

INTRODUCTION

It is easy to be sceptical about how serious the Government are taking their 8 week holiday homework project, aka the “Strengthening Probation, Building Confidence” consultation. However, Napo will not abdicate our responsibilities as the voice of the probation profession and will respond fully and comprehensively during the consultation period – and we’ll continue to influence the debates and discussions beyond 21st September.

As part of this, we are producing a series of in depth briefings and question papers looking at the other big questions prompted by the paper, even if they’re not specifically mentioned in the consultation...the questions the Government are less keen to see asked. ***Briefing #2 looks at the money and the financial questions around the proposed new CRC contracts.***

WHERE’S THE PROFIT THIS TIME?

It’s probably not surprising, given the ideological commitment to outsourcing now embedded in the Tory Party’s DNA, that Gauke’s consultation would insist on sustaining a “mixed-economy” of some sort. This instinctive preference would be re-enforced by the mounting evidence of organisational weakness across the nationalised NPS. The NPS is massively “over-budget” (if it ever had an actual budget) but it can’t pay people or collect pension contributions properly. It’s even getting charged at premium rates to call its own HR helpline!

Yet the Justice Select Committee’s report into TR has officially defined the contracts as “a mess”. In doing so, the JSC join the HMI Probation in officially questioning if the current model could ever work. It must be a huge worry going forward that whoever contracts are let to and on whatever terms, the MoJ will still have responsibility for shaping and monitoring any contracts – with an overwhelming track record of failure.

- **When questions about how much the TR model has actually cost produce confused, contradictory and opaque political answers can anyone be confident these same people have any more idea or chance of getting this right next time?**

For people seemingly wedded to the merits of outsourcing, Gauke and his team seem to be pretty hostile to anyone making a profit. For example, they keep insisting the extra costs to the contracts published in the OJEC updates last summer (and presumably the further imminent update due for this year’s contract adjustments) are not actually extra costs but merely a “restructuring” of the contracts. It’s even been suggested these extra costs are really a saving and that providers are operating at below actual cost – i.e. operating at a loss. The MoJ tell us further planned spending isn’t additional investment but merely not collecting contract fines. ***In other words, the Payment By Results formula’s being replaced by Rewarding Failure Payments to keep these Contractors in the game.***

It’s certainly true that few shareholders have so far got rich on TR. During negotiations with Napo, some CRC owners have shared confidential financial information with our Reps. These show contracts operating at very difficult margins - consistently less than 5%. Not much has to go wrong when a margin is that tight

for a contract to be in trouble. This model sank Carillion. Napo understands that Interserve has been in similar difficulty and doubt remains around if their auditors will allow them to re-tender unless profit margins in new contracts are significantly higher. Working Links' staff report having visits from the Bailiffs because of unpaid utility bills.

But higher margins in new contracts will mean higher costs for the taxpayer or a diversion of monies away from the NPS, who manage and support high risk offenders. You simply can't have it both ways. The consultation paper says nothing about how much the taxpayer should be investing in rehabilitation but unless the spend increases the current problems will surely be replicated. The Government cannot hide from this basic, mathematical fact.

SO WHAT'S REALLY GOING ON NOW?

Napo's intelligence confirms the existing contracts are already being restructured. The CRC owner's financial risks are being reduced. It is not overly cynical to suggest losses are being rectified now to avoid companies suing the MoJ for miss-selling the original contracts – it is no secret that before contracts were signed Iain Poree and others acknowledged that the work split was going to be more like 50:50 than the CRC:NPS 70:30 ratio originally anticipated in the TR consultations.

- ***If this contract restructuring is happening now, to square off the original contracts which will be finishing early, does this mean the taxpayer will be footing a higher than expected bill for probation by 2020?***
- ***Will anyone get around to adding up the additional unbudgeted costs of the NPS (who have had at least 50% of the work rather than the expected 30%) whilst the Contractors are compensated for their shortfall? How much will TR have cost?***

HOW SERIOUS IS THIS PLANNED "COMPETITION" FOR "NEW" CRC CONTRACTS?

Two points immediately jump out about Gauke's continued confidence in the market for probation services. ***Firstly, what market?*** - Who is still in and who is dropping out? Who'd be joining the competition?

- will the Working Links' Bailiffs be off their backs and their contracts magically profitable with core probation provision returning to the NPS at least in Wales?
- Are Interserve so battered and bruised by their TR hiding that their auditors tell them Purple has no Future?
- Will the likes of SERCO or G4S be allowed to join the competition, after being excluded last time because they were under investigation of defrauding the taxpayer on previous MoJ contracts?
- With even bigger contract areas, will the charities and potential Mutuals that dropped out last time because it was impossible to find the deposits to underwrite investment and pension risks, be any better placed now, after 5 more years of austerity?

Secondly, will the existing survivors agree to play-on? Without their risk's being greatly reduced and some guarantee of a profit in evidence, how could their Shareholders let them?

- ***With so little likely competition, isn't the current round of negotiations more about contract adjustments up to 2020 – and as such, just the first phase of formal negotiations around longer more profitable contracts for the current holders?***

Unless this is wrong, that's not competition – that's a cartel - one where the Contractee is a known incompetent and the Contractors now know what they're buying.

LET'S LOOK AT THE MAP

This impression is re-enforced by a quick analysis of the new proposed contract areas in England. 4 of the 10 currently have 1 provider, potentially bidding against itself:

- Kent Surrey Sussex (SEETEC)
- London (MTC Novo)
- South West (Working Links run BGSW and the Dorset, Devon and Cornwall CRC area)
- Eastern (Sodexo run the 3 CRCs in BENCH, East Anglia and Essex)

In 4 more the competition is between struggling Interserve and 1 other provider. If Interserve withdraw the other provider will also have a huge negotiating advantage:

- South Central (MTC Novo in Thames Valley v Interserve in Hampshire IoW)
- East Midlands (RRP having the existing area and potentially picking up Interserve's responsibility for Lincolnshire when it moves from being partnered with North Yorkshire and Humberside)
- Yorkshire (where Sodexo have South Yorkshire and Interserve the rest)
- North-West (With Sodexo having Cumbria and Lancashire whilst Interserve the rest)

In the remaining 2 CRCs the "competition" is also limited, if intriguing:

- West Midlands – where RRP could go up against People First, the provider in West Mercia and Warwickshire who were the 3rd and last bidder for the original contract and the only one left standing after the original winners walked away)
- North East – where Sodexo have ARCC in DTV to "compete" against, unless the MoJ decide to force an arranged marriage to protect the only Mutual winner in the 1st contracts.

HOW LONG WILL THE NEW CONTRACTS RUN?

Everyone with an interest in this needs to know who is in the bidding and who is out - asap. This is especially acute for staff in the Working Links areas, who know they're losing Offender Management in Wales and for staff employed by Interserve.

The next Napo briefing will explore in more detail the staffing implications and questions around a second tier transfer for those returning to the NPS (e.g. in Wales) and potentially transferring to a new CRC owner elsewhere.

However, the consultation paper has some potentially positive ideas about a probation wide workforce development strategy, professional development and career pathways linked to professional standards, a national qualification framework from PSO through to senior management levels, etc. These will need to be carefully developed, in partnership with staff via consultation forums not yet established and in place. Doing this well will not be quick, especially with unions and HR leads on all sides concentrating on TUPE and staff transfer issues, as well as pay reform, etc.

The paper also correctly talks about wanting to test new models – with co-commissioning and co-designing of probation services with regional Mayors and PCCs. With specific reference to the merger of all core probation services in Wales, the consultation talks about considering, “whether the learning from these new arrangements is applicable to the system in England”.

Unless the whole consultation is a cruel hoax and these sections are meaningless filler, it is impossible to see how a sensible and serious contract settlement can be developed to let new long-term contracts in 2020.

Napo knows that some CRC owners have been pressing for contract stability and contracts of a minimum of 10 years. From their perspective that isn't unreasonable, giving them greater scope to borrow and invest in infrastructure, ICT, etc. But that can't seriously be allowed to happen if the parties don't know what will be required – especially after the MoJ made such a mess of the contracts last time for exactly the same reason.

The length and structure of the contracts will give a huge indication to staff, owners, MPs and the public about how serious Gauke and Co are about stabilising the probation service and how genuine the consultation is. There would seem to be only 3 probable answers:

- A. Long 10-year contracts, which mean all of the talk about testing new models is merely talk.
- B. Short 2 to 3 year initial contracts to stabilise, with on-going negotiations and a break clause for re-tendering and restructuring around the end of the existing contract period (2022-23). This would easily facilitate merging core probation services by 2022 and some consensus about what should/could be competed locally, facilitating charities to re-enter probation in areas where they operated prior to TR.
- C. Something half way between these 2, (eg. 5 to 7 year contracts), would suggest the MoJ are still, in fact, making this up as they go along and everything is still to play for.

CONCLUSION

It is natural for Napo and our members to believe that there is a coherent, carefully designed political plan for the service we care so much about. However, it is more likely, given the chaos across Government that this consultation is more about the Government being seen to have a plan. Our hope is the momentum Napo has helped build across the political spectrum, which recognises the importance of getting this right and the risks of continued failure, will exploit this Government uncertainty and force a real and genuine debate around the consultation.

Critical to a wider discussion must be questions about the type and shape of the proposed new CRC contracts. This briefing highlights some of the core questions all stakeholders need to recognise and ask, and Government needs to answer NOW, with their answers also informing people's replies to the consultation.

These questions include:

- **How much is probation really worth to Government? Will they take this opportunity to finally take rehabilitation seriously and invest what's needed, whatever the operating model(s), and allow greater transparency around funding arrangements?**
- **Are all of the existing providers indicating they want to stay in, or have some (like Interserve or Working Links) already told the Government they plan to withdraw? If so, what are the exit terms being agreed?**
- **What assurances are current providers being given about future profits to keep them in the game?**
- **How are the MoJ finding extra monies to stabilise the market and minimise contractor losses? Is this coming from the taxpayer or will the NPS get a smaller slice of probation funding?**
- **How long does the Government want to let the new contracts for and will there be break clauses to allow for further reform and restructuring?**
- **If there are no break clauses, how exactly do they intend incorporating lessons from co-commissioning and/or the Welsh "pilot" or is that meaningless, cynical political spin?**