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Probation Privatisation – Huge Business Risks

In January 2013, the Coalition announced that it was intending to privatise up to 70% of the Probation Service's core work. In June 2013, a risk register compiled by Ministry of Justice officials was leaked. It stated quite clearly that there were severe risks that the project would not meet its objectives and that would lead to reputational damage. There were also fears that there would be insufficient interest from the market and that the standards of service delivery would collapse during the transition period from State to private sector.

The risk document also stated that the Coalition intended that contracts would be let by the beginning of October 2014. During the period June 2013 to the end of that year scant information was available about how the project would actually operate in practice. What was known was that all work with Medium and Low Risk offenders would go to the private and voluntary sectors; work with High Risk offenders would stay with the State. The structure for this reorganisations will be the creation of a National Probation Service, to cover the State work; and the creation of 21 packaged regional areas known as Community Rehabilitation Companies until they are privatised.

The process of privatisation poses huge financial risks for potential bidders both in terms of very tight profit margins, as 80% of expenditure is on staff, and with the increasing cost of the bureaucracy needed to ensure that external communication is efficient and the risk of further offences and therefore public protection compromises are minimised. The risk of failure to deliver and therefore reputational damage remains high for private contractors.

On 11 March the Offender Rehabilitation Bill returns to the Lords for consideration of Commons Amendments. Lord Ramsbotham will re-table an amendment stating that Probation cannot be reorganised without a debate and vote in both Houses of Parliament. This amendment was successfully moved in the early summer of 2013, but struck down by the Coalition when the Bill reached the Commons in November. The next day the influential Public Accounts Committee, Chaired by Margaret Hodge, will commence its investigation into the financial viability of Grayling's plans, in particular the uncosted nature of the new structure.

Work commenced on allocating staff to either side of the divide in late November 2013. It was anticipated that this split would be complete by 31 March and the shadow organisations would operate between then and Christmas, before the share sale and the transfer of assets to the private consortia.

Just before Christmas, when giving evidence to the Justice Select Committee, Chris Grayling indicated that there had been some slippage and that the share sale would not occur until mid to late December 2014. On 20 January, the government slipped out a notice saying that the termination of Probation Trusts would occur, not on 1 April as originally indicated, but on 1 June. Between now and the 1st June staff are being asked to assess and allocate caseloads to either organisation. This is immensely time consuming and will divert staff from their core duties.

Officials no longer believe that operations can commence before the start of the election. They are therefore exploring the possibility of bidders signing contracts before the election with the handover occurring next summer. This is a high risk strategy for the companies as they won't know what they are buying. There are likely to be large gaps in the contracts at this point and this may well lead to a significant increase in costs which will be picked up by the taxpayer.

Probation managers are being inundated with paperwork about the new structures and processes. During a two day period at the end of January the Ministry issued seven emails with 98 attachments about the Transforming Rehabilitation agenda. Several days later they were reissued because of unchecked errors. A Community Rehabilitation Handbook has been issued twice since the New Year because of revisions to the text.

New concerns about the financial viability of the privatisation plans arise each week. The following is a list of the most recent concerns:

- Sections of the contracts and tendering documents are said to be blank.
- The period between submission and selection of successful bids has been announced as two months, for 21 ten year contracts. It would normally be at least six months for one contract.
- London alone has 284 vacancies, mainly on the CRC side of the business. This is replicated elsewhere. There are no skilled and qualified probation officers left to hire; even agencies have run out of employees.
- There is an absence of a publicised industry standard for the bidding process.
- There has so far been no response to the Public Sector Equalities Duty.
- The number of staff appealing or issuing grievances against their assignment to either the NPS or the CRC could reach 2,000.

- As a consequence of a Supreme Court Hearing, all persons recalled to custody will be entitled to an oral hearing. This means the number of such hearings could rise 14,000 per annum, but the National Probation Service has only resources for a third of that number.
- Court Teams are struggling to allocate reports on offenders as staff numbers are depleted following transfer. They are currently coping by granting overtime to existing staff, but the situation will continue to deteriorate as staff are reallocated. This includes offering financial payment in return for staff annual leave to avoid staff being off work during this period.
- There is an absence of a public strategy for Assistive Technology (AT) users.
- There is the potential for scores of Employment Tribunal cases on the grounds of discrimination; for example not giving reasons for assignment, failure to take into account disability, failing to take into account childcare needs.
- There will be a lack of career progression because of the split; the number of transfers between one organisation and another will be limited because of continuity of service issues.
- Ministers originally thought that the local government pension scheme would not apply; but it does. This will be an additional cost of 14% for each CRC employee.
- There is no possibility of using the 21 contracts as a loss leader; there will be no further probation sales.
- It is considered high risk to be selling all 21 areas off at the same time – unlike jails where they were sold off in batches of one or two.
- And finally, the scope for the private companies to make a profit by reducing the number of staff, reducing their pay or closing offices is very limited indeed. The private sector could consider introducing call centres and reducing the amount of time each offender is seen, but these will all impact on risk and add to potential risk of compromising public protection.

There are however over 70 unanswered questions because of the decision to only part privatise probation and massive logistical and bureaucratic problems that will ensue. Some of the main issues which constitute a significant risk to the business and therefore profitability are:

1. Timetable

The timetable is extraordinarily rushed. The leaked risk register described it as 'aggressive' and 'challenging'. There is no plan for a pilot. Ministers have indicated that problems will be ironed out during the shadow period between June and December 2014. This seems highly unlikely to happen and privately officials have already indicated that they may have to split the letting of the contracts and their commencement. They do not believe the operation can be transferred before the 2015 General Election.

2. Risk Register

The government has refused to publish the risk register which was leaked in June 2013. It did however raise significant issues:

Serious risks identified included:

- 'There is a risk that the affordability objectives for the reforms cannot be demonstrated or met, leading to failure to secure approvals during the programme or financial and operational risk and reputational damage to the department after implementation'.
- 'There is a risk that an unacceptable drop in operational performance (during the programme) leads to delivery failure(s) and reputational damage'.
- 'There is a risk that insufficient participation by the market in competition leads to failure to secure value for money bids for "at risk" elements of reforms'.

A second risk register published by the Probation employers was published in November 2013. This document indicated that there were fears that there would be insufficient interest in the market from potential bidders.

It also raised real issues saying that the risk of a 'failure of the programme to be delivered either in scope or within the time scale set by Ministers' was extremely high. In addition it was thought that the risk of a 'reduction of Trust and CRC performance during the change programme' was also high and that 'the risk of a reduction in performance levels following the departure of Trusts' was also very high. This risk register identifies various actions in mitigation of risk that will be taken by trusts and by the Ministry of Justice including: that there would be 'transparent and honest communication with the trust', that the MoJ would 'provide clarity on timescales and processes', and that it would 'coordinate work streams to make best use of resources'.

Again, however, there has been no published evidence to suggest that any of these mitigating processes are currently happening. It has now been confirmed that 30 private sector organisations and consortia have been approved to bid and details of how many bidders there are for each of the 21 package areas will be announced soon.

3. Staffing Split

All Probation Trust areas are currently splitting staff. Some have completed the process and staff are appealing. Most experienced probation officers with qualifications are remaining with the State. Most unqualified staff are transferring to the private sector. This is extremely problematic. The Community Rehabilitation Companies (CRCs) will not have sufficient trained staff to identify changes in offender's risk of further crime or risk to the public. Most probation programmes (designed to effect a lasting change in thinking and behaviour) including those for domestic violence perpetrators, will be run by the private sector. However, following the staff split it has become clear in many areas that there are insufficient programme staff being transferred to the CRC's. This means the MOJ will either have to pay for new staff to be trained or the programmes will not be delivered.

There are also considerable vacancies; London for example has 284, most of which are with the CRCs. Over the last year, Probation areas have used agencies to backfill but there are no probation staff any longer available from those agencies. The private sector will therefore be inheriting a significant staffing problem.

4. Risk Escalation

Because of the decision to keep high risk offenders with the State, the government has had to design a system for transferring cases from the private to the State sector should risk escalate. The Probation Service currently supervises 220,000 people, 25% of whom change risk during the course of their order or licence. The government has therefore come up with a very bureaucratic but presumably legally sound system for transferring cases.

If it goes smoothly in every case it will take at least three and a half hours to complete the process; currently it takes 20 to 30 minutes; and as the private sector do not have enough staff to identify risk escalation there are real problems and dangers involved in the failure to properly identify such risk escalation.

5. Operational Costs

The government has still failed to produce details of what the operation will cost. All it has said is that anticipated savings from the new operation will pay for the supervision of persons released from prison who have served less than 12 months. This group currently receive no supervision whatsoever and has very high reoffending rates. It remains unclear how these savings will be made. As 80% of the Probation budget is made up of wages and other related matters, there is a presumption that either wages will be depressed or there will be a sharp reduction in the number of staff; again putting the public at risk.

6. Training Deficits

Probation Chiefs have calculated they will need to recruit 300 trainees just to stand still; and that's just in the NPS. However, the government is silent on budgets for trainees. Currently the service recruits between 100 and 150 per annum. It is unclear who will be responsible for training generally. In the past the government has stated there will be a duty on the NPS to recruit, train and retrain staff; but no similar duty will apply to the CRCs and subsequently the private sector. This is again a hidden cost.

7. Serious Further Offences

Every year there are about 400 serious offences committed by people on probation or parole. This includes murder, manslaughter, robbery and rape. There is always an investigation into such offences and a report produced and recommendations acted on. There is a real risk that these incidents will rise; first because there will be insufficient staff in the private sector to properly recognise risk; and secondly such offences normally occur when an offender is going through a period of change, including a change in their supervising officers. There is a real risk therefore that there will be more offences during these intense changeover periods.

8. Legality

The government claims it has the power to privatise probation under the terms of the Offender Management Act 2007. However, Labour contests this strongly. David Hanson, the minister at the time, says that powers were included in the legislation to allow for an individual probation trust to go out to tender if it was deemed to be failing.

But again David Hanson has said, most recently at Third Reading of the Offender Rehabilitation Bill on 14 January 2014, that there was a presumption that probation would remain public and that if a trust was failing the first option would be for a neighbouring trust to take over its management. It was never intended to wholly or partly privatise the service. David Hanson has urged the government to look at *Pepper v. Hart*.

9. IT and Data Sharing

There are currently over 2,000 IT systems – big and small – that are used by the 35 probation trusts in England and Wales. Some are stand-alone trust systems; others are shared with other agencies. The government stated in its leaked risk register in June 2013 that: “We believe that there are in the region of 2,000 ITC packages in total. The complexity of closing down all of these systems and moving to a shared service approach would present a considerable challenge”. Probation Chiefs now understand that there will be separate IT systems for the NPS and the CRCs; it is not clear who will actually ‘own’ the offenders’ records; and that progress on developing the systems has been worryingly slow.

10. Nature of Offenders

Throughout the process there has been a lack of understanding on behalf of the Ministry and of potential bidders of the complex nature of offenders’ needs and behaviour: Their experiences are characterised by having been taken into care (27% compared to 2% of the general population); having been excluded from school (49% compared to 2%); numeracy and literacy levels of 11 years or below (65% and 48% respectively); two or more mental disorders (72% of men and 70% of women); and histories of hazardous drinking (83% of men) and drug misuse (66% of men). (Source – Prison Reform Trust, Bromley Briefings 2011).

Offenders are not compliant workforce; they are extremely difficult and complex people. That is why reoffending rates have historically been very high. But the Probation Service has achieved a lot in the last six or seven years. Reoffending rates year on year have fallen. Currently the reconvictions rates within one year of completing an order for those service between one and four years, who are supervised by probation, is 36.2%. For those serving between four and ten years, it is 30.7. This compares with 58.5% for prisoners serving less than 12 months and coming out without any supervision. Probation therefore does have an impact.

Over the last two to three years every probation service in England and Wales has met its targets and all have performed well. The rationale therefore for breaking it up is difficult to understand other than an assumption that it is ideological.

Ends