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**RESPONSE TO ‘STRENGTHENING PROBATION, BUILDING CONFIDENCE’**

**21 SEPTEMBER 2018**

1. **Introduction**

UNISON is one of the three recognised unions for staff working for the National Probation Service (NPS) and the 21 Community Rehabilitation Companies (CRCs) in England and Wales. We welcome this opportunity to comment on the Government’s proposals set out in the consultation paper ‘Strengthening Probation, Building Confidence’.

This consultation response has been put together from the views of UNISON members working for the NPS and the CRCs, gathered in an on-line survey during August and September 2018.

Transforming Rehabilitation (TR) has been nothing short of a disaster. This is not the fault of NPS, or CRC staff; they have worked heroically to maintain services in the face of the barriers erected by TR and its attendant stresses and strains.

In a recent survey of UNISON CRC and NPS members in support of this response:

* 70% of members said that TR had totally failed
* 18% that TR had partly failed
* 4% thought that TR had made no difference
* 8% stated that TR had partly succeeded

No respondents said that TR had been a complete success.

In order to move on, the Government needs to have the courage and honesty to admit to its mistake in forcing an unworkable and dangerous reform agenda on the Probation Service back in 2014/15. The Secretary of State should say that his predecessor and the MOJ simply got it wrong. UNISON asks for an apology to NPS and CRC staff to this effect from the Justice Secretary. Until this happens it is unlikely that there will be any trust re-established between staff and Ministers.

Given the abject failure of Transforming Rehabilitation, UNISON is totally opposed to the proposals in ‘Strengthening Probation, Building Confidence’, because they simply replicate the current failed and failing system. The latest proposals seek to perpetuate the disastrous split in the Service and continue the unworkable private contracts. Quite how the Ministry of Justice believes that such a ‘rescue plan’ would have any credibility is beyond belief.

In this consultation response, UNISON reminds readers of just how badly the Ministry of Justice has managed Transforming Rehabilitation and in particular the CRC contracts. Ministers and officials would no doubt like to draw a veil over this catastrophic performance, but it needs to be laid bare here again in case anyone should be tempted to believe that they can do any better in the future. It is for this reason that UNISON calls for the Ministry of Justice to be stripped of the responsibility for managing Probation going forward.

When the Government consulted on Transforming Rehabilitation in 2013 it failed to take account of the overwhelming opposition to its proposals and ploughed ahead regardless, with predictable consequences. UNISON hopes that the same mistake is not made twice.

1. **Executive Summary**

UNISON wants to see the Probation Service re-united in the public sector as a locally run and locally accountable service. We want an end to the failing private CRC contracts, an end to the artificial and damaging split in the Service and the return of Probation to local democratic control.

This means:

* The CRCs brought back into public ownership
* Probation Reunification
* The re-creation of Local Probation Services, as public sector bodies/employers
* All CRC and NPS work/staff in England to be transferred into the new Local Probation Services
* Local democratic accountability and funding for the new Local Probation Services
* The work of NPS Wales and the Wales CRC to be combined in a new unified, delivery organisation, or organisations, following an all Wales consultation on appropriate boundaries
* The reform of Her Majesty’s Prisons and Probation Service (HMPPS) to protect the integrity and independence of Probation and to devolve political control of Probation from Ministers to local level
* A guarantee of no compulsory redundancies for staff in NPS and CRCs and the protection of pay and conditions, including pensions, via a national collective agreement with the employers.
* Funding from the Treasury to provide for the reconstruction of Probation in recognition of the failure of the TR experiment, including money to reform probation pay and conditions.

1. **Synopsis**

This response is split into the following sections:

* Background
* UNISON’s Rescue Plan for Probation
* Rescue Plan Practicalities
* Ministry of Justice Record
* Devolution of Probation Services for Cymru/Wales

1. **Background**

Until 1 June 2014 Probation was a public service which was run locally by 35 Probation Trusts. Transforming Rehabilitation destroyed this successful model, by splitting Probation in two, privatising half of it and centralising the other half. Probation wasn’t broken, but now it is.

The following failings are not the fault of NPS, or CRC staff; they are the fault of the Government, the Ministry of Justice and the private companies which bid for the CRC contracts.

In June 2018 the Justice Select Committee confirmed what Probation staff have known for some time, namely that:

* The CRC contracts were poorly constructed
* They have been continuously renegotiated at great cost to taxpayers
* The CRCs have underperformed very badly
* The NPS/CRC split has complicated service delivery and created a ‘two-tier’ system
* The voluntary sector has been frozen out of any partnership delivery
* Staff morale is at an all time low in both the CRCs and the NPS
* Through the Gate is ‘wholly inadequate’
* CRCs have taken to supervising service users over the phone

The Select Committee concluded that it was *‘...unconvinced that TR can ever deliver an effective or viable probation service.’* Quite how HMPPS can continue to believe, as it sets out in ‘Strengthening Probation, Building Confidence’ that *‘...opening up the market to a wider range of providers to encourage innovation and modern ways of working...’* remains a *‘...sensible objective...’* is difficult to comprehend.

For its part the Justice Select Committee identified that the private sector CRCs have:

* Not delivered the hoped for reduction in reoffending
* Been let off financial penalties for underperformance
* Failed to deliver ‘Through the Gate’ services
* Taken to supervising service users over the phone
* Been given increased funding in return for indeterminate undertakings

Although the Justice Select Committee concentrated on the failings of the CRCs, Her Majesty’s Prisons and Probation Service (HMPPS) and the NPS are as much a part of the problem; they have:

* forced the rigid, one-size-fits-all, ‘E3’ model on Probation practice
* down-graded key groups of staff such as victim liaison officers, AP residential workers, enforcement officers, business managers and others
* begun to merge Probation into the Prison Service via the Offender Management in Custody (OMiC) model
* given Prison Governors line-management responsibility over Probation staff in Prisons
* failed to pay its staff properly, or on time
* failed to pay pension contributions on time for NPS staff
* carried on with privatisation by outsourcing high risk night waking cover in approved premises with the widely predicted disastrous results

The split in the Service means that CRC and NPS staff find it difficult to communicate and a ‘them and us’ rivalry has begun to appear. In short, the future of Probation is not safe in HMPPS/NPS hands.

The Justice Select Committee has forced HMPPS to accept that Transforming Rehabilitation has failed. But ‘Strengthening Probation, Building Confidence’ just proposes more of the same, with a few tweaks around the edges!

HMPPS proposes to:

1. **Terminate the existing CRC contracts 2 years early in 2020**, but in the meantime:
   * adjust the CRC targets to make it easier for the companies to get paid
   * give £192m more cash to the CRCs to keep them afloat
2. **From 2020**:
   * continue with the disastrous NPS/CRC split
   * continue with the failing privatised CRCs
   * reduce the number of CRCs from 21 to 10
   * align the CRCs to 10 new NPS Divisions in England
   * transfer all offender management work in Wales to NPS Wales, but continue with the privatisation of interventions and programmes

The Justice Select Committee has told MOJ ministers that TR will never work. The HMPPS response is not just to propose more of the same, but actually to reward the failing private companies with even bigger contracts!

1. **UNISON’s Rescue Plan for Probation**

UNISON does not recognise the proposals in ‘Strengthening Probation, Building Confidence’ as credible. We have instead consulted our members in the NPS and CRCs on a real and genuine rescue plan to save the Probation Service. In short, UNISON is proposing a completely alternative plan for the future of Probation to replace the failed and failing TR experiment.

UNISON takes the view that the Ministry of Justice is just too far away from the front line to successfully manage the CRC contracts and has shown in the NPS a centralising tendency to ride roughshod over successful local practice built up over many years. Probation was created as a local service which was initially democratically accountable via local authority control on the old Probation Committees. The local magistracy was also involved. This localism was the key to the success of probation which naturally had to work closely with the police, local authorities and health service in its area. Probation Boards were deliberately aligned with Police Authority boundaries for this reason.

With each successive reform to probation governance by central government this local democratic control was gradually stripped out. As Probation Committees were changed into Probation Boards and then into Probation Trusts and finally into Community Rehabilitation Companies, all vestiges of localism were ultimately removed. The coterminous boundaries of Probation and Police were dealt a final coup de grace by the creation of the CRCs which crossed not only force areas, but also government regional office borders.

UNISON’s proposal for the Future of Probation rests on two important principles: firstly that the Service must be re-united, and secondly that it must be run and managed locally again, not by ministers and officials in the Ministry of Justice in London.

UNISON has existing conference policy which commits us to local democratic accountability for Probation. Probation used to be accountable via Local Authorities, but many Police and Crime Commissioners, across the political spectrum, are now arguing that they should be given responsibility for running Probation at local level, because MOJ Ministers and officials have failed so badly. The Mayors of London and Greater Manchester also want more local control of Probation. This political argument is gaining support, although the details are still under discussion among interested stakeholders.

UNISON is therefore proposing that the Probation Service is reunified and run and managed locally again, via the following process:

* **The CRCs to be brought back into public ownership**. 88% of UNISON NPS and CRC members support this outcome.
* **Probation Reunification**. The split in the Service has been one of the most damaging and dangerous developments to come out of TR. At the time it was proposed, it was almost universally opposed by those who worked in, or with, Probation, but the Government pressed ahead regardless. 91% of UNISON NPS and CRC members support Probation Reunification.
* **The re-creation of Local Probation Services to bring together the work of the NPS and CRCs**. 89% of UNISON members support this aim.
* **All CRC/NPS staff in England to be transferred into one of the new Local Probation Services**. 91% of UNISON members agree this objective.
* **The work of NPS Wales and the Wales CRC to be combined in a new unified, delivery organisation, or organisations, following an all Wales consultation on appropriate boundaries**. See section 8 of this response for UNISON’s for UNISON’s response to the Welsh Government’s Thomas Commission on Justice in Wales.
* **The reform of Her Majesty’s Prisons and Probation Service (HMPPS)** to ensure that Probation retains its identity and independence from the Prison Service and to remove decision making on Probation from Government Ministers and officials in favour of local democratic control.
* **Many Police and Crime Commissioners and some Elected Mayors are calling for the localisation of political control of Probation.** UNISON agrees that there should be a transfer from Westminster to local level of democratic accountability for, and funding to run, the new Local Probation Services in England.
* **A guarantee of no compulsory redundancy for staff in the NPS and CRCs** and the protection of pay and conditions and pensions via a national collective agreement.
* **Funding from the Treasury to provide for the reconstruction of Probation** in recognition of the failure of the TR experiment, including money to reform Probation pay and conditions.

1. **Rescue Plan Practicalities**

Once the privatised CRC contracts come to an end in 2020, the CRCs should be returned initially to public ownership. The CRCs were in public ownership between their creation in June 2014 and their privatisation in February 2015, so we know that this model will work, at least in the interim. Following this initial stage, work should be undertaken with local politicians, probation staff, their trade unions and other local CJS partners to re-unite the whole probation service (NPS and CRCs) as a local, publically owned, and funded service, following consultation on appropriate delivery/employer models.

UNISON supports the re-creation of Local Probation Services into which the work of both the NPS and CRCs will be transferred along with all NPS and CRC staff.

1. **Ministry of Justice Record**

The last four years have shown conclusively that the Ministry of Justice/HMPPS cannot be trusted with the future of Probation. Here are some of the factors that lead UNISON to this assessment:

**The CRC contracts were so poorly constructed and managed that substantial additional public money was needed to keep them afloat.** The Public Accounts Committee and the National Audit Office were both highly critical of the ability of the Ministry to manage the complexity of the CRC contracts, or the call on the public purse to keep the contracts from going under.

**The Public Accounts Committee in its March 2018 report on the changes to the CRC contracts said:**

* ‘Despite committing up to £342 million more of taxpayers’ money to stabilise its contracts with Community Rehabilitation Companies (CRCs), the Ministry has not fixed the underlying problem, or ensured that its ‘rehabilitation revolution’ will actually be delivered. We are deeply concerned that, following the injection of additional public money into these contracts, 14 out of 21 CRCs are still forecasting losses. The majority of CRCs are therefore not much closer to a sustainable position than they were before the contracts were changed. Despite the additional funding, the Ministry did not persuade us that the CRCs will improve the services they deliver.’
* ‘...it should have been well within the Ministry’s capability to recognise that the composition of criminal cases heard by the courts was changing and to monitor and respond to shifting trends in sentencing decisions. The Ministry did not convince us that it was not possible to foresee or model the impact of factors within its purview. The consequence of this failure is that CRCs have not invested in probation services and offenders are not receiving the right support to help them address their needs.’
* **‘It is not yet clear what the Ministry has received from CRCs in return for the contract changes it negotiated with them.** In responding to the underinvestment in probation services, a situation of its own making, the Ministry agreed to provide additional funding of up to £342 million for CRCs. The Ministry had also identified service credits—financial penalties for poor performance—with an overall value of £7.7 million, but only imposed £2 million of this. It waived £2.2 million and agreed that £3.3 million could be reinvested by CRCs. The Ministry has also identified that it is owed £9 million of taxpayers’ money by CRCs. It has not yet taken any action to recoup this money. We were disappointed that neither the Ministry, nor HMPPS, could point to a tangible list of commitments from CRCs as a result of the additional money. In particular, we are not convinced that the additional payments will not be used to prop up parent companies that own the CRCs. The Ministry could not adequately explain the wide variations in the fixed costs claimed by different CRCs, which ranged from 44% to 99.8% of total costs. There are also variations in the administrative costs charged by parent companies to CRCs. We expect the Ministry to vigorously defend taxpayers’ interests in its oversight of CRCs and in any future negotiation.’

**The National Audit Office in its report of 19 December 2017 ‘Investigation into changes to Community Rehabilitation Company contracts’ said, in summary, that**:

* The MOJ claimed originally that it would transfer the commercial risk of future volumes of rehabilitation activity going down, as well as up, to the CRCs
* The MOJ obtained parent company guarantees that financial protection would be provided for the taxpayer should the CRCs seriously underperform, fail outright or become insolvent.
* The volume of rehabilitation activity actually went down, but the commercial risk attached to this was not transferred as promised to the CRCs, but was retained by the taxpayer
* The MOJ ended up paying the CRCs more in 2016/17 than was contractually required in order to keep them afloat
* The CRCs under-estimated their fixed costs when bidding for the contracts, but the MOJ agreed that the taxpayer, not the private companies, should shoulder this cost as well
* So far this has all cost the taxpayer an additional £342 million
* By the end of June 2017, CRCs had, on average, met just 8 of the 24 targets set for them under their contracts. The worst performing CRC, met only 4 of its 24 targets.
* Although it is entitled to fine the CRCs for poor performance, the MOJ has either waived, or allowed CRCs to ‘re-invest’,  71% of the total of the fines which were due to the taxpayer
* One of the options which the MOJ considered in respect of the poor performance of the CRCs was to terminate some, or all, of the CRC contracts, but decided instead to let the taxpayer take the strain of the failing contracts by amending the contract payment mechanisms to give the CRCs more money.

**The recent botched privatisation of night waking cover in NPS approved premises (APs) from 1 March 2018 shows that Ministers and officials at the MOJ have learnt nothing from their mistakes over TR.** UNISON and many other key stakeholders asked Ministers and HMPPS officials to draw back from their ill-advised plans to privatise night waking cover in APs, but, as with TR, they dismissed our concerns as ideologically motivated. The reality is that it is the Ministry of Justice and HMPPS which is ideologically committed to an outdated and unworkable privatisation model which has been conclusively shown to have failed. As predicted, the privatised night waking contracts have not delivered the services which HMPPS is paying for. Safeguards which UNISON was told were in the contract to protect members, residents and communities have also not been materialised. Despite warnings from UNISON, HMPPS has not been willing to change its view, leading UNISON to assume that for the Ministry of Justice it is privatisation at all costs.

**Her Majesty’s Prisons and Probation Service threatens to swallow up Probation into the Prison Service.** The HMPPS Offender Management in Custody (OMiC) model is predicated on putting increasing numbers of NPS offender management staff into Prisons. Senior Probation Officers in prison will be under the line management of the Prison Governor. Here is what UNISON’s NPS members feel about OMiC:

* 83% believe that Probation is losing its identity in HMPPS
* 81% believe that the focus of rehabilitation is moving towards Prison with a loss of resources for Probation
* 25% would be unhappy if they were required to work in the Prison estate
* 32% would be very unhappy if they had to work in Prison

**The National Probation Service has failed to pay its staff properly, or on time, since it was created in 2014.** The problems with NPS pay are too numerous to list here, but include failing to pay pension contributions for 9 months in 2017, not paying regular payments to staff during periods of annual leave going back as far as the creation of the organisation in June 2014, an inability to calculate unsocial hours and failing to pay staff their contractual increments. In responses to our recent survey of members for this consultation response:

* 34% said that the NPS/SSCL payroll function was poor
* 32% said that the NPS/SSCL payroll function was very poor

1. **Devolution of Justice Services, including Probation, to Wales**

UNISON believes strongly that:

* Justice Services in Wales should be devolved from Westminster and placed under the authority of the Welsh Government
* Prison and Probation Services in Wales should therefore no longer be under the control of Her Majesty’s Prisons and Probation Service (HMPPS)
* Probation services in Wales should be re-unified and placed under the local democratic control of Police and Crime Commissioners
* The work of NPS Wales and the Wales CRC should therefore be combined in a new unified delivery organisation (s), following an all Wales consultation on appropriate organisational boundaries.
* The job security and terms and conditions of Probation staff in the NPS and the CRC in Wales to be protected in this reorganisation.
* Prison services in Wales should also be placed under Welsh democratic control, either at all-Wales, or Police and Crime Commissioner, level.
* Court services in Wales should be placed under Welsh democratic control, either at all-Wales, or Police and Crime Commissioner, level.
* The Welsh government should consult all relevant stakeholders on the appropriate structures for publically owned and democratically accountable justice services in Wales.
* Justice services in Wales should be provided by directly employed staff without the involvement of private companies.

1. **Conclusion**

UNISON believes that the Probation Service stands at a crossroads. If the Ministry of Justice proposals in ‘Strengthening Probation, Building Confidence’ are followed they will lead to the end of an independent Probation Service in England and Wales and the winding up of the core values which have sustained Probation since its creation over 100 years ago.

Astonishingly, the Government wants to continue with the disastrous split in the Service between public and private provision, and plans reward the private companies for their failure to deliver Probation over the last four years with even bigger contracts in 2020.

But Probation is far too important for us to allow this to happen. Probation was a successful service until Chris Grayling took it upon himself to reform it. It protects communities, supervises some of the most high risk people leaving prison and helps service users to turn their lives around and become productive citizens again. We simply cannot afford to allow it to be failed again.

UNISON’s alternative is to return Probation to where it belongs: unified as a local service, locally managed, held accountable by local politicians and underpinned by the values of an independent profession. The future of Probation is too important to be left in the hands of Ministry of Justice Ministers. They have shown themselves to be incapable of managing the Service, so once the private contracts are terminated in 2020, Ministers should relinquish control and funding for Probation and devolve both to local level.