Howard League for Penal Reform

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Howard League for Penal Reform's response to the Ministry of Justice consultation on 'Strengthening probation, building confidence'

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Summary

The Ministry of Justice is currently embracing welcome and pragmatic reforms to the prison system and emphasising the value of community options. A similarly progressive, evidence-based, brave approach is required now as the government decides how to fix probation.

Terminating the Community Rehabilitation Company (CRC) contracts early was the right choice. The government now faces a moment of great opportunity. Choices must now be made which will begin to restore probation to its pre-2013 strength. To do this would be a lasting legacy.

It is also a moment of substantial risk. Transforming Rehabilitation (TR) created a split in service delivery and a market for probation, both of which have had disastrous consequences. These structural problems must be addressed, or it is inevitable that the failures of TR will be repeated.

Instead of doubling down on the failures of TR, we propose creating a more intelligent balance of local and central powers in probation. Our model, called 'Community Justice', involves a national strategic focus combined with local service delivery.

Payment by Results should be replaced with more practical and locally based metrics that reflect the complexity of desistance. Local links need to be restored with services and organisations that deliver desistance.

1. About us

- **1.1** Founded in 1866, the Howard League is the oldest penal reform charity in the world. The Howard League has some 13,000 members, including prisoners and their families, lawyers, criminal justice professionals and academics. The Howard League has consultative status with both the United Nations and the Council of Europe. It is an independent charity and accepts no grant funding from the UK government.
- **1.2** The Howard League works for less crime, safer communities and fewer people in prison. We achieve these objectives through conducting and commissioning research and investigations aimed at revealing underlying problems and discovering new solutions to issues of public concern. The Howard League's objectives and principles underlie and inform the charity's parliamentary work, research, legal and participation work as well as its projects.
- **1.3** Due to the breadth of the inquiry, this submission does not attempt to answer all questions posed, but instead focuses on the areas in which the charity has the greatest expertise. The Howard League would welcome the opportunity to provide further information about any of the recommendations, points and examples below.

2. A moment of opportunity: restoring probation to its former strength

Learning from the past

- **2.1** This consultation comes at a time when the Ministry of Justice is embracing some welcome and pragmatic reforms to the prison system and emphasising the value of community options rather than custody.¹
- **2.2** The overall goals, sentiment and vision outlined in this consultation document on probation are similarly laudable, demonstrating an engagement with contemporary trends and research for example, the literature on desistance.
- **2.3** Given this background context, we are surprised and concerned that the Ministry of Justice's proposed changes to the *structure* of the probation system are so minimal.
- **2.4** We welcome the decision to take charge of the problems facing the probation system and terminate the CRC contracts early. But now the Ministry of Justice must take a brave and pragmatic approach to deciding what to do next including asking tough questions about the right operating model for probation.
- 2.5 This decision point is a unique opportunity for government to set probation on a path back to becoming a public service of which England and Wales can again be proud. Before 2013, probation performance was consistently strong, with all probation trusts judged either 'good' or 'excellent' in the Ministry of Justice's 2013-4 probation trust annual performance ratings.² The best result would be for the probation service to return to this level of success in the coming years. Our suggestions in this document lay out the most realistic way to achieve this kind of dramatic improvement.

¹ House of Commons (2018) Response to a Parliamentary Question: <u>https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2018-09-06/171344/</u>

² National Offender Management Service (2014) *Probation Trust Annual Performance Ratings 2013/14* <u>https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/338962/probation-</u> <u>trust-perf-ratings-2013-14.pdf</u>

- **2.6** The Ministry of Justice wants a probation system with a simple, integrated structure which is effective at reducing reoffending, staffed by probation officers who are skilled and properly supported to help those in their care to re-integrate into the community, and which caters to minority needs. We share these overall goals, but the approach outlined in the consultation document will not succeed in achieving a service like this. Ideally any future model should also save money in the long run and be an approach which can be sold to decision-makers and practitioners. The proposals outlined so far by the Ministry of Justice would fail on these counts.
- **2.7** In this document we first respond in some detail to the proposals from the Ministry of Justice, focusing in the rest of section 2 on the most important questions around the operating model and structure of probation. In section 3 we outline our vision of a unified and coherent probation service which keeps the community safer and reduces crime. We then further explore this balance between local and central in section 4, outlining how to protect specialist services. Section 5 closes our response with some reflections about the need to move away from a maximalist view of probation.

Splitting service delivery has failed

- **2.8** The TR reforms have failed for numerous reasons, many of which were predicted in our response to the consultation in 2013. Of particular note were problems around the split in service delivery required by the creation of a probation market. The new proposals do not address this issue.
- **2.9** TR involved splitting the probation service at the point of service delivery. Since then, the lack of collaboration and even mistrust between the National Probation Service (NPS) and CRCs has impeded the delivery of probation services. The split requires hand-offs between the services, for example when people's risk categories change.³ In other words, the continuity of supervision (mentioned in question 1 of the consultation) is threatened by a split service.
- **2.10** We know that there are problems around pre-sentence reporting and how CRCs engage with the courts, as mentioned in questions 5 and 6.⁴ Again, these stem in part from the bifurcation in service delivery instituted by TR and the resulting upheaval. This is why we do not agree that the proposed changes are sufficient to achieve integration across all providers of probation services.

Creating a probation market has failed

- 2.11 The split in service delivery was motivated by the desire to create a market for probation. Regardless of the rhetoric at the time, TR was primarily about creating a market with cost savings at its heart, based on ideology not evidence.
- **2.12** This damaged local accountability. It made probation a hostile environment for the voluntary sector from the off, as exemplified in what happened to services for women. Even very large voluntary organisations like Catch-22 and Nacro have struggled to make it feasible to bid for secondary contracts, let alone contracts as prime providers.

⁴ Her Majesty's Inspectorate of Probation (2017) 2017 Annual Report

³ Her Majesty's Inspectorate of Probation (2017) 2017 Annual Report https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2017/12/HMI-Probation-Annual-<u>Report-2017lowres-1.pdf</u>, p.13 and p.30

https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2017/12/HMI-Probation-Annual-Report-2017lowres-1.pdf, p.13-14

This has had disastrous consequences for organisations which provide specialist services and those who need their services. 5

- **2.13** The new proposals involve larger probation areas, bigger contracts and an even less local structure than before. If anything, the changes seem likely to intensify the challenges the voluntary sector faced under TR in providing services that meet local need.
- **2.14** A clear example of how a market-driven approach has failed is in the area of unpaid work. In theory, unpaid work involves making a contribution to society to make amends, a restorative function which should be welcomed. However, the reality on the ground has been very different since probation was handed to the private sector, with people required to do work that the Justice Committee heard was "meaningless".⁶ As noted in the consultation document, sometimes "places are oversubscribed and offenders have to be turned away".
- 2.15 The consultation document claims that "unpaid work instils discipline and routine in offenders" but if people turn up for work only to be told there is none available, this undermines confidence in the whole system and will lead to public and user mistrust and frustration. These kinds of problems will persist in probation delivery if the current model is maintained. In other words, not only will the reforms fail to deliver the service required, but they in fact risk actively undermining its goal.
- **2.16** Importantly, this is not an issue regarding the precise nature of the boundaries. We recognise that the starting point for any future reforms is the CRC areas and not a blank slate. It is difficult to reconcile multiple overlapping areas especially given mayoral boundaries and Police and Crime Commissioner (PCC) areas. However, there were 21 CRCs and, when they existed, 35 Probation Trusts. These 10 new areas are simply too big.
- **2.17** Any changes to the structure of probation will involve disruption to the service as people adjust to new boundaries, build working relationships afresh and test unfamiliar processes. During this period of transition, things will inevitably fall through the cracks. Given the upheaval the service has experienced in the past few years, the least damaging option could be to leave the areas as they are for now and avoid the turmoil of another major restructure. In the long run, local authorities offer a natural set of boundaries for future probation areas given the valuable links between local authorities and health, housing, drug services, education and the voluntary sector which is how desistance is delivered.

Bravery is needed at this crucial decision point

2.18 Seriously damaged by TR, the probation service is now underperforming, suffering from low morale and fatigued by reform. Decisions at this juncture are crucial, but the government is not being honest with itself about what it is prioritising and what the costs of this will be. The proposed reforms are readable as the rejigging of a bifurcated, semi-privatised probation structure in order to achieve scale economies for the current set of private providers so that they can provide an increasingly standardised service.

⁵ Her Majesty's Inspectorate of Probation (2018) *Probation Supply Chains: A thematic inspection by HM Inspectorate of Probation*, <u>https://www.justiceinspectorates.gov.uk/hmiprobation/wp-content/uploads/sites/5/2018/04/Probation-Supply-Chains-Thematic-Report-1.pdf</u>

⁶ House of Commons Justice Committee (2018) *Transforming Rehabilitation: Ninth Report of Session 2017-19*, https://publications.parliament.uk/pa/cm201719/cmselect/cmjust/482/482.pdf, p.8

This will inevitably lead to the same set of problems as probation faces currently. It will not work.

2.19 The government now needs to make brave choices. Taking the wrong decision at this point risks simply doubling down on the failures of TR. Instead, the Ministry of Justice should seize the opportunity to build a legacy and rebuild probation into a public service of which we can be proud.

3. Our alternative vision for probation: 'Community Justice'

A different split in the service

- 3.1 Probation needs a national strategic focus, with leadership and accountability. Currently probation lacks this because, despite being called a 'national' probation service, the NPS only works with a section of the probation population. The NPS also lacks the independence required to provide a national strategic focus to probation work, being part of a larger body, Her Majesty's Prison and Probation Service (HMPPS).
- **3.2** However, as noted above, probation also needs local service delivery, with multiagency involvement. There is therefore a sense in which the probation service would benefit from a split 'vertically': a national strategic focus combined with local delivery. Our vision is of a split model of this kind which we call 'Community Justice'.

National strategic focus

- **3.3** A national strategic focus would be created by making Community Justice truly independent. Probation would be separated from HMPPS and a new Community Justice Agency would be created to provide strategic leadership, promote best practice and ensure a level of consistency in local service delivery. Separating probation and prisons provides a clearer distinction between the two services, reinforcing their separate identities and professional expertise.
- **3.4** Probation is a challenging and complex professional job and needs to be recognized as such if the types of workplace and training reforms the Ministry of Justice mentions are to succeed. The new Community Justice Agency would have responsibility for workforce development, with a commitment to working with research-intensive universities to evaluate and innovate on interventions. The evidence base for Community Justice and a public health approach is stronger than ever, but it is not being effectively exploited
- **3.5** The Community Justice Agency would be led by a figurehead with responsibility for providing a national voice on the issues. There would be a role for the Agency to set some clear national targets around service expectations that could be developed locally. It would also be responsible for some specific services that could only be provided nationally, for example, contact with the victims of prisoners.
- **3.6** The National Sentencer and Probation Forum is an excellent idea, but it is insufficiently local to be able to influence effectively. This kind of guidance needs to come from the leadership of probation, but it must also be tested, embedded and used to challenge behaviour locally if it is to have an impact.

Local service delivery

- **3.7** We think that the split between the NPS and contractors should end and would recommend forming new Community Justice Partnerships (CJPs). The CJPs would deliver probation services at a local level. This kind of model would address the problems around continuity of supervision currently facing the service.
- **3.8** Members of the CJP boards would include representatives from the police, local authorities, local voluntary groups and members of the community, sentencers, health boards and regional prison management. In cities such as London and Manchester, where the PCC role is subsumed into a larger mayoralty role, there would be scope for wider devolution of justice services and a whole system approach.
- **3.9** PCCs could be closely involved and this approach would give a model for engaging PCCs. However, we agree that probation should not sit within the control of PCCs. Probation is a specialist service at the end of the criminal justice journey, not political. Those responsible for policing should not be responsible for delivery of sentences as it would create a conflict of interest.

Alternatives to Payment by Results

- **3.10** A practical and important question facing any model for probation is how to measure, assess and incentivise probation. The mechanism used under TR was Payment by Results (PbR), which has been plagued with difficulties. Even the Ministry of Justice's claims as to the impact of CRCs cannot be evidenced to the CRC's own work, since the CRCs have been working with those who are less likely to reoffend than the 2011 baseline cohort.⁷
- **3.11** A binary measurement system does not reflect the complexity of desistance. Desistance from crime is rarely a straightforward process: many people with offending histories will lapse and relapse before moving away from criminal activity altogether. It is common for offending patterns to change before desistance is achieved. For example, a person might commit less serious offences than they did previously or reduce the frequency with which they offend before complete desistance.⁸
- **3.12** There are better and more appropriate metrics that could be developed. Unlike PbR, these should be measures which are relatively concrete, easy to measure, feasible to compare to a baseline and calculable within a short time period. Desistance research recognises that there are a range of relatively mundane results which may prove more valuable for practitioners to focus on, such as ensuring an individual is registered with a GP or has some way of keeping time in order to attend probation appointments or job interviews.⁹ It would also be desirable if interim successes could be tracked in this way for example, finding semi-stable housing for someone previously street homeless. This reinforces the necessity to link to housing providers like local authorities.
- **3.13** This measurement and tracking of probation activity should take place at a local level, rather than centrally. This would increase accountability and allow for the metrics to be customised so they are appropriate to the local environment.

⁷ House of Commons Justice Committee (2018) *Transforming Rehabilitation: Ninth Report of Session 2017-19*, <u>https://publications.parliament.uk/pa/cm201719/cmselect/cmjust/482/482.pdf</u>, p. 27-8

⁸ F. McNeill, S. Farrall, C. Lightowler, S. Maruna, (2012) *How and why people stop offending, discovering desistance*. Scotland: Institute for Research and Innovation in Social Services.

⁹ F. McNeill, S. Farrall, C. Lightowler, S. Maruna, (2012) *How and why people stop offending, discovering desistance*. Scotland: Institute for Research and Innovation in Social Services.

3.14 This unresolvable tension arises because an attempt is being made to contractually specify a fundamentally relationship-focused service. Rather than obsessing over how to mitigate the challenges and risks inherent to basing probation on a series of contracts, the Ministry of Justice could save vast amounts of time and effort by simply unifying the service and returning it to the public sector. The implementation of PbR was a choice driven in part by bad structural choices regarding probation. Addressing these structural problems would make it more feasible to replace PbR with something different and better.

A unified Welsh probation service

- **3.15** Given the model we outline, we welcome the proposals for unifying probation in Wales. We had a unified and highly successful probation system in England and Wales before 2013 which worked well. There is no lack of evidence about the advantages of a unified system; what is needed now is action. The consultation document seems to leave fairly open how it would work in Wales in practical terms. We would welcome a system which sits within the public sector. Commissioning is an inherently bureaucratic and management-heavy structure which places an excessive burden on the public sector, which has to oversee and ensure the delivery of services. Lessons must be learned from Carillion.
- **3.16** There are also small mechanisms that could be put in place. Probation trusts had to commit to purchasing a fixed proportion of their services from the voluntary sector. Perhaps a similar approach could be taken in Wales, to contrast with the fragmented approach in England. The goal should be to enable a combination of local, customized services important given the breadth of demographics in Wales.

4. Balancing local and central powers: how to protect specialist services

Protecting specialist services and meeting local need

- **4.1** Our overall argument is that we need a more intelligent balance of local and central powers in probation. There needs to be a sufficiently local approach taken, with local accountability. People should be able to see and understand what probation does in their area, with transparency around where the money comes from and how the service works.
- **4.2** Direction or funding from the centre is sometimes also required and one important area where this is the case is in provision for minority groups. Customised, specialist services do not benefit from scale. A service that meets, say, the needs of Muslim teenage boys in Bradford or women who do sex work in central London, cannot simply be picked up and replicated elsewhere. As such, provision for minority groups will not arise naturally from the market.
- **4.3** The government needs to understand the strengths of the voluntary sector in criminal justice. For voluntary sector providers, it is often the capacity to provide very local and specialist provision. Such service provision is likely to be cost-effective in the long term, because it means a properly tailored service to individuals, but we should acknowledge it does not necessarily deliver savings for government in the short term. The move away from localism has a deleterious impact on minority groups, who are often the target of specifically designed community projects.

The case for protected funding for women

- **4.4** Women are a small minority in the criminal justice system and here we discuss the issue of gender-specific provision. However, this is a general equalities issue and the same arguments apply to other minority groups, for example, some groups within the BAME demographic.
- **4.5** The future state of probation needs to include separate, protected funding for women's services. It could be achieved via a centrally held budget, or through ring-fenced money given to local authorities as happened with youth offending teams (YOTs). There should be a simplified system for applying for this funding, with transparent instructions. Contract structures need to be reasonable and feasible for the women's sector, unlike those imposed under TR.
- **4.6** There needs to be some specific and detailed standards about what counts as a women's service. It is not enough to provide a female point of contact. Provision needs to be in a women-only environment that is safe and welcoming for those accessing it. The Ministry of Justice's own assessment has shown that women's centres are delivering success, often despite the TR debacle.¹⁰
- **4.7** Rather than persisting with the plan in the female offender strategy to pilot residential centres for women, which will end up as prisons in all but name, effort should be placed on funding provision that is proven to benefit women and helps them get back on their feet. Women's centres work because they offer supportive, wraparound, customized services for women, and do so without removing women from the existing support, ties and networks in their communities which are known to be vital in preventing reoffending. This is the kind of support which probation should be funding.¹¹
- **4.8** Probation should fund the justice services provided by women's centres. The power of women's centres is that they work within a wider framework of women-focused activities and the patchwork funding has been both a strength and a challenge.

5. Do better, do less

- **5.1** There has been a wave of pragmatic, non-maximalist messages over the summer from ministers about the prison system, which is extremely welcome.¹² The government should now seize the opportunity to think in the same way about probation. Just as the prison system is overcrowded, so is the probation system. Just as we should not keep people in prison unnecessarily, we should also not be keeping people in probation for longer when resources are constrained. We need to think about stepping back from a maximalist probation system, just as we are starting to do with prisons.
- **5.2** The current 12-month period of post-release supervision should be abolished. The government is right to be considering alternatives to short prison sentences. There should also now be a move to get rid of the unhelpful and over-long period of supervision that follows these short sentences.
- **5.3** There should be a national review of the extent of community orders and of postcustody supervision. The Crown Prosecution Service has a statutory duty to prosecute only in the public interest; thus the CJPs should have a similar duty to supervise only in

 ¹⁰ Ministry of Justice (2015) Justice Data Lab Re-offending Analysis: Women's Centres throughout England.
¹¹ Howard League for Penal Reform (2016) Is this the end of women's centres?, <u>https://howardleague.org/wp-content/uploads/2016/11/Is-it-the-end-of-womens-centres.pdf</u>
¹² The Times - Update superiod of the end of

¹² The Times, 'Under a year in jail must be last resort, says justice chief David Gauke', <u>https://www.thetimes.co.uk/article/under-a-year-in-jail-must-be-last-resort-says-justice-chief-david-gauke-msdbmfmbb</u>

the public interest. Such a duty would involve targeting and designing supervision so as to support desistance and reintegration. At the same time, and helped by a tighter focus on the use of interventions, community orders would be reinforced and properly resourced to improve sentencer confidence.

5.4 When considering how to design a more proportionate system it is important not to underestimate the importance of voluntary engagement where possible. In the consultation document (paragraph 35) the government acknowledges it has no evidence base to justify mandatory post-sentence supervision. We know that women's centres work in part because the support and wrap-around provision they offer is optional – women choose to attend because they get real benefit from it. Similarly, the PbR pilot at Peterborough prison which involved voluntary sector funding was not mandatory, which was a key component of its success.¹³

6. Conclusion

- **6.1** The consultation sets out the ambitious goals of making probation a robust, trustworthy, effective service again a service with an energised staff base, new sense of purpose and re-configured relationship with the voluntary sector. If these truly are the aims, then what needs to be back on the table is some fundamental debate about the operating model and underlying structure of probation services.
- **6.2** The system is currently in disarray; it is not working. The rare pockets of good work are run on a combination of goodwill from dedicated staff and ad hoc voluntary sector funding, but this is not sustainable. People are exhausted and worried about future changes.
- **6.3** In 2013, experts warned that the proposed changes to probation would be disastrous but changes were made anyway. This is now a key decision point it is the chance to put things right. If once again the sector warns against the proposals and the government persists, it will be a disaster.
- **6.4** Instead, now is the time to think critically and draw on the evidence about how to turn probation back into the exemplary public service it was before 2013. If this can be done, it will represent a potent success and a lasting legacy for this government. To save probation will require brave reforms to reverse the damage caused by TR; our suggestions in this document outline how this could be done.
- **6.5** The Howard League is happy to provide further detail on any of the points above and would welcome the opportunity to submit additional evidence as the inquiry progresses.

¹³ E. Disley, C. Giacomantonio, K. Kruithof and M. Sim (2015)

The payment by results Social Impact Bond pilot at HMP Peterborough: final process evaluation report, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/486512/socialimpact-bond-pilot-peterborough-report.pdf, p.23

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