

# Enabling Effective Probation Trusts

The Probation Association supports the principles behind the Offender Management Act 2007 that probation areas will achieve the best outcomes most efficiently through minimum regulation, local commissioning, local delivery of services and competition.

We will continue to work with probation areas, and with Government through NOMS, to enable successful transitions from board to trust.

In this paper we set out what must be done during this financial year in order to achieve the Government's goal to transform all probation boards into public sector trusts. Our over-arching priorities are:

- ✓ a reform of the application process, in particular the selection criteria at each stage, to ensure all potential trusts are identified
- ✓ a statement about the purpose and benefits so that it is clear to everyone why it is worth becoming a trust
- ✓ year end financial flexibility and strategic local control of property to maximise delivery of value for money.

**PROBATION**  
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## **Probation is at the heart of local communities.**

We are the local face of the criminal justice system. Crime could not be managed today without the probation service's ability to supervise up to 250,000 or more offenders at any one time. Prison resources are finite with room for fewer than 90,000 prisoners.

A one-year prison sentence costs around £37,000 and two-thirds of offenders re-offend within two years of release. A 12 month community order costs under £2,000 and has a recidivism rate of around 50%.

The purpose of probation does not change. Trusts were created to deliver even better outcomes through more local responsiveness, business flexibility and a shared approach to dealing with crime locally.

Competitive, locally responsive trusts will be delivered through:

- clarity of purpose, operating flexibility and light touch regulation
- professional confidence and self-assurance
- boards and trusts, the Probation Association and NOMS working collaboratively in appropriate commissioner-provider relationships.

## **Probation boards want to be trusts and are committed to the changes that are needed.**

They will ensure they are:

- ✓ well governed. Trust boards will ensure trusts are commercially viable and above criticism. Where necessary, they will develop their governance, scrutiny and commercial management skills
- ✓ committed to continuous improvement and organisational development
- ✓ outcome focused. Trusts will confidently test different approaches and innovate without being constrained by existing arrangements
- ✓ efficient, using streamlined activities or other more efficient providers
- ✓ entrepreneurial, developing contractual and partnership relationships and selling services to boost capacity
- ✓ locally visible, influential and accountable. Local people are key customers to whom services should be tailored. Trusts will pursue alliances with other public sector bodies (eg through LAAs, LSPs and LCJBs), not-for-profit organisations and private providers
- ✓ good employers. Staff give of their best when they are well managed and have a stake in the trust's success.

## **NOMS, as the parent Agency, is critical to the success of the trusts programme.**

We support the broad direction the Probation Trusts Programme is taking and recognise that many of the items below are already in its work schedule. We remain concerned about the pace of the programme, absence of critical detail and quality of communication with boards and trusts.

We urgently need:

- ✓ a statement about the benefits to be realised through trust status
- ✓ a written response to our report *Probation Trust Freedoms and Business Flexibilities: a mechanism for driving forward public sector reform in probation* (see extract, Annex A) covering:
  - what flexibilities will be available, when and in what form. Our priorities are year end flexibility and local control over property
  - reasons why others are not possible
- ✓ a statement of mandatory regulatory and other requirements and formal confirmation that otherwise trusts are free to develop their own strategies, policies and practices
- ✓ written confirmation about the selection, terms and conditions, appraisal and pay for trust members<sup>1</sup>
- ✓ written confirmation about the selection, terms and conditions, appraisal, pay and disciplinary / capability arrangements for chief executives<sup>2</sup>
- ✓ clarity about what will happen to those applicants that are not successful or who choose not to apply. Detail is needed about:
  - how trusts will be incentivised to create new organisations by merger with unsuccessful applicants;
  - what is meant by a limited trust providing core services, and clarity about the legal basis for this
  - what the remedial action to address deficiencies will consist of. We support this, in principle, as the most effective and least disruptive approach to dealing with unsuccessful applicants; and
  - the legal basis for removing business from boards, who have a responsibility in law to provide probation services
  - the pension position in the case of takeovers of unsuccessful applicants by trusts
- ✓ approval for areas to jointly create new trusts across Government regional boundaries, if that would deliver best outcomes

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<sup>1</sup> The subject of a more detailed letter to NOMS Probation Trusts Programme 20.5.09.

<sup>2</sup> Ditto.

- ✓ information about voluntary merger processes:
  - clarity about what is managed centrally and what is for local determination
  - the position on pensions
  - how the chair, members and chief executive will be selected
  - what happens to current chairs, members and chief officers who are not selected
  
- ✓ a decision on whether trusts are Non Departmental Public Bodies or Second Order Public Bodies
  
- ✓ the updated Governance Handbook for Trusts.

The Government's stated goal is the achievement of 100% public sector probation trusts in England & Wales. The application process is currently producing a no more than two-thirds pass-rate in each group of applicants:

- to have placed so much emphasis on the developing Integrated Probation Performance Framework, and the related "Green to Go" principle to determine which boards may apply for trust status, is not in the interests of effective trust creation
- many areas are being sifted out on the basis of their paper application
- relatively underfunded areas may be at a disadvantage in the application process.

In order to ensure that potential trusts are not being inappropriately screened out we urge that there is:

- ✓ a review of the trust application process.

### **Collaboration is essential to deliver effective trusts.**

Co-creation was established by the first generation trusts and NOMS as an effective working principle. NOMS and probation must work together in a mature, open relationship to jointly deliver second generation trusts.

We must respect one another's role and responsibilities and behave in line with our new contractual relationship which is critically different from the line management arrangements that apply to boards.

These matters are vital to our members. Probation areas have been compliant with a trusts programme that has struggled at times to be convincing because it has lacked continuity of leadership, policy and strategy and its stretched resources have had to be deployed pragmatically against the most pressing activities because of an imposed timetable.

We want to assist NOMS with answers and solutions. A frank reassessment of the programme now, that responds to the issues set out in this statement and its annexes, will pay dividends in terms of creating trusts that deliver efficient and effective public protection and reduced reoffending.

**Annex A**  
**Summary Table of Possible Business Flexibilities**

Suggested Flexibilities	Benefits
Profile estate and centrally provided facilities management services	Fit for purpose premises, profiled to local need. Reduced cost through rationalisation and better managed FM provision
IT service delivery and quality	Improved customer services with reduced down time and number of complaints
To move away from annualised terms to longer contracts (5,7, or even 10 years as the Probation Structure Develops)	Increased stability in the service as the Trust can improve business and strategic planning. Improved staff confidence and the opportunity to engage in longer term commercial relationships with other local public, private and thirds sector bodies.
Some of the statutory elements of the Trust contracts to be moved to their standing orders. A new form of Trust contract to be produced independently of the NOMS Agency and Trusts.	A contract between two public sector bodies (for a whole service) is unique and it is not practical to put in place a full commercial (private sector contract). The complex interaction between the two parties and the reliance on centrally provided services as well as flexibilities to manage changing demand means that a new form of non commercial contract similar to an SLA needs to be developed. This is best done by an independent expert who can mediate between the parties.
To specialise in an area of work and to have the right to opt out of providing an element of work through the commissioning process.	Allows the Trusts and DOM to manage the introduction of new services which may adversely impact on other elements of the service. It also allows Trust to collaborate and provide specialist services across a region.
To review with NOMS the performance targets with a view to tailoring them to local circumstances in a more meaningful way.	Allows the Trust and DOM to maximise the use of techniques that have a proven track record of success locally.
To earn less inspection and regulation through risk based assessment and a self assurance mechanism	High performing Trusts with a track record of success would benefit from reduced inspection and regulation, freeing up staff time to focus on front line service delivery.
All management information relating to performance to be channelled through the DOM instead of a split between the centre and DOM	Reduced bureaucracy
Trusts to own intellectual property rights in order to generate income	Increases innovation and allows Trust to generate additional revenue, it also increases business awareness opportunities.

Post qualification training to become more structured with the PA playing a leading role in its development and management	Reduces bureaucracy and provides a more structured post qualification management process.
To earn the right to membership of an Improvement Opportunity Group to help develop techniques that improves weaknesses in the delivery of existing probation services.	Empowers the top performing Probation Trusts to help shape improvements in the delivery of probation services and brings together a consultative group of probation experts, NOMS and policy leads in a collaborative environment.
To retain any surplus at year end and reinvest it or to go into deficit in the financial year, and have the freedom to carry this over into future years	Allows Trust to put in place better financial management and planning.
To set up pooled budget arrangements with the NHS and local government in order to maximize Offender rehabilitation and support services (similar to section 75 arrangements between Health and Social Care).	Allows Trusts to engage closer with local government and health partners sharing risks and costs. This is likely to give probation more access to additional funding.
To raise revenues from unpaid work placements, particularly for social and community benefit projects run by the private sectors.	Increases access to unpaid work placements and allows Trusts to recover some of the costs for the management and supervision of offenders.
Trust to be allowed to own capital assets with freedom to deploy these to feature on the Trust balance sheets.	Allows Trusts to put in place better financial management and planning.
To facilitate and where appropriate invest in the formation of Social Enterprises, joint venture or company limited by guarantee	This helps Trusts and the DOM to jointly develop the local probation supply market.
To earn a level of independence both in terms for governance and finances similar to Foundation Trusts in the NHS	Probation Trusts become high quality commercially driven service providers that engage fully with the community and manage their operations and finances efficiently and effectively.

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