



# A PARTING SHOT - THE QUESTIONS REMAIN

Transforming Rehabilitation – a final commentary from the



**Probation Association**

**The Voice of Probation Trusts**



# Introduction

With the dissolution of local probation Trusts and the future direct management by the National Offender Management Service (NOMS)/Ministry of Justice (MoJ) of the National Probation Service (NPS) and, at least until share sale, the Community Rehabilitation Companies (CRCs), the need for the Probation Association (PA) falls away. The Association will be wound up during 2014.

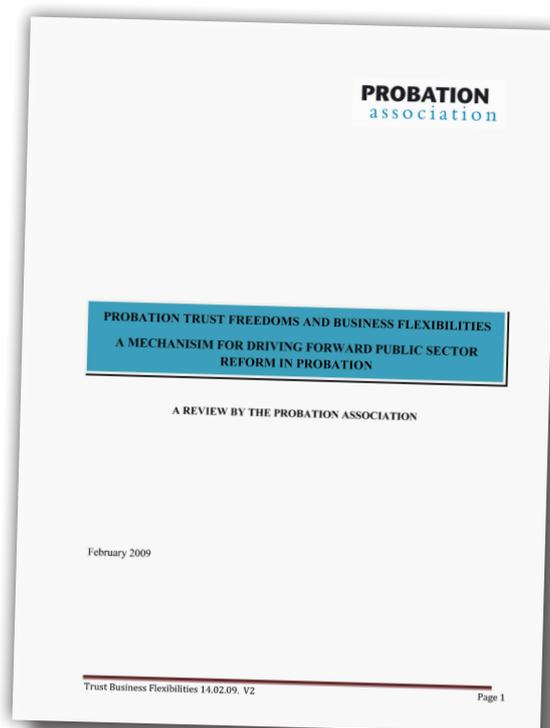
This document has been compiled as a record of the position the Probation Association has taken on recent developments in probation, so that they are not forgotten when any evaluation is made of the period since the establishment of Trusts under the Offender Management Act 2007. The central, but until now entirely unrecorded, role that the PA has played in helping to secure a National Agreement on Staff Transfer and Protections relating to the Transforming Rehabilitation reforms; and in working to design future HR and employment arrangements for probation staff, is set out towards the end of this document.

In its various guises, the Probation Association (formerly the Probation Boards Association, before that the Central Probation Council, and originally the Central Council of Probation and After-Care Committees) has been acting as a national representative body for the local administration of probation for over 50 years. It has also had a particular role to play as the employers' body for the purposes of national collective bargaining on the pay and terms and conditions of probation staff, through the National Negotiating Council (NNC) and the Standing Committee for Chief Officer Grades (SCCOG). It has represented the views and interests of those running or involved in the probation service locally to Government, the judiciary, to Parliament, to others involved in the administration of criminal justice.

The Probation Association (PA) is closing down at the moment that the reforms start to become operational. There are a number of areas that require continued scrutiny and some fundamental questions that will soon require answers. We list the questions that, had we been continuing as an organisation we would have asked, at the end of this digest.

# Trusts under the Offender Management Act 2007

The Offender Management Act 2007 established Probation Trusts for the delivery of probation services within a local geographical area. In creating Trusts, the Government said that it wanted a culture that was 'enterprising', 'innovative', 'business-like' and 'results-oriented'. Chairs and members of the former probation boards were selected for their experience and skills, for example at senior levels in business, public or charitable sectors, which would enable them to lead arms' length bodies in a competitive environment. Trusts were to be allowed freedoms and flexibilities to be successful as business-like entities delivering high-quality, low-cost public protection, offender rehabilitation and punishment. The Association's publication 'Probation Trust Freedoms and Business Flexibilities – a Mechanism for Driving Forward Public Sector Reform in Probation' set out how the new approach could be achieved.



In practice, as the Association noted by March 2011, Trusts remained constrained within a tight management relationship with MoJ through NOMS. While there had been little incentive or enabling flexibility from the centre to think independently in pursuit of better outcomes, many proactive Trusts introduced innovative practices within local partnership arrangements and forged strong local alliances with both private and third sector organisations.

The Association's 'A Local Partnership Development Strategy for Probation Trusts' had been published to encourage this (June 2010).

Trusts were nevertheless subject to a weighty regulatory framework that required compliance with centrally-set standards, instructions, targets, reporting, inspection and audit. The extent of these had been set out in the Association's paper 'Hitting the Target, Missing the Point' (February 2011).

This heavy regulatory framework left little freedom for innovation. Trust contracts focused on inputs and process and there was virtually no differentiation between the 35

contracts. Meeting the letter of requirements and avoiding risk dominated much operational practice. The intended role of Trust boards leading the delivery of differentiated, locally relevant services had not materialised.



## Breaking the Cycle

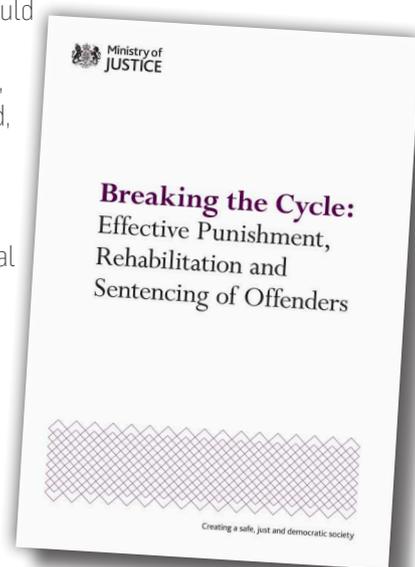
Following the General Election in May 2010 and the formation of the Coalition, the Coalition Agreement contained the following:

'We will introduce a 'rehabilitation revolution' that will pay independent providers to reduce reoffending, paid for by the savings this new approach will generate within the criminal justice system'.

This was followed in December 2010 by the publication of 'Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders'. In its response, the Association again pointed to the unfinished business of the

Offender Management Act. We saw the Green Paper as signalling a clear opportunity for positive change and we welcomed the Government's approach to regulation, outcomes and innovation. We supported competition as a means of driving efficiencies and effectiveness in the management of offenders – but emphasised that it must be managed at local level. We supported the Government's direction of travel at that stage on payment by results and indicated that we were keen to test how a reward system might work. Our prescription was that:

- The Secretary of State should contract with Trusts to deliver all probation outcomes in order to retain a safe and cohesive system
- Trusts should competitively test all provision (other than court services) including core services, in pursuit of value for money
- Trusts should be incentivised financially in order to achieve best outcomes at lowest cost. PbR would be a 'core plus' model – a guaranteed sum to ensure Trusts met central costs and baseline performance against outcome plus 'top up' payments for additional volume and outcomes
- Regulation should be as light touch as possible in order that the Trusts could be innovative and efficient
- National requirements, including contracts between the Secretary of State and Trusts, should reflect the converging and overlapping relationship between probation, local authorities and others at local level.
- All Trusts, local authority and private and voluntary sector partners' crime reduction performance should be measured against a flexible, outcome-focused, national performance matrix which reflects both local and national priorities.



# Justice Committee Enquiry into the Probation Service

The Association's written evidence to the House of Commons Justice Committee's inquiry into the probation service (September 2010) again emphasised that the intentions of the Offender Management Act had not been reflected in the way that probation Trusts had been enabled to operate. The new Government's aspirations for probation could be substantially met by implementing the spirit of the existing legislation – by which was meant the MoJ identifying 'what' was required as national policy outcomes and leaving Trusts to deliver the 'how' locally, by whatever arrangements produced best value for money within required standards. Trusts urgently needed more business freedoms and flexibility and less costly regulation so that they could realise their full competitive and innovative potential.

The Association argued that arrangements for commissioning probation services were too complicated and neither stimulated the commercial and innovatory potential of Trusts nor reflected Trusts' dual lines of accountability to the Secretary of State and local authorities. In what has been one of the Association's constant themes since the Offender Management Act, we argued that all local commissioning should take place through Trusts, to provide qualified oversight of standards of service of delivery. There should be no limit on the use of voluntary or private organisations as providers of interventions with offenders.

There was a place for Payment by Results (PbR). The model was set out in the Association's publication 'A Commissioning Model for Probation' (May 2011) and in the joint publication with the Probation Chiefs Association (PCA) 'Contract Outcomes – facing the right direction?' (February 2011).

# Probation Review

Following the Justice Committee's report, the Government launched the Probation Review. The Association's written evidence (August 2011) returned again to one of our central themes. Rather than going back (again) to the drawing board, the priority should be to implement fully the intentions of the Offender Management Act 2007, by which was meant:

- All commissioning should be done through Trusts, working to an outcomes based contract that set out the Secretary of State's requirement of Trusts;
- Achievement of outcomes was the priority and so it should not matter whether these were delivered at the front-line by Trusts themselves, the private sector, or the not-for-profit sector;
- Cost, value for money and effectiveness should all be taken into account in deciding whether, and which services, to commission from other providers;
- Trusts should be incentivised to achieve results and encouraged to explore all means to do so;
- Trusts should be de-regulated so that they were freed to be business-like. Funding mechanisms should support achievement and innovation.

We also noted that the Justice Committee had recommended that there should be a review of NOMS because it considered that NOMS did not work effectively enough.

We were pleased that during that year probation Trusts were collectively awarded the gold medal for excellence from the British Quality Foundation, the first public sector organisation to receive this accolade.

The Probation Review resulted in 'Probation and Reform: Effective Probation Services', presented to Parliament by Kenneth Clarke as Justice Secretary in March 2012. Satisfyingly, this paper did at last see a stronger role for public sector Probation Trusts as commissioners, with Trusts receiving and managing budgets for the delivery of the entire range of community based offender management services, including electronic monitoring; competing specified probation services; and acting as joint commissioners with local partners of other services for offenders.

We welcomed much in this consultation paper, apart from the proposal to fragment offender management and to compete the offender management of lower risk offenders. We saw this as increasing the risk to public safety and



damaging the relationship with the courts and consequently the credibility of court orders.

## Transforming Rehabilitation

Before decisions could be announced on Kenneth Clarke's consultation paper, the Prime Minister's Cabinet re-shuffle brought Chris Grayling to the post of Justice Secretary and a change of direction with the publication of a new consultation paper 'Transforming Rehabilitation: A revolution in the way we manage offenders' (January 2013).

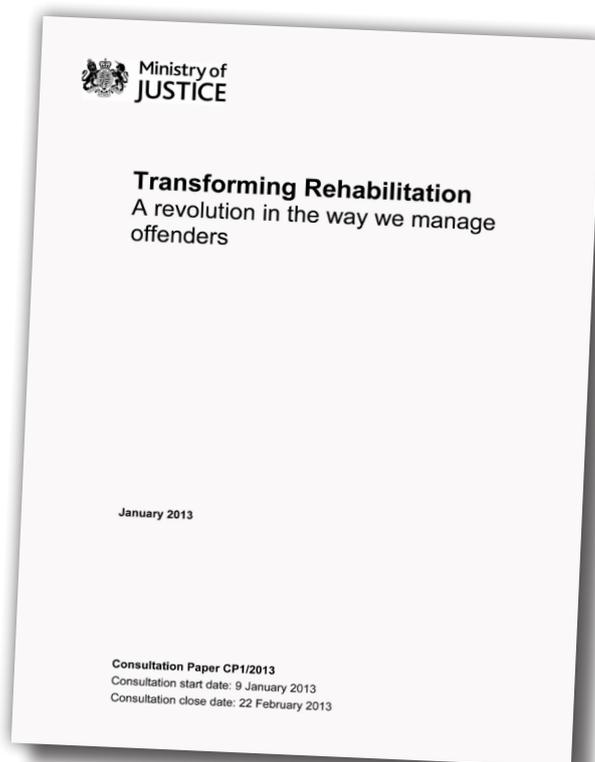
Although there were some aspects of this paper that we supported, the PA, jointly with the PCA, voiced serious reservations about most of its key components - not least the abandonment of proposals for local commissioning that had been included in the Government's paper some nine months previously. Our concerns were:

- Splitting Offender Management, leading to the fragmentation of the supervision of offenders, with an increase in the complexity of information exchange and fracturing of the continuity of offender supervision, adding substantially to the risk of public protection failures.
- National commissioning, which ran counter to the thrust of devolution in other parts of government, would be likely to dislocate probation from local partnerships and on which MoJ and NOMS had some lamentable examples of poor product delivery and design.
- Insufficient testing of PbR in the criminal justice area prior to proposed introduction on a national scale.
- Significant infrastructure issues on IT, data, pensions, information sharing etc.
- The highly risky pace of reform.

In correspondence to Chris Grayling, we pointed out the unfair and misleading nature of some of the statements made at this time about the performance of probation. Although no reply was received to this letter, the Justice Secretary did afford the PA and PCA one meeting at which he made clear his opposition to local commissioning by Trusts on the grounds that the Public Accounts Committee (PAC) had criticised Trusts for their handling of electronic monitoring contracts. This was indeed said by the PAC but the criticism was ill-directed, since electronic monitoring

contracts are, as has since become well known, managed by MoJ. We wrote to the PAC to clarify this point.

The Government's decisions on Transforming Rehabilitation were published on 9 May 2013, 'Transforming Rehabilitation: A Strategy for Reform'. The main elements of the consultation paper were confirmed as Government policy. In response to the strategy paper, we repeated the concerns that we had registered in our response to the consultation. The Secretary of State's confidence in his approach led to the abandonment of the two pilots which were then in design phase to test PbR specifically in the probation context.



At a joint meeting of the PA and PCA on 13 June 2013, the two organisations agreed on a policy of making clear to Ministers their concerns about the reforms, while working with them positively and with a sense of cohesion to help design and implement the programme. As MoJ had not been prepared to publish its programme risk register, it was agreed that a collective trust risk register for the TR programme should be compiled and sent to the SRO for the TR Programme. 'Failure of the programme to deliver change required by Ministers and on time' was considered the biggest risk but there were also risks identified on reduction in performance both during the programme's implementation and after the dissolution of Trusts. As press reports of the leaked MoJ risk register had referred to non-co-operation of Trusts as a risk, the letter pointed out that non-co-operation by Trusts did not feature as a risk identified by Trusts themselves.

Although the PA and PCA had made clear their views during the consultation period and put forward a joint response - drawing attention, among other points, to the proposed timetable - our view was that Trusts had a professional duty to work with Government on implementation. It was our understanding that members were adopting that approach, though we reserved the right to comment on how implementation was progressing and intended to consider that further in the autumn. A proposal to meet to discuss the risk register was declined by MoJ.

A second joint PA and PCA meeting was held on 6 November 2013. The mood at that meeting was darker. It was agreed that an urgent letter should be sent to the Justice Secretary, registering very grave concerns and recording the clear view at the meeting that the implementation of the Transforming Rehabilitation plans was behind schedule – on an already highly compressed timetable – and that critical decisions relating to the Target Operating Model and the description of the processes at a level of detail necessary to put them into practice were not yet defined or decided. This situation ran grave risks of failure for services, if implementation took place without sufficient preparation and testing, with arrangements in place that anticipated what needed to be done to transfer safely the caseload from trusts to the new CRCs and the NPS. A revised risk register was enclosed, which reflected the view that the risk of unsafe and unsatisfactory implementation was very high – with the prospect of an operational failure in an area of great interest and importance to the public and to public safety.

The Justice Secretary responded the following working day and a meeting was held with senior MoJ officials on the day after that, at which an undertaking was given by MoJ for high-level fortnightly discussions on the programme and its implementation. Later that day the Chairman of PA, together with PCA, gave evidence to the Justice Committee on the programme and that evidence is a matter of public record.

In the New Year the announcement was made that the programme was not proceeding with its intended target date of 1 April 2014 for the handover from Trusts to CRCs and NPS, and this was to be delayed to 1 June.

## NNC and SCCOG

The National Negotiating Council and the Standing Committee for Chief Officer Grades have existed for some considerable time as the national negotiating machinery for pay and conditions of service for probation staff. Members (Trust Chairs) of PA form the Employers' Side. Before the publication of the Strategy paper on 9 May 2013, and in the growing realisation that MoJ was approaching the future implementation of change as though probation Trust staff

were direct employees of MoJ/NOMS, the Chairman of PA wrote to Ministers to point out the necessity of respecting the national negotiating machinery in the delivery of change affecting Trust staff. This was recognised by Ministers and the NNC and SCCOG worked from August 2013 through to January 2014 to deliver a National Agreement on Staff Transfer and Protections.

Alongside this negotiating machinery, the MoJ established a forum for discussion with employers and trade unions on issues affecting staff but falling outside the remit of NNC and SCCOG.

The course of these negotiations, consultations and discussions in the compressed timetable allowed was demanding in the extreme, involving residential sessions, almost weekly negotiating/consultation meetings and with constant email and telephone traffic in between.

The interface between the PA and the MoJ was considerably more taxing than that between PA and the unions, and, as will be seen from the Joint Secretaries' circulars issued during these negotiations, it was the issues over which the employers did not have discretion but were reliant on the approach by MoJ that proved the eventual sticking points.

Although MoJ did make considerable concessions in the negotiations, time – as determined by the Justice Secretary's timetable for Transforming Rehabilitation - was insufficient to secure the agreement of all parties.

In November 2013 NOMS/MoJ decided to issue to Trusts a National Framework on Staff Transfer and Protections, much of which replicated the unagreed documentation being negotiated through the NNC and SCCOG and which included a pre-transfer staff assignment process based on the one being discussed with the unions, though with its own significant adaptations.

There followed a critical week, which coincided with the week referred to above in the context of the revised risk register.

- An NNC/SCCOG meeting already scheduled to take place a few days after MoJ's decision to impose its Framework and assignment process held the prospect of securing an agreement on the texts that had been under discussion. The PA secured an undertaking from MoJ that if there were agreement, the negotiated agreement would supersede the framework imposed by MoJ but clearly agreement would be less likely if Trusts had started to implement the MoJ scheme.
- PA asked Trusts to report on their reactions to the MoJ's action and compilations of these reports were circulated to all member Trusts, so that each could see the approach being taken by others. PA held a teleconference with member Trusts to share views, in particular on the legality of

MoJ's action. Trusts co-operated with the request from PA to restrict themselves only to preparatory work in order to keep the possibility of a negotiated agreement alive.

- Unfortunately notification by MoJ – later largely withdrawn – on the day of the meeting of some aspects of the agreement that were not acceptable meant that substantive discussion was timed out and agreement was not reached.
- The subsequent advice from the PA Board to Trusts was then that, while the absence of a negotiated assignment process was regrettable, they should continue with implementation of the MoJ assignment process, and the NNC and SCCOG agreed to exclude the arrangements for assignment from its negotiations. A National Agreement, which secured significant protections for staff, was ratified by both bodies in January 2014.

This above account does not adequately reflect the tireless and critically important role played by PA on the substance of the discussions, in the hammering out of future HR and employment arrangements for probation staff during this period, acting as a central source of expertise on probation terms and conditions, relied on by all concerned and indefatigably working through the minutiae of necessary transfer provisions.

## CRC governance

The PA was pleased that the MoJ accepted its arguments for the need for individual Boards for each CRC, rather than one national board, another option under consideration at one time. However it argued strongly against the governance arrangements under which CRCs are to operate as ill-conceived and contrary to established and recommended practice, from the reports to Government on company governance by Higgs and Cadbury, and most recently included in the UK Corporate Governance Code. In particular, the Chair of the CRC Board is to be the Chief Executive rather than a non-executive director (NED). There is no majority of NEDs on the Board. Not only does this not respect the usual requirements of company governance, for which there are sound reasons, it also demonstrates a tight management control in what should be a business contractual arrangement.

## Questions for the future

The Probation Association is departing the scene at the point at which implementation of the reforms will start to bite in operational terms. As the MoJ itself says, there will be a period of transition in which teething problems can be expected. It is too early to judge the impact of the reforms but, for the benefit of future commentators, we lay down the following as questions to which we, had we been continuing as an organisation, would have been interested to know the answers:

- By how much have the reforms reduced re-offending? The Justice Secretary has indicated that no great change from current patterns should be expected, though the current and steadily declining rate of re-offending by those under probation supervision since 2000 has been held up as a failure of the current probation arrangements.
- Has the CRC bidding process proved successful in funding the provision of services, across all of England and Wales, to those with sentences of less than 12 months leaving prison? This extension of service is the great prize of the reforms. How effective are those services in reducing re-offending?
- How significant is Payment by Results in the new arrangements, or are the contracts really block payments with a bit of a reward added on? The use of PbR was, of course, always the reason given for not allowing Trusts to bid for contracts.
- In addition to the declared costs, how much have the reforms really cost across the piece to implement? Staff time in the TR team and NOMS, conferences and meetings, staff time in the Trusts, secondments from Trusts to the Programme, interim appointments, the use of consultants, IT changes, communications, signage.
- What are the additional costs of managing and monitoring contracts (in the light of recent contract failures eg on electronic monitoring)?
- Could the cost of the reforms have been realised and used to fund an equivalent provision of services to the under 12 months' cohort, without having the disruption and risk to services and performance caused by the TR reforms? Trusts certainly believed so – and some were already

delivering the services, in partnership with PCCs and others, before Transforming Rehabilitation was published.

- Are the CRCs any more liberated than Trusts could have been and wanted to be?
- Has the NPS been able to sustain managing the exclusively high risk caseload?
- Was the management of offenders jeopardised by the changes at any point? What has happened on performance overall?
- What has been the effect on staff professionalism, morale and motivation in the longer term?
- Was it necessary to go through everything that the system has gone through over the past year to achieve what has in fact been achieved? What would a retrospective cost benefit analysis show?

## National Audit Office Landscape Review

As a closing comment, it is perhaps worth noting statements in the NAO's Landscape Review of Probation, published three months ago (March 2014) and the prompt for some close questioning of MoJ by the PAC on 12 March 2014 (to be resumed before Christmas), and a subsequent PAC report. The NAO stated that:

'in general, the probation sector has been performing effectively. Our audit of the accounts of Probation Trusts for 2012-13 found no fundamental weaknesses in the accounting or internal control systems, and the Controller and Auditor General issued unqualified certificates for all 34 English Trusts. (The Wales Probation Trust is audited by the Wales Audit Office. It also had an unqualified audit certificate for 2012-13.) In addition, HM Inspectorate of Probation has identified much good practice among Trusts. In her 2012-13 annual report, the Chief Inspector reported that around three-quarters of work undertaken by Trusts was of a good standard: sufficient, for example, to keep the individual's risk of harm to a minimum. Assessment by NOMS under its Trust rating system awarded Rating 4 (exceptional performance) to five Trusts and Rating 3 (good performance) to the remaining 30.'

We consider that a pretty good legacy for probation Trusts to hand over to their successors.

**(PTO for Glossary of acronyms)**

# Glossary of acronyms

<b>NOMS</b>	National Offender Management Service
<b>MoJ</b>	Ministry of Justice
<b>CRC</b>	Community Rehabilitation Company
<b>PA</b>	Probation Association
<b>NNC</b>	National Negotiating Council
<b>SCCOG</b>	Standing Committee for Chief Officer Grades
<b>PCA</b>	Probation Chiefs Association
<b>PbR</b>	Payment by Results
<b>PAC</b>	Public Accounts Committee (House of Commons)
<b>TR</b>	Transforming Rehabilitation
<b>SRO</b>	Senior Responsible Officer
<b>NAO</b>	National Audit Office





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