

CABINET ITEM COVERING SHEET PROFORMA

AGENDA ITEM

REPORT TO CABINET
7 March 2019

REPORT OF SENIOR
MANAGEMENT TEAM

CABINET DECISION

Leader of the Council – Councillor Bob Cook

Access, Communities & Community Safety – Lead Cabinet Member – Councillor Steve Nelson

STRENGTHENING PROBATION

1. Summary

The purpose of this report is to provide cabinet with an update on the proposed changes being introduced by the Ministry of Justice as part of a review of probation services 'Strengthening probation, building confidence'. As part of the review the Ministry of Justice has decided to cease all contracts in 2020 and re-tender. Members will recall that the Council played an active role in the creation of the Community Interest Company, Achieving Real Change for Communities (ARCC) in 2014 and this report seeks agreement to this support continuing.

2. Recommendations

It is recommended that:

1. Cabinet note the content of the report and continue to support ARCC in the delivery of local probation services.
2. Cabinet agree in principle to continue the provision of a financial guarantee up to the current maximum of £4.886m (current total guarantee of £14.080m less subsidiary guarantees of £9.194m) as part of a revised contract bid by ARCC, subject to satisfactory subsidiary guarantees being provided to the Council by other partners in the bid (including other local authorities), and to being satisfied as to the financial viability of the ARCC bid and a risk assessment of the guarantee being invoked.
3. Cabinet approve that the final amount of the guarantee and any subsidiary guarantees be delegated to the Director of Finance and Business Services in consultation with the Leader of the Council.

3. Reasons for the Recommendations/Decisions

To enable ARCC to progress its business planning for the future delivery of probation services and to maximise the chance of success for a future local bid.

4. Members' Interests

Members (including co-opted Members) should consider whether they have a personal interest in any item, as defined in **paragraphs 9 and 11** of the Council's code of conduct and,

if so, declare the existence and nature of that interest in accordance with and/or taking account of **paragraphs 12 - 17** of the code.

Where a Member regards him/herself as having a personal interest, as described in **paragraph 16** of the code, in any business of the Council he/she must then, **in accordance with paragraph 18** of the code, consider whether that interest is one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest and the business:-

- affects the members financial position or the financial position of a person or body described in **paragraph 17** of the code, or
- relates to the determining of any approval, consent, licence, permission or registration in relation to the member or any person or body described in **paragraph 17** of the code.

A Member with a personal interest, as described in **paragraph 18** of the code, may attend the meeting but must not take part in the consideration and voting upon the relevant item of business. However, a member with such an interest may make representations, answer questions or give evidence relating to that business before the business is considered or voted on, provided the public are also allowed to attend the meeting for the same purpose whether under a statutory right or otherwise (**paragraph 19** of the code)

Members may participate in any discussion and vote on a matter in which they have an interest, as described in **paragraph 18** of the code, where that interest relates to functions of the Council detailed in **paragraph 20** of the code.

Disclosable Pecuniary Interests

It is a criminal offence for a member to participate in any discussion or vote on a matter in which he/she has a disclosable pecuniary interest (and where an appropriate dispensation has not been granted) **paragraph 21** of the code.

Members are required to comply with any procedural rule adopted by the Council which requires a member to leave the meeting room whilst the meeting is discussing a matter in which that member has a disclosable pecuniary interest (**paragraph 22** of the code)

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RECOMMENDATIONS

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DETAIL

1. The 'Transforming Rehabilitation' approach led to a significant change in the management and delivery of probation services. Local Probation services were essentially split with 30% of the caseload (most serious offenders) allocated to the National Probation Service (NPS). The remaining 70% caseload was assigned to Community Rehabilitation Companies (CRC) across England and Wales which were subsequently put out to tender. Expressions of interest were encouraged from both private companies and mutual organisations.
2. A not for profit Community Interest Company (CIC) was established and successfully bid for the Durham Tees Valley CRC under the name of ARCC (Achieving Real Change for Communities). The contract came into effect on 1st February 2015 and the original contract was for an initial 7 years with the option for a further 3 year extension. ARCC is the only not for profit organisation nationally, delivering probation services. ARCC is made up of the following partners from the Public, Private and Third sectors:

- Stockton-On-Tees Borough Council
- Redcar and Cleveland Borough Council
- Darlington Borough Council
- Tees Esk and Wear Valley NHS Foundation Trust
- Thirteen Group
- The Vardy Foundation
- The Wise Group
- Safe in Tees Valley

Durham Tees Valley Community Rehabilitation Company (CRC)

3. The current delivery model of the CRC consists of evidence based practice and reflects the high level vision for the organisation to deliver high quality services in partnership for the benefit of the public. The overall caseload for DTV CRC is 4100, at a local authority level the delivery model consists of the following tiers:

- **Integrated Offender Management (IOM)** cases, selected in consultation with partners. These cases are those individuals who are deemed to cause the most significant harm to the wider community. An intensive approach is adopted with these cases including regular drug testing, supervision and monitoring with the aim of disrupting the offending pattern and reducing the level of repeat offending.
- **Higher reoffending** cases, made up of those individuals who have high levels of reoffending and regularly come to the attention of Probation services. These cases receive frequent face to face contact from probation officers and have to undergo a more intensive programme of interventions.
- **Lower reoffending** cases, made up of those individuals who have committed limited or 'one off' offences and require limited supervision. These cases receive face to face contact throughout the whole of their supervision period but receive a less intensive programme of intervention.

Across the whole caseload safeguarding and overall risks are continually assessed and managed. Depending on the outcome this could have an impact on the level of supervision/service.

Durham Tees Valley CRC performance

4. The challenges brought about by Transforming Rehabilitation have been met by the CRC. The core measures of service delivery remain among the highest nationally. Failure against core measures can incur up to 15% penalties against the total annual contract value. In terms of contractual performance there are currently no core areas of concern and the financial penalties against the core measures for the CRC remain under 1% of the total amount of risk, overall contract compliance remains strong.
5. Performance by Results has proved more of a mixed picture. The CRC has successfully reduced against the binary measure in relation to the proportion of offenders who re-offend. In relation to the frequency of re-offending, progress has been more of a challenge. This is due to the fact that the original baseline used was from 2011. This figure is unachievable under current arrangements due to the subsequent changing nature of offending and crime recording. Detailed analysis of those committing the bulk of the re-offences highlights a cohort of heroin misusers aged over 30, who primarily commit shop theft offences. The issue of payment by results is a national problem which has been faced by all providers across England and Wales. The MOJ has recognised that the original baselines were unrealistic and this has been documented in their consultation document and is one of the main factors for a rethink on the overall contract provision post 2020.

6. The CRC has recently received an inspection from HMIP the final report is due to be published in March 2019 and there is currently an embargo on any prior announcement of results. However, the CRC came out in direct comparison with all CRC's that have been inspected to date, with varying combinations of scores. The narrative within the draft report overall is positive and the areas for improvement are based around two very specific issues. In response the CRC has already implemented a robust improvement plan of action and it is expected that the benefits of this will become apparent in the next few months. Due to the identified issues of the current contracts outlined by the Ministry of Justice (MOJ) which have made it difficult for CRC's to make meaningful progress, it has been made clear that the final inspection results will have no bearing on the awarding of the second contracts.
7. The CRC has been able to develop its model further to support wider partnership working, something which other regional contract providers have found difficult. For example, there is currently a member of staff working within 'Safe In Tees Valley' in relation to the Restorative Justice programme which aims to work both with the offender as well as provide additional support for victims.
8. The CRC is also working with the Oakwood Centre in Eaglescliffe to deliver training to all Unpaid Work participants and working with them to develop a project which can be used for all parts of the community on their site. The CRC co-ordinates approximately 110,000 hours of unpaid work in the region and around 36,000 of those are in Stockton. They work primarily with local authorities but still undertake lots of the smaller resident/ committee nominated projects. In addition to this the CRC has started delivering the Cleveland Divert project for the PCC and Cleveland Police from January 2019 and is leading on a study into the effect of universal credit on re-offending rates
9. The Durham Tees Valley CRC is the only CRC which has been able to successfully integrate staff within the National Probation Service court team, this has received national recognition along with the 'Through the Gate' service which has been described as a beacon service. This is a good example of service integration and fully supports the principles which have been set out in the MOJ consultation for future probation services.
10. The CRC has been able to maintain face to face contact with all offenders, where other regions have moved to telephone contact. The CRC has also been able to retain Integrated Offender Management when other providers haven't and has also expanded the programme with Police colleagues to include domestic abuse. Their one to one domestic abuse programme was recently commissioned by both the Cleveland and Durham Police and Crime Commissioner's and the National Probation Service (NPS).
11. A key element of the CRC model has been the development of community based approaches to offender management, both in terms of supervision within community settings as well as in support and transition into wider community life to reduce the risk of reoffending. A number of community hub locations have been established across the borough.

MOJ consultation 'Strengthening probation, building confidence'

12. The MOJ published its consultation document on the proposed reform of probation services in July 2018. The document outlines a number of proposals intended to further build confidence in the local delivery of probation services with a greater focus on community based sentences as opposed to short custodial terms. As part of its current operating model the Durham Tees Valley CRC delivers a service which largely conforms to the proposed changes outlined in the MOJ consultation. Key elements of its practice have been positively highlighted nationally and have influenced the revised approach.
13. The consultation document further reinforces the original principles of the Transforming Rehabilitation agenda and highlights that since the changes came into effect in 2015 there has

been a national 2% reduction in reoffending of individuals supervised by CRC's. However, following feedback from HMI Probation and the House of Commons Justice Select Committee there is an acceptance that the overall quality of probation services being delivered falls short of expected standards. One of the key issues for CRC's under the current arrangements has been the unforeseen financial challenge in relation to making the model work, such as changes in the volume and types of cases coming to court as well as the changes to the frequency of reoffending. As a result of this, the payment by results element of the contract is unsustainable and as such it has been difficult for CRC's to develop beyond the delivery of core services.

14. While the Ministry of Justice has been working with CRC's to adjust the original baselines to take into account the pressures, it has been agreed that the current contracts will cease in 2020. The learning to date will help to shape the development of revised contracts which will go out to tender and replace existing arrangements. The proposed strategy for managing offenders beyond 2020 consists of a number of areas, summarised below:

Supervising offenders and delivering the sentence of the court: specifically in relation to improving the supervision and management of offenders through:

- Improved assessment and the introduction of minimum standards specifying the form and frequency of contact.
- Improving the delivery of unpaid work to ensure that there are sufficient placements available which promote employment-related skills.
- Explore options to make post sentence supervision proportionate to an individual's sentence and rehabilitation needs.

More effective rehabilitation of offenders: placing a focus on the need to better identify the causes of offending and the action needed to prevent reoffending through:

- Improved quality of advice to court to inform sentencing decisions and promote engagement between courts and CRC's to improve judicial confidence.
- More defined range of services delivered as part of a rehabilitation activity requirement.
- Increased use of community sentences that include drug, alcohol or mental health treatment by testing protocol in five areas across England
- Invest in provision for female offenders
- Improved data collection and publication on offenders protected characteristics

Preparing prisoners for life in the community: there is a need to better understand and address the resettlement needs to prisoners to support community integration and reduce risks through:

- Exploring options for a future model of resettlement involving both offender managers and the community and consider the resettlement services that may be required to support offenders. This includes a commitment to invest a further £22m per year in 'through the gate' provision.
- Establishing a cross government Reducing Reoffending board to tackle barriers to rehabilitation.

A workforce with the right training and skills: addressing the disruption which has been caused by recent reforms ensuring that there are well established systems in place to develop the skills and capability of the workforce through:

- The development of a workforce strategy which ensures providers can recruit and develop the staff they need
- Supporting staff to build careers in probation by defining more clearly the transferrable skills and competencies of responsible officers and introduce a professional register.

Improved system integration: there is a need to ensure that NPS and CRC's work together more closely as part of a single integrated system, improving the efficiency and effectiveness of local services. In order to support this the MOJ propose to:

- Create 10 probation regions in England and configure service delivery within each area with a senior HMPPS leader responsible for joining up services and working with stakeholders.
- Invest in HMPPS digital services to simplify data access and exchange and deliver improvements to IT systems
- Explore options for the commissioning of rehabilitation and resettlement services which promote engagement and collaboration with partners and facilitate greater VCS involvement.

Working closely with partners: there is a role for wider statutory and voluntary partners to play in the rehabilitation process, improving outcomes for both offenders and victims as well as reducing the risk of reoffending, it is proposed that a revised model will:

- Work with voluntary sector organisations to explore how different approaches to commissioning could promote their increased involvement in the delivery of services to offenders.
- Engage with PCC's to consider how they can plan a greater role in shaping rehabilitation and resettlement services and improving local collaboration with statutory agencies.
- Work with London and Manchester as part of existing devolution deals to co-design future probation services.

Driving performance improvement: there is a need to ensure that probation is focussed on the right outcomes and that there are meaningful incentives for providers to achieve these, the MOJ aim to:

- Explore options for future contracts that would pay providers to deliver core services while retaining incentives for innovation and performance improvement
- Explore options for key performance outcomes and measures that probation providers should be judged against in future contracts
- Support HMI Probation to implement its new inspection framework which will see providers inspected and rated annually.

15. Members will recall that there was significant challenge from local authorities and partners to the original proposals outlined under the Transforming Rehabilitation strategy, particularly in relation to the continued effective delivery of probation services locally. These concerns still remain with the proposed changes beyond 2020, however, there remains support for a local approach to be developed via ARCC to ensure that we provide the best possible service under the circumstances.

Durham Tees Valley CRC beyond 2020

16. Under the proposals outlined by the MOJ, the current contract for the CRC will cease in 2020. The move to 10 regions will see a single contract for provision across the whole of the North East (currently 2 contracts). Through ARCC there is a commitment to submit a revised regional bid to deliver probation services based on the current Durham Tees Valley model. In order to progress this a dedicated bid team has been established to work up the proposal and also seek support from partners. To date a number of additional organisations have been approached to support the revised regional bid as well as join the ARCC board to provide oversight of the bid process and subsequent contract delivery should a bid be successful. The current Chair of ARCC is in discussions with prospective partners to bolster the partnership and a number have suggested a willingness to join the ARCC Board; these discussions are ongoing consequently it is too early to make specific reference within the report.

17. In terms of timescales, the bid team is working to the following timeline which has been set by the MOJ and consists of four key periods:
- Pre-Qualification Questionnaire 01/04/19 - 10/05/19
 - Tender 24/06/19 - 16/08/19
 - Negotiation and due diligence 01/10/19 - 31/12/19
 - Submission of final offer 01/02/20 - 28/02/20
18. In order to meet the key MOJ periods the bid team have identified the following key milestones:
- MOJ outline requirements to market, issue draft ITT & Contract 15/02/19
 - Contract Notice issued 01/04/19
 - Go/ No Go decision for ARCC board on Draft Finance Model 16/04/19
 - PQQ submission 10/05/19
 - MOJ Announce Qualifying Suppliers 21/06/19
 - Go/No Go decision for ARCC Board on Tender and Finance Model 15/07/19
 - Submission of Tender 16/08/19
 - Go/ No Go decision on Best and Final offer 19/02/20
 - Submission of Best and Final offer 18/02/20
 - MOJ notifies successful/ unsuccessful bidders 01/06/20
 - Mobilisation begins 01/07/20
 - Contract start date 01/01/21
19. The CRC recognise the challenges a larger area will bring and have been clear in discussions with the MOJ if the area were any larger it would not fit their localism agenda. The CRC have given assurances they will maintain local delivery and representation within their current footprint. As such the current operating model will not change and there should be no reason for services to dip in the current Durham Tees Valley area. The current Northumbrian CRC contract covers Northumberland and Tyne and Wear which has a combined population of approximately 1.4 million people and covers an area of approximately 5,000 sq.km, the current Durham and Tees Valley area consists of approximately 1.15m people covering an area of 2,800 sq.km. The Northumbrian contract is operated by Sodexo and works with 5,000 clients at any one time. It is likely that a similar operating model currently being used in Durham and Tees Valley will need to be replicated in the north of the region as part of a new contract. The next MOJ contract is likely to have greater stipulations on staff grades and the numbers of staff required to carry out work. The merging of the Northumbria area will result in an increase of back office functions and will also provide additional opportunities for development such as data analysis, dedicated communications as well as dedicated resources to focus on reducing reoffending work. The CRC have clear plans to continue to improve links with local communities and work with the local authorities to ensure resources are best used to tackle problems. The CRC would also like to see greater integration in how interventions are commissioned and how the local voluntary and community sector can be better utilised.
20. Notwithstanding the challenges experienced under the current 'Transforming Rehabilitation' arrangements, the CRC has made significant progress in terms of tackling reoffending and maintaining good links with the NPS. The key motivation to support the establishment of ARCC in 2015 was to preserve as much of the existing probation service as possible, which was considered to be one of the most high performing nationally. The community based 'not for profit' approach provided the best opportunity to develop the service and reinvest any profits back into local areas.
21. Throughout the existing contract period the CRC has been able to perform favourably against a challenging backdrop and has regularly received praise from the Ministry of Justice for its approach. Through the current consultation it is clear the moving forward the MOJ is keen to ensure that the key elements of the current Durham and Tees Valley model are replicated in other areas as part of the revised contract arrangements.

22. **Guarantee and Finance Model**

The guarantee for the current contract comprises:

- the Annual Liability Cap of £10,560,000 and;
- the Guarantee Aggregate Liability Cap of £14,080,000.

The indication to date is that the Annual Liability Cap for the whole contract package area including Northumbria, is likely to be 30-35% of the total annual contract value, and the Guarantee Aggregate Liability Cap is likely to be 40-45% of annual contract value.

An indicative annual contract value was given by the MOJ for the DTV and Northumbria area of £26 million. However, the annual contract value was heavily caveated by the MOJ but based on the indicative amount, therefore it is likely that the Annual Liability Cap would be £7.8 – 9.1 million and the Guarantee Aggregate Liability Cap would be £10.4 – 11.7 million.

23. A number of partners have indicated support in principle. It is recommended that Cabinet agree in principle to continue the current guarantee up to a maximum of £4.886m assuming satisfactory sub-guarantees are in place (current total guarantee is £14.080m less subsidiary guarantees of £9.194m). The final amount, risk assessment and subsidiary guarantee agreements to be delegated to the Director of Finance and Business Services in consultation with the Leader of the Council.

COMMUNITY IMPACT IMPLICATIONS

24. The delivery of effective probation services has an impact on the wider community both in terms of reducing the risk of reoffending and victimisation as well as improving overall feelings of safety.

FINANCIAL IMPLICATIONS

25. The Council could potentially have a maximum exposure under any guarantee of £14.080m if the guarantee level remains as in the current contract, mitigated to £4.886m by virtue of potential subsidiary guarantees being provided to the Council by other partners in ARCC.
26. Ongoing financial monitoring and reporting demonstrates that the CRC currently have an acceptable financial position from which to develop their future operations.

LEGAL IMPLICATIONS

27. The Council's ongoing involvement with ARCC and the potential provision of the guarantee can be authorised pursuant to section 1 of the Localism Act 2011 "the power of general competence" and/or the "incidental" power under Section 111 of the Local Government Act 1972.
28. Using the Council's resources to provide assistance, including the giving of guarantees to an organisation in a way that gives an advantage over others may amount to state aid. The European Commission has published specific guidance in respect of the provision of guarantees and provided criteria under which guarantees may be given compliantly within the rules. If ARCC are successful in their bid, a state aid assessment will need to be carried out immediately before entering into the guarantee which will ensure that the provision of the guarantee is entered into on terms complying with guidance, which may include ARCC being required to pay a premium to the Council.
29. The Government have indicated that even following a "no deal" Brexit that the EU state aid rules will be transposed into UK domestic legislation under the European Union (Withdrawal)

Act. This will apply to all sectors; and will mirror existing block exemptions as allowed under the current rules.

RISK ASSESSMENT

30. At this stage, this report provides members with an update on NPS and CRC activity and the current activity is categorised as low to medium risk. Existing management systems and daily routine activities are sufficient to control and reduce risk.
31. In the event that the Council decide to enter into a guarantee in support of a future bid by ARCC, there will need to be a full assessment (as part of legal and financial due diligence) of the risk to the Council of the Guarantee being invoked.

COUNCIL PLAN POLICY PRINCIPLES AND PRIORITIES

32. The work of the NPS and CRC has a significant impact on all of the Council Plan policy principles and priorities through effective intervention with perpetrators and reducing the risk of victimisation.

Policy Principles:

- Protecting the vulnerable through targeted intervention
- Promoting equality of opportunity through targeted intervention
- Developing strong and healthy communities
- Creating economic prosperity

CORPORATE PARENTING IMPLICATIONS

33. This report does not contain any corporate parenting implications

CONSULTATION INCLUDING WARD/COUNCILLORS

34. Consultation is required with all Council members

Name of Contact Officer: Steven Hume
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Education related? No

Background Papers

Ward(s) and Ward Councillors: All ward councillors

Property

This report has no impact on the Council's capital programme or asset management strategy.