

Payment by results in the criminal justice system

Jon Collins highlights some of the challenges of the *Breaking the Cycle* Green Paper.

In December 2010 the Ministry of Justice published Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders, the government's Green Paper on criminal justice reform (Ministry of Justice, 2010). The primary purpose of this package of proposals was to refocus the criminal justice system (CJS) on reducing reoffending, and to achieve this the Green Paper proposes introducing payment by results (PBR) across the CJS, stating that 'this is a radical and decentralising reform which will deliver a fundamental shift in the way rehabilitation is delivered' (ibid.). Although the government's final proposals are still to be published at the time of writing, it appears certain that PBR will be central to the Ministry of Justice's agenda.

These reforms will see providers paid according to the success that they are able to achieve in reducing reoffending, funded by the subsequent savings to the CJS, and the Ministry of Justice aims to have applied PBR principles to all providers by 2015. Six pilot projects will be set up initially, building on the Peterborough Social Impact Bond, which was launched in September 2010. The six pilots will examine different approaches to PBR, with two projects for offenders managed on community sentences and those released on licence, two projects for offenders released from prison focusing on those sentenced to less than 12 months, and two local-incentive schemes which will see local partners working together to develop a plan to

prevent offending and reoffending. The first of these pilots, based at HMP Doncaster, has already been announced.

Shift of focus

The system of PBR envisaged for the CJS is an outcome-based approach, with the provider paid according to the extent to which they achieve agreed outcomes. This represents a shift of focus from processes to outcomes, which is intended to drive innovation and creativity by enabling providers to explore new ways of reducing reoffending, free from process-based targets prescribed by central government. In addition, PBR is intended to better incentivise providers to improve their practice and to deliver the required outcomes by only rewarding them where they are successful. It also creates competitive tendering between would-be providers, theoretically leading to better value for money and more efficient service provision. This model is also intended to protect, or even reduce, government spending, as payments will only need to be made where reconviction rates are reduced. This in turn, the government claims, creates savings from reduced policing, court and incarceration costs.

There are already some examples of PBR projects. The Department for Work and Pensions' Work Programme will see providers paid based on their success at helping unemployed people get into sustainable employment. In the justice system there is the HMP Peterborough pilot, which aims to reduce reoffending by prisoners who have served a sentence of less than 12 months; it is delivered by the

voluntary sector and funded through a Social Impact Bond. If the project reduces reconviction rates by 7.5 per cent or more, investors will be paid by the Ministry of Justice an amount covering their investment and an additional return. If not, then investors will not be paid at all for the work. Similarly, at HMP Doncaster 10 per cent of the contract price will only be payable if Serco, which runs the prison, reduces the one-year reconviction rates of offenders by five percentage points.

Unresolved challenges

Despite these existing projects, there is a paucity of strong evidence in support of a move towards PBR based on outcomes, reflecting the fact that it is a relatively new service-delivery model. Partly as a result of this, there are a number of challenges and unresolved issues that will need to be addressed in the development of PBR in a criminal justice context.

Firstly, an outcome measure will need to be developed to assess reduced reoffending. A binary 'yes/no' measure, based simply on whether or not an offender has been reconvicted (itself a problematic proxy measure for reoffending), would not recognise reductions in the frequency and severity of offending. An alternative approach would be to focus on the frequency of reoffending, which takes into account distance travelled. While this is also not without problems, it appears to be the best available measure. The Ministry of Justice will also need to consider local variations in the measurement mechanisms and tariffs, to reflect different local circumstances and to incentivise providers to work in the most challenging and disadvantaged areas.

In addition, there is a risk that PBR could lead to conservatism in delivery, with providers focusing on services that are known to produce acceptable results rather than innovating at the risk of failure and no payment as a result. There are also risks that providers will 'game' the system, resulting in the offenders most likely not to reoffend being 'cherry-picked', while those that are least likely to avoid reconviction are

'parked' with little or no access to support services. A contracting and payment system will need to be developed that is effective in preventing this, and the Confederation of British Industry has recommended that 'payment incentives should be increased incrementally as reoffending is cut by larger amounts' in order to ensure that 'providers are encouraged to help those who are harder to reach' (Confederation of British Industry, 2011). Differing payments could also be made for working with particular cohorts of offenders (Nicholson, 2011).

Incentives

Clarity is also needed as to who will provide the services. While the public sector could bid for PBR contracts, the Green Paper does not address what impact their involvement would have on the incentives that PBR is intended to create, given that they are not profit-making. Voluntary sector organisations are unlikely be able to carry the financial risk of managing a PBR contract. Social investors could fund the work and carry the risk, but this could weaken the incentives on the provider and there are also questions about the extent to which this is achievable on a large scale, at least in the short term. Voluntary or public sector organisations could be subcontractors to private sector organisations, but this poses risks to their autonomy and integrity. Unless a solution is found to these issues, then PBR could have the effect of locking out many potential providers and result in the widespread privatisation of the delivery of services.

Given this series of challenges, the Ministry of Justice's intention to pilot new PBR processes before

rolling them out more widely is welcome. Having said that, the statement in the Green Paper that 'by 2015 we will have applied the principles of this approach [PBR] to all providers' (Ministry of Justice, 2010) suggests that there will not be time to properly assess the effectiveness of the pilots before broader roll-out begins. This would be a mistake. A KPMG policy paper, co-authored by the now Downing Street Head of Policy Development, states that there may be 'a "bleeding edge" in getting it [PBR] right, as both the customer and the provider explore how to manage complex risks and rewards and the boundaries of cross-government and multi-year spending are transcended' (Downey et al., 2010), while CentreForum

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warns that 'to seek to move quickly to a full PBR approach risks discrediting the policy by running the risk of failure of providers, poor value for money for the public sector and frustrating the development of a diverse range of providers' (Nicholson, 2011). This demonstrates the need to proceed with caution, and therefore the need for a managed programme of proper pilots to judge how PBR can work best.

Value for money

The use of pilots will also be an opportunity for providers to build up the evidence base on what works, with some citing an 'evidence-gap' in what interventions reduce reoffending, and on the likely costs of different approaches and interventions. This would allow them to better price their bids and therefore lead to better value for money (Nicholson, 2011). It will also allow the Ministry of Justice to begin to assess the extent to which PBR will be able to be funded by savings in the system caused by reduced

recidivism. It is possible to argue that, if the police are not using time and resources to arrest and process one individual as a result of their not having reoffended, then this will free up their time to arrest another person who they would not otherwise have come into contact with. This would not result in savings, as the 'replacement' would require the same, or similar, resources from across the CJS. More flexibility in the prison estate will also be required if a reduction in the number of prisoners is to allow prisons to close, which is necessary for significant cost savings to be made.

The government's proposals to reform the CJS are focused primarily on rehabilitation, and PBR is the mechanism intended to deliver this. Clearly, the current government envisages that in the future the majority of criminal justice services will be based on PBR. Yet, while the shift of focus from processes to outcomes that underpins the move towards PBR is welcome, there is to date a lack of clarity about how PBR models will be constructed and delivered. Until these questions are resolved, it is impossible to judge whether PBR will transform the CJS in the way intended by the government. ■

At time of writing, **Jon Collins** was Director of the Criminal Justice Alliance, a coalition of 57 leading justice organisations that works to establish a fairer and more effective CJS.

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