The 2013 Offender Rehabilitation Bill:
'A curious mix?'

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> After more than a hundred years of work with offenders, often with little encouragement or recognition for their efforts, a small island of decency and humanity in the criminal justice system may be disappearing (Mair and Burke, 2012: 181).

It was with this sombre warning that George Mair and I concluded our overview of the history of the probation service in England and Wales in our book *Redemption, Rehabilitation and Risk Management.* Ultimately we argued that whilst community penalties might have a future, if only as an alternative to custody, whether the same could be said for probation was a different matter. The proposals contained within the 2013 Offender Rehabilitation Bill would suggest that the eventual demise of probation is now a step closer to becoming a reality. The existing 35 Probation Trusts will be replaced by a significantly smaller National Service dealing with the rump of high risk public protection cases. Some 70 percent of the services' rehabilitative work will be contracted to providers on a payment-by-results basis, most likely to be the large multi-national security corporations who have already gained a foothold into the delivery of criminal justice services in England and Wales. Probation staff will be split between the National Service and the range of providers of rehabilitative services, although it is unclear as to how and when this will be decided, who will do this and whether there will be a national recruitment process or some sort of allocation process based on matching roles? The timing of these widespread changes is all the more surprising given that reoffending rates are falling, the probation service has met all the targets set for it by government and only recently was awarded a British Quality Foundation Gold Medal for excellence in 2012. As Lord Ramsbotham (2013)[1] suggested in the House of Lords debate on the Bill:

> Until last summer, the criminal justice system was embarked on a rehabilitation revolution led by a Secretary of State whose method included careful examination of practicalities and attention to the all-important role of people in the rehabilitation process. In the new rehabilitation revolution on which we are now embarked, people appear to be made to play second fiddle to the market, while the timing appears to be determined by the need to present tough achievements to the electorate in the 2015 election manifesto.

In this respect the direction and pace of the Offender Rehabilitation Bill would appear to be inextricably linked to the political ambitions of the current Justice Secretary who was appointed to 'put some bite' into his predecessor's proposals to reform community punishments (Travis, 2012). The Bill is thus big on rhetoric but short on evidence. One would expect that such radical changes would, at the very least, be properly piloted and evaluated before being rolled out; but the Justice Secretary decided to cancel the two community pilots in Staffordshire and the West Midlands and Wales, and refused to release details of the evaluation of these pilot schemes - whilst being quick to overplay the initial evaluation of the HMP Peterborough Scheme based upon limited findings. Worryingly, informed

[1] House of Lords Hansard, 20 May 2013: Column 661

public debate regarding the desirability of the proposals by probation professionals has been discouraged and even censured, creating a climate of fear amongst those professionals best placed to contribute to these debates.

There are two main strands to the proposals. Firstly, there is a focus on improved resettlement outcomes through the extension of the licence and supervision requirements for those released from prison having served a sentence of less than twelve months. To facilitate this, a significant part of the prison estate will be designated as "Resettlement Prisons" enabling better "through the gate" provision. The focus on short-term prisoners, who currently get no support on release yet have high rates of reoffending is a particularly positive move but the practicalities of providing additional rehabilitative services for 50,000 to 60,000 additional offenders are huge and complex and barely addressed within the plans. The Justice Secretary has argued that the changes proposed have been necessitated by what are rightly unacceptable levels of reoffending amongst this group. But using this as a rationale for dismantling the probation service, even though it has no statutory responsibility for these prisoners, is at best disingenuous and betrays a fundamental ignorance of the service's work. It is worth remembering that the probation service's lack of involvement with those sentenced to imprisonment of twelve months or less was not the result of wilful neglect by the organization, but because of legislative changes brought about by a previous Conservative government in the 1991 Criminal Justice Act. And the most recent attempt to do something similar in the form of custody-plus in the Criminal Justice Act 2003 was curtailed on cost grounds (Newburn, 2013). The government's intention to utilise the potential of ex-offenders as peer mentors is also a welcome but untested initiative on the scale envisaged. The deployment of peer mentors certainly has the potential to provide positive role models and in the right circumstances might be an appropriate means of engaging those still involved in criminal activity, but as Fletcher and Batty (2013: i) point out:

> ... the pool of individuals possessing the requisite experience, aptitude and skills may be small; high rates of peer turnover may compromise service delivery; the ambiguity of the role means that mentors are placed in a "grey area" where they are neither service users nor professionals; and peer programmes require considerable maintenance and support.

It is important therefore to make sure that everyone supervising offenders has the right kind of training and expertise and that mentoring schemes are not done on the cheap and as a means to replace services rather than complimenting them. As the Prison Reform Trust (2013: 4) has pointed out 'Even if additional mentoring and support for short sentenced prisoners proves successful for people who have committed non-violent and less serious offences, it will nearly always be cheaper and more effective to impose a community sanction rather than a short prison sentence.'

During the course of the short consultation leading to the publication of the Bill there was a significant change in the language used to describe the services offered to those short term prisoners serving less than twelve months on their release from 'support' (which is more in line with a mentoring relationship) to 'supervision'. The notion of 'compulsory mentoring' is an oxymoron if ever there was one! Supervision implies a much more formal structure with obvious detrimental repercussions for non-compliance. This could have the unintended consequence of further increasing the levels of breach which have already led to an unacceptable number of individuals returned to prison for what are sometimes minor infringements of their licence conditions rather than the commission of a new offence. The Bill proposes a sanction of two weeks imprisonment for non-compliance which is in reality unlikely to contribute anything in terms of rehabilitative outcomes. The impact assessment accompanying the Bill provides no assessment of how many additional short-term sentences are likely to be awarded or the potential for increase rates of breaches. If previous sentencing practices are anything to go by, there is a strong likelihood that magistrates in particular might feel that, by imprisoning the offender, they can get the best of both worlds: both the punitive impact of imprisonment and supervision of the offender when he or she is released. Of course, such an approach

could undoubtedly be counter-productive as even a short period of custody can lead to an individual losing their accommodation, employment and fracturing family links, thereby undermining moves towards desistance. Whilst the provision of post-release supervision to *all* prisoners, even those imprisoned for a matter of weeks, might be based on good intentions, it does raise the question as to whether it is really necessary. As Lord Beecham pointed out in the House of Lords debate on the Bill (2013) a more productive approach might result from 'concentrating resources on those offences and offenders to which they are most likely to be relevant; otherwise, in a payment by results, the low-hanging fruit will be too readily plucked by the providers, to the cost of the taxpayer'[2]. Adding, 'the provision forbidding somebody to change residence without permission and the power to impose compulsory attendance at drug appointments look little more than further examples of a creeping culture of control'[3].

The second main strand to the Bill concerns the national commissioning of services in the form of 21 contract areas to support the requirements. The current proposals envisage the commissioning of services on a national basis with delivery being located within 21 contract package areas. The contracts will be held by a small number of private *Community Rehabilitation Companies* (CRCs) who will then subcontract service delivery to a complex mix of providers. At present the shape of these new Community Rehabilitation Companies is unclear but Kuipers (2013) provides a useful summary some of the key elements:

- The CRCs will be the contract holders of the business with Ministry of Justice/National Offender Management Service (MoJ/NOMS) and will remain as the contract holders regardless of who owns them in due course;
- CRCs will be limited liability companies;
- The government will hold a 'golden share' in the CRCs, ensuring that the government has a controlling interest;
- The CRCs in themselves will not be mutual, but they can be owned by a mutual. However, the design of the CRCs (in the hands of the MoJ/NOMS) may include incentives for staff in the CRC;
- Probation Trusts cannot bid to be the owners of CRCs, but staff from Trusts can be part of businesses (mutual, companies, consortia, etc.) that can bid for the CRCs, as long as there are 'ethical walls' between those staff and their current Trust responsibilities (often described to be very difficult to achieve).

The probability of introducing national commissioning with multiple contracts within a timescale of 18 months looks questionable when the competition for Community Payback in London took over two years, and this of course was restricted to a single intervention in a single area. If they go ahead all the indications are that the contract packages will be over a lengthy period in order to reward private providers for their investment and performance (Webster, 2013). As I have indicated elsewhere, this has all the hallmarks of a 'scorched earth' policy which a subsequent change of government would find difficult to untangle even if it were so inclined (Burke, 2013). It has been suggested that what we are witnessing is the emergence of a 'shadow state' of extremely powerful private providers (White, 2013). The government contends that the old monopolies in the prison and probation system need to be opened up to create a more diverse range of suppliers of criminal justice services. However, just three companies (G4S, Serco and Sodexo) dominate the management of

[2] House of Lords Hansard, 20 May 2013 : Column 637

[3] House of Lords Hansard, 20 May 2013: Column 645

private prisons in England and Wales and economies of scale suggest that the same situation will emerge in the contracting of rehabilitative services.

The proposals contained within the Offender Rehabilitation Bill inevitably pose more questions than answers. Potential providers of key rehabilitative services are being asked to develop bids without knowledge of the scale of competed services, the additional costs of working with those prisoners serving short sentences, and the specifics of the payment mechanisms. The government believes that the measure contained within the Bill will lead to cost savings but the start up costs of establishing a new National Service and developing a complex commissioning framework will almost inevitably have the opposite effect. Longer term savings are likely to be achieved through reductions in service delivery and the quality of interventions provided which could ultimately compromise public protection. There are real dangers and difficulties ahead including the danger of fragmentation of services; the bureaucratic nightmare of expensive contractual structures that could so easily push out local initiatives and existing expertise; the risks of perverse incentives to providers; and ensuring that claims to commercial confidentiality do not act as barriers to sustaining effective communication between all parts of the system. There is also the thorny question of accountability. The Bill is short on detail regarding how risk will be managed across private and public bodies in a world of multiple providers. It has been estimated that a quarter of offenders change risk category during their sentence[4] but it is not clear as to whether or not a change to a higher-risk category would constitute a reason for withholding payment in whole or in part, or would that happen only in the event of re-offending?

Perhaps the ultimate failing of the current proposals is the lack of understanding of the complexity of supervision which cannot be reduced to an instrumental means of reducing reoffending at the lowest cost. Offenders are presented as a homogeneous group, differentiated only by the category of risk assigned, and there is little acknowledgment of diversity issues. For example, there is a glaring lack of any specific policies for dealing with women offenders in the Bill despite the Government's acknowledgement in their *Transforming Rehabilitation* (Ministry of Justice, 2013) strategy of the widespread support among those consulted that services specifically tailored to women offenders' needs should be further developed and delivered. In this respect the proposals contained with the Offender Rehabilitation Bill contain all the elements of what Loraine Gelsthorpe has insightfully described in a previous edition of this newsletter as a 'curious mix of political posturing, populist punitiveness and measures to reduce costs' (2012: 3). A more constructive course of action would be to reduce the use of short-term prison sentences in the first place and preserve and develop existing partnerships, although this more measured approach is unlikely to appeal to a Justice Secretary in a hurry.

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[4] Lord Beecham, House of Lords Hansard, 20 May 2013: Column 637

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