

Durham Tees Valley  
Probation Trust



# **Durham Tees Valley Probation Trust**

## **Punishment and Reform: Effective Probation Services**

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**Response to Consultation  
June 2012**

## 1 **INTRODUCTION**

Durham Tees Valley Probation Trust (DTVPT) welcomes the opportunity to respond to this consultation. DTVPT recognises that the Ministry of Justice has responded positively to pre-consultation dialogue with Probation Trusts, Probation Association (PA) and Probation Chiefs Association (PCA) in proposing

- i. The retention of Public Sector Probation Trusts.
- ii. Reserved Services beyond those set out in the Offender Management Act 2007.
- iii. A role for Public Sector Probation Trusts in commissioning
- iv. Responsible competition.

There are, however, proposals set out in the Review about which DTVPT has concern.

- i. Whilst retaining a role in commissioning, we are profoundly concerned about the proposal to deny Public Sector Trusts the right to compete for Non-Reserved Services.
- ii. Confusion throughout the document in relation to the concepts of the Management and Supervision of offenders.
- iii. The use of 'risk' (by which we assume the consultation refers to risk of harm, not of reoffending) as the basis of determining the Management and, in particular, the Supervision of offenders and the risk of 'system-wide' fragmentation potentially resulting from this.
- iv. The assertion throughout the document, without reference to evidence in respect of effectiveness or cost, that the entry of new sectors into the Management of offenders will significantly contribute to the overall reductions in reoffending sought by Her Majesty's Government and Probation Trusts.
- v. The assertion in the document that larger Commissioning Trusts without referenced to evidence, will bring greater efficiencies and effectiveness to the Management and Supervision of offenders.

**2 A NUMBER OF THESE ISSUES ARE DEVELOPED BELOW**

This consultation questions are predicated on the assumption that opening the provision of community based offender services to a free market is undeniably the right thing to do. There is no underpinning research cited to show that there would be any savings to the public purse or that reoffending rates will reduce. The strategy may ultimately result in there being fewer public sector employees but their cost would not be lost as this would simply be transferred to payment through contracts. Nowhere in the consultation document is there reference to the impact on current Probation Trust staff of transitioning from the public to private sector or how this might be facilitated.

It is evident from the experience of competed prisons that those outside of the public sector are more able to refuse excess numbers or charge a premium rate for taking more prisoners than they are initially contracted for. It is not clear whether Her Majesty's Government will build in the reserves necessary to pay contractors of community services the same premium for going beyond their contracted numbers. If not then is the Secretary of State willing to have community orders put into a queue before they start?

There is no reference in the consultation barring the briefest mention in question 8 (female offenders) to whether consideration has been given to how these changes will impact upon the end user, i.e. the offender. Where is the research to show that division of probation business as described will a) radically increase outcome effectiveness or b) increase risk management of cases?

The Probation Service in England and Wales has a long and internationally envied history of delivering high quality evidence based practice. Data shows that community sentences are an effective, including cost effective means of reducing offending. Well researched comparisons between community and custody invariably shows the

latter to be highly expensive and achieving less positive outcomes. The consultation is not clear, beyond a privatisation agenda about the basis for the proposed changes.

We understand and support the Government's push toward efficiency and effectiveness of public services. DTVPT is the highest performing Trust in the country and has in the two years since merger already achieved remarkable cost savings. Our energy has gone into researching more effective means of assessing risk, providing timely and accurate information to Courts, building strong partnerships and making all contact with offenders count. Our Citizenship Offender Management model is externally validated and costed as a proven way of tackling offending behaviour and we have been keen to share this innovation with other Trusts.

We recognise the need for change in some aspects of delivery and support the Government's desire to make every public penny spent make a difference by contributing to improved outcomes. Our Business Development Unit (BDU) uses 'LEAN' principles, and has acquired marketing, procurement and contract management skills. The whole of the Executive team is committed to ensuring the Trust delivers the best services in each of the six LDUs for which it is responsible. We positively plan for change and have a workforce that is dedicated to improving communities. Our BDU operates independently within our Trust. Reviews of service are commissioned by and undertaken on behalf of the Chief Executive. Those reviewing services are separate from those delivering services. Make or buy decisions are therefore made independently and on the basis of efficiency and effectiveness, including cost effectiveness. This model demonstrates Probation Trusts are capable of appropriately commissioning services, without the need for the creation of separate entities and the costs to the public purse associated with that.

The main message we want Government to hear from us in this consultation is that Durham Tees Valley Probation Trust is ready for the challenge and wants to take active leadership in determining a new future. We would offer our expertise validated by the success we have achieved to date to assist in determining new, cheaper and more effective ways of delivering community sentences. We are not opposed to bringing others into the market place and this is demonstrated in the way we have harnessed community resources beyond our immediate control to impact upon offending behaviour. Our 'Gallant' projects effectively encourage local partners to engage with offenders in order that re-integration with their communities is more sustainable. Active involvement in Community Safety Partnerships, Integrated Offender Management, Domestic Violence initiatives and the Troubled Families agenda are all examples of our commitment to securing the best outcomes from pooled resources.

We would advocate the move to wider provision of probation services in a staged and considered way, taking learning from experience and basing change on validated research. Our suggestion is that Probation Trusts initially retain the ability to both commission and provide services. The table below shows the proposed balance between the two, with existing (or merged) Trusts providing advice to courts, risk assessment, the direct supervision of high risk cases, management of all other community sentences and commissioning of all interventions. We accept that low risk cases could be supervised by others, but feel it important to retain the overall management of these cases so that there is no compromise on enforcement and ongoing assessment of risk.

Our current strategy and work in progress is to facilitate this division through the early adoption of partnerships with both the private and voluntary/not for profit sectors. We believe we can achieve Government aims in a safe and sustainable way by staging change over the next two years rather than risking to chance the entrance of new providers who

are not yet fully equipped to provide service that are at least as good as those already available.

Proposed structure/responsibilities:

Commissioning Trust	Commissioned Business
Advice to Courts	Interventions including: Programmes, Community Punishment, Activity Requirements
Risk Assessment	
Public Interest decisions	
Supervision of high risk cases	Supervision of low risk cases
Offender Management of all community cases and licences.	Approved Premises
Commissioning of services	Offender 'support' e.g. Employment and Education, Accommodation, Debt advice services, etc.

**Q1. What are the key issues in competing the management of offenders and how should they be resolved? For example, where should we strike the balance in deciding how far to compete offender management?**

- We recognise the validity of opening the provision of interventions to other providers. In order to ensure consistent, robust and publicly accountable supervision of sentences we advocate that the Commissioning Trust directly provide Offender Management of all Community Sentence and Prison Licence cases. This would place the management of cases within the 'reserved' services of Trusts alongside assessment of risk, advice to courts and management of compliance. We feel this to be the only safe means of oversight for offenders across all tiers of risk.
- The consultation paper clearly recognises the need to differentiate between the management of low and higher risk offenders (para 34,35) but fails to draw on known factors about how risk can move across the

tiers. There is no reference to how effective offender management of cases rising from lower to higher risk (or vice versa) will be catered for within the proposed new structures. Previous reviews and all inspections of the Offender Management Model highlight the need to retain consistency of management via maintaining as few moves as possible of supervising officer.

- The majority of offenders who commit serious further offence (SFO) do not come from the high risk groups but from the low and medium categories. If the whole of the management of offenders below the high and very high-risk categories goes to other providers, the Government cannot be sure that an on-going assessment of risk will be consistently achieved.
- There has been a growing move toward taking input and process type measurement from Government contracts, concentrating instead on the outcomes. However if the overall management of lower risk cases is outside of the commissioning brief then it is difficult to see how in-depth and on-going checks on risk will be seen to be being recognised and acted upon.
- What size of provider will be deemed appropriate for delivery of services? The Government is committed to the localism agenda but letting of contracts to a multitude of providers might not provide the consistency of effective delivery that is desired. Will a 'postcode lottery' of delivery be the result of letting contracts locally?
- Will there be a saving on the public purse by letting delivery of all low and medium risk cases to other sectors? If the commissioner is required to maintain a proper overview of how the provider is delivering services then each will need robust systems to assess delivery against contract. This will necessitate the commissioner having an infrastructure which can regularly audit delivery and the provider having internal systems to provide the information required to inform such audit. Both organisations will therefore need support services at cost to the tax payer.

**Q2. What arrangements will best enable Probation Trusts to take effective action against offenders who breach their sentence in cases where they do not directly manage the offender?**

- The assumption from the paper is that the Trusts will maintain their role in taking enforcement action (para 39) for all offenders. This is welcomed as it places the decision making process about breach outside of any commercial considerations of delivery.
- A fundamental principle of effective offender management is the need to rigorously enforce the conditions of each order. Currently Probation Trusts are able to achieve this by combining the infrastructures necessary for both the delivery of interventions and oversight of compliance. There is an immediate and consistent response to those individuals who do not perform as they are required. In the proposed model where only high and very high risk cases are directly managed by Probation Trusts there will need to be a two layered approach. There would need to be robust processes in place to ensure early notification of alleged breaches so that appropriate and timely action is taken. Specifications of delivery would need to clearly establish parameters for decision making, giving the commissioner the right to decide what does and does not constitute enforceable behaviour. We would argue that it is unduly complex and cumbersome to have a two layered approach and that retention of the management of all offenders by the commissioning Trust would both save money and ensure greater consistency of practice.

**Q3. What is the best approach to competing the management of prisoners released into the community on licence?**

- By statute prison licence cases are from the offender population who have been deemed to be of sufficient risk of harm and/or reoffending to serve a custodial sentence of twelve months or more. It is difficult to reconcile competition of these cases with the principle of maintaining



oversight and management of only low risk cases outside of the Public sector. There would need to be a clear understanding of the categorisation of risk at the point of pre-release and how this might need to be revised at any stage of the licence period.

- Offenders leaving prison are often the most difficult to manage as they tend to bring a variety of problems. Close partnerships with accommodation providers, employment advisors and others is crucial to the effective resettlement of released prisoners. Parallel to using these relationships it is vital that each case is effectively managed so as to ensure public safety by robust enforcement of conditions. Any specification for the provision of supervision of licence cases must ensure that victim issues and close monitoring of the offender are provided.
- It might be necessary to assume a categorisation of High risk for all released prisoners and hold these cases within the 'reserved' services of Probation Trusts. This could then be reduced once the offender is adequately resettled in the community. Alternatively, as previously noted, the retention of Offender Management for all levels of risk within the Commissioning Trust would clearly place responsibilities for licence cases with them. The delivery of resettlement services and the day-to-day supervision of cases could be let via a competitive process.

**Q4. How can we best ensure that greater competition for probation services enhances local partnership arrangements, such as Integrated Offender Management?**

- The advantage of the integrated offender management approach is that providers of relevant services are drawn around the individual needs of each offender. IOM schemes have been very successful in managing offenders by taking the dual approach of disrupting their criminal activity and providing positive support in tackling their criminogenic needs.

- There is a danger of replicating already existing services which are open to all citizens by assuming that offenders need specialist provision. Existing IOM schemes work very well in partnership with drug, alcohol, education, employment, accommodation services, etc. 'greater competition of probation services' only opens the market to those services which are currently managed by Trusts. None of the aforementioned provision is managed by the Trust. All are coordinated by existing partnerships (Community Safety) and there already exists a free and open marketplace for competition amongst the providers.

**Q5. What would be the right balance between commissioning services at local and national levels and how can we best achieve that balance?**

- Assuming that commissioning of probation services is akin to competing prison provision would be a mistake. The nature of the business is very different as it is possible for the custodial estate to agree a number of places available whereas traditionally community sentences have not been subject to a cap on numbers. Probation Trusts currently accept the business risk of open-ended numbers but this should not be assumed of other potential providers. We would argue that all community orders should commence as soon as possible after imposition and 'rationing' to meet contract levels could result in high levels of non-compliance and further offending due to delayed starts.
- It is agreed that some services can be better commissioned nationally. Provision of employment support services for offenders have been very successful whereas the commissioning of the management of probation building infrastructure and ICT is arguable less effective.
- The right balance can be achieved if national commissioning recognises the need for local variation. With the employment support contract a broad specification was produced centrally which was then added to in order to meet local need. Before all national contract

specifications are finalised there ought to be consultation with Trusts to ensure that all aspects of need are catered for.

- All competition should be open to bids for 'lots' as determined by the prospective provider not by the commissioner. This allows the strengths of each provider to be directed toward the most appropriate size for them and so would not restrict bidding opportunities to only larger organisations.

**Q6. What are the main issues in separating the Trust commissioner role from the provision of competed services? How can these best be resolved?**

- The Government has demonstrated its understanding of different models of separation, the most recent being division of commissioning and provision of services within Health. Under the forthcoming Health and Social Care Bill, NHS commissioning will be undertaken largely by Clinical Commissioning Groups (CCGs), clusters of GPs and other clinicians within a locality. At the same time, clinical members of these Boards (GPs) will provide some services. This way of commissioning has been hard fought for by the Government and is seen as preferable to the previous method of provision.
- The option for the division of commissioning and delivery of probation business fails to take into account a significant problem: It is unlikely that most Trusts will be of sufficient size to divide into two component parts. As 'reserved services' must stay with the commissioner it means that the localism agenda favoured by the Government becomes impossible to achieve. It is highly likely that the commissioner and provider of reserved services will be outside of the local area. Consequently the commissioner may well need to provide reserved services for the courts and offenders outside of their geographical base.
- Potential conflict of interest is cited as the main driver for separating commissioning and provision. The only solution proposed is a 'purchaser-provider split' with some Trusts taking the commissioning

role whilst others will only provide services. We would argue that Probation Trusts should be given the option of building capability to undertake both commissioning and delivery functions within one organisation. It is acknowledged that there would need to be an auditable assurance of the ability to provide 'ethical walls' between the two parts of the Trust but we do not feel this is impossible to achieve

**Q7. How can we support Trusts to develop the commissioning and procurement capability they will need in the future?**

- Some Trusts have been building this capability for a number of years. Durham Tees Valley (DTV) have a Business Development Unit that operates with effective 'fire walls' between itself and delivery units. We would be very willing to assist the Government in assessing the viability of using this model to maintain one entity which could be both commissioner and provider.
- NOMS has gained some commissioning and procurement capability but this has been limited and not achieved any real inroads to securing provision from a wider market place. It is difficult to imagine how the present NOMS infrastructure will sit alongside the proposed Trusts. Disassembling NOMS and placing skilled personnel within Trust commissioning functions might be a way of improving capability and providing a degree of assurance to the Government that probity will be maintained.

**Q8. How can we best ensure that the specific needs of women offenders are taken into account in commissioning services?**

- This is a sector of the offender population that has been well researched in recent years and it is doubtful that any Trust would not have an in-depth knowledge of how services for women are best deployed within their localities. DTV has specialist in-house and partnership provision for women. We also have 'Women's Champions' in each location who ensure best practice is maintained.

- Research finds that women offenders usually have more complex issues in relation to their offending than men. In designing sentences that meet these needs we must ensure that the right level of resource is applied which recognises the intensity and range of issues that women face in changing their behaviour, e.g. managing relationships and improving emotional well-being.
- Wider aspects of diversity need to be considered, these should include race, sexuality, ability, health and ability to access services.

**Q9. How can we best encourage and support small and medium sized enterprises and the voluntary sector to participate in competitions to provide probation services?**

- DTV has already embarked on a course which encourages the involvement of diverse provision. It is our experience that many smaller providers have been reluctant to express interest as they do not have sufficient infrastructure to compete for provision across wide geography. Many of the best potential providers are local to particular areas of a city or town and do not want to expand into other areas. Enabling funding via local commissioning processes would allow for smaller providers to thrive.
- We recognise the need to encourage and support growth of provider services. To ensure all Trusts are engaged in supporting smaller providers we would encourage the ring fencing of a proportion of funds specifically for this purpose.
- Initially smaller potential providers could partner with probation delivery units to undertake specific roles within a sub-contracting arrangement. Over time they would become more skilled and sustainable in the market and able to bid for prime provider business.

**Q10. How can we best support public sector staff in the creation of mutuals and other models for delivering probation services?**

- There are some aspects of service delivery which lend themselves to the creation of Mutuals. Some offender behaviour programmes and unpaid work provision might be better provided in local communities in this way. There would need to be sufficient security for staff to enable them to move to this way of working. This might involve the guarantee of contracts for a fixed period from the start of the Mutual being formed.

**Q11. What are the most effective ways to extend service improvements and innovation through payment by results?**

- We agree that contracting for inputs without any recognition of whether or not the output meets the desired outcome is wasteful and unsustainable. Payment by results can improve the performance of organisations but it is difficult to perceive of a method of calculation which fits with the outcomes desired for offender services. The pilots need to report their findings but we imagine that these will indicate that a range of outcomes or outcome proxy measures will be necessary.
- Any PBR system used must have regard to whether or not it can accurately measure the effectiveness of each of the component parts of the inputs. It is highly unlikely that most offenders will be diverted from reoffending by the imposition of a single 'solution'. We have learned over the years that often a multitude of 'interventions' from many providers over extended periods of time is necessary to achieve this end goal. The PBR measure must take this factor into account.

**Q12. How can we best support the continued development of probation professionals consistent with our proposals for reform?**

- We can see how a mixed economy of provision might improve the range and cost of services currently provided for the reduction of offending. Current training and development models acknowledge the need for staff to deliver services at different levels dependent upon the risks posed by offenders. Risk assessment and management of high risk cases calls for different skills/experience than those needed to guide a Tier one offender through a community punishment order. In order to ensure that standards do not deteriorate we would propose the establishment of a training and development entity which establishes and monitors standards for workers delivering services within the criminal justice sector.
- Training and development opportunities which focus upon the skills/knowledge and experiences needed to adequately construct specifications, undertake procurement and manage contracts would need to be put in place. We would argue that generic training in ‘commissioning’ alone would not equip people with the background needed to fully understand the needs of offenders and so enable sufficient oversight of contract delivery.

**Q13. Strengthen local probation delivery and local leadership:**

- It may not be the case everywhere but in the Durham and Tees Valley area, there already exists a very strong network of partnerships. Recent OMI and Ofsted inspections have highlighted this strength. We firmly believe that offending must be seen as a problem to be solved across partnerships with no one organisation being able to achieve outcomes alone.
- We would advocate the maintenance and growth of partnerships as a key aspect of service delivery. This should be demonstrated by all levels of staff via their active participation in strategic alliance meetings

through to co-working of cases by delivery personnel. Part of the key function of the Commissioning Trust should be specified as maintaining and growing effective local partnerships. This would build on the excellent results achieved within the LDU (Local Delivery Unit) structure advocated by the last review of Probation.

**Q14. How might we improve partnership working and local co-commissioning, especially if we have fewer, larger Trusts?**

- We believe that the present arrangement ensures consistency of required outcomes and the provision of adequate resources across the country. Local Authorities areas are already key partners for DTV. Probation Directors play an active part in Joint Commissioning Groups where all community services are managed. These include housing, drug and alcohol services, children and vulnerable adult social care, etc.
- Transferring the responsibility for probation services away from the Secretary of State without safeguarding consistency has the potential to create a 'post code' lottery of provision.
- The creation of larger Trusts without ensuring the ability for the commissioners to understand and work constructively with local partners will have an adverse impact upon our ability to use resources across agencies in the most effective way. The retention of LDU structures could be a possible solution.

**Q15. What are the main issues for local authorities or Police and Crime Commissioners potentially becoming more accountable over time for probation services?**

- We would be pleased to enter into a relationship with PCCs especially if this is the means by which the Trust could retain both purchaser and provider roles (with safeguards in place as previously described).
- If/when PCCs are more accountable for probation services then the present NOMS infrastructure becomes redundant.



- The diverse and often complex needs of offenders should not be regarded as secondary to other competing services that might be commissioned by the PCC.
- The different relationships for PCCs in involving large metropolitan areas as against smaller Authorities will need to be considered. The latter are very concerned about maintaining the localism agenda and have formed strong relationships with key partners such as Probation Trusts which they would not want damaged.

Draft V2