

Local commissioning, local solutions: devolving offender management

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Reform

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Contents

Executive Summary	6
Introduction	9
1 Enduring problems	11
1.1 The current context	12
1.1.1 Reoffending rates	12
1.1.2 Prison population	13
1.1.3 Value for money	14
1.2 Barriers to an effective offender management system	15
1.2.1 NOMS	15
2 The case for change	21
2.1 A reforming government	22
2.2 Overcoming barriers	23
2.2.1 The Prison Service	24
2.2.2 The National Probation Service and Community Rehabilitation Companies	24
2.2.3 Monitoring and inspection	27
2.3 Making offender management work	29
3 The case for local, integrated provision	30
3.1 Localised services	32
3.1.1 Driving better outcomes	32
3.1.2 Driving value for money	34

4	The local commissioning of services	37
4.1	The role of Police and Crime Commissioners	39
4.1.1	What should PCCs commission?	41
5	Local Rehabilitation Trusts	54
5.1	The role of Local Rehabilitation Trusts	56
5.2	The design of Local Rehabilitation Trusts	60
5.3	Local Rehabilitation Trusts and competition	63
6	Regulation in the new system	65
7	Implementation	68
7.1	The role of Reform Prisons	70
7.1.1	Developing prison governor capability	71
7.2	The legislative framework	72
7.2.1	Prisons	72
7.2.2	Probation	73
7.2.3	The new legislative framework	73
7.3	Developing the role of Police and Crime Commissioners and Local Rehabilitation Trusts	75
7.3.1	Transitioning to LRTs	76
7.4	The regulator	77
7.5	The role of the centre	78
8	Conclusion and recommendations	80

Executive Summary

Over the last 15 years, there has been significant change to the way in which offender management services – i.e. prison and probation – are organised and managed. This has included the introduction of competition, first through private sector run prisons and then more recently through the outsourcing of the bulk of probation services through the Transforming Rehabilitation programme. Successive governments have also sought to create a more integrated offender management system, primarily by bringing prisons and probation closer together through the creation of a single agency – the National Offender Management Service (NOMS) – to manage both.

These reforms have delivered some positive change: costs are down¹ and there have been measurable, albeit small, reductions in re-offending.² For the scale and ambition of the changes made, however, the impact has been disappointing. Despite marginal improvement, reoffending rates remain stubbornly high and some aspects of prison performance have actually deteriorated.³ In addition, there remains continuing pressure to secure better value for money from the offender management services. A different approach is needed.

The case for change

Offender management services should be designed and delivered at a local level. They must also be integrated. Evidence shows that a consistent approach to case management is more effective in managing risk, develops more positive offender engagement and is more likely to reduce reoffending than an approach in which case management responsibilities are shared across more than one person.⁴ An offender's journey through prison and probation should be as seamless as possible – the right services, delivered at the right time, in the right place.

1 National Offender Management Service costs were reduced by almost £900 million, in cash terms, over the Spending Review 2010 period. National Offender Management Service, *National Offender Management Service: Business Plan 2014-2015*, 2014.

2 Adult reoffending rates, for all adults released from prison or starting a community order dropped by just over 2 percentage points between 2005 and 2014: Ministry of Justice, *Proven Re-offending Statistics Quarterly Bulletin April 2013 to March 2014*, England and Wales, 2015.

3 House of Commons Justice Committee, *Prisons: Planning and Policies*, Ninth Report of Session 2014–15 (2015), 3.

4 Sarah Partridge, *Examining Case Management Models for Community Sentences*, 2004.

The Government has recognised the compelling case for continued reform, announcing plans to devolve greater powers to local areas and give prison governors operational autonomy, starting with establishing six Reform Prisons this year. Their reforms are also backed up by a £1.3 billion investment in modernising the estate by building new prisons and closing old and inefficient ones.⁵ Nonetheless, this programme does not go far enough, fast enough. An integrated system which puts rehabilitation at its heart cannot be adequately achieved whilst the system remains driven by the centre and pre-occupied principally with managing the prison population.

The proposals in this report set out an ambitious blueprint for reform that sees the Government's current programme as the first step towards a radically different model of offender management.

Local commissioning, local services

Offender management services need to be commissioned and delivered locally, by commissioners who can make well-informed decisions about where money is best spent to achieve reductions in reoffending and reflect local priorities.

Police and Crime Commissioners (PCCs) occupy the right place in the system to fulfil this function. They are sufficiently local, and have direct accountability to the electorate in the communities they serve. They can claim a democratic mandate to change criminal justice services in order to reduce crime. This democratic mandate and the need to win re-election also instils a strong antidote to provider capture.

As such, PCCs should take responsibility from NOMS for commissioning all prison and probation services. They should also take responsibility for commissioning drug and mental health services for offenders to enable genuinely joined-up solutions to be configured at a local level.

To facilitate this, the current National Probation Service (NPS) should be disbanded. Responsibility for the management of all sentenced offenders, irrespective of risk, should transfer to CRCs.

Building on the Government's plans to devolve autonomy to prison governors, all prisons should be re-constituted as self-governing

5 HM Treasury, *Spending Review and Autumn Statement*, 2015.

organisations, rather than merely branch offices of a highly centralised national organisation. Prisons with freedom to respond quickly and flexibly to the requirements of PCCs will enable the momentum of reform to be accelerated.

These reforms together would negate the need for NOMS. Instead, a small Offender Rehabilitation Strategy Unit should be established in the Ministry for Justice to provide advice to the Justice Secretary on strategic planning and priorities, budget setting and response to poor performance.

At the same time, a new delivery vehicle should be created to drive local service integration. Local Rehabilitation Trusts (LRTs) should bring together one or more prisons, with CRCs and other offender services to enable the provision of end-to-end services. LRTs would offer commissioners integrated solutions, aimed at reducing cost and improving outcomes.

The Government should also create a new Criminal Justice Regulator, with responsibility for setting and monitoring standards, ensuring value for money and encouraging competition. As with other public service regulators, they would intervene in cases of poor performance. The regulator would replace the current complex and overlapping system of multiple organisations, providing clarity and consistency.

Taken together, these changes would create an offender management system which was genuinely local and genuinely accountable. With empowered local commissioners and providers able to take rational and informed decisions to deliver better outcomes.

Introduction

This report examines options for building on the Government's reform of the offender management system in England and Wales: that is, the arrangements for managing the prison, probation and surrounding systems. It seeks to build on the ambitious reforms delivered through the Transforming Rehabilitation programme and to map out a direction of travel for further reform of the governance and delivery of prison and probation services.

Our proposals are based on two principles. Firstly, that the offender management system needs to be seen and treated as exactly that: a system. The goal of the many attempted reforms over the last 15 years has been to seek to integrate prisons and probation (and other agencies who work with offenders and influence their future behaviour). Although there is no doubt that the prison and probation delivery landscape is now markedly different, it is questionable whether the efforts at integration have gone far enough or realised sufficient benefit. We reflect on the success, or otherwise, of these efforts, and the key barriers which have hindered progress on these objectives.

The second principle is one of localism. Whatever the policy framework for offender management services, it remains the case that (in the vast majority of non-digital crimes) offending takes place locally and the best responses to offending behaviour are designed, organised and delivered locally.

Reflecting these principles – the need for a systemic approach to managing offenders and the need for solutions to be delivered locally – this paper proposes options for radical devolution of responsibility for managing prisons and probation.

Understanding the problem

NOMS, and the institutions and services it manages, have seen almost perpetual reform and change over the last 15 years, mainly driven by an inability to govern the competing tensions of ministerial desire to set objectives nationally and to meet national pressures, particularly on prison populations, and the desire to achieve local transparency and

control to meet local needs. This fundamental tension lives on in the current arrangements, where the management of a national system – as HM Prison Service (HMPS) predominantly remains – runs up against the provision of local community-based rehabilitation services through the recently created Community Rehabilitation Companies.

Designing for the future

This circle needs to be squared. Reducing reoffending means changing the behaviour of individuals. These changes are achieved locally, through local networks and services. Trying to achieve such outcomes with a system which still has a national centre of gravity limits the ability of providers to meet local needs, to innovate and to craft genuinely local solutions to the reoffending problem.

Resolving this conflict, alongside the need to bed-in the Transforming Rehabilitation reforms and achieve significant further efficiency savings, has left prisons and probation facing extremely challenging and confused messages, particularly in relation to how to work together to deliver the resettlement agenda.

This paper argues that we must begin planning for the post-Transforming Rehabilitation future now.

We are, however, well aware that intelligent people have been attempting to achieve these aims since before NOMS was launched. Any plans need to be realistic and reflective of the very real barriers which have stymied previous reform in this area. Only by being open and honest about the real tensions in the system can we reach a point where decisions can be made to rank one priority over another and deliver change which will explicitly inhibit some aspects of the system to enable others to flourish.

1

Enduring problems

1.1	The current context	12
1.1.1	Reoffending rates	12
1.1.2	Prison population	13
1.1.3	Value for money	14
1.2	Barriers to an effective offender management system	15
1.2.1	NOMS	15
1.2.1.1	Inability to integrate workforces	16
1.2.1.2	Short-term focus on prison capacity	17
1.2.1.3	Poor macro- and micro-implementation of offender management	17
1.2.1.4	A National Offender Management Service	19

Reform of the offender management system over the last decade and more has sought to deal in one way or another with three inextricably linked issues:

- > reoffending rates which have remained stubbornly high;
- > a prison population which has consistently pushed against the available capacity in the prison estate; and
- > an increasingly pressing need to improve the value for money of the system, by improving performance and driving down cost.

Whilst there has been some success in tackling each issue, progress, as this chapter will demonstrate, has been limited. Meeting these challenges will require radical reform to overcome longstanding barriers.

1.1 The current context

1.1.1 Reoffending rates

Headline reoffending rates for adult offenders have barely shifted in 12 years. The most recent data published by the Ministry of Justice (MoJ) show a proven reoffending rate of 24.9 per cent.⁶ Whilst this is a marginal decrease (0.2 percentage points) on the previous year, as the MoJ note, reoffending rates have remained broadly static since 2003, fluctuating little between 24 per cent and 27 per cent.⁷

Reoffending rates for offenders sentenced to custody have likewise scarcely changed since 2003, fluctuating between 45 per cent and 49 per cent. For those serving short prison sentences (less than a year), the reoffending rate has remained around 60 per cent over that period.⁸

For offenders receiving community sentences, the news is slightly better with a reduction of six percentage points since 2003 (from 39.9 per cent to just under 34 per cent).⁹

The Coalition Government sought to address this. The Offender Rehabilitation Act 2014 extends post-release supervision by probation

6 Ministry of Justice, *Proven Re-offending Statistics Quarterly Bulletin June 2013 to June 2014, England and Wales*, 2016.

7 Ibid.

8 Ibid.

9 Ibid.

to prisoners serving less than a year in custody. This much overdue reform ensures that, rather than leaving prison with no statutory supervision, the 45,000 or so short-sentenced prisoners will now be subject to the threat of recall and gain the benefit of rehabilitative support.¹⁰

In parallel with the implementation of the 2014 Act, the Transforming Rehabilitation programme introduced Community Rehabilitation Companies (CRCs) to deliver local offender management services for low- and medium-risk offenders, paid via a payment by results (PbR) system that rewards statistically significant reductions in reoffending.¹¹ It is hoped that the PbR focus will drive innovation and best practice across probation providers.¹²

1.1.2 Prison population

The increase in the prison population since 1993 has been well documented.¹³ Between 1993 and 2012, the population more than doubled, rising from under 42,000 to over 86,000 (at a rate of more than 4 per cent a year between 1993 and 2008).¹⁴ This increase has been driven by greater use of custodial sentences; higher numbers of recalls to custody for offenders on post-release licence; and by increases in average sentence lengths.¹⁵ Over the last three years, the population has remained relatively steady at around 86,000. As of 18 December 2015, the total prison population was 85,641 with a total useable capacity of 87,765 (an occupancy rate against useable beds of nearly 98 per cent).¹⁶

The prison population is forecast to continue to increase and to reach slightly under 90,000 by the end of 2020-21.¹⁷ It may rise further if political pressure continues to propel further growth.

10 Ministry of Justice, 'Post-prison support extended to 45,000 offenders', 1 February 2015.

11 Ministry of Justice, *Target Operating Model: Version 3*, 2014.

12 Ministry of Justice, *Transforming Rehabilitation: A Strategy for Reform*, 2013; Ministry of Justice, *Target Operating Model: Version 3*.

13 Ministry of Justice, *Story of the Prison Population: 1993-2012, England and Wales*, 2013.

14 Ministry of Justice, 'Prison population figures: 2014', 9 January 2015.

15 Ministry of Justice, *Story of the Prison Population: 1993-2012, England and Wales*.

16 Ministry of Justice, 'Prison population bulletin: weekly 18 December', 18 December 2015. This capacity figure will allow for a certain number of beds to be off-line for maintenance at any one time.

17 Ministry of Justice, *Prison Population Projections 2015-2021, England and Wales*, 2015.

Under this pressure, the system can only respond by managing the population effectively and efficiently to achieve the best possible outcomes. With a very small operating margin, management of capacity becomes an operational priority, to the exclusion of other objectives such as ensuring prisoners are kept close to home or the facilitation of good resettlement outcomes. It also makes it more difficult to ensure that prisoners are in the right place at the right time, in order to receive the right interventions at the right point in their sentence.

In addition, high levels of prisoner throughput, in particular in local prisons, inevitably degrades the quality of care and support as resources are focused on responding to increased prisoner flow.

A key question for reform of the offender management system is, therefore, whether it supports the most *effective* management of prison capacity, or whether in reality the objective becomes the most *economic* management of prison capacity.

1.1.3 Value for money

This tension between effectiveness (delivery of the most value per pound spent) and economy (delivery at the lowest spend per offender) is the challenge the MoJ has faced since 2010. Finding a middle course between these two has been required as, by the end of the 2010 Spending Review period, NOMS had to deliver nearly £900 million of cashable savings in spending on prisons and probation.¹⁸

More than a third of this total has been delivered by implementation of a programme of efficiency benchmarking in prisons – a classic economy measure whereby prisons delivering the same outputs at higher cost have been challenged to reduce their spend in line with the ‘best-in-class’.¹⁹ A further £170 million has been secured through the closure of older, more expensive prisons and their replacement with modern, lower unit cost, facilities.²⁰

Pressure remains on NOMS to cut costs over the duration of the 2015 Spending Review period, with savings of £80 million planned in prison

¹⁸ HM Treasury, *Spending Review 2010*, 2010.

¹⁹ National Offender Management Service, *National Offender Management Service: Business Plan 2014-2015*, 2014.

²⁰ Ibid.

expenditure.²¹ To achieve this, the Government plans to invest £1.3 billion to modernise the prison estate by replacing outdated capacity in old and 'hard to manage' establishments with new fit-for-purpose prisons.²²

Significant reductions in probation spending were also delivered over the course of the 2010 Spending Review (nearly £120 million), with efficiencies delivered through the Transforming Rehabilitation programme reinvested to fund post-release services for short sentence prisoners.²³

Against a background of continuing fiscal pressure, reform of the offender management system must, at the very least, deliver the same outcomes for reduced costs. This means commissioning services in a way which enables cost control and prison management which is at least as good as the current arrangements. Delivering better outcomes for lower spend requires investment in services which maximise successful outcomes at each stage of the offender management process.

1.2 Barriers to an effective offender management system

1.2.1 NOMS

Prison and probation services in England and Wales are commissioned, managed and provided by the National Offender Management Service (NOMS). NOMS was created in 2004 to integrate management of HMPS and the Probation Service.

NOMS has had a troubled history. In its original incarnation, as part of the Home Office, it failed to secure the system-wide change envisaged by the Carter Review.²⁴ In particular, it failed to meet the objective of ensuring seamless management of offenders, which it sought to achieve by putting the Probation Service in a controlling position in the

²¹ HM Treasury, *Spending Review and Autumn Statement 2015*.

²² Ibid.

²³ National Offender Management Service, *National Offender Management Service: Business Plan 2014-2015*.

²⁴ Home Office Strategy Unit, *Managing Offenders, Reducing Crime*, 2003; Lord Carter of Coles, *Securing the Future: Proposals for the Efficient and Sustainable Use of Custody in England and Wales*, 2007.

offender management system. Alongside a badly botched attempt at introducing a common case management system (Nomis),²⁵ the original incarnation of NOMS promised much, but delivered little.

Re-launched in 2007, in parallel with the creation of the MoJ, the current incarnation of NOMS has made real progress, delivering the previous Government's Transforming Rehabilitation programme alongside very significant cost reductions.²⁶

NOMS was created in 2004 with three aims:²⁷

- to reduce reoffending, primarily by breaking down the silos separating prisons and probation;
- to deliver a system of end-to-end offender management; and
- to deliver the most cost-effective services through increased contestability (more competition).

There were a number of key barriers which prevented NOMS from achieving these aims.

1.2.1.1 Inability to integrate workforces

The first key barrier related to workforce reform. HMPS is unusual for a frontline service in that its staff are civil servants, and therefore are eligible for entry into the Principal Civil Service Pension Scheme (PCSPS). Those working in probation, having originally worked in local government, were members of the assorted local government pension schemes run around the country. The fundamental difference between the two is that the local government schemes are 'funded', whereas the PCSPS is 'unfunded'.²⁸ These two different pension schemes

25 House of Commons Public Accounts Committee, *The National Offender Management System, Fortieth Report of Session 2008-09*, June 2009.

26 National Offender Management Service, *National Offender Management Service: Business Plan 2014-2015*.

27 Home Office, *Reducing Crime – Changing Lives: The Government's plans for transforming the management of offenders*, 2004.

28 In short, a 'funded' scheme is one in which individuals pay into the scheme and build up a pension 'pot', which is administered by trustees whose primary obligation is to ensure the pot is large enough to honour the commitment to pay the pensions accrued by the members. Trustees therefore can increase or decrease the level of contribution by employers and employees to cover any shortfall. Importantly, they are obliged to not take on any new members whose assets (pot) is insufficient to cover their liabilities. In the jargon, new members bringing accrued liabilities must be fully funded. An 'unfunded' scheme is one in which individuals do not build up a pot, but instead what they pay in is used to pay pensions to those already retired, whereby each generation pays the previous generation's pension.

– and the potential costs involved in assimilating the two groups of staff onto a single pension scheme, have been a significant barrier to breaking down operational silos by integrating the two separate workforces.

1.2.1.2 Short-term focus on prison capacity

The second barrier was the constant pressure to produce ever more capacity as prison populations grew. The NOMS management was therefore focused on finding land to build new prison capacity, whilst also meeting the daily pressure of finding sufficient beds for all the prisoners sentenced by the courts: short-term capacity management inevitably trumped developing new strategies to find long-term solutions. This led, for example, to the introduction of the End of Custody Licence (which released eligible prisoners 18 days before their release date). This was a short-term measure, which lasted until February 2010, but which freed up prison capacity. It was acknowledged by the then Justice Secretary to be “not satisfactory”, but around 80,000 prisoners were released early under the scheme.²⁹

1.2.1.3 Poor macro- and micro-implementation of offender management

The third barrier emerged through the implementation of offender management, which was defined at both a macro and micro level.³⁰ It was used at a system level to refer to the network of structures and processes by which the population of offenders would be managed through custody and into the community. To support this network, the then Government introduced regional commissioning of provision from a mixed market of providers. Regional Offender Managers were appointed with responsibility for this commissioning activity and for the reduction of reoffending in their regions. Multi-agency partnerships were developed to harness the capacity of other government departments, agencies, and local authorities to influence the factors which affect offending.

In addition, offender management was the label applied to the approach used in managing individual offenders. A single offender manager from the probation service would be appointed when the offender was sentenced and would be responsible for the offender

29 House of Commons Library, *The End of Custody Licence*, 2010.

30 Home Office, *Reducing Crime – Changing Lives*.

until the sentence was completed. The key principle of the approach was continuity of case management through the sentence. This offender manager, located in the offender's home area, would assess risk of harm and produce a sentence plan. If the offender was in custody, an offender supervisor would be appointed in the prison to act as a link between prison staff and the offender manager in the community.

This model failed at both levels. At the system level, regional commissioners did not have sufficient traction over existing public sector providers – the prison and probation services – to deliver substantive change, most noticeably through NOMS failing to wrest operational budgets from providers to commissioners, save at the margin. The Government's intention had been to make Regional Offender Managers responsible for integrating service delivery across custody and community and to give them the authority and budgets necessary to commission services from public, private and voluntary providers.³¹ In reality, Regional Offender Managers, and the Directors of Offender Management which they later became, never had the infrastructure, authority, or budget to secure what were radical changes to the status quo. In reality, therefore, Regional Offender Managers became an additional layer of management attempting to integrate services, but without the freedom to move money between prisons and probation or to commission new services from alternative providers. In 2010, five years after the new arrangements had been implemented, there had been no movement of funding from prisons to probation.³²

At the case management level, the NOMS Offender Management Model was complex, theoretically heavy and detached from the day-to-day reality of the role of probation officers in the community. The 82-page manual³³ was developed by headquarter staff, rather than being developed in detail by frontline practitioners reflecting live operational experience. In practical terms, it ignored the obvious difficulties in giving probation officers responsibility for offenders who may be in prison for long periods of time, and potentially many miles

³¹ Ibid.

³² Crispin Blunt, Commons Debate on 'Prison Service: Probation Service', HC Deb 20 July 2010, c236W.

³³ National Offender Management Service, *The NOMS Offender Management Model*, 2006.

away from their home probation areas. As a result, the principles and their practical delivery became diluted to such a degree as to make their impact negligible. As HM Inspectorate of Prisons (HMIP) sadly described:

We have come to the reluctant conclusion that the Offender Management Model, however laudable its aspirations, is not working in prisons. The majority of prison staff do not understand it and the community based offender managers, who largely do, have neither the involvement in the process nor the internal knowledge of the institutions, to make it work. It is more complex than many prisoners need and more costly to run than most prisons can afford.³⁴

More recently, NOMS has shifted further from the original offender management model and implemented a ‘handover’ model, with responsibility for offender management in custody sitting with the prison, transferring to a community-based case manager on release. This, however, is a failure to operationally deliver a workable solution, not a counterargument to the evidence base for consistent end-to-end case management, which remains compelling.

1.2.1.4 A National Offender Management Service

The fourth barrier was the design and priorities of NOMS itself. As a national service, it naturally focuses on delivering against pressing, national priorities – and given the domination of the prison budget, specifically prison priorities.³⁵ The challenge of ensuring adequate prison capacity has already been discussed. Added to this, NOMS has focused on four national objectives.

- Achieving procurement efficiencies through offering contracts which deliver economies of scale via *national* purchasing (for example, prisoner escorts and electronic monitoring).
- Maintaining *national* industrial relations with unions and workforces through *national* pay structures. For probation, for example, all pay negotiations have been undertaken nationally

34 Criminal Justice Joint Inspection, *Third Aggregate Report on Offender Management in Prisons*, 2013.

35 Prisons account for nearly 30 per cent of the MoJ’s resource Departmental Expenditure Limit. National Offender Management Service, *National Offender Management Service Annual Report and Accounts 2014-2015*, 2015; Ministry of Justice, *Annual Report and Accounts 2014-15*, 2015.

through a joint negotiating structure representing all probation trusts. For prisons, the national Prison Service Pay Review Body makes recommendations which are then subject to national negotiation between NOMS and the relevant trade unions.

- > Delivering *national* systems of control over local delivery to be able to deliver reassurance to ministers and senior officials. For example, the detailed audit of prison systems and processes against the requirements of the many Prison Service Orders and Instructions.
- > Establishing a *National* Probation Service (NPS) to consistently manage the riskiest offenders in the community.

In delivering against these priorities, NOMS has been effective. This centralised agenda is, however, clearly at odds with an effective end-to-end offender management model which requires local integration of services. More specifically, it runs contrary to the current Government's stated aim of public services freed from central control via professional autonomy.

2

The case for change

2.1 A reforming government	22
2.2 Overcoming barriers	23
2.2.1 The Prison Service	24
2.2.2 The National Probation Service and Community Rehabilitation Companies	24
2.2.3 Monitoring and inspection	27
2.3 Making offender management work	29

2.1 A reforming government

The Government has recognised the compelling case for further reform of the offender management system. To this end, the Justice Secretary has launched reviews into:

- the scope for further devolving operational autonomy to prison governors, as a means of driving innovation and service improvement;³⁶
- the provision of prison education, including the content of the curriculum, quality, modes of delivery, engagement of prisoners, and integration with post-release support and employment;³⁷ and
- the delivery of youth justice, including whether the leadership, governance, delivery structures and performance management of the youth justice system is effective in preventing offending and reoffending, and in providing value for money.³⁸

In a speech earlier this year, the Prime Minister built on the Justice Secretary's programme of reform.³⁹ In addition to reiterating Michael Gove's call for prison governors to be given a greater degree of operational and financial autonomy, he announced that this would be tested through six new 'Reform Prisons' which would be established during 2016. The Prime Minister also committed to "a strong role for businesses and charities in the operation of these Reform Prisons".⁴⁰ To extend the principle of autonomy across the prison estate a Prisons Bill will be introduced in the next session of Parliament.⁴¹

The Prime Minister also pledged to improve transparency by publishing "meaningful" metrics on prison performance, including on reducing reoffending, and by developing prison league tables.⁴²

Subsequently, in the 2016 Budget, the Government also announced significant changes to the governance of criminal justice services in Greater Manchester, building on previous plans for the devolution of

36 Michael Gove, 'The treasure in the heart of man - making prisons work', 17 July 2015.

37 Ministry of Justice, 'Review of prison education: terms of reference', September 2015.

38 Ministry of Justice, 'Youth Justice Review: terms of reference', September 2015.

39 David Cameron, 'Prison reform', speech given at Policy Exchange, 8 February 2016.

40 Ibid.

41 Ibid.

42 Ibid.

responsibilities from Whitehall to the combined Greater Manchester authorities. These plans include:⁴³

- > combining the role of Police and Crime Commissioner (PCC) with a directly elected Mayor;
- > creating arrangements for greater collaborative working between the CRC and the Greater Manchester Combined Authority;
- > enabling the Authority to work with prison governors to better link prison education with adult learning and skills provision in the community;
- > exploring the potential for Greater Manchester to receive a new resettlement prison;
- > giving Greater Manchester increased scope to develop regional pilots for GPS and other tagging technology; and
- > working with the Authority to devolve the custody budgets for female offenders, young offenders and those sentenced to less than two years in prison.

Taken together, these multiple reforms represent one of the most coherent and far-reaching programmes of prison and offender management reform in the last 50 years, and is backed up by a £1.3 billion investment in modernising the estate by building new prisons and closing old and inefficient ones.⁴⁴ Nonetheless, this programme does not go far enough, fast enough, to meet the enduring issues identified above.

2.2 Overcoming barriers

Realising the vision of an effective, end-to-end offender management system requires an even more radical approach. It requires government to overhaul the four major institutional structures that will hinder the delivery of a local, integrated model:

- > a centrally managed national Prison Service;

43 HM Government, 'Further devolution to the Greater Manchester Combined Authority and directly-elected Mayor', webpage, accessed 12 May 2016.

44 HM Treasury, *Spending Review and Autumn Statement 2015*.

- a centrally managed NPS, managing the highest risk offenders in the community;
- centrally contracted semi-regional CRCs, delivering probation to low- and medium-risk offenders; and
- a multiplicity of inspectors, ombudsmen and monitoring arrangements.

2.2.1 The Prison Service

As noted above, prisons are at the end of a tightly managed command and control system, in which the centre sets targets, determines the services to be provided, benchmarks costs and decides investment and spending priorities. Local prison governors have little, or no, room for local innovation. More critically, there is no requirement or incentive for local prison services to be designed or commissioned in partnership with other local agencies or organisations. Although prison governors may sit, for example, on Local Criminal Justice Boards, their presence is largely symbolic and they are generally unable to invest in jointly developed services or contribute resources to activity outside of a tightly defined, and centrally prescribed, set of activities.

In addition, the recent focus on minimising costs through the NOMS benchmarking process has further curtailed governors' capacity to deliver rehabilitative interventions.⁴⁵

2.2.2 The National Probation Service and Community Rehabilitation Companies

The current system, as described in the MoJ Target Operating Model,⁴⁶ builds in duplication of some probation activities, with complex handover arrangements between the NPS (which is responsible for all pre-sentence assessment of offenders) and CRCs (which are responsible for supervising and providing services to low- and medium-risk offenders). Handover occurs at the point of sentence in the case of offenders receiving a community order, following a risk assessment by the NPS.

Handovers can also occur at the point of release from prison. CRCs are responsible for providing resettlement services for all prisoners in

⁴⁵ National Offender Management Service, *Business Plan 2014-2015*.

⁴⁶ Ministry of Justice, *Target Operating Model: Version 3*.

designated resettlement prisons, whether they are to be supervised by the CRC or NPS after release. Finally, the NPS retains responsibility for all action for breach of a community order, licence or post-release supervision period, with CRCs required to submit information in support of breach action where it may be required. This duplication, and complex web of interfaces creates significant frictional cost in the system.

The role of CRCs in the provision of prison resettlement work is, in principle, positive, but its potential is hindered by several issues. Firstly, splitting the Probation Service has resulted in CRCs needing to be so geographically large in order to deliver sufficient scale to be commercially viable that they are barely describable as 'local'. To put this into context, North Yorkshire, Humberside and Lincolnshire CRC, for example, covers an area roughly the same size as Belgium.

Secondly, the model currently lacks the ability to transform prison activities to be genuinely focused on achieving good resettlement outcomes. Even in the largest prisons the CRC role may consist of just a handful of CRC staff, or subcontractors, being stationed in them. It is an add-on service, rather than one which enables CRCs to influence the shape and direction of prison regimes in order to prepare prisoners most effectively for release. This is despite CRCs being accountable for reducing reoffending and their financial rewards being built, at least in part, around their ability to achieve statistically significant reductions in recidivism.⁴⁷ Whilst this accountability is welcome, it must come with the ability to influence what is done with offenders during the totality of their sentence.

In addition, the separation duplicates the functions in probation, and at a time when significant efficiency savings must be made.

Aside from these design problems, there are several substantive and practical issues with the Coalition Government's decision to split the service – not least the creation of unnecessary challenges to the management of risk, particularly where the risk posed by an individual offender has changed.

- **Disruptions to staff training and development:** probation is a skilled activity requiring both theoretical knowledge and practical experience. As with many careers, new staff are given

47 Ministry of Justice, *Target Operating Model: Rehabilitation Programme*, 2013.

lower risk work to learn their skills ‘on the job’ and as they develop are given increasing exposure to the more challenging aspects of the role. Splitting probation according to the risk presented by the offenders leads to an immediate paradox. NPS requires low-risk offenders for their new or junior staff to develop their skills but does not have any, whilst CRCs have low-risk offenders but, dependent on their business models, may not require full probation officers in any great number and therefore has no incentive to train staff. The obvious solution is NPS staff being seconded to work for CRCs, eroding the barrier between NPS and CRC which the present structure deliberately puts in place. The experiences of seconded NPS staff members may, however, vary considerably depending on the business model of the CRC they join.

- > **Rural resilience:** rural areas with low numbers of offenders naturally have a low number of probation staff. Whilst this is a sensible, demand-driven response, splitting the service means even fewer staff covering the same geographical area for each of the NPS and the CRC. This raises issues of organisational resilience, for example the ability to cover staff sickness, and hence potential risks to public safety.
- > **Complexities of sharing property:** many probation offices are currently split between the CRC and the NPS. This has driven additional and unnecessary costs, by limiting the ability of CRCs (and the NPS) to operate from smaller, more flexible and less expensive premises.
- > **Complexities relating to electronic file transfer:** one of the key risks is ensuring that the different files and case management systems used by CRCs are interoperable, as well as with the NPS system. A key risk is that some information may be held by the CRC but not transferred as part of the standard requirements to the NPS, but could prove important either now or in the future.
- > **Complexities relating to transferring cases between CRCs and the NPS when risk levels are judged to have increased:** probably the most substantive risk is the escalation

process to decide when an offender's behaviour has changed sufficiently to move from low- or medium- to high-risk, and therefore from CRC to NPS responsibility. Despite NOMS's best efforts to design an effective system, there are two near unavoidable issues: the potential for losing offenders during the 'hand-off' between a CRC and NPS, and the discontinuity of offender management right when the offender needs effective intervention.

2.2.3 Monitoring and inspection

Monitoring and inspection in the current system is spread across a number of organisations, with overlapping and inconsistent remits which together do not add up to a robust and coherent monitoring and inspection regime. The system is complex, dislocated and potentially confusing.

Figure 1: Current monitoring and inspection bodies

Institution	Role
NOMS	<p>Setting operational standards (for example on prison security, probation practice, etc.) and specifying operational processes (for example on the conduct of prison adjudications or the consideration of applications for release on Home Detention Curfew).</p> <p>Measuring and monitoring prison and probation performance.</p> <p>Setting and monitoring public sector budgets.</p> <p>Management of contracts with private and voluntary sector service providers (including CRCs and private sector run prisons).</p>
HM Inspectorate of Probation	<p>Reports on the effectiveness of work with adults and children who have offended. This is aimed at reducing reoffending, protecting the public, and improving the wellbeing of children at risk of reoffending. The Inspectorate focuses on the quality and impact of services provided, and makes recommendations designed to assist providers to continually improve the effectiveness of their services.</p>

Institution	Role
HM Inspectorate of Prisons	<p>Reports on conditions for and treatment of those in prison, young offender institutions, secure training centres, immigration detention facilities, police and court custody suites, customs custody facilities and military detention. The Inspectorate promotes the concept of 'healthy establishments' in which staff work effectively to support prisoners and detainees to reduce reoffending and achieve positive outcomes for those detained and for the public.</p>
Prison and Probation Ombudsman (PPO)	<p>The PPO carries out independent investigations into deaths and complaints in custody. The PPO has two main duties:</p> <ul style="list-style-type: none"> > to investigate complaints made by prisoners, young people in detention, offenders under probation supervision and immigration detainees; and > to investigate deaths of prisoners, young people in detention, approved premises' residents and immigration detainees due to any cause, including any apparent suicides and natural causes.
Independent Monitoring Boards for prisons (IMB)	<p>IMB members are independent, unpaid volunteers. Their role is to monitor the day-to-day life in their local prison or removal centre and ensure that proper standards of care and decency are maintained. They also deal with confidential prisoner complaints.</p>

2.3 Making offender management work

To address these structural and system flaws we propose five key components of reform.

1. Reconsideration of the role of NOMS, with a greater focus on local commissioning of services to drive innovation, integration and better value for money.
2. Delivery of a system predicated on local independence and freedom from central control, but with retained collective responsibility to meet national requirements.
3. Integration of prison and probation activity to realise the vision of 'through-the-gate' resettlement activity.
4. A strong regulatory function ensuring quality and efficiency objectives are met.
5. Removal of duplicating or low-impact organisations.

3

The case for local, integrated provision

3.1	Localised services	32
3.1.1	Driving better outcomes	32
3.1.2	Driving value for money	34

Reducing reoffending is complex, not least because the underlying social drivers of crime do not sit in neat compartments. They tend to overlap and reinforce each other and, by their nature, they do not lend themselves to intervention by one government department or one area of local government. An offender's needs may change in importance over time, but there is clear evidence of some of the factors associated with offending.⁴⁸

Figure 2: Prisoner characteristics

Characteristic	Prisoners	General population
No qualifications	47%	15% of working-age population
Never had a job	13%	3.9%
Unemployed in the four weeks before custody	81% for women, 67% for men	7.7% of the economically active population is unemployed
Homeless before entering custody	15%	4% have been homeless or in temporary accommodation
Have ever used class A drugs	64%	13%
Have symptoms indicative of psychosis	25% for women, 15% for men	4%
Have attempted suicide at some point	46% for women, 21% for men	6%

Source: Prison Reform Trust, *Bromley Briefings Prison Fact File Autumn 2015*, 2015.

48 Prison Reform Trust, *Bromley Briefings Prison Fact File Autumn 2015*, 2015.

3.1 Localised services

As has been argued, central management and control of prisons and probation has undermined the development and delivery of local, effective, responses to offending. It has stifled innovation and created an unwieldy system of instructions and controls through which local leaders must navigate.

The scale of this central direction and control is staggering. For the Prison Service, central direction is expressed through Prison Service Orders (PSOs), which are mandatory operating instructions with no expiry date and which remain in force until amended or replaced. As of December 2015, there were some 88 PSOs in force, covering core operational issues such as the operation of prison segregation units; detailed administrative matters such as the arrangements for prisoner pay and management of staff sickness; the organisation of prison healthcare services; and arrangements for IT.⁴⁹

In addition to PSOs, prisons are also subject to Prison Service Instructions (PSIs), further detailed operating instructions but with fixed expiry dates. In 2015 alone, 38 new PSIs were issued, covering subjects such as the arrangements for managing staff stress; radiation safety for x-ray equipment; fire safety; and the operation of prison libraries.⁵⁰ 49 PSIs were issued in 2014 and 37 the year before.⁵¹

For probation services, a similar framework exists of Probation Instructions. These apply to the National Probation Service and to the post-Transforming Rehabilitation Community Rehabilitation Companies. Four such instructions were issued in January 2016 alone, adding to the 24 issued in the previous year.⁵²

3.1.1 Driving better outcomes

More could be done in prisons, but the reality is that the problems offenders have which increase their chances of offending started while they were in their local community. Solutions must therefore be rooted in their community. Creating the illusion that problems

49 Ministry of Justice, 'Prison Service Orders (PSOs)', webpage, accessed 11 May 2016.

50 Ministry of Justice, 'Prison Service Instructions (PSIs)', webpage, accessed 11 May 2016.

51 Ministry of Justice, 'Prison Service Orders (PSOs)', webpage, accessed 11 May 2016.

52 Ministry of Justice, 'Probation Instructions', webpage, accessed 11 May 2016.

*are dealt with by removing offenders only moves the problem to another day.*⁵³

Offender management services should be organised, managed and directed at a local level. Offenders offend in the community. Their problems are mainly in the community (lack of job, lack of accommodation, lack of relationships, access to drugs, access to mental health and other support services). Probation services are provided in the community, and therefore are best placed to manage the offender and dictate what services and support they receive, both in and out of prison.

A multi-pronged approach

Just as offending-related needs are multifaceted, there is no ‘silver bullet’ which reduces the risk of reoffending. Indeed, evidence strongly suggests that recognising the complexities of individual offenders is critical to working effectively to prevent reoffending.⁵⁴ A range of factors may help to reduce the risk of reoffending. These include:⁵⁵

- > having a job, although securing employment on its own may not be enough to prevent reoffending;
- > giving up alcohol and/or drugs;
- > having a place in a social group – those who feel connected to others in a (non-criminal) community, such as a family or mutual aid group, are more likely to desist from crime;
- > having a sense of hope and motivation to change; and
- > having something to give – offenders who find ways to contribute to society, their community or their families appear to be more successful at giving up crime.

As a result, offenders often need a variety of agencies to work together, in a holistic way, to reduce the risk of reoffending. As far as possible, the management of offenders should not be a set of disconnected episodes. Services need to be seamless and delivered in the right place at the right time. As NOMS itself acknowledges:

53 All Party Parliamentary Local Government Group, *Primary Justice: An Inquiry into Justice in Communities*, 2009.

54 Ministry of Justice, *Transforming Rehabilitation: a summary of evidence on reducing reoffending*, 2013.

55 Ibid.

Integration of services is critical to maximising investment and securing better outcomes for offenders, their families and local communities. This intention focuses on effective alignment, prioritisation and sequencing of service delivery with all providers of services to offenders locally, regionally and nationally.⁵⁶

Consistent case management

Evidence shows that a consistent approach to case management is more effective in managing risk, develops more positive offender engagement and is more likely to reduce reoffending than an approach in which case management responsibilities are shared across more than one person, or where the identity of the case manager changes over time.⁵⁷ In particular evidence has shown that:⁵⁸

- continuity of contact with the same case manager was essential in building confidence and rapport with the offender, especially at the early stages of engagement;
- the greater the level of task separation, the less engaged offenders were and the less they experienced the requirements of their sentence as a coherent whole; and
- face-to-face contact with a small case management team achieved better outcomes than contact with a larger number of supervising staff, who may differ from reporting episode to reporting episode.

An effective offender management model should follow this evidence, ensuring continuity of contact between custody and community; consistency in messaging and interventions; and, therefore, integrated services across agencies.

3.1.2 Driving value for money

The structure of direction and control described above not only stifles the delivery of locally appropriate and effective services, but is also expensive. Whilst NOMS has largely been successful in managing severe prison population pressures, reducing prison operational running costs and delivering the Transforming Rehabilitation

⁵⁶ National Offender Management Service, *NOMS Commissioning Intentions*, 2014.

⁵⁷ Sarah Partridge, *Examining Case Management Models for Community Sentences*, 2004.

⁵⁸ Ibid.

programme, the Government should consider whether the costs and bureaucracy of a large central machine are justified.

NOMS's own workforce statistics show that whilst there was a significant reduction in the number of headquarters (predominantly London-based) staff between 2010 and 2013, the net effect of a large-scale expansion in the regional workforce, and post-2013 growth in headquarters staff, has seen total central staffing numbers grow from 2,300 in 2013 to 2,830 by June 2015.

Figure 3: NOMS HQ staff in post (full time equivalent)⁵⁹

	31 Mar 2010	31 Mar 2011	31 Mar 2012	31 Mar 2013	31 Mar 2014	31 Mar 2015	30 Jun 2015
NOMS HQ	3,560	2,240	1,790	1,560	1,600	1,840	1,850
Area Services	590	880	840	740	850	950	980
NOMS HQ and Area Services Total	4,150	3,120	2,640	2,300	2,440	2,790	2,830

In June 2010 approximately 1,500 NOMS HQ staff transferred to the central Ministry of Justice

Source: Ministry of Justice, *National Offender Management Service Workforce Statistics Bulletin 30th June 2015*, 2015.

These movements are reflected in the administrative spend by NOMS, which is forecast to peak at £156 million in 2015-16 – 18 per cent higher than the 2010-11 spend.⁶⁰

⁵⁹ Ministry of Justice, *National Offender Management Service Workforce Statistics Bulletin: 30th June 2015*, 2015.

⁶⁰ Ministry of Justice, 'Ministry of Justice annual report and accounts 2014 to 2015', 10 June 2015; Maria Eagle, Written Answer 1771, 1 September 2009, cw.

Figure 4: NOMS administrative spend

Administrative spend (£m)	2009-10 Outturn	2010-11 Outturn	2011-12 Outturn	2012-13 Outturn	2013-14 Outturn	2014-15 Outturn	2015-16 Outturn
NOMS	132.5	132.3	65.2	107.8	97.2	123.4	156.6

In part this growth is a natural response to the Transforming Rehabilitation agenda whereby substantial contract management functions are now required to monitor the new arrangements.⁶¹ Nonetheless, it raises the question of how aggregate savings from the programme are estimated and whether value for money is really being achieved.

61 Richard Heaton, 'Supplementary responses to the Justice Select Committee', letter to the Clerk of the Justice Select Committee, 2 November 2015.

4

The local commissioning of services

4.1	The role of Police and Crime Commissioners	39
4.1.1	What should PCCs commission?	41
4.1.1.1	Prison places	42
4.1.1.2	Probation services	46
4.1.1.3	Other services	48
4.1.1.4	The payment model	50
4.1.1.5	Geographical boundaries	52

As we have argued, the current arrangements for delivering prison and probation services at a local level are complex, distorted by national imperatives and with a centre of gravity in London and Whitehall. There is, however, an alternative model. This model would build on the Government's recent reforms and on the direction of travel outlined by the Prime Minister.

As Chapter 3 of this paper demonstrated, organisations working with offenders need to be sewn together into as seamless a service as possible. Providers need to be commissioned to provide the right services, in the right place and at the right time. Where they will have the most impact, they should be delivered in prison, but where it would make more sense for interventions to be delivered after a prisoner's release, that is where they should be provided. Commissioning at a local level would enable resources to be directed more effectively to where they have the greatest impact, rather than being constrained by organisational silos.

Offender management services need a commissioning role that is analogous to the role of Clinical Commissioning Groups (CCG) in the NHS. That is, locality-based commissioners with relevant expertise. CCGs are responsible for getting the best possible health outcomes for the local population, by assessing local needs, deciding priorities and strategies, and then buying services on behalf of the population from providers such as hospitals, clinics and community health organisations. Through the commissioning of services, CCGs are responsible for the health of their entire population, and are measured by how much they improve outcomes.⁶² No comparable responsibility or accountability exists for the management of offenders in local communities.

A new model is needed which is built upon five key principles.

1. It must be locally designed and delivered so that services are integrated and the roles of each organisation working with offenders are knitted together.
2. It must be reflective of local public and community priorities, enabled through effective engagement with the public and their elected representatives.

62 Health and Social Care Information Centre, 'Clinical Commissioning Group Outcomes Indicator Set (CCG OIS)', webpage, accessed 11 May 2016.

3. It must deliver value for money, ensuring that money is spent where it makes the most impact. This means delivering sentences efficiently and effectively, protecting the public and reducing reoffending.
4. It must be coherent – a simple and connected system so that everyone is clear on who does what, who is accountable and who has to work with who to deliver the right results.
5. It must be resistant to provider capture, built around the service users not the service providers. This means that it is built to drive outcomes, not for ease of delivery.

4.1 The role of Police and Crime Commissioners

PCCs occupy the right place in the system to commission this model. They are sufficiently local, and have direct accountability to the electorate in the communities for which they are responsible. In the *Swift and Sure Justice* white paper, the Coalition Government described the potential remit of PCCs in this way:

Police and Crime Commissioners provide an opportunity to galvanise joint working across the criminal justice agencies and to increase the transparency of criminal justice services. We will be encouraging Police and Crime Commissioners, the police and their partners in the other criminal justice agencies to work together to reduce crime and reoffending.

As Police and Crime Commissioners will give local people more say in how their community is policed, we believe it is right that we continue to consider the wider roles they might assume in supporting and co-ordinating work not just on policing but reducing reoffending which will help to cut crime and make communities safer. That is why we are already considering ways in which the Police and Crime Commissioners' role could potentially be further developed within the criminal justice system over time. This might include, for example, commissioning Probation and Youth Offending services, as well as clear leadership on improving the local administration of justice.⁶³

63 Ministry of Justice, *Swift and Sure Justice: The Government's Plans for Reform of the Criminal Justice System*, 2012.

It is clear that PCCs are the best available candidates to act as the integrator of criminal justice and offender management services. They have clear accountability at the local level and they can claim a democratic mandate to change criminal justice services in order to reduce crime. This democratic mandate and the need to win re-election is a strong antidote to provider capture. Further, PCCs have an incentive to achieve change in order to improve value for money. The arguments for extending the role of PCCs and using them to integrate local justice services have been well-rehearsed elsewhere.⁶⁴ This paper seeks to show how the role might work as a vehicle for advancing the Government's plans for greater local responsibility for prisons and probation.

The Government has already committed to increasing the powers of the Greater Manchester PCC (which will be combined with the position of Greater Manchester Mayor) through devolving more criminal justice powers to the Combined Authority. The proposed devolved powers do not go far enough, but they are predicated on the same principles as the proposals set out in this paper – that is, that increased local freedom and flexibility will drive better outcomes.

Figure 5: The benefits of local commissioning

Issue	Current system	PCC model
Accountability	Complex and spread across a number of organisations, with weak accountability to communities	Direct accountability to communities for delivery and outcomes
Funding	Silo-driven funding, with duplication and inefficiency	Pooled budget, with single point of responsibility for reducing crime and improving community safety
Commissioning of prison places	Driven by national imperatives and decisions	Commissioned on the basis of local demand and value for money

⁶⁴ Andrew Haldenby, Tara Majumdar and Will Tanner, *Doing it justice: Integrating criminal justice and emergency services through Police and Crime Commissioners (Reform, 2012)*.

Issue	Current system	PCC model
Commissioning of other services	Silo-driven and constrained by central agencies	Local commissioning of services by a single organisation

This argument does not imply there is no role for the Secretary of State. Clearly in the instance where a PCC was failing in their duties, the Secretary of State would need to retain the power to ‘step-in’ and take control. This would only be triggered in the rarest of circumstances, but it is appropriate for the legislative framework to ensure this is addressed.

4.1.1 What should PCCs commission?

PCCs must have considerable freedom to determine how best to meet the requirements of the offender management system. Commissioned services would need to meet two broad objectives: (1) to ensure that there is sufficient capacity to meet the sentencing requirements of the courts in their area; and (2) to reduce reoffending. These are essentially the two purposes of the criminal justice system: to punish and to rehabilitate. Putting decisions about how to balance these two imperatives into the hands of PCCs will improve local accountability and responsiveness to local circumstances. PCCs would take on statutory responsibility for the provision of all sentence demands incurred from a crime committed in their local area and would be held accountable by local citizens in elections every four years.

It is conceivable that PCCs may wish to operate a ‘self-insurance’ pool that funds irregular, unexpected large costs if they emerge and which would destabilise their budgets if not catered for. Such a scheme, where each PCC pays in a regular amount and draws out whenever they are hit by such a ‘shock’ would provide stability in a system where forecasting is not an exact science. Such a system would provide protection against variations in sentencing practice which fell outside of the margin for error of the forecasts. Significant changes in the sentencing environment – driven by government policy – would be for central government to fund.

The model envisaged will require close and careful liaison between PCCs and sentencers. The mechanisms for such collaborative working exist now through, for example, Local Criminal Justice

Boards. It is, therefore, not a huge leap of faith to envisage such structures being built upon to support the expanded role for PCCs.

The role of PCCs will be to commission on a whole-system basis, recognising that the end-to-end coherence of offender management services is critical. PCCs should therefore have freedom to:

- > shift resources from prison to the community, where they judge it would enable them to meet outcome targets more effectively or efficiently;
- > invest in demand reduction initiatives, such as pre-court diversion or constructive approaches to dealing with low-level anti-social behaviour, where to do so would enable downstream cost-reductions to be secured;
- > purchase provision from the most cost-effective provider and to use their commissioning power to drive competition and to improve standards and value for money; and
- > design payment by results regimes which are tailored to their local provider landscape and the results they wish to drive.

4.1.1.1 Prison places

PCCs should commission all prison places and programmes. Unlike the Government's proposals for Greater Manchester, we do not see a need to limit the PCC's role to commissioning prison places for shorter sentence prisoners. Given the geographical spread of the prison estate, places for prisoners serving longer sentences may need to be commissioned from prisons in other PCC areas. Nonetheless, it is just as important that longer sentence prisoners experience a successful reintegration into the community as short sentence prisoners.

This would mean that PCCs would need to plan for and commission:

- > **Remand prisoner places:** based on annual volume estimates derived from the MoJ. Over time the PCC would be free to purchase those places from any potential provider, but in the first instance (because the development of a market for prison services is inevitably a relatively slow process) these places would be bought from any existing local prison. The PCC would be free, over time and if it fit with local priorities, to reduce the volume of

remand places purchased and, with the agreement of sentencers, to shift the resources – for example into the use of bail with electronic monitoring as an alternative to remand.

- > **Prison places for short sentence prisoners:** based on annual volume estimates. In the first instance, these would generally be purchased from those prisons designated as Resettlement Prisons under the Transforming Rehabilitation programme,⁶⁵ but again, PCCs would be free to change this over time if to do so met local needs more effectively. PCCs would be free to vary the volume of places purchased over time if they believed that resources could be better invested in alternative approaches to managing their population of offenders.
- > **Prison places for longer sentence prisoners:** which may be provided by prisons anywhere in the current prison estate,⁶⁶ including from private prisons. These would typically be places in Category B and Category C prisons. Again, these would be purchased against annual volume estimates.

PCCs would gain the ability to make real changes to the size and shape of the prison population, without reducing the focus of imprisonment as the correct disposal for dangerous and prolific offenders. Whether by reducing reliance on remands in custody or, for example, investing in diversion for offenders with mental health issues. Reductions in local prisoner numbers would also deliver real cashable savings in prison costs.

We have considered whether there should continue to be an element of national commissioning. For example, for the highest security (Category A) prison places. One argument is that these places, which are expensive and relatively rarely used, should continue to be commissioned nationally in order to make the best use of scarce resources.

We do not take this view. The provision of specialist services is, essentially, a provider-side issue. It is a response to a need identified

⁶⁵ Ministry of Justice, *Target Operating Model: Rehabilitation Programme*.

⁶⁶ The authors have been unable to identify any strong quantitative evidence that holding offenders 'close-to-home' has any effect on reoffending behaviour.

by commissioners, who should determine the volume of a specialised service they wish to purchase from a particular provider. An effective model needs three core components:

- > a provider – currently the Prison Service is the only provider of high security prison places, through the current dispersal⁶⁷ and high security local prisons;⁶⁸
- > a commissioner – the PCCs, or a committee of PCCs who would determine the annual volumes of high security places they required; and
- > a regulator – setting minimum security standards to ensure public protection. The role of a regulator in the proposed new system is set out below.

In this scenario, whatever the type of prison place, PCCs pay for places which meet the regulator's standards for that provision and are priced on a national tariff. The PCCs can also decide what package of interventions and other services in prisons they wish to purchase alongside the provision of the prison places.

The transition from a nationally managed prison estate, with a strong central population management function and central control over its cost structure (through the benchmarking programme) would be a significant one, but the gains are, in our view, worth it.

The following table sets out how current national functions, undertaken by NOMS, would transition to the new arrangement.

67 HMP Frankland, Full Sutton, Long Lartin, Wakefield and Whitemoor.

68 HMP Belmarsh, Manchester and Woodhill.

Figure 6: The new system

Function	How it works now	How it would work in the new system
Population management	NOMS ensures that the number of available prison places and demand are in balance. Actively managing the prison population to ensure that prisoners are not 'locked out.' ⁶⁹ The system is reactive and has little or no influence over the volume of demand.	PCCs would have greater medium term influence over demand, flowing from flexibility over commissioning decisions and more engaged local liaison with sentencers. A clearing house function – run jointly on behalf of PCCs and funded and accountable to them ⁷⁰ – would provide an immediate operational response to peaks of demand. Prison providers would be required to take those prisoners directed to it by the clearing house.
Setting security standards	NOMS sets physical and other security requirements for each type of prison and supports this with a detailed procedural security manual.	A similar function could be provided by a system regulator, responsible for setting minimum standards and tariff pricing.
Setting minimum regime standards	NOMS sets minimum regime standards, for example through targets for activity and detailed specifications for the delivery of programmes.	Prison providers would be free to negotiate their own standards with purchasers, with minimum requirements (where necessary) set by the regulator.

⁶⁹ A prisoner is 'locked out' when, on sentencing at court, there is no available local prison place for him or her. This may then involve a long, and expensive, journey to another prison or, in extremis, detention overnight in police or court cells.

⁷⁰ Probably through a lead PCC, who may also hold the 'self-insurance' pool as discussed above.

Function	How it works now	How it would work in the new system
Resource allocation	NOMS sets public sector prison budgets and monitors individual prison spending.	Prison provider budgets would be set by PCCs as commissioners through aggregated purchasing decisions. Allocations to PCCs would be formula-driven based on population and deprivation indices.

4.1.1.2 Probation services

High-risk offenders and the private sector

NOMS was in part able to drive through the new probation model because the creation of the NPS allayed concerns about the threat of transferring high-risk offenders out of the direct line-of-command. The theory was that in the event of an emergency ministers need to be able to exert enough immediate pressure and control on the situation, which they would not be able to do through CRCs. This is a perfect example of the logic that this paper is challenging. Again it assumes that the centre knows best, and only the centre is able to handle major events. It also ignores the many serious events and reoffences which have occurred when the public sector has managed this population, such as the cases of Hanson and White in 2005,⁷¹ Anthony Rice in 2006⁷² and Daniel Sonnex in 2009.⁷³

It also ignores the fact that it is not consistent with previous behaviour. Even Category A offenders in prison have historically been managed by private sector prison providers, with no material difference in performance compared to the public sector delivery of this service.

In addition, it fails to consider whether the risks attached to creating an artificial split between two probation bodies were larger or smaller than the risk that the CRCs would not be able to meet their commitments in relation to the high-risk offender population.

71 HM Inspectorate of Probation, *An Independent Review of a Serious Further Offence: Damien Hanson and Elliot White*, 2006.

72 HM Inspectorate of Probation, *An Independent Review of a Serious Further Offence: Anthony Rice*, 2006.

73 Alan Travis, 'How French students' killer slipped through the system', *Guardian*, 4 June 2009.

Overall, we believe the magnitude of these risks (discussed in Chapter 2) outweigh the questionable benefits of having central control over high-risk offenders. As such, this artificial split should be removed as quickly as possible and CRCs given responsibility for high-risk offenders and breach action. Our proposed model would, therefore, place all post-sentence probation responsibilities with CRCs.

Advice

The NPS was retained in the public sector in part because there were also legitimate fears relating to whether a private company should have the power to advise the courts on which offenders should be allocated to them (as opposed of being dealt with through a fine, or a curfew order, for example), or whether an offender's behaviour warrants a breach procedure and potential return to prison.

There is, then, a remaining question about the provision of advice to courts on sentencing. When probation officers were 'officers of the court', it was entirely appropriate for these experts to provide sentencing advice – i.e. the best combination of sentencing options to achieve the aims of the court (balancing the needs of rehabilitation, punishment and public protection). When probation staff moved into being first local authority and then later Probation Service staff, questions were raised about whether those whose pay relies on the delivery of punishments should be relied on for impartial advice to the courts on what that punishment should be.⁷⁴

In fact, Probation Trusts themselves could not necessarily be relied on to provide entirely impartial advice to courts on the most appropriate disposal for individual offenders. For example, on occasion in some probation trusts there were significant peaks in sentencing involving electronic monitoring of a curfew in the spring months.⁷⁵ One of the reasons for this was that as it became clear that probation budgets were at risk of being overspent for the financial year, probation staff

74 Baroness Gibson of Market Rasen, Lords Debate on 'Offender Management Bill', HL Deb 5 June 2007, c1015.

75 Ministry of Justice, *Offender Management Statistics Quarterly Bulletin: October to December 2012, England and Wales*, 2013. See table 4.3 of the Probation Tables contained in the Offender Management Statistics. In this table the rows labelled 'curfew' are cases sentenced to electronic monitoring. Summing the four rows including curfew for January to March 2012 totals 3,070 electronic monitoring curfew. The following period, covering April to June 2012 totals 2,726, meaning 12.6 per cent more curfews were given in England and Wales immediately preceding the end of the 2012-13 financial year than immediately after the start of the 2012-13 financial year.

recommended electronic monitoring in January, February, and March because this was paid for out of an alternative central NOMS budget.

These concerns were rehearsed in relation to the role of the private sector:⁷⁶ would a profit-making organisation direct its staff to advise courts to sentence to the most profitable activities rather than the most effective? The decision was taken to remove this 'perverse incentive' and retain sentence advice in the public sector. It did not, however, resolve the core tension of why any institution or individual involved in post-sentence provision should be advising a court on what sentence to impose.

It is not appropriate for a body to straddle pre- and post-sentencing arrangements – whether public or private sector. As such, the provision of advice should be transferred to HM Courts and Tribunals Service (HMCTS) immediately. HMCTS should treat it in the same way as legal or procedural advice, which is provided by an officer of the court, whether it be the clerk or another, in this case a specialised probation clerk or adviser.

In order to do this, the current legislation – in the Offender Management Act 2007 – should be reviewed to ensure that it would allow the transfer of responsibility and some staff to HMCTS. If it does not, the planned Prisons Bill should be used to make the necessary amendments. The more substantial implication may relate to pension arrangements for any staff moving from the NPS, and a local government pension scheme, to HMCTS, and a civil service scheme.

In addition, the Prisoner Escort and Court Service contracts, which are currently administered by NOMS, should transfer to HMCTS.

4.1.1.3 Other services

PCCs would be free to fund a range of services, alongside prisons and probation. These could include, for example, accommodation and addiction services, specialist women's services and interventions such as restorative justice panels.

To maximise the flexibility available to PCCs, budgets for offender-related drug treatment services (including drug programmes delivered in prison) should be transferred into their control. PCCs should also take

76 Baroness Turner of Camden, Lords Debate on 'Offender Management Bill'.

responsibility for the MoJ-managed contracts for electronic monitoring services.⁷⁷ This would enable PCCs to commission a wider range of services to better meet need and ensure integration. For example, a PCC might want to create a combined drug treatment and electronic monitoring option, which dealt with problematic drug use, and in doing so reduce demand on less effective short-term prison places.

Although it may be harder to achieve, there would also be advantages in giving PCCs the ability to commission some specialist services for offenders with mental health needs. Courts are currently able to apply a Mental Health Treatment Requirement (MHTR) to a Community Order,⁷⁸ but such requirements are rarely used, with only 656 such requirements imposed in 2011 (less than 0.05 per cent of all Community Orders imposed).⁷⁹ This is in a context where around 39 per cent of offenders subject to supervision in the community have a mental health problem.⁸⁰ Transferring budgets for the provision of offender mental health services could drive up the use of MHTRs, for example by enabling PCCs to commission services which better address offenders with dual diagnoses and by expanding the range of treatments which could be delivered as part of the requirement (both of which have been shown to be barriers to wider use of the requirement⁸¹). It could also enable PCCs to commission lower level psychological interventions to support offenders who do not require the full treatment regime of the MHTR.

PCC budgets would consist of:

- > current NOMS spending on prison and probation services;
- > offender-related drug treatment services, from the NHS;
- > an element of local mental health treatment funding, dedicated to providing services to offenders, from the NHS; and
- > current PCC spending on offender management-related services, such as the provision of restorative justice panels.

77 The Prisoner Escort and Court Service, which provides services to courts, should be procured by HMCTS.

78 The Criminal Justice Act 2003 and the Offender Rehabilitation Act 2014 set out the range of requirements which may be attached to a Community Order.

79 Centre for Mental Health and Criminal Justice Alliance, *The Mental Health Treatment Requirement: Realising a Better Future*, 2012.

80 Ibid.

81 Ibid.

4.1.1.4 The payment model

How PCCs will pay for these places takes us to the heart of the debate which saw NOMS created in the first place: how far to allow competition to drive value for money in the system. Broadly there are two options.

- > **Competing on quality:** A system of agreed tariff prices, building on the logic of the Prison Unit Costs model, which all PCCs use, and which have been calibrated to deliver a minimum level of quality in terms of the 'bed & breakfast' functionality of a prison. Such tariffs could be extended to cover programmes and other parts of the package of care and rehabilitation.
- > **Competing on price and quality:** A system where prisons compete in terms of quality *and* price to offer PCCs the ability to use open competition to drive value for money.

This debate has raged for nearly 20 years, but is little closer to resolution. As is often the way, 'facts on the ground' determine the best route.

- > As long as prison populations are close to capacity, the market-power lies with the prison provider, not the purchaser who, ultimately, has to take what he can get, until such time as prison populations fall, or new provision comes onto the market. As such the PCC would be a *price-taker*, not a *price-setter*, a position of weakness which would prevent competition really biting on providers.
- > Existing PFI prisons operate under 25 year contracts, some of which have only a small number of years left to run, whereas others have over 20 years remaining, containing agreed prices which it would be too expensive for NOMS to realistically consider breaking (although some adjustment at the margin is feasible, as has been shown many times, although these come at a cost of a changed service).

As such, without running large-scale competitions, opening existing providers up to the market, the risk is that the commissioner may find themselves unable to drive significant change. However the up-front

costs of such competitions are large, and commissioners would not immediately have the experience to run these efficiently, without relying on the centre.

To make rapid progress, we have therefore reluctantly accepted that commissioners will be best-placed, in the first instance, to focus on improving outcomes by looking to better target services to the right offender at the right time, rather than redesigning existing contracts. To encourage this, until contracts are ready for renewal, we propose the use of a tariff system where all incumbent public sector providers would be expected to comply with the tariff benchmark, but would have the flexibility to price at below this level in agreement with the PCCs commissioning their services.⁸² These proposals are not utopian, they recognise that the tariffs would initially be set by the MoJ, to achieve financial targets, but this would allow providers to plan their service provision until such time that the commissioner takes that service to market.

The important element of a tariff system is that it places the incentive on the PCC to reduce the volume of prison places purchased, rather than the price of each place. This would require the PCC to work with partners and potential providers to deliver new services and solutions which local judges and the magistracy can sentence to with confidence. Even within the existing legislative framework, and with freedom to shift budgets from remand places to electronically monitored bail curfews, or from short prison sentences to improved diversion for offenders with mental health issues, PCCs will have significant scope to shift the balance of resource use.

For programmes and other interventions, PCCs would be free to decide what types and volumes of in-prison programmes they wanted to commission to meet the needs of the prisoner population for which they purchased places. These services could consist, for example, of cognitive-behavioural offending programmes, education courses, employment-related activity, real work experience and so on. Decisions about what and how prison-based services might be provided would be the result of joint planning and design between PCCs and providers of prison services.

⁸² As competitions were run, private prison providers would be expected to submit prices, using the tariff as a cap.

A commissioner would turn to a competitive mechanism if a provider was failing to meet required standards, was failing to participate in locally integrated solutions or was failing to keep pace with the latest innovations and service improvements evidenced around the UK. Competition would also be run where existing private sector contracts had reached their end date.

4.1.1.5 Geographical boundaries

The 43 PCC areas do not map neatly onto the organisation of the Prison Service (which consists of 10 regions, Wales and the geographically dispersed high security estate), or the 21 CRCs. A single NPS manages high-risk offenders across England and Wales.

For example, currently in Wales the four PCCs⁸³ would need to work with a single CRC, only two of the PCCs currently have prisons in their area,⁸⁴ and there is a single NOMS Director for Wales.

This is not, however, an insurmountable issue. In our model, prison places are commissioned by the PCCs for the areas in which the offenders are sentenced, not where prisons are located. In the Welsh example, therefore, HMP Swansea could have places commissioned by any PCC using the prison. This could be based on block contracts for local PCCs and spot purchase for PCCs further afield on the rare occasion that they required places at Swansea.

For the Wales CRC, it would mean that services were commissioned by all four PCCs, based on estimates of offender volumes and their individual plans. There would be no barrier to this group of Welsh PCCs agreeing a joint commissioning plan and priorities and commissioning services accordingly. Similar considerations would apply to the NPS in Wales until such time as its services were moved into the CRC. The PCCs would become the commissioner responsible for making decisions relating to the competition for the CRC on the completion of the current contract.

The fit between PCCs and the organisations from which they would commission services would be significantly improved if the number of PCCs were rationalised. We recognise that the link between PCCs and police forces makes a reduction in the number of PCCs difficult to

83 Dyfed-Powys, Gwent, North Wales and South Wales.

84 Gwent and South Wales.

achieve quickly, but the transformation of the PCC into a commissioner of a wider range of criminal justice services (which do not themselves map easily onto police force areas) is a substantial change and one which warrants a fresh look at the issue.

5

Local Rehabilitation Trusts

5.1 The role of Local Rehabilitation Trusts	56
5.2 The design of Local Rehabilitation Trusts	60
5.3 Local Rehabilitation Trusts and competition	63

Alongside changes to the commissioning structure, we envisage a radical restructuring of the supplier side, through the creation of Local Rehabilitation Trusts (LRTs).

The proposals are intended to provide a stimulus to reform, building on the Government's plans for Reform Prisons. The aim is to stimulate service integration and promote innovation by enabling providers to respond to commissioning priorities.

PCCs could, of course, commission services from within the current landscape of providers: prisons (with the additional local freedoms suggested by the Reform Prison model), CRCs, NPS and other private and third sector providers. Indeed, given the time it would necessarily take to unpick this infrastructure, this is the starting point we envisage. However, if the aim is to secure better local integration and to shift existing organisations away from historical patterns of service delivery, just giving PCCs the commissioning role will not do this quickly enough to secure improvements in outcomes or reduced cost.

It is insufficient to rely entirely on the commissioner being able to create an integrated, coherent and joined-up delivery system just through the power of his or her commissioning decisions. Experience in health shows that the aspiration of integrated service delivery, meeting the end-to-end needs of service users, requires more than a command and control structure (or one in which the commissioner pulls all of the strings). Instead, it needs commissioners and providers to work in a collegiate fashion to develop services and to drive positive outcomes.⁸⁵ Furthermore, previous attempts to introduce commissioning into offender management services have shown this is insufficient on its own to deliver the required change.

We therefore believe that the ability of the system to deliver innovative solutions to offending, and to be able to respond to changing priorities and need, would be significantly improved through a new delivery vehicle – an LRT. There is a careful balance to be struck here. On the one hand, simply enabling PCCs to commission services from the best available providers, and using that commissioning power to drive competition, is likely to drive up standards and reduce cost. On the other hand, the offender management sector is a relatively immature

85 The King's Fund, *Integrated care for patients and populations: Improving outcomes by working together*, 2012.

market and PCCs would be new to the role of commissioner. At the same time, the need to drive better service integration – and to bear down on stubborn reoffending rates – is pressing. The balance of advantage, therefore, lies in also incentivising the provider side to innovate and develop integrated service solutions.

5.1 The role of Local Rehabilitation Trusts

LRTs would not need to be a new corporate entity, more a partnership or consortium arrangement within which providers would cooperate and jointly design solutions to meet the commissioner's priorities. Trusts would become the critical supplier of offender management services in a local area, they would integrate the delivery of services and give PCCs the ability to commission an end-to-end service from a provider with an existing presence and service footprint. Although PCCs would, of course, be able to commission from providers other than the Trust, meaning the service mix delivered by the Trust might change over time.

For prisons the incentive to join the Trust would be the opportunity to flex their greater freedoms and the ability to improve their through-the-gate provision. For the CRC the key incentive would be the ability to have a real footprint within prisons, and to work jointly with prisons in the community, maximising their likelihood of receiving PbR payments.

LRTs would have a role similar to that of accountable care organisations in the health sector – providing end-to-end services for one or more cohorts of offenders, commissioned against clear outcome expectations and within a defined budget envelope.

The basic concept of an ACO is that a group of providers agrees to take responsibility for providing all care for a given population for a defined period of time under a contractual arrangement with a commissioner. Providers are held accountable for achieving a set of pre-agreed quality outcomes within a given budget or expenditure target.⁸⁶

The evidence is that bringing providers together in this way, with a focus on meeting the holistic care needs of a patient population, can

⁸⁶ The King's Fund, *Accountable Care Organisations in the United States and England: Testing, Evaluation and Learning What Works*, 2014.

be successful in improving service quality and in driving down cost, in particular where ACOs:

- > encourage new ways of working across in-patient and community-based services, supported by improved information sharing;
- > build more effective mechanisms for patient engagement, across a continuous and integrated set of care pathways;
- > develop patient-centred care management approaches;
- > are at a scale which is large enough to make economies, but small enough to remain manageable and to connect with communities and patients; and
- > have clear sets of cost and quality measures.⁸⁷

We think ACOs provide a compelling model on which to build LRTs as providers of integrated offender management and rehabilitation services.

The King's Fund⁸⁸ identifies four key lessons from the US experience of ACOs to inform their development in the NHS and four enablers of integrated care. All of these apply to the development of LRTs, and they are reflected in our proposals.

⁸⁷ Ibid.

⁸⁸ Ibid.

Figure 7: Transferable lessons from the implementation of accountable care organisations

Lessons from ACOs	Application to LRTs
The need to focus on the small proportion of people who account for a high proportion of use and cost through risk stratification.	The use of risk-related resource planning is well-embedded in probation practice, with resource use tied to the risk of harm and the risk of reoffending of individuals. The development of LRTs could enable this discipline to be more widely applied.
The need to put in place case management and care coordination to support these patient groups.	Effective end-to-end case management is at the heart of the LRT proposal.
The need to support the development of integrated care through information sharing and investment in information technology.	LRTs, working with their PCC commissioners, would have freedom from centrally prescribed IT contracts and the ability to invest in information technology which supported integration and the delivery of outcomes.
The need to engage patients and to support them to play a bigger part in managing their health and well-being.	LRTs would encourage consistency of engagement between offenders and their case managers, through a focus on end-to-end service delivery and a clear focus on outcomes. Such an approach will encourage offenders to take responsibility for changing their behaviour and engaging with opportunities.

Figure 8: Four enablers of integrated care

Enabler	Application to LRTs
<p>Payment systems and incentives that are aligned behind the purpose of integrated care - service integration requires a form of payment that is less directly linked to existing organisational structures and allows financial resources to be allocated to whichever provider or providers are best suited to deliver the care needed.</p>	<p>PCCs will be free to purchase services in the community or in custody, wherever the need is best met. Creation of LRTs will support the creation of new models of services which give commissioners the ability to allocate funding where it is likely to make the most difference.</p>
<p>Specific objectives related to the improvements in quality and outcomes that will support the partner organisations to work together to deliver these objectives.</p>	<p>PCC funding would be linked to reducing reoffending outcomes and designed to manage demand on the most expensive elements of the system.</p>
<p>Networks and alliances between providers with the leadership and other capabilities needed to work effectively.</p>	<p>System leadership will be critical in LRTs, the structure will provide a clearer focus for such leadership activity, rather than being dispersed across a number of connected organisations.</p>
<p>Commissioners able to use their leverage to support the development of integrated care through innovations in payment systems and contracting.</p>	<p>LRTs and PCCs will need to work closely together. The system will need strong, focused commissioning from a single source (rather than being spread across multiple government departments and other agencies). If commissioning is not sufficiently directed, LRTs will be too powerful to shift behaviours and delivery models.</p>

The strength of this model is that the LRTs would provide a vehicle to accelerate change and would help to enable the transition to a system with local autonomy, local flexibility and genuinely integrated services.

5.2 The design of Local Rehabilitation Trusts

LRTs would be consortia which derive their strength from bringing together as many key partners as possible to quickly react to a PCC's local requirements. We envisage LRTs being formed from:

- > a prison or cluster of prisons, predominantly serving a defined geographical area, but available to all PCCs to commission prison beds from; and
- > CRCs, either in whole or in relation to a specific geographical area or defined offender cohort; and
- > significant elements of the activity currently undertaken by the NPS.

LRTs would appoint a single Trust chief executive, charged with leading negotiations with the PCC(s), directing and coordinating activity across the various elements of the Trust, but with strong operational management to ensure quality and performance in the component parts of the organisation.

LRTs would develop locality-based plans, in conjunction with the PCC, for the provision of offender management services. The LRT would therefore be in a strong position to cooperate with other agencies in the criminal justice system to ensure it delivers integrated offender management services.

Given the issues of geography we describe above, LRTs would inevitably be providing services to more than one PCC, particularly in regard to prison places. If PCCs are commissioning on cost and outcome grounds (or against agreed tariffs for outcomes), for definable cohorts of offenders, LRTs can shape their service provision around the requirements presented by each PCC with which they contract. LRTs would be free to sell services to other commissioners, just as PCCs would be free to purchase services from a range of providers. Over time, the geographical coverage and service provision of LRTs could change as commissioner requirements change and providers find the optimal shape for their solution. This is a vital point: the geographical shape of LRTs and their offering will be determined by local need and demand, alongside economies of scale, not central edict or historical precedent.

LRTs would be locally independent, but would still be required to comply with the following headline principles:

- > LRTs will accept all prisoners from the local area which PCCs commission them to provide, unless there is good reason not to (for example a prisoner requiring a higher level of security than the LRT prisons provide);
- > LRTs must accept prisoners from outside their area, subject to prison capacity, to meet national demand pressures;
- > LRTs can take responsibility to source prison places it is unable to cater for in its own prisons, if the commissioner requests it; and
- > LRTs cannot reduce prison capacity without authorisation from the Criminal Justice Regulator (the role of which we describe below).

LRT status would need to be earned. This process would only take place when the bodies involved had demonstrated they were ready to make the transition. PCCs would be able to commission services from any provider in the landscape – that is from prisons, CRCs and others – while the transition to LRTs took place, and even afterwards, if LRTs do not meet commissioner requirements. Assessment of readiness for Trust status might be modelled on a more manageable, and less bureaucratic, version of the Monitor-led assessment process for NHS Foundation Trusts⁸⁹ and focus on:

- > leadership and organisational capability;
- > effectiveness and future-focus; and
- > financial planning and capability.

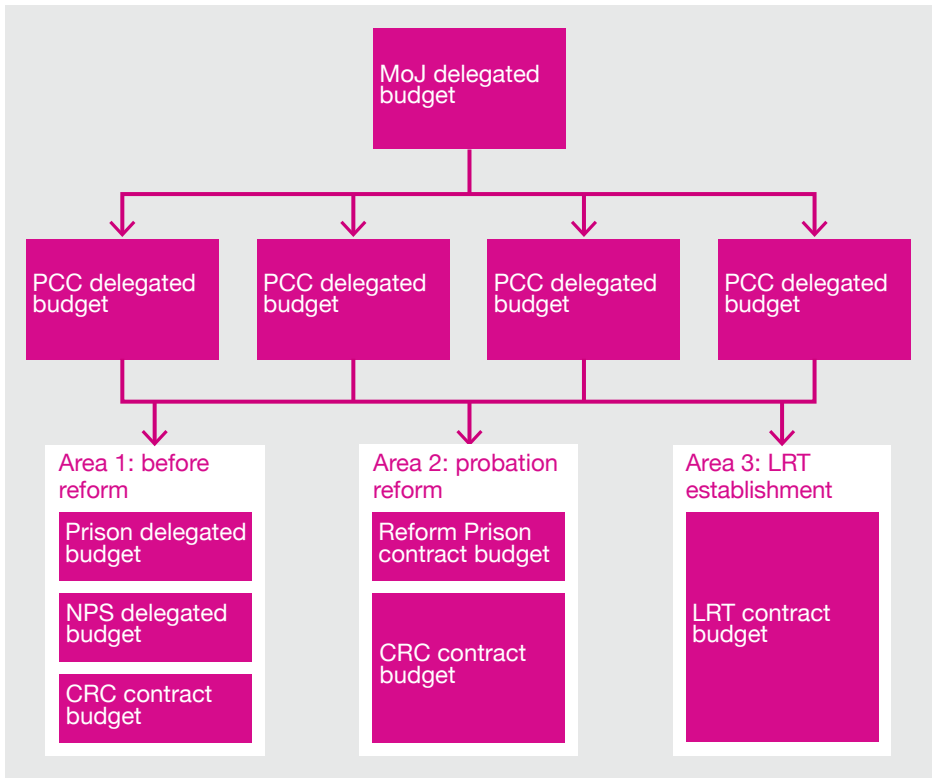
In some areas, Trusts would not be formed and PCCs would commission from the existing provider base. Some prisons, because of their role (for example, in the high security estate) would exist as free-standing service providers, commissioned by PCCs and subject to oversight by the new regulator.

The role of LRTs is to provide a vehicle to accelerate change, where

⁸⁹ Monitor, *Guide for Applicants*, 2015.

such a vehicle is necessary, and where it would help to enable the transition to a system with local autonomy, local flexibility and genuinely integrated services. They are a means to an end, not the end in themselves. We envisage a mixed economy of local provision, with LRTs in areas where providers are able to make a strong case for their role and to meet the criteria set by the Regulator, and in others PCCs commissioning from something closer to the current provider landscape. The key is what approach works best in each case.

Figure 9: Changing financial flows



5.3 Local Rehabilitation Trusts and competition

There is a danger that LRTs would become monolithic providers, to which PCCs default due to their overwhelming market presence (in much the same way the CCGs have little real choice over who provides core acute hospital services). This is not the intention. The purpose of LRTs is to ensure that the offender management system moves quickly towards the kind of integration which will be key to improving outcomes, reducing inefficiency and ensuring that service provision is responsive to need. Trusts are intended to help drive innovation, not to curtail the ability of PCCs to commission from a diverse range of providers.

The aspiration is that LRTs would become strong bidding vehicles for local consortia, bringing together innovation and local knowledge which would deliver high quality bids, but this would always be against a background of other LRTs, prison and CRC providers bidding for contracts as these come to market. This may mean that LRTs break up and are recomposed over time, as different competitors win contracts, but the aim is to ensure the delivery of locally integrated solutions, not permanent management structures. The incentive for those taking part in these arrangements is that this would make them stronger competitors to retain the services they currently offer.

Our proposals do not give any unfair competitive advantage to Trusts, instead they are designed to make Trusts a vital addition to this market place as they provide opportunities to energise prison governors, probation managers and CRCs to collaborate and to be creative in a way that creates better competitors.

In addition, it is vital to ensure that commissioners monitor and challenge the LRT as they should any provider. A Trust which fails to meet the PCC's needs can expect them to take services to market, either as integrated contracts based on meeting the needs of a group of offenders through the offender journey, or on a service (prison/CRC etc.) basis. Also, PCCs may decide to change the mix of services they want to commission in the light of evidence. This may mean, for example, decommissioning some elements of the Trust's activities, or seeking alternative providers, or reshaping services by changing volumes of activities.

The Criminal Justice Regulator would need to be assured that the creation of a Trust was both in the interests of creating more integrated service delivery and not likely to prevent the PCC creating a more diverse provider base.

6

Regulation in the new system

The shift to a locally commissioned model and the creation of LRTs, requires a significantly more robust, focused and responsive regulation function. We envisage a regulatory function which consolidates and simplifies the current arrangements and which supports the move to local commissioning and to LRTs. We therefore propose the creation of a new Criminal Justice Regulator, with four key roles:

- > establish system-wide standards and set minimum standards for the treatment of offenders in custody and in the community;
- > ensure that these standards are met, by the inspection of service provision in prisons and in the community;
- > decide on LRT status; and
- > manage market and quality issues, based on the Monitor model, including compelling commissioners to put failing Trusts into rectification measures, leading ultimately, if problems are not addressed, to competition for the failing service components.

This model would reflect other public service regulators, but would also take on many of the functions currently carried out by NOMS. This would allow the replacement of the current NOMS structure with a smaller, more strategic role supporting the Secretary of State to set the broad direction of the offender management system.

The new Criminal Justice Regulator would have a key role in ensuring that PCCs delivered their new commissioning role effectively. In particular, the Regulator would be charged with ensuring that services commissioned by the PCC were delivered to the required service standards and that they delivered acceptable outcomes. Where services were not being delivered effectively, the Regulator would have the ability to require an improvement plan or, in cases of significant or repeated failure, require the PCC to take corrective action.

The new regulator would be the product of merging the two existing inspectorates (HMI Prisons and HMI Probation). Bringing together standard setting and market stewardship into a single organisation would enable a stronger focus on securing the best outcomes from the system.

Alongside this, there would remain a need for an independent organisation to consider complaints from offenders, both in prison and subject to supervision in the community. This would be best achieved through a merger of the current Ombudsman with local Independent Monitoring Boards and an extension of the remit of the latter to cover offenders supervised in the community, all under the aegis of the regulator, with the power to call on the regulator to undertake inspections.

7

Implementation

7.1	The role of Reform Prisons	70
7.1.1	Developing prison governor capability	71
7.2	The legislative framework	72
7.2.1	Prisons	72
7.2.2	Probation	73
7.2.3	The new legislative framework	73
7.3	Developing the role of Police and Crime Commissioners and Local Rehabilitation Trusts	75
7.3.1	Transitioning to LRTs	76
7.4	The regulator	77
7.5	The role of the centre	78

The model proposed above represents a radical and far-reaching set of changes to the prisons and probation system. Delivering these changes will neither be easy or quick, and they will require primary legislation to achieve. There is, however, a clear implementation pathway to achieve the fully reformed system proposed, and one which builds on the Government's identified reform road map.

There are a number of stages to the potential implementation plan.

1. Consolidating the proposals for Reform Prisons and ensuring that they pave the way for further system reform. This will mean setting out a clear pathway for building on the initial cohort of Reform Prisons and how the freedoms afforded to them might be incorporated into the development of LRTs and the commissioning role of PCCs.
2. Provision of a legislative base for wider system reform, specifically in relation to:
 - > the creation of a new Criminal Justice Regulator and abolition of HMI Prisons and HMI Probation;
 - > the creation of the new Ombudsman, and abolition of IMBs;
 - > the placing of duties on prisons to cooperate in local arrangements and actively facilitate through-the-gate solutions;
 - > the formalisation in legislation of the powers permitted under the Reform Prisons agenda;
 - > the transferral of commissioning powers and duties to the PCCs;
 - > the transferral of court advice to HMCTS; and
 - > the transferral of all other NPS activity to the CRCs.
3. Development and piloting an extended PCC role and LRTs.
4. Subject to piloting, roll out the commissioning role of PCCs across England and Wales, with a priority for PCCs to then renegotiate CRC contracts taking into account the additional responsibilities inherent in the NPS functions the CRC would now be responsible for.

5. The development of LRTs by local consortia, up to and including certification by the Criminal Justice Regulator.

We have deliberately designed a system which enables the Government to progress in stages. The system will work better if services are commissioned locally by PCCs. It will work better still if local service providers are brought together into LRTs and focused on the end-to-end offender journey. The latter is not, however, a prerequisite of the former, meaning that implementation can be staged and the system can be transformed at a sensible pace.

7.1 The role of Reform Prisons

The intention to create six Reform Prisons, with substantial local freedoms, is a welcome precursor to wider system reform. In order to start the transition effectively, the minimum package of freedoms to be given to governors of Reform Prisons should include:

- > the ability to vary or withdraw from central contracts and to commission locally designed services. This should enable governors, for example, to commission additional education services from a centrally procured provider, or de-scope the central provision in favour of other interventions, or to commission entirely new services;
- > the ability to determine the content and mix of regime activities and interventions, for example to commission or decommission accredited offending behaviour programmes, or to bring in real work activities through partnerships with local employers;
- > the ability to set local pay and other employment terms;
- > a single bloc budget, initially determined by NOMS, but subsequently through the PCC commissioners, giving governors the freedom to spend their budget to maximise positive outcomes;
- > scope to derogate from centrally imposed standards (PSOs and PSIs) or processes where this will deliver better outcomes;
- > the ability to develop formal partnerships (such as consortia or joint ventures), for example with CRCs or other providers; and

- > the ability to enter into local contracts with partners and providers. Although this is technically currently possible, the contracting party in all cases would be the Secretary of State. The autonomy of the governor would be underlined by giving individual prisons legal personality and the ability to contract in their own right.

Alongside these freedoms, governors of Reform Prisons should be subject to a duty to actively seek to work and collaborate with CRCs and the NPS (for as long as the latter exists). This is essential if services are to be integrated and to reduce the risk of prisons, granted real autonomy, not connecting as well as they should with post-release provision. The new Criminal Justice Regulator would inspect prisons against this duty, alongside their other functions.

7.1.1 Developing prison governor capability

In addition to beginning the process towards local control and innovation, Reform Prisons will serve to identify and begin to resolve capability issues in current Prison Service management. Governors will be faced with a requirement to exercise skills and competences which are substantially different to those they are currently required to exercise. Alongside the need to be able to oversee the effective day-to-day operational management of their prison, they will need to be able to:

- > commission services from a range of providers, including from the private and voluntary sectors;
- > performance manage commissioned providers (at present, contract management is undertaken centrally or at a regional level);
- > take effective, evidence-based decisions on the mix of services to be provided as part of the prison regime;
- > engage more deeply with a wider range of external partners and other stakeholders, including, for example, the NHS, learning and skills providers and local authorities; and
- > stand accountable for local performance and the prison's role in the wider criminal justice system.

The Reform Prison approach will enable the Government to understand better any development needs for the current cohort of governors and to create a personal development framework which would support the further roll-out of autonomous prisons and the creation of LRTs.

Progress from the six initial Reform Prisons should be as rapid as possible (allowing for primary legislation where necessary) in order to maintain the momentum of reform.

7.2 The legislative framework

The legislative framework for this new model must cover provision, commissioning, and regulation. The Government's planned Prisons Bill could provide the vehicle for the necessary changes.

7.2.1 Prisons

The Prison Act 1952 (as subsequently amended) is as out-dated as it is vague: containing, for example, a prohibition on painful tests to detect malingering on the part of prisoner and references to chaplains officiating in more than one prison if they are more than 10 miles apart.

This legislative framework is generally a list of enabling powers which provides scope for the Secretary of State to give prison governors real autonomy: anything that the Secretary of State may do, governors may do on their behalf, and the Secretary of State has power to lay down regulations which enable them to do almost anything which does not breach other laws. There is nothing in the 1952 Act which would disallow governors from letting contracts, commissioning services or moving money between separate elements of their budget.

- It makes the Secretary of State responsible for the “general superintendence of prisons” and allows them to make contracts for the maintenance of prisons and prisoners.
- It allows the Secretary of State to employ staff to run prisons (and hence all prison staff are civil servants).
- It requires officers of the Secretary of State to visit prisons and for the production of an annual report.

- > It allows for the appointment of an Inspector of Prisons.
- > It requires every prison to have a Governor, a Chaplain “and such other officers as may be necessary”.
- > It allows for the searching of visitors and prisoners.
- > It gives the Secretary of State power to make wide ranging regulations.
- > It defines a prison as anything that the Secretary of State declares to be a prison.

The legislative framework needs to do more, however, than simply allow prison governors to act on behalf of the Secretary of State. If Reform Prisons are to have genuine autonomy – and if this model of autonomy is to be the approach across the prison estate – then prisons need legal status in their own right. Each prison should be an individual legal entity, subject to direction and guidance by the Secretary of State, but no longer simply a branch office of the MoJ. This is essential both to the creation of a system based on local autonomy, but also as a prerequisite for locally commissioned services.

7.2.2 Probation

The legislative framework for probation services is contained in the Offender Management Act 2007.⁹⁰ This makes the Secretary of State responsible for ensuring that “sufficient” probation provision is made in England and Wales. The statute is permissive in allowing the Secretary of State to deliver that provision through the staff they directly employ, or by contracting with others to provide it – allowing for both the NPS and CRCs.

7.2.3 The new legislative framework

The changes we propose would require a number of key changes to the legislative framework. In particular, it would need to allow for a system in which there might be a multiplicity of providers of offender management services, delivered by standalone providers and/or through LRTs, but commissioned by PCCs.

90 HM Government, *Offender Management Act 2007*, Chapter 21.

The “general superintendence” role in the 1952 Act would need to go, to be replaced with a much more clearly defined set of roles and responsibilities, including the role of PCCs, with clarity about who was responsible for what.

The Secretary of State’s role becomes one of setting the broad operating remit for the system and channelling funding to PCCs (on a formula basis).

New legislative arrangements would require:

- > the Secretary of State to retain the ability to provide guidance to commissioners on the purpose and objectives of offender management services (for example, cutting crime and reducing reoffending, delivering value for money and preventing harm to vulnerable offenders and victims);
- > individual prisons to be reconstituted as legal entities in their own right, giving Reform Prisons a legal status similar, for example, to Academy schools;
- > the Secretary of State to retain a duty to fund commissioners in line with need (on a formula basis);
- > the Secretary of State to have the power to direct PCCs where necessary, or to ‘step-in’ and take back commissioning powers from a PCC who was identified as failing in their role, as described above;
- > PCCs to have explicit legal authority to commission prison and other offender management services on behalf of the Secretary of State;
- > CRCs to have the power to participate in legal joint venture arrangements, such as LRTs; and
- > the abolition of existing regulatory bodies and the establishment of a new regulator – combining the roles of the Prisons and Probation Ombudsman with local Independent Monitoring Boards. The Secretary of State would require powers to set the standards against which the regulator should assess providers. The regulator would need to be given appropriate inspection and enforcement powers, up to and including closing or installing new

management in a facility, and a power to advise, and where necessary force, the PCCs to rescind commercial contracts.

7.3 Developing the role of Police and Crime Commissioners and Local Rehabilitation Trusts

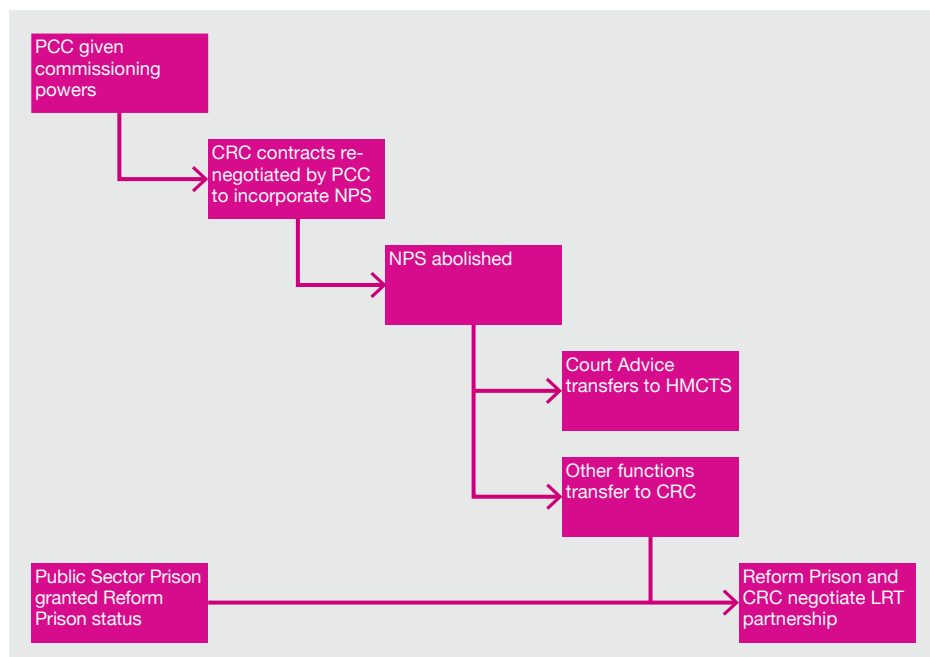
The shift from national management of the prison system to local autonomy and freedom is the first step in the path to wholesale reform. It needs to be followed by a shift to local commissioning of the wider offender management system, of which prisons form part. This next step needs to happen quickly: innovation and integration are needed across the full offender management journey, not just in prisons. This requires a clear strategic framework and shared priorities, the creation of which needs commissioners which are close to local service delivery and who are accountable to local communities.

We envisage a staged process to the shift of commissioning responsibility to PCCs, including the legislative steps outlined above. PCCs will need to be given explicit legal duties and powers to commission prison and other offender management services on behalf of the Secretary of State. This involves a duty to map need across their area, and a duty to consult with local government.

Once the relevant legislation is in place, the Government should immediately pilot PCC commissioning in areas which appear well-placed to make the transition, for example Manchester and the West Midlands. In these areas the following would apply:

- CRC contracts and budgets could be passed to PCCs;
- PCCs would commission prison places. Initially this would be from prisons in their local area or out of area prisons from which they purchase a significant volume of places (for example where there is no local prison in the PCC area); and
- PCCs would negotiate variations to the existing CRC contracts, with NPS functions, in the pilot areas included (except court advice, which would move to HMCTS).

These steps would deliver locally commissioned offender management systems operating with broad autonomy from the MoJ.

Figure 10: Transition process to PCC commissioning and LRTs

Key to the success of this roll-out will be the establishment of effective joint commissioning arrangements between PCCs whose areas are shared by a common CRC, or who use the majority of places in a common prison or prison cluster. This would enable contract negotiation costs to be minimised and shared. The rewriting of CRC contracts to take on NPS activities would enable PCCs to refine the services delivered to meet their requirements.

7.3.1 Transitioning to LRTs

Transition to LRTs would be in two stages. The regulator would first be responsible for awarding Reform Prison status, building on the Government's proposals for piloting the approach later this year. Reform Prisons would be granted autonomy, as proposed by the Government, to withdraw from centrally commissioned contracts (such as for education) and to develop their own local solutions. Reform Prisons would, as suggested above, have separate legal

status and, therefore, the ability to vary employment terms and have flexibility in the requirement of staff.

The regulator would assess applications from prisons, or clusters of prisons, for Reform Prison status based on management capability and the quality of plans put forward for using the new freedoms.

Reform Prisons and CRCs would then be free to put forward proposals to form LRTs to the regulator, which would be assessed against the criteria set out in Chapter 5.

The MoJ should develop a standard set of incentives for commissioners to support the development of LRTs, built around a gain share model in which Trusts would be entitled to re-invest a proportion of the efficiencies they deliver from achieving Trust status. Incentives might also include an extension to existing CRC contracts in return for reduced cost and improved performance through participation in an LRT.

7.4 The regulator

The current Chief Inspectors of Prisons and Probation would be required to work together to create a new merged regulator. The Prisons and Probation Ombudsman would merge with local Independent Monitoring Boards, with delegated responsibility and budgets allocated by the regulator.

We envisage the new regulator taking responsibility for the following broad functions.

- Setting the detailed operating standards for prisons and probation providers. This would set out minimum standards to maintain – for example, decent and appropriate prison conditions and appropriate treatment of offenders in the community – but would allow scope for providers to develop detailed solutions.
- Setting inspection standards, reflecting measures of prison decency and effectiveness in offender management practice.
- Reporting on system compliance with minimum operating standards.

- > Setting annual tariff prices, updating these in the light of best practice.
- > Market stewardship, including encouraging competition and system leadership.
- > Monitoring and reporting on provider performance.
- > Monitoring and reporting on commissioner performance and priorities and recommending remedial action where commissioner performance is unacceptable.
- > Overseeing the arrangements for commissioning prison places, ensuring that overall prison capacity is reflective of individual PCC commissioning decisions.

7.5 The role of the centre

At the outset, the MoJ and NOMS would have a significant role in facilitating and supporting the transfer of commissioning responsibilities to PCCs. In particular, there will be a substantial capacity and capability building role. NOMS's role might be to:

- > resource and deploy transition support teams, consisting of operationally experienced staff, to support the development of appropriately staffed and skilled local commissioning teams;
- > facilitate the short-term secondment of NOMS staff to PCC commissioning teams; and
- > plan and manage the transition of appropriate NOMS regional support staff into PCC teams.

In the medium term, the transfer of functions from NOMS to the new regulator would see it transition into a smaller Offender Rehabilitation Strategy Unit in the MoJ, responsible for advising ministers.

We envisage the Offender Rehabilitation Strategy Unit will:

- > provide advice to ministers on strategic planning, system priorities, resource requirements and performance. This role would assess the demand for new places, agreeing priorities for investment in new prison estate with PCCs in areas of increasing demand;

- > set the budgets for PCCs, in light of demand from the courts;
- > act as a source for senior level professional advice on prisons and probation matters;
- > advise ministers on the exercise of powers in relation to poorly performing commissioners and providers;
- > manage prison build schemes, using national contracts to achieve efficiencies and economies of scale;
- > provide operational support to prison providers in the event of serious or specialist incidents – in particular ensuring that arrangements are in place for mutual support; and to provide an effective command structure for the management of serious incidents; and
- > evaluate the strengths and weaknesses of both the transition process and the new local delivery system during the pilot stage to inform the PCC commissioning across remaining areas.

8

Conclusion and recommendations

Taken together, these proposals would create an offender management system which is locally focused; provides genuinely integrated services, with the greatest chance of reducing reoffending; and which deliver value for money.

Recommendation 1: Reform Prisons should be established as quickly as possible, with early lessons from the six pilots informing the future programme and the content of the Prisons Bill in the next session.

Recommendation 2: the Prisons Bill should:

- > re-establish prisons as independent organisations in their own right;
- > allow commissioning responsibility for prisons and probation to be devolved to Police and Crime Commissioners;
- > create a new criminal justice regulator, with responsibility for standards, market stewardship and inspection;
- > allow the Criminal Justice Regulator to license Local Rehabilitation Trusts; and
- > enable the transfer of National Probation Service court advice functions to HM Courts and Tribunals Service.

Recommendation 3: subject to the new Prisons Bill, the Ministry of Justice should build on the devolution plans for Greater Manchester to test the proposals in this paper. The devolution settlement should be extended to give the Mayor full responsibility for commissioning prison services and to devolve responsibility for the current Community Rehabilitation Companies budgets.

In parallel with this, the Government should similarly extend the current devolution settlements for Merseyside and Greater Lincolnshire to cover the same set of offender management responsibilities and test the arrangements in those areas.

Recommendation 4: the Ministry of Justice should aim to establish the new Criminal Justice Regulator as soon as possible after a new Prisons Bill becomes law, and should aim for it to begin work no later than April 2018.

Recommendation 5: there should be a full transfer of responsibility for commissioning to Police and Crime Commissioners by the end of 2019 at the latest.

Recommendation 6: the first Local Rehabilitation Trusts should be considered by the regulator by the end of 2019.

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