



ESRC Seminar Series 'The Third Sector in Criminal Justice'

Seminar Four – 24th November 2011

The mixed economy of criminal justice: the challenges of contestability, privatisation and partnership working

University of Leeds

Report

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Programme

- 9.00-9.30 Registration and refreshments
- 9.30-9.45 **Introduction**
Dr Anthea Hucklesby (University of Leeds)
- 9.45-11.45 **Marketisation, commissioning and the mixed economy of criminal justice**
Jonathan Martin (Senior Manager, Commissioning and Commercial, NOMS)
Gary Kernaghan (Contract Director, North East Yorkshire & the Humber, G4S)
Clive Martin (CLINKS)
- 11.45-12.15 Refreshments
- 12.15-1.15 **The Third Sector and public services: implications for criminal justice**
Rod Dacombe (Department of Management, Kings College London)
- 1.15-2.15 Lunch
- 2.15-4.15 **Payment by Results**
Spencer Draper and Elizabeth Bouchard (Community Payment by Results, NOMS)
Andy Cross (St Giles Trust)
- 4.15-4.30 Summary and Feedback
- 4.30 Close

Introduction

The fourth of six ESRC seminars on the involvement of the third sector in criminal justice was held at the University of Leeds on the 24th November 2011. The focus of the day was on the mixed economy of criminal justice and the challenges of contestability, privatisation and partnership working. The event was attended by representatives from third sector organisations, private sector organisations, statutory bodies, academics and research students.

Summary of content

The presentations explored the perceived benefits and emerging concerns of the mixed market service economy in criminal justice. Given the current policy emphasis on the commissioning of services for offenders and payment by results (PbR), it was not surprising that these were participants' focal concerns. In particular, the third sector was scrutinized with respect to its potential 'fit' in a more competitive and marketised service landscape, and the potential impact on its various roles as provider, innovator, advocate for service-users and vehicle of change.

Perceived benefits

Several arguments were made as to why a commissioning approach could be beneficial to justice services, including claims that greater 'success' could be achieved for less cost, and that the involvement of more competitors would raise the quality of services, bring about more innovation and reduce obstructive bureaucracy. Moreover, it was suggested that current policy was a continuation of existing practice because offenders already access services from a wide range of providers.

The mixed economy was presented as an exciting opportunity wherein justice services from different sectors could enter into constructive partnerships and enhance each other's strengths. For example, private enterprise partners in bidding consortia could provide the initial investment outlay and cash flow, thus bearing the financial risks and allowing third sector partners to supply skills and services.

There was some enthusiasm for social impact bonds (SIBs), which were argued to be more 'up front' than other financial models because they provide finance to set up services rather than payment being made on outcomes, operate for longer terms and allow more flexible funding structures. This enables service providers to influence the specification and measurement tools, which in turn enables 'services that matter' to be developed.

It was acknowledged that innovative solutions were necessary because reoffending rates remain stubbornly high despite an overall fall in crime and tackling the problem through increased spending was unsustainable. 'Payment by results' (PbR) was presented as a viable solution on the basis that it sets transparent performance and outcome thresholds on which payment will be made. In turn, this stimulates providers to offer value for money whilst also giving greater discretion and autonomy for providers to decide how services will be delivered. The PbR pilots at HMP Peterborough and HMP Doncaster were examined as case studies. Several contributors related how PbR-based service frameworks might work including contracting processes, discussed relationships among the partners involved in the pilots and examined the different frameworks for measuring performance and payments which are being

piloted. The PbR model requires that providers carry the financial risks and payment is only made on measurable outcomes – currently an agreed reduction in reoffending rates. The primary aim is to save money. The four different PbR methods being piloted are being evaluated in order to gather evidence of ‘what works;’ and to scale up successful methods for wider use.

It was proposed that there should be a national system of oversight for commissioned services, such as an creation of an Ombudsman’s office.

Shared concerns

Whilst it was recognised that a mixed economy of providers can be positive for service provision, providers and users, the discussion raised questions about whether the current commissioning model was the most appropriate way to achieve sustainable mixed service partnerships. The discussion highlighted several political or ideological dimensions to the determination to achieve a mix in criminal justice provision and governance. A central concern related to a growing recognition that the *mixed economy* may in practice result in *private sector* dominance of the service landscape. In this vein, it was observed that *partnership working* could in practice become *contractual working* or sub-contractual working for third sector partners. Concerns also focused on the quality and type of services provided and whether commercially viable services would meet the needs of clients. Additionally, it was suggested that the dominant influence of private sector values and practices in partnerships might result in services being provided only for mainstream client groups thus diverting the third sector from its innovative role in providing services for minorities or hard to reach groups. Under these circumstances, commissioning and PbR will hasten the current trend whereby small agencies are crowded out of the market, while large scale third sector agencies emerge which are akin to private sector businesses. It was observed that voluntary sub-contractors can be used by primary (often commercial) bidders as ‘bid candy’ to win contracts. Overall, third sector services could be susceptible to a loss of autonomy and ‘mission drift’ as survival becomes increasingly dependent on funder priorities, rather than service user needs. Private sector representatives concurred that there is a risk of mission drift, given that ‘niche’ or specialist work does not necessarily attract funding.

The discussion charted the wider picture in which the changes are being proposed and implemented including the future of the statutory sector in a climate of retreating public funding and the substitution of statutory services with alternative providers. Concerns were voiced that the statutory sector might become largely a commissioner of work and the implications of this approach for some core specialist work currently carried out by it including court reports were discussed. Participants were apprehensive about who controls the commissioning process leading to concern about what happens when things go wrong or when conflicts of interest arise.

Sectoral change and future viability

The third sector has always existed within a mixed economy. The growth in the size of the sector in the 1980s and 1990s was largely driven by public sector contract funding. Under New

Labour, 'partnership' with the third sector became central to political discourse. The subsequent 'partnerships narrative' framed the sector as being close to its users, locally engaged, innovative and cost effective. The period also saw the third sector itself becoming institutionalised, through initiatives such as the Compact and the institution of the Office for the Third Sector (now Office for Civil Society) at Cabinet level. The third sector remains important to the Conservative-Liberal Democrat coalition's policy, although differently framed. 'Big government' is now viewed as problematic and top heavy, and hence, the third sector must be presented as flexible market players to meet a new set of expectations

Some inconsistencies in current policy were discussed. It was questioned whether the 'Big Society' agenda was a coherent policy theme, or borne out of an ideological commitment to roll back the public sector. Moreover, it was difficult to see how purely competitive markets might develop unless they were managed and fostered. Additionally, the expansion of civil society would not necessarily translate into a smaller state, as commissioning and contracting are tied to central government. The added complexities of competing political agendas, such as 'localism', were also discussed in terms of how they fit with the concept of a market.

Specific considerations were also given to the changing relationship between state and the third sector and specifically, to concerns that the only way for the 'independence' to be retained might be to split the service provider and advocacy arms of the sector and individual organisations.

Participants reflected upon whether the 'market' was a trustworthy and viable model for distributing social goods. On a practical level, it was suggested that complicated issues and complicated lives do not easily match market ideas of single purchasable units and unitisation is difficult to calculate. Concerns were raised about whether competition and commissioning are the most appropriate mechanisms to provide the joined up services offenders need and whether important work on desistance and restorative justice would continue under this model. Furthermore, the binary threshold for PbR – calculated on the basis that individuals have or have not been reconvicted – will prove difficult to implement.

Concluding deliberations

The seminar posed a number of questions which can be broadly grouped into three sections relating to the needs of service users, issues for service providers, and the bigger picture.

The first set of considerations regarding the interests of service users related to how the binary measure made it more difficult to avoid 'cherry picking' client groups perceived to be most likely to desist. Other questions related to the ways in which PbR could reflect the diverse needs of service users, and that the hard binary measure (did/did not reoffend) seemed inimical to measuring desistance and the distance travelled by offenders and the value added by specific services. There were particular concerns that the needs of hard to reach groups and those already socially and economically excluded, especially women, would be further marginalized by the commissioning model and PbR in particular.

Issues for service providers included how and whether fair treatment could be ensured in the supply chain. There remained considerable doubts about how to demonstrate evidence of the impact of an intervention and how payment structures might reflect all aspects of an

intervention. The problem of attributing success to any one intervention and provider and distributing payment for success amongst different providers working with individuals was raised. Additionally, calculation of reward for services purely on 'reoffending' discounts the several factors outside the criminal justice system which might influence offenders' behaviour.

In terms of the wider picture, participants considered whether, where and how different sectors might become 'losers' or 'winners'. It was asserted that procurement may be a barrier to partnership aims and that, moreover, small agencies will be unable to meet the requirements of Commissioners, which will ultimately reduce the number of potential competitors. On a local scale, there was some discussion of the potentially adverse impact of several small third sector organisations competing for the same PbR contracts. Questions about how far risk has been shifted to contractors was raised; as were concerns that adherence to the contract culture had diverted the third sector towards a narrow provision model and away from its rightful place in strategic planning.