

Third Sector Research Centre

Working Paper 34

**The role of the third sector in work with offenders:
the perceptions of criminal justice and third sector
stakeholders**

Dr Rosie Meek, Dr Dina Gojkovic and Dr Alice Mills

April 2010

Contents

- Introduction..... 3**
- What are the benefits of TSOs’ involvement in the criminal justice system? 3**
- The research 6**
- The profile of interviewees 6**
- The changing role of the third sector 7**
- Current commissioning arrangements for the third sector in the criminal justice system 7**
 - 1. A large gap between rhetoric and reality 9
 - 2. Competition policy 9
 - 3. An overly bureaucratic competition system 9
 - 4. TSOs in the criminal justice system are often dependent on contracts for survival..... 10
 - 5. The impact of new commissioning arrangements on the autonomy of TSOs and their ability to voice critique 11
 - 6. TSOs bidding to run prisons and prison services 11
- Privatisation of the criminal justice system and the role of third sector-consortia based bidding 12**
 - 1. Working in a partnership may not be a ‘winning’ model for all TSOs 13
 - 2. Choosing between contract and integrity 13
 - 3. In order to win contracts, TSOs often need to have a track record of service delivery 14
 - 4. Can commissioning services from TSOs be seen as a way of privatising criminal justice services in a more ‘publicly acceptable way’? 14
- Conclusions: inter-sector partnership working and the future of the sector 15**
- End notes 16**
- References 17**

The role of the third sector in work with offenders: the perceptions of criminal justice and third sector stakeholders

Abstract

This paper examines the views of national criminal justice and third sector stakeholders on the strategic position of the sector and its role in the resettlement of offenders. The interview data suggests that although the involvement of the third sector in the criminal justice system is promoted in national policy, considerable gaps have been identified. These include the quality and availability of regional commissioning, implementation strategies and the long-term plans for the re-specification of the criminal justice system. The findings also indicate that increasing emphasis on competitive policy may put a strain on future inter-sector partnerships. The implications of the findings are discussed and areas of further research are highlighted in relation to both the prison and probation services.

Keywords

Third sector; offenders; criminal justice; commissioning; consortia; TSOs, stakeholders, partnership.

Acknowledgements

The researchers would like to thank the individuals who were interviewed for this research. Thanks to Rob Macmillan for comments on an earlier draft.

Introduction

Third sector organisations (also known as TSOs) currently provide a range of services to offenders in the criminal justice system (CJS) including advice, education and training, spiritual and faith guidance, mentoring, arts projects and peer support schemes. TSOs perform an advocacy function through organisations such as the Independent Monitoring Board, and they are also involved in the provision of core rehabilitative and resettlement services, most prominently in drug and alcohol treatment, employment and training, housing aid and financial advice, but also in providing support and advice for offenders' families. In 2005, it was estimated that over 1,500 TSOs work in prisons or with probation (Home Office 2005), with 7,000 volunteers now working in prisons through the Prison Service Chaplaincy and faith-based organisations alone (Ministry of Justice (MoJ)/National Offender Management Service (NOMS) 2008a). The current number of organisations is not known, however, the above figures are likely to have been based on the number of *registered* charities, thus omitting those which operate 'below the radar'. The vast majority of these TSOs are small, local organisations which rely on volunteers, although some organisations which focus on a particular issue such as prisoners' families (e.g. PACT), or substance misuse (e.g. RAPt) operate on a regional or national basis. A small number of larger, national organisations also exist in this area such as NACRO and SOVA, which typically receive the bulk of their funding from statutory sources (New Philanthropy Capital (NPC), 2009). Amongst those working with probation, there is a higher proportion of larger, national TSOs, such as housing associations (Home Office 2005) and employment associations. Many of the TSOs working within the penal system such as Turning Point or Samaritans also provide services to individuals outside the CJS and the GuideStar¹ database suggests that there may be more than 700 organisations like these in the UK.

What are the benefits of TSOs' involvement in the criminal justice system?

Various reports suggest that TSOs have a number of strengths in working with offenders in the CJS (NPC, 2009; Silvestri, 2009; HM Prison Service/Clinks, 2002; NOMS/IVR, 2007). These include:

- diversity of provision and cost-effectiveness– the third sector can widen the range of services and resources available to offenders;
- relative independence from the criminal justice system which may lead offenders to view them as more approachable and trustworthy. Such independence can also enable them to be more offender-focused and carry out independent research and policy work (Bryans et al. 2002). They can also play an advocacy role, representing service users' views to the statutory sector;
- innovative ethos/ responsiveness as the third sector may be less constrained by bureaucracy and more able to respond to the needs of service users;
- engagement with the views of services users at the planning stage of provision (see Martin 2002), which may be used to inform third sector service development;

- social cohesion and links with the community. TSOs working in the penal system are usually based in the community and can provide a bridge between prison and the community (see also Bryans et al. 2002), and may therefore also assist in the provision of a seamless 'through the gate' service;
- diversity of staff - volunteer workforces can be more diverse and thus more representative of the communities they serve than paid workers (Neuberger 2009). There is, however, some evidence to suggest that the volunteering workforce may not be as representative as initially believed (Clinks, 2007; Gelsthorpe & Sharpe, 2007), and that negative attitudes towards, and perceptions of, offenders could limit the volunteering workforce not just in number but also in diversity (Clinks, 2006);
- furthermore, volunteering within the CJS may also improve confidence in the system by making the public feel more involved.

Recent developments in criminal justice, specifically, offender management, reflect some of the issues discussed above and suggest that the role of the third sector in providing correctional and associated services is likely to be considerably extended. On 28th February 2007, the Offender Management Act was passed, which empowered private and third sector organisations to take on some of the responsibility traditionally associated with probation. In a myriad of consultation papers, strategies and action plans, the Ministry of Justice and NOMS have recognised the benefits of working in partnership with the third sector (NOMS 2005, MoJ 2007, 2008), particularly in relation to provision to help to resettle offenders and reduce re-offending (Home Office 2005, NOMS 2005, MoJ/NOMS 2008a, 2008b). The latest NOMS Third Sector Reducing Re-offending Action Plan states:

'The third sector has a critical role to play as advocates of service users and communities, as partners in strategy and service development, and as service providers. We value their role as enablers of effective community engagement, volunteering and mentoring' (MoJ/NOMS 2008b:7).

Whilst this recognition and policy developments may vastly increase the amount of third sector provision in this area, TSOs face a number of difficulties and challenges when working within the criminal justice system with NOMS. These include:

- the highly variable co-ordination, management and support of TSOs within criminal justice organisations. Despite a Prison Service Order issued in 2002 stating that every prison should have a third sector co-ordinator (Home Office 2005), many prisons do not have a named person or manager with responsibility for volunteers (Neuberger 2009);
- the quality of the relationship between TSOs and the penal system can vary widely, depending on the agenda of the prison governors and probation trust directors;
- TSOs may be viewed with suspicion by CJS staff who fear that they will be used instead of paid labour (Neuberger, 2009);
- funding is often scarce and may be short-term with projects left to fold once an initial funding source has been exhausted. Smaller organisations are particularly vulnerable to funding

changes as they often do not have the ability, or contacts to seek out funding opportunities (Gelsthorpe & Sharpe, 2007).

Recently, there has been a great deal of speculation in the literature about the current strategic position of the third sector in the criminal justice system, and the course of their future alliance with the criminal justice system to provide joint care and service. One of these issues is the appropriateness of extending the role of TSOs, particularly those who campaign against increased use of the penal system, to prison management, or administering punishment in the community (Neilson 2009; Silvestri, 2009; Garside, 2009). To be able to take part in the competitive market, TSOs will need to be able to prove their effectiveness, yet many smaller organisations will not have the money, expertise or capacity to collect data demonstrating outcomes, particularly where longitudinal effects are required. There have also been considerable concerns that increasing the role of the third sector may lead to statutory providers being divested of their social welfare role (Sharpe and Gelsthorpe 2009). For example, recent bids for funding to provide services for female offenders in the community were subject to several restrictive conditions, including the requirement that they must be led by TSOs, meaning the expertise of the probation service in this area may be lost.

There are a number of gaps in research that currently exist in relation to third sector involvement in the criminal justice system. A variety of questions arise in light of the recent innovations in the commissioning pathways for TSOs in the criminal justice system, aimed, according to the Government, at promoting inclusion of TSOs as providers and designers of public services such as the Strategic Plan for Reducing Re-Offending 2008-11 (MoJ/NOMS, 2008b). Some of these questions include:

- whether statutory contracts will compromise the perceived trustworthy relationship between TSOs and people in prisons;
- whether these contracts will call for a restructuring of TSOs;
- whether the aims and objectives of TSOs will be manipulated by the need to satisfy the commissioners.

These are some of the questions and issues which are the focus of a programme of research carried out at the Third Sector Research Centre (TSRC), funded by the ESRC, Barrow Cadbury Trust and the Office of the Third Sector. Although this research will not give definitive answers to all of the questions raised in this paper, it aims to provide insight into the views of:

- national stakeholders in the third sector and criminal justice system;
- prison, probation staff, and third sector staff;
- offenders in contact with third sector organisations and offenders and ex-offenders who volunteer with third sector organisations.

Their views are being sought on issues where there appears to be an evident gap in knowledge including:

- the strategic position of the third sector in the criminal justice system;

- the concept of the ‘added value’ of the third sector working with (ex)offenders and their families;
- the role and impact of third sector organisations in the resettlement of offenders;
- the impact of volunteering on empowering offenders and ex-offenders to desist from crime.

The research

The research consists of three stages:

- stage 1: interviews with key national stakeholders to explore the current situation of the third sector in criminal justice and identify key issues for further study;
- stage 2: Qualitative interviews or focus groups with Resettlement/Offender Management staff in prisons and probation, third sector agency representatives and offenders to examine the value of third sector involvement in criminal justice and resettlement;
- stage 3: Qualitative interviews or focus groups to examine the benefit for offenders of being involved with a third sector organization as a service user, and volunteering and working with TSOs for offender and ex-offender volunteers.

This working paper will report the findings of the first stage in this research. This stage served to inform the study about the current position of the third sector in the criminal justice system and to highlight the most important and current issues in the sector, according to those working within it. Some of the questions revolved around the current commissioning arrangements for third sector services; the impact of these on the third sector functioning as well as their relationship with criminal justice staff and offenders; advantages and disadvantages of consortia based bidding and delivery by third sector organizations; the current position of third sector in the service bidding and delivery arena; and the challenges of having three sectors compete for a limited pool of resources in the criminal justice system.

The profile of interviewees

Our interviewees were national stakeholders in the areas of criminal justice and/or the third sector. It is worth noting that many of our participants have crossed the professional boundary between the public and third sector at some point in their career and many drew on their experiences across the sectors (see also Lewis, 2008).

Of the 14 criminal justice or third sector organisations contacted, 12 agreed to take part in the study. We carried out semi-structured interviews with one representative from each organisation, either face-to-face or by telephone interview. Interview transcripts were analysed using framework analysis, a form of content analysis where the coding scheme is designed to reflect the dominant themes presented in the text. The most prominent topics that emerged from the interview transcripts are discussed below, with verbatim quotes included for illustration.

The changing role of the third sector

A number of interviewees pointed out that the sector, now more than ever, has a central role in delivering services to offenders:

'As prisons have got increasingly full, it's been left to the third sector to do educational rehabilitation work with families, work on drugs and alcohol and the likes. So it's been growing with increased emphasis on delivery of public services by the third sector' [third sector stakeholder]

However, the extent to which this form of delivery could be seen a positive development was a matter of some debate amongst interviewees. Many noted that the sector developed rather than changed, but the direction in which it developed has been described in negative terms by a number of third sector stakeholders. An explanation for this was given by one of the third sector interviewees who suggested that the third sector used to have a funding 'security net' in the form of grants and that this is no longer the case. Some Government stakeholders agreed with this, for example by indicating that they were 'a bit disappointed with what the Government has been able to do' to involve the third sector in the system. The sector has been described as becoming more corporate and more competitive in its fight for survival and in that process the gap with other sectors has, according to one governmental representative, 'notably shrunk'.

Current commissioning arrangements for the third sector in the criminal justice system

The changing role of the sector was widely associated with the emerging funding and commissioning schemes. In recent years, the Labour government has introduced some important changes to the commissioning specifications for the third sector in the criminal justice system. The Offender Management Act (2007) specified that service level agreements and contracts will no longer be exclusive to the public sector but will instead be established with a wide range of offender management services from the public, private and third sectors. It foresaw a combination of public sector delivery on the one hand and contested grants programme for all sectors on the other, with an aim to give all sectors 'a fair chance' to compete. The programme was widely promoted by the Government for encouraging rehabilitation and facilitating the seamless provision of services to offenders. The Act followed the establishment of several important policies such as the Reducing Re-Offending National Action Plan (2004) and Reducing Re-Offending through Skills and Employment (2005), which gave the third sector an important role as providers of public sector services. Other developments in the third sector arena included the establishment of the Reducing Re-Offending Third Sector Advisory Group chaired by Sarah Payne, the CEO of YWCA, and the Third Sector Group at the Ministry of Justice led by the third sector champion, Julie Taylor.

In terms of the commissioning arrangements, the commissioning framework was divided into the regional delivery whereby in each of the NOMS regions a Director of Offender Management (DOM) bears responsibility for commissioning local services and overseeing the management of services offered by service providers. Local commissioning has been also entrusted to newly-founded

Probation Trusts. The commissioning potential has therefore been described by some of the criminal justice stakeholders as ‘encouraging’ and ‘wide’ and promoting ‘the commitment to the best value and equal opportunities for all sectors’ to compete for service provision.

Not all of the criminal justice and government stakeholders were, however, enthusiastic about the future prospects of this framework. The vast majority agreed that the framework is still embryonic and it is not clear what the commissioning strategy will look like on the ground. According to some, this could make room for competition that will inevitably put some small third sector providers out of business:

‘...Department says: ‘Ah, commissioning equals efficiency and equals procurement and equals contracting and large scale contracting’ and we’re trying to work with the flow that says: ‘Actually, that isn’t entirely true in every case’. Yes there’s pressure to save money, to be more efficient, to join up contracting and all of those things make sense from the macro point of view, but at the local level, what we shouldn’t do is squeeze out the kinds of proprietors that typically third sector organisations can be [...] particularly if you look at the criminal justice area, offenders and those at risk of offending’ [Government stakeholder]

Additionally, many concurred that even though DOMS have been assigned their regional budgets, they are committed to such a degree that there is very little room to commission new services, despite a strong emphasis on innovation on the Government’s third sector agenda. Some of our respondents informed us that, despite a move for a more centralised commissioning framework through DOMS, prison governors will still be expected to maintain a substantial degree of independence in specifying services for their prison establishments. This could arguably lead to a considerable degree of variation in service provision depending on each prison governor’s agenda. A number of third sector interviewees further pointed out that local commissioning is a good concept but surrounded by considerable vagueness as to how it will be implemented on the ground.

Several criminal justice stakeholders juxtaposed the veil of uncertainty surrounding the third sector commissioning against the considerably more robust health care commissioning model. Compared to health care’s World Class Commissioning (2009) which aims to dramatically transform the way that health care is commissioned through the introduction of well-articulated long-term plans and core competencies for commissioners, many of our respondents felt that the commissioning of third sector still has a long way to go:

‘You know looking at it, it’s a rather chaotic criminal justice sector and they [commissioners] say [...] they put all this money into the sector which is in chaos at the moment - in terms of social benefit they’d get more for their buck if they put the money into health, children’s services or services for the elderly, some other area of social provision that isn’t undergoing the same level of chaos as the criminal justice system at the moment.’ [third sector stakeholder]

The majority of our interviewees across both sectors thus agreed that the uncertainties around the future strategic position of the sector in the criminal justice system, and the shift from grants to contracts for service delivery, made the sector, which has arguably always been rather fragile, even more ‘fragile and nervous’. They called for clearer commissioning guidelines and service innovation budgets for DOMS. To illustrate this stance further, many of our third sector and criminal justice

interviewees listed the most prominent concerns that they held in relation to future commissioning. These are discussed below.

1. A large gap between rhetoric and reality

The interviewees indicated that a substantial gap exists between the rhetoric surrounding the third sector and the actual opportunities for the sector to become involved in the criminal justice system as an equal partner. The third sector interviewees stated that there have not been many opportunities for them despite a level of ambition about involving the third sector into criminal justice service provision. They thus stressed the importance of sensitive and intelligent commissioning in the future:

'If the services are not commissioned sensitively and carefully in this very difficult environment the commissioners are going to create something that they will regret in the end which is the reduction in the size of the market and in terms of choice that they have in service delivery...' [third sector stakeholder]

Some interviewees clearly feared that small organisations might 'lose the battle for survival' in this increasingly competitive environment and either merge into big organisations or disappear altogether, which could compromise not only what they regard as the ethos of the third sector but also the quality of local delivery, which is one of the pillars of the latest commissioning framework.

2. Competition policy

The previous discussion of the arguably unequal competition prompted a number of interviewees, mostly from the third sector, to say that the present commissioning arrangements are in fact favouring the private sector over the third sector. Prison and probation competition policy states that any new service contracts should be put to the market. Whilst there are some contract-winning partnerships that involve a third sector partner, many of the third sector stakeholders noted that this does not happen often enough especially when a third sector organisation is listed as the lead provider, thus compromising, in their view, the 'level playing field' agenda:

'It [commissioning] is either intentionally or unintentionally favouring private sector against the third sector. By that I mean it's happening on a scale that the voluntary sector doesn't work -at either regional or national commissioning, which is making it very difficult for the voluntary sector to compete' [third sector stakeholder]

Not everyone, however, thought that the third sector would be at a disadvantage with the new commissioning arrangements. Some criminal justice representatives believed that with the sector's experience in bid writing and competing, it is the public sector who will stand to lose much with the new framework:

'Probation Trusts and prisons will be doing the same thing [bidding for services]; however, the third sector had the experience of writing bids for a very long time. So, one of the things that they have over the statutory sector agencies is their expertise in bid writing. And that does not exist in the statutory agencies'. [criminal justice stakeholder]

3. An overly bureaucratic competition system

Many third sector and even some criminal justice stakeholders expressed their concerns about the contracts not being proportionate in terms of financial and bureaucratic requirements for small and large contracts and how this could potentially hinder the competitiveness of small TSOs on the market. Many interviewees thus supported the ambitions held by the Conservative party to reduce and

mainstream bureaucratic arrangements and create longer contracts which would ensure stability and viability of an organization delivering the service. A number of examples were given to strengthen this point and to also illustrate what happens when the bureaucracy 'takes over':

'The government says 'We want to deliver this stuff' so the Treasury gives money to the NHS and the NHS gives money to the PCT and PCT in partnership with prison commission services to be delivered in prison. And then out of nowhere comes the organisation called X who say 'we are here to watch what prison and PCT do' and I'm thinking 'sorry...what s that all about?' Surely the PCT are commissioners surely they watch what the private sector company delivering health care services does and what the prison does. So you are watching the watchers? I think this is a bit mad.' [third sector stakeholder]

4. TSOs in the criminal justice system are often dependent on contracts for survival

TSOs in criminal justice are, according to our third sector interviewees, in a more challenging position than some organisations which focus on other areas of social welfare, as they are often entirely dependent on contracts for their survival. This is so, according to some third sector stakeholders, because their cause is often not publicly favoured, and they cannot therefore rely on the steady flow of donations:

'Sector organisations are immensely dependent on contract delivery for their cash flow and their survival which makes it very difficult to fund campaigning to be very critical. It's not a sort of sector like Guide Dogs for the Blind or National Trust where you have a huge amount of unrestricted reserve where you've got a willing public who will sign up for most of your campaigns. So that particular issue I think makes this sector incredibly vulnerable and very dependent on contracts.' [third sector stakeholder]

In response to the continuous lobbying of the third sector to address this issue, the Government set up four infrastructure projects, whereby four infrastructure TSOs in the area, Clinks, Arts Alliance, Development Trusts Association and Action for Prisoners' Families, were jointly allocated £500,000 annually for three years. The idea was to use the funds for core funding of those organisations, to help promote the voice of the third sector in the criminal justice system and to build their capacity through the support of reducing re-offending networks, volunteering and mentoring networks and arts networks and projects.

The infrastructure project was however not the first project of its kind. Whilst drawing up the plans for recession funding in 2008, the Government included the fund for modernization into its scheme which would enable TSOs to look into the feasibility of becoming a part of a consortium or partnership in some way. Additionally, Capacitybuilders, a non-departmental public body, was also established prior to the infrastructure project in order to run the ChangeUp programme, designed to build the capacity of the sector. Nevertheless, despite these systems of support being in place, almost all of the respondents believed that the third sector still needs support to be able to compete with the private and public sectors:

'Particularly if you are a smaller organisation the time it takes to write up a bid, to make sure that you've got all the budgets, the figures done, all the paperwork that goes around your timescales, describing your project in the timelines that are associated with that, the CVs are attached to the staff that you say you're going to be employing, all of those things [...] So having... whether it's funding to have somebody come alongside you and work with you for several weeks as you prepare to make your bid, that would be fantastic

because you've got another set of eyes, you've got hands and skills alongside you.' [third sector stakeholder]

Some third sector and criminal justice interviewees suggested that it would be a good idea to have infrastructure organisations act as grant awarding bodies, because they are 'closer to the ground' and have a better idea of what is needed in their specific area. Ideally, this would not only promote the involvement of smaller local organisations, but would also reduce the bureaucratic arrangements often associated with large funding bodies. Some of the criminal justice stakeholders that we interviewed claimed that this is in fact already happening to some degree:

'I'd be quite interested in [...] having a primary delivery partner, but [...] part of their contract [...] is a requirement to subcontract, so that they would also have delivery partners that worked on a subcontracted basis. [O]rganisations like X, Y [large national providers] would be well placed to bid for that kind of work [...] And for one of those types of organisations to be the prime contractor then with a series of other providers that deliver locally.' [criminal justice stakeholder]

5. The impact of new commissioning arrangements on the autonomy of TSOs and their ability to voice critique

Concern has previously been raised that becoming involved in providing criminal justice services may hamper the ability of TSOs to voice a critique of government policy and to act as advocates for those in the criminal justice system (Neilson 2009). There was a considerable disagreement between respondents as to how the commissioning arrangements would affect the perceived autonomy of TSOs in the system. While approximately half claimed that there would be no negative impact, the other half were less certain of this fact. It is important to note that there were representatives of both the criminal justice and third sector representatives in both groups.

A number of respondents believed that despite being funded by the Government, the third sector will be able to maintain its autonomy, as promoted by the Government's initiatives such as the Compact²:

'There is no doubt that there is plenty of evidence to show many TSOs who are reliant on government money are still able to balance that quite neatly, and the Government will treat us very carefully because they know our views are important and they know our views will influence public opinion or volunteers or whoever. We haven't in my view neither lost the ability to campaign, to have a view, to get out there and say 'we don't agree' nor has our reliance on Government money through contract influenced unduly how they feel about us as a third sector organisation.' [third sector stakeholder]

A number of criminal justice and third sector respondents, however, contested this viewpoint, stating that it is not possible for the third sector 'to have their cake and eat it too', that is to be financially dependent on a Government's contract and campaign against some of its initiatives at the same time:

'I suppose you can't have it both ways [...] If you want independence then you can't really take the money [...], you can't [...] be financially dependent on a Government's contract and campaign against some of its initiatives.' [criminal justice stakeholder]

6. TSOs bidding to run prisons and prison services

The independence of the sector was most frequently questioned in relation to its ambition to bid in partnerships with other sectors and organisations to run prisons. Again, this was one of the most

widely debated points in this study with almost no two opinions fully concurring. Several respondents, both from the third sector and the criminal justice sector maintained that the independence of the sector could further be placed in jeopardy and their public perception drastically changed if third sector organisations chose to play an active role in running prisons:

'I think it's absolutely important that TSOs remain independent and that independence is understood and valued, and those things can get murky when you get into bed with the state inevitably. So I think the organization itself needs to be clear about its independence and its trustees need to be clear about the values of the organizations and whether they can get compromised.' [criminal justice stakeholder]

Others claimed that third sector does not at the moment have a mature enough infrastructure to be able to play a managerial role in running a complex establishment such as a prison, and that in the process, the expertise of the public sector will inevitably be lost. A few third sector and criminal justice interviewees, however, indicated that the decision to allow the third sector to compete for running prisons was *'long overdue'* and that the public sector *'can hardly be pushed to do any worse than it is doing at present'*:

'The problem is that you can wait forever for the public sector to change itself. I don't think it's fair on the people who receive the services to say: 'Well yeah we know it's rubbish what you are receiving, but we have this ideological position that we believe that the Government should fund and deliver services in relation to prisons. I know it's crap but we are going to sacrifice you cos we are going to be patient and wait for the prison service to change itself'. I think it's an entirely un-defendable position.' [third sector stakeholder]

'I don't think that the provision under the current prison and probation service run by the public sector is actually a beacon of excellence.[...] I'm afraid I just don't think we're in much danger of being terribly deprived.' [third sector stakeholder]

It is thus clear from previously presented quotes and opposing viewpoints that the future position of the sector is still not as clear and certain as claimed in the national policy.

Privatisation of the criminal justice system and the role of third sector-consortia based bidding

With the justice system opening to other sectors, the private and third sectors, in line with the competition policy, are more likely to join up in consortia to bid for service provision, both due to a great deal of encouragement, support and funding by policy makers but also to increase their chance of success. This has already proved to be a recipe for success for a consortium of Serco, Catch 22 and Turning Point which has recently been awarded contracts to run two new prisons. Consortia-based bidding, although by no means a new concept in the criminal justice arena, was one of the most widely debated topics by our respondents with one half arguing for, and the other cautioning against, such an arrangement.

The advantages of consortia-based bidding which involves large/national organizations collaborating with small/local organizations were in line with the argument that partnership bidding gives small providers a look in and enables large third sector providers to operate more locally. To further support this claim, many interviewees noted that large, national third sector organisations can

often lose the ability to reach into local communities and work well at a neighbourhood level, whereas this is more readily achievable through subcontracting or by working in partnership with local organisations. However, several criminal justice and government stakeholders admitted that there are examples, even within the third sector, of organisations trying to *'muscle into the contracting process'* even though they work in geographical areas which are not covered by the contract and do not have a record of working with local providers. They stated that this behaviour often leads to resentment and frustration among smaller local providers and to some extent counters the attempts to bring the national and local partners to work together.

To illustrate the enthusiasm within the sector to promote the formation of consortia within its organisations, some third sector interviewees suggested that the large national third sector providers are *'bending over backwards'* to set up consortia to bid for contracts which they can then sub-contract to smaller local organisations. These interviewees however voiced their concerns as to how well this process can be implemented on the ground in a fair and effective manner:

'How we translate this political concept into an operational tool that ends up with local TSOs getting resources and voice to work with local offenders is not there and not clear.'
[third sector stakeholder]

This was, however, not the only issue in relation to the consortia-based partnerships. Some of the most prominent concerns emerging from the interviews are listed below.

1. Working in a partnership may not be a 'winning' model for all TSOs

It was noted by the interviewees that there is a lot of emphasis in the policy on partnership working for third sector organisations even though this may not be a suitable option for all TSOs. The small organisations, according to some respondents, are likely to suffer from this arrangement because they do not have sufficient resources to work in partnerships:

'You've got, you know, a powerful prime who creams off whatever profit or profit margin or whatever they need to for full cost recovery and that gets more and more diluted until at the end you've got people who are ...very local, smaller charities. So I think that the danger of consortium is that in any consortium you will have small, medium and large partners and I think it will feel very unequal to the smaller partners.' [third sector stakeholder]

2. Choosing between contract and integrity

Many third sector interviewees complained that the rather complex nature of the contested grants and contracting programme may result in TSOs not realising when their "ethos" and "integrity" as the interviewees said, are brought into question by the arrangements specified in the contract (for instance when they start behaving more like a company and less like a charity) or being forced to choose the contract in order to secure survival. This arguably poses a considerable danger of mission "creep" for the third sector. However, some criminal justice and third sector stakeholders contested this notion. They stated that occasionally TSOs may choose a contract which is not fully in line with their agenda but that these are outnumbered with numerous examples of organisations refusing to perform mergers or take up contracts deemed unsuitable to their cause:

'We were asked by their local authority to think about merging with another organisation and had a board meeting between the two boards and, in principle, people could see it

made sense, but they never actually got to the point of making the decision to join because the personalities didn't work out. The chief officers in both organisations felt very threatened because, obviously, in a merged organisation there's only room for one chief officer and, indeed, the chairs of the two organisations felt very strongly that they would not compromise on the focus and the ethos of the organisation.' [third sector stakeholder]

Regardless of the stance of the TSO, it can be concluded that third sector organisations often struggle to work in partnerships and, according to some of our criminal justice and third sector stakeholders may need to sacrifice some of their integrity in order to become part of contract-winning consortia. Many interviewees said that TSOs should not seize every opportunity to become an agent in a partnership, but should carefully weigh up the pros and cons of entering into such an arrangement. Some criminal justice stakeholders said that in their view local providers should not strive to enter consortia and should only focus on service delivery. The future of the partnership working in the sector will thus depend greatly not only on the centralised commissioning guidelines but also on the strategic plans and agendas of individual organisations.

3. In order to win contracts, TSOs often need to have a track record of service delivery

Another disadvantage of the consortia, aside from arguably favouring larger organisations and potentially compromising the “ethos of the sector” is that not having a track record of service delivery could significantly impair its competitiveness on the bidding market. Some interviewees noted that this is in fact one of the important shortcomings of newly-formed third sector consortia which puts them at a considerable disadvantage against well-established private sector partnerships and this is not something that is restricted to the criminal justice system:

'So you form the consortia... you then can't even get past the first stage because you don't have the service delivery record. If you are X and you are trying to bid to run a resettlement contract in one particular prison so that you can make sure that the delivery goes to local VCOs [voluntary and community organisations], you don't have a track record as X, so you don't stand a cat in hell's chance.' [third sector stakeholder]

4. Can commissioning services from TSOs be seen as a way of privatising criminal justice services in a more 'publicly acceptable way'?

At the moment, provision of criminal justice services takes place within a mixed economy, with the public, private and third sector all acting as providers. The involvement of the private sector in running prisons has been the subject of considerable debate as it is argued, that no-one should profit from the administration of punishment (Harding 1997). In this atmosphere, there has been an increasing concern that commissioning services from third sector could be seen as bypassing this problem, that is “privatizing” criminal justice in a *'publicly acceptable way'*.

Similarly to other commissioning-related questions, there was no consensus amongst interviewees on this issue. Approximately a third of interviewees thought that the ‘name tag’ was essentially irrelevant, as long as the offenders were not left to the inadequate service provision by the public sector, as previously discussed:

'Yes, so what as long as it works who cares what you call it' [criminal justice stakeholder]

'Grow up is my view! [laughs]. I don't see why people seem to have a clear line around what they see as public sector, and [...] there's a line around public services which has to

be delivered by the public sector. I think my view is that those lines move and change...
[third sector stakeholder]

Others, however, did not share this view. This group defended their view by saying that the irreconcilable difference between the two sectors is that *'the third sector campaigns for social change and the private sector campaigns for money'* and that for this reason they cannot be and must not be confused.

Several interviewees have, however, given an alternative view on this matter by claiming that whether this process will ultimately be seen as publicly acceptable privatisation is entirely dependent on the third sector's approach to bidding for grants and contracts. Those who argue this stance maintain that infrastructure projects will be particularly helpful in preventing the third sector from *'turning'* into the private sector, because it can be very difficult for individual organisations to know when and if they are *'crossing the line'* and starting to act more like a company and less like a charity. This is in line with the previously voiced concerns about TSOs sometimes not being able to tell when they are effectively choosing a contract over their integrity and agenda. Some interviewees claimed that this is already happening in the third sector, and go as far as to state that in 50 years from now the commissioning model will have reached an ultimate position, as argued by some third sector stakeholders, *'which is that nobody really remembers what the differences are between the voluntary sector, and the private and public sector'* and this is something that should be avoided:

'I know it differentiates itself from the Private Sector by virtue of saying 'third' [...] it's not the Private Sector. On the other hand it includes social enterprise and other kinds of not-for-profit, which might have a different cast to the voluntary sector with all the ethos and history that it brings with it.' [criminal justice stakeholder]

Conclusions: inter-sector partnership working and the future of the sector

Despite a number of concerns voiced in relation to partnership working, the general consensus was that this is the way forward for the third sector and their unique chance of becoming an equal partner with other sectors. This is not to say however, that this journey will be easy - much is still needed to create 'the level-playing field' for all. For example there is a need for more clarity in:

- regional and local commissioning and delivery implementation strategies;
- a 'commissioning and partnership survival guide' for small and local providers;
- a plan for criminal justice services which will undergo re-specification in the next three years' time;
- any future government's plan for third sector involvement in the criminal justice system.

At this point though, it is difficult to define precisely what 'more clarity' means in this context, as the interviewees themselves used the term broadly.

These topics will be further explored in the next stage of this research, i.e. the in-depth case studies.

The study has also shown that, aside from promoting partnership working, the competitive policy has already led to the increased competition between sectors for service delivery which could have negative long term effects on the quality of relationships between sectors and organisations. Many of

our interviewees said that the Government's policy sometimes promotes partnerships between agencies which may result in them perceiving each other as competitors rather than collaborators; for example the public sector is reportedly often reluctant to embrace partnership with the private or third sector because it may feel threatened by them, as illustrated below:

'I think Probation have been resistant probably because of the diverse nature of Probation work, but probably because Probation has been seen as the key agent or the central agency that pulls together all aspects of the Criminal Justice agency and seeing [...] that there are other organisations out there who can deliver as well, if not better, some of those roles that they deliver. It's basically a bitter pill to swallow, really, I think.'
[criminal justice stakeholder]

The interviewees thus noted that aside from promoting the involvement of the third sector in the criminal justice system, the policy has also in some ways encouraged the rise in concealed resentment towards third sector providers because the public sector no longer feels that its position in the market is safe.

Another noteworthy finding of this study, in relation to the previous discussion is that there is almost no evidence of the involvement of the third sector in the probation service, as the interviewees almost exclusively referred to prisons. This is particularly important to note due to the recent move to Probation Trusts which will also have a considerable role in local commissioning, and funding given to TSOs to provide services for female offenders in the community (MoJ, 2009). The interviewees who did talk about probation believed that there is a considerable degree of nervousness about this issue in the probation services and that TSOs who want to work with probation will almost always encounter greater challenges than those who work with prisons, because of the increased fears of potential competition. Yet, there is virtually no research in this area as yet to confirm or disconfirm this view.

This research is thus the first to throw some light on the reality of current developments in this arena nationally. It is quite clear from the results of this study that the position and perception of the third sector are not as clear cut as might be suggested in the national policy and there is considerable division within the sector. It appears that the DOMS will have an uneasy task of trying to balance these divisions along with the challenge of having three sectors competing for scarce resources. The next phase of this research - in-depth case studies of prisons and probation areas and the third sector - aims to throw further light onto the numerous issues which have been raised in this paper. More specifically, the ongoing research will look into how criminal justice staff and third sector organisations, as well as offenders and offender volunteers, perceive the involvement of the third sector in the criminal justice system and how well the inter-sector partnership is working and evolving at a ground level.

End notes

¹ A free public website providing a source of information on more than 167000 UK registered charities

² **The Compact** is the agreement between government and the voluntary and community sector to improve their relationship for mutual advantage and community gain

References

- Bryans, S., Martin, C., & Walker, R.. 2002, 'The road ahead: issues and strategies for future joint working' In *Prisons and the Voluntary Sector*, S. Bryans, C. Martin, & R. Walker, eds., Winchester: Waterside press.
- Clinks 2006. *Delivering Services to High-risk Offenders* London, Clinks.
- Clinks/ARO 2007. *Women Offenders-NOMS and VCS* London, Clinks.
- Department of Health 2009. *World class commissioning*. London
- Garside, R. 2009. Pressures facing the voluntary sector. *Community Care*.
- Gelsthorpe, L. & Sharpe, G. 2007. *Provision for women offenders in the community* London, Fawcett Society.
- Harding, R. 1997. *Private Prisons and Public Accountability*. New Brunswick, NJ: Transaction Publishing
- HM Government 2005. *Reducing re-offending through skills and employment*. London.
- HM Prison Service/Clinks 2002. *Good practice guide* London, Clinks.
- Home Office 2005. *Managing offenders, reducing crime: the role of the voluntary and community sector in the National Offender Management Service* London, Home Office.
- Lewis, D. 2008, Using life histories in social policy research: the case of third sector/public sector boundary crossing. *Journal of Social Policy*, 37, 559-578.
- Martin, C. 2002, 'Recent progress in community-based voluntary sector work with the Prison Service,' In *Prisons and the voluntary sector*, S. Bryans, C. Martin, & R. Walker, eds., Winchester: Waterside press.
- Ministry of Justice (MoJ) 2004. *Reducing re-offending national action plan*. London, Ministry of Justice.
- Ministry of Justice (MoJ) 2007. *Third sector strategy: improving policies and securing better public services through effective partnerships (consultation paper)* London, Ministry of Justice.
- Ministry of Justice (MoJ) 2008. *Third sector strategy: improving policies and securing better public services through effective partnerships 2008-2011*. London, Ministry of Justice.
- Ministry of Justice (MoJ)/NOMS 2008a. *Working with the third sector to reduce re-offending: securing effective partnerships 2008-2011*. London, Ministry of Justice.
- Ministry of Justice (MoJ)/NOMS 2008b. *NOMS third sector action plan: securing effective partnerships to reduce re-offending and protect the public 2008-2011* London, Ministry of Justice.
- Ministry of Justice (MoJ). 2009. £10 million funding to divert vulnerable women from custody, Available at: www.justice.gov.uk/news/newsrelease051109c.htm (Accessed 31st March 2010)
- Neilson, A. 2009. A crisis of identity: NACRO's bid to run a prison and what it means for the voluntary sector. *Howard Journal of Criminal Justice*, 48, 401-410
- Neuberger, B. 2009. *Volunteering across the criminal justice system* London, The Cabinet Office.
- New Philanthropy Capital (NPC) 2009. *Breaking the cycle: charities working with people in prison and on release*. London, New Philanthropy Capital.

- NOMS 2005. *Action plan for the development of effective partnership with the voluntary and community sector 2005-2007*. London, NOMS.
- NOMS/IVR 2007. *Volunteers can: towards a volunteering strategy to reduce re-offending* London, NOMS.
- Offender Management Act 2007*. London: HMSO.
- Sharpe, G. & Gelsthorpe, L. 2009, Women offenders and community supervision, *Paper presented to British Society of Criminology Conference, 29th June- 1st July 2009*, Cardiff University
- Silvestri, A. 2009. *Partners or Prisoners? Voluntary sector independence in the world of commissioning and contestability* London, Centre for Crime and Justice Studies.

About the Centre

The third sector provides support and services to millions of people. Whether providing front-line services, making policy or campaigning for change, good quality research is vital for organisations to achieve the best possible impact. The third sector research centre exists to develop the evidence base on, for and with the third sector in the UK. Working closely with practitioners, policy-makers and other academics, TSRC is undertaking and reviewing research, and making this research widely available. The Centre works in collaboration with the third sector, ensuring its research reflects the realities of those working within it, and helping to build the sector's capacity to use and conduct research.

Third Sector Research Centre, Park House, 40 Edgbaston Park Road,
University of Birmingham, Birmingham, B15 2RT

Tel: 0121 414 3086

Email: info@tsrc.ac.uk

www.tsrc.ac.uk

Service Delivery

From housing, to health, social care or criminal justice, third sector organisations provide an increasing number of public services. Working with policy makers and practitioners to identify key priorities, this work will cut across a number of research streams and cover a series of key issues.

Critical understanding service delivery by the third sector is important to policy making as the third sector now provides a major - and very different - option for public services, which may be more responsive to the needs of citizens and service users. At the same time, there are dangers inherent in the third sector becoming over-dependent on funding from service contracts – particularly in terms of a potential loss of its independence. The centre's research will help to inform the debate on the way in which service delivery is developing, the potential role of the third sector in commissioning as well as contracting, and the implications of different approaches to service delivery on the overall impact of the third sector.

Contact the Author

Dr Rosie Meek

02380 597451

r.meek@tsrc.ac.uk

Dr Dina Gojkovic

02380 592482

d.gojkovic@tsrc.ac.uk

Dr Alice Mills

02380 597423

a.mills@tsrc.ac.uk

The support of the Economic and Social Research Council (ESRC), the Office of the Third Sector (OTS) and the Barrow Cadbury UK Trust is gratefully acknowledged. The work was part of the programme of the joint ESRC, OTS Barrow Cadbury Third Sector Research Centre.