

September 2019



CLINKS  
RESPONSE

# Commissioning principles to enable the voluntary sector to deliver services in the future probation model

Information supplied to the Ministry of Justice and Her Majesty's Prison and Probation Service

## Introduction

Since the publication of the government's response to the *Strengthening Probation, Building Confidence* consultation, Clinks has been working to understand proposals made by the Ministry of Justice (MoJ) and Her Majesty's Prison and Probation Service (HMPPS) on commissioning services that are in addition to and in support of the National Probation Service (NPS), and how these will impact the voluntary sector. This paper provides feedback on those proposals and recommendations for ensuring that future commissioning processes enable the voluntary sector to play a full role in delivering services in the future probation model.

Clinks is the national infrastructure charity supporting voluntary sector organisations working in the criminal justice system (CJS). We are a membership organisation with over 500 members, including the voluntary sector's largest providers as well as its smallest and we have a network of over 13,000 contacts.

Our aim is to ensure the sector and those with whom it works are informed and engaged in order to transform the lives of people in the CJS and their communities. We do this by providing specialist information and support, with a particular focus on smaller voluntary sector organisations, to inform them about changes in policy and commissioning, to help them build effective partnerships and provide innovative services that respond directly to the needs of their users.

Between 2015 and 2018 Clinks, in partnership with the National Council for Voluntary Organisations, Third Sector Research Centre and others, undertook in-depth research into the voluntary organisations' experience of the changes to probation services brought about by the Transforming Rehabilitation reforms. Our final report confirmed that the sector is under represented, under pressure and under resourced in the current probation model.<sup>1</sup>

Since the MoJ announcement that they would be ending Community Rehabilitation Company (CRC) contracts early and consulting on the future model of probation, Clinks has been working to ensure that the findings of our trackTR research and the knowledge and expertise of the voluntary sector informs these plans.



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### Background

HMPPS currently propose that they will commission services to support the NPS through two separate procurement routes:

1. Accredited Programmes, Unpaid Work and non-accredited structured interventions to address attitudes, thinking and behaviour, domestic abuse and emotional management will be commissioned via an Innovation Partner who will be contracted to provide these services and who may choose to subcontract elements of that provision.
2. Rehabilitative and resettlement services will be commissioned through a dynamic framework, on which potential suppliers can register interest and then bid for contracts and/or apply for grants to provide services. Core services that will be available from day one of operation of the new model will be procured through the framework. It is intended that NPS areas will also use the framework to procure any future required services. There is also potential that the framework could be used by other commissioners both within and outside of the criminal justice system.

### Voluntary sector engagement in the development of the model

There is a significant amount of feedback from organisations within the sector that the pace of change has been too fast and the number of events, often with very short notice, is a barrier to their effective engagement.

So far, a significant amount of engagement with the sector has been through 'market engagement', which focuses upon the procurement of services which are still in development.

The sector has not been engaged fully in the service design stage of the commissioning cycle. The services that will be procured through the Innovation Partners are highly specified and HMPPS is clear on the national standards they wish to set for these. However, there is concern from some parts of the voluntary sector that this will be a barrier to innovation.

There is an intention to engage further on the service specifications for rehabilitation and resettlement services in the first half of 2020. However, in the meantime decisions have been made to move some non-accredited interventions from the scope of the dynamic framework into the scope of the Innovation Partners. As a result, when any engagement does take place on the service design of rehabilitation and resettlement services these services will be excluded and it will mean that the sector isn't able to contribute its knowledge and expertise to the design of the whole package of interventions that might be available to individuals receiving probation support. Further, there is some concern in the sector that by running two procurement processes it will be challenging to properly coordinate, join up, evaluate and learn from services contracted in different ways in order to provide continually improving services.

In the meantime, engagement has focused upon the design of and qualification onto the dynamic framework. This means the sector is being asked to contribute to the design of a procurement process for services which remain undefined. This is leading to confusion and sector feedback shows that organisations feel ill equipped to answer many of the questions being asked at market engagement events without further information regarding service design. Indeed the development of this paper and its recommendations was



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challenging given that we are making suggestions for how to commission 'resettlement and rehabilitative services' without a clear understanding of what that description includes.

We are concerned that the development of the model and market engagement is taking place in the wrong sequence - focusing on procurement design prior to service design - and is led by procurement timeframes.

**A shift in emphasis is needed, to engage the sector firstly in the design of services followed by engagement on how to then best procure those services.**

## Grant funding to enable voluntary sector involvement and overcome barriers

When compared to the wider voluntary sector, the voluntary sector working in criminal justice is disproportionately made up of small and local organisations who are dependent upon grant funding.<sup>2</sup> The lack of grant funding under the current model is one of the factors contributing to the limited involvement of the voluntary sector, currently limited, in the main, to larger organisations.<sup>3</sup>

**To enable the vast majority of these organisations to play their full role in the future probation model, sustainable grant funding is essential.**

The MoJ and HMPPS have expressed a desire to involve a mixed market of providers, including, but not limited to, voluntary sector organisations. However current proposals to require a Parent Company Guarantee (PCG) for Innovation Partners are likely to impede voluntary sector involvement in this part of the procurement. **We would like to see full consideration of alternatives to or a reduction of the PCG, to enable voluntary sector involvement.** However, even if alternatives can be identified, it is likely that only a limited number of larger organisations in the voluntary sector will be able to bid as innovation partners. We do recognise such alternative arrangements present challenges given the potential recovery risk involved in not requiring or reducing the level of PCG - a risk, not only to the MoJ but also to any voluntary sector supply chain partners, as demonstrated by the impact on voluntary sector supply chain partners following the collapse of Working Links. However, in that situation, the PCG didn't offer full protection either.

**We would therefore suggest that in order not to exclude the vast majority of voluntary sector organisations from the entire model, commissioning for provision of rehabilitation and resettlement services should be undertaken via grants.**

As highlighted by the Grants for Good Campaign, grants are more cost effective, less complex, and faster to implement than other forms of commissioning. They avoid bureaucracy, which benefits commissioners, deliverers and ultimately service users. If all rehabilitative and resettlement services were commissioned through grant funding there would be no need to invest in the development and management of a complex system such as the proposed dynamic framework, generating savings that could be directed towards service delivery.



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We understand that there is a policy intention for the NPS to utilise the dynamic framework as route for them to access a diverse range of providers. However, we would highlight the learning from the Transforming Rehabilitation rate card, which was overly bureaucratic and led to very few services being commissioned by the NPS. If the dynamic framework is also overly bureaucratic, it will suffer from the same issues and the policy intention will not be achieved. Utilising grants would mitigate this risk but otherwise it is essential that the dynamic framework is designed with this in mind.

MoJ and HMPPS have been keen to reassure the sector that it will be possible for NPS areas to make grants available through the dynamic framework. Despite this, discussions at engagement events and webinars have so far mainly focused on large contracts with less attention paid to the availability of smaller contracts or grants. As a result, there is a danger that the model is being designed in such a way that small, local and specialist organisations will be excluded, or at least face greater barriers to their involvement. Delivering grants through a system designed for contracts will lead to unnecessary bureaucracy and complexity and ultimately will lead to grants being underused or used badly, just as Transforming Rehabilitation has.

We are also concerned that providing grants through a dynamic framework may not properly constitute grant funding, due to the requirement for organisations to go through a pre-qualifying process and sign up to a framework agreement, which potentially could mean any grant would legally be viewed as a contract. We understand that the MoJ have taken legal advice regarding this and would request that this advice is published to provide clarity that organisations receiving grants through the dynamic framework will not be at risk of being deemed to be under a contract which has a variety of implications including, for instance, for VAT. If grant making is to be undertaken through the dynamic framework, it is vital that the framework agreement and any clauses and terms and conditions within grant agreements are light touch enough to ensure that they do not in fact form a contract.

**In order to ensure that grant agreements are light touch, they should be checked by charity law experts to ensure they do not constitute a contract and also tested with small organisations.**

**Grants should be made in line with the principles set out by the Grants for Good campaign<sup>4</sup> (see appendix). If this is not possible through the dynamic framework, then MoJ should consider providing a different mechanism through which NPS areas can make grants.**

**In addition to any grants made through the dynamic framework we would also suggest that an alternative route to grant funding is made available to provide capacity building for small organisations for whom pre-qualification may provide a barrier.**

Intelligence gathering from the voluntary sector, undertaken by Clinks and the Prisoner Learning Alliance, during the first 6 weeks of operation of the Prison Education Dynamic Purchasing System (DPS), has shown that the system is presenting challenges to organisations in planning and securing match funding. Previously it was possible to apply and plan for grants from voluntary sources such as trusts and foundation alongside grants from prisons which could complement each other. However the nature of the DPS, including the way in which contracts become available and organisations bid for them and the timelines involved, makes it much more difficult to plan in this way.



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**Before finalising any plans to make grant funding available through a dynamic framework, Clinks suggests that the MoJ discuss these plans with charitable grant making trusts and foundations operating within criminal justice and associated welfare areas, charity law experts and others such as the Grants for Good Campaign to understand and draw on learning about what constitutes good grant giving and how the dynamic framework can best enable match funding.**

## Balancing flexibility and local responsiveness with ensuring consistency and high quality

We welcome the MoJ's intention to create a flexible framework that does not mandate contract or grant length, size, lot or volume. We also recognise the need to ensure high quality and consistent "day one" services and the desire for value for money in the use of public funds. There is a risk however that these two principles pull in opposite directions, with the latter driving an inclination towards larger, more specified contracts.

We are concerned that discussions at market engagement events so far have focused on the core mandated interventions and "day one" services, suggesting that they might be relatively large contract lots, potentially covering the whole NPS area.

However, such contracts will not necessarily be appropriate for all interventions that service users will need and would certainly not result in the policy intention of enabling a sub-regional focus and small and local providers to be involved. If it is not possible to commission services solely through grants as recommended above, there must be the full range of grants and contract sizes available.

**The procurement, including of "day one" services, should be designed with the smallest potential lot in mind to prevent the use of larger than necessary lots of contracts over grants when it is not necessary.**

It is vital to ensure that the choice between contracts and grants and the nature of contracts are appropriate to the intervention. There is a danger that grants will not be made, as is the case under the current system, where despite it being possible for CRCs to make grant funding available, they have chosen not to, because the systems and processes provided to them focus solely on the use of contracts.

**There should be a preference for contract lots that cover smaller geographic areas than the NPS area. The principle of using the smallest contract lot appropriate should apply. Decisions regarding the appropriate funding mechanism or contract size must be based on a presumption for grant funding over contracts and a prioritisation of social value over value for money.**

Appropriateness should be based on optimum service quality and social value not simply cost efficiency in terms of economies of scale and reduced contract management resource. Consideration of social value should include diversity of supply chain, maintaining the



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diversity and health of local voluntary sector, and inclusion of organisations that specialise in working with and/or are led by people with protected characteristics or groups that are vulnerable within the CJS. It should also include assessment of local need and variation with the NPS area e.g. urban/rural, cohort make up, footprint and quality of existing provision, footprint of existing structures within the NPS area – e.g. local authorities, Police and Crime Commissioners (PCCs). The potential role for Reducing Reoffending Boards in coordinating partnership activity across their geographical footprint, might offer appropriate contract size but this should always be assessed on a case by case basis.

## Nature of contracts

If contracts are utilised, we welcome the intention to provide as much flexibility as possible regarding contract length, lot and volumes, however we are concerned that too much flexibility without appropriate guidance to NPS areas could result in inappropriate contracts and inconsistency of voluntary sector experience across areas, leading to variation in appropriate intervention availability for service users.

Voluntary organisations' experience of the Prison Education DPS indicates that it is taking significant time for prisons to become familiar with the system and more guidance is needed to ensure that prison staff are able to properly commission services. This is having an immediate and significant impact on voluntary sector organisations' income and work. **It is therefore vital that NPS areas have appropriate guidance, resources and sufficient preparation time to be able to commission future services effectively.**

Feedback from the Prison Education DPS experience is that 12 month contracts - particularly when they have Transfer of Undertakings and Protection of Employment (TUPE) implications attached - are very problematic for voluntary sector providers. Any guidance provided to NPS areas needs to be informed by such learning.

## Pre-qualifying criteria and Invitations to Tender

Pre-Qualification Questionnaires (PQQs) assess the capacity and suitability of organisations to bid for contracts. The Dynamic Framework is intended to support the NPS to source a wide range of interventions. The PQQ must be informed by the makeup and health of the sector that delivers this range of interventions. The sector is wide and varied but the majority of organisations are small and local. In addition, organisations providing particular interventions or working with particular cohorts will have a specific makeup and some, for example, those working with people with protected characteristics are even smaller and more local than others.

**Any questions used for organisations to qualify onto the dynamic framework must therefore be designed with the smallest and most local organisations in mind so as not to exclude these organisations at the first stage.**

## Timelines

To enable organisations to be sufficiently equipped to submit proposals and bids, detailed timelines must be clearly published. There must be a guaranteed period in which clarification questions will be responded to. We understand that HMPPS are currently considering how to establish proportionate timelines to the nature and value of services being procured, including potential for a minimum timeframe of ten days but an intention that in most cases this will be longer. **Learning from previous MoJ and HMPPS commissioning of**





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**voluntary sector services indicates that a minimum of two months must be allowed for the development of proposals and where appropriate, for larger or more complex contracts, longer.** In particular if partnership working is required, longer times for the development of proposals will be needed. This is essential to minimise the disadvantage that smaller organisations face compared to large organisations with dedicated bid writing staff.

Published timelines must be adhered to and if there is slippage, additional time must be given to organisations rather than squeezing the time available to them to complete their bids.

### Budget visibility and financial information

**In order for organisations to assess whether or not to bid for contracts, full financial information must be made available.** This should include the full budget available and other financial information including any obligations under the TUPE rules.

The guidance provided to prisons for the Prison Education DPS does adhere to these principles, but none the less, feedback gathered from the voluntary sector indicates that these principles have not always been adhered to in practice. **Guidance therefore must be transparent and publically available, and there must be a route for voluntary organisations to raise concerns if it is not followed.**

In order to ensure that NPS areas make appropriate grants and contracts available, clear guidance should be developed including a core set of principles regarding good commissioning practice. In 2016, the Reducing Reoffending Advisory group convened a special interest group to support the commissioning of family services in prisons. Following the special interest group discussion, Clinks wrote a paper outlining a set of agreed principles.<sup>5</sup> In addition, in July 2019 Clinks and Prisoner Learning Alliance convened a roundtable to gather feedback on organisations' experience of the Prison Education DPS. The minutes from this meeting provide a summary of the key points.<sup>6</sup> Both these resources should be utilised to develop good commissioning principles for NPS areas.

### Full cost recovery

We understand and welcome that HMPPS are committed to providing full cost recovery for commissioned services. This is vital to ensuring that organisations are able to provide high quality services without having to subsidise them from other charitable income or reserves in the way that has taken place under the current system.

## Resourcing support for the system at local level

In addition to the principles set out above, Clinks believes that in order for any commissioning system at NPS area level, including the Dynamic Framework, to function and achieve the stated policy ambitions, there will be a need for support for the system at a local level.

It will be vital for relevant staff to have the right expertise and guidance to complete service specifications and provide consistent, timely and detailed information to bidders throughout the commissioning process. Resources should be adequate to ensure that there are enough staff members on the team, that team members have the time to dedicate to the procurement process and that team members have expertise relevant to the specific service being commissioned.



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A key concern of organisations that Clinks have spoken to regarding the proposals, particularly of those with experience of the Prison Education DPS, is that a framework system provides no way for a small organisation to plan for potential future opportunities. There is a need for organisations to have some visibility of what is in the pipeline.

In addition, as outlined above, there is a tension between ensuring that services are flexible and locally responsive while also consistent, high-quality and in-line with key strategic policy priorities such as the Female Offender Strategy and implementation of the Lammy and Farmer Reviews.

Both of these challenges could be overcome through the development of a NPS commissioning strategy, overseen at Director General level within HMPPS. Prior to the Transforming Rehabilitation reforms, a mechanism similar to this existed through the National Offender Management Commissioning Intentions. **The National Probation commissioning strategy should then provide a template for NPS areas to develop strategic plans including their commissioning intentions.**

**In order to ensure that the voluntary sector can play its full role, not just in the delivery of services but also in providing knowledge and expertise to support the design of services, NPS area strategic plans should be based upon the national strategy and co-produced with partners, utilising a Joint Strategic Needs Assessment approach, via regional structures such as local Reducing Reoffending Boards. They should also be co-produced with people and families who have lived experience of the criminal justice system and who are a vital source of intelligence on how to improve services.**

## Commissioning for equalities

A national strategy to inform NPS area commissioning, as set out above, should detail how appropriate services for vulnerable cohorts and those protected under the Equality Act (2010) should be commissioned.

It will be necessary for HMPPS at national level and NPS areas to consider how to ensure that all services recognise and address equalities issues and the needs of vulnerable cohorts, guaranteeing that appropriate specialist services are available.

Ensuring that voluntary organisations and service users with expertise on issues faced by people with protected characteristics are involved in the co-production of NPS area strategies, will ensure that specialist services exist where appropriate and that equalities issues are not relegated solely to a specific stream of work, rather than being mainstreamed into all services.

To meet the policy intentions of the Female Offender Strategy, women specific community provision must be adequately resourced. The new probation model is a significant opportunity through which to achieve this.

**There should be dedicated funds in each NPS area from which grants are made to support such services and ensure that there is consistent women specific provision across the country.**





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This will also provide opportunities at NPS area level to co-commission with other statutory services funding women specific services. The Female Offender Strategy acknowledges that these kind of holistic women-centred services are vital to support women to desist from crime. Women centred services are currently patchy across the country and vulnerable due to their experiences under Transforming Rehabilitation and other cuts to funding. Significant support and development activity should be undertaken between now and 2021 to build capacity of the women's sector so there is improved consistency of day one services for women.

Similarly, there is a need to recognise that many specialist services tailored to meeting the needs of people with protected characteristics e.g. BAME organisations, have been disproportionately affected by funding cuts over recent years. As such, their ability to engage with a structure such as a Dynamic Framework will be significantly limited, however light touch the PQQ is.

**Dedicated grant funding, in addition to and separate from the dynamic framework, should therefore also be available locally/regionally to provide capacity building to such organisations to develop their ability to provide resettlement and rehabilitation services now and in the future.**

# Appendix 1

## Grants for Good campaign

### Principles of good grant making: How to make grants that are fair, transparent and effective

Source: <https://www.dsc.org.uk/grantsforgood/principles-good-grant-making/>

1. **Consultation:** Speaking to charities, funders and other relevant stakeholders leads to better understanding of the market, need and gaps.

*Think: Who do you need to speak to? What understanding do you need to gain at the outset?*

2. **Objectives:** Setting clear objectives enables audiences to be targeted and relevant outcomes to be decided.

*Think: What are you trying to achieve with the grant?*

3. **Criteria:** Clear criteria should produce a better pool of applicants and avoid wasted time with ineligible applications. Clarity over who can apply (including organisation size, location, track record), as well as any exclusions, aids transparency and should sit alongside clear communications and guidance.

*Think: What kinds of organisations do you want to apply? Are your criteria going to attract them?*

4. **Communication:** All communications need to be clear and targeted effectively so as to reach relevant audiences and support understanding. Make all application information available online and avoid complicated jargon.

*Think: Is it accessible? Does it make sense to a layperson?*



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5. **Proportionality:** All applications and reporting should be proportionate to the grant requested/awarded – information should only be asked for where it will be used.

*Think: Do we really need to ask this? Why?*

6. **Resources:** The level of resources available to the grant maker needs to be considered. This will inform the grant process, such as the level of applications that can be dealt with, the opportunity for questions, feedback and frequency of payments. Experts should be brought in to support assessments where the skills/in depth subject knowledge are not available in-house.

*Think: Have you been clear with applicants about what they can expect from you?*

7. **Timescales:** All timescales need to be realistic both for the grant maker and the applicant. Appropriate time for planning, lead-in, application and spending the grant will all impact on the success of the grant programme.

*Think: Will organisations have enough time to apply? Can deadlines be shifted?*

8. **Flexibility:** Effective grant processes respond to need so have to be flexible to adapt to this.

*Think: How will any changes to the grant or project be communicated and agreed?*

9. **Monitoring and Evaluation:** Monitoring and evaluation need to be built in from the start. It needs to be recognised that failure can happen but that doesn't mean a grant has been wasted. Where monitoring goes beyond a financial audit, there should be opportunities to use the information and share learning.

*Think: Will you allocate any internal resources or funding towards evaluation? Is it proportionate? What will be learned?*

10. **Payments:** Payments should be made up-front (not in arrears). This helps the organisation's viability and ability to deliver (especially smaller ones). Ensure payment systems will not prevent some charities from applying.

*Think: Can you do this? If not, why?*



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### End notes

1. Clinks. (2018). *Under represented, under pressure, under resourced*. Online: <https://www.clinks.org/publication/under-represented-under-pressure-under-resourced> (last accessed: 15/09/2019)
2. Voluntary income, including grants, is essential for small specialist criminal justice organisations. The smaller the organisation, the more likely they are to rely more on income from the voluntary sector, which includes charitable trusts and foundations, than from the government. However, the government predominantly funds specialist criminal justice organisations through contracts. 95% of government income for specialist criminal justice organisations is earned income through contracts as opposed to grants (5%). Non-specialist criminal justice organisations receive a higher proportion of their income from the government in the form of grants (14%) rather than contracts (86%). See Clinks *State of the sector 2018* report for further information at <https://www.clinks.org/sites/default/files/2018-11/Clinks%20State%20of%20the%20sector%202018%20Website%20download.pdf>
3. The vast majority of services are paid under contract (86%), but only 19% are subject to payment by results. Six organisations, or 14%, told us that their funding is in the form of a grant. Given that grant funding is widely regarded as more suitable for smaller voluntary organisations, the lack of grant funding may be a reason why small organisations are less likely to be funded by CRCs. See Clinks TrackTR report *Under represented, under pressure, under resourced* at <https://www.clinks.org/sites/default/files/2018-11/Clinks%20State%20of%20the%20sector%202018%20Website%20download.pdf>
4. Directory of Social Change. (Unknown). *Principles of good grant making*. Online: <https://www.dsc.org.uk/grantsforgood/principles-good-grant-making/> (last accessed: 15/09/2019)
5. Clinks. (2018). *RR3 Special Interest Group on Commissioning Family Services: How to improve commissioning*. Online: <https://www.clinks.org/publication/rr3-special-interest-group-commissioning-family-services-how-improve-commissioning> (last accessed: 15/09/2019)
6. Publication forthcoming, contact Clinks for further information.



**Clinks supports, represents and advocates for the voluntary sector in criminal justice, enabling it to provide the best possible opportunities for individuals and their families.**

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