



Ministry of
JUSTICE

Government Response to the Justice Committee's Report: The role of the Probation Service

October 2011



Government Response to the Justice Committee's Report: The role of the Probation Service

Presented to Parliament
by the Lord Chancellor and Secretary of State for Justice
by Command of Her Majesty

October 2011

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Introduction

The Government welcomes the report of the Justice Committee's inquiry into the role of the Probation Service. We have given it very careful consideration.

The inquiry report looks back at the history of probation over roughly the last ten years, including the creation of the National Offender Management Service (NOMS). This approach has the advantage of helping to explain how we have got to where we are now. It highlights the drawbacks of trying to micro-manage the work of probation professionals from the centre. Since May 2010, as the report recognises, there has been a radical change of direction. There is still a long way further to go, but we welcome the Committee's finding that there is a need for greater use of professional discretion by probation professionals and the role that the streamlined *National Standards for the Management of Offenders* can play in bringing that about.

The report also highlights the need for sentencers to have at their disposal all the options they need – and proposes that the private and voluntary sectors could play a greater role in delivering those – but it acknowledges that, in the current financial climate, demands for more funding would not be realistic. The Government entirely shares the Committee's view that there is an urgent need to focus resources on the front line and to continue to bear down on inefficiencies and any unnecessary back-room functions.

The report successfully brings out the complexity of some key issues in probation work, most notably the difficult balance to be struck in making community sentences truly challenging, while ensuring that offenders are enabled and motivated to meet that challenge. However, on two issues, we cannot fully assent to the conclusions the Committee draws from the evidence presented to it. With regard to the quality of the evidence base, it is clear from the debate on how re-offending can best be measured that there is no consensus on how outcomes following community sentences and those following custody should be compared. This issue will continue to be the subject of debate. The Government cannot therefore accept that the recommendation “to develop a measure that enables the effectiveness of prison and community sentences to be compared more robustly” (paragraph 296) should be addressed solely to the Ministry of Justice. A much wider discussion needs to take place – in which the Ministry will play a full part.

At a purely practical level, the recommendation at paragraph 244 – that all sentences, whether to be served in custody or in the community, should be commissioned at local level – may not give enough weight to the difficulties and intense pressures involved in providing custodial places, which the existing system manages very effectively. The courts rightly expect that every custodial sentence (unless the court decides to suspend it) will be given immediate effect. The recent disturbances are a prime example of the challenge that poses when there is a dramatic surge in demand from particular parts of the country. The National Offender Management Service has been

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able to respond to that challenge, but it is not clear that local commissioning arrangements would have been equally successful.

The Ministry of Justice is engaged in considering the future shape of probation services in England and Wales, with the aim of improving justice outcomes and contributing to our work to find further efficiencies across all justice services. This involves looking at a range of options for service improvements and different models for delivering offender services within the community. We will ensure that our proposals are aligned with our priorities for the broader justice sector, including increasing competition, taking forward payment-by-results, and changes to wider structures and accountability at local level, as well as with the Government's priority to open up public services to a range of providers, including mutuals.

The Justice Committee's report is a valuable contribution to evolving thinking on how probation services can develop to protect the public and reduce re-offending: its conclusions and recommendations are informing our consideration of these important issues. We plan to announce the outcome later in the autumn.

Government Response to the Committee's conclusions and recommendations

With the exception of recommendation 19, which is answered jointly with recommendation 10, the following response follows the order of the Committee's conclusions and recommendations as set out in Chapter 8 of the report.

The offender manager's relationship with offenders

- 1. We accept that probation officers have to do a certain amount of work which does not involve dealing directly with offenders. However, it seems to us staggering that up to three-quarters of officers' time might be spent on work which does not involve direct engagement with offenders. No-one would suggest that it would be acceptable for teachers (who also have to do preparatory work and maintain paperwork) to spend three-quarters of their time not teaching. The value which really effective probation officers can add comes primarily from direct contact with offenders. While we do not want to impose a top-down, one-size-fits-all standard, it is imperative that NOMS and individual trusts take steps to increase the proportion of their time that probation staff spend with offenders. The MoJ and NOMS should state explicitly whether they support this aspiration; if they do, they should tell us how they intend to achieve it. (Paragraph 40)**

This recommendation echoes the Government's view that, until recently, probation professionals were required to spend too much time on bureaucratic tasks, thereby limiting the time available for face-to-face work with offenders. The evidence upon which it is largely based is a snapshot survey carried out in 2008. The aim of the present Government's policy is to enable offender managers to spend more time on face-to-face work with offenders, where that is necessary to manage the case effectively. Good offender management, however, does involve some tasks designed to aid the offender's rehabilitation, which do not involve face-to-face contact: for example, the vital role to be played in promoting the co-operation of local partners to support the rehabilitation of offenders.

We have taken, and will continue to take, a number of steps to free up offender managers' time: for example, by reducing the number of centralised performance targets. We have also revised the *National Standards for the Management of Offenders*,¹ making them less prescriptive, in order to increase the scope for the exercise of professional

¹ <http://www.justice.gov.uk/publications/corporate-reports/moj/noms-standards/index.htm>

judgement. Offender managers now have greater flexibility to manage their time in accordance with their assessment of the requirements of each case.

In order to quantify the costs of probation services, the Specification, Benchmarking and Costing (SBC) programme produces operating models which indicate how services can be delivered effectively. Analysis of the models for community payback and supervision – the requirements that courts most frequently include in community sentences – indicate that, for staff working with offenders, 26 per cent of their time is spent on processes such as training and staff supervision, or on annual leave. Of the remaining 74 per cent, staff working on community payback spent 72 per cent on direct engagement with offenders and 2 per cent on other case-related work. Staff managing supervision requirements at the moment spend 34 per cent of their time on face-to-face work with offenders, 28 per cent on other case-related work (including referrals and record-keeping) and 12 per cent on managing risk to the public, including assessment work and public protection measures.

National standards: discretion and professional judgement

- 2. While the level and type of contact with offenders should depend on the individual's assessed needs and risks, rather than on the preferences of the practitioner, we welcome the increase in professional discretion provided by the streamlined national standards, and the assurances of many of the professionals concerned that this will allow them to do their jobs better and more efficiently. (Paragraph 47)**

The changes to *National Standards*, on which the Committee has commented favourably, are part of a wider programme (the Offender Engagement Programme). This aims to improve the quality of work with offenders by promoting use of professional discretion, developing offenders' engagement skills and providing staff with the tools (and the management climate) that support that goal.

The relationship between the offender and practitioner can be a powerful means of changing behaviour to reduce re-offending, through more effective and individualised one-to-one engagement. The Offender Engagement Programme aims to reduce re-offending, while ensuring compliance with court orders, by increasing the scope for practitioners to use their professional judgement.

Following an initial professional judgement pilot in Surrey and Sussex, we have now broadened the pilot scheme. 22 probation trusts are running pilots and all trusts are involved in practitioner and senior probation officer reference groups. The pilots cover engagement skills, sentence planning, practitioners' supervision by front-line managers and effective use of the supervision requirement (the most common component of a community order). Following evaluation, the new, tested approaches will be available for use by all probation trusts and by others working in offender management.

Credible, constructive offender management practice, of the type we are developing, can augment the confidence of the courts and of other agencies involved in criminal justice – and can bolster public assurance that community sentences are an effective response to many types of offending.

Work with victims and restorative justice

- 3. We believe that restorative justice has the potential to be used more widely within the probation service and we think that HM Chief Inspector of Probation might usefully undertake some work into the current use of the approach and suggest how best practice might be disseminated. Basing commissioning on payment by results in reducing re-offending risks overlooking the importance of the rights of victims and the obligations of offenders towards them. The Government must give more consideration to how best to incentivise restorative justice measures to increase their availability so that every victim can be offered the chance to take part in restorative justice. There should also be an expectation that every offender should be faced with the consequences of their crime, and should, where possible, be offered the chance to make amends to the victim. (Paragraph 56)**

We share the Committee's belief that restorative justice measures should be more widely available. There are a number of mechanisms in place which allow the use of restorative justice either as part of, or addition to, appropriate criminal disposals and we are looking at how we make use of those methods both pre- and post- sentence.

Agencies across the criminal justice system are working to increase capacity and availability, so that more victims can be offered the chance to participate in restorative justice. It is important to ensure that we employ restorative justice in ways that are practical, realistic, cost-effective and in the best interests of the victim.

In June of this year, NOMS announced a three-year grants programme for voluntary sector organisations working to reduce re-offending. £500,000 is being provided towards the development of capability to deliver effective restorative justice conferencing and victim awareness on the part of offenders. We will discuss with H M Chief Inspector of Probation whether she believes the Inspectorate could usefully support development in this area.

Working with particular groups of offenders

- 4. The probation service's approach—where resources tend to be directed towards dealing with offenders who present the highest degree of risk—can fail adequately to support women offenders. The approach recommended by Baroness Corston for the provision of holistic services that address all women's needs is still a long way from being realised, even through this would greatly increase the effectiveness of probation work in diverting women from further offending. Rather than requiring extra resources, it would save public money by reducing the prison population and its associated heavy social costs. (Paragraph 60)**

NOMS aims from 2012–13 to continue funding services with a proven track record. We are committed to addressing women's offending. The Government believes that current rates of re-offending, both for men and for women, are unacceptable. While ensuring that sentences include sufficient elements of punishment and payback to the community, our priorities are: to wean offenders off drugs and alcohol for good; to address their mental health problems; and to get them into work. We confirmed in our response to consultation on *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*² that we will take into account the different profile of women's offending in achieving these reforms.

At the forefront of this is the development of community-based women's services that aim to address the underlying reasons for many women's offending, such as drug and alcohol addiction, mental health problems and (often) long histories of domestic violence and abuse. By March 2011, 25 projects across England and Wales funded by the Ministry of Justice had worked with over 5,400 women referred to them. However, these projects must be evidence-based and we will take the lessons from the evaluation of the *Together Women* project, so that projects can ensure they collect data that can evidence the work they have done and support robust evaluation.

In May 2011 the Government announced £3.2 million of funding provided jointly by NOMS and the Corston Coalition of Independent Funders to sustain the majority of services across England. In addition, NOMS has made a commitment from 2012–13 to continue funding services with a proven track record of tackling offending behaviour among women. In Wales, NOMS has ensured the long-term sustainability of women's services as part of its three-year commissioning plans, and the Ministry of Justice and the Home Office are also funding *Women's Breakout*, an umbrella body for women's services, to build capacity in this important sector over the next three years.

² *Breaking the Cycle: Government Response Cm 8070*, June 2011

- 5. The people supervised by the probation service do not make up a homogenous group and have varied and complex needs. Interventions, for example, accredited programmes, have been developed to meet the needs of the majority: young, white men. Although some trusts do try to offer specialist services for others or to refer people into resources provided by others it appears to us that this is very much a work in progress. It is another area which we think might benefit from the scrutiny of HM Chief Inspector of Probation. Also, the Government should ensure that it considers the needs of minority groups when moving towards payment-by-results: contractual arrangements will need to ensure that appropriate services are provided for all offenders, and not just those who fall into the most common demographic. (Paragraph 66)**

NOMS is committed to ensuring equality for all, delivering services fairly and responding to the needs of individual offenders.

The Correctional Services Accreditation Panel, a non-statutory body that helps the Ministry of Justice to develop and implement high-quality offender programmes, is attentive to how well the structure of any programme being developed addresses the needs of a diversity of offenders and this factor is considered as part of the accreditation process. NOMS is currently revising a number of its accredited interventions. In doing so, it will ensure that they meet a broader range of offender needs than the current set of programmes. The interventions will be more flexible and many will be available as either group or individual programmes. This will allow them to be more effectively tailored to the needs of each offender.

The specifications developed under the Specification, Benchmarking and Costing (SBC) programme, covering all services delivered by probation, are designed to ensure that the outcomes delivered address the specific needs of all groups of offenders.

The benefits and limitations of the new training arrangements

- 6. There appears to be a good balance in the new training arrangements between providing staff with the skills to understand and interpret risk and to challenge and motivate offenders. The quality both of the recruitment process and of supervision arrangements within individual trusts are of utmost importance in ensuring that newly trained staff will have the confidence to operate safely in the context of fewer national standards, and in preventing probation trusts from becoming equally constrained by being too risk averse. (Paragraph 72)**

The Probation Qualifications Framework has been designed to provide probation staff with the skills they need to interpret risk and motivate offenders to change. All probation service providers, in contributing towards the delivery of the qualifications, must comply with the Probation Qualifications Regulatory Framework. This sets out the employer's

responsibility to recruit practitioners on to the appropriate qualification pathway; to arrange induction; and to provide training, practice-tutoring, line-management and assessment of practice. It is a function of the Probation Qualifications Assurance Board to ensure that recruitment and supervision arrangements enable newly-trained staff to operate safely in the context of less prescriptive *National Standards*.

7. Although the new probation qualifying framework was designed to open new routes to qualification there are concerns that it will not deliver a steady flow of qualified probation service officers and probation officers. There is a significant risk of a shortfall of trained probation officers in future as budget cuts have impacted on the take-up of training and trusts and the Government needs to have regard to this. (Paragraph 75)

The Probation Qualifications Framework was designed to meet the local requirements of providers of probation services, including a steady flow of staff qualifying throughout the year for different levels of work.

There is wide take-up nationally of the new level 3 vocational Diploma in Probation Practice, with 800 probation service officers (PSOs) undertaking the new diploma course. Other PSOs hold equivalent qualifications. The result is a steady flow of qualified PSOs throughout the year.

Under the new Qualification Framework, it is much easier for providers to respond to variations in projected demand for Probation Officers, with up to three recruitment opportunities each year. Employers also have more flexibility in terms of the time required to train staff for Probation Officer posts: a significant number of PSOs have either been awarded academic credits because of qualifications they already hold, or have been able to take the shorter (15-month) Graduate Diploma course, because they hold a relevant degree.

Responsibility for workforce planning and qualification training rests ultimately with providers of probation services, at local level.

The number of new Probation Officers qualifying in both 2009 and 2010 exceeded available posts at that level. A number of graduates are therefore temporarily in PSO posts, pending new Probation Officer vacancies.

It is projected that fewer staff will qualify during the current financial year, despite central funding being available to support more places. The number of people becoming eligible to fill Probation Officer posts is projected to rise to over 250 in 2012–13; and the Graduate Diploma provides trusts with a shorter route to gain qualified Probation Officers, should their workforce plans change.

Post-qualification and management training

- 8. The new probation qualifying framework should be used as basis for building a national system of accredited training for post-qualification development, including leadership and management training, so that there is a consistent quality of training available to trusts and to any new providers of probation services. If significant commissioning responsibilities are given to trusts—a policy which we question later in this Report—then it will be necessary for NOMS to devolve an appropriate allocation of its resources for management and leadership to enable trusts to purchase the training, contract management and governance skills required. (Paragraph 79)**

NOMS provides leadership development support for senior leaders within trusts, as well as those with potential to progress to senior management. Each year, 25 places on the NOMS Developing Leaders programme are allocated to probation staff and all probation senior managers are invited to attend a range of one-day continuous personal development courses.

NOMS has worked closely with trusts to design a Leadership and Management Framework, which is now in place in all trusts. A virtual learning resource, based on this framework, has been designed by probation staff with support from NOMS: it can be accessed via the Justice Academy website.

Over 60 senior leaders in probation trusts have taken part in a pilot scheme for a procedure to identify the strengths and development needs of probation senior managers. This option has now been offered to all trust chief executives. NOMS is also working with the Probation Association to design a talent programme for aspiring Chief Executives: joint funding has been agreed.

Professional development work is a key part of the Offender Engagement Programme. We are piloting two courses which aim to develop relevant skills. Skills for Effective Engagement and Development, for probation officers and PSOs, teaches skills that are proven to increase the engagement of offenders under supervision. A parallel course for Senior Probation Officers, the Reflective Supervision Model, enables managers to support practitioners through reflective practice. It promotes the exercise of professional judgement, both by the managers themselves and by the practitioners they supervise.

Following evaluation of the pilots, these approaches will be made generally available and good practice and learning will be shared with trusts.

The Office for Civil Society (part of the Cabinet Office) is preparing proposals for a programme to enhance commissioning skills across the public sector, in order to deliver open public services and greater diversity of provision.

National commissioning of probation services and performance framework

9. Probation trusts have laboured under a tick-box culture, imposed on them via NOMS's Probation Trust Rating System. We welcome the fact that this culture is to be weakened by the introduction of streamlined national standards which should allow trusts greater discretion. However, it has been raised with us that the Specification, Benchmarking and Costs programme continues to constitute a form of micro-management from the centre, and we call on NOMS to re-assess this programme to see how the burdens it imposes on trusts can be lessened and those trusts provided with greater autonomy. (Paragraph 84)

The Specification, Benchmarking and Costing programme was introduced in response to a recommendation by the Comptroller and Auditor General. In a 2008 report,³ he found that the Probation Service lacked information on the full cost of delivering community orders and needed to ascertain those costs, to enable value for money to be determined. The SBC programme is designed to create outcome-based specifications to support effective commissioning of the services funded by NOMS and delivered by prisons and probation. In order to calculate costs, it has been necessary to develop models of good operational practice. We publish these models for trusts to use as benchmarks, when developing their own procedures and practices, but trusts are not obliged to adopt them. Trusts are free to decide how to deliver the services they are contracted to provide and local innovation is encouraged.

The National Audit Office report on *Financial Management in the Ministry of Justice* (July 2010) noted the SBC programme's potential to generate significant savings and operational benefits. It recommended that, where resources permitted, the Ministry of Justice should look to accelerate the programme. The Public Accounts Committee, in January this year, endorsed the NAO's recommendation and asked that similar work be conducted across the Ministry of Justice.

The SBC programme will be completed by the end of this year. The service specifications will be maintained and updated as part of the NOMS commissioning arrangements.

³ *National Probation Service: The supervision of community orders in England and Wales* (HC 203 2007–08).

NOMS and national contracts

Local joint commissioning arrangements

- 10. The experience of national contracts currently in place has not inspired confidence that NOMS understands its business sufficiently well to draw up robust contracts that meet the needs of future stakeholders. Trusts need the freedom to make their own arrangements for property and maintenance, including the ability to co-locate with partners or with other trusts. This will be necessary if the Government's intentions for joint working are to be realised. Probation trusts have lost confidence in the ability of the national IT system to meet their needs. Both the management of risk and the development of evidence-based policy and commissioning require that there is an effective national system used by prisons and probation. In our view, NOMS should identify those systems that work well for individual trusts with a view to adapting a successful system for national use. (Paragraph 91)**
- 19. Probation trusts often punch above their financial weight in local partnership work, but such engagement with other agencies is not uniform and probation trusts and local strategic partners have expressed frustration about trusts' ability to participate effectively because of national contractual obligations. Probation work will only be effective if it can draw upon and work with other service providers; NOMS and the MoJ must review those contractual obligations which are a barrier to good partnership working and look to remove those barriers wherever possible. (Paragraph 145)**

The Government agrees. The Ministry of Justice is working to reform existing contractual barriers to efficient and effective working. Individual trusts have some flexibility to tailor their property strategies to meet local requirements. Trusts are able to identify potential new locations, and are encouraged to seek co-location with partner agencies. Where necessary, the Ministry of Justice provides specialist estate management support to assist in this process. Where investment is required, that is subject to a business case detailing the costs and benefits of the proposal, and available funding. However, in some cases there are external constraints: for example, many of the leases signed before 2005 were for 15 year terms, with significant costs for exiting early.

There are a number of contracts in place to support the development and operation of the probation estate, the largest of which are for facilities management (FM). Over the last year, there have been significant improvements in the overall performance of the FM contractors. We are aware of specific concerns about distances contractors travel to get to site and we have discussed these with them. As these costs cannot be reclaimed under the contract, it is in the contractors' interest to ensure they are kept to a minimum.

The Ministry of Justice and the Home Office are reviewing the future of Home Office Property General (HOPG), which currently manages FM contracts on behalf of the Ministry of Justice. The review, in consultation with the Probation Association and probation trusts, will consider the potential for transferring responsibility from HOPG to the Ministry of Justice and will re-examine the current model for delivering FM. It is due to be completed next year. It will make recommendations for alternative FM models and consider the timing of any changes.

It is essential that offender managers are able to access the data they need to do their work effectively, including information relating to offenders in custody. Effective case management depends upon information gathered from all parts of the country, not simply that collected by an individual trust. As the report notes (paragraph 88), the Chief Executive of the Probation Association judged that trusts would not want to go back to owning their own systems.

The National Offender Management Information Systems programme, launched in January 2008, is based on the principle the Committee has identified, of adapting existing local models for national use. It makes available case management and offender risk-assessment information, to prisons and probation trusts across England and Wales. Large-scale ICT projects invariably pose difficult challenges and this is no exception. We are working to overcome these in order to give trusts the data support they need to manage offenders effectively.

The tendering process for community payback

- 11. Regardless of the merits of introducing competition for the provision of services, it is imperative that NOMS communicates its plans to trusts in a timely and genuinely consultative way. This seems not to have been the case with the community payback tendering exercise, and NOMS should do a 'lessons learned' exercise once the competition is completed to make sure that any mistakes are not repeated in future exercises. (Paragraph 96)**

We plan to learn lessons and to apply them as we go forward with the competition. The learning from the London stage of the community payback competition will be applied during subsequent competitions for other lots.

- 12. The very large and incoherent groupings created for the community payback contracts would not be appropriate vehicles for commissioning other probation initiatives, and would undermine links between probation work and other participants in the criminal justice system, such as the police, courts, local authorities and local prisons. (Paragraph 97)**

The groupings were designed specifically for the community payback competition. The community payback specification requires providers to demonstrate how they will ensure that delivery is appropriately channelled

through local arrangements. Whichever provider is successful in the community payback competitions, the probation trust will remain the body on which the courts will rely for advice and for the assessment of offenders.

The community payback providers will be required to have effective liaison arrangements in place with a wide range of stakeholders including the police, the courts, local authorities and local prisons.

Financial management

13. Trusts need to be given greater financial autonomy and, specifically, the power to carry over a small proportion of their budgets from year to year. We have also received evidence that they do not have sufficient autonomy in terms of how they can spend that money, and that relatively trivial amounts of expenditure can require consent from the centre. The overwhelming impression we have formed is of trusts being over-regulated and unable to fulfil local needs because of the top-down, centralising tendencies of NOMS. NOMS reflects the command and control structure and culture of the prison service and is not responsive to diversity of local needs; it has yet to make the shift from being the managers of trusts (the legacy of the National Probation Service and early NOMS) to being a commissioner from the trusts (and others), which calls for a different kind of relationship. (Paragraph 102)

Probation trusts, as Non-Departmental Public Bodies, are able to operate with a degree of autonomy. However, as publically-funded bodies they are governed by the requirements of *Managing Public Money* (H M Treasury)⁴ and, like NOMS itself, are not able to carry funding forward from year to year.

Probation trusts have wide authority to procure goods and services, apart from consultancy services and IT products and services. Under the Government's Transparency Agenda, they must provide information on tenders over £10,000.

The change from a National Probation Service to a system of 35 individual probation trusts has required both NOMS and the trusts themselves to adapt to new ways of working. In neither case has this been an instant transformation: lessons are learned and steady progress has been made. We are confident that the new structure NOMS is adopting will further assist that process.

⁴ http://www.hm-treasury.gov.uk/psr_managingpublicmoney_publication.htm

End-to-end offender management

- 14. There needs to be a better, more seamless, approach to managing offenders. Prisoners are shunted between one establishment and another, in an attempt to avoid over-crowding, and the need to ensure continuity of their sentence plan is not a priority. This is unacceptable. The Ministry of Justice and NOMS need to devise and implement a strategy to ensure that the end-to-end management of offenders is a reality and not just an unachieved aspiration. (Paragraph 110)**

We are reviewing the offender management model, to make for a more streamlined approach, with offenders both in custody and the community categorised according to risk, so that the assessment of the offender and the sentence plan can be put in place quickly, to accelerate delivery against the planned objectives. The offender supervisor, who may be a member of prison service staff or a seconded probation professional, will be responsible for that offender and his or her sentence plan throughout the time spent in custody.

Following the publication of *Making Prisons Work: Skills for Rehabilitation* (May 2011), NOMS is working closely with the Skills Funding Agency to change the arrangements for delivering learning in prisons, bringing together into clusters those prisons between which transfers regularly take place. The aim is to deliver a system that is responsive to local needs and which provides a consistent skills offer to promote continued participation as prisoners progress through their sentences.

It will continue to be necessary to move prisoners to other establishments in some cases: for example, to access an appropriate offending behaviour programme, or because the prisoner's level of risk has reduced. This need to move prisoners represents efficient and effective use of the places available in prison and the interventions they deliver.

Where a prisoner is to be released on licence, meetings between the community-based offender manager, the offender and the offender supervisor in custody are to take place at least six months before release. This promotes continuity and a smoother transition back into the community, so supporting the goal of reduced re-offending on release.

- 15. If NOMS is to work effectively through the two services, there does need to be an enhancement in prison of offender management skills. This could be achieved through better training for prison officers or the appointment of probation officers or probation service officers to work in prisons on sentence management and to follow the prisoner 'through the gate'. Unfortunately, neither of these scenarios is likely given the current prison population and funding restraints. (Paragraph 111)**

Having the appropriate skill mix of staff is vital to the delivery of effective offender management. In preparation for the introduction of new service specifications for offender management, we have:

- developed enhanced training for prison service staff acting as offender supervisors and case administrators (to be introduced at the turn of the year);
- introduced a new training programme for managers of Offender Management Units in custody;
- improved prison managers' understanding of reducing re-offending targets and risk management.
- highlighted in guidance the advantages of using multi-disciplinary teams to deliver offender management in custody;
- built on the existing use of seconded probation staff in prisons to support the expansion of the offender management approach, utilising their expertise and skills within this area of work; and
- looked again at how time spent in custody should relate to time in the community following release, including preparation for release and (where the offender is released on licence) how the licence should be managed.

Review of NOMS

16. The Ministry of Justice should commission an externally-led review of the operation of NOMS to assess whether it is: delivering value-for-money; giving trusts the appropriate levels of support and autonomy they require; and integrating the supervision of offenders in prisons and the community effectively. Our evidence suggests that it is not doing those things well. Should the review reach similar conclusions the Department should be prepared to take radical steps to redesign the structure and operation of NOMS. (Paragraph 114)

The Committee is aware that NOMS is radically restructuring its headquarters operation. This will re-align the business so that it is better able to fulfil its objectives, and will generate efficiency savings of at least 33 per cent.

In July 2011, the Justice Committee announced its own inquiry into the overall structure and budget of the Ministry of Justice (including NOMS) and its associated public bodies. That will provide an opportunity to consider the concerns the Committee raises here.

Provision of services to the courts

17. It is unacceptable that sentencers' hands are tied by the unavailability of important requirements which the probation service cannot provide because of inadequate resources. We are aware that in the current climate, demands for more funding are not realistic. However, the fundamental necessity of giving sentencers all the options they should have at their disposal makes very clear the urgent need to focus scarce resources on the front-line and to continue to bear down on inefficiencies and any unnecessary back-room functions. (Paragraph 131)

The Government very much agrees that resources need to be focused on front-line delivery. When looking for the efficiency savings required by the Spending Review, we have made it our priority, as far as possible, to protect probation as a front-line service. To maximise the resources we can make available to trusts, we are making radical reductions in the cost of NOMS's headquarters and regional operations.

In the current economic circumstances, all areas of public provision need to look for efficiencies, and that includes probation trusts, which have some scope to streamline their administrative practices.

As well as focusing resources on front-line provision, the Government is taking a range of measures to improve the availability of specific requirements that may be attached to a community sentence and that are funded and provided by other Government Departments. These include greater flexibility in the use of the Alcohol Treatment, Drug Rehabilitation and Mental Health Treatment Requirements.

18. Judges and magistrates need to have confidence in the way in which the probation service relates to and provides information to the court. Sentencers should be given accurate information at the time of sentencing about when a community order and any requirements will commence. (Paragraph 134)

Through their work in preparing pre-sentence reports, probation trusts play a critical role in supporting the courts to make appropriate sentencing decisions. In 2009–10, 99 per cent of pre-sentence reports requested by the court were provided within the timescale set by the court. The specification covering court work emphasises the need to ensure that judges and magistrates have confidence in the information provided to them.

All community orders commence on the day of sentence. The *National Standards for the Management of Offenders*⁵ provide guidance on commencement times for any requirements included in the order. It is not

⁵ <http://www.justice.gov.uk/publications/corporate-reports/moj/noms-standards/index.htm>

always possible for a requirement to commence at the start of sentence: for example, where additional work is necessary to prepare the offender to undertake the requirement. If there is likely to be a significant delay, the court should be informed of this at the time of sentence. Data for 2010–11 show that more than 90 per cent of first appointments took place within the recommended timescale (and over 95 per cent had been arranged to take place within that time).

Partnership schemes and the potential to pool resources

20. We are concerned that there is a lack of consistency of provision for those offenders for whom probation services do not have a statutory obligation to provide services, but who nevertheless present a significant burden on the system. We welcome the Government's proposals to extend the use of intensive offender management. The Ministry of Justice should collate evidence on the cost-effectiveness of schemes that are currently operating across England and Wales with a view to publishing good practice guidelines. These should be used to encourage those areas where there is not currently a scheme but where the scale of persistent offending may justify the investment. There is also significant potential to extend the IOM model to other groups of offenders. (Paragraph 155)

Identifying and agreeing which offenders should be included and managed under Integrated Offender Management (IOM) is the responsibility of local strategic partnerships and is the key to maximising their effectiveness taking account of local priorities.

In collaboration with the Ministry of Justice, the Home Office has developed an IOM Efficiency Toolkit. This assists local areas by identifying effective working practices and efficiencies, and helps them to construct a local business case for IOM.

The toolkit is designed to be used alongside the IOM Key Principles, which form the basis of a self-assessment tool we have devised to enable local areas to assess the development and delivery of their IOM arrangements and to identify aspects that may require further development.

21. There is promising evidence that the new requirements that have been placed on local strategic partners to reduce re-offending are beginning to bear fruit in stronger local partnership arrangements, and in achieving efficiencies, but these have not yet had sufficient opportunity to bed in. Nevertheless, they provide a good foundation for the introduction of local incentive models as a mechanism of payment by results. (Paragraph 156)

We are encouraged by the emerging good practice across the country to improve partnership working and reduce reoffending. The justice reinvestment pilots, testing a local approach to payment-by-results, aim to stimulate more effective and efficient responses to crime and re-offending at the local level.

The role of the probation service in public protection

22. Work with other agencies to secure public protection through the management of offenders who pose a risk of harm to the public will continue to be a vital and demanding part of the role of the probation service. (Paragraph 160)

The Justice Committee is right to emphasise the importance of protecting the public as a key part of probation work, and the need for effective multi-agency arrangements. The multi-agency public protection arrangements (MAPPA) in England and Wales for the management of dangerous offenders are internationally respected and we are taking steps to improve them still further. Key Performance Indicators are now collected and collated electronically, enabling performance reports to be produced at local and national level, to identify strengths and areas for improvement. Guidance on the effective management of MAPPA Level 1 offenders, and on mentally-disordered offenders and MAPPA, was issued earlier this year.

MAPPA guidance is issued by the Secretary of State. We intend to streamline it and to shift the emphasis from prescribed processes to required outcomes, giving areas greater flexibility as to how those outcomes are delivered. Revised guidance is being developed in close consultation with other agencies involved in the delivery of MAPPA, including the police. We plan to publish it in April 2012.

Public confidence in community sentences

23. The use of punitive measures may provide a cheaper yet publicly acceptable alternative to supervision for some offenders, but their use will need to be appropriately targeted, and their benefits carefully explained to the public, as they do not address the root causes of offending. Trusts and sentencers will need to deal more effectively with failure to comply if these measures are to be successful as a practical means of dealing with low level offenders. The Government must also clarify what is meant by more robust community sentences, and the outcomes they are designed to achieve. Making sentences more punitive does not mean that they will necessarily be effective in protecting the public by reducing re-offending. (Paragraph 175)

In our response to the consultation on the Green Paper *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*,⁶ we announced that we would overhaul the way community sentences are used so they better punish, control and reform offenders. Offenders will serve longer hours, carrying out purposeful, unpaid activity which benefits their local community, over the course of a working week of at least four days. We will make more use of electronic tagging and longer curfews.

⁶ *Breaking the Cycle: Government Response Cm 8070*, June 2011.

We will transform community orders to break the cycle of offending by intervening to help stop offenders committing more crime.

There is widespread public support for measures to require offenders to make recompense for their crimes. Community payback (CP) can rightly be termed "punitive", because it is designed to make offenders aware that their behaviour is unacceptable and has consequences for themselves, in the form of a requirement to undertake unpaid, demanding work. But it is important also to recognise the positive benefits of CP – both to the community and to those offenders who seize the chance to amend their lives and refocus their energies in a new and positive direction.

New instructions to community payback providers, announced in August, are aimed at making community payback more immediate, intensive and more rigorously enforced, with providers required to implement appropriate quality assurance procedures. We will also develop further opportunities for members of the public to propose work projects for offenders in their local areas, in order to encourage greater community participation and to ensure that offenders make reparation to the community.

24. We endorse the Government's attempt to tackle the factors contributing to the growth in the prison population and probation caseloads in its comprehensive proposals for reform, but the lesson from recent history is that in order to achieve the financial sustainability that it desires, and indeed is necessary, to prevent the need for costly prison building, each element of the reforms must be implemented successfully, and to work coherently together. The strengthening of community orders and reductions in the use of custody are interdependent and both are costly. The Government should clarify how it intends to implement its reforms to community sentences effectively whilst keeping them cost-neutral. It would be a serious error if the Government allowed the search for further savings to replace those it had hoped to achieve from the 50% early guilty plea discount to undermine the development of effective sentencing. (Paragraph 176)

The Government welcomes the Committee's support for its increased focus on reducing re-offending, through the proposals we set out in our response to the consultation on *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*.⁷ Our reforms of the community order are aimed at giving the courts greater flexibility in the use of requirements to tackle the problems that may underlie offending, as well as punishing the offender and ensuring that the offender makes reparation to victims and the community.

⁷ *Breaking the Cycle: Government Response* Cm 8070, June 2011.

These reforms affect seven of the requirements currently available, four of which are primarily rehabilitative. Removing the six-month minimum period for which a drug rehabilitation or alcohol treatment requirement must be specified by a court is aimed at encouraging a greater use of such requirements where appropriate, and will give providers the flexibility to tailor treatment to the offender, depending on individual need. Similarly, simplifying the assessment process for, and provision of, mental health treatment requirements is intended to encourage their use where appropriate. The supervision requirement focuses on promoting the offender's rehabilitation and has the capacity, in combination with another requirement or requirements, to be one of the most responsive vehicles for bringing about change. We are developing guidance on improved targeting of supervision requirements, to ensure that resources are directed to those cases where supportive functions cannot be delivered by the 'responsible officer'.

The availability of longer, more intensive curfews will allow courts to provide the punishment and public protection that will promote confidence among victims and the wider public, but will also facilitate the imaginative use of curfew to improve compliance with other requirements.

We estimate that, overall, there will be no significant financial consequences (other than small transitional costs) from the reforms outlined above. These reforms are not affected by the decision not to take forward the proposal floated in the Green Paper to increase the sentence reduction available for a guilty plea. The Ministry of Justice is working with the Treasury to identify savings. These will need to be found by the final year of the Spending Review period, which allows time for careful consideration of various options before we proceed. In considering possible savings (no decisions have yet been made), we will look to protect front-line services and, above all, to ensure public safety.

25. Public confidence is arguably most likely to be gained by setting out clearly what community sentences attempt to achieve, by demonstrating that they are implemented efficiently and effectively and also by challenging a naïve confidence in the effectiveness of short custodial sentences. This will call for leadership and courage from politicians and sentencers. There is a risk that the recent public debate on sentencing policies with regard to short custodial sentences could threaten to undermine the whole set of proposed reforms. (Paragraph 183)

Some offenders will need to go to prison for a short time and it is important for magistrates to be able to use custody where necessary. Courts do not send people to prison lightly, and only use a short sentence where they perceive that a community sentence would not be appropriate. But the Justice Committee is right to highlight the need for community sentences to have clear aims and be implemented effectively: the Government is committed to achieving that.

We believe that a better understanding of community sentences will improve public confidence. A large body of qualitative research indicates that when sentencing decisions are fully explained, public confidence does increase. As part of the Government's commitment to transparency, more sentencing data will be made accessible, with contextual information to help people understand how community sentences work. We are also exploring with the Sentencing Council and victims' groups how we can improve the way sentences are explained in court.

The success of the proposed reforms in the context of fewer resources

26. Although there are limits to the extent to which the Government's reforms can be effective within limited resources, there is scope for cost savings within the structure of NOMS and the prison service. We refer later to the powerful case for better integrating the commissioning of prisons and probation. If the resources for more intensive and tougher community sentences are not found, increases in the use of short-term custody by the courts will continue. This is a vicious circle in which the criminal justice system has been trapped for too long. The Government wishes to break this cycle, as its Green Paper indicates. This will not happen without a shift in the use of scarce resources. (Paragraph 189)

The National Offender Management Service is radically reshaping its headquarters arrangements to achieve a reduction of at least 33 per cent in administrative costs by the end of the Spending Review period. This enables us to focus resources on the front line and to implement our agenda of more freedom for trusts to manage their work, and greater local accountability.

Creating a mixed economy in probation provision

27. The evidence we have received suggests that there is significant scope to increase the contribution of private and voluntary sector organisations to the delivery of effective offender management and rehabilitation. (Paragraph 206)

The Government agrees. The Ministry of Justice's Business Plan for 2011–15 explains that we will no longer provide rehabilitation services directly without testing whether the private, voluntary or community sectors can provide them more effectively and efficiently.

The *Competition Strategy for Offender Services*,⁸ which we published in July 2011, sets out the Government's ambition to encourage greater involvement of the private and voluntary sectors in the rehabilitation of offenders, to improve outcomes and efficiency. The work the Government

⁸ www.justice.gov.uk/publications/corporate-reports/moj/oscs.htm

announced in July 2011, to consider the future shape of probation services in England and Wales aims to create a long-term direction for probation that is consistent with our objectives for reform.

The benefits of paying providers by results

28. Payment by results provides a potential mechanism for putting the system on a sustainable footing over the longer term by shifting resources away from incarceration towards rehabilitation and towards measures which prevent people becoming criminals in the first place. However, the payment by results models proposed are untested in the field of criminal justice and represent a significant departure from existing commissioning arrangements. Nevertheless, given the problems faced by the sector, there are compelling reasons to test the potential of a radically different approach. (Paragraph 211)

The Government believes that placing the focus on the outcomes that services deliver, and rewarding only those that achieve genuine success, will encourage providers to target the long-lasting rehabilitation of offenders. For this approach to succeed, we must draw on expertise and resources across the full spectrum of potential providers, and allow them to innovate to find new, more effective ways of working. At the same time, we must continue to protect the public, and ensure that offenders are appropriately punished for their crimes.

This is a bold approach, which will need to be constantly informed by knowledge gained as we proceed. *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*⁹ describes the series of early pilot projects we are running to test the principles of payment-by-results. The projects, which will cover a variety of approaches, will be fully evaluated to ensure that the learning from each informs future policy.

Commissioning for offender management: getting the balance right

29. We believe that responsibility to the courts and the community for offender management must remain with a publicly accountable probation service. However, there is plenty of scope for specific services and facilities that support offender management to be offered by a range of providers. Examples include the provision of (non-approved premises) accommodation, electronic monitoring, curfews, mental health support, drug and alcohol treatment, learning and training, and family support. These services should be delivered by whichever provider can facilitate them most effectively with the greatest economy. (Paragraph 214)

⁹ Cm 7972, December 2010.

Apart from certain forms of assistance to the courts – which must be provided by a probation trust or other public body – the Offender Management Act 2007 enables the Secretary of State to commission probation services from “any other person”. This gives wide scope for a range of providers from the public, private, voluntary and community sectors to become involved.

However, it is worth noting that many of the services which support the rehabilitation of offenders are not commissioned by the Ministry of Justice. For example, the Department of Health and the National Health Service (in England) are responsible for commissioning offender health services, including all substance misuse services. The Department for Business, Innovation and Skills and the Skills Funding Agency commission provision for offender learning and skills; and the Department for Work and Pension and Job Centre Plus are responsible for offender employment and benefits advice. In Wales, the National Offender Management Service works closely with the Welsh Assembly Government, which is responsible for devolved functions such as health and education, to ensure that these services support the rehabilitation of offenders.

In addition many services which support rehabilitation, such as housing, are commissioned or provided as mainstream services by local authorities, drawing on a diverse range of providers from both the public and independent sectors.

Achieving savings

30. Although on the face of it large scale payment by results commissioning arrangements such as those used by the Department for Work and Pensions may be attractive in achieving cost savings, economies can also be achieved at a more local level, for example by probation trusts concentrating their efforts on where there is best value in contracting out other services and through local partnerships pooling their resources and investing them strategically. There is a need for careful thinking and calculation on behalf of the Government on how to strike the best balance between opening up the market to new providers and enabling trusts to operate effectively as local strategic partners, facilitating local solutions to local problems. (Paragraph 220)

As primary providers, probation trusts are already able to align and pool resources by negotiation – for example, trusts are involved in the introduction of pooled community budgets in 16 areas, targeting families with multiple needs.

The work we are undertaking to look at the future of probation services in England and Wales will explore the options for service improvements and different models of delivering offender services within the community, and will set out our preferred approach in the autumn.

We are piloting a variety of payment-by-results approaches for offender services, both in custody and in the community. At least two projects will be run in prisons, with another two large-scale projects focusing on services in relation to offenders serving community sentences.

Two further projects testing local approaches to justice reinvestment will examine whether increased flexibility at a local level can result in more efficient and effective approaches to tackling offenders. The lessons learned from all of the initial pilots will influence future policy decisions.

Commissioning principles

- 31. Probation services have been uncertain about their future since the idea of wider competition was first mooted almost ten years ago. The Government must clarify its intentions for the future of probation. We would welcome a clear statement from NOMS about which elements of probation work are considered appropriate for commissioning from other providers (and which are not) as well as those they consider should be contracted for at scale, and the principles that should determine the boundaries. (Paragraph 227)**

We announced in July 2011 that we are undertaking a piece of work to look at the future of probation services in England and Wales. We will explore the options for service improvements and different models of delivering offender services within the community, and set out our preferred approach in the autumn.

- 32. We welcome the Government's local incentive scheme pilots in enabling commissioning for rehabilitative interventions to be more effectively delivered through partnerships at local level. We consider that the local incentives model would work best if it is introduced alongside a model in which probation is "lead provider". (Paragraph 228)**

Probation trusts already act as primary providers and, with the exception of services reserved under statute to the public sector, may choose to sub-contract services. They are also able to align resources with those of other local providers.

The local incentive scheme pilots are still in progress. Once they have been completed, we will evaluate the results and consider any lessons to be learned.

- 33. The Government's commitment to devolving commissioning to the local level is not fully reflected in the green paper or in NOMS' recent approach to commissioning community payback. The decision that it was most appropriate to commission community payback at the level of six large lots across England and Wales is, we believe, flawed in terms of the future direction of commissioning policy; it does not fit the Government's rationale that services should be commissioned at local level. (Paragraph 229)**

The community payback competition does not represent the only approach to commissioning by NOMS. We are looking at a number of different models, including probation trusts acting as providers and as commissioners, together with other options for local commissioning and delivery.

The lot structure was designed specifically for the community payback competition. Various possible approaches were considered. The six-lot structure was chosen as offering the best combination of sufficient scale (to achieve economies in delivery), avoidance of excessive procurement time and cost, and efficient contract management. We will continue to consider the policy as part of our wider review and in the light of experience of the tender and bidding process for the first lot based on London.

NOMS believes that by stipulating for delivery at local level, it is possible to take advantage of innovation (which might require significant investment) and of economies of scale, while maintaining and improving the local nature of delivery.

- 34. The separation of the commissioning of prison places from the commissioning of every other form of sentence provision has a distorting effect on the options available to sentencers. Ministers should, as part of their programme of reform of the criminal justice system, develop proposals which would end this separation and link the commissioning of both prison and probation at a level closer to the communities they are designed to protect. We believe that the responsibility for delivering the sentence of the courts should belong to a single offender management local commissioning body which deals with all aspects of custodial and non-custodial sentences. This would increase efficiency within the commissioning process and provide evidence about how effectual the sentences of individual courts are, which then could be fed back into future decisions of the court. Furthermore we believe there is scope for payment by results to be better integrated with other programmes, such as the DWP Work Programme. There is a real danger that proceeding on present lines will lead to the embedding of contracts which become an impediment to this very necessary reform. We recommend that a geographical area is chosen for piloting integrated commissioning of offender management. (Paragraph 244)**

While we see the attraction of combined local commissioning arrangements as an ideal model, we believe this recommendation underestimates the difficulty of ensuring that custodial places are provided immediately in response to demand, and the unacceptable risks that would be involved in attempting devolution to local level.

Managing the prison population at national level, NOMS is able to maximise public value and efficiency in responding to the needs of both the courts and offenders. This model allows us maximum flexibility to manage the custodial population, making best use of capacity to meet

changing court demand, as well as providing specialist regimes to meet the needs of specific groups, such as women offenders, young adult offenders and older offenders.

This model also makes it possible for regimes to be shaped to meet specific needs – which might not be economical if places were commissioned at local level.

We agree that payment-by-results programmes need to be developed in an integrated way. The Ministry of Justice is working with a number of other Government Departments to explore the potential for joint commissioning of services under a payment-by-results framework. For example, working with the Department for Work and Pensions (DWP), we are planning to test the integration into the Work Programme of a payment for reduced re-offending.

Immaturity of the current market

35. The MoJ must not underestimate the work required to create a stable market and it must take into account the existing cultural differences across the different sectors and the complex nature of probation work. There is also clearly a possibility of early commissioning failures and, in order to maintain public confidence in the system, the MoJ must have clear contingency plans for dealing with any such problems which may arise. Innovation involves risks and those risks need to be managed. (Paragraph 252)

By increasing provider diversity, we are confident that we will attract greater numbers of capable providers into the market. This will increase our scope to build contingency plans, which could include moving to other providers if a particular provider fails to deliver the specified level of service.

By piloting approaches such as payment-by-results, we are able better to understand the risks involved before proceeding to wider implementation.

Transparency and an effective dialogue

36. There is a need for open communication with providers from all sectors to inform the commissioning strategy as well as in any future competitive processes to ensure that the best balance can be struck between efficiency and localism. We are concerned that this does not appear to have been the case to date. (Paragraph 255)

Openness is important – and so is equal treatment of all potential providers. But these two aims can conflict and striking a balance is not always easy.

The majority of NOMS competitions are run as competitive dialogues, engaging key stakeholders, including unions and staff groups, both before and after the procurement announcement is made.

NOMS also consults regularly with representative bodies (including the Probation Association, the CBI, and third sector organisations) which offer a voice to a wide range of local bodies. CLINKS, the umbrella organisation for voluntary and community sector bodies that work with offenders and their families, is funded by NOMS to build local capacity and to facilitate dialogue with front-line service providers.

Implications for training

37. The success of any new commissioning model in protecting the public will be predicated on the existence of strong safeguards to monitor standards of professional expertise. Staff undertaking offender management work on behalf of other sectors will require the same high-quality qualifying training as probation professionals working for trusts. In order to foster some consistency in the specialist skills required to work with particular types of offender, and a high-quality service provided, we would like to see the MoJ working with Skills for Justice to create a framework for both accredited qualifying and post-qualifying training that is accessible to all providers. (Paragraph 258)

The Probation Qualifications Framework is designed to ensure that all staff undertaking offender management work – either on behalf of probation trusts or of other providers – receive the same high-quality training. Under the Regulatory Framework (2010) all providers of probation services must deliver the 10-day *Gateway to Practice* induction programme to all new practitioners, and the PSO learning programme and Diploma course in Probation Practice, level 3 to all new PSOs within a year of appointment. The foundation degree in Community Justice, the Honours degree/Graduate Diploma and the Diploma in Probation Practice level 5 are available to all providers.

The flexibility of contracts

38. The Ministry of Justice will need to ensure that contractual specifications include adequate safeguards for public protection. The current work of probation services is not just about meeting the obligations in their contract; its work is about serving the demands of the courts, which cannot be easily predicted, and being sufficiently flexible to meet the offending-related needs of individuals as and when they arise. The Government must clearly specify in its new commissioning strategy how it intends to ensure that contracting arrangements with providers from other sectors will accommodate these needs and respond to unexpected changes. (Paragraph 263)

Protecting the public is our first priority. When commissioning a service from a new provider, we expect that provider to be able to offer a level of service at least as good as that supplied by the previous provider. Mandatory minimum standards for all core services are set out in the service specifications for probation services. These form the basis of all

contracts and service level agreements with providers and can be viewed on the Ministry of Justice website, at the link below:

<http://www.justice.gov.uk/about/noms/noms-specification-benchmarking-and-costing-programme/noms-directory-of-services-and-specifications.htm>

Diversity

39. From April 2011 the public sector has had a statutory duty to take positive action to eliminate gender discrimination and promote equality under the Equality Act. We would welcome a clear statement in the commissioning strategy about how the equality duty will apply to providers outside the public sector and how the Government intends to ensure that probation and rehabilitative practice is fair and inclusive, particularly in the context of increased provider and professional discretion. (Paragraph 265)

Prior to April 2011, NOMS was required by statute to pay due regard to equality in relation to disability, gender and race in all its functions, including any functions that were carried out by external suppliers. Since April 2011, new protected groups have been added to that list.

Providers outside of the public sector who exercise public functions on behalf of NOMS are also subject to the general equality duty with regard to those functions.

NOMS is fully committed to ensuring that it complies with the equality duty and has built equality considerations into its commissioning and procurement processes. When commissioning a service, NOMS undertakes an equality impact assessment to ensure that the commissioned service is delivered fairly.

NOMS ensures that probation and rehabilitative practice is fair and inclusive by including in probation trust contracts a requirement to report on how equalities issues are taken into account by trusts when commissioning and contracting.

The offender engagement pilot in Surrey and Sussex has shown that offender managers had more purposeful and better focused contact with offenders when given more scope to exercise their professional judgement in deciding how to work with each individual. The Government's policy of promoting greater use of professional discretion is intended to achieve precisely the outcome that the Committee is seeking: responsive practice that is fair to all.

Promoting equality and diversity is central to everything the National Offender Management Service does. Its commissioning strategy (planned for publication in the autumn), will impress upon commissioners their duty to consider the equality impacts that arise through the commissioning process, including those that might result from a change of provider. Individual commissioners must ensure that the services they commission give due

regard to possible equality impacts, represent best practice and, where applicable, comply with the relevant service specifications. All providers, whether from the public, private or voluntary and community sector, will be expected to demonstrate that they can meet the commissioner's requirements for a particular service, including the duty to mitigate any possible equality impacts that might occur during service delivery.

Access to working capital

40. We see that there is considerable potential in social finance, but it will take time to develop. The Ministry of Justice should learn from the experience of other Departments including the Department for Work and Pensions and the Department of Health. (Paragraph 273)

Social investment offers one option for supporting the delivery of offender services on a payment-by-results basis. Through the pilot projects announced in *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*,¹⁰ we will test a range of different funding mechanisms. We will commission a full evaluation of each pilot and publish the findings.

In preparing for our pilot projects, we have considered the experience of the Department for Work and Pensions in running welfare-to-employment programmes on a payment-by-results basis. We have also looked at initiatives within the Department of Health.

Choosing appropriate outcome measures

41. We welcome the Ministry of Justice's review of the local snapshot measure of re-offending. Once a new, more robust, measure is devised, it would be prudent for the Ministry of Justice to commission research to examine practice in the best and least performing trusts so as to strengthen the evidence base. (Paragraph 279)

We are investigating whether meaningful data on the re-offending of offenders supervised by individual probation trusts can be produced after controlling for changes in offender characteristics. We intend to publish some findings from this on-going work in October's quarterly *Re-offending Statistics* bulletin. Pursuing the localism agenda, some probation trusts have also commissioned their own research to learn more about what works to reduce re-offending in their areas.

¹⁰ Cm 7972, December 2010.

Graduated and differentiated payments

42. As outcome-based payment models in other sectors have evolved, differentiated payments have been introduced to suppress the propensity of providers to focus on those who are easiest to help. We urge the Ministry of Justice to ensure that any model of payment by results builds in incentives for providers to work with all offenders from the outset, and that interventions are especially targeted at the riskiest offenders. We favour the development of a graduated payment system which includes some upfront funding, with additional payments based on proxy measures and then ultimately on reduced re-offending. (Paragraph 286)

We will use the initial series of payment-by-results pilot projects to test a range of service delivery models and payment mechanisms. In designing the pilots, we are giving careful consideration to the incentives and disincentives that the different approaches might introduce, and how these could influence provider behaviour.

Developing a business case

43. In any new commissioning model there is a need for a balance to be struck in ensuring that the administrative costs of any new system do not outweigh the potential benefits. The Government's pilots should be designed to enable them to create a business case for a viable model of justice reinvestment to be implemented over the next spending review period (Paragraph 294)

In the *Breaking the Cycle*¹¹ Green Paper, we committed ourselves to applying the principles of payment-by-results to all providers of offender services by 2015. The design of the initial pilot projects, and of any subsequent proposals, will take account of this.

Quality of the evidence base

44. The Ministry of Justice needs to develop a measure that enables the effectiveness of prison and community sentences to be compared more robustly. (Paragraph 296)

In May 2011, the Ministry of Justice published work on the relative effectiveness of a wide range of different types of sentence. It can be found at the link below:

<http://www.justice.gov.uk/publications/statistics-and-data/reoffending/compendium-of-reoffending-statistics-and-analysis.htm>

¹¹ Cm 7972, December 2010.

This work built on an earlier *Compendium of Re-offending Statistics and Analysis*, (November 2010)¹² which provided information on the relative effectiveness of community sentences compared with short prison sentences.

The Committee heard from three distinguished academic witnesses on the question how re-offending can best be measured and how rates following community sentences compare with those following custody. It is clear from the evidence of Professors Hedderburn and Pease that there is no consensus on how outcomes should be compared and that this issue will continue to be the subject of debate. The Government cannot therefore accept that the recommendation “to develop a measure that enables the effectiveness of prison and community sentences to be compared more robustly” should be addressed solely to the Ministry of Justice. A much wider discussion needs to take place – in which the Ministry will play a full part.

Potential to strengthen the evidence base

45. It is important that data and information sharing is not inhibited by the rules governing commissioning and competition. (Paragraph 300)

There needs to be a good understanding of the distinction between information that constitutes intellectual property (which cannot be shared) and good practice in service delivery (which should be shared).

We are committed to raising performance standards across the board. If good practice is identified in a particular service or area, it should be spread across all applicable providers. The restructuring of NOMS headquarters includes the creation of a function within the Commissioning and Commercial Directorate which identifies best practice and disseminates it to all potential and current providers.

Attributing results

46. The Department needs to address the risk that providers may receive multiple payments under a range of payment by results programmes, for example, for employment, drugs misuse and reducing re-offending. (Paragraph 304)

The initial offender rehabilitation payment-by-results pilots will be measured against a single outcome – reduction in re-offending. In developing the pilot programme, we aim to avoid selecting pilot areas where there is a risk of overlap with other pilots.

¹² <http://www.justice.gov.uk/publications/statistics-and-data/reoffending/compendium-of-reoffending-statistics-and-analysis.htm>

**Government Response to the Justice Committee's Report:
The role of the Probation Service**

A number of Government Departments are using, or planning to use, payment-by-results as a means of achieving policy objectives. As the commissioning landscape becomes increasingly complex, it is likely that different payment-by-results programmes will begin to overlap. This could, in fact, be beneficial, since it may increase the incentives for providers to work with offenders with complex problems – those deemed 'hardest to help'.

Recognising this, the Ministry of Justice is working with a number of other Government Departments to explore the potential for joint commissioning of services under a payment-by-results framework. Working with the Department for Work and Pensions, we are planning to test the integration into the Work Programme of a payment for reduced re-offending. We will also be working with the DWP, the Department of Health and the Home Office on eight further projects, testing the use of payment-by-results to deliver drug recovery, employment and re-offending outcomes.



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