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A Commissioning Model for Probation

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Probation services exist to prevent offenders committing further crimes. While this is not achievable for everyone all of the time it is possible to keep the most serious re-offending at a low level and to contain and significantly reduce individuals' rate of reoffending and its impact on the community.

This is realised through professional supervision and control coupled with specialist attention targeted at factors that influence people to break the law, such as difficult early lives, low educational attainment, a tendency to violence, addictions, mental health problems, homelessness, poor money management or unemployment.

The State owns justice and so responsibility for the range and quality of probation services should always rest with the public sector. But who provides the various aspects of face-to-face work with offenders should depend entirely on who can achieve the best results at the most reasonable cost, whether that is the probation trust itself, a not-for-profit organisation or the private sector.

Offenders live in local communities. The solutions to criminal behaviour, and so to making people safer, lie not just in statutory work with individual offenders but also in the services they receive as citizens. As well as commissioning and providing services itself, effective probation includes collaboration with other organisations to help shape the totality of services in an area.

Crime has many inter-related causes and holistic solutions work best. The best model for delivering probation is therefore one in which the Secretary of State has a single contract with each probation trust for the provision of all services: the Secretary of State specifies what outcomes the State is "buying" in that locality on behalf of the public. This allows one body, the probation trust, to have a co-ordinating overview, sub-contracting, providing services itself or ensuring they are provided through others, according to what works best.

In 2001 the National Probation Service was created to drive efficiencies and more consistent improved national performance. To this end probation boards were expected to be compliant with detailed central instructions. Uniform services and activity were prized and there was a culture of 'top down' micro management by the National Offender Management Service (NOMS) that is taking time to reduce.

Today's environment requires a new mindset. To fulfil the requirements of the Offender Management Act 2007, probation boards underwent a rigorous process to transform themselves into trusts. In approving the establishment of probation trusts Parliament

recognised the capability of trusts to be engaged in “*the making and performance by the trust of contracts withany other person which provide for the carrying out by the trust of activities...*” (Clause (4b) Statutory Instrument:2010 No.195 Probation, England and Wales).

Trusts must be enabled to be the Secretary of State’s provider of choice, creative innovators and assertive commissioners in a vibrant local market. They should be given incentives to commission with vigour and to use competition to find the best providers and hold them to account, constantly focused on value for money and on incremental improvements in the quality and efficiency of what’s provided.

Such a model does not preclude either co-commissioning by trusts across trust boundaries or the Secretary of State’s ability to require local market testing and, as public bodies, trusts are bound by competition law.

Essential features of a new probation landscape

There should be a single outcome based contract between the Secretary of State and each trust to provide all probation services in the area it serves which expresses the outcomes the Secretary of State is “buying” on behalf of the public.

Together with the Probation Chiefs Association we have published a briefing paper [*Contract Outcomes – Facing The Right Direction?*] that sets out an outcomes model for the work of trusts to replace the current one which is heavily informed by input and process requirements.

Trusts should themselves decide how to deliver the outcomes in their contract. This might be through sub-contracts with private, not-for-profit or public sector organisations, through non-financial partnerships or through in-house provision. Increasingly it may also include co-commissioning with other local agencies for example in the delivery of alcohol services.

Trusts’ twin accountabilities to central and local government should be recognised and supported by the development of national frameworks to guide local crime reduction and community safety work.

As well as reflecting trusts’ vertical accountability (Offender Management Act 2007) to the Secretary of State and Parliament, arrangements, particularly contracts, should capture their horizontal accountability (Local Government and Public Involvement in Health 2006 and Policing and Crime 2009 Acts) to local communities.

To promote a coherent manageable approach in what can be a complex arena a national crime reduction performance framework should be developed, consisting of:

- a single “reducing reoffending” measure for Responsible Authorities; and
- supporting national crime reduction performance criteria.

Trusts’ primary accountability should be through:

- local authority Scrutiny arrangements at the local level; and
- contract management by the Ministry of Justice and NOMS at national level.

Ministry of Justice investment in national commissioning should be replaced by investment in trusts as local commissioners.

Historically there has been little requirement for trusts to commission but in the new environment, they must become effective commissioners and developers of local markets for the provision of offender management, punishment and rehabilitation. This will not happen everywhere of its own accord, although some trusts do have well advanced approaches. We need systematic leadership and investment in trust development by the Ministry of Justice.

Trusts should be given financial incentives by the Ministry of Justice to improve value for money (ie paid by results).

A payment by results regime is under development by the Ministry of Justice. It should be considered not only for nationally managed singleton projects but also for the management of contracts with trusts. Trusts and multi-agency partnerships should also be able to use payment by results in their sub-contacts.

The regulatory burden should be reduced to enable trusts to focus outwards on providing a service rather than inwards on compliance with process requirements.

Probation is burdened with controls and directives which focus attention on compliance for its own sake and away from achieving results. We have published a report setting out the scale of this micro-management together with proposals for a proportionate approach (*Hitting The Target, Missing The Point*) designed to help trusts be enterprising, innovative and business-like.

Local or national commissioning - the key question

At the heart of this model is the principle that all probation services should be provided through a contract between the Secretary of State and each probation trust. The advantages are:

- responsibility and accountability for the management of offenders, including of the risk of harm they pose to others, and the related duty of care, remains transparently and unambiguously with one organisation
- trust Boards, appointed by the Secretary of State, maintain the key task of securing the performance of in-house and commissioned provision
- probation services remain integrated, based on effective established arrangements that have stood the test of time. A coordinated overview of services is possible, enabling straightforward and coherent planning, implementation and monitoring
- contemporary place-based multi-agency management of public safety and crime reduction is supported and reinforced.

By contrast, when central Government contracts directly with other organisations, in addition to trusts, to provide local probation services:

- extra communication and accountability systems have to be created to accommodate the new players who now work alongside trusts to serve the same “client group” and the same stakeholders but through a separate contract with the Secretary of State. Arrangements becomes more complicated and therefore risks increase
- these newcomers may not necessarily have the reputation, experience or track record in management of risk and this may compromise effective multi-agency sharing of information and collective planning
- significant investment and on-going expenditure is required in MoJ/NOMS to monitor and manage contractors and their performance
- the “lots” for which providers are invited to bid are likely to be large in order to attract substantial national organisations. This makes it more difficult to tailor provision to local need
- individual trusts may be weakened as they lose business to other contractors. While in the longer term this may lead to mergers with neighbouring trusts, in the short term attention will be diverted from service delivery to stabilising the organisation and maintaining a reduced “business as usual”. Existing partnerships and other financially based arrangements must be closed or renegotiated. Staff must be transferred to new employers.

Trust based commissioning does not compromise the possibilities for efficiency gains, greater effectiveness or payment by results. It enables effort to be concentrated on refining and building on existing arrangements rather than investing in new and untested approaches. If the Secretary of State is concerned about any aspect of trust commissioning, he can use his primary contract with trusts to specify his requirements and expectations.

In summary, the strongest, safest and most responsive model for competition in probation services is one where:

- ✓ The Secretary of State contracts with probation trusts to deliver standards and outcomes (and if he wishes may determine which services should be market tested by trusts locally).
- ✓ Trust Boards, appointed the Secretary of State, are the first line of assurance that competition delivers results where they matter: in local communities.
- ✓ Trusts develop diverse local markets and commission from the most cost effective providers.
- ✓ Integrated public protection work is reinforced at local level to reduce reoffending and crime.