



Response to the Ministry Of Justice consultation:

'Transforming Rehabilitation—A revolution in the way we manage offenders'

February 2013

About NCVO:

The National Council for Voluntary Organisations champions and strengthens the voluntary sector, with over 10,000 members, from the largest charities to the smallest community organisations. Alongside our sister councils in Wales, Scotland and Northern Ireland, we make sure the voluntary sector can do what it does best.

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NCVO has a range of expertise that is relevant to this consultation, and convenes the [Public Service Delivery Network](#), a [Special Interest Group](#) of 160 sub-contractor organisations involved in the Work Programme, and a [Payment-by-Results working group](#) that will be making recommendations in 2013.

Summary:

NCVO welcomes the Government's recognition of the benefits that can come from involving voluntary and community organisations (VCOs), including charities, in rehabilitation services. Specialist VCOs, many involving dedicated volunteers, can make all the difference to the lives of people leaving prison and help reduce reoffending. We would also share the Government's view that there is a need to reduce the high rates of reoffending.

However, there are significant concerns that the scale of the contracts proposed by these reforms and the amount of working capital that is going to be needed to compete under a payment-by-results (PbR) model means that the voluntary and community sector (VCS) is going to be squeezed out by large (often commercial) providers and that the expertise and value of those organisations will be under-utilised. Charities often deliver local and specialised services; it is in the interest of helping ex-offenders to rehabilitate, with the significant economic and social benefits that this will bring, that this skill and expertise is not lost under these reforms.

In this response, NCVO has answered questions where we have specific expertise and experience. We have also consulted with our membership on their views around the Government's proposed reforms, and senior staff are available to discuss any elements of this response or our work on public services more generally. NCVO has drawn heavily on experiences gained from the Work Programme in this response. Problems with the Work Programme and a significant level of concern in the VCS must not be carried over to reforms in justice (whilst of course, there are strengths which we would wish to see replicated). Early and clear communication with providers from all sectors about the learning derived from the Work Programme, including around expectations management, would help to alleviate some of these concerns.

We welcome the efforts that officials have made in engaging with the VCS in the consultation process and would urge a continuing dialogue with a range of providers of different sizes and sectors.

Contract specification

1. Question C1: We are minded to introduce 16 Contract Package Areas. Do you think this is the right number to support effective delivery of rehabilitation services? Do you have any views on how the Contract Package Area boundaries should be drawn?

1.1. NCVO would question the assumptions that lie behind the proposed introduction of 16 Contract Package Areas (CPAs). Whilst there are clear attractions to Government both in terms of ease of management and reduced administration costs through the use of a smaller number of very large contracts, the experience of the Work Programme and the nature of organisations in the voluntary sector would lead to significant concerns. Contracts of this size inevitably limit the types of providers that will be involved, can lead to a range of issues around supply chain management and can build in several layers of complexity between the commissioner and service users. It would also be helpful to understand the full rationale behind the decision to move away from earlier proposals for local Probation Trusts to have a role in commissioning towards a centrally commissioned model with much larger contracts.

1.2. NCVO would strongly recommend a detailed impact assessment of the introduction of such large contracts. It would be helpful both for potential providers and for the public to understand the rationale behind the MoJ's 'mindedness' to introduce this proposal, particularly given significant issues with the Work Programme which has CPAs of similar size. Also it is vital to consider what provision should occur alongside or in addition to these contracts, particularly to meet specialist needs.

1.3. The driving motivation behind these reform proposals should be to provide a sustainable, effective, high quality service. To that end, it should not be presupposed that one particular model should be used in isolation. Contracts of this size would appear to presuppose that a prime contractor model is likely to dominate. However, there should be scope for additional collaborative and consortia working if the VCS is to be meaningfully involved in these contracts, but

there will need to be a concerted programme of capacity building across the VCS to make this a realistic proposition.

- 1.4. If the MoJ does decide to proceed with this proposal, then it is essential that robust mechanisms to ensure a diverse market are put in place, that mechanisms by which quality (rather than simply size and access to capital) will be assessed in bids and in service provision, and that where a prime contractor-sub contractor model is, proper standards of supply chain management will be well understood and used.
- 1.5. It is essential that local and specific needs are adequately considered and provided for in service contracts. With very large contracts, there is an inherent danger that local need is neglected and that an aggregate or very general service. If this model is pursued, then the MoJ should publish as soon as possible (and in advance of the tender documents), proposals to ensure that local need is adequately reflected in supply chains. This should be considered one of the key criteria for successful prime contractor bids.
- 1.6. Transition management in service change is also clearly very important. Our experience of the Work Programme has shown that there are consequences where this transition is not managed well and this concern has been raised with the DWP on a number of occasions. The National Audit Office also raised concerns and identified a number of disadvantages due to the speed of implementation.¹ It is essential that transition is managed carefully in these reforms to prevent a negative impact on service users. More widely, this is a turbulent period both for the VCS and in public service commissioning more generally. The cumulative effect of a range of reforms, including the introduction of PCCs, changes to public health and changes to local government is significant and should be included in provision to manage this period of transition.
- 1.7. The MoJ has indicated that the contract package areas should be coterminous with other public sector structures, such as Police and Crime Commissioner (PCC) and

¹ 'National Audit Office Report by the Comptroller and Auditor General. Department for Work and Pensions. The introduction of the Work Programme' (2012).
http://www.nao.org.uk/publications/1012/dwp_work_programme.aspx, p.7

local authority boundaries. NCVO supports the principle of aligning public sector structures, however, clarity needs to be provided over how this will be achieved.

2. Question C2: What payment-by-results payment structure would offer the right balance between provider incentive and financial risk transfer?

2.1. There appears to be a strong presupposition that PbR is the appropriate financing model for these contracts. Central Government has moved rapidly towards establishing PbR as their preferred model for procurement.

2.2. There are clear attractions to a PbR model, namely the potential of reduced risk exposure to the commissioner and the transformational *potential* that a shift toward outcomes-based payment may bring. However, there are limitations to the model, an incomplete evidence base and a range of challenges both around implementation and the fitness of small and medium size providers, including those in the voluntary sector, to operate with these funding mechanisms. As such, using a PbR model alone threatens to significantly reduce the potential range of providers.

2.3. In designing and implementing a successful PbR model it is essential that there must be agreed relevant outcomes, a reasonable attribution method and a deadweight assumption. Furthermore, the results payments must be sufficiently high to reward the provider for continuously improving results and managing financial risks. These conditions are not straightforward to achieve. It is also likely that the commissioner will pay a premium cost for outcomes, to reflect provider risk, and incur significant administrative costs in setting up these complex contracts. Meanwhile, it is important to recognise that if results are not achieved, this does not mean that the commissioner has not lost anything: the outcomes will not have improved and in many cases, this will mean the public sector continues to incur acute service costs. In the context of rehabilitation, failure to achieve results will cost the courts, burden the prison population, and impact on community safety.

2.4. As well as these (not insignificant) difficulties in establishing PbR models, NCVO has concerns about the impact of PbR on the voluntary sector to date. Its use in the Work Programme has proved controversial and provider experience has been

mixed. For many organisations, PbR has either significantly reduced their capacity for involvement, impacted on the financial health of the organisation, or prevented involvement in the programme altogether.

2.5. In order to mitigate the potential negative impact of the use of PbR on VCS involvement and to ensure that its valuable contribution is captured, NCVO would recommend, as a minimum, that:

- A range of financial mechanisms are used which are appropriate to the intervention, to user groups and to a diverse range of providers.
- It may be necessary to make an upfront contribution on the basis of a loan or grant (depending on circumstances) to allow the participation of smaller organisations. This may include, for example, payments to support the hiring of a project worker or investment in new facilities either to bid, or to run elements of the service.
- In the case of very large contracts, prime contractors should be encouraged to use other financial mechanisms to support the involvement of smaller providers – for example, risk sheltering or the use of grant funding to support specific interventions. Prime contractors should be strongly encouraged to use a diverse range of financial mechanisms as possible in the tendering process and should expect to be held accountable for their decisions, explaining how they have configured funding mechanisms to interventions.
- It might also be appropriate that prime or lead contractors consider using standard service delivery contracts for their subcontractors, rather than parcelling out mini-PbR contracts each with partial outcomes, complex attribution issues and uncertain payment arrangements. This might be particularly relevant where an intervention that a subcontractor provides has a strong evidence base for achieving the outcome. This would enable the charity to get on and deliver what is known to work, without the burden of having to come up with the working capital from the outset.

- It is essential that, whichever payment structure is used, they are applied proportionately and intelligently throughout supply chains. A particular concern of the Work Programme has been the passing on of risk and inappropriate supply chain management. A survey that NCVO carried out of voluntary subcontractors in the Work Programme found significant concerns around the financial terms and payment levels imposed by prime contractors.²

2.6. When considering the barriers to VCS participation in PbR systems, the principles of the Compact are of relevance. All Government departments are committed to following the principles of the Compact which include the following:

Compact 3.9. Discuss and allocate risks to the organisation(s) best equipped to manage them. Where prime contractors are used, ensure they adhere to the principles of this Compact in allocating risk. Ensure delivery terms and risks are proportionate to the nature and value of the opportunity.

Compact 3.10. Ensure that the widest possible range of organisations can be involved in the provision of services through appropriate funding and financing models, for example outcome based payments and payment in advance of expenditure. Payment in advance of expenditure should be considered on a case by case basis where this represents value for money.

Compact 3.11. Ensure all bodies distributing funds on the Government's behalf adhere to the commitments in this Compact. This includes the relationship between prime contractors and their supply chains. Demonstrate how funding arrangements and financial support can allow smaller and specialist providers to play a greater part.³

2.7. The above principles were designed and mutually agreed upon so as to ensure that any potential barriers which may limit the contribution of the voluntary sector are removed. As such, the MoJ should ensure that, when addressing the concerns about the impact of PbR on the voluntary sector, Compact principles are considered.

2.8. Appropriate attribution of payments, as was noted above, is central to implementing a successful PbR model. The way in which outcomes are determined and how credit for achieving outcomes is allocated and rewarded across providers must be addressed.

² 'The Work Programme-Perceptions and Experiences of the Voluntary Sector'. (2012) http://www.ncvo-vol.org.uk/sites/default/files/sig_survey_june_2012_report_17.9.12.pdf, p.11

³ 'The Compact' http://www.compactvoice.org.uk/sites/default/files/the_compact.pdf, Section 3.9, 3.10, 3.11.

2.9. Within a simple binary outcome measure, the determination of success or otherwise can be relatively straightforward. Significant complexity can be added when either multiple providers are involved or outcomes are more multifaceted, complex, or cut across boundaries (for example boundaries of responsibility of different Government departments). There will have to be comprehensive and detailed work to determine which outcomes the MoJ is seeking to achieve, how these will be measured and how 'credit' for achieving these outcomes will be allocated.

2.10. In addition, in areas such as the rehabilitation of offenders, it will be necessary to reward progress— for example progress toward reducing reoffending behaviour, rather than simply relying on a blunt and binary mechanism. Reductions in the frequency or the seriousness of offending should be incentivised. Failure to account for rehabilitation as a progression towards desistance from crime is likely to result in perverse incentives for providers to only work with offenders that are 'easiest' to help. There should also be scope for longer term interventions, where work with the offender continues after the results payment has been received.

2.11. Financial incentives must be appropriately aligned to the outcomes that the commissioner wants to achieve. It is likely that in all sectors, but particularly where smaller providers predominate, intensive guidance and support in measuring outcomes and impact will be needed.

2.12. For organisations demonstrating and evidencing the outcomes they achieve to commissioners, access to quality data is necessary. NCVO welcomes the move towards wide access to re-offending data through the Justice Data Lab. However, we would endorse Clinks' recommendation that relevant information held by other departments, for example the Department of Health and the Department for Work and Pensions should also be available and combined with reoffending data.⁴ This would allow a holistic, quality evidence base to be developed and allow more accurate evidence to be gathered around impact in reducing reoffending.

⁴ Clinks, (2013.) 'Response to MoJ consultation *Transforming Rehabilitation: A revolution in the way we manage offenders.*'

2.13. PbR should be a mechanism for encouraging innovation and shifting services towards focusing on outcomes. However, where financial incentives are not sufficient and are not well designed, providers are less willing to experiment with different ways of delivering service and improving quality of outcomes. If financial incentives are not aligned correctly, then the consequence can be the adoption of extremely risk averse practice (which presumably defeats the object of reforming—indeed ‘transforming’—rehabilitation) and can also lead to a phenomenon known as ‘creaming and parking’ which has been problematic in the Work Programme. NCVO’s survey of Work Programme subcontractors found that 13 out of 98 have had to ‘park’ customers because the cost of the intervention exceeds the payment, and of the 78 that have not ‘parked’ customers, 35 have had to subsidise delivery from their own reserves, which is clearly neither acceptable nor sustainable.⁵ The same research showed that 29 out of 98 respondents believed that prime contractors were inappropriately withholding clients (“creaming”).⁶

3. Question C3: What measurements and pricing structures would incentivise providers to work with all offenders including the most prolific?

3.1. A mixed funding model will be necessary to ensure that interventions are driven by quality and efficiency and not simply by price. In PbR models where financial risks to the provider are overly burdensome there is a danger that the ‘hardest to help’ are neglected. There is evidence that problems of this nature can occur when:

- The needs of the individual are not assessed adequately or accurately.
- The ‘differentials’ between helping different groups are not adequate to incentivise more detailed interventions and payments for ‘harder to help’ groups are not high enough.
- Referrals to providers are randomly allocated. This was a particular concern in the Work Programme. NCVO’s survey showed that 40 per cent of respondents

⁵ ‘The Work Programme-Perceptions and Experiences of the Voluntary Sector.’ (2012). http://www.ncvo-vol.org.uk/sites/default/files/sig_survey_june_2012_report_17.9.12.pdf, p.13

⁶ ‘The Work Programme-Perceptions and Experiences of the Voluntary Sector.’ (2012). http://www.ncvo-vol.org.uk/sites/default/files/sig_survey_june_2012_report_17.9.12.pdf, p.8

felt that the ‘lottery ‘ nature of referrals means that some customers are forgoing the appropriate support, with a further 44 per cent considering it was a problem ‘to some extent.’⁷

- A further problem is the perception that these ‘harder to help’ cases are allocated to small providers without proper assessment of need or payment is appropriate.⁸

3.2 Robust and transparent monitoring of the flow and nature of referrals within supply chains would go some way to alleviating concerns, and we expand on this below in our response to C7 and C8. However, the most obvious way to ensure that the most prolific offenders are well served is to ensure that contracts are of the right size and specification to focus on them.

4. Question C4: How should we specify public sector oversight requirements in contracts, to avoid bureaucracy but ensure effective public protection arrangements?

4.1. NCVO agrees with the proposals that for offenders of low and medium risk, the public sector should, at a minimum, still be responsible for risk assessments of offenders, advice to court on sentencing and advice on return to court and recall to custody in cases of breach of order or licence conditions. It is essential to maintain a high level of public confidence in the system and for accountability to be clearly defined and well understood.

4.2. NCVO does not have the expertise to comment specifically on where the line should be drawn between different levels of risk posed by offenders.

4.3. The decision on the level of responsibility that the public sector will retain should be based upon the best way to configure the highest quality, most robust service which commands public confidence, rather than making value judgements around which sector should be in control.

⁷ ‘The Work Programme-Perceptions and Experiences of the Voluntary Sector.’ (2012). http://www.ncvo-vol.org.uk/sites/default/files/sig_survey_june_2012_report_17.9.12.pdf, p. 9

⁸ ‘The Work Programme-Perceptions and Experiences of the Voluntary Sector.’ (2012). http://www.ncvo-vol.org.uk/sites/default/files/sig_survey_june_2012_report_17.9.12.pdf, p. 9

4.4. It will be important to establish a clear and consistent process for changing levels of risk in offenders. Risk is dynamic, a quarter of all offenders change risk during their sentence.⁹ Where offenders change from being the responsibility of the public sector, to that of another sector, or vice versa, there needs to be a system for managing this transition, including a clear process for the attribution of payments.

4.5. To improve cross sector understanding, probation officials should spend time working within providers, or perhaps have a responsibility for a number of providers'. This will help to manage the responsibility of determining changing offender risk. Understanding across sectors is crucial to effectively delivering public services well across organisational and sectoral boundaries. NCVO would recommend that:

- Commissioners should be encouraged and supported to develop relationships with potential providers. We are concerned that commissioners often seem to feel that this process would in some way would distort the market. We would argue that an understanding of the market and empathy with a range of providers is a prerequisite for successful and effective public services.
- Formal mechanisms should be in place to ensure staff understand other sectors well – this might include, for example, work shadowing across sectors. NCVO's experience is that formal work shadowing across sectors can make a huge difference in breaking down both cultural and practical barriers.¹⁰
- Demonstrable understanding of cross sector working should be included as part of the tendering and bidding process—prime contractors from all sectors should outline their experience and what they are planning to do to work effectively across sectors. Successful contracting with a range of providers by size and

⁹ 'Skill and dedicated of staff highlighted in BBC documentary.' The Probation Association. (2013). <http://www.probationassociation.co.uk/news-and-publications/media.aspx>

¹⁰ NCVO runs a work shadowing programme that pairs charity staff with staff from eight government departments: DEFRA, BIS, MoJ, the Cabinet Office, DCLG, DECC, DfE and the Home Office took part in 2012. Of the 1100 people who took part in the scheme, 83 per cent of participants said they found their placements very worthwhile or worthwhile, and 92 per cent of voluntary sector respondents said it had increased their knowledge of how government works. Initiatives such as this can improve understanding and practice on both sides.

sector will likely lead to a healthier, more diverse market and better public services.

- 4.6. Effective oversight of performance requires open and accessible performance data on the effectiveness of interventions being carried out by providers at all levels of the supply chain. NCVO has repeatedly called¹¹ for improvements to the way that data is recorded and reported in the Work Programme. A key finding of NCVO's survey of voluntary sector subcontractors was that two-thirds of respondents reported that prime contractors were not sharing performance data with their supply chain.¹²
- 4.7. So called 'gagging clauses' in Work Programme contracts, where subcontractors are told they must not do anything to 'attract adverse publicity for DWP or make any press statements or publicise the contract without approval of the department', have caused considerable anxiety amongst providers. Nearly one third of respondents to NCVO's survey of Work Programme subcontractors found that 'gagging clauses' have been a substantial barrier to the dissemination of information.¹³ This suggests a substantial amount of useful information has been lost. It is essential that only information which genuinely has to remain confidential cannot be shared. It must be clear from the outset precisely what types of information this applies to, rather than leaving contractors to have to interpret these requirements for themselves particularly with such significant issues of public interest at stake.
- 4.8. Of course, monitoring and reporting requirements must be proportionate to the size of the organisation. It might also be considered that additional resources may be necessary in order to fulfil these requirements.

¹¹ 'NCVO responds to the publication of statistics relating to the Work Programme.' (2012). <http://www.ncvo-vol.org.uk/news/civil-society/ncvo-responds-publication-statistics-relating-work-programme>

¹² 'The Work Programme-Perceptions and Experiences of the Voluntary Sector.' (2012). http://www.ncvo-vol.org.uk/sites/default/files/sig_survey_june_2012_report_17.9.12.pdf, p.14

¹³ 'The Work Programme-Perceptions and Experiences of the Voluntary Sector.' (2012). http://www.ncvo-vol.org.uk/sites/default/files/sig_survey_june_2012_report_17.9.12.pdf, p. 15

4.9. It would be extremely helpful for all organisations in supply chains not only to have access to aggregate performance within their own supply chain, but to have a detailed understanding of how their performance compares to other subcontractors and to their own and other prime contractors. This culture of transparency would help to drive improvement, where open data allows a robust assessment of performance as opposed to partial data releases which can be used to exert pressure on subcontractors without them knowing if this is fair or proportionate. Knowing in advance about what data is required, and giving pre-designed formatted documents to providers at all levels to record this data will help to manage the potential burdens of these requirements.

4.10. It should also be written into contracts which data will be collected and in what format. A consistent format will also allow for direct comparisons of performance. If expectations are clearly set and understood at the outset, then mechanisms for gathering (and being able to share) data can be developed. Having an agreed balance between data transparency and commercial confidentiality written into the contract will ensure that claims of commercial confidentiality cannot override necessary and appropriate data transparency.¹⁴

5. Question C6: What mechanisms can be used to incentivise excellent performance and robustly manage poor performance to ensure good value for money?

5.1. It is important that the payment structure appropriately reflects the different needs of offenders, as was recommended above in C2 and C3. Excellent performance is incentivised by ensuring that payment structures align with the desired outcomes of the service and are proportionate and appropriate to the intervention. Designing the payment structure must be based on a thorough and structured dialogue with the market. As was described above, where too much financial risk rests with the

¹⁴ The Public Accounts Committee, Implementation of the Transparency Agenda, (2012): “We are concerned that 'commercial confidentiality' may be used as an inappropriate reason for non-disclosure of data. If transparency is to be meaningful and comprehensive, private organisations providing public services under contract must make available all relevant public information. The Cabinet Office should set out policies and guidance for public bodies to build full information requirements into their contractual agreements, in a consistent way.” <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpubacc/102/10204.htm>, para 6.

provider, poor practices such as ‘creaming and parking’ may result. Innovation and improvement of services will also be constrained if financial risks or capital requirements are too great.

- 5.2. As was outlined above, transparent data sharing and clear reporting requirements are important for overseeing performance. Additionally, providers will have reputational incentives to perform well. Wide accessibility of data will ensure that providers consistently perform well and deliver quality, or they risk reputational damage.
- 5.3. Where poor performance is persistent, this must be highlighted and there should be a clear process for performance improvement. Where a provider within a supply chain fails, or has the contract taken away, this is both expensive for the prime or lead provider, and the commissioner, and harmful and disruptive to service users. It is important therefore that efforts should first be made to improve performance and that early warning signs about underperformance are heeded. When standards of performance are understood and agreed up front, then this obviously helps in highlighting underperformance early on rather than performance management being viewed as punitive and retrospective.
- 5.4. It should be recognised that changing social and economic factors will have an impact on reducing reoffending; providers should not be unduly accountable for factors beyond their control. There also needs to be enough flexibility in the programme specification and in payment mechanisms to reflect wider changes – for example, if the employment market remains poor then the use of employment related interventions to tackle reoffending is more difficult. NCVO has previously highlighted this problem in the Work Programme.¹⁵
- 5.5. Furthermore, performance levels will differ dependent on the group of offenders that a provider works with. For example, those who work with offenders that have chaotic lifestyles should be subject to measurements of success which reflect the

¹⁵ NCVO’s report ‘Initial Concerns from Civil Society Organisations’ (2011) recommended that “Minimum performance targets need to be flexible enough to cater for, and adapt to, changes and variation in the economic environment and labour market.”

http://www.ncvo-vol.org.uk/sites/default/files/work_programme_concerns.pdf, p. 7

difficulty of their work. Payments must also be aligned to these interventions, as previously outlined.

Supply chain management

6. Question C7 and C8: What steps should we take to ensure that lead providers manage and maintain a truly diverse supply chain in a fair, sustainable and transparent manner? What processes should be established to ensure that supply chain mismanagement is addressed?

6.1. It is essential that there is a strong and clearly communicated commitment to robust supply chain management. This must be outlined as early in the reform process as possible, and there are lessons to learn from the Work Programme—including that Government should retain a direct and clear sense of accountability for interventions and performance, and that the management of supply chains, with the consequence on the treatment of service users and use of public funds, is not only a matter for prime contractors.

6.2. The proposals indicate that the MoJ is committed to supply chain management principles that are aligned to those in the DWP's Merlin Standard. NCVO supports the need for a process of supply chain management, and the Merlin Standard offers useful principles, particularly around transparency, funding arrangements and the fair treatment of subcontractors.

6.3. However there remain significant concerns about the effectiveness of the Merlin Standard in practice. All prime providers in the DWP's Work Programme received accreditation by demonstrating compliance with Merlin principles, yet the experiences of many voluntary sector subcontractors in the Work Programme have been mixed. Reports of charities being used as 'bid-candy' by primes to secure contracts, where there is no substantial intention of subcontracting to them, of the practice of 'creaming and parking, and of lack of referrals to subcontractors suggests

that the Merlin Standard has not always been effective in preventing these bad practices and ensuring supply chain excellence.¹⁶

6.4. In addition, prime providers had to achieve accreditation *within the first 12 months* of beginning contracts making Merlin Standard a retrospective method of scrutiny rather than a starting point for good supply chain relationships. It is also unable to provide independent arbitration of disputes. NCVO would strongly recommend that requirements to comply with agreed standards of supply chain management do not apply on a solely retrospective basis but that prime contractors are required to specify upfront the ways in which they intend to robustly manage their supply chains. NCVO would also reiterate its strong recommendation for an independent, robust and anonymous complaints process.

6.5. The Compact should be used as a mechanism to ensure fairness and good practice in supply chains. As a tool for managing relations between voluntary and public sectors, the commitments in the Compact also apply to “all bodies distributing funds on the Government’s behalf” including throughout supply chains.¹⁷ All Government departments are signed up to the Compact, and the MoJ have generally made significant and welcome progress towards its implementation. In a letter to the Secretary of State, Compact Voice chair Simon Blake has recommended that the MoJ provide details of how they are ensuring they uphold Compact principles during the development of these reforms.¹⁸ NCVO would reiterate this call.

6.6. Compact principles provide a starting point for good supply chain relationships and, as such, it is important that the MoJ makes sure it is embedded in the process of contracting out rehabilitation services. Compact principles can also be used by voluntary organisations to seek redress for the consequences of bad practice, for

¹⁶ ‘The Work Programme-Perceptions and Experiences of the Voluntary Sector.’ (2012). http://www.ncvo-vol.org.uk/sites/default/files/sig_survey_june_2012_report_17.9.12.pdf

¹⁷ ‘The Compact’ http://www.compactvoice.org.uk/sites/default/files/the_compact.pdf, Section 3.11.

¹⁸ A copy of the letter is available here: http://www.compactvoice.org.uk/sites/default/files/letter_from_simon_blake_to_chris_grayling_8-2-13_-_pbr_letter.pdf

example where consultations are inadequate, or there are changes to funding arrangements without due process and notice periods.¹⁹

6.7. NCVO is currently working with Serco to develop guidance on supply chain management. NCVO is happy to discuss the potential use of this guidance in more detail. An important recommendation from this is that commissioners and providers should ensure greater sharing of data and information with their subcontractors. This will allow subcontractors to better understand, plan for, and manage risk.

6.8. Prime contractors should be bearing a proportionate and fair level of financial risk in contracts, rather than passing this risk down supply chains. In a prime contractor model, primes take a significant cut of the contract value; they must therefore justify their mark up on payments by the financial risk that they absorb and the services (management services or direct services) that they provide. Many voluntary sector subcontractors in the Work Programme found this was not the case, for example, having been promised a certain frequency of referrals in the Work Programme they found much more volatile patterns in practice, which has a damaging impact on cash flow and finances. NCVO's survey found that half of subcontractor respondents were receiving significantly less referrals than expected, 70 per cent fear their contracts will not be viable for the full term, and nearly half of respondents are subsidising their service delivery with their own reserves.²⁰

6.9. Supply chain management should involve realistic management of referral expectations and the expected take up of services should be planned as far as possible. Where referral numbers from primes are significantly different to the expectations that organisations were given entering in to the contract, they should be able to withdraw without penalties. Importantly, there should be on-going work flow planning discussions between prime and sub-contractors. There is also a need for Government to clearly set expectations around possible referral

¹⁹ 'The Compact' http://www.compactvoice.org.uk/sites/default/files/the_compact.pdf

²⁰ 'The Work Programme-Perceptions and Experiences of the Voluntary Sector.' (2012.) http://www.ncvo-vol.org.uk/sites/default/files/sig_survey_june_2012_report_17.9.12.pdf, p. 10, 13

numbers. There have been mixed messages from Government on this issue in the Work Programme²¹.

6.10. It should be noted that if the balance between payment by upfront and deferred fees is not appropriately designed, then the likelihood that risks will be passed down the supply chain is heightened. It is not realistic for the MoJ to expect prime contractors to absorb all financial risks and to pay for services from their subcontractors upfront. This is made more difficult if quality data on the success of interventions is not available. Ensuring the payment structure is right, and doesn't load too much risk onto prime contractors, will help to ensure that financial risks can be fairly and appropriately managed throughout the supply chain.

6.11. Bids from potential providers should demonstrate how they will sustain partnerships with organisations within the supply chain and how they will fairly and proportionately distribute and manage risk. The MoJ should recognise this in the allocation of contracts; as well as considering price and quality, they must consider the quality of relationships within supply chains.

6.12. Where a contract would incur more upfront cost because of the way providers have planned and managed risk to enable sustainable and diverse partnerships with the voluntary sector, this expense may be justified by the added value that may well be achieved, the specialist and niche provision and the quality of outcomes. The cost to the commissioner of failure or poor services would also be very high. Often voluntary sector providers achieve added social value in their delivery. If this can be captured in supply chains through fair and proportionate risk management, then the MoJ should take this into account. Indeed, under the Public Services (Social Value) Act 2013, Commissioners are required to take social value (that is, any additional economic, social or environmental benefits) into account

²¹ The Government estimated that 35-40% of the value of the contracts in the Work Programme would go to organisations from the voluntary sector: (April 2011). The reality has been far lower.
<http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110427/debtext/110427-0001.htm>,
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when designing a service and deciding to award a bid.²² Clear communication from the MoJ about how it is using this legislation should come as soon as possible.

6.13. During the contract, the MoJ can help to keep track of instances of where voluntary sector organisations have been used as ‘bid candy’ by looking at spending on the VCS as a percentage of contract value and not purely the number of VCS organisations in the supply chain. Where organisations consistently receive no or few referrals, then this should be explained. There should also be regular supply chain audits to ensure that providers’ lists are accurate and up to date.

6.14. Commissioning on the basis of price, where sustainable supply chain relationships have not been planned for will ultimately reduce the diversity of the market and will result in less specialist services and poorer outcomes.

7. Question C9: How can we ensure that the voluntary and community sector is able to participate in the new system in a fair and meaningful way?

7.1. As has been already been outlined, the proposed size of contract packages, and the level of working capital required to deliver on payment-by-results make the prime contracting model likely in practice. Our recommendations in C7 and C8 relate to managing fair treatment of the VCS as subcontractors.

7.2. The potential advantages of the prime contractor model are that its can achieve greater scale and coordination of services, and manage risk exposure. However, in practice there is limited evidence so far of the effectiveness of the prime contracting model over the alternatives.

7.3. Spot purchase contracts can prove problematic for small organisations, including those in the voluntary sector. NCVO’s supply chain guidance with Serco will make recommendations around reasonable communication with potential contractors about potential referral flows but it will be impossible to entirely mitigate the challenges of spot purchasing.

²² Further information on the Social Value Act and its implications for the voluntary sector can be obtained here <http://www.ncvo-vol.org.uk/networking-discussions/blogs/18452/12/07/02/what-social-value-act>

- 7.4. The social investment market has the potential to enable VCS organisations to deliver innovation and effective public services. NCVO have previously called for fiscal and tax incentives to aid the growth of the social investment market.²³ The MoJ should ensure that they are communicating clearly about its plans to enhance the development of investible propositions. They can also disseminate information about the use of social investment to date, such as in HMP Peterborough.
- 7.5. For voluntary organisations to be able to access financial investment they will need sufficient data and information to go to investors with, and sufficient time to negotiate funding. Longer contracts will also be important. Early communication to the market to allow the development of investible propositions is important.
- 7.6. It is also worth noting that early evaluation of the Peterborough model has highlighted that development of the payment model “demanded considerable analytical resources and relied upon the availability of Ministry of Justice data about the cost of reconviction events.”²⁴ For social investment to be a viable financial model for interventions, substantial resources are going to be required to establish them.
- 7.7. In addition, the challenges around attribution need to be addressed and clarity around multiple outcomes is also going to be necessary. Again, early evaluation at Peterborough makes clear that this is the first evidence of the performance of SIBs as a financial model and as such “developing a track record of investment is crucial to building an investor base and improving understanding of outcome risk.”²⁵
- 7.8. The social investment market appears to be growing, which is something to be welcomed. However, the scope of social investment should not be overstated—it will not be able to finance the scale of reforms to probation services. The MoJ

²³ ‘NCVO Commission on Tax Incentives for Social Investment.’ (2012). http://www.ncvo-vol.org.uk/sites/default/files/ncvo_commission_on_tax_incentives_for_social_investment.pdf, p. 25-26

²⁴ ‘Lessons learned from the planning and early implementation of the Social Impact Bond at HMP Peterborough’ (2011) <http://www.justice.gov.uk/downloads/publications/research-and-analysis/moj-research/social-impact-bond-hmp-peterborough.pdf>, p. iv

²⁵ ‘Lessons learned from the planning and early implementation of the Social Impact Bond at HMP Peterborough’ (2011) <http://www.justice.gov.uk/downloads/publications/research-and-analysis/moj-research/social-impact-bond-hmp-peterborough.pdf>, p. iv

should offer guidance on where they foresee social investment as being able to contribute.

7.9. An alternative model for voluntary sector involvement in delivery on these contracts will be as part of consortia. In order for this to be a realistic model, it is important that market engagement be built into the commissioning and procurement process, and in particular providers that work with niche groups should be brought in to this process. The MoJ might consider supporting this engagement process by having a central service of information exchange. It could also standardise the process of due diligence and hold this information centrally for providers to access.

System design

8. Question C10: How can we best use statutory supervision on release from custody to ensure that offenders engage with rehabilitation effectively? Question C11: How can we ensure consequences for non-compliance are effective, without building in significant additional cost?

8.1. The use of mentoring in the process of rehabilitation can produce highly effective outcomes. However, there is a potential conflict when mentors are responsible for supervision for offenders and this supervision is mandatory. A mentor should be a trusted friend who can support the individual in desisting from crime and getting their lives back on track, yet if they are responsible for reporting breaches to the provider or to probation officials this potentially undermines the relationship between the mentor and the offender.

8.2. A further concern is that, by making supervision for short term offenders mandatory, there are potential hidden costs above and beyond the costs of this provision. Where offenders breach the terms of their supervision, this will cost the courts and potentially the prison services if they are reconvicted. This is of particular concern for offenders who have chaotic lifestyles and may struggle to meet appointments and conditions.

9. Question C13: What else can we do to ensure the new system makes best use of local expertise and arrangements, and integrates into existing local structures and provision?

9.1. It is important that local structures and provision are a central consideration when designing this system. The MoJ has made plans to commission these services nationally and using large scale contracts. This would appear to run against the Government's agenda of localism and the introduction of PCCs which was intended to support local commissioning. As has been highlighted throughout our response, local and specialist service provision must be preserved and strengthened in order to effectively combat reoffending.

10. Question C14: Police and Crime Commissioners will play an integral role in our reforms. How best can we maximise their input/involvement and that of other key partners locally?

10.1. Police and Crime Commissioners clearly mark a fundamental change in policing and justice policy. NCVO continues to work with colleagues from across the VCS through the Home Office to ensure that the voice of the VCS is heard by incoming PCCs. NCVO would encourage the MoJ to work with the Home Office and others to issue high quality guidance to PCCs on the impact of its proposed reforms at the earliest possible opportunity.

10.2. As a practical first step, the MoJ should produce a briefing for incoming PCCs on upcoming probation reforms—including emphasising the importance of rehabilitation services and the role that PCCs should play with their local VCS in running these services and the importance of funding them adequately. As a minimum, PCCs should at least understand the full implications of these proposals.

10.3. At the time of this consultation, it is of significant concern that Safer Future Communities (SFC) which has represented the VCS in this crucial area is about to reach the end of its funding with no clear plans from Government for how this work can be resourced in future.

11. Question C15: How can we ensure that professional standards are maintained and that the quality of training and accreditation is assured? A professional body or institute has been suggested as one way of achieving this. What are your views on the benefits of this approach? Question C16: What role can the Inspectorate of Probation best play in assuring effective practice and a high standard of service delivery?

11.1. The MoJ needs to ensure that high standards and the quality of probation services are not driven down by these reforms. There is a real concern that pressures on organisations to come up with the cheapest bids possible will mean that investment in the training and skills of staff are going to be lost. The emphasis on financial savings should not mean that providers cut costs in the quality of staff. A professional body would go some way towards achieving this.

Proposals for Reform

12. Question C19: Do you have any further comments on our proposals for Transforming Rehabilitation in this document?

12.1. NCVO recommends that the MoJ make efforts to fully understand the scope and practicalities of volunteering. Volunteers are involved throughout the criminal justice system.²⁶ The scale of volunteer involvement is very significant in rehabilitation, as demonstrated in forms of mentoring by volunteers in the current NOMS pilot projects and its investment in developing mentoring and befriending services.²⁷

12.2. In working towards the aspiration for universal through-the-gate mentoring, a massive increase in the number of volunteers would be absolutely essential. Resources are needed to support the structures to recruit, train and manage volunteers and, especially in this context, to establish and maintain the relationships between prisons and volunteers. The overall system of contracting

²⁶ More information on volunteers in criminal justice can be found at <http://www.justvolunteer.org.uk/volunteer/> and <http://www.prisonadvice.org.uk/about-us/our-goals-and-values>

²⁷ 'NOMS volunteering and mentoring project' (2013) <http://www.mandbf.org/about-us/our-projects/noms-volunteering-and-mentoring-project>

and providing volunteer-based services is the more complex in rehabilitation for the large number of small charities and voluntary groups which work with their local prisons and probation services. The role of volunteering by those in and leaving custody as part of the pathway toward rehabilitation should also be recognised. Time Well Spent, a report from the Prison Reform Trust²⁸, recommends that volunteering should start within prisons and the prison service should do more to encourage active citizenship and expand on opportunities that are already available.²⁹

12.3. In regards to the impact that these proposals will have on female offenders and offenders with protected characteristics, we refer to Clinks response regarding equality impact assessments, women and BAME offenders³⁰. In particular, we support their recommendation that the MoJ should consider how Equality Impact Assessments might be strengthened.

12.4. It is essential that the MoJ outsource probation in a way that ensures diverse provision and quality of outcomes, whilst securing public safety. The Justice Committee's recent report on 'Interpreting and translation services and the Applied Language solutions contract' highlights significant concerns about the MoJ's approach to commissioning services nationally.³¹ The Justice Committee have also outlined concerns about the tendering process for the Community Payback scheme, where information was not communicated to the market clearly and where there were also significant concerns about the size of the regional 'lets' involved.³² Given the scale of the proposed reforms to probation, and the high costs of failure, the Ministry must not move to outsource probation quickly in a way that prevents it from commissioning intelligently.

²⁸ 'Time Well Spent' (2011)

<http://www.prisonreformtrust.org.uk/Portals/0/Documents/Time%20Well%20Spent%20report%20lo.pdf>

²⁹ Our Institute for Volunteering Research is commencing a research project with the Institute for Criminal Policy Research on volunteering by ex-offenders:

<http://www.ivr.org.uk/ivr-projects/ivr-current-projects/ex-offenders-and-volunteering>

³⁰ Clinks, (2013) 'Response to MoJ consultation *Transforming Rehabilitation: A revolution in the way we manage offenders.*' p. 12

³¹ Justice Committee, (2013) 'Interpreting and translation services and the Applied Language solutions contract' <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmjust/645/645.pdf>, p.20

³² Justice Committee, (2011) 'The role of the Probation Service' <http://www.publications.parliament.uk/pa/cm201012/cmselect/cmjust/519/51906.htm>, para 92

12.5. Given a significant level of concern in the VCS around the implementation of the Work Programme and the likelihood that at least some of that programme's model is going to be used in rehabilitation, a clear early signal from the MoJ about how the VCS is going to be engaged and commissioned in these services would be very welcome.

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