

**PROBATION TRUST FREEDOMS AND BUSINESS FLEXIBILITIES**  
**A MECHANISIM FOR DRIVING FORWARD PUBLIC SECTOR**  
**REFORM IN PROBATION**

**A REVIEW BY THE PROBATION ASSOCIATION**

February 2009

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## Executive Summary

- The current lack of clarity on the structure and role of probation services means it is not possible to fully explore all of the potential freedoms and business flexibilities that may be available in the future. Therefore some assumptions have been made reflecting the view of the Probation Association that probation services will in the future be provided by Probation Trusts operating as free standing public bodies that are contracted to deliver local community based services.
- This will be achieved with Probation Trusts focusing on the delivery of core services whilst commissioning non-core services from a mixed economy provider base. The Directors of Offender Management will provide strong regional support and a light touch NOMS centre will provide advice and guidance on policy and funding.
- This aligns with the Governments public sector reform agenda and the recent KPMG report recommending local delivery and a more active role in Local Area Agreements.
- The lack of clarity on the future structure of Probation Trusts, and on the new Director of Offender Management (DOM) role, impacts on what freedoms can be explored in any depth. It is important to stress that the Probation Association has put forward freedoms that it feels are within the scope of the project but they are considered the start of the journey to a more businesslike and locally engaged probation service. More freedoms and business flexibilities will need to be explored as Probation Trusts mature over the next three to five years.
- The Probation Association has been commissioned by NOMS to review current and future Probation Trusts freedoms. The inclusion of radical ideas was encouraged but certain eligibility criteria based on the current economic climate and benefit realisation were introduced. Freedoms were to be split into two categories, those that could be implemented by April 2010 and longer term freedoms that could make an impact on service delivery over the next few years.
- The term freedoms suggest a break from the centre with probation operating independently from NOMS. This was considered an adversarial phrase as most Probation Boards/Trusts want to work in collaboration with NOMS, using different operational, financial and structural techniques. The term “business flexibilities” was therefore adopted to replace “freedoms”.
- A number of barriers exist to the successful implementation of business flexibilities, particularly around funding models and budget allocation. These restrictions flow down from HM Treasury single year funding arrangements and budget exchange schemes.
- The review built on the initial proposed freedoms developed by NOMS in 2007 for the first wave Probation Trusts. A consultation exercise together with a review of existing probation business processes as well as lessons learned from other public sector

organisations was used to inform understanding and development of new business flexibilities.

- It has been necessary to make some assumptions when undertaking the review as there was not absolute clarity about the future organisational structure of NOMS and the wider probation service. It was assumed that a strong local service delivery element is required with Probation Trusts undertaking more of a commissioning role that engages with the community, health, local government and third sector partners. A decentralised regional structure, managed by the DOM with NOMS centre providing strategic, financial and policy development was also assumed to be the organisational structure in the future.
- All areas of service delivery, funding and organisational structure were considered during the review. However some suggestions relating to staff terms and conditions were considered out of scope and were not included. The outcome of the review was split into four sections, centrally provided services, operational business flexibilities, financial business flexibilities and structural business flexibilities.
- The majority of suggested business flexibilities for centrally provided services were focused on estates and IT. The suggestions ranged from local ownership to sharing premises, however on review these were generally put forward as a resolution for poor performance and customer service issues with current arrangements. It is recommended that NOMS carry out a local review and profiling process to assess if estates and IT are currently fit for purpose.
- The review identified a number of operational business flexibilities, these included:
  - To move away from annualised terms to longer contracts (5, 7, or even 10 years as the Probation Structure Develops).
  - 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.
  - 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.
  - To review with NOMS the performance targets with a view to tailoring them to local circumstances in a more meaningful way.
  - To earn less inspection and regulation through risk based assessment and a self assurance mechanism.
  - All management information relating to performance to be channelled through the DOM instead of a split between the centre and DOM.
  - Trusts to own intellectual property rights in order to generate income.
  - Post qualification training to become more structured with the PA playing a leading role in its development and management.

- To earn the right to membership of an Improvement Opportunity Group to help develop techniques that are designed to improve weaknesses in the delivery of existing probation services.
- The rationale, benefits and suggested criteria for these business flexibilities was explored and a recommendation on the way ahead has been provided.
- The review identified a number of financial business flexibilities but the implementation of these is likely to be constrained by controls outside of the Ministry of Justice include:
  - 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.
  - 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).
  - To raise revenues from unpaid work placements, particularly for social and community benefit projects run by the private sectors.
  - Trust to be allowed to own capital assets with freedom to deploy these to feature on the Trust balance sheets.
- A recommendation that NOMS is encouraged via the Ministry of Justice to put forward a case to HM Treasury for probation funding to be brought in line with local Government arrangements is included. It is felt that this will significantly help Trusts in re-structuring their organisations, making more efficient use of resources and in developing longer term commissioning arrangements with partnering organisations. The rationale, benefits and suggested criteria for each of the financial business flexibilities is explored and a recommendation on the way ahead has been provided.
- Two structural business flexibilities were suggested that were worth including in the report. These were:
  - To facilitate and where appropriate invest in the formation of Social Enterprises, joint venture or company limited by Guarantee.
  - To earn a level of independence both in terms of governance and finances similar to Foundation Trusts in the NHS.
- The setting up of other commercial vehicles was seen as important in developing the supply market for probations services and as long as investment and exit strategy planning is robust it could help to develop community based services. The move to foundation status was recognised as aspirational with no Probation Boards/Trust currently able to meet the exacting eligibility requirements. However this business flexibility was included to help develop strategy and because a foundation status goal may help Trusts adopt a more businesslike approach to service delivery.

- A range of business flexibilities have been forward in this paper some of which can be implemented by 2010 whilst others which do not meet the early adoption criteria have also been included. These longer term business flexibilities will require a level of preparatory work prior to implementation but in our view are just as important to the future delivery of probations services.
- This paper outlines business flexibilities that will facilitate the development of a more business like probation service. NOMS will need to decide which are appropriate and which are considered not appropriate with a rationale on why they are not being taken forward.
- All the flexibilities set out in this report are considered capable of implementation without particular difficulty. Where there are caveats these are set out in the text. Indeed, some commentators within the service feel that these proposals are insufficiently radical, that the service can comfortably support even more challenging change and that such change is essential if the benefits of trust status for greater efficiency and reduced reoffending are to be realised.
- It is considered essential that NOMS appoints a senior owner to ensure that they are implemented efficiently and effectively.

## **Background**

The probation service is currently in a period of change that is likely to have a significant impact on the way services are delivered in the future. The application process for becoming Probation Trusts and the threat of contestability if a Board fails to meet the threshold criteria have had a significant impact on the morale of the service. The decision by the Ministry of Justice in 2008 to manage probation services through a new NOMS Agency has resulted in a period of further instability and increased concern over on whether a centrally controlled service will be able to effectively deliver local community engagement.

The Probation Association take the view that in the future probation services will need to be provided by Probation Trusts operating as free standing public bodies who are contracted to deliver local community based services. Contracts will be outcome/output focused allowing Trusts, in consultation with the Courts and other community organisations, to manage offenders according to what works best locally.

In order to achieve this, Probation Trusts will need to focus on the delivery of core offender management and Court work, whilst commissioning the appropriate interventions and non-core services from a mixed economy provider base. Strong regional support from the Directors of Offender Management will be required to help develop services and ensure that national priorities are being implemented and a light touch NOMS centre will provide advice and guidance on policy and funding.

A probation service based on the model described above aligns with the Governments public sector reform agenda and the recent KPMG report which recommended that probation needed to engage better with the community and play a more active role in Local Area Agreements.

It is recognised that there is a period of development, possibly three to five years before probation services are delivered by Probation Trusts of the sort described above. However it is important that Probation Boards/Trusts have a clear understanding on the final goal, the road map for getting there and how it will be achieved if they are to help deliver the process efficiently and effectively. The Probation Association have commissioned this paper based on the understanding that their view of the future delivery of probation services is that of the Secretary of State for Justice and senior Civil Servants in the Ministry of Justice.

## **Introduction**

The Probation Association has been commissioned by the National Offender Management Service (NOMS) to review current Probation Trust business freedoms and where appropriate suggest other more detailed operational and financial freedoms for the existing first wave and future Trusts.

The lack of clarity on the future of Probation Trusts, the role of NOMS and the new DOM structure clearly impacts on what potential freedoms can be explored in any depth. It is important to stress that the Probation Association has put forward a series of potential freedoms and business flexibilities in this paper that it feels are within the scope of the project as described by NOMS and will provide some immediate and medium term benefits. They are considered the start of the journey to a more businesslike and locally engaged probation service and many more freedoms and business flexibilities will become available and need to be explored as Probation Trusts mature over the next three to five years.

The timescales involved in the delivery of this project mean that widespread consultation with all 42 Probation Boards and Trusts was not possible, so a working group was formed to represent the Probation Areas. Members of the working group were required to consult with their peers across probation as well as other stakeholders to brainstorm ideas for inclusion in the final paper to NOMS. The Group was made up of the following:

- The Chief Executive, Probation Association (SRO)
- An independent specialist with experience of commercial processes in probation (Project Lead)
- A representative from NOMS
- A Probation Board Member
- A Probation Trust Chair
- A Probation Board Chair
- A PCA Representative
- A Trust Chief Executive
- A Probation Trust Finance Director
- A representative from the PA to engage with probation ACOs.

The review's draft report was discussed with the Probation Association's Board of Directors.

NOMS encouraged the inclusion of radical ideas as well as more practical and normal business freedoms but as described above, until there is more clarity on the future of probation and the structure of the NOMS agency, it has been difficult to put forward any radical suggestions. For this reason the Probation Association has put forward proposals that it feels are short to medium term freedoms that will help develop the probation service. However it reserves the right to recommend further freedoms and business flexibilities as the Ministry of Justice clarifies the structure of the service. The freedoms put forward in this paper are split into two categories:

1. Entry level freedoms or business flexibilities that must be capable of implementation on 1<sup>st</sup> April 2009. [Note because the final report is due for submission to NOMS in February 2009 it was felt that very few freedoms could be implemented before 1<sup>st</sup>

April 2009 so for practical reasons entry level freedoms included are those that we feel can be implemented before the end of March 2010.]

2. Earned freedoms or business flexibilities that can be introduced as Probation Trusts achieve a pre-determined level of competence or performance

NOMS has also stipulated that the following requirements must be met in order for a proposed freedom to be considered:

- Any entry level freedoms proposed must be supported by information on why they are being recommended, how they will be implemented and a benefit/impact analysis
- Any earned freedoms proposed must be supported by detailed information on why they are being recommended, how the threshold mechanism will operate, how they will be implemented and a benefit/impact analysis.

It is the Probation Association's view that further eligibility criteria be applied to any suggested freedoms to ensure they benefit both NOMS and the Probation Trusts. Therefore they should also meet one or more of the following:

- Help to improve the delivery of front line probation services by:
  - Improving capacity for the same costs (doing more for less), or;
  - Reducing back office and administrative burden to reduce corporate overheads
- Improve performance in the delivery of front line services (this is different to capacity building as it focuses on the quality of delivery).
- Build better capabilities and improve organisational structure.
- Improve partnership working and local engagement with the third sector, health, local government and the general public etc.

The current economic climate dictates that any entry level freedoms must be cost neutral or show an immediate financial benefit. Earned freedoms must also meet these financial constraints, however invest to save may be considered but it is likely that any additional funding will not be made available in the current fiscal climate. Any freedom that does require upfront investment will need to be supported by a robust business case that includes a detailed breakdown of costs, the return on investment profile and a benefit realisation plan.

There are a number of external barriers or influences that impact on the possible introduction of business flexibilities and freedoms, particularly around funding arrangements, organisational restructuring and what is and is not allowed with regards to NOMS central contracts. These barriers are described later in this paper but it is likely that some freedoms and business flexibility which could provide significant operational and financial benefits to NOMS and the Probation Trusts cannot be implemented unless they are tackled at a senior level in the Ministry of Justice.

Although Probation Trusts currently remain unclassified by the Cabinet Office it is understood that Non Departmental Public Body (NDPB) or Second Order Public Body status will be the final classification. In normal circumstances this would change the current VAT regime adopted by the six first wave Trusts and although it is likely that HMRC would give

dispensation to fully recover VAT, it cannot be guaranteed. For the purposes of this paper it is assumed that classification to either status will not have an impact on the VAT rules, the structure and makeup of the Probation Trust Board or their governance arrangements, however it is recommended that NOMS reviews this carefully to satisfy itself that there will be no impact.

It is clear that the term freedom can and has been misinterpreted as a mechanism by which the Probation Trusts can operate independently of the centre, this is not the case and this paper has tried to identify “business flexibilities” that will allow Probation Trusts to work with NOMS in tailoring probation services to best suit the needs of the local community. It recognises that some autonomy for Trusts will need to be introduced if Trusts are to develop and grow but access to this autonomy and many of the business flexibilities described in the paper will need to be earned.

Both Probation Trusts and NOMS will have to demonstrate a high level of business maturity and trust before these earned business flexibilities can be put in place and this will only be achieved by working together in a collaborative manner with some shared risk. To help develop this approach, this paper has replaced the term “freedoms” with “business flexibilities” to give a better understanding of aims and goals.

### **Review Methodology**

As a starting point for the project the original list of freedoms produced by NOMS in July 2007 were used as a building block for the development of additional business flexibilities. A high priority and focus of the review was the operational and financial areas of probation services. These were considered areas that would provide immediate benefits in efficiencies and financial performance without impacting on the quality or standard of service delivery.

To facilitate development of the business flexibilities a one to one consultation process with selected probation staff and finance leads was held to find out what changes would help them become more efficient. The results of these discussions produced a range of alternative ways of working that would help improve service delivery. A key group engaged were the Probation Board Secretaries who had made a significant contribution to the development of the first wave Trusts contracts and whose knowledge on the legalities and governance arrangements used in the delivery of probation services was vital.

To complement the internal consultation process, a lessons learned exercise was undertaken to identify any business flexibilities that had been introduced successfully into other public sector organisations such as the NHS. Where appropriate the working group evaluated the use of similar business flexibilities to establish if they met the eligibility criteria and where they could be used in the probation environment

It became clear during the course of the review that some important and potential beneficial business flexibilities would fall out of scope due to the time scales, the strategic nature of the business flexibility, barriers outside of the control of the Ministry of Justice or the Trusts/Boards’ readiness to implement them. However it was felt they were of significant importance to include them in this paper and they may be helpful to NOMS and Ministers when developing probation strategy and policy in the future.

## Assumptions

It has been necessary to make assumptions on the future organisational structure of the probation service, the way it interacts with the NOMS agency and the wider direction of travel in the Ministry of Justice. It has also been important to factor in how the structure will drive forward the Government's public sector reform agenda which will require more locally engaged Probation Trusts that call on a mixed economy provider base to help deliver high quality services. It is recognised that other workstreams and projects that may impact on the direction of offender services are currently underway; however we are confident that the proposed access to additional business flexibilities outlined in this paper will be transportable across any future probation service model.

The following assumptions have been made in developing the outcomes of this review:

- Probation services will be delivered by stand alone Trusts focused on local delivery, ensuring that offenders are managed effectively in the community to help reduce reoffending and protect the public.
- The introduction of "Best Value" reviews undertaken locally in consultation with the DOM will ensure continuous improvement and the development of the local, regional and national probation supply market. As this market matures it is likely that more private and third sector providers will be used to complement the Trusts' offender management activities in delivering elements of the service. It should be noted that some Probation Trusts/Boards have already embarked on their own Best Value reviews which are starting to deliver benefits in terms of business process and strategic thinking. This is a sign that organisations are developing a more businesslike approach to providing services and recognise that they need to manage the service effectively and efficiently. It is assumed that any change in structure within NOMS and the probation service will support this business best practice at a local or regional level and not impose bureaucratic processes that slow down or try to control their development.
- Although probation may be delivered locally it is recognised that some restructuring of the management of the service may be needed including and where appropriate the merging of Trusts/Boards. However it is assumed that front line core services such as offender management and court work will still be carried out by probation staff based in their local community. Non-core services and interventions would also be delivered locally but from the most appropriate provider (public, private or third sector) and they may manage these services on a regional or national level.
- To meet the Government's public sector reform agenda probation will need to form closer partnering relationships with Local Government, Health (particularly in managing substance misuse and mental health issues) and the Third Sector to improve service delivery in line with Local Area Agreements (LAA).
- It is assumed that budgetary pressures and increased demand will result in Probation Trusts migrating to a more commissioning based model similar to that being

introduced in Primary Care Trusts (PCT) in the NHS. This means that Probation Trusts will focus on internal delivery of core offender management and court services whilst commissioning interventions and other support services from the most appropriate provider. A model of this type will require a purchaser provider split within probation where current internal delivery of non-core services will have to be competed on a fair and transparent basis. A number of Probation Trusts/Boards are already considering this option and the learning from the PCT model will help in develop their thinking further.

- It is assumed that the new Director of Offender Management (DOM) structure will play a similar role to that of Strategic Health Authorities in the NHS i.e. Central NOMS focus will be on strategic development of probation policy and regional funding with more of the regional operational, financial and commercial management activities being passed to the DOM. It is not currently clear what the structure and role of the DOM will be, however the assumed model would seem reasonable in order to maximise efficiencies savings (reduced central costs) and develop a more regionally based management approach that links better to community based services and Local Area Agreements.

## **Outcome of Review and Potential Business Flexibilities**

All areas of service delivery, funding and organisational structure were considered in developing this paper. However some suggestions relating to staff terms and conditions such as more flexibilities over performance related pay, responsibility for national negotiations, revising the NNC or SCCOG to allow Trusts to manage allowances and role boundaries and the management of novel and contentious payments were raised but these were considered out of scope for this review and are therefore not included.

A summary table of possible business flexibilities is provided below followed by a more detailed description of each that gives the rationale, benefits, suggested eligibility criteria and recommendations of each. The outcomes have been separated into four sections, centrally provided services (estates and IT), operational business flexibilities, financial business flexibilities and structural business flexibilities.

### **Summary Table of Possible Business Flexibilities**

<b>No</b>	<b>Suggested Business Flexibility</b>	<b>Benefits</b>
CS1	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
CS2	IT service delivery and quality	Improved customer services with reduced down time and number of complaints
OF1	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.
OF2	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.

OF3	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.
OF4	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.
OF5	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.
OF6	All management information relating to performance to be channelled through the DOM instead of a split between the centre and DOM	Reduced bureaucracy
OF7	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.
OF8	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.
OF9	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.
FF1	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.
FF2	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.

FF3	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.
FF4	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.
SF1	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.
SF2	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.

### **Centrally provided estate and IT services (CS)**

Several suggestions were put forward for potential business flexibilities that would help improve the performance and management of IT and estate services. These ranged from opting out of central contracts, managing budgets locally through to disposing of current premises. After reviewing the suggestions it became clear that the majority of them were based on frustrations built up over a number of years and focused mainly on persistent poor performance or time taken to resolve issues, effectively poor customer service.

It is recognised that new estate and IT schedules have been produced for inclusion in the Trust contracts which define roles and responsibilities and there is clearly progress in this key area of service delivery. However, the schedules still maintain that service credits for poor performance by the estate and IT service providers will be paid to NOMS and not the Trusts. There is a strong view within probation that this does not drive the right dynamics for resolving key issues as NOMS is too removed from the impact that IT downtime or poor quality estate has on the delivery of services. It is therefore perceived that they do not put the necessary pressure on the providers to correct the problem quickly.

Examples of email being down for long periods and vital repairs to buildings taking several months suggest there are some fundamental issues that will need to be resolved before any sort of business flexibilities can sensibly be put in place.

This paper understands that significant strides are being made in trying to resolve the estate and IT problems and to help with this process the two sections below have suggested activity that may facilitate further advances in this area.

## **CS1. Profile of Estate and Centrally Provided Facilities Management Services**

This section can be split into two distinct parts, premises and centrally provided facilities management services.

### ***Premises***

It is acknowledged that much of the probation estate is not fit for purpose (some premises may even not meet Health and Safety standards) and will require significant investment to bring it up to recommended working environment levels. Because of these issues and to engage closer with other local community services some Trusts wish to embark on a programme of rationalisation, moving out of existing unfit premises and adopting a shared premises arrangement with Local Government or police forces. The difficulty with this type of arrangement is that a Probation Trust under the OM Act is not allowed to hold land, including leases so for them to moved into shared premises under a leasing arrangement, the Ministry of Justice/NOMS would be required to hold the lease on their behalf.

There is a mechanism in the new schedules to the Trust Contracts that allows Trusts to apply to move out of existing estate and move into new premises but it also states that NOMS will have the right to refuse any proposals put forward. There is a dispute mechanism for appealing against a decision but it is important to avoid this adversarial approach wherever possible so the following recommendations are proposed to help manage this process.

1. The Ministry of Justice to change the current wording in the OM Act as soon as possible to allow Trusts to hold land and;
2. Carry out a series of local reviews in full consultation with the Board/Trust and DOM to clearly define local needs. This review should be carried out to determine the suitability of premises with regards to fitness for purpose, identify those premises that can be disposed of, those that need upgrading and if practical where sharing arrangements that will to provide a higher community profile and efficiency saving can be established.

Allowing Probation Trusts to lease premises directly will allow more control over the quality of the estate being used as well as helping to reduce the demands on the centre for often costly and poor quality premises. Under these arrangements Trusts will also have to justify both operationally and financially the need for any premises and this will help in rationalising the number of buildings needed. Sharing arrangements with other local public sector organisations will also contribute to a net reduction of premises, all of which will allow the Ministry of Justice to significantly reduce its overall estate profile and deliver real cashable savings.

A local review of the type described above will allow Trusts and the MoJ to plan for change once legislation allows the Trust to hold land. It will identify where sharing with another organisation is appropriate, what local potential there is to rationalise the probation estate and what levels of urgent short term investment is needed to bring current non fit for purpose buildings up to standard.

The current problems that exist in this area and the grass roots level of discontentment that it generates should not be underestimated, so any improvements will increase morale.

### ***Facilities Management***

Persistent poor performance of the previous and current facilities management providers has consistently plagued the Probations Boards/Trusts. There is a general view that locally procured and managed services would be more cost effective and efficient. It is recognised that some of the issues are related to the basic quality of the premises (refer to the section above) but there are still some weaknesses in the delivery of the services. The purchasing leverage of a central contract may provide cashable cost reductions but the total cost of ownership in terms of increased Trusts administration, putting in place temporary work around solutions and the impact on staff moral significantly impacts on efficiency and effectiveness.

A rationalisation and general improvement in the quality of the probation estate is likely to reduce the pressures on the FM providers, having a positive impact on the levels of service delivered. Sharing arrangements with other local public sector providers or a move into serviced offices will also mean a reduction in requirement which could allow the Ministry of Justice or their agents to renegotiate FM contracts and reduce costs.

### ***Recommendation***

A clear demonstration of Ministry of Justice commitment to improving the probation estate is needed so it is recommended that it puts forward the necessary changes to legislation allowing Trusts to hold land at the earliest opportunity. A review in accordance with that described above should be undertaken as soon as possible at a local level and an action plan for rationalising the estate should be agreed with the Boards/Trusts. Where appropriate, sharing arrangements should be explored and any premises that as a result of the review proved to be not fit for purpose should be brought up to standard as a matter of urgency.

Problems with facilities management are more difficult to resolve as they are influenced by the quality of the estate and the fact that new national contracts have recently been re-let. There is likely to be a significant cost to early termination of these contracts but it is recommended that some form of local management be introduced to help improve this area of concern. Further work is needed to establish what local management will look like and how it can be introduced if an escalation of the problems is to be avoided.

### **CS2. IT service delivery and quality**

It is important to state that it is recognised that probation IT services need to be managed through a central core service that provided commonality and easy flow of secure data. In common with the estate issues it is the quality of the service being provided that creates frustration and complaints. There is evidence to suggest that reaction times on correcting faults is slow and down time is significant resulting in Probation Boards/Trusts having to put in place temporary and sometimes labour intensive processes to manage alternative workflows.

It is understood that NOMS does not pass on the full cost of the IT service to probation but there is an observation in many quarters that with a fee of in excess of £650 per desktop, and with modern technology, reaction times should be much faster and down time limited to a couple of hours at most as a worst case scenario.

There are also issues relating to the accessibility through the GSI system for probation staff working in Courts. It is not uncommon for a member of staff to return to their office from a Court just to access data. This suggests that the current understandings and the use of secure remote access technology may not be sufficient and examples of delays in equipment deliveries and other issues seem to add to the frustration of probation staff.

A small technical review of centrally supplied IT services using a selected number of Trusts/Boards but carried out as a customer satisfaction exercise, is needed to identify the core issues and put in place a corrective action plan for improvement. This is especially important with the proposed changes to IT infrastructure and rationalisation of data centres which may result in a period of reduced service levels in order to gain longer term improvements.

These changes will need to be managed well and during the consultation process, it was clear that some stakeholders felt that NOMS central IT was not fully aware of the issues affecting them and that their service provider was often getting conflicting and mixed messages on priorities.

A small review and profiling exercise of the type described above would provide NOMS IT with a crucial understanding of the issues and problems effecting services in probation. Information gathered will enable a corrective action plan to be developed for the whole of the probation service that will improve the quality of IT service delivery and relationships between probation, NOMS and their central IT service provider.

### ***Recommendation***

As suggested with the probation estate, a clear demonstration of NOMS commitment to improving IT services is needed so it is recommended that it and its IT infrastructure provider undertake a review with a selected number of Trusts/Boards. Once completed and analysed NOMS can develop and implement an improvement plan for the whole of the probation service.

### **Operational Business Flexibilities (OF)**

#### **OF1. To move away from annualised terms to longer contracts (5, 7, or even 10 years as the Probation Structure Develops)**

##### ***Rationale***

A five year contract (with the necessary break clauses) is already in place with existing first wave Probation Trusts, however it is likely that these will be terminated before the end of the second year and replaced with another agreement. Significant work was put into jointly developing the first wave Trust contracts and there was confidence both within NOMS and the rest of probation that a new and exciting collaborative form of working had commenced.

Unfortunately, the changes in the NOMS structure and a lack of commercial maturity within the Trusts led to a period of “no change” and a lack of understanding on roles and responsibilities, so an opportunity was missed to drive the Trust concept forward.

There is now once again uncertainty within the existing first wave Trusts and the rest of the probation service as to what the future will bring so a period of stability that comes with longer term contracts would be beneficial.

### ***Benefits***

Contract length cannot be considered a business flexibility as NOMS, being the Contracting Authority, determines the term of the agreement. Probation Trusts however, unlike Boards have no statutory powers and therefore require longer term contracts to build confidence and stability in the workforce and with local partners. A contract of 5, preferably 7 or 10 years would help build this confidence and develop a stable relationship with NOMS and other key partners.

### ***Suggested Eligibility Criteria***

To become a Trust, Probation Boards have to meet a performance threshold set by the Secretary of State (delegated to NOMS as the Secretary of State’s representative). This should be sufficient to allow longer term contracts to be put in place.

### ***Recommendations***

NOMS to implement five to ten year contracts for those Trusts meeting the eligibility criteria.

**OF2. 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.**

### ***Rationale***

At first glance this may seem a strange business flexibility but it has been included as it does carry merit. Although it is usual for the contracting authority to raise the contract (in this case NOMS) this proposal could benefit both parties as a contract between two public bodies (for an entire service) is unique and finding the balance between a true commercial contract with strong terms and conditions and a workable agreement that maximises collaborative working and improved service delivery is important.

Lessons learned from the first wave Trusts suggests that there is a complex relationship between the centre and probation Boards with a certain amount of reliance on each other to deliver services. It is clear that maximum flexibility is needed if the probation service is to grow and become more businesslike especially in managing increasing demand so a new form of contract somewhere between a Service Level Agreement and a commercial arrangement is needed. This will allow the Trusts and NOMS to mature and develop in line with the national agenda and local needs.

There is clearly a lack of trust between the centre who feel probation have failed to develop as a service and the Boards/Trusts who feel the centre is trying to put in place a command

and control structure which significantly restricts local service delivery. A new form of contract produced by an independent organisation under full consultation with both NOMS and the Trusts would help to develop relationships and build collaboration.

### ***Benefits***

The contract would be tailored to suit the unique probation/NOMS contractual requirements as well as allowing local service delivery and demand management. It would be output based with some traditional commercial elements being incorporated into Trust standing orders. This would allow for increased innovation and more flexibility to meet the needs of the local community and demands of the Courts.

### ***Suggested Eligibility Criteria***

The Contract would need to be signed off by both parties and a legal view would be required to determine what elements of a contract could be transferred to Trust Standing Orders.

### ***Recommendation***

It is likely that there will be strong resistance to this business flexibility; however we urge that it is evaluated for the benefits it can provide. NOMS would still be the Contracting Authority and both parties would need to agree terms just like a normal contract. Moving some of the more conventional commercial requirements (such as the requirement to adopt mandatory changes from the Secretary of State) to the Trusts standing orders would make the contract less onerous and allow for a more flexible agreement on service delivery, performance and financial management. The key driver for an independent approach is that both NOMS and a Probation Trust are publicly funded organisations delivering criminal justice services to the public. It avoids any unnecessary or protracted adversarial negotiations over contract form which many would consider is not a good use of public money.

**OF3. 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.**

### ***Rationale***

This business flexibility builds on the existing freedom granted to first wave Trusts which was "To say 'no' in free negotiations with commissioners over the delivery of new services". It was felt that the existing freedom could easily be misinterpreted as the right for a Probation Trust to refuse to introduce a new service element placed on it by NOMS. This is an adversarial statement and the freedom needed rewording to demonstrate that it is the flexibility to control the way new services are introduced.

In real terms this business flexibility states that if following an evaluation of a proposed new service, the Trust can demonstrate that its introduction would for example impact on its performance levels in other areas, it would be within its rights to negotiate with the DOM on how to manage this issue. The wording of the new business flexibility therefore clarifies that in consultation with the DOM the Trust can commission another Trust/Board (or other suitably qualified organisation) to provide the service on their behalf. Conversely if a Trust

has a specific skill set and is a high achiever in a particular element of service delivery, they should be allowed to offer these services to another Trust/Board.

### ***Benefits***

This business flexibility allows Trusts to develop a specialism and lead for the rest of the probation service regionally (or nationally). It will help to improve the quality and effectiveness over a larger geographical area whilst making efficient use of resources. The commissioning of a service where a Trust has a gap in skills or a resource issue, especially with the introduction of new services, would help the DOM and Trust manage demand. This approach would also develop centres of excellence that would help the MoJ develop best practice and policy.

### ***Suggested Eligibility Criteria***

When specialising, the Trust would need to demonstrate that other elements of the service continue to meet performance requirements and are given equal importance. As a specialist, the Trust would also be required to share knowledge and learning with other Trusts.

The Trust wishing to make other arrangements for the introduction of a new service would have to provide the rationale for the refusal to adopt internally, supported by evidence in the form of an impact assessment which would be subject to independent scrutiny.

### ***Recommendation***

There is no evidence that Probation Trusts are currently specialising or becoming sector experts on a particular element of probation delivery. However the very fact that it has been raised by a number of stakeholders as a potential business benefit suggests that it is being considered by some as an option for the future. NOMS should develop thinking around this opportunity and identify level of interest.

## **OF4. To review with NOMS the performance targets with a view to tailoring them to local circumstances in a more meaningful way**

### ***Rationale***

This business flexibility would provide significant benefits at a local level with the management of offenders being profiled to community dynamics and identified local successes. It ensures that the most appropriate interventions, policies and other techniques which are known to work in the local environment will be given priority. This will still meet national performance targets but the DOM will work with the Trusts to localise these targets and help reduce reoffending rates.

### ***Benefits***

Performance is directly related and targeted to maximise techniques or interventions that are known to work locally. It will link directly with the LAA and wider community engagement agenda and many probation areas have suggested that targets focused more at a local level will help deliver more community based offender services that reduce reoffending and provide better public protection.

### ***Suggested Eligibility Criteria***

Trusts would have to provide sufficient evidence to the DOM that locally profiled Targets would deliver high and consistent levels of performance based on agreed criteria that ensure national priorities are taken into consideration.

### ***Recommendations***

NOMS should pilot a programme of local targeting with selected Trusts/Boards to assess the effectiveness.

### **OF5. To earn less inspection and regulation through risk based assessment and a self assurance mechanism**

#### ***Rationale***

It is generally recognised that Probation Trust/Boards are subject to a significant number of inspections, reviews, audits and Regional Offender Management assessments, all of which are generally given the term “Audits”. Replacing a number of the non statutory inspections/assessments with a self assuring and reporting mechanism (backed up by robust NOMS Audit) for Trusts that meet a consistently high level of performance and quality would relieve a lot of pressure on support and front line staff in servicing these inspections.

#### ***Benefits***

Inspection and assessments are often resource intensive and can lead to front line staff being taken out of working with offenders to assist the inspection teams. A risk based self assurance process would ensure the use of resources was focused on the delivery of offender management and a robust NOMS audit process will provide confidence to the Trust Board and DOM that the figures reported are accurate.

### ***Suggested Eligibility Criteria***

Pre determined and consistent levels of high performance would need to be met before any reduction in inspections.

#### ***Recommendation***

NOMS to select a top performing Trust/Board to work with NOMS Audit, the DOM and other stakeholders in developing and piloting a self assuring risk based assessment mechanism.

### **OF6. All management information relating to performance to be channelled through the DOM instead of some to the centre and some to the DOM**

#### ***Rationale***

There is currently a mix of reporting lines with some management information being sent to NOMS direct and some going through the existing ROM structure. With the introduction of the new DOM's it seems a more efficient and effective way of managing data and reporting if it were all sent to a single point of contact regionally.

### ***Benefits***

A single point of contact for reporting will reduce bureaucracy and falls in line with the Trust contract and performance reporting structure.

### ***Suggested Eligibility Criteria***

None as it is simply a more efficient way of handling data for community based services.

### ***Recommendations***

NOMS to develop a new reporting protocol and introduce regional reporting as soon as practicable.

## **OF7. Trusts to own intellectual property rights in order to generate income**

### ***Rationale***

This is a contentious area as it is difficult to see how a Trust in its current form can develop IP without funding from NOMS. However if NOMS has a free licence to use the IP then there is no reason why a Trust that has developed a unique product or service cannot market it commercially to generate additional revenue.

### ***Benefits***

Trusts becomes more businesslike and possibly supplements revenue stream

### ***Suggested Eligibility Criteria***

NOMS would be given a perpetual and irrevocable free of charge licence for use if the IP was developed using NOMS monies. Other Probation Boards/Trust would pay a nominal fee for use and the third and private sectors would pay commercial rates (structured so that the third sector pays less than private sector).

### ***Recommendations***

NOMS to accept this business flexibility and develop a protocol for it to be included in the Trusts contracts. The ownership of any IP would be reviewed on a case by case basis.

## **OF8. Post qualification training to become more structured with the PA playing a leading role in its development and management**

### ***Rationale***

There has been criticism of current training arrangements with some Probation Areas investing in their own management development only to be told staff had to attend centrally devised training programmes. A more streamlined approach, managed locally and that is overseen by the PA may cut administration costs

### ***Benefits***

More streamlined and consistent training approach

### ***Suggested Eligibility Criteria***

Post qualification training review to be carried out to identify a more streamlined approach.

### ***Recommendation***

It is recommended that NOMS review the benefits of moving post qualification training and restructuring the process.

**OF9. 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.**

### ***Rationale***

The Improvement Opportunity Group would be a recognised body of probation experts who would work with NOMS and the MoJ policy unit to develop techniques to improve weaknesses in probation interventions and offender management. Probation Trusts would get a seat at the table once they attained an agreed level of financial and operational performance and it is envisaged that this group would be the main vehicle for identifying opportunities for improvements in existing probation service delivery areas.

### ***Benefits***

This business flexibility 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.

### ***Suggested Eligibility Criteria***

A pre determined level of performance would need to be maintained for a Trust to gain a seat on the Improvement Opportunity Group.

### ***Recommendation***

MoJ to review proposal with an aim to developing the Group.

### **Finance and Funding Business Flexibilities (FF)**

This is a particularly difficult area to identify any business flexibilities or freedoms that could provide benefits in the short term, primarily because of the way the Ministry of Justice and NOMS are funded and the need to balance the books at the end of each financial year. A budget exchange scheme has been in operation for a number of years with bonuses for the better performing Probation Boards. This means that those better performing Trusts/Board that come in with a financial surplus have some flexibility although limited in carrying over that surplus (up to 5% for the first wave Trusts) which helps in business planning and longer term community based offender projects.

Current funding levels are likely to tighten as the economic climate become difficult and now that Probation falls under the NOMS agency umbrella it is understood that the budget exchange scheme is being withdrawn. This will mean Trusts/Boards and Prisons will have to

come in on financial target and any surplus will be taken and reinvested into the NOMS Agency overall budget pot. The danger with this approach is that it drives out innovation and business development and there will be no incentive to make a surplus, it may even lead to creative accounting practices, so strong audit arrangements will need to be put in place. There is also a danger that any surplus made by a Trust/Board or Prison will not be re-invested in front line services at a local level and therefore miss an opportunity to improve on the delivery of local offender management.

The same issues arise with the 1 year funding model which restricts business planning and service investment, especially when partnering with Health and Local Government. Ideally a three year funding arrangement similar to Local Government would be more appropriate for community based organisations such as probation.

We recognise that NOMS is constrained by current Government funding programmes but we encourage it, via the Ministry of Justice, to put forward a case to HM Treasury for Probation Funding to be brought in line with local Government arrangements. This will significantly help Trusts in re-structuring their organisations, making more efficient use of resources and in developing longer term commissioning arrangements with partnering organisations.

Recognising the limitations above, we have decided to include the financial and funding business flexibilities identified during the review for completeness.

#### **FF1. 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**

##### ***Rationale***

Carrying over a surplus of up to 5% is currently a freedom for the first wave Trusts on condition that the Ministry of Justice budgets balance at the end of each year, but as described above it is our understanding that no carryover of surplus will be allowed in future years.

To be effective this business flexibility requires an alternative funding mechanism to the current arrangements, allowing any costs incurred as a result of organisational restructuring or longer term projects to be managed more effectively.

##### ***Benefits***

As Trusts become more businesslike they will need to make best use of existing funding stream and may be required to carry over funding to maximise benefit realisation. It will also allow the introduction of DOM approved invest to save initiatives and organisational restructuring that provide medium to long term return on investment or enhanced capacity and performance.

##### ***Suggested Eligibility Criteria***

A Trust will need to demonstrate the required level of financial management and control and a level of commercial awareness before it can carry over surplus or deficits. All invest to save opportunities will need to be approved by the DOM following the production of a detailed business case.

## ***Recommendations***

As described earlier NOMS is restricted in its flexibility to grant this type of freedom, however a review of the current funding formula should be undertaken to help develop a case supporting a move to a three year funding arrangement for Probation that can be taken by the MoJ to HM Treasury.

**FF2. To set up pooled budget arrangements with the NHS and local government in order to maximise Offender rehabilitation and support services (similar to section 75 arrangements between Health and Social Care).**

### ***Rationale***

Early pooled budget arrangements between health and local government proved to be difficult; however there are now examples of effective and efficient pooled arrangements that are delivering significant benefits to the partnering organisation. A sharing of the cost and risk between partnering organisations ensure a joined up community approach and there are potential benefits in working under this type of arrangement in the areas of substance misuse, mental health, education and housing.

HMT and HMRC would be required to sanction pooled budget arrangements as a section 75 agreement is only currently allowed between Health and Social Care

### ***Benefits***

This business flexibility allows Trusts to tap into potential additional funding streams and maximise efficient business processes when working with health and local government partners. It is especially important when working with offenders with mental health, substance misuse or housing problems that cut across different public sector organisations and have a direct engagement with the local community.

### ***Suggested Eligibility Criteria***

Trusts would have to demonstrate similar governance arrangements to a section 75 pooled budget arrangement.

### ***Recommendation***

The MoJ to engage with HMT to put in place the necessary arrangements for allowing pooled budgets to be adopted.

**FF3. To raise revenues from unpaid work placements, particularly for social and community benefit projects run by the private sectors.**

### ***Rationale***

An example of this business flexibility would be where a private sector company wishes to sponsor the cleanup of a nature trail, children's playground, hospital ground etc. Using offenders to undertake the work with the private company paying the costs of supervision and transport could be an option for reducing unpaid work costs.

This approach is different from sponsorship (which is already allowed) because Trusts would submit invoices and charge VAT for the work. The invoice would not be for the offender's time (this would be free of charge), only for the supervision and management element which ensures the unpaid work ethos is maintained.

### ***Benefits***

This business flexibility would help Trusts offset supervision costs, reinvesting the revenues received into front line service delivery. It would also open up a sector for additional unpaid work placements as local companies may wish to engage more with the sustainability and environmental agenda in their communities. Offenders would also benefit from a sense of ownership in a community project.

### ***Suggested Eligibility Criteria***

Reviewed on a case by case basis but all private sectors' unpaid work would need to demonstrate that the paying organisation did not gain financially from the use of offenders and that the community directly benefitted from the work. Each placement would have to comply with guidance issued by NOMS.

### ***Recommendation***

This business flexibility is relatively easy to implement and should be opened up to existing and second wave Trusts in pilot form. Once proven the flexibility should be rolled out to the wider probation service. NOMS will need to provide guidance on the terms of engagement with private sector companies and define what a social or community beneficial work placement is.

## **FF4. Trusts to be allowed to own capital assets with freedom to deploy these to feature on the Trust balance sheets.**

### ***Rationale***

Trust and Boards are concerned that any future contestability initiative will not enable them to compete on a level playing field if they are allowed to bid for the work. Enhanced accounting practices will allow them to become more businesslike, mirroring private sector organisations.

### ***Benefits***

Trusts become more businesslike and move to a situation where they can compete on a level playing field if a decision to move to contestability is taken.

### ***Suggested Eligibility Criteria***

A more meaningful and fully approved accounts reporting process will have to be agreed

### ***Recommendations***

This business flexibility should be reviewed in light of the recommendations on the funding models above and any future contestability initiative.

### **Potential Organisational Structure Business Flexibilities (SF)**

#### **SF1. To facilitate and where appropriate invest in the formation of Social Enterprises, joint venture or company limited by Guarantee**

##### ***Rationale***

This was a freedom initially allowed in principle to first wave Trusts but was restricted until a review could be implemented as part of the “learning year”. This has not happened so the freedom has been developed further in this paper giving some rationale to the proposal.

Research has show that the probation services supply market is not well developed and a catalyst is needed to build market capability. This mechanism would allow Probation Trusts to develop and engage with the third sector and help provide a vehicle that can deliver noncore services and interventions. The formation of a social enterprise is likely to be the desired model for these vehicles as joint ventures etc may be inappropriate and carry too much risk. The Cabinet Office has recently promoted the development of Social Enterprises as one source of support for economic regeneration.

Trusts will need to demonstrate that any assistance or investment in setting up these organisations is based on a relatively short return on investment period. They will also need to ensure that any position on the Board, managerial or support roles provided to help with the start up of a Social Enterprise have an end date and that the organisation is set up to generate sustainable revenues from multiple sources.

##### ***Benefits***

A Social Enterprise has significant benefits in developing the external probation supply market which is recognised as being underutilized. An organisation of this type is required to make a profit (which is reinvested in the community) so will need to be competitive and bid for contracts (including those from the Trust) like any other provider, but with the freedom to partner and enter into consortia arrangements, with other third sector organisations or the private sector.

It is also likely that Social Enterprises that are designed to deliver a range of offender, mental health and social based services (mentoring is a prime example) would attract staff who currently work in Probation, Health or Social Care. This staff migration would often be seen as a problem but with the move to a more commissioning based probation service it is vital that contracted providers have the necessary skills sets to meet delivery requirements.

Social enterprises can deliver a range of non-core probation services that would meet the commissioning agenda and help develop a mixed economy supply chain.

##### ***Suggested Eligibility Criteria***

In order for the Trust to invest in the formation of one of these vehicles they would have to provide a detailed business case that shows the level of investment, the return on investment, the exit strategy and a benefit realisation plan. The business case would also have to provide information on any partnering organisations and how the enterprise would be funded going forward.

A key evaluation will be the use of probation staff to deliver services through the vehicle and the impact that would have on the performance of the Trust overall. It should be understood that setting up a Social Enterprise as a vehicle to avoid competing a service will not be sustainable, especially if staff are transferred under TUPE arrangements. A sustainable Social Enterprise provides services to a number of clients, each with their own revenue stream, it will need to be profitable and be able to compete for services. The business case put forward by the Trust will need to demonstrate how this will be achieved.

### ***Recommendation***

Early adoption of this business flexibility is recommended as economic pressures are driving the need for change in probation service delivery mechanisms. Where appropriate, the formation of a Social Enterprise will meet the requirements of Government for local engagement with the community and third sector organisation.

NOMS to draft guidance and governance arrangement for Trust involvement in developing Social Enterprises, joint ventures and Companies Limited by Guarantee. It is also recommended that the guidance is not mandatory and that governance is in line with HM Treasury accounting rules. This is required because Trusts can obtain funding from other sources in the form of grants to help develop a Social Enterprise and therefore they may be required to abide by those funding organisations governance requirements.

The exception to the above would be where approval has been given by the DOM to use money allocated for the delivery of probation services through the Trust contract in establishing the Social Enterprise. This is a possibility if the establishment of the organisation delivers immediate performance improvements and in these situations, the NOMS governance rules would apply.

### **SF2. To earn a level of independence both in terms for governance and finances similar to Foundation Trusts in the NHS**

#### ***Rationale***

A move to a structure that over time introduced a similar organisational model to that in the NHS where high performing Probation Trusts could earn Foundation status (or similar) was considered during the review. It is clear that all 42 Probation Trusts/Boards would currently fail to meet the exacting eligibility criteria that NHS Trusts have to meet to gain foundation status but it was felt in some quarters that the opportunity to work towards a similar status in probation over the next five to seven years would speed up the adoption of more business like practices.

This is considered a long term business flexibility however if probation is to develop into a commercially robust service that delivers cost effective year on year improvements within

limited budget constraints, the flexibility to meet local needs and efficiently manage its own financial resources will be required. Therefore our view is that the MoJ should consider the long term viability of Foundation status as an optional business flexibility that could be developed and introduced over the next five to seven years.

### ***Benefits***

Foundation status would place a duty on the Probation Trust to engage with the local community and encourage local people to engage with the organisation. It would provide a level of financial independence that will allow them to manage their own budgets and to shape the probation services they provide to better reflect local needs and dynamics. The introduction of a Probation Foundation Trust Regulator (similar to Monitor in the NHS) would provide the necessary assurance and governance needed by the MoJ reducing some of the burden on NOMS.

### ***Suggested Eligibility Criteria***

High levels of sustainable operational and financial performance would be needed to achieve Trust Status, including obtaining and sustaining a commercial credit rating of BBB. A Probation Foundation Trust would also need to demonstrate high levels of commercial and commissioning capability as it would be required to manage probation services from a range of providers and partners.

This business flexibility would also require some rationalisation of the number of Probation Trusts/Boards as many are too small financially to be able to sustain a foundation status.

### ***Recommendation***

The Ministry of Justice to carry out a high level review on the viability of Probation Foundation Trusts

### **Conclusion**

The current lack of clarity on the structure and role of probation services means it is not possible to fully explore all of the potential freedoms and business flexibilities that may be available in the future. Therefore some assumptions have been made which in the view of the Probation Association suggests that probation services will in the future be provided by Probation Trusts operating as free standing public bodies that are contracted to deliver local community based services.

Contracts will be outcome/output focused allowing Trusts, in consultation with the DOM, Courts and other local community organisations, to manage offenders according to what works best locally. This paper has been produced on the understanding that their view of the future delivery of probation services is that of the Secretary of State for Justice and senior Civil Servants in the Ministry of Justice. Therefore a range of business flexibilities have been put forward that are considered only the start of a group of more radical flexibilities that will emerge as the Probation Trusts develop.

In this paper some of the suggested business flexibilities can be implemented in accordance with the entry level criteria specified as a NOMS requirement. Other business flexibilities

which do not meet the early adoption criteria have also been put forward and although they are longer term and will require a level of preparatory work prior to implementation in our view are just as important to the future delivery of probation services.

Business flexibilities in relations to centrally supplied IT and estate services have not been put forward as there are fundamental problems relating to the quality and customer service levels currently being provided. This paper has recommended that the OM Act is changed as soon as possible to allow Trusts to hold land and therefore lease premises in order to facilitate a local review, rationalisation and improvement in the quality of the probation estate. It also recommends that a review of the current delivery model for IT in terms of customer service is carried out as a separate piece of work to enhance understanding of the issues and to put in place the necessary corrective action plan to improve the quality of centrally supplied IT services.

Financial flexibilities are limited due to the current funding models both within NOMS and from HMT to the MoJ. Until these mechanisms are changed it is difficult to see what business flexibilities can be introduced to help improve effectiveness and efficiencies. Operational and organisational business flexibilities however do offer some opportunities for development.

### **Recommendations**

It is recommended that the changes to the OM Act and reviews of centrally provided IT and estate services are carried out in accordance with the suggestions detailed in this paper and that the following entry level business flexibilities (those that can be implemented by April 2010) be adopted in principle by NOMS:

- OF1 - To move away from annualised terms to longer contracts (5, 7, or even 10 years as the Probation Structure Develops).
- OF2 - 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.
- OF4 - To review with NOMS the performance targets with a view to tailoring them to local circumstances in a more meaningful way.
- OF5 - To earn less inspection through risk based assessment and a self assurance mechanism.
- OF6 - All management information relating to performance to be channelled through the DOM instead of a split between the centre and DOM.
- OF9 - To earn the right to membership of an Improvement Opportunity Group to help develop techniques that improve weaknesses in the delivery of existing probation services.

- FF2 - 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).
- FF3 - To raise revenues from unpaid work placements, particularly for social and community benefit projects run by the private sectors.
- SF1 - To facilitate and where appropriate invest in the formation of Social Enterprises, joint venture or company limited by Guarantee.

It is also recommended that the following long term business flexibilities (those that can be implemented post April 2010) be reviewed with a commitment in principle to adoption:

- OF3 - 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.
- OF8 - Post qualification training to become more structured with the PA playing a leading role.
- FF1 - 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.
- FF4 - Trust to be allowed to own capital assets with freedom to deploy these to feature on the Trust balance sheets.
- SF2 - To earn a level of independence both in terms for governance and finances similar to Foundation Trusts in the NHS.

This paper outlines opportunities to introduce flexibilities that will allow the development of a more business like Probation service. NOMS will need to decide which are appropriate and which are considered not appropriate with a rationale on why they are not being taken forward. It is strongly recommended that NOMS appoints a senior responsible owner to manage any business flexibilities taken forward and to ensure that they are implemented efficiently and effectively.