
Opposition Day Debate 'Future of the Probation Service' Wednesday 30 October

Background

In January 2013 the Ministry of Justice launched a consultation 'Transforming Rehabilitation - a revolution in the way we manage offenders' which closed in February 2013. The consultation set out radical plans to dismantle the probation service and outsource the majority of probation work to private companies. In May 2013, the Ministry of Justice published its response to the consultation, entitled 'Transforming Rehabilitation: A Strategy for Reform' alongside the Offender Rehabilitation Bill.

The Offender Rehabilitation Bill has yet to be passed. The bill had its third reading in the House of Lords in July and was due to have its second reading in the House of Commons this autumn. However, on 19 September, under delegated powers, the Ministry of Justice announced the launch of a competition for an annual £450 million package of rehabilitation contracts across England and Wales. Contracts will be awarded in 2014 with private sector organisations expected to take over approximately 70 per cent of probation work in 2015.

Key Points

- 1. A successful public service will be dismantled and replaced with an untried and untested payment-by-results system.** Reoffending is down and a report by the National Offender Management Service (NOMS) on 25 July 2013 rated the performance of all 35 probation trusts in England and Wales as either 'good' or 'exceptional'. Yet the government's plans will dismantle the existing probation service and replace it with a system that is untested in the criminal justice system.

The MoJ published an interim evaluation of the payment by results schemes at Doncaster and Peterborough that it has heralded as presaging the future. However, this report shows the impact of payment by results to be non-existent despite additional resources and efforts.

The Howard League would like to see policies based on evidence of what works and is concerned that the government is taking a huge gamble with public safety.

- 2. There has been a significant delay in the passage of the Offender Rehabilitation Bill through Parliament.** The first reading of the Bill in the House of Commons took place on 9 July 2013, but a second reading is yet to be scheduled. Whilst the Howard League welcomes the delay to the privatisation of probation, such a long time period between debates suggests that there are major problems with the proposals.

The Howard League is concerned that the **Ministry of Justice is attempting to implement the proposals without adhering to proper Parliamentary process.** For example, during the third reading of the Offender Rehabilitation Bill in the House of Lords, an amendment successfully moved by Lord Ramsbotham, stated that “no alteration or reform may be made to the structure of the probation service unless the proposals have been laid before, and approved by resolution of, both Houses of Parliament.” The government ignored this amendment and on 19 September officially announced the launch of the competition for contracts.

- 3. The proposals set people up to fail, will lead to longer sentences and will land more people in prison.** Rather than scrapping ineffective and expensive short-term prison sentences the Offender Rehabilitation Bill proposes a minimum additional 12 months statutory supervision for everyone sentenced to prison for less than two years. This will create disproportionately lengthy sentences for minor crimes, so that for example a two-week prison sentence becomes a year and one week of being trapped in the criminal justice system. This represents one of the single biggest intrusions of the state into people’s lives in recent memory. Breach and return to custody will be very real prospect for many, indeed the **Ministry of Justice estimate that around 13,000 people will be recalled to prison each year, requiring at least 600 additional prison places.**
- 4. If implemented, the reforms will be one of the biggest changes to our justice system in a generation but there is very little detail about how it will work.** Risk is key to the Transforming Rehabilitation proposals – who will supervise people under sentence will be determined by their risk level, with high risk cases remaining in the public sector and all low and medium risk cases (the vast majority) being transferred to private providers. Despite the central importance of risk levels to the proposals a risk assessment tool is yet to be published, or possibly even developed.

Furthermore, probation officers are currently being asked whether they would prefer to stay in the public sector or move to one of the 21 ‘Crime reduction companies’ (CRCs), but they are not being provided with any information with which to make this decision. Probation officers do not know who their employers will be in a CRC, what kind of what they will carry out or what terms and conditions they will be expected to work under. **It is unacceptable to put forward radical plans that are central to public safety with so little detail about how it will work and how it will affect the people involved.** The probation service has offered to manage these people without additional resources but government has rejected this proposal, preferring to inject additional public money into private companies to set up a whole new system.

- 5. The government says these proposals can be implemented without spending any extra money.** Focus on rehabilitation and resettlement is welcome, but the Howard League questions whether the proposals can be implemented successfully at a time when the Ministry of Justice is under pressure to reduce its budget. The Transforming Rehabilitation proposals will result in an additional 60,000 being supervised in the community who previously would have been released from a short term prison sentence without any probation supervision. This will result in a large rise in the prison population as many of the additional 60,000 people will breach the terms of their supervision and be recalled to custody - previously they would have only been sent back to prison if they had committed a further offence of serious enough gravity to pass the custody threshold. The Ministry of Justice estimates that an additional 13,000 people each year will receive short prison sentences as a result of the reforms. New prisons cost at least the equivalent of two general hospitals or 500 schools to build with running costs of £50 million.

Furthermore, the proposals necessitate wholesale reorganisation of the probation and prison services and a lengthy and complex national tendering and contracting process, all

of which will require significant investment. Again, there is a lack of detail, **despite the publication of several impact assessments the Ministry of Justice has yet to clearly set out the costs of the reforms and how they will be funded.** The current budget for probation is approximately £800 million per year, suggesting a ten year budget of £8 billion. The House of Commons library has broadly estimated the ten year value of outsourced probation contracts as £5-20 billion, which does not include the budget for the remaining public sector probation service. **This suggests a significant increase in costs is predicted, contrary to Ministry of Justice claims that the reforms are a cost-saving initiative.**

- 6. The new system could create perverse incentives for private companies.** Reducing reoffending will be measured through cohorts, rather than measured on an individual level. This could result in 'cherry-picking' where providers work only, or more closely, with those least likely to reoffend and fail to invest resources in those with significant risk factors in order to meet targets. Providers will continue to be paid if people breach their conditions and are recalled to custody. A recent report produced by the Justice Select Committee stated that perverse incentives arising from the payments by results system could be a particular problem for the provision of services for women offenders, who are often classified as presenting a lower risk of reoffending or harm but have a high level of need and require more intensive, costly intervention. Similar perverse incentives have already caused problems for the government's Work Programme, where results have been disappointing.

In addition, **the record of private companies operating in the criminal justice system is far from encouraging.** Two of the largest companies expected to bid for contracts, G4S and Serco, are under investigation by the Serious Fraud Office for alleged overcharging by tens of millions of pounds in regard to existing offender tagging contracts. Recently the Minister of Justice confirmed that these two companies would be permitted to bid for probation contracts.

- 7. The proposed payment-by-results system poses a particular threat to the supervision of women.** Probation interventions for women are usually successful because they are small, local and holistic – they look at each woman as an individual with problems and needs rather than simply as an offender. This approach has a proven track record in helping women turn their lives around as well as reduce reoffending. Under the proposals it is likely that these types of services will eventually lose funding completely. Private companies are very unlikely to subcontract with many women's services as they are small (and will therefore not provide services across an entire contract area), and more expensive than non-gender specific services. The Howard League is concerned that women will be assigned to community interventions designed only for men with detrimental consequences for their safety, levels of offending and the health and wellbeing of the women involved. Some of these concerns were echoed by the Justice Select Committee's recent inquiry into Women Offenders.

After much delay the Ministry of Justice published its review of the women's custodial estate on 25 October 2013. The review stated that two of the 12 women's prisons would close and that all remaining prisons would become resettlement prisons. As there will be 21 contract package areas but only 10 remaining women's prisons a substantial number of female prisoners will be released into an area different to the prison. The review contains no information on how the resettlement prison system will work for women. **Female prisoners are being shoehorned into a system designed for men.**

- 8. Reoffending rates are falling under the current system.** The latest set of reoffending statistics published by the Ministry of Justice shows that for everyone under probation supervision, **the probation service reduced reoffending by 5 per cent.** The fall in

reoffending is even higher when the figures for those serving community sentences are separated from those released from custody, with a **6 per cent reduction for those serving community sentences**. This continues the downward trend in reoffending rates witnessed over recent years for those supervised by the probation service. The success of the probation service in reducing reoffending must be the benchmark for measuring the performance of private companies.

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