

GOVERNANCE IN COMMISSIONING: ADVICE AND GUIDANCE FOR TRUSTS

HOW or whether the Probation Review will affect trusts' commissioning role is still unknown. Nonetheless, our staff continue to press NOMS for legal guidance on key unanswered questions about governance arrangements.

Angela Munley from NOMS Business and Provider Unit, comments on our questions (below).

Last year we obtained

similar advice for Trusts in the context of Community Payback competition. Trust members can read this [here](#).

Commissioning consultant Ian Clarke has provided two papers for members – a summary of legal forms of commercial vehicles [here](#) and a new paper on State Aid Rules [here](#) which addresses whether the use of Community Payback to generate revenue is in breach of

EU and National State Aid rules.

David Preston, NOMS Social Enterprise Champion, has provided an [update](#) for members on the NOMS SE programme and trails a new opportunity to be launched in March.

We have compiled a [list of websites](#) here which will be of particular interest to members who are new to the world of social enterprises, mutuals and civil society organisations.

SOCIAL ENTERPRISE - WHAT ALL TRUSTS SHOULD CONSIDER

ANGIE Munley has responsibility for legal issues in the Probation and Contracted Services Directorate and is an authority on the Offender Management Act 2007.

Q: Can a trust establish another organisation?

A: Broadly speaking Yes. The OM Act gives trusts the power to do "anything that enables the trust to deliver its purposes." Trusts can work with existing organisations, or establish CiC's or SEs, or similar structures, but it has to be clear that this delivers the purposes of a Probation Trust. These purposes must "consist of or include the making or performance by the Trust of contracts with the Secretary of State" to deliver the probation provision. Trusts should always take advice before considering setting up another organisation.

Q: So are you saying that Trusts should set up a separate delivery vehicle?

A: No. The power to do so exists under the terms set out above. However, Trusts should consider very carefully the reasons they have for wanting to set up another delivery body and be clear about the case for doing so. Start with

what you want to achieve and see whether a) you can already do it or b) whether you could sub-contract or work in partnership with another body to achieve the same outcomes.

Q: Can a trust be represented on the Board of such a company?

A: In practice, this is happening now, and my instinct is that the answer will be in the affirmative. Trusts should seek their own legal advice first.

Q: Can trusts second staff?

A: There is always a requirement to be mindful of Employment Law which Trusts as employers will be very aware of. Also, as Trusts are indemnified by the Ministry of Justice, some consideration around the limit of liabilities in relation to seconded staff will be required.

Q: Can a trust itself become a mutual?

A: No it can't. The Trust can "spin off" staff into new organisations, or staff can seek this, and these organisations may become "Mutuals". However, the trust itself cannot transmute into a different structure.

● A full transcript is available on the [PA Forum](#)

DEVELOPING TOMORROW'S CHIEFS

THE Association has been working with partners at the PCA and NOMS on a new chief executive development programme for probation trust ACOs and directors.

The design and delivery of the programme has been contracted to Equality Works Group, which has worked with a number of trusts over many years and is currently working on similar programmes across all sectors.

Group CEO Jane Farrell will work with Paul Wilson, former probation chief executive and Regional Offender Manager. They will be joined by Steve Hemming, currently Chief Executive of Humberside, who will share coaching duties.

There will be key contributions from NOMS and Probation Trusts and a variety of others including Google UK Partnerships and Serco

(Secure Accommodation and Community Services). The programme has two core elements: Three Development Clinics focussing on leadership skills and behaviour, business and strategic skills and political awareness and three coaching sessions.

Participants will undergo 360 degree assessment and will have the opportunity to join an action learning set to maintain momentum once the programme ends. Core funding is being provided by NOMS and may be supplemented by participating Trusts.

Eighteen participants from a range of Trusts successfully bid for places on the first programme, which will start in March. For more information contact Lynne Last at PA or Barrie Crook at Hampshire Probation Trust who is leading for the PCA.

TIERS AND RISK

THE Association is supporting strong representations to NOMS by the Probation Chiefs Association about the last element of the Specification Benchmarking and Costing (SBC) programme, "Manage the custodial sentence pre and post release".

70% of tier three cases could be reassessed as tier 1 or 2 under the proposals. Our FORT group argued that that the scale and impact of these changes would need to be considered much more carefully than other specifications.

A well argued PCA briefing paper expresses serious concerns and argues for a "work through model" in six trusts to be followed by a live exercise to "fully understand the impact of the new framework and if adjustments should be made to the risk thresholds". We support this approach and will closely monitor progress.

JSC LOOKS AT MOJ STRUCTURE

THE Justice Select Cttee has launched an inquiry into the budget and structure of the Ministry of Justice.

Former Secretary of State Jack Straw and former Director General of NOMS, Phil Wheatley, gave evidence on 24 January. The draft transcript can be read [here](#).

Today Permanent Secretary Sir Suma Chakrabarti, Helen Edwards, Director General, Justice Policy Group, Anne Beasley Director General, Finance and Corporate Services and Antonia Romeo, Director General, Transforming Justice gave evidence.

"PA GATEWAY" COMMUNICATIONS (Dec-Jan)

All corporate communication is now posted to the [PA Forum](#). All registered board members will receive email alerts containing hyperlinks to new posts. Any members not registered can do so either by clicking "Register" and following the online instructions, or by emailing a request to nlampert@probationassociation.co.uk.

06 December	Update on PA Parliamentary Reception
09 December	PA News Update December 2011
19 December	Probation in Parliament December 2011
24 January	Political engagement good practice guide
27 January	Triennial Reviews - NDPBs letter from Jonathan Djanogly MP