



The Boards to Trusts Application Process
Report of an Inquiry

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Introduction

Through the thirty months from the passing of the Offender Management Act in July 2007 to vesting day for wave three applicants in April 2010 the trust application process was a leading priority for boards and trusts. It was costly and demanding and questions about whether it would be worth the investment were regularly raised. At times misgivings about purpose and method seemed to dominate and as an Association we were frequently called on to represent our members' concerns to NOMS and to try to influence what was being required of them. Simultaneously, though, there was strong support for the concept of trusts and the opportunities trust status promised.

This report was commissioned by us for two reasons:

- to formally report on this major programme, to take stock of where trusts are, and to highlight any critical outstanding matters in the process of creating effective trusts
- to flag up in good time what might be done differently in future contract letting rounds.

It is a companion report to "*Experiences and learning from the first wave of probation trusts*", commissioned by the Association from the same independent consultant and published in May 2008¹.

This report captures the twin themes of probation areas' pride in their achievements coupled with their frustration with the process. It reinforces the point that it might well have been possible to design a simpler and better way to realise the ambition of universal trust status. If there is one overarching lesson still to be learned we would say it is that trusts ought to be involved more closely in the design and implementation of such organisational development programmes. They are experts in probation matters and their active involvement will lead to more efficient processes and effective outcomes.

We are very grateful to all those people, in trusts, in NOMS and in other organisations, who contributed their views to this inquiry.

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¹ Available on our website – Click the link below <http://probationassociation.co.uk/media/1237/Experiences%20and%20Learning%20from%20First%20Wave%20of%20Probation%20Trusts%20-%20John%20Hutchings.pdf>

1. This report is based on answers to a questionnaire sent to all probation trusts in April 2010 on behalf of the Probation Association, followed up by interviews with representatives of ten trusts. The questionnaire posed the following key questions:
 - *What worked well for your area in the Probation Trusts application and selection process?*
 - *What did not work well?*
 - *What were the principal lessons learned?*
2. Interviews with trust representatives took place within the period 22nd June to 13th August. Meetings also took place with the Probation Association's Chief Executive, with other Probation Association staff, with three of the National Offender Management Service's (NOM's) Directors of Offender Management, with the trust secretaries', and with two independent consultants who had assisted probation boards in their applications.
3. The background to the inquiry will already be well known. Following the passing of the Offender Management Act 2007 the government stated its intention that all probation boards should have the opportunity to become independent probation trusts. The aims of trusts as set out in the legislation in each local area would 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. More specifically the Act was intended to:
 - Reinforce probation as a local service working closely with the police, local authorities and through local partnerships
 - Give probation an opportunity to be responsive to local variation and to work in its community with fewer constraints from the centre
 - Enable a system wide integration of offender management, governed by common standards
 - Allow services to be designed and commissioned across the custodial community boundary
 - Provide a clear and legitimate route by which the voluntary and commercial sector could become involved in delivering services to offenders where they could demonstrate effectiveness and value.
5. After a formal application process six probation boards were selected in August 2007 to become the first wave of trusts to come into existence on 1st April 2008, these being Dyfed Powys, Humberside, Leicestershire and Rutland, Merseyside, South Wales and West Mercia.

Following this in October 2008, Justice Minister David Hanson stated that all probation areas would now be required to apply for trust status, and in doing so demonstrate that they could deliver effective and locally tailored offender management services within budget. He envisaged the creation of additional freedoms for the resulting trusts which would allow them to take on new responsibilities. The interim period had also seen the publication of a government commissioned report about the work of the probation service from the KPMG organisation to review the current structure and identify how financial savings might be made. The report stated:

'there is overwhelming merit in initiating a nationally-led, high ambition improvement programme across probation for the next three years, in order to put in place a more local level of delivery at the frontline of offender management, to deliver large scale efficiency savings and to establish a much more robust commercial and managerial structure across probation'

6. KPMG envisaged that by 2011 no services would be provided by probation boards and all parts of the country would be served either by licensed trusts or by commercial/voluntary sector providers. The national system would be underpinned by a more localised structure of service delivery. The report again stated:

'Offender management is dependent on very local effectiveness – engaging with individual sentencers to shape demand and with other local partners to integrate solutions around the offender. We have identified the opportunity to organise the offender management function at local authority level – giving some 160 'local command units'. This looks like the most appropriate level to plan the future structure of the Probation Service, rather than the 42 police areas or the 10 regions'

7. A second wave of trust applications was to take place from November 2008 onwards (including re-applications or, as they were called, 'realignments' being required from the first wave trusts), with all previous boards eventually being granted trust status from 1st April 2010.
8. The Minister had also stated that voluntary and locally initiated mergers of probation areas would be supported by NOMS and would be agreed by ministers, if these were more likely to achieve the required goals. While never formally stated, there was some expectation probation areas with smaller budgets would find it difficult to satisfy the relevant criteria for trust status. There was a requirement that mergers could only be considered between boards within the same NOMS region. In the event a number of voluntary mergers did take place - County Durham and Teesside into Durham Tees Valley; West Midlands and Staffordshire into Staffordshire West Midlands; Norfolk and Suffolk; and Surrey and Sussex from their previous constituent boards; and a single trust coming into existence for Wales from the previous Dyfed Powys, Gwent, North Wales and South Wales trusts or boards.

In the end though size did not appear to be a factor determining success with many of the smaller areas achieving trust status. 35 new trusts were to eventually emerge from the previous 42 England and Wales probation boards, which had been in itself a significant reduction from the 54 separate probation services that had existed as recently as 2001 prior to the creation of the National Probation Service.

9. The application process involved completion of lengthy documentation detailing the board's internal working and performance over four key domains, these being:
 - Local engagement and accountability
 - Operational performance
 - Use of resources
 - Organisational capability.
10. The documentation would next be considered by three regional assessment 'hubs', led by people without a connection to the areas and boards being assessed. Should the documentation demonstrate that the required standard had been achieved, representatives of boards were invited to a formal interview at NOMS Headquarters, after which they would be told whether they were successful or not. Boards were to be allowed only two applications, and had been told that if they failed, other arrangements would be made to deliver probation work in their area. The government had previously stated that if any areas were unable to meet the requirements of trust status, the powers in the 2007 Act would be used to open up their services to competition, either from existing trusts or other providers. In the event, though, and as already mentioned, all the boards were to be ultimately successful in the application process, either individually or through a merger.

Lessons to be learned – what worked well?

11. The list of issues detailed by the new trusts either in the questionnaires or in interviews was relatively short, but its brevity was more than compensated for by its significance. The identified issues were principally:
 - Boards and their senior managers had had to scrutinise the way in which the organisation worked, leading to improvements in its structures, planning and operation and creating something that was far more like a business than whatever had previously existed
 - The application process included some very positive examples of board members and senior managers working together in the review and formulating an eventually successful application. Examples of good involvement of other staff were also mentioned, including trade unions being constructively engaged in the process

- Focusing on how the organisation operated meant that the new trusts now felt themselves better equipped to preserve front-line work, and the quality of services provided to offenders, the courts and the community against a background of reduced financial resources. They had been forced to make major strategic choices to achieve this, rather than just juggle priorities
- Consultation with local statutory and voluntary organisations, with local authorities and with members of parliament, had strengthened links with those organisations or individuals, and in many cases had drawn very positive comment about their probation area's work
- The focus the process required on the development of local delivery units, as recommended in the KPMG report, was universally welcomed as a means of the probation service becoming a more localised organisation that would be more responsive to the needs of communities, courts, victims and offenders, and would be better able to provide or commission the services each of these groups required.

12. The comments to the questionnaire from trusts of varying sizes in different parts of the country included:

'The whole process gave us a tight timeline which we saw as an opportunity. It provided us with opportunities to discuss, debate, develop in much greater detail than perhaps we might have if the process had not been in place. A team ethos was developed with board members and executive officers working closely. It offered the whole staff team opportunities to contribute fully to the future strategic direction- incorporating their ideas, thus offering true ownership for all. The process allowed us to consider true organisational culture changes and to begin to cascade these throughout the area. Staff met regularly with Chief and Chair through staff focus groups and team meetings. This allowed for frank discussion and priorities to be clearly understood and followed through.'

'Our pre-existing strategic plan already outlined the organisational changes we wished to make. The process both focussed our attention and accelerated the pace of change. It also helped us clarify some of the outcomes we required and to address a few items we had overlooked. As a consequence we totally restructured the organisation last summer. On reflection we probably "bit off more than we could chew" at the time (major restructure and application) BUT we are now reaping the benefits particularly from the new leadership structure/personnel. So short term pain for long term gain!'

'The trust feels it is a better organisation as a result of the process, with a greater sense of self, with a clear strategic plan, objectives and timetable, and with greater clarity. There were some benefits to the review process; we are now trying to do things differently. It awakened the realisation that the trust needs to be more business-like than it was previously as a probation service.'

'The process directed us to perform a fundamental reconsideration on our governance; operating structures; and strategic direction.'

'Once we all got down to what was being tested in the trust application, the headings and subsets in each domain really introduced a discipline to the strategic planning of the organisation and it became a very constructive and developmental tool.

By the time we submitted our application we were able to recognise how far we had travelled. We knew our organisational strengths and weaknesses much better and had a clear idea as to what behaviours needed to change to be able to operate as a trust in the future. The process has opened up interest and doors for us with local strategic partners.'

'A good team with excellent admin support. The process was a challenge that united a lot of people.'

'On reflection, what worked well was going first, as we had a small window of opportunity to put everything together and I think this gave our application focus and necessitated excellent teamwork between the paid officers and board members. We knew we had good evidence to rely on and the capacity to pull it together relatively quickly to meet the tight deadlines. Our final interview was challenging but we were able to think on our feet and respond flexibly because we all knew the material so well and believed in our submission so strongly by that time.'

'The public consultation on our four year strategic business plan was a really good exercise, there was caution before doing so, that it could expose the organisation to unhelpful scrutiny, in reality the opposite happened and we found our partners and stakeholders (including local MPs) were ready to engage in our business and learn more about it's complexity and challenges. We are now more ready to talk about our business and if anything we are struggling to keep up with the level of interest. Long term analysis for work force and financial planning provides a much more stable bedrock and staff have been able to appreciate that the board does have a grip on planning for the future in difficult circumstances. There is now better use of management information to inform planning and the development of the 2010/11 business plan became a much more integrated and meaningful activity.'

'The process strengthened collaborative working between board members and senior management. The board gained in-depth appreciation of the Area and of its strengths and weaknesses.'

'The structure of domains and clear criteria in each informed business planning. The application made us undertake strategic planning in a different way. We generated strategic plans, including four year delivery plans, using the application criteria as a guide. These plans will stand us in good stead moving forward.'

'The application process and the four domains were well set out with clearly defined expectations. The selection process was fair and equitable. Feedback after an earlier failed application was constructive and supportive.'

Lessons to be learned: what did not work well

13. Despite such positive comments, it was the irritations and much greater concerns about the application process that people wanted to talk about. These dominated all the interviews that took place, far more than any positive views. They centred on:

- Preparing the application documentation, both the writing and the necessary preparatory work, required an enormous amount of time. This placed severe pressures on boards and chief officer groups, and most particularly on Chief Officers themselves, which had to be managed on top of the normal pressures of the job and fitted in around other major work commitments. Several of the Chief Officers interviewed referred to the amount of extra out-of-hours work they had to put in to complete the application to the required timetable. This was increased even more if the first attempt proved unsuccessful. The work was not helped in some areas by key members of staff leaving the organisation at significant points in the process.
- It was questioned as to whether all of this represented a responsible use of public money. As well as all the work that went on within probation areas, there must also have been considerable central financial costs to NOMS itself for the staff-time involved in processing, reading and commenting on a large number of lengthy applications.
- The amount of work required for so many applications to be considered in an approximate 15 month period, some of them more than once, was seen as something that militated against sensible decision-making due to its creating a rushed and pressurised timetable.
- It was noted that each of the first wave of six trusts agreed back in 2008 had been given some government funding to support the extra work involved. There was no similar provision this time around.
- The application process was considered unnecessarily cumbersome, with vast amounts of written material having to be generated and then presented in an easily accessible manner, including cross-referencing between the different sections and the required domains. There was the feeling that the applications were being judged primarily on the quality of the written material presented, rather than on the real nature of the originating organisation.

- Similarly, in addressing the identified domains, just as much emphasis seemed to be given to the nature of the area's internal structure and processes, as to its actual performance, for example in achieving the required targets in the supervision of offenders; properly protecting the public in collaboration with other agencies; and providing effective services to the courts. It was suggested this was because everything had been devised within central government, rather than using the skills and experience of people from the probation service to identify the most important criteria by which to make a judgement.
 - There was the feeling that the different regional hubs responsible for assessing applications had operated to different standards, with it being seen as easier to get through the assessment depending on which hub was going to consider it. It was of course impossible to prove this, but the belief nevertheless continued.
 - There were also allegations, again impossible to prove and also strenuously denied by those Directors of Offender Management interviewed, that success had become easier to achieve towards the end of the process, because of a political need to ensure all boards became trusts with a general election imminent.
 - No real hard information was ever forthcoming from NOMS as to what might happen to an individual probation board should its application for trust status prove unsuccessful. Although a number of options had been floated at different times – for example bringing in the private or voluntary sector, or inviting a successful trust to take over the area's work - the position remained unclear even as the final decisions were being made about applications in December 2009 and January 2010.
14. There were also a whole number of issues related to mergers, both where these had been realised, and also where there had just been preliminary discussion:
- A number of trusts, especially the smaller ones, had done work exploring the possibility of mergers, as they believed their applications were unlikely to be successful, given the messages about size that had initially emerged from NOMS. They had then seen areas of the same or smaller size being successful at an early stage of the application cycle.
 - The restriction on mergers being only sanctioned within the same NOMS regions was seen as unhelpful. Lincolnshire for example saw itself as perhaps more naturally linked with Cambridgeshire in the south, or Humberside in the north; Cumbria with the north east of England; and West Mercia maybe with Gloucestershire.

- Durham Tees Valley was a situation of two previous probation boards having already achieved significant savings in costs through some shared management services, before the trust application process came into operation. However, it then saw itself as being required to reduce its financial costs even more if it was to be successful in its trust application.
- Surrey and Sussex believed itself to have been particularly unfairly treated. The two previous boards had both applied for trust status early in 2009, with only Sussex being successful. Sussex had then been encouraged by NOMS to take lead responsibility for a voluntary merger with Surrey. It had agreed to take this on, believing it had some assurance that the application would be favourably received with a light-touch approach from the centre. Having undertaken a considerable amount of further work and tackled the task of merging two areas who were not previously preparing to merge over a tight time period, it had been understandably aggrieved that its application had then been turned down, this despite its being very much based on the previous successful application from Sussex alone. The result was that the new Surrey and Sussex Probation Trust had had to go through the application process in some form a total of three times and was unique in that respect.
- Wales represented the largest merger of all and inevitably the process of combining two existing trusts and two probation boards into a single new trust had been particularly complex. Once the decision to merge was agreed by the previous organisations, there was an extremely tight timescale for an application to be put together, one which necessarily had to describe an organisation still only existing on paper. After this again, work on progressing the merger could not be taken further until approval of trust status was given. The shortage of time finally remaining before the new organisation came into existence on 1st April 2010 had certainly created an enormous impetus to get things done, but it also left numbers of key issues still needing to be resolved on that date as the trust moved to become fully functioning and operational.

15. Some comments to the questionnaire are set out below. It is important to note that many of these came from trusts whose very different and positive comments have already been recorded above.

'The most challenging aspects related to organisational capacity. The process itself required a huge amount of work from senior managers, Chief and Chair. This created huge pressure. The board accepted at an early stage that there was likely to be a temporary drop in performance as managers focused on the application process. We made a conscious decision to support this if it happened. It did and the dip in performance has been rectified. The cost of the whole exercise was disproportionate to the outcomes. Yes, the process needs to be challenging but there must be realistic expectations of increased workloads that such a process would incur. It should be properly funded.'

We shall be undertaking a costing exercise on the initial application process. This may well exceed £30k. In my view this is an unacceptable cost to be borne by any area.'

'...the main criticism is reserved for the scale and bureaucratic nature of the process. The cost for areas and the enormous supporting cast at NOMS HQ cannot have been a good use of public money.'

'The actual process of making the application did not feel well supported, we were given mixed advice, no dates, no venue until the day before panel. The invitation to panel was clearly another probation area's letter typed over, so even the Chief Officer's name was wrong, it felt very poor given the message that this process was testing us on 'our capability' and did not present the national team in the best light. The process was expensive and distracting from other performance improvement activity, the demand on senior management time was not accommodated for by NOMS HQ.'

'The costs involved in the process were significant, both financially and in terms of staff. It was felt there had been some lack of clarity and consistency in the process.'

'Because the different sections of the application were farmed out to different assessors we were marked down for not supplying information when in fact we had supplied it in a different section. The panel interview was challenging and fair but some of the panel had not read the paperwork properly and questions seemed to have been hurriedly put together.'

'The amount of data and the work involved for the management team was totally disproportionate. The process was completely mechanistic and took no account of the previous performance of the area, the position already reached in implementing the NOMS agenda, and the additional demands it made on the senior management of the Areas. The marking itself revealed significant weaknesses in the assessment process with inconsistent comments. The whole trust process created pressures on the senior staff in particular, that significantly heightened business risk and thus risk to public safety. A key issue which concerned the board in particular was the enormous waste of public money for little or no value.'

'The nature of the exercise as a paper based assessment of what was in one's application meant that it was a bit of a game. It was about who could put in a comprehensive application with shed loads of paper and answer questions on it in interview, rather than who was actually fit for purpose. A huge amount of time and energy went into it, much of which is will probably prove to have been wasteful.'

'Given that all Boards eventually achieved trust status, the process was over complex. It used significant amounts of management time to the detriment of other priorities. It was very time consuming and resource intensive and also unduly stressful.'

Some overall comments and conclusions

16. One of the most striking features of the inquiry has been the way in which the same people gave very positive comments about the application process and its results, yet were also severely critical of what they had had to go through. A typical example was a Chief Executive saying that the trust now felt really proud of its strategic planning and clear about its direction of travel while also attacking the process for what they saw as its inconsistency, poor timetabling, resource intensiveness and capacity to generate cynicism about its purpose.
17. This raises the question of whether the process adopted for considering applications was really the right one. Given what NOMS already knew about probation boards, from their performance figures, three year plans, service delivery structures, whether they were working satisfactorily within their budgets, HM Inspectorate of Probation reports, serious further offence reviews and audit reports, it is surprising that all areas were expected to start from the same base-line as though nothing was known about any of them. A more selective approach whereby better regarded areas might have been granted trust status without going through such a detailed application process would have enabled a more measured consideration of areas where there were doubts about their potential for success. Such a process might also have been used to support improvements and should that not prove effective, allow early consideration of what might be alternative means of delivering services in that area. Instead of this the whole project appears to have been characterised by more of a largely paper-based exam-passing mentality, and hardly gave the impression of adult responsible organisations working together in partnership towards a mutually desired goal.
18. The comprehensiveness of the process for all England and Wales probation boards, including those already considered effective enough to have been granted trust status in 2008, created an excessive load of extra work for senior managers, and risked diverting their attention from other key aspects of work of the service, including sustaining performance and ensuring offenders were being satisfactorily supervised, and obviously the public being properly protected. It is worth mentioning that at one point the trust application process overlapped with nation-wide adverse publicity coming at the probation service following the conviction of an offender under its supervision for very serious crimes. This drew unwelcome attention to the work of all areas, not just the one responsible for supervising him. Against this backcloth, one wonders whether the amount of work required and the implications of this were ever properly considered by NOMS when the process was being devised, and in terms of the service's many other basic priorities, whether a time commitment of this nature for all really made sense.

19. The second key issue relates to whether all this effort and activity was really worth it in any case. Although probation trusts are now independent public bodies and the Minister had spoken in 2008 of them being able to take on new freedoms, the inquiry discovered these new freedoms still being described as 'elusive' and as a 'mirage'.

One trust Chair wrote *'Overall, becoming a trust has brought no benefits - we have signed away the right to be the responsible provider under the previous legislation without negotiating any gains in return, notably the freedoms needed to operate in a competitive environment'*. As examples of this trusts:

- still find themselves bound by nationally imposed estates management and information technology contracts which have long been generally regarded by them as inappropriate and expensive
- are locked into contracts with NOMS which they regard as imposed and where the final arbiter in any dispute is the Secretary of State
- are no longer allowed to carry forward any funding from one year to the next (which is creating serious problems in commissioning services with other organisations who are seeking longer periods of commitment)
- have to comply with national instructions in relation to National Standards and completion of the lengthy OASys offender assessment documentation.

20. Several of those interviewed also described some staff within NOMS having apparently been unable to make the conceptual leap from seeing probation trusts as just another government department, and of their continuing to receive instructions or requests for information from NOMS which they could not imagine would have been sent to any equivalent private sector organisation that was delivering offender services.

21. Despite the above, it is still very early days with the present inquiry only taking place within a few months of the trusts vesting date. Nor are the above concerns not known within government. An Office of Government Commerce Report on the Probation Trusts Programme included in its conclusions:

'One risk is growing rapidly in significance. Many trusts – especially those with new Chairs with a strong private sector background – expected trust status to provide operational and financial flexibility in much the same way as it has to NHS Trusts. In the immediate future these flexibilities will not be available. There are indications that trusts will find the detailed performance oversight carried out by DOMs to be irksome. As a result, there is growing disillusionment with trust status and antipathy towards NOMS.'

There is a significant risk that this will hamper reform of probation service unless action is taken to engage trusts – and especially recently recruited and reform-minded trusts Chairs – and tap into the potential contribution they can make to reform.'

22. Similarly the NOMS Chief Executive, Michael Spurr, when recently interviewed for the Probation Association stated that probation trusts will now have more opportunity to act independently and with a greater degree of innovation than in their previous incarnation as boards. He went on to say that NOMS will have to specify what it wants to see delivered, but how that delivery is to be achieved is a matter for the individual trust. However, such an optimistic forecast has to be contrasted with the view expressed in the inquiry by one trust Chief Executive that the current situation reminded them of having been a teenager, where you were now expected to behave like an adult, but it still felt as if you were being treated like a child.
23. There can be little doubt that at the end of the day and approaching a period of increasing financial restraint and cutbacks, probation trusts see themselves as more effective organisations than their predecessors to meet the expectations of government, the courts, partner organisations and their local communities. Despite the considerable imperfections in the application process, it is clear that it has assisted them in moving to the present position. The unanswerable questions of course are whether they needed to become trusts to achieve this; whether the previous probation boards could have made these changes just as effectively if pushed to do so; and indeed whether some boards would have put through similar improvement processes of their own accord, especially in the light of the KPMG report, irrespective of what was coming at them from central government.

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