



National Audit Office

Report

by the Comptroller
and Auditor General

Ministry of Justice, HM Prison & Probation Service

Transforming Rehabilitation: Progress review

Summary

1 The Ministry of Justice (the Ministry), through HM Prison & Probation Service (HMPPS), is responsible for probation services in England and Wales. As at September 2018, 257,000 offenders were supervised by probation services, which are delivered in courts, prisons and in the community. The purposes of these services are to:

- protect the public;
- reduce reoffending and rehabilitate offenders;
- carry out the proper punishment of offenders; and
- ensure offenders are aware of the impact of crime on victims and the public.

2 In 2013, the Ministry embarked on major reforms of probation services. Its purpose was to reduce reoffending and:

- open the market to a range of rehabilitation suppliers from the private and voluntary sectors;
- encourage innovation, paying providers by results for reducing reoffending; and
- extend statutory rehabilitation to those serving sentences of less than 12 months.

3 The Ministry dissolved 35 self-governing probation trusts and created 21 Community Rehabilitation Companies (CRCs) to manage offenders who pose a low or medium risk of harm. It created a public sector National Probation Service (NPS) to manage offenders who pose higher risks. In February 2015, the CRCs were transferred to eight, mainly private sector, suppliers working under contracts, managed by HMPPS, that were to run to 2021-22. The Ministry considered that its reforms would deliver reductions in reoffending corresponding to £10.4 billion net economic benefits to society over the seven-year period of the contracts.

4 We reported on the reforms in April 2016. We found that the Ministry did well to sustain the competition for CRC contracts within cost limits and timescales set by ministers, but the procurement had left some difficult issues to manage. CRC business volumes were much lower than the Ministry modelled during the procurement, which presented risks to their income and ability to transform their businesses.¹ In response, the Ministry changed its contracts with CRCs in 2017-18 to increase their income and stabilise services. We subsequently reported that CRCs were not achieving performance targets and that the Ministry's interventions had not resolved their financial difficulties.² In July 2018, the Justice Secretary acknowledged that the quality of probation services being delivered was falling short of expectations and announced that the Ministry will terminate its CRC contracts 14 months early, in December 2020. The Ministry has consulted on the future of probation services and plans to procure second-generation contracts in April 2019.

Our report

5 This report takes stock of the Transforming Rehabilitation reforms following the decision to terminate the CRC contracts. It builds on our previous work and examines the Ministry's:

- progress in achieving the objectives of the reforms (Part One);
- implementation of the reforms (Part Two); and
- use of learning to inform the future of probation services (Part Three).

6 Our audit approach is described in Appendix One and our evidence base is set out in Appendix Two.

Key findings

Progress in achieving the objectives of Transforming Rehabilitation

7 **While reoffending has reduced overall, CRCs have not achieved the Ministry's targets.** By March 2017, mid-way through the reforms, there was an overall 2.5 percentage point reduction in the proportion of proven reoffenders since 2011. However, there was a 22% overall increase in the number of proven reoffences per reoffender over the same period. The Ministry expected CRCs to reduce reoffending by 3.7 percentage points over the life of the contracts. However, just six of the 21 CRCs achieved statistically significant reductions in the proportion of reoffenders in all offender cohorts (paragraphs 1.2 to 1.5).

1 Comptroller and Auditor General, *Transforming Rehabilitation*, Session 2015-16, HC 951, National Audit Office, April 2016.

2 Comptroller and Auditor General, *Investigation into changes to Community Rehabilitation Company contracts*, Session 2017-2019, HC 676, National Audit Office, December 2017.

8 The Ministry has not achieved the wider objectives of its reforms.

There has been:

- **patchy third-sector involvement with CRCs.** Although two larger voluntary sector organisations (VSOs) are partners to CRCs and one CRC is owned by a consortia of voluntary, private and public organisations, as at October 2018, just 11% (159) of VSOs working in the criminal justice sector were providing services directly to CRCs. CRCs have not developed supply chains as intended, primarily due to financial pressures (paragraphs 1.8 and 1.9);
- **limited innovation and a lack of progress transforming probation services.** Overall, CRCs have not met the contractual commitments set out in their investment and transformation plans. Investment has been slowed by financial pressures, delays in the Ministry's IT gateway to link CRCs' and HMPPS's systems, and the Ministry not enforcing transformation plans. Only two CRCs delivered the IT innovation they promised (paragraphs 1.10 to 1.13 and 2.10);
- **significant increases in the number of people being recalled to prison.** This is a direct result of the Ministry's extension of statutory rehabilitation to those serving short custodial sentences of less than 12 months. Between January 2015 and September 2018, offenders on short sentences as a percentage of those who are recalled to prison has increased from 3% to 36% (paragraphs 1.14 and 1.15); and
- **ineffective Through the Gate (TTG) services to support transition from prison to the community.** CRCs introduced TTG services to support offenders by providing help with accommodation, employment, finance, and mental health and substance misuse. The Chief Inspector of Probation concluded that TTG services have consistently failed to meet offenders' resettlement needs. In 2016, HMPPS rated all audited CRCs' TTG services 'amber/ red' for meeting contractual requirements and quality standards (paragraphs 1.16 to 1.18).

9 The NPS has established a consistent national structure for delivering its services, but is constrained by severe staff shortfalls and high workloads.

The NPS's transformation programme has introduced a single, standardised approach to delivering services across most of the NPS. The NPS faces workforce challenges including a shortfall of probation officers and difficulties filling vacancies and retaining staff. In August 2018, its overall staff vacancy rate was 11%, and as high as 20% in London. It relied on more than 1,100 temporary staff, at the same time as also facing a shortfall of around 930 full-time equivalent staff (paragraphs 1.20 to 1.22).

10 Overall, CRCs have performed poorly against a range of other measures of their performance. In seeking to achieve its objectives, the Ministry relies on its contractual relationships with the CRCs. However:

- CRCs met, on average, 53% of their quarterly contractual targets by September 2018.
- HMPPS gave ‘amber/green’ ratings (indicating that practice mostly complies with standards) in just five of its 37 CRC audits between February 2017 and October 2018 (14%). It did not give any ‘green’ (fully compliant) ratings.
- Of 13 CRCs inspected between December 2016 and March 2018, HM Inspectorate of Probation (the Inspectorate) rated nine negatively for the quality of their work in reducing reoffending and protecting the public (69%); and for abiding by the sentence of the courts, it rated five negatively (38%). By February 2019, it had rated eight CRCs as ‘requires improvement’ and one as ‘inadequate’ under its new inspection framework introduced in April 2018. It consistently gave the lowest scores for public protection (paragraphs 1.25 and 1.27 to 1.29).

11 The NPS’s performance has been stronger:

- NPS regions met, on average, 94% of their performance targets by September 2018.
- HMPPS gave ‘amber/green’ ratings in 15 of its 26 NPS audits (58%), and a ‘green’ rating in one (4%), between February 2017 and October 2018.
- All 13 of the NPS regions inspected were rated positively by the Inspectorate for delivering the sentence of the court, and 10 (77%) were rated positively for protecting the public and reducing reoffending. By February 2019 it had rated three NPS regions as ‘good’ under its new inspection framework (paragraphs 1.25, 1.27 to 1.29).

Implementation of the reforms

12 The Ministry designed and implemented its reforms too quickly and without sufficient testing. Tight deadlines meant that the Ministry did not adequately test how the transformed system might work before letting contracts. It did not have a good understanding of probation trusts’ delivery models, working practices and governance, and relied heavily on their information about costs. Although it began some pilots, these ended early and others were abandoned before they started. The Ministry sought to transfer the risk of lower volumes of work to the CRCs but it only modelled a 2% reduction in volumes. Two years into the contracts, volumes were between 16% and 48% lower than anticipated (paragraphs 2.2, 2.3, 2.10 and 2.12).

13 The creation of CRCs and the NPS introduced new interfaces that are not yet working smoothly. The Ministry’s decision to split probation services between the NPS and the CRCs created interfaces between the NPS, CRCs, and HMPPS, which HMPPS then had to manage. Five of the seven NPS regions must work with more than one CRC. Specific issues include poor-quality pre-sentence reports from the NPS to courts, gaps in joint working, and insufficient and poor-quality information about specialist CRC services available to the NPS and prisons (paragraphs 2.4 to 2.6).

14 The Ministry's chosen commercial approach proved to be inappropriate given the nature of probation services. The Ministry designed outcome-based contracts with payment by results to encourage CRCs to innovate. However, the role of probation services in protecting the public and delivering sentences handed down by the courts meant that the Ministry had a low risk appetite for failure, which did not sit well with its desire for innovation. Ultimately, the lightly specified contracts hampered its ability to hold providers to account for poorly performing services. Furthermore, the use of payment by results was not well suited for probation services. It takes two years for data on proven reoffending to become available, and changes in reoffending cannot be directly attributed to CRCs' interventions, as they are also influenced by services such as support with housing, employment and substance misuse (paragraphs 2.9 and 2.18 to 2.20).

The future of probation services

15 Faced with the risk of multiple provider failures, the Ministry decided to terminate CRC contracts 14 months early, in December 2020. In June 2018, the Ministry commissioned work to understand CRCs' financial positions through to 2021-22 and to develop options for terminating the contracts. It found that, as at March 2018, CRCs faced collective losses of £294 million over the life of the contracts compared to expected profits of £269 million when CRCs had bid, a difference of £563 million. The Ministry concluded that these losses would result in providers withdrawing services, unacceptable further deterioration in performance and, potentially, multiple providers becoming insolvent (paragraphs 3.2 and 3.3).

16 The agreement to terminate the contracts comes at a further cost to the taxpayer of at least £171 million. The Ministry has reached agreements with CRCs to limit their forecast liabilities from payment by results (£114.8 million), to spend more to deliver enhanced Through the Gate services (£43 million) and made other technical adjustments to the payment mechanism (£13.2 million). When added to the costs of changing the contracts in 2017-18 the total estimated additional cost becomes at least £467 million. The full termination costs will not be known until December 2020, but the total costs of the contracts are still below what was projected when they were signed (paragraphs 2.15 and 3.6).

17 The Ministry has identified and acted on many of the shortcomings in the reforms. The Ministry has conducted exercises to understand why the reforms did not work as intended and inform its future approach. Its commitments to improving future probation services include better aligning probation regions, abandoning payment by results, introducing minimum standards for services, designing a future prisoner resettlement service, developing the probation workforce and improving local commissioning. The Justice Secretary has also announced a cross-government working group to identify opportunities for reducing reoffending (paragraphs 3.7, 3.18 and 3.22).

18 But the Ministry's proposals for probation services do not address all the risks, and they introduce some new ones. While the Ministry plans to better align boundaries, it has chosen to retain the split between the NPS and CRCs, meaning it will still need to ensure that operational interfaces work effectively. It also needs to manage the risks of transitioning to the new contracts. Notwithstanding the risks of a new procurement process, which needs to be progressed rapidly, it must also manage the risk of existing providers disinvesting or failing outright. For example, on 14 February 2019, Working Links and the three CRCs it owned went into administration. The Ministry was aware of Working Links' financial situation and implemented its contingency plans, by transferring staff and services from the three CRCs to Kent, Surrey and Sussex CRC, owned by Seetec. Beyond the existing contracts, once new contracts are in place the Ministry will need to carefully manage the transition between providers, minimising disruption for staff and service users, and manage new contracts effectively (paragraphs 3.8 to 3.22).

Conclusion on value for money

19 The Ministry set itself up to fail in how it approached the Transforming Rehabilitation reforms. Its rushed implementation introduced significant risks that its chosen commercial approach left it badly placed to manage. The consequences of these decisions are far-reaching. CRCs have underinvested in probation services, which have suffered as a result. There is little evidence of hoped-for innovation and many of the early operational issues, such as friction between the NPS and CRCs, persist. Although the number of reoffenders has reduced, the average number of reoffences they commit has increased significantly. Transforming Rehabilitation has achieved poor value for money for the taxpayer.

20 The Ministry has chosen to end the CRC contracts in 2020, 14 months early, but this comes at a cost. When added to previous, unsuccessful, efforts to stabilise CRCs, the Ministry will pay at least £467 million more than was required under the original contracts. It now estimates it will pay up to £2.3 billion under the contracts. This is still less than the £3.7 billion expected at the outset of the reforms, but little progress has been made on transforming probation services. The Ministry has consulted on the next generation of contracts and its proposals address many of the issues that have caused problems. But it has limited time to procure the new contracts, and in persisting with the split between the NPS and CRCs, it will still need to manage risks posed by the interfaces between these organisations and the wider system. It also needs to make sure that the quality of probation services is improved and maintained during the transition from the existing contracts to the new ones.

Recommendations

21 The Transforming Rehabilitation reforms have had a profound impact on the probation system. Our report comes at a critical juncture; there is limited time between now and the termination of the existing contracts at the end of 2020, and, in light of its past experience, the Ministry needs to think carefully about its next steps. The Ministry should:

- a** **pause and reflect on its proposed approach to provide assurance that this is both deliverable and consistent with its strategic aims for the probation system.** In doing so it should evaluate thoroughly the responses to its consultation, be explicit about its risk appetite for provider failure and variations in the quality of probation services and consider how it will respond to the risks set out in this report;
- b** **in parallel, work with the Reducing Reoffending Board to publish a cross-government strategy that spells out how it will work with other bodies to reduce reoffending.** This should include setting measurable objectives and clarifying accountability for different services across probation providers, local authorities and central government departments; and
- c** **develop a detailed plan for managing the wind-down period of the existing contracts, refining its approach to contract management and assurance so it focuses on the areas of greatest risk.** This should include obtaining assurance that CRCs deliver services to at least minimum expected standards, that any service credits due are identified and collected, and any material breaches of contract are enforced.