

PAYMENT BY RESULTS: HOPES, FEARS AND EVIDENCE

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Abstract

The idea that government should move away from paying for services to be delivered to paying in proportion to the level of reduction in reoffending achieved has obvious attractions, particularly in the current economic climate. But will adopting such a 'Payment by Results' model actually deliver the benefits claimed by its proponents? This article reviews some of the potential obstacles to success. As Payment by Results is a relatively untested concept in the field of criminal justice, the article draws on the experience of this approach in employment and in health where it has a longer history. The results suggest that the chances of Payment by Results leading to a reduction in reoffending in crime or in costs are slim. Adopting such an approach may also carry insidious, as well as obvious, dangers.

Keywords

Payment by Results; re-offending; evidence-based policy; cost effectiveness; Transforming Rehabilitation

Introduction

The Ministry of Justice (2011:2) makes a bold claim in its response to the Breaking the Cycle consultation and on its website:

We will change our whole approach to the management of offenders and their rehabilitation, so we only pay for what works in delivering reduced levels of crime.³

On the face of it this 'Payment by Results' (PbR) idea is hugely attractive, particularly in the current economic climate and under a government which is so keen, not only to reduce public expenditure, but also to reduce the scale of the public sector. Why should we pay for the delivery of a service which may or may not bring about the desired change, when it is possible to transfer the cost of failing onto the supplier. Paying only when the promised change has been achieved, and in proportion to the degree of change affected, is obviously preferable. Moreover, as Fox and Albertson (2011) explain, there are other potential benefits to PbR. The sheer possibility of making profits is expected to bring new providers into the field. This, combined with a financial incentive to achieve outcomes, is then expected to increase competition, sweep away unnecessary bureaucracy, and increase the desire to innovate. In turn, these developments should lead to a better understanding of what is effective. Also, if the anticipated gains in efficiency and effectiveness are realised, this will lead to lower unit costs (even allowing for an element of profit to be paid). The remaining savings can be ploughed back to pay for additional activities in this, or another, area of public policy. Additionally, under the Social Impact Bond variant, the possibility of making a profit will not only bring in new suppliers but also financial intermediaries who are expected to finance the service provision in advance of impacts being achieved, in return for a subsequent slice of the profits. This is expected to facilitate the involvement of smaller providers who may not have the financial resources to sustain a service over several years while waiting for their results to be evident and their payments to be triggered.

The idea of payment by results is new in the field of criminal justice, so it is important to consider what evidence there is to support the Ministry of Justice's (2013a) hope that the putative benefits of PbR will be realised. In fact, the only empirical evidence which seems to support this radical policy shift is the positive findings of one small piece of research (Frontier Economics, 2009). This made some rather large claims about success from a weakly designed reconviction analysis in which a sample of prisoners serving sentences of at least one year at one prison, who received additional support in relation to some resettlements needs, was compared with a poorly matched national sample. However, payment by results has a much longer history in other fields such as health, so it is worth reflecting on that experience too. Unfortunately, a recent Audit Commission (2012a:3) review of this sort of material does not inspire confidence as it concluded that:

'Our review of UK and international research evidence found few rigorous evaluations of PbR and no complete, systematic analysis of its effectiveness.'

³ See <https://www.justice.gov.uk/offenders/payment-by-results>

It then goes on to outline a number of 'issues that commissioners should consider if they are to use it successfully' which it derives from previous efforts to implement Payment by Results schemes. Combining the Audit Commission's concerns with those raised in responses to the Transforming Rehabilitation consultation (Ministry of Justice, 2013b) yields a very long list of questions about whether adopting a Payment by Results approach in delivering services to offenders will actually yield the sorts of benefits so confidently anticipated by the Ministry of Justice. This article addresses eight of the most important questions raised:

1. Do we know enough about how to reduce reoffending to attract new suppliers?
2. Can we measure reoffending well enough to base contracts on such measures?
3. Will reducing reoffending lead to 'reduced levels of crime' as the Ministry of Justice claim?
4. Will transferring uncertainties about effectiveness affect the price charged by suppliers or other aspects of the contract?
5. What will happen if suppliers miss targets?
6. Is it possible for suppliers to meet targets but not achieve outcomes?
7. Is it safe to rely on contracts and contract management?
8. Can we be certain that savings will outweigh costs?

In the next section, the first three questions are addressed mainly by considering what we know from a criminological perspective. Given that PbR is a new development in criminal justice, the remaining five questions are considered in the light of evidence from a broader evidence base, including research into other Payment by Results initiatives. The conclusion discusses how far this evidence supports the Ministry of Justice's optimism about PbR and how far it suggests that some of the concerns other commentators have raised are well-founded. It also considers whether the current focus on payment by results is unhelpful in that it distracts attention from other important questions about the provision of services to those who offend.

What does the evidence say?

1. Do we know enough about how to reduce reoffending to attract new suppliers?

Reducing adult reoffending is very hard. Many of those in custody or on probation have childhoods and histories marred by abuse and neglect (Social Exclusion Unit, 2002). As adults under supervision, they are usually assessed as having three or more of the nine main ('criminogenic') factors which are thought to promote offending such as serious alcohol or drug misuse, unemployment, pro-criminal attitudes, and cognitive skills deficits (see Cattell *et al.*, 2013, for example). Probation and prison staff, along with the voluntary sector, have worked hard to reduce reoffending. This work has been heavily influenced by 'what works' evidence from abroad (e.g. Andrews *et al.* 1990; Lipsey 1992) which focused on the use of intervention programmes which tackle cognitive deficits and pro-criminal attitudes. While some aspects of programme delivery are standardised, the evidence shows these interventions need to be tailored to take account of individual learning styles (or 'responsivity'). They also need to be 'multi-modal', which means being delivered

alongside other interventions, designed to overcome the practical obstacles which also impede reducing reoffending such as homelessness, a lack of job skills and education, social isolation, etc. As the National Audit Office (2013a) has pointed out, tackling many of these issues is not something that the Ministry of Justice (or contractors) can deliver alone.

While the best interventions have yielded 10-15 per cent reductions in reoffending with some groups, this is very unusual. The basic message is that some things work for some people in some circumstances, but that getting the right mix in practice is very difficult. This evidence base certainly does not offer any simple recipes which can be guaranteed to dramatically reduce overall reoffending rates. It remains true, as Vennard *et al.* (1997:33-34) concluded just as England and Wales were moving to 'evidence-based practice':

...the research literature does not demonstrate that cognitive behavioural approaches, or indeed any other type of approach, routinely produce major reductions in reoffending among a mixed population of offenders...it is not possible to identify any all-purpose methods or forms of intervention as being reliably and consistently better than standard or traditional programmes with offenders.

The evidence about whether importing and rolling-out this approach has been effective is also scant; and our knowledge about what works for women is particularly slight (Gelsthorpe and Hedderman, 2012). Even the latest rehearsal of this evidence from the Ministry of Justice (2013c) acknowledges these points, although not in these terms. Indeed, the Ministry of Justice contributed to this state of affairs in recent years by both cutting back expenditure on research and increasing restrictions on access to prisons and to probation for independent researchers.⁴ It has been suggested that once interventions are managed by private companies, funding and access may improve, and knowledge may develop more quickly. However, as that investment may give a provider commercial advantage, it is also possible that the overall pool of openly available knowledge about 'what works' may shrink rather than expand.

Meanwhile desistance theorists contend that this whole approach may have serious limitations (e.g. Farrall, 2003). In particular, 'what works' focuses on tackling what promotes offending rather than what promotes desistance. It also tends to treat moving away from offending to not offending as switching between two separate states rather than seeing that desistance as a process and acknowledging that the path to total desistance can be rather zig-zag (Burnett, 2004).

Given this context, it seems likely that reoffending rates remain 'stubbornly high' (Ministry of Justice, 2013a:3) because helping offenders to reduce reoffending is difficult, complex and based on an imperfect knowledge base. This is not a situation which is likely to draw in a lot of new potential suppliers unless they are naive, reckless or both. Indeed the risk of failure is so high that even the current pilot at Peterborough limits the risk to which

⁴ <http://www.justice.gov.uk/publications/research-and-analysis/noms>

suppliers are exposed; and it is why Ministry of Justice plans have, despite the rhetoric, always included an element of payment for service delivery.

2. Can we measure reoffending well enough to base contracts on such measures?

As payment depends, in whole or in part, on demonstrating a reduction in reoffending under PbR, it is axiomatic that this must be measured accurately. Results from the NHS, one year after a Payment by Results model was introduced to pay for elective (ie non-emergency) care between Primary Care Trusts (PCTs) and NHS Foundation Trusts during 2004-5 found that data quality was woeful (Audit Commission, 2005; O'Connor and Neumann, 2006). Although improvements have been made, after 5 years of quality assuring data for the NHS, the Audit Commission (2012b) found that there remained an average error rate of 7.5% in 'episodes of care' records. Only 4 Foundation Trusts had error rates of less than 5%. Indeed, inaccurate record keeping was still so widespread among Trusts that they concluded that 'More have performed consistently poorly or have varied between mediocrity and poor performance.' (2012b:3). This was associated with between £600m and £700m of under- and over-payments. Meanwhile a recent study by Capita (2013) found that 40% of decisions about how to allocate patients with mental health issues to 'clusters'⁵ involved misallocations, lacked the required evidence for the decision, and the time in the cluster was wrong. A further cause for concern was that these issues, and the implications for costs, were not usually being picked up at Board level.

Reconviction rates have been chosen as the outcome measure which will trigger payment under the Ministry of Justice plans. While reconviction data certainly reflect offending behaviour, they are also affected by other factors such as police clear-up rates and the time taken to finalise cases, with more serious cases taking longer (see Hedderman, 2009, for a fuller discussion of what reconviction measures apart from reoffending). They also vary over time for this reason as well as because justice has become more or less effective or efficient. At a local level this could include a police initiative aimed at tackling a particular form of crime. At a national level this can be caused by initiatives such as the Labour Government's 'offences brought to justice' initiative, which was largely achieved by rounding up the usual suspects rather than seeking out and prosecuting those who were previously unknown to the system (see Home Affairs Select Committee, 2008).

When looking at the impact of an intervention on a relatively small sample, reconviction rates can also be affected by errors in the data or data search, as well as changes in underlying offending behaviour. Even simply tracing someone's criminal history and re-offences accurately on the Police National Computer can be a rather hit or miss exercise. A recent check by the Ministry of Justice (2013d) found that about one in every ten offenders could not be found when name, date of birth and gender were used as the identifiers. Given that the most effective interventions only yield reductions in reoffending of this order, this could have serious consequences for being able to say with confidence

⁵ A 'cluster' is a grouping of those with similar characteristics and service needs in contrast to grouping people according to their diagnosis or the individual interventions they receive (Capita, 2013)

whether an intervention worked or not, as the recent study by Jolliffe *et al* (2011) demonstrates.

A further problem is that any perceived change must be directly attributable to the service being provided. While it is usually sufficient to adopt a Bayesian approach to deciding whether a change in reconviction is due to a genuine change in offending behaviour, once payment becomes contingent on being right about this, it becomes essential (not just very important) that the change represents a genuine reduction in reoffending and can be attributed to the intervention being delivered. In the criminal justice field this is usually done by matching those given an intervention with those who are not. Doing this well is possible but difficult. This is clear from the first report on this aspect of the Peterborough pilot (see Cave *et al.*, 2012). Unfortunately, in the field of reconviction analysis achieving accuracy is the enemy of transparency because it requires the use of very sophisticated statistical techniques to allow for some of the problems outlined above. In the case of PbR, it is worrying that simplistic and potentially misleading assessments of impact have been welcomed by the Secretary of State (Grayling, 2013) as evidence of success even before the independent evaluators have received the data for analysis.

3. Will reducing reoffending lead to 'reduced levels of crime' as the Ministry of Justice claim?

There is good reason to think that the actual level of crime in England and Wales is four or five times the 10 million or so crimes counted by the British Crime Survey; and more than 10 times the amount of crime recorded by the police (e.g. Brand and Price, 2000). The amount of crime which reaches court is even smaller because less than 30% of recorded crime is detected each year (Ministry of Justice, 2010); and just under half of that is dealt with through cautions, fixed penalties etc. Only one in four of those who do go on to be convicted at court are then sentenced to either custody or a community sentence (Ministry of Justice, 2010). In this context, the idea that efforts to reduce reoffending will make serious inroads into overall crime rates is simply fanciful. Perhaps this hope is built on the idea that about 100,000 people commit half of 'all crime'? If so, it is built on a misunderstanding of the evidence. These individuals certainly pick up a disproportionate number of convictions, but that is quite a different thing to being responsible for half of all offending. As Garside (2004:18) concludes from his assessment of the evidence:

...it stretches credibility to breaking point to claim that it is possible to achieve meaningful reductions in crime by targeting a few thousand of the usual suspects.

4. Will transferring uncertainties about effectiveness affect the price charged by suppliers or other aspects of the contract?

Transferring risk in any arena is expensive; and the greater the risk, the greater the price. That is why organisations like Wonga can charge 4,000% interest on unsecured loans while mortgage rates, secured against the value of a home, are currently averaging 4%.⁶ It is

⁶ See <https://www.wonga.com/> and <http://www.telegraph.co.uk/finance/personalfinance/borrowing/mortgages/10299887/Average-mortgage-rates-reach-new-low-of-3.43pc.html>

also why car insurance premiums for 17-22 year olds, who have higher accident rates, are three times the price of those for 50-59 year olds.⁷

It is too early to say exactly how uncertainty about the most effective ways of working with offenders to reduce reoffending will ultimately affect the cost of involving commercial companies in the provision of such services. However, the latest information from the Ministry of Justice (2013e) on this shows that it has already led to adjustments being made to the proposed payment mechanism, so that some allowance will be made for a learning curve. Also, the PbR element has been scaled back so that the majority of payment will be made (as now) for service delivery (see Ministry of Justice, 2013d). Even this may not be enough to tempt new suppliers into the market. Simulations for the (pro-PbR) think-tank the Social Market Foundation, based on the current proposed payment structure, suggest that providers may make losses if they spend money on providing rehabilitative services and concludes that 'The payment mechanism encourages providers to cut spending on services and allow reoffending to drift marginally upwards' (Mulhern, 2013:1). If this is right, the money available, the payment mechanism, or both, will have to change as, otherwise, only unscrupulous suppliers will be able to make a profit.

5. What will happen if suppliers miss targets?

The Work Programme was introduced in June 2011 to help long-term unemployed people move off benefits and into sustained employment. After 14 months the overall success rate was under 4 per cent (31,000 people) compared with an expected rate of just under 12 per cent (104,000 people). The project was particularly unsuccessful in harder cases in that, among the 9,500 former incapacity benefit claimants referred to providers, only 20 had been placed in a job that lasted three months. None of the 18 providers has met their contractual targets. As a result the Public Accounts Committee (2013a) reported that it expected one or more providers to go out of business or have their contracts cancelled. They also criticised the Department for Work and Pensions for having poor contingency plans. In July 2013, NHS Direct (2013), the provider which won 11 out of 46 regional contracts for providing the '111' non-emergency medical helpline and thus covered 34 per cent of England, announced that it was pulling out of the contract because the volume of calls had been 30-40% lower than the contract specified and the payment per call had fallen from around £20 per call to about £8. NHS England's (2013) contingency plans - or at least its response once the contingency occurred - consisted of suggesting that other existing providers may fill the gap. It seems unlikely that other providers will be queuing up to take over, unless it is with lower targets or increased payments. In both cases, there is a real risk that service users (or 'customers') will be the main losers. When the supervision of offenders fails, it is not just the needs of those being supervised which are not met (though that is important), but public safety is also potentially put in jeopardy. While the Ministry of Justice seems to have made some allowance for a change in individual risk triggering the involvement of the public Probation Service, they do not seem to have allowed for the wholesale failure or withdrawal of commercial service providers. The plans to curtail the public Probation Service included in the overall Transforming Rehabilitation strategy (Ministry of Justice, 2013a) certainly rule out any large-scale transfer back to them should a contractor fail or withdraw. The only obvious

⁷See <http://www.theaa.com/newsroom/bipi/201307-bipi.pdf>

alternative is that other providers move in but, as in the case of the 111 service, it is hard to believe that they will do this without charging a premium for doing so.

6. Is it possible for suppliers to meet targets but not achieve outcomes?

While the exact measure of reconviction to be used has been much debated, the idea that reconviction should be the ultimate measure of success for PbR has not been seriously challenged. This seems rather odd given that it is a measure of failure rather than success. An obvious difficulty with this is that while the new providers will no doubt be expected, like the public Probation Service, to report any offending they become aware of, they will also be aware that it is not in their commercial interests to do so.

The distorting effects of targets are so common that the effect has been formulated into Campbell's Law in the Social Sciences (Campbell, 1976) and Goodhart's Law in Economics (Chrystal and Mizen, 2001). In their simplest formulation, these state that 'when a measure becomes a target, it ceases to be a good measure'.⁸ A more cynical commentator has suggested that payment by results:

does not reward organisations for supporting people to achieve what they need; it rewards organisations for producing data about targets.... It makes good people do the wrong things, and then forces them to lie about it. (Lowe (2013) as cited in Garton Grimwood et al., 2013:6).

In fact, fraud is only one of the seven ways which Smith (1993, as cited in Chowdry, 2011) identified in which targets can be achieved without this leading to the outcomes desired. The other six are:

Gaming - meeting the target without changing performance by focusing on the easy wins;

Convergence – targets are defined in relation to what other suppliers are able to provide, leading to a standard level of performance rather than excellence;

Tunnel vision – focusing on the agreed target even if it becomes clear that this is not making any real difference;

Sub-optimisation – the target is too narrow for meeting it to affect the overall objectives;

Myopia – focusing on short-term gains to yield quick returns, leaving longer-term issues to build up;

Ossification – failing to innovate because this may put profits at risk.

These are not simply potential problems. The UK experience of using PbR to get people into work has provided examples of fraud (CPS, 2013) and gaming through 'cream skimming' (only accepting easy cases) and 'parking' (accepting difficult cases but only working with easy ones). In addition to both parking and cream skimming in the provision of non-emergency care in the NHS, O'Connor and Neumann (2006) found 'upcoding' whereby easy cases are re-classified as hard ones in order to obtain higher fees. They also

⁸ See <http://www.atm.damtp.cam.ac.uk/mcintyre/papers/LHCE/goodhart.html>

found 'sub-optimisation' in that the volume of hospital operations became the target because this was measurable, even though operations formed only part of the care needed for improved health. Another version of potential 'upcoding' was identified in a more recent Audit Commission (2012c) whereby some patients who stayed in a hospital for less than 24 hours were coded and charged as in-patients and some as (much cheaper) out-patients. The Commission estimated that sorting out this one data problem could cost over £16m nationally to resolve.⁹

Most worryingly, Hudson *et al.*, (2010) found that, while previous research has shown gaming to have happened, their research on welfare to work in the UK showed that such practices were sometimes regarded as acceptable and endorsed by the service provider's managers. The alternative, as Price Waterhouse (2012:2) found in a recent review, is that:

providers and commissioners are increasingly deciding to negotiate reimbursement locally...our survey evidence shows that 50% or more providers engage in local negotiations with commissioners, outside the rules of PbR.

7. Is it safe to rely on contracts and contract management?

The uncertainties identified about what reduces reoffending, reliable data on reoffending and the lack of alternative sensitive outcome measures mean that designing and managing contracts which reward providers appropriately, but not over-generously, without creating perverse performance incentives, is going to be very hard. It is difficult to say whether the standard of government procurement is worse than in the private sector, although a number of Public Accounts Committee, National Audit Office and Audit Commission reports and Inquiries such as Laidlaw (2012) suggest that the mistakes made are often obvious and easily avoidable if the right basic procedures are followed. What is certainly true is that when government procurement goes wrong, the amounts involved can be eye-watering. For example, the Chair of the Public Accounts Committee (Hodge, 2011) commented in relation to one review of the management of large contracts by the Ministry of Defence procurement, that 'In this one hearing, when we were able to focus on only four projects, we identified over £8 billion of taxpayers' money which has been written off or incurred simply for reasons of delay.' While recent progress has been made, the Public Accounts Committee (2013b) still found that the Department continued to take an unrealistic view of the potential for overspending and was very weak at holding suppliers to account. Meanwhile, in another report the Public Accounts Committee (2011:3) concluded that the £11.4bn programme NHS patient record system was 'beyond the capacity of the Department of Health to deliver'.

The Ministry of Justice's record of letting and managing contracts has recently been criticised in a National Audit Office (2013b) review; and the National Offender Management Service (NOMS), which has been given responsibility for managing PbR, has a poor record in this regard too. For example, the National Audit Office (2009) concluded that not only had it made serious errors in its handling of the £234m C-NOMIS IT system

⁹ These sorts of problems have also been identified in other countries (see, Koning and Heinrich, 2011, for a review of the some of the international evidence on gaming).

for Prisons, which led to both delays and overspend, but that most of these mistakes were both foreseeable and avoidable. Most worryingly in relation to PbR: 'contractual arrangements with its key suppliers were weak and its supplier management poor' (National Audit Office, 2009: 7). NOMS was also criticised for failing to provide sufficient senior management oversight; failing to provide adequate management resources and structures; having poor financial monitoring and planning arrangements; for failing to grasp the technical complexity of the project; and failing to grasp that introducing a consistent system into an environment with inconsistent business practices would not work. Even when it sought to rectify these problems, the National Audit Office (2009:8) concluded that 'Although programme management has improved considerably in the last 18 months, weaknesses remain'. It is to be hoped that these deficiencies have now been rectified.

8. Can we be certain that savings will outweigh costs?

The Ministry of Justice has been required to reduce expenditure between 2010 and 2014 by a quarter (HM Treasury, 2010) and to plan for a further 10% reduction in 2015/16 (HM Treasury 2013). In this context, it is not surprising that the Ministry of Justice (2013a:3) is hoping that PbR will help to 'free up funding through increased efficiency and new ways of working'. However, the experience from other PbR schemes does not give grounds for optimism. This is partly because the contracts and the measurement of targets involved in operationalising PbR require very detailed planning and careful monitoring. Evidence from previous PbR schemes suggests that this is likely to be neither simple nor cheap. For example, in a detailed study of three Hospital Trusts and three PCTs, Marini and Street (2006) found that costs were estimated to have increased by around £100k to £180k in Hospital Trusts and from £90k to £190k in the PCTs. Most of the additional expenditure was attributed to recruiting the extra staff needed to negotiate contracts, collect data, monitor services and deal with contractual disputes. The Audit Commission (2005: 4) also found that when it was introduced into the NHS

...in the first year, Payment by Results proved to be a more complex, time-consuming and challenging process for the early implementers than they anticipated. It requires investment of time and resources – the organisations in our sample spent approximately £100,000 each, equivalent to £50 million nationally. It also requires clinical engagement, better planning and reporting arrangements, careful negotiation and close attention to detail. All this has meant that time and energy has been devoted to the system and its mechanics, and has not yet broadened into the expected concentration on quality of care and performance improvement

The fact that reconviction records can be missing in 10 per cent of cases searched (Ministry of Justice, 2013d) suggests that they too will have to spend time and effort improving record keeping to a level which will support a PbR model. This alone suggests that introducing PbR will not reduce costs in the immediate future. Given the NHS experience, even in the longer term, savings may be hard to identify.

Conclusions: does the evidence support hopes or fears?

The Justice Secretary, Chris Grayling, seems to take a very optimistic view of PbR. The evidence reviewed above suggests that this optimism is unlikely to be well-founded. It is

therefore reassuring that other parts of government take a more cautious position. For example, the executive director for strategy at the Cabinet Office's Efficiency and Reform Group (ERG) reportedly told delegates at the National Audit Office annual conference that her department was taking a more 'measured view' of payment-by-results. The director general for public services at the Treasury was similarly careful:

Chris Grayling... is going to take a payment by results approach to almost the whole of probation. But some of us who have been around a long time get very nervous about panaceas.....We're taking a very cautious approach on whether this is going to deliver better value for money compared to direct public spending intervention.

If the Ministry of Justice begins by learning from the experiences of other schemes, it may be able to avoid some of the issues which have affected other PbR initiatives. First, it is to be hoped that, despite their budget cuts, NOMS is able to improve its commissioning and project and contract management skills. Second, it might be worth considering whether some positive outcome measures might be tested alongside the proposed absence of reconvictions to assess whether a service for offenders has yielded benefits. Such measures might be harder to 'game' and less likely to create perverse incentives than reconviction. If reconviction is to be retained as a measure of success, the government will need to improve the quality of reconviction data significantly. This will be expensive and it will take some time to get right. The original plans to pilot and then roll-out PbR might have allowed for such developments, but the 'big-bang' approach now being pursued will happen well before such changes can be made. This is risky on many levels, so it is to be hoped that the Ministry does have good contingency plans (or deeper pockets, than they appear to have).

Unfortunately, it seems that the Ministry of Justice is intent on learning what are likely to be painful PbR lessons at first hand. By the time these lessons have been learnt, the public Probation Service will have become such a vestige of its former self. Once that happens, it is very unlikely that anyone will have the courage, imagination or money to recreate it. This is a source of concern as the Ministry of Justice's (2013f) own figures show that Probation has been making inroads into overall reconviction rates; and, anyway, has a much better record of reducing reconviction than prison in like-for-like cases. There are no magic solutions out there which will miraculously improve on those achievements and disrupting that work is not only of doubtful value but potentially dangerous. First, it may put the public at risk as individuals who are not high risk become so because of a commercial decision not to work with them. But PbR carries a second, perhaps less obvious, danger.

Payment by Results is being promoted on the grounds that it concentrates the supplier's mind on outcomes. Reviewing the evidence from other fields suggests that this is correct. However, the outcome it concentrates the mind on is profit. As the political philosopher Michael Sandel (2012,n.p.) observed:

A growing body of research confirms what common sense suggests: financial incentives and other market mechanisms can backfire by crowding out non-market norms.

The one really solid piece of evidence we have about the majority of those who get caught up in the criminal justice system is that they are drawn from the most deprived and disadvantaged in our society. Reducing reoffending is an important aspiration, but it has not previously been the only reason for working with offenders. It is unfashionable to argue that we owe them a duty of care, but that does not make it any less true.

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