

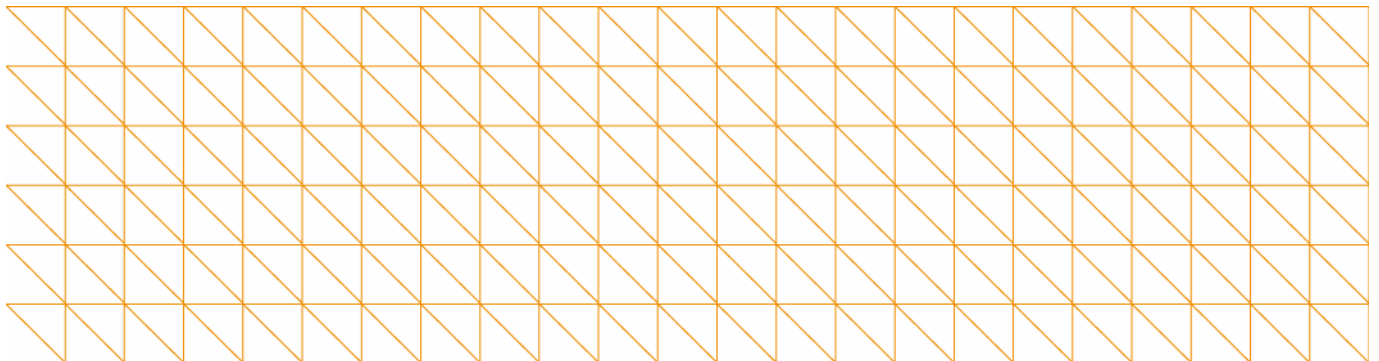


Best Value in Probation

Response to Consultation

CP(R) 06/08

Published on 26 November 2008





Best Value in Probation

**Response to consultation carried out by the Ministry of Justice.
This information is also available on the Ministry of Justice website:
www.justice.gov.uk**

Contents

Introduction and contact details	3
Background	4
Summary of responses	5
Responses to specific questions	8
Conclusion and next steps	24
Impact Assessment:	28
Consultation Co-ordinator contact details	54
The consultation criteria	55
Annex A – List of respondents	56

Best Value in Probation Summary of Responses

Introduction and contact details

This document is the post-consultation report for the consultation paper, Best Value in Probation, CP 06/08.

It will cover:

- the background to the report
- a summary of the responses to the report
- a detailed response to the specific questions raised in the report
- the next steps following this consultation.

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This report is also available on the Ministry's website: www.justice.gov.uk.

Alternative format versions of this publication can be requested from bestvalueconsultation@justice.gsi.gov.uk or 020 7035 4930.

Background

The Ministry of Justice (MOJ) published "*Best Value in Probation*", consultation paper CP 06/08, on 9 April 2008. The consultation lasted for 12 weeks ending on 2 July 2008. This paper sought views from all interested parties on the proposals which it set out for how the Best Value regime in probation should work.

This report summarises the responses, including how the consultation process influenced the final shape/further development of the policy/proposal consulted upon.

A list of respondents is at Annex A.

Summary of responses

The consultation paper was published on the Ministry of Justice, National Offender Management Service (NOMS) and National Probation Service (NPS) websites, through internal NPS channels and the NOMS National Provider Network. Messages were sent to 143 organisations inviting them to respond to the consultation.

The MOJ organised two open meetings in London and Leeds to introduce the Best Value consultation and encourage discussion. In total, 46 delegates attended including representatives of the probation service, the third sector, the private sector and probation trade unions and staff associations.

A range of themes were covered at the two open meetings including the value of building on service reviews that areas/ regions have already undertaken, the need for clear guidance especially on costs; and the need to coordinate reviews regionally to share resources and skills to ease implementation. In terms of process, there was support for national specifications for consistency. There was also support for an initial focus on Best Value reviews on a fairly large scale, perhaps involving interventions. Independence and transparency were regarded as essential and it was proposed that NOMS Agency regional directors¹ should play a leading role in undertaking assessments of the outcomes of the reviews and with the involvement of the third and private sector.

Ministry of Justice officials also contacted representatives from the private sector through the CBI, third sector, probation trade unions and staff organisations to offer them the opportunity to discuss Best Value. MOJ officials met with representatives from Addaction, the Association of Chief Executives of Voluntary Organisations (ACEVO), the CBI, Clinks and the National Disabled Staff Network which represents the probation service and CAF/CASS.

To support the development of Best Value, the Ministry of Justice formed a Third Sector taskforce on Best Value in probation. The outputs from the taskforce will be considered alongside this public consultation in updating the best value framework.

In total, 73 written responses were received, representing the views of a wide range of stakeholders from across the public, private and third sectors. A list of respondents is at Annex A.

¹ For the purposes of offender management (probation and prisons), England and Wales are divided into ten units – nine English regions, and Wales. In the rest of this document, for simplicity, all ten will be referred to as 'regions', even though Wales is not. Ongoing changes to the structure of the National Offender Management (NOMS) Agency mean that the governance of these regions is changing, but they will all in time move to being led by a regional Director of Offender Management. The rest of this document will refer to regional directors.

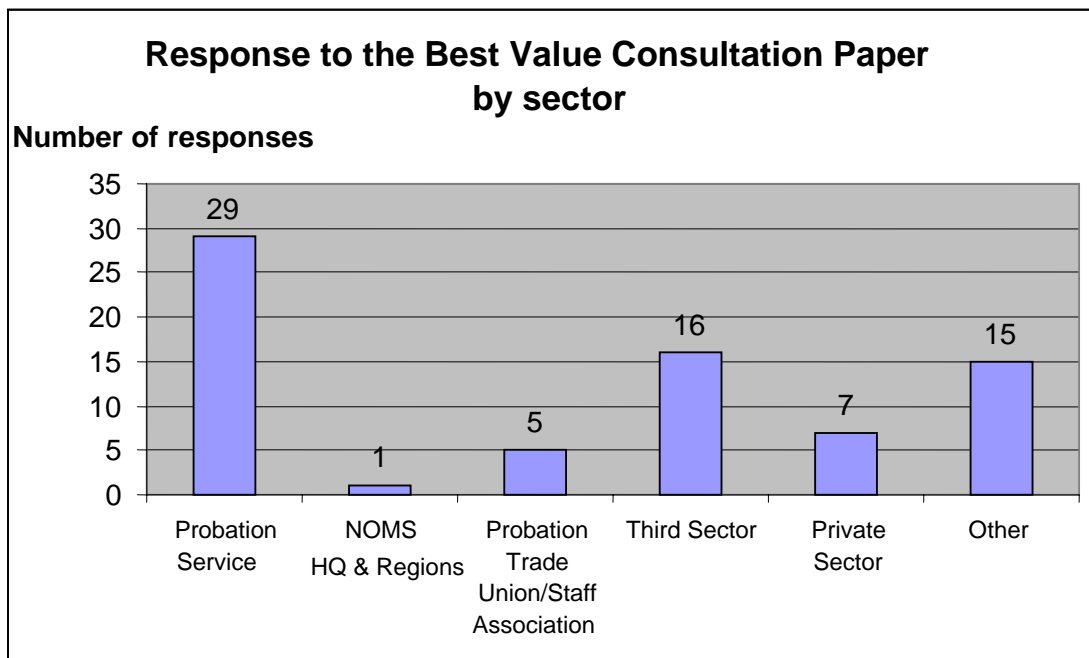
The largest number of responses (29) came from within the probation service. The third sector had the second largest number of responses (16). Responses classed as 'other' included members of the public, the judiciary, local government and other public sector bodies.

The consultation document included a formatted questionnaire for respondents to record their views, 23 of whom did not use this standard questionnaire and adopted a different format. Where such answers could be matched against a specific question they were included in the analysis of that question. All other comments were included in Question 16 - the general comments section.

Questions 2, 3 and 4 specifically sought views from those who had answered question 1, and question 7 sought the views of those who had answered question 6. However, some respondents chose to answer the question regardless of their answer to Question 1 or 6. These votes were counted.

To keep the percentage calculations consistent, all percentages have been worked out using the total number of responses (which was 73) rather than the number of respondents who chose to address the individual question.

We are grateful for all the responses received during the consultation period and have produced this paper to reflect the views that were presented.



The findings indicated that the principles behind Best Value were generally supported although a range of opinions were expressed about how to implement the process.

A number of probation service respondents were strongly of the view that a decentralised (local/regional) approach for selecting services for review should be adopted from the outset, rather than being chosen initially by the NOMS Agency. In addition, some of those probation service respondents preferred an area-based decision-making process rather than a regional process.

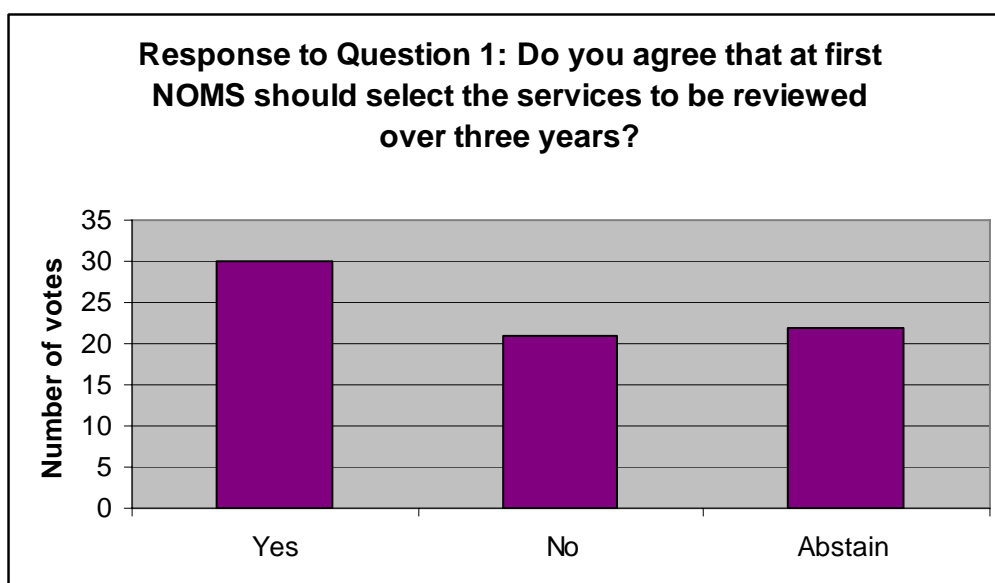
Concerns included: a perceived over-emphasis on cost rather than quality of service provision; the resource implications of delivering the Best Value reviews particularly in terms of the potential for costs to outweigh the benefits in respect of the impact assessment; the need for expanded guidance on how the Best Value process will work under the 5 'Cs,' in particular "collaborate" and "consult"; and how the third sector would contribute to the process.

A small minority expressed dissatisfaction with the way the proposals were presented as they felt that there was limited scope given in the paper to object. However, the majority welcomed the opportunity to comment on the proposals and contribute to the development of the Best Value framework.

Responses to specific questions

1. Do you agree that, at first, the National Offender Management Service, for the Ministry of Justice, should select the services to be reviewed by probation areas over three years? Do you have any comments on this?

The overall response to Question 1 was positive. 41% of respondents agreed, 29% disagreed and 30% chose to abstain or gave no answer to this question. This proposal was least popular with respondents from the probation service. 59% of respondents from the probation service disagreed that the NOMS Agency should select the services to be reviewed over three years. However, the majority of respondents from the third and the private sectors agreed with the proposal.

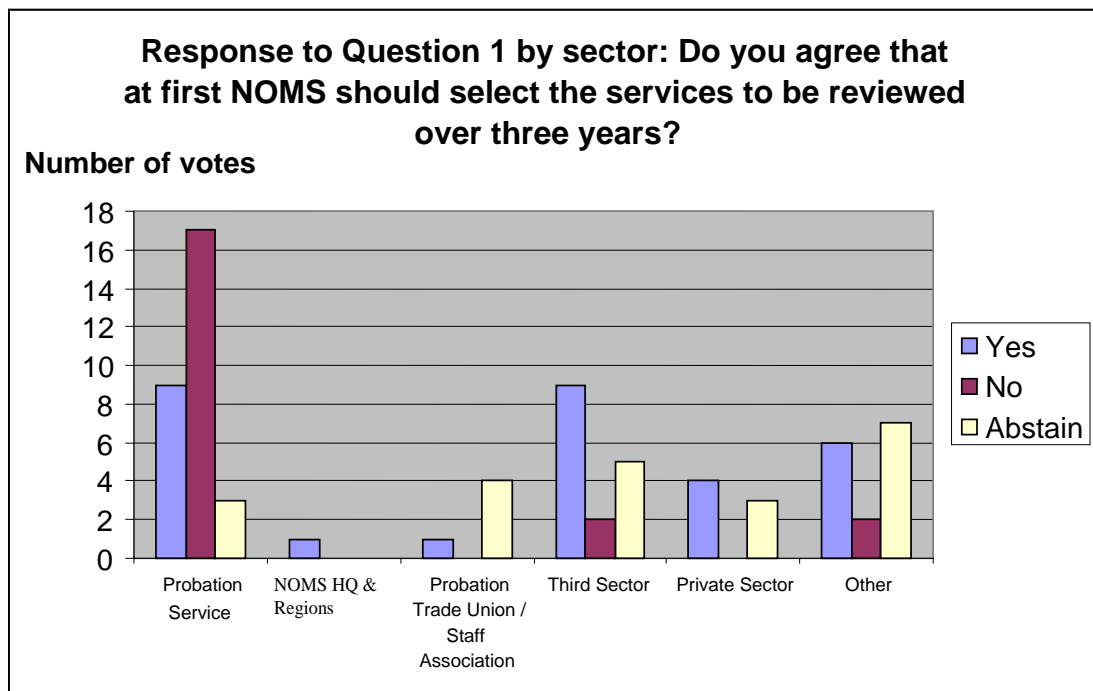


It was generally thought that this would enable the centre to set the direction for future work and drive the selection process forward to gather momentum before giving probation areas the freedom to agree with regional directors the services they wish to review to address regional and local priorities, as part of a decentralised approach. It was suggested that if the proposed approach were adopted, the first services to be reviewed should be those that are large enough to allow robust data to be collected, to enable the comparison and benchmarking of areas.

Whilst respondents appreciated the need to be able to compare efficiency and effectiveness, some doubted that a national programme would be the best way to achieve this. Some felt that this approach would be too prescriptive and bureaucratic, leading to an increase in compliance costs, delays and the stifling of innovation.

Some respondents argued that the NOMS Agency should from the outset empower areas or regions to decide which services to review based on their local knowledge; that the priorities for doing so should be determined in the light of local conditions and needs; and that choosing services to be reviewed centrally would reduce local flexibility and fail to take into account local changes or reviews that have been implemented.

It was also suggested that local probation boards and representatives of the private and third sectors should be brought into the selection process to ensure that services selected are the most suitable to deliver strategic objectives and that decisions are made with awareness of resource implications for delivery.



2. If you agree with question 1, how many services do you think should be reviewed in each year of the programme?

The majority of respondents (55%) abstained or did not comment on this question. This was partly because the question was directed at those who were in agreement with question 1 but some participants chose to answer this question regardless of their answer to Question 1. Of those that gave a numerical answer 15% thought that no more than two services should be reviewed in each year of the programme because they felt that fewer reviews, with time allowed for evaluation, could produce better outcomes. It was also argued that carrying out a greater number of reviews would risk diverting staff resources and expertise and potentially undermining the ability of local areas to deliver core services.

One respondent however argued that since Best Value is intended to improve the efficiency and cost effectiveness of service delivery, as many services as possible should be reviewed and benchmarked.

A number of respondents thought that deciding how many services to be reviewed each year would depend on other factors such as the size and type of the service, the definition of 'a service' and overall capacity issues. For example, it was suggested that an activity such as alcohol intervention or victim liaison would not be as resource-intensive as, say, broader areas of activity such as unpaid work and offender management.

3. If you agree with question 1, do you agree that the services to be reviewed should be selected on the basis of:

- i. The strategic importance of the service?**
- ii. The potential to increase the effectiveness of the service?**
- iii. The potential to increase the efficiency of the service?**
- iv. The capacity of boards and trusts to review the service?**
- v. The benefits of the review outweighing its costs?**
- vi. And do you think that there are any other criteria which should be considered?**

As with the previous question, although it was directed at those who agreed with question 1, some answered despite not having agreed to that question. These responses were still counted.

The most popular options were ii) and iii) with each receiving 36 votes (49%). Option iv) was the least popular only receiving 21 votes (29%). More than one respondent mentioned that (iv) – the capacity of boards and trusts to carry out a review should not normally be accepted as a reason not to review a service because it should be assumed that they are capable of reviewing their services. It was also suggested that improving services to victims should form an integral part of the review.

Under option vi) respondents were asked what other criteria they would like to see considered when selecting services to be reviewed. Suggested criteria included: the impact of the service on reducing re-offending and on public safety; the importance of services to local courts; improving services to benefit victims; the consideration of outsourcing to the voluntary and private sectors; and the examination of a non probation-specific approach to services.

Some other respondents reiterated points made in their responses to question 1. For instance the Council of Her Majesty's Circuit Judges considered that the decision to select services to be reviewed should be taken by Boards and Trusts at a local rather than national level because priorities need to be determined in the light of local conditions and needs.

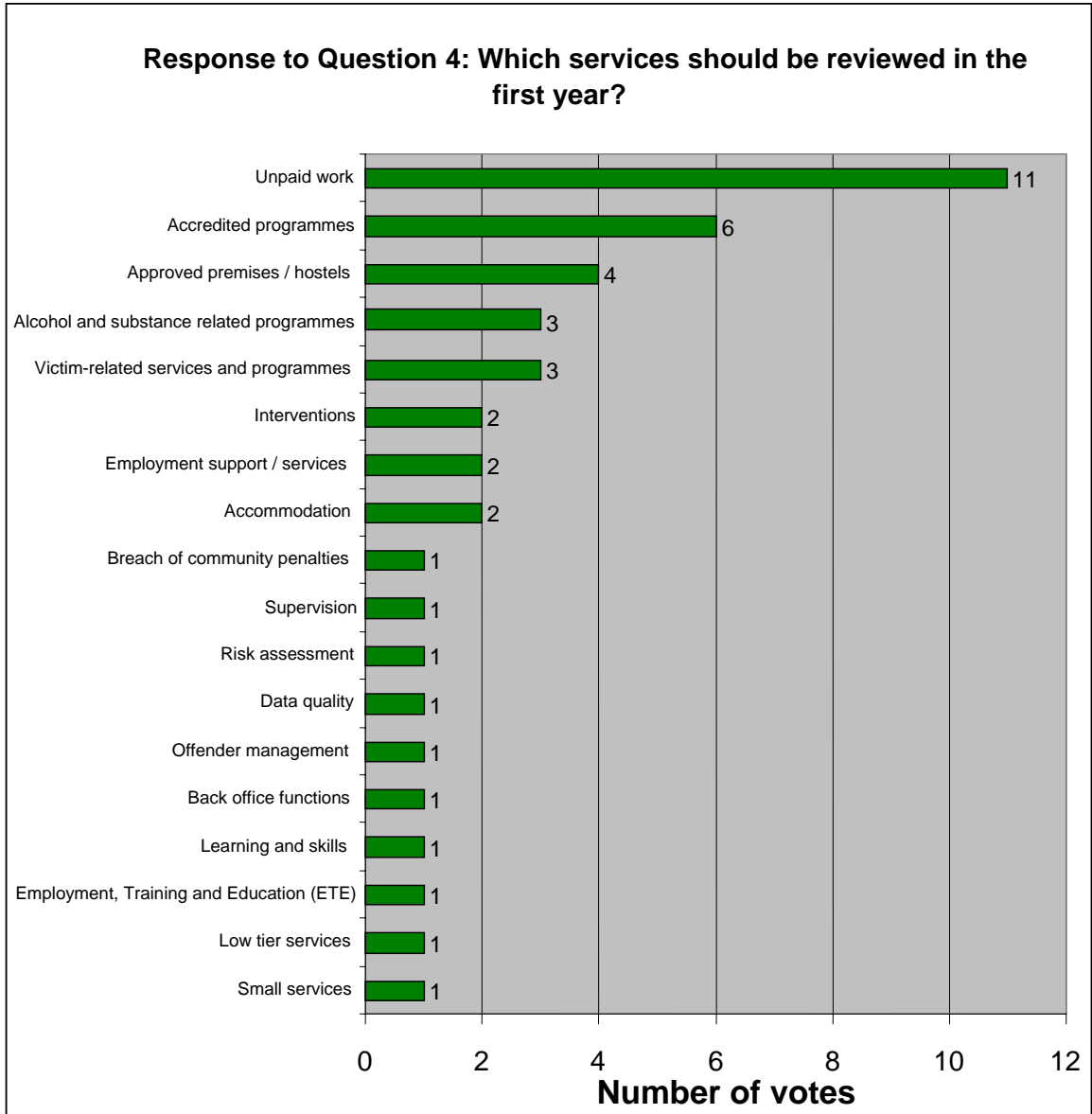
TMS Insight considered that other stakeholders who contribute effectively to reducing re-offending rates should have a voice and be involved in the

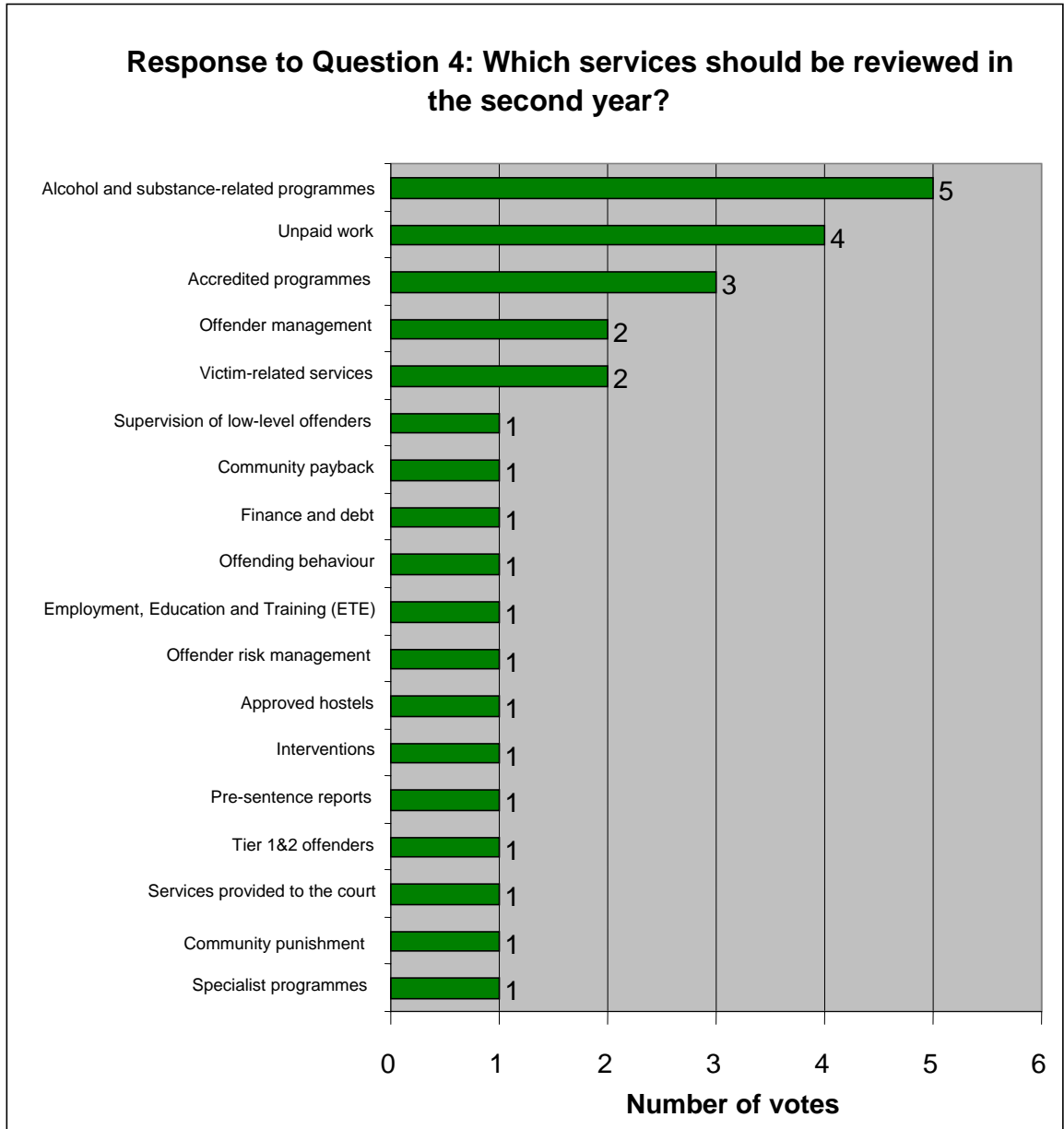
selection process and that all services should be reviewed, without 'no go areas.'

4. If you agree with question 1, which services do you think should be reviewed in the first year and which should be reviewed in the second year?

Although it was directed at those who were in agreement with question 1, some participants chose to answer this question regardless of their earlier answer. These responses were still counted.

Where only one suggestion for a service was made it was counted as a service to be reviewed in the first year. Where multiple services were suggested but no distinction was made whether they should be reviewed in the first or second year, they were also counted within the votes for the first year. Far fewer respondents (16 out of 73) suggested services to be reviewed in the second year. There were also 49 who did not answer this question. The services suggested in the responses are shown in the charts below.





Of those respondents who stated a preference for services to be reviewed in Year 1, 11 agreed that unpaid work should be tackled first, followed by accredited programmes (6 votes) and approved premises/hostels (4 votes). In year 2, programmes related to alcohol and substance misuse were the most popular choices (5 votes), followed by unpaid work (4 votes) and accredited programmes (3 votes).

Some respondents chose services but not a specific year in which they should be reviewed. For example, Serco proposed that services such as unpaid work should be reviewed in the first two years because they operate in every

probation area and are less contentious than other services.

Some respondents suggested other approaches, for example, that the delivery of interventions should be reviewed in year 1 and that selection should take into account the Ministry of Justice's strategic objectives, particularly in relation to reducing re-offending. Another suggested that it would be helpful to consult with local areas and to focus on services where there are problem when deciding which to review.

5. Do you agree that NOMS, with the Ministry of Justice, should make available national service specifications on performance, economy, efficiency and effectiveness for the services to be reviewed?

64% of respondents agreed that the NOMS Agency, with the Ministry of Justice, should make available national service specifications on performance, economy, efficiency and effectiveness for the services to be reviewed. Only 3% disagreed but 33% of the respondents did not answer this question.

Gloucestershire Probation Area considered that the specifications should provide a baseline with standards covering value for money, quality and stakeholder criteria. Staffordshire Probation Area argued that establishing the basic design features, key performance and quality characteristics of services to be reviewed, is necessary to establish what a 'Best in Class' service will look like, and to provide a baseline for reviews and benchmarking.

Several respondents suggested that the specifications should be outcome rather than input based in order to encourage local flexibility and innovation. For example, Serco argued that the specifications should describe the aim to be achieved rather than how it is to be achieved. NACRO supported a national standard to ensure consistency but not so prescriptive that it deters innovation and the flexibility to deal with local or regional issues.

6. Do you agree with the aspiration to move over time to a more decentralised model, with regions agreeing with probation areas the services to be reviewed in the region, taking account of national guidance on how to make the selections?

Just over half of the respondents (52%) agreed with the move over time to a decentralised model. Only 16% disagreed and 32% abstained or made no comment. Within the votes from the probation service, 66% agreed with the move to a decentralised model. 24% disagreed and 10% abstained.

Several respondents that viewed this aspiration positively felt that such a move would enable better links to be made within the local community by increasing communication between local partners from the third and private sectors. For example, Addaction felt that localising service provision was consistent with other Government initiatives and that this would be likely to maximise 'buy-in' from local stakeholders.

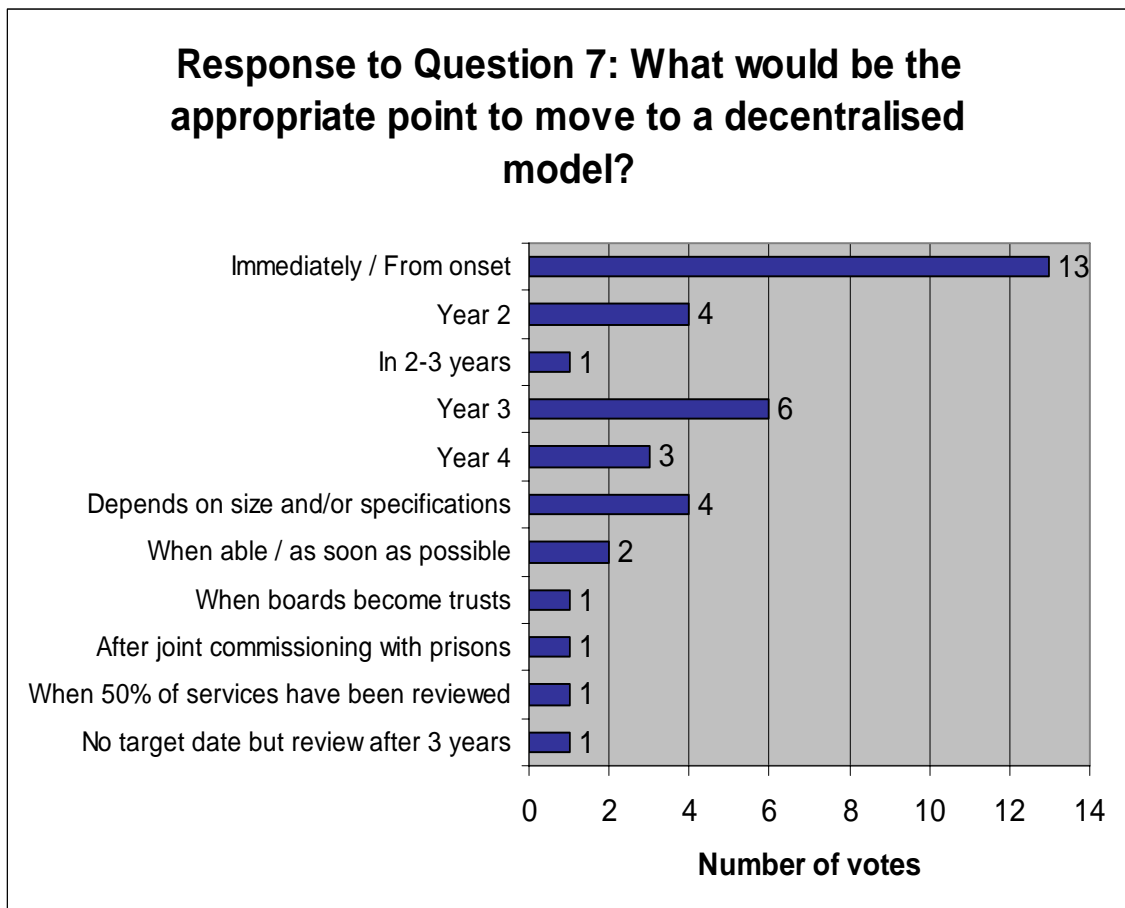
A number of respondents considered that decentralisation should only take place when the national programme has been evaluated and the lessons have

been learnt. However, it was also argued that decentralisation should take place as quickly as possible or a regional model should be adopted from the outset.

7. If you agree with question 6, what do you think would be the appropriate point at which to move to a more decentralised model?

Although it was directed at respondents who had agreed with question 6, some chose to answer this question regardless of their earlier answer.

37 respondents (51%) answered this question. An almost equal number, 36 (49%) did not answer this question or made no comments. The chart below provides details of the answers.



The single most popular point to move to a decentralised model was (from 13 responses – 18% of all 73 respondents) immediately or from the outset of the reviews.

Nearly twice as many respondents (24, 33% of the total) chose other options. 14 of these (19%) opted to move to a decentralised model in years 2 to 4 and 6 (8%) of the respondents chose year 3. 10 respondents (14%) made their

answers dependent on other factors for example one considered that the move should only take place once national specifications had been developed.

Probation service respondents were the most clear about the options they favoured. A little under half (41%) of probation service respondents favoured an immediate move to a decentralised model whilst 10 (34%) favoured a later point or argued that other factors were important before deciding on the point to move to a decentralised model and 7 (24%) abstained. A much higher proportion of other respondents abstained or made no comments about the appropriate point to move to a decentralised model.

8. Do you agree that NOMS regions should:

i. Coordinate the reviews carried out by probation areas in their region, ensuring that they happened at similar times?

Over half of all respondents (52%) agreed that the NOMS Agency should co-ordinate the reviews carried out by probation areas in their region, ensuring that they happened at similar times. 15% disagreed and 33% of respondents abstained or made no comments on this subject. 59% of the respondents from the probation services agreed with the NOMS Agency co-ordinating the reviews, 31% disagreed and 10% abstained.

Those who agreed generally considered that a synchronized approach would help ensure consistent data was collected for benchmarking. The Wales Audit Office commented that this approach would enable the exchange of costing and performance information and the sharing of learning. Some, including NACRO and Kent Probation Area, considered that flexibility should be built into the process to allow single area reviews where appropriate to meet local needs.

Some who disagreed considered that the review process should be managed entirely by boards and trusts. South Yorkshire Probation Area suggested that the selection of reviews and their timing should be a matter for local boards and trusts to decide to meet their particular requirements and circumstances. They did not think that prescribing the time of year when reviews should take place would be particularly helpful as they largely depend on the nature and complexity of the service being reviewed.

ii. Negotiate and agree with probation areas any necessary variations to national service specifications?

The response to this question was similar to the response to part i). 56% of respondents agreed, 11% disagreed and 33% abstained. Of these responses, 62% of respondents from probation services agreed, 28% disagreed and 10% abstained or made no comments on this question.

Of those who agreed, several considered that variations to national service specifications would enable local needs to be met although some argued that any variation of such specifications should be evidence-based and exceptional rather than routine. A small number of respondents felt that variations should

not be allowed, or if they were, the centre should negotiate any changes rather than regions.

9. Do you agree with our proposals for the way in which probation areas should conduct the first step (initial data collection) of the Best Value reviews?

Just over half of the respondents (51%) agreed with the proposals for the way in which probation areas should conduct the first step (initial data collection) of the Best Value reviews. 15% of respondents disagreed and 34% abstained or had no comments.

Many respondents highlighted the importance of ensuring that cost information is collected in a consistent and comparable way, and made available. Some had little confidence in the current national unit-costing model and urged that it should be reviewed.

Some expressed concern that the process only seemed to involve probation areas and recommended that other stakeholders, such as third party service providers, should also be involved. The point was also made that there needs to be agreement about how information is exchanged across all agencies particularly as services can be delivered by alternative providers.

An alternative 'initial first step' was put forward by Accenture. They proposed undertaking diagnostic assessments across a small number of boards to build a thorough understanding of the current costs and effectiveness of a range of services. They believe that this approach would produce information within a relatively short period of time, which could be gathered and shared from the centre with immediate results. Furthermore, this would provide an indication of the data available to compare services and the feasibility of measuring costs. It would also help show what good practice looks like and enable realistic targets to be set.

10. Do you agree that probation areas should make the initial data from their Best Value reviews available to NOMS and that it should be collated and made available to all probation areas to enable comparison?

Just over half of respondents (52%) agreed that probation areas should make the initial data from their Best Value reviews available to the NOMS Agency and that it should be collated and made available to all probation areas to enable comparison. 14% disagreed with this suggestion and 34% chose to abstain or had no comments on the availability of initial data.

Those in support, for example Addaction, were of the opinion that information sharing is in the public interest. Rainer added that transparency, and for information to be available and shared, is necessary for effective best value practice. Gwent Probation Area said that it is appropriate for all areas to receive relevant local, regional and national data and that probation areas learn from the experience of others. Some, like Dorset Probation Area, stressed that this should only happen when there is confidence in the

benchmarked data and there is a level playing field for all probation areas.

Concern was expressed about the need to safeguard commercially sensitive data, particularly if this were to be made more widely available than to other probation areas. Clarification was sought on this point. It was argued that this requirement to prepare and send data to the NOMS Agency might impose further time and cost burdens on probation areas. .

11. Do you agree with the proposals for the way in which probation areas should challenge their delivery of the service?

Just over half of the respondents (53%) agreed with the proposals for the way in which probation areas should challenge their delivery of the service. 12% of respondents disagreed and 34% abstained or made no comments on challenging the delivery of service.

Of those who agreed with the statement, some, such as Hampshire Probation Area, highlighted examples of a successful best value review of an area of service where information was shared and delivery models challenged using the methodology that has been proposed. They also recommended that probation areas consider involving an external “challenger” within the process. North West Probation Region reported their experience of a challenge process. This required objective input. Challenge teams in the region consisted of board members, internal specialist staff and ‘critical friends’ from the voluntary and private sector.

In general, there was a great deal of support for collaboration. However, a large number of respondents expressed concern that the proposals seemed to favour collaboration between probation areas on a like-for-like basis. It was strongly argued, by a number of respondents including the West Yorkshire Probation Board, South Yorkshire Probation Area and Rainer, that this was too restrictive. Collaboration should take place between probation areas and external bodies in other sectors delivering similar services. It was also argued that this would lead to greater transparency and enable new solutions, innovation and change.

Some respondents suggested that, beyond the probation region or ‘family’ groups, an additional structure should not be created in order to carry out comparisons.

12. Do you agree with the proposals for performance improvement plans?

The majority of respondents (56%) agreed with the proposals on performance improvement plans. Only 11% disagreed and 33% abstained. The proposals on performance improvement plans were popular among respondents from the probation service. Over three-quarters of respondents from the probation service (76%) agreed with the proposal, 10% disagreed and 14% abstained. The proposals were least popular with third sector respondents, of whom 63% disagreed, 6% agreed and 31% abstained.

Several probation service respondents felt that the main purpose of undertaking Best Value reviews is to improve services and the proposals for performance improvement plans will help to achieve this.

Several respondents warned that the amount of time and resource needed to develop and implement a performance improvement plan should not be underestimated. Some felt this ought to be examined more closely in the impact assessment. There were also some questions about whether the estimated savings for year 1 would be feasible given the time needed to make the changes necessary to realise efficiency gains.

Some respondents also argued that only giving performance improvement plans to poor performing areas and then introducing competition would make the market unattractive to potential private and third sector providers and that they may be less likely to come forward to take over poor or failing services.

It was suggested that performance improvement plans could restrict the development of effective partnership if a climate develops where partners are seen as potential competitors and probation areas focus on retaining work rather than improving service delivery through partnership.

13. Do you agree that regional directors should evaluate the draft performance improvement plans, in line with centrally set evaluation criteria?

44% of respondents agreed that regional directors should evaluate the draft performance improvement plans, in line with centrally set evaluation criteria. 22% of respondents disagreed with this proposal and 34% abstained or made no comment about regional directors reviewing performance improvement plans.

Those in agreement, such as Serco, commented that regional directors evaluating the plans would help to reduce subjectivity, increase consistency and drive forward the momentum of the review. It was thought by some, including Clinks, that regional directors should not do this in isolation, but ensure that the views of appropriate stakeholders are included in the overall assessment.

Some probation service respondents, however, suggested that evaluations should be the responsibility of probation boards and trusts, with regional directors only contributing to the assessments.

Many respondents raised the issue of impartiality. Some argued that one of the key roles of the regional directors should be to ensure transparency in the reviews and improvement planning process. Others argued that an external independent body should oversee this process as it would increase its credibility and add an element of independence and accountability.

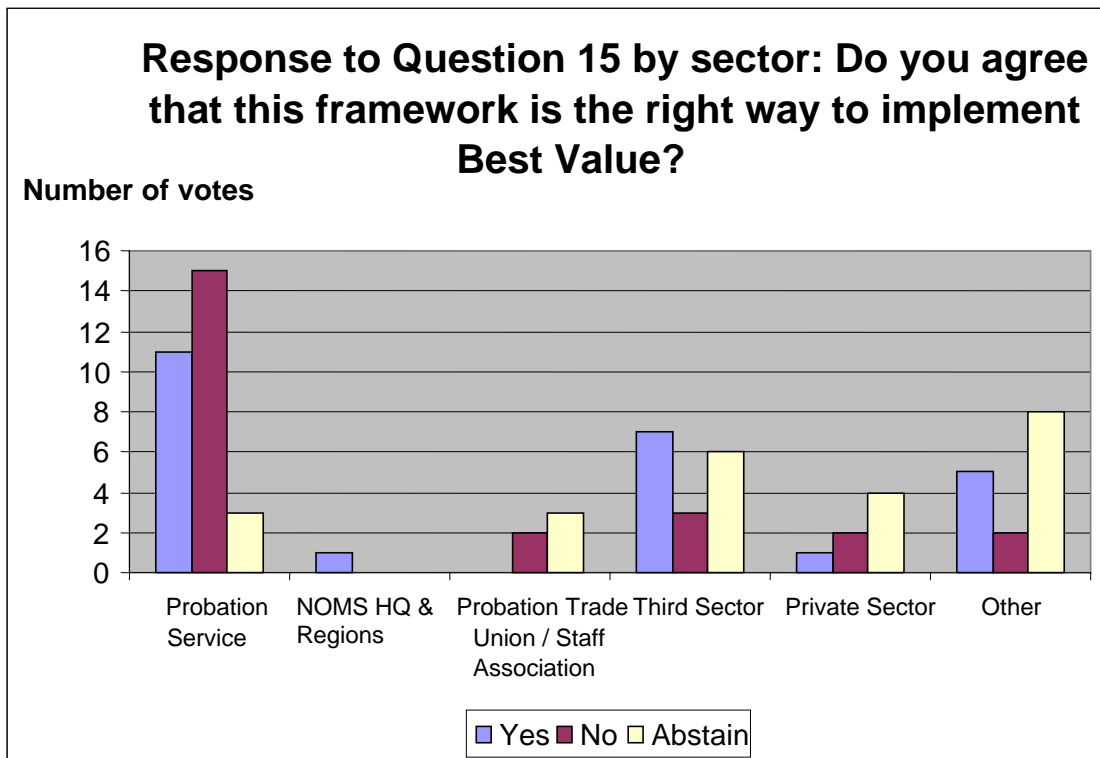
14. Do you agree with the proposals for incorporating equality and diversity issues into the framework?

Responses to this question have been given separate consideration and comments have been reflected in the full equality impact assessment.

In summary, the response to this question was very positive. Just over two-thirds of responses (67%) agreed with the proposals for incorporating equality and diversity issues into the framework. Only 1% disagreed with the way in which equality and diversity issues were proposed in the consultation exercise, although no alternatives were put forward. 32% abstained or made no comments about the proposals on equality and diversity issues in the consultation paper.

15. In general, do you agree that this framework is the right way to implement Best Value?

Responses to this question were fairly evenly divided (34% yes, 33% No and 33% abstained). Responses to the framework were mixed across the sectors.



The proposed framework was most popular with respondents from the third sector. 44% of respondents from the third sector agreed, 19% disagreed and 38% abstained. However, it had less support from the probation service. Over half (52%) of probation respondents disagreed with the framework in general, 38% agreed and 10% abstained.

Though most supported the Best Value principles, a large number of respondents voiced concerns about the proposed approach as outlined in the Framework.

Some respondents warned that leading with a national programme would create additional layers of bureaucracy, which would put at risk the delivery of the required outcomes within the proposed timeframe. It was also suggested that this would reduce scope for local accountability and innovation.

Several respondents considered that the NOMS Agency should only provide guidance on the process and that it should delegate responsibility so the probation regions and areas would manage the reviews, as they would be best placed to know where reviews were needed. It was argued that a flexible approach is required, which incentivises innovation and benchmarking across traditional boundaries and collaboration in new partnerships; and that this would achieve greater improvements in both effectiveness and efficiency than the proposed scheme, which was thought to focus more on efficiency than on effectiveness.

Other respondents urged that the experience of local authorities who operated a similar regime should be taken into account and this learning should be built into the scheme. Turning Point felt that, instead of the proposed framework, a more appropriate alternative model would be compulsory competitive tendering for all services.

16. Do you have any further or general comments on our proposals?

63 out of the 73 respondents provided additional comments on the proposals. Those who chose to submit their views in free text rather than in the formatted response template are included in that number. The most common issues not highlighted elsewhere in this document are as follows:

Resource pressure

Some respondents expressed concern about the current levels of funding and argued that additional funding was not being offered from central government to assist with reviews and that the resources needed to implement Best Value, especially in smaller probation areas, have been underestimated. One respondent warned that redeploying staff from front line duties to gather statistics and complete returns puts at risks the successful provision of core probation services. Others thought that the reviews should take account of capacity and workload priorities and make allowances accordingly.

Third Sector provision

Concern was expressed at how the proposal will impact on the third sector. Some felt that third sector organisations involved in criminal justice have suffered as result of delay at the centre over the last few years, and this has impeded their development. Whilst generally content for the centre to manage the process for the first three years, it was felt that this could create a further

delay before any opportunities to get involved become available for the third sector.

One respondent was concerned that it could be too easy for commissioners to use the review process as justification for delaying commissioning decisions and failing to support services which the third sector would in many cases be best placed to deliver and which could make a real impact on re-offending rates and numbers in custody. Another concern was that an entirely internal system would block the third sector from demonstrating its value in reducing offending so a greater acknowledgement of the value of partnership should be demonstrated as the potential impact of losing third sector organisations unable to thrive under this regime, and the social loss to communities if this should happen, would be considerable.

Workforce matters and outsourcing

Issues were raised over staff transferring under the Transfer of Undertakings (Protection of Employment) Regulations (TUPE), particularly around pensions and the possible creation of a two-tier workforce. It was thought that some third sector organisations would be able to handle TUPE transfers but small organisations would not be able to do so.

One respondent strongly opposed any plans to outsource core probation tasks, but was content for non-core activities to be outsourced through partnerships. This respondent saw Best Value as a suitable vehicle for achieving the most efficient and effective partnership arrangements. Others expressed concern about any scheme leading to the contracting out of staff to other bodies before the implications of the two-tier workforce agreement, the two relevant codes of practice and the health and safety policies applicable within the service have been addressed.

Some respondents considered that the 10% outsourcing target for probation work should be reintroduced until a robust new commissioning approach is developed. It was also suggested that existing high performing probation boards and trusts should be encouraged to think creatively and ambitiously about the services they commission, beyond the timeline and proposals set out in the consultation paper.

Impact assessment

Some respondents felt that the impact assessment was flawed and did not consider that the benefits of the Best Value regime would outweigh the costs of the process involved. Some felt that the basis for the estimated savings of £17.1 million was not particularly clear and assumed that all probation areas and trusts would make 3% efficiency savings without recognising that they will start from different places or that their ability to improve will depend to some extent on local circumstances. It was also suggested that resources would be diverted from front line duties to the management of the process. We have taken on board the comments and developed a new Impact Assessment which is contained in this response document.

Other issues

Some probation service respondents were very concerned about what they perceived as an assumption that probation areas do not already carry out best value type assessments or will not do so unless directed by the centre; and that the consultation paper could be taken as wrongly implying that they have no track record of engaging in reviews of services and delivering efficiency savings. Others thought that the proposals placed too much emphasis on centralised processes; significantly underplayed the role of local probation boards and trusts in ensuring the effective and efficient delivery of local services; and risked stifling local service improvements and responsiveness.

Conclusion and next steps

The Ministry of Justice is grateful for all comments received on the consultation paper on Best Value in Probation and welcomes the overall positive response to the proposals.

All the responses and comments have been carefully considered and we have identified a number of themes below. We have also described our position and how responses will influence the further development of the framework.

The move to decentralisation

More respondents agreed (41%) than disagreed (29%) that Best Value should move to a decentralised model whereby probation areas would have the freedom to agree with regional directors the services they wish to review to meet regional and local priorities. However 18% of respondents, particularly probation boards and trusts, felt that this decentralisation should happen from the outset, but 33% preferred decentralisation in years 2 to 4, or depending on other changes being carried out. However, there was also a concern that a decentralised model may not provide sufficient impetus to deliver improvements in service delivery.

We have always been keen to move to a decentralised model. In order to provide greater freedom to the NOMS Agency, no strict timescales will be imposed. Instead the NOMS Agency will be allowed to determine the detail of how and when the decentralised model will be realised.

We still consider that reviews should be coordinated through the regional director as this will allow resources and skills to be shared between probation areas and other providers and is an effective use of resources.

There is a need to retain the role of the regional director in the Best Value process in order to ensure that Best Value is applied consistently and is independent and transparent.

The criteria for the selection of services to be reviewed

The consultation document identified five criteria for the selection of services to be reviewed. The least popular of these was: number iv. the capacity of boards and trusts to review the service. Several respondents commented that this was not a justifiable reason for not reviewing a service. Whilst we understand these views, we still believe that it is appropriate to retain this as one of the criteria to ensure that reviews are appropriately undertaken to deliver the maximum gains in efficiency and effectiveness.

The consultation document also asked whether there were any other criteria should be considered. A number of suggestions were made, but none of these

were widely supported. We did not consider that there was sufficient consensus on any suggestion to support changes to the list of criteria.

The definition of “Collaboration” and “Consultation”

The definition of “Collaboration” in the consultation document only referred to “peers” who were considered to be “other probation boards and trusts”. The definition of “Consultation” was also at times limited to refer to other probation boards and trusts.

The responses to the consultation questioned why such narrow definitions had been adopted. We acknowledge the support for greater and wider collaboration and consultation to take place.

The Ministry of Justice recognises that collaboration and consultation should not be confined to other probation areas. The definitions of Collaboration and Consultation will be broadened to ensure that they allow wider engagement which should include internal and external providers, partners, and stakeholders, and make use of joint planning and commissioning arrangements. This should assist in delivering efficient and effective services, for example, through cross-sector multi-agency partnerships, sub-contracting or consortia working.

Approach to competition

There were a number of responses, in particular from the third sector and private sector, that the approach to competition was unclear. It could be construed that competition would only be considered where the existing service provider had been unable to deliver the improvements stated in the performance improvement plan.

This was not the intention. The use of competition is one of the five Cs. Competition must be considered during the Best Value review process as an alternative to internal improvement. It is for probation boards and trusts to consider whether Best Value can be achieved by improvements to the existing service or through the use of competition, including partnership working.

The Best Value framework will be amended so that it is clear that an evaluation must be undertaken by probation areas on whether to subject the service to competition, as part of the review process.

Improving the transparency of Best Value

Some of the responses raised concerns that the implementation of Best Value would not deliver real change and that it would be used to confirm and reinforce the existing service delivery arrangements with no real improvements in the efficiency and/or effectiveness of those services.

We need to ensure that Best Value reviews are undertaken in a consistent way across all regions, that the evaluation of the reviews is seen as independent and that decisions made are transparent.

The Minister of State should confirm the level of ambition for the scope and scale of the Best Value work programme and the level at which competition is required.

Probation boards and trusts will review the services as the commissioner and, in the majority of cases, the provider of those services. To ensure that there is a clear separation of these roles, ethical walls will be developed and applied.

The regional directors will evaluate the reviews, and agree with the probation boards and trusts the implementation of the improvement plan. The regional directors would be encouraged to engage with third and private sector organisations to support them in the evaluation of the performance improvement plans to ensure transparency and so build confidence in the Best Value process.

The transparency of Best Value will be supported by the Ministry of Justice's regulatory framework.

Further guidance

There were a number of comments that further information would need to be provided to detail how Best Value reviews would operate in practice.

The framework will identify that, as part of the implementation and delivery of Best Value, the NOMS agency should develop guidance to explain the process and details of reviews. The guidance should recognise the need to keep the process simple, build on previous work and identify and implement learning.

Impact Assessment

There were a number of comments made about the costs and benefits information of the initial Impact Assessment contained in the consultation responses. We have reviewed the Impact Assessment and undertaken further work to develop an approach to identify the costs and benefits from introducing Best Value. The final Impact Assessment is included within this consultation response document.

We have developed the final Impact Assessment on the basis that Best Value should minimise the administrative burden for all stakeholders involved. Best Value must not become a bureaucratic process but a rigorous one which delivers the maximum benefit for the lowest cost.

Best Value is a performance tool which should be seen as part of the day-to-day management of services rather than as an additional bureaucratic task.

The above themes together with the agreed recommendations from the Third Sector task force established by the Justice Secretary, will be taken into account in updating the Best Value framework. We intend to publish the updated framework later this month.

The NOMS agency will use the framework to develop the programme and detailed process for the implementation and delivery of Best Value in Probation.

Impact Assessment:

The following pages contain the final proposal stage Impact Assessment for this policy, including the full Equality Impact Assessment.

Summary: Intervention & Options		
Department /Agency: National Offender Management Service, Ministry of Justice	Title: Impact Assessment of Best Value in Probation	
Stage: Final Proposal	Version: 2	Date: 12 Sept 2008
Related Publications: The document summarising the responses to the public consultation on Best Value, earlier in this overall document		

Available to view or download at:

<http://www.justice.gov.uk>

Contact for enquiries: Jon Neville

Telephone: 020 7035 4930

What is the problem under consideration? Why is government intervention necessary?

Probation faces rising demands on its services whilst also needing to deliver efficiency savings. The development of Best Value process will assist probation areas with their incentives to innovate and reduce their cost base. The Government must ensure that probation areas have a focus on producing their desired outcomes more efficiently and effectively. It must ensure that probation delivers value for money to the taxpayer. This will help to ensure improved outcomes for offenders, reduce re-offending and assist public protection.

What are the policy objectives and the intended effects?

To improve the efficiency and effectiveness of probation services and provide value for money to the taxpayer. The intended effects are:

- Better value for money for the taxpayer in the delivery of probation services.
- Greater efficiency and reduced costs.
- Improved service delivery.
- More effective and efficient outcomes for offenders.
- As a result, reduced re-offending and, thereby, public protection.

What policy options have been considered? Please justify any preferred option.

During the passage of the Offender Management Bill through Parliament, Ministers signalled a move away from a target-based outsourcing regime to a model based on best value principles, in which the eventual provider would be the one which delivered the best value, whichever sector it came from. There is therefore limited scope for considering other options and the 'do nothing' option is included here as a benchmark against which to assess Best Value.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The policy will first be reviewed substantively at the end of the first full financial year of its operation.

Ministerial Sign-off For final proposal consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister:

.....

Date:

Summary: Analysis & Evidence			
Policy Option: Best Value		Description: Best Value reviews by probation areas, based around comparison, challenge, consultation, collaboration and competition.	
COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' <ul style="list-style-type: none"> Costs for managing and delivering the reviews and implementation of the improvement plans across probation areas (staff and expenses). Costs for the NOMS Agency centre (staff, training, production of documents, other expenses).
	One-off (Transition)	Yr s	
	£ 200,000	1	
	Average Annual Cost (excluding one-off)		
£ 930,000		Total Cost (PV)	£ 4.5million
Other key non-monetised costs by 'main affected groups' Costs for specialist knowledge input into the reviews and implementation, costs of competitions, costs for on-going management of changes, and costs for			
BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' We estimate that there would be £29.6 million savings over five years . Please see the evidence base for a description of why the calculation is being made in this way. The benefits would take the form of efficiency savings resulting from Best Value reviews.
	One-off	Yr	
	£		
	Average Annual Benefit (excluding one-off)		
£ 5.9M		Total Benefit (PV)	£ 25.8 million
Other key non-monetised benefits by 'main affected groups' Better value for money for taxpayers, improved service delivery, better outcomes for offenders, reduced re-offending. These all derive from the improvements resulting from the Best Value reviews.			
Key Assumptions/Sensitivities/Risks There is a risk that the system would put the current provider at an advantage, as there is no requirement to compete a service after a certain time. This risk will be mitigated through the requirement to prove value against the market.			
Price Base Year 2007/08	Time Period Years 5 years	Net Benefit Range (NPV) £ 1.6 million – £21.3 million	NET BENEFIT (NPV Best estimate) £ 21.3 million

What is the geographic coverage of the policy/option?	England and Wales			
On what date will the policy be implemented?	Winter 2008			
Which organisation(s) will enforce the policy?	Ministry of Justice			
What is the total annual cost of enforcement for these organisations?	£ Included above			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	N/A			
What is the value of the proposed offsetting measure per year?	£			
What is the value of changes in greenhouse gas emissions?	£ N/A			
Will the proposal have a significant impact on competition?	Yes			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)				(Increase - Decrease)
Increase of	£	Decrease of	£	Net Impact £

Key:	Annual costs and benefits: Constant Prices	(Net) Present Value
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Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Background

Probation services are delivered by 42 probation boards and trusts across England and Wales, organised into ten regions (defined so as to include Wales) and coordinated by the National Offender Management Service (NOMS) Agency. It supervises offenders in the community – those subject to a court order (about 70%) and those released on licence from prison (about 30%). The probation annual budget has been in the region of £860 million and it employs about 20,000 staff. At any one time, it is supervising about 200,000 adult offenders in the community and, each year, it commences the supervision of about 175,000 offenders. Its responsibilities include:

- Supervising community orders (which may involve, for example, unpaid work, curfews or drug rehabilitation). For example, each year, probation will find and supervise about 8 million hours of unpaid work by offenders in local communities.
- Preparing pre-sentence reports (about 250,000 each year) for the courts.
- Working with the victims of violent or sexual crime where the offender has been sentenced to a year or more in prison.
- Arranging approved premises to accommodate, for example, offenders released from custody. There are 100 approved probation hostels.²

The Driver for Change

Probation is a public service, although the boards and trusts may outsource services to private and third sector providers. Probation faces a situation in which it both faces increasing demands on its services and must deliver efficiency savings of 3% a year until 2011. Probation areas need to have effective tools to produce their desired outcomes more effectively and efficiently. As probation services are funded by the taxpayer, the Government must ensure that its providers deliver the maximum value for money and provide services which achieve the greatest possible efficiency and effectiveness. The Government is committed to delivering cost effective and efficient probation services which deliver real results for offenders, reduce re-offending and deliver benefits for the taxpayers who fund the service.

² For further details, please consult the National Probation Service website – www.probation.homeoffice.gov.uk.

In 2007/08, probation boards have been required to meet a target of outsourcing 10% of services, in an attempt to improve the level of competition and improve outcomes for offenders. During the passage of the Offender Management Bill through Parliament, Ministers signalled a move away from a target-based outsourcing regime to a model based on best value principles, in which the eventual provider would be the one which delivered the best value, whichever sector it came from.

In light both of this and the need to ensure that service delivery represents value for money, a Best Value regime will be introduced into probation. We will be assessing a 'do nothing' option in order to provide a baseline against which to assess the Best Value policy. The type of best value regimes that could be implemented are discussed below.

The Local Government Angle

The Best Value system, assessed in this Impact Assessment, is inspired by the regime of the same name which operated in local government from April 2000, consequent to the Local Government Act 1999. Although there are several differences between our proposed model and the local government one, there are a number of similarities, and the costs and benefits realised as a result of the local government regime will therefore give some indication of the potential effects of a Best Value system in probation.

There does not appear to be any systematic, national cost/benefit profile of the local authority best value regime. The relevant literature does, however, contain a number of indications about how the benefits measured against the costs. It is clear that many local authorities found the best value regime to represent a significant resource burden. As the Audit Commission commented in 2001, *'[Best Value Reviews] can be long, difficult and resource intensive projects. It is important that councils plan how to maintain momentum once the review phase is completed.'*³ In another report from the same year, 95% of the local authorities surveyed commented that they found implementing best value to be a major challenge.⁴ A report two years later noted that best value led to an increase in bureaucracy.⁵ Staff time was a key resource and many staff had commented that best value had led to a substantial increase in their workload.⁶

³ 'Changing Gear – Best Value Annual Statement 2001', Audit Commission, September 2001, p.25.

⁴ 'Best Value in English Local Government – Summary Results from the Census of Local Authorities in 2001 – report prepared for the [then] Office of the Deputy Prime Minister by G. Enticott, R.M. Walker, G.A. Boyne, S. Martin and R. Ashworth, on behalf of the Cardiff Business School based Research Team, section 3.2

⁵ 'Evaluation of the long-term impact of the Best Value regime: Baseline report (Executive Summary)' – Cardiff University/Centre for Local and Regional Government Research, May 2003, p.viii.

⁶ 'Improving Public Services: Evaluation of the Best Value Pilot Programme – Final report – Executive Summary' – Local Government Centre, Warwick Business School, University of

Some of these high costs derived from the particular ways in which councils carried out their activities. The 'compare' part of best value could be cost-heavy, as councils looked to find appropriate data against which they could compare themselves.⁷ In addition, many local authorities, at least at first, tended to review too many services at once, resulting in high costs and greater difficulty in realising benefits.⁸ The simultaneous implementation of actions resulting from best value reviews and the execution of new reviews could lead to overstretch.⁹ Finally, the inspection process was considered to introduce a significant cost.¹⁰

Best value reviews did still lead to efficiency savings. The Audit Commission judged in 2001 that half of the best value reviews that had been done would 'definitely' or 'probably' lead to better services.¹¹ Another study from the same year judged that many reviews had led directly to service improvements and/or cost savings. 24% of the councils surveyed reported total savings of less than £150,000, 29% saved between that figure and a million and 12% reported even greater savings, although 35% reported no savings at all.¹² In a later evaluation report, it was judged that 42 of the 61 best value reviews studied had led to the introduction of significant organisational change.¹³ For example, as illustrated in the earlier report, the London Borough of Lewisham made savings of £500,000 in its revenues and benefits service.¹⁴ Other service improvements, not necessarily expressed in terms of cost efficiencies, were often made. For example, Surrey County Council improved its use of community buildings through joint caretaking arrangements.¹⁵

Evaluation of the costs and benefits therefore varies. 45% of those surveyed in a 2001 report believed that the gains from the reviews would outweigh the costs of implementing Best Value. The report also stated that many of the costs were set-up costs which should diminish over time.¹⁶ But there is no evidence that this was the general experience and the cost burden does appear to have been considerable.

Warwick, for the [then] Department of the Environment, Transport and the Regions, January 2001, p.13.

⁷ 'Changing Gear', p.19.

⁸ For example: *Ibid.*, p.13.

⁹ 'Improving Public Services', p.7.

¹⁰ For example, 'Summary Results', section 3.5.

¹¹ 'Changing Gear', p.7.

¹² 'Improving Public Services', p.6.

¹³ 'The long-term evaluation of the Best Value regime: Final Report' – Centre for Local and Regional Government Research, Cardiff University, for the Department for Communities and Local Government, November 2006, p. 56.

¹⁴ 'Improving Public Services', p.6.

¹⁵ *Ibid.*, p.5.

¹⁶ *Ibid.*, p.6.

Proposal

Here, we will provide a cost-benefit analysis of the main proposal, and indicate how it changes for two variations on that proposal.

That proposal is to introduce a Best Value system into probation. This draws in part upon the local government model, but it is also specifically tailored to probation. It would be based around five 'C's – consult, compare, challenge, collaborate and, where appropriate, compete.

The process would work as follows:

- i. At first, the National Offender Management Service (NOMS) Agency centre, for the Ministry of Justice, would set centrally a work programme of reviews. The NOMS Agency centre would select services which had to be reviewed by probation boards and trusts. The selection of a service would be made taking into account its strategic importance, the potential to increase its effectiveness, the potential to increase its efficiency, the capacity of probation areas to carry out reviews of it and the likely costs and benefits associated with reviewing it. The NOMS Agency centre, with the Ministry of Justice, would also issue national specifications for the services reviewed, consistent with Service Level Agreements, contracts and national standards. In due course, Best Value would be decentralised and a mature model would allow the NOMS Agency regions to select the services to be reviewed, although they would need to have regard to national guidance in making that choice.
- ii. The NOMS agency regions would direct and coordinate the regional programme of reviews. Where necessary, they would also negotiate with probation areas appropriate regional modifications to the national service specifications.
- iii. Individual probation areas would then carry out reviews. At first, they would collect various items of data to enable them to challenge themselves on how they were providing the service. They would supply this data to the NOMS Agency centre (subject to considerations of commercial confidentiality) to create a national pool of data, and the NOMS Agency centre would then supply it to all other probation areas, to enable them then to benchmark their performance against that of their peers. Probation areas would then further challenge their service delivery and, on the basis of this, would write a performance improvement plan, which would describe the way in which they intended to improve their services in the light of the reviews. Consideration would have to be given to competing the service.
- iv. The regional director would assess these plans, using a standard set of evaluation criteria, and agree a final performance plan with the probation area which both sides agreed to be robust. The regional director will either approve the implementation of the performance improvement plan or require a competition to select a better value provider. In cases of disagreement, the NOMS agency centre, in consultation with the Ministry of Justice, would facilitate a way forward.

The probation area would then implement the performance improvement plan, and monitor that implementation.

Implementation would probably be during Autumn/Winter 2008.

Consultation

This proposed model has been subject to significant informal consultation, and has also been the subject of a formal twelve-week public consultation.

Costs and Benefits

The main **costs** of the proposed Best Value process in probation are set out below.

Local

1. Management and delivery of the reviews and implementation

Staff time of those of the probation areas' staff who are involved in managing and delivering the review process and/or the implementation of the performance improvement plans. This cost may be taken on within existing resource, although this would depend upon capacity. There is a cost in releasing operational staff to do the work and, if appropriate, in backfilling those staff costs. Probation areas might choose to take on new staff to do the reviews, but the policy intention is that the review work should be fitted into existing management processes. They would have significant discretion in how they chose to carry out the reviews.

Direct, non-staff costs for the probation area of carrying out the reviews. The most likely direct cost is in consultation – for example, probation areas might choose to carry out surveys, which could involve direct expenditure. There might be publicity costs related to this.

Although the reviews will be undertaken by probation areas, they will be coordinated at a regional level. The coordination role would be responsible for overseeing both reviews and the subsequent implementation of the performance improvement plans. The coordination role is likely to be a full time Band 5 (middle manager) for each region. Band 5s are paid about £35,000 and with a 30% rise in staff costs to account for pensions and employers' national insurance contributions, the staff costs would be £45,500 for such a region.

As the review process and the implementation of the performance improvement plans would call on the time of local probation area staff who would manage and deliver the review process and/or implementation. This should be part of any normal management or delivery activity. It would be very difficult to try to quantify each variable, as it would depend on the unique circumstances of the probation area and the direction of the review or the content of the performance improvement plan, so it would be difficult to be more specific. We have assumed that the review process and the

subsequent implementation of the plan would cover a nine month period. The cost of the review process and implementation of the performance improvement plans during this period would represent 1.0% of the total expenditure on the service.

We have assumed that the non-staff cost and expenses of a review, where they are coordinated at a regional level, would be £25,000 for each review per region.

2. Specialist knowledge

The review process and implementation of the performance improvement plans are likely to call on other local probation area staff with specialist knowledge who may contribute to the reviews or implementation of the performance improvement plans in various ways. This would be difficult to quantify.

Staff time of those with specialist knowledge who are involved in the review process and/or implementation performance improvement plans. The actions involved would depend on the unique circumstances of the probation area and the direction of the review or the content of the improvement plan, so it would be difficult to be more specific.

3. Competitions

If and when agreed performance improvement plans lead to the competition of services, there would be costs in running the competitions and in the organisational changes associated with changing service providers. It would be difficult to try to quantify this – it will depend on the number of competitions, which will be dependent on the outcomes of the reviews. The processes and costs of competitions would be likely to differ across the country.

4. On-going management of delivery

The implementation of the performance improvement plans may call on other probation area staff to manage the outcome of the changes. This would be difficult to quantify.

Staff time of those who are involved in on-going management of the delivery of the improvements. The actions involved depend both on the unique circumstances of the probation area and the nature of the improvements, so it is difficult to be more specific. This should be part of any normal management or delivery activity.

Direct, non-staff costs for the probation area of the on-going management of the delivery of the improvements.

As the nature of the changes and so the on-going management of delivery would be different in each case, it would be very difficult to try to quantify either staff time or direct non-staff costs.

The overall direct cost to probation areas of the process is therefore estimated to be an average of £870,000 over the five years, although the majority of costs will be incurred in years one, two and three. All of the staff capacity figures involved are estimates and would be likely to vary between probation areas.

Regional

The NOMS Agency regions (defined so as to include the equivalent in Wales) would have to invest resources in coordinating the national work programme of reviews, negotiating regional amendments to the national specifications and assessing the performance improvement plans. However, as these offices will be reorganised, it would be difficult to estimate costs at this stage.

National

The NOMS agency centre would have a number of roles in the course of the process: setting the national work programme(s), issuing national specifications, producing and circulating guidance, analysing and issuing benchmarking data, and resolving any disagreements between regional directors and probation areas about performance improvement plans. The role would be more onerous than that of the regional directors. Many of these tasks would not be simple, but would require analysis and/or research, especially the selection of services to be reviewed, analysis of benchmarking data and the issuing of national specifications.

However, unlike the local and regional levels, it is likely that a dedicated central team would be established within the NOMS Agency, to take on all of these functions. This might potentially include half a Grade 7, one Higher Executive Officer and one Executive Officer (both full-time). Accounting for a 30% rise in staff costs to account for pensions and employers' national insurance contributions, and including the expenses of their work, the likely cost of this team would be about £100,000 *per annum*, based on general salary ranges for staff of those grades. The costs of their work (as reflected in the number of staff needed and associated costs) would most likely vary over time. Greater resources would be needed at first, as initial processes, guidance and data were assembled and when probation areas needed more guidance on the process. If there were a succession of three-year national work programmes, there would be cost hikes every three years.

There are also likely to be national non-staff costs in the first year of the regime's operation. We have estimated that training and workshops would cost £100,000, the production and distribution of a guidance manual for probation areas, £25,000, the production of standardised documentation to assist probation areas, £20,000, and other miscellaneous costs, £50,000; this creates a total of £195,000.

The quantifiable annual costs are estimated to be £927,000 averaged over five years, although the majority of costs will be incurred in years one, two and three. To avoid a greater degree of accuracy than the data supports, £930,000 is the estimate. The specific set-up costs would be £195,000 – again, to avoid inappropriate accuracy, £200,000 would be a more appropriate figure. However, these do not include the unquantifiable costs.

The main **benefits** of the Best Value process are harder to specify, not least as the market for probation services is in its infancy. In general, Best Value reviews are intended to lead to more efficient delivery and to cost savings. Competing services may result in efficiencies. And collaborative provision – delivering services across organisational boundaries – is likely to lead to economies of scale.

A well specified Best Value framework and process should also incentivise providers (public, private or third sector) to focus on achieving better performance improvement and ensuring better outcomes for offenders.

The annual budget of probation has been in the region of £860 million, of which interventions represent about one third (about £287 million). If the significant areas of intervention expenditure were subject to Best Value reviews over a three year period, then approximately £248 million would be reviewed over three years.

For the purposes of this Impact Assessment only, we have assumed that the work programme for the services to be reviewed would be Victim Contact in year one, Unpaid Work and Programmes in year two and Approved Premises in year three. The reviews would commence at the beginning of the year, except in year two when the first review would commence at the beginning of the review and the second review would commence six months into the year. The actual programme of work will be set by the NOMS Agency in conjunction with the Ministry of Justice, based on the requirements of the NOMS Agency and the Ministry of Justice and the availability of national service specifications.

The annual expenditure on Victim Contact is significantly lower than the expenditure on the other interventions. If the order of the reviews was changed then this could result in greater savings being realised earlier. Similarly, we have assumed only a single review in year one to allow time for implementation of the performance improvement plan and learning from the review process and implementation arrangements. If a second review was undertaken in year one then again this could result in greater savings being realised earlier. However, we believe that for the purposes of this Impact Assessment our approach is appropriate.

The savings would not be achieved as soon as the Best Value review commenced. We have allowed nine months for undertaking the Best value review and implementing the performance improvement plan before any savings start to accumulate. The savings would start in month ten after the commencement of the Best Value review.

If efficiency savings of 5% for Victims Contact, Unpaid Work and Programmes were achieved and 1% for Approved Premises was achieved, all ten months after their Best Value reviews commenced, then we would anticipate the following savings:

- In year 1, about £0.14 million savings would be made relating to the service reviewed in the first year.
- In year 2, about £1.62 million savings would be made relating to the services reviewed in the second year and the on-going efficiencies from the service reviewed in the first year.
- In year 3, about £8.25 million savings would be made relating to the service reviewed in the third year and the on-going efficiencies from the services reviewed in the first and second years.
- In year 4, about £9.81 million savings would be made relating to the on-going efficiencies from the services reviewed in the first, second and third years.
- In year 5, about £9.81 million savings would be made relating to the on-going efficiencies from the services reviewed in the first, second and third years.

So over a five year period we would anticipate total national savings of £29.63 million (a total of £0.14m, £1.62m, £8.25m, £9.81m and £9.81m) against the initial baseline. However, these are only estimates at this stage. **This equates to a total Net Present Value of £21.3 million.**

Were we only to achieve a percentage saving of 1% per annum across all reviews, we would still achieve a Net Present Value of around £1.6 million.

There is a risk that the benefits may not accrue as soon as we might expect, or that the costs may overrun. If the benefits were not to accrue for an extra year after the review took place, we would still see a 5 year NPV of £12.5 million. If the costs were to overrun, they would need to be around 5 times as much as predicted here to achieve a negative NPV. Both of these scenarios are felt to be very unlikely.

There are also likely to be further benefits that have not been quantified here – for example, improved service delivery and reduced re-offending.

Owing to the nature of the Best Value process costs are likely to accrue in the earlier stages, whereas benefits will be realised over time. As with most new systems of this nature, we expect that, over time, costs will reduce as probation areas and the NOMS Agency regions and centre become more efficient in its operation.

Other options

1. Do nothing

This would involve having no formal, national efficiency regime within probation. Without an efficiency regime probation areas may decide not to innovate, reduce costs, or improve the quality of service delivery. Probation areas are now free to implement efficiency measures of their choosing. In some cases, probation areas have recently carried out their own best value-style reviews; however, there is not yet a cost-benefit analysis of these.

2. Best Value – greater regional role

A variation on the main proposal would see greater involvement at the regional level. Our main proposal, as already assessed, is for the NOMS Agency centre to set a work programme at first, but, over time, to decentralise responsibility to the regions. In this option, the regions would, from the start, choose the services that their probation areas were to review, following guidance set by the NOMS Agency centre.

If responsibility for selecting the services to be reviewed were devolved to the regions, there would be a significant diminution of central costs. The NOMS Agency centre would no longer have to set the work programme or analyse and issue benchmarking data. Since those are the most resource-intensive of the central tasks, there would be a significant fall in central work and costs. The NOMS Agency centre would still issue guidance on how to select services to be reviewed, issue more general guidance and retain an overall governance/oversight role, but this would represent a far smaller amount of work (and money) than in the previous model.

Some of the associated costs would be transferred to the regions. In turn, this is likely to be passed on in terms of increased prices if the service under review is run by the private or third sector. Regions would now need to select the services to be reviewed, but, as they would be able to call both on the national guidance and on their own existing, detailed, knowledge of local circumstances, this would be a far less onerous and cost-heavy process than it would be for the centre. A more significant cost for probation areas/regions would be seeking out the data against which to compare themselves. As described for the local authority regime, this can be a significant expense. However, it is likely that there would still be overall cost savings.

However, it is likely that the benefits realised would be much lower. The difficulty of adapting to a new performance system, without national guidance in the early years on how to carry it out, and with less effective enforcement levers, would mean that the reviews would be less likely to produce improvements. Peripheral rather than core services might be reviewed and benchmarking would be more difficult. As ever, it is very hard to be precise about benefits, but the potential reduction in benefits would be likely to outweigh the cost savings.

3. Best Value – greater central role

Again, this is a slight variation on the main proposal. It would involve the NOMS Agency centre maintaining all of its roles indefinitely. All of the costs associated with the central role would be maintained. There would probably also be a reduction in benefits. Although a certain degree of central direction is necessary at first while the culture embeds, its continuation would be likely to prove counter-productive. Best Value would be likely to become a process- and compliance-driven system, and there would be less local innovation. Staff would be less motivated and would produce poorer-quality reviews which would be less likely to realise benefits.

Overall analysis

From studying both the local government model, and the proposed Best Value framework, it is clear that Best Value is a process which *can* realise significant net benefits, but only if it is properly structured. Otherwise, the increased burden placed on both probation areas and the NOMS Agency regions and centre may create excessively high costs that would outweigh the benefits.

Judging the precise costs and benefits is very difficult, as the market for probation services is undeveloped and will be the subject of great regional variation. In the absence of a better quantitative model, the way to ensure that Best Value leads to net benefits is to structure the model so that that is the most likely result. We have therefore introduced a number of safeguards to avoid a cost-heavy model.

- i. A key factor in deciding which services to select for the work programme would be whether the benefits would be likely to outweigh the costs.
- ii. In the performance improvement plans, probation areas would be required to set out the expected costs and benefits of implementing the plan. This would avoid the implementation of actions which brought no net benefit. The scrutiny of the plan by regional directors would provide a layer of assurance. This judgement would encompass only those costs associated with implementing the plans, not those associated with the review process.
- iii. In the monitoring of the implementation of the performance improvement plan, probation areas would be required to consider not only whether performance had improved, but whether the benefits of Best Value had outweighed its costs. This would account for costs throughout the process and would inform feedback to the NOMS Agency centre. It should therefore influence the way in which Best Value operated in the future.

In addition, our model avoids some of the problems which led to high costs for local authorities:

- i. Probation areas would not have to spend a lot of money finding relevant data – it would be provided to them. By the time that more responsibility had been devolved from the centre, they would have a better idea where to look.
- ii. The scrutiny/inspection process would not be onerous.
- iii. Probation areas would not be in the situation where they reviewed too many services.

All of this should help to ensure that the benefits of Best Value do outweigh the costs, rather than *vice versa*.

Our preferred option is the one set out under the Proposal section – initial central direction, leading to greater decentralisation.

Competition Assessment

The introduction of Best Value replaces the previous performance indicator which required probation boards to sub-contract an agreed percentage (10% in 2007/08) of their business. There was therefore a requirement that a certain amount of business would be sub-contracted although there was a lack of clarity and consistency on what would be sub-contracted.

Best Value is 'outcome neutral'. It is more than a simple make or buy mechanism and is intended to improve economy, efficiency and effectiveness, irrespective of whether services are delivered by the public, private or third sector. Best Value is not intended to be a process-compliance procedure. However, a Best Value regime may deliver significant improvements in probation services without the need for competition.

Best Value would initially be based on a nationally agreed programme of reviews, which means that the same services would be subject to review during the programme period. It will require probation boards and trusts to challenge and compare – amongst other things – how the services are delivered. The challenge and compare process will lead to serious consideration about the use of competition to deliver the required service improvements. This should, in turn, lead to a number of competitions – some involving in-house bid teams – for the services under review.

In addition, probation boards and trusts identified through Best Value reviews to demonstrate poor performance – below a market threshold – will be expected to be subject to competition.

The Best Value regime is not intended to limit directly or indirectly the number or range of suppliers. We will introduce national specifications for each service which the probation board or trust will be expected to meet, whether or not they choose to contract out the service. All suppliers should be able to compete vigorously for all services which are subject to competition.

In the initial years there may be a number of factors which limit the amount of services which are contracted out. However, these are the capacity and appetite of potential new suppliers, which are not specific to Best Value. The capacity is whether there is an existing market and the ability of that market to meet the service provision requirements. The appetite is the interest of the market to compete for these new services.

All competitions for services would be managed in accordance with the competition strategy principles and the competitive neutrality principles.

Impact on Specific Sectors

The direct impact of these proposals will fall only upon the public sector. This includes the role of the probation areas in carrying out and implementing the reviews, but also the roles of the centre and regions. Most probation services are provided by the public sector – probation boards and trusts – and, where they are sub-contracted out, it would be the probation board or trust in the area which actually carried out the Best Value review.

There may be an indirect impact on the independent sector – largely the third sector, which tends to be the recipient of probation outsourcing contracts. Probation areas would require any sub-contractors to participate in and contribute towards the reviews. They could do so, for example, through a requirement in new contracts and Service Level Agreements (SLAs). Where there are existing contracts and SLAs, providers would be encouraged to follow the framework to demonstrate transparently their efficiency and effectiveness relative to other providers and to the wider market. However, this is unlikely to be an onerous burden, and would not be significantly different to the obligations which sub-contractors currently have – for example, in providing information.

Best Value may lead to competition for probation services. This could provide advantages to non-probation boards and trusts providers, who might have new opportunities to compete for services, but also disadvantages, as there could be competition for services which they currently deliver. If a service is competed as it currently exists, the value, size and complexity of the service will mean that it would be difficult for small organisations to compete and deliver these services as a single bidder.

During a Best Value review a probation board or trust should challenge and compare how services could be delivered more effectively. It may be that, in order to deliver a more effective service, it is more appropriate to involve a number of specialist service providers in partnership than to use a single supplier for the entire service. This could provide opportunities for small organisations to deliver these specialist services.

We have engaged several times with third sector organisations throughout the development of Best Value.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	Yes	Yes
Disability Equality	Yes	Yes
Gender Equality	Yes	Yes
Human Rights	No	No
Rural Proofing	No	No



EQUALITY IMPACT ASSESSMENT FORM

Part 2 – Full Assessment

1. Officer(s) & Unit responsible for completing the assessment:

Jon Neville - Offender Strategy

2. Name of policy/strategy/function/project:

Best Value in Probation

3. In Part 1 (Initial Screening), which diverse group were identified as being disadvantaged by the policy/ strategy/ function/ project proposals?

- Age
- Disability
- Faith/belief
- Gender
- Race
- Sexual orientation
- Gender identity

4. Summarise the negative impact for each group:

The initial screening assessment did not identify any negative impact on these diverse groups. None of the research undertaken suggested that the Best Value policy (either the framework for the reviews or the reviews themselves) would have negative impact on these diverse groups. However, as Best Value reviews generally lead to changes in service delivery whether as reforms by a provider to its own practice or as result of competition, it was thought that this resulting action could have an impact on these groups. Hence the need to develop a full equality impact assessment.

The next two questions must be completed, but only after consultation and necessary, relevant research has been carried out to inform the response given.

5. What previous consultation has taken place or will take place with each diverse group affected either externally or internally?

(PLEASE NOTE: trades unions, staff associations and staff should be included in the consultation process)

Key stakeholders in the public, private and third sectors, the National Offender Management Service (NOMS) Agency and elsewhere in Government, were consulted on the policy proposal. Subsequently, a formal public consultation took place between April and July 2008. Almost 150 organisations from across private, public and third sectors, probation trades unions, staff associations and equality user groups were invited to respond.

6. What relevant research material and qualitative and quantitative data was obtained? Please list:

As Best Value is a new mechanism to be used within probation, limited material was available on the effects it would be likely to have. However, we have researched the best value regime in local government, which helped to inform this policy. A number of documents relating to the local government best value regime were consulted. They are as follows:

- 'Improving Public Services: Evaluation of the Best Value Pilot Programme – Final report' – University of Warwick for the Department of the Environment, Transport and the Regions – January 2001.
- 'Use of Local Performance Indicators in the Best Value Regime – Final Report' – Department for Transport, Local Government and the Regions – December 2001.
- 'Best Value and the Two-Tier Workforce in Local Government' – Best Value Intelligence Unit, UNISON – January 2002.
- 'Equality and Diversity' – Audit Commission – May 2002.
- 'Local authorities' experience of carrying out DTLR Best Value surveys – A report for the Office of the Deputy Prime Minister by Quantitative Methods Applied to Surveys at the

Office for National Statistics' – Ed. O. Rowlands, Office for National Statistics, October 2002.

- 'Guidance on Equalities, Best Value, Community Planning and Power of Well-Being' (Guidance to Scottish local authorities on the Scottish local government best value regime) – September 2003.
- 'Local Government Act 1999: Part 1 - Best Value and Performance Improvement' – Office of the Deputy Prime Minister Circular 03/2003 – March 2003 (and Addendum to Annex C – December 2003).
- Guidance relating to Best Value and the Equality Standard for Local Government, Improvement and Development Agency for local government (IDeA) website.
- 'Social Issues in Purchasing' - Office of Government Commerce
- 'Procurement and the Disability Equality Duty' – Disability Rights Commission
- 'Implications of the Disability Equality Duty for Public Procurement and the management of Public Sector Contracts' – National Disabled Staff Network.

7. What information did the consultation provide about the negative impact of the policy/ strategy/function or project proposals?

Representatives from a range of diverse groups helped to shape the proposal during its initial development phase to ensure that equality and diversity issues were taken into account and embedded into the Best Value Framework. The following measures were proposed:

1. National service specifications, which NOMS issues to those conducting Best Value reviews, should incorporate equality and diversity considerations.
2. Consultation within the Best Value review process should include all relevant stakeholder groups, to ensure that all relevant diversity issues are considered.
3. When, in the course of the Best Value review process, probation areas are comparing their performance with that of their peers they should seek to learn from how other providers address diversity matters.
4. During the challenge stage of Best Value reviews, providers should pay particular attention to ensuring that their efforts to achieve Best Value do not impact adversely on diversity.
5. Performance improvement plans should include an equality impact assessment, which will ensure that any significant service change, including contracting out, takes into account equality and diversity considerations. When scrutinising the performance improvement plans, regional directors should check that this has been done.

These measures were tested during the formal 12-week public consultation exercise and were, in the main, supported by respondents. However, it was recognised that there could be potential for small organisations to be disadvantaged when a competitive process occurs following a best value review. Concerns were raised by groups particularly in the voluntary and community sectors that they would not be able to compete on an equal footing with larger organisations and the view was expressed that steps would need to be put in place to safeguard against this.

In addition, the following recommendations were made from respondents during the consultation process:

- Equality and diversity issues ought to be an integral part of all aspects of service delivery, not just for inclusion in performance improvement plans.
- All national service specifications, not just those that are deemed relevant, should include requirements about equality and diversity.
- Equality legislation ought to be clearly referenced and stated in all Best Value matters to avoid any potential legal and/or reputational challenge.
- Effective mechanisms should be in place to ensure that hard to reach groups are able to contribute to the discussion on diversity issues relating to improvement plans.
- To avoid overload “consultation with minority groups, clarification of what ‘consultation with relevant stakeholder groups mean’ should be provided.
- A statement, in line with Government support for social issues, ought to be incorporated that states that Best Value does not, and should not, mean the ‘cheapest’.
- Where a probation area significantly fails to meet its equality and diversity requirements then this should be used as a criterion for early contesting of the service.
- If a national programme is adopted then generic consultation and impact assessments should be undertaken nationally.

These points will need to be considered when taking this proposal forward.

8. What changes do you propose to make to the policy/strategy/function or project as a result of the research and/or consultation?

We are very grateful for the comments that have been made on the equality and diversity aspects of the Best Value framework.

The Best Value framework requires that equality and diversity considerations are appropriately made throughout the Best Value process. We agree that the equality and diversity issues raised should be included in the Best Value guidance to ensure that there is appropriate engagement with all equality user groups.

9. Will the planned changes to the policy/strategy/function or project:

- lower the negative impact? Or
- ensure that the negative impact is legal under anti-discriminatory law?

(please note: if this answer is chosen, evidence must be provided as to the legal advice sought to support this view)

- X provides an opportunity to promote equality of opportunity and improves relations between diverse groups?

10. What equality monitoring/ evaluation/ review systems have been put in place to ensure regular checks are undertaken on the effects of the policy/ strategy/ function or project proposals? Give details:

The equality and diversity obligations will be embedded throughout the framework.

The guidance on Best Value prepared by the NOMS Agency will include advice on handling equality and diversity issues.

During the Best Value process, consultation should include all relevant equality user groups, comparison of performance with other probation boards and trusts and stakeholders should include learning on how they have addressed equality matters, and during the challenge stage, probation boards and trusts should consider that the most efficient delivery option is not always the most effective one for all users.

Regional directors as part of the consideration of the performance improvement plans submitted by probation boards and trusts will ensure that an equality impact assessment has been completed, if appropriate.

11. When will the policy/ strategy/ function or project proposals be reviewed?

The Ministry of Justice and the NOMS Agency will undertake a review of Best Value. This review will occur after the first full financial year that Best Value has been operating.

Date completed: 16 September 2008

Signed by Unit or Director Manager: David Griffiths

Date approved by senior management: 19 September 2008

A copy of this full equality impact assessment must be published along with the policy/ strategy/ function/ project outline. A signed copy must be retained by the Unit/ Department for audit purposes.

ENSURING ACCESS TO INFORMATION

How will you ensure that information used for this EIA is readily available in the future?

(N.B. You will need to include this in your action plan)

The document summarising the responses to the Best Value in probation consultation will be published on the Ministry of Justice website which is available to the public.

The individual responses to the Best Value in probation consultation will be kept on file, both electronically, where available, and in paper form.

How will you ensure that your stakeholders continue to be involved/ engaged in shaping the development/ delivery of this policy/strategy/function/ project?

(N.B. You will need to include this in your action plan)

The NOMS Agency will engage with equality and diversity user groups during the development of the Best Value guidance which will define the detailed process for undertaking Best Value reviews.

How will you monitor the actions to ensure that the policy/ strategy/ function or project delivers the equality commitments required?

(N.B. You will need to include this in your action plan)

Probation boards and Trusts will give feedback to the NOMS Agency and the Ministry of Justice on how to improve Best Value.

Ministry of Justice and NOMS Agency will undertake a review to measure the impact of Best Value.

The feedback and reviews will occur after the first full financial year that Best Value has been operating.

The regional directors will assess the equality impact assessments prepared by probation boards and trusts during the Best Value review process to ensure that equality issues have been considered with any proposed changes to the service delivery.

EQUALITY IMPACT ASSESSMENT ACTION PLAN

Area of Negative Impact	Changes Proposed	Responsibility	Success Indicators	Target Date	Progress made to date?
Data Collection					
Publication Arrangements					
Monitoring & Review Arrangements					
List other changes proposed					

Nor 18

Consultation Co-ordinator contact details

If you have any complaints or comments about the consultation **process** rather than about the topic covered by this paper, you should contact Gabrielle Kann, Ministry of Justice Consultation Co-ordinator, on 020 7210 1326 (or from **12 December 2008** on 020 3334 4496), or email her at consultation@justice.gsi.gov.uk.

Alternatively, you may wish to write to the address below:

**Gabrielle Kann
Consultation Co-ordinator
Ministry of Justice
5th Floor Selborne House
54-60 Victoria Street
London SW1E 6QW**

From **12 December 2008** the address changes to:

**Gabrielle Kann
Consultation Co-ordinator
Ministry of Justice
7th Floor
102 Petty France
London SW1H 9AJ**

Please note that the e-mail address remains the same after 12 December 2008 (consultation@justice.gsi.gov.uk).

If your complaints or comments refer to the topic covered by this paper rather than the consultation process, please direct them to the contact given under the **How to respond** section of this paper at page 3.

The consultation criteria

The seven consultation criteria are as follows:

1. **When to consult** – Formal consultations should take place at a stage where there is scope to influence the policy outcome.
2. **Duration of consultation exercises** – Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. **Clarity of scope and impact** – Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. **Accessibility of consultation exercises** – Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. **The burden of consultation** – Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. **Responsiveness of consultation exercises** – Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. **Capacity to consult** – Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

These criteria must be reproduced within all consultation documents.

Annex A – List of respondents

Accenture
ACEVO
Addaction
Action Housing and Support Ltd
Anne Peaker Centre
Audit Commission
Bury Primary Care Trust
Cabinet Office - Social Exclusion Taskforce
CBI
CLINKS
Council of Her Majesty's Circuit Court Judges
Derbyshire Probation
Devon and Cornwall Probation Area
Dorset Probation Area
Dyfed Powys Probation Trust
Equality and Human Rights Commission
Foundation Housing
Freddy Crabbe - Hampshire
Futurebuilders England
Gloucestershire Probation Area
Gwent Probation Board
G4S
Hampshire Probation Area
HM Chief Inspector of Probation
Humberside Probation Trust
JHM Associates (MK) Ltd
Justices' Clerks' Society
Kent Probation
LankellyChase Foundation
Leicestershire and Rutland Probation Trust
Magistrates Association

Merseyside Probation Trust
Metropolitan Police
Ministry of Justice - Equality, Diversity and Human Rights Division
NACRO
NAPO
NAPO - Greater London
National Audit Office
National Disabled Staff Network
Network for Caring
Northamptonshire Probation Board
North West Probation Region
North Yorkshire Probation Board
Peacepals
Prince's Trust
PROUD Network
Probation Association
PS Plus
RAINER
Reliance Secure Task Management
RSOU – Midland region
Serco
Skills for Justice
Southampton City Council
South Wales Probation Trust
South West Probation
South Yorkshire Probation
Social Enterprise Coalition
SOVA
Staffordshire Probation Area
Suffolk Probation Area
Sussex Probation Area
TMS Insight
Turning Point
Victim Support

Wales Audit Office

Warwickshire Probation Board

West Midlands Probation Board

West Yorkshire Probation Board

Wiltshire Probation Board

Yorkshire and Humberside Probation Region

Yorkshire and Humberside Probation Region's Partnership Board

Yorkshire and Humberside Regional Offender Manager

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020 7035 4930 or bestvalueconsultation@justice.gsi.gov.uk