



Rt Hon Sadiq Khan MP
Shadow Lord Chancellor
and
Shadow Secretary of State for Justice
(with responsibility for political and constitutional reform)

Rt. Hon Chris Grayling MP
Secretary of State for Justice
Ministry of Justice
102 Petty France
London
SW1H 9AJ

19 September 2013

Dear Chris,

Privatisation of the Probation Service

I am writing in relation to your plans to privatise the probation service and my concern that these could put public safety at risk.

I am alarmed that Parliament has been denied the opportunity to debate and scrutinise your proposals for the Probation Service. Your plans entail almost 200,000 serious and violent offenders being handed over to private companies in contracts worth almost £800million a year, with the local nature of the service abolished, and provision fragmented. These are enormous changes in anyone's book, and the way offenders are to be supervised thus deserves full and proper parliamentary scrutiny. Given that this involves the safety of communities up and down the country, our constituents would expect nothing less.

To make matters worse, not only has Parliament been denied the opportunity to scrutinise the plans, your refusal to pilot them before rolling out nationally means there is no empirical evidence base of what works and what doesn't. It is hardly surprising that the plans are viewed, in many quarters, as a risk to public safety and your own internal risk register raises big questions over deliverability.

You have defended your decision to avoid any Parliamentary approval by referring to the Offender Management Act 2007 as providing the necessary legislative vehicle. I understand that this particularly refers to Clauses 1 and 2 of the 2007 Act.

But, having looked into this, I do not believe that the 2007 Act was ever intended to be used in the way you propose. I have revisited Hansard and it is clear from the debates at each and every stage that the 2007 Act was designed to establish local Probation Trusts and permit them to commission services at the local level, not abolish local trusts and commission direct from Whitehall.

You will know from the case of *Pepper (Inspector of Taxes) v Hart* [1992] that Hansard can be used to interpret the meaning of primary legislation. I will highlight two key sections which add weight to the view the 2007 Act was about something very different to what you intend to use it for:

1. At the Committee Stage in the House of Lords, Minister of State Baroness Scotland of Asthal described the changes as follows:

"In practice, although some services will be commissioned at a national and regional level, where it makes sense to do so, the great majority will be commissioned from lead providers at the local level, who in most cases will be the public sector probation trusts, and in full co-operation with their local strategic partnerships to meet the local area agreements" (Hansard, 16 May 2007)

2. At Consideration of Lords Amendments in the House of Commons, Minister of State David Hanson MP said:

“There will be a mixture of commissioning. Some will be at national level, because in certain cases and with certain contracts that will be the best way of securing a strong and efficient service. There will also be a strong role for those commissioning work at regional level. As my hon. Friend surely accepts, economies of scale will sometimes be necessary, and some services will be best purchased and commissioned at that level. However, there will also be a need for local probation trusts to act not just as service deliverers but as commissioners of services from the voluntary sector, or from others, providing a proper service to help prevent reoffending at local level”. (Hansard, 18 July 2007)

Avoiding Parliamentary scrutiny could, I believe, have catastrophic consequences. By avoiding scrutiny, you risk implementing a set of proposals which have been insulated from the important transparency of the parliamentary process – debated, refined and improved with the support of outside expert advice.

However, if you and your officials believe the 2007 Act does provide the necessary powers, then I call on you to publish as a matter of urgency any legal advice that supports your decision. Any failure to do so will be interpreted as a snub to Parliament, an insult to due process and an abuse of parliamentary power.

You will be aware that the House of Lords voted to support Lord Ramsbotham’s amendment to the Offender Rehabilitation Bill on 25 June, such that approval of both Houses was required before probation could be privatised. However, rather than waiting for the Bill to pass through the Commons it appears you have decided to go ahead and publish in the European Journal the tenders for the privatisation of the Probation Service, and begin the re-organisation of existing staff. This leaves the impression that you are acting outside your powers in proceeding with the above without Parliamentary approval and that you are willing to take a risk with public safety as a consequence.

Therefore, I call on you to publish your legal advice that confirms that you have the legal powers (as set out above) or suspend the whole probation privatisation process, and return to Parliament for full and proper approval.

I look forward to hearing from you shortly.

Yours sincerely

A handwritten signature in blue ink, reading "Sadiq Khan". The signature is written in a cursive style. Below the signature is a small number "2".

Rt. Hon Sadiq Khan MP
Shadow Secretary of State for Justice