

DISCUSSION PAPER

Due Diligence in Probation

This paper addresses the concept of Due Diligence, generally and within a probation setting. Its purpose is to focus attention on the need for a clear definition of what Due Diligence is.

Informed by responses to this paper, the Association intends to provide detailed guidance to members on how probation boards and trusts should apply Due Diligence in their decision making. We are aiming to issue this in electronic format, providing a locally adaptable template to list and monitor key areas of work, sources of information, tasks to be undertaken and questions to be asked.

Comments are welcomed, particularly on the three issues raised in this paper concerning:

- The timing of Due Diligence
- The question of who should carry out Due Diligence
- The case for a bespoke model for probation

Responses should be sent to Nigel Spencer, Projects Manager, Probation Association, on nspencer@probationassociation.co.uk by October 31, 2009.

PROBATION
association

The Voice of Probation Employers

83 Victoria Street
London SW1H 0HW
Tel: (020) 003 7930

Email: association@probationassociation.co.uk

Background

A quick browse on a search engine will produce many definitions of Due Diligence, most of which reflect its origin in the financial and commercial sector.

Essentially, it is a term which describes the steps a business needs to take to be sure that a merger is in its best interest. Some financial consultants specialise in providing Due Diligence, which has parallels with an internal audit, providing assurance to inform decision making when considering an external situation.

Due Diligence has become a “buzz phrase”, being used in a wider context than the commercial sector and is now seen as part of good governance practice.

Due Diligence has moved from the narrow definition of being a process of investigation performed by investors, to being a means of prudence within general governance, especially during consideration of merger or collaboration. It is part of a wider responsibility for scrutiny and verification, and a way of taking all reasonable steps to inform a decision.

The Charity Commission has a useful entry on its website, [*Promoting Effective Performance, Collaborative Working*](#), which provides a checklist for merging charities, and identifies trustees (akin to board members) as responsible for deciding on the appropriate level of due diligence.

The National Council for Voluntary Organisations has published a booklet, [*Due Diligence Demystified*](#), which sets out areas of work to be covered by voluntary organisations interested in collaborative working. It groups these under three headings – Financial, Legal, Strategic and Operational.

Context

Many probation boards have had to consider whether or not to merge or work more closely with an adjoining area, or areas. This is not a new phenomenon, but the potential risks and liabilities have increased because of the need to search for efficiencies and the requirement for boards applying for trust status to consider these issues.

At an Association event in February 2009, National Offender Management Service (NOMS) speakers stressed the need for boards seeking either merger or closer collaboration to undertake Due Diligence, when addressing the need for merger in their trust application, although no precise definition was provided.

At the same event, presentations on work undertaken between Avon/Somerset and Dorset, and between Durham and Teesside, described the processes involved. The first two areas were taking the first steps to consider options, the latter two were already sharing backroom and some front line services and had decided to merge.

To a large extent these processes described work which could be described as part of a process of Due Diligence – these are incorporated in suggestions listed later in this paper.

Further presentations also outlined histories of mergers, planned or actual, successful or otherwise, from the private and public sector.

Subsequently, a helpful CD produced by the NOMS Performance Unit in March 2009 included Due Diligence as one of eight actions listed as good practice for decision makers (boards, Chief Officers/Executives and senior management teams) on mergers.

The CD contained advice to:

“carry out targeted due diligence as early as possible by gathering important financial, legal, operational and staffing information about the bodies to be merged.....identifying issues or risks for integration”.

It depicted Due Diligence as a process undertaken to overlap the first two of five phases – Decision to Merge and Early Planning.

In contrast to some other organisations within the public sector, no prescribed process for Due Diligence exists for Probation. The Association aims to develop guidance for its members in this area.

The role of Due Diligence and Good Governance

Given the status of a probation trust as a body corporate, it is reasonable to expect trust boards to embrace the [Good Governance Standard for Public Services](#). This standard requires boards to:

- Focus on the purpose and outcomes of the organisation
- Demonstrate value
- Take informed and transparent decision whilst managing risk

It is hard to see how a board can approach the strategic decision to merge or enter into collaborative working without undertaking Due Diligence. This process provides independent information on matters such as risks and

liabilities and on the performance and financial position of the parties involved, enabling board members to be fully informed when undertaking their role as scrutineers.

The scenario for probation boards

The Association is now seeking feedback from its members, particularly on the following three questions:

1. In March 2009 the National Board Secretaries group considered a paper, *Due Diligence Issues* by Claire Kay, Interim Board Secretary, Nottinghamshire, which argued that Due Diligence could not properly be undertaken within the limited timescale implied by NOMS, during trust application. Does Due Diligence need to be time limited, or can it inform the whole project?
2. There is a need to consider whether Due Diligence can and should be carried out by staff or board members from one or both of the areas considering the issues, or whether, almost by definition, an external, totally objective, person is required to undertake the exercise. Is this necessary, and if so, who pays?
3. There is also a case to argue that the special features of probation require a hybrid definition of Due Diligence which is more tailored to probation needs than the models developed in the financial sector - a template which can be used to underpin project management between boards and trusts researching or embarking on collaboration and merger. Such a tool would assist the executive and operational contributors to the initiative, and it could be a key aid to those focusing on strategic direction and governance responsibility. Would members welcome more detailed, probation-specific guidance?

Due Diligence in probation - scope of review

The standard process of Due Diligence would require probation areas to commission their own studies on each other, providing them with independent information.

The sections outlined below suggest the scope of a Due Diligence study in a probation setting:

Legal/Constitutional

Governance arrangements
Board Minutes /Membership
Contractual obligations – leases/office equipment

HR issues

Sickness levels
Disciplinary and grievance proceedings - recent, outstanding
Terms and conditions of employment

Local Commitments

Partnerships, Local Area Agreements, Crime and Disorder Reduction Partnership issues
Compatibility of IT systems

Performance

Integrated Probation Performance Framework
historical and forecast
Serious Further Offences
Workloads
Local commitments/secondments

Financial

Completed accounts over last five years
Projected budget next three years
Plans for efficiency savings
Pensions issues, deficits
Property - arrangements and issues

Summary

The Association wishes to produce a model which will assist boards to undertake a process of Due Diligence when considering closer working with an adjoining area. It sees this as a necessary process – it is in effect being undertaken by areas considering such issues now, even if not formally so described. It aims to provide a framework which will inform local investigation, but which will enable the participating areas to add to or omit suggested items, and which can also serve as a working tool for project managers and boards. We are seeking members' response to this proposal, as well as comments on the issues raised and the model suggested.

The Association wishes to acknowledge the helpful advice and encouragement provided by the National Board Secretaries group, with particular thanks expressed to Claire Kay, Interim Board Secretary, Nottinghamshire Probation Board.

Probation Association

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