



'Restructuring Probation to Reduce Re-offending' Consultation Response

The Revolving Doors Agency Response to
the Home Office

19 December 2005

REVOLVING DOORS AGENCY

1. Revolving Doors Agency is an independent charity with over ten years' experience of developing, testing and promoting innovative ways of working with people caught up in the damaging cycle of crisis, crime and mental illness. All of our clients have mental health problems and have been arrested or imprisoned, but most also present with a wide range of problems, such as homelessness, substance misuse and histories of abuse and institutionalisation. We are the United Kingdom's only national charity exclusively devoted to working with this client group.

2. One area of our work is the development of practical 'Link Worker schemes' based in police stations, courts and prisons, which offer a needs-led service combining assertive outreach with the provision of emotional support and practical help. We assist our clients to gain access to services such as housing, primary health care, welfare benefits, and drug and alcohol rehabilitation services.

3. In order to be successful in this work, we have accumulated considerable expertise in building effective partnerships with other statutory and voluntary sector organisations.

4. Revolving Doors Agency is also the lead agency for Partners in Reducing Re-offending¹, a pan-London project aimed at building effective partnerships between voluntary and community sector organisations to help reduce levels of re-offending. Commissioned by the Voluntary Sector Unit in the National Offender Management Service, it is one of several pilot projects aimed at exploring the development of constructive joint-working between voluntary sector organisations. Through its commitment to this project, Revolving Doors Agency has supported the voluntary sector to respond pragmatically and creatively to the challenges posed by the introduction of contestability within NOMS.

¹ www.PiRR.org.uk

INTRODUCTION

5. This response is the result of consultation with Revolving Doors Agency service users and staff. It is of note that many of the issues raised in this response were shared by both service users and staff who were consulted independently of one another.

6. We have endeavoured to restrict our comments to the remit of the consultation questions but we have made additional comments where necessary and appropriate.

7. Our response links the policy framework set out in the consultation paper with our practical understanding of 'what works' with a challenging client group. It is therefore designed to be constructive and add value where necessary. We have concentrated on identifying gaps and loopholes and on highlighting concerns about the consequences of commissioning and contestability in this area.

8. Revolving Doors Agency notes that there are currently both structural and operational changes taking place with the introduction of the new offender management system. Whilst we understand why this is taking place simultaneously, we believe that this coincidence of change may be responsible for some of the turmoil and misunderstanding surrounding it. NOMS is therefore charged with the difficult responsibility of clearly separating out these two distinct types of change whilst, at the same time, showing how structure and operation will work together.

9. In relation to this consultation, Revolving Doors Agency found the lack of focus on the offender in the consultation paper to be a striking omission. Although it relates to structural changes, it is crucial to demonstrate an understanding of what this means at an operational level for individual offenders. This would not only assist respondents to see the proposals in the round, but it is in fact necessary to inspire confidence in NOMS, particularly amongst practitioners and service users:

understanding must be seen to exist at the highest level.

10. We believe strongly that quality of service delivery *must* be guaranteed to an agreed minimum level i.e. an offender should be entitled to expect a certain standard of service delivery wherever he is in the country, from whichever provider. We propose this in the full knowledge that regulation and safeguards may act as a disincentive to potential private and voluntary and community sector service providers, so all of our recommendations reflect what we believe to be the necessary minimum standard.

11. We are also aware that this consultation takes place against the background of new changes in sentencing under the Criminal Justice Act 2003. Coupled with the offender management reforms, this will increase the workload of probation services considerably and, very significantly, will introduce a new client group into probation services around which there is no existing practice. This highlights the necessity to instigate a dialogue with those organisations which do have experience working with that client group.

VIEWS ON THE SUPPORT WHICH ROMS MIGHT NEED IN IDENTIFYING THE PARTICULAR OFFENDER MANAGEMENT AND INTERVENTION NEEDS IN THEIR REGION

12. We would like to note the inherent difficulty in answering this question due to the absence of information about *how* the ROM might go about identifying the needs in his area.

13. We strongly recommend sound investment in initial needs assessments as the foundation for effective service provision, which should take care to utilise the vast array of knowledge and intelligence that exists at a local level.

14. There should be a delegated framework for commissioning which allows locally-based commissioners to meet hidden, niche or localised need on an ongoing basis. That is to say, the regional framework drawn up by the ROM should incorporate a role for local commissioners to target localised need within it.

15. In executing such a strategy, we would recommend a high level of consultation with

existing statutory and voluntary service providers in the formulation of policy within NOMS.

16. This is an opportunity to take a fresh look at how probation works alongside other providers, including Drug Action Teams and Primary Care Trusts. There is considerable scope for the design of public services provision to dovetail much more effectively and innovatively across the board. The ROM will need to map wider service provision very carefully as well as the needs for which he has immediate responsibility. This requires a sophisticated understanding of service provision across a variety of sectors, including health and education. For this reason, it is advisable for each ROM to undertake part of this consultation personally in order that the picture of need be visible at all levels in the offender management system. This is particularly important in relation to 'hard-to-reach' groups.

17. We also recommend consultation with service users themselves. Many organisations run service user groups and can provide the gateway to service user participation in a given area.

18. After an initial needs-mapping of the region it is important to implement a continuing monitoring and evaluation process to allow for revisions and to obviate the need for future large-scale assessments.

19. Revolving Doors Agency warmly welcomes the capacity for ROMs to commission across probation area boundaries and across the custody-community divide, which should support the aim of end-to-end offender management. This form of commissioning is particularly relevant to our client group who, when they are in the community, often move between probation areas.

20. Additionally, Revolving Doors Agency supports the implementation of standardised data sharing systems to ensure that offenders do not become 'lost' in the system when they move about, both between areas and between services in one area.

We recommend sound investment in thorough consultation as part of an initial needs assessment, making sure to utilise existing local intelligence in the service provision framework.

VIEWS ON THE COMPETENCIES REQUIRED BY, AND THE SIZE OF, THE NEW PROBATION TRUSTS

21. There is a general concern, amongst both service users and staff, that the membership of not only probation trusts, but of any service provider be subject to some minimum level of regulation. This should include clear processes requiring declarations of any vested interests of senior staff or trustees e.g. shareholdings in relevant companies.

22. It is important that even senior members of a service provider demonstrate an understanding of the sector in which they are operating in addition to possessing the relevant professional qualifications.

23. This might include, for example, an awareness of the root causes of crime and re-offending and the impact of local circumstances on local crime. Service providers should be representative, allowing participation from the local communities they service, and they should be champions of diversity and service user involvement. Some working knowledge of how the voluntary and community sector operates differently to the public and private sectors is also necessary.

24. The size of any service provider should be determined by the resources committed to the service by the ROM in accordance with his needs assessment of the local area.

Membership of all service providers should be of concern to NOMS, not just that of Probation Trusts.

VIEWS ON HOW THE RELATIONSHIP BETWEEN THE JUDICIARY, THE PROVIDERS AND THE ROMS AS COMMISSIONERS CAN BEST BE DEVELOPED

25. By virtue of its practical work, Revolving Doors Agency has experienced first-hand the importance of an understanding within the local judiciary of local probation services. We would strongly recommend retention of a statutory requirement relating to the involvement of the judiciary. Given the impracticalities of judicial representation on the boards of every service

provider in an area, we would suggest the implementation of a steering group at the level of the ROM's office. In our view, it is crucially important that the judiciary be fully integrated within the new system if the aim of end-to-end offender management is to be accomplished.

It is crucial that there be a statutory requirement that the judiciary be involved at the level of the ROM.

VIEWS ON THE NEW TERMINOLOGY

26. Revolving Doors Agency questions the accuracy of the new terminology for three reasons.

(1) Given that, with the introduction of contestability, there is no presumed provider, to describe services as *probation* services may not accurately reflect the source of the service i.e. they may not originate from the Probation Trust, but from a private or voluntary and community sector provider.

(2) Given the similarity in name between the services and the public sector provider (e.g. West Yorkshire Probation Services and West Yorkshire Probation Trust), the public sector provider stands to benefit from a much closer association, amongst the general public, with probation services than a private or voluntary and community sector provider can expect to. It encourages the perception that the services are provided by the public sector, which may not be the case.

(3) With the introduction of offender management, the services might be more accurately described as 'offender management services' and 'offender intervention services'.

The new terminology does not accurately reflect the new state of affairs.

VIEWS ON HOW PARTNERSHIP ARRANGEMENTS CAN BEST BE MANAGED

27. Revolving Doors Agency's response to this question is based on our experience in partnership work and on our work leading the Partners in Reducing Re-offending project.

28. Despite general agreement that partnership working is desirable, we have found that there is reluctance, at least amongst the voluntary and community sector, to commit to everything that this entails e.g. sharing of skills, resources and knowledge. We believe that this could be an endemic problem amongst potential service providers from all sectors for a variety of reasons. For example:-

- The public sector, understandably, currently feels under threat and may be reluctant to work with, and promote the work of, private and voluntary and community sector organisations.
- The same may also be true for private sector organisations which operate on the basis of commercial gain, as opposed to the statutory and voluntary sectors which operate on a non-distribution constraint.
- Similarly, voluntary and community sector organisations have traditionally struggled between themselves simply for survival and many will find this struggle even more difficult when asked to prove their effectiveness at reducing re-offending, something they sometimes lack the capacity to do.

29. For these reasons, Revolving Doors Agency is convinced that the aim of end-to-end offender management can only be realised if partnership working is built into the service model itself. That is to say, commitment to working in partnership should be a precondition to funding, contractual obligations should be put in place to ensure that these commitments are carried out, and organisations should be held to account. This is a necessary safeguard because the failure or reluctance of one link in the chain to work effectively in partnership may affect the ability of other service providers to meet their targets.

30. In particular, Revolving Doors Agency is concerned about communication between

agencies. In 2003 we published a report analysing inter-agency co-ordination for people with mental health problems in contact with the criminal justice system. We found that "[d]espite understanding the problem and knowing how to resolve it, inter-agency working for clients with multiple needs continues to suffer because no-one has the statutory authority to ensure that agencies co-operate and to compel them to do so when they do not"². Revolving Doors Agency believes that the potential fragmentation of the Probation Service could result in similar outcomes. Notably, communication between agencies is viewed as a significant issue amongst our service users.

31. Revolving Doors Agency organises a regular Local Advisory Group in each area where we have a Link Worker scheme. This brings together health, criminal justice, substance misuse and social care agencies, both statutory and voluntary, to review the performance of our schemes locally and to discuss practical ways of improving inter-agency working in the area. Having seen the success of this approach, we recommend adopting a similar model to bring together service providers in each locality.

32. In relation to representation on the Local Criminal Justice Boards, Revolving Doors Agency recommends that both the ROM and service providers be represented on the boards in the interests of keeping both commissioner and service provider informed and involved. It is important that the commissioner is aware of issues at the frontline.

33. The consultation paper does not raise the issue of representation in Crime and Disorder Reduction Partnerships. Revolving Doors Agency notes the importance of addressing the current lack of correctional services representation in these partnerships as part of the proposed reforms.

Partnership working and inter-agency co-operation must be built into the service model in order to ensure joined-up service provision. It should be a condition of any successful bid.

² Revolving Doors Agency (2003) 'Working Together?', London: Revolving Doors Agency

GENERAL COMMENTS

Data-sharing

34. We believe that the issue of data-sharing requires extremely careful consideration. We appreciate that it is essential to have data-sharing mechanisms to enable service providers to work effectively, but there is a correlative duty to ensure that there are robust measures in place to protect the personal information of offenders.

35. Many of our service users view data-sharing amongst statutory agencies with suspicion because they do not feel in control of their own information and fear that this will lead to negative consequences for them. As ownership of the process is key to empowerment of the service user, which in turn is key to that individual engaging fully with the process of reducing re-offending, it is critical that they feel in as much control of the information-sharing process as possible, otherwise they will not engage with the system. For example, increased data-sharing powers could result in offenders withholding critical information for fear that it will be misused by services.

As a preliminary stage in responding to this highly problematic area, we recommend extensive consultation with service users. Our initial soundings indicate that service users' consent to information-sharing should be sought wherever possible.

Regulation, monitoring and accountability

36. It is critical to highlight the fine line between efficiency and value for money, and cost-cutting.

37. We strongly recommend that measures are put in place to ensure minimum quality of service provision and avoid a race-to-the-bottom. In practice, this means clear obligations in contracts, which are *enforced*, clear accountability structures, and clear complaints channels.

38. There are two issues that we would like to draw attention to in particular:

- (1) There is a concern about the adequacy of existing complaints procedures. The recent report of the Prisons and Probation Ombudsman notes that out of 269

probation complaints in 2004-2005, only 40 were eligible. Moreover, “[g]iven that the main reason that complaints have been ineligible is that the National Probation Service complaints procedure has not been completed, it is worrying that in many cases complainants have not known how to go about complaining. It is especially disturbing that this situation still exists when the National Probation Service complaints procedure has been in force since September 2001”³.

39. As the potential for fragmentation of service delivery increases, the need for basic service standards is essential to ensure consistency in service delivery and minimise the likelihood of a postcode lottery.

Service providers should not be allowed to underestimate the seriousness of the statutory responsibilities incumbent upon them when delivering probation services.

Legal Accountability

40. There is a serious question about the legal accountability of service providers under the commissioning structure. Whether the court will be able to review the decisions of a private or voluntary and community sector service provider is an open question, but as Vincent-Jones points out, this is likely to be “beyond judicial interpretation and development, and requires legislation⁴”.

41. He also states that “[t]he effect of contractualisation has arguably been to undermine the legal protection of both the public interest in good administration, and the more particular interests of individual citizens directly affected by decisions or the quality of services. While the problem is not peculiar to human services, it appears especially acute in this sector due to *the frequently vulnerable position of service*

³ ‘Prisons and Probation Ombudsman for England and Wales Annual Report 2004-2005’, London: Home Office

⁴ Vincent-Jones, P. ‘Citizen Redress in Public Contracting for Human Services’, (2005) 68(6) M.L.R. 887-924

recipients and the significant impact on their life chances or living conditions'⁵ [emphasis added].

42. Our concern arises from the worry that in the field of human services, there is a need to protect access to public law remedies by service recipients, particularly quashing orders and orders to re-take decisions. The tortious remedy in damages for breach of statutory duty is not adequate, being of its nature compensatory.

43. If legislation protecting recourse to judicial review is not forthcoming, there is an ever more compelling argument for state regulation setting and enforcing minimum standards.

The importance of legal accountability cannot be overlooked. The risk that it may be diluted must be guarded against in the most robust way.

Reducing re-offending

44. We understand that the definition of 'reducing re-offending' has not been finalised. Revolving Doors Agency would welcome the opportunity to be consulted on this subject in future. We are particularly concerned, in relation to probation services, that targets be formulated in light of the holistic development of individual offenders. This is particularly important in relation to the ability of the NOM and ROMs to co-commission. There is a danger that offenders could be shifted away from the criminal justice system simply to become somebody else's problem e.g. migration into mental health services.

45. Before leaving this issue, Revolving Doors Agency notes that the most vulnerable and needy individuals in our society have been consistently failed by the criminal justice system and have always formed the percentage of people who do not escape the cycle of crime, no matter which system has been in place. The impact of the reforms cannot therefore simply be measured in percentage terms. The touchstone of success should be whether or not these reforms change the lives of society's most vulnerable and needy. Methods of assessing impact on this group should therefore be built into monitoring and evaluation tools.

⁵ *ibid*

Revolving Doors Agency would welcome the opportunity to comment on the definition of 'reducing re-offending' in future.

Potential for gaps

46. Revolving Doors Agency wishes to highlight three potential areas where gaps could form as a result of re-structuring.

(1) It will be easier for service providers to meet targets if they work with compliant offenders. Services for the most difficult to engage are therefore likely to be unpopular. The public sector should therefore ensure that it is adequately resourced to fill this gap.

(2) Services for foreign nationals liable to be deported on release are also at risk of being neglected. To ensure that their needs are addressed we would support national commissioning of services for these individuals.

(3) Unless it is very clear which service providers have responsibility for which individuals, there is a danger that some individuals with multiple needs will be passed between services and needs will go unaddressed e.g. a client with a mental health problem and a drug addiction: mental health services may require the addiction to be addressed before treatment can commence; drug agencies may see the addiction as a response to the mental health problem and require that problem to be addressed before drug treatment can commence.

NOMS must endeavour to identify potential gaps resulting from restructuring and adequately resource the public sector such that it is able to close those gaps.

Service-user involvement

47. Revolving Doors Agency, having spent some time developing our own user-involvement strategy, would encourage the participation of service users on a consultancy basis and would welcome the opportunity to comment on this

further in future. This is supported by Vincent-Jones who says that “empowerment strategies should be directed at increasing the influence of service recipients on all aspects of the contractual process, including standard-setting, provider selection, determining the trade-off between price and quality, monitoring delivery, sanctioning poor performance, and the resolving of performance problems”⁶.

Revolving Doors Agency would welcome the opportunity to comment on service user participation in future.

CONTACT

Kelly Bond (author)
Policy and Information Officer
t. 020 7553 6077
e. kelly.bond@revolving-doors.org.uk

Chandra Fowler
Head of Policy, Research and Participation
t. 020 7553 6060
e. chandra.fowler@revolving-doors.org.uk

Units 28 and 29
The Turnmill
63 Clerkenwell Road
London
EC1M 5NP

t. 020 7253 4038
www.revolving-doors.org.uk

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⁶ *ibid*