



Briefing paper

The Third Sector in Criminal Justice

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The policy of increasing the role of third sector, i.e. voluntary, charitable and non-governmental organisations, in delivering criminal justice services is now well established in England and Wales, having been adopted by successive governments. Policy agendas are rapidly moving towards a mixed economy of service provision within criminal justice whereby core services are supplied by a tripartite structure of statutory, private and third sector organisations working singly or in partnership (MoJ, 2010; 2012; 2013). A long history of involvement in criminal justice provides a solid foundation on which third sector organisations (TSOs) can build, but moving from being suppliers of largely supplementary services to providers of core services raises considerable challenges as well as opportunities (Corcoran, 2008; Hucklesby and Worrall, 2007; Vennard and Hedderman, 2009). TSOs will need to establish themselves as competent and legitimate contributors and partners in the provision of criminal justice by demonstrating that their stated attributes - flexibility, innovation; adaptability and value for money – can continue to inform their work and result in the expected improvements in service quality and value for money.

It was within this context that the ESRC funded seminar series, *The Third Sector in Criminal Justice* (RES-451-26-0823) ran during 2011-12. It brought together leading academics, policy makers, criminal justice providers and representatives from TSOs to critically explore third sector involvement in the criminal justice system and consider how it might develop over time. The six seminars focused on different aspects of third sector involvement in criminal justice, scoping out their current involvement and concerns within and beyond criminal justice; debating the role of volunteers; exploring TSOs' roles as penal reformers and service providers and questioning the compatibility of these dual functions; examining TSOs' preparedness for providing core services and working in partnership with the statutory and private sector; and the challenges presented by requirements to evidence the outcomes of their work. Reports from each of the seminars are available at: <http://www.law.leeds.ac.uk/research/projects/the-third-sector-in-criminal-justice.php>.

The seminars contributed greatly to knowledge and understanding of the current state of TSOs' involvement in criminal justice and the implications of the move away from traditional models of voluntary sector service provision to one in which TSOs become embedded into the fabric of criminal justice system.

Key Findings

Government policy to increase competition and create a mixed market in criminal justice had resulted in a great deal of uncertainty for TSOs and concerns about their future. It was noted that TSOs risk losing their integrity and identity if they operate and/or contribute to government funded services.

There was general optimism about the opportunities afforded to the TSOs by current policy agendas especially in relation to greater financial stability which would support their innovative work. TSOs were keen to embrace the opportunities provided by the new landscape of criminal justice but they were concerned about whether they would be able to compete, especially with the private sector which was largely viewed as predatory.

Questions were raised about whether TSOs had the capability, skills and resources to tender and win bids to run services. There were also concerns about whether they had the infrastructure to provide the promised services and work with regulatory or auditing regimes.

Discussions often centred on the unique 'values' of TSOs. Their distinguishing feature is a lack of a profit motive, but pinning down what made TSOs different was illusive and not based on solid evidence.

Contradictions between the roles of service providers and penal reformers were identified which are likely to be heightened by current policy agendas.

Volunteers were viewed as a valuable but not free resource for TSOs, but concerns were raised about their capacity and willingness to contribute to services funded and run on behalf of government.

Considerable questions were asked about TSOs' preparedness to effectively evaluate their work and measure outcomes.

Diversity of the Third Sector

The Third Sector is diverse, varying in size, history, remit and mission. Its diversity is a strength of the sector but it has significant implications for policy developments because they will impact upon different parts of the sector in different ways.

Marketisation

TSOs endorse the thrust of government policy, which envisages that they will undertake innovative work with offenders as flexible, cost efficient service providers in local integrated offender management partnerships. Misconceptions about the role, capacity and capability of TSOs to deliver criminal justice services continue to exist and threaten the implementation of government plans. Although contracting out and payment by result models create opportunities for TSOs, small- and medium-sized TSOs are structurally disadvantaged vis-à-vis the statutory and private sectors as they lack the financial and operational capacity to bid for and provide services on a large scale. Despite the third sector's reputation for social innovation, doubts exist about whether all TSOs have sufficiently professional approaches

or specialist skills to work in criminal justice. Policy discourse is still replete with assumptions that TSOs can be straightforwardly bolted on to existing service delivery arrangements or can be used as leverage to drive down costs.

In a turbulent financial and competitive climate, TSOs are exposed to commercial practices and behaviours which make them susceptible to mergers or being regarded as shop fronts for well-resourced private sector interests. Marketisation may simply result in private sector dominance of the service landscape with TSOs operating merely as sub-contractors for commercial providers. TSOs identities might also become too closely linked to the interests of more powerful partners or funders.

Mission drift

Mission drift, whereby the values and objectives of TSOs change to align more closely to government or partners agendas, to win contracts and provide services, is a considerable concern for TSOs. Mission drift becomes more likely when survival or growth of the organisation becomes more important than its services or values and when specialist work does not necessarily attract funding. The extent to which TSOs share the

objectives of commercial organisations especially in terms of market share was highlighted as an important issue for future research.

Moving from providing supplementary to core criminal justice services will inevitably result in their involvement in coercive aspects of criminal justice, such as reporting breaches of community sentences, which have hitherto been dealt with almost exclusively by the statutory sector. The supposed incompatibility of such responsibilities with stated TSO values will be one of the major challenges which TSOs will have to overcome. Many TSOs pride themselves on work in local and marginalised communities, providing specialist services to minority groups. Current government plans put this work at risk, leading to TSOs becoming divorced from the communities they serve and thereby contradicting the 'localism' agenda of government.

The service delivery and campaigning aspects of the third sector mutually reinforce its work with service users, communities and other stakeholders by adding to services' credibility. Carrying out dual roles enables emerging concerns to be identified and ensures that campaigners are familiar with frontline issues and that they have a voice in terms of practice.

Having to silence their opposition to government plans or curtail their advocacy or reforming functions to facilitate their involvement in service provision is potentially an enormous challenge for TSOs and one which they and others are acutely aware of. Indeed, it may be that one of the main motivations for current government agendas is to blunt the voice of the penal reform movement. The potential for 'capture' is real especially when TSOs' participation in core services may be incompatible with their social justice 'mission', given that punitive and coercive aspects of criminal justice work are unavoidable. TSOs should be vigilant about apparently innovative interventions which may generate unintended harms to service users and being used to legitimate practices which may jeopardise their reputations.

Volunteers

Volunteers bring unique benefits to criminal justice by empowering individuals and providing a different philosophy for engaging victims and offenders. Direct participation by volunteers not only supports the work of criminal justice system but also facilitates cultural change in state institutions and challenges them to become more publicly representative and accountable. At the same time, there is a drive to professionalise the

performance of volunteers, potentially to the detriment of social engagement and trust.

Volunteering is not simply work without remuneration although the risks and challenges mirror those in paid roles. An uncritical 'benefits fallacy' pervades claims about volunteering so that the risks and dangers to which volunteers and service users are exposed are overlooked. Volunteers' motivations are diverse and selection needs to be carefully undertaken. Lack of diversity within volunteering populations also presents a major challenge to TSOs' claims to work with and in communities. Increased monitoring for potential or actual risks such as misconduct and burnout is reshaping relationships with volunteers and service users along more managerial lines. Prisoners and ex-offenders experience additional barriers to volunteering because of complex procedures for security clearance, supervision and monitoring.

Measuring outcomes

Contracting out, competition and partnership are now pervasive mechanisms in the mixed economy of service provision. These arrangements offer small- and medium sized organisations opportunities to contribute their specialist skills and develop programmes on a larger scale with private sector partners, for example. However, payment regimes are critical to creating the proper incentives for encouraging TSOs to deliver services. Social Impact Bonds were considered to be more transparent and flexible for TSOs whereas payment by results models favour large providers at the expense of smaller TSOs. This is partly because the binary measurement for payment by results, calculated on the basis that individuals have or have not been reconvicted, does not capture the complexity of the work undertaken by TSOs, the variety of outcomes or the value added by specific providers (Fox & Albertson, 2012). It can also lead to 'cherry-picking' the service users most likely to succeed. The regulation and auditing of providers will be also be resource hungry and require considerable TSO and state infrastructures adding to costs.

Monitoring and research

There is not a strong tradition of independent research in the third sector. Consequently, whilst the value and contribution of TSOs to the criminal justice system was acknowledged, it was also recognised that many assertions about its effectiveness are not substantiated by robust or verifiable research. Where research has been made available variations in the quality and reliability of the outputs was acknowledged.

Compromises between robustness and quality on the one hand and timescales and resources on the other hand exist for all TSOs.

There are significant gaps between the expectations of funders with regards to the standards of research and evaluation and what TSOs are able to substantiate about their services. Research has become associated with auditing regimes, with implications for judgments about the perceived performance and competence of TSOs. The instrumentalist focus on the value of research is compounded by the emphasis on outcome based measures, which in turn drives Commissioners to prefer quantitative data-gathering and reductive analysis. Consequently, the breadth of work undertaken by TSOs, in terms of less quantifiable measures, is not captured.

The paucity of qualitative or 'below-the-radar' research in the field reflects particular challenges such as gate-keeping by some TSOs as well as the wide variation in the quantity and quality of data generated by such a diverse sector. The competitiveness of the funding climate can exacerbate the temptation to withhold apparently critical results or potentially marketable methods. However, contrary to these perceived risks, the benefits of research and its wide dissemination outweigh any disadvantages.

Concluding comments

Despite the progress that has been made in opening up the service market to private- and third sector providers, it remains skewed towards large, professionalized organisations, irrespective of sector. Government claims that a fully tri-partite structure for the delivery of criminal justice services will reduce costs, improve efficiency and effectiveness and support diversity in the market. In reality, TSOs have to balance conflicting demands to become market-ready service providers while staying rooted in communities and localities. Rapid marketisation has introduced new problems as well as prospects, including territorial competition with former partners such as the Probation Service and potential incorporation into private enterprises. In a more competitive environment, the sector is promoting its unique identifying characteristics – such as its values, diversity, close links to service users, public trust – more intensively (Paton, 1998). In this vein, TSOs are advantageously positioned to respond to policies which are aimed at reducing the prison population as they can drive down costs and capitalise on their experience of providing community-based services which meet the needs of defendants/offenders. Concentrating

on what makes TSOs unique will ensure their survival in turbulent and uncertain times.

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