

Managing Offenders: A New Model of Probation Debate on 3 October 2019

Summary

This House of Lords Library Briefing has been prepared in advance of the debate due to take place on 3 October 2019 on the motion moved by Lord Ramsbotham (Crossbench) “that this House takes note of the case for reforming the management and treatment of offenders in prison and the community”.

There are over 250,000 people under the supervision of probation services at any one time.¹ Under current policy, professionals provide rehabilitative probation services to all prisoners; this starts twelve weeks before their release, with supervision in the community continuing for twelve months after release.² While on probation, individuals may have to:³

- do unpaid work;
- complete an education or training course;
- get treatment for addictions; and
- attend regular meetings with an ‘offender manager’.

Since 2014, two services have managed offenders on probation:⁴

- the National Probation Service (NPS), a statutory criminal justice service, supervises high-risk offenders; and
- 21 community rehabilitation companies (CRCs) managing low and medium risk offenders.

However, the Government has recently announced plans to reform the probation system. The plans propose a new model of probation services in England and Wales, where the NPS would be responsible for managing all offenders on a community order or licence, including those currently managed by CRCs.

This briefing considers the Government’s recent announcement. It focuses on the probation system in England and Wales and outlines: plans for the proposed system; the history of the current system; and criticisms it received. It also includes statistics relating to probation and re-offending. Information on conditions in prisons is set out in further reading.

Recent Developments

On 16 May 2019, David Gauke, the then Secretary of State for Justice, announced proposals for a new model of probation services in England and Wales.⁵ Under the new model, the National Probation Service (NPS) would be responsible for managing all offenders on a community order or licence

following their release from prison, including the low and medium risk offenders who are currently managed by CRCs.

The voluntary and private sectors would also have a “significant and more clearly defined” role in the delivery of unpaid work, accredited programmes and resettlement and rehabilitative interventions.⁶ The Ministry of Justice (MoJ) announced an intention—“when Parliamentary time allows”—to implement an independent statutory register for probation professionals.⁷ In addition, it said that it would make changes to support continuous professional development for probation workers.

The Conservative Government under Theresa May ran a consultation in 2018 that outlined its plans to reform the probation system.⁸ Subsequently it published a draft operating blueprint. This provided more detail on what the proposed model would look like when the current CRC contracts end in spring 2021.⁹

Overview of the Proposed Model

Responsibility for Offender Management

Under the proposed model, the NPS and the private and voluntary sectors would continue to have a role in offender management. The NPS would be responsible for all offenders on a community sentence or licence, regardless of risk.¹⁰ Private and voluntary sector organisations would deliver interventions and rehabilitative services, such as unpaid work and accredited programmes (except for programmes for sex offenders). The NPS would have an express requirement to buy all interventions from the market, spending an estimated £280 million a year. The private and voluntary sectors would also have a role in supporting the NPS to identify and deliver wider innovation.

The MoJ also set out plans relating to performance management and IT. It stated it would develop “clear and transparent” key performance outcomes and measures against which to judge the NPS and private and voluntary sector providers. There were also proposals to develop centralised IT systems and to modernise data-sharing capabilities.

Planned Structure of the Model

There would be twelve probation areas across England and Wales headed by a regional director.¹¹ This would mean the introduction of eleven new areas in England, with existing arrangements in Wales remaining unchanged.¹² In England, the new regional directors would:

- oversee each area;
- provide strategic leadership; and
- be responsible for overall delivery and commissioning of probation services in their area.

These directors, along with the NPS director in Wales, would also be responsible for local and regional partnership working and strengthening engagement. The recruitment of the directors is due to take place in 2019, with roles confirmed by the end of the year.

Building NPS Capability

The MoJ plans to build NPS capability and capacity in the following areas:¹³

- **Advice to Court:** the MoJ stated it would deliver high quality advice to courts which would ensure offenders have appropriate assessments. These would “enable effective sentence planning and support the most effective targeting of interventions”.
- **Offender Management:** the MoJ announced it would be taking a gender-informed approach where appropriate. In addition, clear national standards would focus on: the importance of quality offender engagement; the form and frequency of contact with offenders; and clear frameworks for staffing ratios and caseloads.
- **Resettlement Services:** the MoJ said it would support offenders on release from prison by enhancing the role of the responsible officer in planning for release. It plans to achieve this by aligning arrangements with responsibilities for the management of offenders in custody to ensure a safe and planned transition from custody to community.

Plans to Improve Quality of Delivery

The Government plans to improve the delivery of unpaid work and accredited programmes.¹⁴ It would guarantee the quality of unpaid work through “clear contractual requirements”, which would ensure individual assessments and the availability of placements with staff who are appropriately trained. There would also be a requirement for suppliers to provide meaningful unpaid work placements which “maximise employment, education and training opportunities and deliver reparation to local communities”. These placements would need to take account of personal circumstances.

Additionally, the MoJ would require that all offenders who are eligible and able to attend accredited programmes do so. The creation of co-terminus agreements across NPS regions is also set out, with the aim of ensuring the effective integration of services and clear accountability for delivery. Plans to design flexible contracts would also enable “innovative approaches that show results can be quickly identified and spread across the wider system”.

Further actions in the blueprint focus on resettlement and non-accredited rehabilitation interventions.¹⁵ This includes plans for a “dynamic framework” for resettlement and rehabilitative interventions. The framework would operate at a national level but allow the NPS to directly commission services at a regional or local level. The MoJ’s intention is that it would help to strengthen engagement not only to the private and voluntary sectors, but also support co-commissioned activity with partners such as: local authorities; NHS organisations; and police and crime commissioners.

The MoJ would also ensure interventions for offenders focus on their needs. It aims to “better define” the services delivered as part of a rehabilitation activity requirement (RAR), to ensure that interventions available address the primary factors linked to reoffending. This would “improve both the range and quality of rehabilitative interventions” to target the needs of offenders. Some interventions would specifically target vulnerable offenders and those with mental health, alcohol and substance abuse problems. In commissioning services and interventions, the MoJ stated it would work with smaller providers “who can often provide a more tailored and locally responsive approach”. Providers would also take a gender or trauma informed approach where appropriate.

Supporting a Professional Workforce

The MoJ plans to legally recognise the probation workforce as a profession and to create a regulatory framework. This framework would set:¹⁶

- qualification requirements and practice standards;
- requirements for fitness to practice; and
- continuing professional development expectations.¹⁷

The MoJ believes the introduction of new NPS leadership structures and capabilities would support a smooth transition for staff and drive up standards.

Reaction to the Proposed Model

Reaction to the proposals has been mixed. Responding to the Government’s statement announcing the reforms, Baroness Chakrabarti, Shadow Attorney General, said it was a “welcome U-turn on a disastrous probation policy”.¹⁸ However, she questioned the decision to continue the involvement of the private and voluntary sectors:

I must probe the Minister on the thinking for the future and the proportion of these funds that are to be preferred towards private companies as opposed to voluntary bodies and social enterprises. This is crucial to understanding whether failing outsourcing giants, such as G4S and Sodexo [CRC contractors], are going to be offered a way back into the probation system.¹⁹

Lord Dholakia, Co-Deputy Leader of the Liberal Democrat Peers, stated that “we should broadly welcome the thrust of the Government’s intention to reorganise the service”.²⁰

Former Chief Probation Inspector, Dame Glenys Stacey, said she was “delighted” with the decision to reform the system.²¹ She argued that people would be safer under a system delivered by the public sector. NAPO—the trade union and professional association for probation and family court staff—also welcomed the announcement. It argued that the current model had been “doomed to fail from the outset”.²² However, it also said it was disappointed that some probation work would remain in the private sector.

Speaking on behalf of four companies that are responsible for 17 of 21 CRCs in England and Wales, Janine McDowell, of Sodexo Services in the UK and Ireland, said she was disappointed by the decision.²³ She argued that it would increase costs and risk, with a more “fragmented system” causing confusion as offenders are passed between various organisations for different parts of their sentence.

Commenting on the reforms as set out in the initial consultation, the National Audit Office (NAO) stated that the proposals “address many of the issues [with the current system] that have caused problems”. It found, however, that the MoJ has limited time to procure new contracts. The NAO also raised concerns that in continuing to split services between NPS and CRCs, the MoJ will “need to manage risks posed by the interfaces between these organisations and the wider system”. In addition, it stated that the quality of probation services needs improvement and maintenance during the transition from the existing contracts to the new ones.

Current System: Transforming Rehabilitation

Under the current system of probation, two services manage offenders:²⁴

- the public sector NPS manages high-risk offenders and provides services to the courts; and
- new CRCs managing low and medium risk offenders.

It also includes the following features:²⁵

- an extension of statutory rehabilitation to offenders sentenced to less than twelve months in custody (“the most prolific group”);
- a ‘through the prison gate’ resettlement service to give most offenders continuous support by one provider (usually a CRC) from custody into the community; and
- ‘payment by results’ incentives for market providers who produce real reductions in reoffending.²⁶

The Coalition Government launched this model of probation in 2013 through a series of reforms (this was known as the ‘transforming rehabilitation’ programme).²⁷

Prior to this, between 2001 and 2010, probation boards delivered probation services across 42 areas in England and Wales.²⁸ Subsequently, in 2010, following the implementation of the Offender Management Act 2007, 35 self-governing probation trusts replaced probation boards. However, the Government stated that under this model:

Re-offending rates remained stubbornly high and criticisms of the model saw it as inefficient and lacking in transparency, with consistent challenges in meeting targets to draw off the expertise available from voluntary and specialist providers.²⁹

In September 2013, the MoJ invited bids to run 21 CRCs across England and Wales, worth a combined £450 million. The following year, in December 2014, the MoJ announced the new owners of CRCs.³⁰ Subsequently, in May 2015, ‘through the gate’ services began.

In July 2017, the Government acknowledged issues with the system and announced a change in the payment mechanisms within the CRC contracts. Sam Gyimah, the then Minister for Prisons and Probation, stated “it is clear that the current delivery of some aspects of probation services must improve”.³¹ As a result, he reported that the contracts had been adjusted to reflect the “fixed nature of most of the costs that providers incur when delivering services to offenders”. The aim was to help CRCs respond to the reduction in the number of offenders sentenced to community orders and to make CRC income less sensitive to changes in demand.

However, in July 2018, the MoJ stated that the quality of probation services was falling short of expectations. It announced it would terminate its CRC contracts 14 months early, in December 2020.³² Alongside this, David Gauke said that the Government would invest an extra £22 million each year “to improve through-the-gate support” and published the consultation document which set out the current proposed reforms.³³

Criticisms of Transforming Rehabilitation

Since its introduction, the transforming rehabilitation reforms have received criticism from a variety of sources. In March 2019, the NAO published a progress review of transforming rehabilitation, which stated that the MoJ “set itself up to fail” in how it approached the reforms.³⁴ It argued that the rushed implementation introduced significant risks that its chosen commercial approach had left it badly placed to manage. The NAO also found that the consequences of these decisions were far-reaching.³⁵ For example, it reported that there was little evidence of hoped-for innovation, with many of the early operational issues, such as friction between NPS and CRCs, persisting. The NAO stated that transforming rehabilitation “achieved poor value for money for the taxpayer”.

In addition, the NAO examined the cost of the decision to end the CRC contracts.³⁶ It reported that, when added to previous “unsuccessful” efforts to stabilise CRCs, the MoJ would pay at least £467 million more than the original contracts required. Based on this, it estimated that the MoJ would pay up to £2.3 billion under the contracts. While this is less than the £3.7 billion expected at the outset of the reforms, “little progress has been made on transforming probation services”.

The same month, Dame Glenys Stacey, the then Chief Inspector of Probation, published the final of several reports focusing on the reforms. She found that the current model for the delivery of probation services in England and Wales was “irredeemably flawed”.³⁷ She argued that it had proved that it is “well-nigh impossible to reduce probation services to a set of contractual requirements”. Commenting further, she stated:

To implement government policy, capable probation leaders were required to deliver change they did not believe in, against the very ethos of the profession. On inspection, we now find probation supervision provided under contract to be substandard, and much of it demonstrably poor. Judicial confidence in community sentencing is now at serious risk.³⁸

In recent years, the House of Commons Public Accounts Committee has also reported on the transforming rehabilitation reforms. In its most recent report, published in May 2019, the committee argued:

In its haste to rush through its reforms at breakneck speed the Ministry of Justice not only failed to deliver its ‘rehabilitation revolution’ but left probation services underfunded, fragile, and lacking the confidence of the courts. Inexcusably, probation services have been left in a worse position than they were in before the Ministry embarked on its reforms.³⁹

It also stated that CRCs are too dependent on volumes of work which “did not materialise”, with their exposure to payment by results worsening the subsequent financial pressure. This left CRCs with insufficient income to cover the cost of “basic, good quality probation services”. The committee also criticised ‘through the gate’ services, highlighting issues with accommodation. It found examples of offenders given tents and left with no fixed address on release from prison. The committee is currently waiting on the Government’s response to its report.

The House of Commons Justice Committee also highlighted concerns with the reforms. In June 2018, the committee published the findings of its inquiry into transforming rehabilitation, finding that there were “many serious issues” with the reforms.⁴⁰ Responding, the Government acknowledged issues with

the system and stated an intention to reform the system:

The importance of the Justice Committee's report is reflected in the Government's decision to end contracts for community rehabilitation companies early, in the publication of the public consultation on the future of probation, and in the nature of the strategic changes being brought forward. These changes are intended to directly address the structural challenges identified by the Justice Committee and reiterated in feedback from the public consultation, subsequent reports from other key stakeholders such as HM Inspectorate of Probation, and by our own internal analysis of lessons learned from transforming rehabilitation.⁴¹

The MoJ acknowledged these sources of criticism in the draft blueprint detailing the proposed new model.⁴² It stated that it had considered concerns of key stakeholder groups—and its own analysis—in designing the new system.

Statistics: Probation and Reoffending

Ministry of Justice Offender Management Data

MoJ statistics found that at the end of 2018, 256,010 offenders were on probation in England and Wales.⁴³ It reported that this was a 3% decrease in the total probation caseload (court orders and pre- and post-release supervision) compared with one year earlier and an increase of 5% compared to December 2008. Focusing on recent trends, the MoJ reported that at the end of 2014, the caseload was at 217,359, compared with 256,010 at the end of December 2018. It attributed this increase to the requirement of statutory supervision for all offenders given custodial sentences of more than one day.

In contrast, the total court caseload (offenders on community orders (COs) and suspended sentence orders (SSOs)) has fallen in recent years. The MoJ argues that this trend reflects the fall in community orders given over the past eight years. In addition, the total number of reports⁴⁴ prepared by the probation service for courts fell by 48% between 2009 and 2018.⁴⁵ The MoJ state that the downward trend in the number of defendants dealt with by the courts over this period contributed to the fall.

Focusing on the most recent quarterly trends, the findings reported by the MoJ included:⁴⁶

- The overall caseload of offenders supervised before or after release from prison fell by 2% between the end of December 2017 and 2018.
- The latest quarter also saw a continued rise in the number of rehabilitation requirements, as well as a rise in the 'treatment' requirements (drug, alcohol and mental health) under COs.
- 68% of community orders terminated successfully (they ran their full course or terminated early due to good progress). In addition, for the supervision periods of suspended sentence orders, 75% of those terminated were done so successfully over this period.
- The number of pre-sentence court reports produced by the probation service decreased by 10% between the quarter ending December 2018 and the same quarter the previous year. The MoJ also reported that 89% of immediate custodial sentences proposed in pre-sentence reports resulted in the courts giving that sentence in the latest twelve month period.

HM Inspectorate of Probation Data

Her Majesty's Inspectorate of Probation also publishes statistics which focus on the performance of probation services. In her annual report, published March 2019, the then Chief Inspector of Probation, Dame Glenys Stacey, set out the following key facts in relation to probation services:⁴⁷

- 258,157 individuals were under probation supervision on 30 September 2018.
- HMI Probation rated 80% of CRCs inspected 'inadequate' in terms of implementation and delivery of probation supervision.
- 38% of magistrates indicated that they had less confidence in the probation system than under previous arrangements.
- 64% of adults released from a custodial sentence of less than twelve months reoffended (January to March 2017 cohort). In comparison, those who served longer sentences reoffended at a rate of 28%.
- 33% of adults who served a community or suspended sentence reoffended (January to March 2017 cohort).
- 11% of criminal justice third-sector voluntary organisations worked directly with CRCs (October 2018).
- 40% of individuals commencing a community sentence or suspended sentence were subject to a rehabilitation activity requirement (July to September 2018 cohort).
- There was a 56% reduction in the number of individuals starting accredited programmes between 2009/10 and 2016/17.
- At March 2018, CRCs were forecast to lose £294 million (if the contracts had continued as planned), compared to a £269 million forecast profit at bid stage.
- NPS and CRCs jointly occupied 15% of probation premises.
- 2 of 21 CRCs used the gateway to connect their systems to MoJ systems for the transfer of essential information.

Further Information

- HM Chief Inspector of Prisons for England and Wales, [Annual Report 2018–19](#), 9 July 2019, HC 2469 of session 2017–19
- Prison Reform Trust, [Prison: The Facts](#), Summer 2019

¹ HM Prison and Probation Service, [The Proposed Future Model for Probation: A Draft Operating Blueprint](#), 19 June 2019, p 3.

² HM Inspectorate of Probation, [Report of the Chief Inspector of Probation](#), March 2019, p 5.

³ HM Government website, [Probation: Overview](#), accessed 17 July 2019.

⁴ HM Government website, [National Probation Service: About Us](#), accessed 17 July 2019.

⁵ Ministry of Justice et al, [Justice Secretary Announces New Model for Probation](#), 16 May 2019.

⁶ HM Government website, [Guidance: Strengthening Probation, Building Confidence](#), 16 May 2019.

⁷ *ibid.*

⁸ Ministry of Justice, [Strengthening Probation, Building Confidence](#), 27 July 2018.

⁹ HM Prison and Probation Service, [The Proposed Future Model for Probation: A Draft Operating Blueprint](#), 19 June 2019.

¹⁰ *ibid.*, p 3.

¹¹ Ministry of Justice, [Strengthening Probation, Building Confidence: Response to Consultation](#), May 2019, CP 93, p 7.

- ¹² The MoJ is also considering whether to make further changes to the delivery of services in the North West to make caseloads more manageable and reflect the commitment to joint working with the Greater Manchester combined authority: HM Prison and Probation Service, [The Proposed Future Model for Probation: A Draft Operating Blueprint](#), 19 June 2019, p 5.
- ¹³ HM Prison and Probation Service, [The Proposed Future Model for Probation: A Draft Operating Blueprint](#), 19 June 2019, p 6.
- ¹⁴ *ibid*, pp 6–7.
- ¹⁵ *ibid*, p 7.
- ¹⁶ *ibid*.
- ¹⁷ *ibid*.
- ¹⁸ [HL Hansard, 16 May 2019, col 1702](#).
- ¹⁹ *ibid*.
- ²⁰ *ibid*.
- ²¹ BBC News, [‘Probation Service: Offender Supervision to be Renationalised’](#), 16 May 2019.
- ²² NAPO, [‘Union Welcomes Government U-Turn on Probation’](#), accessed 18 July 2019.
- ²³ BBC News, [‘Probation Service: Offender Supervision to be Renationalised’](#), 16 May 2019.
- ²⁴ Ministry of Justice, [Transforming Rehabilitation: A Strategy for Reform](#), May 2013, Cm 8619.
- ²⁵ *ibid*.
- ²⁶ *ibid*, p 6.
- ²⁷ *ibid*.
- ²⁸ *ibid*, p 7.
- ²⁹ *ibid*.
- ³⁰ HM Government, [The Transforming Rehabilitation Programme: The Preferred Bidders for the Community Rehabilitation Companies](#), accessed 24 July 2019.
- ³¹ House of Commons, [‘Written Statement: Justice Update’](#), 19 July 2017, HCWS81.
- ³² National Audit Office, [Transforming Rehabilitation: Progress Review](#), 1 March 2019, HC 1989 of session 2017–19, p 6.
- ³³ Ministry of Justice et al, [‘Justice Secretary Outlines Future Vision for Probation’](#), 27 July 2018.
- ³⁴ National Audit Office, [Transforming Rehabilitation: Progress Review](#), 1 March 2019, HC 1989 of session 2017–19, p 10.
- ³⁵ *ibid*.
- ³⁶ *ibid*.
- ³⁷ HM Inspectorate of Probation, [Report of the Chief Inspector of Probation](#), March 2019, p 3.
- ³⁸ *ibid*.
- ³⁹ House of Commons Public Accounts Committee, [Transforming Rehabilitation: Progress Review](#), 3 May 2019, HC 1747 of session 2017–19, p 3.
- ⁴⁰ House of Commons Justice Committee, [Transforming Rehabilitation](#), 22 June 2018, HC 482 of session 2017–18, p 3.
- ⁴¹ House of Commons Justice Committee, [Transforming Rehabilitation: Government Response to the Committee’s Ninth Report of Session 2017–19](#), 7 June 2019, HC 2309 of session 2017–19, p 1.
- ⁴² HM Prison and Probation Service, [The Proposed Future Model for Probation: A Draft Operating Blueprint](#), 19 June 2019, p 11.
- ⁴³ Ministry of Justice, [Offender Management Statistics Bulletin, England and Wales: October to December 2018 and Annual \(Calendar Year\) 2018](#), 25 April 2019, p 11.
- ⁴⁴ NAPO, [‘Ministry of Justice Changes to Pre-Sentence Reports’](#), accessed 24 July 2019.
- ⁴⁵ Ministry of Justice, [Offender Management Statistics Bulletin, England and Wales: October to December 2018 and Annual \(Calendar Year\) 2018](#), 25 April 2019, p 11.
- ⁴⁶ *ibid*, p 12.
- ⁴⁷ HM Inspectorate of Probation, [Report of the Chief Inspector of Probation](#), March 2019, p 4.

House of Lords Library briefings are compiled for the benefit of Members of the House of Lords and their personal staff, to provide impartial, politically balanced briefing on subjects likely to be of interest to Members of the Lords. Authors are available to discuss the contents of the briefings with the Members and their staff but cannot advise members of the general public.

Any comments on briefings should be sent to the Head of Research Services, House of Lords Library, London SW1A 0PW or emailed to purvism@parliament.uk.