PROBATION ‘POST-TRANSFORMING REVOLUTION’

A submission to the Parliamentary Welsh Affairs Committee from Napo, the Trade Union and Professional Association for Probation and Family Court Staff – 6th April 2018

The Welsh Affairs Committee has invited evidence from stakeholders and interested parties in relation to the current state of justice provision across Wales, with particular reference to prison and probation services.

Our brief is to give relevant comment on:

A. Staff shortages in the prison service (both in prisons and in the probation service) in Wales;

B. The effectiveness of Transforming Rehabilitation, Working Links and Community Rehabilitation Companies in Wales, how these services can be improved and whether there are any alternatives. Additionally, the Committee has said it would be interested to hear whether these support services are currently meeting the needs of offenders from vulnerable groups. For instance, in its last evidence session, the Committee was told that Transforming Rehabilitation has not been meeting the needs of women offenders;

C. The overcrowding of prisons and the potential for new prisons in Wales.

Napo is the recognised trade union and professional association for staff employed at all levels across rehabilitation, probation and the family court services in England, Wales and Northern Ireland. As such, we very much welcome the invitation to comment on the enormous challenges in the probation system since Grayling’s self-proclaimed “Transforming Rehabilitation Revolution”.

We also make some observations on points A and C in that they relate to B; however, the bulk of our comments are focussed upon B.

We include some ideas for the Committee to consider about alternative models and how we could transition to these in a safe and sustainable manner that would increase accountability, efficiency and, most importantly, the quality of service to the public.
POINTS A AND C - PRISONS AND PROBATION

Many Napo members work alongside POA and PGA colleagues across the prison estate and have witnessed the deterioration of the service since 2010, specifically since significant budget and staffing cuts. Prisons are without doubt less safe and less effective since these cuts. The changes to probation that happened in parallel to these cuts and which were allegedly part of some integrated strategy from the MoJ, have had little tangible impact on prison numbers and pressures. This is probably largely down to them being as poorly planned, poorly tested and as reactive as the prisons cuts. These habits, alongside a chronic ineptitude for managing contracts, are the MoJ’s ‘hallmarks of chaos’.

A much-lauded part of the TR programme was “Through the Gate” (TTG), aiming to improve integrated and holistic support for clients upon release from prison. HMI Probation has identified the scale of this failure previously, labelling it as making no difference at best. This understates the negative impact on the professional morale of staff; the diversion of scare resource to TTG; and the added complexity of community support to offenders prompted by this failed model being a fundamental design flaw in the CRC contracts. (See more detail below).

One political reaction to the problems in prisons has been to abolish NOMS and launch the HMPPS. To date this has brought no tangible improvement for clients or staff, in prison or probation. It looks smells and sounds like NOMS under a different label, but with added mixed messages about greater integration of the probation and prison services.

Napo is engaged in on-going discussions about the Offender Management in Prisons (OMiC) strategy and we believe that it is too early to draw definitive conclusions. We welcome the principle of integrating rehabilitation and probation principles into the heart and soul of prison philosophy. Prison does not work. However, wishful thinking isn’t enough when redesigning complex organisational systems. A huge, understated challenge involves the planned integration of more probation staff into prison-based teams. This generates additional practical HR challenges and highlights enormous cultural challenges. The probation and prison services have very different cultures. They are not opposite sides of the same coin but opposing magnets—forcing the positives of each together is physically impossible and merely releases the tension between both elements. Great care and caution are needed, as well as great vision and leadership to achieve cultural shift. Confidence that this is in place is limited when the HMPPS is still being led by TR’s chief engineers.

Napo has visited HMP Berwyn and have members working throughout the Welsh Prison estate. Clearly, HMP Berwyn is not overcrowded – indeed, difficulty recruiting staff is one of the reasons it remains under capacity. Recent issues there highlight that overcrowding is only part of the prison problem.
Napo’s view is that Wales can do better. Evidence from the Netherlands and Scandinavia show that a different approach is possible and realistic, if the justice system shifts holistically towards one focussed upon prevention and rehabilitation ahead of punishment. It is irrational that since the creation of the MoJ the number of people in prison has grown significantly whilst levels of serious crime have consistently fallen across England and Wales.

Hidden in the big statistics are disproportionate impacts upon some of the already more vulnerable in our society, suggesting prison policy multiplies social divisions instead of addressing them. This is acute amongst women, who are especially likely to be given short sentences, which have a huge and devastating impact on their families, as well as a disproportionate social and economic cost. Serious efforts to address the prison crisis requires breaking this vicious circle that has become entrenched since the creation of the MoJ two decades ago.

To have a serious alternative to prison we need to stabilise and re-enforce community rehabilitation and probation services. This means addressing the consequences of Grayling’s failed TR revolution. TR could have been a huge opportunity to divert investment into prevention and rehabilitation support but the dogma of privatisation combined with political incompetence and a dangerous rush to beat an election timetable meant this opportunity was not only wasted, but adds new short term recovery costs to putting things right before building a new, more sustainable model. However, a longer-term plan of diverting funding into prevention and community rehabilitation would, we believe, more than pay for itself socially and economically.

Core Challenges across Probation

a) **Staffing shortages**

Both the NPS and the CRC have serious staff shortages. Across England and Wales, there are more unfilled posts in the NPS than across the prison estate, although the HMPPS national recruitment drive has focussed more heavily on prisons (including macho multi-media adverts featuring riot control squads, petrol bombs and the previous Minister, that highlighted the contrasting cultures between the two services, and would not have encouraged many to apply for probation roles in the same organisation).

Stories from members trying to apply for posts in the NPS also shine a light into the Kafka-esque bureaucratic chaos in the NPS. The recruitment process is torturous, with online applications vulnerable to unstable IT. Security clearance processes are not aligned to recruitment processes, and can delay either starting dates or people being paid once they start. Trying to convert temporary staff into permanent contracts is also problematic. It is not unusual to take a year from application to starting, even where DBS checks are already in place.

In the Wales CRC 47% of jobs have been cut since the contract was awarded, many in front line posts. This has had a direct impact on standards and safety of provision. For example, in unpaid work staff shortages are a frequent reason for regular cancellations of workday assignments for clients.
This has a human cost as well as an economic one. For example, to complete their sentence and protect their employment, one client recently cancelled their only contact days with their child for three weeks in a row only to see each supervised session cancelled due to staff shortages.

The reason for the problem is rooted in the MoJ’s failed management of the TR split. The concept was predicated on staff being split roughly 30:70 between the NPS and CRC. This was based on little more than a hunch. Even before the actual share sale, after the CRCs had spent almost 9 months in public ownership, it was evident that the split was nearer 50:50, although we do not believe that contracts were adjusted to recognise this embedding a fundamental flaw into financial modelling. Napo was not allowed to see the budget split between the NPS and the CRCs at the point of the transfer but we believe the cost of nationalising the management of high-risk clients and managing risk allocation was dangerously under-estimated; whilst the flow of money into CRCs for managing clients was seriously over-estimated. This has undermined everything that has followed.

CRCs did not get the workflows and offender numbers required to meet contract projections, so they cut frontline staff. Losses on marginal contracts do not look sustainable. This has also impacted upon morale with, we believe, higher than average staff turnover. It is difficult for us to quantify this as the CRC does not readily have or does not want to share staff data, but we know from our own membership data that there is a clear trend. This is particularly worrying when high levels of consistent monitoring of clients is a core probation requirement.

b) Lack of progress on pay reform

Before TR it was recognised on all sides that the probation pay system was broken. The longer this has gone unaddressed the more obvious potential inequalities and indirect discrimination become to all. The cost could now sink probation unless it is fully recognised and the Treasury allows unions and employers the scope to negotiate.

The pay system assumed annual pay progression through a contractual range at around 3-4% p.a. A minimum 1% progression was contractually built into the system but the assumption from all sides was that it would be at least 3% and often higher. An average 4% would allow a probation support officer or probation officer to reach their rate for the job in around 6 years, progressing through a contractually binding 27% range.

Since 2010, progression has been limited to 1% and those already at the rate for the job have received no consolidated increases. The majority of PSOs and POs are still below the mid-point of their range, many having already been in post for over a decade. This presents evident and obvious age discrimination risks that unions have been pressing employers to resolve amicably. However, since the autumn of 2016 no negotiations have formally taken place, due to the Treasury refusing permission for talks to proceed.
This impacts on the NPS and the CRCs. If pay reform in the NPS drives up the value of PSOs and POs then CRCs fear a rush of staff leaving to work in the NPS, given their number of vacancies. This is currently prevented by the NPS not allowing staff to transfer on their existing salary but instead insisting staff start on their band minima – something that increases their recruitment difficulties.

CRCs have delayed pay reform negotiations because the contract margins do not give them scope to address the scale of the problem and are waiting for progress in the NPS, so that they can argue for further adjustments to the contract price. However, having had responsibility for these contracts now for over 3 years their legal defence is gradually evaporating along with union patience.

The critical barrier to pay reform seems to be the Treasury’s loss of trust in the NPS/HMPPS senior leadership’s capacity to manage budgets and therefore, pay reform. To a large extent Napo understands the reasons for this as they mirror our own loss of trust in the NPS management – highlighted by the shambolic 2017-18 pay round where a range of excuses were used at different times for giving NPS staff (a majority of whom are female) no increase because they had overspent on the prison pay budget (where the majority of staff are men).

c) Approved premises outsourcing contract failures

Despite high profile contract failures highlighting the importance of strict and close contract management and compliance, the MoJ has authorised hugely dangerous outsourcing contract for double waking night cover staff in approved premises. This contract, split between Sodexo and OCS, was due to start on 1 February 2018. In January, it was recognised that the contractors had not addressed a number of critical staffing issues so the risk of letting the contract was too great. They were given until the 1 March to address these. When unions met with MoJ officials and the contractors in February it was clear that none of these risks had been safely addressed. However, the MoJ allowed the contract to proceed. Risks include a 60-day leeway for staff who have not been vetted or who have not got the security clearance and numerous health and safety risks. These contracts are to manage incredibly difficult, complex and sometimes violent clients – not an area for a casual attitude to people’s personal safety/ It also amplifies the MoJ’s seemingly entrenched inability to learn from past errors in letting contracts before it was operationally safe to do so.

**NPS systems failures**

a) Shared Service Centre (SSCL) failures – taking the human out of HR

A MoJ pre-requisite for the part-nationalisation of the probation service was that NPS staff would be supported by the Shared Service Centre in Newport. In principle, this should not have been problematic. Unfortunately, fundamental differences between the terms and conditions of probation staff and other civil service staff was not accepted, despite Napo raising serious concerns ahead of the transfer, and we believe these being echoed by staff within SSCL. Essentially, the model works on the premise that everything is the same (i.e. shared) – or at least that differences are clearly identified so computer modelling builds around these differences. This is bit the case in the NPS and nothing works.
A Treasury condition for TR was that government were protected from taking on probation pension liabilities. Probation staff had been, and largely remain, members of the local government pension scheme (LGPS) - except for new starters in the CRCs who are on much cheaper defined contribution schemes. The LGPS is a funded scheme. The civil service scheme is unfunded, meaning there is no pot that is protected and invested to cover the pension costs in retirement. This has allowed governments to manage the civil service scheme on Maxwellian principles – e.g. raiding the notional pot for redundancies. There has also been a bleeding of pension language into wider civil service terms and conditions. The computer has learned these clues and what they mean. When a different set of meanings, based upon different pension scheme rules and consequences is imposed on top, it gets confused and either shuts down or gives the wrong answer.

This extends to wider terms and conditions, which have not been harmonised with MoJ policy including absence management processes, notice periods and aspects of annual leave. Until 2017, this included maternity and paternity provision, with the NPS resisting union efforts to bring a majority female NPS workforce into line with other civil servants, meaning NPS staff regularly found their maternity leave being reduced mid-leave.

In 2017, the system almost entirely collapsed. Over 3000 staff were wrongly paid for over 7 months, as pension contributions were not deducted. Efforts to put this right only made the problem worse.

All staff have utterly lost confidence in the shared service centre – including those working there; who openly tell us they cannot trust the computer’s answers and assume they will need to do manual over-rides.

All line managers are reliant upon the shared service centre company SSCL and their processes for all HR activity. This is something that is soul destroying when it rarely works and you cannot trust what it tells you. It extends to managing absence records, processing ill health early retirement applications, pay adjustments, etc. It is difficult to fully establish the scale of the impact as we also rely on SSCL for statistical information (e.g. on absence patterns) but they have not been contracted to produce these.

In addition, it became clear during the 2017 crisis that SSCL was charging the NPS at premium rates to call them. With many offices having moved to mobile only phone systems due to hot-desking, this means all calls to HR cost up to 88p a minute. One member who started in February 2017 and was not paid at all until almost 3 months later faced a personal phone bill of £88.00 trying to sort out their pay.

If we do get pay reform, the risk that the shared service system will mess it up is self-evident. The human in HR has been conceded to a dyslexic computer system. Monty Python would call it far-fetched.
Napo’s view is the obvious need to free the NPS from this problem is being resisted because of a dishonest politics in the MOJ – senior leaders have bound their reputations to the HMPPS vision and would see releasing the NPS from this contract as conceding that HMPPS is merely NOMS re-badged. Egos and reputations cannot be allowed to get in the way of running a key public service in a systematic and sane manner.

b) Loss of managerial confidence

Possibly the most critical side effect of the SSCL and HR failures is the additional strain this is putting on first line managers in the NPS – a critical group in terms of performance. The NPS refused to accept warnings that Senior Probation Officers in probation trusts did little HR management, focussing upon professional mentoring and support with local HR teams being used to address HR issues. This local HR capacity was removed, and replaced by the computers at SSCL. Because of their limited historical HR role, these managers have a much higher number of staff to manage directly than would be anticipated in similar civil service 1st line manager roles - SPOs having typically 12 to 14 reportees.

On a day to day basis this problem is punched and bruised by the SSCL failures leading to managers becoming disengaged or looking for shortcuts – e.g. we know examples where triggers under an imposed absence management regime are being ignored or SPO’s are not entering absence to avoid having to issue warnings to staff they don’t think are right.

c) Retirement problems

There are currently acute problems with the management of pensions across the NPS. This is especially acute in cases where staff are applying for ill health early retirement. This is now routinely taking so long that staff are inevitably on reduced or no pay before they retire. The subsequent loss of notice pay is an area of on-going dispute and legal challenge from Napo. In several recent cases staff have been dismissed and still been waiting to receive their pension several months later.

This is in addition to the failure to collect pension contributions for over 300 staff for most of 2017. When Carillion went bust, members in CRCs asked if we were sure, their contractors had been honouring the commitments under the LGPS. We were confidently able to reassure them that the only systematic failure in this regard under TR came from the NPS.

If Working Links had a Carillion-like collapse, the NPS have admitted to Napo that they would not be able to make the same guarantee to Working Links staff that they would honour their pay until a new contractor could be found.
Greater clarity about CRC challenges and failures

a) SFO evidence reveals information gaps

Napo has been monitoring the management of Serious Further Offences (SFO) cases since TR. This is difficult as access is limited and investigations are closed. Statistics are also difficult to interpret as increased numbers under probation skew baselines.

However, before TR happened we warned that splitting local delivery of core services was a recipe for disaster, introducing a commercially sensitive barrier to information exchanges and separating the most professionally qualified and experienced staff (predominantly probation officers) from the less trained and less experienced staff (predominantly probation support staff and some specialists in the CRCs). The NPS allocation of a low or medium risk label does not mean all CRC clients are safe to manage without adequately trained, properly supported professional staff. This risk is amplified by the lack of any clear national standards or a license to practice in probation.

We are alarmed by evidence in a number of high profile CRC cases, including the murder of Connor Marshall in Wales, where a failure to track critical information about a client between their release and allocation to the CRC could have led them to a different approach. The difficulties experienced by the Marshall family in accessing the truth behind the circumstances of Connor’s murder also amplify why we support greater independence in the investigation of SFOs, passing them HMI Probation.

The pressure of same day reporting in courts is also being identified as a factor in clients, who may be high risk, wrongly being transferred to the CRCs. We again highlighted this risk before TR but think the evidence now exists for a systematic, independent analysis and recommendations.

b) Working Links – Carillion Mark 2?

Napo is given very limited access to information about contractual performance by either the MoJ or Working Links. However, we do know that the contract was won with very limited competition but against very small financial margins.

We have already covered why the assumptions in the contract have meant Working Links has, like all CRCs, struggled to make any profit on the contracts. Indeed, we believe the contracts have led to significant losses for the company.

Adjustments to the contract pricing in 2017 will not address this challenge fully. The second half of the contract was disproportionately reliant upon Performance by Result (PbR) payments that cannot materialise if the number of clients coming into the system have not arrived. Therefore, the contract adjustments will merely limit the forecast losses. If the NPS collected fines for poor performance these losses would increase, although legal bills may rise if Working Links, along with other CRCs, challenge the MoJ based upon mis-sold contracts.
In addition, there is the on-going, now culturally entrenched, loss of trust between the CRC and NPS at local level. The contract funding mechanism was based upon the NPS buying some services from the CRC using a rate card system. Until last summer, NPS staff report being encouraged not to buy off the rate card due to their own budget constraints, each request needing specific managerial authorisation. Since the contract adjustments, we are told this instruction has turned around. NPS staff are now being actively encouraged to support the CRC and to get specific permission where they do not want to do so. We are told this is not working due to low confidence in CRC delivery linked to CRC staff cuts and a limited menu, as well as on-going local NPS budget pressures.

Working Links has already been restructured and taken over by a German equity firm but if the possibility of profit on the investment continues to look unrealistic then the long-term sustainability of the contract must be questioned. For as long as the contract goes on Working Links are likely to continue to seek to cut corners and the quality of service delivery. We know that recently, staff shortages in the Torfaen Office saw it closed for two days with staff relocated to Newport. In March, the Caerphilly office was closed for two days after the water was cut off due to an unpaid bill. Bailiffs raided the Cardiff Office, seizing equipment in lieu of unpaid bills, in full view of clients.

c) **Commissioning model has broken down**

One reason for the loss of confidence in the NPS buying from the CRC is the limited menu of services and interventions offered as a direct result of the commissioning model having broken down.

The TR model expected CRCs to purchase specialist support, such as sex offender treatment or domestic abuse programmes, from second tier providers, especially from the third sector. In practice, this has not happened, due to the shortfall in the contract meaning CRCs are incentivised to do as much as they can themselves and squeeze out potential local competition from the charity sector. The current commissioning model gifts Working Links a commissioning monopoly from Land’s End to Holyhead. This is financially incoherent for the taxpayer but also bad news for service delivery, where previous partner organisations have been forced out and intelligence gathering from this network of local providers is locked out.

**STARTING NOW TO FIND A SAFER, BETTER WAY FOR PROBATION**

In February this year, Napo held a discussion event at the Welsh Assembly, in the light of the recently launched Wales Justice Review. Invited guests and speakers included academics, practitioners, victims’ services, and the CEOs of national charities with established track records in delivering services for offenders, including specialist services for women offenders. There was broad and emphatic agreement that the CRC privatisation model was hampering (if not actually excluding) effective work achieved in partnership between probation and community organisations. Pre-TR, probation had worked effectively in providing core services, and working in close locally forged partnerships with specialised community organisations.
It is our view that the frameworks and expectation for this to be rekindled must be built into any revised model for delivery of rehabilitative services.

The current system is utterly unsustainable. If it survives to the end of the existing contracts, there is no sustainable way forward under the existing model. It cannot be tweaked. Working Links are amongst the worst of the CRC providers but we have no confidence or evidence that the market is strong enough to produce an alternative, better provider.

Re-tendering would still leave the NPS a struggling bureaucratically straightjacketed systematically dysfunctional organisation that was almost accidentally nationalised because no one thought that they could sell off the management of high-risk offenders. Re-tendering would entrench this artificial professional divide in core service delivery. Re-tendering would entrench the conflicting lines of accountability that undermine public trust and confidence if, and when, something goes wrong. We need a new and different model. Napo has established four key tests for any possible alternative.

These are:

1) **A locally accountable commissioning body** – which should not necessarily be the provider of services. This would re-open the market to the third sector and new innovators (e.g. possible Mutuals).

2) **Strong and accountable local leadership** - where there is enough political visibility and credibility to stand up to Ministers and secure adequate funding and enough political risk for them to see danger of being blamed for service failures.

3) **Unified local delivery of core services** – removing the risk of burn out for staff only managing serious and high risk cases in the NPS; facilitating greater capacity building for new recruits in the community; and removing the information sharing barriers that can increase risk when clients are transferred between the NPS and the CRC, as seen in recent SFOs.

4) **Not for Profit** – The privatisation experiment has failed. A core principle should be that services exclusively using public funds should be exclusively accountable to and measured against the public interest. Additionally, the probation market has been shown to be too weak to sustain itself. This does not preclude efficiency drivers in any model but any surpluses generated should be reinvested into service/programmes by Commissioners, with those delivering efficiently expecting to be rewarded by additional/continuing commissions.
In Wales, there is an obvious opportunity to devolve the commissioning of probation services to the Welsh Assembly. Potentially, at least, this would meet all of these tests. However, before doing so we would expect there to be careful consideration, including engagement with Napo and other staff unions, to build a consensus around this change – including united support for establishing professional standards and frameworks; ensuring sustainable long-term budgets; and working through the transitional people issues.

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