

Trusts' Practical Governance Project: Final Report

Auriola Consulting Limited
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Introduction

This report is the final deliverable of the Trusts Practical Governance Project which Auriola Consulting has been leading on for the Probation Association during 2009-10.

Our report has been endorsed by the Project Board. As a summary of the project, it captures the interim findings from the various project elements (which have already been reported and published) and makes a final set of recommendations.

The Project Board would like to thank Miranda Hughes and Gareth Hadley, and Board and Trust Chairs, Secretaries and Members who responded to various requests for information, attended fact finding and information dissemination events, or who simply engaged with the project to debate the current state of governance practice and where it needs to move to in the future. This project would not have been possible without them.

Members of the Project Board

| | | | |
|------------------|------------------------|---------------|----------------------|
| Christine Lawrie | Probation Association | Jane Coates | Gwent Probation Area |
| Mike Caldwell | Probation Association | Paul Davies | London Probation |
| Jo Whyte | Probation Association | Sharon Higson | NOMS |
| Ben Emm | Auriola Consulting Ltd | Angie Munley | NOMS |
| Janardan Sofat | Kent Probation Board | Sue Power | NOMS |

Executive summary

With the majority of Probation Boards applying for Trust status during 2009/10, the Practical Governance Project was timed to offer Boards and Trusts the opportunity to reflect on their local governance practice, to consider best practice and to contribute to a national discussion on how Trust governance should move forward.

A gap analysis suggests that governance in key areas of Probation business is strong but that Boards and Trusts are on a developmental journey, in which there are as many challenges looking internally at the role, style and behaviours of the board as there are looking externally at better local engagement, better partnership working and closer links with stakeholders.

A skills review confirms a number of strengths but also suggest that some Boards and Trusts need renewal and a skills refresh to be properly ready for the new Trust environment. Furthermore, future needs include not only better business skills but also network knowledge and experience.

Three governance review exercises, undertaken with two Trusts and a Board, raise a number of challenges for local Boards and Trusts as well as for NOMS and the Probation Association. They also underline the need for a better and more consistent skill base to help provide the assurance that NOMS can loosen its controlling grip on Probation and indeed needs to, if Trust status is to lead to service reform.

In total, fourteen recommendations are made, for the Probation Association, NOMS and for Boards and Trusts themselves. These reflect the findings of each project element and the feedback from Probation Board representatives at a Study Day held in November 2009.

Practical Governance Project: Background

The Probation Association and NOMS launched the Trusts' Practical Governance project in April 2009 to help Boards and Trusts put into practice best governance. The project aimed to provide assistance in implementing key aspects of the *Governance Handbook for Probation Trusts* by looking practically at how those requirements would be delivered.

Overseen by a Project Board of senior representatives from NOMS, PA, Boards and Trusts-designate from England & Wales, the project had a number of deliverables:

- A gap analysis looking at the readiness to implement Trust governance best practice
- A skills review exploring the governance skills needed for the future Trust environment
- A pilot with three Boards/Trusts to examine governance skills and behaviour in practice
- A study day to develop recommendations for the next steps
- A final report (this document) to the Project Board on the way forward

The Gap Analysis: Headline Findings

The Gap Analysis exercise (published in August 2009) invited Boards and Trusts to compare their current practice against a defined set of governance criteria and standards which would be needed to operate as a successful Trust. Twenty-six Boards & Trusts responded and twelve self-reported key gaps emerged, covering six areas of governance practice.

| Governance Area | Key Areas for improvement |
|-----------------------------------|---|
| Roles, Function & Style | <ul style="list-style-type: none"> •Organisational development •Clearer role differentiation & schemes of delegation •Governance behaviours |
| Capability | <ul style="list-style-type: none"> •Member induction •Awareness of and responsivity to diversity issues |
| Scrutiny & Accountability | <ul style="list-style-type: none"> •LDU level scrutiny |
| Decision making & Risk Management | <ul style="list-style-type: none"> •Influencing decision making beyond the Trust's boundary •Commissioning services |
| Performance & Outcomes | <ul style="list-style-type: none"> •More sophisticated performance information which reflect national and local priorities |
| Engaging with Stakeholders | <ul style="list-style-type: none"> •Engaging with external stakeholders •Developing long term partnerships •Systematic capture of feedback to shape service delivery |

The Skills Review: Headline Findings

In preparation for the Study Day, we invited member Boards and Trusts to reflect on the current ‘most valuable’ skills around their board tables and how or whether that position would need to change for the future. A third of Boards & Trusts responded and we highlight below the areas of commonality in terms of current valued skills, alongside future identified needs. It was clear that the starting points were different for each Board and Trust: some already had the future skills sets, some needed to seek additional skills and some needed major skills renewal. Note that for the future, ‘experience’ appears to be valued as much as new skills.

| Current and core skills | Future additional skills |
|-------------------------|-----------------------------------|
| Financial Management | Commissioning |
| Performance Management | Governance of contract management |
| Risk Management | Organisational Development |
| Leadership | LAA experience |
| Governance practice | Partnership working experience |
| | External perspectives |
| | Public engagement |

The Pilots: Headline Findings

The Probation Association invited Miranda Hughes and Gareth Hadley, both experienced Appointments Commissioners and consultants, to work with two Trusts and one Board (a Trust-designate) to explore governance issues and future development needs. Their challenging findings formed the keynote presentation at the Study Day in November 2009 and their independent report was published by the PA in December 2009. Having examined current governance systems, identified future challenges and considered future skills needs, they made seven recommendations.

| Recommendations | |
|---|---|
| 1. Restructure the accountability relationship with NOMS: <i>Trusts should be allowed to innovate and manage their own businesses which requires a less controlling approach from NOMS.</i> | 5. Consider reconfiguration of Board structures: <i>It is not clear that the 'value added' of Area Boards is significantly greater than that which could be achieved by a single regional Board.</i> |
| 2. Lighten up on audit: <i>Trusts' financial governance systems should be proportionate to the size of Trusts' funding.</i> | 6. Raise quality of Boards <i>There should be systematic recruitment and induction, and a continuous development programme for Board members.</i> |
| 3. Develop partnership governance skills: <i>Trusts should use LDUs as building blocks to strengthen and develop their local partnership capability.</i> | 7. Strengthen capacity of the PA <i>Enhanced capacity would allow for a stronger voice and representation with ministers and the public.</i> |
| 4. Develop commissioning skills: <i>Trusts should enhance their commissioning skills, but, given the relatively modest size of Trust budgets, the NHS 'world class commissioning' competence level is unnecessary.</i> | |

The Study Day: Headline Findings

Sixty delegates, covering 37 of the 42 Probation Boards and Trusts, attended a Project Study Day in November 2009. It was an opportunity for the PA to have a dialogue with its members, to report on the interim findings from the gap analysis, skills review and pilots, and to invite members to shape the Probation Association's strategy. Members identified eight actions in total.

| Member identified actions |
|--|
| 1. Produce a NED competency and skills framework |
| 2. Produce advice on best practice governance in relation to LDUs |
| 3. Produce best practice advice on making the new CEO/Chair relationship work |
| 4. Develop a Local Authority/LAA group within PA to take forward a policy response to the challenges of localism |
| 5. Develop a national best practice CEO Appraisal Framework |
| 6. Develop governance benchmarking arrangements |
| 7. Produce & disseminate best practice on governance |
| 8. Empower the PA to negotiate with NOMS on national performance indicators |

Recommendations

Having considered carefully the findings from the different elements of the project, we now make 14 recommendations, two as joint recommendations for the Probation Association and NOMS, four for the Probation Association, three for NOMS and five for Boards and Trusts.

For the Probation Association and NOMS jointly:

R1. Produce a competency framework for non executive Trust board members.

It is clear from the pilots, gap analysis and skills review, as well as from members themselves that the time is right to review the existing competencies for board members and to refresh these to better meet the challenge of the Trust environment.

R2. Develop and implement a national induction programme for Board members

The Pilot report highlighted the inconsistency of member induction and in the Gap Analysis, Boards and Trusts reflected that too often, local induction was about understanding the local business rather than learning about the governance role. We recommend that the PA develops a consistent and national induction programme for board members, which will build on the new competencies and best governance practice. Depending on funding, it may also be possible in subsequent years to support continuous development for board members.

Recommendations

For the Probation Association:

R3. Produce and disseminate best practice advice on governance.

There was a high level of interest from members at the Study Day in pursuing governance best practice yet no single source of advice is easily accessible. We recommend that the PA collates a series of appropriate web-links and reading material into a single resource centre on its own website. In time this might also develop into a member forum, perhaps incorporating local best practice, including the different governance approaches to LDUs.

R4. Develop governance benchmarking arrangements.

Building on the wider access to governance best practice, and seeking continuous improvement in standards, the PA should explore mechanisms which might allow Trusts to benchmark their governance practice against other Trusts and other public sector bodies.

R5. Produce and disseminate best practice on how Chair/CEO relationships work

The Gap Analysis and discussion at the Study Day suggested that insufficient attention had yet been given by Boards to the changing nature, within a Trust environment, of the relationship between the Chair and the Chief Executive. In seeking role clarity, sharp governance and ongoing positive working relationships in the pursuit of effective performance, we recommend that the PA reviews and shares best practice from other public and private sector organisations, where reporting to a Chair is the norm for a CEO.

R6. Provide ongoing advice on strategy and development

Members welcomed and would like to see repeated the PA's valued added approach in 2009/10 to providing external consultancy to compliment its internal capability and support Trust development and governance practice.

Recommendations

For NOMS:

R7. Review and revise IPPF

The advent of the Trust environment and the greater emphasis on localism leaves IPPF looking strangely reflective of central government and NOMS agency measures only. Probation Trusts will become local Responsible Authorities on CDRPs in April 2010 and are already widely engaged in contributing to LAA targets. NOMS will need to consider whether locally made commitments should be monitored purely by the Trust or whether some adjustment to IPPF is required to better reflect the local dimension. Without some amendment, two simultaneous but potentially unlinked performance conversations will be taking place, one vertically with NOMS and one horizontally with local partners. We temper our recommendation by suggesting that this may indeed be appropriate given the direction of travel, and we have no desire to see even greater central control, but local targets commit local resource and usually have some genesis in national priorities, even if these exist beyond the MoJ.

R8. Make commissioning and contracts real

There will be little benefit from the costs of seeking Trust status if in time it doesn't lead to greater freedom from central control in order to allow for greater innovation and better value. For this to happen, we suggest that commissioners will need to look at how services are configured differently and how managing through the contract rather than through the line becomes the norm. In turn this will drive the right governance behaviours from Trusts.

R9. Lighten up on audit

We endorse the recommendation from Hughes & Hadley that the audit requirement should be proportionate to the financial risk borne by Trusts.

Recommendations

For Boards and Trusts:

R10. Develop local Balanced Scorecards

Whether NOMS makes changes to IPPF or not, the performance and financial management regime in a Trust will be more complex in future. Coupled with OD requirements, and a contract for just three years, we recommend that local oversight of how the business is working would benefit from a balanced scorecard approach which reflects both national priorities and local needs.

R11. Further develop partnership and & stakeholder working

It was clear from the Pilots report and from the Gap Analysis that Boards recognise they have more to do to develop partnerships and stakeholder relationships and to understand how the board member role fits with these.

R12. Further develop local engagement and consultation mechanisms.

Boards and Trusts reflected to us in the Gap Analysis that improving local engagement and seeking feedback and opinion was a development need. It's important because better public services will only develop if Trusts allow their services to be shaped both by those who need to have confidence in what's delivered as well as those who are service users themselves.

R13. Further develop commissioning skills

We welcome Hughes & Hadley's advice that the world class commissioning approach for Probation is probably excessive, and agree with and endorse their finding that the governance skills around commissioning, as well as commissioning itself need further development. There may be opportunities to use the PA's membership of the Academy for Criminal Justice Commissioning to seek common approaches and standards for best practice commissioning.

Recommendations

R14. Re-position Trusts

Throughout our work on the governance project, we have been surprised by the relative lack of ambition of Boards and Trusts. We have frequently been told what cannot be done or what is not allowed, and have heard insufficient conviction and purpose. Trust status from April 2010 onwards offers an opportunity to revisit what Boards and Trusts want to achieve over the next three years, the type of organisations they want to become and the range of services they want to deliver. The role of the board in setting strategy and holding the executive to account for delivery has probably never been more important or relevant, and for those who don't rise to the challenge, the contracts for 2013-14 are unlikely to offer a second chance.

Hughes & Hadley reflected that the governance relationship with NOMS needs to be re-cast and they suggested that NOMS needs to loosen its control. We agree, but observe that two bodies walking away from each other tend to move apart more quickly. Trusts must therefore use their new status assertively. Through their management of the contractual relationship, they have an equal responsibility to create the space in which innovation, with real opportunity as well as real consequence, can occur.