



Just Results

Payment by Results in Community Sentencing
July 2012

**MAKE
JUSTICE
WORK**





Acknowledgements

Make Justice Work would like to thank all of the participants who attended *Just Results* for their valuable contributions to the various discussions which took place.

Particular thanks go to the following people; Dr Greg Parston, Alasdair Liddell CBE and Dr Henry Kippin of the project team; the advisory group; David Barrie CBE, Graham Beech, Toby Eccles, David Harrison, Jacque Mallander, and Mark Woodruff.

We remain deeply grateful to our major funders: the Ruskin Foundation, the Monument Trust, the Lankellychase Foundation, and the Esmée Fairbairn Foundation.

The Paul Hamlyn Foundation was also very generous in providing a venue for the event.

Foreword

In March 2012 the Ministry of Justice (MoJ) published a consultation document - Punishment and Reform: Effective Community Sentences which revealed that Ministers were committed to the rapid adoption of PbR:

We aim to apply the principles of payment by results to all providers of offender services by 2015. We are testing the approach through a series of initial pilots. Pilots have already started in two private prisons, with two more, in public sector prisons, to follow in 2012. Two further pilots focus on offenders in the community, under the management of the Wales, and Staffordshire and West Midlands Probation Trusts, and are being developed in line with our wider proposals for reforming probation services...The pilots will begin in 2013, and run for up to four years. ...Each of the two pilots will be the subject of an independent evaluation, and the lessons learned will inform our strategy for applying payment by results principles more widely to offender services.¹

This is a radical new departure. PbR has never yet been applied to the delivery of community sentences in the UK or anywhere else, and no one knows for sure how it will work. Participants in *Just Results*, however, agreed that it would be far from easy to make it work successfully. The success of the government's promised 'rehabilitation revolution' will depend, in large measure, on the outcomes of this experiment. Much is therefore at stake.

In May 2012, Make Justice Work (MJW) brought together 30 leading experts to explore in an open-minded and constructive spirit the challenges of applying the principles of Payment by Results (PbR) to the delivery of community sentences. The group did not identify any difficulties that were in principle insuperable, but the report reveals many potential problems, some of which could have serious consequences if not managed effectively.

The report

At the heart of the *Just Results* report are nine interlocking operating principles all of which, in the view of the participants, must be applied if the use of PbR in community sentence provision is to have any chance of success. The principles are not a menu from which a selection can be made.

MJW strongly believes that an independent inspectorate should be established to ensure that any new PbR system operates in accordance with these principles and delivers the results that the public want. An independent inspectorate will help to ensure that proper mechanisms of quality assurance are in place, and that outcome data are robust and reliable, and properly shared.

MJW, however, has a number of serious concerns:

- The government's present plans appear not to allow sufficient time for the necessary experimentation and fine-tuning. The proposed pilots do not start until 2013. It will not be possible fully to assess their success in reducing reoffending before they are completed in 2017. We therefore strongly urge the government to reconsider the timetable to which it is currently committed.
- We question the wisdom of relying on a single 'binary' outcome measure. Rehabilitation is a complex and usually gradual process, and the needs of offenders vary greatly. Effective community sentences of the kind that MJW has identified (see our report *Community or Custody*) are tailored to the needs of the individual and call for great flexibility.

¹ <http://www.official-documents.gov.uk/document/cm83/8334/8334.pdf>

- We are concerned that some outstandingly effective existing service-providers with limited access to working capital may not be able compete successfully in the new PbR market. If the new system were to be dominated exclusively by a small number of large private sector providers, much valuable specialist expertise might be lost and the range of services on offer might be seriously reduced. Steps therefore need to be taken to protect smaller players.

In short, MJW is deeply concerned about the haste with which the government is moving to introduce PbR to all community sentence provision, and foresees a number of serious pitfalls that must be avoided if the new system is to have any chance of successfully reducing crime levels. It therefore calls on Ministers to extend the proposed timetable and to adopt the nine operating principles set out in the report.

Make Justice Work
July 2012

Contents

- 1.0** Executive Summary
- 2.0** Introduction
 - 2.1** The Event
- 3.0** Stakeholder Perspectives
- 4.0** The Operating Key Principles
- 5.0** Appendix 1: Swot analysis
- 6.0** Appendix 2: Outcome from group
- 7.0** Appendix 3: *Just Results* Participants
- 8.0** Appendix 4: Biographies of public service advisers Alasdair Liddell CBE and Dr Greg Parston, the facilitators of *Just Results*

1.0 Executive Summary

The Ministry of Justice has proposed a system of Payment by Results (PbR) for providers of community sentencing. The stated aim is to achieve a reduction in re-offending through the development of new service payment incentives, potentially leading to greater use of community sentencing. But there are important issues that need to be carefully managed if the new system is to succeed.

Make Justice Work (MJW) was keen to explore how PbR might work and consider the challenges posed by it. To that end, MJW held *Just Results*, a one-day meeting of 30 experts from the fields of criminal justice and social finance to consider how the PbR system in community sentencing must work if it is to meet the multiple objectives of achieving intended outcomes, ensuring equity and fairness, meeting the needs of offenders and victims and creating an efficient and sustainable market of commissioners and providers. A list of participants is at Appendix 3.

The expert deliberation and negotiation produced a set of nine key operating principles that participants recognise as necessary for PbR in community sentencing to succeed. In brief these principles are:

- **Focus on Outcomes**
The ultimate goal is to make life safer for everyone. The focus of PbR is currently on reducing reoffending, but other outcomes, particularly reducing crime, are also important
- **Integrated Services**
Service provision must embrace agencies outside the traditional criminal justice system to address the underlying causes of crime.
- **Personalised Services**
Providers need the flexibility to tailor packages of support that reflect the individual needs of offenders, victims and communities.
- **Equity of Outcome**
Addressing the needs of offenders of all kinds must be a goal.
- **Procedural Justice**
All aspects of the management of offenders and victims under PbR must be fair and transparent.
- **Effective Communication**
Good communication is required, focused on building the confidence of sentencers and the public in community sentencing.
- **Quality Assurance**
Independent outcome data and effective quality assurance are required, but inspection and regulation must be as light as possible.
- **Innovation**
Structures of provision and service delivery must be agile and flexible, allowing for innovation and learning, and tolerating some failure.
- **Value for Money**
Value for money must be measured by success in achieving outcomes and not simply in reducing costs.

This publication reports on the day and the key principles which emerged must be addressed in implementing PbR in community sentencing.

2.0 Introduction

Advocates of community sentencing are passionate about its effectiveness, but also recognise the barriers to its wider use. Public and media perception often regards community sentencing as a 'soft option'. Yet there is evidence to suggest that some offenders prefer short term prison sentences to effective community sentencing, because prison does not require individuals to address the causes of crime, the consequences of their actions, and their role within the community and how it could change.

Although details of the Ministry of Justice's proposal for PbR in community sentencing are not yet finalised, under the new scheme it is likely that providers of community sentencing would be paid a partial fee for provision of the community sentencing service to a particular group of offenders, at the time it was provided, with a balancing payment after an interval of time, determined by the rate of reduction in re-offending achieved within that group.

The policy objectives of this new initiative are to reduce re-offending, reduce the costs of rehabilitation and transfer financial risk to providers, all in a manner that adheres to high standards of equity, fairness and probity and allows providers to remain financially sustainable. Meeting these objectives depends on obtaining clarity about appropriate measures of performance and time scales.

The new system may produce beneficial results but there can also be unintended and unwanted consequences if key issues are not carefully managed. These include risk transfer, financing, community reactions, measures of success, savings realisation, and moral hazard, among others.

MJW, which advocates wider use of intensive community sentences for lower level crimes, believes that it is essential to understand these issues properly in advance of policy implementation, so that the opportunities of the new system can be maximised and perverse effects can be avoided.

PbR might work in different ways in different settings and, indeed, might vary over time in the light of experience. There are also multiple objectives and stakeholder interests to consider. However what should be constant is a set of underlying principles that would define what success might look like, irrespective of the detailed operational arrangements.

2.1 The Event

On 25 May 2012, Make Justice Work held *Just Results*, a one-day event gathering 30 experts from the fields of criminal justice and social finance to explore how the PbR system might work in community sentencing and to develop a set of key operating principles to guide implementation and performance. Public service advisers Alasdair Liddell CBE and Dr Greg Parston designed the event and facilitated discussions on the day.



Just Results began with a discussion aimed at creating common understanding among all participants about how PbR might work in the context of community sentencing. We sought to highlight key challenges and opportunities for further exploration during the course of the day.



The output of this first discussion can best be represented as a series of stakeholder perspectives on how the current system of community sentencing works or fails to work and, in some cases, how PbR could alter that. The perspectives of ex-offenders, magistrates, police, mental health and social services providers, private sector providers, the public, financiers, and economists are set out in Section 3 of this report.

This was followed by a SWOT (strengths-weaknesses-opportunities-threats) analysis reflecting a common view about what needed to be addressed in implementation of PbR and what tools were or were not available to help make the proposed policy a success. The result of the SWOT analysis is presented in Appendix 1.

Many of the issues discussed in these initial sessions grouped into four key areas of performance related to community sentencing:

- **Outcome**
How do we reduce re-offending and address the underlying causes of crime using PbR?
- **Equity**
How do we ensure probity and universality, while avoiding gaming and cherry-picking?
- **Choice**
How do we ensure interventions are tailored to the specific needs of the offender, while reducing the costs of rehabilitation?
- **Providers**
How do we transfer/share risk with providers but ensure they remain financially viable?

Participants were assigned to work in four small facilitated groups to consider what had to be done to ensure success of PbR in community sentencing, in relation to each of the four areas of performance. Subsequently these groups came together - first in pairs, and then in plenary - to decide which of the principles were most important to achieving success across all four areas of performance.

It was agreed that PbR in community sentencing could only succeed if it was implemented within the framework of the resulting set of nine key principles. These are set out in Section 4.

3.0 Stakeholder Perspectives

The perspectives set out below reflect discussion in the opening session of *Just Results*, which was designed to provide a context for the work in developing a set of operating principles to guide - and evaluate - the implementation of PbR in community sentencing.

The Magistrate

Magistrates know that short custodial sentences are too frequently handed down, even though they do not address the underlying issues behind criminal behaviour. The problem is partly about public perception, which is fixated on the balance between leniency and severity. This is frustrating for magistrates, and there is a feeling that public education is needed to shift the debate towards effectiveness and 'what works' for people on the ground.

Many magistrates feel constrained by codified guidelines (e.g. via the Coroners and Justice Act 2009), which have effectively become fixed 'tramlines' that shape decision-making and tend to encourage custodial sentencing decisions. We need to see more flexibility, innovation, better training, and decisions made on the basis of personal judgement and a holistic view of the offender, his/her actions and his/her needs. PbR has the potential to unlock some of this, but we need to be careful about how it is implemented. Fundamental to our approach must be awareness that sentencers must have confidence in the effectiveness of the interventions they sanction. Whatever it is - community or custody - it must be seen to work.

The Former Offender

Short-term prison sentences do not address the underlying issues, which are social, psychological, and practical (no probation support is offered on release to prisoners serving sentences of less than one year). This is reflected in the high rate of recidivism - many people would prefer to be in prison than face the challenges of a tough community sentence. It is a much easier option for people to do their time, come back out and - perhaps despite their best intentions - fall back into the same social networks and destructive patterns of behaviour as before. Offenders sentenced to less than one year in prison receive little or no support when they re-enter the community, a difficult process of adjustment that many find hard to negotiate successfully.

Effective community sentencing helps to create new bonds of trust that can build a way out of trouble for ex-offenders. A close relationship with a probation officer can be the gateway to a range of services - such as housing, peer-mentoring and skills - in addition to the obvious punitive element to a community sentence. The trust relationship is key, both in terms of the likelihood that an individual will go through a sentence and stay 'clean', and in terms of the family and the broader community's acceptance of wrongdoing and engagement in the rehabilitation process.

The Police

The police are the entry point to the CJS, with considerable pre-sentencing powers and the ability to shape the initial journey of offenders through the system. We are already seeing big changes in the way the police work - they are often already critical players in local partnerships, and the forthcoming elections for Police and Crime Commissioners could well play a visible and vocal role in setting the tone for the way sentencing and inter-agency collaboration works in an area. This means there is big potential to create better relationships and a possible re-balancing towards community sentencing.

Restorative justice is increasingly recognised as a powerful tool to reduce reoffending and mend relationships - bringing together victims and offenders in a way that recognises the seriousness of the crime, and addresses its impact on people, families and the wider community. This is far from a soft option. Many offenders prefer prison rather than facing up to the impact of their actions.

The Mental Health/Social Service Provider

The needs of people entering the CJS are typically complex and multi-layered. Interventions that work - that help rehabilitate and change people's lives - usually reflect this complexity. They are about being understood, and about creating positive relationships. The risk with PbR is that it may create market mechanisms that cannot easily address this complexity and may result in standardised processes that do not adequately reflect the textures of individual need.

The flipside of this is the potential to give providers the freedom to innovate in how they achieve the outcomes. Areas such as drug treatment have traditionally been heavily moralistic, and government has consequently been quite prescriptive of intervention processes. PbR has the potential to reverse this and embed a principle of 'what works', with agencies integrating functions and budgets around this front-line innovation.

If implemented successfully, a PbR regime in community sentencing could bring in a whole new range of providers and relationships around the needs of the client. Particularly exciting is the potential to integrate across CJS and non-CJS agencies, as well as within the sector and within organisations themselves. PbR creates the potential to do things in different ways, spending money outside of traditional boundaries and getting much more joined up solutions.

The reality is, however, that PbR in this area is untried and untested, without any real evidence base and within a context of extreme resource pressure, which could put pressure on pricing and drive the market away from tailored, specialised interventions and towards the lowest common denominator.

The Private Sector Provider

Private sector providers are feeling their way as much as anyone else in the system, yet they know something about what works (and what does not) from the Work Programme and experiences to date with Doncaster and Peterborough prisons. In a broad sense, PbR based on a binary measure - such as offending or re-offending - is a real shift in mindset towards thinking about how the sector can avoid offenders 'falling off a cliff' - by helping them re-integrate into their communities and stopping the cycle of rapid reoffending following discharge from prison. There is a sense that, although their bottom line is inevitably financial, providers recognise they have a strategic interest in finding ways to make this work for the benefit of the system. Larger private sector players can have a key role - bridging the revenue gap as they partner with smaller organisations, and accepting the necessary downside financial risk that makes the whole system work. Yet pricing policy is vital and it cannot be focussed on solely reducing costs.

The Public

Austerity and cuts are an opportunity to push both community sentencing and the introduction of PbR, but there is still work to do in terms of winning the public and media debate. PbR is intellectually attractive, but the public are understandably suspicious of the profit motive, and as the Welfare to Work arena demonstrates, good practice in this area is difficult to achieve.

Public debate about crime is generally conducted in very crude terms, but the territory is very complex. For example, crime and reoffending are distinct concepts with distinct measurements

and causality. Crime can decrease whilst reoffending increases, and vice versa. Our own understanding needs to reflect this.

The question is whether PbR in community sentencing can help shift the tone of public discussion and push the debate toward effectiveness. Three factors are seen as key: first, communicating the fact that incarcerating people does not reduce reoffending in the short term; second, 'shifting the gravity' of the CJS away from custodial sentencing; and third, thinking about the CJS as a whole, and beyond that, integrating the CJS with all the relevant social and welfare services. PbR can be a tool to begin shifting traditional perceptions towards a broader perspective, less fragmented within the separate 'silos' of prison, community, mental health, and drug and alcohol dependency.

The Financier

PbR should be seen in a context of reform and austerity. It is a means to create new ways of doing things when upfront public investment in community sentencing is not forthcoming, and where reductions in public spending are inevitable. It is a means to create an investment market where none previously existed, and it has the potential of fostering innovation and creativity by encouraging a focus on doing what matters to achieve the desired outcomes and by allowing service integration to occur around this principle.

PbR will only prove effective if the pricing issue is openly addressed. A cost-cutting/under-pricing agenda could seriously undermine PbR in community sentencing, as it could create incentives to think conservatively and minimise risk, squeeze smaller players out of the market. If a PbR agenda is to avoid 'parking', 'cream-skimming' and 'cherry-picking', it needs to be accompanied by a broader debate about the balance of resources currently allocated between custodial and non-custodial justice.

The Economist

Evidence from comparable international systems (such as accountable care organisations in the US) suggests that, where PbR goes wrong, it is because outcomes are too narrow and it encourages 'gaming' of the system. For PbR to work in community sentencing, we need to ensure the right balance between breadth (broad enough to allow innovation and creativity), and specificity (specific enough to be measurable and accountable). This is not only vital to the way the system works in the medium term, but also to the perception of return on investment for charitable trusts and social investors over the long term.

Information and incentives are vital cogs in the system. The incentives of providers must be aligned right down the value chain, or smaller providers will be quickly driven out of the market, reducing innovation and diversity. Information systems must reflect the breadth of interventions, some of which will take place outside the criminal justice system, with costs and benefits accruing to a wide range of different organisations. This makes accessible cross-jurisdictional information vital, both in terms of sustaining market diversity and fertility, building public trust and developing a responsive and realistic pricing policy.

¹ Cream-skimming/Parking - When those least likely to achieve the result, or whose needs are too costly and complex to address - and therefore those most needing state interventions - are ignored by providers seeking to win the financial result. Cherry picking - When individuals with whom it is easiest to obtain results are prioritised on a basis of what is most financially valuable to the provider, rather than socially valuable to the individual.

4.0 The Key Operating Principles

Implementing PbR in the criminal justice system (CJS) will be complicated. The intensity and effectiveness of community sentencing is inconsistent. Most problematic is the amorphous nature of community sentencing interventions, which may cut across traditional public service and budget lines and pose a challenge to traditional methods of sentencing and accountability. Effective community sentencing creates greater opportunity to manage offenders holistically and according to their personal and family needs.

The rationale behind the new policy of PbR is to shift emphasis to paying service providers on the basis of measurable outcomes, creating new delivery chains that shift a proportion of financial risk (and potential reward) to providers. It is underpinned by a confidence in the merits of focusing on outcomes and less on inputs/process, thereby unlocking innovation and creating new markets for social goods.



The discussion and debate between the expert participants of *Just Results* produced a set of nine key operating principles that we believe are necessary for PbR in community sentencing to serve communities, offenders and victims well, and to reduce crime and re-offending.

This will only happen if the system achieves its intended outcomes, ensures equity and fairness, addresses the specific needs of offenders and victims and create a well-working efficient, innovative and sustainable market of commissioners and providers.

We believe that successful delivery of community sentencing with PbR will require adherence to these principles:

1. Focus on outcomes

All stakeholders must be clear that the ultimate goal is to make life safer for society as a whole. The focus of PbR is currently on reducing reoffending, but reducing crime can be equally or - to the public - even more important. Stakeholders (including commissioners of services) also need to be mindful of other outcomes such as public protection, reparation, rehabilitation, deterrence and punishment.

2. Integrated services

Effective management of service provision must extend beyond the agencies of the traditional criminal justice system if it is to address the underlying causes of crime. Key to this is recognising the diversity of services involved (e.g. housing, employment, education, mental health and substance abuse services), and the need to encourage creative partnerships that integrate services across sector and functional boundaries, focusing on the specific needs of offenders.

3. Personalised services

Providers need the flexibility to tailor packages of support that reflect the individual needs of offenders, victims and communities; intervention 'packages' must be created around what offenders need in order to turn their lives around. This may be contingent upon the ability of smaller, bespoke service providers to operate successfully within the market system; mechanisms are needed to protect them and the contribution they can make.

4. Equity of outcome

Equity of outcome across different groups must be a goal. The differentiated needs of gender, ethnicity, geography, age, severity etc must be respected and reflected in the way interventions are designed. In practice this could mean differentiated measurement, inspection and pricing policies across these groups. For some groups, PbR may not be an appropriate mechanism.



5. Procedural Justice

The process of justice is important, as well as the outcomes. Procedural justice ensures there is fairness and transparency in the processes by which decisions are made. Offenders must be treated with respect and fairness; they should understand what is happening to them at each stage of the process and be assured that undertakings will be honoured. There must be a fair balance between the interests of offenders and victims, ensuring both are treated with dignity throughout the process. This will require mechanisms to reflect offender views, light touch inspection regimes, staff training and embedding a principle of co-design.

6. Effective communication

Good communication is required, focused on building the confidence of sentencers and the public in community sentencing. Magistrates and judges need flexibility and the understanding of what works in order to apply it. This means that partnership and information sharing is vital within the system - particularly around outcome measurements. This should lead to a criminal justice system where only people who need to be in prison are in prison. Failure to share information is a key risk.

7. Quality assurance

Independent outcome data and effective quality assurance are required, but inspection and regulation must be as light as possible. New mechanisms of quality assurance must be put in place by service providers under the oversight of inspectors. The system should assess the levels of offender and victim feedback and satisfaction throughout the process. Sentencers should have sight of better information as well. In order to improve the levels and types of support for people on short-term sentences and during the community re-integration process, conditions have to be right for good relationship-building through integrated provision.

8. Innovation

Structures of provision and service delivery must be agile and flexible, allowing for innovation and learning. We need a diverse and efficient market for community interventions that supports service providers, encompasses a mature approach to the inevitability of some failure in risk-based systems and encourages lessons to be learned, but that also retains the confidence of the police, politicians, magistrates and others in the CJS

9. Value for money

Value for money must be measured by success in achieving outcomes and not simply in reducing costs. PbR must be developed in a way that creates the means to improve or sustain outcomes within a context of budget cuts through more effective deployment of resources within (and outside) the system. The market mechanisms need to be designed to allow providers to innovate to improve outcomes, but also reduce their own cost base.

In addition, a number of important questions and observations emerged in the small group negotiation that merit consideration by policy implementers:

- How can we allow human intelligence to flourish in the system - creating a PbR/ community sentencing system that listens, learns and adapts?
- How can we create the best mechanisms for engaging sentencers in these issues, and for giving them prompt and accurate feedback on effectiveness?
- We need to acknowledge the political limitations - should we be advocating a kitemark or independent inspectorate? More generally, how can we ensure public protection in a system which represents a fundamental shift in the way the Government commissions offender services?
- We need fixed-price contracts and procurement processes that protect small providers - to guarantee service quality, and to learn about effectiveness and quality. It is vital that the system is protected from dominance by a small number of large players.
- We need a core principle to drive up diversity in the market (not only focusing on price), giving enough lead-in time for smaller providers to build a funding and operational base.
- Clarity about the appropriate outcome is needed - a balance between homing in on a single binary measure, and broadening out to reducing crime within a demarcated area. How can we develop a system that keeps in mind the complexity of some cases, which necessarily means fostering the smaller market players that can create the right kind of provider-offender relationships?
- Concern over the balance between procedural justice and over-bureaucratising the system. How do you create the means to regulate and inspect effectively without creating a shadow process management system that outcome-commissioning is trying to leave behind?
- How much process can you embed within an outcome-based contract? Perhaps this is about publishing a set of clear, measurable objectives with a light touch regulatory framework?
- Measurement and accountability at the programme level - which elements should be subject to inspection? Are there elements of the community sentence process that are simply not suited to PbR if we don't want to end up with compliance contracts for hundreds of procedural elements?

5.0 Appendix 1: Swot analysis

Participants were asked to reflect - first in small groups, then in a plenary session - on the opportunities and challenges (or threats) that PbR will present to the workings and capabilities of the current system. They were also asked to identify the strengths and weaknesses of the current system to seize those opportunities and to parry those threats.



The purpose of this SWOT (strengths-weaknesses-opportunities-threats) analysis was to provide all participants with a common view about what needed to be addressed in implementation of PbR and what tools are or are not available to help make the proposed policy a success.

The discussion reflected a sense of excitement about the potential of PbR to spur a greater emphasis on community sentencing, but also realism about the difficulty of implementing a relatively untested

mechanism on an already complex sector. Participants identified a big opportunity for PbR to encourage cross-jurisdictional working and more innovative commissioning across a broader spectrum of social, behavioural and punitive interventions. By focusing on the outcome, participants saw the potential of breaking down barriers to create much more socially productive relationships between citizens, probation officers and personalised services. Many identified creativity, highly trained staff and good practice as vital ingredients of any effective system. PbR, it was argued, offers an opportunity to develop this strength and drive better outcomes for offenders and the wider public.

Realism and scepticism focused on the ability of policymakers to get the payment mechanism right, the obvious threats to small-scale provider organisations, and the ability of commissioners to push beyond the lowest common denominator and genuinely innovate. The confluence of these factors would, it was suggested, create an unsustainable PbR market that risked inhibiting front-line innovation, and even undermining the community sentencing agenda as a whole. Several participants felt that the PbR policy agenda has some way to go in order to alleviate these threats and weaknesses.

OPPORTUNITIES

A more integrated approach to community sentencing

A chance to commission something that works

Unlocking the potential of experimentation

Shifting public debate towards “effectiveness”

Enabling new/small provider entrants

Promoting use of evidence (data sharing - what and why)

Increasing user voice and experience of the victims

Increasing confidence of sentencers

THREATS

Loss of political buy-in and risk of PbR becoming a political football

Political haste to implement

Price value to departments reinforcing tendency to work in silos

Profit motives affecting relationships between provider and offender

Damage to small providers

Individual providers treating successful interventions as their own intellectual property

Stifling of user voice

Gaming of the system undermining outcome equality

Cherry picking/cream skimming distorting the market

STRENGTHS

Some excellent practice in the system

Workforce that is largely committed and well trained

Greater consensus about the need for change

Some evidence and understanding about what works (eg, desistance)

The system is already being opened to interrogation

Existing pilots and learning to inform policy development

Shared and understood objective of the CJS: to reduce crime

Some media sympathetic to sentencing reform and PbR

WEAKNESSES

Poor procurement procedures

Scepticism of workforce towards new models (partly as a result of over-professionalism)

Poor dissemination of good practice

Weakness in commissioning structures

Poor coordination between PbR initiatives across government

Not enough satisfactory measures of effectiveness

Misalignment of crime and reoffending figures

Over-focus on a single metric – (reducing re-offending)

Lack of clarity about who is the customer – taxpayer, MOJ, offender, victim, community?

6.0 Appendix 2: Output from groups

The four areas of performance

The nine key operating principles emerged from discussion and negotiation between participants in four groups that looked separately at one of the areas of performance: outcome, equity, choice and providers. Referring to the SWOT analysis, participants discussed three aspects of performance:

- What value or benefits needs to be produced and for whom?
- What structures or system components need to be put in place in order to ensure success?
- What processes, actions or regulation need to be in play in order to ensure success?

The principles for all four areas of performance follow.

OUTCOMES Group: working principles

How do we reduce reoffending and address the underlying causes of crime using PbR?

There is a need to recognise that a richer mix of objectives than simply reducing reoffending is required. For example, the combined objectives of the criminal justice system (in statute) are punishment, protection of the public, reducing re-offending, reparation and deterrence. A broader view means that, for example, hours of unpaid work in the community could be used as a metric for reparation.



The system must acknowledge that there will be some failures. This is about encouraging a culture of self-awareness and reflexivity around what does-and-does not work within the system. The law needs to be flexible around the number and severity of breaches, for example.

Magistrates and judges need flexibility and clarity over what works. This means that partnership and information sharing is vital. This should lead to a criminal justice system where only people who need to be in prison are in prison. That will require better

sentencing, and more flexibility for better-trained magistrates, district judges, police and probation officers. Probation liaison committees should be statutory.

The system must encourage integration and clustering of services. This means looking for opportunities to form clusters of services focusing on different objectives, but with operational overlap. Key to this is recognising the diversity of services involved (e.g. housing, employment).

CHOICE Group: working principles

How do we ensure interventions are tailored to the specific needs of the offender, while reducing the costs of rehabilitation?

Intervention 'packages' must be created around what people need. The system must allow providers the flexibility to tailor packages of support that reflect the individual needs of offenders, victims and communities.

Interventions must prioritise effectiveness in reducing re-offending over punishment. The pre-sentence report is crucial here, as an entry point for restorative justice and other community-based techniques. Good information for sentencers is essential to ensure that effectiveness (not cost or ease of dispensation) is the deciding factor. The system must engage the enthusiasm of sentencers. Probation officers and sentencers must work together to create the most effective ways of rehabilitating offenders and sustaining confidence in reducing re-offending. This will require better feedback to the courts and more emphasis placed on pre-sentencing relationships.

New mechanisms of quality assurance must be put in place. The system should assess the levels of offender and victim feedback/satisfaction throughout the process. Sentencers should have sight of better information as well. In order to improve the levels and types of support for people on short-term sentences and during the community re-integration process, conditions have to be right for good relationship-building through integrated provision.

Mechanisms are needed to protect small providers that can deliver tailored services. Much of the above is contingent upon the ability of smaller providers of such services to operate within the system. Random trials/testing could be used to ensure 'good' market behaviour (reducing cherry picking etc).



EQUITY Group: working principles

How do we ensure probity and universality, while avoiding gaming and cherry-picking?

Procedural justice, which ensures that there is fairness and transparency of the processes by which decisions are made, must be maintained. Offenders must be treated with respect and fairness; they should understand what is happening to them at each stage of the process and be assured that undertakings will be honoured. The process of justice is important, as well as the outcomes. This will require mechanisms to understand offender views, light touch inspection regimes, staff training and embedding a principle of co-design.

Procedural justice is equally important for victims. There must be a fair balance between the interests of offenders and victims, ensuring both are treated with fairness and dignity throughout the process. This is about making sure victims are treated with respect and commitments to them are honoured.

Reasonable adjustments and freedoms must be allowed for providers to tailor programmes to the needs of individuals and to be flexible about what interventions will best achieve the core outcome of reducing reoffending.

Equitable outcomes across different groups must be a goal. The differentiated needs of gender, ethnicity, geographic, age, severity etc must be respected and reflected in the way interventions are designed. In practice this could mean differentiated measurement, inspection and pricing policies across these groups.

The system must address the underlying causes of crime, advocating interventions that understand and deal with them. This could be realised through an emphasis on co-design.

PROVIDER Group: working principles

How do we transfer/share risk with providers but ensure they remain financially viable?

Current gaps in provision must be plugged using the PbR mechanism to improve the 'reach' and effectiveness of criminal justice system provision and community sentencing in particular.



The system must deliver improved outcomes. New market mechanism must drive better and more innovative practice to achieve identifiable outcomes of reducing re-offending.

Better value for money must be achieved. This is defined as 'budget constrained allocative efficiency' - i.e. a mechanism that creates the means to improve or sustain outcomes within a context of budget cuts through more effective deployment of resources within (and outside) the system.

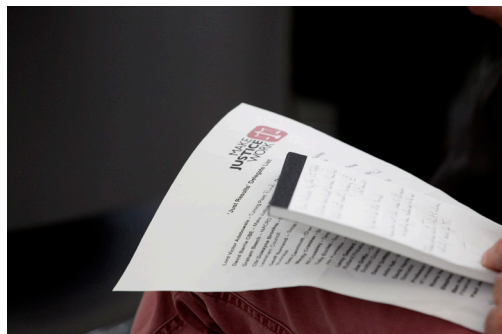
The system must result in lower cost to both commissioners and providers. This will require the creation of market mechanisms that allow providers to innovate to improve outcomes, but also reduce their own cost base. Lower upfront cost to commissioners is already a driving principle of other PbR-focused reform.

The application of PbR must encourage systemic and operational integration. Market players/providers must be allowed and encouraged to integrate across functions and traditional organisational boundaries in order to reduce re-offending more effectively and at lower cost.

Good quality information is essential. Effective information gathering and sharing within the system - particularly around outcome measurements - will facilitate a lighter touch regulatory system. Information asymmetries are a key danger to a smoothly working market in this area.

Risk sharing must work across the market. The risk model that underpins PbR cannot be restrictive of creative partnerships between bigger and smaller players, and should not suffocate the market at the outset.

7.0 Appendix 3: *Just Results* Participants



Lord Adebawale CBE - Chief Executive, Turning Point

David Barrie CBE - Chair, Make Justice Work

Graham Beech - Strategic Development Director, NACRO

Liz Cadogan - Grants Officer, Paul Hamlyn Foundation

Wendy Cranmer - Recruitment & Retention Manager, BeOnsite

Ali Crossley - Senior Researcher, The Centre For Social Justice

Toby Eccles - Development Director, Social Finance

Jon Furmston - Trustee, Make Justice Work

Leroy Gatward - Health Trainer, Leicester & Rutland Probation Trust and Recovery Activities Worker, Quality of Life.

David Harrison - Director Global Health Economics, Amgen

Prof Carol Hedderman - Professor of Criminology, University of Leicester

Roma Hooper - Director, Make Justice Work

Ben Hughes - Chief Executive, Community Development Finance Association (CDFA)

Paul Jenkins - Chief Executive, Rethink Mental Illness

Jacque Mallender - Chief Executive, Matrix Knowledge

Clive Martin - Director, Clinks

Diane McAdam - Assistant Chief Officer, Avon & Somerset Probation

Richard Monkhouse - Deputy Chairman, Magistrates Association

Professor Rod Morgan - Professor Emeritus, University of Bristol

Kate Morris - Deputy Chief Executive, Youth Justice Board

Séin Ó Muineacháin - Policy Advisor, Confederation of British Industry

Heather Munro - Chief Executive, London Probation Trust

Adam Pemberton - Assistant Chief Executive, Victim Support

Sir Charles Pollard - Non-Executive Chairman, Restorative Solutions

David Pritchard - Head of Measurement and Evaluation, New Philanthropy Capital

Anton Shelupanov - Senior Planner, Center For Court Innovation

Julie Taylor - Assistant Chief Executive, London Borough of Barnet

Nick Timmins - Senior Fellow, Institute for Government

As an observer:

John Hall - Deputy Director, Offender Management, Ministry of Justice

The Project Team:

Alasdair Liddell CBE

Dr Greg Parston

Dr Henry Kippin

8.0 Appendix 4: Biographies of public service advisers Alasdair Liddell CBE and Dr Greg Parston, the facilitators for *Just Results*

Alasdair Liddell CBE

Alasdair is an independent consultant in health and public service strategy, specialising in system reform, innovation and strategic communications.

His previous career includes twelve years in chief Executive positions in the NHS, and a further six years working at the most senior level in the Department of Health, as national Director of Planning. In that role he had Board level responsibility for NHS strategy, system reform, NHS information and IT and a number of key policy areas. He was a member of the top management board of the NHS from 1988 to 2000, and also has Board experience in both charitable and private sectors.

He was awarded the CBE in 1997 for services to the NHS.

Dr Greg Parston

Greg Parston is a social entrepreneur and an organisation consultant to public, not-for-profit and private enterprises. He is respected internationally in the fields of public service governance, strategy and change.

Greg was Chairman and Chief Executive of the Office for Public Management, which he co-founded in 1988. In 2006, Greg was asked to lead Accenture's global Institute for Public Service Value, where he initiated international citizens' forums on the role of government.

He served three terms on HM Treasury's Public Sector Productivity Panel, co-authoring its reports on motivation and on performance accountability. He chaired the Barrow-Cadbury Commission on Young Adults and the Criminal Justice System and the King's Fund's Working Group on the Supplier Market in the NHS.

Greg earned a PhD as a Marshall Scholar from the University of London and degrees in architecture and economics from the University of Michigan.

Make Justice Work
26a Ganton Street,
London W1F 7QZ

email: info@makejusticework.org.uk
tel: +44 (0)20 3538 8365

www.makejusticework.org.uk

