



**The future** of public services

## **The voluntary and community sector in criminal justice: a capacity building action plan**

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## Executive Summary

The Ministry of Justice has identified a need to promote the involvement of the voluntary, community and social enterprise sector (VCS) in the development of a diverse market of providers in the *Transforming Rehabilitation* agenda. Accordingly, this report sets out an action plan to develop the capacity of voluntary and community organisations (VCOs) to successfully participate in justice sector payment by results (PbR) programmes.

The report focuses on the VCS, but recognises that capacity building is a 'system-wide' rather than purely 'sector' concern, involving relationships between all stakeholders in an emerging market for rehabilitation services focused on reducing reoffending. In other words, this is not simply about saying the sector has to raise its game but that diverse organisations with different motivations should work together to co-operate more effectively, understand each other and seek to create partnerships which align incentives in their mutual interest.

VCOs are highly diverse, and have different levels and kinds of experience of criminal justice work and PbR contracts. The action plan is structured around four 'stages' of decision making designed to enable VCOs to judge whether to continue with preparations and discussions on participation, or decide that it is 'not for us':

1. Understanding the changing environment
2. Developing and costing the service offer
3. Contract negotiation
4. Delivery and performance measurement.

From this four-stage model, a set of 19 costed priority actions has been developed. These have again been organised sequentially in terms of actions most relevant for VCOs at pre-competition, Pre-qualifying Questionnaire, and Invitation to Tender stage. Each action has been categorised as 'High', 'Medium' or 'Low' priority.

The eight 'high priority' actions are:

1. *Merlin Plus*: developing the existing Merlin Standard as a more practical, robust set of measures embedded within the service specification and contractual terms.
2. *Developing an evidence base in criminal justice*: establishing a centrally developed database of evidence to provide an industry standard baseline and support VCOs to evidence the suitability of their services.
3. *Financial modelling tool*: developing an accessible modelling tool to help VCOs assess the financial viability of contracts.
4. *Information workshops*: covering the key requirements of the specification, commercial principles, outcome measures, and timeframes in order to help organisations gain an overview of the process, likely requirements and challenges.
5. *Reality checklist*: identifying key things VCOs will need to have, or need to address, or be willing to undertake in order to have a realistic chance of accessing the opportunity.
6. *Compact Agreement*: demonstrating commitment to the Compact through explicit reference to its principles in both the service specification and contractual terms.
7. *Negotiation skills*: workshops to strengthen VCOs' knowledge and bargaining position in negotiations over sub-contracts with Prime contractors.
8. *Legal support – terms and conditions check*: an independent, central review of the contractual terms and conditions that each short-listed Prime contractor / lead entity intends to provide to its subcontractors.

# 1. Introduction

## *Purpose of this report*

This report responds to a need identified by the Ministry of Justice to expand the involvement of the voluntary and community sector (VCS) in the development of a diverse market of providers in criminal justice programmes, particularly insofar as these are organised on a payment by results (PbR) basis.

From the descriptive summary of the project, the aim was:

*to design a Capacity Building action plan to develop the capacity and capability of VCS organisations to successfully participate in justice sector PbR programmes...setting out the steps the voluntary sector needs to take to compete in PbR markets in the Justice Sector...The primary purpose of the action plan will be to set out what VCS organisations need to do in order to overcome the barriers which prevent them from competing in the PbR market place.*

## *Structure of the report*

The main report is organised in five sections:

1. In the remainder of this section, we discuss *our approach to the project* and the challenge of VCS capacity building.
2. **Section 2** briefly discusses the *policy context* behind the 'Transforming Rehabilitation' programme.
3. This is followed in **section 3** with a brief review of *existing VCS capacity building initiatives*.
4. The main discussion of the *research findings*, from which our recommendations around priorities for support are drawn, is found in **section 4**.
5. Finally, **section 5** offers a brief *conclusion* with some wider recommendations.

**Appendix 1** sets out the *full VCS capacity building action plan* in terms of targeted and costed priority actions.

**Appendix 2** briefly describes the *research and engagement activities* undertaken during the project.

## *Capacity Building*

The idea of capacity building is highly contested in the VCS, with multiple definitions and descriptions<sup>1</sup>. As a result the project did not adopt a strict definition of capacity building. Discussions of the topic tend, however, to revolve around skills, confidence and awareness within organisations, expressed in terms of improving organisational effectiveness or performance. Most commentators prefer to use the more accessible language of 'support' for organisations in relation to a range of internal and external challenges and demands.

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<sup>1</sup> Cairns, B., Harris, M. and Young, P. (2005) 'Building the Capacity of the Voluntary Nonprofit Sector: Challenges of Theory and Practice', *International Journal of Public Administration*, 28 (9-10): 869-885.

However, there is an important distinction in the capacity building literature between a 'deficit' model, which highlights the skills and resources thought to be lacking in an organisation, and an 'empowerment' model, which aims to strengthen an organisation's ability to carry out its own purposes and mission<sup>2</sup>. This distinction is important because it tends to filter through judgements of what the voluntary and community sector 'needs', especially in relation to involvement in the changing landscape of public service delivery, in criminal justice or elsewhere. This report highlights many examples of strong perceptions and judgements about the (lack of) capacity of the VCS made by other stakeholders, such as Prime contractors, commissioners and social investors.

This raises the difficult issue of purpose, or 'building capacity for what'? There are two sorts of answer to this question. The first has a narrower focus on what support is needed to enable interested VCOs to have a reasonable opportunity to participate in a particular programme or changing policy agenda; for example in emerging criminal justice programmes, including those organised on a PbR basis. This report focuses primarily on this question.

The second answer is broader, and addresses the kinds of support the VCS needs, *alongside other stakeholders* in order to build the capacity of the criminal justice system to meet particular policy objectives and outcomes, in this case to reduce reoffending. In a recent paper for the Big Lottery Fund, Diana Leat<sup>3</sup> argues that we need a 'new map' for an environment which requires everyone to do more with less (Leat 2011: 17). She suggests moving beyond simple and fixed notions of the voluntary and community 'sector', towards thinking about complex systems which operate around particular issues - in this case rehabilitation and reoffending. This might help get beyond some of the stereotypes involved in thinking about the VCS. A systems approach:

*allows us to recognise that voluntary organisations are not isolated behind the walls of sector but are in constant interaction with a variety of other organisations and forces that may push or pull in different directions. Such a perspective sensitises us to the complex environments we live in, the variety of different and changing, direct and indirect relationships we have, as well as the spider's web of points for change interventions. (ibid: 20).*

This perspective has significant implications for how we think about VCS capacity building:

*Conventional capacity-building efforts, rooted in a sectoral model, tend to focus on only one part of what is a complex and fluid system. The assumption is that developing or changing what goes on in the organisation or the sector will enable the organisation to act on its environment more effectively (to raise more money or to demonstrate performance, for instance). But what if elements in the environment are themselves acting on voluntary organisations or ignoring or moving the goalposts, changing the map and the rules of the game?...Using a systems perspective enables us to engage in more sophisticated, sensitive analysis of factors and relationships – especially in a developing environment. (ibid: 22).*

This means that VCS capacity building efforts, and the priority actions which are detailed in the action plan presented here, cannot be divorced from wider concerns to structure and shape the market for criminal justice programmes. This is a matter of the aligning the

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<sup>2</sup> IVAR (2010) *BIG and small: Capacity building, small organisations and the Big Lottery Fund* (London, Institute for Voluntary Action Research), p.15.

<sup>3</sup> Leat, D. (2011) *New tools for a new world (or why we need to rethink capacity-building)*, Big Lottery Fund Research 66 (London, Big Lottery Fund).

relationships between all stakeholders in the system, including the department, Prime contractors, social investors, etc. Although VCS capacity building is important, successful involvement of the VCS in justice sector programmes is perhaps ultimately more a matter of how the field is structured, the 'rules of the game', for example the extent of any PbR component, rather than purely a result of targeted capacity building investment.

### *Our approach*

Leat's model challenges all stakeholders - commissioners, Prime contractors, investors and providers of whatever sector and size alike – to participate in commissioning the most effective services to achieve social change in rehabilitating offenders and reducing reoffending. With this systems perspective in mind, however, we have been struck by an apparent and perceived gap between many VCOs on the one hand, and the world of contracts, PbR, Primes (predominantly, although not exclusively, larger private sector organisations), and social investment, on the other. This is not a statement about a VCS deficit, but a realistic appreciation of the challenges faced by all participants in a changing public services environment.

The 'gap' can be seen as being around three things: (i) different capacities and resources to participate; (ii) different languages, understanding and culture; and (iii) different core competencies. For example, Primes may have expertise in bidding, commercial processes and supply chain management, but lack expertise in frontline delivery, whereas for many VCOs to varying degrees the situation is reversed. Greater understanding and learning is required from both sides of this gap; for example the private sector learning about the VCS as much as the VCS learning about the private sector.

Of course not all VCOs are in the same position. Some have existing experience and capacity from which to draw. Some will have experience of Prime contractor status and will be interested in taking on this role here. However, the direction of policy, with its focus on measurable outcomes and payment by results, appears to be raising the entry requirements for work in criminal justice, while setting demanding and aspirational outcomes. There is a risk, without further action, that it might damage existing VCS delivery, especially for smaller and specialist VCOs, and may limit the VCS's potential involvement in criminal justice work.

The action plan presented here should thus be seen as guidance for steering capacity building investment in bridging gaps to help ensure a diverse provider base. The aim is to enhance the best elements in the (changing) criminal justice field. We have tried to develop an action plan which can harness and combine different forms of complementary expertise from VCOs, Primes, and social investors, drawing on respective strengths to create the 'best of both worlds'.

## 2. Background and context

### *Wider Policy Context*

The Coalition government's 'rehabilitation revolution' is underpinned by the following key policy objectives:

- A rationalisation of government procurement and consequent efficiencies
- Personalised (innovative) services to achieve desired outcomes
- Cost savings through a reduction in the number of service users

These objectives are not new. Dominey's 2012 article<sup>4</sup> explores a trend which commenced in the 1990s: successive governments reducing the service delivery role of the public sector and increasing the contribution made by the voluntary and private sectors. Much time and effort has gone into creating structures and financial mechanisms, including best value reviews, purchaser/provider splits and commissioning, to make this happen. The argument for this approach has consistently been made on the grounds of economy, effectiveness, flexibility and innovation.

The Offender Management Act 2007 further supported this rationale and radically opened up areas of community and prison-based work to competition. Corcoran and Fox, in their forthcoming article<sup>5</sup> state that 'expanding the supply-side of the penal services market initially functioned to stimulate 'innovation' and raise standards through competition.' The Coalition government continues to stimulate the provider base through the rehabilitation revolution, as we see in the most recent consultation document.

### *Transforming Rehabilitation*

In January 2013, the Ministry of Justice published a document concerning the future of the Probation Service and offender supervision in England and Wales. *Transforming Rehabilitation: A revolution in the way we manage offenders* addresses many of Secretary of State Chris Grayling's key policy aims: tackling high reoffending rates, improving rehabilitation interventions for offenders, and making use of a PbR mechanism to reward success. This will be done through a competitive procurement process, which will seek to both drive down the unit costs of services and create opportunities for private and voluntary and community sector organisations to tender for contracts.

The consultation document involves six key proposals and issues:

#### 1. *Competing services in the community*

The provision of most rehabilitative services for low and medium risk offenders in the community, including community orders and licence requirements, will be subject to competition. This represents an approximate annual caseload of 265,000 offenders and £1bn of services. Contracting will be with entities capable of bearing the financial and operational risks. This should open up service delivery to a more diverse range of providers and achieve efficiencies.

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<sup>4</sup> Dominey, J. (2012) 'A mixed market for probation services : Can lessons from the recent past help shape the near future?' *Probation Journal*, 59(4) 339–354.

<sup>5</sup> Corcoran, M. and Fox, C. (forthcoming) 'A seamless partnership? Developing mixed economy interventions in a non-custodial project for women' *Criminology and Criminal Justice* (published online 7 August 2012).

## *2. Rewarding success using Payment by Results (PbR)*

Contracted providers will only be paid in full if they achieve sufficient reductions in reconviction rates for their cohort of offenders. The proposal *does not* suggest 100% of the contract will be subject to PbR – but a proportion will. The preferred measurement of success is binary, but the department will consider how this can be adapted to avoid creating perverse incentives for providers to ‘park and cream’ offenders to maximise income. To support the measurement of outcomes, the document announces the launch of the Justice Data Lab in April 2013, which will give providers access to reoffending data specific to a cohort of offenders.

## *3. Tackling the causes of reoffending*

The Coalition Government has stated its commitment to tackling high reoffending rates, particularly among offenders leaving prison. Interventions delivered by contracted providers should therefore include ‘through the prison gate’ mentoring support and attempt to tackle the root causes of offending behaviour, joining up with other services such as accommodation, mental health and substance misuse services.

Statutory supervision and rehabilitative provision will be extended to offenders released from short custodial sentences of less than 12 months. The vast majority of these offenders currently have no statutory licence or rehabilitation provision but have the highest reconviction rates. Also included in the competition will be services for offenders with protected characteristics, including female offenders.

## *4. Effective cross-sector partnerships*

Contracted providers will be expected to work closely with local services and arrangements across all sectors, including Youth Offending Teams and Integrated Offender Management. It is hoped that the new structures will facilitate co-commissioning with Police and Crime Commissioners, and that the public, private and voluntary sectors can be involved with Community Safety Partnerships.

The consultation document recognises the value of interventions delivered currently by the VCS and encourages partnership working and the creation of consortia of VCS organisations, or private and VCS providers, to bid for the delivery of services. The document places an expectation on lead providers to manage supply chains fairly (to DWP Merlin Standard principles) so that smaller organisations are neither excluded nor exposed to disproportionate levels of risk. It also suggests that the emerging social investment market has the potential to provide the financial capital required for VCS organisations to create commercially sustainable and credible bids.

## *5. Maintaining the public sector’s role in public protection*

The Probation Service will continue to provide advice to courts on sentencing options and will retain overall responsibility for ensuring that risk of harm to the public is effectively managed. This will include the retaining the direct management of high risk offenders, carrying out risk assessments, advising the courts and Parole Board, and handling most breach cases. Contracted providers will be required to report to the public sector any escalation of an offender’s risk of serious harm and any material breach of a community order, suspended sentence requirement, or licence condition.

In addition to its roles in risk management and reporting breach, the consultation document proposes to retain the skills and expertise of Probation professionals through employment in the private and voluntary, as well as public, sectors. It suggests that the public sector can design Mutuals or develop appropriate partnerships with other organisations to bid for



contracts for service delivery. To support this, the Cabinet Office will design a package of support through the Mutuals Support Programme.

#### *6. National commissioning*

Those services subject to competition will be commissioned centrally across 16 proposed contract package areas, which align to Police and Crime Commissioner and local authority boundaries. This model will align commissioning boundaries with those for services provided by other government departments, for example the DWP Work Programme.

The consultation document suggests that reorganisation will lead to fewer Probation Trusts than exist currently, with the possibility of one national Probation Service. Transition to this new structure is intended to begin in 2013.

#### *Market response to the consultation process*

Shortly after releasing the consultation document, the Ministry of Justice ran 20 market engagement events, spanning England and Wales and the voluntary, private and public sectors. Feedback of particular relevance to this project includes:

1. *Payment:* many attendees felt that there needed to be some security for providers whether in the form of a limit on the proportion of PbR for VCS providers or otherwise. It was also clear that the timing of payments and a lack of working capital has a significant impact on the VCS's capability to compete for contracts. There was general support for the use of interim payments as a mechanism to soften the time lag in payments and to overcome cash-flow issues.
2. *Supply chains:* attendees were keen to talk about what supply chain governance arrangements would be implemented, often referring to the DWP's Merlin Standard. Concerns centred on the transfer of risk down the supply chain and the importance of diverse and sustainable supply chains, especially for niche groups of offenders such as women.
3. *Measurement:* as well as general dissatisfaction with a solely binary measure of success, many VCS providers suggested considering intermediate outcomes such as progress in employment, accommodation and drug treatment to support a reoffending outcome, as well as measures of frequency and severity of offending.

This project's survey, *PbR Support*, which was completed by 120 VCS organisations operating in the criminal justice system, asked the question: 'Have you read the consultation paper, 'Transforming Rehabilitation: a revolution in the way we manage offenders?' 72% of respondents answered 'yes', but a significant minority, 28% answered 'no'. This surprising result could be seen to support a number of suppositions: that some individuals within the sector are not interested in engaging at commissioner/strategic level, or do not consider it appropriate because of their role within the organisation; that some feel apathetic towards the consultation process; that the sector finds it difficult to access engagement opportunities, or does not have the capacity internally to do so; or simply that responding to consultation opportunities is not a priority.

### 3. Existing capacity building initiatives

We undertook a brief review of current VCS capacity building initiatives at an early stage in the project. The aim was to provide an indication of the scale and scope of existing provision and how this might connect with the recommended actions suggested in this report.

VCS capacity building and infrastructure has been significantly reduced in recent years compared to previous investment through the ChangeUp programme and via Capacitybuilders' array of national support services. Attention has shifted somewhat from generic capacity building to targeted support programmes around, for example, investment readiness.

It appears that the only organisations which provide capacity building specifically for VCOs operating in the criminal justice sector at a national level are Clinks and NAVCA. This is provided, for example, through training courses on 'Understanding the Criminal Justice System', 'Commissioning and Collaboration' and 'Demonstrating SROI and outcomes'; seminars on 'The fundamentals of finance for contracts' and 'managing the challenges of new payment models'; and bespoke 1-2-1 support.

Other capacity building can be split into the following groups:

- Market-agnostic, VCS capacity building relating to relevant issues such as commissioning and procurement or partnerships and consortia, for example provided by NCVO (Sustainable Funding, Public Service Delivery, bespoke support), ACEVO, DSC and NAVCA (Local Commissioning and Procurement);
- Market specific capacity building e.g. NCVYS (youth sector) and SEUK;
- Issue specific capacity building e.g. Ability Net (IT - professional matching programme), Charities Evaluation Service (evaluation, quality and compliance) and Charity Finance Group (charity finance and investment);
- Mentoring/coaching to VCS organisations, in which volunteers from the private sector are matched with VCS organisations requesting support e.g. Pilotlight, Business in the Community (e.g. Business Connectors) and The Cranfield Trust;
- Central government schemes such as UKCES' Links Service (not yet operational) and Cabinet Office programmes including Commissioning Academy Masterclasses; and
- Social investment programmes e.g. Investment and Contract Readiness Fund managed by the Social Investment Business.

It was not within the remit of the project to assess the overall scope of capacity building activity. Many initiatives appear to cast a wide net across the sector, rather than concentrate on a particular field or programme. Whilst many of the actions recommended in this report can link quite well with existing activity, there is a need for more focused support in relation to the *Transforming Rehabilitation* agenda.

## 4. The case for targeted actions

In this section we establish the case for the targeted actions outlined in the action plan. We consider the barriers the faced by the VCS, and assess the solutions which have been offered through the engagement process described in Appendix 2. We examine the results of the survey and of our direct engagement activities with the sector, Prime contractors, commissioners, social investors and others.

*A variable picture: stages of decision making and involvement*

The VCS face the emerging context in different positions. VCOs have different levels and kinds of experience of criminal justice work, PbR contracting, and social investment, with different resources and existing capabilities. Some are working in more or less specialist areas (clients, field), some in single or different localities. They can continue to play a role in the market as part of a range of structures, including as a Prime, sub-contractor, joint venture and as part of a spin-out.

In recognition of this fact, we have structured this section around different 'stages' in the process of getting involved in PbR contracts in the emerging criminal justice market. Each stage involves different requirements, key decisions, deeper involvement, and specific kinds of capacity building support.

We present this as a 'journey' with different barriers and pitfalls to overcome or avoid at each stage. For example, imagine a VCO working in criminal justice, thinking about what they need to do if, seeing a new opportunity, they want to get involved in this process, or if already funded to provide these kinds of services, how they would need to adapt to new policy directions and funding mechanisms in order to continue in this field.

Facing each organisation is a set of key decisions to make, based on increasingly complex knowledge, understanding and capabilities. There are **four key stages of decision-making** for consideration:

1. **Understanding the changing environment** - awareness/understanding of the policy context, field developments, PbR, key players, cultures and language, and the likely demands of the new rehabilitation framework. This enables an organisation to gain a basic appreciation of the opportunity, and to make an initial assessment of whether it aligns with its mission and charitable objectives without compromising its independence.
2. **Developing and costing the service offer** – understanding what can be offered, with what risks, the service proposition, track record and demonstrating existing outcomes, alongside the cost base, resource/cash-flow required to underpin the work, forecasting performance/financial modelling, and the potential role of social investment.
3. **Contract negotiation** – bidding, consortia development, negotiating with Primes and social investors, understanding offers and sub-contracts, legal issues.
4. **Delivery and performance measurement** – organising and managing staff for delivery; performance management, data collection and analysis.

VCOs will not necessarily proceed in a step-wise linear fashion through the four stages. They may be working on each of the four in parallel rather than in strict sequence. They may have experience and strengths in some areas rather than others. The action plan is then structured around what is needed to support them at each stage. This is designed to enable them to make the decision whether to 'carry on' with preparations and discussions or whether it is 'not for us'.

## Stage 1 – Understanding the changing environment

The first stage examines the basic awareness and understanding the sector has of the changing policy context signalled by *Transforming Rehabilitation*, and its implications for the work of VCOs in the criminal justice sector.

This involves understanding the background and rationale for reform of rehabilitation services, and the direction and shape of the emerging policy framework. It requires an understanding of the likely funding and outcome mechanisms which will be in operation, such as PbR contracting systems, social investment and reoffending outcomes. As such it includes the need to understand the potential role, ways of working and even the language of other organisations, such as private sector Primes, social investors, remaining public sector probation services and spin-outs, Police and Crime Commissioners and local authorities.

Overall, the department is attempting a rapid reshaping of services in a financially very constrained environment, and is aiming to reduce costs and release resources. The department has to reduce its budget by £2.5bn by the end of 2014/15. As one participant put it, the *'VCS needs to recognise there will be significant changes to the structure/models over the first couple of years – Primes are being asked to reduce costs and increase workloads'*.

Increasing the scope of services while reducing costs has significant implications. VCOs will therefore need to appreciate the commercial reality of the exercise, and adjust expectations accordingly. There may not be significant opportunities for the majority of the VCS. One Prime contractor thought there was a danger of the sector *'being oversold again'*. As a result, VCOs, particularly smaller organisations, need to be able to make what was described as *'an honest assessment of the opportunity'*.

In our survey of VCOs, we asked respondents to list the five most important support activities from a list of 18 which would help them win more PbR Prime contracts and subcontracts in criminal justice. Just under a third of respondents (32%) wanted help with *'understanding the changing commissioning environment in criminal justice'*, and a similar proportion (31%) wanted help with *'networking with commissioners and Prime contractors'*.

Just over a third of respondents (35%) wanted help with *'understanding the risks associated with PbR contracts'*. Many survey respondents had no experience of PbR contracts from which to draw, and were therefore in uncharted waters. This was a particular concern for smaller organisations. One noted that they *"would like to know more about PbR and how to mitigate risks for small Voluntary Sector Organisation."* For some, issues of ethos come into play: 18% identified *'understanding of our values and ethos'* as one of the three most important factors (from a list of 12) when considering whether to take on future PbR contracts in criminal justice.

Our engagement activities with potential and current Prime contractors (from the private and voluntary sectors) and with social investors highlighted a perception of VCOs as being rather naïve about the emerging market, contracting and the implications of PbR in criminal justice. This perception seems in part to be based on a view of the sector's experience in the Work Programme, where, for example, interviewees reported organisations struggling with their relationship with Primes, waiting for referrals, paying staff in the meantime, and consequently going bust and unable to repay investors. A number of social investors suggested that there is a significant risk that VCOs do not really know what they are getting into and do not understand the risks.

From a Prime's perspective, the most successful VCOs are those that understand the contracts and what then is required of them. Primes believe that significant elements of the

VCS will try to sell what they want to deliver (their existing services) or what they see as meeting the existing need, rather than what is required/wanted by the commissioner. VCOs are perceived by Primes to want the marketplace to adapt to them, rather than them adapting to the marketplace. A key element here appears to be a need for VCOs to gain a basic understanding of the likely opportunities through *Transforming Rehabilitation* and the emerging 'rules of the game'.

This should apply to all potential participants in the market, not just the VCS. As further information is released about the commissioning of services, there is a need to be very clear what the requirements of the specification are, that is what is in and out of scope, to show what services are, or are not, needed within the supply chain. Alongside this, our engagement activities have suggested a gulf in understanding, and different perspectives, between VCOs, Primes and social investors.

From these considerations, there are two specific issues that VCS organisations must think clearly about and understand before even thinking of entering into the market:

1. *What do commissioners want?* In the new environment, money will increasingly be aligned with 'hard' outcomes e.g. reduced reoffending, as opposed to 'soft' outcomes e.g. increased confidence and self-esteem (even though these can be evidenced, maybe needed and wanted by service users, and maybe important as intermediate steps towards 'hard' outcomes). There might be a need for recognition in the commissioning process of the importance of 'soft' outcomes and the role they play in offenders' rehabilitation, especially in work with those with complex needs.
2. *Understanding the structure of the new market.* Whilst there is governmental support for collaborative models such as mutual/spin-outs, most contracts are likely to be based on a traditional Prime-sub contractor model. If so this would mean Primes would be the top tier providers. First-tier sub-contractors are likely to be national / regional organisations of scale, where they would need to be able to take on risk within contracts. TUPE may apply to these organisations. Second-tier sub-contacting would be likely to be commissioned on a thematic basis, e.g. mentoring, housing etc, and from smaller local VCS organisations. This may be on a call-off basis for specialist support, much like the Work Programme. The risk here is that, as with the Work Programme, smaller providers sign contracts, scale up, but then do not receive any referrals. Prime contractors are likely to be keen on consolidated collective offers from local consortia of VCOs, as this will involve fewer meetings and negotiations in a limited timeframe and a more efficient model of contract management. As a result, VCOs may need to embrace collaboration, with some recognition that not every organisation will necessarily have a role to play.

The main **capacity building priorities** which may respond to these concerns of 'understanding the changing environment' include:

- *Information workshops.* The aim would be to help organisations gain an overview of the process, likely requirements and challenges. VCOs would be better informed of the process, and able to make an initial judgement about whether they can or want to proceed further.
- *Reality checklist document/online self-assessment.* A simple check list of key things VCOs will need to have, or need to address, in order to have a realistic chance of accessing the opportunities in the commissioning process. Again VCOs would be better informed of the process, and particularly the likely demands of proceeding further.

- *Building relationships.* Cross-sector seminars and workshops between different groups to build relationships. This would help overcome some of the stereotypes and perception gaps which appear to have developed between different stakeholders. Each would have a better understanding of other stakeholder groups, including their interests, what matters to them, their ways of working and language.
- *Support for collaboration.* Helping smaller organisations develop partnerships or consortia offers of subcontracting, and helping larger organisations to form partnerships to bid at Prime level.

## **Stage 2 – developing and costing the service offer**

The second stage involves VCOs understanding the nature of and finances supporting their service offer. There are three elements to this stage: developing a service offer and understanding impact, understanding the costings underpinning this, and the potential role of social investment in supporting delivery in a PbR environment.

### *Understanding services and impact*

Organisations will need to think through and articulate their service proposition: what kinds and levels of service can be offered, and with what risks? And in contrast, what are the limits beyond which they will not offer to run services? This may require considerable analytical skills, in order to assess reoffending data and the contribution an intervention/service may make. Also included here is the need to think about marketing services to other organisations in the field: commissioners and Prime contractors. This involves an appreciation of the VCS's experience, track record and ability to demonstrate the positive outcomes from their existing work.

The main concern raised by the sector through the research was around how organisations can demonstrate the outcomes and impact of their work. For example, in answer to the survey question on the most important support activities (from a list of 18) which would help VCOs win more criminal justice PbR contracts:

- *'demonstrating the outcomes achieved by your services'* was ranked 4<sup>th</sup>, identified as a priority by 35% of respondents, and
- *'raising your organisation's profile'* was ranked 9<sup>th</sup>, identified by 29% as a priority.

As one respondent noted: *"It would help us to be able to monitor our impact in reducing re-offending so that we can demonstrate the effectiveness of our model and therefore assess the risk of a contract. This data isn't easily available"*.

This relates to a concern around the evidence base for reoffending, and particularly the process by which this is translated through contract offers into performance targets and expectations. In our survey, the *'transparency of calculations and evidence base behind minimum performance expectations'* was ranked as the 2<sup>nd</sup> most important factor for VCOs when considering taking on future PbR contracts in criminal justice, identified by just under half of respondents (46%). A call for greater transparency, and standardisation, in financial and impact models was also raised in our VCS engagement events, including clear criteria on measuring outcomes and results, and how risk and profits are shared throughout the supply chain.

Social investors were also concerned about data. One interviewee described the need for *“all relevant data to be published in order that bidders and investors can correctly assess the level of risk taken on”*.

However, support needs around services and impact are not just a matter of data availability. As our discussions with social investors highlighted, VCOs, but also Prime contractors and commissioners, will be expected to have considerable information management capacity, including technological and administrative capacity to collect, manage, process, analyse, understand and report on data requirements. As one respondent suggested, *“charities often underestimate how much work is involved – particularly in terms of data collection.”*

### *Costing services*

Understanding the finances associated with contracting in criminal justice, as in any field, is also vital. Here we examine issues around costing services. VCOs will need a sophisticated understanding of their (unit) costs, the organisation’s overall financial position, and the resources required to support service delivery in advance of payment. For many this will involve taking a different approach to financial planning and management. From this they can set prices for their services and understand margins. This may require support around financial modelling and forecasting cash-flow, especially in assessing the potential risks and returns from PbR contracts. The financial reporting of PbR contracts may also require VCOs to use different accounting principles than those used with grant funding.

In our survey, from the list of 18 support activities which would help VCOs win more PbR Prime contracts and subcontracts in criminal justice, *‘costing and pricing your services and demonstrating value for money’* was ranked as the second most important activity overall. Just under half (46%) wanted help with this. A smaller proportion (28%) identified *‘managing your cash flow and developing robust financial models’* as a high priority activity.

Prime contractors suggested that VCOs needed support around developing their commercial skills, particularly around pricing their services, and thus understanding whether a sub-contract offer would be financially viable or not.

### *The role of social investment*

In our engagement discussions, VCOs raised significant concerns about cash-flow and working capital. Many VCOs operate services with negligible margins, and may not have sufficient reserves or working capital to support up-front service delivery in advance of payment, and the risks are likely to be too high for many VCOs. VCS participants suggested that the payment model needs to recognise this and be appropriate for different kinds of provider and service. For smaller and specialist organisations, it was suggested that payment may need to be for activity rather than by results.

In our survey *‘financial support with up front capital/working capital’* was considered the most important factor (out of a list of 12) for VCOs when considering taking on future PbR contracts in criminal justice, and identified by over half (52%) of respondents. *‘Accessing appropriate investment’* was identified as a support need by only just over a quarter of respondents (28%). However, around two thirds (68%) indicated that they do not know how they may be able to access sources of (repayable) investment to finance their organisation’s delivery of PbR contracts.

The majority of respondents had not sought social investment before, indicating a range of reasons including that it is still relatively new and unknown; risk aversion; historical reliance on grants; using reserves instead and not needing to access social investment; and a lack of desire to be in debt, linked to a belief that many would not be able to pay the money back.

Only 19% had previously sought investment to finance contract delivery and this was unanimously rated by respondents as 'very difficult'.

Our discussions with social investors confirmed the picture that VCOs are not particularly aware of:

- the potential role of social investment;
- the range of investment products and terms;
- the range of investors, how to approach them and their expectations; and
- the skills and capabilities required to meet investor's criteria of investment readiness.

The experience of the Work Programme suggests that a number of VCOs sign up to PbR contracts that can only be fulfilled if they then raise finance to enable them to undertake the work. Yet after signing up to these contracts, they have not actively sought finance. It is likely that reticence to seek finance is part of the reason for this inactivity, although it may also be the case that organisations have thought better of attempting to deliver the contracts based on the terms on offer.

The main **capacity building priorities** which may address these issues include:

- *Help with costings.* Smaller groups need help with understanding how to cost a service, and the differences between cost, price and surplus. Support might help VCOs build realistic costs models for different levels of performance; pricing must cover variable costs and make contribution to fixed costs.
- *Help to understand risks associated with PbR.* Support in identifying (and illustrating) services that are more/less suitable/appropriate for a PbR contract.
- *Help with identifying/accessing social investment opportunities.* Support and training, plus neutral and realistic guidance and advice on the role, pros and cons of this form of contract/financing, including for trustees in order to understand the issues and implications.

### **Stage 3 – contract negotiation**

This stage takes a VCO beyond understanding the emerging market, what they can offer, and assessing the financial aspects of their services, into the processes of bidding (for example Expressions of Interest and further bids), developing partnerships and delivery consortia and negotiating with Primes and social investors. This involves support needs around understanding the terms and likely implications of offers and sub-contracts, if and when to withdraw, with expert legal help in understanding contracts.

We have identified two key themes within this stage. Most concerns are of a legal and contractual nature, and we deal with these first, but there is also a smaller group of issues connected to general concerns about collaboration, sub-contracting and being present in supply chains.

There is clearly a very strong appetite within the VCS for greater transparency, clarity and fairness to be built into contractual relationships with Primes. In our survey of VCOs, we asked respondents to list the five most important support activities from a list of 18 which would help them win more PbR Prime contracts and subcontracts in criminal justice. Half of the respondents indicated that their priority was '*negotiating fairly priced, sustainable contracts with Prime contractors*', and this was the highest ranked support activity on offer.



Equally there is a very strong demand for guaranteed minimum referral numbers in sub-contracts. Similarly, when asked about the most important factors involved in considering whether to take on future PbR contracts in criminal justice the answer 'a guaranteed number of referrals' was chosen by 45% of respondents and ranked third out of twelve factors.

Taken together with evidence from the Ministry of Justice's consultation events this seems to be based on experiences (or perceptions) to date that the VCS finds it very hard to deal with, for instance, staffing and forward planning when it has no guarantee of client referrals. But equally VCOs seem to expect and desire more clarity around what they are expected to deliver: their role in the relationship, and clarity in contracts on performance measures. As one survey respondent put it:

*I cannot emphasise enough the importance of fair contracts. We all agree that poor performance and failing programmes should not be rewarded but equally small charities have to be given the investment required to be able to show those results.*

In short, the VCS seems to want a clearly articulated and transparent payment structure embedded in the contractual process. Fears were also expressed about the 'protection' of independence and the campaigning role for VCS engaged with PbR and the Probation reforms – suggesting advice for the VCS is needed to negotiate contracts that allow for their campaigning/advocacy role on behalf of service users. This highlights the concern that the VCS do not want their campaigning and provider roles to be in conflict<sup>6</sup>.

However, it is perhaps telling, and problematic, that in responses to the survey question on the most important support activities (from a list of 18) which would help VCOs win more criminal justice PbR contracts, respondents ranked legal issues very lowly: i.e. 'support with legal issues e.g. TUPE transfers and liabilities, reading commercial contracts' was only chosen by 20% of respondents and ranked 14<sup>th</sup> from 18. Similarly the option 'understanding the terms and conditions of your contract/subcontract' was only chosen by 12% and ranked 15<sup>th</sup> of 18. As we have seen, these are clearly going to be very important issues for VCOs to thoroughly appreciate and understand.

It is perhaps for this reason Primes delivered some stark messages for the VCS. There are two main messages:

1) *VCOs need to understand the commercial realities.* Primes are typically large commercial organisations and they do not have an imperative to support or underwrite VCS (or any other) providers. They may do so with individual providers, or across the board, but this is unlikely to become a general trend. Much will depend on the requirements incorporated into the commissioning process. Respondents from Primes feel that the VCS does not understand the basic commercial reality of the opportunities ahead, particularly the difference between the reality and perception of what is available. A general observation is that VCOs try to sell services that are unaffordable within the cost model of the system, and then complain that Primes are not purchasing their services. Primes will not invest in services which do not generate a return. Therefore Primes felt that a much greater understanding of the cost model and VCS organisations' unit rates are required.

2) *VCOs need to understand the head contract.* The Work Programme illustrates this point: generally speaking contracts do not guarantee volumes: while sub-contracts may have

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<sup>6</sup> As recently highlighted by the recent report of the Panel on the Independence of the Voluntary Sector (2013) *Independence under Threat: the Voluntary Sector in 2013* (London, The Baring Foundation, Civil Exchange and DHA) <http://www.independencepanel.org.uk/>

indicative volumes, they also have a clause clearly stating volumes are not guaranteed, yet subcontractors have often complained when they do not receive referrals. Providers often do not appreciate the risks involved with the contracts they are taking on, either because they do not review the contracts properly, or they do not understand the head contract and the implications that has for their own contract. This highlights the need for support to understand the contracts / terms and conditions that they might sign up to. It is therefore of some concern that these issues emerge from the survey as being of relatively lower priority.

Though these messages from our engagement with Prime providers seem very strong, there is clearly a sense in which both sides need to understand each other's perspective better, echoing some of the issues and suggestions raised in stage 1 above.

When it comes to consideration of the potential supply chains that they might be involved in, the major expectation from VCOs is a wish to see an equal spread of risk and opportunity between Primes and subcontractors. Other relevant issues that were considered important in the engagement events included transparency around the data that would be used to assess outcomes, and concerns about data sharing between organisations in the system and particularly concerns about commercial confidentiality. It was argued that failure to share information across organisations would hamper the spread of learning and innovation, and also make it difficult to ensure accountability, particularly of Primes' performance. There was appetite for a mechanism to enable challenging of Primes when they were seen not to fulfil their side of the contract: 'a Merlin Standard with teeth' (Merlin Plus). It was suggested that there should be a standardisation and central collection and dissemination of performance data, presumably overseen by the department. A closely related suggestion was for 'open access' to data on effectiveness of different approaches to re-offending. On a more general point: VCOs seemed to recognise the relevance and potential of working in consortia, with 30% of respondents choosing the option '*forming consortia and partnerships*' as a support activity and it was ranked 11th from a list of 18.

In summary, specific problems and areas that need to be addressed:

- Feedback from Primes was that VCOs often submit *poor quality Expressions of Interest*. The Merlin Standard means that Primes have to use a robust and transparent selection process, so services must be well described to enable this, but this is not always the case.
- There is a need for *negotiation skills* so that both parties to a contract know what is agreed, volumes (or lack of), and unit rates. Verbal agreements and discussions are not enough – deals need to be in writing.
- The VCS needs to understand *performance requirements* – and the need for monitoring accurately and rigorously.
- The VCS needs to be very clear that *TUPE* may play a prominent role in these contracts, in many cases if VCS organisations are not in a position to transfer at a significant scale they will not be a significant player.

The main **capacity building priorities** arising from these discussions include:

- *Brokered talks* between the VCS and potential Primes to build sub-contracting relationships. This could extend to broader facilitated exchanges identifying ways to work across different organisational and sectoral cultures, that is, working across private, public and VCS. For example, our engagement activities suggest that relationships between private sector Primes and social investors are under-developed.

- *Legal support and advice* - an infrastructure legal group to support all legal-related advice: including for example contract negotiation – pre and post-contract, TUPE, pensions and employment issues, and conflict resolution through arbitration/mediation; professional advice while running the service.
- *Support for collaboration and consortium building*. This would include the ‘nuts and bolts’ of forming consortia/partnerships when organisations are of different sizes, developing partnership agreements, sharing good models of collaboration where overall partnership achievements and individual contributions are recognised.

## **Stage 4 – delivery and performance measurement**

Beyond contracting, stage four involves the support needs around actual delivery of services under (sub)contract. This involves understanding the delivery requirements of service fee and payment by results elements of contracts, and organising and performance managing the staff to meet them. Stage four also involves supporting the capacity for collecting, managing, analysing and interpreting outcome data.

Generally speaking we have identified a considerable mismatch between what VCOs told us at engagement events and through the survey and the messages that have come back from consultations with potential Prime organisations. From the VCS perspective, there is a very strong desire for clarity, transparency and to be given a very clear steer from Primes and the commissioning process. But the VCS itself appears to lack a full appreciation of the need for, and the need to build capacity in its own measurement and evidencing of impact. However, it is also important to recognise that VCOs that have been involved in criminal justice have not necessarily to date been expected or required to do so.

A clear indication of the VCS perspective was when asked to rank options in response to the question ‘Which of the following are most important for your organisation when considering taking on future PbR contracts in criminal justice?’, the option ‘*transparency of minimum performance expectations and any variations*’ was chosen by 39% and ranked 4<sup>th</sup> of 12. From the sector engagement events the message that came through was that VCOs are very concerned to get a clearer appreciation of what is expected of them in delivery (but it is important to note that there was also scepticism towards the basic model of PbR and the metrics involved). So for instance VCOs expressed an expectation for a clear framework and some involvement in defining the models for assessing and demonstrating impact and in clarifying the timescales over which measurements are made.

There was particular disquiet about the advent of a binary metric in reoffending outcomes. Participants at a number of sector events expressed strong disapproval of binary measures and expressed a desire to work towards measures of ‘soft outcomes’. They were interested in whether outcomes could be broken down into intermediate steps and whether ‘distance travelled’ measures would be considered and developed, and that this should be set within a comprehensive framework that set out what the supporting evidence would be.

One interesting idea that was floated at engagement events was the notion of co-production of a list of impact measures for demonstrating outcomes at start of the process, and identifying what/how you get the evidence. The VCS should be involved in determining what the outcome measures and metrics should be. This would involve considerable investment in up-front discussions and dialogue. There is a need to recognise that there may be a need for different outcome measures for different groups/interventions e.g. families, women, BAME, drug and alcohol services.

The engagement events suggested that VCS organisations did not rate the need to provide evidence of outcomes or the need to understand their own impact very highly. There is almost certainly an issue of scale here, with smaller organisations in particular less likely to be aware or to have the capacity to engage with these issues. However, evidence from the survey backs this up, with respondents giving low priority to the option *'support to fund and implement data collection and management systems'* when asked the most important factors for your organisation when considering taking on future PbR contracts in criminal justice – it was only chosen by 19% and ranked 8<sup>th</sup> of 12 factors. And similarly, the option *'published monthly provider performance tables'* was only chosen by 4% and ranked 10<sup>th</sup> of 12.

On the other hand, and somewhat in contrast, when asked in the survey about the support required to enhance the delivery of PbR contracts, organisations ranked, *'demonstrating the outcomes achieved by your services'* and *'managing the performance of the contract'* as 2<sup>nd</sup> and 3<sup>rd</sup> out of 19 options.

Prime contractors tended to take a more basic and challenging attitude towards the VCS, particularly when it comes to the issue of evidencing the impact of services and carrying out robust monitoring. As one respondent stated: *"VCS providers need to understand performance requirements – and the need for monitoring accurately and rigorously"*. As we have noted, from a Prime perspective there was a sense that VCOs need to provide a clear explanation of service, and what value they can provide to the Prime: *"Everyone thinks they play a vital role – but most VCS providers struggle to provide evidence of their success / value to Prime"*. A lack of evidence of impact from the VCS is a consistent theme, and there is concern about unsubstantiated claims; for example as described here: *"Lack of robust evidence supporting VCS performance claims – they consistently over promise"*. This suggests that this is an extra stage of 'maturity', building on the initial understanding that VCOs need to have to engage in this kind of environment (i.e. Stage 1 above). In short, they are being required to understand the requirements of the specification, and provide good evidence of their ability to deliver these requirements (or parts of) it.

Primes reiterated the following:

1) *Clarity of the service offer and evidence of impact.* A common theme was that the VCS are regarded as very poor at providing robust evidence that their services deliver the outcomes that are claimed, as one stated: *"the VCS often struggle to deliver core outcomes – in the Work Programme this is Jobs. Many providers claim to be successful but few have the evidence to back it up"*. An intuitive or gut feeling of success, or a genuine belief that the services work is not going to be credible without supportive evidence.

2) *Aligning evidence of impact with commissioner requirements.* An organisation's impact needs to correspond with the requirements of the contract specification, and this needs to be evident to any Prime. Understanding of what is wanted needs to go hand in hand in what VCS offer and how they evidence it. For example: the "black box" approach means services provided under contract by Primes are not necessarily those sought by the service user, but necessary to achieve the outcomes sought by the commissioner. While there may well be a case for 'soft outcomes', unless an organisation can demonstrate a clear correlation between the soft outcome they deliver, and the hard outcome the commissioner wants, e.g. 60% of the women who complete our self-esteem course find work with 85% sustaining employment for 13 weeks (so 51% of completers), then the Prime is unlikely to pay for that activity.

A similar message came from the social investors that were consulted in this research. From their point of view investors need to understand the likelihood of VCOs being able to deliver against the outcomes which are expected of them. It was suggested that the VCS needs to

work on its evidence of delivering outcomes in order to stand it in good stead in its negotiations with Prime providers; contracts “*will be delivered by many unproven contractors testing new approaches and introducing new services*”. This raises a number of barriers: do VCOs have a track record of work sufficiently similar to what is expected of them under the PbR contract? And are VCOs able to convincingly demonstrate the delivery of the specified outcomes?

The main **capacity building priorities** under stage 4 are:

- *Support for evidence gathering and reporting.* Meeting the costs of proving/evidencing impact – who meets the costs of training or employing new staff for monitoring and reporting requirements, and for re-training and continuing development as and when circumstances/measures change?
- *Impact measurement.* Support for the VCS to develop appropriate outcome tools, for example quick tools to aid data collection and show impact; increase understanding of impact *within* organisations.
- *Co-producing an evidence framework.* It was suggested that there might be a role for the sector’s voice in arguing for, and helping to develop – co-produce – a national framework for intermediate outcomes, in contrast to binary metrics.

## 5. Conclusion and Wider Recommendations

The *Transforming Rehabilitation* agenda signals the beginning of a process of radical and significant change in the nature and structure of rehabilitation services over the next few years. The consultation paper identifies the importance of VCS participation in the process. This report has examined how best to support this objective with targeted resources for capacity building.

Through a literature review, an online survey and engagement activities with VCOs working in criminal justice, social investors, commissioners, and prime contractors, we have considered a range of evidence on different concerns and capacity building support priorities for the VCS. The action plan has emerged from an assessment of support needs and priorities at different stages of decision making for VCOs involved in rehabilitation. It is designed to assist organisations to make informed and intelligent decisions about their involvement in the reform process, and to understand how and when to say 'yes' and when to say 'no'.

As part of our engagement process, we spoke to one CVS infrastructure organisation which formed a consortium of local providers in order to negotiate collectively with Primes during the Work Programme commissioning process. Their negotiations resulted in the whole consortium withdrawing from negotiations because the terms provided were untenable:

*'When the relevant Work Programme prime contractors were announced we met with each of them to discuss possible subcontracting opportunities. We were keen to ensure the inclusion of relevant VCS organisations in delivery. Initially our offer was that we could be contracted to coordinate the provision offered by local VCS organisations. One of the primes met with us to discuss this offer; however they were keen for us to coordinate a programme across the entire contract package area. After some negotiations and deliberations we agreed to be subcontracted to provide this service. We did not hear from the prime for some time.*

*Eventually, they got in touch with us - but only days before the contract start date. However, having been sent due diligence documentation, it was revealed that there were undisclosed TUPE liabilities, which had not been raised at previous meeting or in correspondence. This made the whole situation untenable for us and our partners. The network subsequently withdrew its offer.'*

We believe this example to be an excellent illustration of a collective of VCOs knowing when to say 'no', and opting out. On a wider scale, this strengthens the VCS's negotiating position. We recognise that fewer VCOs choosing to participate in the rehabilitation revolution may be a consequence of this action plan. This illustrates how providing a service needed by the beneficiary (capacity building the VCS), will not necessarily provide the outcome sought by the commissioner (increased involvement in PbR contracts).

### *Wider recommendations*

This report has been prepared whilst the consultation process for *Transforming Rehabilitation* has been underway. The emerging shape and structure of the new rehabilitation market are thus unclear and still to be determined. In developing this action plan we have gathered a wide range of opinions and suggestions which fall outside of the scope of this project. In the interests of sharing good practice, we include recommendations

for The Authority to consider as they continue to develop their *Transforming Rehabilitation* competition.

It is arguable that the way the commissioning process for this market is structured may have more of an impact and influence on the role and participation of the VCS than an earmarked budget for capacity building. The scoring criteria, service requirements, and commercial structures will incentivise and drive the behaviours of bidding entities, enable or exclude participation by significant elements of the VCS, and consequently determine whether or not a diverse or homogenous marketplace is created.

For example, we note that there remain questions about the suitability of the PbR model for many organisations in the sector – particularly those providing specialist services to women, black and minority ethnic offenders and the arts as well as those motivated by faith. For these groups it is important that other strategies (such as a community engagement strategy) are developed and supported by different funding mechanisms, and through a recognition of the value of interim and soft outcomes, as well as success rates of their current services. A potential funding mechanism could mirror that of the Jobcentre Plus Flexible Support Fund, which provides small amounts of funding to local VCOs to enable the delivery of specialist services which sit outside mainstream employability provision.

We believe that the solution to creating the right behaviours in the supply chain is to demand greater transparency, not least in contractual terms (including clarity around expected volumes and revenues) between Primes and sub-contractors, responsible market stewardship on behalf of Primes, and open book accounting and open data, as well as whistle blowing mechanisms and complaints advocacy. Equally important will be adherence to the principles of the Compact and to the Social Value Act. Nonetheless, the capacity building actions proposed here may help lever additional resources or bend existing initiatives to widen the reach of the plan.

Finally, we believe there would be significant value in establishing a working group, potentially led by The Panel on Independence of the Voluntary Sector, and including a leading economist, business school, public sector markets expert, and the OGC to undertake a study on the behaviours, motivations and incentives of social sector organisations when they operate in competitive markets and how this influences their effectiveness at allocating resources. Current economic textbooks do not account for the social motivations of social sector organisations. Rather they assume that financial motivations move the invisible hand to match demand and supply. But when VCOs' approaches to commercial negotiations are influenced by factors beyond financial motivation, this creates what a mainstream economist would call 'sub-optimal market conditions'.

Throughout this report, we have highlighted the sometimes starkly different perspectives held by different stakeholders. At least part of the resulting action plan aims to increase understanding between stakeholders, and perhaps seek to address or challenge stereotypes. We believe a working group such as that recommended would go further towards enabling commissioners to align incentives. This would engender more of a collaborative 'system' standpoint over and above an entrenched 'sector' perspective, and enable a greater appreciation of complementary strengths. In time, it may be useful for the department to consider undertaking a regular assessment of system-wide capacity building priorities as the emerging market takes shape.

## Appendix 1 - Capacity Building Action Plan

The recommendations in the Capacity Building Action plan are based on consideration and review of all research and engagement activity conducted during the course of the project. They address and will achieve what we identify as the key success criteria of any capacity building activity; namely that participating voluntary and community organisations (VCOs) are able to:

- Understand what PbR is, how it works, and the potential implications for their organisations;
- Make informed and intelligence decisions about participating in PbR contracts;
- Articulate, evidence and cost their service provision, their offering and their success rates;
- Demonstrate performance and social impact of services;
- Get investment ready for and access social investment;
- Get contract ready for commissioners and Primes; and
- Deliver successful, sustainable and financially viable contracts which fit with their organisational mission and values.

### *Prioritisation: rationale*

Actions are listed in chronological order based on when they are likely to be needed and most beneficial. This falls into three key phases of the commissioning process: pre-competition, Pre-qualifying Questionnaire (PQQ), and Invitation to Tender (ItT) phase, although some activities will span multiple phases.

In establishing priority order, we have categorised priorities by *high/medium/low*. Actions are not ranked further within these bandings, i.e. the Compact Commitment is equally as important as Negotiation Skills. We also considered which actions could potentially be funded through other sources, for example Cabinet Office's Investment and Contract Readiness Fund (ICRF), or which could be delivered by leveraging in existing support e.g. Cabinet Office Masterclasses. Our prioritisation of actions is recorded in the table below:

| Priority | Action  | Reference | Cost                        | Action owner |
|----------|---|-----------|-----------------------------|--------------|
| HIGH     | Compact Commitment                                    | 1         | N/A (internal exercise)     | MoJ          |
| HIGH     | Merlin Plus   | 2         | N/A (internal exercise)     | MoJ          |
| HIGH     | Developing the evidence base for reducing reoffending | 3         | N/A (internal exercise)     | MoJ          |
| HIGH     | Financial modelling tool                              | 4         | £50k-150k                   | MoJ          |
| HIGH     | Information workshops                                 | 8         | £20k-40k                    | MoJ          |
| HIGH     | Reality checklist                                     | 9         | £2k                         | MoJ          |
| HIGH     | Negotiation skills                                    | 15        | £20k-40k                    | MoJ          |
| HIGH     | Legal support – contractual T's and C's check         | 16        | £50-300k (est. cost ~£150k) | MoJ          |
| MEDIUM   | Building relationships                                | 10        | £20k-40k                    | MoJ          |
| MEDIUM   | Brokerage support                                     | 12        | £1m-1.5m                    | MoJ          |
| MEDIUM   | Help with unit costs                                  | 13        | £10k-20k                    | MoJ          |
| MEDIUM   | Demonstrating impact                                  | 14        | £10k-20k                    | MoJ          |



|        |  |    |                                      |                  |
|--------|--|----|--------------------------------------|------------------|
| MEDIUM | TUPE & pensions support  | 17 | £12k-24k                             | MoJ              |
| LOW    | Support with accessing and identifying social investment opportunities | 5  | To be explored with social investors | Social investors |
| LOW    | Support for bidding as primes (collaboration and business development) | 6  | £100k-£150k per consortia            | ICRF             |
| LOW    | Provide working capital  | 7  | £100k-250k per VCO                   | Social investors |
| LOW    | Support for collaboration (subcontractor)                              | 11 | £30k-£50k per consortia              | ICRF             |
| LOW    | Legal Support – Legal Helpline and Central Q&A log                     | 18 | £20k-£150k                           | MoJ              |
| LOW    | Support for collaboration (specialist)                                 | 19 | £15k-£30k per consortia              | ICRF             |

### **Action 1: Compact Commitment**

**Action owner: Ministry of Justice**

**Detail:** Demonstrating commitment to the Compact through explicit reference to its Principles in both the service specification and contractual terms and conditions, with clear guidance that these principles should apply to contracts at all levels within the supply chain.

**Outcome:** ensuring Compact Principles such as 3.9, 3.10 and 3.11 are embedded within the commissioning process should remove potential barriers which may otherwise limit the contribution of VCOs.

**Target group:** All providers

**Indicative cost:** Free – embedding the compact principles within the commissioning documents / process would be an internal exercise. Compact Voice would be happy to provide a “Compact proofing” service, providing scrutiny and insight into how the policy documents can be amended to ensure they reflect Compact Principles.

**Timescale:** Short term – this activity should commence ASAP (pre-competition) if the Compact Principles are to be embedded within the commissioning process.

**Impact:** Medium – while embedding these principles within the commissioning process is unlikely to dramatically increase the involvement of VCOs in these services, it should ensure that those who are involved do so on a fair, equitable, and sustainable basis.

**Existing Resources:** The Compact Voice: <http://www.compactvoice.org.uk/>

### **Action 2: Merlin Plus**

**Action owner: Ministry of Justice**

**Detail:** Developing the existing Merlin Standard as a more practical, robust set of measures embedded within the service specification and contractual terms and conditions that Primes

must adhere to in terms of supply chain management, fair treatment of sub-contractors and the development of healthy high-performing supply chains.

**Outcome:** having specific measures, requirements and methods of behaviour should help ensure genuinely sustainable excellence and appropriate fairness within supply chains, while enabling Primes / lead bodies to be held to account in a transparent, robust, and enforceable manner.

**Target Group:** All providers

**Indicative cost:** Free - embedding Merlin Plus within the commissioning documents / process would be an internal exercise.

**Timescale:** Short term – this activity should commence ASAP (pre-competition) if the Merlin Standard is to be embedded within the commissioning process.

**Impact:** Medium – while embedding these measures from the commencement of the commissioning process is unlikely to dramatically increase the involvement of VCOs in these services, it should ensure that those who are involved do so on a fair, equitable, and sustainable basis.

**Existing Resources:** Merlin Standard website: <http://www.merlinstandard.co.uk/>  
DWP information site: <http://www.dwp.gov.uk/supplying-dwp/what-we-buy/welfare-to-work-services/merlin-standard/>

### **Action 3: Developing the Evidence Base for Reducing Reoffending**

**Action owner: Ministry of Justice**

**Detail:** Little evidence exists for services directly aimed at reducing reoffending. Most evidence relates to specific re-offending factors linked to the seven pathways of resettlement, but the integrity and credibility of much of it is questionable. The MoJ could support VCOs to evidence the suitability of their services by establishing a centrally developed database of evidence to provide an industry standard baseline for each of the principle outcomes of the seven pathways.

**Outcome:** VCOs would be able to provide a credible metric on which to assess their performance when developing their offer to Primes / securing investment.

**Target group:** All providers

**Indicative cost:** Free – this would be developed internally by the MoJ and would align with their work on the Justice Data Lab.

**Timescale:** Short term. The evidence base should be developed at the earliest opportunity.

**Impact:** Medium – the lack of robust evidence impacts on providers and financiers at every level. Establishing a baseline from which everyone could work from would support the entire industry.

**Existing Resources:** Charity Finance Group's publication 'Principles of Good Impact Reporting':  
[http://www.cfg.org.uk/resources/Publications/~media/Files/Resources/CFDG%20Publications/SME330%20CFDG%20Impact%20Report\\_v6.ashx](http://www.cfg.org.uk/resources/Publications/~media/Files/Resources/CFDG%20Publications/SME330%20CFDG%20Impact%20Report_v6.ashx)

#### **Action 4: Financial Modelling Tool**

**Action owner:** *Ministry of Justice*

**Detail:** Develop an accessible financial modelling tool. The tool should be flexible enough to adapt to varying offers from Primes / lead bodies, and feature straightforward guidance. The MoJ should request that organisations considering bidding as Primes submit historical models in order to support this work.

**Outcome:** VCOs will have a means to properly assess the financial viability of sub-contract offers – enabling a more informed position of assessment and negotiation.

**Target group:** All VCOs. As a centrally held resource this should be available to anyone free of charge.

**Indicative cost:** £50k-150k. The MoJ should explore developing/funding this tool in collaboration with voluntary sector organisations. The providers involved in supporting MoJ to develop their own commercial model may be well placed to complete the exercise, but are also likely to be at the top end of the cost range.

**Timescale:** Short to medium term. While the tool will be useful for some at PQQ phase, it is likely to be of most value during the ITT phase when Primes are developing their supply chains and negotiating with providers. Development of the tool should commence ASAP.

**Impact:** High – supporting organisations to assess the financial viability of any contracts they are considering will have a significant impact both during the competitive process and post implementation (fewer complaints / withdrawals from supply chains).

**Existing resources:** Inclusion Work Programme Modelling Tool: <http://www.cesi.org.uk>  
Rocket Science Work Programme Costing Tool:

<http://www.rocketsciencelab.co.uk>

Clinks' seminars 'the Fundamentals of finance for contracts' and 'managing the challenges of new payment models': <http://www.clinks.org/training/events/commissioning-seminars>

Locality's 'Community Contracting Unit': supports community enterprises source finance:

<http://locality.org.uk/projects/community-contracting-unit/community-contracting-unit-offer/>

Funding Central guidance:

<http://www.fundingcentral.org.uk/page.aspx?sp=6245#.UVGCTxypWPN>

#### **Action 5: Support with identifying and accessing social investment opportunities**

**Action owner:** *Social investors*

**Detail:** Supporting VCOs to meet the working capital requirements of these contracts through the development and implementation of social investment arrangements, such as social impact bond type arrangements, which can shelter the sector from risk. The MoJ could support this through facilitating engagement events between social investors, potential primes and potential tier two suppliers. .

**Outcome:** To allow investors to develop relationships with Primes and to allow smaller VCSE orgs to play a role in supply chains on appropriate risk terms.

**Target group:** Investors, Primes and smaller VCOs

**Indicative cost:** The overall level of funding will depend on the scale and final commercial structures of contracts as well as the willingness of the investment community to participate in these contracts. We recommend the MoJ investigate this option further with Cabinet Office and the investment community e.g. Social Finance received £5m of BIG funding specifically to develop a package of pilot SIBs to address deep rooted social issues, raise awareness of Social Impact Bonds among policy makers and statutory agencies and create a broad base of potential investors, and therefore may be able to contribute towards, or fund, this activity.

**Timescale:** Short term. This activity should start as soon as possible and prior to the competition process in order that interested organisations can thoroughly consider their options in advance of the competition process.

**Impact:** Medium – although this activity would target a relatively small number of organisations who are already well-positioned within the CJS market, interested in operating at Prime contractor level, and have an understanding of the social investment market, the targeted outcome would be to enable a greater number of VCOs to participate through centrally (pan-CPA) developed SIBs or other funding mechanisms.

**Existing resources:** Cabinet Office site: <https://www.gov.uk/social-impact-bonds>  
Social Finance offer a range publications including technical guides to developing and commissioning social impact bonds, and materials specific to criminal justice at: <http://socialfinance.org.uk/resources/social-finance>  
Big Lottery publication: [www.biglotteryfund.org.uk/er\\_invest\\_ready.pdf](http://www.biglotteryfund.org.uk/er_invest_ready.pdf)

### **Action 6: Support for bidding as primes (collaboration and business development)**

**Action owner:** Cabinet Office (ICRF)

**Detail:** There are a number of VCOs who may struggle to demonstrate sufficient capacity / financial robustness to bid as Primes in their own right, but who could credibly develop partnerships or consortia to bid at Prime Contractor level. This funding could also be used to provide VCS organisations with the resources to focus on business development activity e.g. engaging with Primes, investors and commissioners.

**Outcome:** Supporting this activity would help create a more mixed marketplace, increasing the likelihood of the emergence of a “social Prime”.

**Target group:** VCOs seeking to bid at Prime level.

**Indicative cost:** £100-£150k per consortia / partnership – we recommend this activity is funded through the Cabinet Office ICRF. VCOs are unlikely to benefit significantly from having 60% of the available funding spent on external ICRF providers. They have the necessary skills to compete for contracts; they simply lack the capacity (financial) to leverage them as extensively as possible.

**Timescale:** Short and medium term. This activity must commence ASAP if these consortia are to be in place in time to submit PQQs. Following on from PQQ, support at the earliest as early within the ITT phase as possible will maximise the likelihood of success.

**Impact:** Medium – this activity would target a relatively small number of organisations who are already well-positioned within the CJS market but need support to come together and compete at scale, having a potentially large impact on the eventual Prime provider base mix.

**Existing Resources:** Clinks' and NAVCA's training 'Criminal Justice Commissioning and Collaboration': <http://www.navca.org.uk/criminal-justice-commissioning>  
NAVCA 'Interact': a package of support for consortium development: <http://www.navca.org.uk/interact>  
NCVO paid course provide training on introductory/intermediate/advanced supply chains and consortia building: <http://www.ncvo-vol.org.uk/advice-support/public-service-delivery-network/events>  
Locality's 'Community Contracting Unit': supports community enterprises build consortia  
Locality's 'Connect For': advises on collaborations, mergers, acquisitions and joint ventures [http://locality.org.uk/resources/?locality\\_theme=6](http://locality.org.uk/resources/?locality_theme=6)  
Cabinet Office practical Masterclass <http://knowhownonprofit.org/funding/service/commercial-masterclasses/event-listing>  
Cabinet Office Mutuals Support Programme: <http://mutuals.cabinetoffice.gov.uk/>  
'Consortia Support': Neil Coulson Associates and ACECVO joint initiative: <http://consortiasupport.org.uk/>

### **Action 7: Provide working capital to support the development of social Primes**

#### **Action owner: Social investors**

**Detail:** Supporting VCOs to meet the working capital requirements of these contracts. The MoJ should work with social investors such as Big Society Capital to encourage social investors to engage in discussions at an early stage, and ensure that there are a range of funds / investors prepared to invest in these contracts. This funding would be used to support "social Primes" that have been successful in gaining contracts through the commissioning process. Social investment may help secure additional funding from more commercial investors and could be structured in such a way as to enable other investors to feel more comfortable with their balance of risk and return and encouraged to participate e.g. through this fund taking a first loss and higher return position. A separate fund could also be established to support a larger number of VCOs participating as subcontractors.

**Outcome:** Securing social investment remains exceptionally challenging – providing an element of working capital / a dedicated fund against which social investors could "match" their investment would increase the likelihood of the emergence of a "social Prime", helping create a more mixed marketplace.

**Target group:** Very largest social Prime candidates

**Indicative cost:** £250k-£500k per VCO (to be funded by social investors). The overall level of funding will depend on the scale and final commercial structures of contracts, the number of "social Primes" securing contracts, and the willingness of the investment community to participate in these contracts. We recommend the MoJ investigate this option further with Cabinet Office and the investment community.

**Timescale:** Short to medium term. Work with social investors such as Big Society Capital needs to be developed at the earliest opportunity to ensure that the investment community is prepared and expectations are managed.

**Impact:** Medium - this activity would target a relatively small number of VCS organisations who secure contracts with the MoJ at Prime contractor level, require support with working capital, and have an understanding of the social investment market.

**Existing Resources:** None, although various funds exist in the market or are emerging to fill this space.

### **Action 8: Information Workshops**

**Action owner: Ministry of Justice**

**Detail:** Events should cover the key requirements of the specification, the commercial principles e.g. payment profile, the performance and contractual outcome measures, and timeframes for the competition. The aim is to help organisations gain an overview of the process, likely requirements and challenges.

**Outcome:** VCOs better informed of the process, and able to make an initial judgement about whether they can / should proceed and the most likely role of them should they choose to participate.

**Target group:** All interested VCOs (50-200 per event). Events should be organised at CPA or Regional Level.

**Indicative cost:** £1000-£2000 per event. Inclusive of: admin for bookings and events; venue hire; facilitation, staffing and any other expenses.

**Timescale:** Short to medium term. Events should be organised as soon as is practically possible after release of the specification and commencement of competitive process. Follow up events should be considered upon release of the ItT/later phase documentation should significant levels of new information be released.

**Impact:** Low – main impact will be to manage expectations of the sector and reduce the number of organisations investing time and resource pursuing opportunities unlikely to come to fruition.

**Existing resources:** NCVO's masterclasses and publications serve as a good introduction to procurement and commissioning: <http://www.ncvo-vol.org.uk/advice-support/public-service-delivery/commissioning-procurement/commissioning-procurement-step-step>  
NCVO's KnowHow NonProfit guidance on assessing opportunities: <http://knowhownonprofit.org/funding/service/commercial-masterclasses/assessing-opportunities> and Commissioning and procurement: step by step: <http://www.ncvo-vol.org.uk/advice-support/public-service-delivery/commissioning-procurement/commissioning-procurement-step-step>  
Cabinet Office practical Masterclasses: <http://knowhownonprofit.org/funding/service/commercial-masterclasses/event-listing>  
Clinks and NAVCA training: <http://www.clinks.org/training/training/commissioning-and-collaboration-feb-2013>

### **Action 9: Reality Checklist / Online Self-assessment**

**Action owner: Ministry of Justice**

**Detail:** A simple check list of key things VCOs will need to have, or need to address, or be willing to undertake in order to have a realistic chance of accessing the opportunity (akin to contract/investment readiness) e.g. reporting non-compliance with sentencing requirements. This could be available for download online.

**Outcome:** VCOs better informed of the process, and able to make an initial judgement about whether they can / want to participate.

**Target group:** Interested VCOs

**Indicative cost:** £1000-£2000. As a centrally held resource this should be available to anyone, free of charge. This could potentially be done “in-house” by MoJ staff. External providers may require support from the MoJ Legal Team to clarify what requirements of the specification / terms and conditions will apply to all levels of the supply chain e.g. data standards / insurance etc.

**Timescale:** Short to medium term. On commencement of competitive process (to accompany workshops). The checklist may need to be revised or updated upon release of ItT/ later phase documentation.

**Impact:** Low – main impact will be to manage expectations of the sector and reduce the number of organisations wasting time and resource pursuing opportunities unlikely to come to fruition.

**Existing resources:** Locality’s ‘Contract readiness checker’:

[www.contractreadinesschecker.org.uk](http://www.contractreadinesschecker.org.uk)

The Finance Hub: Tools for Procurement and Contracting Funding and Finance Toolkit:

<http://www.ncvo->

[vol.org.uk/uploadedFiles/NCVO/What we do/Sustainable Funding/Support for Infrastructure/Procurement FINAL.pdf](http://www.ncvo.org.uk/uploadedFiles/NCVO/What_we_do/Sustainable_Funding/Support_for_Infrastructure/Procurement_FINAL.pdf)

## **Action 10: Building Relationships**

**Action owner:** Ministry of Justice

**Detail:** Networking Events to facilitate sessions between different stakeholder groups (investors, Primes, subcontractors) to build relationships. A brief follow up to Action 9, Information Workshops, should be included as part of these events should there be significant changes to the specification or new information released with the Invitation to Tender.

**Outcome:** Different stakeholders have a better understanding of other stakeholder groups, including their interests, what matters to them, their ways of working and language. VCOs will be able to hear from / meet with every short-listed Prime in their area in one day.

**Target group:** Medium / Small VCOs. (50-100 per event) Events should be organised at CPA Level.

**Indicative cost:** Free. Although these events would theoretically cost £1000-£2000 each we would propose that the MoJ request each short-listed Prime contractor / lead body contribute towards the cost of these events as a condition of participation. Events on social investment should be funded on the same basis.

**Timescale:** Medium term. These events should take place as early in the Invitation to Tender phase as possible.

**Impact:** Low – many short-listed Primes will still run their own CPA based engagement events; this may enable VCOs to choose which additional events to attend rather than attending each of them, reducing the time and cost burden on smaller organisations.

**Existing Resources:** None

### **Action 11: Support for Collaboration (participating as significant subcontractors)**

**Action owner:** Cabinet Office (ICRF)

**Detail:** There are many VCOs who, although unlikely to be able to bid at Prime level, (even in consortia) will be willing to undertake the offender management element of the contracts – and the potential TUPE transfer - and could represent a credible proposition as significant sub-contractors.

**Outcome:** Supporting this activity would help create a more mixed marketplace.

**Target group:** VCOs targeting significant subcontracts (max two groups per CPA)

**Indicative cost:** £30-£50k per consortia / partnership – we recommend this activity is funded through the Cabinet Office ICRF. This activity could potentially be aligned to the NOMS SE Consortia programme, by funding those consortia which successfully secured funding to widen their membership / scope.

**Timescale:** Medium term. Although needed more the ItT phase than for the PQQ phase, the earlier work starts on these consortia, the greater their chance of success.

**Impact:** Medium – creating credible 1st tier consortia supply chains will help ensure a more diverse marketplace and help secure the involvement of VCOs in delivering services from day one of these contracts.

**Existing resources:** see Action 6: Support for Collaboration (Primes)

### **Action 12: Brokerage Support**

**Action owner:** Ministry of Justice

**Detail:** Support function to act as an intermediary/agent between VCOs and Primes / lead entities. The broker could provide an in-depth service covering multiple activities including support with: Understanding the Opportunity; Unit Costs; Demonstrating Impact; Building Relationships; Negotiation; and Culture Match.

**Outcome:** The broker would facilitate the negotiation of an agreement that was appropriate for both parties, with a clear understanding of the expectations, behaviours, processes, and risks on either side.

**Target group:** Small / Medium VCOs on a CPA basis. Brokerage Support would be a highly skilled and consequently expensive resource.

**Indicative cost:** As no comparative service currently exists it is difficult to benchmark but we estimate this would cost £60k-£80k per CPA / Region for six months of full time support/brokerage.

**Timescale:** Medium term. Although the broker could start engaging VCOs immediately, this would simply be preparatory work. Brokerage in the truest sense cannot commence until the ItT phase, when a shortlist of successful bidders has been announced.



**Impact:** High

**Existing resources:** There is a range of existing business mentoring programmes which may provide professionals with the relevant skills and understanding to support this service, but we anticipate that there will still be capacity and market-expertise deficits.

### **Action 13: Help with Unit Costs**

**Action owner:** *Ministry of Justice*

**Detail:** Support to understand how to cost services appropriately, in the form of workshops / masterclasses to provide relatively high level (but effective) guidance on establishing unit rates – potentially linked to the Financial Modelling Tool. Further more detailed consultative support could be provided by funding local infrastructure organisations / consortia through the Cabinet Office. This would be supported through the publication of an online guide. This should align with ACEVO and New Philanthropy Capital's existing resource (listed below in *Existing Resources*).

**Outcome:** VCOs will be able to establish robust unit costs on Full Cost Recovery principles enabling them to properly assess the commercial viability of contracts and to increase their negotiating power.

**Target group:** Small / Medium VCOs (25-50 per event). Workshops should be delivered on a CPA or Regional Level.

**Indicative cost:** £1000-£2000 for the support guide. £1000-£2000 per event, inclusive of: admin for bookings and events; venue hire; facilitation, staffing; and any other expenses. £20-25k could potentially fund a full-time (non-permanent) post within a CPA for approximately 3 months for more in-depth support. \*We would suggest aligning this activity along with Action 15: Demonstrating Impact. The two could be combined in a full day workshop.

**Timescale:** Medium term. Any workshops / support should not be made available until after any follow up Information Workshops have finished (mitigating the risk of VCOs participating in this support, only to later withdraw due to a compliance issue or having accessed support without genuine intent to participate) and should not take place until the ItT phase in any instance.

**Impact:** Medium – helping VCOs establish their cost base will improve their proposition to Primes and social investors enable them to better assess the financial viability and sustainability of any contracts they are considering, and increase the likelihood of securing investment.

**Existing Resources:** Full Cost Recovery Template – ACEVO and New Philanthropy Capital: <http://www.ncvo-vol.org.uk/advice-support/funding-finance/financial-management/full-cost-recovery/template> - tool is at: <http://www.fullcostrecovery.org.uk/main/> Charity Finance Group's 'Know Your Cost Base' good practice guide: [http://www.cfg.org.uk/resources/Publications/~/\\_media/Files/Resources/CFDG%20Publications/KYCB.ashx](http://www.cfg.org.uk/resources/Publications/~/_media/Files/Resources/CFDG%20Publications/KYCB.ashx)  
Clinks training – Fundamentals of finance for contracts  
<http://www.clinks.org/training/events/commissioning-seminars>

## **Action 14: Demonstrating Impact**

**Action owner: Ministry of Justice**

**Detail:** Workshops / masterclasses to provide relatively high level (but effective) guidance on evidencing and assessing services appropriately – particularly those linked to desistance factors e.g. employment, accommodation, health services. It is important to note, in this instance, that this is about evidencing outcome impact linked to potential income streams, not social or financial return on investment. These need to be hard measures that can link back to the principle contractual outcomes. This activity could be aligned to the NOMS funded research capacity building programme to help the VCS identify, monitor and measure outcomes currently being carried out by NPC, Clinks and Project Oracle. Further more detailed consultative support could be provided by funding local infrastructure organisations / consortia through the Cabinet Office.

**Outcome:** VCOs will be able to provide evidence of service effectiveness / achievement of outcomes, enhancing their proposition to Primes / Investors and increasing their negotiating power.

**Target group:** Small / Medium VCOs (25-50 per event). Workshops should be delivered on a CPA or Regional Level

**Indicative cost:** \*We would suggest aligning this activity along with Action 14: Help with Unit Costs. The two could be combined in a full day workshop.

**Timescale:** Medium term. Any workshops / support should not be made available until after any follow up Information Workshops have finished (mitigating the risk of VCOs participating in this support, only to later withdraw due to a compliance issue or having accessed support without genuine intent to participate) and should not take place until the ItT phase in any instance.

**Impact:** Medium – helping VCOs demonstrate their impact will improve their proposition to Primes / Investors increasing their likelihood of securing contracts / investment support.

**Existing resources:** Charities Evaluation Service: outcome indicator tools and resources: <http://www.ces-vol.org.uk/tools-and-resources/outcomes-and-outcome-indicators> and publications include 'Assessing change: Developing and using outcomes monitoring tools': <http://www.ces-vol.org.uk/Publications-Research/publications-free-downloads/publications-free-assessing-change>

NPC provide outcomes maps for a range of desistance interventions:

<http://www.thinknpc.org/publications/> and outcomes for social investment purposes: <http://www.thinknpc.org/publications/mapping-outcomes-for-social-investment/>

NCVO's KnowHow NonProfit guide to evaluating outcomes and impact:

<http://knowhownonprofit.org/organisation/quality/mande/evaluating-outcomes-and-impact>

Clinks Statistical Toolkit: <http://www.clinks.org/services/sfc/sfcreources/sfc-statistical-toolkit>  
Arts Alliance Evidence Library: <http://artsevidence.org.uk/about-arts-alliance/>

## **Action 15: Negotiation Skills Workshops**

**Action owner: Ministry of Justice**

**Detail:** Workshops / masterclasses to strengthen VCOs knowledge and bargaining position in negotiations over sub-contracts with Primes – e.g. general training on negotiating skills,

understanding the principle contract, key requirements, confirming understanding and reaching agreement.

**Outcome:** VCOs will negotiate better terms and conditions with Primes / lead bodies, developing a stronger, more sustainable relationship between the parties.

**Target group:** Small / Medium VCOs (25-50 per event). Workshops should be delivered on a CPA or Regional Level.

**Indicative cost:** £1000-£2000 per event, inclusive of: admin for bookings and events; venue hire; facilitation, staffing; and any other expenses.

**Timescale:** Medium to long term. These events should take place during the ItT phase and predominantly target VCOs who are clear on their intention / ability to participate.

**Impact:** High – by giving VCOs the skills needed to negotiate sustainable contracts, we ensure they achieve fair and equitable terms of delivery, ability to successfully deliver PbR contracts and thus reduce the risk of market failure.

**Existing resources:** Cabinet Office practical Masterclass:  
<http://knowhownonprofit.org/funding/service/commercial-masterclasses/event-listing>  
NCVO information page: [http://www.ncvo-vol.org.uk/psd/commissioning/relationships\\_negotiation#how](http://www.ncvo-vol.org.uk/psd/commissioning/relationships_negotiation#how)  
ACEVO publication: 'Win-win Negotiation strategy and tactics for Third Sector Leaders:  
<http://www.acevo.org.uk/Page.aspx?pid=191&nccsm=21&nccspID=913>'

### **Action 16: Legal Support - Contractual Terms and Conditions Check**

**Action owner: Ministry of Justice**

**Detail:** An independent, central review the contractual terms and conditions each short-listed Prime contractor / lead entity intends to provide to its subcontractors highlighting areas of concern / risk, particularly those which may require further legal advice for VCOs.

**Outcome:** With the exception of Payment Schedules, which may be individually agreed, contracts are unlikely to vary significantly across the supply chain. Providing a central review service will dramatically reduce the level of financial resource spent by VCOs on legal support.

**Target group:** All VCOs. As a centrally held resource this should be available to any VCO participating in the competition.

**Indicative cost:** £5k-£20k per Prime contractor / lead entity – based on approximately 15 Primes. The cost of this service will vary depending on the number of organisations short-listed to the ItT phase. The overall cost will also be lower if purchased as a single exercise. We would suggest this option is explored further with the MoJ's own legal team and external advisors. We recommend the MoJ request each short-listed Prime contractor submit their proposed terms and conditions as a condition of participation.

**Timescale:** Medium to long term. Lead entities will need time to prepare their own contractual terms and conditions and are unlikely to undertake this exercise until the ItT phase has commenced. However the aim should be to have the reviews available from

midway through the ItT phase of the competition to enable VCOs to scrutinise the reviews and seek further advice if necessary.

**Impact:** High – this activity will reduce the financial burden on VCOs, particularly smaller niche providers, where low value contracts may make seeking legal advice financially impossible. Making the reviews of terms and conditions publicly available may also force Prime contractors / lead entities to ensure contracts are fair and equitable from the outset.

**Existing resources:** None

### **Action 17: TUPE and Pensions Support**

**Action owner:** *Ministry of Justice*

**Detail:** HR / Legal Workshops to advise VCOs on the legal obligations and liabilities being transferred through any TUPE transfer, and therefore the levels of risk and responsibility associated with the transfer.

**Outcome:** providing VCOs with robust TUPE support will enable those organisations to make informed decisions on whether or not the proposed level of transfer is manageable or not, and ensure appropriate structures are in place, e.g. pension schemes, reduce the number of disputes / challenges, and help facilitate a smoother service transition.

**Target group:** VCOs expecting to undertake a TUPE transfer as part of this commissioning process.

**Indicative cost:** £2000-£4000 per event, inclusive of: admin for bookings and events; venue hire: facilitation, staffing and any other expenses. Workshops / Events could be delivered on a pan-regional basis e.g. Wales and South West; London, South East, and East England (x2); Midlands; Yorkshire & Humberside and North East; and North West, with 10-25 VCOs per workshop.

**Timescale:** Medium to long term. We would make this support available from midway through the second phase of the competition and to those providers who have in principle agreements within supply chain/s.

**Impact:** Low –this support will only apply to VCOs who are able and willing to take on TUPE staff.

**Existing resources:** NCVO's TUPE due Diligence Checklist: [http://www.ncvo-vol.org.uk/sites/default/files/ncvo\\_tupe\\_due\\_diligence\\_checklist\\_2012.pdf](http://www.ncvo-vol.org.uk/sites/default/files/ncvo_tupe_due_diligence_checklist_2012.pdf)  
Locality's 'The Pool' (consultancy service which provides interim management at short notice. This includes technical experts such as lawyers, who can be teamed with practitioner experts, as well as be made available for one-off advice): <http://www.thepool-locality.co.uk/>  
NCVO training 'Legal Training: TUPE and Pensions': <http://www.ncvo-vol.org.uk/training-events/TUPE/April2013>

### **Action 18: Legal Support – Legal Helpline and Central Q&A log**

**Action owner:** *Ministry of Justice*

**Detail:** A free, dedicated legal helpline providing high level advice in response to concerns and queries regarding the service contracts, at principle or sub-contract level with all queries and responses recorded (anonymously) and published on a central Q&A log

**Outcome:** VCOs are able to seek initial legal support and advice without being constrained by budgets, resulting a greater understanding of the risks and challenges of contracts they are entering into.

**Target group:** All VCOs. As a centrally held resource this should be available to any VCO participating in the competition.

**Indicative cost:** £10k-£50k per month. The cost of this service will vary dramatically depending on the scale and scope of the advice to be given. We would suggest this option is explored further with the MoJ's own legal team and external advisors.

**Timescale:** Medium to long term. To avoid the helpline being heavily utilised by VCOs unlikely to participate in service delivery, we would make this support available from midway through the second phase of the competition and to those providers who have in principle agreements within supply chain/s.

**Impact:** Medium – this provides an easily accessible way of ensuring those providers that are unsure of commercial or contractual stipulations can quickly resolve concerns and queries and will be aware of the longer-term implication of the deals they are considering signing up to.

**Existing resources:** NCVO's training 'Legal Overview: Public Service Contracts':

<http://www.ncvo-vol.org.uk/training-events/contracts/April2013>

If you are an ACEVO member, they have a free legal and HR law helplines:

<http://www.acevo.org.uk/Page.aspx?pid=1436>

LawWorks: pro-bono legal support for small community organisations:

<http://lawworks.org.uk/index.php?cID=10241>

### **Action 19: Support for Collaboration (specialist VCOs)**

**Action Owner: Cabinet Office (ICRF)**

**Detail:** There are large numbers of locally-based, service specific VCOs who may have role to play in the delivery of these contracts providing specific interventions aimed at reducing reoffending. For many of these VCOs, joining local second tier specialist consortia may be the best way of securing work as a subcontractor.

**Outcome:** Specialist VCOs would have greater bargaining power when negotiating as a collective, and may be able to lower their cost base by reducing central overheads.

**Target group:** Small/Specialist VCOs

**Indicative cost:** £15k-£30k per consortia / partnership – we recommend this activity is funded through the Cabinet Office ICRF. This activity could potentially be aligned to the NOMS SE Consortia programme, by funding those consortia which successfully secured funding to widen their membership / scope. Funding local infrastructure bodies to support these consortia may be a suitable alternative.

**Timescale:** Long term. Although potentially required for the ItT phase, it appears unlikely there will be a significant requirement / funding available for these services in the early stages of contract delivery.

**Impact:** Medium – creating credible second tier consortia supply chains should help ensure a broad range of services are in place to support the diverse needs of offenders.

**Existing resources:** see Action 6: Support for Collaboration (Primes)

## Appendix 2 – Engagement process

Evidence gathering work for the project proceeded through an evidence review stage and a thorough engagement and consultation process. What follows is a more detailed description of the engagement activity and briefly how the survey was conducted, including an indication of individuals who were consulted or attended events.

### *Evidence review*

The team conducted an evidence review which comprised the following separate activities:

- An assessment of the current policy context impacting on criminal justice
- A rapid and wide-ranging appraisal and synthesis of academic and policy literature
- A focused literature review on evidence on social investment, including policy reports, Government documents, and websites
- A review of existing capacity building support for the VCS.

### *Engagement activity*

A number of members of the team carried out one-to-one consultations through interviews with individuals in the following categories:

- Commissioners/central and local government (15 individuals)
- MoJ/NOMS (8 individuals)
- Private sector (i.e. potential Primes) (9 individuals)
- VCS (sector umbrella bodies, and VSOs) (8 individuals)
- Social Investors (8 individuals)
- Others (3 individuals).

### *VCS engagement events*

The research team held a number of consultation events. Seven regional consultation events organised by Clinks were carried out with the aim of identifying the support and training needs of the VCS in order to engage with PbR contracts. These were aimed at organisations of all sizes who might be considering engagement with, or were already working in PbR contracts.

The events were held in the following cities; the table also shows the results of a poll into attendees' experience of contracting and PbR in particular.

| <b>Venue – city</b> | <b>Number of attendees</b> | <b>These with direct experience of PBR</b> | <b>Those with general experience of contracting</b> |
|---------------------|----------------------------|--|---|
| London              | 33                         | 5  | 5   |
| Manchester          | 17                         | 3  | 14  |
| Birmingham          | 11                         | 5  | 8   |
| Exeter              | 21                         | 2  | 20  |
| Nottingham          | 14                         | 4  | 14  |
| Newcastle           | 11                         | 2  | 10  |
| Cardiff             | 11                         | 2  | 4   |
| <b>Totals:</b>      | <b>118</b>                 | <b>23</b>                                  | <b>75</b>   |

### *Sub-sector consultation events*

In recognition that there are particular needs and concerns for organisations within key sub-sectors of the VCS engaged in the criminal justice field, Clinks, in partnership with three organizations, organised a further three consultation events, focusing on:

- The BAME sector, organised by QED Foundation (2 attendees)
- The families of those in the criminal justice system, organised by the Action for Prison Families (APF) (4 attendees)
- Women, organised by the Women's Resource Centre (WRC) (9 attendees).

However, it must be noted that in spite of considerable publicity and efforts to promote engagement, attendance at some of these events was low. This could suggest an issue with desire to engage at this level, with implications for specialist delivery and the issue of disproportionality in the criminal justice system. This may be a particular concern in relation to the BAME sector.

The following organisations publicised events and the online survey:

- APF
- WRC
- QED
- Make Every Adult Matter Coalition
- Drugscope
- Homeless Link
- WCVA
- Greater Manchester Council for Voluntary Organisations (GMCVO)
- Voscur
- Arts Alliance
- Safer Future Communities

#### *Wider industry consultation events*

Members of the team also attended all eight private, voluntary and wider sector *Transforming Rehabilitation* market consultation events hosted by the MOJ. Detailed notes were taken at each event, and our interpretation of attendees' comments was checked against a summary document provided by the MOJ. Candour Collaborations also attended a MOJ VCS roundtable event on the *Transforming Rehabilitation* commissioning process and other related events including the Institute for Government's probation 'payment by results' roundtable.

#### *Surveys*

Two surveys were carried out by the research team. The main one was a bespoke online survey designed by the team and conducted by Candour Collaborations and Clinks. This was widely advertised through many of the aforementioned channels (and particularly by Clinks) and received 120 responses.

Clinks also amended a section of their regular State of the Sector survey that is concerned with contracting and PbR – in consultation with the rest of the team – and the results from these questions were fed into the overall analysis made by the team.