



National Audit Office

Report

by the Comptroller
and Auditor General

National Offender Management Service

Probation: landscape review

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Probation: landscape review

Report by the Comptroller and Auditor General

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Comptroller and Auditor General
National Audit Office

28 February 2014

This report summarises the arrangements for probation that were in place during the first year of the C&AG's audit. It also summarises the main elements of the reform currently under way and identifies the key issues now facing those involved in probation.

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Key facts

35

probation trusts provide a range of services to offenders and the courts in England and Wales

£853m

was spent by the 35 probation trusts in 2012-13

208,000

offenders being supervised by probation trusts as at 31 March 2013

- 7.6 per cent** fall in probation caseload between 2008 and 2012
- 1,629** staff left probation trusts in 2012-13
- £1.338 billion** pension liabilities for probation trusts as at 31 March 2013
- 75 per cent** of work undertaken by probation trusts deemed sufficient to keep individual's risk of harm to a minimum
- 36 per cent** adult reoffending rate for those with custodial sentence of between 12 months and 4 years
- 59 per cent** adult reoffending rate for those with custodial sentence of less than 12 months
- 21** proposed Community Rehabilitation Companies

Introduction and summary

Background

1 In 2012, the Comptroller and Auditor General (C&AG) took responsibility for auditing England's 34 probation trusts (the Wales Audit Office audits the Wales Probation Trust). The 2012-13 financial year was, therefore, the first for which the C&AG audited the financial statements for each trust. Previously, the work had been undertaken by the Audit Commission. During the course of the year, the government held two consultations on reform of the probation sector, and in May 2013 introduced the Offender Rehabilitation Bill to Parliament. The Bill includes provision for the extension of licence supervision to offenders receiving custodial sentences of under twelve months. The government aims to have made its changes to the way probation is organised by the end of 2014.

Scope

2 This report summarises the arrangements for probation that were in place during the first year of the C&AG's audit. It also summarises the main elements of the reform currently under way and identifies the key issues now facing those involved in probation. The report is a landscape review, intended to inform Parliament about developments and advance its understanding of them. It is not an evaluation of progress in implementing the Transforming Rehabilitation policy. It is based on our audit of probation trusts, analysis of documents published by the Ministry of Justice (the Ministry) and other relevant bodies, and our ongoing contacts with the sector.

3 The report covers:

- the current probation system (Part One); and
- proposals for reforming probation (Part Two).

Key issues

4 **In general, the probation sector has been performing effectively.** Our audit of the accounts of probation trusts for 2012-13 found no fundamental or material weaknesses in the accounting or internal control systems, and the C&AG issued unqualified certificates for all 34 English trusts.¹ In addition, HM Inspectorate of Probation has identified much good practice among trusts. In her 2012-13 annual report, the Chief Inspector reported that around three-quarters of work undertaken by trusts was of a good standard: sufficient, for example, to keep the individual's risk of harm to a minimum. Assessments by the National Offender Management Service (NOMS) under its trust rating system awarded Rating 4 (exceptional performance) to five trusts and Rating 3 (good performance) to the remaining 30 (paragraphs 1.17 to 1.26).

1 The Wales Probation Trust is audited by the Wales Audit Office. It also had an unqualified audit certificate for 2012-13.

5 The government wishes to open up service delivery to a wider range of providers in order to achieve efficiencies, encourage innovation and extend rehabilitative provision to more offenders. The government's proposals are designed to address what it considers are key challenges (paragraphs 2.2 to 2.6):

- **High reoffending rates.** Almost half of all adult offenders reoffend within a year of leaving custody, with the proportion rising to three-quarters for those sentenced to youth custody.
- **The high costs to the economy of that reoffending.** The NAO estimates (accepted by the Ministry) that reoffending by offenders sentenced to less than 12 months in prison (not currently covered by statutory provision) costs the economy up to £10 billion per year.²
- **No incentive for service providers to reduce reoffending.** The Ministry wants to use an element of 'payment by results' in future payment mechanisms to give an incentive for providers to reduce reoffending.
- **A lack of diversity in current service provision.** The Ministry's procurement exercise aims to attract new providers into providing rehabilitation services, creating opportunities for greater innovation.
- **The need to fund new services.** National commissioning; introducing an element of payment by results; and removing administrative costs through abolishing probation trusts are all designed to help fund the new rehabilitation services for offenders sentenced to less than 12 months in custody.
- **The public finances.** The Ministry is committed to making annual savings of over £2 billion by 2014-15 and a further 10 per cent in real terms between 2014-15 and 2015-16.³ Although the government's objectives for the programme do not include significantly reducing costs, reducing reoffending rates will lead to a reduction in costs elsewhere in the criminal justice system.

6 New structures and organisations to provide rehabilitation services will operate from 1 June 2014. Probation trusts will cease operation at 31 May 2014 and will be wound up completely shortly afterwards. A new National Probation Service (NPS) will deal with high-risk offenders and provide services to courts. The government will own 21 local Community Rehabilitation Companies (CRCs), but it plans to sell these by the end of 2014. The NAO's future work programme will test progress and the key enabling services and structures, that are designed to support and deliver these major reforms. An end-state governance diagram is shown in Figure 6 (paragraphs 2.7 and 2.8).

2 Comptroller and Auditor General, *Managing offenders on short custodial sentences*, Session 2009-10, HC 431, National Audit Office, March 2010.

3 National Audit Office, *Departmental overview: the performance of the Ministry of Justice 2012-13*, October 2013.

7 The Ministry needs to develop effective contracting arrangements that encourage innovation and value for money. In December 2013, the government announced that 30 bidders had passed the first stage of a competition to win rehabilitation contracts. Bids have been received from partnerships, with more than 50 organisations represented. A complex reform programme of this ambition and scope inevitably involves managing generic risks inherent in such a programme. Based on past experience, these include (paragraph 2.34):

- **Encouraging the development of suitable market capacity to deliver the new services.** Extending rehabilitation services to a new cohort of offenders will require increased capacity; fulfilling the government's desire to see greater innovation in provision will require new and different providers. In seeking to foster conditions to encourage development of new capacity, the Ministry must be mindful of relevant public sector procurement expectations.
- **Using a commissioning approach that ensures the objectives of the government are met consistently by providers.** Extending service provision and seeking innovation require effective commissioning. The Ministry will need to identify and retain, and if necessary develop or acquire, knowledge of the service area being commissioned, as well as commissioning skills themselves.
- **Having sufficient, appropriate skills in place to manage suppliers of rehabilitation services so that contracts deliver both the benefits anticipated for taxpayers and value for money.** Recent difficulties reported in the management of government contracts with the private sector, including the electronic monitoring of offenders for the Ministry of Justice, provide useful learning that should be applied to the management of the contracts for rehabilitation services.
- **Managing the risk of market failure.** Placing any service into the private sector successfully depends on there being appropriately qualified providers willing to carry out the work at the right quality and price. This is challenging when the service is being put to the market for the first time, as potential investors or suppliers will have limited data on which to base their decisions. Moreover, plans need to be devised to ensure there is always a provider of last resort in the event of an unsuccessful procurement exercise.
- **Managing the risk of supplier failure.** The management and supervision of offenders is a crucial public service that cannot be interrupted for any reason, including supplier failure. Managing such contracts will inevitably need appropriate capacity and regulation to ensure any early signs of supplier failure are detected and acted on. Plans need to be in place to ensure there is always a provider of last resort to ensure service continuity.

8 A recent report by the Justice Committee also identified similar issues as areas that would require careful management as the programme was implemented.⁴ The Committee also raised issues in connection with four broad areas to which it intends to return in its final report:

- the rationale and evidence base for the reforms;
- the transition from trusts to CRCs and the NPS;
- the proposed payment mechanism; and
- the creation of the market.

4 Justice Committee, *Crime reduction policies: a co-ordinated approach?*, Twelfth Report, HC 1004, 22 January 2014; available at: www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/publications/

Part One

The current probation system

Background

1.1 Probation in the modern criminal justice system is the means through which offenders are supervised and their rehabilitation pursued. Probation services are currently provided by 34 probation trusts across England and one in Wales. Trusts receive funding under contract from the National Offender Management Service (NOMS), an executive agency of the Ministry of Justice (the Ministry) and its main delivery arm to which they are accountable for their performance and delivery.

1.2 Probation services exist to: protect the public; reduce reoffending; carry out the proper punishment of offenders; ensure offenders are aware of the effects of crime on the victims of crime and the public; and rehabilitate offenders.

1.3 Currently, probation trusts provide services to courts, to offenders and also give assurance to the victims of crime and the wider public. Trusts work with offenders who are serving a community-based sentence or prisoners released from custody. They have not had statutory responsibility for the rehabilitation of offenders who have served a custodial sentence of 12 months or less, although the proposed new National Probation Service (NPS) and Community Rehabilitation Companies (CRCs) (discussed in Part Two) will be responsible for these offenders in the reformed arrangements.

1.4 There are a number of probation-related activities. These include:

- supervising offenders aged over 18 sentenced to either a community order or a suspended sentence order;
- supervising offenders released under licence from prison;
- preparing pre-sentence reports for judges and magistrates in the courts, which help them to choose the most appropriate sentence;
- liaising with victims of crime if the offender has been given a prison sentence of 12 months or longer;
- managing approved premises (hostels) for offenders with a residence requirement on their sentences or licences; and
- working in prisons assessing offenders to prepare them for release.

1.5 Local structures for the delivery of rehabilitation and probation services have developed over time. For much of the twentieth century, probation was overseen locally with significant input from councils. In 2004, NOMS was established to bring together prison and probation services. Subsequently, greater emphasis has been placed on competition within probation services, and from 2008 the existing probation boards were replaced by probation trusts. By April 2010, there were 35 independent trusts. Separate arrangements exist in Scotland and Northern Ireland.

1.6 Probation trusts are currently responsible for a caseload of around 225,000 offenders (**Figure 1**). This is roughly the same number as in 2005, but a 7.6 per cent fall since 2008. Caseload is a broad measure of activity and each trust has a different mix of activities making up the overall figure. Figure 3 (on page 13) shows the mix of activities across all trusts. The overall rise in caseload between 2000 and 2008 was caused by:

- the introduction of new court orders, in particular the suspended sentence order (under the Criminal Justice Act 2003);
- the increase in pre- and post-release supervision caseload due to the continued growth in the number of offenders serving custodial sentences of 12 months or more who require supervision on release from custody; and
- offenders spending more time on licence after release from custody under the Criminal Justice Act 2003.

Figure 1

Probation service caseload, 2003 to 2012

Year	Total caseload
2003	199,237
2004	209,461
2005	224,094
2006	235,029
2007	242,722
2008	243,434
2009	241,504
2010	238,973
2011	234,528
2012	224,823

Source: Ministry of Justice, offender management statistics

1.7 As at 31 March 2013, the 35 probation trusts employed 18,282 staff (19,911 at 31 March 2012) between them. Frontline staff account for 62 per cent of those employed (2011-12, 59 per cent). Trusts have been reducing headcount. Some 1,629 staff left trusts in 2012-13 (580 in 2011-12), at a cost in exit packages of £8 million in 2012-13 (£8 million in 2011-12). Of the reduction during 2012-13, 1,089 (71 per cent) came from back-office roles (these roles made up 41 per cent of total headcount at 31 March 2012). In other terms, frontline headcount reduced by 4 per cent while back-office headcount reduced by 15 per cent. In contrast, the reduction during 2011-12 was relatively heavier on frontline staff, although the divergence was nowhere near as marked (5 per cent and 2 per cent respectively).

Structure and governance of probation trusts

1.8 The Offender Management Act 2007 gives the Secretary of State responsibility for ensuring sufficient provision is made for 'probation purposes'. It also gives him or her powers to make any contractual or other arrangement for this provision. The Act gives the Secretary of State powers to create and dissolve probation trusts.

1.9 Trusts are non-departmental public bodies (NDPBs). Each trust is led by a board which includes the chief executive. Board members other than the chief executive are appointed by the Secretary of State. The board appoints the chief executive, who is also appointed by the Ministry as the accountable officer. Each probation trust has a chair and no fewer than four trust members appointed by the Secretary of State, responsible for, among other things:

- establishing and taking forward the strategic aims and objectives of the trust, consistent with its overall strategic direction and within the policy and resources framework determined by the Secretary of State;
- ensuring that the Secretary of State is kept informed of any changes that are likely to have an impact on the strategic direction of the trust or on the attainability of its targets, and determining the steps needed to deal with such changes; and
- ensuring that any statutory or administrative requirements regarding the use of public funds are complied with; that the trust operates within the limits of its statutory authority and its contract with the Secretary of State, and in accordance with any other conditions relating to the use of public funds; and that, in reaching decisions, the board takes into account guidance issued or forwarded by the Ministry.

1.10 Probation trusts are responsible for a discrete geographical area. Typically, they are organised into local delivery units (LDUs), with each unit made up of several offices across the region. The responsibilities of the LDUs include representing the trust in court, processing referrals, dealing with pre-sentence reports, supervising offenders, community safety work and supporting operational staff.

1.11 Trusts are a key element of various local partnerships in the criminal justice system and the wider community, which aim to protect the public and reduce reoffending. Other partners include the police, HM Courts Service, the Crown Prosecution Service and HM Prison Service. In addition, each trust works closely with local and national voluntary organisations, including those providing housing, education and mentoring services for the benefit of offenders, and also support services for victims.

1.12 Multi-agency public protection arrangements (MAPPA) are also in place between the police, probation and prison services for violent and sexual offenders. Offenders who come under MAPPA are managed at one of three levels, which are determined by the level of risk posed and the amount of multi-agency involvement required to manage the risk. For example, level 1 is classed as ordinary agency management and is for offenders who can be managed by one or two agencies. Management involves sharing information about the offender with other agencies if necessary.

Financial arrangements

1.13 In 2012-13, probation trusts spent £853 million (2011-12: £867 million), with the majority of that spending funded through the contracts between the trusts and the Secretary of State for Justice. In 2012-13, the trusts received funding of £806 million through these contracts (2011-12: £822 million). In addition, trusts secured income from a range of other sources, including provision of specialist services within the criminal justice system, of just over £41 million. Overall, trusts had a net operating income of £5.9 million (2011-12: £5.9 million). **Figure 2** summarises expenditure by probation trusts and **Figure 3** analyses 2012-13 spend by trusts' activities.

Figure 2
Expenditure by probation trusts

	2012-13 (£m)	2011-12 (£m)
Staff	639	646
Non-staff (including):	213	220
Premises	75	74
Offender-related costs	29	28
Travel and subsistence	15	16
Total spend	853	867

Notes

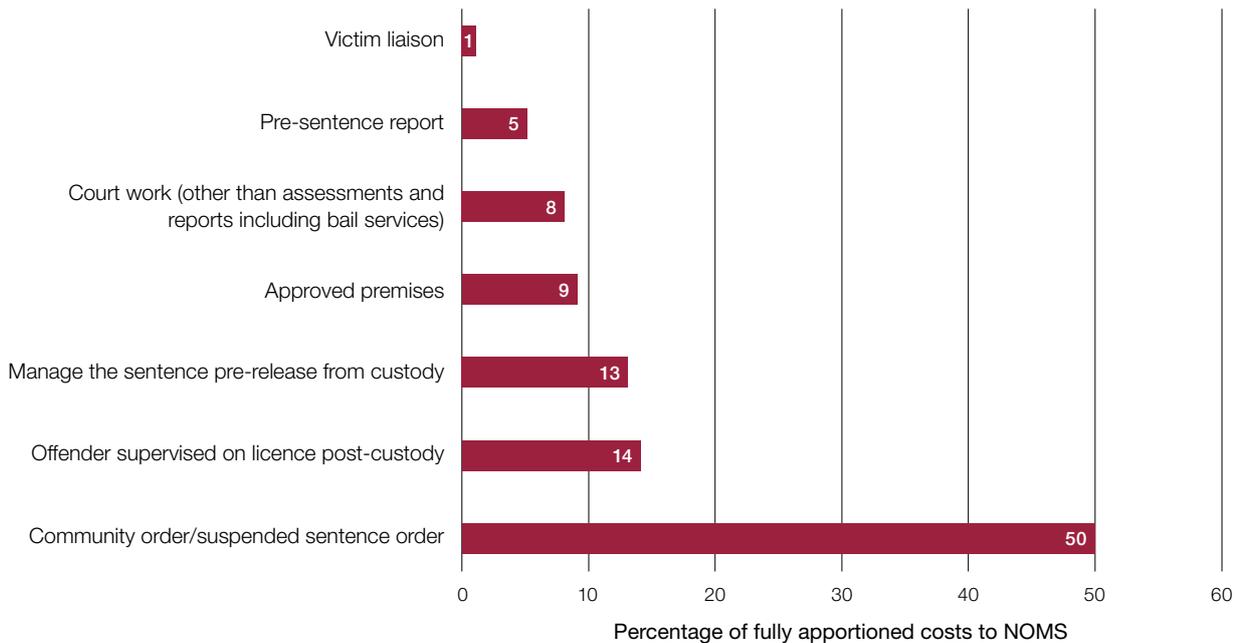
- 1 All figures are taken from the financial statements of the 35 probation trusts. No intra-group eliminations (to cancel out transactions between trusts, NOMS and the Ministry) have been made and thus the figures do not reflect a true consolidation.
- 2 Figures may not sum due to rounding.

Source: Audited 2012-13 financial statements of the 35 probation trusts

Figure 3

Probation trust activity in 2012-13 by proportion of spend

Half of all trust spending related to community and suspended sentence orders



Source: PREview data returns by probation trusts

1.14 In our report *Ministry of Justice: financial management report 2011*, we reported that NOMS had improved oversight and understanding of its cost base.⁵ Since then, it has completed a specification, benchmarking and costing programme and now publishes cost information for some of the main services provided by probation. This includes the cost per offender of pre-sentence reports, community orders, suspended sentence orders and supervision post-custody.⁶ **Figure 4** overleaf shows comparative average unit costs for trusts in 2012-13 for these types of activity. The cost information recorded in the PREview system is not subject to an independent external audit although the Ministry tells us that quality checks are carried out by it and overall costs align with trusts' audited accounts.

5 Comptroller and Auditor General, *Ministry of Justice: financial management report 2011*, Session 2010–2012, HC 1591, November 2011.

6 Ministry of Justice, *Probation trust unit costs financial year 2012-13*, Ministry of Justice Information Release, October 2013.

Figure 4

Probation trusts unit costs comparisons 2012-13

	Lowest (£)	Average (£)	Highest (£)
Pre-sentence report	110	210	320
Offenders supervised on licence post-custody	1,770	2,620	3,190
Community orders/suspended sentence orders	2,950	4,305	5,860

Source: PReview data returns by probation trusts

Assets and liabilities

1.15 Under the Offender Management Act 2007, trusts do not own their buildings and so carry few non-current assets on their statements of financial position. Total net liabilities for trusts were £1.3 billion at 31 March 2013 (31 March 2012: £1.2 billion).

1.16 The largest single item carried by trusts on their statements of financial position relates to pensions. Trusts are admitted bodies to the Local Government Pension Scheme (LGPS), which is a funded scheme administered locally by Pension Funds. The total pension liabilities at 31 March 2013 were £1.338 billion (31 March 2012: £1.197 billion). These figures will be subject to a revaluation of each scheme every three years, which will be reported in the 2013-14 accounts.

Current performance

1.17 This section draws on the evidence from the first year of the C&AG's audit of the financial statements, the work of HM Inspectorate of Probation and the NOMS Annual Probation Trust Rating System.

C&AG's audit of the 2012-13 financial statements

1.18 The C&AG took over the audit of probation trusts in 2012. Our audit of the accounts of probation trusts for 2012-13 found no fundamental or material weaknesses in the accounting or internal control systems, and the C&AG issued unqualified certificates for all 34 English trusts.⁷ The main areas for improvements in trust financial management related to control over journal entries, some poor documentation, reconciliations and segregation of duties.

⁷ The Wales Audit Office audits the Wales Probation Trust. It issued an unqualified certificate for the Trust for its 2012-13 accounts.

Findings of HM Inspectorate of Probation

1.19 HM Inspectorate of Probation (the Inspectorate) is an independent inspectorate funded by the Ministry of Justice. It reports directly to the Secretary of State on the quality of the assessment, planning and implementation of work with adult and youth offenders and those at risk of offending. In its inspections, the Inspectorate examines a representative sample of offender cases and assesses whether each aspect of work has been done sufficiently well. Findings are supported by commentary, which is drawn from discussions with senior managers and offender managers. The Inspectorate also obtains the views of sentenced individuals, victims and sentencers through questionnaires that are included in the reports.

1.20 Between September 2009 and November 2012, the Inspectorate looked at each of the 35 probation trusts. In its Annual Report for 2012-13 it reported evidence of much good practice.⁸ For example, its headline scores were:

- 75 per cent of the work undertaken by probation trusts was sufficient to keep the individual's risk of harm to a minimum;
- 74 per cent of the work undertaken by probation trusts was sufficient to make each individual less likely to reoffend;
- 79 per cent of the work undertaken by probation trusts was sufficient to support effective compliance and enforcement;
- in 79 per cent of high-risk-of-harm cases, all reasonable action was taken to keep risk of harm to others to a minimum; and
- in 76 per cent of all cases (and in 84 per cent of high-risk-of-harm cases), breach action or recall was instigated on all occasions when required.

In general, the quality of work with cases assessed as high risk of harm was better than that for all cases as a whole.

1.21 For young offenders the results were more mixed. For example, although 75 per cent of pre-sentence reports were found to be of good quality, the Inspectorate raised areas of concern, in particular around the risk of harm, safeguarding of children and risk assessment of young adult offenders (18 to 21 years). The Inspectorate concluded that too often the assessments, where insufficient, were either based on unclear evidence or had not been fully updated, and arrangements for managing the risk of harm to others or the child or young person's safety were only good enough in just over half the cases examined.

⁸ HM Inspectorate of Probation, *Annual Report 2012-13*, July 2013, available at: www.justice.gov.uk/downloads/publications/corporate-reports/hmi-prob/hmi-probation-annual-report-2012-2013.pdf

NOMS Annual Probation Trust Rating System

1.22 In addition to the external inspection of probation services, NOMS maintains its own performance assessment regime for trusts. The Probation Trust Rating System (PTRS) assessed the 35 probation trusts in England and Wales by looking at performance against 12 indicators for 2012-13 (reduced to seven indicators for 2013-14). Performance is considered in the three areas that best describe the work of probation. These are: public protection; reducing reoffending; and sentence delivery. Performance is graded into one of four bands. These bands are 4: exceptional performance, 3: good performance, 2: requiring development and 1: serious concerns.

1.23 In the latest year for which PTRS results are available (2012-13), all trusts were rated as having achieved at least level 3 – good performance. Five trusts, those in Durham and Tees Valley, Northumbria, South Yorkshire, Warwickshire and West Mercia, achieved level 4 – exceptional performance.⁹ These ratings are subject to independent assurance provided by the NOMS non-executive directors.

Delivery of probation service objectives

1.24 Paragraph 1.2 noted that probation services have a number of different purposes. These include protection of the public and reduction of reoffending. The performance information available for each of these is set out in the following paragraphs.

1.25 Protection of the public. The PTRS measures trust performance in this area over four aspects:

- minimise risk of harm to the public;
- victim risks, needs and rights;
- efficient and effective MAPPA processes; and
- quality and timeliness of offender assessments and reviews.

All trusts were rated overall as being at least 'good' in the PTRS ratings for 2012-13. Results for trusts in some of the areas listed above were mixed. For example, in the area of quality and timeliness of offender assessments and reviews, nine trusts were below the 'good' standard.¹⁰

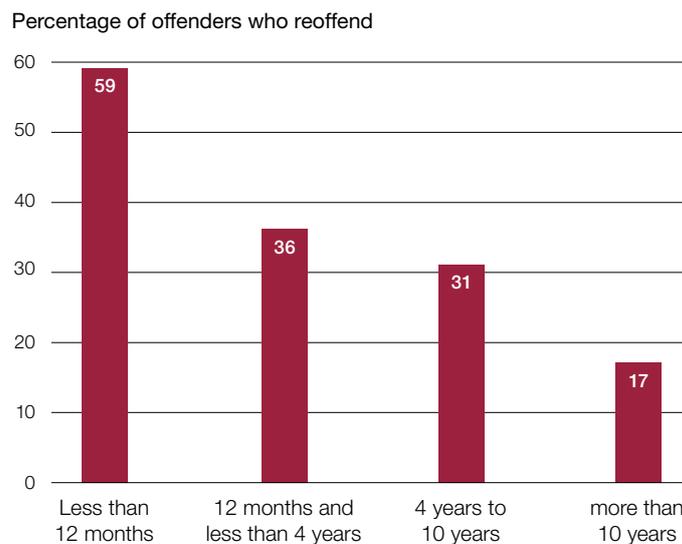
⁹ NOMS, Probation Trust annual performance ratings 2012-13, July 2013, available at: www.gov.uk/government/uploads/system/uploads/attachment_data/file/225227/probation-trust-annual-performance-ratings-12-13.pdf

¹⁰ Full details of trust results for each domain of the PTRS are available at: www.gov.uk/government/publications/prison-and-probation-trusts-performance-statistics-201213

1.26 Reduction of reoffending. Reoffending rates for all offenders have for some time been considered higher than acceptable by government and Parliament. They vary greatly for offenders receiving different lengths of custodial sentence (**Figure 5**). The consultation paper, *Punishment and reform: effective probation services* (March 2012), noted that reoffending rates for some groups had fallen. For example, the reoffending rate of adult offenders serving court orders fell from 39.9 per cent in 2003 to 34.1 per cent in the year to March 2010. Nevertheless, the government considered that they remained ‘unacceptably high’. It added that reoffending by those serving a sentence of less than 12 months, who have no statutory supervision, was higher at almost 60 per cent within a year. As a result, the government has proposed to reform the way probation services are provided and extend their scope. The proposed reforms are considered in Part Two.

Figure 5
Reoffending rates analysed by sentence length

Adult reoffending by custodial sentence length



Source: Ministry of Justice/National Offender Management Service

Part Two

Proposals for reforming probation

2.1 This part of the report summarises the proposed reforms of the rehabilitation of offenders and the changes to the commissioning and delivery of the probation service in England and Wales. In particular, it explains:

- the Transforming Rehabilitation programme;
- the current status of the programme; and
- key risks to implementation.

Transforming Rehabilitation consultation

2.2 Plans to pay independent providers to reduce reoffending were set out in the Coalition Agreement in 2010. In March 2012, the Ministry of Justice (the Ministry) published its initial consultation document, *Punishment and reform: effective probation services*. This stated that the existing system had ‘grave weaknesses’ which – as discussed in paragraph 1.26 – resulted in levels of reoffending that it considered ‘unacceptably high’. The Ministry has accepted the NAO estimate that reoffending by offenders sentenced to less than 12 months in prison (not currently covered by statutory provision) cost the economy up to £10 billion per annum.¹¹

¹¹ Ministry of Justice, *Punishment and reform: effective probation services*, Consultation Paper CP7/2012, March 2012.

2.3 In September 2012, a new ministerial team was appointed, and reviewed the policy proposals it had inherited. In January 2013, the Ministry launched another consultation, *Transforming rehabilitation: a revolution in the way we manage offenders*.¹² The new proposals differed in several respects from those described above. They were:

- **Competing services in the community.** The majority of community-based offender services would be subject to competition. This was designed to open up service delivery to a much more diverse range of providers and to achieve efficiencies. It would also retain an important role for a public sector probation service focused on protecting the public, and deliver other core functions, such as providing advice to court.
- **Providers who tackle the causes of reoffending.** Providers will be commissioned to deliver community orders and licence requirements, and will be given incentives to reduce reoffending. They will be paid by results according to achieving reductions in reoffending rates.
- **Extending rehabilitative provision to more offenders.** Delivering services more efficiently is intended to release sufficient resources to extend rehabilitative provision to offenders released from custodial sentences of less than 12 months. As mentioned in paragraph 1.26, these offenders usually have no statutory supervision or rehabilitation provision but have the highest reconviction rates.
- **The public sector role and public protection.** The public sector probation service will retain responsibility for public protection. It will continue to carry out assessments of the risk of serious harm posed by each offender and advise the courts and parole board. Working in partnership with the police and others, the public sector will manage directly those offenders who pose the highest risk of serious harm to the public. This group will include multi-agency public protection arrangements (MAPPA) cases (see paragraph 1.12) where the public sector will continue to work with police forces in assessing and managing risk.
- **Effective partnership working between providers and public sector.** Providers of competed services will work closely with the public sector. Arrangements will be put in place so that in cases where the risk of serious harm escalates, providers will notify the public sector probation service and take appropriate action to safeguard the public.

¹² Ministry of Justice, *Transforming rehabilitation: a revolution in the way we manage offenders*, Consultation Paper CP1/2013, January 2013.

- **Efficient structural design.** The Ministry intends the design of the structure of this new system to be as efficient as possible. Local services provided by CRCs will be commissioned through a national commissioning function to avoid, in the Ministry's view, undue complexity and duplication. The new contract package areas are aligned to Police and Crime Commissioner (PCC) and local authority boundaries, to support interaction with other local services, grouping individual police force areas where necessary.
- **Integration with local partnerships.** The Ministry intends the design of this system to make use of local expertise and integrate with existing local structures. As part of the bidding process, potential providers will have to demonstrate how they would sustain local partnerships.

The final proposals

2.4 The government responded to the consultation on the developed proposals in May 2013 in *Transforming rehabilitation: a strategy for reform*.¹³ The main features of the government's proposals were:

- new statutory rehabilitation extended to all 50,000 of the most prolific group of offenders – those sentenced to less than 12 months in custody;
- a fundamental change to the organisation of the prison estate, in order to put in place a nationwide 'through the prison gate' resettlement service – this means most offenders would be given continuous support by one provider from custody into the community, instead of being transferred between organisations;
- opening up the market to a diverse range of new rehabilitation providers, including mutual organisations, with the stated intention that taxpayers get the best out of the public, voluntary and private sectors, at the local as well as national level;
- new payment incentives for market providers to focus on reforming offenders, giving providers flexibility to do what works; and
- a new national public sector probation service, working to protect the public and building upon the expertise and professionalism already in place.

2.5 In May 2013, the government also introduced the Offender Rehabilitation Bill into the House of Lords. The Bill seeks to amend the law relating to the release, and supervision after release, of offenders released from short custodial sentences. It would also make some changes to community sentences. As at January 2014, it had passed its House of Commons' second reading stage.¹⁴

¹³ Ministry of Justice, *Transforming rehabilitation: a strategy for reform*, Response to Consultation CP(R)16/2013, May 2013.

¹⁴ House of Commons Library, *Offender Rehabilitation Bill*, Research Paper 13/61.

2.6 The Ministry's reforms need to be seen in the context of the public finances overall and of its cost reduction programme and the Ministry's commitment to deliver annual savings of over £2 billion by 2014-15 and a further 10 per cent in real terms between 2014-15 and 2015-16.¹⁵ Savings are required to fund the new rehabilitation services for offenders sentenced to less than 12 months in custody. These will be released from: a move to national commissioning; the introduction of an element of payment by results; and the removal of administrative costs through the abolition of probation trusts. In the longer term, reductions in reoffending will also lead to reduced costs elsewhere in the criminal justice system as volumes of offences and offenders reduce.

Target operating model

2.7 In September 2013, the Ministry published a target operating model for the programme.¹⁶ The model describes how the system for managing and rehabilitating offenders will work in the future. The proposed system governance arrangements are shown in **Figure 6** on pages 22 and 23. The key elements are:

- a new National Probation Service (NPS) as a directorate of the National Offender Management Service (NOMS) – the NPS will remain in the public sector and will have direct responsibility for high-risk offenders and overall public protection;
- twenty-one Community Rehabilitation Companies (CRCs) to deliver local probation services to low- and medium-risk offenders – CRCs will be set up as new companies, initially publicly owned, with the expectation of a share sale around six months later;
- national commissioning arrangements for local rehabilitation services;
- a procurement process to enable rehabilitative services for low- and medium-risk offenders; and
- a payment mechanism that reflects the government's aspiration to provide incentives to reduce reoffending for the future providers of these services.

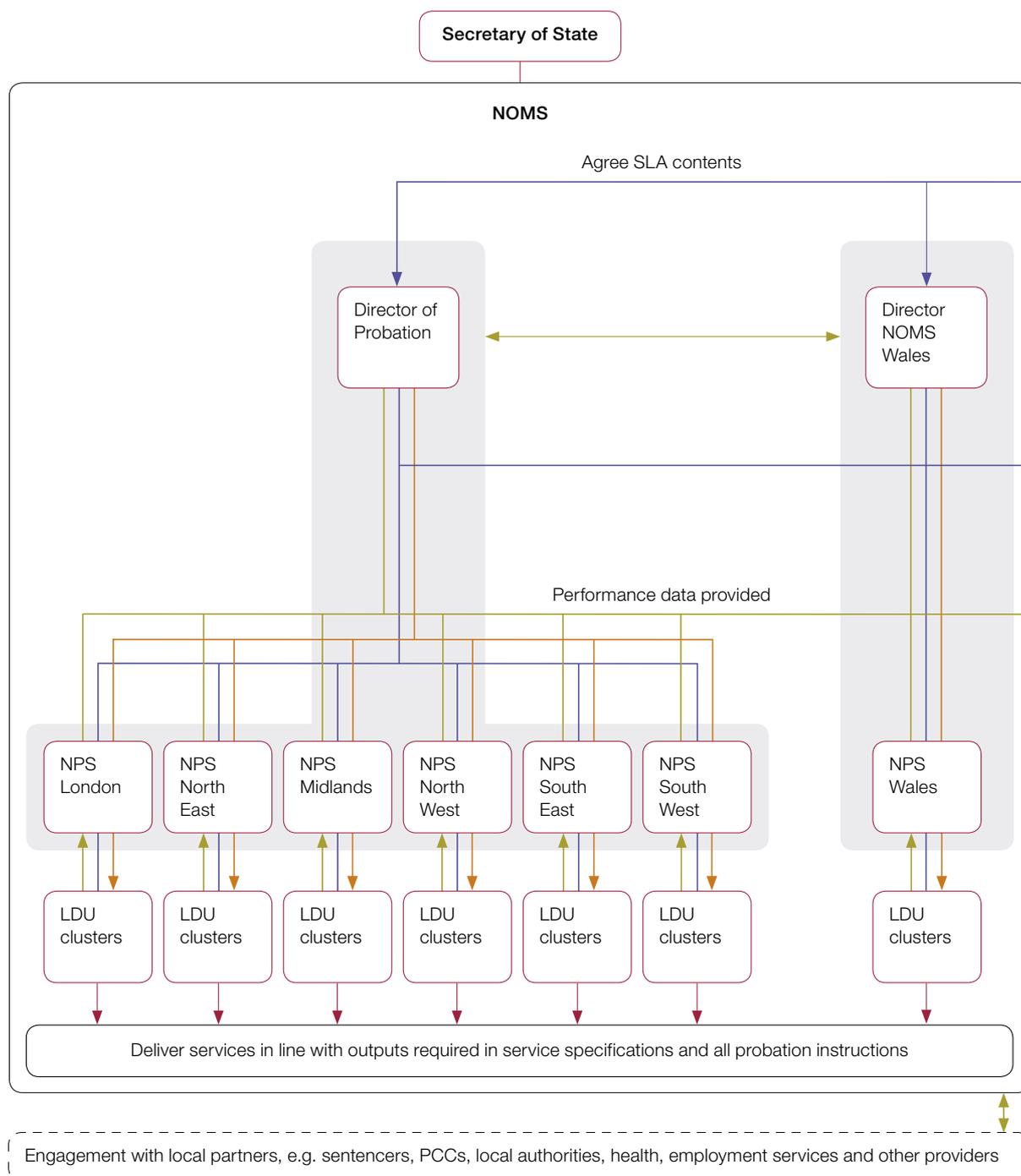
2.8 The exact boundaries of the NPS's geographical divisions will be reviewed, if necessary, after the procurement process, through which the CRCs will leave public ownership. The Ministry envisages that the local delivery unit (LDU) clusters will align with police force areas, while individual units – around 150 in number – will align with local authority boundaries. CRCs will be governed by articles of association drawn up under the Companies Act 2006. The Ministry plans that CRCs will be companies limited by shares, with a special share held by the Crown.

¹⁵ National Audit Office, *Departmental overview: the performance of the Ministry of Justice 2012-13*, October 2013.

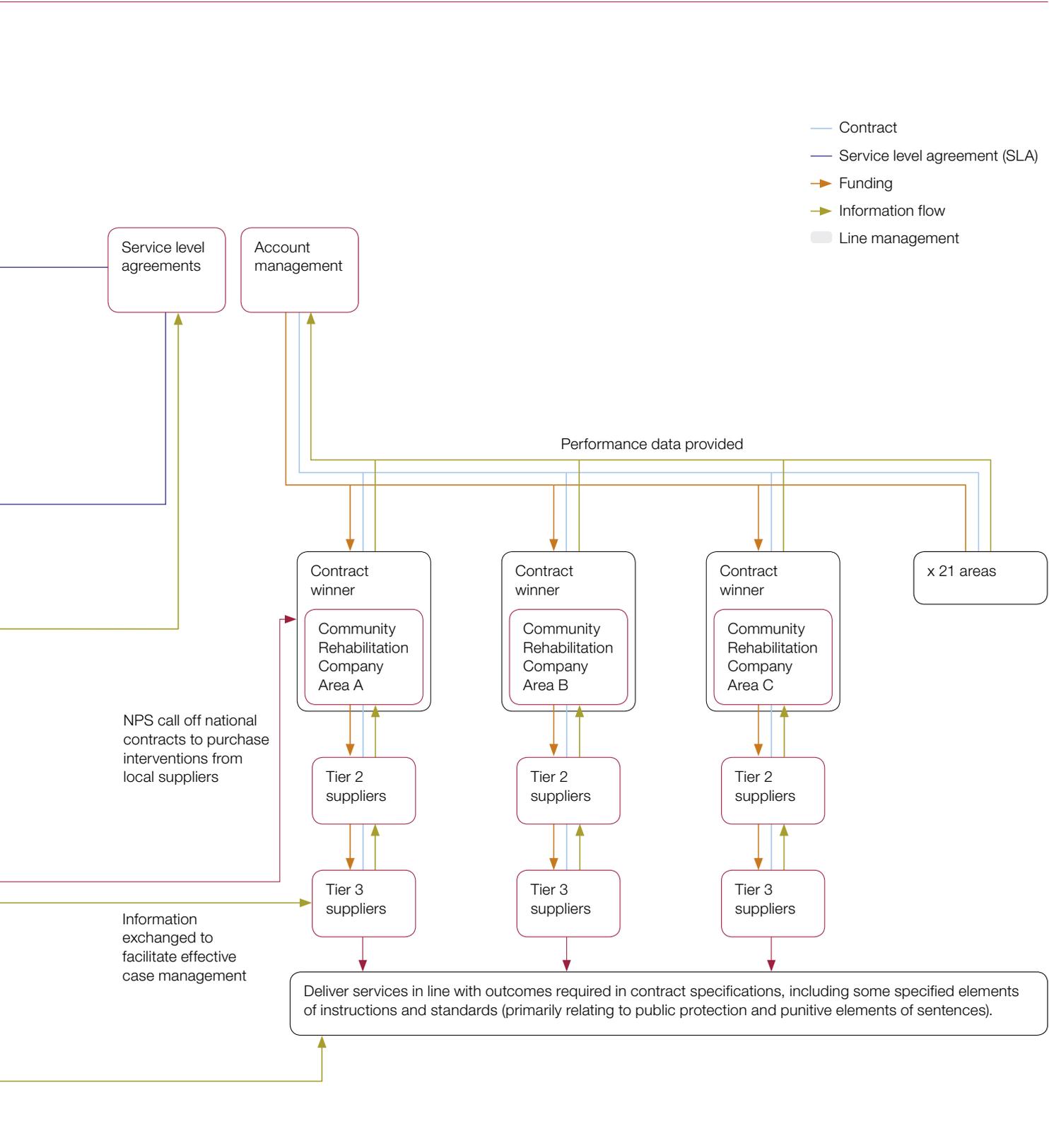
¹⁶ Ministry of Justice, *Target operating model rehabilitation programme*, September 2013, available at: www.justice.gov.uk/downloads/rehab-prog/competition/target-operating-model.pdf

Figure 6
Transforming Rehabilitation – system governance

System governance – end state



Source: Ministry of Justice, Target Operating Model Rehabilitation Programme



Governance of the Transforming Rehabilitation programme and project milestones

2.9 The Transforming Rehabilitation programme is led from within the Ministry of Justice, with the Director General, Criminal Justice Group, holding the role of senior responsible owner (SRO). Day-to-day delivery of the programme is the responsibility of a programme director supported by directors responsible for transition delivery, procurement and delivery assurance.

2.10 The Ministry aims to complete the procurement process by the autumn of 2014. For this to be achieved, much detailed work needs to be completed. In particular, before 31 May 2014, the following need to be completed:

- appointing senior staff to the new structures for the NPS and the CRCs;
- allocating all other probation staff to either the NPS or the relevant CRC (including the determination of staff appeals against the allocation decision where required);
- completing the design of the governance arrangements for the CRC including the work necessary to register these companies correctly; and
- determining the winding-up arrangements for the probation trusts, including how to achieve the orderly closure of the 2013-14 accounts, how assets will be allocated between the NPS and CRCs and how financial management will work from 1 June 2014.

2.11 In line with this, in the period from 1 June 2014 to October/November 2014 the Ministry plans that:

- offender records will be correctly allocated between the NPS and CRCs with transition arrangements for some cases;
- CRCs will begin to operate as stand-alone businesses allowing for testing of some of the arrangements governing the 'border' between low/medium-risk and high-risk offenders;
- NPS will carry on supervising high-risk offenders as well as providing the statutory services to the courts; and
- the final trust governance activity for the 2013-14 financial year will be completed, including the approval of the 2013-14 accounts.

Current status of the programme

2.12 This final section sets out the current status of the Transforming Rehabilitation programme. In particular, it reports on:

- overall programme governance;
- staffing;
- winding-up arrangements for probation trusts;
- procurement;
- CRC ownership;
- payment mechanisms;
- pensions; and
- regularity issues.

Overall programme governance

2.13 The Transforming Rehabilitation programme has an overall plan underpinned by supporting sub-programmes and project plans. The programme has a framework of decision-making and approval forums including the following significant elements:

- **The programme board** is the senior decision-making authority within the programme. It includes representation from the Ministry's corporate services, (including legal, finance and analysis, as well as NOMS' Chief Executive Officer) representing the interests of the department while supporting the programme. The board is supported by sub-programme boards in its formal governance role and a range of steering groups and working groups that provide advice but sit outside the formal governance of the programme.
- **The implementation and system acceptance board**, chaired by the Chief Executive Officer, NOMS, provides formal advice to the programme board on operational deliverability.

Staffing

2.14 Towards the end of 2013, there were important developments affecting staffing arrangements. In particular:

- Senior appointments have been made to head the directorates for England and for Wales of the new NPS. The seven deputy directors have also been appointed.
- Chief executives for all 21 CRCs were appointed by the end of 2013 and appointments to the post of head of operations are under way.

2.15 All trusts completed staff allocation by 31 January. Any appeals against staff assignment decisions are due to be considered by 28 February. So far, in the Ministry's view, the number of appeals has been limited. Latest estimates indicate that the final staff split will be around 46 per cent NPS and 54 per cent CRC.

2.16 In 2013, discussions took place between the Ministry, probation trade unions and the Probation Association (representing trust employers) over the arrangements for transferring staff to the new probation structures. Following negotiations over the terms of the transfer, probation trade unions and the employers' side ratified the National Agreement on Staff Transfer at a meeting of the probation national collective bargaining machinery on 29 January 2014. The Ministry has told us that trade unions have also now withdrawn all local trade disputes.

2.17 Formal consultation on a draft of the National Agreement on Staff Transfer took place in September 2013, after which further negotiations took place on the final version of the Agreement. Following the end of the formal consultation period, trusts have continued to engage with their staff over the arrangements for staff transfer on an ongoing basis and the Ministry has made clear its expectation that this will continue through to the point of transfer on 1 June 2014. The Ministry intends all staff to have their allocation confirmed by 1 April 2014 in readiness for transfer on 1 June.

2.18 Demands upon local trust corporate functions (finance, HR and legal) arising from implementing the transition programme have been high. Turnover of staff in these roles in some trusts has increased. Many trusts have operated on a minimal corporate capacity and it is not uncommon for a finance function to consist of no more than three or four individuals, some of whom may be part time. The Ministry has procured a call-off contract to provide finance staff but these arrangements are yet to be tested. Staff aspects of the changes have been supported by a people transition service in the Ministry and in some cases this service has covered gaps and vacancies in trusts' human resources teams.

Winding-up arrangements for probation trusts

2.19 All trusts have produced an exit plan covering key aspects of the winding-up process. In addition, they have made arrangements to manage potential conflicts arising from the development of spin-out businesses,¹⁷ including mutuals, from current trusts. The Ministry and local finance teams are holding weekly conference calls to consider emerging issues.

¹⁷ 'Spin out' refers to new businesses created from existing operations.

2.20 Issues still to be addressed include:

- while CRCs will be responsible for overseeing the closure of probation trusts there is no certainty yet as to who will be responsible for agreeing the 2014-15 accounts – usually the audit and risk committee or the board of an entity – given that trusts will cease providing services from 31 May 2014;
- how the successors to current audit and risk committees, boards and trust chief executives (the accountable officer) will obtain assurance over the full year of operation of the trust, whose accounts they will take responsibility for;
- the mechanisms for paying outstanding liabilities and receiving sums due to the probation trusts after they close;
- how financial systems will operate in the period from 1 June to the transfer of CRCs into new ownership given that there is no common financial system in use; and
- dissolving the trusts, which will be effected by a statutory instrument (SI), subject to the negative resolution procedure. The Ministry plans for the SI to be made once the trusts complete the tasks remaining to them.

2.21 NOMS has assumed that trust boards and audit committees will remain in place to receive and approve the trusts' 2013-14 final accounts and our audit completion reports. The Minister wrote to trust chairs in December 2013 inviting probation trust board members to continue in their role after the trusts cease operating on 31 May 2014. We understand from the Ministry that every trust chair and a majority of trust board members have agreed to continue. Letters confirming these extensions were to be issued in February. The Ministry has also, in the same letter, said that it will appoint two non-executive board members to each CRC, and that these posts are open to current board members. A process for making these appointments will be announced shortly.

2.22 Based on our previous experience working with bodies closing or reorganising, we believe it makes sense for boards and audit committees to remain in place to close down trusts. We have also communicated to the Ministry our view on the necessary governance and accountability arrangements which would be required at Ministry/ NOMS level where this is not deemed possible. This includes the nature, extent and timing of assurances that would be required from trust boards and audit committees in formally handing over to their successors.

2.23 The chief executive of NOMS wrote to all trusts on 17 January 2014 giving them notice of the termination of their contracts with NOMS with effect from midnight on 31 May 2014. This is two months later than originally envisaged in the programme. This period will be used to trial aspects of the new ways of working, including account management arrangements between NOMS and the developing CRCs as well as the IT systems and processes the new structures will need. The practical implications of the later termination date are now being worked through by the programme and NOMS.

Procurement

2.24 In September 2013, the procurement process was launched by a notice in the Official Journal of the European Union. Interested organisations can provide rehabilitation services within the supply chain in different ways:

- **Tier 1 potential providers** to contract directly with the Ministry of Justice. The high level of interest from potential suppliers, coupled with the volume of clarification questions, prompted the Ministry to extend the deadline for submission of the relevant pre-qualification questionnaire to 14 November 2013.
- **Tier 2 and Tier 3 potential providers** to form part of the supply chain via subcontracts for the services under the Rehabilitation Programme contracts (Tier 2) or through the award of grant-funding arrangements (Tier 3), both with Tier 1 providers.

2.25 In December 2013, the Ministry of Justice announced that 30 bidders had passed the first stage of the competition to win regional rehabilitation contracts.¹⁸ The bids involved more than 50 organisations from the private and third sectors. In nine cases, the partners making the bid included staff mutuals. G4S and Serco withdrew from the bidding process in the context of the well-publicised problems with their billing on contracts for the electronic monitoring of offenders.

CRC ownership

2.26 CRCs will provide local probation services to low- and medium-risk offenders. Initially, they will be publicly owned and subject to *Managing Public Money* and similar controls, and will be consolidated into the Ministry's accounts.¹⁹

2.27 The final shape of the arrangements for CRCs after the competition and shares-sale is yet to be determined. As yet, we are unclear on the proposed internal and external audit arrangements for the CRCs, including during the remaining period of public ownership.

2.28 The preferred option has been to create a 'special share' arrangement. European Union and case law in this area is complex and care will need to be taken to ensure that the final ownership structure is compliant. The ownership arrangement will be important for the Office for National Statistics in determining the status of CRCs, and thus whether they will have to be consolidated into the Ministry group after the share sale.

¹⁸ Ministry of Justice Press release, available at: www.gov.uk/government/news/best-in-the-business-bidding-to-rehabilitate-offenders

¹⁹ HM Treasury guidance: *Managing Public Money*, available at: www.gov.uk/government/publications/managing-public-money

Payment mechanisms

2.29 Since May 2013 the Ministry has sought the views of the potential market and others on how to devise a payment mechanism that appropriately incentivises rehabilitation providers to reduce reoffending. The Invitation to Negotiate (ITN) issued on 31 January 2014 now clarifies how the mechanism is intended to work. Payments to providers will comprise two elements: a fee for service (FFS) and payment by results (PbR). FFS primarily includes activities that deliver the sentence of the court and licence conditions. PbR will be paid for achieving statistically significant reductions in reoffending against a baseline (2011). The mechanism is designed to maintain pressure on suppliers to focus on reducing reoffending by reducing the FFS element over the lifetime of the contracts as suppliers' experience grows. To maintain income streams suppliers will need to achieve reductions in reoffending. The PbR measure will reflect a binary measure of reoffending as well as a frequency measure. Are offenders reoffending? If they are, how many times are they reoffending?²⁰

Pensions

2.30 Paragraph 1.16 explained that trusts have assets and liabilities in pension funds under the Local Government Pension Scheme (LGPS) of over £1 billion in each case. Following discussion, all existing trust pension schemes will transfer to a single provider, the Greater Manchester LGPS, from 1 June 2014. A guarantee will be in place from the Secretary of State for Justice to cover the pension liabilities relating to staff transferring to the CRCs. No guarantee is required for staff transferring to the NPS as they will be employed by NOMS, which is within the Ministry group.

Regularity of expenditure issues

2.31 As NDPBs, trusts are required to comply with HM Treasury's *Managing Public Money* and this requirement is enshrined in the authority given to trust chief executives as accountable officers.²¹ Our experience of other organisations indicates that closure increases risks around the regularity of expenditure. Both the Ministry and NOMS have been proactive in this area, using a variety of communication channels to raise awareness among trusts of these issues. In particular, NOMS has told trusts that there will be no retention packages and this has been confirmed in a letter to trust chief executives from the Ministry.

²⁰ Details of the payment mechanism are available in the contract documentation issued by the Ministry available at: www.justice.gov.uk/transforming-rehabilitation/competition

²¹ See footnote 19.

Maintaining acceptable performance levels

2.32 It would be unusual for any change programme not to be associated with a reduction in performance of the body undergoing the change. Current contract management information does not yet indicate any deterioration in trust performance, although evidence to the House of Commons Justice Select Committee from the Probation Chiefs Association suggested that it was starting to show.²² The process of allocating staff to jobs within the new structures is not yet complete and local intelligence gathered by our audit teams shows that trusts are identifying this consistently as a risk in their local risk management arrangements. Operational performance risk is mentioned by trusts as likely to increase as the changes are implemented on the ground.

2.33 In addition, some trusts are now reporting an increase in turnover of staff in client-facing roles. Although this is not happening consistently across the trusts we understand that local 'hot spots' are developing (for example, in the South of England) and staff workloads are being reconfigured to accommodate this.

Delivering the changes – generic risks

2.34 Alongside the programme-specific issues identified above, a complex reform programme of this ambition and scope inevitably requires the management of generic risks inherent in such a programme. These include:

- **Encouraging the development of suitable market capacity to deliver the new services.** Extending rehabilitation services to a new cohort of offenders will require increased capacity, while fulfilment of the government's desire to see greater innovation in provision will require new and different providers. In seeking to foster conditions to encourage development of new capacity, the Ministry must be mindful of relevant public sector procurement expectations.
- **Using a well-grounded commissioning approach that ensures the objectives of the government are met consistently by providers.** Extending service provision and seeking innovation requires effective commissioning. The Ministry will need to identify and retain, and if necessary, develop or acquire, knowledge of the service area being commissioned, as well as commissioning skills themselves.
- **Having sufficient and appropriate skills in place to manage the suppliers of rehabilitation services.** The Ministry will need to ensure that contracts deliver the benefits anticipated for taxpayers, including ensuring value for money. This will require contract management skills that are a scarce resource. Recent difficulties reported in the management of government contracts with the private sector, including the electronic monitoring of offenders for the Ministry of Justice, provide useful learning that should be applied to managing these new contracts for providing rehabilitation services.

²² Evidence to the House of Commons Justice Select Committee from Sue Hall, Chair, Probation Chiefs Association, 12 November 2013, Q154.

- **Managing the risk of market failure.** Placing any service into the private sector successfully depends on there being appropriately qualified providers available and willing to carry out the work at the right quality and price. These factors are more acute when the service is being put to the market for the first time as potential investors or suppliers will have limited data on which to base their decisions. Moreover, plans need to be devised to ensure there is always a provider of last resort in the event of an unsuccessful procurement. Markets work best, in our view, when there is a well-developed demand side of active and well-informed users willing and able to choose, and an efficient supply side of different providers all competing against one another to gain market share.
- **Managing the risk of supplier failure.** The management and supervision of offenders is a crucial public service which cannot be interrupted for any reason including supplier failure. The management of critical public service contracts will inevitably need appropriate capacity and regulatory oversight to ensure that early signs of supplier failure can be detected and acted on. Plans need to be in place to ensure there is always a provider of last resort to ensure service continuity.

Appendix One

Probation trusts and Community Rehabilitation
Companies proposals in England and Wales

Figure 7

Current trusts and the successor Community Rehabilitation Companies (current low- and medium-risk offenders under supervision in brackets)



- | | |
|--|--|
| 1 Cumbria and Lancashire (10,000) | 12 London (33,000) |
| 2 Cheshire and Greater Manchester (20,000) | 13 Northamptonshire, Bedfordshire, Hertfordshire and Cambridgeshire (12,000) |
| 3 Merseyside (8,000) | 14 Essex (6,000) |
| 4 Staffordshire and West Midlands (19,000) | 15 Derbyshire, Nottinghamshire and Leicestershire (14,000) |
| 5 Wales (16,000) | 16 Norfolk and Suffolk (5,000) |
| 6 West Mercia and Warwickshire (6,000) | 17 South Yorkshire (7,000) |
| 7 Thames Valley (7,000) | 18 West Yorkshire (12,000) |
| 8 Gloucestershire, Avon and Somerset and Wiltshire (9,000) | 19 North Yorkshire, Humberside and Lincolnshire (10,000) |
| 9 Dorset, Devon and Cornwall (7,000) | 20 Durham and Cleveland (8,000) |
| 10 Hampshire (7,000) | 21 Northumbria (7,000) |
| 11 Kent, Surrey and Sussex (14,000) | |

Note

1 The above excludes the approximately 60,000 offenders serving a custodial sentence of 12 months or less who will be supervised by Community Rehabilitation Companies.

Source: Ministry of Justice Transforming Rehabilitation: A Strategy for Reform (2013)

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