



Lost in probation?

Ministry of Justice plans to transform prisoner rehabilitation will come into force later this year. Three commentators give their analysis



The intention behind the rehabilitation revolution is admirable – but the devil is in the detail, says **Tom Clougherty**

There is a real problem at the heart of the Government's "Transforming Rehabilitation" programme: nearly half of those released from prison reoffend within a year. Given that we spend more than £3bn annually on prisons, this represents a poor return on investment. It also highlights the human tragedy at the centre of our criminal justice system: too many offenders are stuck in a vicious cycle of crime from which they are unable to escape.

The goal of *Transforming Rehabilitation* is to break this cycle by implementing two complementary policies. The first is to extend statutory rehabilitation services to *all* those leaving prison and to ensure that they are given continuous "through





the gate” support. This could mean helping released offenders to find housing, overcome substance abuse and mental health problems, or address deficits in their education and training. It could mean helping them to get identification, sign up for benefits, or apply for jobs. It could even mean counseling them on how to improve their family relationships.

“ The reforms are aimed at driving a cultural shift in the justice system, away from a focus on retribution and towards reintegration ”

The second policy is designed to ensure that this approach yields the best possible results without increasing costs to the taxpayer. It involves opening up the provision of rehabilitation services to competing private and voluntary sector organizations, and then paying them based on their success keeping offenders out of trouble. If these new providers achieve

lower reoffending rates than the existing system, they will make money; if not, they stand to lose out. This means they will be motivated to find and develop better ways of reducing recidivism, without spending more money.

This aspect of the reforms is about more than just creating the right financial incentives, however. It is also about driving a cultural shift in the criminal justice system, moving us away from a focus on retribution and towards an emphasis on reintegration—that is, towards helping people to turn their lives around and become productive members of society. Such a dramatic change in priorities is difficult to achieve without the fresh thinking and innovative management that new, independent providers bring to the table. And that is why private and voluntary sector involvement is central to the government’s criminal justice reforms.

That these plans are typically described as “privatising the probation service” conceals as much as it illuminates. This is not the kind of privatisation that Margaret

Thatcher pursued in the 1980s. It is not part of an ideological battle over the commanding heights of the economy. Nor is it an exercise in rolling back the frontiers of the state. In fact, *Transforming Rehabilitation* is about something much more commonplace and mundane than that: the well-established use of performance-based contracting as a tool to make government more efficient and effective.

How well this works has much to do with the efficacy of procurement and contract management processes. And it is on these unglamorous grounds that the Government’s *Transforming Rehabilitation* plan will ultimately be judged. The intention behind the plan is admirable, and the idea underlying it is sound. Yet, as always, the devil is in the detail. The Government should certainly move ahead with its rehabilitation revolution, but it must do so with great care and attention. ■

Tom Clougherty is a senior fellow of the Adam Smith Institute and managing editor at Reason Foundation



The Justice Secretary's belief in probation reform is no substitute for evidence and clear-headed analysis, warns **Richard Garside**

For a number of practical and concrete reasons, the Government's current proposals to reorganise the delivery of probation across England and Wales are deeply problematic.

The current structure of 35 Probation Trusts is not without its problems. It does, though, have the virtue of relative simplicity in terms of structure and clear lines of accountability. The proposed new structure of 21 'Community Rehabilitation Companies' (CRCs), working alongside a small National Probation Service, creates enormous scope for duplication, bureaucratic waste and complexity.

As the recent Justice Committee report points out, in place of a single probation service, operating locally, there will be "two probation services... in every locality delivering similar services side by side and sometimes via one another. Each will have to form working relationships with other local organisations, bodies and services for the delivery of the joint or complementary services which characterise effective local work with offenders".

"Ministers should recognise," the Committee adds, "that there is a potential risk that this will lead to inefficient use of resources, and confuse accountability at local level."

The proposals for payment by results [PbR] have attracted much attention. While they do mark a departure from current funding arrangements, the change is in some senses overstated. The vast majority of the new probation contracts will be delivered on a block fee basis, with only around five to 15% being paid via the PbR framework.

Whether PbR will work in the terms the Government expects is impossible to tell. In his evidence to the Justice Committee, Chris Grayling said that PbR was "so



obviously the right thing to do". Sincere belief is not, however, a good substitute for evidence. And on the question of evidence the Committee is hardly encouraging in its report: "Serious question marks hang over the design of the PbR mechanism

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itself, and the proportion of payment to providers which will depend on the results they achieve. It is likely that any model introduced at the beginning of the new system will need to be modified in the light of experience."

One of the arguments made in favour of the Government's plans is that it will broaden and diversify the market of

providers. In at least one crucial respect, however, the opposite is more likely. Voluntary and community groups are seen as central to the delivery of the new plans. Yet of around 1,700 voluntary and community organisations currently working within the prisons and probation field, fewer than 400 have so far registered an interest in providing services under the programme.

The lack of buy-in from probation professionals is also striking. The Justice Committee reported that it "heard compelling evidence that neither Chief Executives nor Trust Boards feel confident that they are ready for the first stage of transition or that their concerns are being listened to".

The parliamentary arithmetic and the powers to change probation structures already resting with ministers do not favour the opponents of the changes. It also appears increasingly likely that the Government's plans will founder on the rocks of implementation. ■

Richard Garside is Director of the Centre for Crime and Justice Studies



Chris Grayling's refusal to allow scrutiny of his untested plans shows his disregard for public safety, says Lord Ramsbotham

The Government's proposals for a complete revision of the structure and delivery of probation services are not set out in a bill, but in a White Paper, *Transforming Rehabilitation*, published simultaneously with the Offender Rehabilitation Bill, which the Justice Secretary told the Commons "will not make any changes to the Probation Service".

During its passage through the Lords, there was universal acceptance of the Government's avowed aim of trying to reduce the appallingly high re-offending rate, particularly amongst short term prisoners, who are neither in prison long enough to benefit from rehabilitation programmes, nor required to undergo probation supervision. But there was considerable concern that Parliament was being denied any opportunity to debate or scrutinise the detail of Mr Grayling's untried and uncosted proposals, which amount to a civil service National Probation Service being responsible for high risk

offenders, and 21 private sector Community Rehabilitation Companies for low and medium risk offenders, replacing 35 public sector Probation Trusts.

In July 2013 a draft MoJ risk register, dated 21 days after publication of the White Paper, was leaked to the press. It included, inter alia, that: there was a "more than 80% likelihood that an unacceptable drop in operational performance during the programme leads to delivery failure

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and reputational damage"; there was a 51% to 80% likelihood that affordability objectives for the reforms cannot be demonstrated or met; that it is not possible to design the programme to a timescale that meets ministerial expectations and/or the Coalition's commitment to roll put payment by results by 2015; that services following competitions do not meet required quality, leading to operational failures and loss of public confidence; that programme delivery

cannot or does not meet the timescale set by the programme. No response to these concerns has ever been published.

The previous government's attempt to tackle the problem, 'Custody Plus', proved unaffordable, so how will competition produce sufficient funds to enable private sector supervision of 50,000 additional offenders? The late, lamented Paul Goggins MP raised three other significant points during Commons' Committee: "Our electorate expect us to ask questions, not simply to take at face value the kind of proposals that are being offered to us". "Public money is being put at risk: £500m of it. Should not the public at the very least expect to know how that is spent?" "Surely it would be sensible for the minister to unite the House by running a pilot, with the support of the Opposition, to prove whether or not he is right? If the Justice Secretary is right, and the result is that the pilot works, we would all have to hold up our hands and accept that."

These doubts are by no means unique. The Justice Select Committee has just published a critical report, drawing attention, inter alia, to the continued refusal to provide cost details; three Chief Executives of Probation Trusts wrote, openly, to Mr Grayling seeking delay; the Chief Inspectors of Prisons and Probation have published a report doubting the offender management ability of NOMS; Police and Crime Commissioners have voiced their concerns; And now Mr Grayling has announced a two month delay, on official advice.

Professionally trained probation staff are most unhappy about the way in which their future is being handled, and are haemorrhaging at an alarming rate. But to me the most distressing aspect of all this is Mr Grayling's apparent disregard for public safety, demonstrated by his continued refusal to allow Parliament to scrutinise his untested proposals, in which he, almost alone, appears to have confidence. ❗

Lord Ramsbotham is a Crossbench peer and Chair of the Penal Affairs APPG



Chris Grayling sets out his plans to transform rehabilitation in a speech at the Centre for Social Justice