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Delays could jeopardise 'rush-job' probation reforms

Lords' vote subjects privatisation plans to further scrutiny as justice ministry's own risk assessment warns of flaws



Alan Travis

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The costs of the 'rehabilitation revolution' are not detailed. Photograph: Dominic Lipinski/PA

Campaigners against justice secretary Chris Grayling's privatisation of more than 70% of the probation service got a rare psychological boost last week when the House of Lords made clear its alarm at the "aggressive timetable" adopted by the justice secretary.

The 215 to 186 defeat inflicted by the peers on Grayling will require that a proper debate and vote takes place in both the Commons and the Lords before any major reform of the structure of the probation service can take place. The defeat will probably be overturned when the offender rehabilitation bill reaches the Commons, but for those in the beleaguered public probation service it was a welcome respite to find that the House of Lords shares many of their concerns.

That rebellion was led by the former chief inspector of prisons, and cross-bench peer, Lord Ramsbotham. He made clear that while many welcome the intention behind

Grayling's "rehabilitation revolution", especially the introduction of post-release supervision for short-sentenced prisoners, there is deep alarm over the lack of detail on costs and whether it can all be done before the next election.

That rebellion was partly fuelled by the Guardian's disclosure of the Ministry of Justice's own strategic risk register in which Grayling's "rehabilitation programme board" describes the policy as a "complex, large-scale change programme to be completed within an aggressive timeframe".

The risk register is quite clear about what is involved. The 35 existing probation trusts are to be replaced by 21 government companies "delivering all functions subject to market competition", and the establishment of a new national public probation service to deliver the remaining 30% of the work involving public protection and high-risk offenders. It means transferring 18,000 employees to new organisations, reallocating 250,000 offender cases, recruiting 22 new management teams and merging more than 2,000 existing computer packages. All of this needs to be in place by October next year so that it is up and up and running by the May 2015 general election.

The justice minister, Lord McNally, told peers that Grayling intends to use existing powers in Labour's Offender Management Act of 2007 to "create and sell companies, and to transfer the delivery of a large proportion of the probation service to the private sector via contractual arrangements involving the formation and sale of a number of new community rehabilitation companies".

In Whitehall, risk registers are often discounted as simply a troubleshooting management tool where every possibility of something going wrong gets a mention just to cover their backs. The probation minister, Jeremy Wright, dismissed this one in similar terms saying they wouldn't be doing their job if they didn't plan for every eventuality, however remote.

Yet, unlike many such documents this one is unequivocal, with three "code blacks" – the highest risk rating in the traffic-light warnings of green, amber, red and black. The most stark is the risk that "an unacceptable drop in operational performance (during the programme) leads to delivery failures and reputational damage".

For probation, a "delivery failure" can mean that a medium-risk offender – who will be monitored in future by a private company working with a charity – goes on to murder or rape someone after their release because of supervision blunders.

The register says the problems that are likely to lead to an unacceptable drop in performance include "industrial relations/action, morale, management attention diverted; leadership/staff turnover/departures; inability or lack of willingness of trusts to backfill key posts; and that chairs and chiefs disengage".

The other two code blacks are closely related and raise other serious problems, such as insufficient support for the reforms among management and staff. This includes concerns that the behaviour of the existing leadership of the 35 probation trusts "is not conducive to progressing reforms" and that the Probation Chiefs Association and the Probation Association "actively promote resistance".

The third code black is a concern that the "affordability objectives for the reform cannot be demonstrated or met, leading to a failure to secure approvals during the programme". The register says they are particularly concerned that they will be unable to demonstrate the costs and benefits of the new payment-by-results model or fail to make promised savings.

The MoJ's rehabilitation programme board, chaired by Ian Poree, director of the programme and Grayling's principal adviser, also has serious worries about the likely level of private sector participation and whether the new service models will prove effective.

But what assessment does it make about the campaign against the reforms? "There is a risk that action through parliamentary process/lobbying causes delays and/or changes that prevent implementation or result in implementation that does not achieve objectives," it acknowledges. It rates this as code red, with the potential for significant detrimental effect, but with a 51% to 80% likelihood of it happening.

The measures the board believes need to be taken to mitigate this risk include "keeping the bill slim and supported by appropriate handling. Minimise dependence of reforms on the passing of the bill" and "media messaging to keep elements of reform at the top of the agenda".

But, interestingly, it also makes the point that Grayling needs clear support from Downing Street, the Treasury, and the Home Office if the reforms are to succeed, and that means dialogue with each of them. The justice secretary is a man in a hurry. He may be able to shrug off last week's House of Lords defeat but delays are his biggest enemy.

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