

Response

to the Ministry of Justice consultation on its proposals outlined in *Transforming Rehabilitation – A revolution in the way we manage offenders*

Question B1

How can we maximise the results we get from our collective Government and public sector resources?

The Ministry of Justice is dependent upon a large number of other organisations to help it work with offenders and reduce reoffending.

As we reported in our *Criminal Justice Landscape Review* in November 2010¹, of the seven NOMS pathways to reducing reoffending, the majority are the responsibility of non-criminal justice departments. It is therefore important that the MoJ ensures its proposals are fully integrated with those of other government departments if they are to achieve their goals.

Other departments are also currently introducing their own payment by results schemes to deliver outcomes related to these seven pathways. Participants in these programmes, such as those run by the Department of Health on drugs and alcohol and the Department for Work and Pensions on employment, will inevitably include ex-offenders. The Ministry is already piloting a joint approach with the Department for Work and Pensions, and will need to incorporate the lessons it can take from this into the contracts it tenders for probation.

Question B2

How can we use the reform of offender services in the community to enhance the broader range of social justice outcomes for individuals?

We have not provided a response to some questions, as we have either not conducted relevant work in these areas to enable us to comment or they are outside the scope of the National Audit Office.

Question B3

Should any additional flexibility be built into the community sentencing framework to strengthen the rehabilitation impact of community orders, and the reintegration of offenders into society?

No response provided.

Question C1

We are minded to introduce 16 Contract Package Areas. Do you think this is the right number to support effective delivery of rehabilitation services? Do you have any views on how the Contract Package Area boundaries should be drawn?

As we have already raised in B1, the Ministry needs to ensure that its proposals are integrated with other government departments and their bodies. The Ministry should identify the key organisations it needs to align with closely and assess the benefits of aligning its contract package areas to those

organisations. We note that the Ministry proposes to align with Police and Crime Commissioners and local authorities and potentially the DWP's Work Programme where possible.

In our paper on *delivering public services through markets*², we identify ten principles for success. Our fifth principle is that there needs to be **a level playing field for all providers**, whether public or private. Large contracts within the criminal justice system are already held by a few large firms, who could exploit this synergy, compared to smaller or newer players. The Ministry needs to consider whether the size of the contract areas will create barriers to entry for some smaller providers, given the need for greater investment and exposure to risk that these will entail.

We see that the Ministry is committed to supporting the involvement of the voluntary sector and potential mutual organisations that may be formed. However, we also note that of the 18 providers selected by the DWP for its Work Programme, the majority came from the private sector. It is likely to require significant efforts by the Ministry for it to achieve its aim of creating a diverse and sustainable market, at least in terms of prime providers.

Question C2

What payment by results payment structure would offer the right balance between provider incentive and financial risk transfer?

In our work on the Ministry's pilot programme, we found that providers did not take up the original proposal for Leeds and were cautious about the proposed community pilot in Staffordshire and West Midlands, as they perceived both proposed schemes to contain a number of risks. When combined, the providers largely considered that the risks would have made them unacceptable to their boards. Risks included not having the level of control to match the amount of risk which the Ministry proposed transferring, the time lag between performance results and payments and the 'cliff-edge' payment mechanism in the Leeds model. The level of risk was, for potential investors, exacerbated by what they considered to be the novelty of payment by results in the field of reducing reoffending.

The Ministry needs to develop a greater understanding through this consultation and from its pilot evaluations of the right balance to strike between ensuring savings and value for money and setting structures that are not acceptable to the emerging market.

Different government departments have taken a variety of approaches to setting up their payment by results schemes. The Ministry should ensure that the structure it selects does not create perverse incentives or, if it does, that it is aware and manages these perverse incentives accordingly. For example, we have previously reported that DWP set demanding performance targets for the Work Programme which, when combined with the price discounts offered by providers, created incentives for providers to:³

- target easier-to-help claimants, while not helping others;
- reduce the level of service provided to reduce costs; and
- put disproportionate pressure on subcontractors.

Question C3

What measurements and pricing structures would incentivise providers to work with all offenders including the most prolific?

As the Ministry has already recognised in the consultation paper, the use of a binary measure could encourage providers to concentrate their efforts on the offenders least likely to offend and prevent them from working with the most prolific offenders. There is a general agreement across those that are involved with rehabilitating offenders that a frequency metric most closely reflects how offenders stop offending.

We understand that the Ministry's overall aim of complete desistance of offenders from committing crimes may mean choosing binary in preference to frequency measures. However, as noted in C2, it is important that in doing so the Ministry ensures that its resulting payment structure does not create perverse incentives or, if it does, the Ministry is aware of these and puts structures in place to manage them accordingly.

Question C4

How should we specify public sector oversight requirements in contracts, to avoid bureaucracy but ensure effective public protection arrangements?

No response provided.

Question C5

We want to incentivise through the gate provision, but some prisoners will disperse to a different part of the country following release. How can we best account for that in contract design?

No response provided.

Question C6

What mechanisms can be used to incentivise excellent performance and robustly manage poor performance to ensure good value for money?

No response provided.

Question C7

What steps should we take to ensure that lead providers manage and maintain a truly diverse supply chain in a fair, sustainable and transparent manner?

No response provided.

Question C8

What processes should be established to ensure that supply chain mismanagement is addressed?

See C11.

Question C9

How can we ensure that the voluntary and community sector is able to participate in the new system in a fair and meaningful way?

No response provided.

Question C10

How can we best use statutory supervision on release from custody to ensure that offenders engage with rehabilitation effectively?

No response provided.

Question C11

How can we ensure consequences for non-compliance are effective, without building in significant additional cost?

The Ministry should consider how to address non-compliance by providers as part of the development of its payment structure, as well as quality assurance and regulation of the market.

Our view is that once these have been agreed, the Ministry should enforce these in order for the market to be effective, as one of our principles of delivering public services through markets². Such enforcement can help deter providers from infringing rules and encourage compliance.

Question C12

Given our proposals for the commissioning structure and the proposed responsibilities of the public sector, what kind of delivery structure would be most appropriate for the public sector probation service?

No response provided.

Question C13

What else can we do to ensure the new system makes best use of local expertise and arrangements, and integrates into existing local structures and provision?

No response provided.

Question C14

Police and Crime Commissioners will play an integral role in our reforms. How best can we maximise their input/involvement and that of other key partners locally?

No response provided.

Question C15

How can we ensure that professional standards are maintained and that the quality of training and accreditation is assured? A professional body or institute has been suggested as one way of achieving this. What are your views on the benefits of this approach and on the practicalities of establishing such arrangements, including how costs might be met?

No response provided.

Question C16

What role can the Inspectorate of Probation best play in assuring effective practice and a high standard of service delivery?

No response provided.

Question C17

How can we use this new commissioning model, including payment by results, to ensure better outcomes for female offenders and others with complex needs or protected characteristics?

No response provided.

Question C18

What are the likely impacts of our proposals on groups with protected characteristics? Please let us have any examples, case studies, research or other types of evidence to support your views.

No response provided.

Question C19

Do you have any further comments on our proposals for Transforming Rehabilitation in this document?

Market oversight

As the Ministry finalises its plans for contracting out community-based offender services, it should ensure that it has put in place a robust oversight process to ensure that the market is delivering expected outcomes. In order to achieve this, the Ministry will need to have:

- robust market oversight through good quality financial monitoring and market intelligence;
- sufficient expertise to understand the market in order to enable it to intervene, if appropriate, to remedy market failure; and
- regular reviews of whether outcomes are being delivered.

These are principles we have identified for *delivering public services through markets*² which are very relevant to the Ministry's proposals, given the immaturity of the market in managing community-based offender services.

ICT and data

The Ministry already sees the need for good performance data as well as the need for it and its providers to have shared access to timely and accurate information on offenders. It will need to

ensure that this ties into existing ICT projects, in particular the national case management and risk assessment case systems being developed. The Ministry will also need to ensure that the problems which have caused the cost of these systems to escalate and risk delay are not repeated, given its plans to implement the new contract packages by 2015. As a comparison, the speed with which the DWP implemented the Work Programme resulted in it being launched without a fully functional ICT system, which prevented DWP from conducting automatic checks on provider claims³.

Affordability

The Ministry plans to reduce the cost of community-based offender services through competition and use the savings this generates to pay for the additional costs of its proposals. We note that this is an approach already being piloted in the contract the Ministry has with Serco for HM Prison Doncaster.

However, the Ministry also recognises that it has to make savings while simultaneously delivering £2bn of savings which it has already committed to make under its 2010 comprehensive spending review settlement. We have previously raised concerns over the Ministry's ability to deliver long-term savings. In September 2012⁴, we reported that NOMS and MoJ do not yet have shared fully funded plans for delivering long-term savings and there are risks to NOMS being able to deliver long-term sustainable spending reductions. Affordability of these proposals needs to be seen in that context.

End notes

1 Comptroller and Auditor General, *Criminal Justice System Landscape Review*, November 2010.

2 Comptroller and Auditor General, *Delivering public services through markets: principles for achieving value for money*, June 2012.

3 Comptroller and Auditor General, *The introduction of the Work Programme*, Session 2010-12, HC1701, National Audit Office, January 2012.

4 Comptroller and Auditor General, *Restructuring of the National Offender Management Service*, Session 2012-13, HC 593, National Audit Office, September 2012.