

**Criminal  
Justice  
Alliance**

# **Delivering Justice**

**The role of the public, private and voluntary  
sectors in prisons and probation**

**Edited by Vicki Helyar-Cardwell**

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This collection of essays is published by the Criminal Justice Alliance. However, the views contained in the essays are those of the authors alone, and not necessarily those of the Criminal Justice Alliance or its member organisations.

## About the Criminal Justice Alliance

The Criminal Justice Alliance is a coalition of 67 organisations – including campaigning charities, voluntary sector service providers, research institutions, staff associations and trade unions – involved in policy and practice across the criminal justice system.

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### Ben Crewe

Ben Crewe is Deputy Director of the Prisons Research Centre at the Institute of Criminology, University of Cambridge. He has published on various aspects of prison life, including staff-prisoner relationships, the drugs economy within prison, the 'inmate code', and public and private sector prisons. His most recent book, *The Prisoner Society: Power, Adaptation and Social Life*, was published in 2009. He is about to undertake (with Susie Hulley) an ESRC funded study entitled 'Experiencing very long term imprisonment from young adulthood: identity, adaptation and penal legitimacy'.

### Helen Edwards

Helen Edwards is the Director General of the Ministry of Justice Policy Group, responsible for major reforms including both rehabilitation and sentencing. Between 2006 and 2008 she was Chief Executive of the National Offender Management Service. Helen has previously led the Home Office's Communities Group, covering the voluntary and community sector, and prior to this was chief executive of Nacro, the national crime reduction charity. She is a Fellow of the RSA and a Non-Executive Director of the Central and North West NHS Trust. In 2001, Helen received a CBE in recognition of her services to offenders.

### Vicki Helyar-Cardwell

Vicki Helyar-Cardwell is Director of the Criminal Justice Alliance. Vicki previously worked for youth justice charity Catch22, as well as for the Transition to Adulthood (T2A) Alliance. She has authored several reports including *A New Start: Young adults in the Criminal Justice System* and *The Young Adult Manifesto*. Vicki has an MSc in Social Policy from the London School of Economics, where she was awarded the Titmuss Prize. Her dissertation explored the relationship between young fatherhood and desistance from crime.

### Susie Hulley

Susie Hulley is a Research Associate in the Prisons Research Centre at the Institute of Criminology, University of Cambridge. She is currently working on outputs from a study of 'Values, Practices and Outcomes in Public and Private Sector Corrections', including a recent publication on 'respect' in prisons (co-authored with Alison Lieblich and Ben Crewe), and will shortly be undertaking an ESRC funded project entitled 'Experiencing very long term imprisonment from young adulthood: identity, adaptation and penal legitimacy', as co-investigator (with Ben Crewe). Susie was awarded a PhD from the University of London in 2008 for her thesis on the perceptions and experiences of anti-social behaviour amongst adults and young people.

### Peter Jones

Peter Jones joined Catch22 as part of a secondment agreement in October 2011 to be the Service Manager of the Alliance Offender Management Team at HMP & YOI Doncaster. Peter is an experienced practitioner and manager having worked with several organisations driving forward new delivery models as part of Government pilots and initiatives. Peter is a Level 5 Chartered Manager after graduating with the Chartered Managers Institute in 2011. In March 2012, Peter was awarded a Butler Trust Commendation by Princess Anne for his inspiring and progressive work with substance-using offenders in the custodial setting.

### **Jonathan Ledger**

Jonathan Ledger became General Secretary of Napo in June 2008. He is Napo's chief negotiator and is the union side Secretary of the National Negotiating Council for the Probation Service. He is a member of the Executive of the General Federation of Trade Unions and a member of the Justice for Colombia National Committee. Jonathan was National Chair of Napo from 2000-2002 when he was appointed the union's Assistant General Secretary with responsibility for negotiations and trade union organisation. Jonathan started his career as a Probation Officer in Hertfordshire in 1984 before moving to London where he worked in Hackney, Camden and Tower Hamlets. He spent some years as a specialist Sex Offender worker and, more generally, worked with high risk individuals in prisons and the community.

### **Alison Liebling**

Alison Liebling is Professor of Criminology and Criminal Justice and Director of the Prisons Research Centre at the Institute of Criminology, University of Cambridge. She has carried out research on suicides in prison, staff-prisoner relationships, the work of prison officers, small units for difficult prisoners, incentives and earned privileges, prison privatization and measuring the quality of prison life. She has published several books, including *Suicides in Prison* (1992), *Prisons and their Moral Performance* (2004) and (with Shadd Maruna) (2005) *The Effects of Imprisonment*.

### **Heather Munro**

Heather Munro was appointed as Chief Executive of London Probation Trust in August 2010. The Trust deals with over 70,000 offenders each year, and over one million hours of Community Payback per year are completed by offenders under probation supervision for the benefit of communities in London. London Probation Trust employs 3,000 staff working across the 32 London boroughs. Heather qualified as a Probation Officer in 1978 and worked for Durham, Hereford and Worcestershire before moving to Leicestershire in 1981. Heather was the Chief Executive of Leicestershire and Rutland Probation Trust from 2004 to March 2010. Heather is the Joint Vice-Chair and Communications Portfolio lead for the Probation Chiefs' Association. She is an Honorary Visiting Fellow for the Department of Criminology, Leicester University.

### **Michael Teague**

Michael Teague is a criminologist at Teesside University, where he is also a member of the Social Futures Institute. He has published work on the masculine cultural perceptions of rapists, American probation and imprisonment, and developing ethnographic research in probation. He is currently researching probation culture in London and the north east of England. Prior to his academic career, he was a probation officer, working directly with probation service users. This experience informs his teaching and research.

### **Gary L. Sturgess**

Gary Sturgess holds the New South Wales Premier's Chair of Public Service Delivery at the University of NSW and the Australia and New Zealand School of Government, based in Sydney, Australia. He was the Cabinet Secretary in the NSW state government in the early 1990s and served as Executive Director of the Serco Institute in London from 2003 to 2011.

### **Chris Wright**

Chris Wright took over as Chief Executive of Catch22 in August 2011 having spent the previous five years driving the operations of the organisation into new areas of provision as both Chief Operating Officer of Catch22 and Operations Director of Rainer, prior to the merger in 2008 with Crime Concern. Before joining the charity, Chris was Head of Performance at the Youth Justice Board (2001-2006) where he led on developing and implementing a performance management framework for the Youth Justice System. He has over 25 years experience within the social care and criminal justice systems as a practitioner, policy adviser and senior manager. In 1999, he established Nottingham's first multi-agency Youth Offending Team.

# A Changing Landscape

Vicki Helyar-Cardwell

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The number of people in the criminal justice system has increased extraordinarily over the last two decades. The focus is often on rocketing prison numbers – quite rightly lambasted as one of the worst features of this extraordinary growth. But, so too have the numbers on community sentences increased over the last two decades; the probation service now manages some 230,000 offenders in the community. This huge increase in scope of the justice system come at a significant financial cost. For example, investment in prisons has increased by nearly 40% in real terms between 2003-04 and 2008-09, from £2.52bn to £3.98bn a year (Grimshaw *et al*, 2010). Despite this, capacity has not been able to meet demand, and as a result the prison system is severely overcrowded. So too in the community, the challenge of high probation caseloads is well known.

As well as questions about whether the size and scope of our criminal justice system, in particular the custodial estate, is necessary and appropriate, to which the answer is surely no, there is also debate about how the government intends to financially sustain the functions of the justice system whilst maintaining historic low crime rates, and what the respective roles of the private, public and voluntary sectors should be in delivering these functions.

Private prisons were first introduced to the UK in the 1990s<sup>1</sup> and represent part of the move from the 1980s onwards towards greater competition across a range of public services. The catalyst for prison privatisation was to address overcrowding, reduce costs and to some degree improve standards (Harding, 2001). The involvement of private companies in building, financing and operating custodial facilities has been endorsed and expanded by the former Conservative administration, New Labour and now the Coalition government. Despite being strongly against private prisons in their time in opposition in the 1990s, once elected, the Labour government, faced by a spiralling prison population, quickly announced that they would be allowing private companies to bid for the running of new prisons, and that existing private prisons would not be taken back into the public sector. A consensus had now been reached amongst the major parties in support of privately-run prisons. Despite this political consensus, there has been a consistent critique, including from academics (Teague, 2010), the penal reform lobby (Neilson, 2009) and sections of the media (Monbiot, 2009).

Following this initial foray in the 1990s, the next major step towards privatization was the establishment of the National Offender Management Service (NOMS) in 2004, with the intention of introducing ‘contestability’ throughout the prison and probation services. The review by Patrick Carter (2003), on which the structure of NOMS was based, argued for ‘greater use of competition from private and voluntary providers’ (p.5), and called for this to

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<sup>1</sup> In 1992 HMP Wolds opened under management of G4S, see [www.hmpwolds.co.uk](http://www.hmpwolds.co.uk)

be extended to existing prisons. It was clear that Carter, and subsequently the Government, envisaged a much greater role for the private and voluntary sector in the criminal justice system, and that the introduction of NOMS was seen as a way of facilitating this.

The second important development was the announcement in 2008 that a number of charities were bidding in partnership with private sector companies for prison contracts. While the voluntary sector has long worked in both public sector and privately-run prisons, delivering services to prisoners, this was seen as a significant change in the landscape. There are now charities and private companies running prisons and delivering large-scale payment-by-results contracts within prisons.

Perhaps the most significant 'step change' has occurred over the last year or so. Although the majority of the UK prison estate is managed by the public sector, there are now currently 14 private or 'contracted out' prisons. Last year Birmingham was the first public sector prison transferred to private sector management, and the government is currently tendering out a further nine prisons. At the same time probation services are being radically reshaped. The majority of probation functions are being competed out, with advice to courts and the management of high risk individuals retained in public sector. Probation Trusts will inevitably merge to form fewer, larger entities and become commissioners of services at local level, although it is questionable how 'local' this will be.

Clearly, cuts in public spending are a significant cause of the current quickening in the pace of the privatisation of the prison estate, based on the (contested) belief that privately-run prisons are cheaper than their public sector equivalents. As *NOMS Business Plan 2012-2013* makes clear, the stated aim of government is to drive down prison place costs (MoJ, 2012). The Probation Service has undergone a 19% real terms budget cut since 2008-09, and this pressure on cost is set to continue.

While the ongoing debate about competition is sometimes presented as peripheral to the overall future of criminal justice policy, it is in fact highly significant. The issue of who delivers criminal justice services is important, and must be informed by full and accurate analysis of the benefits of different approaches. This collection of essays is intended to be a contribution to this debate.

In the first essay, Helen Edwards, Director General of the Justice Policy Group at the Ministry of Justice, which has responsibility for competition policy in the criminal justice system, sets out the Government's views on the benefits of competition across prisons and, more latterly probation. She argues that competition is vital to improving performance and efficiency. Helen also contends that competition is central to increasing innovation and improving quality, a discussion followed up by several contributors, with differing views.

As part of their wide-ranging project on values, practices and outcomes in public and private prisons, Alison Liebling, Ben Crewe and Susie Hulley summarise their key research findings. Their work underlines the complexity of a debate that simply asks 'private or public - which is best?' but does point to some issues around maintaining the moral legitimacy of prisons and the fundamental importance of staff-prisoner relationships to every aspect of prison life. In a further essay Crewe and Liebling go on to examine the views of senior staff

from both sectors about the introduction and effects of private sector competition. They note that principled objections to privately-run prisons have been marginalised within the public sector, that the introduction of competition is seen as having been a driver of innovation, and, perhaps most significantly, that privatisation has had a significant impact on the role of staff unions. They also identify a lack of professional dialogue about policy changes, an issue which remains problematic for the probation review.

We then turn to those very practitioners for their views. Gary Sturgess, former Executive Director of the Serco Institute, examines in more detail the benefits of contracting out prison provision. He breaks down the benefits into three broad categories – value-for-money improvements, positive effects on the whole system and innovation – and argues that privately-run prisons are significantly cheaper than public sector prisons, despite being of similar quality, and that competition and contracting have resulted in improvements to the prison system as a whole and greater innovation.

In their chapters, Michael Teague and Jonathan Ledger question these benefits. Teague argues the shift towards privatisation of justice services essentially places the aim of financial return above that of social justice. He also notes the impact of privatization across the board, including moves within the policing arena. Ledger goes on to argue that competition runs counter to the values of probation and would undermine cooperation across the criminal justice system. In contrast, Heather Munro puts forward a different perspective, arguing that Probation Trusts are ready for competition and will largely embrace the changes and their new role as commissioners.

In the final chapter we turn to a practical application of the principles discussed. It is now the Government's preferred model to see the private sector working in partnership with the voluntary sector to deliver payment-by-results services in prisons. In his essay, Chris Wright of Catch22 explains the operation at Doncaster prison in detail arguing that payment-by-results and contracting out of services has driven innovation.

The contents of these essays cover a diverse range of issues. Perhaps unsurprisingly, given that the debate about who delivers justice services has been ongoing for decades, they do not provide all the answers. But it is intended that they will contribute to the future discussion around prisons and probation services, and what the implications are of the increasing involvement of the private and voluntary sectors. The value of various sectors should be continually evaluated to ensure that the services for both prisoners and offenders in the community are provided in the best possible way. These essays are intended to help this process.

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# The benefits of competition in offender management services

Helen Edwards

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## Introduction: Why Competition?

“I believe in competing services as a means to raise the quality of public services. This can deliver innovation, better performance and value for money. Services should be funded by taxpayers, but delivered by whoever is best suited to do so.”  
Kenneth Clarke QC MP, Lord Chancellor and Secretary of State for Justice  
(Ministry of Justice, 2012)

Over the past few decades an increasing amount of core public sector business has been opened up to competition. The justice system has been no exception and a number of initiatives have increased the amount of competition we now see in offender management services.

This essay will consider competition in the current context, what the increased use of competition in prisons has achieved and Government proposals for introducing competition into probation services. But before starting on specifics, it is important to note that over the past decades there has been ongoing debate about the role of competition in the public sector and the greater involvement of the private, voluntary and community sectors. This Government’s approach has always been that the benefit to the users of the service and the wider public should be the focus of what we do rather than concentrating on who provides the service. Coupled with research that says public/private ownership is *not* the most important variable in determining prison quality (Liebling *et al*, 2011) perhaps the question is less ‘why competition’ than ‘why not?’

## Competition in the current context

In 2010 the Ministry of Justice published *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders* (Ministry of Justice, 2010). It made the case that although there had been reductions in the level of re-offending over the period 2000-2009 there was still a need for fundamental reform of the criminal justice system. ‘Despite record spending and the highest ever prison population,’ it stated, ‘we are not delivering what really matters: improved public safety through more effective punishments that reduce the prospect of criminals reoffending time and time again.’

In July 2011, responding to the reforms in *Breaking the Cycle*, the Ministry of Justice published the *Competition Strategy*. This document set out the Government’s ambition for encouraging greater involvement of the private and voluntary sectors in the rehabilitation of offenders in order to cut re-offending and improve outcomes and efficiency. This would be achieved by inviting private and voluntary organisations and local communities to provide services where they could do so effectively and at a lower cost.

Although elements of competition had been present under the previous administration, the *Competition Strategy* was different in that it outlined a new guiding principle that competition would apply to *all* offender services not bound to the public sector by statute, rather than as a means to select providers for new services or to address poor performance. This, it argued, would ensure a clear focus on results and improved value for money.

In the forward to the *Competition Strategy*, Michael Spurr, the Chief Executive Officer of NOMS, described how this would work:

“In using competition we are committed to delivering better outcomes for the taxpayers for less. The processes and specifications that underpin offender services will move away from focusing on how providers deliver a particular service, and will increasingly concentrate on what outcomes are required from a particular service. By specifying the outcome to be delivered, and allowing more freedom in how it is achieved, we will help providers from all sectors to deliver services in the most cost-effective manner. In using outcome-focused competitions, we will maintain a ‘provider-neutral’ approach on the basis that competition will stimulate providers from all sectors to provide innovative and better value services.” (Ministry of Justice, 2011a)

The *Competition Strategy* also made clear however that what the Justice Secretary referred to as a ‘strong, vibrant and newly empowered public sector’ would remain a key provider of services:

“The public sector currently delivers the vast majority of our offender services. It has a wealth of experience, expertise and commitment to bring to bear on the challenges we face and will remain an essential provider of services. However, to achieve the required step-change in value for money, service reform and innovation, we will work with both existing and new providers from the public, private and voluntary sectors, with contracts awarded on the basis of whoever is best placed to deliver our strategic objectives.” (Ministry of Justice, 2011a)

To ensure competition was used appropriately, the *Competition Strategy* set out the key strategic principles that the MoJ would apply to competition proposals in all its business areas:

- competition activity should be focused on achieving mid to long-term savings, not finding the cheapest solution at the expense of quality;
- competition should be used to deliver public sector reforms, ensuring providers are more effectively held to account for the outcomes they deliver;
- providers should be involved early to identify where efficiencies could be realised in national or process-based functions through competition;
- small and medium sized enterprises (SMEs) and the voluntary and community sector (VCS) should be encouraged to participate to drive innovation; and
- competition should be widely applied, with public sector providers allowed to bid where we are competing localised services and robustly held to account where successful.

## Prisons

It is in Prisons where the private sector and competition have been established longest. The Criminal Justice Act 1991 introduced competition into offender management services by allowing private firms to be involved in the managing and construction of prisons. This led to the opening, in 1992, of the UK's (and Europe's) first privately managed prison, HMP Wolds, following a competition won by what was then Group 4.

Since then a number of approaches have also been used to market test and performance test prisons. There are now 14 prisons being run by private sector providers including HMP Oakwood which has recently opened (in April of this year).

Competition was extended through Prison Competition Phase 1 (PCP1) which ran between November 2009 and March 2011. The aim of this was to bring the benefits of competition into three areas

- 1) Quality improvements in delivery at the particular prisons competed, including delivering on Government priorities;
- 2) Significant cost savings, both within the current spending review period and across the 15 year contracts; and
- 3) Whole system reform in all prisons including modernisation in terms and conditions.

In particular there have been some interesting developments, including

- HMP Birmingham moving from public to private sector - a new step designed to deliver improved standards;
- HMP Buckley Hall significantly improving delivery requirements from the public sector including increased levels of funding drawn in from prisoners' work;
- HMP Doncaster incorporating a payment by results pilot that will lead to reduced reoffending – with financial penalties if this is not achieved;
- Contracts for Birmingham, Doncaster and Buckley Hall being forecast to save over £200m or 16% relative to previous spend over the life of the contracts;
- HMP Oakwood, a 1,605 place prison, providing places at the lowest operational unit cost in the estate at a contract price of £11,000 per prisoner per year. This compares with an average of £27,400 per prisoner per year. Taking all cost elements into account this results in the lowest direct establishment unit cost in the prison estate. What is especially important is that the low cost has not been achieved at the expense of quality. The specification for Oakwood requires standards as high as those in our existing prisons. This is possible in part because of the winning provider's plans for the innovative use of information technology in reducing costs while maintaining standards.

What is noteworthy about these results is that they are being achieved while maintaining the 'provider-neutral' approach intended to stimulate providers from all sectors. Buckley Hall remained under Prison Service management and Doncaster remained with Serco yet competition still led to the improvements outlined. Contracts for Birmingham and Oakwood prison were won by G4S, with Birmingham being the first example of a public sector prison transferring to private sector management.

Following this successful first phase of prisons competition, Prison Competition Phase 2 (PCP2) was launched in October 2011 in line with the strategic principles for selecting offender services for competition. It includes nine prisons which, apart from HMP Wolds, are all publicly operated.

These are substantial and ambitious competitions through which the Government expects to achieve a range of benefits, not only savings. Providers will help implement important reforms set out in *Breaking the Cycle*, particularly working prisons and drug-free wings. This and future competitions will encourage innovation in prisons and strengthen the market in offender services. Again a key mechanism here is the use of payment by results with NOMS currently canvassing views on how such an approach might be incorporated into the core prison contract.

### Probation services

In contrast to prisons, competition in the probation services is less established. The consultation document *Punishment and reform: effective probation services* was published by MoJ on 27 March of this year detailing proposals that are designed to provide a stronger role for public sector Probation Trusts as commissioners of competed probation services, as envisaged by the Offender Management Act 2007.

Under these proposals, all probation services not directly provided by Probation Trusts will be open to competition.<sup>1</sup> These services, together with central IT and estates contracts, amount to around 60% of the £1 billion per year budget for community offender services. Those providing services under competition will be increasingly incentivised through payment by results to reduce reoffending.

The approach outlined in the consultation paper would enable Trusts to commission more locally responsive or specialist services, working with local partners such as health commissioners and local authorities. This is designed to encourage the participation of the voluntary, private and public sectors, alongside new models for delivering public services such as joint ventures, social enterprises and public service mutuals. This would incentivise Trusts and front-line staff to achieve the best use of resources across the system, using their greater local knowledge to deliver high quality outcomes.

### Other offender services

Aside from prison competitions, better value for money has been achieved by competition in the national delivery of three services - prisoner escort and custody services (PECS), the bail accommodation and support services, and electronic monitoring. Following the re-competition of PECS, we expect gross cashable savings of around £30m (18%) in year one and £260m (20%) over the minimum seven year contract period.

Competition has been used by commissioners to find the most suitable providers to deliver services in both custody and the community, including services for health, substance misuse and offender learning and skills. Competition stimulates a thorough examination of

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<sup>1</sup> Under the proposals public sector Trusts will retain responsibility for managing higher risk offenders and, in the case of all offenders, providing advice to court and making certain public interest decisions such as initial assessments of risk, consistent with their function to protect the public.

services and should lead to improved delivery models. For instance, the most recent process to re-tender offender learning and skills services (OLASS 4) enabled a greater focus on employability in custody, a focus on the start and end of sentence and greater scope for the service to be shaped at a local level.

Competition has also been applied to offender employment support services through the European Social Fund, with £142m of services covering all of England having been competed to date. The successful bidders cover a broad mix of service providers from all sectors who meet particular local market conditions. This enables expertise in providing employment support to offenders to be brought in from the market. Competition has diversified the type of provider so that it includes large and small organisations from across the private, voluntary and community and public sectors.

More evidence will become available as competition is taken further forward. We will monitor the implementation of competition strategy over time and add to our understanding of positive evidence of benefits achieved.

### **Commissioning**

A focus on outcomes, value for money and a substantial increase in competition is not possible without the ability to commission services and manage the resulting contracts effectively. Commissioning is also key to the delivery of services that are responsive to local priorities in relation to offenders' risks and needs.

Competition is now part of the NOMS commissioning cycle, which involves assessing the needs of courts, offenders, defendants, victims and communities in order to design, secure and monitor services to meet those needs while making best use of all available resources. The cycle is designed to lead to new service level agreements with public sector prisons and refreshed contract schedules and delivery plans with existing contracted providers of prisons and Probation Trusts.

Understanding of the cost of efficient service delivery informs the assessment of value for money, enables benchmarking of existing delivery and of the potential for savings through competition. With understanding of costs and making use of evidence about outcomes, NOMS has been developing its ability to make choices about where to deploy limited resources to secure best possible outcomes and to inform commissioners.

Key to commissioning, whether with the private sector or through SLAs and contracts with the public sector, are explicit delivery requirements which set clear minimum outcomes and which have been through extensive governance as part of the NOMS Specification Benchmarking and Costing Programme. This enables us to maintain effective services.

In conjunction with a robust Commissioning process, NOMS has continued to develop its contract management capabilities. This is vital to ensuring that the full benefits of competition can be realised and that change in requirements can be accommodated. The response to last August's disturbances, for example, saw private providers of criminal justice services including prison escorts, electronic monitoring contractors and private prisons working flexibly to support the criminal justice process.

## Conclusion

The Office of Fair Trading in 2010 summarised the benefits of competition as: “a driver that can: place downward pressure on costs; force providers to be more focused on meeting customer needs; lead to more efficient allocations of resources between providers; act as a spur to innovation” (Office of Fair Trading, 2010).

It is with these aims in mind that competition has been introduced into offender management services, as part of a process of long term change and development. The range of organisations delivering services is increasing and will, we anticipate, develop further. Through wider reforms extending commissioning, competition and payment by results the Ministry of Justice will continue to seek value for money in pursuit of its major aim of reducing reoffending.

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# Values, Practices and Outcomes in Public and Private Sector Prisons

Alison Liebling, Ben Crewe and Susie Hulley

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## Background

So far, research on private sector prisons has tended to focus on performance, management and budgets rather than internal cultures, practices and relationships (Harding, 2001). Outcomes have generally been conceived in terms of future offending or cost savings alone. This is despite the fact that the introduction of private sector prisons in the UK, Australia, and elsewhere, was in part motivated by an attempt to change internal prison practices and staff-prisoner relationships. Most studies in the UK to date have relied upon secondary or official performance data, such as costs, suicide rates, or assaults.<sup>1</sup>

We had reason to believe that the public and private sectors had different strengths and weaknesses, from our forays into private prisons during the course of particular studies on quality of life and suicide prevention (Liebling, 2004; Liebling *et al*, 2005). Findings from these studies indicated that the treatment of prisoners in some private sector prisons was more benign and respectful than in most public sector prisons (see Shefer and Liebling, 2008). At the same time, a handful of studies have also consistently identified problems in the private sector related to low staffing levels, high turnover, and staff inexperience (Moyle, 1995; James *et al*, 1997; NAO, 2003; HMCIP, 2007). Official reports have suggested that, where these problems are particularly acute, private prisons are worse than the poorest performing public sector establishments (NAO, 2003; see also HMCIP, 2002, 2005, 2007). There is considerable variation within both sectors.

We set out in 2007 to explore some of these issues in a systematic manner, through an independently-funded study of public and private sector corrections. The study was funded by the ESRC and was conducted over a three year period.

## Objectives

The key aims of the research were:

1. To provide an in-depth, close descriptive account of a major experiment in the social organisation of prison life.
2. To provide a systematic account of management, quality, practices, values and outcomes in contemporary corrections.
3. To provide rigorous empirical evidence on which to base arguments about the relative quality and effectiveness of public versus private prisons.
4. To assess whether public or private sector prisons have advantages or disadvantages that make a difference to the prison experience, and that influence outcomes for individual prisoners.

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1 Home Affairs Committee, 1997; NAO, 2003; and see Logan, 1992; although see Bottomley *et al*, 1997; James *et al*, 1997.

5. To identify what the key factors in success or failure (high or low moral performance) are, including, for example, public or private sector management, the characteristics of staff and prisoners, the management approach to the prison, values held by staff and managers and their translation into practice.

## Methods

For study 1, which was an observational, interview and survey-based study, we were given unlimited access to high-level operational and policy arenas over the course of the project (e.g. the Prisons and NOMS Boards). We jointly observed around 10 Executive and Change Management Board meetings, and meetings with the Prison Officers Association (POA), and we both shadowed key Board personnel over a number of days, taking full notes throughout. In each of the main study fieldwork prisons, we spent a considerable amount of time observing and interviewing members of the senior management teams. We conducted long, biographical interviews with 95 prison governors, directors, Area Managers, Prisons and NOMS Board members, with Chief Executives and Operational Directors of the private prison companies, and with a few highly involved 'outsiders'. Most of these interviews lasted around 3 hours. Some had to be conducted in two parts (and in one case, three) and lasted between 5 and 6 hours. We discussed each interview immediately afterwards, had them fully transcribed, have conducted a series of thematic discussions and analyses, and have developed a typology of professional orientations and a framework for further analysis.

The interviews were focused around biographical and career experiences, values, attitudes towards privatisation and the current organisation and operation of the Prison Service. The selection process was a mixture of opportunistic, snowballing, and theoretical, but was in the end more comprehensive than we originally intended. No-one declined to participate, and the sample was a sizeable proportion of the population of senior managers working in senior correctional management. We deliberately included most of those who had left the public sector to join the private sector and any 'returnees'. With a few exceptions, the interviews were jointly conducted in Cambridge, with a single respondent, as a relaxed, organised conversation. We received an extraordinary level of cooperation and enthusiasm for this part of our work, and we were made welcome to follow up interviews with shadowing, visits to prisons and further conversation.

We also collected 120 senior manager surveys, which we handed out at a public sector Prison Service conference in 2007 and a smaller number from the private sector. The survey asked for agreement or disagreement with a number of items relating to social and political attitudes, views on punishment and rehabilitation, attitudes towards aspects of imprisonment (including prisoners' rights) and the purpose of imprisonment.

Study 2 consisted of an observational, interview-based and survey methodology in four matched and three additional establishments. Our original research design proposed a mainly ethnographic comparison of two public sector and two private sector establishments, carefully matched in terms of function, age, size and other relevant factors. One of the key aims of the study was to provide the kind of qualitative insight into cultures and practices that has been absent from most public-private evaluations: to observe the use of authority, and interview prisoners and staff about their experiences in general, the exercise of power

and the application of discretion; to gauge staff dispositions, and explore the relationship between their attitudes and behaviour; to see whether there were differences in management styles and structures, and to evaluate values as well as practices within each organisation. This qualitative component was supplemented by the collection of survey and official data.

Advice on which prisons were comparable was taken from senior practitioners in both sectors. We were seeking relatively well regarded establishments in both sectors (on the grounds that this would facilitate access). Following the selection process, access was successfully negotiated with two local prisons, HMP Forest Bank (private sector) and HMP Bullingdon (public sector), and two category-B training prisons, HMP Dovegate (private sector) and HMP Garth (public sector). The research team spent several weeks in each of these establishments between September 2007 and November 2008, where its members were given keys and allowed unaccompanied access to all areas of each prison. A combination of research methods was employed, including interviews with prisoners, uniformed staff and managers, observations of management meetings, adjudications and staff-prisoner interactions, and the distribution of quality of life surveys to prisoners and staff. Access and cooperation throughout has been generous.

Prisoner perceptions of their quality of life were gathered using a revised version of the Measuring the Quality of Prison Life (MQPL) survey (see Liebling, assisted by Arnold, 2004): a 140-item self-completion evaluation instrument that asks prisoners directly about their experiences of staff-prisoner relationships, respect, safety, order and other aspects of prison life that 'matter', rather than relying on management information and secondary indicators of such variables (c.f. Logan, 1992). It provides a measurement of culture, as well as of outcomes such as distress and wellbeing, which we know to be correlated with other outcomes such as suicide (Liebling *et al*, 2005). The survey was revised specifically for the purposes of the study in response to ongoing research projects (Liebling *et al*, 2005; Drake, 2007; Crewe, 2009) which had identified new forms of 'depth' (Downes, 1988), 'weight' (King and McDermott, 1995) and 'tightness' (Crewe, 2009, 2010) in modern imprisonment. It was also adapted in some specific areas in the light of the early qualitative research, so that new dimensions such as policing and staff professionalism were developed. We believed that these areas of prison life - based on past research findings and early fieldwork - would be especially pertinent to the study. The surveys were administered to a random sample of prisoners from all areas of each establishment in focus groups of between eight and twelve. Time was made available for prisoners to discuss issues arising from the surveys with the research team. The views of staff were gathered using a Staff Quality of Life (SQL) survey developed in consultation with prison staff (Liebling, 2008; Tait *et al*, in progress). In all prisons apart from HMP Altcourse, these surveys were distributed and collected by the research team following a brief presentation to all staff present during a full staff meeting.

Supplementary data (prisoner and staff surveys, and a small number of interviews) were collected at three further private sector prisons: HMP Rye Hill, HMP Lowdham Grange, and HMP Altcourse. The inclusion of Rye Hill was opportunistic, the outcome of an invitation from the Office of National Commissioning to use our staff and prisoner surveys to assess

‘where the prison was’ at the end of its ‘rectification notice’.<sup>2</sup> Lowdham Grange and Altcourse were incorporated into the study primarily because prisoners in our main research sites consistently referred to their quality, and we were aware that our two original private sector prisons were not performing as well as we (and others) had expected. We recognise that there is therefore some asymmetry in the research design, in that data from the ‘matched four’ have not been collected from an equal set of ‘highest performing prisons’. Within the four, the public sector prisons were ‘on the better side’ of the available range, although unlike Lowdham Grange and Altcourse they were not identified by prisoners as outstanding examples of their type. Short, informal visits were made to two further private sector prisons, HMP Parc and HMP The Wolds.

The structured questionnaire data were entered and analysed using the computer software package SPSS. A final revised set of quality of life dimensions were developed using a combination of conceptual and statistical methods (Liebling *et al*, 2010). Theoretical reflection on the factors generated by the quantitative analysis led to revisions, which were then retested statistically. The interview data were transcribed and thematically analysed using the software package NVivo. In total, we collected 1134 prisoner surveys and 957 staff surveys, and conducted 114 interviews with prisoners and 133 with staff.

## Results

In terms of the matched pairs of prisons, the two public sector prisons generally outperformed their private sector comparators. Garth (public Category B Training prison) scored significantly higher than Dovegate (private Category B Training prison) on seventeen of our twenty-one prisoner quality of life dimensions, and below it on none, while Bullingdon (public Local prison) scored significantly higher than Forest Bank (private Local prison) on eight of the dimensions and below it on none. Data from the three supplementary private prisons complicate this picture, however. Lowdham Grange (private, Category B Training prison) scored significantly higher than Garth on nine of the twenty-one dimensions (and below it on none) and Altcourse (private Local prison) scored significantly higher than Bullingdon on fifteen of the twenty-one dimensions (and significantly below it on none). Rye Hill’s scores (also a private, Category B Training prison) resembled those of Dovegate, i.e. they were relatively poor compared to the other training prisons.

Both Forest Bank and Dovegate (the two private prisons in the main part of the study) exhibited weaknesses in the areas of policing and control, organisation and consistency, and prisoner personal development. At senior levels, managers in both of these prisons acknowledged that staff were less good at following procedures than staff in the public sector, that the quality of uniformed staff and middle managers was highly variable, and that the high turnover of staff was a major problem. Many officers and unit managers lacked the confidence and knowledge to deal with prisoners’ problems and referred their queries and applications up the institutional hierarchy. Like prisoners, some senior managers

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<sup>2</sup> The Office for National Commissioning (ONC) was the body within the National Offender Management Service which oversaw the monitoring and performance of the private sector prisons. The ‘rectification notice’ was served upon the prison’s contractor (GSL) to highlight serious shortcomings in the prison’s performance (principally in the areas of prisoner safety and regime activities). The notice required the company to produce a written action plan and to address the issues identified in an operational review of the establishment.

blamed the quality of staff training for these problems. The emphasis in staff training on interpersonal skills - and the self-conscious effort made in both establishments to inculcate a more positive and respectful staff culture – did not lead to our two main private sector prisons outperforming their public sector comparators in the areas that one might expect. This was particularly striking given findings from previous studies (e.g. James *et al*, 1997; Liebling, 2004). Relationships with prisoners were courteous and often friendly, compared to the public sector, but this is only one component of respect. Custody officers were less ‘professional’ and were not always a conduit to meeting prisoners’ needs. ‘Being nice’ was not the same as ‘getting things done’.

The problems exhibited by the two main private prisons in the study were not identical, however. Relative to Bullingdon, the main weaknesses in Forest Bank were in two domains: first, in organisation and consistency; and second, in control and security, including a complex drug culture and its attendant problems. Prisoners recognised that staff attitudes were generally benign, but they were highly frustrated by the ineffectiveness of custody officers in meeting their needs. Dovegate shared many of these problems, but its main weaknesses related to staff-prisoner relationships, fairness and staff professionalism. Having been encouraged to tighten up control after a turbulent period, and to manage their boundaries more appropriately, re-empowered staff had become rather careless in their use of power. They had reduced their emphasis on forming meaningful relationships with prisoners, and the prison’s ‘re-integration unit’ (now disbanded) was generating a culture of fear and resentment.

One implication of these findings is that deficiencies in private sector prisons can take different forms, even when their root causes – chiefly, a lack of experience and expertise among staff (and low numbers and light management) – are similar. In both establishments, uniformed staff struggled to use their authority and generate legitimate forms of control. In Dovegate, they tended to over-use their authority to achieve order, to the detriment of interpersonal relationships. In Forest Bank, staff under-used their power in a way that maintained good relationships but at the expense of safety and control.

Prisoners in Dovegate and Forest Bank were often explicit in identifying staff professionalism as the key difference between their experiences in the two sectors. The importance of this dimension of prison quality is evidenced by the fact that the differences between the mean dimension scores of the best and worst performing prisons in our study were greatest within our ‘professionalism’ cluster of four dimensions. ‘Staff professionalism’ generated the largest difference in the study (ranging from 3.53 in Altcourse to 2.62 in Rye Hill where the highest possible score is 5 and 3 is neutral), ‘organisation and consistency’ the second largest (Altcourse: 3.08; Dovegate: 2.23), ‘fairness’ the fifth largest (Altcourse: 3.15; Rye Hill 2.46) and ‘bureaucratic legitimacy’ the eighth largest (Altcourse 2.97; Dovegate 2.35). It is instructive to note that the prisons at each extreme on these dimensions were all private sector establishments (see further Crewe *et al*, 2011).

In the private sector prisons, prisoners acknowledged that many problems were caused by staff being naïve rather than malign. In both Dovegate and Forest Bank, officers were enthusiastic about their work and fairly positively oriented to prisoners. However, their benign intentions were impeded by their inexperience and lack of confidence. For

prisoners, the resulting problems made the experience of imprisonment more stressful and frustrating than in the public sector comparators, even though the lack of ‘edge’ among staff meant that it was in some ways ‘lighter’. Here, then, we see the limits to what positive staff cultures can achieve when there are other (‘professional’, or ‘delivery’) problems linked to private sector staffing.

In Garth and Bullingdon (both public sector prisons), officers were confident and knowledgeable, delivering regimes that were safer and more reliable than in the matched private sector prisons. Relationships with prisoners were fairly informal, and power was generally exercised fairly and confidently. However, prisoners sometimes described an experience of imprisonment that felt ‘heavier’ than in the private sector comparators, and staff could sometimes be indifferent towards prisoners. Although their interactions with prisoners were often highly professional, their dispositions towards them were more negative than those of most private sector staff.

Lowdham Grange and Altcourse combined most of the strengths of both sectors, providing an environment that was relatively humane, predictable and purposeful, with staff-prisoner relationships that appeared to be largely respectful, supportive and caring. Because the turnover of uniformed staff was not as high as in Dovegate and Forest Bank, wing staff had built up the kind of confidence, knowledge and expertise that was lacking in the weaker private sector prisons. Significantly though, Lowdham Grange and Altcourse were least impressive (relatively speaking) in the domain of security and policing. It seems likely that, even in private prisons with experienced staff, the thin staffing levels that characterise profit-making institutions, and the relatively high turnover among a staff group who are less bonded to their occupation, may limit quality levels in certain areas. This caveat aside, it appears that prisons that are relatively good are relatively good in almost all respects – they are generalists rather than specialists. This reinforces our view that prisons are fundamentally relational: where staff-prisoner relationships are *right*, almost all aspects of the prisoner experience are enhanced.

There were some differences in management practices in the public and private sector prisons. Private sector directors spent a higher proportion of their time managing the external environment and company reputation, while also trying to reinforce basic staff standards. Public sector governors devoted considerably more time to dealing with industrial relations issues and spent longer in less directed meetings. At more senior levels, we found greater resistance to punitive government policies within the private sector, for both instrumental and moral reasons. Altcourse and Lowdham Grange were led by an impressive ‘moral dualist’ Director and by a dynamic ‘entrepreneur’ respectively (see further below), both of whom understood the power of ‘performance’ but directed the demands of targets at clearly described ends (like delivering an effective and decent form of imprisonment, which enhanced prisoner opportunities).

In the senior manager study, we identified some clear professional styles, representing distinct approaches to the Governing task, with certain strengths and weaknesses, including different depths of moral vision. These were linked to personal and biographical characteristics and formative experiences during careers. We have defined these styles as: *highly skilled operational*; *the performance-plus manager*; *entrepreneurs*; *moral dualists*;

*thinker/speakers*; and those who are *alienated or complacent* (Crewe and Liebling, 2011). We found some paradoxical developments, whereby some managers with the strongest liberal-humanitarian commitments were leaving the public sector to work in the private sector, because they felt their values would be more welcome and effective there. Likewise, a disproportionate number of highly performing women governors had left the public sector, and were made to feel welcome and highly valued in the private sector. It is a false assumption that public sector professionals are predominantly ‘knights’ – heroic altruists with professional ethics – or that private sector professionals are predominantly ‘knaves’ – pursuing only profit under any circumstances.

*Moral dualists* were the managers most sensitive to power dynamics and to the plight of the individual, and were arguably the most effective. They were empathic and had a ‘feel’ for the prisoner experience. They were articulate, intelligent and operationally astute, and had a passion and pride in what they did. They almost always had a clear focus on ‘delivery’, but they had a broader grasp of the purpose of performance targets and a clear focus on ends as well as means. They saw order, and targets, as for *other things* (such as decency); and saw security and relationships as mutually reinforcing rather than in conflict.

*Thinker/speakers* were liberal-idealists or value intellectuals. They were often slightly uncomfortable with their own roles, and were sometimes uncomfortable wielding power. They tended not to be pragmatists and were unembarrassed by using a language of care. We found an old liberal style of ‘gentleman governors’, who were paternalistic and somewhat elitist, but were respected for their values. These practitioners embodied the moral conscience of the Service, and had often shaped or mentored younger, highly competent but more managerial governors, creating in them a broader vision. There was also a younger, less purist, set of liberal governors, who were less utopian, more comfortable using power, and less embarrassed about the prison’s security functions, but who were no less values driven.

Two key axes emerged from our typology – values, and style. In general, the balance within the Service has shifted towards the security, ‘robust management’ end of the style axis, and away from a model which sees social disadvantage as a major factor in offending. We found widespread unease with some harmony values and orientations. A younger generation of managerialists have become so focused on ‘the figures’ that they risk alienating staff by demanding that they work in a ‘virtual prison’. They have a narrow model of offending and its treatment and may blur the boundaries between responsabilisation and punishment. They are uncritical and can be highly mechanical. Many liberal governors think that the Prison Service has moved away from ‘doing things that matter for prisoners’ and that a form of economic rationalism has started to dominate, where a business case rather than a moral case is made for interventions (and everything else).

We have provided tailored feedback to senior management teams in six of the seven establishments that have been included in our comparative analysis of quality of life and culture in public and private prisons. In each case, we presented the main research findings, provided extensive documentation of the staff and prisoner results for each survey item, and responded to questions. We were very positively received and there has been considerable demand for further feedback and dissemination. Our various feedback activities have helped inform senior-level policy discussions about the contemporary prison

experience, about management culture and the relative strengths of public and private prisons, but clearly there are other forces at work in the making of policy decisions.

We plan to continue to use (and develop) the quality of life survey, and the project in general has deepened our understanding of the use of authority, the prison experience, prison dynamics and outcomes, and the nature of contemporary imprisonment. Together, the revised dimensions represent a carefully balanced conceptual framework for thinking about the moral quality of a prison, as experienced by prisoners. The revised ‘moral performance’ survey constitutes a tool for reflection and analysis, and for the ‘identification of symptoms’ indicating moral failings as well as strivings for legitimacy. We cannot deny that such strivings go on, in both public and private sector prisons. The strivings sometimes look more energetic in the private sector, even if aspirations are not always reflected in practice. We plan to continue to develop our analysis and reflect on its implications.

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## Insider Views of Private Sector Competition

Ben Crewe and Alison Liebling

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Prisons are not for profit. Yeah, I was bothered about that morally. I just thought that prisons should be ... it's such an important sanction by the State. It's for the State to decide and to manage, all that. Having said that, what's happened is that there's a new player on the field and we've taken notice of them. [...] The opposition have started playing in a different way and they've got a different coach, and we've looked across and thought, 'we can't keep losing like this, they might have some ideas, we'd better send a scout out to find out what they're doing'. It's enabled us, I think, to ... I don't know if it is just privatisation that's enabled us to have a lot more courage about different ways of running things, or if it's the fact we have got more standards...you know, there's a new player on the field, and we've had to raise our game (Senior manager 73).

Apparently Lord Longford, who was of the opinion that private prisons were wrong in principle...visited Blakenhurst and is reputed to have written in the visitor's book, 'If I was not a man of principle I'd have to admit this was a good prison!' (Senior manager 39)

After two years of deliberation, the High Court of Justice in Israel ruled in 2009 that privately run prisons are unconstitutional. According to the newspaper *Haaretz* (2009, 23 Nov), the panel of judges ruled that 'for the state to transfer authority for managing the prison to a private contractor whose aim is monetary profit would severely violate the prisoners' basic human rights to dignity and freedom'. The Supreme Court President declared in her ruling that the extraction of profit from prisoners undermined their rights and that economic efficiency was insufficient justification for punishment to be delegated to non-state organisations.

In the UK, meanwhile, heated debates about the ethics of privatisation have faded. The first privately run prison, HMP Wolds, opened in 1992, so it might be unsurprising that many practitioners and critics have become accustomed to the presence of private sector prisons and are no longer disputing first principles. There has been little independent research investigating the impact of the privatisation 'experiment' – as it was originally presented (Bottomley *et al*, 1997; James *et al*, 1997). In other words, neither the quality nor the legitimacy of privately-managed prisons has been subjected to close scrutiny in recent years (see Sparks, 1994). Assumptions and claims are made about the superiority and dangers of each sector with little empirical basis.

As part of a major study of values, practices and outcomes in public and private corrections, between 2007-2010 we interviewed over ninety senior managers in both sectors about their careers and professional orientations. Most worked in the public sector, eighteen worked in the private sector (mostly after a period in the public sector) and six had returned to the public sector after a brief spell in the private sector. One area we probed was their views about the introduction and effects of private sector competition. We asked our interviewees what

they felt about privatisation when it first occurred (or when they first joined the Prison Service), and whether their views had changed. These views, from individuals who have observed private sector competition directly, give us a particular kind of insight into the impact and development of privatisation – albeit one that is by no means impartial or indisputable, and which ends before the recent acceleration of market testing. They also help us to assess the ideological commitments of an important senior practitioner group. In this chapter we briefly summarise the responses to such questions and analyse some of their implications.

Recalling their initial views, most interviewees remembered feeling strongly ideologically opposed to private sector prisons. Only one had been philosophically committed to privatisation, based on a belief in small government. This was compared to around half who believed at the time that punishment should be a function of the state and that privatisation was in principle indefensible. Some acknowledged that their primary sentiment had been concern about their professional monopoly – ‘I saw it as interesting and slightly threatening in a remote sort of way’ (senior manager 52) – while a number recalled having been sceptical but curious. The latter feeling stemmed from a widespread recognition that public sector prisons were in need of radical reform:

I was interested to see how it would work out. I was sort of fairly agnostic about it. [...] Bearing in mind my experience at [Local prison X], where we used to treat remand prisoners disgracefully. I [felt] that if the private sector can actually treat the remand population in this more civilised way, we’ve got a lot to be ashamed of. If they can demonstrate they can do that, all to the good that was my early view. (Senior manager 39)

Several interviewees who leaned politically to the left explained, in similar terms, that they had found it hard to oppose private sector competition at the outset given the difficulties of trying to reform public sector prisons in the face of change-resistant unions: ‘I wondered whether it would work [but] I was very conscious at the time that we weren’t running prisons well, and that we were in thrall to the POA in particular’ (Senior manager 12).

This attitude of pragmatic acceptance was more dominant in current views of private prisons. The majority of interviewees who had worked in prisons during the last decade had become accustomed to privatisation and persuaded of its value. Most believed that competition had driven up standards in the public sector, and argued that the threat of privatisation was the only tool that could have done so, particularly given the power of the Prison Officers’ Association:

I think [privatisation has] been really helpful in raising our game, and it’s been a wake-up call in terms of suddenly realising that...this may not be a job for life, that we’ve actually got to deliver and if we don’t there’s people over there who will do it instead, and I think that’s been generally good. (Senior manager 65)

I don’t think the improvements we’ve seen in the Prison Service in delivery and outputs would have happened without the threat of privatisation, and without the reality of privatisation, because we wouldn’t have done it ourselves. We wouldn’t have had the motivation, there would’ve been no incentive. (Senior manager 18)

Among this group were a number of people who had originally been fiercely hostile to private sector involvement in prisons, but had moderated their position over time:

All I saw [at first] was making money out of something that you shouldn't make money out of. I think I've probably changed towards something that like ... if you deliver the outcomes and they're well defined and they are fair, then it doesn't really matter who delivers it. I've got still an underlying unease that the profit will always be higher on the agenda than anything else. But I'm not anything like as extreme in my view as I was when I started. (Senior manager 83)

Many interviewees had revised their views through direct exposure to the private sector and its practices: visits to good private prisons (Altcourse was mentioned on several occasions, as were the Wolds and Lowdham Grange), participation in bids to capture prisons for the public sector (e.g. for Blakenhurst or Buckley Hall), secondments to the private sector, and so on. As the following quotation illustrates, these practitioners felt that their moral misgivings were unsustainable given the quality of some private sector establishments:

*When privatisation first came on the scene do you remember having views about it?*

Oh God yes, [I] marched against it.

*Did your views change?*

Yes, because I grew up and because, you know, you've got the health service with things being contracted out, it became more of a way of life. [And] because I accepted an invitation to go round Altcourse. And Altcourse was a lot better than what we were doing and I thought 'well how can you say actually ... my philosophical principles mean that I don't think it's good for you - prisoner - to go to a good prison? Philosophically it's better for you to go to this rat-infested shite-hole - morally it's better for you, and I hope that keeps you warm at night'. It wasn't just the fact the place was clean and shiny and whatever. There was more respect in it; people spoke to each other more as people. (Senior manager 32)

I spent a lot of time visiting [private] prisons, and I just couldn't escape the reality that they were good. [...] You just couldn't get away from the fact that prisoner after prisoner after prisoner said 'why aren't I treated like this [in the public sector]?' [...] The bottom line, I always used to think, is if - god forbid - my son had got into trouble, I'd have rather he was in a private prison. (Senior manager 13)

This form of reasoning – that prisoner outcomes should take precedence over other considerations – was espoused by a number of practitioners, and illustrated an apparent paradox. Many of the most politically progressive and humanitarian governors were now working in the private sector, having left the public sector because they were frustrated with the slow pace of public sector reform. They wanted the opportunity to run prisons with more humane cultures and less union resistance. Given that these practitioners often retained moral qualms about companies profiting from punishment, their position was rather uncomfortable, as some acknowledged. But it was a little more comfortable to be a left-leaning public sector manager who disapproved of privately run prisons in theory while welcoming their impact in practice:

I could never work for a private sector company, and that position has never changed. What has changed is a recognition that, without the competition, I don't think we could have made the gains that we have made in the Prison Service at anything like the speed we've been able to make them. I absolutely regret that. I think that says a great deal about public sector expectations and management, and an awful lot about public sector staff actually. [...] With a heavy heart, I don't think there's any way that we could've got some of the changes that we've got without the threat of private sector competition - which gives a wonderful dilemma about whether you should've done it really, doesn't it? (Senior manager 23)

Interestingly though, while the accepted view among most public sector senior managers was that competition had been necessary to accelerate public sector improvement, most did not experience this as morally problematic. Their foremost consideration was delivery: 'I'm not uncomfortable with it as a tax payer or as a member of society. As long as what is being delivered is appropriate, it shouldn't really matter too much whether it's public or it's in the private sector, it doesn't bother me too much' (senior manager 1). Moral arguments were considered less important than quality, effectiveness and value for money: 'if it is cheaper and does the job, what's the problem? If the taxpayer can get the same job done for less money, then great, does it matter who is providing it?' (senior manager 63). The new 'moral' discourse of 'taxpayers' money' was powerful in the reasoning of many practitioners. Many considered public sector profligacy as serious a problem as private sector profit.

Some interviewees objected to private sector competition primarily in the sense that they felt that the playing field was uneven (practitioners in both sectors used this term, each feeling at the time that the political climate and conditions suited the other). For example, some public sector governors complained that while private prisons could use their contracts to demand more money when they were asked to accommodate more prisoners, they had to find additional places without receiving extra resources. These were highly operational forms of objection. The dominant sentiment among public sector senior managers was one of loyalty and competitiveness - wanting to out-perform the private sector - rather than ideological hostility. Several interviewees felt that there were tensions between 'engaging with the private sector' and 'having to compete', or that it was unfair that the public sector could not compete on senior manager salaries - leading to some 'loss of talent'.

Few interviewees expressed clear moral opposition to private sector competition, and quite a few public sector managers disclosed that, at some point in their career, they had considered approaching the private sector or had been tempted when sounded out, especially as they approached retirement age. Several said that they would never consider working for one of the private prison companies. However, this was less often to do with ideological unease than because working for the public sector was an important part of their personal and professional identity. They felt loyal to an organisation that had nurtured and invested in them or were uneasy with aspects of private sector culture (specifically, a sense that it was too 'smooth' or was not totally upfront about its own weaknesses). Ethical objections to privately run prisons were largely seen as 'naive', 'arrogant' or 'immature'. Practitioners who had maintained a stance of moral opposition were considered quaintly purist by most of their peers. The suggestion that there might be something disquieting about making profit from punishment was generally dismissed with the argument that all prison managers were

making a good living from prison work: ‘I’ve got no issues about organisations making money from this environment ... none of us are altruists entirely in this, are we?’ (senior manager 90).

Such dismissals illustrate the degree to which principled objections to privately run prisons have been marginalised within the public sector. They also point to some general features of contemporary senior manager culture. First, a large number of senior managers in public and private corrections are either a-political or do not consider political considerations to be relevant to their work. ‘Speaking out’ about issues such as the growing prison population, or about any of the complex moral and political issues regarding private sector confinement, is not seen as professionally relevant or appropriate. There are few forums in which critical voices can be expressed, and few critical voices searching for such outlets. The job is to ‘deliver’, and while there is undoubtedly a deep commitment to improving the internal quality of prisons, much less attention is paid to the exterior world of penal politics (Crewe and Lieblich, 2011, and Lieblich and Crewe, in press). One danger of this is that there is little professional dialogue about policy changes. For example, there has been almost no comment on the transfer of adjudicating powers within private prisons from state employees (‘controllers’ or ‘monitors’, who are based in the establishments to ensure that they stick to contract) to private sector directors, despite the importance of this division of labour in maintaining the symbolic distinction between the allocation and administration of punishment (Moyle, 2001). Some controllers have commented that it is sensible for private sector directors to take over adjudications, because this gives operational managers more grip on the prison and a better sense of its ‘temperature’. Again, this reflects a prioritisation of pragmatic considerations over important matters of legitimacy and accountability.

Second, relying on competition to push public sector staff to reform their working practices might work as a short-term motivator, but lasting change probably requires staff to ‘see the light’ as well as ‘feel the heat’ (senior manager 22). Some interviewees expressed concern that NOMS was using competition as a ‘stick to beat the public sector with’ rather than as a source of inspiration and innovation, as it had initially been conceived. This may have reflected the fact that, at the time of our interviews, some NOMS board members were by no means convinced that private prisons were always a good model for the public sector (there were particular concerns about safety and control in several of the private sector prisons). Meanwhile, using competition as a threat required that the threat remained credible. Some interviewees regretted that none of the existing market tests had – at that time – resulted in private sector takeovers of public sector prisons, fearing that staff in some of the poorest performing public sector prisons had become complacent, and that the private companies would tire of competing for contracts if they were not awarded them more often. In 2012, with market testing having entered a new phase, the impact is rather different: public sector prison staff feel that privatisation is almost inevitable in the near future, regardless of how well their prisons are performing, resulting not so much in coasting as resignation.

Just as significantly, if it is the case that only the threat of privatisation has been able to force reform in the public sector, then this speaks volumes about public sector staff cultures and the chronic industrial relations problems that have beset the Prison Service. It is striking that, from the perspective of practitioners, the inside story of prison privatisation in the UK is the story of union power. It is telling that some of its most senior managers felt that they required the threat of market testing in order to ‘convince staff that [...] they couldn’t

with impunity assault [prisoners]' (senior manager 13). According to most interviewees, while private sector innovation has been generally disappointing, the most important lessons that private prisons have demonstrated are that giving prisoners more time-out-of-cell and calling them by their preferred names are neither difficult nor a threat to staff authority. In some public sector establishments, there remains considerable resistance among uniformed staff to these practices. In the words of one public sector governor, it remains 'a huge battle ... incredibly hard' to persuade officers to address prisoners more courteously (senior manager 61). This battle puts a paradox at the heart of debates about prison privatisation in the UK, aligning many politically progressive practitioners with the private sector or leaving them deeply conflicted in defence of a public sector struggling to reform itself.

The moral arguments were shifting somewhat towards the end of our interviewing period (December 2009) in the light of severe financial constraints that may mean that both sectors are forced to provide 'custody on the cheap'. Neither sector welcomed this development, but few expressed concern or outrage about the increasing population figures that make this a requirement. Nor was there much concern that some of the characteristic weaknesses of the private sector that are linked to its reduced costs (i.e. reduced staffing levels) might end up being replicated in pared-down public sector prisons, a concern that now seems particularly apposite. If anything, the idea of private sector superiority went rather unquestioned among public sector managers.

We are only beginning our analysis of the relationship between values and practices in prison management. One of our early findings is that many of the most influential and effective senior managers in both sectors regretted the lack of 'moral space' available to them under current conditions and felt that some of the fundamental questions about 'what prisons are for' should be revisited. The goals of efficiency and effectiveness do not necessarily have to compromise humanitarian endeavour. But as Andrew Rutherford – former Director of the Howard League – suggests in *Criminal Justice and the Pursuit of Decency* (1993), an efficiency-utilitarian position can crowd out foundational questions about the aims, morality and legitimacy of imprisonment.

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# The Sources of Benefit in Prison Contracting

Gary L. Sturgess

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## Origins and Development of the British Market

Writing of convict leasing in the late nineteenth century, Woodrow Wilson asked, ‘Who can justify a policy which delegates sovereign capacities to private individuals? Who can defend a system which makes the punishment of criminals. . . a source of private gain?’ Of course, no one defends convict leasing as it developed in the American South in the late nineteenth century; and yet there are many who are ready to justify prison contracting as it emerged in Britain in the final decade of the twentieth century.

Prison reformers such as Lord Woolf were prepared to defend such a system, if it resulted in greater transparency and prisoners were treated more decently. Labour politicians, long opposed to private gain from public services, persisted with prison contracting in the belief that there were real value-for-money savings and government got the lion’s share of the benefit. And prisoners were pragmatic, welcoming the longer hours out of cell and improved living conditions that accompanied the introduction of prison contracting in 1992.

Against this backdrop, the confidence of the Ministry of Justice in its *Competition Strategy for Offender Services* in July 2011 was unsurprising:

“...competition in offender services has been shown to be effective at encouraging the management and workforces of existing and future providers to improve services, drive efficiency and deliver more innovative models of service delivery.”  
(Ministry of Justice, 2011, p 4)

The concept of prison contracting firmed into policy in late 1987 and early 1988, as the government of the day faced the prospect of commissioning twenty-six planned facilities (six then under construction). Unsurprisingly, questions of economy were being given serious attention, and the early lessons from prison contracting in North America, and the results from new contracting models used in building the new facilities in England and Wales, suggested there was scope for significant savings.

However, there was much more to it than that. In 1985, Ian Dunbar, the former Governor of Wormwood Scrubs, had published *A Sense of Direction*, expounding a radically different model of prison management based on ‘dynamic security’, in which staff and prisoners interacted closely within discrete living units, and prison officers actively managed inmate behaviour. That same year, a Home Office working party reported on a visit to some of the ‘new generation’ prisons in North America founded on these same ideas. These principles were built into the physical design of the new prisons being commissioned at that time, however there was union resistance to the introduction of dynamic security, and for some senior officials in the Home Office, contracting offered a relatively pain-free way of

transforming prison culture. The publication of the Woolf Report in 1991 reinforced this new approach, so that with the introduction of privately-managed prisons, both commissioners and contractors placed considerable importance on what would become known as ‘the decency agenda’ (Dunbar, 1985; Home Office, 1991).

At the same time, there was widespread concern about a lack of management control within the nation’s prisons. Woolf criticised ‘the confetti of instructions descending from headquarters’, and recommended increased delegation of responsibility to Governors. He also commented on the accretion of custom and practice that had resulted in working arrangements ‘of labyrinthine complexity’. ‘Fresh Start’ had been introduced in 1987 to increase managerial flexibility, but by 1991 it was seen as having substantially failed, contributing to deep mistrust within the workforce. While some politicians may have seen contracting as a way of dealing with the unions, public officials were critical of Ministers for repeatedly backing down on managerial reform in the face of union opposition.

And in the late 1980s, prison reform was deeply infused with a contractual paradigm. Direct supervision was built on the concept of ‘compacts’ with individual prisoners, explicitly setting out expectations and responsibilities. Governors used quasi-contractual arrangements for specifying prison activity (although Woolf was critical of how it was being implemented). And Woolf recommended the introduction of a national system of performance standards, with accreditation the reward for successful establishments.

The first four contract prisons, opened between April 1992 and July 1995, were owned by government. Thereafter the Home Office adopted a policy of contracting the design, construction, financing and management of all new prisons under the Private Finance Initiative. In the result, the UK currently has a larger proportion of prisoners under private management than the United States.

## **Evidence of Benefits**

While policy analysts would always like more, there is reasonably good evidence about the relative performance of prison contracting in the UK. In the discussion that follows, this has been broken down into three broad categories – value-for-money improvements, system effects and innovation.

### **Value for Money Benefits**

One of the most rigorous studies of public and private management, anywhere in the world, was conducted in the United Kingdom in the late 1990s, contrasting four privately-managed prisons, each with its own public sector comparators. These comparisons were made over four years, using a robust and consistent methodology.

Cost-per-prisoner and cost-per-place were both tracked, however because of changes in levels of overcrowding, cost-per-prisoner was the most reliable. On this measure, the contract prisons were, on average 11-15% less costly than their public sector benchmarks. However, this underestimated the cost differential since it failed to take into account taxes paid by the private providers and the full cost of public sector pensions<sup>1</sup>.

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<sup>1</sup> Using cost per place – where the cost differential narrowed over time – public officials and some academics later concluded that competition had caused the public sector to improve the efficiency of the benchmark prisons. However, the impact of overcrowding over this same period was so great, that cost per place was not a reliable measure.

In 1995, when the Home Office decided to contract for the next generation of prisons under the Private Finance Initiative (PFI), the public sector comparators were based on the assumption that any new public prisons would be designed and commissioned by government, but managed by the private sector under contract. On this basis, the net present value of the first of the PFI prisons was a further 17% below its public sector comparator (although this included construction costs as well as operating costs). By the time the contract for the fifth PFI prison had been negotiated three years later, the cost per place for a prison of comparable scale had fallen by 38% from the public sector comparator for the first PFI prison. Not all of this cost differential can be attributed to operating efficiencies, however, since 60-70% of the present value of a PFI prison is attributable to operating costs, we might conclude that they made a significant contribution (Sturgess *et al*, 2007, pp 83-87).

Measurement of the qualitative performance of contested and non-contested prisons is more problematic. Since early 2009, the Ministry of Justice has published quarterly ratings to compare the performance of different prisons, public and private (replacing the flawed 'Weighted Scorecard'). It is based on a range of output measures, moderated by prisoner surveys, inspectorate reports and the subjective judgments of regional Directors of Offender Management. Results fluctuate, but on average, public and private sector prisons are delivering comparable results (Ministry of Justice, 2011). This is interesting, given that privately-managed prisons are incentivised by the performance regimes written into their contracts, rather than departmental targets (and performance in these ratings has no impact on financial returns, nor on success in competitive tenders).

However, a unitary score for each prison masks important differences between these two classes of establishment. A survey of prisoners conducted in 2003 by the National Audit Office found much higher levels of perceived respect in the privately-managed prisons (National Audit Office, 2003, p 24). And Alison Liebling's research suggests that contract prisons have placed more emphasis on 'relationship measures' (respect, humanity and trust), while state prisons have given greater weight to 'regime measures' (fairness, order and safety). While results differ from prison to prison, her studies of prisoner attitudes over several decades seem to confirm this interpretation (Bottomley *et al*, 1997, p 32. 34; Liebling and Arnold, 2002; Liebling, 2004; Crewe *et al*, 2011, pp 94-115).

In short, the available evidence from England and Wales seems to suggest that competition and contracting have delivered a broadly comparable level of service quality (albeit with different characteristics), at a significantly lower cost.

### **System Effects**

One of the benefits anticipated from the introduction of competition (or the credible threat of competition) into a monopolistic service is an improvement in the performance of the system overall. Analysis of system effects in the United States, comparing the expenditure in different states based on their use of the private sector, has found statistical associations but not causal relationships (Lattimore *et al*, 2003; Mitchell, 2003; Blumstein and Cohen, 2003).

In the UK, however, there is strong anecdotal evidence of systemic improvement as a result of competition and contracting. In 1997, the then Director-General of the Prison Service, Richard Tilt, claimed to have found evidence of such an effect in the narrowing of differences

in cost-per-place; closer analysis suggests that this was overwhelmingly caused by increased crowding in the contract prisons (HM Prison Service, 1997). But Tilt was not alone. His predecessor, Derek Lewis, said that ‘much, perhaps most, of the progress that has been achieved in the public sector in the last ten years would not have been possible without the threat of credible competition from the private sector’ (Sturgess, 2003). And Tilt’s successor, Martin Narey, acknowledged on a number of occasions that contracting had been central to the delivery of the government’s ‘decency agenda’. The National Audit Office has also reported that ‘Competition has been important within the prison system for improving both management and conditions for prisoners’ (National Audit Office, 2003, p 7).

The Australian criminologist, Richard Harding, also commented on the increase in transparency and accountability that flowed from prison contracting: ‘In the United States, the state of Louisiana required ACA accreditation by its private prison but not for its own public sector prisons. This requirement soon worked its way into the fabric of the public sector system’ (Harding, 2001, pp 332-333). While the drive for performance assessment in HM Prisons certainly pre-dates the introduction of competition, the development of performance measurement regimes for use in managing these contracts accelerated its development. And the work on ‘efficient cost’ undertaken for Lord Carter’s 2007 review of the English prison system was largely based on a search for comparative data for one of the contract prisons won back by the Prison Service in 2001 (Carter, 2007, pp 22, 36, 46).

### **Innovation**

While the question has not been studied systematically, there is considerable anecdotal evidence suggesting that competition and contracting have stimulated greater innovation in prison management. This is most evident in the design and construction of the early PFI prisons, which resulted in a 45% drop in delivery times for new establishments and a marked reduction in construction costs (National Audit Office, 1997, pp 28, 29, 44-45). There was also technological innovation, with CCTV cameras, magnetic key cards and privacy locks in managing inmates.

In terms of day-to-day operations, the National Audit Office concluded:

“A key innovation by the private sector has been in promoting a more constructive staff/prisoner relationship. PCOs [prison custody officers] are encouraged to treat prisoners in a more positive manner, for example through the use of first names and mentoring schemes. The senior management of the Prison Service has been able to use the success of the private sector in nurturing better staff/prisoner relationships to encourage their own staff to adopt a similar approach” (National Audit Office, 2003, p 9).

As noted above, contracting was deliberately used by the Home Office as a way of accelerating the introduction of direct supervision into prison management. The creation of an alternative system of prison management, with staff recruited from outside the sector, and covered by different unions, made it easier to introduce a radically different culture into prison management. Among the many changes that accompanied prison contracting, perhaps the most striking was the increased reliance on female prison officers. Around one-third of prison officers in the first contract prison were female, compared with an average in the Prison Service at that time of around three percent (Sturgess, 2003, p 34).

## Sources of Financial Savings

If competition has resulted in the delivery of broadly comparable services at significantly lower cost, from where have these savings come? Most have been delivered through a reduction in personnel costs, which is unsurprising since these account for two-thirds to three-quarters of all the costs involved in operating a prison. (McDonald and Carlson, 2005, p 52; U.S. Department of Justice, 2001, p 16; Donahue, 1988, p 14; Crants, 1991, p 53)<sup>2</sup>.

There are two elements to personnel costs: unit costs (the cost of salaries and benefits per staff member) and staffing levels (usually measured as staff-to-inmate ratios). One of the few studies to provide insight into the relative contributions of these two elements was undertaken by HM Prison Service in the late 1990s, which found that around half of the cost reductions came from having fewer staff per prisoner, with the other half coming from lower average unit costs (Park, 2000).

### Unit Costs

It is usual though not universal for contested facilities to have lower unit costs. In some cases, this is because contract prisons pay lower salaries; in others, it is because of less generous pensions and fringe benefits. Some unit cost savings clearly amount to productivity enhancements, the most obvious examples being the management of sick leave and overtime. Studies undertaken by HM Prison Service in the 1990s found that the cost of sick leave (per prisoner) was 53% lower in the contract prisons than in their public sector counterparts, differences that have persisted over time (Andrewes, 2000, p 8; Prison Service Pay Review Group, 2006, p 15).

However, privately managed prisons have also reduced their unit costs by structuring their workforce differently. A 2006 survey by the Prison Service Pay Review Body found that the average basic pay for prison officers (in the public system) was 39% higher than for prison custody officers (in the privately managed facilities). But the authors identified important structural differences between the two systems:

- private companies set their terms and conditions with reference to conditions in local markets, while (for the most part) the Prison Service negotiated national pay scales;
- prison officers (in the public system) had much longer terms of service and many were near the top of their pay scale;
- the privately managed prisons had an average turnover rate of 24%, compared with 3% in the Prison Service – the former was higher than the average in the private sector in general (15%) and the latter was lower than the public sector in general (8%);
- the workforce in the privately managed prisons had a much younger age profile; and
- prison officers in the public sector had a much steeper pay progression in their early years of service (MCG Consulting, 2006)<sup>3</sup>.

<sup>2</sup> The Bureau of Justice Assistance estimated 65-70% - Bureau of Justice Assistance. Donahue provided an estimate of 60%. The Crants have suggested a much higher ratio of 80%.

<sup>3</sup> The Prison Service Pay Review Body has not updated this research since 2006, although in 2001, the Prison Service relied on anecdotal comparators in its submission to that body – See HM Prison Service (2011) *Submission to the Prison Service Pay Review Body for 2011/12*, London: Ministry of Justice, 2011, p.41.

### **Staffing Levels**

If, through better physical design, service design or use of technology, prison managers are able to significantly reduce the number of staff required to supervise the prison population, this will have a major impact on costs. This relationship is widely understood among prison managers (Stephan, 2004, p 5; U.S. General Accounting Office, 1992).

One of the most significant impacts of introducing competition into custodial services has been to force prison managers to explore new service designs and management regimes that will permit lower staffing ratios. Contract prisons have been able to operate successfully with lower staff-prisoner ratios for two decades, partly because of technological innovations, such as CCTV cameras and electronic keys, and partly because of regime innovations such as direct supervision and the recruitment of a much higher proportion of female prison officers (which has had an impact on the prison culture).

### **Drivers of Benefits**

What is it about competition and contracting that delivers these benefits? This remains something of a black box, little work having been done to understand the drivers of higher productivity in prison contracting. The following discussion offers some tentative suggestions.

### **Contracting**

Exposing a service to competition and writing a contract demands a detailed statement of requirement which has the effect of focusing the commissioners' attention on the desired outcomes, and the desired scale and scope of the service in question. Prison directors who have worked in both the public and the private sectors report this as a stark difference between the two systems (Reddington, 2004, p 19).

Another significant difference lies in the 'contractual shield' that is created when a legally-binding agreement is signed, leaving space within which managers are free to manage (Reddington, 2004; Mathias and Reddington, 2006). The heavy cost of bureaucratic intervention in operational management in the Prison Service has long been recognised in England and Wales, and one of the contributions that contracting makes to the efficiency of prison administration is that it regulates the manner in which head office intervenes in the management of individual institutions, and it increases the autonomy of Prison Directors (Home Office, 2000, pp. 3, 14).

A third consequence of commissioning a public service under contract is heightened accountability. In the survey of contract managers conducted by the Serco Institute, a number of respondents commented that accountability was more personal than it had been when they managed similar services through the traditional model (Reddington, 2004, pp 27-35). The Chief Inspector of Prisons made this same point in 1999, in commenting on the first of the PFI prisons:

[At] HMP Altcourse, being a contract prison...management response to appeals from the Director for help, or support, is instant, not subject to labyrinthine public sector, bureaucratic procedures, and it tells (HM Inspectorate of Prisons, 1999, p 8).

## Competition

Competitive tendering demands that alternative providers develop innovative solutions in a demanding environment, where each bid team knows that other highly experienced teams are at the same moment in time developing alternative solutions to the very same set of requirements. The tendering process is thus a period of intense research and development, as bid teams bring together existing technologies, processes and capabilities in new and innovative ways.

The threat of competition has been seen as a powerful factor in disseminating best practice across the Prison Service. In 2006, Martin Narey explained:

“When I visited Dartmoor in 2001, and despite my expectations being low, I was shocked by how poor the prison was...The POA told me bluntly that they were not going to change. I told them that if the jail was not transformed in twenty-six weeks, the public sector would no longer run Dartmoor...

In the case of Dartmoor, and at many other prisons before and since, we were able to obtain radically improved value for money while at the same time driving up standards of care and introducing new and innovative working practices. Improvements which might have taken years to drive through were achieved in twenty-six weeks, and all because staff knew that we could get someone else to run the prison decently and effectively if they could not or would not. In short, as a customer, we could shop elsewhere” (Narey, 2006).

Even where an in-house provider wins the contract, the fact that the management team has secured (or refreshed) its right to manage following a competitive process, bestows upon it a mandate for change. This may give managers the authority to renegotiate the implicit terms and conditions that tend to accumulate over time in mature organisations through a process of accretion. Organizational theorists speak of ‘psychological contracts’ which are regarded as essential to the effective working of a complex organisation – the written contract of employment is simply too cumbersome to allow management and staff to adapt to changing circumstances day to day. However, if they are not periodically reviewed, they can also result in organisational sclerosis, and management may find itself incapable of refreshing the organisational structure and culture over time (Conway and Briner, 2005).

## Commercialisation

There are several additional benefits that may come from engaging private firms in the provision of prison services. International public service companies may have a greater capacity for transferring best practice from one jurisdiction to another. In the early history of the prisons market in Australia and the UK, North American firms, both prison management corporations and smaller firms specialising in innovative design, played a significant role in the transfer of learning from North America. More recently, British prison management companies have been disseminating best practice from the UK to Japan, Germany, South Africa and Australia, and importing innovations from prisons they operate in these jurisdictions.

A number of writers have commented on the difficulty that the public sector has in scaling up effective innovations. The existence of two or more providers (public or private) within a

system of public administration, means that there is an intermediate structure that can assume the responsibility for scaling up without compromising or challenging the system overall.

Finally, there are benefits associated with employing organisations with brand names, and drawing on the self-interest of stakeholders with a commercial interest in that brand. In the UK, prison contractors are held to account both through their profit and loss statement (that is, through financial penalties for non-performance) and through the share price (as the Chief Inspector of Prisons delivers public reports on the performance of individual establishments).

### Other Explanations

**A Fresh Start:** One study has suggested that in prisons, which tend to be extremely conservative institutions, change can be implemented more quickly ‘when sufficient numbers of new staff are transferred en masse from the training college or from another establishment’ (Crawley, 2004, p 11). This may be one of the reasons why competition and contracting seem to deliver transformation in organisational performance and culture.

**Increased Diversity:** Organisation theorists have also argued that a modest level of turnover in a system, involving the introduction of personnel who are not as deeply socialised with prevailing norms, has the effect of increasing exploration and improving aggregate knowledge. From this perspective, it may matter less that the new entrants are experts in the field than that they bring a different perspective. Many of the gains to the system from competition and contracting may come from increased diversity (March, 1991, p 79).

**Selection Effects:** It is possible that contracting selected out the ‘change vanguard’ from within the Prison Service, so that the contractors had access to some of the best managers in the system; although another way of looking at this phenomenon might be to say that the prison companies created ‘hot spots’ which attracted other high quality managers (Kelman, 2005, pp 92-93)<sup>4</sup>.

**Direct supervision:** Contracting was a vehicle for introducing a modified form of direct supervision into the UK, and it is possible that many of the benefits associated with the contract prisons are derived from its adoption. In the United States, direct supervision seems to have contributed to lower costs and reduced assaults across a number of institutions (Wener, 2006, pp 392-410).

### Conclusion

It has long been recognised that it is competition rather than privatisation that delivers productivity improvements in the delivery of public services. As some of the leading North American scholars of prison contracting have argued, it is ‘the disciplinary power of the market in the long run’ that changes incentives, rather than a change of ownership (Camp and Gaes, 2001; Nelson, 2005).

While prison contracting in the UK has not been without its challenges, the available evidence, quantitative and qualitative, suggests that it has delivered significant value-for-

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<sup>4</sup> I am indebted to Dr John Rynne of Griffith University, in a private conversation in December 2011 for the insight about hotspots.

money improvements, and assisted in the transformation of the management culture across the prison system as a whole. However, as Liebling and others have argued, we still know far too little about the processes through which these changes took place, and if government wishes to derive further advantage from contestability in prison management, much closer study will be required.

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## Privatising Criminal Justice: A Step Too Far?

Michael Teague

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The UK currently has the most privatised prison system in Europe. Fourteen prisons out of a total of 141 prisons in England and Wales are currently contractually managed by private companies. Two of the 16 prisons in Scotland are also privately run. On 30 March 2012, around one in eight of the entire prison population of England and Wales (some 11,252 prisoners out of a total prison population of 87,080) were incarcerated in privately managed prisons (Ministry of Justice 2012b). We already lock up a significantly higher proportion of inmates in private prisons than the USA, the nation that many consider to be the heartland of privatised incarceration. Approximately one in twelve of all US federal and state inmates are in private prisons<sup>1</sup> (Glaze, 2011, p 7) – a significantly smaller proportion of private inmates than in English and Welsh jails.

A sense of the scale of privatisation's expansion is provided by the two newest private prisons, which according to Justice Secretary Ken Clarke will provide "modern facilities at reduced cost to the taxpayer" (Ministry of Justice, 2012a). HMP Thameside, the first of two English prisons to open in 2012, began operating on March 30. This was followed on April 24 by the opening of HMP Oakwood. When they reach full operating capacity, these two prisons will contribute an extra 2,500 spaces to the prison estate in England and Wales, and provide a 22 percent increase in the number of private prison places. The number of privately held prisoners is likely to climb still higher in future, with the market testing of eight public prisons now in train. In the event that the private sector is successful in bidding for all of them, almost a quarter of our entire prison population could soon be privately managed.

Is privatisation the answer to our overcrowded prison system? Prisons have been in the vanguard of the shift towards privatisation in the justice arena in the UK. In an era of acute fiscal tightening, private incarceration's capacity to grow shareholder profits while simultaneously saving taxpayers money is presented as attractive. The funding settlement for prisons for the financial year 2011-12 encompassed a total budget of £1,870 million for public prisons and £311 million for private prisons Hansard (Hansard, 2011a). This means that while 12.9 percent of our prison population was privately managed, we nevertheless spent some 16.6 percent of the budget on private prisons.

Baroness Vivien Stern observed in 2006 that privatisation was "...mainly designed to reduce the unit cost of a prison place and introduce fear as an element in the management of prison staff. It is not in any sense an experiment in prison reform" (Prison Officers' Association,

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<sup>1</sup> 128,195 prisoners are in privately managed prisons, out of a national federal and state prison population of 1518104 inmates. This figure, correct as of 31 December, 2010, does not include the 748,728 inmates who are locked up in local jails Glaze, L. E. 2011. 'Correctional Population In The United States, 2010.' in *Bulletins*. Washington: Bureau of Justice. A version of this essay was originally published on the Justice Gap website: [www.thejusticegap.com](http://www.thejusticegap.com)

2011, p 4). Lord Carter took an opposing position on the positive impact of privatisation of the prison system, arguing that the introduction of competition delivered “a strong incentive for improvements in public sector prisons”, and helped “in driving down costs, changing the culture and enabling flexible staffing structures to be introduced” (Carter, 2004, p 4).

Carter’s view was shared by the architects of the Conservative-Liberal Democratic coalition government’s so-called ‘rehabilitation revolution’. They demanded that “The old monopolies in the prison and probation system need to be opened up to create a far more diverse range of suppliers of criminal justice services”, as a Conservative policy statement from 2008 put it (Conservative Party, 2008, p 49). The Justice Secretary told the House of Commons that privatisation of prisons was no longer controversial, and asserted the existence of “almost a universal view in this House that we are moving on to a proper, fair, competitive basis for deciding how best to run prisons and at what cost, without being so obsessed about whether they are private sector or the public sector” (Hansard, 2011c). Clarke nevertheless acknowledged that this view may not be universally held outside parliament. He noted the development of contingency plans “in case anyone is so foolish as to start industrial action” (Hansard, 2011c) (which would in any case encounter legal difficulties, as prison officers, along with the police and the armed forces, are banned from taking industrial action).

The three private companies who manage UK prisons are G4S Justice Services, Serco and Sodexo Justice Services. G4S run six prisons, Serco manage five, and Sodexo are responsible for the remaining three. Sodexo and Serco also run one prison each in Scotland. The companies function in what is a competitive global market for privatised imprisonment. All have contributed to breaking what were labelled the “old monopolies”. Private prison companies represent themselves as both efficient and professional, but they are also highly profitable, despite functioning within the context of economic recession.

- G4S styles itself as “the world’s leading international security solutions group” (G4S plc 2012:18). It operates in over 125 countries, employing 657,000 staff. As well as six UK prisons, G4S manages three secure training centres and two immigration centres. The company’s ‘Corporate Responsibility Report’ (G4S plc, 2012) confirms that private intervention is a profitable business. Its turnover in 2011 rose 4.7 percent to £7.5 billion, while adjusted earnings per share rose by 6 percent (G4S plc, 2012, p 1)
- Serco similarly define themselves as a leading international provider of custodial services. They operate four adult prisons in the UK, as well as a Young Offenders Institution and a secure training centre. Their adjusted operating profit in 2011 rose by 12.1 percent, while their earnings per share similarly rose by 12 percent (Serco, 2012, p 5).
- Sodexo Justice Services operate in 120+ sites worldwide, including four UK prisons. They currently work with over 30,000 offenders worldwide. Sodexo, like the other companies, was able to announce solid organic revenue growth of 6.4 percent and an increase in operating profit for the first half of fiscal 2012 (Sodexo, 2012, p 3).

Part of the reason private companies can run prisons more economically than the public sector may be the simple matter of salaries. Prisons and probation minister Crispin Blunt informed parliament in 2011 that while a typical public sector prison officer might earn

£27,940 pa, their private sector counterpart would expect to earn only £21,413 pa - three-quarters of this amount (Hansard, 2011b).

The current coalition administration has emulated the previous Labour government in supporting private sector prisons. Privatised incarceration has prospered under the governments of both the right (Cameron, Thatcher, Major) and the centre left (Blair, Brown). England was the first country in Europe to use private prisons. What was then Group 4 Remand Services Limited opened the UK's first privately managed prison, HMP Wolds, in 1992. Private prisons were rapidly established under the government's Private Finance Initiative (PFI), which allowed public projects to be funded by private capital. As Shadow Home Secretary in 1993, Tony Blair unequivocally opposed privatised incarceration. He avowed that "... people who are sentenced by the state to imprisonment should be deprived of their liberty, kept under lock and key by those who are accountable primarily and solely to the state" (Prison Reform Trust, 2005, p 2). For a brief period following Blair's landslide victory in 1997, it appeared that prison privatisation might be reversed, as New Labour had insisted in opposition that they would return private prisons to the public sector. The then Shadow Home Secretary Jack Straw had insisted that it was not appropriate to make profit out of incarceration and even labelled private jails as "morally repugnant" (Hough, Allen and Solomon, 2008, p 82). However, once New Labour's 'modernising' agenda gained traction, private prisons continued their relentless expansion. Within a decade, England and Wales had eleven private prisons.

A 2003 National Audit report found that despite some evidence of good performance by some PFI prisons, they performed less well in safety and security. There were relatively high levels of assaults, and prisoners expressed concerns about personal safety due to the relative inexperience of private staff (National Audit Office, 2003). A high turnover of staff contributed to a lack of consistency and poor continuity of care for prisoners. Sachdev (2004) found that UK private prison contractors reduced labour costs by slashing pay, extending hours, cutting holidays and downgrading pensions.

Prisons and probation minister Crispin Blunt told parliament in 2010 that the ratio of prisoners to prison officers in public sector prisons in England and Wales was one officer to 3.03 prisoners. The comparable ratio in private prisons was one officer to 3.78 prisoners (Hansard, 2010). This may suggest that more individualised personal intervention is available in public sector prisons. While the Ministry of Justice has attested that privatisation was necessary to "meet the specific needs of each individual offender" (Ministry of Justice, 2011), how these needs may be better met in privately managed prisons given these ratios is unclear. Private prisons have also locked up a higher percentage of their inmate population in overcrowded accommodation than public sector prisons every year for the past thirteen years. In 2010-11, the average overcrowding rate for private prisons was 31.8 percent, easily overshadowing the public sector average of 22.8 percent (Prison Reform Trust, 2011, p 71).

The impact of the drive to privatise has long been evident in prisons. Colin Moses, ex Prison Officers Association chair, has observed that "it is the state's responsibility to imprison its citizens, and not profiteers" (BBC News, 2011). Jack Straw's 1995 assertion that incarceration "is surely one area where a free market certainly does not exist" (Nathan, 2003, p 168) now rings somewhat hollow. The ethical dilemma associated with privatisation was delineated by Sir Nigel Rodley, the ex-United Nations Special Rapporteur on Torture, almost a decade

ago: “the profit motive of privately operated prisons ... has fostered a situation in which the rights and needs of prisoners and the direct responsibility of states for the treatment of those they deprive of freedom are diminished in the name of greater efficiency.” (Rodley, 2003, p 7)

We are also now approaching the large scale privatisation of policing, with two of England’s biggest police forces (West Midlands and Surrey) inviting tenders for a contract which will allow private companies to investigate crime, detain suspects and patrol the streets. At £1.5bn over 7 years, the current deal makes the previous £200m contract between G4S and Lincolnshire police to run a police station look like chickenfeed. Should other forces become involved, the figure may rise to £3.5bn. What might the privatisation of policing involve in practice? As early as next spring, we might expect to see private companies running a range of police activities, including the investigation of crimes, the detention of suspects, the management of high risk offenders, the investigations of incidents, the support of both witnesses and victims, the support of both victims and witnesses, and the street-level patrol of individual localities.

With the tectonic plates shifting in favour of privatisation within the criminal justice system for both policing and prisons, it is hardly surprising that the probation service would also experience the impact of the drive to privatise. When a private company such as G4S advertises for probation officers, it is clear that a sea change is occurring within the justice system. Probation – notwithstanding its long history of embracing the rehabilitative ideal - amounts to a business worth some £820 million each year (Warrell, 2012). From Ken Clarke’s perspective, the government are simply “modernising the probation service so that we bring in more of the energy and innovation of the widest possible range of providers to bear on the battle against reoffending and crime”(Warrell, 2012). From the perspective of a private provider, with 233,000 people subject to supervision by probation staff (either on probation or parole), there is the potential for significant profit.

The Ministry of Justice’s latest consultation document ‘Punishment and Reform: Effective Community Sentences’ (Ministry of Justice, 2012c) outlines plans to allow private companies and charities to manage a range of services currently provided by probation, including some direct supervision of offenders. Electronic tagging, too, is booming. The Financial Times estimated that tagging represents a £1 billion market in the UK (Warrell, 2012). The ubiquitous G4S (which provides around 60 per cent of the Ministry of Justice’s tagging technology) and Serco (which supplies the remaining devices) are heavily involved here too.

Competition for the running of criminal and community justice services – prisons, policing and probation – reflects the inexorable process of ideologically driven marketisation. The private sector, it is claimed, can recoup substantial sums of taxpayers’ money by operating more efficiently, more effectively and above all more economically. The coalition government emphasises the centrality of markets and market processes. The “rehabilitation revolution” is officially defined as the creation of “an offender management system that harnesses the innovation of the private and voluntary sectors” (Ministry of Justice, 2010, p 3), reflecting the government’s ideological inclination towards, and strong support of, privatisation. There is a shift underway to private provision in prisons, policing and probation. A relentless process of transforming our criminal justice system into a competitive market place in which the attainment of financial return, rather than social justice, is the primary driver is well underway.

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## Probation and contracting out: the case against

Jonathan Ledger

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In 1992, as a youngish Probation Officer and Napo activist, I lobbied my then MP, Michael Portillo, as part of the 'Prisons are not for Profit' campaign organised by the Prison Officers Association. As I recall Mr Portillo, then a high flyer in the John Major Government was more interested in my views on the POA than the threat to justice from privatisation. Back then, many of us realised that the initial tendering of a handful of prisons was the thin end of the privateering wedge for the Criminal Justice System as a whole. The process has been a slow one but the cold dead hand of market testing/contestability/competition/contracting out (the terminology is almost endless) has inevitably reached all of the CJS including the Probation Service.

Whilst I will focus on the implications of competition for Probation I want to begin, as a relatively close observer, by reflecting briefly on the prison experience. Following the initial privatisation of a handful of prisons more have followed and the fourteenth private prison opened in April 2012. Individuals and organisations involved with the Service have highlighted the consequences of this process over the years. In a briefing issued in 2005 the Prison Reform Trust raised a number of concerns about the impact of private prisons on those incarcerated and their staff. These included the quality of contact between staff and prisoners, prisoner/staff ratios and pay and conditions. In its conclusions it commented that:

“The private sector is motivated by the need to make profits, a fundamentally different motivation from the public sector. It inevitably leads to cost cutting and a desire to ‘grow’ markets.” (Prison Reform Trust, 2005)

Writing more recently, criminologist Michael Teague has questioned the effectiveness of the mixed market approach to imprisonment and expressed concern about its ‘roll out’ across the wider CJS:

“The impact of the drive to privatise has long been evident in prisons. Competition for the running of criminal and community justice services – prisons, policing and probation – reflects the inexorable process of ideologically driven marketisation. A relentless process of transforming our criminal justice system into a competitive market place in which the attainment of financial return, rather than social justice, is the primary driver is well underway.” (Teague, 2012)

The Probation Service is currently under the competition spotlight following the publication in March 2012 of two MoJ consultation papers covering ‘effective’ community sentences and Probation Services (sic). However, this is not the Service’s first experience of contracting out. The disastrous IT and facilities management contracts have been well documented having been criticised over the years by, amongst others, House of Commons Select Committees

and the National Audit Office. Without getting into the detail of the chronic system failures of software provision, wasted public money and endless anecdotes about light bulbs sent aimlessly around the country to hostels the overwhelming experience has been a negative one. The traditional mantra that competition delivers efficiency and quality has sounded more than a little hollow to Probation staff. The Service has been weighed down by multi million pound contracts agreed by policy 'Generals' ensconced safely behind lines blissfully ignorant of where the Front is let alone understanding what is happening there.

Currently, the Service is dealing with another imposed contracting out process that has defied logic and sense. The Community Payback process began early in 2011 when it was announced that the work across England and Wales would be put out to tender on the basis of six newly created 'Lots'. It turned out that these 'Lots' would be something of a geographical lottery as Wales found itself linked with the north west of England, South Yorkshire was moved to the Midlands and Trusts as far apart as West Mercia and Devon and Cornwall were defined as regional neighbours.

Increasing chaos and confusion has followed this inauspicious start and the process has become mired in problems with contractual relationships, pensions and confidentiality. Some Trusts have not helped the situation by forming partnerships with one or other of the approved multinational bidders in order to compete against public sector bids (there is evidence of this practice developing in other tendering processes). Such alliances, unwelcome as they are, do appear to reflect Trust inexperience and uncertainty about the process and the underlying role of employers as providers and/or commissioners. All in all, it is hardly surprising that the Justice Committee in its report on the role of the Probation Service published last summer concluded that:

“The very large and incoherent groupings created for the community payback contracts would not be appropriate vehicles for commissioning other probation initiatives, and would undermine links between probation work and other participants in the criminal justice system, such as the police, courts, local authorities and local prisons.”  
(House of Commons Justice Committee, 2011)

The second part of the Committee's observation is particularly pertinent in the context of the Trust merger talk in the MoJ's consultation paper on effective Probation Services (see below). Following its election the Coalition Government was talking of a 'rehabilitation revolution' in its criminal justice policy. To its credit there has been some recognition of the urgent practical (and moral) need to reduce the prison population although, in common with most politicians, Ministers have tried to camouflage this view with tough talk about community alternatives. In March 2012 the Prime Minister returned from a trip to the USA lauding satellite tracking and complaining about 'soft' community sentencing. If only he had been listening to his own Prisons and Probation Minister who made a rather telling assessment of this myth just a few weeks earlier:

“There is an issue around public confidence in community sentences. The public may feel that a person has got away with it with a community sentence. But community sentences can be extremely intensive and very demanding. You are dealing with perception and reality.” (Crispin Blunt, 2012)

Mr Cameron's prejudice, regrettably, appears to have infected the MoJ consultation papers on Probation and community sentences, the latter being full of tough talk about punishment in the community and support for greater use of surveillance technology (which contrasts with the more progressive endorsement of restorative justice principles). However, it is the consultation paper on Probation that sets out Government thinking on the role of competition in the future of the Service. In his foreword to the paper the Justice Secretary states that the consultation "further extends the principles of competition, which have been applied successfully to the prison estate over recent years, to more of community-based management." (Ministry of Justice, 2012)

Yet what follows appears to be nothing more than a mishmash of ideas and proposals that are confused and, at times, contradictory. For example, it is conjectured that around 60% of probation work could be contracted out but that Trusts would retain key decision making powers and all statutory responsibilities, thus retaining liability for work which has been removed from their responsibility. The local knowledge of Trusts is recognised as important and Probation delivery structures are intended to remain consistent with local authority and police areas yet the argument for a purchaser/provider split in (or between?) Trusts is supported by encouragement of more Trust mergers. As the Select Committee identified last year it is imperative that Probation's structure enables it to work consistently with other statutory partners in the CJS. The much heralded 'localism' approach appears to have been, at the very least, mislaid if not lost in the consultation paper.

These examples are serious enough but alarm bells ring out when we consider the consultation paper's implications for probation practice. The use of the terms 'higher' and 'lower' in relation to risk reveals, at best, ignorance of the fluctuating nature of risk and the constant reassessment probation staff, of all grades of responsibility, make of those whom they supervise. That these terms are employed to define whom the market might be involved in competing for is professionally irresponsible. These proposals threaten the continuity and consistency that underpins best probation practice and enable staff, even in a budget-cutting environment, to build challenging relationships with offenders. These professional concerns were echoed in the recent debate about the Government's NHS Bill and one pathologist appeared to identify tensions that are just as relevant to the Probation Service:

"I have done some private work, but it's just not as interesting clinically: most of the time, you're just treating the "worried well"; ... it's all hips, hernias and hysterectomies. The NHS really comes into its own when treating the seriously ill: with the exception of certain excellent heart doctors who work privately, the private sector just can't compete." (The Guardian, 2012)

Clearly, Probation does not operate in a clinical setting as such but it is tempting to speculate what the external competition might view as the equivalent of 'hips, hernias and hysterectomies'. Large multinational companies of the type interested in probation work are likely to be attracted by 'safe' interventions available on a bulk basis. If you accept that premise you can begin to make sense of the artificial constructs at the heart of the MoJ consultation: large areas or regions and distinct 'lower' risk work.

In the area of practice I would also argue that competition runs counter to the culture of Probation, in particular the dissemination of best practice. Over the years probation staff have developed innovative and effective interventions such as work with those who have committed hate crimes, foreign national prisoners and a variety of accredited programmes, many originally defined under the 'what works' principle. All of these initiatives have been shared widely, not for profit but in order to improve the work of staff across the Probation Service. As has been witnessed in the Prison Service, competition, so often trumpeted as a progenitor of innovation, can have an inhibiting effect on cooperation as employers become jealous of what makes them 'stand out' in anticipation of a tendering process. Many of us were appalled to witness the recent debacle in South Yorkshire when Probation staff were temporarily excluded from local prisons due to a spat between the two services over the Trust's decision to join G4S in a bid for the prison cluster. This fall out, generated by a competitive process, runs counter to the joined up approach to post sentence work which NOMS was designed to nurture and the traditional approach of the Probation Service to cooperative work.

The Service's instinctive altruism has long expressed itself in the development of partnerships with local voluntary organisations. This is a long-standing 'localism' commitment and has demonstrated its willingness to share work cooperatively, not for reasons of profit or dominance, but in order to improve the range of services provided to those serving sentences in the community. It is an irony of tendering processes such as that for Community Payback that voluntary organisations are effectively frozen out with the consequence that some, like a handful of Probation Trusts, are forced to consider teaming up with multinationals in order to survive in the new world order. Despite the consultation paper's praise for the work of the voluntary sector it seems likely that, in what is already a cash strapped climate, many groups, often working in key areas such as diversity and specialised needs, are at risk of disappearing. This demonstrates the lack of the so-called 'level playing field' in competitive processes.

Before concluding it is important to address one of the fundamental arguments for promoting contracting out and competition; that of value for money and cost efficiency. The MoJ's own statistics demonstrate the success of probation interventions and relative 'cheapness' when compared to the cost of incarceration. The official way of recording reconviction rates has been subjected to many changes over recent years and this makes comparison difficult but broadly the re-offending rate for prisoners is 66% (even higher for short term prisoners) whilst the re-offending rate for those subject of probation supervision is 50% falling to 34% for those on specialist groups and programmes (MoJ, 2010). In annual average cost terms group/programme work (domestic violence £3572, sex offender £4148, substance abuse £2088, community payback £1982 (Hansard, 2011)) compares favourably with the prisoner cost of £41,636. Whilst there might be a desire to drive community sentence costs down these figures are hardly extortionate given the significance and intensity of the work undertaken and the skills provided by staff.

The cost of participating in a competition process should also not be ignored. This is reflected not just in simple expenditure but also in resources including staff time. It would be enlightening to discover how much Service money has been expended on the Community Payback process that is currently 'paused' in all but one of the Lots. Given the ongoing and

significant cuts to Trusts' budgets and the loss of experienced staff as a result of related redundancy processes, it is surely hard to justify the time and money to be spent by Trusts on competitive tendering in order to effectively 'stand still' in terms of current provision.

## Conclusion

It is implicit in any discussion of the role of competition in public services that there is an ideological debate underpinning the argument. I am aware that as the General Secretary of a public sector trade union there will be some who will claim that 'he would say that, wouldn't he'. However, I have sought to argue in this essay that the introduction of competition when measured against the Government's own criteria of increased quality and efficiency fails on both counts. It prompts agency tensions, wastes precious staffing and financial resources, demoralises staff, inhibits innovation and collaboration and consequently undermines good practice. The heavily veiled secrecy around competitive processes, under cover of catch-all confidentiality clauses which exclude trade unions and other interested parties, only reinforces suspicions about the fairness and equality of what is taking place.

In a speech to the Howard League in 2010, I set out an alternative vision for Probation based on its traditional values and openness to change. Seeking recognition of its highly trained and skilled staff, policy commitments to representing and promoting diversity, established work with voluntary agencies and century long experience of working effectively with those who commit offences, I argued that a properly resourced Probation Service could play a pivotal role in decreasing the use of incarceration.

"We should make our case based on an approach that emphasises shared values and beliefs, cooperation rather than competition, altruism rather than profiteering and trust rather than suspicion." (Jonathan Ledger, 2010)

I stand by those words today. The future of an efficient and high quality Probation Service should remain in its own hands rather than gambled on the uncertainty and risk resulting from external competition.

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# The Contracting out of Probation Services: Ready for Change

Heather Munro

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On the 27<sup>th</sup> March 2012 the Lord Chancellor and Secretary of State for Justice, Kenneth Clarke, published the long awaited consultation on the future of probation titled *Punishment and Reform: Effective Probation Services* alongside a review of community sentences. The consultation further extends the principles of competition to more community-based offender management and urges this process to be speeded up. There may be some who feel that those working in probation are not up for this challenge. I would beg to differ and believe that we are ready for this change.

It is worth reflecting on the recent history of probation to understand the change from probation as a “monopoly provider” of services. This came about with the Offender Management Act 2007 when the responsibility for the provision of probation services was passed to the Secretary of State and included the establishment of Probation Trusts who were the public sector bodies responsible for the provision of probation services. From this point on the Secretary of State could choose to contract with other providers for probation services, except in respect of “restricted probation provision” which relates to the giving of assistance to any court. The idea of having a wider range of providers delivering services for offenders is therefore not new to those of us leading in probation.

I was Chief Executive of Leicestershire and Rutland Probation Trust and one of the ‘first wave’ Probation Trusts and it was always clear to me that as a Trust we should both be able to compete to deliver probation services and so become more business like, but also should commission services from a range of providers. Shortly after becoming a Trust, Leicestershire and Rutland competed a proportion of Community Payback resulting in a wider range of providers including the voluntary sector, Social Enterprises and Serco, a private sector provider. Other ‘first wave’ Trusts took different business approaches but still developed their roles as providers and commissioners, for example West Mercia Trust who worked with voluntary sector providers in their area to deliver offender services. What followed, however, was a change in direction from the National Offender Management Service (NOMS) to the operation of Trusts, with the development of a new Trust ‘test’ and contracts in which NOMS saw Trusts as providers and not commissioners. Both the Probation Chiefs Association and the Probation Association have argued consistently that Trusts should be the local commissioners of probation services.

As someone who is a strong believer that the public sector has a key role in the delivery of probation services, I, like many Chief Executives, can still however see the value of competition. There is no doubt that it focuses the mind on greater efficiencies and encourages new ways of thinking. I suspect that in most parts of the country the prospect of the national competition for Community Payback has brought about greater efficiencies, though often the driver has been to ensure the public sector can compete and win the competition. There

is much that the public sector can learn about innovative delivery from the private and not for profit sectors.

As a result, the suggestion in the consultation document that Probation Trusts could become the commissioners of services is a very welcome one. With commissioning at a more local level there will be benefits – services should better reflect local circumstances. When the riots happened in London in the summer of 2011 it was important to work with partners to be responsive to local circumstances and yet as a provider of services the conversation about changes to what might be delivered was not in London Probation Trusts' gift.

There is also reference in the consultation about different models for oversight of probation services, including the potential involvement of Police and Crime Commissioners and local authorities. Probation Trusts work closely with local partners to deliver reductions in reoffending – many of the resources that are required to achieve this are in the hands of partner organisations, such as health and housing, so working alongside these organisations is not new to us. Indeed, as a local delivery organisation probation's oversight by NOMS, a national organisation not aligned to local boundaries, has not always seemed the best fit. The opportunity to commission jointly with partners is surely the most sensible approach and fits with other initiatives around localism such as community budgets. From a London perspective, working closely with the Mayor's Office for Police and Crime is not new. In September we seconded an Assistant Chief Officer to assist with the establishment of the new arrangements for a Mayor's Office for Police and Crime. We are active members of the London Crime Reduction Board chaired by the Mayor and so closer alignment would be something we would be ready to test out. In other parts of the country however, where PCCs are not yet established and have not had the experience of managing police services the move to a wider remit for probation is perhaps a step too far.

The probation consultation refers to a need to "speed up" implementation of the Offender Management Act 2007. Moving commissioning to Probation Trusts would ensure that there is progress on timescales. National Commissioning has been slow and cumbersome – a decision was made to put Community Payback to the market following the publication of the *Competition Strategy for Offender Services* published in July 2011. London was identified as the first 'Lot'. There are, of course, complex issues to be addressed including those around pensions, particularly as the contracting authority (NOMS) is not the employer and so progress has been slow. If Trusts are to become commissioners there are very real challenges ahead, not least in sharpening competences and skills as commissioners, but the opportunity to deliver greater efficiencies and innovation leading to better outcomes though competition is one not to be missed. This approach lends itself to payment by outcomes: for example, Trusts could incentivise and reward through payments dependent on downstream savings from reduced reoffending. Re-offending rates have been improving; the latest reoffending figures (for the year ended March 2010) show that just under 36% of adults released from prison, or starting a court order under probation supervision reoffend within one year. We need to better align services to the research on what works in reducing reoffending and to test out new ways of working. London Probation Trusts are about to test out Biometric monitoring of offenders as an additional tool to allow for enhanced engagement with those offenders who need a greater level of contact. Commissioning Trusts would have a role in researching and testing out new opportunities. Trusts, in their provider role, have

had limited capacity for such research, and indeed innovation, as most services are specified in detail and volumes set within the contract.

The consultation raises an issue about the size of Trusts for commissioning purposes and I suspect there will be a range of responses from individual Trusts about the right size and model. Undoubtedly a level of scale is required to compensate for the costs of commissioning, procurement and contract management. It would not be sensible to do this 35 times with the existing Probation Trusts each becoming commissioners. The configuration of the right model to take this forward will take time in some localities but in the case of London and Wales it might be possible to move more swiftly to a commissioning function and allow some learning to shape the future.

Perhaps the most controversial element in the consultation is what particular aspects of offender management services should be competed. The document presents a very clinical and purest view of the commissioner/provider split, insisting on a separation of provision for services, apart from advice to courts and the management of higher risk offenders, which should remain in the public sector. There are confusing aspects in the consultation about the delineation of “higher risk offenders” and what other aspects of managing lower risk offenders will remain in the public sector, such as breach and recall. Experience tells us that risk is dynamic and offenders cannot easily be divided into low and high risk, for example some offenders who are potentially high risk may be sentenced for a low risk offence. Other offenders may have committed very serious offences but when released from custody will be unlikely to ever reoffend. A high proportion of serious further offences come from those accurately assessed as low risk. So where the line is drawn over services reserved for the public sector will be contentious.

As someone who has chosen to work in the public sector and believes there is an argument for retaining a public sector probation service it is good to see that this has been recognised in the review. The arguments for retaining key aspects of the service are several. Firstly as a public sector body Probation Trusts have legitimacy. Trusts carry considerable powers e.g. to recall offenders to prison and to breach offenders. The Justice Select Committee comment on this in their recent enquiry into the role of the probation service. Secondly the probation service has the authority of the court and parole board to manage risk and is not distracted by considerations of reputation when making difficult decisions with regard to offender risk. Probation Trusts have won the confidence of sentencers who trust the independence of the service.

There seems to be more clarity about what have traditionally been known as “interventions”, such as offending behaviour programmes being competed and of course the wish to continue to compete Community Payback though not necessarily in the ‘Lots’ as previously described. There may however be a more mature approach that could be taken to commissioning, based on developments in health. There are a number of commercial functions that support commissioning, such as market stewardship where the commissioner plays a part in developing the market and establishing channels by which commissioners’ requirements and the reasonable needs of the public, third and commercial sector supply side can be defined and met. With a new market in criminal justice there is also a need for commissioners to have a role in market development. In health two trends are emerging

strongly which are not always pulling in the same direction -*pathway based* commissioning and *personalisation*. The review will at least provide an opportunity to comment and reflect on the various approaches.

*Punishment and Reform: Effective Probation Services* has provided a platform to debate the role of the public sector in delivering probation services and the way in which a wider range of providers can deliver services to generate efficiencies and innovation. In summary, much of this is welcomed by those leading probation. We are ready for change and whilst the devil is in the detail on which aspects of work will be competed the principles of Trusts as commissioners, competition to deliver efficiencies and innovation, and a method of payment by results are all ones I can certainly embrace. In London's case there is a willingness to work more closely with the Mayor's Office for Police and Crime to ensure our priorities are aligned. Whilst the proposed model for commissioning is not as forward thinking as might have been hoped the opportunity to develop this is welcomed. Not only are Probation Trusts ready for change we would welcome a more ambitious approach, such as the money for commissioning short term custody passing to Trusts or Police and Crime Commissioners. The continual tinkering with probation structures and delivery may not in itself deliver the drastic reduction in reoffending that could be delivered. Offenders sentenced to short term custody (under 12 months) who have no statutory supervision have reoffending rates of almost 60%. What is needed is a more radical approach to commissioning prison places, perhaps starting with short term custody. Probation Trusts would be a key partner in driving local solutions.

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## **Something old, something new: Catch22's work in Doncaster Prison**

Chris Wright & Peter Jones

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In October 2011 Catch22, as part of an “alliance” with Serco and Turning Point, began to deliver an innovative new service at HMP Doncaster designed to improve long-term outcomes for prisoners and reduce reconviction rates. The new approach forms part of the Ministry of Justice’s Payment by Results pilots whereby service providers will be paid on the basis of the results they achieve. The work at Doncaster is innovative in many ways; it brings together private and not for profit organisations who have jointly designed a solution strongly influenced by a commitment to the importance of building effective and professional relationships between offenders and practitioners, and in ensuring the environment in which the services are provided is conducive to bringing about lasting changes in behaviour.

### **Catch22**

Catch22 has a rich history dating back to the late eighteenth century. We have been in the field of offender rehabilitation and at the heart of innovation for over 200 years. Frederick Rainer who funded the establishment of the London Police Court Mission in 1876, which later became the probation service, was the founding father of one of our legacy organisations. Over the years we have delivered a wide variety of services to those caught up in the criminal justice system, from prevention to custody. In our current guise as a social business, with what we believe is a compelling social mission to help transform the lives of those we work with, we have enthusiastically embraced the idea that opening up the market to a range of providers from the state, private and not for profit sectors will ensure on-going innovation drives better outcomes for the community, victims and offenders. In our experience competition has created a structure that allows organisations with highly complementary strengths, expertise and shared commitments to making a difference to come together in support of common aims. Our work in Doncaster prison exemplifies this approach.

### **The Alliance**

Back in 2006, in a time which might be defined as the “white heat” of the National Offender Management Service (NOMS), there was an explicit encouragement from government for collaboration between the large private sector providers of correctional services and voluntary sector organisations in order to compete for services to work with offenders. It was during this period that Catch22’s legacy organisation, Rainer entered into a partnership with Serco and Turning Point and created what we called “the alliance”. Although much of the original enthusiasm to open up the wider offender rehabilitation/management market place to competition has taken longer to come to fruition than originally anticipated the “alliance” has held together and secured some notable successes within the prison sector, including successful bids for HMP Maghull and HMP Belmarsh West.

HMP Maghull was subsequently shelved as an early casualty of the current government’s austerity drive whilst HMP Belmarsh West opened at the end of March 2012 renamed as HMP

Thameside where Catch22 is providing offender management services and community re-entry support. Whilst establishing our footprint across the prison estate we are encouraged by the publication of the consultation document *Punishment and Reform: Effective Probation Services* (Ministry of Justice, 2012) which we anticipate will provide similar opportunities for innovative and again collaborative new approaches to service delivery within the community.

However, for the purpose of this piece we want to concentrate on the most recent success for the alliance: the re-tender for HMP Doncaster. A key part of the bid was the development, transition and operation of a payment by results offender management model tasked with reducing re-conviction rates by 5% with 10% of the total contract revenue at risk for non-delivery. Success will be determined by applying a binary measure of whether any sentenced prisoner released from HMP Doncaster following the start of the new contract is re-convicted within 12 months of release. For those who argue such arrangements favour “cherry picking” we are working with all sentenced offenders received into Doncaster regardless of potential. Through our effective and congruent case management approach we are seeking to achieve the required results by offering a coordinated care approach and delivering quality services to the prisoners (more of which later).

### **Payment by Results**

It has been claimed that Payment by Results (PBR) is the coalition government’s “big idea” (Haldenby, 2012). It is difficult to argue against the basic precept that payment for services should be linked to achieving specified outcomes. Obviously, in practice there are numerable challenges associated with “operationalizing” payment by result frameworks and contracts but it is to the great credit of the Ministry of Justice, no doubt driven by economic realities, that they are exploring this area with some vigour through the range of pilot programmes that have either been established, are in planning or in the process of being competed for. Inevitably there are those who opine against the concept; there are debates about what metrics to apply, binary versus seriousness and frequency and challenges for organisations where cash flow is an issue. But, if the approach is supported by “intelligent commissioning and contracting frameworks” alongside a corresponding relaxation in input and output controls and a true “black box” approach is allowed to be applied then genuine innovation can be brought to bear, in this instance on the challenge of reducing re-offending.

### **The Approach**

One of the most challenging elements of our role in the alliance has been how we have engaged with the bidding process. Initially, in the early days of our work together roles were not clearly defined and to some extent there was some fighting to be heard in getting ideas across – bidding is a fiercely competitive process whereby there is a constant, albeit creative, tension between innovation, efficiency and pricing whilst ensuring that the specified requirements are adequately addressed. But, as the relationship developed and the respective skills sets of the different organisations became more widely understood real added value has been brought to the process. By the time of the re-tender for HMP Doncaster a fine-tuned process had emerged which to the great credit of the “major” player in the alliance, Serco, allowed for radical delivery solutions to be developed. Although, subsequent to the success of the bid the attention has been focused on the payment by results element of the contract, the significant point is that the delivery model had already emerged prior to the negotiations around PBR. The fact that the partnership was eager to test the approach

in a contractual relationship which put the providers' revenue at risk fully endorsed the belief that bringing the three organisations together as a formal alliance would allow the complementary skills sets to drive innovation forward.

### **The Importance of Relationship**

These are interesting times. For many of us who have been involved in “social work” of any description there is an acknowledgement that the dynamic of the relationship between the practitioner and the service user can be critical in effecting positive change. From the early 1990's and the introduction of the “what works” paradigm into mainstream rehabilitation practice within both custodial and community settings it could be argued, albeit oversimplifying the position, that the centrality of the relationship became subservient to the perceived power of the intervention. However, through the academic work of the likes of McNeill (McNeill, 2012) and Liebling (Liebling, 2005) and the emergence of desistance theory the importance of the practitioner's ability to engage with the offender and the way in which the service is delivered has come to the fore. This theoretical and academic underpinning is central to the delivery model developed by Catch22 in support of the alliance's work at Doncaster Prison. At Catch22 we have long held the view that success is determined largely by the way things are done: by creating the right kind of environment to deliver services; by building effective working relationship between the service user and the practitioner and instilling hope in those we work with that their situation can change for the better. This approach has been informed by Assay and Lambert's work on the common factors that determine successful outcome in therapy (Assay, 1999).

### **One assessment, one case worker, one relationship**

The approach we have developed at HMP Doncaster provides an “end to end” management system that has replaced the former custody screening process which only provided a basic triage and signposting system of support to sentenced offenders on reception to custody. The new model of delivery provides a step change in the management of offenders throughout custody and post release, particularly for those who are serving less than 12 months. In the past this group would have received only a basic custody and release planning service given that they fall outside the requirement for statutory supervision on release and for many they re-appear in the system in far too short a period of time. According to the *Breaking the Cycle* Green Paper (Ministry of Justice, 2011) 61% of offenders serving less than 12 months are reconvicted within 12 months of leaving custody.

Our new approach means that we are engaged at the reception point into custody. All sentenced offenders are met by Catch22 case managers/workers (at the start of the new contract some 31 former Serco Prison Custody Officers and support grade staff transferred through TUPE across to the employment of Catch22) who complete an assessment of needs and risks and address immediate issues. Through a care co-ordination approach a package of support and relevant interventions is agreed, according to the individual circumstances of the offender. Whilst the case managers provide generic care co-ordination and support, specialist roles within the team provide additional assistance, for example in relation to complex housing issues.

What we are aiming to achieve through this model is for case managers to make informed decisions regarding the level of personal interaction required, taking account of the risk and individual needs, and to begin the process of involving other internal services and

disciplines in delivering the “sentence plan”. The case manager’s role is vital in winning the confidence of the offender and in ensuring improved co-ordination across the regime and in effectively sequencing relevant interventions. This coordinated approach ensures priority health and substance misuse issues are immediately addressed, numeracy, IT and literacy needs are identified and referrals prioritised to offender behaviour programmes or wider educational courses. Sentence planning and wider social support needs are addressed concurrently as part of the case management process, maintaining a focus on what is realistic and achievable for the offender at regular review points.

The notion of one relationship does not preclude additional input and help when required; it is simply designed to ensure that the offender is engaged in the process and benefits from the involvement of a consistent point of contact. The challenge for the model is to ensure that individual workers can develop and apply the necessary empathetic skills to encourage effective engagement.

After only six months of operating the new approach there has been a noticeable impact on the “total” regime of the prison and in how previously disparate functions are interacting and contributing to a more co-ordinated approach to the offender’s experience. There have been a number of specific developments which appear to be adding value to the overall approach. We have introduced an “alliance resettlement unit” that accommodates offenders from the South Yorkshire area serving less than 12 months with less than 6 months remaining. The men located on the unit receive additional support and advice in areas including benefits, budgeting, employability, thinking skills and planning for the future as part of an alliance led initiative the “Make a Change” Course (MAC). We are also providing volunteer mentors who provide on-going support to matched offenders on their journey back to the community – the mentors are providing an independent link which sits outside the formal criminal justice system with a focus on strengthening self-belief and self-esteem.

It is critically important that the work of the offender management unit in Doncaster is not delivered in isolation from the wider world and significant effort has been placed on developing pre-existing and new partnerships within the community. To this end we have co-located Catch22 case managers with police, probation and drug intervention colleagues in IMPACT teams across South Yorkshire in support of the Integrated Offender Management (IOM) model which in turn has improved the flow of communication between statutory partners and added a further dimension to the working of this integrated model. There is close working between Manchester College (the education provider in the prison), Working Links and Job Centre Plus designed to ensure that learning needs are prioritised and offenders are fully engaged prior to their release into the Work Programme, offering a continuity of employment and training support through the gate. In effect the different elements required to provide the foundation to successful resettlement are being bound together by the oversight of the case manager in collaboration with the offender.

### **Early Observations**

The new arrangements have only been in place since October 2011 and so it is too early to be able to demonstrate whether the PBR metrics are being delivered. However, what we do know is that there has been a steady increase month on month in the number of offenders engaging with the approach. In October 2011 of the 182 men released from the prison 62

were engaging with the programme. By January 2012 of the 183 men released 182 were engaging and in February 2012 191 men were released all of whom were engaging with the programme. With regards to released prisoners moving into education, training and employment as well as stable accommodation the performance figures are all moving in a very positive direction. These are early indications that the new approach is establishing itself and offering something different and apparently meaningful to the offender.

The introduction of the new approach has been facilitated by the fact that HMP Doncaster was already a well run establishment with a very clear ethos designed to support offenders re-integrate back into their communities. In particular Doncaster has developed imaginative and sensitive approaches to helping the men re-establish links with and maintain relationships with their families. This existing environment, supported by a management that is committed to making a difference, provided a strongly encouraging environment to introduce new thinking. There are many lessons to be absorbed and there are still fractures in the delivery model – the notion of one relationship has for logistical and resource reasons not fully transpired and so there is a “transfer” at the point of release to community based case managers with some consistency being provided by the volunteer mentor arrangements. But, for those being released from sentences of less than 12 months, we have built a model which provides, where wanted, on-going support back in the community – a significant advance on previous arrangements.

It is also the case that we are still in the process of creating a different culture amongst the newly designated case managers who in the majority of cases previously operated as prison custody officers. This will take time, support and training but we are starting from a strong base. Fergus McNeil in his Apex Scotland Annual Lecture in 2009 (McNeil, 2009) presented his work on Oral Histories of Scottish Probation. In it he illustrated the view of some of the former probationers he interviewed in which it became clear that the “tone” set at the beginning of the relationship with the probation officer was an important factor in determining the success of the order – feeling cared for and liked cannot be underestimated as motivations for wanting to change the course of one’s life. They are also important considerations when deciding how to respond to restrictions and boundaries. Setting the right “tone” and treating individuals with respect whilst holding them to account are the attributes we are committed to developing in our staff at Doncaster and beyond.

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# Conclusion

Vicki Helyar-Cardwell

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After 20 years of private prisons in the UK, the evidence on whether it has improved or worsened prison performance remains mixed and contested. The running of prisons by private companies, in particular, has resulted in years of heated debate – not least because the deprivation of liberty is the most severe punishment executed by the State and often upon the most marginalised of citizens. Furthermore, the ethical questions regarding the role of various sectors across the wider justice system remain controversial; the debate about the future of probation services and who runs offender management in the community is only just beginning in earnest. The outcome of the probation review could be a ‘game changer’ in this sense, transforming the offender management landscape considerably for years to come.

In all of this, what is apparent is the dearth of evidence from prisoners themselves on various differing prison regimes (with the notable exception of Liebling and Crewe’s work). Yet we know prisoners are keenly aware of whether a particular institution has a reputation for fairness and what perks or procedures are granted compared to other prisons (Sparks and Bottoms, 1996). As the increasing desistance evidence is making clear, prisoners and those under probation supervision are powerful agents for their own change, if given the opportunity to realize this. Further work is needed on understanding offenders’ views on community provision, in particular the growing use of electronic monitoring and curfews, and how debates on legitimacy and managing by consent can be translated into this arena.

As a final thought, perhaps it is questionable whether the private, public or voluntary sector prison and probation regimes can be effective in what has been described and widely acknowledged as the “contemporary culture of control” (Garland, 2001). In the early days of the new government talk was of rehabilitation and reform. It has become apparent that explicitly promoting community sentences as a genuine alternative (rather than as an addition) to prison is not politically possible. This is a shame. If our current penal ideology prioritises public protection, managing risk and the exclusion or ‘othering’ of those who commit crime, then it may in fact undermine any ‘rehabilitation revolution’, which many of the changes to service delivery were proposed to enable. Such a pressure has undoubtedly contributed to the huge expansion of the prison system and a Probation Service focused primarily on risk (Kemshell, 2002). Clearly, the delivery of services for offenders take place within a political and social context that is difficult to ignore.

Who delivers justice services is a significant topic for discussion, demonstrated by the range of issues and arguments covered by the authors here. Who delivers really does matter. This collection of essays is our contribution to this important debate.

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