

## Getting back on the straight and narrow

A better criminal justice system for all



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# Foreword

BY RICHARD LAMBERT | DIRECTOR-GENERAL | CBI



The cost of crime is not just measured in pounds and pence. Lost opportunities, blighted lives and a disfigured environment are all part of the price we pay.

All of these issues affect businesses as corporate citizens as much as they impact on all of us as individuals. As a funder and user of our public services, including the criminal justice system, business has every right to hope that the best results are delivered while achieving value for money.

And as a supplier of innovative ideas to reduce crime and reoffending, business has a role in tackling the problems.

We think businesses' record – in transforming the debate about the 'decency' agenda in prison, in challenging vested interests while working with progressive trade unions and in delivering lower costs to the taxpayer – speaks for itself: the private sector can deliver fundamental and transformative change.

But now there is a need to take reform much further. Additional capacity is vital. Prisoner numbers are at record levels and the government has been forced to press into service ideas that were rejected as unaffordable or inappropriate just months earlier. But more prison places inside a dysfunctional system is just not a good enough response.

Policy makers need to do more than just focus on day-to-day crisis management. We need long term solutions that begin to make a serious impact on re-offending rates.

That is what this report is about. The CBI has identified three key priorities for the future:

- Getting offenders into work when they leave prison should be item one in any programme to cut re-offending
- Public confidence in non-custodial alternatives to prison should be increased
- And while prison capacity must increase, the new prisons must be fully fit for purpose.

Business expects politicians of all parties to stand up and be counted on these issues. In times of greater economic stringency and when Britain's corporate tax levels already threaten our national competitiveness, every penny we spend must deliver the maximum results.

*Richard Lambert*

# Executive summary

An effective criminal justice system which protects the public and reduces re-offending should be a priority for the government. In the end it is the taxpayer that bears the costs and consequences of a system that is not highly performing, which is why the CBI believes the UK's criminal justice system is in urgent need of reform.

Although recorded crime rates have fallen significantly over the past decade, the prison population is now at its highest ever level. And despite spending increases of over 40% in real terms since 1997, more than half of offenders go on to be convicted for another crime.

As a user, funder and provider of public services, business has a stake in seeing the criminal justice system improve. We recognise there are no 'quick fixes' to the current problems; new prison places and more effective action to reduce re-offending will take years, not months to bear fruit. This makes it all the more vital for the government to act now to reform the criminal justice system and reduce the cost of crime.

“...more than half of offenders go on to be convicted for another crime”

Current failures to deal with crime and criminal behaviour come at a high price: the overall cost of crime in each year in the UK is £60bn, the equivalent of 5% of GDP and only marginally less than the amount we spend on education. We spend almost £15bn on public services related to criminal justice, a third of which is 'offender management' – the prison and probation services.

Of particular concern is the proportion of criminals who go on to re-offend. Reducing the re-offending rate for ex-prisoners from its current rate of over 65% by just 10% would save over £1bn – enough to pay for nearly 50,000 nurses or 41 new academy schools. We think that this is achievable.

“...the overall cost of crime in each year in the UK is £60bn, the equivalent of 5% of GDP...”

The CBI has consistently supported reform of the criminal justice system to address these issues, and has worked with the government to try and create an 'end-to-end' offender management system to deal with crime and reduce re-offending. But, despite substantial extra investment and the promise of reform, this has not happened. The failure to deliver reform has contributed to an increasingly overcrowded and expensive prison system which does little to reduce re-offending. Two aspects of the criminal justice system have contributed to this state of affairs:

- **Management and funding arrangements make joined-up provision difficult** – the prison and probation systems have developed separately for over a century and, as a result, have significant differences in culture and approaches to managing offenders. This means that even when systems are compatible, there are different ways of implementing services. Further, funding is restricted to a particular service or agency, making it difficult to deliver a joined-up service
- **The ageing prison estate is not fit for purpose in the 21st century** – since 1997, the prison population has increased by almost a third, from 61,000 to 82,000. Prisons, many of which are in urban locations and were built in the Victorian era, have operated close to their operational capacity throughout that time. Old prisons need to be replaced with modern facilities which are better equipped to provide the range of services and interventions needed to rehabilitate offenders. Realising the value of the land on which some prisons are built could allow new ones to be built.<sup>1</sup>

## RECOMMENDATIONS

To improve the criminal justice system, we recommend seven key steps:

- 1** A single offender risk measurement should be adopted across the criminal justice system and a single system should be used to assess and monitor offenders for the whole of their sentence
- 2** Resettlement of an ex-offender should work within the welfare to work framework to provide joined-up provision in custody and the community. Innovative ways of getting ex-offenders in to work should be encouraged
- 3** Greater use of innovative and effective community sentences should be encouraged. Barriers to diverting and transferring offenders with mental health problems from prison should be removed. And government and providers should work together to improve public confidence in electronic monitoring systems
- 4** The government should act swiftly to procure the extra capacity necessary to house the rapidly rising prison population, and ageing prison accommodation which is unfit for purpose should be replaced with secure, effective facilities
- 5** Funding for offender management should be co-ordinated within the prime contracting welfare to work model, recognising the specific circumstances of interventions delivered in prison. And outcomes-based payments should be used to incentivise providers to get ex-offenders into sustainable employment
- 6** Better commissioning and financial management capability should be prioritised and resources devoted to improving such skills. To achieve a level playing field, the government should introduce a system of unit cost comparison and service level agreements for all prisons. NOMS should be given responsibility for a new performance measurement system for all prisons to replace the existing weighted scorecard and a purchaser-provider split should be evident throughout the system
- 7** Services not meeting clear performance targets should be subject to market testing, and commissioning services effectively should be an element of best value measurement for probation trusts.

“Reducing the re-offending rate for ex-prisoners from its current rate of over 65% by just 10% would save over £1bn...”

Improving the effectiveness of the criminal justice system requires the government to commit to solutions which treat the symptoms and causes of crime. This includes a more joined-up approach across government. Building extra prison places is unavoidable, but will not alone solve these systemic flaws. Alternatives to custody should be used more widely, and funding for offender management re-aligned in recognition that sustainable employment can offer a realistic route out of re-offending. These solutions, which require action now, will not bring about immediate improvements but they offer the best answer to rising prisoner numbers and high re-offending rates. The CBI therefore recommends the government takes the following action:

- **Offender management should focus on sustainable employment** – the aim of government spending on offender management should be the same as government spending on those without jobs – sustainable employment. Resettlement should better link services in custody and the community required to get offenders into work
- **Confidence must be increased in alternatives to custody** – research shows that the public would support community sentences if they were effective in reducing re-offending and they had confidence that offenders could be monitored securely

The greater involvement of local communities in developing alternatives to custody that act as reparation, for example, should be encouraged. Providers and government should work together to improve the effectiveness of electronic monitoring systems, which can offer cost-effective ways of structured transition of offenders back into the community as part of their sentence

- **Prison capacity must be increased to reduce strain on the system** – when commissioning the new places needed to deal with over-crowding, the government must not let ideology or opposition to reform prevent expert providers with track records of success from bidding in a fair commissioning process. The record of private providers in prison construction and management since 1991 has demonstrated the benefits of using competition to deliver extra capacity and improve standards.

“Building extra prison places is unavoidable, but will not alone solve these systemic flaws.”

# 1 The criminal justice system urgently needs reform

Crime is a major concern for us all. Reducing the amount of crime should be the priority for government. Although overall crime has fallen in recent years, Britain still has one of the highest crime rates in Europe and the fear of crime remains high: the cost of crime to victims and households is estimated to be £36.2bn,<sup>2</sup> and the British Crime Survey shows 63% of people believe crime has increased in the previous two years.

It is vital that we reduce the number of people who become victims of crime, and minimise the damage caused by criminal acts. To do this, the CBI wants to see a criminal justice system which gives us all security and represents value for money.

Crime doesn't just ruin lives – it affects our ability to do business. Crime costs business and government £9.1bn per year; retail crime alone costs business £2.1bn per year.<sup>3</sup> Even these figures do not take into account the wider economic costs of crime, such as damage caused to business viability. Crime means higher insurance premiums for businesses and home owners, particularly in high-crime areas.

**“Crime committed by ex-prisoners costs the economy £11bn a year.”**

The government has invested billions of pounds in the criminal justice system. In the last decade, spending on offender management (prisons and probation) has risen by over 40% in real terms. Yet the percentage of ex-prisoners who commit further offences after release from prison has remained virtually unchanged at 65%.<sup>4</sup> Crime committed by ex-prisoners costs the economy £11bn a year.<sup>5</sup>

Furthermore:

- The overall rate of re-offending has fallen only slightly in recent years, from 57.6% in 2000 to 55.5% in 2004
- Three quarters of young offenders and those serving sentences shorter than 12 months go on to re-offend<sup>6</sup>
- The re-offending rate is over 50% for offenders serving community sentences
- Released prisoners alone are responsible for at least one million crimes a year.<sup>7</sup>

This high level of re-offending has only served to increase the pressure on what was already a strained system: the prison population stood at 82,068 in February 2008, a record high and in excess of operational capacity which has led to the use of police cells at a cost of £385 each per night.<sup>8</sup> The prison population is predicted to rise further, with official estimates predicting a rise to 102,000 by 2014.<sup>9</sup>

The CBI believes these problems have been caused in part by a failure to reform the criminal justice system. The government's flagship reform – the creation of an end-to-end offender management system through the National Offender Management Service (NOMS) – was welcomed by the CBI in 2004 but has not been given the support it needs to work with and influence the Prison Service to create a truly joined-up system. The Prison Service has continued to operate its own systems independent of NOMS priorities. Four years on, with NOMS having spent £2.6bn, there has been little impact on the headline rate of re-offending and prison numbers are now higher than the projected upper limit of 80,000.<sup>10</sup>

The existing offender management system is clearly ill-equipped to deliver its aims. This is due to strain on the system, a lack of effective working between different parts

**EXHIBIT 1**

**A recent history of offender management**

**2003** The Criminal Justice Act sets out clear objectives for the criminal justice system: protecting the public and reducing re-offending.

**2003** Lord Carter's report *Managing Offenders, Reducing Crime* reviews the existing system of prisons and probation. It criticises a lack of alignment between work done in prisons to prepare for release and supervision and support in the community.

Lord Carter recommends the introduction of an end-to-end offender management system, based on a structured plan covering the whole of an offender's sentence. He also recommends a clear 'purchaser-provider split' between the offender managers responsible for commissioning services, and the organisations charged with delivering them.

**2004** The government creates the National Offender Management System (NOMS) in response to Lord Carter's report. NOMS is intended to create an end-to-end offender management system to protect the public and reduce re-offending.

**2006** NOMS produces a national reducing re-offending action plan as part of its strategy to meet the government's target of a 10% reduction in re-offending by 2010.

**2007** The Offender Management Act introduces a framework for reform, allowing probation provision to be commissioned from a range of providers on the basis of outcomes. It is too early to tell whether reform will result in a greater use of the private and voluntary sectors as intended.

**2007** The crisis in prison capacity leads the government to ask Lord Carter to undertake a second review. This recommends an increase in prison capacity, improved operational efficiency and structural reform of NOMS and the Prison Service, recognising that NOMS had not achieved what was envisaged in 2003.

**2008** The government responds to 'Carter 2' by restructuring NOMS, combining it with the Prison Service in a single operational delivery unit, running public prisons and managing performance across probation boards and trusts, privately run prisons and other providers.

and poor implementation and monitoring of sentencing plans. The system – rather than those operating within it – is at fault. The CBI believes there are two main reasons for its current lack of effectiveness in reducing re-offending and protecting the public:

- Management and funding arrangements make it difficult to deliver joined-up provision
- The ageing prison estate is not fit for purpose in the 21st century.

### **Management and funding arrangements make joined-up provision difficult**

A major reason why a joined-up approach to offender management has proved so elusive is that the existing management systems and funding arrangements are not aligned and are often contradictory. The prison and probation systems have developed separately for over a century and now have significant differences in culture and

approach to managing offenders. This means that even when systems are compatible, their implementation is often different. Further, funding streams are often restricted to a particular service or agency making it difficult to deliver joined-up working.

For example, the Prison Service classifies prisoners on the basis of security (the risk of escape), while probation judges them on the risk of harm (the risk of re-offending). In his 2003 report, Lord Carter argued sentence plans should be drawn up on the basis of the risk of re-offending based on an offender's previous criminal record – the so-called 'persistent principle'. A consistent approach like this would provide a solid basis for implementing sentence plans. Whichever criteria are used, a clear and consistent approach is needed to balance risk, re-offending and public protection. Such an approach – which has been looked at by NOMS – would make it easier to prioritise and target interventions and manage overall demand.

Giving each offender an individual offender manager responsible for ensuring their sentence plan is fulfilled, whether in custody or in the community, is a key element of the end-to-end approach envisaged by NOMS. If this is to work, a single effective and accurate assessment system is needed, together with a single system to monitor an offender's progress.

The Offender Assessment System (OASys) was developed by the prison and probation services to determine how sentence plans would be followed, and to make arrangements prior to release for drug treatment programmes, accommodation, education and training or employment. But the services adopted different approaches to OASys' introduction, and implementation has been patchy. Only 12 of the 42 prison areas were linked to OASys by June 2007 and OASys was fully operational only on the Isle of Wight. The ineffective implementation of OASys is a contributing factor to the weaknesses that exist within the offender management system. The roll-out of OASys has been hampered by a range of factors:

- Some prisons do not give OASys sufficient priority
- Inadequate resourcing in some prisons
- Under-estimation of the work involved
- The inability to exchange information between prisons and probation IT systems (or, even, between publicly and privately run prisons).<sup>11</sup>

As a result, assessments are rarely coordinated and followed through consistently during a sentence. No individual is responsible for ensuring plans are followed, nor for monitoring progress against targets. Sentence plans are not used routinely to inform key decisions about how a prisoner spends time in custody.<sup>12</sup> Even where the system has been implemented, the results have been disappointing – discussions with officials indicate that only 2% of offenders complete their sentence plans successfully. There is also a question mark over the validity of many sentence plans: one in three sentence reports written by probation officers has been judged inaccurate.<sup>13</sup>

Half of government expenditure on reducing re-offending – which includes skills training, employment advice, healthcare and housing – is not spent by the Ministry of Justice but by other agencies such as Jobcentre Plus, the Offender Learning and Skills Service (OLASS) and the NHS. Yet effective action requires programmes and funding

streams which are aligned (or pooled) and focused on these strategic goals. Over half of prisoners truant from school and 70% have substance misuse problems on arrival in prison. Support such as basic skills training from a further education college, or drug treatment programmes from a specialist provider or the local primary care trust, is therefore likely to be a priority for any sentence plan.

The government's strategy for reducing re-offending focuses on seven issues or 'pathways' to produce a single package of support for an offender as part of their sentence plan. These are: accommodation, skills & employment, drugs & alcohol, health, families, benefits and offending behaviour.

These pathways are all vital elements in resettlement but too often they are delivered in isolation rather than as part of a package. This creates distortions and perverse incentives. For example, one leading skills provider identified a need for anger management training but was forced to re-package it as the course was not eligible for funding under the existing skills 'pathway' funding criteria.

Yet there are examples of end-to-end programmes for offenders. Nacro's Pyramid Project in the Tees Valley works inside local prisons to prepare prisoners for release and supports them with mentors in the community who help them into jobs and accommodation. But Nacro is able to provide this seamless service because its funding comes from a single funding stream, a charitable trust. Its work is not dependent on the disparate funding criteria which determine public expenditure.

The elements of a more effective system are straightforward in theory, but have proven seemingly impossible for successive governments to deliver. A single system that encourages information sharing and consistency is key to rectifying this.

### RECOMMENDATION 1

**A single offender risk measurement should be adopted across the criminal justice system and a single system should be used to assess and monitor offenders for the whole of their sentence**

## The existing prison estate is not fit for purpose in the 21st century

Since 1997, the prison population has increased by almost a third, from 61,000 to 82,000, and the prison system has operated close to its operational capacity throughout that time. This is particularly true of local prisons, many of which are in urban locations and were built in the Victorian era. Of the 14 local prisons inspected in 2005-06, all were operating at the limits of capacity. Swansea was operating at 42% above its certified normal accommodation and Leeds was holding two men in all of its 340 one-man cells.

The government's proposals for expanding the prison estate include 5,000 new places to replace existing antiquated and inadequate provision. Assuming current sentencing policy, reducing the re-offending rate of ex-prisoners by 10% would free up another 5,000 places. This would allow for either a reduction in the size of the prison estate in the longer term or the replacement of more outdated provision with modern facilities better equipped to provide the range of services and interventions needed to rehabilitate offenders.

“Since 1997, the prison population has increased by almost a third, from 61,000 to 82,000...”

Overcrowding is also preventing many prisons from providing offenders with the training, skills and support they need to help hold down a job on release. Some prisons have less than 40% of prisoners in work, with most of those engaged in domestic work on residential wings. In others, inmates without work can spend as little as two hours a day out of their cells.<sup>14</sup>

Rationalisation of prison programmes has meant some prisons specialise in specific programmes while many local prisons offer very few. But the difficulty of moving prisoners to the right prison has ‘... resulted in some courses being undersubscribed in some prisons while at others there were waiting lists that would well exceed the length of prisoners’ sentences – in one case three and a half years’.<sup>15</sup>

The failure of the Prison Service to meet its purposeful activity target of 24 hours a week resulted in the measure being downgraded from a key performance indicator (KPI) to a prison target in 2004. HM Inspectorate of Prisons has expressed concerns that inaccurate reporting by prisons has led to inflated figures:

- Between 1996-97 and 2005-06, the average time out of cell per prisoner per weekday fell from 11.2 hours to ten hours
- Of the 58 prisons inspected in 2006-07 and given purposeful activity assessments only five were performing ‘well’ and 25 ‘reasonably well’, while 28 were performing ‘not sufficiently well’ or ‘poorly’<sup>16</sup>

“Assuming current sentencing policy, reducing the re-offending rate of ex-prisoners by 10% would free up another 5,000 places.”

But overcrowding is not an insurmountable barrier. Some privately run prisons have largely been able to deliver their contractual requirements for purposeful activity and regime despite overcrowding. Average daily time out of cell in privately run prisons is 11.8 hours and privately run prisons typically have a purposeful activity target of 30-38 hours a week. The most recent performance ratings for the 11 privately run prisons found that two were ‘exceptionally high performing’ and all were delivering a decent regime.<sup>17</sup> A number of reports have suggested that privately run prisons have improved decency. This is one example of the innovation that privately run prisons have brought to the prison service.

“Between 1996-97 and 2005-06, the average time out of cell per prisoner per weekday fell from 11.2 hours to ten hours.”

**EXHIBIT 2** The cost of crime for business and society

Meeting the government's own target of reducing the re-offending rate by ten percent would save the taxpayer over £1bn – enough to pay for almost 50,000 NHS nurses or 41 new academy schools. The cost of crime is set out below:

- £60bn – the overall cost of crime each year in the UK – equivalent to 5% of GDP and only £3.7bn less than the amount we spend on education as a nation<sup>18</sup>
- £36.2bn – the estimated cost of crime to victims and households a year<sup>19</sup>
- £9.1bn – the cost of crime to business and government each year<sup>20</sup>
- £2.1bn – the annual cost of retail crime to business<sup>21</sup>
- £6.7bn – the bill for policing and crime prevention in 2006-2007<sup>22</sup>
- £3bn – the cost of dealing with crime per year, of which £2bn is legal aid<sup>23</sup>
- £4.7bn – the cost of dealing with offenders through prison and probation services in 2006-2007 for England and Wales alone – an increase of over 40% in real terms over the last decade (and equivalent to nearly two pence on the basic rate of income tax or almost as much as the entire budget for further education)<sup>24</sup>
- £2.7bn – the government's new prison building budget for 10,500 prison places, nearly double the £1.5bn already pledged to fund the 9,500 places promised in the government's Comprehensive Spending Review<sup>25</sup>
- £37,500 – the annual cost of keeping an offender in prison – far more than the average salary of £25,000<sup>26</sup>
- £230,000 – the total cost of reconviction for a re-offending ex-prisoner, including the court process and subsequent imprisonment.<sup>27</sup>

It is vital these retain the flexibility to deliver their contracted outcomes in the best way possible. Imposing a single regime across all prisons in England and Wales may bring about short-term cost savings, but it would prevent privately run prisons – and the government – from continuing the successful strategies they are currently using to deliver on their targets.

Further comparisons between publicly and privately run prisons are hard to make as the performance measurement systems of the two types of prison are not directly comparable. Privately run prisons are subject to a contract, while public sector prisons' key performance targets (KPTs) are measured, and their weightings refined, to reflect the current working arrangements and objectives of the Prison Service.<sup>28</sup>

Despite this, and the fact that private sector prisons are not required to collect almost a third of the 44 KPTs including health, decency, race equality and employee relations,

“The most recent performance ratings for the 11 privately run prisons found that two were ‘exceptionally high performing’ and all were delivering a decent regime.”

privately run prisons are measured and appear on the Prison Service's weighted scorecard performance table. As a result, ten out of 11 privately run prisons appear to be in the lowest quartile of the weighted scorecard performance tables. This inconsistency has been recognised by NOMS and a new weighted performance matrix is being developed for all prisons.

## 2 Government must commit to sustainable solutions

Improving the effectiveness of the criminal justice system requires solutions which treat the symptoms and causes of crime. Building extra prison places is unavoidable, but it will not solve the evident systemic problems. Alternatives to custody should be used more widely, with funding for offender management re-aligned to recognise that only sustainable employment offers a realistic route out of re-offending. These solutions, which require the government to act now, will not bring about immediate improvements – building new prisons and reforming offender management takes years, not months. But they offer the best solution to rising prison numbers and high re-offending rates. The CBI recommends the government takes the following immediate steps:

- Offender management should focus on sustainable employment
- Confidence must be increased in alternatives to custody
- Prison capacity must be increased to reduce strain on the system.

### **Offender management should focus on sustainable employment**

We know resources are limited. But this makes it all the more important that the offender management system focuses on the most effective way of reducing re-offending – sustainable employment. Research conducted in 2002 by the Social Exclusion Unit shows that being in sustainable employment is the single most important factor in preventing re-offending by ex-offenders; employment can reduce the risk of re-offending by between a third and a half.<sup>29</sup>

Getting ex-offenders into work is the best way to ensure they repay their debt to society. Evidence from National Grid's Offender pre-release Training and Employment Programme suggests that getting into – and staying in – work saves the taxpayer around £17,000 a year per offender.<sup>30</sup>

Getting offenders into work also helps the economy. Rehabilitation should prepare offenders for employment in ways which meet their needs and those of employers and the wider economy. While 57% of employers already employ ex-offenders, they need confidence and support to take on ex-offenders and help keep them in employment.<sup>31</sup>

In particular, offenders need to have the skills necessary to meet employers' needs. Employers value basic skills – at least literacy and numeracy to the level expected of an 11-year-old – as well as generic 'employability' skills such as team-working, problem solving and self-management.<sup>32</sup> CBI research shows that employers rated 'better training for offenders before release from prison' and 'support for employers' as the two initiatives most likely to encourage them to employ ex-offenders.<sup>33</sup>

Helping offenders gain work is at the heart of the government's recent welfare to work proposals, which aim to help the hardest-to-reach, long-term unemployed, many of whom are ex-offenders. The new Local Employment Partnerships (LEPs) form part of the solution to helping people into work. By committing to LEPs, employers will provide new recruits with training specific to the roles for which they are hired, but will also expect applicants to be ready for ongoing employment. Effective support is also essential in many cases to sustain performance in the workplace. The credibility and ultimately success of this programme therefore rests on ensuring candidates are ready to move into – and remain in – work.

A successful offender management system should form part of the welfare to work programme to provide integrated support. By making sure funding for offender rehabilitation is part of an overall welfare to work strategy – and working with the organisations delivering welfare to work services – the piecemeal approach to dealing with offenders could be set aside. This is vital, as the multiple disadvantages faced by offenders are in many cases the same as those faced by those on welfare. This is reflected

in the existing seven ‘pathways’ of offender resettlement, which mirror the areas welfare to work providers focus on. Resettlement should align commissioning of services in custody and the community – OLASS for training, the Primary Care Trust for healthcare, local authorities for accommodation and Jobcentre Plus for employment and benefits. These services need to be joined-up across prisons and probation by working with offenders while they are still in prison to prepare them for release.

A resettlement strategy based on getting offenders ready for work needs to deal not only with skills deficits and training but also with the whole range of other barriers to employment, such as drugs, accommodation and mental health issues. Offenders need to be treated as individuals – jobseekers with multiple needs – rather than as individuals with separate issues relating to accommodation, drugs, benefits or health issues. Only by dealing with offenders and making them employable will they be able to get, and hold down, jobs.

A successful offender management system needs managers responsible for ensuring offenders receive the help they need to address their offending behaviour. It requires them to identify an offender’s needs based on their sentence plan and to liaise with providers to ensure the correct services are delivered. The experiences of providers from all sectors suggest that the basic framework for joined-up offender management and rehabilitation already exists, and is largely encapsulated in NOMS’ reducing re-offending strategy.

Focusing on multiple disadvantage – for example, the problems faced by an illiterate ex-offender with mental health issues – is by far the most effective way to address offending behaviours. The recent Equalities Review *Fairness and Freedom* commented that multiple markers of disadvantage drastically reduce the probability of being employed.<sup>34</sup>

More can be done to develop innovative provision of best practice. Some employers – such as National Grid Transco – are already working with offenders on schemes providing effective links between prison and work for

#### CASE STUDY 1

#### A flexible and joint approach to employment services – Progress2work

Working Links has been delivering progress2work in Wrexham and on the north Wales coast since 2002. Working alongside the local Probation Service and Drug Treatment and Testing Orders team, Working Links has moved over 500 former substance misusers into further education and into work, helping them remain there beyond the crucial first three months.

The Dawn Project, also set up in the area, brings together the North Wales Health Authority, North Wales Police, North Wales Probation, CAIS, SOVA, Nacro, Employment Service, further education colleges and private sector provider GSL, to address the current and emerging needs of those involved in, or at risk of, substance misuse, criminal behaviour and social exclusion.

This 12-week programme offers participants the opportunity to gain Open College Network qualifications, open an account with the Royal Bank of Scotland and get an insight into what employers look for. The Duke of Edinburgh Award Scheme’s work covers motivation skills, decision making and team-building exercises,

while interview skills training and mock interviews are provided with the support of local employers.

Integral to the success of this initiative is the strength of Working Links’ local relationship with the Probation Service. This is bolstered by:

- Devising agreements that allow Working Links and the Probation Service to share premises so that people under Probation Service supervision can access services in a familiar setting
- Recognising that people need support outside traditional 9-5 working hours, which resulted in them running an evening surgery at a local hostel
- Working Links staff making regular visits to local Probation Service offices in Shotton to ensure smooth and efficient referral procedures
- Participating in the local service delivery forum for the Dawn Project in Wrexham.

offenders. These initiatives provide a clear fit between job and skills training and are crucial parts of the move to get ex-offenders into employment. But such initiatives need to complement a broader, joined-up approach that addresses getting offenders into work as part of the government's wider welfare to work programme.

Many successful services currently operating across custody and the community are not commissioned by NOMS but funded from other sources because of the lack of existing joined-up commissioning arrangements. For example, the G4S Transitional Support Scheme (TSS) provides across-the-prison-gate mentoring support for offenders with substance misuse problems for up to 12 weeks after release. It is wholly funded by the Welsh Assembly Government.

The programme has been running in Wales since January 2004 with G4S providing the service in the south Wales and Gwent areas. The scheme is for voluntary participants serving a sentence of fewer than 12 months and returning to resettle in Wales. In addition to mentoring, TSS helps ex-offenders access services from a range of other agencies to help manage the transition from custody into the community. Following a positive external evaluation a longer-term evaluation is being carried out on behalf of the Welsh Assembly Government. And following a re-tender process G4S now delivers the contract for South Wales, Gwent and Dyfed Powys.

Innovative schemes that bridge the gap between prison and resettlement also operate in prisons. HMP Forest Bank focuses on the importance of accommodation as part of resettlement and provides offenders with on-site assessment for housing and a single point contact for accommodation. In 2007, 96% of ex-offenders from the prison had accommodation to go to on release, and 90% of prisoners on work-related programmes and financial courses have also been given access to a Co-operative Bank account. This integrated approach resulted in HMP Forest Bank – an 800-place local prison – equipping 256 ex-prisoners with a job or training in place, accommodation and a bank account on release in 2007.

For offenders serving or completing their sentence in the community, interventions and support should help rehabilitate them while at the same time ensuring effective monitoring of their activities. Using existing facilities in new ways normalises offenders' lives and reduces the risk of breach or re-offending.

“This integrated approach resulted in HMP Forest Bank – an 800-place local prison – equipping 256 ex-prisoners with a job or training in place, accommodation and a bank account on release in 2007.”

## CASE STUDY 2

### Providing a direct route into employment – National Grid

Under the leadership of National Grid's chairman, Sir John Parker, the Young Offender Programme is one of the most well-known examples of an employer engaging with prisons across the UK. The programme has reduced re-offending among those on the National Grid-led scheme to less than 7% from a national figure of over 75% by offering prisoners training while in prison and employment on release. The programme, which began at Reading Young Offender Institution, was initially established to meet local skills needs and trained young offenders as forklift truck drivers. Due to its success, the programme was expanded into the gas industry and,

having been highlighted in the 2003 Budget Statement, was developed to engage other industry sectors.

The scheme works with prisoners in the latter stages of their sentences who are eligible for Release on Temporary Licence (ROTL). Offenders, identified and rigorously selected for their suitability by prison governors, are given the opportunity to make a seamless transition from prison to employment and become taxpayers. The scheme has now expanded to over 80 companies and 1,000 offenders have now gone through the programme.

**CASE STUDY 3****Helping offenders in the community – Northamptonshire Probation Area Pharmacy Project**

Launched in May 2007, this project allows probation officers to work with drug-dependent offenders in the retail shops of Boots the Chemist. Offenders collect their medication while having supervision with their Probation Officer. This ensures they keep in regular contact with probation staff and their behaviour can be monitored. The initiative also keeps offenders motivated as they deal with their addiction.

Northamptonshire is the first probation area in the country to run this scheme. It has won a 'Priority Probation' national award (formerly the Lord Falconer's Challenge) for its work in reducing bureaucracy and aligning probation with other services. The local Drug

and Alcohol Action Team and the National Treatment Agency have been fully supportive as the scheme aligns drug and probation services through the better management of offenders in the community.

Since the scheme started it has yielded further advantages. Bureaucracy has been reduced, as separate appointments with the chemist and the offender manager are combined. Unemployed offenders were previously collected and returned from probation offices to attend sessions – now they meet the offender manager at the pharmacy. The scheme has now been extended to include the Co-operative Chemist chain. Offender compliance has also greatly increased.

**RECOMMENDATION 2**

**Resettlement of ex-offenders should work within the welfare to work framework to provide joined-up provision in custody and the community. Innovative ways of getting ex-offenders into work should be encouraged**

**Confidence must be increased in alternatives to custody**

The average community sentence costs around £20,000 a year less than a custodial sentence, and recent studies suggest that the public supports alternatives to custody if they can be shown to reduce re-offending.<sup>35</sup> Yet since 1995, the total number of offenders given short-term sentences of fewer than 12 months has increased by 27%, and the proportion of offenders released on Home Detention Curfew to complete their sentence in the community on a tag reduced from 37% of those eligible in 2003 to 32% in 2005.<sup>36</sup>

While tougher sentencing guidelines are a factor, these figures also point to a lack of confidence in the effectiveness of community punishments among judges and magistrates. Judges reflect wider concern and evidence suggests the public does not have confidence in the effectiveness of existing community punishments. If community

sentences are to be viable alternatives to custody, confidence needs to be re-built among judges and the public.

This begins by showing the public that justice is being done and that the community is benefiting. It also means showing to sentencers that community punishments can reduce re-offending and that technology – such as tagging – is effective in preventing further crime.

Courts can already impose up to 300 hours unpaid work as part of a community sentence; such unpaid work now forms part of about half of all community sentences. This is a good opportunity for offenders to 'give something back' and gain new skills. It provides offenders with practical learning in real situations and prepares them for employment or formal training, but unpaid work should not be seen as a 'soft option' for the offender – it must be seen as reparation to the community.

Many organisations already work with offenders and communities to undertake community regeneration projects:

- **North London Probation Board** and other probation areas work with local authorities to identify work for offenders that can make a tangible difference to improving the quality of life for local people – by restoring or improving parks, community spaces and community facilities

- **Groundwork** – a charity aimed at building sustainable communities through joint environmental action – focuses on working with those who find it hardest to get a job and getting them to contribute to the regeneration of their own neighbourhoods. It has developed Blue Sky as an enterprise which provides work placements for ex-offenders. Its trainees, who are referred from prisons or via the probation service, undertake vocational training and work placements at local companies. They are supported by supervisors who understand their problems – not least because they share a prison record. The trainees leave with skills, work experience and, crucially, a reference – vital to help get them their next job.

Many offenders come from the most deprived communities, so ensuring they make reparation in those communities can help to improve the local environment. One way to achieve this is to create a more direct link between the community and the court process. For example, in November 2006 the government announced the expansion of the community courts initiative piloted in north Liverpool and Salford to ten new areas across England and Wales.<sup>37</sup>

These community courts are based on community justice centres developed in the United States – most notably in Red Hook, New York – which deliver a co-ordinated approach to people's problems by co-ordinating civil, family and criminal jurisdictions. Judges can combine a range of sanctions and services to deliver justice in the widest sense and tackle the root causes of offending. This is supported by a range of programmes that engage local residents in 'doing justice'. These include mediation, community service projects that put local volunteers to work repairing the damage they have done and a youth court where teenagers resolve cases involving their peers. Engaging the community in aggressive crime prevention helps solve local problems before they even come to court.

Secure hospital accommodation can provide an alternative to custody. Around 90% of prisoners have mental health problems and one in ten prisoners has a severe mental health condition.<sup>38</sup> Yet few get adequate treatment or support in prison. The costs to the justice system are significant. Many prisoners will need to be kept in a cell by themselves, or on the hospital wing, or on suicide watch. This can cause additional strain on a prison system already at capacity. Recent reforms in prison healthcare have improved the quality of care for offenders with severe

mental health problems, but there are still significant problems with the capacity of prison health services to cope with mental ill-health.

Diversion – allocating offenders with mental health problems to secure hospital accommodation – and transfer – moving offenders from prison to hospital – are more effective than keeping them in prison: studies show that re-offending over the two years following release is below 10% for those released from forensic services.

The effective diversion of offenders who would benefit from treatment for mental illness outside of the criminal justice system can ensure they are treated in the most appropriate settings available so their condition improves rather than worsens. It can also help tackle the rising custodial population, and reduce the increasing re-offending rates for those leaving prison.

But current arrangements mean the NHS is not only responsible for prison healthcare but also responsible for identifying and paying for hospital services for a patient diverted from prison. The existing system is therefore a disincentive to transfer patients from prison to hospital. These difficulties are compounded by shortage of NHS secure beds and an excess of around 1000 beds in the independent sector. With some notable exceptions there is a continued reluctance by the NHS to purchase beds from the independent sector. The status quo means that severely mentally ill prisoners remain in prison rather than benefiting from a readily available psychiatric bed with all its attendant benefits.

Another alternative to custody is electronic monitoring, or 'tagging'. Monitoring can provide a secure and value-for-money option for community sentencing – but it must be trusted by the public. To do this, providers of electronic monitoring must constantly strive for better and more secure ways of providing their service. The government also has a role to play, and should improve its dialogue with companies supplying the technology and the probation service to secure a continued commitment to innovation and improvement on both sides.

The National Audit Office estimates NOMS could save up to £9m a year if it streamlined its assessment process. Its 2006 report *The Electronic Monitoring of Adult Offenders* shows that three months of an electronically monitored curfew is nearly five times more cost-effective than three months in custody: on average, it costs £1,300 to monitor

an offender who has been released from prison on Home Detention Curfew (HDC) for 90 days, compared to £6,500 for the same period in custody.

Electronically monitored curfews cannot stop someone committing offences, but they do offer control and place restraints over offender behaviour. These restraints offer a more structured transition back into the community and can impact on people's behaviour. Research undertaken by Leeds University showed that 41% of offenders reported a decrease in alcohol use while on curfew, 42% reported a reduction in drug use and 46% a reduction in offending. In addition the tag offers some control to the authorities and should the person be in breach, recall to prison is swift.

Despite this evidence, there has been a decline in the use of HDC since 2005. This is partly because prisoners are opting for the alternative End of Custody Licence (ECL) instead. ECL currently allows offenders to be released up to 18 days early without being subject to electronically monitored curfews. Providers report that prisoners prefer to wait for their ECL and come out without restrictions. More worryingly, some prisoners who have been refused HDC are subsequently released on ECL – without the public protection constraints that HDC offers.

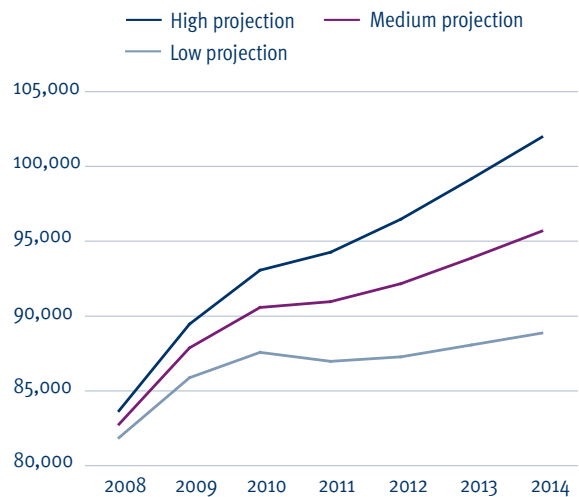
### RECOMMENDATION 3

**Greater use of innovative and effective community sentences should be encouraged. Barriers to diverting and transferring offenders with mental health problems from prison should be removed. And government and providers should work together to improve public confidence in electronic monitoring systems**

#### Prison capacity must be increased to reduce strain on the system

The most recent review of the prison estate by Lord Carter of Coles assumed an increase in the prison population to 96,000 by 2012. To manage this, the Ministry of Justice has announced a near doubling of its capital investment budget from £1.5bn to £2.7bn to fund 10,500 prison places in addition to the 9,500 already promised in the government's Comprehensive Spending Review (CSR).<sup>39</sup>

#### EXHIBIT 3 Projected prison population (end June 07 figures)<sup>40</sup>



It is clear new prisons are needed to deal with the increased number of offenders and to reduce overcrowding. The 20,000 additional places made available since 1997 have all been filled and nine of the thirteen new prisons built in that time are already overcrowded.<sup>41</sup> To deal with the current crisis, the government must act swiftly to procure the extra capacity necessary to house the rapidly rising prison population.

New prisons will take up a large proportion of new government spending on criminal justice over the next five years and it is vital that this money is spent as efficiently as possible. Privately built and run prisons have operated successfully within England and Wales for many years and their success should be noted. When commissioning the new places needed to deal with overcrowding, the government must not let ideology or opposition to reform prevent expert providers with track records of success bidding in a free and fair process.

The record of private providers in prison construction and management since 1991 has demonstrated the benefits of using competition to deliver extra capacity. Prisons built under the Private Finance Initiative (PFI) have been delivered on time and on budget. Construction times under the PFI have fallen by more than 40% and cost savings appear to be more than 20%. It has been estimated that competition is saving the taxpayer £40m to £60m a year.<sup>42</sup>

Privately run prisons have saved the taxpayer money in comparison to previous investment in the prison estate:

- In the seven traditionally procured prisons studied by the NAO in 1993-94, actual construction expenditure exceeded estimated costs by more than 18% (although the amount differed between projects)
- In a further 15 refurbishments of existing prisons, the final price exceeded the contract price by 10% or more
- The first PFI prison, HMP Parc in 1997, resulted in a saving of 17% above and beyond the estimated 'efficient case' costing for a traditionally built but privately managed facility.<sup>43</sup>

Privately run prisons are also delivering value for money in their operation. Contrary to currently quoted data, private sector prisons cost less than those in the public sector. The regularly quoted comparative costs of the provision of services in prisons between the public and private sector paint a picture of private sector provision costing the same as or more than the public sector. In fact, the cost of private sector provision is markedly lower because the figures used for the comparison include significant elements of cost in the private sector figures not included in the public sector figures. A comparison of costs of a private sector prison and the average for the public sector equivalent illustrates the point.

Official figures show a private sector prison has an annual cost per prisoner per year of £29,000, while the average for a similar category B male local public sector prison is £28,000.<sup>44</sup> But, the quoted private sector costs include capital repayment, depreciation, pensions and organisational overheads, none of which are included in the public sector comparator. Subtracting just the capital repayment costs would lower the private sector comparator to £21,000. Taking into account the other elements would increase the differential even more.

The prison population has increased by almost a third in the last decade – during which prisons have operated close to their operational capacities. Many existing prisons – in particular local prisons housing less serious but often more persistent offenders – are in urban locations and were built in the Victorian era. Local prisons are also the most overcrowded part of the prison estate. In 2001, Lord Carter argued that, “Too many of our prisons are old, costly and unsuitable for modern needs”.<sup>45</sup>

These prisons need to be replaced with modern facilities better equipped to provide the range of services and interventions needed, including training and education facilities, adequate healthcare and drug treatment facilities, and family contact and visitor facilities. The government's existing proposals for expanding the prison estate include 5,000 places to replace existing antiquated and inadequate provision. This is a good start, but more needs to be done in the longer term to replace inadequate prisons with facilities that aid rehabilitation.

Analysis suggests that a number of existing prisons are built on high-value urban locations where the value of the land could be realised at commercial rates and used for other purposes, such as housing.<sup>46</sup> The government should investigate the potential gains from this approach.

#### RECOMMENDATION 4

**The government should act swiftly to procure the extra capacity necessary to house the rapidly rising prison population, and ageing prison accommodation which is unfit for purpose should be replaced with secure, effective facilities**

### 3 Market management lessons must be learnt

The government can achieve the improvements needed in the criminal justice system if it commits to reform and uses its existing powers to push them through. The CBI calls for the government to take a lead from the good practice in all areas – including other areas of government and private and voluntary sector providers.

To achieve its goals the government must foster innovation and improvement. As in other public service markets, this means taking steps to ensure a level playing field between all providers so that quality and value for money can be properly compared. A commitment to improving services also means not tolerating inadequate existing provision and introducing market testing. Innovation also requires funding streams that are sustainable and aligned so that providers are encouraged to come up with complete rather than partial solutions.

Given this, the government should take steps to ensure the following:

- Funding to reduce re-offending should be directed through a welfare to work model
- Better commissioning and financial management capability should be prioritised
- Fair and independent performance systems must be introduced
- All providers which do not meet agreed targets should be subject to market testing.

#### **Funding to reduce re-offending should be directed through a welfare to work model**

The Ministry of Justice should look to the progress being made on reforming welfare to work provision and work with the Department for Work and Pensions (DWP) to deliver a joined-up approach to reducing re-offending that gets individuals ready for sustainable employment. The DWP is moving to a prime contracting delivery model where an organisation is responsible for co-ordinating

and contracting out provision and joining up as appropriate. This is because to deal with multiple disadvantage effectively the market for provision of services must be restructured to ensure that funding comes from a single source. As estimates suggest that between 30 and 50% of those on welfare to work courses are ex-offenders, it should be clear that government spending on this group needs to be co-ordinated across departments.

CBI members see the prime contracting model as relevant for addressing the complex needs of offenders. It represents not just end-to-end thinking but also end-to-end funding. This can be seen in the Pathways to Work pilots that began in 2004/2005 and which in 2008 will be delivered largely by alternative providers.<sup>47</sup> The pilot projects demonstrated a range of joined-up working:

- Support from a personal adviser offering monthly contact in the first eight months of a claim
- NHS rehabilitation support to manage health conditions
- Partnerships with New Deal schemes
- Work with local GPs and employers to ensure incapacity benefit claimants are not discouraged from seeking work.

Streamlining government funding from departments for initiatives such as skills, regeneration and health care services is central to this approach, as it would help prevent duplication of spending and align objectives across government. The DWP has started to do this by working in partnership with the departments for Communities & Local Government, Health and Innovation, Universities & Skills. Organisations such as the Learning and Skills Council (LSC) and OLASS would also be relevant partners.

In practice this would mean the new, single regional managers who are to replace prison service Area Managers and NOMS Regional Offender Managers, work with prime providers and link offender management funding with welfare to work prime contractors. Such work would entail ‘bottom-up integration’: funding would be held by NOMS, but linked with the prime provider of welfare to work services to provide the services that are so important to success.

Private providers are already seeking to do this by linking up government agencies – for example, as well as delivering OLASS programmes in 32 public sector prisons across the UK, A4e already works alongside the LSC, Jobcentre Plus and the Probation Service to provide employment, training and support to ex-offenders in the community. It is also developing the concept of the ‘Working Wing’™ which would integrate these services and use a prime contracting model to identify offender needs and provide employment-focused support and training in prison and after release.

The criminal justice system should also learn the lessons from other sectors, such as welfare to work and healthcare, and develop outcome-based contracts for providers delivering services which tackle re-offending. Contracts based on outcomes drive success in two ways:

- They encourage prime contractors to work with organisations to pick and choose services, tailoring a package to meet an individual’s needs. These specialist services are often delivered by smaller providers or third sector bodies
- Outcomes-based contracts address concerns that prime contractors will ‘cream’ the market, taking on easier-to-place cases and ‘park’ the more difficult ones. In fact, prime providers will be incentivised to develop the best service because payment will be assessed on this basis.

#### RECOMMENDATION 5

**Funding for offender management should be co-ordinated within the prime contracting welfare to work model, recognising the specific circumstances of interventions delivered in prison. And outcomes-based payments should be used to incentivise providers to get ex-offenders into sustainable employment**

“Commissioning must be focused on understanding and delivering what offenders need to live law abiding lives...”

#### **Better commissioning and financial management capability should be prioritised**

Effective commissioning – the process of assessing, procuring, managing and reviewing contracts and service delivery – is essential to improving outcomes and creating an offender management system that focuses on individual offenders. In order for single area managers to act as custodians of the market, they should concentrate resources on their commissioning roles: needs analysis, procurement and contract management.

Commissioning strategies, coupled with efficiency targets, allow for the delivery of targeted services despite resource constraints. Achieving some of these planning and demand management functions will mean a major change in both the volume and accuracy of the data they receive and government’s ability to analyse it. NOMS should do more to recruit high-calibre managers from outside the existing offender management service.

Commissioning must be focused on understanding and delivering what offenders need to live law-abiding lives, rather than relying on traditional service delivery channels. Commissioners should not be ideologically concerned about whether the provider is from the public, private or voluntary sector: the aim should be to ensure seamless offender management and value for money. There have been examples of good commissioning: like the East of England Serco-led partnership with Rainer and Turning Point to deliver supported job search for ex-offenders who are referred to the service by probation officers. This was brokered by the Regional Offender Manager (ROM) with the Probation Boards in the region. These good ideas should be championed and learned from.

The Ministry of Justice has a number of initiatives to help commissioners do this and capitalise on private and voluntary sector expertise. The Academy for Criminal Justice Commissioning is encouraging the dissemination of best practice. ROMs and probation trusts can draw on this expertise when they need additional help, addressing the problem of having insufficient size and wealth to attract experts.

### Fair and independent performance systems must be introduced

Costs need to be properly measured if efficiency is to be improved in existing prisons and new prisons commissioned fairly. The current comparator used by NOMS to measure the cost of privately run prisons does not compare like with like, as it includes prison capital repayment, life cycle, pensions, and central and regional overheads which are not included in Prison Service figures for publicly run prisons. A clear measurement of unit cost comparison is needed for all prisons, so commissioners can ensure value for money is being delivered.

Measuring performance accurately across the criminal justice system is fundamental to challenging poor performance. The Ministry of Justice must be able to measure the performance of all providers in a fair and consistent way to allow true comparison on the basis of results, not outputs. CBI members have expressed concern that the existing weighted scorecards used to assess prison performance fails to achieve this. The Prison Service weighted scorecard, which does not allow privately run prisons to be assessed on a number of targets applicable to public sector prisons, should be replaced by a new and independent measure with a clear methodology based on outcomes – which recognises true performance. Such a

measure, which would allow good and bad practice to be identified and dealt with robustly, should be the responsibility of NOMS.

In addition to this all providers should be subject to the same measurement for service delivery. The CBI supports the recommendation – made in Lord Carter’s review of prisons – that public sector prisons or prison clusters should be subject to service level agreements (SLAs) equivalent to contracts with private sector prisons, together with a standard operational model for each category of prison so that clear standards can be set.<sup>48</sup> It would also bring public sector prisons in line with private sector prisons and allow for direct performance comparisons by commissioners and inspectors.

But for these systems to be applied fairly it is vital that a level playing field between all providers exists and that the purchaser-provider split, central to NOMS, be retained. The CBI is concerned by proposals to give prison service area managers – currently responsible for the performance of public sector prisons in their area – responsibility for monitoring the contractual performance of privately run prisons. This clearly undermines the purchaser-provider split and makes a level playing field more difficult to achieve.

#### CASE STUDY 4

#### Improving commercial expertise – the Academy for Criminal Justice Commissioning

NOMS created the Academy of Criminal Justice Commissioning in September 2007 to provide a centre of excellence for criminal justice commissioning – promoting the aims of reducing crime, strengthening public safety and improving confidence in the justice system. The initial focus of the academy is on those directly involved in commissioning offender services, but it also intends to embrace the needs and expectations of providers and partners. Its objectives include:

- Strengthening the reputation of and increasing confidence in criminal justice commissioning
- Identifying and sharing good practice in public service commissioning
- Becoming a central repository of commissioning knowledge and experience

- Creating a gateway for recognised awarding bodies of standards in criminal justice commissioning and related subjects
- Strengthening links in criminal justice commissioning, procurement, performance management and evaluation systems through partnership working with stakeholder bodies.

Events and activities include:

- Evening seminars to discuss commissioning issues
- A regular bulletin
- Promotion and publication of good practice guides
- Research into commissioning models
- Job swaps and secondments.

## RECOMMENDATION 6

**Better commissioning and financial management capability should be prioritised and resources devoted to improving such skills. To achieve a level playing field, the government should introduce a system of unit cost comparison and service level agreements for all prisons. NOMS should be given responsibility for a new performance measurement system for all prisons to replace the existing weighted scorecard and the purchaser-provider split should be evident throughout the system**

### All providers which do not meet agreed targets should be subject to market testing

The CBI believes that market testing – improving a service by exposing it to competition from external providers – is an effective way of challenging poor performance and giving a commissioner the chance to select the best possible provider in an open competition. Recent market

testing exercises in the prison estate have not been followed through – for example, the halting of the market testing of the cluster of prisons on the Isle of Sheppey in 2005 mid-way through the process reduced market confidence in the government's commitment to reform. In the short term, performance testing of existing provision should be introduced to improve standards. But any performance testing exercise must be transparent and part of a continuous programme of improvement with the clear recognition that failure to improve will lead to market testing.

The proposed move from probation boards to probation trusts provides a clear opportunity to assess performance and market test sub-standard provision. Where provision is inadequate, a performance testing exercise should be carried out, on the basis that boards ready for trust status are allowed to make the transition. Underperforming boards should be required to consider partnerships with other providers – whether private or voluntary sector or existing successful boards – as soon as possible.

## EXHIBIT 4

### Competition improves public services

Competition can improve public services by acting as a catalyst for change, promoting innovation and giving public authorities a choice of providers. Evidence from other sectors demonstrates the benefits that can result:

**In welfare to work:** private sector providers have delivered concrete results in helping long-term unemployed people back to work. One provider of employment services to the long-term unemployed in some of Britain's most disadvantaged communities has used an Employment Zones contract to help more than 76,000 people back to work, 80% of whom stayed in work for longer than 12 months. Success is linked to an outcomes-focused contract, which incentivises staff and jobseekers through a tailored recruitment pathway, using different management strategies, and real financial incentives for staff.

**In health:** the Health Select Committee said in 2006 that competition from independent sector treatment centres (ISTCs) may have had a significant effect on improving NHS services, and that this may be one of the most important contributions of the ISTC programme.<sup>49</sup>

Somerset PCT (formerly Mendip PCT) claims that the establishment of an ISTC has given its commissioners influence over local NHS trusts to reduce their waiting times. Two acute hospitals in the area subsequently improved performance without extra resources, and one is now likely to reach the government's goal of 18 weeks waiting time this year as a result of these efforts.<sup>50</sup>

**In education:** private sector provision of educational support services for local authorities has contributed to major improvement in outcomes. Between 2000 and 2005 the proportion of pupils who achieved five or more GCSEs at A\*-C grade increased by more than three times the national average in the nine privately managed local education authorities. These improvements have continued up to the present. For example, the London Borough of Islington saw a rise from 26.5% in 2000 to 47% in 2006. In Bradford, the increase was from 34% in 2001 to 50% in 2006, and in Waltham Forest the pass rate rose from 43% in 2001 to 51% in 2006.<sup>51</sup>

A first step would be to encourage probation boards to become trusts on the basis of readiness. At present the Ministry of Justice proposes that only six of the 42 probation boards – Dyfed Powys, Humberside, Leicestershire and Rutland, Merseyside, South Wales and Mercia – receive trust status in April 2008, with the others following in April 2009 and April 2010. The reasoning behind this approach is that the six pilot trusts represent a cross-section of experience and performance and can act as pathfinders for those that follow. This fails to recognise that there are existing high performing probation boards with the ability and willingness to achieve trust status now. Boards should become trusts as soon as they are ready, in order to maintain the momentum of reform and to increase the pool of experience and good practice.

To help deliver better outcomes, the Ministry of Justice should encourage the piloting of partnership models by the first wave of trusts and make the transition to probation trust status dependent on partnership with other providers. This is needed to make greater use of the expertise of the private and voluntary sectors in probation:

this is currently under-used, with approximately only 3% of probation services being commissioned rather than provided directly. NOMS had set the Probation Service a target for commissioning 10% of services from alternative providers for 2007-08, but few probation boards are expected to reach this figure. Furthermore, no target has been set for 2008-09 and the Ministry of Justice is instead encouraging probation boards to focus on best value. The CBI believes this should include commissioning services rather than providing them directly. NOMS should work with probation boards and trusts to foster this message and demonstrate its benefits.

#### **RECOMMENDATION 7**

**Services not meeting clear performance targets should be subject to market testing, and commissioning services effectively should be an element of best value measurement for probation trusts**

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