

TRANSFORMING REHABILITATION

Justice Select Committee Submission

November 2017

**The Centre for Social Justice
Criminal Justice Unit**

**Written Submission to the Justice Committee's Inquiry into the
Government's Transforming Rehabilitation Programme**

Q1(a) What contractual, financial and administrative changes did the Government introduce for CRCs in July 2017 as a result of their internal review of Transforming Rehabilitation? What has been the effect of these changes on the delivery of probation services?

We understand recent changes made by Government in relation to CRCs seek to remedy an evident flaw in the initial contracts which assumed that only 20% of the cost-base for CRCs was fixed, with the remaining (80%) of costs being variable.¹

Making such an assumption for probation services is at odds with the reality of high quality services built upon a professional and motivated workforce engaging in relational work. In recent oral evidence it was confirmed by the Ministry of Justice (MoJ) that in fact 80% of costs are fixed, with the remaining 20% variable.

We hope that the Justice Committee will explore with CRCs the extent to which this assumption may have affected them and distorted or otherwise influenced the design of their operating models.

For example, one concern is that the use of such a low fixed cost base might have been a deliberate effort by those behind the original competition design to encourage CRCs to commission and subcontract services in a manner that would only see cost incurred in direct proportion to volumes. If so, then it would appear to be at odds with the principles of market stewardship outlined and reiterated by the MoJ at the time of the original competition.²

Given the assumption of a very low fixed cost those organisations seeking the contracts could have been expected to develop operating models that sought to minimise fixed costs, to align their own business models with the commercial contract under which they operate.

One potential manifestation of this might be seen in the shift in probation supervision away from face-to-face contact towards remote and automated monitoring, as documented in recent reports from

¹ *Oral Evidence: The work of the Ministry of Justice*, Justice Committee, HC 418, 25 October 2017, Q69-Q70 [Accessed via <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/the-work-of-the-ministry-of-justice/oral/72183.pdf> on 10 Nov 2017]

² *Principles of Competition: Transforming Rehabilitation Programme*, Ministry of Justice, 2013 [Accessed via <http://www.justice.gov.uk/downloads/rehab-prog/competition/moj-principles-of-competition.pdf> on 12 Nov 2017]; see also *Transforming Rehabilitation: A Strategy for Reform, Response to Consultation CP(R)16/2013*, Ministry of Justice, May 2013 [Accessed via <https://consult.justice.gov.uk/digital-communications/transforming-rehabilitation/results/transforming-rehabilitation-response.pdf> on 12 Nov 2017].

HM Inspectorate of Probation. In one CRC area the Inspectorate found 1 in 4 low risk offenders had their supervision scaled back to a telephone call every six weeks.³

Similarly, growing pressures on some service providers to shift from relatively costly one-to-one work with individuals to much cheaper seminar-style group work. For individuals with multiple and complex needs, or other vulnerabilities, the prescription of group work can be inappropriate and ineffective, especially in the early stages of engaging and intervening.

The injection of approximately £22 million into the CRCs during the summer as part of an interim agreement and the potential for a further £277 million over the remaining life of the contracts speaks to a significant recalibration in response to the flawed fixed/variable costs assumption and related volume issues. The OJEU notices publicising this contract variation give the following reasons for the variation:

“Since the contract was awarded, the volume of cases allocated to the CRC has been much lower than was foreseeable, and the volume of community sentences and nature of service requirements applicable to offenders have been significantly different from historic data and this was not foreseeable. Consequently, the Fee for Service payments have been significantly lower than anticipated. In addition, the CRC has a much higher proportion of fixed costs than was foreseeable. This results in too much of the Fee for Service payment being changed when volumes change, when more of it should remain fixed.”⁴

Like other organisations we have concerns that the nature of the contracts and the modifications remains somewhat opaque, limiting the ability for anyone outside of Government to scrutinise or understand the specific challenges or issues experienced in probation with respect to the contracts.

Q1(b) Are strengthening inspection standards and creating joint performance measures (between probation services and prisons) the best ways of improving performance?

While Transforming Rehabilitation sought to give CRCs responsibility and incentives for reducing reoffending through, for example, the use of a payment by results mechanism, some of the levers or tools for potentially reducing reoffending are presided over by other parties with often conflicting incentives.

For example, release on temporary licence (ROTL) can be beneficial for aiding resettlement of prisoners back into the community.⁵ However, at present, the decision to use ROTL is based on central rules and the decision of a prison governor. While a joint performance measure might go some way towards improving the effective and appropriate use of ROTL, a more radical approach might be to provide the CRC / probation service with greater control over the use of ROTL to support the resettlement of offenders and to aid their desistance from crime. This is one area we are currently exploring as part of our ongoing work.

³ *Quality and Impact Inspection: the effectiveness of probation work in Gwent*, HM Inspectorate of Probation, April 2017 [Accessed via <http://www.justiceinspectrates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2017/04/Gwent-QI-inspection-report.pdf> on 10 November 2017]

⁴ For example see *UK-London: Probation Services 2017/S 139-286195 Modification Notice*, TED Supplement to the Official Journal of the EU, 22 July 2017 [Accessed via <http://ted.europa.eu/TED/notice/udl?uri=TED:NOTICE:286195-2017:TEXT:EN:HTML> on 10 November 2017]

⁵ *Prisoners' Release on Temporary Licence: recent controversies and reform proposals*, House of Commons Library Briefing Paper, 3 June 2016 [Accessed via <http://researchbriefings.files.parliament.uk/documents/SN06878/SN06878.pdf> on 10 November 2017]

Furthermore, we would call for much higher levels of transparency with respect to the performance and operation of probation services. Such an increase in the provision of data would benefit the public at large, and help supply much-needed detail to Police and Crime Commissioners who can be expected to have a growing interest in the performance of probation services as they seek to reduce crime and improve public safety.

Q1(c) What should be the Government's priorities to improve work between departments on the delivery of services needed for effective rehabilitation?

Both the Justice Secretary (Rt. Hon. David Lidington MP) and the Parliamentary Under Secretary of State for Prisons and Probation (Sam Gyimah MP) have referenced in recent remarks the fact that the criminal justice system often inherits the failures of other state agencies.⁶ Thought and consideration should be given to the creation of mechanisms that ensure agencies or departments outside of criminal justice that generate such 'failure demand' are required to contribute towards the resultant costs within the criminal justice system.

Furthermore, the Centre for Social Justice has a strong history of championing whole system reform – like that seen with Universal Credit – ensuring that work does pay and recognising that work remains the best pathway out of poverty.

The CSJ is therefore actively exploring opportunities to rethink the mechanisms by which the criminal justice system, and the rehabilitative element – for both offenders and victims alike, could and should be resourced. Our work is at an early stage, but this is one area that we believe is worthy of exploration.

Linked to this, we have concerns around the measure chosen for payment by results, with reducing re-offending (i.e. proven reconviction) being of financial interest to the Ministry of Justice, but not adequately capturing the positive outcomes being delivered by probation services. Proven reconviction fails to effectively account for any distance travelled in relation to criminogenic needs, while also being a measure affected by many variables outside of the control of CRCs.

Therefore, while we support the use of payment by results mechanisms as a means of driving improved outcomes, we do have concerns over the choice of measure – and would prefer a measure or basket of measures that more accurately tracks recidivism (the tendency for an individual to relapse into criminal behaviour) as opposed to reoffending (proven reconviction).

Some voluntary sector providers – like Tempus Novo – are already mapping their own performance against a wider basket of measures than merely reconviction, in recognition of the deficit in the reconviction measure and to better understand their impact and effectiveness.

Q2 What impact have the reforms had on: i) sentencing behaviour, ii) recalls to prison, and iii) serious further offences?

A recent CSJ Conversation paper by Jonathan Aitken and retired Judge John Samuels QC examined the issue of recalls to prison and found that 21,559 people were recalled to prison in the 12 months ending December 2016. Many of those recalled will have been rightly recalled in relation to the risk

⁶ Remarks made by Sam Gyimah MP at CSJ Fringe Event *Unlocking Potential: How effective criminal justice can transform lives*, Centre for Social Justice, 3 October 2017 [Accessed via <https://www.youtube.com/watch?v=zKGplZDdSlg> on 10 November 2017] and by Rt. Hon. David Lidington MP in address to Conservative Party Conference 2017 [Accessed via <https://david-lidington-cc5l.squarespace.com/blog/2017/10/16/speech-at-the-conservative-party-conference> on 10 November 2017]

of harm they pose to the public, but up to 55% may have been for minor reasons unconnected to any risk of harm.⁷

The increased volume of recalls to prison can in part be attributed to the expansion of supervision to those individuals on shorter sentences. Anecdotally, evidence suggests that some reasonable proportion of these recalls may be due to poor communication or a lack of communication between offender manager and offender.

Q3 How effective have Government measures been in addressing issues arising from the division of responsibility between the NPS and CRCs in the delivery of probation services?

The division between NPS and CRCs with respect to risk remains an issue, with our fieldwork identifying a significant issue in relation to individuals moving from medium risk to high risk.

At the very time where consistent relational contact could benefit an offender, any existing relationship and understanding of the individual and their situation is handed from a member of staff within a CRC to a different member of staff within the NPS.

This issue is one that has been reported to us during the course of fieldwork as part of our ongoing work and echoes issues raised prior to the launch of Transforming Rehabilitation by the now defunct Probation Chiefs Association and Probation Association.⁸ It is also worth noting that our fieldwork indicates the ease of transition between CRC and NPS caseload is often dependent upon the nature and quality of the local relationship between CRC and NPS.

Q4 What else should the Government do to address the issues facing probation services?

Strategically, the Government should increasingly seek to enable local areas to take ownership of probation services and commissioning. There is a growing appetite among some Police and Crime Commissioners to better effect the delivery of public safety through more joined-up working.

The criminal justice system remains over-centralised and in the coming months and years, Government should be open to and actively seek to support local areas in taking ownership of criminal justice; as, for example, we have begun to see in Manchester through the whole systems approach.

Q5 How can the Through-the-Gate provision be improved so that prisoners get the right help before their release from prison and afterwards?

Inspections of Through the Gate (TTG) services, including the joint Criminal Justice Inspectorate inspection in October 2016, have found CRC efforts to be “pedestrian at best” in relation to TTG.⁹ The dysfunction in TTG services can be partly attributed to the contractual and financial issues that have affected CRCs and driven them to focus on more immediate and substantial sources of payment, in preference to investing in TTG. Furthermore, as the Inspectorates have found, the quality of

⁷ *What Happened to the Rehabilitation Revolution?*, Centre for Social Justice, September 2017 [Accessed via <https://www.centreforsocialjustice.org.uk/core/wp-content/uploads/2017/09/CSJJ5667-Rehab-Revolution-WEB.pdf> on 10 November 2017]

⁸ *Transforming Rehabilitation: Consultation Paper CP1/2013: A Joint Response from the Probation Chiefs Association and the Probation Association*, Probation Chiefs Association and Probation Association, February 2013 [Accessed via <http://probationchiefs.org/wp-content/uploads/2013/02/PROBATION-REVIEW-PCA-PA-Response-FINAL.pdf> on 10 November 2017]

⁹ *An Inspection of Through the Gate Resettlement Services for Short-Term Prisoners*, HM Inspectorate of Probation and HM Inspectorate of Prisons, October 2016 [Accessed via <https://www.justiceinspectorates.gov.uk/cjji/wp-content/uploads/sites/2/2016/09/Through-the-Gate.pdf> on 10 November 2017]

assessments and screenings conducted by prison staff are not fit for purpose and hamper subsequent efforts.

These findings are echoed by members of our own CSJ Alliance of frontline charities and through our fieldwork. There is significant scope to improve the process and there is at least anecdotal evidence to suggest that for some the current service is worse than that which existed prior to the implementation of TR.

At present, for many offenders, Through the Gate is little more than “to the gate” – with little in the way of consistent throughcare from within the prison walls out into the community. Furthermore, through our Alliance of charities and other fieldwork, we hear of continued and repeated duplication of signposting in place of meaningful service delivery that addresses the needs of offenders as they approach release and re-enter the community.

This phenomenon of duplication is mirrored across other areas, such as employability, with offenders having their employability assessed on multiple occasions, but with little or no resource ever allocated to assisting an offender in developing their employability.

The current approach to TTG services appears heavily skewed towards the minimum contractual obligations on CRCs – specifically the completion and review of resettlement plans for offenders. The promise of ‘payment by results’ (PBR) failing to incentivise investment in anything more significant.

TTG is a crucial component in what we believe should be a much smoother transition from custody back into the community, incorporating the use of ROTL (as already referenced) along with activity to ensure that on release the risk of prisoners being homeless or unemployed are minimised.

Q6 What can be done to increase voluntary sector involvement in the delivery of probation services?

At the CSJ, we have an alliance of over 350 voluntary sector organisations who we work closely with to inform our research. We have seen some excellent examples of the ways in which these organisations can deliver the transformational services that will be critical if we are to successfully reduce reoffending.

These voluntary organisations often bring something unique to the areas they work in, such as a strong connection with communities and an acute responsiveness to the distinct needs of individuals. As a result, the CSJ continues to believe it is essential that probation services develop in such a way as to facilitate the inclusion of the voluntary sector in order to make the most of the skills and experience the best organisations have to offer.¹⁰

The CSJ sought to ensure effective market stewardship was built into the Transforming Rehabilitation programme at inception, however our survey results and evidence gathered during site visits suggests that some voluntary sector organisations have suffered from reduced funding via probation services and/or seen restrictions or constraints placed on the services being commissioned.

As with any sector of the economy, voluntary organisations working in criminal justice can be more or less effective and efficient. Therefore while the voluntary sector can play a valuable role in helping contribute towards reducing re-offending and, more importantly, reducing recidivism, it is important

¹⁰ *The New Probation Landscape: why the voluntary sector matters if we are going to reduce reoffending*, Centre for Social Justice, September 2013 [Accessed via <https://www.centreforsocialjustice.org.uk/core/wp-content/uploads/2016/08/landscape.pdf> on 10 November 2017]

to recognise that being part of the voluntary sector does not automatically confer efficiency or effectiveness.

Examples of highly effective voluntary sector organisations include Tempus Novo (working with individuals leaving prison and connecting them with sustainable jobs) and Key4Life (working with young men at risk of returning to gang-related criminality by connecting them with sustainable employment opportunities), The Clink (training prisoners in catering and hospitality and operating a chain of prison restaurants), among many others.

In relation to female offenders, the effect of Transforming Rehabilitation on women's centres has been particularly pronounced. These services are often very effective and deliver much-needed gender-specific support, built on a relational basis. For some, TR has effectively denied them valuable referrals whether from probation services or via sentencing at court, and some have had to scale back activities to focus on diversion activity built around police custody suites. There is also evidence that some organisations have fought hard to withdraw from TR contracts having found them to undermine their mission or otherwise impose constraints that are to the detriment of the organisation.

We have also heard of a growing bureaucratic burden placed on voluntary sector and other delivery partners, with reports of organisations being required to gather ever more data for the purposes of evidencing impact, while diluting the share of time spent productively addressing needs versus merely capturing them.

Q7 When should there be a review of the future of the Transforming Rehabilitation model and the long-term plan for delivering probation services?

The Centre for Social Justice's Criminal Justice unit is currently engaged in work examining the future of probation and opportunities for earlier and more effective intervention. We are conducting this work as we believe that 2018 will be a crucial year for reviewing the TR programme and looking to the future for probation services.

Finally, the failure to develop an effective probation service across England and Wales into the long-term can only be expected to continue to contribute to the growth of the prison population. Probation has become a pipeline to custody for too many offenders and while there are positive stories to be found within the Transforming Rehabilitation programme, it has fallen short of delivering on the promise it originally offered and, so we welcome the Justice Committee's timely inquiry into TR.

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