

Written evidence from Professor Peter Raynor (TRH0031)

The Design, Implementation and Consequences of ‘Transforming Rehabilitation’.

Introduction

This submission argues that the Transforming Rehabilitation programme (TR) has suffered from over-hasty and ill-informed introduction, which was driven by optimistic assumptions about the superior performance of private sector service providers rather than by any substantial consideration of evidence. Topics covered include the intended benefits of the privatisation programme, the reasons why they have mostly not been realised in practice, and whether this could have been predicted if more of the available evidence had been taken into account. It is argued that the approach taken to the introduction of TR was inherently more risky than was appropriate to a Service which handles statutory duties in the interest of public safety. Finally the problems emerging in Through-the-Gate services and post-custodial resettlement are discussed, an alternative approach is outlined, and some comments are offered on changes in governance which may have contributed to current problems. This submission is relevant to the following Terms of Reference: 1(a) and (b), 2(i) and (ii), 4, 5 and 7.

The intended benefits of privatisation

Whilst transfer to private companies was not the only intended route for establishing Community Rehabilitation Companies (CRCs), and it was hoped that (for example) voluntary sector organisations would bid, in practice the effect has mainly been transfer of responsibility to private companies which aim to profit from the provision of publicly funded services. It is important to consider why this was believed to be the right way forward, to the extent that the most experienced and arguably qualified providers, the Probation Trusts themselves, were excluded from the competition to run CRCs. Perceived advantages of privatisation included a belief that private sector managements would be more effective at reducing running costs and raising productivity; that they would show more innovation and creativity; that they would fully embrace and use the evidence base of ‘what works’ (although of course the same evidence was available to the public sector), and that new technological solutions to service delivery challenges would transform the effectiveness of services. The bidding process, by inviting competition between bidders, was supposed to drive up the quality of bids.

Have the intended benefits been realised?

It is now clear from a series of reports by Her Majesty's Inspectorate of Probation (HMIP) that, with few and isolated exceptions, these benefits have simply not happened – performance is generally poor and this is not helping either the rehabilitation of offenders or public safety (see, for example, HMIP 2016a, b, c). The voluntary sector has not been involved to the expected extent, and reoffending data available so far are mixed and not conclusive. Use of community sentences by the Courts has declined, for reasons which are not yet clear but probably include a lack of confidence in, or a lack of knowledge about what CRCs are providing. This in turn has created financial problems for CRCs, and instead of being incentivised by Payment by Results (PBR) they have been given more money following poor performance. This is one of the known risks of privatisation: when essential services and statutory duties are outsourced in arrangements supported by long contracts with private sector providers, the contractual arrangements seldom provide enough leverage to manage performance in a service which cannot be allowed to fail, so further public costs are incurred to keep providers afloat. It is also known to be difficult for either public or private sector bodies to raise productivity significantly in services which are personally provided, since there is limited scope for replacing people with technology while maintaining levels of service (see, for example, Taylor-Gooby 2013).

Technological innovation in corrections has usually been more effective when it supports and supplements personal supervision of offenders rather than when aiming to replace such supervision. For example, international research on electronic monitoring shows that it has greater effects on reoffending when it is used alongside personal supervision (Nellis et al. 2013). The use of 'kiosks' to automate reporting by people under supervision has not been shown to have positive effects except where probation staff are supervising very large numbers of low-risk offenders with limited needs for supervision, who would probably not be seen as requiring community sentences in England and Wales (Crosse et al. 2016). Reports that some CRCs are supervising offenders through a telephone call every six weeks run counter to recent research on the impact of personal supervision: studies in several countries now show that skilled personal supervision can produce significant reductions in reoffending (Chadwick et al. 2015; Raynor et al. 2014). There is no technological fix to replace personal supervision while retaining effectiveness. Greater increases in effectiveness and therefore productivity are more likely to result from developing and improving staff skills.

Faced with these difficulties many CRCs have struggled to deliver and have tried to resolve the consequent financial problems by reducing staff. This can reduce their capacity to deliver effective supervision, and sometimes results in a disproportionate loss of more experienced staff who are higher up the salary scale and nearer to retirement. There is a clear danger of a downward spiral, and presumably the recent injection of new funds is an attempt to avoid this; however, there is always a risk that private companies delivering services may have to choose between maintaining the level and quality of services and strengthening their financial position by reducing wage costs. They serve both public interest and shareholder interest, and when the two conflict they are likely to prioritise the latter. It is too simplistic to argue that the use of the private sector always involves a conflict between the quality of service and pursuit of profit: on the contrary, private sector trainers, consultants, programme developers and researchers have made major contributions to the effectiveness of probation services. However, this has been when their involvement has a clear and limited purpose which aligns quality of service and financial rewards, and when commissioning is overseen by, and in the interest of public providers. The approach taken to privatisation in TR has provided too many perverse incentives for over-promising and under-delivering. When civil servants are tasked with achieving major outsourcing by a particular target date, this can result in undue haste and gives a bargaining advantage to bidders (National Audit Office 2016).

Normally one standard way to mitigate the risks involved in radical innovations is to pilot them and evaluate the pilots, so that problems can be identified and addressed in advance. It is generally understood that pilots of the TR proposals were planned, but cancelled to allow faster implementation. The proximity of a general election may have influenced the timetable, as it did when the railways were privatised. The decision not to explore possible impacts showed either an astonishing degree of confidence that the changes would work, or a belief that privatisation would in itself be a significant achievement. Both of these suggest a somewhat cavalier attitude to the risks involved. In a partial attempt to fill this gap, officials and politicians have drawn attention to two pilot studies of ‘through the gate’ services (Disley et al. 2015; Pearce et al. 2015) as if these were tests of the wider reforms; however, what they mainly show is that it is better to provide some resettlement services than to provide none, and they do not include systematic comparisons of different ways of providing them.

Resettlement of short-sentence prisoners

The TR programme was intended to fill a long-standing gap created by the Probation Service's withdrawal in the late 1980s from providing voluntary prison after-care (Maguire et al. 1998, 2000). CRCs were to provide a 'through-the-gate' (TTG) service and an imaginative range of post-release services in collaboration with the voluntary sector. Bids proposed new ways of involving the voluntary sector. According to HMIP, promised innovations in TTG and resettlement have mostly not been delivered. The most obvious consequence of the changes has been a spectacular increase in recalls to prison for breaches of licence requirements rather than further offences (Howard League 2017). It is important to recognise that while there was evidence of unmet need for post-release resettlement of short-sentence prisoners, there was little if any evidence to support the introduction of a full year of compulsory supervision.

Research on the Home Office's resettlement 'Pathfinder' projects in 1999-2003 provided evidence that short-sentence prisoners who wanted post-release support could benefit from it, with lower than predicted recidivism for those who remained in contact after release, and that the take-up of voluntary schemes rose if a persuasive offer to prisoners was made (Lewis et al. 2003; Clancy et al. 2006). The research also compared the different approaches taken in different 'pathfinder' prisons, and found that the more effective projects appeared to be those managed by probation services and those run by voluntary organisations which provided post-release contact with mentors. Post-release contact was usually for much less than a year. Providing a long period of compulsory post-release supervision is likely to result in breaches, particularly when contact with supervisors is infrequent, superficial or absent, as appears often to be the case under current arrangements. Compliance with supervision is usually better when supervision is personal and experienced as helpful by those under supervision (Ugwudike and Raynor 2014). Otherwise what is being offered to released prisoners amounts to little more than a substantial risk of return to prison even if not offending. Given the current level of the prison population, there is a case for considering other approaches.

A reduction in the number of prisoners receiving sentences of less than 12 months would by itself clearly help to reduce the need for their post-release supervision. In addition, and more immediately, it is suggested that the current scheme could be improved and made easier to deliver by reducing the supervision period to six months, which easily covers the most critical phase of resettlement for many prisoners. In addition, the basis of participation could be changed to an opt-in approach in which prisoners could sign up for resettlement in response to a persuasive offer from resettlement workers or TTG teams. This was the basis of

the Pathfinder projects and of the Doncaster and Peterborough ‘pilots’. Participation could carry the further incentive of earlier release, leaving a part of the sentence in suspension and available to serve in the event of complete non-cooperation with agreed supervision arrangements; prisoners in this situation would be regarded as having opted out of the scheme, forfeiting the advantage of early release. It seems likely that such recalls could be much rarer than at present, particularly if supervisors had the time and authority to engage in a more constructive and problem-solving approach to non-cooperation (Raynor 2013).

The introduction of CRCs into resettlement and TTG services creates more fragmentation in what is already a complex and confusing picture, which is not well understood by many prisoners and does not add up to a high quality service (Maguire and Raynor 2017). There seems little doubt that if consortia of probation services and voluntary organisations were encouraged (or allowed) to put forward proposals for resettlement schemes, some good proposals would be likely to emerge, with more coherence and less fragmentation. The current situation is far from satisfactory as few services beyond ‘signposting’ are actually provided, and many prisoners are exposed to enforcement action without much, if any, help to turn their lives around.

Governance and change in probation services

The recent World Congress of Probation in Japan drew 371 delegates from 34 countries, but none from the Ministry of Justice (MoJ) or the Prison and Probation Service (HMPPS). This was the third such Congress; the first, in 2013, was hosted in London by the MoJ. At the Congress in Tokyo several delegates commented to me on this reduction in the profile of probation in England and Wales. Some went further and observed that England and Wales had a world-leading Probation Service in the late 1990s but it appeared to have gone into decline since then. It is worth reflecting on some of the changes in organisation that have occurred during this period. In the 1990s the Service was locally based, and governed by Probation Committees consisting mainly of local magistrates. Changes since then have included the establishment of a national Probation Service and Probation Boards in 2001, the creation of the National Offender Management Service in 2004, the establishment of Probation Trusts in 2008-9, the launch of CRCs in 2014 and the abolition of NOMS and its replacement by HMPPS in 2017. It is not clear which of these rather frequent reorganisations produced actual improvement, as they have not been subjected to any full evaluation.

One feature of these reorganisations which has not been the subject of much comment is that as well as reducing local control and accountability, they have completely displaced the judiciary from its former role in the governance of probation services. It is not clear how far the judiciary was consulted on TR or how far judges and magistrates were involved in the MoJ's recent internal review. Given the Probation Service's role in advising sentencers and implementing sentences, it seems perverse to remove the voice of sentencers from its governance.

Overall, this submission suggests that the problems experienced by TR are not superficial aberrations but are the natural and often predictable consequences of the way it was designed and implemented. In the 2012 edition of the Oxford Handbook of Criminology I wrote that 'If current trends in England and Wales continue, we can expect to see more diversity and variation in the provision of community sentences, with both good and bad results. These developments, however, seem likely to be driven more by political ideologies and expediency than by the needs of courts, victims or offenders' (Raynor 2012, 949). There is no satisfaction whatsoever in being right about this. The difficulties of TR are deep-rooted and unlikely to be fully addressed by adjustments to the detail of CRC funding arrangements. A more fundamental review of the TR model would be preferable, including the option of resuming public ownership of some or all CRCs. The aim should be a Probation Service which reinstates a less fragmented delivery model, with greater emphasis on personal supervision and staff skills, greater local accountability and more judicial involvement, reflecting its role as a service to Courts as well as a part of the penal system.

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