



Reunification of probation services

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Introduction

In 2019, the government announced it was bringing the management of medium- and low-risk offenders in England and Wales back in house. The decision followed extensive criticism of the decision to outsource these services in 2015 and is the fourth major restructuring of probation services in 20 years, two of which have taken place in the last eight years alone.

This case study looks at the Ministry of Justice's (MoJ) preparations for the reunification of services and their transition back into the department, highlighting successes, challenges and areas of focus for the longer-term improvement of probation services.

Background

Transforming Rehabilitation (TR) was the then-Justice Secretary Chris Grayling's plan for the reform of probation services for offenders in the community. Conceived in 2013¹ and implemented from 2014, it saw service delivery split into two parts: MoJ's National Probation Service (NPS), responsible for high-risk offenders, and community rehabilitation companies (CRCs) – private and voluntary organisations providing offender management and contracted services, such as unpaid work and accredited programmes, for medium- and low-risk offenders.

TR was the subject of strong criticism from the start and throughout its service. A 2019 report, for example, found 19 out of 21 CRCs had failed to meet their reducing reoffending targets.^{2, 3} This poor performance, coupled with ballooning costs, led the Institute for Government to declare in 2019 that it had “failed by every measure”.⁴ Grayling, too, would later admit problems with his reforms,⁵ reflecting that he should “probably have done [TR] in two or three stages”.⁶

Against this backdrop, the government launched a consultation in 2018 on the future of TR and, in May 2019, announced a new probation system: from January 2021 in England and the end of 2019 in Wales, all offender management would be brought back into the public sector. Under these plans, resettlement and rehabilitative services, such as education, training and employment, and accommodation, would continue to be delivered by the private and voluntary sectors. However, in June 2020 the new secretary of state for justice, Robert Buckland, announced that unpaid work, accredited programmes and structured interventions would also be brought back in-house.* The government said the changes would “strengthen public protection by bringing together management of offenders of all levels of risk into one organisation... deliver visible punishment and reparation to communities through an overhauled approach to unpaid work... [and] strengthen rehabilitation”. The changes would be backed by additional investment of £155 million.**⁷

The changes also included:⁸

- Twelve new probation regions in England.
- Each region overseen by a new dedicated Regional Probation Director, providing strategic leadership and with responsibility for the delivery and commissioning of probation services.
- Regional Probation Directors working closely to ensure an effective, unified approach from pre-sentence stage in court through to management in the community.
- The publication of a workforce strategy.⁹

The ambition was for the return of all*** services to MoJ in June 2021 – 12 months from the announcement. With 113,000 cases and over 7,000 staff from 54 separate organisations needing to be transferred, alongside the harmonisation of different operating models, cultures and processes, the timetable was ambitious. The pressure was increased by the impact of Covid-19 on already-stretched services, and the complexity of delivering with a largely remote workforce. So tight was the timetable, an MoJ non-executive director privately gave the programme a 3% chance of success.¹⁰

Nevertheless, the advice of officials to ministers was that further delaying structural changes would only ‘prolong the agony’ of poor CRC performance.¹¹ The senior

* Though some services would still be delivered by private organisations and voluntary, community and social enterprises

** Plus £75m capital.

*** Other than the still externally commissioned rehabilitation services.

responsible owner (SRO) and responsible director general (Jim Barton and Amy Rees, respectively) accepted personal accountability for the risks associated with the accelerated timetable. On that basis, ministers gave their endorsement, and the date of transition was set as 26 June 2021.

Planning for transition

MoJ's plan for Day 1 was for staff to keep their cases when moving into the new organisation to maintain operational delivery, protect service continuity and minimise the risk of operational failures. MoJ organised its planning for Day 1 continuity around five themes:¹²

1. Process – the same tasks and activities will be carried out as before Day 1 wherever viable/appropriate.
2. People – the same people will carry out the same jobs, in the same location, wherever viable/appropriate.
3. Organisation – teams will follow the same configuration and structure wherever viable/appropriate.
4. Digital, data and tech (DDaT) – staff will have access to all relevant data. They will use HM Prison & Probation Service systems and equipment rather than those currently used.
5. Estates – probation staff will carry out their jobs in the same location wherever viable/appropriate.

But there were concerns from stakeholders.¹³ Attendees at an Institute for Government roundtable in February 2021 felt the CRCs' autonomy and innovations – one of the few positives of TR – would be lost in the civil service. These innovations included drawing on service users to design and run services (something supported by ministers); adopting new and more effective IT and case management software, which could not be transitioned due to the standardisation of IT within the new Probation Service; and creating new 'blended' ways of meeting offenders, both in-person and remotely. These initiatives were partly possible due to the inherent freedoms private sector organisations had: greater flexibility to hire, procure and design services, and the ability of CRCs to stand back and redesign the whole service.

Several risks associated with the pace of change were also highlighted. There was agreement that the timescale for transition was challenging and would inevitably lead to problems early on. For example, it increased the risk of probation cases falling between the cracks as the legacy organisations integrated their structures, people and systems. Longer-term concerns were also expressed about the effective integration of the distinct private and public sector cultures, and how the workforce could become fractured if the change was not managed effectively. This was also reflected in HM Inspectorate of Prisons' (HMIP) inspection findings during the preparation for transition.¹⁴ While noting some CRCs were preparing well and collaborating with the

NPS, it also highlighted that local managers in providers were not being involved in the changes; there was uncertainty and anxiety about job security; and there was a lack of clarity on Transfer of Undertakings (Protection of Employment) Regulations (TUPE) data and eligibility. These issues were also raised in the Institute for Government's research interviews for this project.

MoJ adopted a robust, programmatic approach, and delivery was closely tracked for six months before Day 1. There were also daily checkpoint meetings attended by each of the lead delivery officials for the three months before Day 1. The programme was described by one interviewee as being "managed to within an inch of its life".

Strong programme management was complemented by strong communication and engagement.¹⁵ The leadership team, in particular, were viewed as accessible. One interviewee said: "There was real commitment from Jim [Barton] and Amy [Rees] to do things the right way and learn the lessons from TR. The engagement has been on another level." Another said their experience was "really positive", and a third added they felt they "could call Jim [Barton] at any time". The communication approach placed particular emphasis on how the changes were "a merger, not a takeover", and included forums and visits by the SRO to resettlement prisons. For example, during a visit to HMP Chelmsford, the MoJ team ran an engagement session with Nacro staff to explore how the unified service might operate, post-transition. Feedback on the MoJ commercial team's engagement was more mixed, however,¹⁶ with a perception that they were too rigidly focused on the commercial agenda and issues at the expense of the nuanced bigger picture. For example, one interviewee told us there was overuse of commercial jargon, which was alien to smaller providers in the voluntary sector.

Although the programme was well run, the timetable remained challenging. In March 2020, a joint special advisory group* was set up to advise MoJ on the transition to the unified model. Convening six times with representatives from the voluntary sector and government – both officials and a minister** – it looked at areas including the design of the Dynamic Framework (the mechanism by which the government would procure rehabilitation and resettlement services), how regional directors could work with the voluntary sector, and Day 1 contract values and volumes.¹⁷ It produced recommendations, but some of these – such as recommending that MoJ provide clear guidance to organisations on the process they would need to follow to qualify on the Dynamic Framework – were not fully delivered, in that the resulting guidance was considered difficult to understand by some organisations. This was attributed by one voluntary sector interviewee to the pace of the programme. Despite the best intentions of the MoJ leadership team, the timetable they had set themselves meant it was not possible to collaborate with providers as fully as they would have liked.

The Dynamic Framework itself was also subject to criticism. It required organisations to apply and meet prescribed criteria to make their services available, but was viewed as unnecessarily complex.¹⁸ The contractual architecture was described as 'dense', with some contracts too large in both scope and geography.¹⁹ As a result, some small

* A Special Interest Group of the Reducing Reoffending Third Sector Advisory Board.

** Alex Chalk MP, Parliamentary Under-Secretary for Justice.

organisations gave up trying to meet the qualifying criteria because they could not gather the resources and expertise needed to apply.^{*.20} Even larger organisations struggled: already under pressure due to Covid-19, many had to move staff away from front line activities to support procurement, affecting users.²¹

Day 1 and evaluation

Despite concerns about the pace of change and the approach to procurement, the reunification of probation services took place successfully on 26 June 2021, as planned.

On Day 1:

- Over 7,000 staff transferred to MoJ, joining 3,500 probation officers already in the public sector, creating a workforce of more than 10,500 people in the new Probation Service.
- All transferred staff were provided with devices and had data and email migrated.
- All but 30 staff had access to a laptop; and only 10 were not paid at the end of the first month. Emergency payments were promptly arranged for all 10 individuals.
- Almost 200 buildings were transferred.
- All 110 Commissioned Rehabilitative Services** contracts for Day 1 services were in place.
- Essential services were still running.

Even without the tight timetable and difficulties created by Covid-19, the fact that a transition of such scale was delivered as planned with virtually no disruption is impressive.

Jim Barton described the change as having gone “as well as could be expected”; and this view was shared by HMIP, which published its annual report in March 2022.²² This first major independent assessment of the changes included a survey of 1,500 probation staff and found that the programme had, in the main, been well managed, noting there were no major disruptions to service provision; and the majority of the staff and managers they spoke to supported the direction of travel.

Inevitably, the report found some areas where things could have gone better. This included former CRC staff not being given enough time for a proper induction as they moved organisations, again due to the pace of change; and feeling less satisfied with the implementation of the changes than former NPS employees. Over half of probation staff were also dissatisfied with high caseloads and the guidance on how to manage work at the point of unification.

The Institute for Government’s interviews confirmed the issues around high caseloads. Staff from CRCs took their existing caseloads into the unified service to reduce the risk of people on probation being ‘lost’ in the transition, until they could be migrated onto

* One estimated a resource cost of £10,000.

** Plus two grants covering women’s services in London.

new, unified digital structures. This was done region by region after transition, with the final region to combine former CRC and NPS cases onto these structures doing so in December 2021. The workload was exacerbated by concerns about the accuracy of tools designed to assess case volumes.

This was a large, complex programme delivered against the backdrop of Covid-19, and its success, though not unqualified, in bringing together many different component parts should be recognised. But there were bumps in the road, too, which MoJ could have foreseen. Here, we analyse the approach that government took to major decisions and assess their impact on the programme.

Timetable

The first and arguably most important decision the programme leadership had to take was in relation to the timetable. This, ultimately, would drive the intensity of the staff engagement, shape the commercial approach and determine the level of delivery risk. The choice was between a slower pace, thereby maintaining the status quo, or 'ripping the plaster off' and compressing delivery into a year.

Both approaches had their merits. A more measured timetable would have offered the commercial team in MoJ the time and space to properly consider the value of using grants, rather than just contracts, and explore a simpler commissioning framework (see below). This could have enabled a broader range of services to be available on Day 1. It may even have made it possible to retain some CRC innovations, such as better case management systems. A slower transition could also have helped lay the groundwork for the integration of staff from the different CRCs – including through better induction programmes – tackling the perception of new staff being 'second-class citizens'. But while this would have reduced programme risk, it would have increased the risk of supplier failure by prolonging a model where some CRCs were still losing money and performing below the expected standards. Conversely, the longer-term changes, such as cultural integration between staff in the unified service, could only begin once transition was complete, and delaying would therefore only further defer this. Increased delivery pressure on the programme team – and stakeholders and suppliers – was, then, the price of pace.

In the end, MoJ opted for the quicker 12-month delivery. Senior officials were of the view that no prospect of slippage would help 'focus minds'; and it generated, in the SRO's words, a 'ruthless' emphasis on making Day 1 a success. Ministers endorsed this more aggressive roadmap and clearly placed faith in the ability of officials to deliver against this timeline.

Although the programme team should be commended for meeting this difficult timetable – even if it was self-imposed – on balance MoJ should have extended the timetable by up to six months, delivering by the end of 2021. Covid-19's disruption cannot be overstated: in the words of one interviewee, it "had a massive impact", with the programme team working almost entirely remotely and unable to engage face-to-face or visit prisons.²³ A short extension would have struck a better balance between

MoJ's competing priorities. Ironically, Covid-19 actually helped delivery in one respect: with large numbers of staff working almost entirely from home, there were fewer practical IT and estates issues to navigate on Day 1.

Leadership and engagement

With real problems associated with TR, having the right programme leadership for reunification was an important decision. Whether by design or not, the two most senior leaders responsible for the programme – SRO Jim Barton and director general Amy Rees – were both involved in TR. Learning from its failures no doubt coloured their approach – particularly with respect to engaging providers, as we discuss further below – and helped avoid a repeat of many of the same mistakes. In addition, their understanding of probation systems, processes and culture played a notable part in helping the programme navigate a complex landscape.

A consistent theme during our research interviews was MoJ's commitment to open dialogue and engagement. This included visits to providers, forums with staff and regular communications, all with the aim of making the changes as smooth as possible for staff and providers alike. With more than 7,000 staff across 54 affected organisations, the programme could not have been delivered effectively without a relentless focus on business change and an approach that was inclusive, bringing together the diverse stakeholders. The programme benefited from the fact that, unlike TR – which was almost universally unpopular from the off, being literally and figuratively divisive – unification was a change that many across the probation sector wanted to see. They were therefore more responsive to MoJ's efforts to communicate and engage. Notwithstanding this, and some mixed feedback from HMIP's survey, it is clear that MoJ set out with a genuine intention to put engagement at the centre of its programme. Its choice paid dividends.

CRC innovations

A key concern of providers when reunification was announced was that the innovations developed by CRCs would be lost. These concerns were valid, given the relatively limited autonomy in the civil service. And, to some extent, they turned out to be well founded – but not in the ways expected.

The decision to jettison innovations such as case management systems was as much attributable to the tight timetable as to the restrictions of the civil service. The programme SRO acknowledged²⁴ that these could have been integrated had there been more time, though this could have been a lengthy process. As it was, the need for speed meant taking a more rudimentary approach, and the path of least resistance was followed. Further, some of the innovations that *were* kept were largely serendipitous. For example, contact centres in Norfolk were retained partly because the contracts were too complicated to unpick in the time available.

Overall, despite the clear commitment of MoJ to a 'merger', it was probably inevitable that the cultures and working practices would lean towards the NPS rather than the CRCs, as the Probation Service, like the NPS, would be in the civil service.

Commissioning of services

The central commercial decision for MoJ was its commissioning mechanism. It put effort into ensuring there was strong, early engagement to generate an active market of potential providers. However, despite representations to the contrary from providers, its Dynamic Framework was complex and made it difficult for smaller providers to qualify. As a result, some gave up trying to qualify, while others had to divert front-line resources to the tender processes, impacting front-line services. The approach was partly attributable to the need for speed. Faced with a challenging timetable, MoJ opted for a procurement approach that was in keeping with previous, large commercial arrangements that better suited large national providers, rather than developing a new approach that would have better supported smaller and local providers. MoJ also opted not to use grants, a key demand of the voluntary sector, for essentially the same reasons.

Both these decisions were incorrect. More focus from the start on whether the Dynamic Framework was proportionate and fit for use by all participants would have saved time on communications and engagement as the process developed, and would have delivered a more diverse, engaged market of providers for Day 1 services.

Richard Oldfield's report on the Dynamic Framework,²⁵ coupled with feedback, has resulted in MoJ now developing criteria and guidance on the use of grants, in partnership with Clinks. MoJ also told us that, despite challenges with the Dynamic Framework, 74% of contracts on Day 1 went to voluntary, community and social enterprise organisations. This has since grown further, and the Dynamic Framework is subject to ongoing review and refinement.

Workforce management

MoJ's core message to staff was that the change was a merger, not a takeover. With TR still casting a shadow over reunification, this was the right approach. But MoJ's desire to 'live and breathe' this motto, while admirable, led to difficulties.

An early decision was to carry out a job evaluation and grading support (JEGS)* exercise: a process by which each new post's grade in the Probation Service was assessed independently. While this undoubtedly reinforced the message that the Probation Service was, essentially, a new organisation being built from scratch, it did lead to unpredictable outcomes, with some CRC staff matched into roles at grades lower than expected. This, in turn, would leave some staff on lower pay after the three-year pay protection agreed for them in the National Agreement with Probation Trade Unions came to an end. Similarly, the emphasis on a new corporate identity led to some staff having inflated expectations that unification would make an instant and tangible difference to their work, when the reality was that these changes were simply a first step. While MoJ was generally excellent at communicating throughout the process, it could have better managed expectations about the immediate impact the transition would have on working conditions and service performance.

* For those unfamiliar, further detail on the principles can be found at JEGS, 'Job Evaluation and Grading Support Good Practice Guide', https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/307808/JEGSGoodPracticeGuide240513Issue1.doc

A recurring theme in our research into the reunification of probation was the high volumes of cases CRC staff had to deal with post-unification. CRC staff arrived having to hold on to their existing cases until a new IT system could be developed to accept them. This lack of new, integrated IT capability on Day 1, rendered impossible by the aggressive timetable, was sub-optimal. It led to unnecessary pressure on some staff and this, in turn, likely coloured the perspectives of those who already felt 'second class'. Staff shortfalls contributed to the caseload pressures, too. CRCs were required to freeze recruitment for up to three months prior to unification to minimise the overhead of onboarding and then transitioning further staff. While understandable, this led to critical gaps in the workforce.

The future

The probation reform programme will be formally wound up at the end of 2022. But the longer-term programme of work to improve the performance of probation services has only just begun. The structural changes of 2021 are the platform on which deeper and difficult changes will be built. That will be a lengthy journey.

Transition highlighted several themes that will play an important part in that journey. For MoJ's long-term ambitions for probation to be successful, the following areas should be focussed on.

Operational performance

A central criticism of TR was the poor performance of CRCs. Although performance improved over time in some CRCs, TR could not completely shake the perception of poor service delivery.

Current probation performance is 'not great'²⁶ with four 'Inadequate' and two 'Requires Improvement' Inspectorate reports. To some extent, this is to be expected, given wider public service performance²⁷ (post-Covid-19, in particular²⁸), existing challenges in probation and the post-transition bumps. But the success of unification will ultimately be judged by the performance of the new Probation Service. Without swift action that leads to better services, the reform programme risks being added to the long list of unsuccessful historical restructures.

Recruitment

By June 2022, 1,518 new probation officers had been recruited, but staffing numbers still remain below target: as of May 2022, there were 1,106 vacancies across the Probation Service.²⁹ The government aims to recruit a further 1,500 officers in 2022/23. If it meets this target, it will be fully staffed. But this does not allow for staff attrition or increased demand on probation services. Sustained investment is needed in the years to come. The government previously announced an additional £155m for probation services, which, while helpful, may not be sufficient given the competition from other public sector employers, such as the police and Border Force, as well as the pressure from staffing groups to increase pay in line with high levels of inflation.

The government's recent announcement of an arbitrary³⁰ reduction of the Civil Service by 91,000 will also make it more difficult – though not impossible – to secure the necessary agreements to recruit the necessary numbers beyond 2022/23, particularly after having already absorbed over 7,000 CRC staff.

Cultural integration

MoJ's tagline for the unification of probation was that it was a 'merger, not a takeover'. But mergers require cultural and contractual cohesion. MoJ is still in the process of trying to harmonise the terms and conditions for some 700 staff who worked for parent companies or subcontractors. This will be an important step towards proper workforce integration,* without which true transformation and effective delivery of probation services will be difficult to realise.

* Legacy issues from organisational and structural changes, where not dealt with contemporaneously, can rumble on for years – for example, the creation of Border Force ('Independent review of Border Force: terms of reference', <https://www.gov.uk/government/publications/independent-review-of-border-force-terms-of-reference>)

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August 2022

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