

**Experiences and Learning from the First Wave
of Probation Trusts
Report of an Inquiry**

**John Hutchings
Independent Probation Consultant**

May 2008

1. I have undertaken the inquiry at the request of the Probation Association's Board of Directors. I was previously one of HM Assistant Chief Inspectors of Probation. Since retiring from the Inspectorate in May 2006 I have undertaken various pieces of freelance work for the Home Office or Ministry of Justice and for probation areas.
2. The present report is mainly based on visits during the past month to the six first wave probation trusts, created from 1st April 2008, to record their experiences of this change. In four I was able to interview the chair and chief executive together, and in the other two the chief executive. The structure of the meetings was very much assisted by interviews undertaken during April with a selection of board chairs and chief officers in regions where no trust currently existed. The purpose of these meetings was to establish their key concerns in relation to becoming trusts and to the process of transition. I am grateful to all those who set time aside to meet with me and share their experiences of the trust creation process as it has operated to date.

Background to the inquiry

3. Following the passing of the Offender Management Act 2007 the government has stated its intention that all probation areas should have become independent probation trusts by approximately 2011. The aims of trusts as set out in the legislation in each local area will be:
 - The protection of the public
 - The reduction of re-offending
 - The proper punishment of offenders
 - Ensuring offenders' awareness of the effects of crime on the victims of crime and the public
 - The rehabilitation of offenders.
4. Specifically the Act is:
 - A reinforcement of probation as a local service working closely with the police, local authorities and through local partnerships;
 - An opportunity for probation to be responsive to local variation and to work in their communities with fewer constraints from the centre;
 - A structure that enables system wide integration of offender management, governed by common standards;
 - The ability for services to be designed and commissioned across the custodial community boundary;
 - A clear and legitimate route by which the voluntary and commercial sector can become involved in delivering services to offenders where they can demonstrate effectiveness and value.

Trust selection process

5. The National Offender Management Service (NOMS) stated that it was keen to receive applications to become trusts from probation boards *'with the capability and commitment to take advantage of such a status in line with the vision of end-to-end offender management, supported by more commissioning and partnership*

working, and an enthusiasm to share their learning across the system. Suitability was to be assessed through a combination of self-assessment, inspection results, audit reports, and diagnostic assessment by commissioners in partnership with the Delivery and Quality Team in NOMS. A key role would be played by the new Integrated Probation Performance Framework and the information this provided in relation to an area's public protection work, offender management, interventions and organisational capability, as well as its performance against a number of key national standards.

6. Following a formal application and interview process six probation areas were selected from 12 applicants in August 2007 to become the first wave of trusts coming into existence on 1st April 2008. Of those chosen, four were in England - Humberside, Leicestershire and Rutland, Merseyside and West Mercia - and two in Wales, Dyfed Powys and South Wales. It has been the government's plan that the remaining 36 areas would acquire trust status in second and third waves through repeating the process, adapted as necessary based on the learning acquired from the first wave.
7. The information coming from NOMS about the purpose of trusts included:
 - Trusts would be the public sector provider delivering the NOMS key objectives of reducing offending and protecting the public
 - The best boards would become trusts in recognition of their achievement of excellence
 - Trusts would be the lead providers of offender management with the opportunity to be creative and deliver improvements with three-five year contracts
 - They would be able to consider further options such as specialising in service delivery areas, developing partnerships, and sub-contracting areas of work to diverse community organisations with relevant expertise and skills
 - They would facilitate local crime being dealt with at a local level by those with the most appropriate skills
 - They would support the development of strategic partnerships at local, regional and national level
 - They would strengthen the key relationship between areas and commissioners
 - They would allow the inclusion of provision and expertise from diverse community organisations, as well as from the private and not for profit sectors, thus ensuring that services were delivered by the most appropriate providers.
8. In due course Ministers were to agree what precise freedoms the first trusts were to have, which were summarised as:
 - Not being required to deliver a service on any terms (in other words the trust could refuse to deliver a particular aspect of probation service work or withdraw from delivering an existing service)
 - Being able to negotiate changes to the service specification
 - Not having changes imposed without negotiations – they would have to go through a Notice of Change procedure
 - Three year budgets
 - 5% year-end carry-over budget flexibility

- Being able to withdraw from national contracts if the business case was strong enough
 - The freedom to form joint-ventures and social enterprises would be developed during 2008.
9. The vision of the change to trust status was well articulated by the chief officer of one of the successful probation areas who wrote in his Autumn 2007 information bulletin:
- ‘Since 2001 our area has been part of the National Probation Service responsible to the National Probation Directorate in London. This new move will mean that we are released from this arrangement and will be given more freedom. This is an endorsement of the strategy that we have followed over the past six years, which has been about meeting the needs of our local communities through innovative projects aimed at the most prolific offenders and so reduce offending. As we move towards trust status we will want to involve our partners and stakeholders in the process – the whole point of an independent trust is for it to be sensitive to local needs, so this is only the start of a sustained process of informing and consulting that will be carried out over the next few months and beyond.’*

The process of applying for trust status

10. There had been a demanding timetable. All boards were invited to attend a workshop on 4th June 2007 to get updates on the plans for trusts and to be briefed on the application process. Areas in the top performance band would automatically be able to apply to become trusts, but NOMS also encouraged areas in the second and third bands to apply so that Wave 1 would include a mix of metropolitan and shire and larger and smaller areas. This meant that 35 of the 42 boards were eligible. In the event 22 expressed an interest in applying, 13 actually applied, and 12 were interviewed.
11. Boards were given until 13th July to return completed self-assessment packs. Despite the pressures of time, there was a general view from the successful areas that this self-assessment process had been constructive, because it forced the organisation to undertake an evaluation of itself and of its ability to engage with its anticipated new status.
12. Those interviewed gave a number of reasons for having applied to become trusts:
- They had obviously been attracted to the prospect of greater local freedom with less bureaucracy, even though the precise freedoms to be given were still unclear at the point of application
 - The change represented further national approval for them in relation to their performance. It was an additional way of saying ‘well done’ to staff
 - It was important to avoid complacency and not just sit on good performance once it had been achieved
 - They would be able to have a stronger independent local identity, rather than just being one area of the National Probation Service, and this would enhance their image and status
 - There was the opportunity to move into new areas of work

- There was also the strong wish to be in at the start of a process and from that to have the ability to influence how it developed, bearing in mind that areas becoming trusts in the first wave would clearly have something of a pathfinder status with a greater capacity to effect future developments and cultural change from their own experience. This was said in a context where trusts were going to be coming into existence in any case and there seemed to be advantages in not hanging back in their development
 - Board chairs and board members were also enthusiastic about the prospect of change, as it fitted in many cases with their previous work and experience and why they had applied and been recruited. Many boards were already becoming smaller and more business-like in the way they managed their work. In a number of areas people said they had applied to become trusts because in many ways they saw themselves as already operating like a trust.
 - Areas that were seen as good performers against national targets believed they were strong contenders to be successful in their application, although as it turned out not all those selected had the best performance figures, and in at least one area there was at least mild surprise that they had featured in Wave 1.
13. Needless to say, all the trusts had been pleased at the time to have been successful, seeing this as a sign of confidence from the centre. They represented a wide geographical spread, and included one of the metropolitan areas, as well as a broad range of urban and rural environments. In relation to national regions, the East and West Midlands, the North West, and Yorkshire and Humberside were represented, but it was perhaps surprising that two areas out of the four in Wales were selected. There were no selections from the major population centres of London and the South East, although obviously selections could only have been made from the areas that actually applied.
14. One might also have assumed that NOMS's assessment of the potential trust board chair and their relationship with the future chief executive would be a crucial factor in the selection of areas, especially as the new board chairs appointed in 2006 were apparently selected with a judgement being made about their ability to bring business related skills to the role. However, in one of the selected areas, the work to progress the trust application had been done under a board chair who was about to step down, having come to the end of his period in office, and in another the prospective trust chair was later to be assessed as not suitable for the role by NOMS and so was not appointed, to local dismay. This left the area with no permanent postholder in place while the process of change went ahead, a situation that continues to this day.

August 2007-March 2008: Probation areas work with NOMS to become trusts

15. The process necessitated a considerable amount of work between the six probation areas and NOMS, both through individual and collective area contact. The latter included a workshop for all those concerned over a weekend in December, which was described as being very ably assisted by an expert on contracts brought in from outside NOMS, acting as a facilitator. A number of people expressed the view that real hard negotiating work had only started at this point, when the six areas came together for the first time, even though this was four months after they

had been selected to become trusts and less than that period now remained until the trusts were due to come into existence.

16. Some of the key aspects of the whole process have been as follows:

- Probation areas were critical of the fact that NOMS had not started the process from a more informed perspective with a proposed contract that would fit the specific needs of probation trusts, which were to be a new type of independent organisation operating within the public sector. Areas thought the first draft contracts produced fell far short of this requirement and seemed better fitted for agreements between government and commercial organisations. A considerable amount of work had had to go on to produce more suitable documents with a great number of different versions being devised. Even those eventually signed are seen as being imperfect and as requiring continued development during the months ahead. However, the contracts do contain 'no detriment' clauses and it has been agreed by NOMS that 2008/2009 will be a 'learning year' while the various processes and activities continue to be evaluated. Much work still needs to be done on the service specifications.
- Despite these frustrations the initial lack of a clear framework from NOMS did allow the areas to have a substantial influence on devising the type of contract that was eventually produced
- The need to involve board secretaries, most of whom were lawyers, in the changes does not seem to have been immediately recognised by NOMS, despite the considerable legal implications of the changes taking place. Board secretaries were said to have been extremely critical of the initial version of the contracts, which fell far short of what they felt was required from a legally binding document. They were to become increasingly important players as the work to finalise the contracts continued
- There were a whole number of technical issues where decisions needed to be taken. These included:
 - Whether judges and magistrates who were members of the previous probation boards, could remain as members of trust boards
 - Whether trusts would have to register for, charge, pay and reclaim VAT
 - Confirming that TUPE did not apply to staff in an area's becoming a probation trust and that instead the Secretary of State had the power to make a straight staff transfer scheme
 - Ensuring the safeguarding of the area's current staff pension schemes
 - It was still unclear how the required local authority representatives were to be recruited to trusts.
- A governance handbook for the operation of trusts has needed to be prepared, although it is still not in its final form
- A number of consultants had been engaged by NOMS to assist with the transitional process but some of their work was felt to have been unhelpful and there were also examples of different consultants having had over-lapping briefs
- Although this was not the universal view, board representatives became more and more alarmed at the limited amount of time available to do a considerable amount of work and get everything in place by 1st April. Even where people were more relaxed about this, there was still the view that a minimum of six months was required for the necessary work to be completed. There was a considerable extra pressure from the requirement to meet the parliamentary

and legislative timetable of having the required statutory instruments in place in advance of 1st April. At one point there was a strong proposal from some boards that just 'shadow trusts' should be appointed in the first instance, but they were told that this would be unacceptable to Ministers

- Boards became concerned about the lack of any extra financial provision from NOMS to resource the extra work required to become trusts. Eventually a total of £350,000 was made available, £100,000 to Merseyside and £50,000 to each of the other areas. However, this was still considered by some to be inadequate, given the amount of time and extra work required
- Regional Offender Managers (ROMs) had in most cases played only a secondary role in the process, although there was also the view that their greater involvement might have only further complicated things and that the ROM's main role should be just to be encouraging and supportive
- Chief Officer grades had been appointed as Transition Managers and it had obviously been important to select the right person and then free them up from other responsibilities to carry out this task effectively. It had also been important to give them authority to get on with the work rather than burdening people with an endless round of consultative meetings
- As well as all the extra activity generated the normal work of the area had to continue with performance not being allowed to slip. In some areas this created particular additional pressures on senior managers. These were likely to be greater if the management team itself was small. The area's distance from London might also be problematic because of the time needed to travel there to meetings
- The amount of preparatory work required had also had a knock-on effect in delaying the trusts drawing up the three year plans they were now required to produce.

17. Within areas themselves there was a need to provide information to board members, other senior managers and middle managers, through keeping the move to trust status on the agenda of meetings and through the widest possible sharing of information. Staff were kept informed through newsletters, team meetings and staff conferences, as it was essential they should not have any anxieties raised about the anticipated changes. Meetings also needed to take place with the unions, and it was important that such discussions should be underpinned by existing good relationships, take place in an atmosphere of mutual trust, concentrate on the gains to be achieved through trust status and emphasise that the basic purpose of the organisation was not going to change. It was interesting that staff did not appear to have raised major objections to the changes, once reassured that jobs, conditions of service and pension arrangements were unaffected, perhaps being attracted to the greater freedom from central control that trust status might generate. There was an exception to this in one area, but this was linked to a more immediate current concern about re-structuring and the need of the area to make a number of staff redundant.

The present position

18. The visits to the six trusts were undertaken between 7th and 19th May, so that each of the new organisations had been in existence only a few weeks, with obvious little opportunity as yet to capitalise on its new status. Most said that the position

on the day of the interview was much the same as it had been on 31st March, but this was primarily because they already saw themselves operating as very much like a trust. The change reflected work already being undertaken to develop services which best fitted the needs and nature of the local area.

19. Despite all the difficulties that had occurred in negotiating the change of status, none regretted that they had made the bid to be selected. It was apparent that at the top the chair and chief executive saw themselves as having established a new identity for the organisation. There had been some imaginative events to launch the trust both internally to staff and to the wider world of local stakeholders and the local MPs.
20. It is however still important to recognise that certain key and hoped for freedoms remain denied to the trusts, and this will prevent them seeing themselves as truly independent public sector organisations until further concessions are made. There was disappointment that this situation continued despite the fanfare of publicity when trusts had been created. The issues in question are principally:
 - Trusts still being bound in to a national IT contract which has received much criticism.
 - Trusts being also bound into a national facilities management contract for probation buildings, which is seen generally to be inefficient and expensive
 - The existence of nationally negotiated pay agreements, which reduces trusts' flexibility to pay staff differential rates of pay in different parts of the area, whenever this is seen to be in the best interests of delivering a satisfactory service
 - Performance targets for trusts will continue to be set by NOMS and will be the same for both trusts and probation boards, rather than allowing trusts to set targets which are more relevant in their eyes to the local area, and which may also be related more to the outcome of the work and not be primarily process driven. Some concern was expressed that NOMS had now actually increased the number of performance targets against which trusts and boards are expected to deliver
21. These continuing central controls mean it is unlikely any significant cost savings and service improvements can be made in the short term, although they do still challenge the trusts to look for opportunities of pushing out the boundaries and identifying ways of how they can now take greater control of their own destinies.
22. Some additional issues of concern are:
 - Although trusts were told they would be given budgets for three years and there is the very welcome provision for the 5% carry-over, the actual budgets have still to be set, so that in terms of financial planning for the future, their position is as yet no different from where they were previously as probation boards
 - Chief executives were apparently given some indication that their extra responsibilities as heads of independent organisations would lead to their present salary arrangements being reviewed. There is no sign as yet of this taking place
 - There continues to be some lack of clarity in parts of the country about the role of the ROM in relation to trusts and to whether they exercise any general

over-seeing semi-management role in relation to the chair and the chief executive, or whether they are there to operate in a purely contractual, commissioning relationship, which is what one would naturally expect.

23. During the course of the inquiry the whole process of the current 42 probation areas all achieving trust status has also been called into question with NOMS undertaking another review of the structure of the National Probation Service. This appears to be a cost-driven exercise on the basis that savings would be made if there were fewer areas than the current 42 (or 36, plus the six trusts), but it has also been influenced by an increasing view that a probation area with an overall annual budget of less than £10 million will have insufficient management infrastructure and therefore capability to operate effectively as a probation trust (this would certainly be the view put to me by a chief officer and board chair of a small probation area interviewed in the April round of visits). I have been informed that the Wave 2 round of probation trust selections has been suspended until the outcome of this structural review is known.
24. There would appear to be two main proposals currently under consideration:
- A regional system, whereby new trusts would still be created, but these would be much larger than the old area ones previously envisaged
 - A system of amalgamating some of the 42 current areas into a smaller number of perhaps 25 trusts, along the lines of the amalgamations being talked about in 2006, which were to take place in line with the police force amalgamations under consideration at that time.
25. Either proposal if implemented would clearly impact on one of the key messages in the creation of probation trusts, that local crime is best dealt with at a local level. There are concerns that a change to larger areas will only continue central control over the probation service, which will be the actual reverse of pushing it towards a structure of independent trusts with a local focus. Any move to create larger administrative units also begs the question of what should happen to the six existing trusts which are now independent bodies and cannot simply be regionalised or amalgamated out of existence. During the visits a number of people questioned why such major changes were now being contemplated so soon after it had been announced that all 42 areas were to become trusts, and wondered whether the government's and NOMS's whole commitment to the whole concept of trust creation was diminishing. People talked of being 'let down', 'led up the garden path', even 'betrayed.'

Lessons to be learned

26. Having retired from the probation service two years ago I have not been involved in the various developments related to the setting up of probation trusts and when I started the inquiry I also had some degree of scepticism about whether yet more change should take place following the establishment of the National Probation Service, the 2003 amalgamations from 56 probation areas down to 42, the establishment and then re-structuring of NOMS, the transfer of the service from the Home Office to the new Ministry of Justice, and the many demands coming from new legislation related to the supervision of offenders. However, I found myself considerably impressed by the concept of trusts, talking to the people who

have been principally involved in their creation process although it has been disappointing to hear also that the gains achieved so far have been limited when compared with the effort expended.

27. What have been the main lessons learned to date, especially with relevance to the next round of trust creations, in whatever form the latter appear?

- There needs to be a more sensible time-table. Although not everybody took the view that the time allowed in Wave 1 was insufficient, the general impression is of a process that was uncomfortably quick and that the date for change was fixed in stone without any identification of how long it would take to get there. It also needs taking into account that Wave 1 trusts were all areas which were keen to take on trust status, had completed a satisfactory self-assessment and had senior management teams and boards in place who were assessed as being competent to take on the change. There is the further point that the process of translating all the other 36 areas to trust status (in whatever form), will be a much bigger exercise than just doing it with the original six
- The process of agreeing a satisfactory contract by NOMS with each of the trusts has been complicated and the existing signed contracts still require further work. This suggests that although important work has been completed to establish the basis of a type of contract that may be suitable for all probation areas, the next wave of trusts should not be rushed into agreeing contracts which may be unsuitable for their area. There are particular implications for the very largest areas, especially London
- The establishment of the Wave 1 trusts involved a considerable amount of work for the areas concerned and can hardly have been 'resource-neutral'. Additional funding was eventually made available to areas, although it seems unfortunate that this was not promised from the outset. A similar provision should be made for the next waves as there should be no assumption it will be easier the second and third time around
- The first wave of trusts now have a wealth of knowledge they can pass on to probation areas about the issues they have had to deal with along the way and the matters that have needed to be resolved between themselves and NOMS. A system needs to be established for them to be able to link with other areas that have a timetable to become trusts so as to provide advice as required. They need to be properly resourced to be able to do this. A view was expressed during the visits that one shouldn't rely on civil servants to get things right in the second and third waves, especially as some of them would have now moved on from their previous responsibilities
- The whole issue of any revised structure for the probation service needs to be quickly resolved with the implications both for new trusts and the future of the current ones considered as a part of this. The continuing uncertainty cannot be helpful to the development of trusts as centres of excellence which are best placed to provide probation services to offenders, courts, victims and the local community generally. If the move is towards larger organisations then consideration needs to be given to how the concept of providing local services can be best preserved and chains of command not vastly extended. If the decision is made to preserve the current structure of 42 areas, then areas will need to maximise the ways in which they can collaborate with their neighbours to achieve cost savings. There are already a number of initiatives up and down the country of where this is taking place very effectively.

28. A major underlying factor in all of the above is the extent to which NOMS can allow trusts to be given further freedoms and deliver on the objectives for which they were established. In other words, can trusts be trusted? As a key stakeholder in the process and as the body representing both trusts and boards, I would encourage the Probation Association to adopt an active interventionist role and seek to influence the views of Ministers and NOMS not to jettison changes which are still only in their infancy and result from only recently passed legislation.