



Justice for sale – the privatisation of offender management services

A TUC report based on research by the New Economics
Foundation

Acknowledgements

This report presents findings from research undertaken by the New Economics Foundation (NEF) commissioned by the Trades Union Congress (TUC).

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Section one

Introduction

Preface

This report presents findings from research undertaken by Stephen Whitehead at the New Economics Foundation (NEF) which was commissioned by the Trades Union Congress (TUC).

The research investigates the outsourcing of public services in key sectors – offender management, employment services, health care, social care and local government services.

This first report examines the outsourcing of offender management in England and Wales and looks at prisons and the supervision of offenders in the community. It also reviews three significant contracting areas – prisons, electronic monitoring and probation.

Based on this research, the TUC has identified a set of policy recommendations to address specific issues related to the outsourcing of offender management services, and also others which are applicable to public services more broadly.

Offender management

This report looks at the outsourcing of offender management – prisons and the supervision of offenders in the community – in England and Wales.

The introduction of competition has had a significant impact on delivery, with fewer staff employed and lower salaries now paid in private prisons.

The market for offender management services is highly concentrated. All prison contracts are held by just three companies, G4S, Serco and Sodexo, and all electronic monitoring is delivered through a single national contract, currently held by Capita. The market has been disrupted by the dispute between the Ministry of Justice (MoJ), G4S and Serco after both companies admitted overcharging the taxpayer for electronic monitoring contracts. As a result G4S and Serco were temporarily prevented from bidding for any new contracts.

The dispute between the MoJ, G4S and Serco has had an impact on the current government's probation reform programme, Transforming Rehabilitation. The programme includes outsourcing the bulk of probation supervision, so that a more diverse range of providers including staff mutuels and the voluntary sector organisations have been shortlisted. However, it remains to be seen

whether this will achieve a greater diversity in practice and private sector providers and consortia led by private companies still form a significant majority of the bidders for the primary probation contracts.

Examining the outsourcing of offender management highlights a range of issues including the capacity of central government to manage large contracts effectively, the stability of a market dominated by a few large players and the impact of price-led competition on service standards.

National Offender Management Service

The National Offender Management Service (NOMS) is the public body responsible for overseeing prisons and probation within England and Wales. The service is the single largest area of MoJ spending, with an annual budget in 2012–13 of £4bn, representing two-fifths of the total departmental budget.

Within NOMS, there are three service areas where outsourcing features, or will feature heavily:

Electronic monitoring

Electronic monitoring allows the imposition of movement restrictions on offenders and the remote monitoring of curfew compliance. Defendants on bail, offenders serving a community or a suspended sentence, or who are on early release from prison are fitted with ankle bracelets which communicate with a base station in their place of residence. This device reports back to a central provider, confirming whether the offender is at home. The service has been outsourced since its inception and is commissioned nationally by NOMS.

Private management of prisons

The UK has the most privatised prison system in Europe with one in six prisoners held in privately managed prisons.¹ Supporters of private prisons argue that they are cheaper and more effective than publicly run institutions.² However, critics have raised concerns around staffing levels and the effect that the make-up of private sector prisons is having on inmates.³

1 Prison Reform Trust (2013) *Bromley Briefings Prison Factfile Autumn 2013* (London: Prison Reform Trust)

2 Tanner, Will (2013) *The Case for Private Prisons* (London: Reform)

3 National Audit Office (2003) *The Operational Performance of PFI Prisons, HC700, 2002-03*, (London: The Stationery Office) p.24. See also: Her Majesty's Inspectorate of Prisons (HMIP) (2002) *Report on a Full Announced Inspection of HMP & YOI Ashfield, 1–5 July 2002*; HMIP (Her Majesty's Inspectorate of Prisons) (2005) *Report on an Unannounced Inspection of HMP Rye Hill, 11–15 April 2005*. Her Majesty's Inspectorate of Prisons (HMIP) (2007) *Report on a Full Unannounced Inspection of HMP Rye Hill, 11–15 June 2007*; Her Majesty's Inspectorate of Prisons (HMIP) (2008) *Report on an Announced Inspection of HMP Dovegate, 29 September – 3 October 2008*.

Outsourcing of probation supervision

The MoJ's Transforming Rehabilitation programme includes a major expansion in the outsourcing of offender management. From 2015 the bulk of the service, which is currently delivered almost entirely by the public sector, will be contracted to external providers. Probation covers the supervision of offenders under community sentences and on release from prison. The statutory probation service was established by the Probation of Offenders Act in 1907 and was the first of its kind anywhere in the world.⁴

These three service areas are distinct and largely have their own characteristics. In this brief we examine the current markets in electronic monitoring and private management of prisons, before looking at the prospective market for probation services.

⁴ National Probation Service (2007) *A Century of Cutting Crime: 1907–2007* (London: National Probation Service)

Section two

Electronic monitoring and private prisons

Background

The outsourcing of offender management in England and Wales began with the opening of the first privately managed prison in 1992, under the auspices of the Home Office. Over the following decade, a further eight private prisons opened with successive governments appearing to form a consensus that the private management of prisons could offer savings and provide performance improvements. Over the same period, other offender management functions were outsourced including prisoner transport and electronic monitoring.

In 2004 the National Probation Service and Her Majesty's Prison Service were merged to create NOMS. This followed the 2003 Carter Review which stated that benefits would be gained through extending competition from the private and voluntary sector across prisons and probation. The structure of NOMS incorporated a clear purchaser/provider split, with its commissioning arms operating separately from the Prisons Service and probation trusts. Even so, following the creation of NOMS there was a slowdown in the outsourcing of offender management, with probation trusts remaining in the public sector and no further expansion of private prisons between 2005 and 2010.

Outsourcing has resumed its momentum under the current government, with the largest prison competition process so far and the proposed privatisation of 70 per cent of the probation workload. This however has been disrupted by the high-profile dispute between NOMS and two of its largest contractors – G4S and Serco – over millions of pounds worth of fraudulent pay claims made under the electronic monitoring contracts.

Current trends in the market for offender management services

Current expenditure on outsourced offender management services takes place mainly via contracts for electronic monitoring which incurred public spending of £108m in 2012–13, and privately run prisons (£428m in 2012–13).

Tables 1 and 2 below show how annual spending on these contracts has grown over time.

Table 1: Electronic monitoring expenditure and caseload under 2005–2013 contracts⁵

	2005– 6	2006– 7	2007– 8	2008– 9	2009– 10	2010– 11	2011– 12	2012– 13	Total
Expenditure (£m)	56	68	82	93	94	102	117	108	722
Recorded number of cases (000s)	60	73	92	100	105	116	105	90	741
Avg. cost per case (£)	974	938	895	925	892	876	1113	1200	975

As shown in Table 1, over the eight-year life of the last electronic monitoring contracts, overall costs rose as the number of cases grew, nearly doubling in the period from 2005–06 to 2010–11. Note that figures from 2011–12 onwards are not directly comparable to previous years due to a change in the way the figures are measured.⁶

Table 2: Spending on privately managed prisons by year⁷

	2010–11	2011–12	2012–13	2013–14 (projection)
Expenditure (£m)	327.4	354.9	428.1	424.1

Spending on privately managed prisons has risen sharply over the past few years as private companies are now managing HMP Birmingham (privatised April 2012), HMP Thameside (opened March 2012) and HMP Oakwood (opened April 2012).

Electronic monitoring contracts

Today England and Wales are the biggest users of electronically monitored curfews outside the US. Data for 2011–12 shows that there were around 105,000 new tags, an average caseload of almost 25,000 offenders, and a total cost in that year of £117m⁸ – around 3 per cent of the entire NOMS budget.⁹

⁵ National Audit Office (2013) p6

⁶ From 2011–12 onwards, cases where a pre-trial curfew order is extended by a court are now classified as extensions of existing cases rather than new ones, leading to a reduction in caseload numbers and an increase in average case length and cost.

⁷ Prison Reform Trust, *Bromley Briefs 2008-Present*

⁸ Geoghegan, Rory (2011) *Future of Corrections: Exploring the Use of Electronic Monitoring*. (London: Policy Exchange), p11

⁹ HMI Probation (2012) *It's Complicated: The Management of Electronically Monitored Curfews*. (London: Criminal Justice Joint Inspection)

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The precise details of payments are subject to commercial confidentiality, but it is believed that the majority of cost is incurred by installing and removing the electronic equipment.¹⁰

The last round of contracts was put into place in April 2005. These contracts expired in April 2014 and responsibility for delivering electronic monitoring was taken over by Capita on an interim basis. Disruption to the bidding process for the new contracts (see below) means that a new set of long-term contracts will not come into play until later this year.

Prison management contracts

Private prison management contracts are split into two types – design, construct, manage & finance contracts (DCMF), and maintain and manage.

DCMF arrangements contract out both the construction and operation of a prison to a consortium of contractors grouped together in a special purpose company. DCMF contracts typically last 25 years. In maintain and manage contracts, a publicly owned prison site is leased to a private operator who agrees to run the prison and maintain buildings and infrastructure. These contracts are typically for 15 years.

Private prisons tend to be larger than those in the public sector. The average capacity of a privately managed prison is 1,045 inmates compared to an average capacity of 706 across state prisons in England and Wales. There is a particular tendency for very large prisons, built in response to growth in the overall prison population over the last two decades, to be privately managed. Of the ten largest prisons in England and Wales, five are privately managed.

Exploring the financial underpinnings of the private prison market is problematic, as financial information on prison contracts is confidential.¹¹ Comparable data on the cost per place is not available. The last major study of cost-effectiveness was undertaken by the Home Office in 1998–99 and concluded that costs per place were on average 13 per cent lower with private prisons offering an average saving of 13 per cent.¹² However, this saving was mainly achieved by higher rates of overcrowding rather than reductions in the base cost of accommodation.¹³

There is also concern that existing DCMF contracts may incur additional costs due to inflexibility, given their long contract periods. The cost of amending

10 Policy Exchange, 2012, p33

11 Pozen, D, (2003), “Managing a Correctional Marketplace: Prisons Privatisation in the United States and the United Kingdom”, *Journal of Law and Politics*, Vol. XIX. No. 253. pp.253–282, p.278.

12 Park, Isabelle, (2000) *Review of Comparative Costs and Performance of Privately and Publicly Operated Prisons 1998-99* (London: The Home Office):
<http://webarchive.nationalarchives.gov.uk/20110218135832/http://rds.homeoffice.gov.uk/rds/pdfs/hosb600.pdf>

13 Pozen, op cit

specifications can offset initial cost-savings. For example, in 2006, the MoJ had to pay an estimated £54m to contractors to undertake changes to existing DCMF contracts reflecting a shift in emphasis from prison work to education and resettlement.¹⁴

Market composition

The market in offender management services is dominated by a few large companies. Electronic monitoring is commissioned in a single national block. Currently the contract is held by Capita on an interim basis while permanent contracts are drawn up. Fourteen of the 130 prisons in England and Wales are currently privately managed. All the private contracts are held by three suppliers – G4S, Serco and Sodexo.

Potential future trends

Prospects for the electronic monitoring market

Under the newest set of contracts, which come into force later this year, electronic monitoring will be contracted as a single lot across England and Wales. The new service will make use of GPS – though it is unclear in what capacity. In August 2013 Capita was named the preferred bidder for the overall management of the service. Three other firms, London-based technology firm Buddi, satellite and software firm Astrium and O2 owner Telefonica, lined up to deliver elements of the infrastructure.¹⁵ Capita estimates that the contract will be worth £400m over its initial six-year term.¹⁶ Buddi subsequently pulled out of the negotiations in March 2014 citing repeated changes in specification and a risk to its intellectual property.¹⁷ Timelines for when the final contracts will be put in place is now unclear.

Prospects for the private management of prisons

Further expansion of the private management of prisons was put in doubt in November 2012 when it was announced that three of eight proposed privatisations were to be cancelled. The MoJ announcement suggested that bids for these prisons had not produced “a compelling package of reforms for delivering cost reduction, improvements to regimes and a working prisons

14 Panchamia, Nehal, (2013) *Competition in Prisons*, (London: Institute for Government), p5
15 “Four firms handed tagging contracts”, *Express and Star*, 20 August, 2013:

<http://www.expressandstar.com/business/city-news/2013/08/20/four-firms-handed-tagging-contracts/>

16 “Capita preferred bidder for electronic monitoring contract”, Capita press release, 20 August 2013: <http://www.capita.co.uk/news-and-opinion/news/2013/capita-preferred-bidder-for-electronic-monitoring-contract.aspx>

17 “Tagging Supplier Buddi Quits MoJ deal”, *Financial Times*, 6 March 2014
<http://www.ft.com/cms/s/0/b54ceb4-a47d-11e3-9cb0-00144feab7de.html>

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model.”¹⁸ In the same month, it was also announced that HMP Wolds, which had been run by G4S since 1992 would be returned to the public sector at the end of its contract term in July 2013, following an inspection report which described the prison as having “very clear weaknesses.”¹⁹ This direction of travel was confirmed when the transfer of three prisons to private management by Serco was cancelled, with management remaining in the public sector.

The November 2012 announcement pointed to a new model oriented towards the outsourcing of some services within prisons rather than the management of whole institutions (although further prison-by-prison outsourcing was not ruled out). In particular the announcement pointed to the potential outsourcing of services such as resettlement (preparing prisoners for release) and maintenance. The total value of this new market is estimated by G4S to be £1bn per year.²⁰ Precise details of what this new market may look like are elusive, although the contracting out of a range of other services within prisons, including education and healthcare, is well established. In both of these sectors, however, a significant proportion of contracts are held by public bodies.

In the medium term, the length of prison management contracts makes the sector relatively robust. The next set of prison contracts is not due for renewal until 2022 when contracts at HMP Parc and HMP Altcourse will expire. We are unlikely, therefore, to see any significant decline in the private prison market over the next decade.

Performance and impact

Electronic monitoring

Assessing the performance of the current electronic monitoring providers is complicated by the fact that there is no comparable public sector service.

However, a review of the contracts by the National Audit Office (NAO) in 2006²¹ found some issues with the delivery. A case review identified that only 85 per cent of cases were tagged within the contractual timeframe – midnight on the day that the curfew starts. More seriously, breaches of curfews issued as part of a sentence were only referred to the court within the specified time period (five working days) in 31 per cent of cases.

Overall, the NAO report concluded that that the current contracts represent value for money, offering a 40 per cent saving compared to their predecessors, and a significant saving compared to the cost of custody – £5,300 over the

18 “Next steps for prison competition”, Ministry of Justice press release, 9 November 2012: <https://www.gov.uk/government/news/next-steps-for-prison-competition>

19 HMCIP (2012) *Report on an Announced Full Follow-up Inspection of HMP Wolds*

20 G4S (2012) Annual Report, p10

21 National Audit Office, 2006, *The Electronic Monitoring of Adult Offenders* (London: National Audit Office)

course of a 90 day sentence.²² In terms of reducing reoffending however, the NAO could find no evidence that electronic monitoring made any difference.

A 2012 Policy Exchange report²³ questioned the NAO's judgement. It criticised the design of the electronic monitoring service in three ways: high cost, a fragmentation of the relationship with the offender, and a low level of technological innovation. The report compared the cost of tagging in England and Wales to similar models in use in the US. It found that a similar model was deployed in Florida at a significantly lower cost – £8.29 per day, compared to £13.14 in the UK, a saving of 27 per cent. However, it went further, noting that the contract price could be reduced by as much as 90 per cent by bringing the work of fitting and removing the tag and checking the status of the equipment into the probation caseload. While this approach would transfer costs to probation rather than creating a direct saving, it would serve to better incorporate tagging within the system. As it stands, probation staff lack contact time with offenders and curfews are poorly integrated into the structures of sentencing.²⁴ More integration could strengthen the relationship between offenders and probation officers and create a more joined up service.

The Policy Exchange report also noted that despite the rapid advance of mobile communications technology, central commissioning and long contract lengths meant that electronic tagging was using the same technology in 2012 as it had in 1990. Other forms of technology, such as GPS, which had the potential to offer more nuanced forms of monitoring, were not available to courts or the probation service.

Fraud allegations

Beyond the criticisms of the design and delivery of the monitoring contracts, they have also been the subject of a high profile dispute between the MoJ and its suppliers which is currently being investigated by the Serious Fraud Office.

The issues first came to light in 2013 during a review of documentation as part of the bidding process for the third round of monitoring contracts which come into effect this year. During this check the MoJ identified anomalies in G4S accounting. At roughly the same time a former staff member at a G4S call centre contacted the NAO and the MoJ with a series of allegations.

In May 2013, PricewaterhouseCoopers began an audit of G4S's work which was later expanded to include Serco. The initial audit, which reported in November 2013, found a number of 'disputed practices'. Providers were found to have been charging on the basis of orders rather than the number of actual clients, continuing charges after a tag had been removed but where no formal end to the order had been issued, and charging from the first attempted

²² *ibid.* p4

²³ Policy Exchange, 2012, *op cit*

²⁴ HMI Probation, 2012

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installation of a tag whether or not the installation had taken place. Serco and G4S argued that the charges were within the scope of the contract but conceded they may not have been appropriate. The precise value of the disputed charges is unclear, but they are described as running into ‘tens of millions of pounds’.²⁵

G4S’s initial offer of credit notes to the value of £23.3m to cover the disputed payments was declined but an increased offer of £109m was accepted.²⁶ Serco’s offer of a £68.5m repayment has also been accepted.²⁷

Repercussions of the dispute

The fall-out from the dispute has been extremely disruptive to the MoJ’s outsourcing plans. Both Serco and G4S withdrew their bids for the third round of electronic monitoring contracts, which left the other main bidder, Capita, without a serious competitor. Both companies also withdrew their bids for the Transforming Rehabilitation probation contracts. In November 2013 three prison contracts underway with Serco in South Yorkshire were cancelled for ‘operational reasons.’²⁸

The audit of the electronic monitoring contracts has been followed up by an audit of all contracts between the MoJ and both G4S and Serco. The audit has identified discrepancies relating to invoicing, delivery and performance reporting in G4S’s work to manage court facilities. This issue has also been referred to the Serious Fraud Office. Secretary of State Chris Grayling stated that neither supplier would be awarded any more MoJ contracts until they were given a ‘clean bill of health’.

In the medium term, the absence of Serco and G4S from the MoJ’s supplier pool had the potential to pose challenges for large-scale outsourcing plans, reducing the number of credible bidders for major contracts. However, G4S were judged eligible to bid for government contracts by 9 April 2014 by the Cabinet Office who stated that its “corporate renewal plan represented the right direction of travel to meet our expectations as a customer”.²⁹

25 National Audit Office, 2013, p12.

26 “Security Firm G4S Cleared for Government Contract Bids”, *BBC News*, 9 April 2014: <http://www.bbc.co.uk/news/uk-politics-26958650>

27 “Serco to Repay £68m for Wrongly Billed Electronic Tagging”, *Channel 4 News website*, 19 December 2013: <http://www.channel4.com/news/serco-repay-68m-wrongly-billed-electronic-tagging-g4s-sfo>

28 “Fears over Contracts as Serco Loses out on £450m Prisons Deal”, *The Telegraph*, <http://www.telegraph.co.uk/finance/newsbysector/supportservices/10469118/Fears-over-contracts-as-Serco-loses-out-on-450m-prisons-deal.html>

29 “Security firm G4S cleared for government contract bids”, *BBC News*, 9 April 2014: <http://www.bbc.co.uk/news/uk-politics-26958650>

Prison management

The introduction of outsourcing into prison services has placed competitive pressure on the Prison Service, forcing it to explore cost-cutting measures to secure prison management contracts. The Prison Service has negotiated with the Prison Officers Association to secure more flexible staffing arrangements which has helped them secure bids. When the Prison Service regained the contract to manage HMP Blakenhurst, for example, the winning public sector bid was 10 per cent cheaper than the incumbent private sector contractor, and was also ranked first in terms of quality.³⁰

Supporters of privatisation suggest that the reduced cost of delivering prison places has been achieved as a result of changes which allow the reduction of staffing levels, such as CCTV and electronic keys, and regime improvements such as increased use of female officers which has led to a less violent prison culture.³¹ In 2010 the ratio of staff to inmates in private prisons was 1 to 3.78, compared to 1 to 3.03 in the public sector.³² However, some critics have argued that this reduces the opportunity for individualised personal attention.³³

There is also concern that competition over price may have driven down the quality of service. As far back as 2003, the NAO found that competitively priced bids are often priced too low which can make meeting performance and contractual obligations difficult.³⁴

There are particular concerns about the standard of provision in private prisons. Private prisons are more likely to be overcrowded than publicly owned prisons and have held a higher percentage of their prisoners in overcrowded accommodation than public sector prisons every year for the past 15 years.³⁵ In 2012–13 private prisons averaged 29.3 per cent of prisoners held in overcrowded accommodation compared to an average of 21.8 per cent in the public sector. Three private prisons, HMP Forest Bank, HMP Birmingham and HMP Altcourse have particularly high rates of overcrowding, with 41.4 per cent, 47.2 per cent, 65.9 per cent and 67.4 per cent of prisoners held in overcrowded accommodation respectively.³⁶

Only one private prison, HMP Parc, gained a rating of “exceptional performance” in 2012–13. HMP Oakwood and HMP Thameside, both large,

30 NAO (2003) *The Operational Performance of PFI Prisons* (London, National Audit Office), p.7

31 Sturgess, Gary, L (2012) “The Sources of Benefit in Prison Contracting” in Helyar-Cardwell (ed.) *Delivering Justice* (Criminal Justice Alliance: London)

32 Hansard (2010) *Hansard 15 Sep 2010: Column 1037W* (London: HM Govt.)

33 Teague, M, (2012) ‘Privatising Criminal Justice: A Step Too Far?’ in Cardwell, V, (ed) *Delivering Justice: The Role of the Public, Private and Voluntary Sectors in Prisons and Probation* (London, Criminal Justice Alliance), p.43

34 NAO (2003) *ibid*

35 Prison Reform Trust (2013) *Bromley Briefings Prison Factfile 2013 Autumn 2013* (London: Prison Reform Trust)

36 Prison Reform Trust 2013, *op cit*

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newly opened institutions, were two of the three worst performing prisons in England and Wales, and where “overall performance is of serious concern”. A recent inspection report on Oakwood found that “too many prisoners felt unsafe and indicators of levels of violence were high”. Inspectors had “no confidence in the quality of recorded data or the structures and arrangements to reduce violence”.³⁷

The contemporary examples of poor provision contrast sharply with older studies which suggest that privately managed prisons offer prisoners a better quality of life. For example, one 2008 report suggested that on average privately managed prisons provided better staff-prisoner relationships and more out of cell time.³⁸ The study suggested that private prisons adopt a more business-like, less-punitive approach in order to facilitate an easier-to-manage prison culture. However, while some privately managed prisons have actively pursued the ‘decency agenda’ as a way to reduce conflict, it also seems likely that some of this is attributable to the fact that most private prisons are relatively new and are purpose built for a modern prison regime. Equally, the difficulties experienced by HMP Oakwood and HMP Thameside may have been compounded by well-known difficulties in managing large and/or newly opened prisons.

37 Ministry of Justice (2013) *Prison annual performance ratings 2012/13* (London: Ministry of Justice)

38 Shefer, G and Liebling, A. (2008) ‘Prison Privatisation: In Search of a Business-like Atmosphere?’, in *Criminology and Criminal Justice*, Vol. 8. No. 3. pp. 261-278, p. 271.

Section three

Probation services

Background

Transforming Rehabilitation represents a major attempt to outsource the bulk of a service which is currently delivered almost entirely by the public sector. Probation covers the supervision of offenders under community sentences and those on release from prison.

Probation in England and Wales is delivered by 35 probation trusts, who are accountable to NOMS. The trusts together employ 16,300 staff of whom 60 per cent work on offender management, and a further 21 per cent on delivering rehabilitation programmes.³⁹ In 2012, caseload across all probation trusts was 224,823 offenders.⁴⁰ The total budget across all the probation trusts for 2011–12 was £821m.⁴¹

Supporters of the Transforming Rehabilitation plans suggest that private and voluntary sector organisations are better equipped to reduce reoffending and that the ‘payment by results’ funding mechanism will offer operational freedom and generate good practice. Outsourcing is also meant to produce efficiency savings which will allow the extension of probation supervision to offenders released after serving a prison sentence of 12 months or less. Although the MoJ is committed to a 34 per cent reduction in spending between 2011–12 and 2014–15,⁴² the case for outsourcing probation does not include a reduction in the cost of the service.

Proposed structure of probation delivery

The bulk of probation’s rehabilitation and supervision workload will be delivered by 21 privately managed community rehabilitation companies (CRCs). The CRCs will be responsible for managing the majority of offenders on community or suspended sentence orders, or those who are subject to a supervision requirement following a custodial sentence.

They will be expected to supervise offenders, deliver the mandated components of the court sentence, and design and implement innovative rehabilitation programmes. Alongside the CRCs, a new publicly operated National Probation

39 Ministry of Justice (2013) *Probation Workforce Quarterly Report Quarter 1, 2013/14* (London: Ministry of Justice), tables 1 and 5.

40 Ministry of Justice (2013) *Offender Management Statistics Quarterly Bulletin, October to December 2012, England and Wales* (London: Ministry of Justice), p12

41 Hansard, *HC Deb*, 23 January 2013, c347W (London: HM Govt)

42 Tetlow, Gemma (2013) *Post-Spending Round Briefing* (London: Institute for Fiscal Studies)

Outsourcing of probation services

Service (NPS) will advise, support and manage those offenders judged to present a high risk of harm.

The MoJ has provided estimated caseloads for the new CRCs and estimates of the numbers of offenders with shorter sentences that will now be eligible for supervision by CRCs on their release. The figures suggest that in 2010, 185,500 probation clients would have been eligible for management by CRCs⁴³ which is 80.3 per cent of that year's 230,800 total caseload.⁴⁴ The size of the CRCs is highly variable. The smallest, Essex, had just 4,690 eligible clients in 2010, while the largest, London, had 26,790. The forecasts are higher as they include the group of prisoners on a short-sentence, who will be supervised under the new arrangements, but who do not currently receive any probation supervision.

Although the final contract values will not be known until the end of the bidding process, the MoJ has suggested minimum and maximum contract values for each. The total value of the contracts is expected to be between £405.9m and £496.3m per year. This represents between 49.5 per cent – 60.5 per cent of the annual probation trust budget of £821m for 2012–13, a significant reduction per client. However, this is offset by the fact that the NPS will retain responsibility for pre-sentence reviews and the supervision of the most demanding clients. The average contract value is expected to range from £19.3m to £26.6m. The least valuable contract package area (CPA), Norfolk and Suffolk, is expected to be worth £10.5m–£12.9m per year, while the largest, London, will range from £58.9m–£72m. (More detail on the contract areas, scope and value is provided at annex one of this report.)

The design of the CRCs has been the subject of a number of criticisms during the consultation process. A range of observers have suggested that the proposed division of responsibility between the CRCs and the NPS will fragment and undermine probation.

It has also been noted that the proposed national commissioning structure runs counter to trends to localise responsibility for related areas, including the establishment of police and crime commissioners and the health and well-being boards.

Accountability and incentives

The CRC contracts aim to give maximum flexibility to providers to manage the delivery of supervision and rehabilitation. Accountability will be through the inclusion of an element of 'payment by results' (PbR) in the funding model which is intended to encourage good performance.

43 Ministry of Justice (2013) *Transforming Rehabilitation Contract Package Areas* (London: Ministry of Justice)

44 Ministry of Justice (2011) *Probation Statistics Quarterly, September–December 2010* (London: Ministry of Justice)

Providers will receive a ‘fee for service’ (FFS) based on the number of clients they manage. Providers who manage to reduce reoffending rates will receive an additional PbR bonus, while providers with worsening reoffending rates will have a portion of their fee clawed back.

The value of both the FFS and the PbR portions of the contract will be negotiated during the bidding process. However, there is an assumption that over the course of the contract, there will be a shift from a fee for service to payment by results. The contracts will be fully FFS for the first year so that baseline reoffending rates can be set following the potentially disruptive switch to CRCs.

However the PbR model has faced a number of criticisms.

In terms of performance measurement, critics have noted that the primary assessment will be a ‘binary’ measure of reoffending. This refers to whether an offender has or has not reoffended irrespective of the severity of the offence, and/or the number of re-offences. As such, critics argue that the performance will be assessed and rewarded in an over-simplified way that fails to capture the real value that providers can add through tackling complex and high risk individual cases or through a reduction in the total number of offences committed by their cohort of offenders.

Over-emphasising the binary measure which counts every offender who offends at least once as a failure can distort the incentives on providers. This directs attention to some offenders – those who can be most easily be prevented from offending at all. Using a binary measure discourages work with the most difficult offenders since trying to make sure that they don’t offend at all is likely to be impossible. It also provides no incentive to work with those who have already reoffended, given that they will already have been assessed as a failure to meet contract requirements.

In order to accurately measure the added value that a provider is delivering a ‘statistical uncertainty’ threshold related to the baseline reoffending rate has to be established. This reflects the estimated change to the reoffending rate within a cohort that is likely to occur due to a number of factors that are beyond the control of the provider and therefore cannot be attributed to their performance within the contract. Before any bonus payment can be made or part of the fee for service is clawed back, this must be exceeded. The average threshold is 1.7 percentage points but it can be as large as 2.3 percentage points in the smallest areas which can be a challenging target. Critics have noted that this could discourage investment.

To put that into perspective, the Peterborough social impact bond pilot, which can be regarded as ‘state of the art’ in rehabilitation achieved a 2.9 per cent reduction in reoffending, with a spend of £1,700 per offender. However, CRCs are likely to have between half and a quarter of these resources per offender to spend on rehabilitation services. For providers, this will make reaching the

Outsourcing of probation services

larger thresholds extremely challenging.⁴⁵ Analysts have suggested that in order to maximise profit, private contractors may reduce investment in rehabilitation services and allow reoffending rates to remain within the threshold. This may be particularly true if FFS payments are negotiated to a level that provides sufficient operating margins for the contractor without the need for additional PbR revenue that may require high cost and high risk interventions.

This could be particularly problematic given that the Transforming Rehabilitation programme intentionally cedes all operational control of delivery to providers and relies exclusively on the payment by results mechanism to incentivise providers and ensure quality provision. If the payment mechanism fails, the MoJ will have only limited tools at its disposal for holding providers to account.

Contracts and supply chain

Contracting arrangements for the CRCs will be broadly similar to those used in the Work Programme. CRCs will be run by tier one suppliers who will contract directly with the MoJ. They will directly bear the risk of the potential payment by results clawbacks and will be expected to demonstrate access to a high level of capital to assure that they can deliver the service and meet any clawback requirements.

Below tier one, will be tier two and tier three providers who will form part of the supply chain via sub-contracts for the services under the rehabilitation programme contracts (tier two) or through the award of grant funding arrangements (tier three). This supply chain may potentially include many smaller providers who do not have the capacity or access to capital to act as a prime.

Perhaps informed by criticism of the Work Programme, the MoJ has taken a number of steps to make it easier for small voluntary sector providers to access tier two and three contracts and to ensure that they are adequately recompensed and protected from undue risk. The MoJ has proposed to introduce a range of actions, including:

- Specifying that supply chain contracts should meet the Merlin standard for sustainable practice in designing and managing supply chains.⁴⁶
- Developing an accessible modelling tool to help voluntary and community organisations assess the financial viability of contracts.
- Conducting an independent, central review of the contractual terms and

⁴⁵Mulheim, I op cit, p14

⁴⁶The Merlin Standard was developed by the Department for Work and Pensions in response to concerns of providers operating as subsidiaries in outsourced provision supply chains. It seeks to support sustainable practice across four areas: supply chain design, commitment, conduct and review. For more information on the Merlin Standard see <http://www.merlinstandard.co.uk/>

conditions that each short-listed prime contractor/lead entity intends to provide to its subcontractors.⁴⁷

However, it is not yet clear how effective these mechanisms will be in ensuring that tier two and three contractors are offered an appropriate amount of work and are recompensed sufficiently to make their involvement sustainable.

Potential tier one contractors

At the time of writing, the bidding process for prime providers is ongoing and the outcome is uncertain. In total, 35 bids were received⁴⁸ and on 19 December 2013, the MoJ published details of the 30 bids which had made it to the second round of the tendering process.

Table 3: Shortlisted Transforming Rehabilitation bids by type⁴⁹

Bid type	Number
Private company	11
Not for profit and public sector providers	4
Consortia	15
Total	30

The shortlisted bids can be broadly divided into three types: large private companies, not for profit and voluntary sector providers and consortia of different providers.

The list of 11 shortlisted private companies includes outsourcing firms with a major presence in the UK market such as A4E, Capita, Sodexo and Prospects Services Ltd, as well as newer entrants to the UK outsourcing market such as Sentinel Offender Services (a US electronic monitoring provider).

The scale of the contracts and the high capital requirements have presented difficulties for public and not-for-profit providers acting as prime bidders. However, four not-for-profit bidders have been shortlisted.

The significant scale, complexity and capital requirements of these contracts is encouraging potential providers to form consortia to bid for this work. These are made up a mixture of private sector, voluntary and public providers. Many have particular geographic orientations, either because they are based in an existing probation trust or because they represent charities with specific local knowledge.

⁴⁷ Ministry of Justice (2013) *Ministry of Justice Response to the 3SC Voluntary Sector Action Plan* (London: Ministry of Justice) for context, see also 3SC (2013) *The Voluntary and Community Sector in Criminal Justice: A Capacity Building Action Plan* (London: 3SC

⁴⁸ ‘Many Organisations Set to Bid for Rehabilitation Work’, Ministry of Justice press release, 28 November 2013 <https://www.gov.uk/government/news/many-organisations-set-to-bid-for-rehabilitation-work>

⁴⁹ This table and the subsequent information on bidders is sourced from a MoJ press release, 19 December 2013: ‘Best in the Business’: Bidding to Rehabilitate Offenders’: www.gov.uk/government/news/best-in-the-business-bidding-to-rehabilitate-offenders

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Eight of the fifteen shortlisted consortia include a large private sector company. A4E, Sodexo and Prospects Services Ltd are all members of shortlisted consortia and have their own individual bids. Ten of the shortlisted consortia include potential mutuals made up of probation service staff. As the details of bids are still subject to commercial confidentiality, it is unclear what role different partners are intending to play.

Section four

Conclusion and recommendations

Conclusion

This research is set in the context of an escalation in outsourcing in the justice sector in England and Wales. The government plans to privatise 70 per cent of probation work and has proposed the largest-ever prison privatisation programme.

However, this report has shown that the market for offender management is highly concentrated – with three companies managing all private prisons, and only one company holding the contract for electronic tagging. As a result of this market concentration, the dispute between the MoJ and two of its largest contractors, G4S and Serco, has led to a temporary delay in the government’s privatisation and outsourcing plans.

The outsourcing of offender management has raised concerns about the government’s ability to manage large-scale contracts, which is particularly important in view of the risks to public safety. Ensuring that providers meet their contractual obligations is essential to monitoring the delivery of justice and for making sure that taxpayers receive value for money.

Holding providers to account requires transparency, but the G4S and Serco fraud cases demonstrate that this is lacking, and commercial confidentiality creates further barriers to accountability. Plans to introduce payment-by-results in probation as a mechanism for accountability could discourage providers from working with the most difficult offenders, and encourage a focus on working with those who can most easily be prevented from reoffending.

There are additional concerns that competition over price may drive down service quality – as highlighted by the NAO in relation to prisons. This suggests that cost savings made by privatised prisons could be lost through reduced standards of service provision and higher levels of overcrowding.

Service quality is also likely to be affected by fragmentation following on from the outsourcing of services, which will lead to challenges to deliver an integrated approach to offender management.

The TUC believes a new approach is needed for the design, commissioning and delivery of offender management and public services more broadly. The following recommendations should be applied as a minimum in order to provide the necessary transparency and information that will guarantee the interests of the public, service users and taxpayers.

Conclusions and Recommendations

Recommendations

Offender management services

- An independent review should be undertaken to identify the most effective model for delivering the electronic monitoring of offenders. In particular, this should address cost-effectiveness, the capacity to incorporate new technological developments, and reductions in reoffending and the maintenance of public safety. The review should explore both public sector and outsourced delivery.
- The Transforming Rehabilitation reforms should be put on hold while an independently evaluated pilot is undertaken. The evaluation should monitor binary and frequency measures of reoffending, the use of custody by sentencers, the effectiveness in addressing offenders' needs relating to crime, such as mental illness, substance abuse and unemployment, and the protection of public safety.
- A unified, locally accountable, public probation service should be in place to ensure one agency has overall responsibility for risk management whilst maintaining important links with local communities.
- Supervision and mentoring for those who have been in prison for less than 12 months should be the responsibility of a unified, locally accountable, public probation service.
- An independent review of prison structures should be undertaken looking into prison overcrowding levels, prison closures and the mothballing of prison places. The review should consider the impact of marketisation on service quality and workers.
- Private prison management contracts should include the option to bring prisons back into public management where provision falls below agreed standards. These clauses should be triggered on the advice of the HM Inspectorate of Prisons.
- Tendering processes for prison management contracts should place a greater emphasis on the quality of provision, with a specific focus on safety and security for offenders and staff, the availability of purposeful activity such as developing literacy and numeracy skills, and the welfare of prisoners.

Public service delivery

Decision-making

- Public services provide benefits to both individual service users and wider society. Universal access, delivery according to need, services free at the point of use and delivered for the public good rather than for profit should be at the heart of any model of service delivery. The public sector is best placed to provide public services that meet these criteria and should be the default model of delivery.

- Before a public service, be it national or local, can be put out to tender a thorough public interest case needs to be put forward incorporating both quality and value for money considerations.
- There should be full consultation with relevant stakeholders, staff, service users and the public on the case for outsourcing prior to the decision to undertake an outsourcing process for any public service.
- If the merits of competitive tendering a public service have been shown to be in the public interest, private and third sector providers should be assessed against a realistic and thorough in-house bid from the public sector.
- Consideration should be given to the appropriate model of provider and commissioner relationships and arrangements to deliver high quality public services in each sector. In particular, this should recognise that the design of the delivery model and tendering processes, including assessment criteria, size of providers, monitoring systems and quality assurance can have a significant impact on the services delivered both now and in the future.

Standards of transparency

- The Freedom of Information Act should be applied to all providers of public services and all public sector commissioning, procurement and contract management.
- The same transparency requirements should be applied to all providers of public services, within the public, voluntary and private sector, including details on supply chains, company ownership and governance structures, employment, remuneration and tax policies and practices.
- The public sector equality duty should apply to all providers of public services, both within the public, voluntary and private sector.
- Public sector authorities commissioning services should not be able to stop the publication of contracts or joint venture details except in cases of national security.
- The ownership of all companies, including those with offshore or trust ownership, which provide services under contract to the public sector should be available on public record.
- Public sector authorities should disclose details of relationships between providers and decision makers/influencers in public bodies commissioning and procuring services or with influence over the commissioning and procurement process.

Standards of accountability

- The public should have the 'right to recall' contracted out services due to poor quality or performance that is not in the public interest. Previous poor performance of bidders, including breaches of UK employment law, health and safety, environmental and tax obligations, should be taken into account during any tendering process.

Conclusions and Recommendations

Accounting practices and cost appraisal

- Where services are outsourced, standardised accounting procedures and practices for ‘open book’ accounting should be enforced including an annual independent audit on all public service contracts. There should also be a requirement to publish audited and verified statements on contractors’ operational and financial performance, with access to relevant information, systems and personnel for the NAO, internal public sector auditors and their external auditors.
- Regular reports on the full costs of procurement should be published, including contingency costs required to cover unforeseen circumstances, the use of external advisors, and the contract management and monitoring costs for individual contracts.
- A robust and consistent framework must be developed which is capable of measuring service quality from the experience of users, not simply performance measure against targets.

Employment terms and protection for staff delivering public services

- Mechanisms for the protection of employment standards and collective bargaining should be promoted through the strengthening of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE), the creation of a new two-tier code of practice and the adoption of mechanisms to ensure that existing sectoral collective agreements are extended to all providers of public services.
- Procurement and commissioning should be used as far as possible to promote social, environmental and economic objectives, such as the living wage, investment in training, skills and apprenticeships, union recognition and an end to zero hours contracts and other forms of vulnerable employment, through the full use of the revised EC Directive and UK legislation including the Public Services (Social Value) Act.

Annex one – Outsourcing of probation services

Table A1: Probation contract package areas

Area	Min. estimated annual value (£mn) ⁵⁰	Max. estimated annual value (£mn)	2010 eligible case load	Forecast number of new clients each year ⁵¹
1. Northumbria	15.4	18.8	5,680	7,000
2. Cumbria and Lancashire	17.4	21.3	8,060	10,000
3. Durham & Cleveland	12.6	15.4	6,380	8,000
4. North Yorkshire, Humberside & Lincolnshire	17.7	21.7	7,550	10,000
5. West Yorkshire	17.6	21.7	9,570	12,000
6. Cheshire & Greater Manchester	29.4	35.9	15,360	20,000
7. Merseyside	12.4	15.1	6,310	8,000
8. South Yorkshire	11.4	13.9	5,450	7,000
9. Staffordshire & West Midlands	30.6	37.4	16,220	19,000
10. Derbyshire, Nottinghamshire & Leicestershire	24.0	29.4	11,160	14,000
11. Wales	28.1	34.4	12,170	16,000
12. West Mercia & Warwickshire	11.6	14.2	4,160	6,000
13. Gloucestershire, Avon, Somerset & Wiltshire	16.9	20.6	7,060	9,000
14. Dorset, Devon & Cornwall	12.2	14.9	5,070	7,000
15. Hampshire	12.8	15.7	5,620	7,000
16. Thames Valley	11.2	13.6	4,790	7,000
17. Northamptonshire, Bedfordshire, Hertfordshire & Cambridgeshire	19.8	24.2	9,650	12,000
18. Norfolk & Suffolk	10.5	12.9	3,830	5,000
19. Essex	12.2	14.9	4,690	6,000
20. London	58.9	72.0	26,790	33,000
21. Kent, Surrey & Sussex	23.2	28.3	10,180	14,000
Total	405.9	496.3	185,750	237,000

⁵⁰ Ministry of Justice (2013) *Transforming Rehabilitation Target Operating Model* (London: Ministry of Justice), p60

⁵¹ *ibid*



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