

Trusts' Practical Governance: A Gap Analysis

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Executive summary

This report examines the readiness of Probation Boards & Trusts to move to a newly defined level of governance practice, which the Probation Association and NOMS believes should underpin how Trust Boards operate in the future. The work falls under the remit of the joint NOMS/Probation Association Trusts' Practical Governance project.

Twenty five Boards & Trusts responded to the survey and self-assessed their current governance practice against thirty-eight governance criteria, grouped under six areas of governance practice. The collated results show that on around 40% of the criteria, Boards are already satisfied that they are operating at the required level, but than on 60% of the criteria, Boards recognise that they have further work to do. Much of this work is in hand, but Boards are understandably at different stages of development in relation to different aspects of governance.

These findings, which are examined in detail in the report, suggest there is an important role for the Probation Association in taking forward with its membership advice on the practical aspects of governance. There is a need to identify and disseminate best practice and an opportunity to issue revised and updated governance guidance for members. This could take the form of practical advice on how to operationalise the minimum requirements determined by NOMS in its *Governance Handbook for Probation Trusts*.

The information from this survey will be used to help shape a forthcoming skills audit and, alongside ongoing pilot work on governance, will contribute to a final report and recommendations in January 2010 on the way to develop governance practice in 2010/11.

Background: Practical Governance Project

The Probation Association and NOMS launched the Trusts' Practical Governance project in April 2009 to help Trusts put into practice best governance. The project aims to provide assistance in implementing key aspects of the *Governance Handbook for Probation Trusts* by looking practically at how those requirements will be delivered.

Overseen by a Project Board of senior representatives from NOMS, PA, Boards and Trusts-designate from England & Wales, the project has a number of deliverables:

- A gap analysis (this report) looking at the readiness to implement Trust governance best practice
- A skills audit (due October 2009) looking at the competence to implement Trust governance best practice
- A pilot with three Boards/Trusts to test governance in practice in four key areas
- A study day (in November) to disseminate the findings and to develop recommendations for the next steps
- A final report (due January 2010) to the Project Board on the way forward

Aims of the Gap Analysis

The Gap Analysis exercise had two elements: firstly to define the governance practice and standards which would be needed to operate as a successful Trust. This level of practice would not only demonstrably move on from the governance level of Probation Boards, but would also take into account new challenges e.g. Local Delivery Units, commissioning and wider external/public engagement. It was also intended to underpin the way in which Trust Boards will be able to operate in the future: under three year contracts and with some greater business flexibilities.

A range of governance best practice was considered and from that six relevant and key areas of governance practice for Trusts were determined:

- Roles, Function & Style
- Capability
- Scrutiny & Accountability
- Decision making and Risk Management
- Performance & Outcomes
- Engaging with stakeholders

The second element invited self-assessment against defined criteria under these areas of governance best practice. This made it possible to identify areas of strength and areas for improvement i.e. gaps against the required standard.

Methodology

The survey criteria were compiled from a review of governance best practice, sourced from a series of reports and publications (see Appendix 2) and then shaped, in a Probation context, by a workshop with Chairs and Secretaries in July 2009 and by the Trusts' Practical Governance Project Board.

All 42 Boards/Trusts (we use the term Board from this point forward as a generic term for Boards & Trusts) were invited to complete the survey electronically or by hand. It was a self-assessment task, which we suggested should be completed either by the Chair or the Secretary, and which required the Board's current governance practice to be compared against a range of criteria and standards which had been defined as possible future Trust governance standards. Participants rated the degree of importance which they attached to each criteria (Low, Medium or High) as well as providing a self assessment score (ranging from 'falling short', through 'work underway' to 'operating with confidence').

The ratings and scores were collated and averaged across the respondent group. A self-assessment score averaging at 2.5 or above merits a "green" rating indicating that there is no gap between the required standard and the level at which Boards report to be operating. Between 1.5 and 2.4, scores are rated amber, indicating that more work is needed to be able to operate at the required level. Scores at 1.4 or below are rated red, suggesting that practice falls significantly short and that further external assistance is required. This distribution increases the likelihood of an amber rating when there is wider range of scores recorded against a criteria, but that would be a fair reflection of the national picture which emerges, whilst recognising that Boards themselves are on a spectrum in the development of their governance practice.

Headline results

There were 25 responses received, one a shared response from two Boards which plan to merge to form a Trust. This represents just short of 60% of the Boards & Trusts in England & Wales.

If all the scores for each of the 38 questions are totalled to provide a maximum possible 'score' on governance practice of 114, it is possible to calculate an overall percentage score for each respondent. Figure 1 (overpage) shows that these range from 66% to 93% (with an average score of 79%). It is important to remember that these are self-assessments, but it does indicate a range of perceived governance practice.

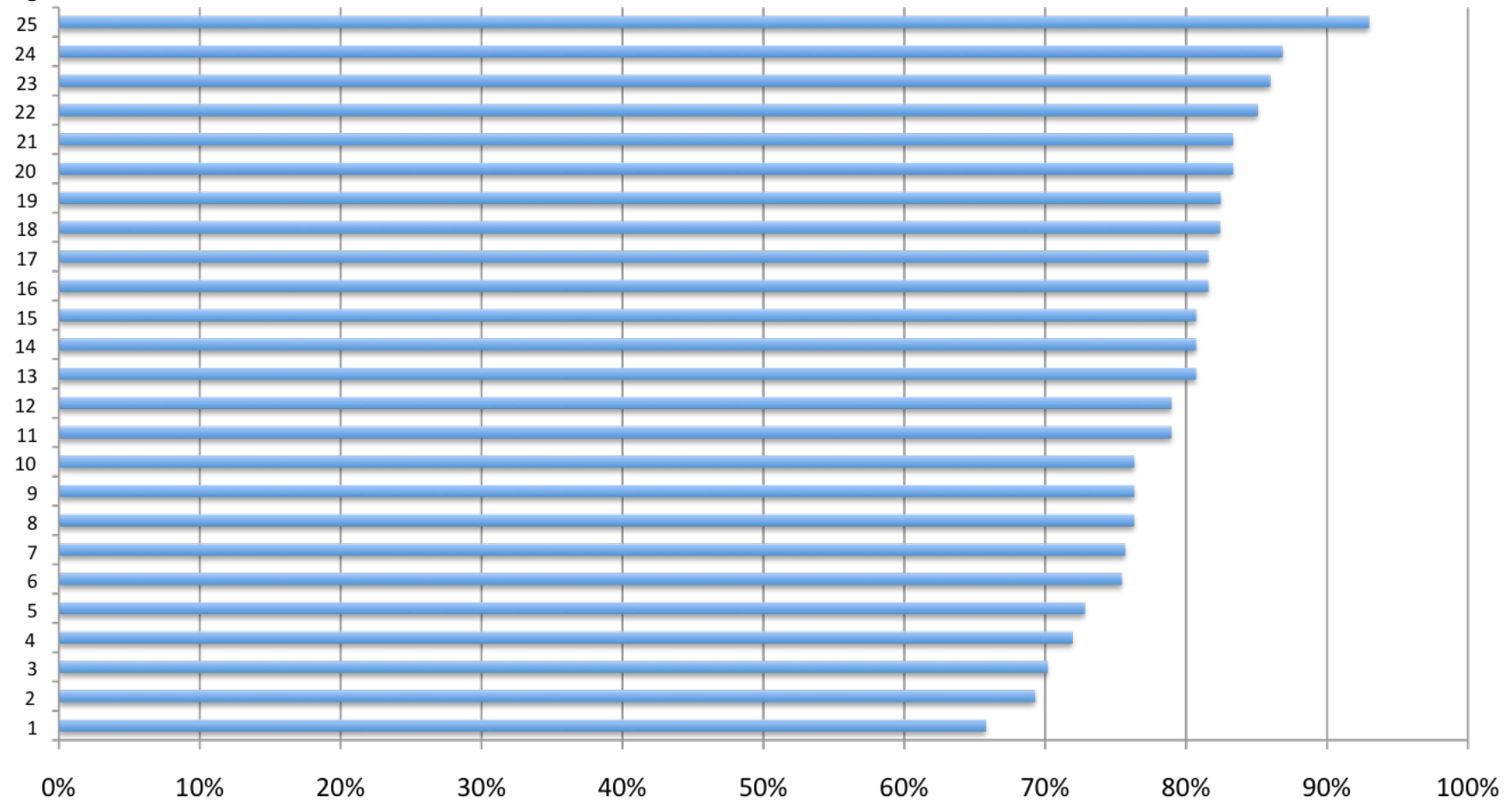
The table below shows the distribution of scores against perceived importance. 15 criteria were rated green (i.e. no gap) and 23 were rated amber (i.e. an area for further improvement).

	Green	Amber	Red
High	13	12	0
Medium	2	11	0
Low	0	0	0

The highest rated criteria were those relating to being a critical friend in the development of policy and strategy, and evidencing effective internal control and a strong Audit Committee function. The lowest rated criteria related to incorporating shared performance measures into LDU performance and reflecting the public voice. However, neither criteria was ranked as a high priority.

Range of respondent scores

Figure 1



Summary of the key gaps

Governance Area	Criteria Distribution			Key Areas for improvement (Amber, High priority)
	■	■	■	
Roles, Function & Style	3	4	0	<ul style="list-style-type: none"> •Organisational development •Clearer role differentiation & schemes of delegation •Governance behaviours
Capability	3	4	0	<ul style="list-style-type: none"> •Member induction •Diversity
Scrutiny & Accountability	4	1	0	<ul style="list-style-type: none"> •LDU level scrutiny
Decision making & Risk Management	4	3	0	<ul style="list-style-type: none"> •Influencing decision making which impacts on the Trust •Commissioning
Performance & Outcomes	0	5	0	<ul style="list-style-type: none"> •More sophisticated performance information
Engaging with Stakeholders	1	6	0	<ul style="list-style-type: none"> •Engaging with external stakeholders •Developing long term partnerships •Systematic capture of feedback to shape service delivery

Roles, Function & Style 1

Issue	Perceived Importance	Current Practice	Analysis
Operates transparently, adheres to the Nolan Principles and conducts itself ethically.	HIGH	■	Self assessment indicates confidence in this key underpinning aspect of governance practice.
Conducts its employer responsibilities competently and uses a range of information to pursue an organisational development strategy.	HIGH	■	The Organisational Development Plans required for Trust application have made Boards more aware of the development work required and there is a strong sense of work underway.
Demonstrates a clear differentiation of role between the Chief Executive and the Chair, and a clear understanding of the role of Board members, supported by an annually reviewed Scheme of Delegation.	HIGH	■	More than a quarter of respondents did not annually review their Scheme of Delegation; two Boards were unsure whether they had one. Some uncertainty remains about how changes in CEO accountability will work in practice when the CEO remains the “accountable officer”. Getting role clarity is a critical component of the basis for good governance.
Operates with objectivity and independence and has defined the behaviours required for the interaction between members and executives.	HIGH	■	There is a recognition that moving to Trust status offers an opportunity to review or re-define governance behaviours, both of members and execs and that, with smaller Boards, and a greater awareness of efficiency, the need for crisp and effective interaction is paramount.




Roles, Function & Style 2

Issue	Perceived Importance	Current Practice	Analysis
Operates as a 'constructive critical friend' not just as a sounding board for executives; also defines policy rather than rubber-stamps it; and determines strategy rather than merely endorse it.	HIGH	■	A number of Boards emphasised the importance of execs and non-exec's working together on policy and strategy and practice would appear good across the country. If there is a very slight gap, it lies in Boards feeling able to determine what services should be provided, which requires both system knowledge and an ability to test strategy prior to its implementation.
Designates a governance guardian (e.g. a Secretary) and engages in peer review with similar Boards to examine and challenge its own governance practice.	MEDIUM	■	Some Boards have accessed PA expertise, two are currently sharing practice, one is comparing practice with the Police and Health in their local Area; others believe this to be the value added area of the Secretary role. There is however a recognition of the need to regularly review practice and the provision of more best practice governance advice would be welcomed.
Holds meetings which are professionally chaired in an inclusive and facilitative style, with focused agendas.	HIGH	■	Effective meetings are more likely to foster effective governance. Practice would appear to be good.

Capability 1

Issue	Perceived Importance	Current Practice	Analysis
Ensures that members receive a structured and comprehensive induction, not only in relation to the organisation’s business, but also in relation to their role as a Board member.	HIGH	■	Although there are some well defined approaches and a number of genuine attempts to immerse members in the Probation Service’s work, there is a also a recognition of the need to raise the game with more structured induction programmes which include governance aspects as well as business exposure.
Ensures that members receive ongoing appropriate coaching, training and development.	MEDIUM	■	There is an obvious tension between need, time and cost but a recognition that ongoing development to support the new Trust agenda will be required. Chairs are keen to link this back into annual member appraisal.
Reviews the skills and competence of members and makes adjustments to meet the Board’s current business needs as well as its future strategic needs e.g. in relation to commissioning.	MEDIUM	■	Some Boards have already achieved the skills mix they need for current business priorities, others are still working towards it. There is however a very clear recognition of the need for some new and different skills and for each member to bring something distinctive to the table.
Demonstrates an effective understanding of its statutory obligations and responsibilities as an employer (e.g. in relation to Health & Safety).	HIGH	■	This area appears to be covered well by Boards. Many have link members with specific knowledge on key issues especially Health & Safety.

Capability 2

Issue	Perceived Importance	Current Practice	Analysis
Demonstrates a sophisticated understanding of, and response to diversity within its local population, delivery partners, service user and staff groups.	HIGH		The Trust application process is reminding Boards that further development work in this area is required. People focussed services need to have a diversity awareness at their heart, which requires better data and training to support more effective engagement.
Demonstrates the competence and skill to appoint effective senior managers.	HIGH		Few Boards have had the opportunity to test these skills in recent years but there is a confidence that the member skill base exists to do this when required.
Has a flexible sub-structure to enable the best configuration of member competence to be brought to any given issue or task.	MEDIUM		The majority of Boards are content with their sub-structure models, which range from formal sub committees, to working panels, to task and finish groups. The direction of travel appears to be away from standing committees, necessitated by a reduction in overall Board size, which reflects a more contemporary approach to governance.

Scrutiny & Accountability 1

Issue	Perceived Importance	Current Practice	Analysis
Holds the Executive to account by providing effective challenge to the evidence rather than to the officer, using a questioning, investigative, deliberative, robust and non aggressive approach.	HIGH	■	Boards report that they do this aspect of governance well. A few suggest that there is a need for the Executive to be better prepared for this style of governance as it develops.
Conducts appropriate, rigorous and risk based financial scrutiny.	HIGH	■	Most Boards appear content with their practice in this area.
Ensures that appropriate internal controls are in place to provide an assurance of probity and that there is a strong and effective Audit Committee function.	HIGH	■	Audit Committees and the way in which they work are generally seen as strengths.




Scrutiny & Accountability 2

Issue	Perceived Importance	Current Practice	Analysis
Requires Executives to attend Board meetings and engage effectively with scrutineers.	HIGH	■	Two models appear to exist: either execs attend for the whole meeting or attend when they are presenting a report. One Board is exploring with NOMS whether some key members of the executive team could also be appointed as Executive Board members, alongside the Chief Executive. This would reflect more closely how a number of Boards in other organisations and sectors are structured.
Conducts scrutiny at the organisational level and, where appropriate, at LDU level.	HIGH	■	Most Boards report that they intend to shift their scrutiny towards the LDU level from next year, but a small number have deliberately decided to retain an Area level focus, which could end up missing the point and value of LDUs and their outward connectivity.

Decision making & risk management 1

Issue	Perceived Importance	Current Practice	Analysis
Has an agenda set by the Chair rather than the Chief Executive, and structures its agendas to fit with the business cycle.	MEDIUM	■	Most Boards report that agenda setting is a shared responsibility between the Chair and Chief and that there is a good fit with the business cycle.
Demonstrably shapes decisions within the organisation and exerts its influence on external decisions which impact on the organisation.	HIGH	■	Boards recognise that they need to use their influencing skills and power better on external matters than they have to date. This will help to strengthen the Trust but there is a recognition that it could also cause tension with NOMS.
Clearly identifies, assesses and manages corporate risks, and seeks to calculatedly and appropriately stretch its own risk appetite.	HIGH	■	There was some confusion about “stretching risk appetite” but overall, risk management was seen a strength. Trusts have the opportunity to push at the boundaries of where the business has existed over the past few years. They have the opportunity to use the business flexibilities to work differently and to engage outwards differently. But all of those decisions are underpinned by risk and Trusts will need to become clearer on how much risk they are prepared to absorb in future.
Allocates clearly defined resources to meet its priorities.	HIGH	■	This would appear to be well established practice.

Decision making & risk management 2

Issue	Perceived Importance	Current Practice	Analysis
Understands its commissioning role, and can clearly demonstrate how it pursues best value for the tax payer through its choice of make or buy decisions.	HIGH		Most Boards do not yet feel comfortable with their level of commissioning experience or expertise. There is however a clear understanding that this is a priority area for development and that it underpins what many see as one of the key differences for Trust operation in the future.
Sets aside dedicated time to develop its strategy, using a range of information to inform direction and decision.	HIGH		Whilst the majority of Boards do set aside time to develop strategy with the Executive, a surprising number don't. The perceived greater demands of running a Trust are however making many re-consider how strategy is conceived. One Trust is already looking to implement Trust Seminar meetings. We suggest that half day to one day events every six months, to consider key strategic direction, would be appropriate.
Clearly defines the style of succinct reports it needs to support effective decision-making.	MEDIUM		Most Boards suggest that they would like to see an improvement in the quality of papers presented to them. Some are more interested in the content than the style but best practice suggests that both are important. The aim is to make papers concise and coherent, with clearly analysed options which facilitate quick decision making.

Performance & Outcomes 1

Issue	Perceived Importance	Current Practice	Analysis
Seeks, receives, interprets and analyses a range of performance information rather than data, which includes trends and comparisons with other Boards, and which allows the Board to form its own view on performance attainment.	HIGH	■	Boards appear to arrive at performance judgements themselves but most are presented with IPPF and relatively little else. There is a recognition that this is insufficient and that a more sophisticated approach to performance will be required in the future.
Sets and measures its own outcome objectives where these are inadequate at a national level.	MEDIUM	■	Although some Boards have set lower than required sickness absence targets, or more challenging public protection measures, there is a recognised over-reliance on national data alone. The move to LDUs and greater external engagement in reducing re-offending is making some Boards review whether they need additional measures. Some are already incorporating shared CDRP/LSP outcomes into LDU performance.
Incorporates into its own performance information, oversight of the key shared performance measures with other statutory partners and contracted services at LDU level.	MEDIUM	■	This is seen as challenging but necessary and, in addition to the examples above, some Boards are seeking to incorporate, for example, shared LAA objectives into their LDU scorecards. Note that this is not yet seen as highly important, suggesting that the LDU model is only slowly becoming a reality.

Performance & Outcomes 2

Issue	Perceived Importance	Current Practice	Analysis
Actively pursues and can demonstrates value for money through comparison with others.	MEDIUM	■	Most Boards recognise the need to do more of this but report that quality comparative information is difficult to obtain. One Board also suggested that Probation was not always the best benchmark for best value.
Defines the quality standards for service delivery, exercises appropriate scrutiny when these standards are missed, and ensures that the learning from failures is embedded into the organisation.	MEDIUM	■	There is some difference of opinion about whether this is a management or Board level activity. We believe it is a clear responsibility for the Board as a service provider and that the learning from complaints and SFOs, for example should be verified through future inspections and performance reporting.

Engaging with Stakeholders 1

Issue	Perceived Importance	Current Practice	Analysis
Identifies key internal and external stakeholders and has a clear strategy for engaging with them in the pursuit of business priorities and outcomes.	HIGH	■	The links with Local Authorities are seen as very important and it is clear that Boards are starting to plan their engagement in a more sophisticated way on the back of changing statutory requirements, the LDU model and their Trust status.
Appreciates that it is considered as a stakeholder by others and has defined its approach for responding to such groups or organisations.	MEDIUM	■	It is interesting that engaging with other stakeholders on Probation priorities is seen as highly important, but that Probation's response to stakeholders' priorities is seen as less important. Working in partnership would suggest a more balanced set of priorities. One Board had realised this and was taking a more "outside-in" viewpoint.
Seeks to develop long term partnerships, either with statutory partners or through contracted services, in the pursuit of outcomes.	HIGH	■	Outcomes can probably only be realised with investment in long term partnerships but Boards report that taking a long term view, in the present financial climate, is difficult.
Is able to genuinely reflect the 'public voice' because consultation or engagement structures are in place to hear the public's views.	MEDIUM	■	Scoring close to being red rather than amber, almost all Boards recognise that considerably more work in this area is required. A number cite the LCCS initiative as part of the way forward on this issue.

Engaging with Stakeholders 2

Issue	Perceived Importance	Current Practice	Analysis
Has an approach for engaging with, being accessible to, and maintaining a dialogue with the public, stakeholders and partners through a range of media.	MEDIUM	■	Most Boards recognise that they do not yet do enough of this. Being able to repeatedly hear external voices is one of the more sophisticated roles for Trusts in the future, in order to help shape services which, at LDU level, really fit into their strategic environment.
Systematically captures, considers and utilises feedback from service users, stakeholders and partners to shape and improve services.	HIGH	■	Given the national focus on the Excellence Model some years ago and the range of feedback surveys which supported it, it is disappointing to see how few Boards now systematically capture external views. Most recognise that an outward looking business needs to do this and are taking steps to improve their focus in this area.
Prioritises its relationship with the DOM as a regional commissioner of services, understands his/her needs, responds accordingly and develops strategy together.	HIGH	■	There is a collective recognition of the need, opportunity and value in building strong new relationships with the DOMs. Many Boards have already started but their approach is countered, most typically in regions with non Probation DOMs, by questions about whether the DOMs yet understand their roles and what they wish to achieve as commissioners of services.

Interim recommendations

The recommendations which follow are, at this stage, interim in nature, because this report is the first of a number of deliverables within the overall Trusts' Practical Governance project. It will be important, as we move towards the final report in January 2010, to consider how the gap analysis fits with the other project elements.

At this stage however, having identified that governance practice is far from poor, yet a number of areas of governance practice require further attention, and noting that Boards across the country are already involved in this work, the question is how best NOMS and the Probation Association can support them in these endeavours.

We have considered carefully the roles of NOMS and PA respectively. We believe that NOMS should shape its minimum expectations of Trusts, which it has done in its 2009 governance handbook for Trusts, but that it should fall to the Probation Association, working with its membership, to define some common governance practice standards or competencies which underpin those requirements.

This work could form the basis of those standards, around which there could then be discussion between the PA and NOMS about how support for the priority governance needs could be taken forward into 2010/11. In this way, practical steps could be taken to assist all Boards & Trusts in moving up to the required standard. This should be a shared interest between the PA and NOMS. The Probation Association could also use this opportunity to foster and support an exchange of governance best practice and better benchmarking between member Boards. We also recommend that the standards and best practice should be disseminated as updated governance guidance by the Probation Association.

Appendix 1: Participating Boards/Trusts

Our thanks to the Boards & Trusts which took the time to complete and return the survey. Their assistance is greatly appreciated.

Cambridgeshire	Hampshire	Sussex	South Wales
Cheshire	Lancashire	Thames Valley	
Derbyshire	Lincolnshire	Warwickshire	
Devon & Cornwall	Merseyside	West Midlands	
Durham & Teesside	Nottinghamshire	Wiltshire	
Dyfed-Powys	Staffordshire	North Yorkshire	
Essex	Suffolk	South Yorkshire	
Greater Manchester	Surrey	North Wales	

Appendix 2: Source material

This Gap Analysis Survey drew on the experiences of Board & Trust Chairs and Secretaries who attended a briefing workshop in July 2009 and on governance practice and standards defined in a number of well known publications:

Good Governance Standard for Public Services

Independent Commission on Good Governance in Public Services, CIPFA 2004

Probation Boards' Handbook

Probation Boards' Association 2003

Governance Handbook for Probation Trusts

NOMS 2009

The Good Scrutiny Guide

The Centre for Public Scrutiny

Rubber stamped? The expectations & experiences of appointed public service governors

Office for Public Management 2003

The Intelligent Board

Dr Foster Intelligence 2006