

IL 133-14 Redacted

1st December 2014

CONFIDENTIAL

Dear Mr Grayling

1. I write as the General Secretary of the main representative body of probation staff. For the avoidance of doubt, the representations in this letter have only been discussed between the members of the confidentiality ring ordered by Irwin J on 26 November 2014.
2. You have told us that, on 3 December 2014, you will make a decision on whether to transfer shares in the Community Rehabilitation Companies ("CRCs") to your preferred bidders.
3. For the reasons set out below, we ask you not to bind yourself to transfer the shares at this stage in light of serious outstanding safety concerns with the new system [REDACTED]. Instead, we ask you to undertake a short further period of testing. We ask you to take account of this letter and the information referred to in it when making your decision.
4. This letter is arranged as follows:
 - (1) Background.
 - (2) Workloads.

(3) Information and communications technology (“ICT”).

(4) Risk information on allocation.

Background

5. We are very concerned that no piloting of a divided probation service was conducted before the initial division between the National Probation Service (“NPS”) and CRCs took place. However, the Ministry of Justice told the Public Accounts Committee that the CRCs would be kept in public ownership for a period which would “allow shadow running of the new arrangements” before they are sold¹. The Ministry of Justice’s Accounting Officer told the Public Accounts Committee that the Ministry “will not proceed with the arrangements unless it is safe to do so”².
6. On 2 May 2014 you wrote to us, through the Treasury Solicitor, that “The MoJ is implementing the reforms in stages, ensuring that the department only moves to the next stage of implementation when it is safe to do so” and “the period in which the CRCs are in public ownership provides a valuable opportunity to allow the new organisations and case allocation systems to embed and be tested, before introducing market owners”. In other words, this period of public ownership was apparently intended to replace any formal system of piloting. This emphasises the importance of addressing the lessons from evidence and research undertaken during this period of ‘national piloting’.
7. On 15 July 2014 you wrote to us, through the Treasury Solicitor, that you would not transfer shares in the CRCs unless “satisfied that [you] had sufficient evidence that it is safe to do so”.
8. You undertook tests to obtain evidence sufficient to satisfy you whether or not it was safe to transfer shares in the CRCs. These included “Test Gates” of “business and system readiness”.

¹ Public Accounts Committee, Probation: landscape review (HC 1114), 20 May 2014, p11.

² Public Accounts Committee, Probation: landscape review (HC 1114), 20 May 2014, p5.

9. In the period after 1 June 2014, when the probation service was divided and CRCs were created, the main tests were supposed to be Test Gate 4, Checkpoint 1 internal audit and End State Realisation reports. Test Gate 4 described itself as [REDACTED]
[REDACTED]
[REDACTED], you in fact commissioned a further Test Gate 5, [REDACTED]
[REDACTED]
[REDACTED].

You have told us that, apart from the Test Gates, you will take into account the Checkpoint 1 internal audit and the fortnightly End State Realisation Reports.

10. Over many months, in correspondence and in the consultative forum, we have raised with you serious concerns identified by our members about defects in the new system which were putting probation staff and the public at serious but avoidable risk of harm. We asked you to disclose the evidence you have collected during the process so we can assist by pointing out safety concerns and issues to be addressed. We have asked you to disclose evidence, if any, of readiness, including the Test Gate 4 report in good time so that we could make more informed representations. Unfortunately you refused to disclose that information to us.

11. In light of your uncooperative stance and refusal to discuss our concerns about the unacceptable serious risks to physical and psychological safety which remained in the system as it was operating, which emerged from concrete evidence (which we disclosed to you), we issued a claim for judicial review on 6 November 2014. This is a legal challenge to the safety of the system and your refusal to provide us with the evidence you have collected on the operation of the system to enable us to make informed representations. Following the claim being issued, you maintained your refusal to provide us with the evidence. We therefore made an application for specific disclosure and, on 26 November 2014, Mr Justice Irwin ordered you to disclose to us the Test Gate 4 and 5 reports, the Checkpoint 1 internal audit and the End State Realisation Reports for the period 1 September to 25 November 2014, as well as

[REDACTED]

certain other information. You disclosed the reports to us at just after 4.00pm on Friday 28 November 2014.

12. We are now in a position, for the first time, to make representations to you in light of the tests you have undertaken. Those representations are set out below. We ask you specifically to take account of those representations when you take your decision on 3 December 2014. We also ask you specifically to take account of the witness statements we have served on you pursuant to the claim for judicial review, because these concern the safety of the probation system as currently operated and are therefore relevant to your decision. Those witness statements are the statements of:

13. In particular, we draw your attention to the following matters:

- a. Due to the serious shortage of probation officers in the Warwickshire office, trainee Probation Service Officers (“PSOs”) are dangerously overworked. One trainee PSO was allocated an offender with a history of domestic violence who should have been allocated to a probation officer. Home visits should have been undertaken every 4 months, but the PSO was too overworked to do this. On 13 September 2014, the offender murdered his partner and then killed himself.
- b. A PSO working for a CRC had an excessive case load, which meant that she was unable to spend sufficient time working with an offender. Left without suitable supervision, the offender committed a murder while under the supervision of the CRC.
- c. [REDACTED] an Education, Training and Employment Officer employed by Essex CRC suffered a serious sexual assault when required to meet an offender alone, in circumstances where she was prevented by defects in the ICT system from seeing the risk flag that the offender should not be seen alone by female officers.
- d. [REDACTED] a probation officer employed by the NPS, recalled an offender to prison because he posed a high risk of serious harm to the public. He attended a CRC programme a few days later but, because the CRC could not access the NPS information that showed he was dangerous and needed to be recalled, he was not apprehended and was left at large, posing a serious risk to public safety.
- e. [REDACTED] a probation officer with Avon & Somerset CRC, delivers rehabilitation courses to high-risk NPS-managed offenders. Inadequate ICT access to

[REDACTED]

risk information led to two members of rival gangs being at the same centre at the same time, which created a serious risk of violence.

- f. Due to the serious shortage of probation officers in Grimsby, a newly qualified probation officer has been asked to work with sex offenders after only one day's training, when the guidance says that at least one year's experience and intensive training is required, thereby placing her and the public at serious risk of harm.

14. In summary, [REDACTED] there are outstanding areas of concern and uncertainty which must be resolved before it could possibly be said that there is sufficient evidence that the system will be able to operate safely before you commit yourself to selling the shares (*i.e.* the test you have set yourself – as recorded in your letter of 15 July 2014).

15. [REDACTED]
[REDACTED] We do not see how you can be satisfied that you have sufficient evidence that it is safe to transfer the shares [REDACTED]
[REDACTED]

16. We now turn to address some [REDACTED] significant outstanding issues.

Workloads

[REDACTED]
[REDACTED]
[REDACTED]

18. The shortfall in Probation Officers creates serious risks, including:

[REDACTED]

- Staff being put at risk of psychiatric damage through excessive workloads.
- Work being done by staff who lack the necessary training or experience.
- Work being delayed and/or being of inadequate quality.

19. Indeed, we have recently learned from a senior probation officer, [REDACTED], that in the Thames Valley region, shortages are so severe that efforts are being made to recruit probation officers from the Czech Republic.

20. The shortage of Probation Officers also affects the matters set out under separate headings below, viz. the delivery of ICT solutions (because CRCs and the NPS do not have the resources to provide ICT training) and the quality of the information provided by the NPS to CRCs at the case allocation stage.

21. The tests undertaken by your department show as follows (in chronological order).

22. The Checkpoint 1 internal audit (9 September 2014) identified [REDACTED]. The result of this was that [REDACTED].

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]⁸.

[REDACTED] There was evidence [REDACTED]

[REDACTED]

[REDACTED]

⁷ [REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED] There was evidence from [REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
13 [REDACTED]
[REDACTED]

25. The End State Realisation Report (22 September to 6 October 2014) recorded: [REDACTED]
[REDACTED].

[REDACTED] The information included in the Test Gate 4 report [REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] The Test Gate 5 report (27 November 2014) recorded that [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

18 [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

28. The latest estimates are that [REDACTED]

[REDACTED] It is also significant to note [REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]
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[REDACTED]

27 [REDACTED]

28 [REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

30. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

ICT

31. Test Gate 5 (27 November 2014) recorded that [REDACTED]
[REDACTED] The reports show that:

- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

33
34

- [Redacted]

32. [Redacted]

33. Test Gate 4 identified:

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted] It was clear at Test Gate 4 that [Redacted]

[Redacted] Test Gate 5 reveals that [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

35. The Test Gate 5 report provides that [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

[Redacted] the End State Realisation: Enabling Strands Progress Report
[Redacted]
[Redacted]
[Redacted]
[Redacted]

[Redacted]

[REDACTED]

[REDACTED] the Test Gate 4 report recorded that [REDACTED]

[REDACTED]

[REDACTED] The Test Gate 5 report records that [REDACTED]

[REDACTED]

Risk information on allocation and escalation

38. It is obviously essential that, at the point that the NPS allocates an offender to a CRC, the NPS conducts a proper risk analysis and provides the CRC with sufficient information about the offender. Without this, CRCs may be allocated high risk offenders (who they are not equipped to manage), offenders may be allocated to insufficiently qualified or experienced staff within a CRC, and CRC staff may lack the information needed to take precautions against risks posed by an offender.

39. [REDACTED] it cannot be said that [REDACTED] it is safe to proceed to share transfer.

40. The tests undertaken by your department show as follows (in chronological order).

[REDACTED]

41. Checkpoint 1 (9 September 2014) recorded [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

43. The End State Realisation Report (8 – 22 September 2014) recorded: [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] The End State Realisation Report (22 September – 6 October 2014) recorded: [REDACTED]
[REDACTED]
[REDACTED]

45. Test Gate 4 revealed:

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

46. On 20 November 2014, Solutions in Partnership produced a report on case allocation.

[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] We cannot see how it could be said that
[REDACTED] it is safe to proceed [REDACTED]
[REDACTED]

[REDACTED] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The Test Gate 5 report shows that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Conclusion

49. For the reasons set out above, we do not consider that you have obtained sufficient evidence to show that it is safe to proceed to share transfer. [REDACTED]

⁶² Test Gate 5 report, "NPS and Corporate Function Achievements Since TG4".
⁶³ The thresholds for risk levels are set out in the End State Realisation Report, 20 October to 3 November 2014, Annex B.
⁶⁴ Test Gate 5 report, "Recommendations".

