



National Audit Office

Report

by the Comptroller
and Auditor General

Ministry of Justice, HM Prison & Probation Service

Transforming Rehabilitation: Progress review

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National Audit Office

Ministry of Justice, HM Prison & Probation Service

Transforming Rehabilitation: Progress review

Report by the Comptroller and Auditor General

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Sir Amyas Morse KCB
Comptroller and Auditor General
National Audit Office

25 February 2019

This report builds on our previous work and takes stock of the Ministry of Justice's Transforming Rehabilitation reforms

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Key facts

£2.3bn

maximum forecast payments to Community Rehabilitation Companies (CRCs) from 2014 to December 2020, as at August 2018 – the Ministry of Justice's (the Ministry's) original assumption was £3.7 billion to 2021-22

2.5

overall percentage point reduction in the proportion of proven reoffenders, covering all offenders (including those not supervised by probation services), between 2011 and March 2017

22%

overall increase in the number of proven reoffences per reoffender between 2011 and March 2017

- 59:41** caseload split between CRCs and the National Probation Service (NPS) as at September 2018, against an original assumption, in December 2013, of 64:36
- 257,000** offenders supervised by probation services in England and Wales, September 2018
- £294 million** CRCs' forecast losses, as at March 2018, if the contracts had continued as planned, compared with £269 million forecast profit at bid stage
- 14** number of months by which the Ministry is terminating CRCs' contracts early, in December 2020
- £467 million** additional projected payments to CRCs above the original terms of the contracts between 2016-17 and December 2020 (£296 million) and minimum contract termination costs (£171 million)
- 10** aligned CRC and NPS areas the Ministry will create in England in its new probation system, replacing 21 CRCs and seven NPS regions under the current system in England and Wales

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.

Part One

Progress in achieving the objectives of Transforming Rehabilitation

The Ministry of Justice's objectives

1.1 In this part, we examine the Ministry of Justice's (the Ministry's) progress against the objectives of its Transforming Rehabilitation reforms and the performance of probation services more generally. The reforms were intended to reduce reoffending, delivering net economic benefits to society of £10.4 billion, and introduce innovative ways of rehabilitating offenders by:

- opening up the market to diverse providers by creating 21 Community Rehabilitation Companies (CRCs);
- paying providers by results;
- extending statutory supervision to offenders sentenced to less than 12 months;
- introducing a new Through the Gate (TTG) resettlement service for offenders; and
- creating an integrated public sector National Probation Service (NPS).

Reducing reoffending

1.2 The Ministry measures reoffending in different ways. It publishes statistics on:

- overall proven reoffending, comprising reoffenders who receive a court conviction, caution or fine, and including offenders who are not supervised by probation services;
- CRCs' performance in reducing reoffending under payment by results; and
- the NPS's performance in reducing reoffending.

1.3 The Ministry expected CRCs to achieve a modest reduction in reoffending of 3.7 percentage points over the contract period between 2014-15 and 2021-22. It tracks CRCs' performance in reducing reoffending through two measures:

- the percentage of offenders who have reoffended (the binary rate); and
- the average number of reoffences per reoffender (the frequency rate).

1.4 Overall, between 2011 and March 2017, there was a 2.5 percentage point reduction in the proportion of proven reoffenders. However, the average number of reoffences per reoffender increased by 22% over the same period (**Figure 1** overleaf). This reflects broader trends in the increasing proportion of highly prolific reoffenders. For example, 23% of adult offenders convicted or cautioned had 15 or more previous offences in the year ending June 2008, but by June 2018 this figure had risen to 35%, an increase of 12 percentage points.

1.5 Under the contracts, the Ministry and CRCs agreed a contractual baseline of average reoffending in 2011. The baseline is significant because it affects CRCs' income under the payment by results arrangements. Overall, CRCs have not achieved their reoffending targets against the original 2011 baseline. Just six out of 21 CRCs achieved statistically significant reductions in the proportion of reoffenders in all six quarterly offender cohorts, between October 2015 and March 2017. In addition, against the 2011 baseline, 19 CRCs had statistically significant increases in the frequency of reoffending in 2016-17 (**Figure 2** on pages 15 and 16).

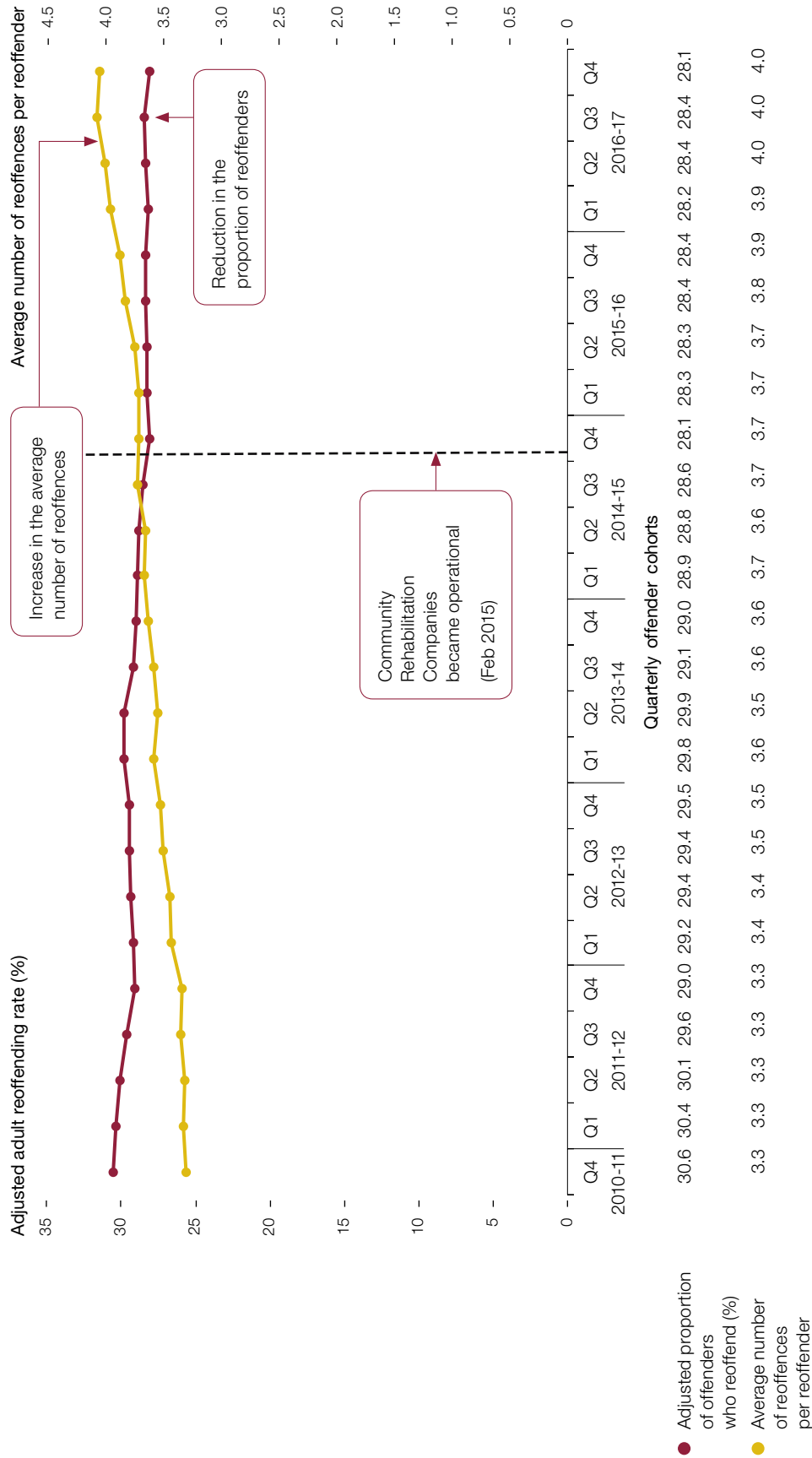
1.6 Against the same measures in reducing reoffending, outcomes across NPS regions show a mixed picture in the five quarters from October 2015 to March 2017. Three of the seven NPS regions oversaw reductions in the proportions of offenders who reoffended, but five had increases in the frequency of reoffences (**Figure 3** on pages 17 and 18).

1.7 CRCs and the NPS are required to carry out a serious further offence review when a supervised offender is charged with serious sexual or violent offences. The number of reviews of serious further offence cases of offenders on probation increased from 507 in 2015-16 to 627 in 2017-18 (24%).

Figure 1

Overall adjusted adult reoffending rate in England and Wales, between 2011 and 2017

The proportion of offenders who have reoffended has fallen, while the average number of reoffences per reoffender has increased sharply



Notes

- 1 In addition to offenders supervised by Community Rehabilitation Companies and the National Probation Service, this analysis also includes offenders who are not supervised by probation services.
- 2 The absolute numbers of reoffenders and reoffences declined over this period, with a reduction of around 17,100 reoffenders and around 33,800 reoffences.

Source: National Audit Office analysis of Ministry of Justice data

Figure 2 Community Rehabilitation Companies' performance in reducing reoffending against the Ministry of Justice's 2011 baseline, between October 2015 and March 2017

Six Community Rehabilitation Companies (out of 21) achieved statistically significant reductions in the binary measure of reoffending in all quarters; 19 Community Rehabilitation Companies oversaw statistically significant increases in the frequency measure

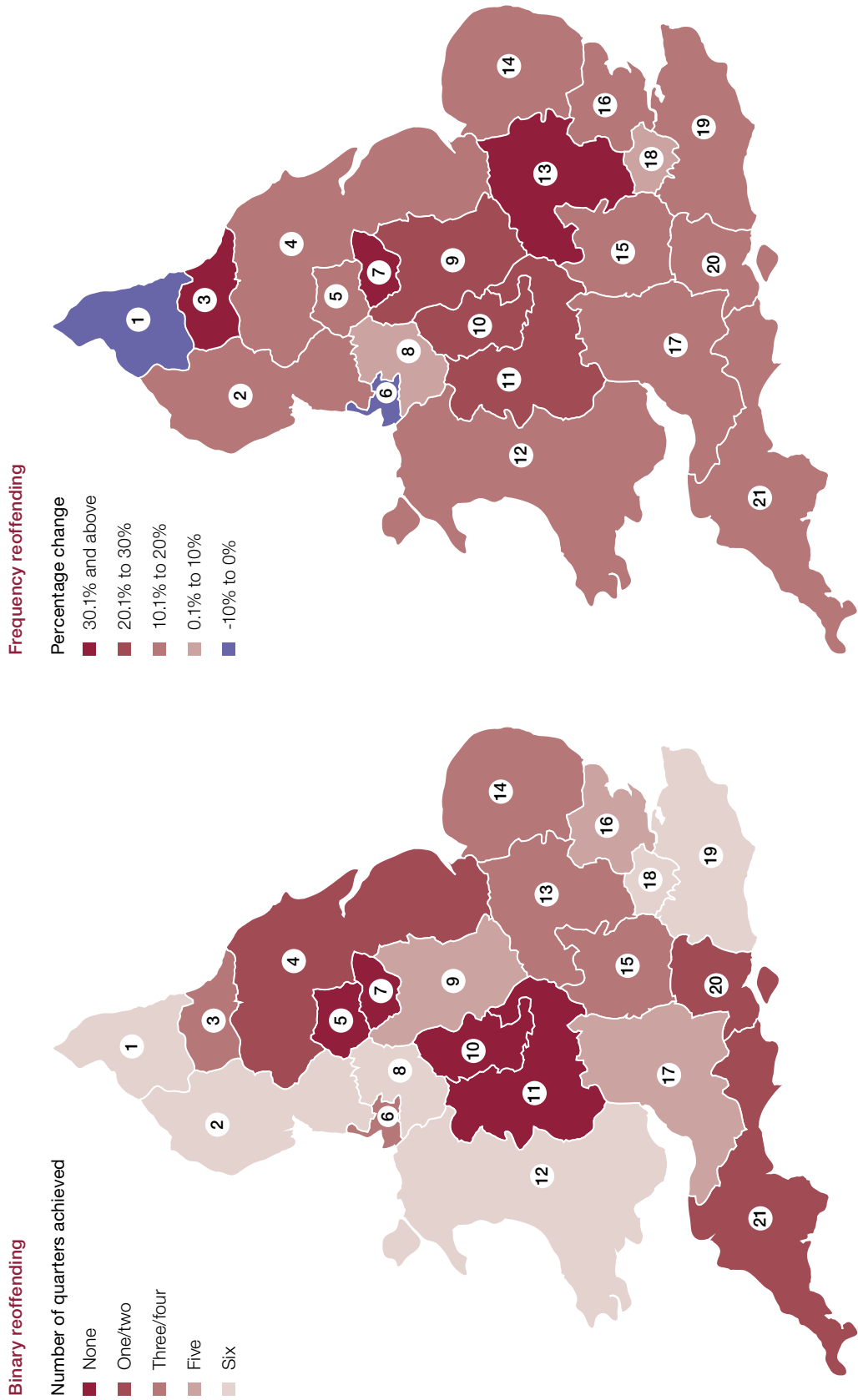


Figure 2 *continued*

Community Rehabilitation Companies' performance in reducing reoffending against the Ministry of Justice 2011 baseline, between October 2015 and March 2017

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

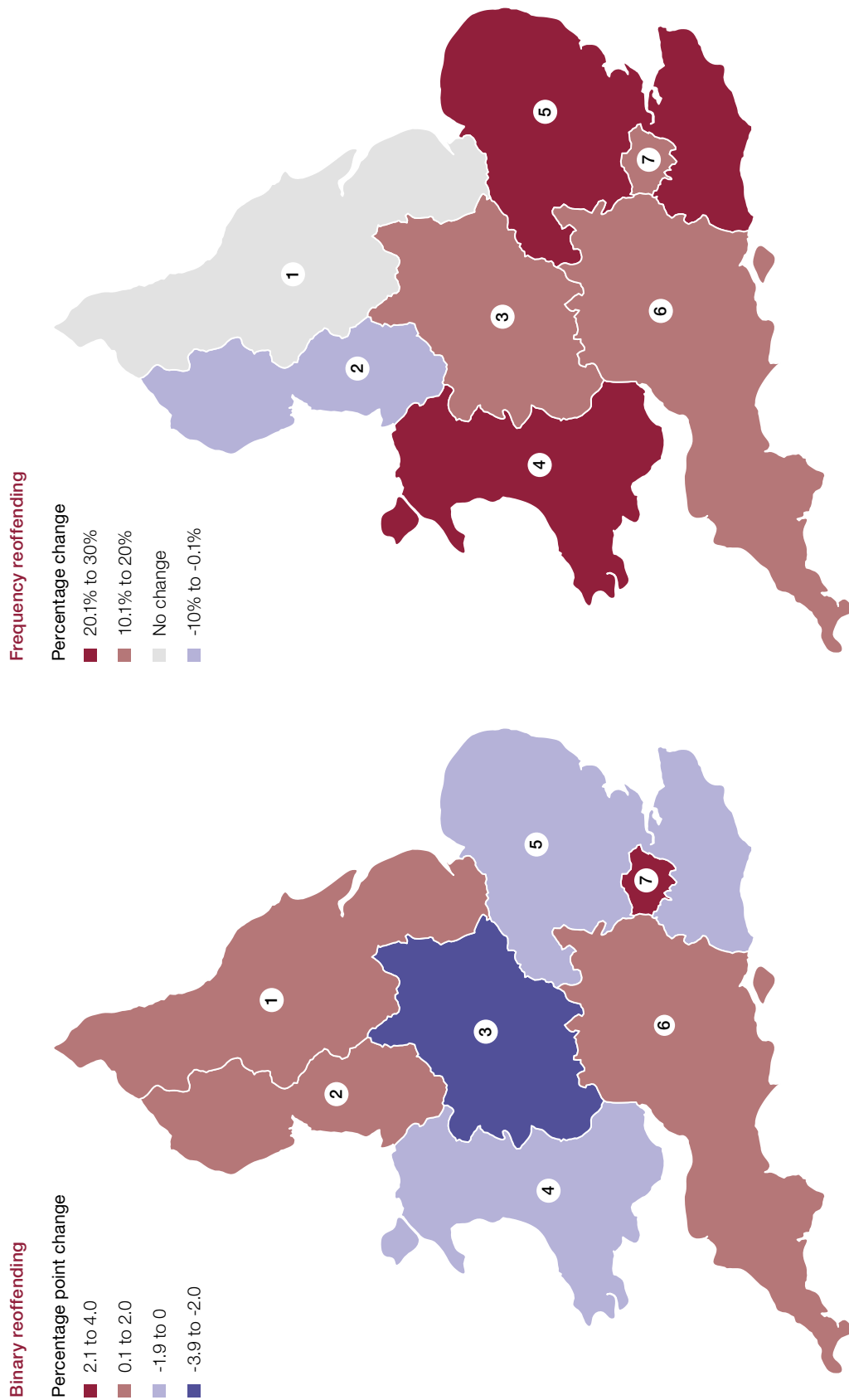
Note

- 1 The Ministry of Justice set a contractual baseline of average reoffending in 2011 to assess Community Rehabilitation Companies under payment by results. It changed the frequency baseline in 2018 to average reoffending in 2015-16 (paragraph 3.4).

Source: National Audit Office analysis of Ministry of Justice data

Figure 3 The National Probation Service's performance in reducing reoffending between October 2015 and March 2017

Four National Probation Service regions oversaw increases in the binary measure of reoffending, while five regions oversaw increases in the frequency measure



Source: National Audit Office analysis of Ministry of Justice data

Figure 3 *continued*

The National Probation Service's performance in reducing reoffending between October 2015 and March 2017

- 1 North East
- 2 North West
- 3 Midlands
- 4 Wales
- 5 South East and Eastern
- 6 South West and South Central
- 7 London

Source: National Audit Office analysis of Ministry of Justice data

Wider objectives of the Transforming Rehabilitation reforms

Opening up the market to diverse providers

1.8 Reflecting ministers' objectives to open up the market, the Ministry put extensive effort into attracting a diverse range of potential bidders, as primary contractors or within supply chains. Ultimately, many voluntary sector organisations (VSOs) were unable to provide the financial guarantees required to tender for a contract on their own. Nonetheless, the Ministry still expected CRCs to use VSOs in their supply chains.

1.9 Although contracts are now in their fifth year, the Ministry acknowledges that the rehabilitation market is still immature, and its ambition for greater third-sector involvement in probation remains unrealised. Two larger VSOs are partners to CRCs and one CRC is owned by a consortia of voluntary, private and public organisations, but, as at October 2018, just 11% (159) of the 1,433 VSOs working in the criminal justice sector were providing services directly to CRCs.³ Smaller VSOs have a long history of providing specialist services, such as for female offenders. However, they were less likely to be funded by CRCs than larger VSOs.⁴ Many VSOs have reported financially unsustainable positions as they draw on their own finances and other funding to maintain services.

3 1,433 registered charities were members of the representative body CLINKS in 2018, though it is possible that more than this were working in the criminal justice sector.

4 CLINKS, *Under represented, Under pressure, Under resourced: The voluntary sector in Transforming Rehabilitation*, April 2018.

Incentivising innovation

1.10 The reforms were intended to incentivise innovation and introduce new ways of rehabilitating offenders. The Ministry required CRCs to prepare transformation plans under the contracts. These varied across CRCs but included commitments to invest in new technology and ICT systems, make greater use of VSOs and better target services.

1.11 To support CRCs to invest in their own ICT systems to promote innovation, the Ministry committed to create an ICT gateway by June 2015 to provide a link between CRCs and HM Prison & Probation Service (HMPPS) systems. Our 2016 report highlighted delays in development of the gateway, which was not introduced until September 2016. This delay affected CRCs' ability to introduce new ICT systems and the Ministry paid a total of £23.1 million in compensation to 17 CRCs. By January 2019, only two CRCs were using the gateway, seven were still working towards introducing their own systems, and 12 CRCs had decided to retain HMPPS's systems rather than introducing their own. CRCs have continued to bring legal claims against the Ministry relating to the delays and their consequential impact.

1.12 Beyond new ICT, HM Inspectorate of Probation (the Inspectorate) has identified some examples of innovation through its work. These include: new sentence planning tools; the introduction of hubs for providing multiple services; new operating models to prioritise resources; and specialist services such as autism-specific support. Kent, Surrey and Sussex CRC has also introduced an initiative to improve sentencers' confidence in community sentences by providing local sentencers with information on offenders' progress against sentence requirements.

1.13 Although the Ministry has also identified discrete examples of innovation and good practice, it has not systematically captured evidence of them. Nor has it held CRCs to account for delivering their contractual transformation plans. The Ministry attributes CRCs' lack of progress in delivering these to funding pressures, the level of time and effort needed to adjust to delivering their services, and difficulties reducing reoffending.

Extending supervision to all offenders

1.14 Before the reforms, offenders who had served less than one year in prison did not have to be supervised by probation services. Recognising the high reoffending rates for this group, the Ministry extended statutory supervision to all offenders for the first time. This meant that the number of offenders under supervision increased by 17% (37,000) between January 2015 and September 2018. In 2016, we highlighted the risk of the Ministry not sufficiently understanding and managing the performance of services for this new cohort of offenders.⁵ The Ministry has still not systematically evaluated the impact of the extension.

⁵ Comptroller and Auditor General, *Transforming Rehabilitation*, Session 2015-16, HC 951, National Audit Office, April 2016.

1.15 The extension of supervision has increased the number of offenders who are returned to prison during their licence period. Between January 2015 and September 2018, the number of offenders recalled to prison for breaching their licence conditions increased from 4,240 to 6,240 (47%). Over the same period, the percentage of offenders recalled to prison who had received short sentences of less than 12 months increased from 3% to 36%. Offenders serving short sentences often find it difficult to comply with licence conditions as they are more likely to have chaotic lives, with accommodation difficulties, mental health problems and alcohol and drug dependency. The Justice Select Committee found that available supervision was not sufficiently flexible or appropriate to reflect the diverse needs of this group.⁶

Introducing Through the Gate services

1.16 CRCs introduced TTG services from 1 May 2015 to support offenders in their transition from prison to the community by providing resettlement support for accommodation, employment, finance, and mental health and substance misuse. The Ministry designated some prisons as resettlement prisons for this purpose. In 2016, arrangements to resettle offenders through these services were still in their early stages.⁷

1.17 In 2016, HMPPS rated all audited CRCs 'amber/red' for failing to meet contractual requirements and service delivery standards for TTG services. It found that, while CRCs were good at completing processes, they were weak at providing quality services, with low staff awareness of service requirements and insufficient training.

1.18 In 2016 and 2017, the Inspectorate reported that TTG services consistently failed to meet offenders' resettlement needs. The Chief Inspector concluded that the removal of TTG services would have a 'negligible' impact on the resettlement of prisoners. CRCs were focused on contractual targets, rather than meeting offenders' needs in a meaningful way, and there were significant gaps across services.

1.19 The Ministry intended TTG services to be provided to the majority of offenders through resettlement prisons. It estimates that up to 2,961 prisoners did not receive TTG services in 2018. These were offenders released from non-resettlement prisons, predominantly sex offenders and foreign national offenders.

Creating a National Probation Service

1.20 Under Transforming Rehabilitation, the Ministry aimed to create a new integrated NPS. The NPS launched its Efficiency, Effectiveness and Excellence transformation programme in November 2015 to introduce a single operating model across the organisation. NPS staff we interviewed told us that the NPS has implemented its operating model covering core strands of probation, such as its work in courts, with victims and managing offenders' supervision in a consistent way. However, it has not had the capacity to deliver some of its work, such as intervention work with offenders.

⁶ House of Commons Justice Committee, *Transforming Rehabilitation*, Ninth Report of Session 2017–2019. HC 482. June 2018.

⁷ See footnote 5.

1.21 The NPS faces workforce challenges, including difficulties filling vacancies and retaining probation officers. In August 2018, its overall staff vacancy rate was 11% (1,165 vacancies), ranging from 4% in the Midlands (73) to 20% in London (304). The NPS relied on 1,103 temporary staff and had a net deficit equivalent to 936 full-time staff. Particular challenges include competition for staff between the South East and Eastern region, and London, where wages are higher. The NPS is considering a localised recruitment approach to respond to this.

1.22 Our focus groups with probation officers confirmed that NPS staff face high workloads, and while staff felt able to meet their responsibilities to protect the public, they lacked the time for meaningful contact with offenders. The NPS measures workloads as a percentage of available staff resources, setting an internal threshold of 110%. As at October 2018, 12 out of 70 sub-regions (17%) had levels at or above 110% (**Figure 4** on pages 22 and 23).

Performance of probation services

1.23 As well as tracking reoffending outcomes, the Ministry assesses probation services using data and information that cover:

- performance against assurance and performance targets;
- compliance with HMPPS's professional and contractual standards; and
- independent assessments of CRCs and the NPS published by the Inspectorate.

Performance against assurance and performance targets

1.24 Previously, we and the Committee of Public Accounts have reported on the limitations and incompleteness of performance information. From July 2017, the Ministry changed its assurance and performance targets, removing three targets and replacing them with two new targets. Data availability has improved under the new regime, with data for just one quarterly target unavailable (**Figure 5** on page 24).

1.25 These data show by September 2018, the NPS was achieving, on average, 16 out of 17 (94%) of its quarterly targets where the Ministry considered robust data were available. CRCs have made only a modest improvement overall against the Ministry's expectations, achieving, on average, 9 out of 17 (53%) of their quarterly targets by September 2018.

Figure 4 Workload rates across National Probation Service sub-regions, October 2018
 Of the National Probation Service sub-regions, 61% were operating at or above 100% of their operational capacity in October 2018, while 17% were operating at or above the threshold of 110%

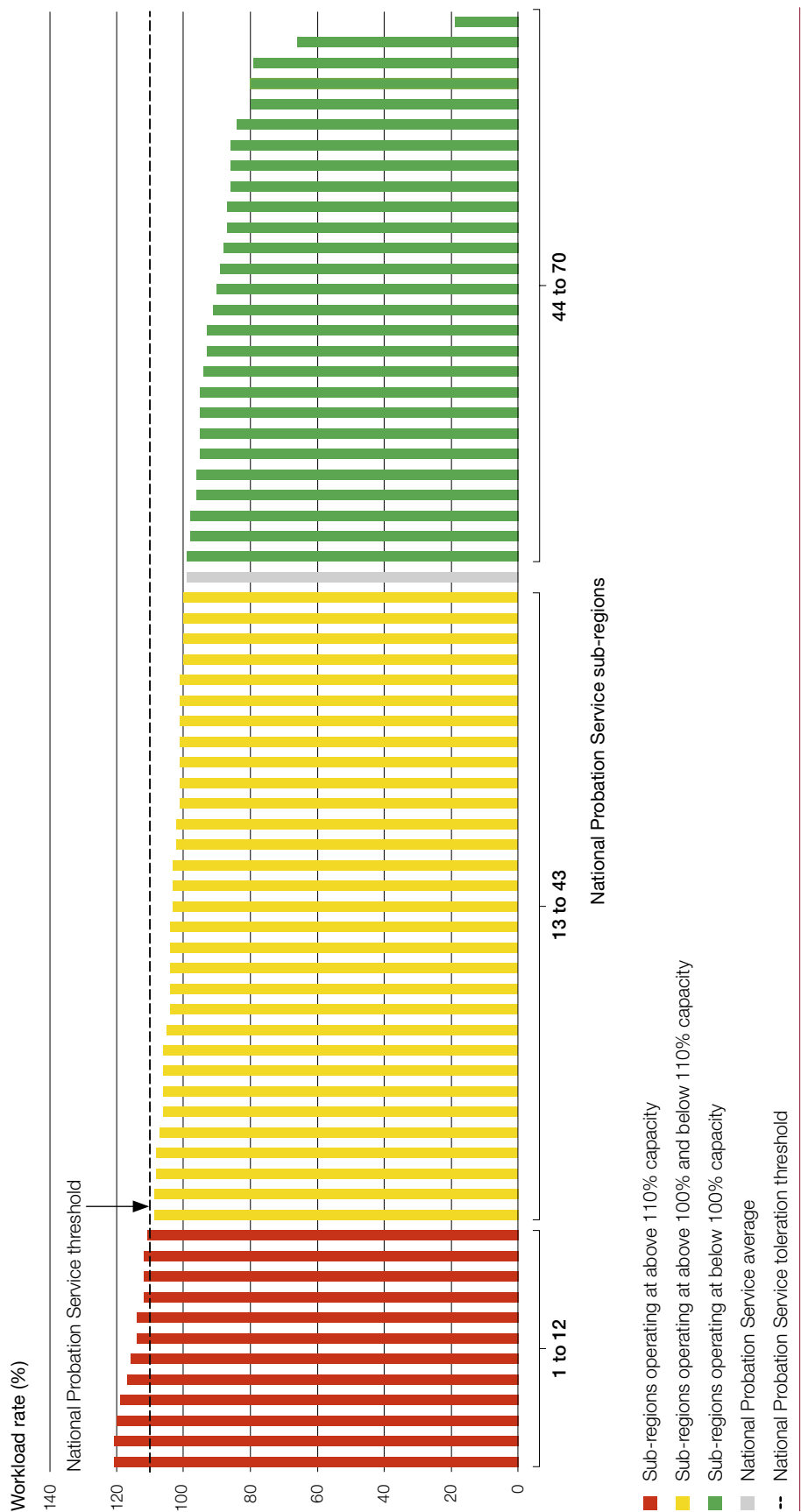
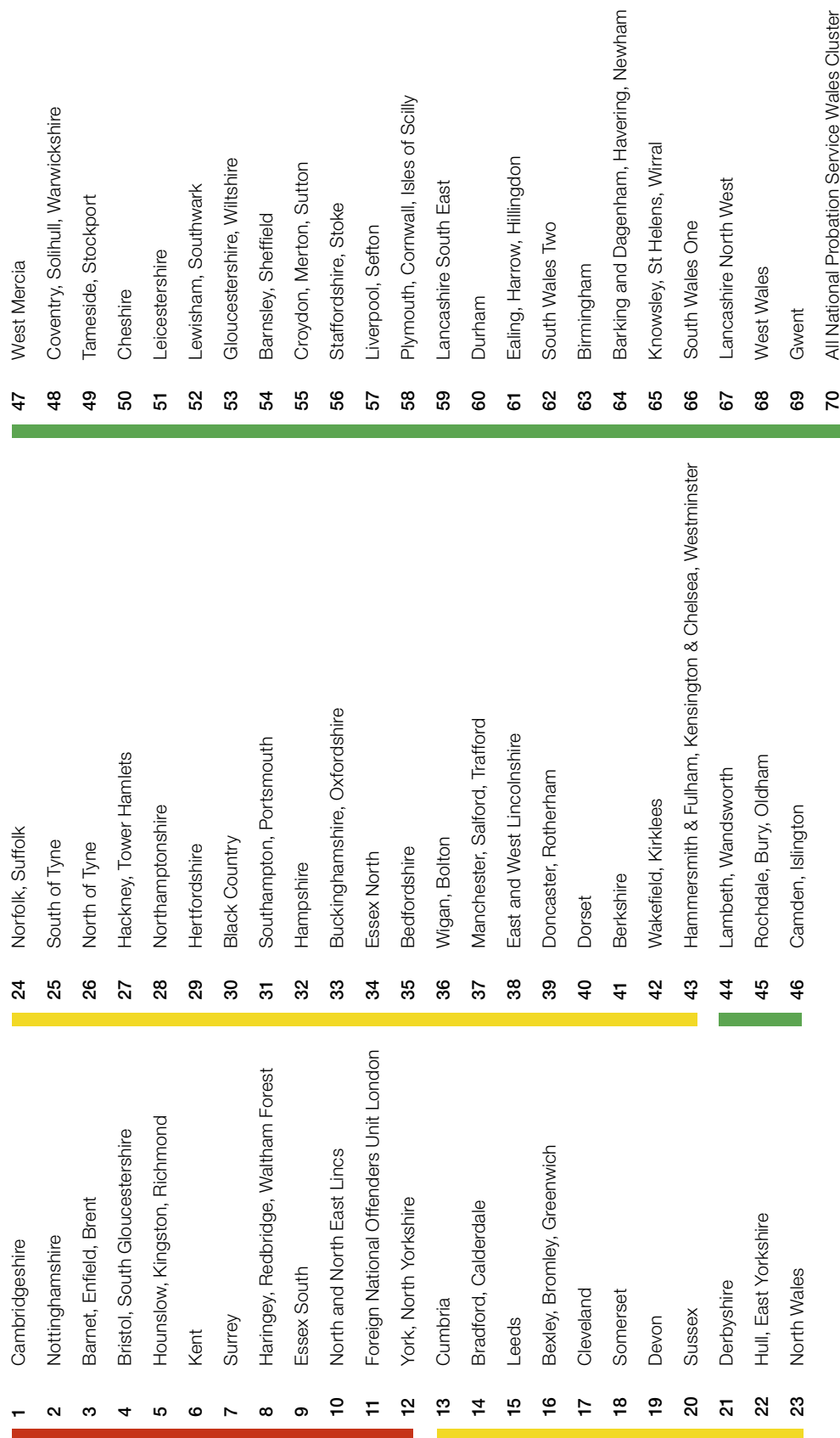


Figure 4 continued
Workload rates across National Probation Service sub-regions, October 2018

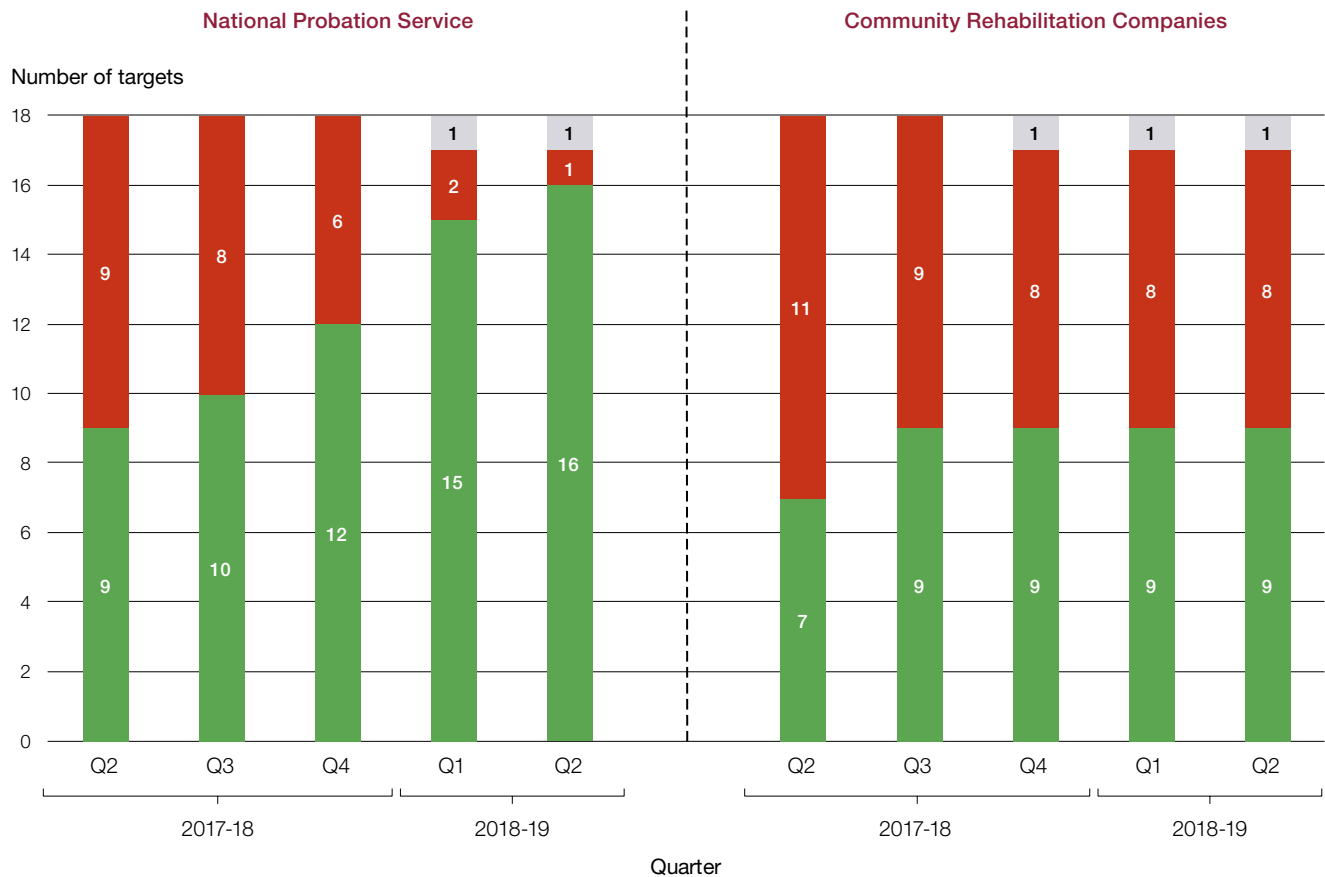


Source: National Audit Office analysis of National Probation Service data

Figure 5

The National Probation Service's and Community Rehabilitation Companies' performance against quarterly targets between July 2017 and September 2018

The National Probation Service is achieving a higher proportion of targets than Community Rehabilitation Companies



- Targets for which a result was not published
- Target missed
- Target met or exceeded

Note

1 Analysis is based on the Ministry of Justice's quarterly targets and excludes three National Probation Service and two Community Rehabilitation Company targets for which data are collected bi-annually or annually. It also excludes a further Community Rehabilitation Company and National Probation Service target which the Ministry could not assess owing to low volumes of data.

Source: National Audit Office analysis of Ministry of Justice data

1.26 The Ministry may deduct service credits (penalties for poor performance) from its payments to CRCs. Since the Committee of Public Accounts published its report on the CRC contracts highlighting the level of service credits previously imposed, the Ministry has applied a higher proportion of service credits (**Figure 6**).

Compliance with HMPPS professional and contractual standards

1.27 HMPPS assesses CRCs' and the NPS's compliance with its professional standards through operational audits, focusing on service areas with the highest risks. In its audits of CRCs, it did not assign any 'green' ratings. It rated just 5 of its 37 CRC audits (14%) as 'amber/green'. It found that the NPS was performing more effectively overall. It assigned a 'green' rating in one audit (4%) and 'amber/green' ratings in 15 of its 26 NPS audits (58%) (**Figure 7** overleaf).

Independent inspections

1.28 The Inspectorate has viewed performance of the NPS more positively than CRCs. It made qualitative assessments of probation services in 13 geographical inspections,⁸ which covered: abiding by the sentence of the courts; protecting the public and reducing reoffending. Overall it assessed:

- nine out of 13 CRCs (69%) negatively for the quality of their work in reducing reoffending and protecting the public, and five negatively for abiding by the sentence of the courts (38%); and
- all 13 NPS areas positively for abiding by the sentence of the court, and 10 (77%) positively for protecting the public and reducing reoffending (**Figure 8** on page 27).

Figure 6

The status of service credits raised by the Ministry of Justice¹

The Ministry of Justice has applied a higher proportion of service credits since the Committee of Public Accounts published its report on Community Rehabilitation Company contracts²

Period	Service credits re-invested by Community Rehabilitation Companies (£m)	Waived ³ (£m)	Applied (£m)
July to September 2015 to April to June 2017	3.3 (42%)	2.2 (29%)	2.2 (29%)
July to September 2017 to January to March 2018	–	2.1 (51%)	1.9 (49%)

Notes

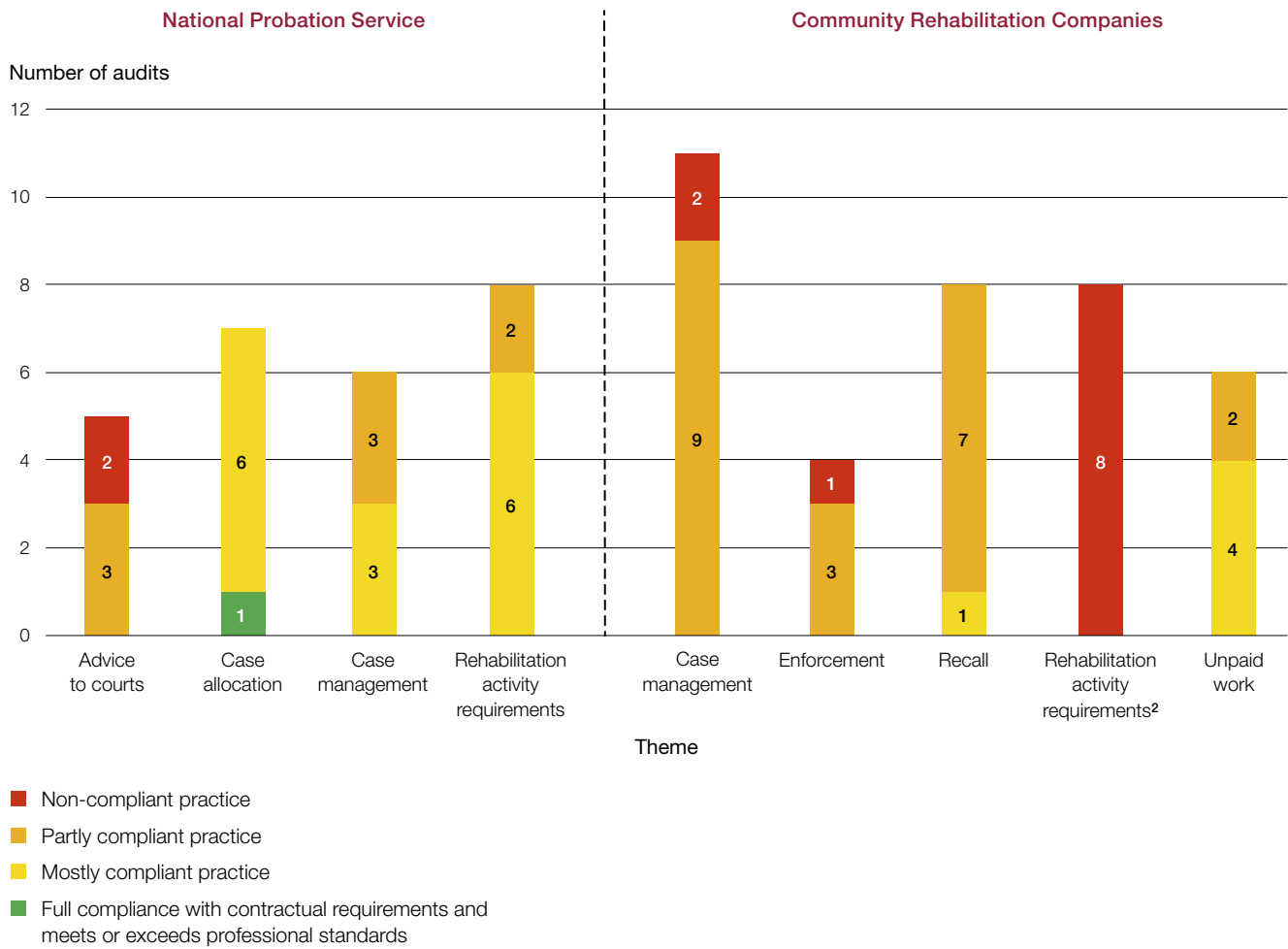
- ¹ A service credit is a financial penalty for poor performance.
- ² Committee of Public Accounts, *Government contracts with Community Rehabilitation Companies*, Twenty-Seventh Report of Session 2017–19, HC 897, March 2018.
- ³ The Ministry of Justice may waive service credits where it considers that factors outside Community Rehabilitation Companies' control has materially impacted on their ability to achieve service levels.

Source: National Audit Office analysis of Ministry of Justice data

⁸ Under its previous inspection framework, the Inspectorate inspected both CRCs and the NPS at the same time. It made 13 geographical inspections between December 2016 and March 2018, before it introduced its new framework.

Figure 7
HM Prison & Probation Service's operational audit ratings¹

Community Rehabilitation Companies' compliance with HM Prison & Probation Service's professional standards has been significantly lower than the National Probation Service's compliance



Notes

- 1 HM Prison & Probation Service carried out 37 audits on Community Rehabilitation Companies and 26 on the National Probation Service between February 2017 and October 2018.
- 2 Rehabilitation activity requirements are requirements set by the courts which probation providers should deliver against.

Source: National Audit Office analysis of HM Prison & Probation Service documents

Figure 8

HM Inspectorate of Probation’s overall assessment of National Probation Service regions and Community Rehabilitation Companies’ performance, December 2016 to March 2018

The performance of the National Probation Service has been assessed more positively than that of Community Rehabilitation Companies



Source: National Audit Office analysis of HM Inspectorate of Probation reports

1.29 In April 2018, the Inspectorate introduced a new inspection framework, according to which all probation providers are inspected annually and assigned overall ratings.⁹ By February 2019, it had rated eight CRCs as ‘requires improvement’ and one as ‘inadequate’, consistently giving the lowest scores for public protection. It had inspected three NPS regions, which it rated as ‘good’.

9 The four ratings are: outstanding; good; requires improvement; and inadequate.

Part Two

Implementation of the reforms

2.1 This part sets out the reasons the reforms have faced difficulties. It describes three interlinked issues:

- the speed with which change was implemented;
- the consequences of structural changes introduced through the reforms; and
- the Ministry of Justice's (the Ministry's) commercial strategy.

The speed of implementation

2.2 In 2016, we reported that the Ministry completed the procurement in a challenging timescale set by ministers. Introducing such a significant change into a complex system at this pace created significant risks. The concurrent changes in the probation system limited bidders' understanding of their exposure to business risk.¹⁰ The Ministry identified that its procurement was affected by time constraints, poor alignment between policy and analytical teams, poor integration of information and communication technology (ICT) into the programme, and strained resources while it evaluated bidders' submissions.

2.3 The Ministry did not pilot how transformed probation services would be delivered in practice. It abandoned pilots in community settings and ended its two localised pilots in prisons early due to the advanced development of the programme and ministerial priorities to progress with the procurement. Furthermore, it lacked a good understanding of service delivery models, working practices and governance under the probation trusts, and it was heavily reliant on their information about costs. It did not understand what new arrangements for delivering services bidders might introduce in a reformed system, and Community Rehabilitation Company (CRC) owners lacked complete and reliable information about the businesses they were acquiring.

¹⁰ Comptroller and Auditor General, *Transforming Rehabilitation*, Session 2015-16, HC 951, National Audit Office, April 2016.

Consequences of structural changes

2.4 The Ministry's decision to split probation services between 21 CRCs and seven National Probation Service (NPS) regions created new operational interfaces between the NPS, CRCs, prisons and HM Prison & Probation Service (HMPPS). For London and Wales, the respective NPS regions and CRCs are geographically aligned, but other NPS and CRC boundaries are not well aligned. The remaining five NPS regions all have to work with more than one CRC and, in the North West region, three CRCs are run by two different parent companies.

2.5 The Transforming Rehabilitation reforms split the role of probation services in court, so the NPS provides all advice to courts in a pre-sentence report. The Inspectorate reported that these arrangements do not support sentencers' confidence in CRCs. CRCs are detached from the court process, while the NPS itself lacks knowledge of, and confidence in, CRC services.

2.6 Delivering effective probation services relies on close cooperation between all organisations involved. We previously reported that the interfaces and new working relationships between the NPS and CRCs presented significant challenges. At the halfway point of the contracts, interfaces between organisations are not yet working smoothly, with both HM Inspectorate of Probation (the Inspectorate) and HMPPS identifying shortcomings, including:

- the NPS's pre-sentence reports to courts, including sufficiency of its risk assessments, were of poor quality;
- the NPS process for allocating offenders to the appropriate service was time-consuming, suffered from delays and included gaps in risk assessments;
- CRCs' directories explaining their specialist services on offer to the NPS and prisons were insufficient and of poor quality; and
- gaps in CRCs' and the NPS's joint working was undermining purposeful rehabilitation.

2.7 During our case study visits, staff told us that local initiatives, such as co-location, the introduction of service liaison roles and joint forums between organisations, had improved overall joint working since the reforms were introduced. Although legislation prevents CRC staff from providing advice to court, one CRC co-locates staff with the NPS court team so that pre-sentence reports are better informed about services available from the CRC.

2.8 At the outset of its reforms, the Ministry expected that 64% of cases would be managed by CRCs and 36% of cases would be managed by the NPS. However, data for September 2018 show a caseload split of 59:41 respectively. Increasing caseloads in the NPS, combined with staff shortages, have contributed to high workloads (paragraphs 1.20, 1.21 and 1.22).

The Ministry of Justice's commercial strategy

2.9 The Ministry's commercial strategy relied on CRCs reducing reoffending through largely outcome-based contracts using payment by results to encourage CRCs to innovate. But in using this approach it sought to transfer risks that CRCs were not well placed to manage.

2.10 The Ministry tried to transfer the risk of lower volumes of work to CRCs, but this has proved to be unsustainable. As activity volumes fell, the Ministry was paying less to CRCs. But it overestimated CRCs' ability to reduce their costs as their income fell. The scale of the fall in activity volumes and the consequential financial impact has put CRCs under financial pressure and affected their willingness to invest in probation services and implement their transformation plans.

2.11 The Ministry's contracts with CRCs set out three main types of payment:

- a **'fee for service'**, paid in full for the satisfactory completion of specified activities;
- **'payment by results'**, following proven reductions in reoffending after two years; and
- a **'fee for use'** to cover services commissioned by the NPS.

2.12 We previously reported that the volumes of activity qualifying for fee for service payments were well below the levels expected when the contracts were let. Two years into the contracts, by the first quarter of 2017-18, the differences ranged from 16% to 48% less than expected. In letting the contracts, the Ministry only modelled a 2% fall in activity volumes, and believes it could not have foreseen a drop in volumes on the scale that materialised.¹¹

2.13 Declining activity volumes are partly a result of changing sentencing practices. Community sentences, which include community orders and suspended sentence orders, are in long-term decline as a percentage of all sentences. In 2015, when CRCs became operational, the courts handed down 91,224 community orders, compared with 77,810 in 2017, a 15% fall. Over the same period, the number of suspended sentence orders fell by 9%, from 46,515 to 42,520. The declining use of community sentences is in part influenced by the low confidence sentencers have in CRCs (paragraph 2.5).

¹¹ Comptroller and Auditor General, *Investigation into changes to Community Rehabilitation Company contracts*, Session 2017–2019, HC 676, National Audit Office, December 2017.

2.14 Some of the requirements attached to community sentences, such as accredited programmes and unpaid work orders, lead to fee for service payments for CRCs. The proportion of orders with accredited programmes attached has also fallen with the introduction of Rehabilitation Activity Requirements (RARs) under the reforms. RARs were designed to give CRCs flexibility to deliver against sentences set by the courts. But CRCs are not separately paid for delivering RARs, with the Ministry assuming that CRCs would recoup the costs incurred through payment by results.

2.15 The Ministry expected to pay CRCs up to £3.7 billion over the life of the current contracts to 2021-22. However, by August 2018, it forecast that it would pay CRCs £2.3 billion through to December 2020, the point at which its contracts with CRCs will now end (**Figure 9** overleaf). This fall is a consequence of the fall in fee for service payments and the forecast liabilities under the payment by results arrangements.

2.16 In transferring volume risk the Ministry had a poor understanding of CRCs' cost bases. Both it and bidders had overestimated CRCs' ability to reduce their costs as income fell. The Ministry's original assumption was that 20% of CRCs' costs were fixed, but in June 2017 it amended the contracts to allow for average fixed costs reported by CRCs of 77%. This increased its maximum projected payments to CRCs by up to £278 million over the life of the contracts to 2021-22, or an estimated £207 million to December 2020 when the contracts will terminate (Part Three). Following the changes, as at March 2017, 14 CRCs still projected losses ranging from £2.1 million to £43 million.

2.17 The Ministry's payment by results arrangements have placed additional pressure on CRCs' financial positions. The first set of annual reoffending statistics, published in January 2018, meant that CRCs incurred total liabilities of £9.3 million.¹² The Ministry deferred applying these penalties as it was in commercial negotiations with CRCs. It modelled three scenarios for potential future reoffending trends to estimate CRCs' future liabilities, concluding that CRCs were most likely to incur total liabilities of £146 million (**Figure 10** on page 33).

2.18 The use of payment by results was intended to transfer the risk of successfully reducing reoffending to CRCs. But many of the steps necessary to achieve this outcome are not fully within their control. Offenders' likelihood of reoffending is influenced by wider public services, such as support with housing, employment, mental health, and substance misuse, as identified by a review by the Government's Social Exclusion Unit in 2002.¹³

2.19 More generally, payment by results as a contract mechanism is not well suited to probation services. We published a report in 2015 setting out the circumstances in which payment by results schemes have proved effective. Applying this framework to probation highlights several shortcomings (**Figure 11** on page 34).

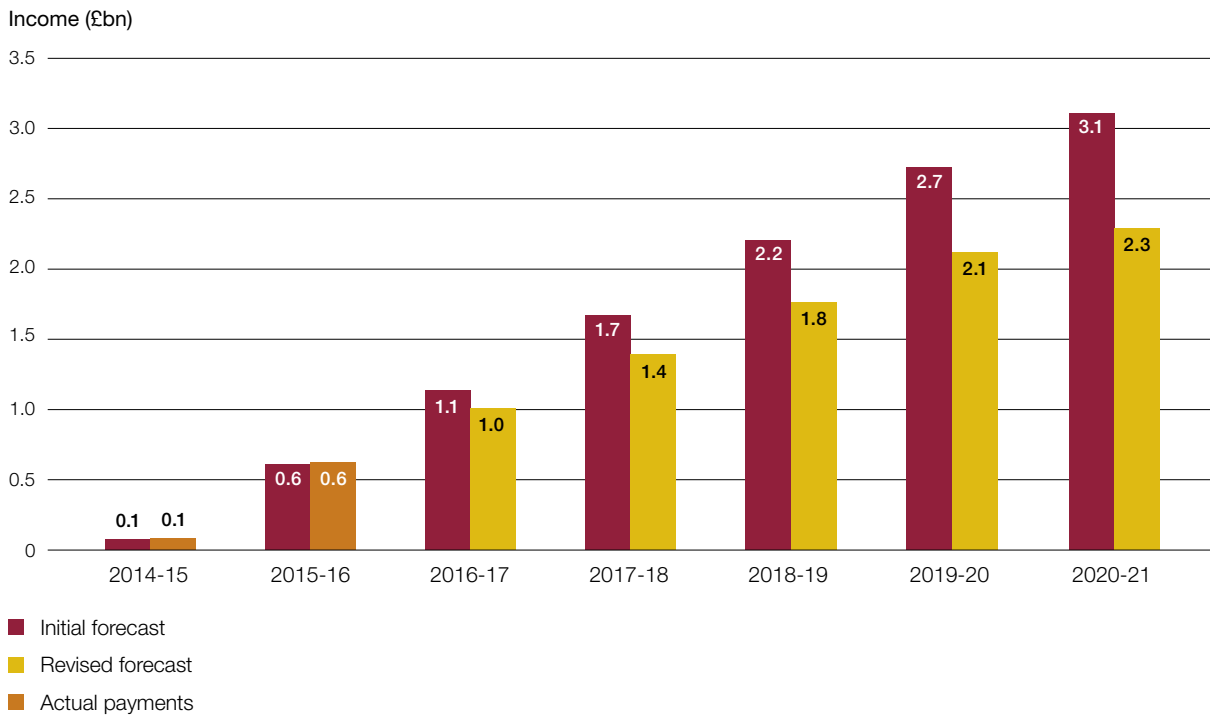
¹² The Ministry changed the baselines used to measure CRCs' performance in reducing reoffending (paragraph 3.4) which resulted in payments to CRCs of £4.9 million.

¹³ Social Exclusion Unit. *Reducing re-offending by ex-prisoners*, July 2002.

Figure 9

Cumulative forecast payments to Community Rehabilitation Companies between 2014-15 and December 2020, as at July 2014 (initial forecast) and August 2018 (revised forecast)

The Ministry of Justice expects to pay Community Rehabilitation Companies £822 million less than it originally expected

**Notes**

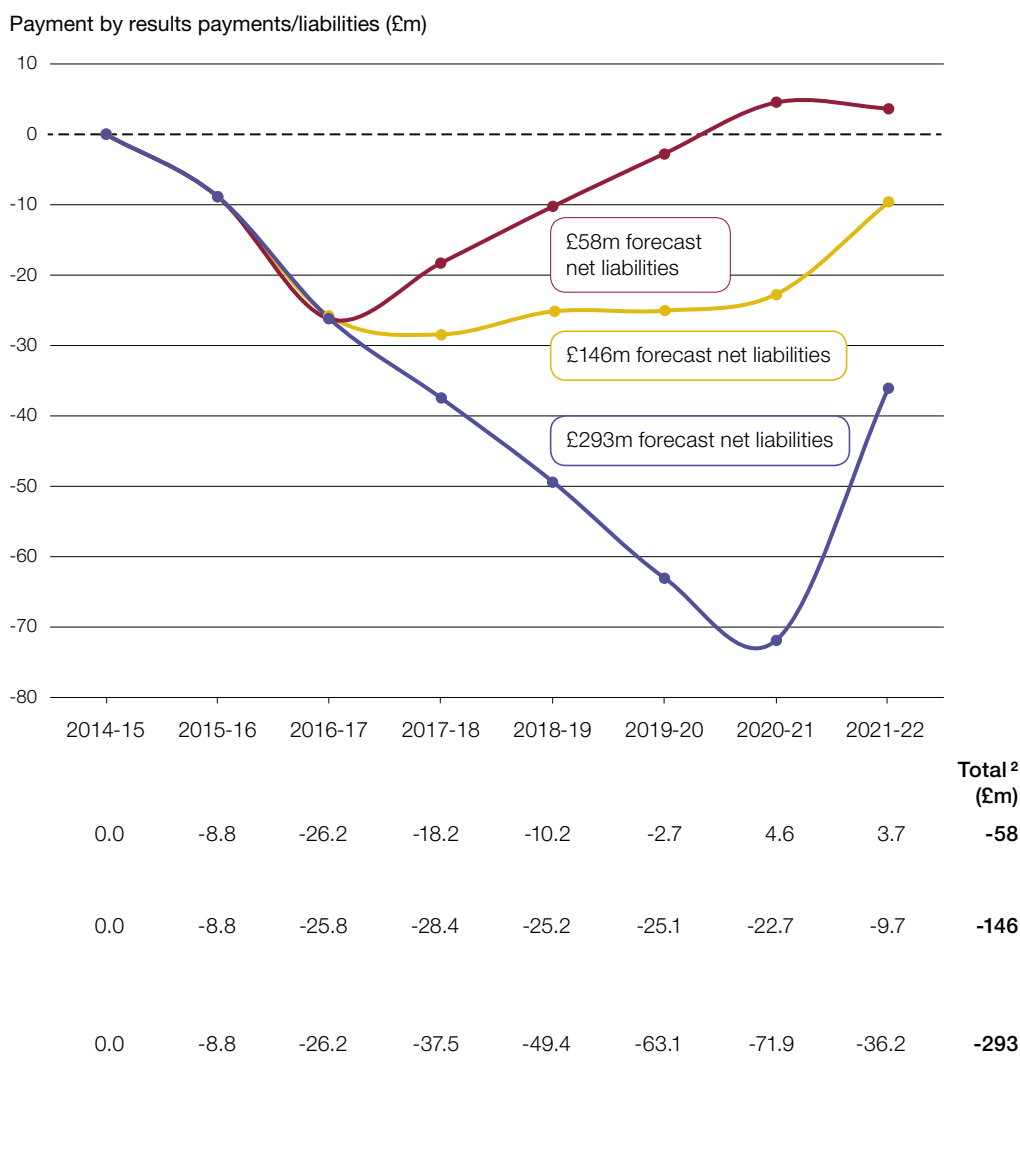
- 1 This figure represents net forecast payments to Community Rehabilitation Companies over the contract period.
- 2 The Ministry of Justice forecast in July 2014 that it would expect to pay Community Rehabilitation Companies £3.7 billion over the life of the contracts, comprised of £2.8 billion in fee for service payments and £0.9 billion in payment by results payments.
- 3 As part of commercial negotiations with providers, the Ministry of Justice has secured early contract terminations in December 2020. For the purposes of comparison we have excluded the final year of the original contracts from this analysis and deducted one quarter of estimated forecast payments to Community Rehabilitation Companies in 2020-21.
- 4 Data for actual payments to Community Rehabilitation Companies in 2014-15 and 2015-16 is comprised of fee for service, payment by results, fee for use for work carried out on behalf of the National Probation Service, and the Ministry's payments to Community Rehabilitation Companies to settle legal claims.
- 5 Data for the Ministry of Justice's revised forecast include actual fee for service payments to Community Rehabilitation Companies between 2016-17 and 2017-18. Data also include the Ministry of Justice's estimates of Community Rehabilitation Companies' liabilities under payment by results and forecast payments to Community Rehabilitation Companies agreed as part of the Ministry of Justice's commercial negotiations.

Source: National Audit Office analysis of Ministry of Justice data

Figure 10

The Ministry of Justice’s modelling of future reoffending trends to understand Community Rehabilitation Companies’ future exposure to liabilities

The Ministry of Justice expected Community Rehabilitation Companies to incur £146 million in liabilities under payment by results if the contracts continued through to 2021-22



Notes

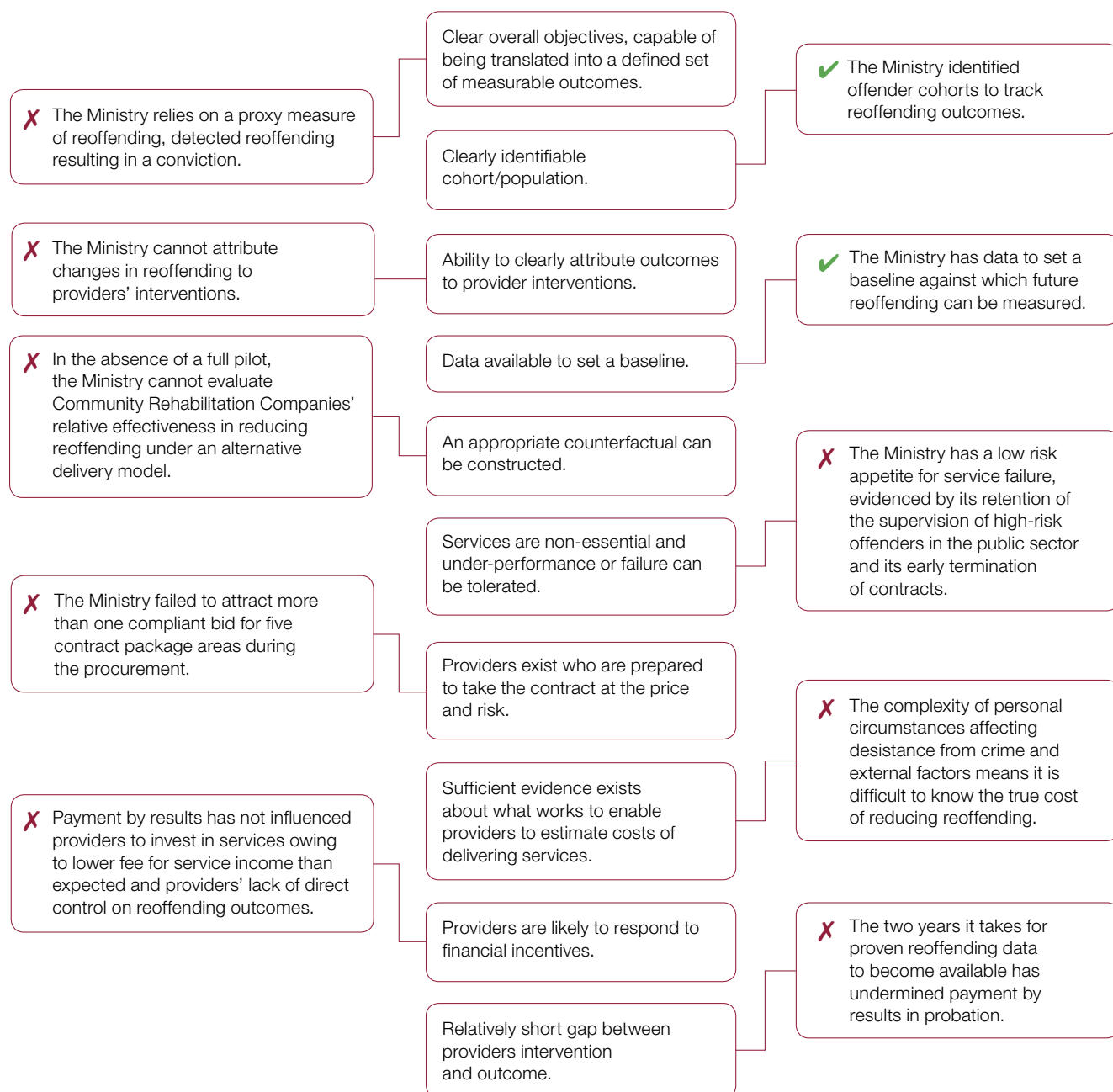
1 These results show three of the Ministry’s scenarios: the best, static and worst cases.

2 Rounded to the nearest £ million.

Source: National Audit Office analysis of Ministry of Justice data

Figure 11
Our evaluation of the Ministry of Justice’s use of payment by results in probation

Payment by results was not well suited to probation services¹



Note

1 We evaluated the suitability of payment by results to probation services against our framework: Comptroller and Auditor General, *Outcome-Based Payment Schemes: Government’s use of Payment by Results*, Session 2015-16, HC 86, National Audit Office, June 2015.

2.20 The Ministry also did not reconcile its appetite for risk with its commercial approach. There is an inherent tension between the desire to promote innovation and the need to maintain minimum service requirements for statutory probation services to protect the public and deliver courts' sentences. CRC contracts did not specify how CRCs should provide some services, as the Ministry wanted to allow CRCs scope to deliver services as they saw fit. The Ministry's light-touch approach to specifying services in contracts has prevented it from holding CRCs to account when services were failing (**Figure 12**). In practice this left the Ministry with few levers to intervene when CRCs' performance fell below expectations.

Figure 12

The Ministry of Justice's self-assessment of the adequacy of its contractual specifications

Community Rehabilitation Companies' contracts are lightly specified in five high-risk service areas

Service requirements	Key HM Inspectorate of Probation and operational audit findings	Adequately described in contract?	Red/Amber/Green rating
Contact with offenders	High numbers of offenders are not seen, with contact taking place by telephone leading to failures to identify offenders' changing risks.	No	●
Through The Gate services	Little evidence of creativity or innovation with many prisoners approaching their release date without their resettlement needs being met or considered.	No	●
Service provision against offenders' Rehabilitation Activity Requirements (RARs)	Assessments of offenders' needs are poorly addressed in offender management plans. The quality of RAR service delivery is poor.	No	●
Services for female offenders	There is a lack of focus on outcomes for women, both strategically and operationally.	No	●
Management oversight	There is a lack of management oversight of practitioners' work, including managing the risk of further serious harm.	No	●

Note

- 1 The Ministry of Justice identified that its contracts were described in 'general terms' in five other service requirement areas, for which it assigned amber ratings, including: evidencing offenders' acceptable absences from appointments; the quality of enforcement paperwork; delivering the sentence of the court as intended; capturing information in offenders' case records; and an appropriately trained workforce, including supply chains.

Source: National Audit Office analysis of Ministry of Justice documents

Part Three

The future of probation services

3.1 This part examines:

- the Ministry of Justice's (the Ministry's) decision to terminate the contracts early;
- how the Ministry has applied its learning to inform the future of probation services; and
- risks to the effective delivery of probation services.

The decision to terminate the contracts

3.2 In June 2018, the Ministry commissioned work to understand Community Rehabilitation Companies' (CRCs') financial positions and develop options for terminating the contracts. It found that as at March 2018, CRCs forecast collective losses of £294 million over the life of the contracts compared with £269 million profits expected at bid stage – a difference of £563 million (**Figure 13**). The Ministry's analysis was limited because it could not evidence lines of credit from parent companies to CRCs that would limit the risk of insolvencies. It also does not know the extent to which corporate overhead charges applied by parent companies to CRCs are reasonable.

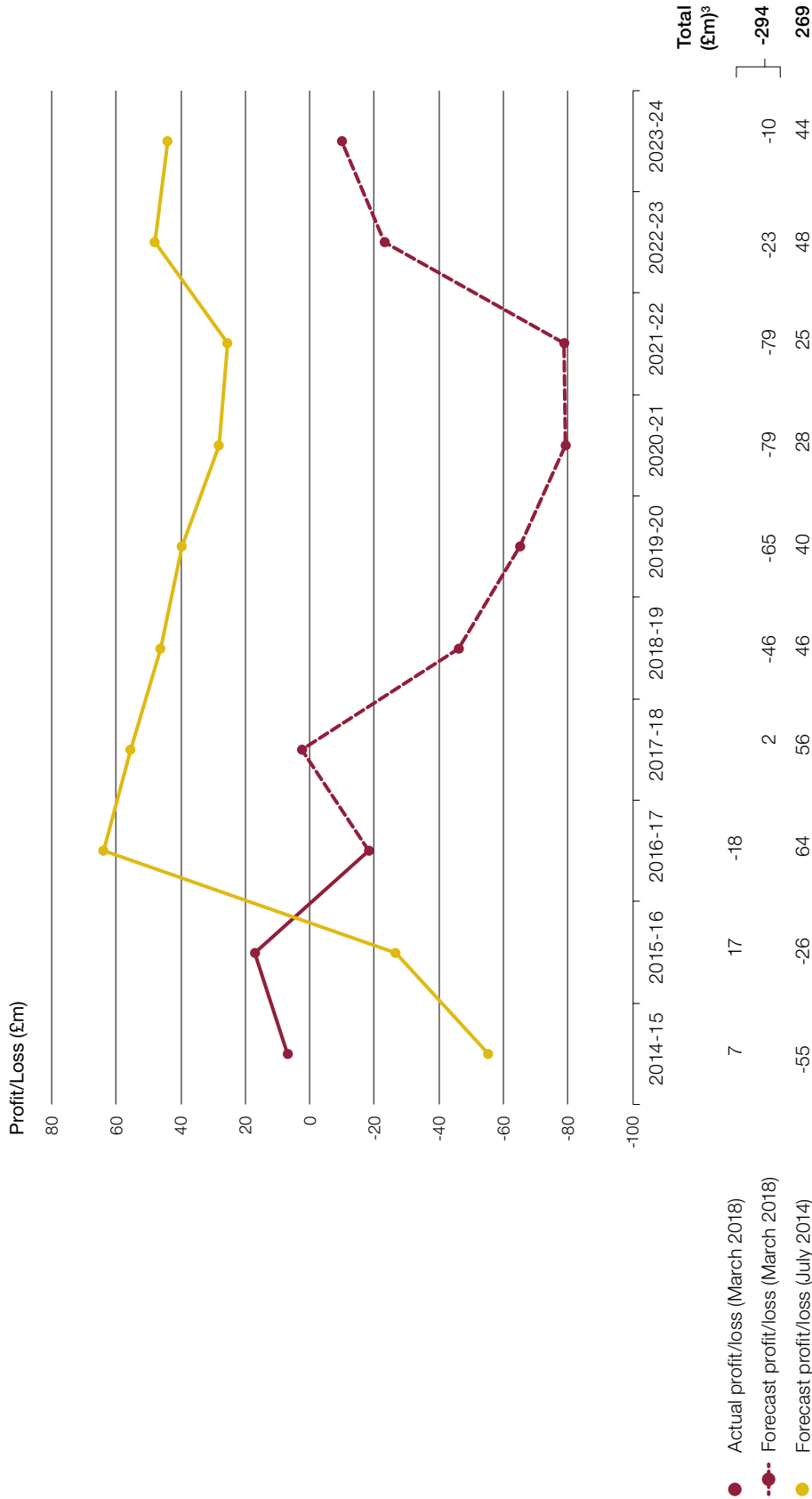
3.3 In July 2018, the Ministry announced it would terminate its contracts with CRCs 14 months early, in December 2020. It concluded that activity volumes and reoffending rates would need to change by “unprecedented” levels for CRCs to become profitable. The Ministry judged that losses could result in CRCs withdrawing services, unacceptable further deteriorations in performance and potential multiple provider insolvencies. It also identified risks to the continuity of probation services, owing to the scale of the challenge in bringing services back in-house in the event of multiple provider failure. Its preferred commercial response was to:

- terminate contracts with no compensation payable to providers (except for paying providers reasonable sub-contractor breakage costs and redundancy costs), a requirement set by HM Treasury;
- improve the frequency of contact between probation officers and offenders at no cost to the Ministry, recognising HM Inspectorate of Probation's (the Inspectorate's) criticisms;
- improve CRCs' provision of financial and workforce management data at no cost to the Ministry; and
- improve CRC delivery of Through the Gate (TTG) services against an enhanced specification, at a cost of £43 million to the Ministry up to December 2020.

Figure 13

Forecast net profit/loss in July 2014 (bid stage) and March 2018 (recent forecasts)

Community Rehabilitation Companies forecast profits of £269 million at bid stage but now forecast losses of £294 million if the contracts continue as planned



Notes

- 1 The Ministry of Justice overlaid its assumptions about Community Rehabilitation Companies' continued performance under payment by results, substituting Community Rehabilitation Companies' projections with its assumption that performance would remain consistent with 2016-17, the third year of the contracts, through to 2021-22.
- 2 The contracts were due to expire in 2021-22. The presence of contract years 2022-23 and 2023-24 reflects the two-year time lag to arrive at verified reoffending results, and therefore, whether Community Rehabilitation Companies are due payments or are liable to pay the Ministry of Justice liabilities from reoffending results in 2020-21 and 2021-22, respectively.
- 3 Rounded to the nearest £ million.

Source: National Audit Office analysis of Community Rehabilitation Companies' financial submissions to the Ministry of Justice

3.4 In seeking providers' agreement to its proposals, the Ministry offered to limit their forecast losses through retrospectively changing the baseline for calculating payment by results to 2015-16, the second year of the contracts, for all but one CRC. It did this because it concluded that its 2011 baseline unfairly penalised CRCs for trends occurring under the previous delivery model. It also proposed some technical adjustments to the contracts. The Ministry opened commercial negotiations in January 2018 and reached agreement in October 2018. It served termination notices in December 2018.

3.5 The Ministry believes that, irrespective of the early termination, it would have made the resulting changes to the contracts in good faith. However, without the changes it would have been difficult for it to reach agreements on terminating contracts with parent companies, owing to the risk of legal challenge if it allowed providers to fail by enforcing the current contracts. Earlier in the contracts, the costs to the Ministry for enacting its no-fault termination for convenience clauses would have been prohibitive, but these potential costs reduced considerably as the contracts have progressed. Ultimately however, the Ministry chose to avoid paying termination fees.

3.6 Although the Ministry's forecast payments to CRCs are still below its initial projections (see paragraph 2.15 and Figure 9), the Ministry's deal with CRCs will cost the taxpayer at least an extra £171 million above the terms of the original contracts (**Figure 14**). This follows its previous, unsuccessful, attempts to stabilise CRCs' financial positions in 2016-17 and 2017-18. When added to the costs of these contract changes, the total additional cost becomes at least £467 million.¹⁴ Full termination costs will not be known until December 2020 at the earliest, as further costs will arise, such as paying for sub-contractor breakage and settling any outstanding legal claims.

Applying learning to inform the future of probation services

3.7 The Ministry's Probation Programme Board has reviewed the shortcomings and lessons as it develops its options for procuring the second-generation contracts. In July 2018, it launched a public consultation, *Strengthening Probation, Building Confidence*, in which it made a range of commitments for the future probation system. **Figure 15** on page 40 sets out how these commitments intend to address the issues we identified in Part Two.

Risks to the delivery of probation services

3.8 While the Ministry's proposals address learning points it has identified, there remain some immediate and longer-term risks affecting probation. These include:

- managing transition to the new contracts;
- managing continuing system interfaces;
- managing new contracts; and
- better integrating services.

¹⁴ £467 million comprises the following: the Ministry of Justice sought to stabilise Community Rehabilitation Companies' financial positions in 2016-17 and 2017-18 through interim payments of £88 million; adjustments to contracts in 2017-18 to reflect higher fixed costs, worth an estimated £207 million to termination in December 2020; and at least £171 million early termination costs.

Figure 14

The cost to the taxpayer of the Ministry of Justice's early termination of Community Rehabilitation Companies' contracts

The Ministry of Justice's early termination of contracts will cost the taxpayer at least an extra £171 million

Commercial agreement area	Description	Cost (£m)
Measures to limit providers' losses	The Ministry of Justice agreed with 20 Community Rehabilitation Companies (out of 21) to change the frequency of reoffending baseline from 2011 to 2015-16.	113
	Merseyside Community Rehabilitation Company oversaw a statistically significant improvement in the frequency of reoffending in its area in 2015-16. The Ministry accepted a request from its parent company, Purple Futures, for Merseyside Community Rehabilitation Company to retain the original baseline.	1.8
	The Ministry of Justice agreed a series of technical variations with providers. It: <ul style="list-style-type: none"> changed the data source used to calculate Community Rehabilitation Companies casework volumes; and waived £1 million due to be paid by Community Rehabilitation Companies to the Ministry of Justice arising from a reconciliation of forecast and actual activity volumes from the first year of the contracts. 	13.2
Improving Through the Gate (TTG) services	The Ministry of Justice agreed with Community Rehabilitation Companies to deliver an enhanced TTG specification through to December 2020.	43
Total		171

Source: National Audit Office analysis of Ministry of Justice documents; Comptroller and Auditor General, *Investigation into changes to Community Rehabilitation Company contracts*, Session 2017–2019, HC 676, National Audit Office, December 2017

Figure 15

How the Ministry of Justice plans to address issues we have identified

The Ministry of Justice has made a number of ambitious commitments for the future

Issue	How the Ministry of Justice is addressing risks
Speed of implementation Speed and extent of change	While the extent of system change is less than previous reforms, the Ministry of Justice will need to manage the risks of a challenging procurement timetable, which must take no more than 15 months from pre-qualification stage (April 2019) to awarding contracts (May/June 2020), before new providers assume responsibility for services in December 2020.
Inadequate piloting and testing	No plans to pilot or test planned changes, although the extent of system change is less than previous reforms.
Consequences of structural change	
Poor alignment between the National Probation Service and Community Rehabilitation Companies	Creation of 10 new probation regions in England which are geographically aligned between future National Probation Service regions and new contract package areas. Introduce HM Prison & Probation Service senior leaders in each area responsible for joining up services and working with local stakeholders. Different model in Wales to integrate Community Rehabilitation Companies offender management functions into the National Probation Service Wales.
Separation of Community Rehabilitation Companies from involvement with courts	Improve the quality of National Probation Service advice to courts. Improve engagement between courts and Community Rehabilitation Companies to promote confidence in sentencers.
Operational interfaces not working effectively	Invest in IT to simplify data access and exchange. Improve voluntary sector involvement in services. Improve current Through the Gate provision with additional funding of £22 million annually. Work more closely with Police and Crime Commissioners, and with the devolved regions of London and Greater Manchester to improve design of services.
Commercial strategy	
Appropriateness of risk transfer	Final decisions on the payment mechanism or precisely what risks will be transferred to future providers have yet to be taken.
Use of payment by results	Acknowledged that payment by results has not worked. Plans to change the way providers are paid so that the costs of delivering probation services are not put at risk while retaining incentives for innovation and performance improvement.
Aligning contract specification with risk appetite	Clearer focus on probation services meeting core expectations and standards. Improve assessment of offenders, introducing standards specifying the form and frequency of contact between offenders and probation officers. Define the range and quality of services to be delivered as part of Rehabilitation Activity Requirements set by the courts. Tailored provision for female offenders.

Transition

3.9 The Ministry expects CRCs to take “drastic” steps to limit their losses in the run-up to contract termination. CRCs have begun to submit disinvestment plans to the Ministry, indicating where they propose to withdraw services to limit their losses. The Ministry is still to decide the extent to which it will step in to fund the continuity of some services. The possibility of multiple provider failures is a live risk (paragraph 2.14).

3.10 The Ministry has contingency plans in place and in February 2019 it implemented these for the three CRCs owned by Working Links: Dorset, Devon and Cornwall CRC; Bristol, Gloucestershire, Somerset and Wiltshire CRC; and Wales CRC. This became necessary as Working Links and its three CRCs went into administration on 14 February 2019.

3.11 In October 2018, the Ministry was approached by the owner of Working Links, Aurelius, to discuss the financial situation of Working Links and its three CRCs. Aurelius was concerned about the financial position of Working Links and asked the Ministry to consider Working Links’ exit from the contracts prior to the December 2020 termination date.

3.12 The Ministry considered a range of options for contingency plans, which it narrowed down to two:

- create a government company to take over probation services in Wales and the South West – transferring staff and assets into a government company managed by HMPPS; or
- ask another CRC to take over probation services in Wales and the South West – transferring staff and assets to that CRC under the same contractual arrangements as their existing CRC contract.

3.13 The Ministry evaluated these options and explored the extent to which existing parent companies would be willing to take over the services of Working Links’ CRCs, whilst maintaining the principle that no parent company can control more than 25% of the total market. On 5 February 2019, Aurelius announced that it would be selling the remaining parts of its public sector business in the UK, including its ownership of the three CRCs. On 14 February 2019, Working Links and its three CRCs went into administration and, on the next day, the Ministry varied the contract of Kent, Surrey and Sussex CRC, owned by Seetec, to transfer staff and services in Wales and the South West to Kent, Surrey and Sussex.

3.14 In the event of a provider’s insolvency, the Ministry expected to apply the Parent Company Guarantees it secured to provide financial protection for the taxpayer, including covering the costs of the Ministry stepping in to provide services for the remaining contract period. The money the Ministry can recover from Working Links’ parent company remains subject to the administration process.

3.15 Running a successful procurement will be critical to secure value for money for the taxpayer. During the first procurement of CRCs, compressed timescales and limitations in data hampered bidders' due diligence. The Ministry believes there is strong interest in its future contracts, based on its early market engagement events. But the extent to which smaller providers will be able to compete for fewer and larger contracts remains to be seen. The Ministry has allowed up to 15 months for the procurement, from the pre-qualification stage to the award of contracts, which it acknowledges will be challenging. It will be important for the Ministry to have the resources in place to ensure the thorough assessment of bids, sufficient scenario testing and sensitivity analyses to test the feasibility of bidders' proposals, building on learning from its first procurement.

3.16 Transitioning to new contract package areas will cause inevitable disruption for probation staff, many of whom will transfer to new commercial providers or NPS regions. In our case study visits, some CRC staff were concerned about potential redundancies, acquiring higher-risk caseloads and whether sufficient training would be provided to help them in their transition.

3.17 A change in providers and geographical boundaries may also disrupt offenders who are under supervision at the point of transition. The Ministry will need to seamlessly transfer management data on offenders so that new providers fully understand their needs, the risks they present and their past compliance with supervision requirements.

System interfaces

3.18 In deciding to maintain a mixed-provider model in probation, and retain the split between the NPS and CRCs, the Ministry has retained the need to manage interfaces between parts of the probation system and other organisations (paragraph 2.4). Recognising this, the Ministry plans to better align probation service regions and introduce senior HM Prison & Probation Services (HMPPS) leaders to oversee performance and promote joined-up commissioning. The Ministry has also created a forum to enable magistrates, the NPS, CRCs, court staff, prosecutors and others to discuss challenges and opportunities for improving joint working. It has not yet designed the future operational interfaces, including the arrangements for ICT. The extent to which its changes will reduce operational friction remains to be seen.

Managing contracts

3.19 The Ministry has chosen to abandon the use of payment by results for future probation contracts, recognising the limitations in its suitability (paragraphs 2.18 and 2.19). It has instead proposed using target cost contracts, but these require a very different management approach. Target cost contracts calculate available profit depending on the level of actual costs in relation to target costs set by the contracting authority. Such contracts are usually used when the cost of providing services is uncertain. For target cost contracts to work effectively, several conditions are needed:

- a high degree of trust and collaboration between commissioners and contractors;
- open-book accounting arrangements, with transparent cost data and robust reporting requirements;
- strong oversight mechanisms, including targeted audits, to challenge providers on their reported costs;
- strong service specifications to avoid disputes, a key commitment the Ministry has made in its public consultation; and
- appropriate protections to avoid the risk of gaming, such as providers potentially cutting their costs to achieve a greater profit at the expense of service quality.

3.20 The Ministry has so far relied on ad-hoc exercises to understand CRCs' financial positions, but its insights have been at a relatively high level. Migrating to effective, open-book accounting arrangements is a challenge the Ministry recognises. It is considering recruiting additional staff to help it manage future contracts effectively. In our 2016 report we highlighted that the Ministry had invested in contract management, which accounted for 2.1% of its total contract spend. In 2018-19, contract management costs (excluding operational assurance functions) are 3% of total contract spend.

3.21 The Ministry is also exploring how best to pay providers fairly for delivering services and wants to ensure that providers' profit is linked to their performance against targets. Final decisions have yet to be taken on the payment mechanism, precisely how it will allocate risks to future providers, or how it will incentivise innovation alongside more closely specifying services.

Integrating services

3.22 The Ministry recognises the important role that other organisations play in bringing about reductions in reoffending. In March 2018, the Secretary of State for Justice announced the formation of a cross-ministerial working group to reduce reoffending, overseen by the cross-government Reducing Reoffending Board, chaired by the Minister for the Cabinet Office. Its aim is to bring strong leadership to promote the level of change required, a difficult task in a period of public sector spending restraint. In doing so, clarifying the roles and accountabilities of different bodies in the system will be important, as will establishing how progress will be measured.

Appendix One

Our audit approach

1 This report builds on our previous work on the Transforming Rehabilitation reforms to assess whether the Ministry of Justice's (the Ministry's) reforms have delivered value for money.^{13,14} We reviewed:

- the Ministry's progress in achieving the objectives of its reforms;
- the Ministry's implementation of its reforms; and
- how the Ministry has applied lessons it has learned to inform the future of probation services.

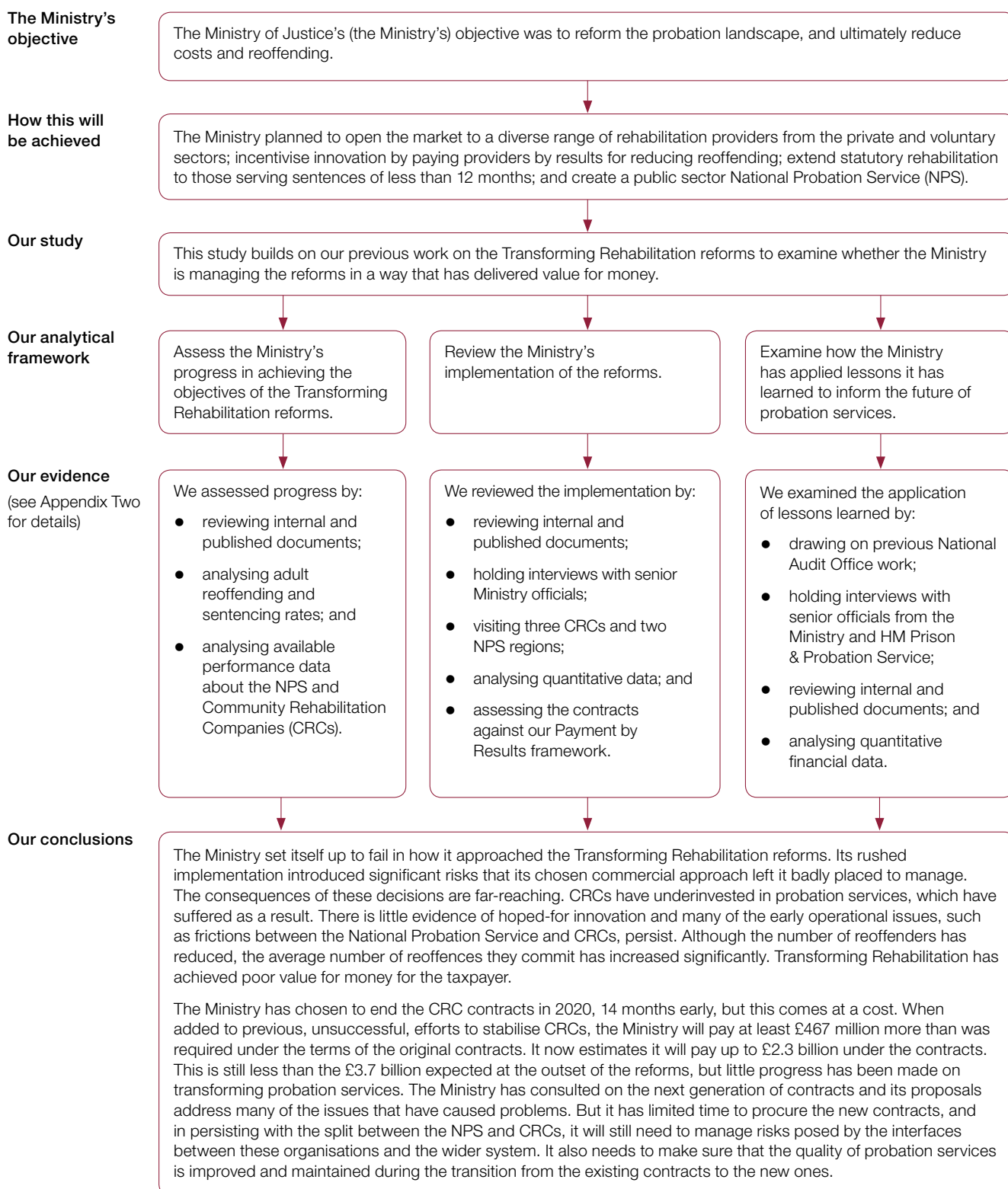
2 Our audit approach is summarised in **Figure 16**. Our evidence base is described in Appendix Two.

¹³ Comptroller and Auditor General, *Transforming Rehabilitation*, Session 2015-16, HC 951, National Audit Office, April 2016.

¹⁴ Comptroller and Auditor General, *Investigation into Changes to Community Rehabilitation Company contracts*, Session 2017-2019, HC 676, National Audit Office, December 2017.

Figure 16

Our audit approach



Appendix Two

Our evidence base

1 Our independent conclusions on whether the Transforming Rehabilitation reforms have delivered value for money were reached following analysis of evidence collated between July to September 2018. Our audit approach is outlined in Appendix One.

2 We assessed the Ministry of Justice's progress in achieving the objectives of the Transforming Rehabilitation reforms:

- We drew on previous National Audit Office (NAO) analysis of the performance of Community Rehabilitation Companies (CRCs) and the National Probation Service (NPS).
- We reviewed internal and published documents from a range of sources including the Ministry, NPS, HM Prison & Probation Service (HMPPS), academics and the third sector.
- We analysed adult reoffending rates, including the binary and frequency reoffending rates by CRC and NPS region, as well as national sentencing rates.
- We analysed the available performance data about the NPS and CRCs, consisting of data collated by the Ministry, operational audits conducted by HMPPS and reports published by HM Inspectorate of Probation.

3 We reviewed the Ministry's implementation of the reforms:

- We reviewed internal and published documents from sources including the Ministry, NPS and HMPPS.
- We analysed reports published by HM Inspectorate of Probation.
- We analysed quantitative data such as caseload volumes, sentencing rates, CRC financial submissions and other data held by the Ministry.
- We drew on previous NAO work on the early stages of Transforming Rehabilitation reforms.

- We interviewed senior Ministry officials, academics and representatives from the third sector.
- We visited three CRCs (Wales CRC, Bristol, Gloucestershire, Somerset and Wiltshire CRC and Kent, Surrey and Sussex CRC) and two NPS regions (Wales, and South East and Eastern). Here we held focus groups and interviews with members of staff.
- We evaluated the Ministry's application of payment by results against our analytical framework for assessing the suitability of payment by results schemes.

4 We examined how the Ministry has applied lessons it has learned to inform the future of probation services.

- We drew on previous NAO work on the early stages of Transforming Rehabilitation reforms.
- We held interviews with senior officials at the Ministry and HMPPS.
- We reviewed internal and published documents held by the Ministry, regarding the contract terminations, public consultation and future reforms.
- We analysed quantitative financial data to assess the costs of termination to the taxpayer.

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