

### **Introduction - The TR “Counter-Revolution” starts here.**

The probation service across England and Wales is in difficulty. Half way through the MoJ’s initial 7 year outsourced contracts, Probation Inspectors and the NAO says they’re meeting barely 1/3<sup>rd</sup> of performance targets. These contracts had been devalued by almost 44% because of poor MoJ planning and it remains to be seen if they’re sustainable. Meanwhile, the National Probation Service (NPS) struggles with low staff morale and record staff shortages; HR chaos with at least 2000 staff being wrongly paid consistently throughout most of 2017; and limited capacity for local leadership in the nationalised bureaucracy. Chris Grayling and the MoJ’s “Transforming Rehabilitation Revolution” is an unmitigated disaster.

Napo was not alone in predicting this chaos. However, continually saying, “We told you so” does little to solve the problems undermining a service so important to our members, service users and the public. Probation is too important and too valuable a public service to just keep looking back. And with such instability in the system it is too important to wait for someone else to start the ‘change conversation’.

Unlike Grayling, we recognise there’s no room for dogma – probation’s a complex service supporting service users with complex needs, back into communities that also have varied and differing challenges. There will be no easy answers but that’s all the more reason to start working now, across stakeholders - looking firstly, to identify all the questions, before testing possible solutions that build a consensus for a better operational model across probation.

### **What’s Probation For?**

The first big question in building a new probation model is to ask what the purpose of probation should be. Prior to TR this was clear and consistent – to develop safer communities by supporting offenders to minimise their likelihood of reoffending. Probation worked alongside the prison service and local agencies to meet this end in a holistic, joined up way.

### **So Who Can’t Run Probation?**

Probation’s relationship with the State and with prisons is therefore critical. It should maintain some independence – only the State can take away liberty through imprisonment, so to earn and retain the trust of service users it is easier if probation retains some independence. Culturally probation and prison are also very different – not so much two sides of the same coin as opposite ends of a magnet. Forcing the opposing cultures together will only create powerful resistance to each other.

This rules out fully merging probation into the prison service, as some fear is the inspiration behind Ministers creating the HMPPS in 2107. One of the cultures would have to be entirely removed in a merger (e.g. the Dutch prison model is entirely designed around probation principles with little regard to punishment or control).

Organisationally, extending nationalisation also cannot work. Bringing accountability for all Serious Further Offences (SFO) directly to the Minister's door has a paralysing effect. Further, government just isn't very good at running complex local services. Already the NPS is struggling from being forced into a shared service HR model built on core assumptions that probation doesn't share. Line managers are left adrift and morale is undermined.

However, we also know that just because the State can't run all of probation doesn't mean the private sector could take over management of high risk cases. Even Grayling suspected no-one would see a profit in these cases, hence the split. Three years on, we know the market is too thin and margins too tight for the profit motive to only add to the complexity.

### **The Key Tests – One Probation, Locally Accountable, in the Public Interest Not Profit**

During the TR process, Napo said much about the organisational personality, behaviours and reputations of many of the bidders seeking to win contracts to run CRC's. However, in looking forward it would be a mistake to be distracted by how these concerns have, in many cases, been realised (not least in Wales). Finding new players aiming to make money out of an unprofitable market would be unproductive, especially when we know the MoJ's capacity to manage any contracts is dangerously limited.

We need a new model founded upon fundamental tests. These would recognise the lessons from the failed TR experiment, and should include:

- a. **A locally accountable commissioning body** – this shouldn't necessarily be the provider as CRCs have failed to adequately engage with a range of local providers, including the 3<sup>rd</sup> sector, because they can commission the work from themselves instead to maximise their profit. Options could include national and regional assemblies, Metro Mayors, PCC's or even local authorities.
- b. **Strong and accountable local leadership** – Accordingly, we think a key test of who and where this should sit must be if the local commissioner has the political strength and influence to be able to stand up to Government and argue for the necessary resource; whilst also having the local visibility to see a reputational risk in not managing the service delivery in their area effectively.
- c. **Unified local delivery of core services** – recognising that the local split introduces additional complexity, risk and bureaucracy. The split also undermines public confidence, blurs accountability and makes it harder to maintain trust with other relevant agencies.
- d. **Not for Profit** – A core principle should be that services exclusively using public funding are exclusively accountable to and measured against the public interest. The need to deliver profit should not be allowed to undermine this. Efforts to establish a market have failed and should not be allowed to colour a new structure. Any surpluses generated should be reinvested into the service/programmes by commissioners, with those delivering efficiently expecting to be rewarded by additional / continuing commissions. There are many ways of ensuring publically funded, publically accountable services without reverting to direct State ownership – these should be explored.

### **Maintaining a Sustainable Service During Transition**

The urgency of the debate about a future model should support whatever strategic actions are needed to maintain public safety and public accountability of the existing contracts, through to a safe conclusion. In our view this requires increased transparency around the existing contracts and on-going costing adjustments – commercial confidence is less significant if contracts will not be renewed. Secondly,

government must lead more effectively and establish now some of the keystones that any model will operate around – including clear, unified national standards and a license to practice; unified national pay reform; and independent SFO investigations led by HMI Probation. Thirdly, the MoJ must stabilise the NPS by addressing the HR fault lines to re-establish confidence in NPS pay and pension security.

### **HOW YOU CAN JOIN THE DEBATE & FIND OUT MORE?**

Napo is the recognised professional association and trade union for the probation and family court services across England and Wales. As such we seek to engage with policy makers, academics, pressure groups and a wide range of legitimate stakeholders in all matters relating to the delivery of high quality probation and Family Court provision. This includes issuing regular briefings, attending events, proposing policy and legislative changes, etc.

If you want to find out more and/or join in this debate, or have a wider interest in any aspect of our members' work, you can arrange a meeting or join our mailing lists via [info@napo.org.uk](mailto:info@napo.org.uk)

You can also speak to any of the Napo Officials and local Officers present today who'll be happy to arrange follow-up discussions.

You can also find out more about Napo via:

(web) [www.napo.org.uk](http://www.napo.org.uk)  
(twitter) @Napo-news

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## Annex: The Background Story in More Detail

Before Chris Grayling's "Transforming Rehabilitation Revolution", 35 locally accountable, publically owned Trusts successfully delivered either good or outstanding services, managing all offenders from their area released after serving more than 12 months in prison. A unified welsh service formed one of these Trusts.

Probation didn't have any statutory responsibilities for those released after less than 12 months in custody, where re-offending rates were stubbornly high. Grayling decided to address this in a characteristically post-rational, dogmatic and cavalier manner. Ignoring the concerns of almost all experts and stakeholders, and with an aversion to evidence and piloting, Grayling split local provision by:

- Nationalising risk allocation and the management of high risk cases through a new sub-department of the MoJ, called the National Probation Service (NPS); and
- Outsourcing the commissioning and provision of services to low and medium risk offenders via 21 newly created Community Rehabilitation Companies (CRCs). The 7 year contracts were eventually divided between 7 different bidders, with Working Links winning three joined contracts for services from Lands End to Holyhead.

The service was officially split in June 2014, with CRC's being in public ownership under the management of the MoJ until share sale transfers in February 2015. By the end of 2017, the process was subject to very critical reports by the NAO and HMI Probation. This has prompted reviews by both the Public Accounts Committee and Justice Select Committee. HMI Probation's annual report questions the sustainability of the current operational structure.

Current identified risks include:

- **Huge shortfalls of staff** in the NPS and some CRC's, mirroring problems recruiting staff into the Prison Service. In probation this is made more challenging by a broken pay system, which takes at least 27 years to progress to the contractual "rate for the job" and where there is a constant threat to NPS and CRCs of equal pay challenges.
- **Knowledge gaps identified by HMI Probation**, particularly relating to the allocation of risk and transfer of key information at the point of cases being passed to the CRCs.
- **CRCs going bust**. Forecast cases were flawed at the start of contracts meaning CRCs have been unprofitable. This has led to forced staff cuts, impacting upon the quality and sustainability of provision across CRCs; and to further cash injections from the taxpayer to stabilise the contracts. Even then, after Carillion, no-one can be sure that these providers are all secure – with Interserve giving rise to particular concern.