

## Probation privatisation – the risks of TR

### **A briefing by Napo' the trade union and professional association for Probation and Family Court Staff**

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 reorganisation will be the creation of a National Probation Service (NPS), to cover the State work; and the creation of 21 packaged regional areas known as Community Rehabilitation Companies (CRC'S) until they are privatised.

#### **Staffing 'split' causes chaos**

Work commenced on allocating probation staff to either side of the divide in late November 2013. It was anticipated that this split would be complete by 31 March 2014 and the shadow CRC 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 may not occur until mid to late December 2014. On 20 January, the government slipped out a notice saying that the commencement of the shadow operations would commence, not on 1 April as originally indicated, but on 1 June. From that date, Probation Trusts will cease to exist. In the meantime cases are currently being assessed and transferred to each organisation, taking up practitioner time and diverting them away from their core work.

MoJ Officials privately believe that operations within the privatised CRCs cannot commence before the start of the general election. They are therefore exploring the possibility of bidders signing contracts before the election, with the actual handover occurring in summer 2015. This is a high risk strategy for the companies as they won't know exactly what they are buying.

### **Increased Bureaucracy**

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.
- 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.
- There is an absence of a public strategy for Assistive Technology (AT) users.
- There is the potential for scores of Employment Tribunal cases from staff on the grounds of discrimination; for example not giving reasons for assignment, failure to take into account an individual's protected characteristics and a failure to take account of childcare needs.
- There will be a lack of career progression because of the split; the number of transfers between one organisation and another such as CRC staff into the NPS 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 which will have to be written into the commercial contracts.

- There is no possibility of using the 21 contracts as a loss leader as there will be no further sale of other probation work.
- It is considered high risk to be selling all 21 CRC areas off at the same time – unlike the prison estate where HMP establishments were sold off in batches of one or two.
- 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 such moves will all add to the potential risk of compromising public protection.

**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 Registers**

The government has refused to publish its own 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' caused the same concern. This risk register identifies various actions in mitigation of risk that will need to be taken by trusts and by the Ministry of Justice including: that there would need to be 'transparent and honest communication with the trust', that the MoJ would need to 'provide clarity on timescales and processes', and that it would 'co-ordinate 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 take part in the bidding process and details of how many bidders there actually are for each of the 21 contract package areas will be announced soon.

### **3. Staffing Split**

All Probation Trust areas are currently splitting staff. Some have completed the process and many staff are appealing. Most staff with the full probation officer qualification are going to the NPS despite the fact that their level of skill will be needed equally in both organisations. The majority of probation service officers are transferring to the CRCs. This is extremely problematic, as they will not have sufficient trained staff to identify changes in an offender's risk of involvement in further crime or risk to the public.

Most probation programmes including those for domestic violence perpetrators will be run by the private sector, however, there is a shortage of staff trained to deliver programmes being assigned to the CRC's. This means that the MOJ will have to pay to retrain new staff or the programmes designed to effect a lasting change will not be able to run.

There are also considerable vacancies; London for example has 284, most of which are within the areas to be covered by the CRC. Over the last year, probation areas have used agencies to backfill but there are now no probation staff 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 for each client (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 in the front facing services; again putting the public at risk.

## **6. Training Deficits**

Probation chiefs have calculated they will need to recruit 300 trainees within the NPS just to stand still, however, the government is silent on where the budgets for trainees will come from. Currently the service recruits between 100 and 150 per annum, yet 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 and the risk to public safety**

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; firstly because there will be insufficient staff in the private sector with the ability to properly recognise risk; and secondly such offences normally occur when an offender is going through a period of change, including a change of supervising officer. 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 with no requirement that they must be consistent in terms of design or the type of data that they hold. It is not clear who will actually ‘own’ the offenders’ records; and no assurances about who that information might be sold to. Meanwhile, 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 of Justice and of potential bidders of the complex nature of offenders’ needs and behaviour: Their experiences are characterised by the following factors: 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 a 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 to their lowest levels since 2007. Currently the reconviction rates within one year of completing an order for those serving between one and four years in prison, 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 of prison 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 and in the majority of trusts, to a standard of ‘excellence’. The rationale for breaking up the probation service is therefore difficult to understand other than an assumption that it is an ideologically driven social experiment that represents a clear and present danger to public safety.