achieving their sentence plan objectives and to liaise with other prison, probation and Third Sector staff to ensure compliance with the sentence plan.”¹³⁵

105. A recent joint thematic inspection by HM Inspectorates of Prisons and Probation, *A joined up sentence?—Offender management in prisons 2009/2010*, found “Prison officers were often enthusiastic about their role as offender supervisor, but frustrated by the limitations of the time available to them. A consistent feature of prison life in most institutions was the need, at times, for prison officers to be allocated to other operational duties, leaving little time for acting as an offender supervisor. There was little guidance available to define what supervisors were meant to do in their contact with prisoners. In some prisons their role was unclear. Since the implementation of the Offender Management Model, the role of the personal officer had also become less defined. However, within the time available to them, we found that offender supervisors worked efficiently to refer or signpost prisoners to the interventions available to address offending related needs. In reality the role of the offender manager was limited in most cases, and the supervisor tended to drive the management of the case.”¹³⁶ This last comment was a reflection of how impractical it was for offender managers, even with the use of video conferencing to “drive” what happened to a prisoner in prison in most, though not all, cases.

106. We heard evidence from trades unions and from chief executives of trusts that they supported the concept of end-to-end offender management. Napo told us: “Theoretically, we would be supportive of the offender management approach because we are fully supportive of the idea of end-to-end joined-up thinking and process of the way we work with offenders, whether it is in prisons or in the community.”¹³⁷ In their submission, the Leicestershire and Rutland Probation Trust explained what this meant to offenders: “Consultation with offenders has shown that they value a consistent service and we have ensured through effective offender or ‘case’ management that the range of interventions and the work of various providers is consolidated into appropriately sequenced and coherent plans.”¹³⁸

107. Witnesses did however agree that whilst the Offender Management Model is embedded in practice for offenders in the community, that was not the case in prison.¹³⁹ We heard two potential reasons for this. The Probation Chiefs’ Association said: that

135 Justice Committee, Twelfth Report of Session 2008-09, *Role of the prison officer*, HC 361, para 173

136 Criminal Justice Joint Inspection, *A joined up sentence? Offender management in prisons 2009/2010*, March 2011, p 7

137 Q 365

138 Ev w48

139 See e.g. Ev 196; w26; w122; Qq 329, 364, 461

“[w]here we have perhaps had less success has been in the full integration between prison and probation, and that’s primarily because of the volatility of the custodial population, with prisoners who tend to move around a lot under national prison population management procedures. It can be more difficult, therefore, for offender managers based in the community to manage that part of the sentence as well as the model would like them to” and Napo explained “[i]n practice, we have struggled to see it work properly, it has to be said. Not least, a lot of that has to do with the very different ways in which the Prison and Probation Services work, and quite legitimately so because of the nature of the work they have to do in relation to the sentencing outcomes.”¹⁴⁰

108. In all of the submissions which refer to end-to-end offender management there is an implicit acknowledgement that it has not been successful. With some exceptions, the probation officer has been unable, practically, to direct the management of individual offenders whilst in prison. Martin Narey ascribed this to prison overcrowding.¹⁴¹ Clinks essentially agreed with this analysis:

The major barrier to its effective functioning has always been the degree of control and influence that the offender manager has in relation to the offender’s experience of custody. The prison service has, necessarily, retained the authority to move prisoners around the system in order to deal with the effects of overcrowding, and this has often resulted in disruption and delay in the implementation of the sentence plan.¹⁴²

109. Useful work can be undertaken in prisons that are either local to the home of the prisoners or reasonably accessible, and where efforts are made by local probation services and prisons to work closely together. (We look at such an example in Brighton and Hove in our discussion of intensive offender management below.) The reality for most prisoners is that they are housed where there is space and they are moved around to meet the needs of the system. David Chantler, Chief Executive of the West Mercia Probation Trust, gave an illustration of how the prison service manages some of its population problems:

...being between London and the less-populated-but-more-prisons north, from the ripple effect of London prisoners being sent to our prisons and our prisoners being sent to the north. We need to go back to Woolf’s recommendation after Strangeways and make a priority of community prisons. When the prisoners are physically available and accessible, you can do all sorts of things through the prison gate, like Connect demonstrated. I would urge you to make that a key part of something that you attend to, or as much as possible: seal prison regions so we can physically work together.¹⁴³

110. There needs to be a better, more seamless, approach to managing offenders. Prisoners are shunted between one establishment and another, in an attempt to avoid over-crowding, and the need to ensure continuity of their sentence plan is not a

140 Qq 329 [Ms Hall], 365 [Mr Ledger]

141 Q 466

142 Ev 196

143 Q 691

priority. This is unacceptable. The Ministry of Justice and NOMS need to devise and implement a strategy to ensure that the end-to-end management of offenders is a reality and not just an unachieved aspiration.

111. If NOMS is to work effectively through the two services, there does need to be an enhancement in prison of offender management skills. This could be achieved through better training for prison officers or the appointment of probation officers or probation service officers to work in prisons on sentence management and to follow the prisoner ‘through the gate’. Unfortunately, neither of these scenarios is likely given the current prison population and funding restraints.

112. The outgoing Chief Inspector of Probation described the creation of NOMS as “a takeover of the probation service by the prison service” but conceded that there had been some benefits and that some “Prison Service top managers seem to have shown themselves much better at managing resources effectively than many top probation managers in the past”. He concluded that, while he would not have created NOMS in the first place, he would not now revert to the old system.¹⁴⁴

113. Others argue that NOMS has experienced a diminishing level of knowledge and experience of the probation service at the highest levels of the organisation. Napo sums up the impact that it believes this has had on the governance of probation: “NOMS undermines the ability of the probation service to achieve its aims. Senior managers in NOMS now create policy and strategy in relation to the probation service while their background and bias is exclusively in the prison service and they have little experience of working with offenders in the community. They are not therefore well placed to know how to introduce efficiencies and prioritise spending in the community without compromising public protection.”¹⁴⁵ However, it is the case that the current management structure includes directors with direct experience of working in probation.

114. The creation of NOMS has been described to us as a “takeover” of the probation service by the prison service. This might have been desirable had it resulted in a more ‘joined-up’ treatment of offenders but, as we have seen, that has not happened to any appreciable level. Furthermore, NOMS has not proved itself proficient at running national contracts which deliver what probation trusts on the ground need in a cost-effective and efficient manner. The way it has handled the community payback tendering exercise to date has not inspired confidence. **The Ministry of Justice should commission an externally-led review of the operation of NOMS to assess whether it is: delivering value-for-money; giving trusts the appropriate levels of support and autonomy they require; and integrating the supervision of offenders in prisons and the community effectively. Our evidence suggests that it is not doing those things well. Should the review reach similar conclusions the Department should be prepared to take radical steps to redesign the structure and operation of NOMS.**

144 Q 292

145 Ev 184

4 Working with courts and other local partners

Relationships with courts

115. The Offender Management Act 2007 retains services to courts as a function of probation trusts or other public sector bodies, reflecting the reliance that sentencers have on the impartial advice given to them by the service. In 2001 the requirement for magistrates' courts committees to hold regular liaison meetings with their local probation service ended. In most areas, however, relationships continued as it was recognised that dialogue was necessary and usually positive. Northumbria Magistrates outlined the benefits: "The NPT (Northumbria Probation Trust) has a well deserved excellent reputation with the courts. Liaison arrangements have been consistently strong over many years and were sustained during the period during which such arrangements were no longer required as mandatory. This is because they have always added value to the work of magistrates and district judges."¹⁴⁶

116. It was eventually acknowledged that ending this formal relationship had been a mistake. In 2008 Lord Justice Leveson, then the Presiding Judge, issued, in conjunction with NOMS, a binding set of guidelines for magistrates and judges as an appendix to probation circular 06/2009, *Determining Pre-Sentence Report type*. It set out the levels and frequency of liaison meetings between the probation service, magistrates' courts and crown courts and what they are meant to achieve. Importantly, it raised the issue of probation resources being finite—although it states that this should not constrain sentencers.

117. There were few probation areas in 2008 where liaison did not take place but there were some who needed this guidance to re-start relations. In most trust areas the probation service has a positive relationship with its courts. The Birmingham judges said in their submission: "In Birmingham we maintain close liaison with the probation service, principally via the senior officer based at the Crown Court. Such liaison is essential for effective use of community sentence requirements. The presence of a team of probation officers at the Crown Court is a vital part of that process."¹⁴⁷ And Northumbria Magistrates commented: "Confidence levels amongst the judiciary remain high but are not taken for granted with annual feedback being sought to ensure that service delivery to the courts remains high."¹⁴⁸

118. Liaison focuses on keeping sentencers abreast of developments and is also the vehicle for the service to explain why it has to try to manage the demand for its work. In Brighton we heard how the Chief Executive of the Surrey and Sussex Probation Trust had approached this: "Last year, we reduced the occurrence of community orders imposed by our local courts by 8%, and we continue to bear down on demand, in an appropriate way though, because the approach that we've taken with our local sentencers is to say to them

146 Ev w24

147 Ev w114

148 Ev w24

that there may be occasions where other disposals are more appropriate for the lower-end offender than a community order.”¹⁴⁹ There are also examples of where the courts and probation services work together to publicise their work, for example using the Local Crime Community Sentence project to improve public confidence in sentencing and to raise awareness of the effectiveness of community sentences and the work of probation staff. These are joint presentations to a wide range of community groups in a locality.¹⁵⁰

Resources

119. Sentencers have expressed some frustration about reducing levels of resources. For example, the judges at Birmingham Crown Court explained: “In Birmingham judges are in a position to utilise a wide range of activity and programme requirements [...] The range of programmes and activities theoretically available is far wider than it was 10 (or even 5) years ago. We say “theoretically” because there is often a long waiting time for offenders to take their place on any given programme [...] More fundamental in our view is the need to fund and resource interventionist programmes adequately. We do all that we can to avoid the short custodial sentence i.e. a sentence of less than 12 months. For that to be possible we need to have a full range of alternative disposals available at the time of sentencing. We recognise also that crimes driven by drug or substance abuse often can be met best with a sentence designed to tackle the underlying cause of the offence. Again that requires proper funding of such sentences.”¹⁵¹

120. We heard from the Probation Chiefs’ Association and Napo that savings have been made over the previous two financial years that have not had an impact on front-line service delivery.¹⁵² The management ratio overall has come down, as have the back-office costs. Where possible trusts that did not merge share costs. However, this year savings were also being made in front-line posts. Napo gave examples from trusts of the volume of losses in PO and PSO posts, mainly through voluntary redundancy or retirement.¹⁵³ According to the Probation Chiefs’ Association cuts further down the line were also having an impact, for example, NOMS has not extended funding for the six intensive alternative-to-custody (IAC) projects that had been running for two years.¹⁵⁴ The trusts involved are trying to maintain the work but at a lower level by prioritising this over services for lower risk offenders. They also reported information from trusts where partner agencies had cut their contribution to work with offenders due to their own need to make savings.¹⁵⁵ Napo reported that prisons that still had probation officers in their offender management units until recently were ending their secondments; this had become a management problem for the probation trusts who had to take them back and will also have a negative impact on delivering offender management in prison.¹⁵⁶

149 Q 524

150 Ev w16

151 Ev w114

152 Ev 184; 173; Q 335

153 Ev 184

154 Q 335

155 *Ibid.*

156 Q 374

121. Over the last five years or more trusts have made a considerable success of managing sickness absence policies nationally. In evidence it was mentioned by both unions and chief executives as a positive move.¹⁵⁷ Procedures include a mixture of tight reporting requirements coupled with employee care measures. Matthew Lay from UNISON gave example of how this had been improved: “Members who are at work suffer when people are not at work and vice versa. We had a constructive engagement. That has delivered some returns and has contributed to the reduced absence. We have also focused on well-being in work and ensuring that people are respected.”¹⁵⁸

122. A further impact upon resources and workload has been the significant reduction in standard or full pre-sentence reports and the increase in fast delivery or oral reports to 70% of all reports. Whilst this has made a significant saving, the funds were taken out of probation area budgets in 2009 in accordance with the calculations from the Specification, Benchmarking and Costs programme. The Magistrates’ Association was concerned about the probation service’s ability to deliver reports as intended because of cuts in court duty staff:

Reports are now rarely provided *on the day*, but within a few days. This is preferable to the original three week delays that were the norm not many years ago but experience around the country would suggest that the momentum for speedy delivery of justice is being lost because of financial imperatives. ‘Fast delivery reports’ as originally envisaged are not working and it is feared that the time to produce fast delivery reports may lengthen even further due to the numbers being requested and as probation is forced by budgetary cuts to reduce its staff numbers.¹⁵⁹

Workloads

123. The level of resources available and the workloads borne by staff are inextricably linked. We asked a number of witnesses how high workloads are for frontline probation staff and what level ought they to be set at. No one answered this question directly. Barrie Crook from the Probation Chiefs’ Association gave an example of how trusts try to respond flexibly: “I think it is very difficult to answer the question in quite that form because you may be aware that the probation service grades the level of risk of different offenders in four tiers. Most probation trusts don’t work on the notion of an average case load. They try to allocate a level of time and capacity according to each case.”¹⁶⁰ Matthew Lay from UNISON commented that the probation service does not have complete control over how much work it gets: “... a trust does not suddenly get any more money to employ more staff if there is a surge. They have to manage it. The complexities of that make it inordinately difficult to manage demand and ensure that you are supplying the right number of staff to do that. Most areas will try and do that using their own management tools effectively to do that. As I say, some trusts do it well and some less well.”¹⁶¹ Inspectorate reports from the Offender Management Inspection programme indicate that

157 Qq 167–8, 407

158 Q 407

159 Ev 219

160 Q 165

161 Q 385

levels vary widely from trust to trust. The national workload has risen, as have staffing levels, though not to the same proportion.

124. Trusts have recognised that keeping workloads to a manageable level is in everyone's interest due to the potential for harm when things go wrong. We heard nothing to suggest there is a formula that says that a workload of one size will support good quality practice while another will automatically lead to poor practice. Skilled offender managers will do good work regardless, although they may need to prioritise their efforts so that not all of their cases meet their preferred standard. They may need to be able to defend why they done so if things go wrong. However, a Channel 4 survey of 20 probation trust chief executives in August 2010 found that three-quarters of respondents believed that probation did not have the capacity to keep up with current levels of offenders entering the system and over half felt that their capacity to manage offenders effectively in the community was average (9) or poor (2), citing that budgetary constraints meant they may only be able to offer a basic service. While all trusts stated that they were then able to offer the required levels of public protection most (16) or all (4) of the time, half believed that a 10% or more cut in their budgets would result in them being able to provide this only some of the time.¹⁶²

125. John Thornhill of the Magistrates' Association took a pragmatic view: "We accept, again, there are limited resources, but we need to look at how we harness those resources in the most productive way."¹⁶³ The Birmingham Crown Court judges made a separate point about transparency: "[t]he problem often facing the sentencing judge is a lack of information as to when the person to be sentenced will be able to undertake the recommended programme";¹⁶⁴ knowing when an offender would start an accredited programme was an important consideration in sentencing.

126. The balancing act of working within budgets and providing what sentencers require is a difficult one for trusts. Hertfordshire Probation Trust explained how this impacts on its work: "One of the most significant challenges under the current commissioning model, is that while the Director of Offender Management (DOM) can commission and set volume targets for the trust to deliver, the demand is in fact determined by sentencers who are independent and do not have to take account of the resource implications. A good example is unpaid work (community payback). For 2010–11 [the trust] has been commissioned to deliver 800 unpaid work orders [...] In 2009–10 the area completed 932 unpaid work orders against a target of 800. The demand from courts is clearly outstripping the commissioned capacity."¹⁶⁵ It is not how such work would be completed by providers from the private or voluntary sectors if it is not stipulated in their contracts.

127. We heard how Sussex and Surrey Probation Trust and key partners were managing their budget through managing the demands of sentencers.¹⁶⁶ In 2010, they reduced the number of community orders imposed by local courts by 8%, for example, through liaison

162 <http://www.channel4.com/news/probation-chiefs-public-protection-warning>

163 Q 587

164 Ev w114

165 Ev w18

166 Q 524

with courts and discussion about the merits of other disposals including curfews for offenders posing a low risk of harm. They have also introduced two senior adult attendance centres to deal with younger adult offenders where a brief intervention may be more appropriate.¹⁶⁷ An individual magistrate complained to us about the effects of demand management where the bench was using sentencing guidelines and wanted to impose an unpaid work requirement but were initially told by the probation court duty officer that it did not meet their internal guidelines. This demonstrates the need for effective liaison and communication.¹⁶⁸ Northumbria Magistrates were able to give an example of how good liaison can take account of that problem: “In a context of finite resources the well-established liaison arrangements between NPT and the courts have ensured that NPT has generally been in a position to provide an appropriate range of options to meet the courts’ needs. Magistrates appreciate that due to financial constraints the NPT is currently unable to provide the full range of services to offenders living in the remote rural areas of Northumberland.”¹⁶⁹

128. Our predecessor Committee’s Report, *Cutting crime: the case for justice reinvestment* stated that: “There remain wide disparities in the use and availability of requirements that can be attached to community orders. The National Audit Office (NAO) found that many of the 12 sentence requirements available to the courts are not available in certain areas and offenders often do not receive vital requirements if they are not available locally. Potentially rehabilitative requirements such as alcohol treatment and mental health treatment in particular are under-used in relation to offenders’ needs.”¹⁷⁰

129. In evidence to this inquiry we found no evidence of progress. The Magistrates’ Association said that “services are provided professionally, but their provision is piecemeal at best—which means that good practice does not necessarily roll out from area to area and region to region. Specialist programmes for drug-users, alcohol abusers and the mentally disordered are particularly patchy.”¹⁷¹ The provision of these services is not the responsibility of the probation service but of health services. Where substance misuse requirements are available, trusts have developed them as part of their activity as Drug and Alcohol Team commissioners.

130. Half of all community orders starting in 2010 had just one requirement and a further 35% had two requirements. The proportions for each number of requirements have remained stable throughout the last five quarters. Among the different combinations of requirements, stand alone unpaid work continued to be the most prevalent, accounting for almost a third of community orders and 22% of all suspended sentence orders starting in the first quarter of 2010. In the same period, unpaid work and supervision were the most used requirements for community orders and suspended sentence orders. These two requirements accounted for roughly two-thirds of all requirements attached to orders.¹⁷²

167 *Ibid.*

168 Ev w1

169 Wv w24

170 HC (2008–09)HC 94, para 77

171 Ev 219

172 Ministry of Justice, *Probation statistics quarterly brief January to March 2010*, July 2010

131. **It is unacceptable that sentencers' hands are tied by the unavailability of important requirements which the probation service cannot provide because of inadequate resources. We are aware that in the current climate, demands for more funding are not realistic. However, the fundamental necessity of giving sentencers all the options they should have at their disposal makes very clear the urgent need to focus scarce resources on the front-line and to continue to bear down on inefficiencies and any unnecessary back-room functions.**

132. Northumbrian magistrates told us that their low use of custody was a mark of confidence in the local probation trust: "Northumbrian courts are amongst the lowest users of custodial sentences in England and Wales. There is little doubt that this is linked directly to the reputation of NPT for providing community sentences of high quality which are managed in a robust and professional manner."¹⁷³

133. We heard concerns about the staffing levels in court which have reduced significantly over the years as the probation officer role has moved away from 'the officer of the court'. This is not the case in all courts, as we heard from the Magistrates' Association, who told us that: "Probation staff can hear the reasons for the pre-sentencing report (PSR) which may not always be apparent in the documentation. [They] can be questioned about offenders' previous response to community orders; something that is not always demonstrated on an offenders' record, which itself is often not up to date. [They] can give an update on the effectiveness and/or progress of a current order."¹⁷⁴ John Thornhill, the Chair of the Association, also suggested consideration of using video links in the court building to get quicker access to fast delivery reports on the same day where probation staff are based some way away and would otherwise require an adjournment.¹⁷⁵

134. **Judges and magistrates need to have confidence in the way in which the probation service relates to and provides information to the court. Sentencers should be given accurate information at the time of sentencing about when a community order and any requirements will commence.**

Working with local partners

Local joint commissioning arrangements

135. The probation service has a long history of working in partnership with other agencies, either to develop services specifically for offenders or to develop services for the general population and from which offenders will also benefit. The factors underlying the offending of individuals can be complex and are usually interdependent. For example, an offender may have a requirement in an order or licence to undertake an accredited programme; if they become homeless or are subjected to domestic abuse or experience mental health problems, these will preoccupy them and will need to be addressed before offending behaviour work can be effective. The probation service tends to deal directly with the attitudes, thinking and behaviour related directly to offending but must

173 Ev w24

174 Ev 219

175 Q 563

commission or negotiate for access to services to address the underlying factors linked to offending.

136. Formal arrangements have been introduced since the 1990s across England and Wales that have broadened the remit of other agencies to include some responsibilities towards offenders. Clinks gave us examples: “The role of the VCS in delivering services to offenders and their families should be seen in the context of two key developments in the early 2000s. The first of these was the Supporting People programme which, *inter alia*, required the probation service to transfer to local authorities the funding allocated to offender accommodation, much of which was spent on voluntary sector provision. The second was the establishment of the Offender Learning and Skills Service, which again required probation areas to move funding for employment, training, and education provision to the Learning and Skills Service. This removed the contracting arrangements from the probation service and transferred them to the LSC [Learning and Skills Council].” The Drug (and Alcohol) Action Teams pre-dated these; probation are commissioners with other statutory agencies and usually work in partnership with voluntary agencies to deliver services.¹⁷⁶

137. In recent years, commissioning activity to reduce re-offending had been further embedded in the work of a range of local partnerships (and their component agencies), including: local strategic partnerships (LSPs), community safety partnerships (CSPs) in England and Wales, multi-agency public protection arrangements (MAPPA), Child Safeguarding Boards and local criminal justice boards (LCJBs). LSPs and LCJBs were abolished by the government in April 2011, although 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.

138. Probation is the local lead provider in offender management that engages with these arrangements; it sits as an equal partner at the various partnership tables, though without the financial influence of other agencies. West Yorkshire, for instance, is one of the largest probation trusts and has an annual budget in 2011–12 of around £40 million; this is tiny in comparison with other public services.¹⁷⁷ Councillor Khan, representing the Local Government Association, told us how probation senior managers sit at the local commissioning table as equal partners with agencies that have much greater financial power e.g., the primary care trust, police and local authority.¹⁷⁸ In return probation help other agencies to identify and respond to the distinctive needs of some of the most vulnerable and hard-to-reach people they should be serving e.g. through the DATs.

139. Although local area agreements are no longer in operation, we received evidence about a number of successful examples of what had been achieved under these arrangements.¹⁷⁹ Witnesses did not suggest that ending the LAA had created problems; it had been a useful framework for bringing agencies together and they would continue to do

176 Ev 196

177 Q 569

178 Q 568

179 See e.g. Qq 495–7, 560–2

work collegiately. Local authorities now had more discretion about where to invest their resources. Sonia Crozier, the Chief Executive of the Surrey and Sussex Probation Trust, and Linda Beanlands, of Brighton and Hove City Council, explained: “So yes, it was over-engineered, but it did serve a purpose and...it’s also given us a very strong foundation now in terms of that collective responsibility to reduce reoffending, but now we have greater freedom to determine exactly how we do that and where we prioritise.”¹⁸⁰

140. As an example of how this works in practice, Leicestershire and Rutland Probation Trust illustrated how it had been successful in generating resources:

We work with a social enterprise to deliver a Learning Café to improve offenders’ skills in the catering trades. We also work with charities providing housing related support and with a range of organisations including voluntary and private sector bodies, and social enterprises which provide supervision or placements for offenders on community payback. We are developing our supply chain of local voluntary sector organisations which can bring specific skills to bear to assist with the delivery of probation services. We have been particularly grateful for the role that the private sector has played through Leicestershire Cares [an offshoot of Business in the Community] which has provided work placements for offenders, the majority of whom have subsequently gone on into full-time employment.¹⁸¹

141. Where there are no funds to commission services directly the probation service has to try to persuade mainstream agencies to provide them. Whilst we heard of some positive examples of local health services engaging with the probation service, there was evidence from several witnesses that referred to alcohol misuse and mental health treatment as hardest to access.¹⁸² For example, the Howard League cited a report which found that probation caseloads have high levels of alcohol-related need but 40% of alcohol-related interventions had not commenced four to six months after supervision had begun. During 2007–08 only 8% of dependent drinkers received an alcohol treatment requirement and only one in four alcohol treatment requirements were delivered in line with existing guidance.¹⁸³

142. The Probation Chiefs’ Association highlighted the highly developed relationships that exist between trusts and local magistrates and judges, and with local strategic partners, including local authorities.¹⁸⁴ Some trusts gave examples of the high level of local influence that they have within local strategic partnerships, but highlighted that the nature of their accountability to NOMS constrained their ability to contribute, financially and strategically.¹⁸⁵ Probation trusts are small organisations that typically “punch above their weight” through the involvement of senior managers in the various local partnerships. Nevertheless, they can experience difficulties in keeping abreast of all local partnerships as a result of their size and geographical configuration. The Local Government Association

180 Q 498

181 Ev w48

182 Ev w6; w47; w89, w93, w99, w103, w122, Q 499

183 Ev 203

184 Ev 156

185 See e.g. Ev w18; w

stated that while trusts work effectively in many areas, they struggle on existing resources to engage with local partners; a survey of LGA members revealed patchy engagement with probation in CSPs.¹⁸⁶ They have particular difficulties in engaging effectively at district council level; in some counties there are up to fourteen CDRPs/CSPs.

143. On the other hand, since 2010, trusts have been divided into Local Delivery Units which offer a better means of engagement with local partners. Councillor Khan told us that the LDUs in West Yorkshire were coterminous with the five large conurbations which meant that at local authority level it was possible to forge closer links between the borough commander for the police, the primary care trust, the local authority, probation and other partners.¹⁸⁷ This is less easy to achieve in large rural areas.

144. Probation trusts understand their areas and must organise to make best use of their resources. John Long from Avon and Somerset Police Crime said to us: “Crime is essentially a locally based activity; let us deal with it locally, and so on. I am absolutely in line with that.”¹⁸⁸

145. Probation trusts often punch above their financial weight in local partnership work, but such engagement with other agencies is not uniform and probation trusts and local strategic partners have expressed frustration about trusts’ ability to participate effectively because of national contractual obligations. Probation work will only be effective if it can draw upon and work with other service providers; NOMS and the MoJ must review those contractual obligations which are a barrier to good partnership working and look to remove those barriers wherever possible.

Partnership schemes and the potential to pool resources

146. One of the achievements of the community safety partnerships in most areas is the creation of effective Prolific and Priority Offender (PPO) Schemes which work with those offenders committing the highest volumes of crime. Recognising the harm—albeit not necessarily serious harm from violence—caused by this relatively small group of offenders, criminal justice agencies are expected to deliver a ‘premium’ service to them to achieve deterrence, conviction or rehabilitation, and to prevent new people from entering the pool of prolific offenders. A high proportion of these individuals are problematic drug users committing a high volume of acquisitive crime to support their dependency, typically for shoplifting and burglary or loitering for the purposes of prostitution.

147. Local authorities, police, probation, the prison service and voluntary agencies work together in these schemes. We heard that current cuts in public service funding are likely to have a negative impact on their ability to do that.¹⁸⁹ Linda Beanlands from Brighton and Hove Council told us: “what we have seen in recent months, when the local authority and all its partners have had to sustain cuts, is a real commitment to taking on each others’ issues, to taking on shared priorities. In fact, if we just look at the community safety

186 Ev w116

187 Q 567

188 Q 695

189 Ev w21; Qq 335, 374

partnership pooled budget, which is perhaps a small example but a very important one, we had to find a cut in the overall services that we commission from that, and the PPO project was one of those.”¹⁹⁰ The project survives but with some cuts. The Probation Chiefs’ Association made a similar point.¹⁹¹ In a number of areas the prison service is an active partner in the scheme. However, it is difficult for prisons to get involved in the schemes if offenders are not located in local prisons.

148. Integrated Offender Management Schemes (IOMs) have been piloted in several areas to work with those aged 21 and over released from prison sentences of under twelve months in addition to those on statutory licence or orders. Where they exist they take responsibility for PPOs, as many of them continually appear before courts and get short prison sentences. Intensive Alternative to Custody (IAC) schemes take a similar approach and will supervise PPOs in the community. The IOM deals with offenders serving short prison sentences who are not subject to statutory supervision. The IAC is offered to courts as a requirement in a community order as an alternative to custody so is enforceable.

149. We heard evidence from John Quick, Assistant Chief Officer from Merseyside Probation Trust, that the IAC in Liverpool was achieving significant results in terms of compliance. During ‘normal’ levels of supervision, compliance rates amongst this group of offenders who have been in and out of prison are around 40% successful completion; in Liverpool compliance was running at 67%. He attributed this to the successful engagement of offender managers and other agencies, and an ability to devote significant time to these individuals.¹⁹² Avon and Somerset Criminal Justice Board submitted evidence about their IOM scheme: “Avon and Somerset have been one of the pilot areas for Integrated Offender Management (IOM) and have developed a cost neutral, fully integrated model for delivery of this initiative, increasingly seen as a good practice model for other areas.”¹⁹³ A recent evaluation of the Diamond Initiative in London had mixed results about the impact of the scheme on re-offending; the evaluation is cautious and some results are said to be disappointing, reflecting the challenges of this work and the complexities of evaluation.¹⁹⁴

150. The Local Government Association (LGA) highlighted a National Audit Office (NAO) report which noted that that short-sentence prisoners have on average 16 previous convictions, and around 60% are convicted of at least once offence in the year after they are released. This re-offending has a significant cost: in 2007–08 the NAO estimated re-offending by recent ex-offenders cost between £9.5 billion and £13 billion. Effective management of ex-offenders is therefore vital in the LGA’s view in reducing crime and making communities safer.¹⁹⁵

151. These partnership initiatives also show considerable potential to reduce the costs of re-offending to society and to the local agencies involved. The Local Government Association explained:

190 Q 525

191 Q 335

192 Q 703

193 Ev w41

194 London Criminal Justice Partnership, *An evaluation of the Diamond Initiative; year two findings*, April 2011

195 Ev w116

The Total Place pilots showed the costs and processes associated with ‘silo’ delivery of re-offending services and the savings that could result from a true partnership approach. For example, the Bradford Total Place pilot found that offenders currently have between 5–10 separate assessments conducted by a range of agencies as they move in and out of prison, and these could be reduced to one, with resulting savings in budgets. The LGA therefore believes it is particularly important for local public service budgets to be pooled which would improve the quality of service and reduce costs. The LGA has developed a model to achieve this through place-based budgets.¹⁹⁶

152. Councillor Khan agreed with John Thornhill about the merits of intervening early and preferring to invest ‘upstream’ in early intervention to prevent imprisonment as a less expensive option.¹⁹⁷ Positive examples of investing upstream already exist, for example, in some areas women who agree to attend an assessment at a women’s centre can do this as an alternative to a fixed penalty, caution or charge. Offenders serving short prison sentences who do not get support are the most likely to re-offend thereby creating more victims and damage to communities ‘downstream’.¹⁹⁸ John Long, Assistant Chief Constable in Avon and Somerset, explained how expensive policing was and argued that early investment reduces costs and creates a better environment for potential victims.¹⁹⁹ All of the trusts submitting evidence were positive that working in partnership was the most cost-effective and beneficial way to meet offender needs that were outside of the scope of the probation service alone to provide and the evidence we received made it clear that police and local authorities support this approach.

153. We heard about an interesting example of an Intensive Offender Management programme when we visited Brighton and Hove. The scheme has built on a positive working relationship between the probation and prison services at the local prison HMP Lewes. Probation staff already have a high level of access to prisoners. In addition, they work with prison staff to identify children and families of prisoners who need assistance from them and Children’s Social Care Services. In custody the prison IOM contribution includes access for prisoners to drugs and alcohol services, the Benefits Agency and the Preventing Offender Accommodation Loss project. This is a joint venture between probation, HMP Lewes and Brighton and Hove Council to prevent tenancy loss where possible or support in finding accommodation on release if not. The probation trust has invested in two prison officer posts during 2010–11 to engage with prisoners who fit the IOM profile from reception into the prison. The prisoners are encouraged to sign up for voluntary contact with the project for twelve months from release. These prison officers follow them out “through the gate” and work with them on the scheme in their home locality.²⁰⁰ There is a similar approach in the Bristol IOM scheme where there are three

196 Ev w116

197 Q 365

198 Ev w13

199 Q 689

200 Q 508

dedicated prison officers who work with prisoners and agencies on their behalf both pre- and post-release.²⁰¹

154. Some trusts gave us examples of the wider application of IOM. Avon and Somerset Probation Trust believed that IOM should become the building block for commissioning offender services, and suggested that it is also applicable to those offenders presenting the most serious risk of harm.²⁰² Leicestershire and Rutland Probation Trust has extended the principles of IOM to drug and alcohol misusing offenders from the point of arrest.²⁰³

155. We are concerned that there is a lack of consistency of provision for those offenders for whom probation services do not have a statutory obligation to provide services, but who nevertheless present a significant burden on the system. We welcome the Government's proposals to extend the use of intensive offender management. The Ministry of Justice should collate evidence on the cost-effectiveness of schemes that are currently operating across England and Wales with a view to publishing good practice guidelines. These should be used to encourage those areas where there is not currently a scheme but where the scale of persistent offending may justify the investment. There is also significant potential to extend the IOM model to other groups of offenders.

156. **There is promising evidence that the new requirements that have been placed on local strategic partners to reduce re-offending are beginning to bear fruit in stronger local partnership arrangements, and in achieving efficiencies, but these have not yet had sufficient opportunity to bed in. Nevertheless, they provide a good foundation for the introduction of local incentive models as a mechanism of payment by results.**

The role of the probation service in public protection

157. The probation service is heavily involved in statutory public protection arrangements; in partnership with the police—and sometimes the prison service—it commits funding and senior and middle manager time to the development and running of the local and central Multi Agency Public Protection Arrangements (MAPPA) panels. MAPPA are the statutory arrangements for managing all sexual and some violent offenders. MAPPA is not a statutory body in itself but is a mechanism through which the police, prison and probation services can better discharge their statutory responsibilities and protect the public in a co-ordinated manner with co-operation from other statutory agencies, including local authorities, health, housing authorities and education authorities.

158. Leicestershire and Rutland Probation Trust gave examples of the complexity of services working together under MAPPA:

In particular we prioritise interventions for sex offenders, those convicted of domestic violence and the mentally ill. We accommodate many of these offenders initially in our own approved premises (hostels) where they can be closely supervised and then work with local authorities to ensure they are accommodated appropriately subsequently. We have our own psychology service which is able to assess and treat

201 Q 691

202 Ev w105

203 Ev w48

some of the most complex cases, and floating housing support to ensure close support for those in their own tenancies in conjunction with the Supporting People programme.²⁰⁴

The Government has signalled its intention of retaining MAPPA in its green paper *Breaking the Cycle*.

159. The probation service underpins its work with offenders who pose a risk of harm to the public through the accredited programmes referred to earlier. Professor Hazel Kemshall of De Montfort University outlined what she thought research showed the probation service was doing well in this respect: “The first is the community supervision of sex offenders, particularly through specialist teams and units, group programmes for sexual offenders and, to a limited extent, also violent offenders. The evidence also shows that high-risk public protection teams, often comprising both police and probation co-located together, have been beneficial. The multi-agency public protection panels for multi-disciplinary risk assessment and management have also been helpful.”²⁰⁵ However, a lack of consistency between areas proved to be a limitation to this positive view.

160. Work with other agencies to secure public protection through the management of offenders who pose a risk of harm to the public will continue to be a vital and demanding part of the role of the probation service.

204 Ev w48

205 Q 647

5 Reforms to community sentences

The Government's proposals

161. The Secretary of State's foreword to the Government's response to *Breaking the Cycle*, published at the end of our inquiry, summarised his proposals for reform to community sentences:

Community sentences have not won public confidence as a punishment. There are too many cases where community orders require only 'supervision' by a probation officer—perhaps one meeting a fortnight. We will overhaul the way community sentences are used. Offenders will serve longer hours, carrying out purposeful, unpaid activity which benefits their local community, over the course of a working week of at least four days. We will make more use of electronic tagging and longer curfews. Community sentences will not be pushed as a replacement for prison sentences—instead, tougher, better community punishments will help stop offenders in their tracks earlier to stop them committing more crime.²⁰⁶

Other proposals in the *Breaking the Cycle* consultation included:

- changing community orders to give providers more discretion to supervise offenders and secure the best reduction in reoffending;
- encouraging use of fines and improve their collection;
- ensuring that offenders make amends for their crimes and better repair the harm they have caused to victims and society as a whole; and,
- diverting many offenders with mental health, alcohol or drug abuse problems into treatment programmes.

162. This package of reforms is remarkably similar to those that the previous Government sought to implement throughout the last decade and which our predecessor Committee reviewed in its reports *Towards effective sentencing* and *Cutting crime: the case for justice reinvestment*. For example, NOMS was created with the assumption that sentencers would impose fewer short prison sentences and its failure is due in part to measures to implement this not taking place.²⁰⁷ Despite the introduction of "tougher" community sentences and relatively sizeable reductions in reoffending rates in the community, the impact on prison places has been comparatively small due to an increase in the use of custody and especially an increase in the length of sentences.

Reducing the use of short-term imprisonment

163. Witnesses, including trusts, the Probation Association, Napo, UNISON, magistrates, and the Criminal Justice Alliance, supported the Government's intention to reduce the use of short-term prison sentences for those offenders for whom community sentences may be

²⁰⁶ Ministry of Justice, *Breaking the Cycle response*, p 1.

more effective but agreed that the probation service has limited financial capacity to cope with any increase in demand that may result.²⁰⁸ There is a willingness on behalf of magistrates to make less use of such sentences, provided that appropriate options are available to them in the community.²⁰⁹ A Comres survey for Make Justice Work showed that business leaders support community sentences as a more cost-effective way of dealing with low-level offenders than prison.²¹⁰ Napo's report *Short-term jail sentences: an effective alternative* examined 170 case histories of short-sentence prisoners where the court report writers had recommended non-custodial options and concluded there was "substantial potential" for alternative arrangements.²¹¹

164. There are a number of potential means of freeing capacity to enable probation trusts and their partners to concentrate on those offenders who are currently subject to short prison sentences, some of which are proposed by the Government above, and these received support from many of our witnesses.

- i. diversion of lower-risk offenders from courts and probation, through the police and Crown Prosecution Service, for example, restorative justice approaches could be made more widely available as an alternative to prosecution, and greater use made of fines or curfews;²¹²
- ii. reduction in levels of supervision for lower-risk offenders, facilitated by the relaxation of national standards;²¹³
- iii. more flexible use of shorter community orders, including stand-alone requirements, for example, more creative use of specified activity requirements as tested in the IAC pilots;²¹⁴
- iv. more widespread implementation of strong local partnership approaches for those offenders most at risk of receiving short prison sentences;²¹⁵ and
- v. better use to be made of existing requirements, for example, mental health and alcohol treatment which tend to be underused.²¹⁶

165. Achieving the Government's aspiration will require management of existing demand.²¹⁷ For example, Bedfordshire Probation Trust believed it would be necessary to "recalibrate the offer to the courts" so that cheaper sentencing options, including

208 Ev 173; w24; w52; 216; w89; w93; w95;

209 Ev 219

210 Ev w21

211 Ev 184

212 Ev 196; 156; w35; w55; w125

213 Durham Tees Valley Probation Trust cited research evidence that managed properly, and in partnership, levels of probation supervision for low risk offenders can be safely reduced.

214 Ev w95; see also Ev 184 Napo calculated that an extra £50m would allow for 1000 additional staff to support extending such an approach to those currently receiving short prison sentences, therefore yielding substantial savings.

215 Ev w99

216 Ev w59; w70; w89

217 Ev 156

attendance centres, fines and discharges, are fully utilised; the range of accredited programmes is reduced, based on an analysis of their cost-effectiveness; and the volume of information given to the court and parole boards is reduced.²¹⁸ John Thornhill believed that there was scope for granting professionals greater discretion if it is done in conjunction with courts.²¹⁹

Strengthening community sentences

166. Witnesses, including the Magistrates' Association, were broadly supportive of the Government's intention to strengthen community sentences by increasing their intensity and immediacy, but some highlighted the cost implications of such an approach.²²⁰ For example, the Howard League called for community sentences to commence in the week after sentencing or no longer than four weeks after sentencing for specialist programmes, noting that community sentences "face a problem in the public eye in terms of their immediacy...delays damage public confidence in community sentencing".²²¹ Jonathan Ledger advocated both intensive supervision and quick intervention once a sentence has been passed—as not doing the latter affects the motivation of offenders and undermines the confidence of the court—but noted that there are already long delays in the take-up of programmes attached to community orders and that demanding supervision is more resource intensive.²²²

167. There are a number of risks inherent in strengthening community sentences (something which successive governments have tried to do, with limited success), including an increased propensity for sentencers to use them for offenders who would otherwise have received lesser penalties, and for subsequent sentences to be ratcheted up if offenders fail to comply, known as "net-widening" and "up-tariffing", which may serve to *increase* demand on the system.²²³ For example, Northumbria Probation Trust highlighted the importance of ensuring that any additional use of community sentences is for those who would otherwise have gone to custody rather than those who may have received fines and discharges.²²⁴ We also heard that there is a risk in "overloading" offenders with multiple requirements in an effort to make community sentences tougher as this may increase the risk of breach, which, ironically, can, in turn, result in an increase in custodial sentences.²²⁵

Public confidence in community sentences

168. The Government is critical of high levels of breach—for example, of community payback—which, it suggests, undermines public confidence.

218 Ev w144

219 Qq 575–7

220 Q 568

221 Ev 203

222 Q 380; Q 394; see also Q 698 [Mr Chantler]

223 See e.g. Ev w125

224 Ev w85

225 Ev w125; Ev w89

Confidence has been undermined by the fact that community sentences, especially Community Payback, are sometimes not properly completed. In 2008–09 a quarter of offenders on community orders or on licence did not complete their sentence due to breaking the conditions of that order or licence. While most enforcement is satisfactory, this unacceptable breach rate threatens public safety and means that the opportunity to tackle criminal behaviour at an earlier stage is missed.²²⁶

169. Supervision requirements are meant to be strictly enforced with a final warning after one unacceptable absence and a return to court after two (two warnings are possible in licences with a direct return to prison after a third unacceptable absence). During the year ending March 2010, 15,004 people had their licences revoked and were recalled to prison.²²⁷ Two witnesses who had had experience of custodial and community sentences told us why they believed breach and recall can happen: “I was told probably two months before release about what I was going to be up against basically. So I knew what I was going to do and I told them before I got released, “I don’t think I can do this”, you know?” and “I think a big percentage of people who do get released aren’t ready to be released or don’t have anything set up for them when they are. So when the courts find them back in front of them within the month and they ask themselves why, I think it is quite obvious.”²²⁸ Securing people’s compliance, encouraging them at times when they feel that changing is beyond them and requiring them to respect the community order requires considerable levels of professional skill.

170. The increasing demands of National Standards and the removal of almost all local discretion has led to a rise in the number of cases of non-compliance. Clinks summarised how this had happened: “The goal of rehabilitation in working with offenders has had less emphasis than previously, as was inevitable with the shift to a law enforcement ethos. Compliance with the requirements of supervision is now a key objective for the service.”²²⁹ The probation service has tried to ‘sell’ a tough approach to courts and the public through terms such as ‘rigorously enforcing compliance’.²³⁰

171. Magistrates, probation trusts, Napo and UNISON believed that community sentences can be sufficiently rigorous and demanding and noted that effecting change in offender attitudes and behaviour—frequently from a very low baseline—takes time, patience and focused intervention.²³¹ There was some concern that the Government did not fully appreciate the difficulties of managing offenders in the community. For example, Napo explained that offenders on unpaid work have disproportionate problems with drugs, alcohol and mental health; they are not a compliant and willing workforce and need to be worked with firmly if they are to comply, and consequently believed that reconviction rates

226 Ministry of Justice, *Breaking the Cycle consultation*, p 6

227 Ministry of Justice, *Licence recalls and returns to custody to 31 March 2010 England and Wales statistical bulletin*, July 2010

228 Q 95

229 Ev 196

230 Ev w48

231 Ev 184; Q 588 [Mr Thornhill]; Q 359 [Ms Webb]; Q 394 [Mr Ledger, Mr Lay]

were encouraging.²³² Sonia Crozier similarly observed: “the reason that people are offenders is because they don’t follow rules and they don’t always comply, so there’s that challenge of working with this really difficult group. Let’s not forget that by the time they’ve got to the Probation Service, they have often been failures in every other Government organisation.”²³³ These witnesses did, however, acknowledge that there was room for improvement, as illustrated in UNISON’s eight point community payback improvement plan, for example.²³⁴

172. We also heard that there is emerging evidence from intensive alternative to custody schemes that it is possible to design “tough” intensive community sentences which achieve the confidence of sentencers and to which offenders with the most complex needs are able to conform: compliance rates were expected to be around 40%, yet the national average across the pilots was 56%, and in Liverpool it achieved 67%.²³⁵ More intensive measures do come at a higher costs, however. John Thornhill of the Magistrates’ Association advocated “incentivised sentencing”—which builds on the concept of problem-solving courts, the principle of judicial continuity, and desistance theory—whereby an offender would be given a 12 month community order, for example, but if there is sufficient compliance that can be automatically reduced by the probation officer or, if there is not compliance, automatically increased. Similarly, if an offender suddenly fails to comply but had been making progress, instead of just assuming they should receive an immediate custodial sentence, the court could look at a staged response, to give the offender a continued incentive to change. In this way, sentencers and probation officers could work together to adjust and amend the delivery of the sentence and the content of the sentence over a period of time in accordance with the shifting needs and circumstances of the individual offender; this need not take place in court.²³⁶

173. A conversation with one of the participants of community payback during our visit to a project run by London Probation Trust highlighted the issue of whether community payback should have a punitive function, as well as reparation. While they may be seen as tougher in the eyes of the public, increasing the use of punitive requirements, including electronic tagging, curfews and unpaid work, may have limited value in terms of the reduction of re-offending, and will therefore only be appropriate for some offenders. Napo and UNISON questioned the cost-effectiveness of electronic tagging and curfews, for example, because no effort is made to address the root causes of offending so the effect on re-offending may be limited to the duration of the intervention.²³⁷ The Criminal Justice Alliance cited 2009 research by George Mair and Helen Mills which found that probation

232 Napo PB05 cited Hansard 07.12.10 The reconviction rates for those on unpaid work are half of those for custody and have been effective: last year 74% of offenders completed their orders successfully, 14% were breached for failing to comply with conditions and 12% were convicted of a further offence

233 Q 531

234 Unison, *Response to Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*, March 2011

235 Q 703 [Mr Quick], see also Q 359 regarding the programme in West Yorkshire.

236 Q 576; Q 578

237 Ev184; w110; Q 399

officers considered prohibited activity and exclusion requirements to be unenforceable.²³⁸ This may explain low use of such requirements.²³⁹

174. On the other hand, increasing the immediacy of the commencement of community sentences has a chance of increasing both public and sentencer confidence in community sentences as alternatives to the imposition of short custodial sentences when a prison van comes to take the offender away. Nevertheless, as our predecessor Committee identified in its reports *Towards effective sentencing* and *Cutting crime*, there has been a long-term trend for sentencing to become more and more severe, while the public apparently believes that the opposite is the case.

175. The use of punitive measures may provide a cheaper yet publicly acceptable alternative to supervision for some offenders, but their use will need to be appropriately targeted, and their benefits carefully explained to the public, as they do not address the root causes of offending. Trusts and sentencers will need to deal more effectively with failure to comply if these measures are to be successful as a practical means of dealing with low level offenders. The Government must also clarify what is meant by more robust community sentences, and the outcomes they are designed to achieve. Making sentences more punitive does not mean that they will necessarily be effective in protecting the public by reducing re-offending.

176. We endorse the Government's attempt to tackle the factors contributing to the growth in the prison population and probation caseloads in its comprehensive proposals for reform, but the lesson from recent history is that in order to achieve the financial sustainability that it desires, and indeed is necessary, to prevent the need for costly prison building, each element of the reforms must be implemented successfully, and to work coherently together. The strengthening of community orders and reductions in the use of custody are interdependent and both are costly. The Government should clarify how it intends to implement its reforms to community sentences effectively whilst keeping them cost-neutral. It would be a serious error if the Government allowed the search for further savings to replace those it had hoped to achieve from the 50% early guilty plea discount to undermine the development of effective sentencing.

The role of probation in promoting confidence in community sentences

177. Magistrates have a high degree of confidence in community sentences, and this can be seen in the large number of sentences imposed and the high level of agreement with community order proposals put forward in pre-sentence reports by probation services.²⁴⁰ As we noted above, their confidence has improved due to better liaison and the Local Crime, Community Sentence Scheme, a joint programme whereby sentencers and probation officers go out to community groups to educate them about sentencing.²⁴¹

238 Ev w89

239 Ev 224

240 Ev 219

241 Q 528; see also Ev w16

178. Some trusts raised concerns that there is widespread public misunderstanding about probation, for example, about the extent to which trusts are responsible for all the services that contribute to reducing re-offending and about what can reasonably be expected of probation supervision, as well as what constitutes punishment.²⁴² Sentencers themselves are similarly concerned about the public perception of probation.²⁴³ MORI research suggests that public confidence in the use of community penalties increases the more the public know about them but witnesses highlighted a challenge in improving public perception of probation when their understanding of its operation is so opaque.²⁴⁴ For example, Christine Lawrie explained:

One of our problems is that if you look at other public services such as health and education, most people have a general knowledge from their own experience of what they are like but most people do not have one about probation. All they get is a diet of largely bad news stories in the press...they have no way of judging whether a probation bad news story is typical...I really urge people to listen to what sentencers say, because they are the ones who know; they have to trust probation to supervise—and they do—and that seems to me the critical issue.”²⁴⁵

179. In reality, there are very few bad news stories: Professor Kemshall explained that in 2009, only 0.26% of the probation caseload of almost 180,000 offenders who were supervised in the community, went on to reoffend seriously harmfully.²⁴⁶ Matthew Lay was unsure whether probation services would ever gain the full confidence of the public: “I do not think we, in terms of probation practitioners, will ever satisfy the need for people to want people to go to prison, which exists in sections of the population. We will never achieve that. We can do better.”²⁴⁷ Tessa Webb similarly observed that despite the fact that enforcement performance in probation services has been strengthened considerably: “[the] toughening up of community sentences is a perennial problem; it has been around for a long time. The public perception is that community sentences are not tough...How do you get across the complexity of changing people’s behaviour? It does not sound like a punishment.”²⁴⁸

180. Some witnesses were critical of the probation service’s management of its public image. Dr Rob Mawby and Professor Anne Worrall defined it as “particularly poor at public presentation”.²⁴⁹ Jonathan Ledger described improving public confidence in probation as “a process, essentially, of education and communication”. He, Matthew Lay, and some probation trust chief executives remarked on the way communities had developed greater confidence in community payback as a form of sentence as a result of probation’s efforts to engage them and how the confidence of sentencers had increased as a

242 Ev w18; w26

243 Q 362

244 Q 458 [Mr Smith]

245 Q 362

246 Q 657

247 Q 398

248 Q 359

249 Ev w64; see also Q 458 [Mr Smith]

result of closer liaison as examples of this.²⁵⁰ Clive Martin was also optimistic that more could be done, explaining that in his experience when efforts are made to engage with the public on probation in a managed and structured way the outcome of discussion was almost without exception positive.²⁵¹ Several witnesses saw potential for greater community engagement in the criminal justice system, for example, through the provision of volunteering opportunities; this would have the added benefit of capitalising on public confidence and trust in the voluntary sector.²⁵²

181. Jonathan Ledger believed that it was as much a political responsibility as one of the service itself: “Occasionally we would benefit certainly from senior politicians saying ‘This is a complex area of work. It is a difficult and demanding area of work, but actually it is valuable’, rather than falling back on a more, I have to say, tabloid approach to the way we communicate now”.²⁵³ Mr Narey explained that there were risks in politicians playing to the media: “The terrible problem with this issue is that you can have very intelligent and sound discussions within Ministries, and certainly historically within this Committee, but you get a very immature discussion in the media and the press. I think that the current Justice Secretary is absolutely right to try to get some measure of management over who goes to prison. He is absolutely right. It is something I believed in passionately, and that belief was the foundation of NOMS [...] You can’t feed the appetite of a media frenzy which suggests that more and more people need to be sent to prison. Until you can do that, I don’t believe you can get the rational redistribution of resources.”²⁵⁴

182. Other witnesses saw potential to improve understanding about probation by placing it in the context of local communities.²⁵⁵ The Howard League stated: “local communities are the core arena in which to fight a public perceptions battle...if government is interested in emphasising to people the reality of the criminal justice system in England and Wales it must happen on a local level and probation will be the core agent in this regard.”²⁵⁶ Sonia Crozier explained that discussing probation within local partnerships may provide a key to better public understanding: “talking about probation on its own often doesn’t make sense when you disconnect it from the other partnerships that we work with”.²⁵⁷ For example, Tessa Webb highlighted that district councils, the primary care trusts and the police had jointly promoted community payback, through local newspapers, poster campaigns, and in direct communication with victims and the public, in Hertfordshire.²⁵⁸

183. Public confidence is arguably most likely to be gained by setting out clearly what community sentences attempt to achieve, by demonstrating that they are implemented efficiently and effectively and also by challenging a naïve confidence in the effectiveness of short custodial sentences. This will call for leadership and courage from politicians

250 Qq 394–395, 360 [Ms Webb]; Q 529 [Ms Crozier]

251 Q 458

252 Q 457 [Mr Wright]; Q433 [Mr Martin]; Q 710 [Mr Chantler]

253 Q 397

254 Q 466–469

255 Q 528

256 Ev 203

257 Q 528

258 Q 360; see also Q 528

and sentencers. There is a risk that the recent public debate on sentencing policies with regard to short custodial sentences could threaten to undermine the whole set of proposed reforms.

The success of the proposed reforms in the context of fewer resources

184. As with almost all areas of public expenditure, probation services have seen their budgets cut and it is not intended to commit additional resources to payment by results during this spending review. The MoJ asserts that: “[b]y shifting the emphasis away from specific process-related targets towards genuine reductions in re-offending, and implementing a payment structure based on performance against outcomes, we can deliver more effective public services at the same or less cost.”²⁵⁹ However, while trusts agreed that the reduction in central reporting and increased professional discretion has the potential to create some capacity for probation staff to spend more time in direct contact with offenders, for example, by putting less resource into the management of lower risk offenders, Humberside Probation Trust concluded that this was “unlikely to create anything like the capacity required to manage offenders who will have higher risks of re-offending”.²⁶⁰ Matthew Lay of UNISON similarly observed: “if [probation staff] have less time because they have more offenders, [greater flexibility] becomes a bit of a pointless exercise [...] if staff are going to engage more effectively with offenders in terms of face-to-face engagement, they have to have the time to do that.”²⁶¹

185. We heard that there are limits to what can be achieved by way of providing effective alternatives to short-prison sentences within existing and diminishing resources. Make Justice Work believed there is a “real danger” that appropriate community alternatives to short-term prison sentences might not be put in place speedily enough to deal with any changes in sentencing behaviour.²⁶² Other witnesses agreed that the combined effect of cuts on local agencies is likely to have a significant impact on local provision.²⁶³ The availability of resources thus limits the capacity of local programmes designed to reduce the use of custody to operate at their full potential. For example, Jonathan Ledger explained: “if the probation service is not able to provide the range of alternatives, there must be a risk that sentencers will have to fall back on short prison sentences”.²⁶⁴

186. It must also be acknowledged that some approaches designed to reduce the volume of demand on the system via the courts require new legislation and others, including nationwide roll-out of mental health liaison and diversion schemes, will take some time to come to fruition.²⁶⁵ There may also be delays in any increase in the use of new measures while sentencers, the police and the Crown Prosecution Service, gain greater confidence in them. In addition, we heard that in the context of cuts in magistrates’ court budgets, which

259 Ev 171

260 Ev w95

261 Q 378

262 Ev w21

263 See e.g. Ev 216, Qq 335, 374

264 Q 379

265 See e.g. Ev w59

are resulting in reductions in the number of magistrates, the capacity of sentencers to stay as aware of—and hence maintain confidence in—local initiatives that are available to the courts may be diminished.²⁶⁶

187. It was repeatedly suggested by our witnesses that a transfer of resources from prisons to probation would be required to support a reduction in short-custodial sentences on the basis of community sentencing.²⁶⁷ David Chantler explained:

If we were to take up all of the strain in the system from not having short sentences—I know the Government are not proposing not to have any short sentences—clearly we would struggle. The question is: what is the “break even” from the saving from the system in reducing the amount of short sentences and giving us enough to be able to cope? I would suggest, from our experience, a contribution to deciding that point is the way in which other agencies can be used to do a lot of the day to day work [...] There are some very simple, straightforward interventions that will make significant changes. If, as part of the shift from short sentences to being picked up in the community, we also have the freedom and the ability to manage the money [currently allocated to short prison sentences] to engage in that sort of commissioning, we can do a lot with it.²⁶⁸

188. Thus, the model of justice reinvestment explored by our predecessor Committee—of greater investment in a package of reforms to reduce the use of custody, including increased spending on probation services, allowing significant resources to be freed by halting the prison-building programme and enabling current inefficient prisons to close—has not been fully exploited; this will undoubtedly impede the pace at which capital can be transferred from prisons to community-based interventions and will therefore continue to leave probation services and local communities deprived of desperately needed resource.

189. Although there are limits to the extent to which the Government’s reforms can be effective within limited resources, there is scope for cost savings within the structure of NOMS and the prison service. We refer later to the powerful case for better integrating the commissioning of prisons and probation. If the resources for more intensive and tougher community sentences are not found, increases in the use of short-term custody by the courts will continue. This is a vicious circle in which the criminal justice system has been trapped for too long. The Government wishes to break this cycle, as its Green Paper indicates. This will not happen without a shift in the use of scarce resources.

266 Q 553

267 See e.g. Ev 173; 196; 156; w99; w114; w131; Q 710 [Mr Quick; Mr Chantler, Mr Long]

268 Q 710 [Mr Chantler]

6 Future commissioning arrangements

The Government's proposals

190. The Government's green paper *Breaking the Cycle* continues on the trajectory begun by the Offender Management Act 2007 by introducing greater contestability into probation. It envisages a system in which probation trusts would compete with other providers from the voluntary and the private sectors. The Government has summarised the approach that it intends to take towards future commissioning arrangements as follows:

We will signal a clean break with the controlling, centralising tendencies of the past by making a clear commitment to decentralisation. We will provide frontline professionals with greater freedoms in how they manage offenders. Local areas will focus on the criminals who cause the most problems in their communities. There will be fewer targets for providers and less prescription in the way that different agencies work together. Our decentralising approach will mean a move away from centrally controlled services dominated by the public sector, towards a more competitive system that draws on the knowledge, expertise and innovation of a much broader set of organisations from all sectors.²⁶⁹

191. More specifically, the Government proposes to offer financial incentives to existing and new providers: to produce innovative solutions to re-offending; to stimulate the development of effective practice; and to establish reliable and sustainable funding arrangements. Central to this is the idea of payment by results. Ms Byrne of A4E described payment by results as a contracting mechanism designed to “increase the direct link between the cost of an intervention and the positive social outcome.”²⁷⁰ The green paper considers applying payment by results to people on community sentences and to local partnership incentive schemes. For example, in the first case a “lead provider” would be contracted to deliver an overall community sentence. This provider, or consortium of providers, may choose to sub-contract some services to other partners. There would be two kinds of payments: one for delivering the statutory requirements and ensuring compliance with the sentence; a further payment would depend on the results the provider delivers in reducing reconviction. The second scheme requires local statutory partners to develop a joint plan to prevent offending and reduce reoffending, jointly commissioning innovative services to fill any gaps with the desired outcome to reduce demand on the system. If demand for criminal justice services is reduced they would share in any savings made and jointly reinvest them. For short-term prisoners, the paper raises the possibility of paying some prisons for their success in rehabilitating prisoners. The Peterborough social impact bond pilot has been developed by Social Finance, a not-for-profit organisation. This approach seeks to build a social investment market.²⁷¹

²⁶⁹ Ministry of Justice, *Breaking the Cycle consultation*, p 8

²⁷⁰ Q 241

²⁷¹ A social impact bond is a contract under which government agrees to pay a fund-holder for a set of outcomes for a specified group, for example, a reduced number of convictions by a group of ex-offenders; the fund-holder raises money from investors to pay for a set of services to achieve these results.

192. Although the commissioning model that will be adopted for community sentences is not yet clear, the Government has said that:

- any model must “strike a balance between: ensuring that statutory requirements are delivered efficiently and effectively; managing and enforcing delivery of the overall sentence; and reducing reoffending”;
- it does not believe that it is “either practical or desirable” to contract for these different objectives separately from one another and with different providers and therefore proposes to contract with one provider to deliver the overall community sentence;
- local commissioning gets the “best responsiveness to local needs, to drive out cost and to enable smaller community-based organisations to participate fully”;²⁷² and
- it intends to “devolve accountability and decision-making to the lowest appropriate level and encourage criminal justice agencies to draw authority from their locality rather than central government”; it has recognised that this requires reducing the burdens of excessive performance targets and inspection regimes on local partners, discussed in the previous chapter, and anticipates replacing six existing reducing re-offending related measures with “a single, comprehensive and easily understandable outcome”.²⁷³

193. The Government intends to apply the principles of its new approach—freedom to innovate; increased discretion; and paying by results at reducing re-offending—to all providers by 2015 and will produce its fuller proposals for competition in prisons and probation by this summer. The green paper also anticipates co-commissioning with the Department of Health, the Home Office and the Department for Work and Pensions, paying a range of providers for delivering outcomes including the offender stopping taking drugs and gaining and sustaining employment as well as reduced reconviction.

194. Through its competition strategy the Government wishes to promote the effective use of existing resources and to attract additional resources into the infrastructure to reduce re-offending. The *Comprehensive Spending Review* stated that the Big Society Bank, created from private sector funding and resources in dormant bank accounts, would “support the growth of the social investment market and make it easier for social enterprises and other enterprising civil society organisations, including those looking to participate in the Work Programme, to access capital. The Big Society Bank will, however, be an independent wholesale organisation that will be free to make its own investment decisions based on the quality of opportunities presented by the market.”²⁷⁴ Consequently, the Big Society Bank’s involvement in rehabilitative projects is not yet a certainty and is likely to depend upon the Bank’s perception of the sustainability of this type of investment.

272 Ministry of Justice, *Breaking the Cycle consultation*, p 48

273 *Ibid*, p 82

274 HM Treasury, *Spending Review 2010*, November 2010, p 32

Potential models of commissioning

195. We had wide-ranging discussions with our witnesses about the relative merits of the potential models for implementing payment by results that the Government has proposed; not surprisingly, their perspectives frequently reflected their own interests in the nature of any future commissioning model. There was widespread agreement—but not a consensus—that the majority of probation services should be commissioned at local level to enable local solutions to be devised to address local problems and priorities. This seems consistent with the Government’s stated principle, quoted above, that accountability and decision-making should be devolved to the lowest appropriate level with justice agencies drawing authority from their locality rather than from central government. There was also agreement with the MoJ’s single provider model for the commissioning of community sentences, although there was no consensus on what such a model would look like in practice.

Community sentences model

196. Although the Government has stated that the services which probation trusts currently provide will be increasingly subject to competition, it is neither clear how far the MoJ is envisaging extending new commissioning arrangements nor the level at which they anticipate these various services will be commissioned. Equally unclear is the role that probation trusts would play in any nationwide application of payment by results, other than that trusts themselves will become paid on the basis of outcomes achieved and would represent a key partner in local incentive schemes if the pilots prove successful. While the Government has asserted that trusts “have an important and continuing role to provide local strategic leadership for managing offenders”, it is not evident whether this means that they envisage trusts retaining oversight of offender management for those sentenced to community sentences.²⁷⁵

197. When we asked the Minister, Mr Crispin Blunt MP, for his views on what the role of probation trusts would constitute in the future he was clear that he believed they would become commissioners and providers. He outlined the payment by results pilots planned for prisons, probation and local communities and stated:

The challenge that we face is that you cannot see all of this in isolation. Probation is part of a wider regime, which delivers, if it is successful, better people once they have been in the custody of the state. The challenge that we face is to link all this up so that we drive earlier intervention in order to prevent people coming into the justice process in the first place, ideally [...] In this environment, I don’t see the simplicity of being able to say that probation trusts, who are currently providers...are going to simply remain as providers. If we are to get the charitable and voluntary sector, in particular, properly engaged in the rehabilitation of offenders and in delivering a revolution in rehabilitation, that cannot be done without engaging all those people in our society who frankly want to help the state with the task of rehabilitating offenders and putting people back on the straight and narrow...I don’t think it could be done if we try to leave the commissioning role at the level of [NOMS]. I think we

²⁷⁵ Ministry of Justice, *Breaking the Cycle consultation*, p 46

are going to have a period where probation trusts will need to be in a position of occasionally being both provider and commissioner.²⁷⁶

He was much less clear, however, about the longer-term future of trusts:

Exactly how [probation services are] going to be delivered in five years' time we will see from the development of a localist agenda, how much probation trusts remain a creature of NOMS or what their development is with all the other local services that are delivered in their local area [...] In the end, the people who have the nation's offender management expertise are the Probation Service. Is that expertise going to need to continue? The challenge identified in the formation of NOMS is how to get the offender managers in charge of an offender in his whole progression through the justice system more effectively so that they can deliver proper co-ordination of that sentence, and the sentence planning and rehabilitation programmes that are required to secure a successful outcome for that offender and society so that there are not future victims of crime because he has ceased offending. That dynamic and that requirement are not going to change.²⁷⁷

198. The absence from the green paper, and from the Government's response, of a clear statement about the role of probation in any new commissioning model has fuelled concerns, expressed by our witnesses, about the future direction of probation trusts.

A probation led model of commissioning for community sentences?

199. The Probation Association and Probation Chiefs' Association, trades unions and numerous probation trusts, expressed considerable support for creating commissioning arrangements which would allow probation trusts to continue both focusing on offender management and building on work with existing local partners to improve services and results.²⁷⁸ The Local Government Association also expressed this view in its response to the *Breaking the Cycle* consultation.²⁷⁹ Prior to the publication of the consultation paper, the Magistrates' Association proposed to us that the MoJ should commission services directly from probation trusts, who would then commission locally. In their view this would "ensure that all types of contract are possible with all sorts of providers, rather than moving towards specific national organisations taking most of the contracts. There is merit in small providers supplying services, particularly on a local basis."²⁸⁰ Under such a model, trusts would undertake the role as "lead provider" for all offender management services, and could then decide whether to provide these services themselves, through sub-contractors or by co-commissioning with statutory partners. New commissioning arrangements would be used to strengthen the contributions of other sectors and should support probation trusts in discharging their legal and statutory responsibilities. For example, London Probation Trust suggested that such a model would enable trusts to "focus more of their energies and resources on the supervision of offenders and effective management of their

276 Q 718

277 Q 740

278 See e.g. Ev 173; 156; w52; w80; 216; w85; w93; w95; w107; w110; 177

279 Local Government Association, *Response to Breaking the Cycle consultation*, February 2011

280 Ev 219. See also Magistrates' Association, *Response to Breaking the Cycle consultation*, March 2011

risk”, whilst retaining oversight of the quality of interventions delivered by other providers.²⁸¹ Cambridgeshire and Peterborough Probation Trust agreed that such a model “would create a very powerful delivery base”.²⁸² Similar views were expressed by some voluntary sector organisations, including Together.²⁸³

200. West Mercia Probation Trust was cited as an example of what this might look like:

[West Mercia Probation Trust] recognise that other organisations are far better placed to deliver on offender interventions from the local community than probation trusts. We have seen a split there between the roles [of offender management and offender interventions]. They recognise we have a little more flexibility and freedom to operate. We can be more responsive to the needs and risks being posed by individual offenders. We are able to project-manage in a way that is different from probation trusts, particularly when we start talking about trying to thread together a whole range of different funding streams to be able to create new services and to innovate. They are the type of things that they have hallmarked as being unique about the voluntary sector locally.²⁸⁴

The Chief Executive of Youth Support Services (YSS), a voluntary sector organisation appointed as West Mercia Probation Trust’s preferred partner, explained that it is developing a “menu of provision” for the trust’s offender managers that works across all the needs of an individual and tailoring it around them.²⁸⁵ YSS works with probation to commission services from other local third sector providers and develop the capability and capacity of local voluntary organisations to create innovative solutions to working with offenders.

201. The Minister, Crispin Blunt MP, recently visited West Mercia Probation Trust and commented:

West Mercia seems to be ahead of the game in terms of the overall direction of approach about delegating authority from the centre to those who are charged with operational delivery. They are also ahead of the game in terms of engaging with all our local service providers who can deliver improved rehabilitation of offenders. This includes the other local government services and trust services such as health but also across the voluntary sector, as demonstrated by their groundbreaking partnership with YSS. It may be that the rest of the country will be looking to West Mercia as an example of effective engagement of partners around rehabilitation.²⁸⁶

Large scale models

202. Some private and voluntary sector witnesses proposed larger scale “lead provider” models. For example, A4E supported the appointment of a “lead integrator” to manage

281 Ev w99

282 Ev w93

283 Ev w70

284 Q 432

285 Q 450

286 The Kidderminster Shuffle, *Minister for Prisons and Probation in Kidderminster*, 11 March 2011

and deliver each contract and CBI advocated a “prime contractor” model similar to that used by the Department for Work and Pensions, whereby a single contractor has responsibility for sub-contracting services from a range of specialist providers in the public, private and voluntary sectors.²⁸⁷ Such models could potentially be used to widen the market for the commissioning of specific services, for example, community payback, or for whole trusts to be subjected to competition, as advocated by Catch22, Nacro and G4S, for example.²⁸⁸ The Department for Work and Pensions has developed a tiered model with a prime provider—covering large geographical areas—which subcontract, or enter into service level agreements, with smaller providers who specialise in either a particular area locally or are focused on a particular type of client or customer characteristic.²⁸⁹ For example, A4E has sub-contracted with 700 providers; 49% are from small, local and third sector organisations and 18% are statutory partners, primarily PCTs and local authorities.²⁹⁰

Local partnership models

203. Many of our witnesses were firmly of the view that any commissioning model must recognise that the reduction of reoffending is a partnership responsibility, as a large amount of activity that is required to address offending behaviour is outwith the budgets of probation and NOMS.²⁹¹ Ms Webb, Chief Executive of Hertfordshire Probation Trust, explained:

[the] probation service is not the provider of a lot of the interventions that are needed to reduce re-offending, so on the ownership of results there needs to be a multi-agency partnership...if it is put as an outcome for probation on its own to deliver we are at the mercy of a lot of other public sector providers delivering it or not.²⁹²

Chris Wright of Catch22 agreed:

It is about making sure you have proper co-commissioning arrangements, where each and every agency that has a responsibility for services which can be directed at those who require them in order to address their issues is working collectively. The competition strategy cannot be seen in isolation from a whole range of other organisations that have a responsibility for commissioning services for those who offend.²⁹³

204. The Ministry of Justice sees local incentive pilots as the answer to boosting local service provision.²⁹⁴ Witnesses welcomed the idea as a potential means of overcoming

287 Ev w9; 162

288 Ev 200; 224; w134; 185

289 Q 242

290 Q 243

291 See e.g. Ev w70; w139; Q 434 [Mr Wright]

292 Q 355; see also Q 517 [Ms Crozier]

293 Q 434 [Mr Wright]

294 Q 268 [Mr Porée]

problems with the local accountability of probation trusts under existing governance arrangements by enabling closer alliance with other public sector services and hence a more strategic approach to the local targeting of resources. This was advocated by our predecessor Committee in *Cutting crime: the case for justice reinvestment*. An ex-probation officer commented: “active arrangements that foster better levels of trust between organisations are more important than competitive contractual working”.²⁹⁵ In its response to *Breaking the Cycle*, the Local Government Association stated: “while competition amongst providers drives down costs and improves services, competition amongst commissioners results in inefficiencies and duplication and makes it more difficult to improve the quality and efficiency of services”.²⁹⁶ These incentive schemes would therefore enable local partners to capitalise on the success of existing partnership initiatives which have illustrated the economies of scale that can be achieved when local statutory agencies co-locate and integrate services, share assessments, and forge strategic links with service providers from other sectors.

The potential benefits and limitations of new commissioning models for probation and rehabilitative services

Creating a mixed economy in probation provision

205. Catch22 stated that there is some evidence that quasi-markets have had a positive impact across public service areas in other fields, for example, in education and drug and alcohol treatment. There is some debate on the extent to which performance testing and competition for new prison contracts has had an impact on driving up standards across the custodial sector.²⁹⁷ The CBI stated that cost savings of over 20% have been achieved through competitive tendering in the prison service. Our witnesses considered that there were a range of benefits which could be gained by facilitating the delivery of a greater range of rehabilitative services by a wider range of providers.²⁹⁸ Numerous probation trusts and the Probation Association commented on the value of the contribution that private and voluntary providers could, and already do, make to offender management.²⁹⁹

206. Catch22 argued that benefits from diversity of providers and contestability arise “not simply from large-scale transfers from one sector to another but from opening up the possibility for the best provider, *from across the different sectors* [emphasis in original], to deliver a service.”³⁰⁰ Chris Wright further explained:

I don't think any sector owns the total knowledge about how to do things. Commissioning should be about creating an opportunity to bring in different delivery models and ideas [...] The important thing is to commission the right kind of services that are going to achieve the right kind of outcomes [...] There are lots of organisations that have an expertise and knowledge about how you can help and

295 Ev w11

296 Local Government Association, *Response to Breaking the Cycle consultation*, February 2011

297 See e.g. HC (2008–09) 361, paras 183–187; NAO report, 2003, *The Operational Performance of PFI Prisons*, June 2003

298 See e.g. Ev196; w48; w59; w61; w70; 200; Q 432 [Mr Smith]; Ev 224; Q 644

299 See e.g. Ev w52; w80; 216; w85; w93; w95; w103; 173

300 Ev 200; see also Ev w145

challenge offending behaviour. I believe commissioning provides an opportunity to bring some of that experience and talent to delivery.³⁰¹

Mr Neden of G4S agreed:

...it isn't the private sector per se that has something to offer. It is that a market that leads to a mixed economy has something to offer and that, over time, having a diversity of providers will lead to innovation that can either be a better service or more efficiency or lower cost or some mix of those things. It is the ongoing effectiveness of the market in competition that drives that. The players that win in that market will just be the players that the commissioners choose.³⁰²

Witnesses from the voluntary and private sectors, including Catch22 and the CBI, highlighted that across each sector there was the capacity to both manage high level contracts, in a co-ordinating role, and to deliver niche services and build relationships at local level.³⁰³ Clinks and the Centre for Mental Health stated that VCS organisations could also provide a developmental function for commissioners.³⁰⁴ Some trusts, for example, Leicestershire and Rutland, also have experience of co-ordinating large consortia.³⁰⁵ **The evidence we have received suggests that there is significant scope to increase the contribution of private and voluntary sector organisations to the delivery of effective offender management and rehabilitation.**

The benefits of paying providers by results

207. Payment by results models have been applied to the Department for Work and Pensions' funding arrangements for consecutive programmes designed to move people from benefits and into employment. In Department of Health models payments are not paid by results as such but by activity, for example, number of treatments administered.³⁰⁶ Such mechanisms have the potential to bring new money into the system, for example, through social investment, and to improve performance by providing a greater focus on specified outcomes, potentially yielding cost savings by weeding out inefficiency. There is some evidence of improved performance under DWP contracts.³⁰⁷ The services provided in the field of probation are currently cash-constrained, and some or all of the savings gained by reduced reoffending could be reinvested in service provision. The Probation Association summarised the potential strengths of payment by results as: clarity about requirements; the use of measurable and specific outcomes; payment made only when outcomes are delivered, thus making attainment of results the imperative; and the potential to attract investment from the private sector.³⁰⁸

301 Q 432

302 Q 605

303 Ev 200; w9

304 PB 28; Clinks, *Response to Breaking the Cycle consultation*, March 2011

305 Ev w48

306 Q 214

307 See e.g. Ev w9; Q 241; Q 250

308 Ev 177

208. Experience of the existing local commissioning arrangements for women offenders suggests that there is scope for new commissioning models to ensure that even more specialist services are provided to particular groups of offenders, including BME and women, than some smaller and less urban probation trusts are currently able to provide, for example, by increasing provision to meet local needs by specialist voluntary and community sector organisations.³⁰⁹ Catch22 also suggested that there is potential for new arrangements to ensure a smoother transition from youth offending services to adult probation services.³¹⁰

209. We encountered some objections to the principle of introducing a profit motive into the delivery of community sentences. For example, the Magistrates' Association raised concerns about the impact that introducing a profit motive for reducing re-offending may have on meeting the core aims of the criminal justice system.³¹¹ The Association's Chair, John Thornhill, explained:

We are saying that we, as sentencers, must have confidence that the sentence will be properly and effectively delivered, and successfully delivered over a period of time...we do not believe it should be driven by profit. We believe it should be driven by the appropriateness and effectiveness of the delivery of the sentence. ...If we see that success is not as successful as we would like it to be, then confidence is going to wane in the community penalties.³¹²

210. Some witnesses' wider concerns centred on the potential impact on risk management of giving probation work to alternative private sector providers, whose principal motivation may be profit rather than rehabilitation, public protection and accountability to communities. For example, cost reductions might result in a dilution of the quality of service provision through an increase in group sizes, the loss of individual placements, or poorly trained staff.³¹³ Caseloads are already high, so there is a risk in attempting to cut costs purely by increasing caseloads; probation trusts have had to carefully re-evaluate their whole approach to providing a service to the courts in order to operate to best effect within existing level of resources.³¹⁴ The Magistrates' Association has questioned whether organisations from other sectors would have the same dedication and genuine desire to reduce re-offending as probation trusts do currently.³¹⁵ Birmingham Crown Court judges considered that public confidence in sentences may not be at the forefront of private sector providers' thinking, citing examples of failures to report breaches.³¹⁶

211. Payment by results provides a potential mechanism for putting the system on a sustainable footing over the longer term by shifting resources away from incarceration towards rehabilitation and towards measures which prevent people becoming criminals

309 See e.g. Ev 196 ; w6

310 Ev 200

311 Ev 219

312 Q 575

313 See e.g. Ev w110

314 Q 191

315 Magistrates' Association, *Response to Breaking the Cycle consultation*, March 2011

316 Ev w114

in the first place. However, the payment by results models proposed are untested in the field of criminal justice 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.

Commissioning for offender management: getting the balance right

212. There was considerable debate amongst our witnesses about which services that are currently provided by probation trusts would be appropriate for contracting out to other sectors. Trusts highlighted the benefits of themselves taking responsibility as lead providers, citing their extensive knowledge of: local communities; the requirements of local sentencers; local offending and the needs of local offenders; and the range of local organisations which can provide appropriate services, as well as capitalising on their expertise in offender management and further developing their role as local commissioners.³¹⁷ If trusts were not to become “lead providers”, many trusts, the Probation Chiefs’ Association, Napo and other witnesses believed that responsibility for offender management should be retained, citing a need for high standard, accountable, professional judgment on the assessment and management of risk.³¹⁸ For example, Wiltshire Probation Trust argued that this was necessary for there to be clear accountability through Ministers and to Parliament.³¹⁹ Particular emphasis was placed on the importance of management of high risk offenders, including in approved premises, and public protection cases, remaining within trusts.³²⁰ Napo also believed that victim liaison should remain a statutory responsibility.³²¹

213. The Magistrates’ Association similarly believed that it was important that a single agency was responsible for the management of offenders and stated that “the current arrangement is difficult enough to control without adding in different pressures that may come from different organisations and different types of organisation.”³²² John Thornhill further explained that their preference would be for the single agency to be the probation trust:

A concern that sentencers would have is that if we have a single contact in the courtroom—and that is something we would prefer, i.e. the probation service as a single point of contact, providing the reports, and taking the delivery of the sentence to whoever the providers are—there is then not a disconnect between the commissioner and the deliverer. There have to be very strong links because, if we have high risk offenders, if we have dangerous offenders, and the courts are imposing a community penalty, then the courts need to be confident that the probation service as the point of contact in court has appropriate quality assurances and procedures in

317 See e.g. Ev w44; w48; w52; w80; w93; w103; w122

318 Ev w52; w70; w125; w85; w93; w103; 184; 156; w95; 173

319 Ev w26

320 Ev w48; w52; 216; 184; w85

321 Ev 184

322 Ev 219

place to ensure that the sentence is properly delivered, that there is no risk and there is risk management.³²³

Clinks, and some other voluntary sector organisations, also favoured the probation service retaining offender management and ultimate responsibility for the enforcement of court orders and post-release licences, believing that the state should be responsible for the assessment of offenders and providing information and advice to courts to assist in sentencing.³²⁴ G4S believed that the private and third sectors could bring “management expertise, fresh thinking and new techniques” to the core task of offender management.³²⁵ One probation trust did not believe that either sector is equipped to run the full system of offender management.³²⁶

214. We believe that responsibility to the courts and the community for offender management must remain with a publicly accountable probation service. However, there is plenty of scope for specific services and facilities that support offender management to be offered by a range of providers. Examples include the provision of (non-approved premises) accommodation, electronic monitoring, curfews, mental health support, drug and alcohol treatment, learning and training, and family support. These services should be delivered by whichever provider can facilitate them most effectively with the greatest economy.

Achieving economies of scale

215. Several private sector providers highlighted the potential benefits of larger scale contracts. G4S stated that it is: “questionable whether commissioning services through ... separate probation trusts can deliver the most efficient delivery model for those services which could realise economies of scale if commissioned on a national or regional basis”.³²⁷ A4E similarly believed that to develop the market the MoJ must broaden the base of large providers with scale to take on the management of contracts and the financial capacity and appetite for risk needed to deliver contracts linking payment by results.³²⁸ The CBI similarly considered that commissioning at regional or pan-regional level has the potential to deliver the returns to attract large commercial providers with fresh ideas from operations in other public services markets; this would also have the benefit of cutting out duplication in the existing procurement of services at probation trust level.³²⁹ Under these models opportunities must also be on a sufficient scale to deliver a return on investment; contract size can also be determined by length, for example, G4S has advocated contracts

323 Q 586

324 Ev 196; w70

325 Ev 224

326 Ev w85

327 Ev 224

328 Ev 162

329 Ev w9

spanning several years.³³⁰ As we noted above, savings can also be made through local partnerships, for example, by developing co-located services.³³¹

216. On the other hand, several witnesses expressed concerns that the scale of contracts required to make large payment by results models financially viable, and the results statistically significant, may be at odds with local commissioning, and may preclude relatively small organisations, including probation trusts, from becoming lead contractors. Napo believed that only large VCS and private providers were likely to be able to operate under the conditions of large “lead provider” contracts.³³² Indeed, as a result of lack of access to working capital VCS and statutory providers have tended to be involved in payment by results as subcontractors in other fields. Matthew Lay of UNISON raised concerns that “the providers are setting the framework by which [payment by results] will operate because of the commercial risk. Therefore, in a sense the balance is skewed.”³³³

217. There was disagreement amongst our witnesses about implications of larger scale models for the level at which commissioning decisions would be made. For example, Tessa Webb, Chief Executive of Hertfordshire Probation Trust, told us that: “There is a real tension between the localism agenda and the efficiencies... Obviously, as you scale up there are opportunities. At that size, it is far more attractive to the larger, private sector companies to come in on a large-scale basis. I am not sure that they would be particularly interested in delivering on a micro-level, which is perhaps how we operate at present.”³³⁴ Other witnesses believed that it was possible for such models to facilitate an integrated approach by a range of organisations so that support can be tailored to the individual needs of offenders. For example, Mr Hill of Sodexo and Mr Neden of G4S did not recognise the issue raised by Ms Webb as a tension. Mr Hill used the example of the community payback tenders to explain: “How you construct the community payback lots to ensure that you get efficiency into the scale of what you are offering doesn’t for a moment mean that you don’t expect us as providers to build in local decision making into community payback as a delivery. I don’t believe those two things are a poor fit with one another. Quite the contrary: I should think they will fit together quite well.”³³⁵

218. The community payback competition exercise is a good example of the tensions between scale, efficiencies and localism. Mr Copsey identified what the MoJ intends to get from providers and believed it could be both:

Clearly we want to see efficiencies and value for money delivered in those contracts, but we will certainly want to see innovation and performance improvement, and we will certainly want to see the ability of those successful bids to demonstrate proper and rigorous local delivery arrangements, which...will be critical in terms of enhancing voluntary third sector local groups and local communities in working

330 Ev 224; w9

331 Q 701 [Mr Chantler]; Q 702 [Mr Long]; Ev w139

332 Ev w9

333 Q 391

334 Q 347

335 Q 613

with those offenders and the community payback scheme to deliver the types of projects and outcomes that local communities want to see.³³⁶

219. However, even if local providers are involved, there is limited scope for commissioning to be integrated with local strategic arrangements. Clive Martin, Director of Clinks, highlighted difficulties of commissioning effectively to address particular types of crime or particular communities of offenders, e.g. BME offenders, within a large commissioning area: “the closer you can get to the commissioning matching the needs of the local population, the better.”³³⁷ The community payback competition is also a good example of the potential to undermine the viability of trusts by top-slicing aspects of their work: community payback represents 23% of the services that probation delivers in terms of cash value.³³⁸

220. Although on the face of it large scale payment by results commissioning arrangements such as those used by the Department for Work and Pensions may be attractive in achieving cost savings, economies can also be achieved at a more local level, for example by probation trusts concentrating their efforts on where there is best value in contracting out other services and through local partnerships pooling their resources and investing them strategically. There is a need for careful thinking and calculation on behalf of the Government on how to strike the best balance between opening up the market to new providers and enabling trusts to operate effectively as local strategic partners, facilitating local solutions to local problems.

Potential risks in getting the balance wrong

221. The Probation Association, Probation Chiefs’ Association and some trusts raised concerns of a risk of fragmentation and potential dilution of the quality of services—and the offender management process—if trusts do not retain responsibility for all sub-contracting and commissioning; trusts may become weaker strategically (with local partners) and financially if they lose business.³³⁹ Christine Lawrie of the Probation Association stated:

One of the risks with [some] PBR [models] is that it becomes a [system] in which particular contracts are managed, commissioned and then contract-managed by NOMS in a silo alongside whatever the trust is doing...it is important to retain the integrity of systems so that you build in incentives for the whole system; you don’t try to slice off bits and then pay people for achieving a narrow range of results.³⁴⁰

222. Bedfordshire Probation Trust summarised the tensions inherent in defining those services which, in practice, could cost-effectively be delivered by other providers:

Apart from writing of court and parole reports which could lead to conflict of interest, any aspect of the service could be delivered by the private, third sector or by

336 Q 747

337 Q 431

338 Q 748

339 See e.g. Ev w85; w95; w103; w122; Q 354 [Ms Webb]

340 Q 356

a combination of private, third sector and public. This approach would drive efficiency and innovation but would lead to a much more fragmented service delivery model.³⁴¹

There is also a risk that the complex work to which probation trusts are central will be undermined, for example, as we noted above, as well as advocating for provision for offenders within local strategic partnerships, probation trusts are important components in partnerships, including MAPPA and domestic violence, which are critical to fulfilling public protection responsibilities.³⁴²

223. The effectiveness of offender management is also reliant on the delivery of interventions from a range of sources being well co-ordinated.³⁴³ In Andrew Bridges' response to *Breaking the Cycle*, he raised concerns that in having different providers responsible for different elements of a community order, the overall co-ordination of the sentence may be considerably more onerous.³⁴⁴ For example, there is an increased risk of communication not passing through and a potential for increased costs.³⁴⁵ Reviews of the few cases that go wrong usually identify problems with fragmented delivery and poor communication.³⁴⁶ Northumbria Probation Trust highlighted that while trusts will generally have no objection to supporting a role for the private and voluntary sectors in the provision of some offender services, other key partners will also need to subscribe to this direction of travel; for example, the police may not be willing to share highly sensitive information in relation to public protection.³⁴⁷ As our predecessor Committee noted in its report *Cutting crime*,³⁴⁸ it has taken considerable time since the Crime and Disorder Act 1998 mandated the sharing of information for the purposes of crime reduction for statutory agencies to trust each other.

224. Other witnesses had particular concerns about the impact of lateral slicing of services on the coherence of service provision at local level. For example, Clive Martin summarised his views:

The market is fragmented. So long as we have services put out to competition on a discrete basis without anyone thinking about the process of how they are joined up for the person who is at the receiving end of them, we face a real danger of fragmentation, which is heightened by the fact that there is no common, usable IT system that can transfer records. It is almost like thinking about the NHS trying to work without patient notes. It is the equivalent in some way, because you have records about people, and their needs and services, held in different places. There is no common way of sharing that without some quite complicated to-ing and fro-ing of people. You make a system more complicated for people who don't start in a

341 Ev w122

342 Ev w95

343 Ev w70; w139

344 HM Inspectorate of Probation, *Response to Breaking the Cycle consultation*, February 2011

345 Q 354 [Ms Webb]

346 Ev w26; Q 354

347 Ev w85

348 Justice Committee, *Cutting crime: the case for justice reinvestment*, para 271

positive place about the system's ability to meet their needs. You then make it more complicated for them to access that system. It is not a happy mix.³⁴⁹

225. Some witnesses identified potential risks in contracting out some services which may have implications for the willingness of commercial organisations to undertake such ventures; for the political liabilities involved in devolving responsibility to non-statutory providers; and for the effectiveness of the Government's strategy for stabilising criminal justice expenditure. Together, a national mental health charity, considered that giving legal and statutory responsibilities for the provision of offender management services to the private or voluntary sector providers risked the development of uncoordinated services that are expensive and unaccountable.³⁵⁰

226. G4S acknowledged in written evidence that the core task of probation with regards offender management was unclear.³⁵¹ Mr Neden, Corporate Development Director of G4S, further explained:

The market would develop by commissioning a range of different services, which could be community payback. It could be other interventions such as drug treatment programmes. It could be offender management services, although I recognise that, particularly with the prolific and more dangerous offenders, that would be difficult perhaps for us reputationally and possibly difficult in terms of appropriateness.³⁵²

227. Probation services have been uncertain about their future since the idea of wider competition was first mooted almost ten years ago. The Government must clarify its intentions for the future of probation. We would welcome a clear statement from NOMS about which elements of probation work are considered appropriate for commissioning from other providers (and which are not) as well as those they consider should be contracted for at scale, and the principles that should determine the boundaries.

228. We welcome the Government's local incentive scheme pilots in enabling commissioning for rehabilitative interventions to be more effectively delivered through partnerships at local level. We consider that the local incentives model would work best if it is introduced alongside a model in which probation is "lead provider".

229. The Government's commitment to devolving commissioning to the local level is not fully reflected in the green paper or in NOMS' recent approach to commissioning community payback. The decision that it was most appropriate to commission community payback at the level of six large lots across England and Wales is, we believe, flawed in terms of the future direction of commissioning policy; it does not fit the Government's rationale that services should be commissioned at local level.

349 Q 433

350 Ev w70

351 Ev 224

352 Q 608

Towards a fully integrated commissioning model

230. None of the proposed commissioning arrangements described above appear to strike the optimum balance between integrating the commissioning of local strategic partners to improve reductions in re-offending, facilitating a “rehabilitation revolution” across prisons and probation, and increasing the sustainability of the funding of the criminal justice system. Clive Martin explained:

If you get probation as the sole commissioner you get probation commissioning. If you have the Prison Service you have the prisons. If you are trying to get a joined-up service for someone who is inside custody, outside custody or returning to a community, then you need a commissioning structure that reflects all of that [...] Something that makes sure that you bring in those community organisations or even things like local authorities is key.³⁵³

G4S believed that “due regard must be given to commissioning services that span both custody and community sentences in a ‘joined up’ or vertically integrated way”.³⁵⁴ John Thornhill saw merits in terms of cost reduction:

If you have a single integrated service, then you can achieve continuity of delivery right across the whole spectrum of disposals. However, that depends on ensuring that there is a fair and just balance of funding, again, right across, and identifying where the funding is most necessary.³⁵⁵

Prisons: the missing link?

231. The effective extension of offender management to all offenders through integrated local approaches requires better relationships with prisons. Any new approach must undoubtedly rectify the fact that, in the eyes of many of our witnesses, NOMS’ commissioning arrangements have been “inappropriately prison oriented” and served to marginalise probation.³⁵⁶ NOMS is currently undergoing a process of reform and streamlining and the green paper anticipates that this will continue as responsibility for commissioning is increasingly devolved to local commissioners. Nevertheless, the abolition of NOMS’ regional tier—whilst overwhelmingly welcomed by our witnesses—leaves a void that ignores the potential benefits of commissioning in a way that enables a more strategic approach to be taken to the end-to-end management of offenders across their sentence. While the MoJ also aims increasingly to connect the prison system to local communities, it believes that: “[t]here will always be a need for some central management of prisons and a need to ensure capacity across the whole prison estate is used effectively”.³⁵⁷ According to Clinks, this centralised approach has restricted the capacity for more integrated

353 Q 425

354 Ev 224

355 Q 566; Q 570

356 See for example, Ev 184; w74; w103; 203

357 Ministry of Justice, *Breaking the Cycle consultation*, p 47

commissioning arrangements: “the prison service has, necessarily, retained the authority to move prisoners around the system in order to deal with the effects of overcrowding”.³⁵⁸

232. There is potential for greater cost savings within NOMS by reducing the continued duplication in central governance arrangements for prisons and probation, yet Assistant Chief Constable Long and Mr Chantler cautioned that there is a need to retain some coherence nationally as well as promoting stronger local governance³⁵⁹ Mr Chantler explained: “What ought to be required by the centre...is that you are meeting the needs of local communities and the need of engaging properly with the police and with prisons.”³⁶⁰

233. When we asked Mr Hill for a best-case scenario in terms of integrating prisons and probation he said:

integration does boil down to how you commission services and not to the organisational state of the different providers. The logic of your question really is that you then commission around either a locality or a group of offenders [...] it is probably the case that the vertical slicing, which links quite strongly back to Patrick Carter’s original model of offender management and following the individual through the system, makes, in my view anyway, for a more effective approach.³⁶¹

234. Lord Carter’s 2003 report proposed the separation of the case management of offenders from the provision of prison places, treatment services or community programmes.³⁶² Jonathan Ledger identified the potential for “structural tensions” to arise in a single commissioning model for a probation trust and several prisons.³⁶³ For example, prison is currently a national resource and probation a predominantly local one and, as we were reminded by Cllr Khan, the prisoner population are often not located in a prison near to the area where they will live on release.³⁶⁴ Surrey and Sussex, Merseyside and West Mercia probation trusts highlighted that when there is a defined local prison, relationships with local agencies are very good.³⁶⁵ For example, the Prison Service takes responsibility alongside other agencies in local partnerships including MAPPA and community safety partnerships.³⁶⁶

Geographically based commissioning

235. Witnesses advocated more local authority involvement in criminal justice.³⁶⁷ Echoing the views of our predecessor Committee, Andrew Neilson of the Howard League focused on the importance of ‘place’ in any new commissioning arrangements:

358 Ev 196

359 Q 693 [Mr Chantler]; Q 695 [Assistant Chief Constable Long]

360 Q 696

361 Q 599; Q 614

362 Patrick Carter, *Managing Offenders, Reducing Crime*, 2003

363 Q 415

364 Q 579

365 Qq 508, 691

366 Q 691 [Mr Quick]

367 Q 428 [Mr Neilson]

The problem also with the criminal justice system is its focus on the individual with the term “offender management” [...] A lot of the lessons from America and elsewhere recently, in the movement of justice reinvestment, show that place is important. It is just how big that place is and how you structure it. Two of the payment-by-results pilots are going to be local authority-based. Personally, I think they will be the most successful because of that. I wouldn’t overly obsess about the individual. The system has struggled to do that. In the hypothetical situation that you are positing [of local commissioning flowing from the court or as close to the sentence as possible], we are very far away from having the infrastructure and ability to do that.³⁶⁸

236. Some witnesses questioned whether the local incentives model proposed by the Government was the most appropriate means to build on existing local partnership arrangements. Drawing on the success of the ‘Total Place’ pilots, which showed the costs and processes associated with silo delivery of re-offending services and the savings that could result from a partnership approach, the Probation Association and Local Government Association urged a place-based budgeting model of locally driven commissioning that enables local budgets—including those of probation trusts—to be pooled to deliver outcomes for reducing re-offending more efficiently and effectively.³⁶⁹ This is not incompatible with payment by results, but the Probation Association proposed that place-based funding should be the foundation principle, with payment by results introduced to address very specific issues and commissioned by local agencies as part of their wider approach. The Government has shown interest in the potential for place-based budgets to be developed on a ‘thematic’ basis, covering specific complex policy areas, but not currently for reducing re-offending.³⁷⁰

237. We also heard that, while there are benefits in co-terminosity—as illustrated by the closer relationships that have been facilitated between probation and the police—it may not be possible to create uniform local commissioning arrangements across England and Wales that encompass local authorities, due to differences in governance arrangements, for example between urban and rural areas; it is therefore likely that any new structures would have to be locally determined.³⁷¹ For example, John Long of Avon and Somerset Constabulary considered that joint venture companies, such as that which had been established between the private sector, the police and local authorities in his area, could provide a flexible model of delivering payment by results at local level.³⁷² G4S and Naco similarly considered that there was scope for “joint ventures” between trusts and private or voluntary sector organisations.³⁷³ Cllr Khan believed that there was the potential for bringing the resources for commissioning prison places into a localised model.³⁷⁴

368 Q 442

369 Ev w116; 177

370 For example, DCLG is piloting community budgets—which pool departmental budgets for local public service partnerships to work together more effectively—for families with complex needs, with a view to implementing them nationally from 2013–14.

371 See e.g. Q 581 [Councillor Khan] Q 539; Q 565 [John Thornhill]; Q 444 [Mr Martin]; Q 695 [Mr Chantler]

372 Q 689

373 Ev 224; w134

374 Q 580

The role of sentencers

238. An effective commissioning model must also recognise the importance of sentencers. They make the decisions about the community and custodial sentences that the providers of probation services will manage.³⁷⁵ For example, London Probation Trust explained that “the separation in commissioning arrangements between probation trusts and courts/sentencers means that there is an inherent tension between what is demanded of probation services and what can be delivered.”³⁷⁶ Avon and Somerset Criminal Justice Board and Thames Valley Probation Trust agreed that services should be commissioned on the basis of a shared local strategic needs assessment which included contributions from judges and magistrates.³⁷⁷ Durham Tees Valley Probation Trust advocated a model in which resources were managed in such a way to allow them to be allocated at the point of sentence.³⁷⁸

239. Several of our witnesses highlighted difficulties with this.³⁷⁹ John Thornhill did not believe that sentencers should be involved with the direction of resources: “It is the responsibility of those delivering the sentence to ensure that there is proper provision of the sentences that the courts require. That management should be driven by sentencing, not by capacity [...] because we are judiciary, it is right for us not to be involved in the commissioning process.”³⁸⁰ Nevertheless, our predecessor Committee concluded in its inquiry on justice reinvestment that it would be helpful if sentencers were made aware of the relative cost-benefits of different interventions as one element that should inform their sentencing decisions. Several of our witnesses were supportive of this, although there was some debate about whether sentencers would engage in such considerations.³⁸¹ There is no mention of the importance of engaging sentencers in new commissioning arrangements in the Government’s green paper.

Potential solutions

240. While Mr Blunt acknowledged that the ideal would be to have an integrated local commissioning model for offender management, including prisons and probation, he perceived that the current overcrowding in the prison system would preclude such a possibility from driving the savings that are required, for example, because it would neither be possible to configure prisons on a more local basis nor to close institutions if the prison population is reduced.³⁸²

375 See e.g. Ev w74; w103; w122; w41; w52

376 Ev w99

377 Ev w41; w52

378 Ev w80

379 See e.g. Q 698 [Mr Chantler]

380 Q 572; Q 579

381 See e.g. Qq 672–3 [Professor Hedderman] ; Q 696–7 [Assistant Chief Constable Long]

382 Qq 719–723

He explained:

The logic of a vertically integrated service, and, say, a police and crime commissioner who is responsible for the management of criminal justice policy in their area, would be to allow local sentencers and a police and crime commissioner the freedom to pursue the criminal justice policy in their local area as they see fit. If they want to bang people up and their sentencers want to send people to prison for exemplary periods for burglary or whatever else it is in the county of Surrey, for example, and to have an extremely robust sentencing policy, well, that is fine as long as the people of Surrey are prepared to pay for it through their council tax because of all the prisons they are going to have to build to hold them. Equally, they could pursue a different policy which is focused on sharing the savings with the Ministry. The issue in those circumstances is that we would go to a completely different environment where the state was not procuring custody. I do not think we are quite ready to make that jump yet.³⁸³

241. Although it was not apparent to us that the MoJ had given much thought to the potential of vertical commissioning, the Minister highlighted Cumbria as an example of an area where such an approach may be possible, given the alignment of prison catchment areas with the areas of other local statutory agencies. He further suggested that the configuration of prisons into clusters under the new offender learning commissioning arrangements—whereby prisoners can serve their sentence at a group of prisons in a particular area as their category changes—may make it easier for local links to be established between prisons and local probation trusts and the management of their offenders.³⁸⁴

242. Devising a fully integrated model would be challenging to achieve in practice, but that is no excuse for failing to consider an approach which has great potential. Several witnesses, including Clinks, the Probation Association and some trusts, considered that local reducing reoffending boards, which have been created in some areas, and the proposed introduction of Police and Crime Commissioners, open new avenues for the local governance and commissioning of probation services.³⁸⁵ These could also eventually provide a platform for assimilating prison commissioning into local commissioning frameworks. For example, South Yorkshire Probation Trust proposes the establishment of a “Joint Commissioning and Reducing Re-offending Board”, chaired by a Police and Crime Commissioner and with representation from health and local authorities as well as sentencers, victims and the community. The Board would be accountable to the Community Safety Partnership and have responsibility for commissioning all interventions from a diverse market of providers; all agencies with statutory responsibility for reducing re-offending would have a proportion of their budget “top-sliced” to create a pooled budget that would also bring together existing funding streams which address offending.³⁸⁶ The Greater London Authority has created the London Crime Reduction Board that brings together a range of statutory partners involved in crime reduction and

383 Q 752

384 Q 749; Q753

385 See e.g. Ev 178; 196; w103; w125; w131; w139; Q 702 [Mr Long]

386 Ev w125

prevention at a strategic level, and enables improved cost-effective and innovative commissioning for all criminal justice services.³⁸⁷

243. There are also positive examples of what can be achieved if rehabilitative work “through the prison gate” could be commissioned across a whole prison region.³⁸⁸ The recommendation of our previous Committee to find a mechanism for the devolution of custody budgets similarly merits further attention.³⁸⁹

244. The separation of the commissioning of prison places from the commissioning of every other form of sentence provision has a distorting effect on the options available to sentencers. Ministers should, as part of their programme of reform of the criminal justice system, develop proposals which would end this separation and link the commissioning of both prison and probation at a level closer to the communities they are designed to protect. We believe that the responsibility for delivering the sentence of the courts should belong to a single offender management local commissioning body which deals with all aspects of custodial and non-custodial sentences. This would increase efficiency within the commissioning process and provide evidence about how effectual the sentences of individual courts are, which then could be fed back into future decisions of the court. Furthermore we believe there is scope for payment by results to be better integrated with other programmes, such as the DWP Work Programme. There is a real danger that proceeding on present lines will lead to the embedding of contracts which become an impediment to this very necessary reform. We recommend that a geographical area is chosen for piloting integrated commissioning of offender management.

387 Ev w124

388 For example, the Connect project funded by the European Social Fund. See Q 691.

389 Justice Committee, *Cutting crime: the case for justice reinvestment*, para 352

7 Practical issues in the application of payment by results to rehabilitation

245. Although there is undoubtedly scope to create a vibrant market in probation and rehabilitative services, it is clear that considerable development will be required to establish a strong competitive base that is financially stable and facilitates access to providers from a range of sectors and of a range of sizes. What it means to “create a level playing field” differs for, and within, each sector but there are also considerable cross-sectorial commonalities in what is required, no matter what level new commissioning arrangements are introduced at. Creating a market based on payment by results is also time-consuming.

246. Several of our witnesses commented on the complexity of developing a commissioning model based on payment by results. Helen Edwards, Director-General for Criminal Justice at the Ministry of Justice, gave us her views: “Although there is a good deal of agreement, or certainly we feel there is, around the payment by results approach and the concept, it is complicated and getting it right will be quite difficult.”³⁹⁰ Time is needed to develop market and complexity of devising a system of payment by results which Peter Neden of G4S believed would need to evolve: “the answer isn’t obvious and immediate. It might be a simple concept, but delivering it in reality is quite complex. The second point I would make is that it is not all or nothing. We haven’t gone from a world where people are just paid money for trying to do things to a world where we are only going to be paid for outcomes. There is a transition period that allows us as providers to become more confident about the payment-by-results system and to build the evidence base that is in the interests of both our clients and us as providers to be able to make those steps.”³⁹¹

247. John Thornhill described to us a series of concerns that sentencers would like to see answered as the Government designs the new commissioning model:

We raised the concerns [with the MoJ] about cherry-picking. We raised the concerns about how far this will be driven by profit rather than by effective delivery of the sentence. We raised the concerns about what would be the consistent approach across the country. For instance, what about the demographic issue? It will be attractive to bid for a contract in, say, somewhere like a large conurbation where there may be a wide range of clients to deal with. But in the country areas, again, what would be the difficulties there? How will they deliver across the whole of a large area? [...] We [subsequently] put a paper to the Ministry of Justice where we expressed the view that there needed to be very clear quality assurance and quality control built into the contracts, with regular appraisals, inspections, and the ability to withdraw from a contract—a whole range of commercial statements that you would have in a contract.³⁹²

390 Q 258

391 Q 617

392 Q 575

We discussed many of these matters with our witnesses and here we draw conclusions about some of the key issues that the Government will need to resolve as it creates a payment-by-results based commissioning model.

The creation of a stable market

Immaturity of the current market

248. UNISON described the existing market as “immature”.³⁹³ We were also told that NOMS has failed to establish an effective market in probation services and there continue to be shortcomings with existing national contracts with external providers.³⁹⁴ Jane Coyle of Blue Bay Support services was concerned that in her experience of engaging with the probation service to negotiate to provide more cost-effective pre-sentence reports and offending behaviour programmes, there is a lack of will to diversify the market.³⁹⁵ Roger Hill had similar concerns:

What matters is a construct that is based on a belief that a range of providers is a good thing for the system. I think the probation service are quite frightened of competition and, although they may describe a view that is similar to what I have just said, they don't really mean it. So long as we ask the system to reform itself, in my view, that reform is unlikely to happen.³⁹⁶

However, he further explained why he believed the market had not developed thus far:

The reason that there isn't a market and there isn't active competition is because the commissioners are not putting work to the market. It is providers and, as providers, we can influence that and we do it on a weekly, sometimes daily, basis. We are very keen to compete amongst ourselves and with the public sector. But until the commissioning decision is made, rather like the example I gave of community payback—and they are difficult decisions to make; I know they are because I have been on that side of the fence—there is any number of views as to why you shouldn't do it or, if you have to do it, why you shouldn't do it now. Those decisions have to be the first ones. Once you start to make them and become more confident, and NOMS becomes more confident as a commissioner, and I think it will under this new construct, then that market will develop. That is how markets do develop.³⁹⁷

249. Other witnesses suggested that this may have as much to do with a lack of central drive to open up the market as individual probation areas' reluctance to do so.³⁹⁸ Martin Narey explained to us that while he was CEO of NOMS there was a shift to less central enthusiasm for contestability.³⁹⁹ On the other hand, the impact of competitive forces and

393 Ev 184

394 See e.g. Q 423 [Mr Wright]; Ev w134

395 Q 596; see also Ev 223

396 Q 604

397 Q 611

398 See e.g. Ev 196

399 Q 463 [Mr Narey]

the threat of transfer can, in themselves, spur improvements within existing service providers.⁴⁰⁰ We have also heard that the financial situation that trusts and their local strategic partners now find themselves in has already encouraged greater external commissioning, both by individual trusts, as they have reviewed their core business, and by local partnerships, as they have been motivated to pool resources.

250. There are differences across the various sectors that must also be considered. For example, Clinks has suggested that there was a need to address cultural issues between the public and voluntary sectors.⁴⁰¹ Private sector procurement specialists with experience of working with NOMS, Excalibur, expressed concerns that the differences between dealing with prison-based and community-based offenders are not fully appreciated, either within NOMS and the MoJ, or by potential new providers.⁴⁰² As we noted above, Napo has raised similar concerns about the cultures of prisons and probation, which would have implications for the design of a new commissioning model.

251. There is likely to be considerable variation across England and Wales in the work that will be required to establish a stable market. In some areas there will be a local infrastructure of existing organisations but in others this will need to be developed. For example, some trusts noted that voluntary sector providers would need to build up their capacity to take a greater role.⁴⁰³ In addition, there is a strong likelihood that the economic situation will have a considerable impact in diminishing the range of providers whilst there is an increase in demand. We heard that this is a particularly “big issue” for the voluntary sector. For example 60% of Clinks members were using free reserves to finance frontline delivery.⁴⁰⁴

252. The MoJ must not underestimate the work required to create a stable market and it must take into account the existing cultural differences across the different sectors and the complex nature of probation work. There is also clearly a possibility of early commissioning failures and, in order to maintain public confidence in the system, the MoJ must have clear contingency plans for dealing with any such problems which may arise. Innovation involves risks and those risks need to be managed.

Transparency and an effective dialogue

253. According to the CBI, a prerequisite to the creation of effective markets is for commissioners to establish and maintain “open communication” with potential providers, for example, to ensure that contracts are acceptable to the commissioner and the market.⁴⁰⁵ Roger Hill explained why he felt communication and consultation were important: “[Sodexo] would like to see the continuing competition of public sector prisons and we would like to be part of constructing how payment by results, locality based commissioning, place based budgets and all of that develops, because we take the view that

400 Ev 200, citing Julian LeGrand; see also Q 478 [Mr Narey]

401 Clinks, *Response to Breaking the Cycle consultation*, March 2011

402 Ev 219

403 See e.g. Ev w95

404 Qq 444, Q 452 [Mr Martin]

405 Ev w9

there isn't a straightforward simple answer as to how to do that. It requires a lot of thought and a lot of discussion and we would like to be part of it."⁴⁰⁶ Catch22 advocated earlier involvement of the voluntary sector in the development of new commissioning practices.⁴⁰⁷ There does appear to have been communication between NOMS and providers from the private sector on the new commissioning strategy.⁴⁰⁸

254. Conversely, the Probation Association expressed disappointment that NOMS had not consulted them about either the tenders for community payback or the forthcoming commissioning strategy.⁴⁰⁹ Sebert Cox, Chair of the Probation Association, explained the implications of NOMS' lack of consultation with probation trusts with respect to the community payback tendering process: "The concern here is that we have been thrust into this particular competition without any consultation whatsoever. If we had had that, we might have been able to advise on the best route to take to end up in a place where we will save money and possibly keep the localism agenda intact, because lots of work has gone into ensuring that services on the ground have been properly thought through with partners and so on".⁴¹⁰

255. There is a need for open communication with providers from all sectors to inform the commissioning strategy as well as in any future competitive processes to ensure that the best balance can be struck between efficiency and localism. We are concerned that this does not appear to have been the case to date.

Implications for training

256. Unlike the work of prison officers, which our predecessor Committee concluded was best informed by "life experience" rather than extensive formal qualifications, a thorough supervision and training process for probation work is necessary to equip professionals with the skills and knowledge that they need to exercise expert judgment and discretion in managing offenders safely in the community and to provide a basis for consistent performance.⁴¹¹ However, the qualifying framework is not currently easily accessible to candidates outside the statutory sector, and there are no equivalent qualifications available to practitioners in private or voluntary organisations.⁴¹² The infrastructure for training would also need to be re-considered, as few regional training consortia now exist and regional training arrangements rely on support by chief executives of trusts.⁴¹³ There is similarly a need for consistent post-qualification arrangements.

257. The Probation Chiefs' Association stated that trusts already have the business skills to commission offender services, although some trusts suggested that additional training was

406 Q 616

407 PB 44

408 Qq 614-5

409 Q 343; Q 351

410 Q 350

411 Ev w95; w103; see also Q 464 [Mr Narey]

412 Ev w38

413 Q 186

required.⁴¹⁴ When we asked Robin Wilkinson, Director of NOMS Human Resources, what training he envisaged would be required to equip trusts under any new commissioning arrangements he responded: “there has already been quite an investment in thinking through what commissioning means, and in training and developing key staff within probation trusts around those skills, but it is clearly going to be an on-going part of our world.”⁴¹⁵

258. 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 to work with particular types of offender, and a high-quality service provided, we would like to see the MoJ working with Skills for Justice to create a framework for both accredited qualifying and post-qualifying training that is accessible to all providers.

The complexity of designing a payment by results commissioning model

259. Helen Edwards described what she foresaw as the role of the Ministry of Justice under any new commissioning arrangements:

We will still have responsibility overall for standards. In the way we put contracts together, we will want to be clear about the parameters and who is responsible for what. We have yet to work out the detail of that, but I think, overall, the broad approach is for more discretion to be exercised by those who provide services, and with that goes increased responsibility for what is done.⁴¹⁶

260. We heard that working through this detail was likely to be incredibly complex. Witnesses have raised questions about the implications for the application of payment by results to criminal justice of: the risks of failure in terms of public protection; the validity of indicators of reduced re-offending; the costs to providers of monitoring and the national costs of commissioning; ownership and commercial confidentiality of information; and the quality of the evidence base on which to base commissioning decisions.

The flexibility of contracts

261. There will be a need to strike a balance between over-prescriptive contracts which may inhibit innovation and including sufficient safeguards to promote quality services that are effective at both reducing re-offending and protecting the public, particularly in the context of fewer national standards.⁴¹⁷ We heard that in other fields a so called “black box” approach had been adopted whereby “the commissioning department defines very clearly the high-level outcomes it wants to achieve...but they leave it up to a provider to then

414 Ev 156; see e.g. w44, w48, w103, w122

415 Q 208

416 Q 262

417 See e.g. Q 445 [Mr Wright]; Q 236 [Professor Chalkley] Ev 224; Q 224 [Ms Byrne]

determine how they are going to find a solution to that”; the requirements in contracts generally have been limited to legal requirements to deliver a minimum service.⁴¹⁸ On the other hand, while part of the potential value of payment by results is in the transfer of risk and responsibility to the provider, there is a danger that public protection will be compromised if contracts are not properly designed. Mr Eccles of Social Finance identified potential tensions arising in applying such a model to some areas of probation work as public safety concerns may increase the extent to which service provision is specified by the MoJ.⁴¹⁹ However, in practice it may not be easy to draw such distinctions, as the risk presented by an individual offender does not remain static throughout the duration of the order.⁴²⁰ It is possible, however, to build a set of principles into the contracting process, including for example, safeguards around working with vulnerable individuals, including victims, engagement with sentencers and treating people with dignity and respect.⁴²¹

262. Contracts also need to be flexible enough to ensure that providers address offending-related needs as and when they arise rather than purely on the basis of the sentence of the court and any assessment of needs at the time of the order. Probation trusts frequently go above what is required in their service level agreements with NOMS, by providing a greater volume of interventions than they are contracted to and by engaging in partnerships to work with offenders who are not their statutory responsibility.

263. The Ministry of Justice will need to ensure that contractual specifications include adequate safeguards for public protection. The current work of probation services is not just about meeting the obligations in their contract; its work is about serving the demands of the courts, which cannot be easily predicted, and being sufficiently flexible to meet the offending-related needs of individuals as and when they arise. The Government must clearly specify in its new commissioning strategy how it intends to ensure that contracting arrangements with providers from other sectors will accommodate these needs and respond to unexpected changes.

Diversity

264. The progress that probation trusts have made towards more equal treatment in the criminal justice system could be undermined if contractual safeguards are not put in place. Probation trust performance analysis incorporates diversity criteria to enable improvement. Avon and Somerset Trust considered that it will be important for any providers of probation services to at least meet the current attention paid to diversity and equalities.⁴²² Nevertheless, the green paper does not comment on the implications for addressing diversity of contracting out services and the potential loss of the public sector equality duty; neither is it clear whose responsibility it would be to monitor practice in this regard.

418 Q 224; Q 236

419 Q 245

420 Q 374 [Mr Ledger]

421 Q 252 [Mr Eccles]; Q 645 [Mr Hill]

422 Ev w103

265. From April 2011 the public sector has had a statutory duty to take positive action to eliminate gender discrimination and promote equality under the Equality Act. We would welcome a clear statement in the commissioning strategy about how the equality duty will apply to providers outside the public sector and how the Government intends to ensure that probation and rehabilitative practice is fair and inclusive, particularly in the context of increased provider and professional discretion.

Designing appropriate payment mechanisms

266. The Government's proposed model for the application of payment by results to community sentences is to make an initial payment to providers for the delivery of community orders and a subsequent one for reducing reconviction, yet it does not intend to provide additional resources up front to finance local incentive schemes. We had a great deal of discussion with our witnesses about their views on the key components of effective payment mechanisms, including the appropriate results, to ensure that they are attractive to potential providers; are financially viable; they facilitate the participation of a range of cross-sector providers; and provide the right incentives to ensure that the aims of the criminal justice system are met.

Access to working capital

267. Access to working capital was raised as an issue which could undermine the ability of organisations across all sectors, particularly small and medium sized organisations, including probation trusts, to participate under both the models described above. For example, trusts themselves are not in a position to bear the financial risk of investing money in services to facilitate payment by results schemes, either in terms of having the sufficient funding to invest upfront in new services or to sustain themselves in the event that they do not get paid, a problem exacerbated by the fact that they are not allowed to hold reserves.⁴²³ For example, Clinks identified that “risk appetite will be very low at the local level where [VCS] organisations have little or no reserves” and Catch 22 argued that access to capital from mainstream financial services which, it stated, are “much more geared towards catering to the private sector”.⁴²⁴ Cash flow, and the level of financial risk, is also an issue for both small and large private sector organisations, for the latter particularly where it is difficult to make informed investment decisions as a result of a lack of evidence.⁴²⁵

268. While witnesses welcomed the Government's proposed model of payment for community sentences, described by Christine Lawrie as a “core plus” payment system, we heard that to make payment by results viable for any organisation it will be important to

423 Q 356; Q 517 [Mr Steele]

424 Ev 200; Clinks, *Payment by results: what does it mean for voluntary organisations working with offenders*, October 2010. In cases where existing probation services become provided by other sectors there are also TUPE-issues related to the employment conditions of public sector staff, including their pension arrangements, which could be prohibitive. See e.g. Ev 194, w95, w85, w150

425 Q 634

get the ratios right between upfront “guaranteed” payment to provide working capital and the element attached to “results”.⁴²⁶

269. Social finance funding for the Peterborough project has come from trust funds and the Big Lottery Fund.⁴²⁷ However, Andrew Neilson of the Howard League, Clive Martin of Clinks and A4E were sceptical that there would be sufficient social investors interested in criminal justice in the short-term.⁴²⁸ Andrew Neilson warned that, in his view, payment by results pilots, and the six year social impact bond project in Peterborough in particular, will not be able to prove itself in sufficient time to attract new money into the system; payment by results is not going to reduce the numbers in the criminal justice system any time soon.⁴²⁹ There may also be difficulties in designing financially viable schemes as the minimum size for a social impact bond model is dependent on what is statistically significant in terms of reducing reconviction for the target population as well as the size of the cashable benefit of that reduction. Rob Smith of YSS explained that West Mercia had been trying to develop a similar project for two years but “the scale you have to get to in order to make the cashable savings for the Treasury appears so large and is very difficult to overcome. Agreeing a set of metrics to a more rigorous standard that had probably been initially worked out for the Peterborough model is making it impossible to develop anything at present.”⁴³⁰

270. Crispin Blunt was more hopeful about the role that private investors could play in bringing new resources into the system:

I would sincerely hope that it will not just be Social Finance coming forward to finance schemes like Peterborough, and social philanthropists and charitable trusts investing in Social Finance to deliver Peterborough. I sincerely hope that with our payment-by-results schemes we will be able to convince the market that this is a proper investment vehicle, because they should be sufficiently confident that they are going to add to our capacity to drive down reoffending and so improve the people in the care of the state, either in custody or in the community, that we are going to be able to take the savings that they have invested in creating the capacity to do it. That has to be the objective.⁴³¹

271. Our predecessor Committee considered the relative merits of performance incentives versus financial incentives for driving reductions in re-offending to the extent required to prevent prison population growth. It concluded that additional financial incentives had the potential to accelerate progress at local level; evidence suggested that this would require some pump-priming.⁴³² There is considerable scope for partnership approaches to provide viable alternatives to short-custodial sentences but these can require high initial

426 Q 443 [Mr Smith]; Q 356 [Ms Lawrie] Q 441 [Mr Wright]

427 Q 453 [Mr Martin]

428 Q 444 [Mr Neilson]; Q 453 [Mr Neilson, Mr Martin]; PB66

429 Q 453

430 *Ibid.*

431 Q 739

432 Justice Committee, *Cutting crime: the case for justice reinvestment*, para 352

investment, and Hertfordshire Probation Trust questioned whether the local incentives model would facilitate their development.⁴³³

272. When we questioned the MoJ about the viability of the local incentives model when no additional resources would be provided, it recognised the difficulties of organisations getting working capital to finance start-up costs but was clear that it did not expect to have to provide the resources to underpin service provision.⁴³⁴ The Youth Justice Board has taken a different approach—more akin to our predecessor Committee’s recommendations—and created a small reinvestment fund.⁴³⁵

273. We see that there is considerable potential in social finance, but it will take time to develop. The Ministry of Justice should learn from the experience of other Departments including the Department for Work and Pensions and the Department of Health.

Choosing appropriate outcome measures

274. The complexities of devising appropriate outcome measures on which to base payments in criminal justice must not be underestimated; the relationship between intervention and outcome is less straightforward than in other fields.⁴³⁶ It is the Government’s intention that the main ‘result’ that would attract payment is reduced reconviction. However, reduced re-offending is by no means the only purpose of a sentence: courts must also consider appropriate punishment, public protection, general deterrence and reparation to the victim. This raises the question of whether it is appropriate to assess an intervention in terms of a single purpose when it may have been intended to achieve others.

275. There are also questions about the reliability of the various indicators of reconviction and about which would be most appropriate for payment by results. Reconviction is used as a proxy measure for reoffending because it is the best indicator available, although there are obvious limitations in its use, not least that recorded crime accounts for between only a quarter and a tenth of total crime. Levels of reconviction also vary by offence and by police area, so that variations in rates may reflect variations in policing performance; and they are dependent on the efficiency of the courts.⁴³⁷

276. As a result of attempts to improve the sophistication of reconviction as an indicator of re-offending, a number of measures have been used in recent years. Examples include a measure of the volume and severity of offences committed, and a local re-offending snapshot measure, which takes a cross-sectional approach to examine the reconviction rates of the caseload of each trust on a given day.⁴³⁸ Probation trusts currently use the

433 Ev w139

434 Q 265

435 *Ibid.*

436 See e.g. Ev w149

437 See e.g. Q 486 [Mr Narey]; Q 660–661; Q 704 [Mr Chantler]

438 The baseline indicator of effectiveness currently used by the Ministry of Justice relates to the volume of re-offending (number of offences) per 100 offenders rather than an absolute measure i.e. the percentage of offenders who have or have not reoffended.

snapshot measure coupled with a series of proxy measures, including successful completion of orders or licences and entering employment or stable accommodation.⁴³⁹ The Ministry of Justice has identified three indicators which could be used as an outcome measure of reduced re-offending: 1) All proven re-offending, including reconvictions, cautions and penalty notices for disorder; 2) All proven re-convictions; or 3) Reconvictions leading to a serious disposal i.e. community order or custodial sentence.⁴⁴⁰

277. Witnesses explained that measuring re-offending is very complex and that, as a result, there are limitations with each measure.⁴⁴¹ The most robust or accurate measures cannot be provided until a year or two years after sentence; this time-lag would have important implications for cash flow in a system of payment by results.⁴⁴² Martin Narey explained why he favoured frequency measures: “What we need to know when we are looking at what we do with offenders is whether they offend less, both in terms of quantity and gravity of offending. If someone leaves a prison after a 10-year sentence for an armed robbery and is convicted within the next two years for a petty theft, that is seen as a failure, when actually that is probably a great success.”⁴⁴³ Another potential issue is that re-offending is currently measured against a national baseline which would fail to account for existing local variations in performance, yet the existing local indicator used by trusts—the snapshot measure described above—is not comparable to the national baseline.⁴⁴⁴ Nationally, we were told that the snapshot measure is indicating a “statistically neutral” impact, i.e. that probation trust practices are having neither a positive nor negative effect on re-offending.⁴⁴⁵ South Yorkshire is reportedly the only trust where there has been a statistically significant reduction in re-offending levels since the introduction of the snapshot measure: over 90% offenders do not re-offend.⁴⁴⁶ The snapshot measure is currently being reviewed by the MoJ. Hazel Kemshall advocated examining the impact of local probation practice on re-offending by examining actual reconviction against what it is predicted those offenders would do based on risk assessment measures in OASys.⁴⁴⁷

278. The choice of indicator of reconviction is important so as to ensure that providers are adequately incentivised to target the right offenders. The Ministry of Justice also noted that there may be a case for rewarding providers differently for rehabilitating different types of offender, for example, female offenders, offenders from minority ethnic groups and young adults.⁴⁴⁸ If this were to be the case it may be necessary to use different indicators of re-offending for different types of offence and over different time periods.⁴⁴⁹ Clive Martin argued that measures would need to vary by type of offence, for example, sexual offences,

439 Q 501 [Ms Crozier]

440 Ev 171

441 See e.g. Qq 331–332 [Ms Hall]; Q 503 [Ms Crozier]; Qq 660–661 [Professor Pease; Professor Hedderman]

442 Q 517; Q 660

443 Q 485

444 Q 517; Q 662 [Professor Hedderman]; Ev w134

445 Q 503 [Ms Crozier]

446 W125

447 Q 657; Ev 227; see also Ev w122

448 Ev 171

449 Q 449

would require a binary measure, but for a persistent drug user, for example, it would be unrealistic and may require intermediate measures e.g. completion of a drug treatment programme.⁴⁵⁰

279. We welcome the Ministry of Justice’s review of the local snapshot measure of re-offending. Once a new, more robust, measure is devised, it would be prudent for the Ministry of Justice to commission research to examine practice in the best and least performing trusts so as to strengthen the evidence base.

Interim/proxy measures

280. As a result of the limitations of reconviction measures, several witnesses called for the use of interim or proxy measures for those factors proven to have a critical role in reducing re-offending as a sounder basis for payment by results.⁴⁵¹ For example, Hertfordshire Probation Trust proposed that payment could be determined by achieving specific measurable results such as commencement and completion of treatment or intervention or commencements and completion of qualification with an overall supplementary payment linked to re-offending.⁴⁵² These measures are useful, particularly in the absence of a strong evidence base, as there is a relationship between an offender’s compliance with their sentence and behavioural change.⁴⁵³ However, the factors known to be associated with offending are not separate but inter-related—for example, being without employment makes it hard to find settled accommodation and vice versa.⁴⁵⁴ Martin Narey emphasised this point, telling us that

Despite the flaws in the research, what the research tells us over and over again is that, if you get a prisoner, or someone on a community penalty, somewhere to live and into employment or training, they will offend much less, by about a half. There is lots of analysis to prove that. A valid measure of success for community penalties or for prisoners would be having somewhere to live and in a job after release. That would give you a dependable indication of the likelihood of someone not reoffending.⁴⁵⁵

Graduated and differentiated payments

281. There is also the question of how best to incentivise providers to avoid the risks of “creaming and parking” of potential clients—i.e. focusing their services on those who would be most likely to achieve the financial outcome—which has been a problem with models in other fields, notably under DWP programmes.⁴⁵⁶ This is particularly important in criminal justice as “cherry picking” offenders would represent a potential threat to public safety.

450 Q 447; see also Q 491 [Mr Narey]

451 See e.g. Qq 486, 488 [Mr Narey], Ev w143

452 Ev w139

453 Q 501 [Ms Crozier]

454 Ev w139

455 Q 486

456 Q 222

282. Councillor Khan summarised the potential hazards in using inappropriate measures to determine payment: “Whatever size of contract is given, if there is the same tariff for all the individuals, I just think if I had this limited resource to work with that client group I am going to try and get the most bang for my buck on that, which is why differential payment tariffs are really important on that.”⁴⁵⁷ It is thus important that the “result” upon which payment is based is carefully calibrated to ensure that providers cannot choose to work with the “easiest offenders”.

283. Other witnesses similarly suggested that differentiated payment models should be devised to incentivise providers to work with those offenders who may be harder to rehabilitate. For example, under the DWP Work programme initial payments, or “attachment fees”, are made on the basis of eight categories which relate to the type of customer, including for example, lone parent, ex-offender, young person, and the duration of a person’s unemployment; there are subsequent weighted payments on a pure outcome basis that are differentiated again by a customer cohort basis.⁴⁵⁸ The Department of Health has designed a complex tariff for mental health care under which payments determined using a set of 21 ‘care clusters’ that together form ‘currencies’ or units for contracting; each cluster defines a group of service users who are relatively similar in their care needs and therefore in their resource requirements. It is worth noting that it took considerable time to devise these metrics.

284. However, we heard that it can be difficult to define “who is hard to help or how they are hard to help, and how much to pay extra for those who are hard to help”.⁴⁵⁹ Hertfordshire Probation Trust suggested that a supplementary payment linked to re-offending levels could be used to incentivise partnership co-operation, whereby all agencies are working to an overall shared outcome. It also proposed a banded system of differential payments to encourage work with range of offenders e.g. first-time, intermediate, prolific and high risk of harm.⁴⁶⁰ Another option would be to align the bands with the four tiers of the offender management model, which rank offenders according to their risks of reconviction. For example, Councillor Khan explained:

One possible solution is that, for those clients who have the highest risk of reoffending, their payment by result tariff is larger than for those who are at a low risk of reoffending. Therefore, within the system, regardless of which client group you are working with, the input you put into that particular client and the output that you receive is commensurate. That kind of system is going to be more difficult and bureaucratic to manage, but I believe in the longer term it will deliver the best results.⁴⁶¹

285. There are also examples of graduated payment for achieving a mixture of activities and outcomes. Chris Wright drew our attention to Catch 22’s INSPIRE youth resettlement programme under which it receives payment on the basis of: 10% on contract signing; 15%

457 Q 574

458 Q 219; Q 221

459 Q 252

460 Ev w139

461 Q 573

on starts; 25% on positive activities or skills development; 20%* entry to employment, 30%* on sustainable job outcomes (*or sustained education or training if under 16).⁴⁶² The Peterborough social impact bond pilot is tasked with reducing the frequency of offending for a whole cohort of ex-prisoners which provides a natural incentive to work with those most likely to re-offend.⁴⁶³

286. As outcome-based payment models in other sectors have evolved, differentiated payments have been introduced to suppress the propensity of providers to focus on those who are easiest to help. We urge the Ministry of Justice to ensure that any model of payment by results builds in incentives for providers to work with all offenders from the outset, and that interventions are especially targeted at the riskiest offenders. We favour the development of a graduated payment system which includes some upfront funding, with additional payments based on proxy measures and then ultimately on reduced re-offending.

Developing a business case

287. The Government believes there is a strong economic and social case for investing in rehabilitation and scope to increase the use of rehabilitative requirements in community sentences, yet at the time that the green paper was published, it had yet to develop the business cases for the individual rehabilitative proposals.⁴⁶⁴ In order to develop a business case an analysis of the costs of existing services is required, which can be built on—once evidence on outcomes, and their costs, is available—to generate a cost-benefit analysis.⁴⁶⁵

288. Work is underway to improve NOMS' information on costs to provide a framework for future commissioning. By April 2012, the Specification, Benchmarking and Costs (SBC) programme will have developed: a directory of over 70 services that NOMS funds for delivery to offenders, defendants, victims and courts so that costs and performance can be compared; service specifications with clear outcomes and outputs, so that any provider can deliver services under service level agreements or contracts; operating models to help determine what services should cost and show how the service could be delivered effectively and efficiently; and direct service costs to allow NOMS to understand the impact of commissioning decisions. However, Ms Byrne stated that, despite having initial costings, it has taken at least 15 years for the Department for Work and Pensions to be “reasonably confident” that they have a “fairly accurate” calibration of cost.⁴⁶⁶ Martin Narey admitted that in the early stages of prisons competition there was not a very sophisticated understanding of public sector costs.⁴⁶⁷

289. Crispin Blunt acknowledged that building payment by results commissioning model would be a learning process:

462 Q 443

463 Q 252; Q 289

464 Ministry of Justice, *Breaking the Cycle consultation*, p 8–9

465 Q 230

466 *Ibid.*

467 Q 482

In the course of all of this, people will make losses and some people will make supernormal profits, because people will make judgments both in writing the contracts in the public sector and in taking up the contracts in the private sector which they will get right and get wrong. We are just going to have to learn as the market develops to make sure we get closer and closer to what should be a proper rate of return because it does not suit anybody if a company makes a disastrous decision, loses its shirt and then finds it is in difficulty delivering its contract. That does not help us any more than it does if it then becomes a national scandal that this company appears to be fleecing the taxpayer by having taken them to the cleaners in writing the contract.⁴⁶⁸

290. Witnesses identified some problems with basing a new commissioning framework on the costs determined under the SBC programme. Some trusts, including Wiltshire and Staffordshire, noted difficulties in achieving increased innovation within the context of the highly prescribed service specifications which they are currently subject to.⁴⁶⁹ Furthermore, Durham Tees Valley Probation Trust argued that the SBC programme has taken little note of the effectiveness of services delivered.⁴⁷⁰ Cambridgeshire and Peterborough Probation Trust therefore expressed a need for a realistic specification of services to be provided.⁴⁷¹ The SBC costs were also based on service specifications that were based on the old national standards. Under the Pathways to Work scheme the contracting price was determined through a more iterative competitive tendering process where tenders are submitted and defined by those who are tendering, and then assessed as part of the competitive process.⁴⁷²

291. The introduction of payment by results into criminal justice is intended to be cost-neutral.⁴⁷³ Nevertheless, while there is the potential for cost savings to stem from driving out existing inefficiencies, and from ‘upstream’ savings by reducing reoffending, there is also the prospect that costs will increase. For example, UNISON believed that such a system would require additional bureaucracy for the oversight of commissioning arrangements, contract management and quality assurance which would divert resources from the frontline.⁴⁷⁴ Indeed the application of payment by results in health and employment resulted in increased costs. For example, administrative costs were estimated to have increased by around £100k–£180k in hospital trusts and from £90k to £190k in primary care trusts (PCTs). Most of the additional expenditure was due to: recruitment of additional staff; higher costs of data collection; higher monitoring costs; and higher enforcement costs. While there are lower costs in negotiating prices and volumes, this is offset by difficulties in managing activity levels.⁴⁷⁵

292. There would undoubtedly be some cost implications for the application of payment by results to criminal justice. For example, Tessa Webb, Chief Executive of Hertfordshire

468 Q 739

469 Ev w26, w6

470 Ev w80

471 Ev w93

472 Q 218

473 Q 264

474 Unison, *Response to Breaking the Cycle consultation*, March 2011

475 Centre for Health Economics, *The administrative costs of payment by results*, July 2006

Probation Trust, stated that the probation service does not currently have access to the police national computer which provides data on re-offending.⁴⁷⁶ Sonia Crozier, Chief Executive of Sussex and Surrey Probation Trust has commissioned research to create a costing framework to assess the impact of local delivery models which would be required to facilitate the implementation of payment by results.⁴⁷⁷ We were told that other than for the evaluations of the pilots, the MoJ has not budgeted for an increase in administrative costs; indeed the administrative costs of the Department are being reduced by 30% over the spending review period.⁴⁷⁸

293. Nevertheless, it is also important for the Government to reflect on the potential benefits of greater investment in generating better outcomes. Mr Eccles raised concerns that consideration of the merits of any new commissioning model on cost alone could overlook the need for contracting processes that deliver higher quality services and better outcomes; it should focus on value for money.⁴⁷⁹

294. In any new commissioning model there is a need for a balance to be struck in ensuring that the administrative costs of any new system do not outweigh the potential benefits. The Government's pilots should be designed to enable them to create a business case for a viable model of justice reinvestment to be implemented over the next spending review period.

The quality of the evidence base

295. For any provider, judgments about the type of services to commission need to be based on the best available evidence if they are to have optimum impact on the reduction of re-offending, and hence on being paid. Although there has been a major drive to implement effective practice in terms of the delivery of probation interventions, the evidence of programmes having a demonstrable impact on reconviction is patchy, and the emerging importance of desistance theory, which offers an alternative understanding of how best to stop offending, is largely untapped, and therefore untested.⁴⁸⁰ Mr Eccles summarised the situation: “while there is a lot of data available to predict whether people will reoffend or not, there is less data available on interventions that will work to stop them.”⁴⁸¹ Mr Martin identified a risk that commissioning decisions may be “arbitrary and based on almost historical practice.”⁴⁸² There is also a risk that this will undermine the ability of the MoJ to bring new money into the system.⁴⁸³

296. Professors Hedderman and Pease explained that there are limitations in the methodology that enables comparisons of the effectiveness of custodial and community sentences, as reconviction is counted from the day of release for imprisonment and from

476 Q 332

477 Qq 512–516

478 Q 264

479 Qq 239–240

480 Q 430 [Mr Martin]

481 Q 253

482 Q 430

483 Q 445; Ev 230

the date of sentence for community sentences, yet they disagreed about whether a uniform measure should be based on the beginning or end of the sentence.⁴⁸⁴ They also had different interpretations of the evidence that was available to compare these sentences. Professor Hedderman cited Ministry of Justice evidence that “seems to show” that the impact on reconviction of probation and suspended sentence supervision is greater than a short prison sentence. On the other hand, Professor Pease’s interpretation of other available evidence from the MoJ was that it “appear[ed]” that community sentences make no difference to reconviction as “one can predict the probability of reconviction on the day of sentence as well as one can at the end of sentence”; he also cited similar international evidence from the limited number of randomised controlled trials comparing short prison sentences and community payback that have been conducted in this field.⁴⁸⁵ Professor Hedderman was sceptical of the value of randomised controlled trials in evaluating the effectiveness of sentencing because sentencing is not random, i.e. the particular circumstances of the individual form an important part of the sentencing process.⁴⁸⁶ While there are some cost-effectiveness evaluations, notably by Matrix, that indicate that community supervision is more cost-beneficial than prison, the methodological issues described above have implications for the ability of providers to understand the relative cost-effectiveness of particular interventions.⁴⁸⁷ **The Ministry of Justice needs to develop a measure that enables the effectiveness of prison and community sentences to be compared more robustly.**

Potential to strengthen the evidence base

297. The Secretary of State believed that payment by results provides an opportunity to strengthen the evidence base: “If people start making claims and we contract for it, one minor side effect might be that we get improved information about what actually is happening in terms of re-offending and different types of treatment.”⁴⁸⁸ However, Mr Eccles of Social Finance believed that while payment by results offers the potential quickly to build a large set of evidence, realising the benefits of the data is dependent on ensuring that providers are willing to, or contracted to, make the information generated public.⁴⁸⁹ Mr Ledger, General Secretary of Napo, explained that “[the probation service] is very much based on altruism and the belief in co-operation, and the sharing of ideas and views”, thus where academics or probation practitioners have developed work it has been shared: “it has not been something to sell or to keep to yourself in order to compete over it”.⁴⁹⁰ According to Helen Edwards, the Ministry of Justice is currently adopting a collaborative approach to information sharing within pilot projects but acknowledged that “once you go into a competitive process it gets more difficult.”⁴⁹¹ The Ministry of Justice is funding the evaluations of the payment by results pilots and will in future have responsibility for

484 See Qq 648–650; 660–661

485 Qq 650, 654, 655

486 Q 657

487 Qq 669–671

488 Oral evidence taken before the Justice Committee on 21 July 2010, HC 371-i, Q 52

489 Q 228

490 Q 291

491 Q 263

disseminating good practice. It is not clear whether national or local commissioners will be expected to evaluate the outcomes of payment by results contracts once they are rolled out.

298. It could be argued that the idea of payment by results is predicated on a notion of cause and effect that does not fit well with what is known about the nature of desistance i.e. stopping offending. Interventions do not ‘cause’ people not to offend. What is known about the processes of change is that desistance is not a linear path, it is characterised by lapse and relapse and a results framework could struggle to comprehend that. Tessa Webb explained: “you have to weigh up outcomes in a variety of ways. That is one of the challenges that the probation service really struggles with [...] we see achievement with offenders, but it is two steps forward and one step back [...] it is about how you measure progress. Desistance is the ultimate goal.”⁴⁹² Nevertheless, Professor Pease believed that incentivising probation services and other providers potentially offered a means of strengthening the evidence base on the interaction between the qualities of staff and behavioural change leading to reduced reconviction.⁴⁹³

299. Nevertheless, while it is difficult to establish firm causal links, several trusts gave us examples of reductions in re-offending, and resulting cost savings to the public purse, as well as to individuals and households, that seemed to be strongly associated with changes in practice, including prolific and priority offender schemes, intensive offender management schemes and transition to adulthood programmes.⁴⁹⁴ It is harder to translate these into cashable savings from the prison budget, although this had been achieved by the Youth Justice Board.⁴⁹⁵

300. It is important that data and information sharing is not inhibited by the rules governing commissioning and competition.

Attributing results

301. The MoJ noted that “[a] particular challenge in developing [payment by results] is ensuring that the results delivered are attributable to the work of the provider and do not generate any adverse outcomes.”⁴⁹⁶ Witnesses agreed, particularly in the context of a range of payment by results programmes being introduced across Government.⁴⁹⁷ Professor Chalkley explained how this challenge had manifested itself in health: “There has been big literature in health care about the practicality of paying according to genuine outcome, as in whether the treatment is successful. That literature emphasises the difficulties that would be involved in doing that: the difficulties in establishing whether it is the actions of the hospital or the actions of health carers that have given rise to the outcome rather than just chance and good or bad luck.”⁴⁹⁸ However, the Secretary of State told us that “You have to put up with the fact that if you pay people because someone does not re-offend, in some

492 Q 332

493 Q 659

494 Q 705 [Mr Chantler]; Ev w131; Q 503; Q 505; Q 539 [Sussex and Surrey Probation Trust]

495 Q 699, Q 705 [Mr Chantler] Q 706 [Mr Long]

496 Ev 171

497 See e.g. Q 450; Ev 227

498 Q 215

cases they will be just lucky because nothing they do has contributed but the man will not offend again.”

302. Mr Blunt displayed a similar lack of concern about the potential for Government to be making duplicated payments for work with an individual offender across several different payment by results schemes:

If there is overlap—someone takes a drug-addicted prisoner and turns him into a tax-paying employee, and they get the bonus for getting someone into work; they get paid for getting a drug addict clinically independent of drugs; and they get paid for stopping an offender reoffending, so they manage to score under three different schemes—I suspect that is probably a perfectly satisfactory state of affairs [...] It is our job to make sure that one of the schemes isn’t paying for all three of them up front and they are getting paid double underneath.⁴⁹⁹

303. Effective application of payment by results measures must be sensitive to what is and what is not within the control of the provider, otherwise there is a risk of: perverse incentives to manipulate results to meet a payment measure, for example, not to arrest or not to breach; or inaccurate conclusions, if the positive results are not related to the intervention.⁵⁰⁰ Hertfordshire Probation Trust explained that there was potential for the police not to arrest in order to meet a payment by results measure, for example. Inaccurate conclusions could be drawn about effectiveness if positive results are not related to the intervention.⁵⁰¹ Perverse incentives might also hinder effective approaches. For example, Hertfordshire’s ‘Choices and Consequences’ programme requires offenders to take responsibility by admitting to the full extent of their crimes, which would adversely affect the reoffending rate.⁵⁰²

304. The Department needs to address the risk that providers may receive multiple payments under a range of payment by results programmes, for example, for employment, drugs misuse and reducing re-offending.

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8 Conclusion

305. The probation service has been through a decade of change—from the setting up of a national service, through the development of NOMS, to the establishment of trusts—and more change is yet to come. We broadly support the Government's proposed reforms as part of the process of reducing re-offending, although we believe it should be more ambitious in moving to an integrated system of offender management involving the commissioning of both prison and probation services in defined geographical areas. The following are key criteria against which reforms will need to be tested in order to assess whether they have been successful:

- Will more resources be directed to front-line work and will probation officers get to spend more time dealing directly with offenders?
- Will trusts have greater autonomy to manage their budgets effectively?
- Will the end-to-end management of offenders—with meaningful, comprehensive liaison between prisons and probation—become the rule, rather than the exception?
- Will good examples of effective working with partners, such as the police and health service, be encouraged and facilitated?
- Will payment by results be used in a way which produces more efficient and effective services which are properly locally accountable?
- Will the Government be more ambitious in moving to an integrated system of offender management involving the commissioning of both prison and probation services in defined geographical areas?
- Will judges and magistrates have access to the full range of community sentences so that their hands are not tied by avoidable resource restraints?
- Will probation staff be encouraged and motivated to achieve higher qualifications?

306. These questions are the ones we shall continue to ask as the reforms are introduced and as they bed in, and against which we shall continue to scrutinise the performance of the Ministry of Justice and the probation service throughout the remainder of this Parliament.

Conclusions and recommendations

The offender manager's relationship with offenders

1. We accept that probation officers have to do a certain amount of work which does not involve dealing directly with offenders. However, it seems to us staggering that up to three-quarters of officers' time might be spent on work which does not involve direct engagement with offenders. No-one would suggest that it would be acceptable for teachers (who also have to do preparatory work and maintain paperwork) to spend three-quarters of their time not teaching. The value which really effective probation officers can add comes primarily from direct contact with offenders. While we do not want to impose a top-down, one-size-fits-all standard, it is imperative that NOMS and individual trusts take steps to increase the proportion of their time that probation staff spend with offenders. The MoJ and NOMS should state explicitly whether they support this aspiration; if they do, they should tell us how they intend to achieve it. (Paragraph 40)

National standards: discretion and professional judgement

2. While the level and type of contact with offenders should depend on the individual's assessed needs and risks, rather than on the preferences of the practitioner, we welcome the increase in professional discretion provided by the streamlined national standards, and the assurances of many of the professionals concerned that this will allow them to do their jobs better and more efficiently. (Paragraph 47)

Work with victims and restorative justice

3. We believe that restorative justice has the potential to be used more widely within the probation service and we think that HM Chief Inspector of Probation might usefully undertake some work into the current use of the approach and suggest how best practice might be disseminated. Basing commissioning on payment by results in reducing re-offending risks overlooking the importance of the rights of victims and the obligations of offenders towards them. The Government must give more consideration to how best to incentivise restorative justice measures to increase their availability so that every victim can be offered the chance to take part in restorative justice. There should also be an expectation that every offender should be faced with the consequences of their crime, and should, where possible, be offered the chance to make amends to the victim. (Paragraph 56)

Working with particular groups of offenders

4. The probation service's approach—where resources tend to be directed towards dealing with offenders who present the highest degree of risk—can fail adequately to support women offenders. The approach recommended by Baroness Corston for the provision of holistic services that address all women's needs is still a long way from being realised, even through this would greatly increase the effectiveness of probation work in diverting women from further offending. Rather than requiring

extra resources, it would save public money by reducing the prison population and its associated heavy social costs. (Paragraph 60)

5. The people supervised by the probation service do not make up a homogenous group and have varied and complex needs. Interventions, for example, accredited programmes, have been developed to meet the needs of the majority: young, white men. Although some trusts do try to offer specialist services for others or to refer people into resources provided by others it appears to us that this is very much a work in progress. It is another area which we think might benefit from the scrutiny of HM Chief Inspector of Probation. Also, the Government should ensure that it considers the needs of minority groups when moving towards payment-by-results: contractual arrangements will need to ensure that appropriate services are provided for all offenders, and not just those who fall into the most common demographic. (Paragraph 66)

The benefits and limitations of the new training arrangements

6. There appears to be a good balance in the new training arrangements between providing staff with the skills to understand and interpret risk and to challenge and motivate offenders. The quality both of the recruitment process and of supervision arrangements within individual trusts are of utmost importance in ensuring that newly trained staff will have the confidence to operate safely in the context of fewer national standards, and in preventing probation trusts from becoming equally constrained by being too risk averse. (Paragraph 72)
7. Although the new probation qualifying framework was designed to open new routes to qualification there are concerns that it will not deliver a steady flow of qualified probation service officers and probation officers. There is a significant risk of a shortfall of trained probation officers in future as budget cuts have impacted on the take-up of training and trusts and the Government needs to have regard to this. (Paragraph 75)

Post-qualification and management training

8. The new probation qualifying framework should be used as basis for building a national system of accredited training for post-qualification development, including leadership and management training, so that there is a consistent quality of training available to trusts and to any new providers of probation services. If significant commissioning responsibilities are given to trusts—a policy which we question later in this Report—then it will be necessary for NOMS to devolve an appropriate allocation of its resources for management and leadership to enable trusts to purchase the training, contract management and governance skills required. (Paragraph 79)

National commissioning of probation services and performance framework

9. Probation trusts have laboured under a tick-box culture, imposed on them via NOMS's Probation Trust Rating System. We welcome the fact that this culture is to be weakened by the introduction of streamlined national standards which should

allow trusts greater discretion. However, it has been raised with us that the Specification, Benchmarking and Costs programme continues to constitute a form of micro-management from the centre, and we call on NOMS to re-assess this programme to see how the burdens it imposes on trusts can be lessened and those trusts provided with greater autonomy. (Paragraph 84)

NOMS and national contracts

10. The 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. Trusts need the freedom to make their own arrangements for property and maintenance, including the ability to co-locate with partners or with other trusts. This will be necessary if the Government's intentions for joint working are to be realised. Probation trusts have lost confidence in the ability of the national IT system to meet their needs. Both the management of risk and the development of evidence-based policy and commissioning require that there is an effective national system used by prisons and probation. In our view, NOMS should identify those systems that work well for individual trusts with a view to adapting a successful system for national use. (Paragraph 91)

The tendering process for community payback

11. Regardless of the merits of introducing competition for the provision of services, it is imperative that NOMS communicates its plans to trusts in a timely and genuinely consultative way. This seems not to have been the case with the community payback tendering exercise, and NOMS should do a 'lessons learned' exercise once the competition is completed to make sure that any mistakes are not repeated in future exercises. (Paragraph 96)
12. The very large and incoherent groupings created for the community payback contracts would not be appropriate vehicles for commissioning other probation initiatives, and would undermine links between probation work and other participants in the criminal justice system, such as the police, courts, local authorities and local prisons. (Paragraph 97)

Financial management

13. Trusts need to be given greater financial autonomy and, specifically, the power to carry over a small proportion of their budgets from year to year. We have also received evidence that they do not have sufficient autonomy in terms of how they can spend that money, and that relatively trivial amounts of expenditure can require consent from the centre. The overwhelming impression we have formed is of trusts being over-regulated and unable to fulfil local needs because of the top-down, centralising tendencies of NOMS. NOMS reflects the command and control structure and culture of the prison service and is not responsive to diversity of local needs; it has yet to make the shift from being the managers of trusts (the legacy of the National Probation Service and early NOMS) to being a commissioner from the trusts (and others), which calls for a different kind of relationship. (Paragraph 102)

End-to-end offender management

14. There needs to be a better, more seamless, approach to managing offenders. Prisoners are shunted between one establishment and another, in an attempt to avoid over-crowding, and the need to ensure continuity of their sentence plan is not a priority. This is unacceptable. The Ministry of Justice and NOMS need to devise and implement a strategy to ensure that the end-to-end management of offenders is a reality and not just an unachieved aspiration. (Paragraph 110)
15. If NOMS is to work effectively through the two services, there does need to be an enhancement in prison of offender management skills. This could be achieved through better training for prison officers or the appointment of probation officers or probation service officers to work in prisons on sentence management and to follow the prisoner 'through the gate'. Unfortunately, neither of these scenarios is likely given the current prison population and funding restraints. (Paragraph 111)

Review of NOMS

16. The Ministry of Justice should commission an externally-led review of the operation of NOMS to assess whether it is: delivering value-for-money; giving trusts the appropriate levels of support and autonomy they require; and integrating the supervision of offenders in prisons and the community effectively. Our evidence suggests that it is not doing those things well. Should the review reach similar conclusions the Department should be prepared to take radical steps to redesign the structure and operation of NOMS. (Paragraph 114)

Provision of services to the courts

17. It is unacceptable that sentencers' hands are tied by the unavailability of important requirements which the probation service cannot provide because of inadequate resources. We are aware that in the current climate, demands for more funding are not realistic. However, the fundamental necessity of giving sentencers all the options they should have at their disposal makes very clear the urgent need to focus scarce resources on the front-line and to continue to bear down on inefficiencies and any unnecessary back-room functions. (Paragraph 131)
18. Judges and magistrates need to have confidence in the way in which the probation service relates to and provides information to the court. Sentencers should be given accurate information at the time of sentencing about when a community order and any requirements will commence. (Paragraph 134)

Local joint commissioning arrangements

19. Probation trusts often punch above their financial weight in local partnership work, but such engagement with other agencies is not uniform and probation trusts and local strategic partners have expressed frustration about trusts' ability to participate effectively because of national contractual obligations. Probation work will only be effective if it can draw upon and work with other service providers; NOMS and the MoJ must review those contractual obligations which are a barrier to good

partnership working and look to remove those barriers wherever possible. (Paragraph 145)

Partnership schemes and the potential to pool resources

20. We are concerned that there is a lack of consistency of provision for those offenders for whom probation services do not have a statutory obligation to provide services, but who nevertheless present a significant burden on the system. We welcome the Government's proposals to extend the use of intensive offender management. The Ministry of Justice should collate evidence on the cost-effectiveness of schemes that are currently operating across England and Wales with a view to publishing good practice guidelines. These should be used to encourage those areas where there is not currently a scheme but where the scale of persistent offending may justify the investment. There is also significant potential to extend the IOM model to other groups of offenders. (Paragraph 155)
21. There is promising evidence that the new requirements that have been placed on local strategic partners to reduce re-offending are beginning to bear fruit in stronger local partnership arrangements, and in achieving efficiencies, but these have not yet had sufficient opportunity to bed in. Nevertheless, they provide a good foundation for the introduction of local incentive models as a mechanism of payment by results. (Paragraph 156)

The role of the probation service in public protection

22. Work with other agencies to secure public protection through the management of offenders who pose a risk of harm to the public will continue to be a vital and demanding part of the role of the probation service. (Paragraph 160)

Public confidence in community sentences

23. The use of punitive measures may provide a cheaper yet publicly acceptable alternative to supervision for some offenders, but their use will need to be appropriately targeted, and their benefits carefully explained to the public, as they do not address the root causes of offending. Trusts and sentencers will need to deal more effectively with failure to comply if these measures are to be successful as a practical means of dealing with low level offenders. The Government must also clarify what is meant by more robust community sentences, and the outcomes they are designed to achieve. Making sentences more punitive does not mean that they will necessarily be effective in protecting the public by reducing re-offending. (Paragraph 175)
24. We endorse the Government's attempt to tackle the factors contributing to the growth in the prison population and probation caseloads in its comprehensive proposals for reform, but the lesson from recent history is that in order to achieve the financial sustainability that it desires, and indeed is necessary, to prevent the need for costly prison building, each element of the reforms must be implemented successfully, and to work coherently together. The strengthening of community orders and reductions in the use of custody are interdependent and both are costly.

The Government should clarify how it intends to implement its reforms to community sentences effectively whilst keeping them cost-neutral. It would be a serious error if the Government allowed the search for further savings to replace those it had hoped to achieve from the 50% early guilty plea discount to undermine the development of effective sentencing. (Paragraph 176)

25. Public confidence is arguably most likely to be gained by setting out clearly what community sentences attempt to achieve, by demonstrating that they are implemented efficiently and effectively and also by challenging a naïve confidence in the effectiveness of short custodial sentences. This will call for leadership and courage from politicians and sentencers. There is a risk that the recent public debate on sentencing policies with regard to short custodial sentences could threaten to undermine the whole set of proposed reforms. (Paragraph 183)

The success of the proposed reforms in the context of fewer resources

26. Although there are limits to the extent to which the Government's reforms can be effective within limited resources, there is scope for cost savings within the structure of NOMS and the prison service. We refer later to the powerful case for better integrating the commissioning of prisons and probation. If the resources for more intensive and tougher community sentences are not found, increases in the use of short-term custody by the courts will continue. This is a vicious circle in which the criminal justice system has been trapped for too long. The Government wishes to break this cycle, as its Green Paper indicates. This will not happen without a shift in the use of scarce resources. (Paragraph 189)

Creating a mixed economy in probation provision

27. The evidence we have received suggests that there is significant scope to increase the contribution of private and voluntary sector organisations to the delivery of effective offender management and rehabilitation. (Paragraph 206)

The benefits of paying providers by results

28. Payment by results provides a potential mechanism for putting the system on a sustainable footing over the longer term by shifting resources away from incarceration towards rehabilitation and towards measures which prevent people becoming criminals in the first place. However, the payment by results models proposed are untested in the field of criminal justice 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. (Paragraph 211)

Commissioning for offender management: getting the balance right

29. We believe that responsibility to the courts and the community for offender management must remain with a publicly accountable probation service. However, there is plenty of scope for specific services and facilities that support offender

management to be offered by a range of providers. Examples include the provision of (non-approved premises) accommodation, electronic monitoring, curfews, mental health support, drug and alcohol treatment, learning and training, and family support. These services should be delivered by whichever provider can facilitate them most effectively with the greatest economy. (Paragraph 214)

Achieving savings

30. Although on the face of it large scale payment by results commissioning arrangements such as those used by the Department for Work and Pensions may be attractive in achieving cost savings, economies can also be achieved at a more local level, for example by probation trusts concentrating their efforts on where there is best value in contracting out other services and through local partnerships pooling their resources and investing them strategically. There is a need for careful thinking and calculation on behalf of the Government on how to strike the best balance between opening up the market to new providers and enabling trusts to operate effectively as local strategic partners, facilitating local solutions to local problems. (Paragraph 220)

Commissioning principles

31. Probation services have been uncertain about their future since the idea of wider competition was first mooted almost ten years ago. The Government must clarify its intentions for the future of probation. We would welcome a clear statement from NOMS about which elements of probation work are considered appropriate for commissioning from other providers (and which are not) as well as those they consider should be contracted for at scale, and the principles that should determine the boundaries. (Paragraph 227)
32. We welcome the Government's local incentive scheme pilots in enabling commissioning for rehabilitative interventions to be more effectively delivered through partnerships at local level. We consider that the local incentives model would work best if it is introduced alongside a model in which probation is "lead provider". (Paragraph 228)
33. The Government's commitment to devolving commissioning to the local level is not fully reflected in the green paper or in NOMS' recent approach to commissioning community payback. The decision that it was most appropriate to commission community payback at the level of six large lots across England and Wales is, we believe, flawed in terms of the future direction of commissioning policy; it does not fit the Government's rationale that services should be commissioned at local level. (Paragraph 229)
34. The separation of the commissioning of prison places from the commissioning of every other form of sentence provision has a distorting effect on the options available to sentencers. Ministers should, as part of their programme of reform of the criminal justice system, develop proposals which would end this separation and link the commissioning of both prison and probation at a level closer to the communities they are designed to protect. We believe that the responsibility for delivering the

sentence of the courts should belong to a single offender management local commissioning body which deals with all aspects of custodial and non-custodial sentences. This would increase efficiency within the commissioning process and provide evidence about how effectual the sentences of individual courts are, which then could be fed back into future decisions of the court. Furthermore we believe there is scope for payment by results to be better integrated with other programmes, such as the DWP Work Programme. There is a real danger that proceeding on present lines will lead to the embedding of contracts which become an impediment to this very necessary reform. We recommend that a geographical area is chosen for piloting integrated commissioning of offender management. (Paragraph 244)

Immaturity of the current market

35. The MoJ must not underestimate the work required to create a stable market and it must take into account the existing cultural differences across the different sectors and the complex nature of probation work. There is also clearly a possibility of early commissioning failures and, in order to maintain public confidence in the system, the MoJ must have clear contingency plans for dealing with any such problems which may arise. Innovation involves risks and those risks need to be managed. (Paragraph 252)

Transparency and an effective dialogue

36. There is a need for open communication with providers from all sectors to inform the commissioning strategy as well as in any future competitive processes to ensure that the best balance can be struck between efficiency and localism. We are concerned that this does not appear to have been the case to date. (Paragraph 255)

Implications for training

37. 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 to work with particular types of offender, and a high-quality service provided, we would like to see the MoJ working with Skills for Justice to create a framework for both accredited qualifying and post-qualifying training that is accessible to all providers. (Paragraph 258)

The flexibility of contracts

38. The Ministry of Justice will need to ensure that contractual specifications include adequate safeguards for public protection. The current work of probation services is not just about meeting the obligations in their contract; its work is about serving the demands of the courts, which cannot be easily predicted, and being sufficiently flexible to meet the offending-related needs of individuals as and when they arise. The Government must clearly specify in its new commissioning strategy how it

intends to ensure that contracting arrangements with providers from other sectors will accommodate these needs and respond to unexpected changes. (Paragraph 263)

Diversity

39. From April 2011 the public sector has had a statutory duty to take positive action to eliminate gender discrimination and promote equality under the Equality Act. We would welcome a clear statement in the commissioning strategy about how the equality duty will apply to providers outside the public sector and how the Government intends to ensure that probation and rehabilitative practice is fair and inclusive, particularly in the context of increased provider and professional discretion. (Paragraph 265)

Access to working capital

40. We see that there is considerable potential in social finance, but it will take time to develop. The Ministry of Justice should learn from the experience of other Departments including the Department for Work and Pensions and the Department of Health. (Paragraph 273)

Choosing appropriate outcome measures

41. We welcome the Ministry of Justice's review of the local snapshot measure of re-offending. Once a new, more robust, measure is devised, it would be prudent for the Ministry of Justice to commission research to examine practice in the best and least performing trusts so as to strengthen the evidence base. (Paragraph 279)

Graduated and differentiated payments

42. As outcome-based payment models in other sectors have evolved, differentiated payments have been introduced to suppress the propensity of providers to focus on those who are easiest to help. We urge the Ministry of Justice to ensure that any model of payment by results builds in incentives for providers to work with all offenders from the outset, and that interventions are especially targeted at the riskiest offenders. We favour the development of a graduated payment system which includes some upfront funding, with additional payments based on proxy measures and then ultimately on reduced re-offending. (Paragraph 286)

Developing a business case

43. In any new commissioning model there is a need for a balance to be struck in ensuring that the administrative costs of any new system do not outweigh the potential benefits. The Government's pilots should be designed to enable them to create a business case for a viable model of justice reinvestment to be implemented over the next spending review period (Paragraph 294)

Quality of the evidence base

44. The Ministry of Justice needs to develop a measure that enables the effectiveness of prison and community sentences to be compared more robustly. (Paragraph 296)

Potential to strengthen the evidence base

45. It is important that data and information sharing is not inhibited by the rules governing commissioning and competition. (Paragraph 300)

Attributing results

46. The Department needs to address the risk that providers may receive multiple payments under a range of payment by results programmes, for example, for employment, drugs misuse and reducing re-offending. (Paragraph 304)

Annex: e-consultation

Introduction

1. The Committee set up a web forum in support of its inquiry into the current and future role of the probation service. The purpose of the forum was to encourage contributions from probation staff and others with experience of probation on the challenges currently facing probation services. Although the main target group was frontline probation practitioners, the Committee invited the views of other individuals and organisations who work with offenders (including probation middle managers and probation trust board members), the public, (ex-) offenders and their families, victims of crime, sentencers and small voluntary sector providers.

Practicalities

2. The forum opened on 17 May 2011 and ran until 21 June 2011.

3. The site was designed and created by the Parliamentary web-centre. During the registration process, users agreed to a set of discussion rules. The forum was moderated by Justice Committee staff—messages were checked to ensure that they adhered to the discussion rules before they were published on the forum.

4. Contributions to the forum were used by members of the Committee to inform their questioning of the witnesses who attended hearings as the inquiry progressed as well as during the process of drafting and agreeing a report.

Outreach

5. The forum was announced by the Committee via a press notice and a publicity letter was sent to Napo, UNISON, Criminal Justice Alliance, Clinks, Victim Support, Probation Association, Probation Chiefs' Association, Unlock, Nacro, Howard League, Local Government Association, the British Society of Criminology and the Magistrates' Association.

Forum questions

6. The web forum posed the following questions:

- To what extent is more direct contact with offenders necessary for effective offender management and how could this be achieved?
- Probation national standards have recently been streamlined. To what extent are frontline probation staff, and others who work with offenders in the community, equipped to confidently handle such a shift in their role?
- What will be the impact of creating a system in which probation trusts would compete with other providers from the private and voluntary sectors?

- Are there ways of improving efficiency and driving up probation performance in addition to the Government's proposals?

Profile of respondents

The e-consultation attracted 2,812 views and users contributed 60 posts. The majority of respondents were probation officers or probation service officers.

Summary of responses

Direct contact with offenders

7. Participants in the forum stressed the importance of direct contact between probation officers and offenders:

The relationship between the probation officer and the offender is key to the process of rehabilitation. It takes time to build up trust before an offender will begin to disclose personal pertinent information to his/her supervising officer.⁵⁰³

The task of probation staff is to focus on those individuals without the will, the skills or the capacity to identify and make changes. In order to do this staff NEED to spend time with their offenders to understand them within the contexts of their environment, relationships and their pasts. Staff need to be able to model effective, realistic ways to solve problems, increase motivation and offer support whilst also holding individuals to account in relation to their behaviour/order/licence. This can't be done from a computer but from actual contact with the person.⁵⁰⁴

You can only engage with a client and build a good relationship with them if you have time to sit down and talk with them. By having this time you have a better knowledge of the client and can make a better assessments of their needs. Making 'remote' assessments with little or no direct contact with the offenders decreases their willingness to engage and reduces compliance. It's human nature, if you take a genuine interest in somebody (and have time for it) they will respond positively.⁵⁰⁵

8. One contributor thought that direct contact was not necessarily essential for every tier of offender:

We need to get real. Tier 2 cases are dealt with on an office duty basis with little continuity. Put this group out to a tendering arrangement and concentrate on tier 3/4 high risk work. Just think of the resources we could free up to do quality work.⁵⁰⁶

But another disputed this view:

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In my experience working for the West Mercia Probation Trust, Tier 2 cases are not dealt with on an office duty basis with little continuity for the above reason. They are managed by trained and experienced PSOs [probation service officers] who communicate with fully qualified POs [probation officers] and who are supervised by SPOs [senior probation officers]. These cases should continue to attract a similar level of resource / intervention by the probation service due the risk of re-offending posed.⁵⁰⁷

The relationship and contact is vital to all tiers of offenders. Tier 1, mainly unpaid work offenders, need appropriate supervisors who model respectful social interaction, work ethic, social responsibility and so on. I have the utmost respect for those who manage it given the nature of how they are expected to achieve it. Other tiers of offenders also require this with the additional support of motivating and managing the offender.⁵⁰⁸

9. High caseload was identified as a barrier to effective contact between probation officers and offenders:

One of the biggest barriers to building a relationship under the current arrangements is the emphasis on the ‘number and frequency’ of appointments, not the ‘quality or content’ thereof. What you do with the offender is what matters, not how often they are seen. Offenders are also legitimately upset when they travel for three hours to a probation office just to be signed in because their supervising officer is too busy with another bureaucratic deadline. Such requirements undermine the credibility of the processes (as do the closure of local offices and centralisation of services in rural areas, where public transport lacks the efficiency of the London Underground). You can achieve more in one hour than you can in 4 x 15 minutes spread over a month. It offers better continuity the time necessary to dig that little bit deeper. Allow staff to manage their own diaries based on their availability or the work required and not on meaningless reporting and the demands of an increasingly voracious IT system.⁵⁰⁹

The former CIP [chief inspector of probation] Andrew Bridges (witness to the JSC) noted in an earlier contribution to this debate with Enver Solomon (in Criminal Justice Matters) that any practitioner having a caseload beyond 32 could not expect to offer quality supervision.⁵¹⁰

The general public would be appalled if they knew how little time we actually spend working with offenders. The system has become far too bureaucratic and target driven, and it seems to be becoming more bureaucratically intensive. The introduction of OASys quality assurance is an example of this, where rigid rules force staff to do meaningless and repetitive tasks. OASys has many good points, but needs to be streamlined radically. In our area there have recently been some good developments with the introduction of workbooks for one to one use, and this sort of

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509 Rob Palmer

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simple, but effective intervention should be encouraged. Time could also be saved by simplifying many of the referral forms that are used within probation, and with other agencies.⁵¹¹

10. Several respondents felt that the day-to-day work of a probation officer had become too bureaucratic. They advocated reducing the use of OASys (Offender Assessment System) and increase professional discretion in order to reduce the burden on probation officers and create more time for direct contact with offenders:

The oversold OASys tool which has become the equivalent of e-servitude, confining staff to endless hours of computer dominated practice, which was shamefully sidestepped by more senior probation voices called to be witnesses to the Committee. Needs urgent revision and streamlined.⁵¹²

I agree that the extensive use of OASys is very time-consuming with little real value as an effective tool.⁵¹³

I find that an OASys led pre-sentence report approach seems to have added to the length of the reports and has increased significantly the time it takes to prepare such a report.⁵¹⁴

Streamlining national probation standards

11. Some contributors had concerns that frontline probation staff would find it difficult to handle a shift in their role in the face of new streamlined national probation standards:

I worry that we are moving too fast. Like so much with the Coalition, they want it to happen today. I think it will take some time for the service to adjust to not being tied to rigid standards. I think the way that training has been done over the last few years and the lack of training provided to PSOs has not provided officers who necessarily have professional judgment or know how to use it.⁵¹⁵

The removal of the social work background training was the biggest mistake probation undertook. Now we have probation staff who suffer from an identity crisis of not knowing what or who they are. A generation of probation staff who are accustomed to using enforcement now have to make decisions based on professional judgment. A difficult task to achieve when you have been taught and developed to follow stringent guidelines and standards with very little flexibility to breath never mind spend 20 minutes with an offender.⁵¹⁶

Spending hours in front of a computer recording endless information to satisfy NOMS targets and defend the service from political scrutiny has only served to de-

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skill new practitioners. The tired mantra of “if you haven’t written it down it didn’t happen” has been taken to the ridiculous—perhaps we should say this to our offender—It’s ok if you didn’t write it down you didn’t do it! Clearly there is no confidence in practitioners to enjoy their work and be honourable to it—micro managing professionals does not work!⁵¹⁷

12. Others had concerns that the streamlining of national standards had been designed to enable other providers to fulfil the work of probation:

There have also been expressed concerns that this might prefigure a worrying prelude to enabling other providers into the supervisory role.⁵¹⁸

My concern is that simplifying these standards just for the benefit of easing the transition for other agencies to do the work of probation undervalues all the positive development which the service has achieved in its 100 years of work.⁵¹⁹

13. However, several contributors welcomed the change because the standards had proved inflexible and too prescriptive. They argued that probation officers are capable of using professional judgment to do their work effectively:

National standards had become over prescriptive and a barrier to initiative. Strict protocols invite a bureaucratic response and can dumb down practice, as can be seen in the behaviour of a whole variety of organisations from hospitals to building societies. In probation their relaxation is welcomed because it brings with it an increase in discretion and a better chance to build purposeful relationships with offenders as part of challenging their offending behaviour.⁵²⁰

I think the skills are there but the culture is not. I think, given the new National Standards (or lack thereof ??), it will afford trusts to opportunity to empower their staff to revisit the concept of defensible decision making. We still have many managers who grew up in a Service that was not tied up in bureaucracy and more able to look at things creatively and sensibly.⁵²¹

I would suggest that probation workers who have worked in different fields and have more life experience are better-equipped to ‘use our discretion’. I feel that my training and learning as a TPO [trainee probation officer] has helped to improve those skills. However, our line managers often seem to have insufficient time available to help us as effectively as they wish. It would be good to have more time for development sessions within our teams, to discuss particular issues or clients, but in practice this is very difficult to do.⁵²²

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Paring down national standards is to be welcomed, and staff are very capable of managing this change. More flexibility can only help us to focus on using our resources to the best possible effect.⁵²³

14. Many welcomed the new emphasis on professional judgment and individual discretion, but warned that the change needed to be accompanied by proper training and supervision:

The only concern is that the lack of guidance could be used against staff when there are serious further offence (SFO) reviews. Staff deserve support when there is evidence of good work, but all too often SFO reviews tend to seek out any excuse to blame staff.⁵²⁴

However two questions emerge: the first about the skill base of the service which has been eroded by confusion over the roles and functions of probation staff which has led to inadequate investment in training. This needs to be remedied. Secondly there is the question of clarity of purpose of supervision. This needs to be defined broadly at a national level and locally on a case by case basis so that there can be proper line management and coaching of all staff.⁵²⁵

We have been so used to prescribed NS [national standards] that a relaxation may cause anxieties. I welcome the relaxation of NS (however we have still to be told what these are and when they come into practice). I think with further training and support[I would welcome the idea that I can make more decisions myself rather than consult a prescribed standard. My only reservation is that managers are available as needed to offer advice and countersign any decision made.⁵²⁶

If the new NS are about greater flexibility, discretion and professional judgment then this needs to be supported by a quality trained staff who can make the decisions which are based on sound theoretical principles.⁵²⁷

Competing with other providers from the private and voluntary sectors

15. Two contributors argued that increased competition between probation trusts and private and voluntary service providers would drive innovation:

We need to spark innovation and change and trusts have demonstrated again and again they can't deliver this. Market testing will drive quality in the end.⁵²⁸

I have to say I tend to agree with you, in that we do need to spark innovation whilst remaining vigilant when things, as everything does, begin to go wrong. As someone

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who is very passionate about their Trust but also constantly frustrated at the lack of “thinking outside the dots”, I tentatively welcome this move.⁵²⁹

16. But the majority of contributors were against the proposals to open the work of a probation trust to the market, for a number of reasons. Some argued introducing the profit motive into probation would lead to a fall in standards:

Private sectors core values are measured by profitability; in effect they will attempt to do the same job for cheaper compromising quality as a consequence. History indicates that Government bodies never stipulate the finer details of accountability and performance targets within the tender/contracts, introducing a drop in standards instantly.⁵³⁰

It can't be more efficient having more people involved, less consistency, mixed messages and confusion passed on to offenders whose lives may already be unstable. Breaches, possibly contested breaches, will increase with the associated costs to the whole system. It's not innovative, the contracts will be worked to the letter, no more, no less, because private business will never see the value in going the extra mile.⁵³¹

I have experienced the limited involvement of private providers in the delivery of criminal justice, and my experience shows their delivery has been inflexible and limited to the letter of their contract, without any understanding of risk management. The provision of services has, in my experience, been limited and lacking in an understanding of “wider issues” or joined up thinking.⁵³²

Others argued that any savings would be cancelled out by increased costs elsewhere in the criminal justice system:

Creating a market in probation will simply lower standards and appear to lower costs. In fact the costs will simply be transferred to another part of the public sector in some way (rising prison population probably) and leave shareholders happy.⁵³³

It won't be cheaper, the costs will end up somewhere else, most likely prison places when cases have been mismanaged.⁵³⁴

One contributor argued that offenders may be suspicious of the motives of private providers and therefore less likely to cooperate with them:

logic dictates that the offenders benefit from the underlying motivations of the people they come in contact with, meeting people with ££ in their eyes with pound shop attitudes will not encourage behavioural changes. It is the empathy and

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intangible concepts of human behaviours from Probation employees that change people not cheaper premises or materials.⁵³⁵

Several contributions to the web forum warned that private providers were likely to 'cherry-pick' their clients at the expense of those offenders considered too demanding:

The issues that impact on the offending behaviour of individuals are many and complex and the approaches offered by private sector providers have shown them to be incapable of working with the most demanding and difficult clients, preferring, instead, to 'cherry pick' the easy wins in order to 'evidence' their ability to perform. This will serve to marginalise the most difficult and dangerous people in a way that exacerbates risk rather than reduces it. Private sector providers seem to struggle to identify who the customer is. Is it NOMS? Is it the Courts? Is it the community? Is it the offender? The answer is 'it's all of the above'.⁵³⁶

This is likely to lead to...a real danger that probation will do what other businesses do, delivering services to the people who are more compliant to show its worth as opposed to working with those who need to be worked with.⁵³⁷

I currently work in programmes and the services to be tendered will have to be extremely well written if the harder to deal with offenders are not to be excluded as providers faced with the reality of dealing with such individuals 'cherry pick' the easier individuals to meet completion rates and targets.⁵³⁸

Others warned that the introduction of competition for particular elements of probation work (as the Government is currently doing in the case of unpaid work) would lead to a fragmented service, with a number of negative consequences:

Unpaid work has for many years outperformed any other area of probation work. Yet it has suffered from being under under-resourced. In opening it to competition there is the real risk that the service it provides will deteriorate by divorcing it from the "gene pool" that is the probation family. It may not be clear to outsiders but the cross fertilisation that is at the heart of the management of offenders enriches all areas of probation work. In both directions. You cannot spend 6 to 7 hours a day with offenders, many more than any other professionals in the criminal justice system, as supervisors of unpaid work do, without gaining a great deal of insight into their motivation and lifestyle choices of the offenders you are supervising. This is passed on, sometimes inadvertently but often reflectively to other probation staff and is used in every aspect of the work: offender management; programmes; drug rehabilitation units etc. That cross fertilisation would be lost and the whole system devalued if a non-probation body took over unpaid work.⁵³⁹

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The government sees unpaid work, offender programmes, community supervision etc as distinct and separate arms of community sentences. This is a mistake if you are trying to promote effective practice. As an offender manager I have benefitted from direct contact with unpaid work supervisors and groupwork facilitators who often work from the same office. The loss of one or other to another provider would break the coherent picture needed to effectively manage offenders or assisting them in changing. The fragmentation of the community sentence into ‘processes’ for drug rehabilitation, unpaid work, etc with a rump probation service writing reports for courts and the parole board will lead in the longer term to a ‘layering’ of community justice; harder to communicate between and ultimately more expensive.⁵⁴⁰

Historically probation’s core value base has been to co-operate with other agencies, debate and discuss how agencies could work together towards a common aim in securing better services for their local areas. There is no doubt that payment by results will have a devastating impact on the relationship with other agencies and instead of working together for a common good they end up working against each other for a few shilling from their masters.⁵⁴¹

The impact will ultimately be the degradation and fragmentation of services provided to offenders which in turn will lead to a public less protected, and significant damage being caused to government and ministerial reputations. Given the current constraints within which probation trusts operate, particularly in relation to estates and IT, there is absolutely no way in which trusts can compete on a level playing field with the private and voluntary sectors.⁵⁴²

Some respondents warned of the negative impact such a change could have on staff:

Compulsory competition decreases staff moral, distracts focus from local offending reduction initiatives, drives down terms and conditions for staff, increases staff turnover and decreases the clients perception and experience.⁵⁴³

The introduction of the private sector has served only to lower standards (the fact that the high standards that the Probation Service have offered had to be lowered before the private providers could even consider entering the field is telling in itself), reduce the quality of training and increase the turnover of staff by offering poorer contracts, poorer terms and condition and poorer management.⁵⁴⁴

Improving efficiency and performance and resources

17. One contributor argued that to increase efficiency, the probation service should concentrate on higher risk offenders and put other areas of its work out to tender:

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Move the concentration of Trust work to tier 3/4 activity. Look at tendering other parts of work. Try combining court, court escort and prison reception to reduce costs and improve the experience of the offender.⁵⁴⁵

18. Some warned that the strain on resources as a result of budget cuts could affect service outcomes:

Basically the question is can we cut costs whilst at the same time get more out of the work force. As an example it's the same thing as taking your car to a back street garage and having the breaks done, rather than taking this to a dealer or a service station. The difference is visible—at the back street garage yes you can get the job done on the cheap, fast and service with a smile but when you drive your car away you'll be back in a couple of months time having more replacement breaks. You take it to a dealer—it'll cost you more but you know what they do is quality, checked and proper monitored. You try and complain to a backstreet garage about the job they did—they'll blame it on the user.⁵⁴⁶

With year on year Ministry of Justice budget cuts of 6% and probation trusts facing significant budget reductions at a point in time when the ambitious aims of reducing the prison population as enshrined in the Government's Green Paper are premised on kick starting a 'Rehabilitation Revolution'. The Gordian knot question is now of finding 'innovative' ways of improving efficiency within an organisation that has been battered and bruised by the ill wind of political expediency, whilst at the same time promoting greater diversity (read marketisation) in service provision with a view to securing reductions in reoffending.⁵⁴⁷

Its seems Governments want more for less. The probation service has driven up standards in recent years and has far exceeded targets in many cases. To expect even more efficiency when the service is running on bare bones will only affect outcomes.⁵⁴⁸

19. One respondent argued that reducing bureaucracy would drive efficiency:

Its seems Governments want more for less. The Probation Service has driven up standards in recent years and has far exceeded targets in many cases. To expect even more efficiency when the service is running on bare bones will only affect outcomes.

My time would be more efficiently spent doing direct work with clients. Instead I am filling out various forms and ticking boxes at an ever increasing rate. I'm sure the public would be astounded that after paying to train me for two years they hear I spend a lot of my time filling in housing and ETE [education, training and

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employment] forms and then spend more time in front of a computer inputting data. Efficiency can be improved by cutting 50% of the paperwork/ bureaucracy.⁵⁴⁹

20. Another argued that increasing efficiency would require deeper cultural change:

There needs to be a real debate about the core functions of probation. The emphasis on risk management is producing an ever more defensive culture, which lacks creativity and purpose. It must be understood that good rehabilitation reduces risk and protects the public and saves enormous amounts of public money. Political leaders must show courage in leading, and there are some signs that this happening. A cultural change is needed—less blame, and more staff time spent on core activities rather than auditing everything excessively to meet inappropriate demands and targets.⁵⁵⁰

21. Several respondents argued that the political emphasis during the 2000s on punishment has undermined fundamental probation values:

Sadly the damage was done long ago when the political emphasis was on ‘punishment’. The punishment for the offender was to keep to tight schedules, travel long distances if necessary and to be returned to Court if he/she was late by 15 minutes. Fundamental social work values and the core task of rehabilitation have been lost in the IT wilderness. Systems and processes have become more important than the core task itself.⁵⁵¹

Probation practice has been informed from a very rich source of knowledge about offending behaviour that was ever provided under the old social work qualification. It is the values and ethics of the service that had been brutalised not the core understanding. Paul Boateng spouting off “we are a law enforcement agency, that is what we are, that is what we do” nonsense which led to the identity crisis of the Probation Service and the abandonment of the assist, advice and befriend values. The ‘law enforcement’ rhetoric is responsible for a breach first talk later mentality and an erosion of ethical decision making when dealing with offenders.⁵⁵²

The real question for me is, what does the MOJ want the Probation Service to achieve? In 2001 we were moved away from the social and holistic view of supervising offenders and encouraged to be more punitive and target driven. The result is a diluted and fragmented service...If I want an to assist an offender to change his life I have to offer him an alternative. That is the role of the Probation Service. If you are a risk I need resources to monitor you and the authority to have some control in the community.⁵⁵³

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22. Several respondents argued that efficiency was currently hampered by national demands and a target driven culture. They argued that probation trusts should be able to set their priorities locally:

In order to re-ignite purpose in the Probation Service policy makers need to decentralise control, devolve policy making to a more local level, confer with local chiefs of probation and other local stakeholders on what we are trying to achieve; enable local probation areas to make contracts with local providers of facilities, empower them to invite competitive bids from providers of I.T. support. Have a compact or mission statement for probation. Separate record-keeping functions from performance measures (let auditors audit and probation staff do their job). Redesign performance in terms of meeting local needs. Allow the Probation Service to become innovative instead of being smothered by auditors.⁵⁵⁴

The objectives and targets set locally within a broad framework would enable energy to be directed at appropriate line management activity that would provide proper oversight of performance at all levels. This is the essence of both efficiency and effectiveness. Furthermore this would not only provide a supportive environment for staff doing a difficult job it would enable appropriate prioritisation of activities at all levels of the service. In a proper line management structure efficient use of resources means that the life licence case or the child abuser is always closely supervised.⁵⁵⁵

Removing some of the demands placed on probation from the Centre will help improve performance and save money. However, NOMS are introducing new ideas and new process as a way of justifying their own existence. Probation was doing very well before NOMS without a culture of rigid structure and regime taken from the prisons and forced onto probation. Probation is accountable what I would like to know how accountable is NOMS. Does the community/public know what they do? These back-office operators who do very little accept create red tape and block localised creativity would serve well to be dismantled.⁵⁵⁶

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Formal Minutes

Tuesday 12 July 2011

Members present:

Rt Hon Sir Alan Beith, in the Chair

Jeremy Corbyn
Ben Gummer

Claire Perry

Draft Report (*The role of the Probation Service*), proposed by the Chair, brought up and read.

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

Paragraphs 1 to 306 read and agreed to.

Annex agreed to.

Summary agreed to.

Resolved, That the Report be the Eighth Report of the Committee to the House.

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 Wednesday 7 September at 4.15pm.]

Witnesses

Tuesday 12 October 2010

Page

Daniel Mitchell, Brett Hawksley, Angela Prince and Daniel Coriat, Revolving Doors national service user forum; and **Tina Braithwaite**, Director of service user involvement, Revolving Doors Agency.

Ev 1

Tuesday 2 November 2010

Mark Mitchell, Institute of Criminal Justice Studies, University of Portsmouth; **Barrie Crook**, Chief Executive, Hampshire Probation Trust and Learning and Development lead for Probation Chiefs Association; and **Lesley Thompson**, Director, North West Training Consortium.

Ev 15

Robin Wilkinson, Director, NOMS Human Resources; and **Alan Woods OBE**, Chief Executive, Skills for Justice.

Ev 21

Tuesday 8 March 2011

Professor Martin Chalkley, University of Dundee; **Genevieve Knight**, Policy Studies Institute; **Jen Byrne**, A4E; and **Toby Eccles**, Social Finance.

Ev 27

Helen Edwards CBE, and **Luke Edwards**, Ministry of Justice; and **Ian Porée**, National Offender Management Service.

Ev 36

Tuesday 29 March 2011

Andrew Bridges CBE, HM Chief Inspector of Probation.

Ev 44

Wednesday 11 May 2011

Sebert Cox, Chair, and **Christine Lawrie**, Chief Executive, Probation Association; **Sue Hall**, Chair, Probation Chiefs Association; and **Tessa Webb**, Deputy Lead for Public Protection and lead for Big Society for the Probation Chiefs Association.

Ev 52

Tuesday 17 May 2011

Jonathan Ledger, General Secretary, Napo; and **Matthew Lay**, Chair, Probation Committee, UNISON.

Ev 61

Wednesday 18 May 2011

Clive Martin, Director, Clinks; **Rob Smith**, Chief Executive, Youth Support Services; **Chris Wright**, Chief Operating Officer, Catch22; and **Andrew Neilson**, Assistant Director, Howard League for Penal Reform.

Ev 73

Monday 23 May 2011

Martin Narey, Former Chief Executive NOMS, 2004–05.

Ev 84

Tuesday 24 May 2011

Sonia Crozier, Chief Executive, **John Steele**, Chair, and **Leighe Rogers**, Operational Director, Surrey and Sussex Probation Trust; and **Linda Beanlands**, Brighton and Hove City Council. Ev 91

Graham Bartlett, Chief Superintendent, Sussex Police; **Lisa Dando**, Brighton Women's Centre; **Jason Mahoney**, Hastings and Rother Primary Care Trust; and **Claire Brown JP**, Magistrate and Chair of Sussex Central Bench. Ev 101

Tuesday 7 June 2011

John Thornhill, Magistrates' Association; and **Councillor Mehboob Khan**, Local Government Association. Ev 108

Jane Coyle, Director, Blue Bay Support Services; **Roger Hill**, Director, Community and Partnerships, Sodexo; and **Peter Neden**, Corporate Development Director, G4S Ev 117

Wednesday 8 June 2011

Professor Ken Pease OBE, Manchester Business School; **Professor Hazel Kemshall**, De Montfort University; and **Professor Carol Hedderman**, University of Leicester. Ev 125

Mr David Chantler, Chief Executive, West Mercia Probation; **Mr John Long**, Assistant Chief Constable, Avon and Somerset Police; and **Mr John Quick**, Assistant Chief Officer, Merseyside Probation Trust. Ev 132

Tuesday 14 June 2011

Mr Crispin Blunt MP, Parliamentary Under-Secretary of State, Ministry of Justice; **Colin Allars**, Director, Probation and Contracted Services; and **Martin Copsy**, Head of Community Commissioning, NOMS. Ev 141

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| 1 | Revolving Doors Agency | Ev 153 |
| 2 | Probation Chiefs Association | Ev 156 |
| 3 | Mark Mitchell, University of Portsmouth | Ev 161 |
| 4 | Professor Martin Chalkley | Ev 161 |
| 5 | A4e | Ev 162 |
| 6 | Transition to Adulthood (T2A) | Ev 165 |
| 7 | Ministry of Justice | Ev 167; 171 |
| 8 | Probation Association | Ev 173; 177; 180 |
| 9 | Napo | Ev 184 |
| 10 | UNISON | 194 |
| 11 | Clinks | Ev 196 |
| 12 | Catch22 | Ev 200 |
| 13 | Howard League for Penal Reform | Ev 203 |
| 14 | Surrey and Sussex Probation Trust | Ev 215 |
| 15 | Magistrates' Association Judicial Policy and Practice | Ev 219 |
| 16 | Blue Bay Support Services | Ev 223 |
| 17 | G4S Care and Justice Services (UK) Limited | Ev 224 |
| 18 | Professor Hazel Kemshall | Ev 227 |
| 19 | Professor Hazel Kemshall and Dr Brian Stout | Ev 228 |
| 20 | Robin Wilkinson, Director HR, NOMS | Ev 231 |
| 21 | Professor Ken Pease, Professor of Criminology, Manchester Business School | Ev 234 |

List of additional written evidence

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| 2 | C B McGown | Ev w1 |
| 3 | Mr Will Watson | Ev w2 |
| 4 | Staffordshire and West Midlands Probation Trust | Ev w5 |
| 5 | Raymond Ashley JP | Ev w8 |
| 6 | Confederation of British Industry (CBI) | Ev w9 |
| 7 | Mike Guilfoyle | Ev w11 |
| 8 | The Griffins Society | Ev w13 |
| 9 | Local Crime Community Sentence National Steering Group Probation Association | Ev w16 |
| 10 | Hertfordshire Probation Trust | Ev w18 |
| 11 | Make Justice Work | Ev w21 |
| 12 | Bench and the Probation Liaison Committee Chairmen in Northumbria | Ev w24 |

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| 13 | Wiltshire Probation Trust | Ev w26 |
| 14 | Association of Retired Chief Officers and Inspectors of Probation | Ev w30 |
| 15 | Thames Valley Restorative Justice Service | Ev w35 |
| 16 | Community and Criminal Justice Division, De Montfort University | Ev w38 |
| 17 | Avon and Somerset Criminal Justice Board | Ev w41 |
| 18 | West Yorkshire Probation Trust | Ev w44 |
| 19 | Police Sergeant 7157 Lee Bailey, West Midlands Police, Dudley Local Policing Unit, Offender Management Supervisor | Ev w47 |
| 20 | Leicestershire and Rutland Probation Trust | Ev w48 |
| 21 | Thames Valley Probation | Ev w51 |
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| 25 | Dr Rob Mawby, Senior Lecturer in Criminology, Leicester University and Professor Anne Worrall, Emerita Professor of Criminology, Keele University | Ev w64 |
| 26 | Christopher Hignett | Ev w67 |
| 27 | Together (Working for Wellbeing) | Ev w70 |
| 28 | Jeremy C Britton, Avon and Somerset Probation Trust | Ev w74 |
| 29 | Malcolm Lacey, Chief Probation Officer, Dorset, 1982–97 | Ev w76 |
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| 31 | Northumbria Probation Trust | Ev w85 |
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| 38 | UNISON | Ev w110 |
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List of Reports from the Committee during the current Parliament

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Session 2010–12

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| Second Report | Appointment of the Chair of the Judicial Appointments Commission | HC 770 |
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| Fourth Report | Appointment of the Prisons and Probation Ombudsman for England and Wales | HC 1022 |
| Fifth Report | Appointment of HM Chief Inspector of Probation | HC 1021 |
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