Payment-by-Outcome in Offender Management

James Dicker
This case study series was an input into the report *Payment by Outcome: A Commissioner’s Toolkit*. The case studies do not provide an explanation of how to design a payment-by-outcome system in the sectors studied. Rather, through the case studies, the authors sought to understand the challenges involved in using payment-by-outcome and the tools that have been employed to cope with them.
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Introduction

Re-offending: a costly problem
Despite decreases in re-offending over the last decade, half of adult prisoners released in England and Wales between January and March 2008 were reconvicted within 12 months of release. Reconviction rates are significantly higher for young offenders, those sentenced to less than 12 months in prison, and those with a number of previous convictions. While offending programmes have had some success in reducing re-offending, there is no clear evidence about what works best.

Although it is difficult to calculate the precise costs of re-offending, a National Audit Office report estimated the cost to the economy to be between £9.5 billion and £13 billion in 2007-08, with those serving short sentences responsible for three-quarters of this. There are also numerous costs associated with re-offending that are very difficult to calculate, such as the harm to victims and the disruption to family and community life that occurs when offenders are imprisoned. It has been calculated that victims bear about half of the estimated total cost of crime to society, £36.2 billion in 2003, in material and emotional damage.

Policy context
The problem of re-offending gained prominence following the publication of the Social Exclusion Unit’s seminal report, Reducing Re-Offending by Ex-Prisoners (2002). In 2003, the government commissioned Patrick (now Lord) Carter to review the management of offenders. Carter proposed that there should be ‘end-to-end’ management of offenders from the commencement to the completion of sentences. The Review recommended the division of commissioning and provision of offender management services and greater contestability.
Acting on the Review’s recommendation, the government created the National Offender Management Service (NOMS) in 2004 to bring together the headquarters of the prison and probation services. The intention was to give each offender a case manager who would follow them throughout imprisonment and probation to ensure continuity of relationships and service provision. NOMS, now an executive agency of the Ministry of Justice, is responsible for commissioning and delivering adult offender management services, including the safe incarceration of offenders and rehabilitation services in custody and the community.

In 2004 the government also released its *Reducing Re-offending: National Action Plan*. The focus of the Plan was on the resettlement of ex-prisoners through the provision of key services, including accommodation; education, training and employment; mental and physical health; drugs and alcohol; finance, benefit and debt; children and families of offenders; and attitudes, thinking and behaviour. These are known as the seven ‘pathways’ to reducing re-offending. A variety of programmes designed to assist offenders’ progress along these seven pathways are provided in prisons and in the community. The specific needs of each offender are assessed and offenders are referred to specialist services for support to meet those needs.

More recently, the Coalition Government published its Green Paper, *Break the Cycle*, detailing further reforms to the criminal justice system, including plans for more effective rehabilitation and the use of payment-by-results to reduce re-offending.

This case study draws on the development of payment-by-outcome in offender management and explores the tools that commissioners might use to overcome the challenges.
What is Payment-by-Outcome?

Payment-by-outcome is a way for government to incentivise providers of public services to deliver policy priorities. It is the latest in a series of initiatives falling under the general rubric of ‘performance management’. Performance management in various guises – ‘Management by Objectives’, ‘Performance Budgeting’, ‘Management by Results’ – has been attempted by numerous governments over the last 40 to 50 years.

The most recent incarnation of performance management in the UK is called payment-by-results, where providers will be paid based on their delivery of outputs or outcomes, rather than inputs or processes. There is often an assumption that the performance incentives will be high-stake, with significant financial risk for the provider, although this is not an essential feature of the model.

Payment-by-outcome is a type of payment-by-results in which there is a strong focus on outcomes rather than outputs. While commissioners may ultimately measure intermediate outcomes or high-level outputs, the notion is that commissioners identify the outcomes they want to achieve and then find practical ways of measuring the impact of interventions on them.

There are several benefits to using payment-by-outcome in offender management. First, because payment-by-outcome involves specifying an end goal for providers to achieve, it compels commissioners to state explicitly the goals of policy. This is particularly important in offender management, where a focus on both public protection and the reduction of re-offending can often lead to an implicit bias in favour of the former. This is because failings in public protection are readily observable and attributable to a specific institution, while reduced re-offending is difficult both to measure and to connect to a particular intervention. However, by stipulating that providers will be paid for reducing re-offending, commissioners
can ensure that rehabilitation is the priority for those providers. Another benefit of payment-by-outcome is that it allows for and indeed incentivises innovation in services and service delivery models. There are many factors that affect offending behaviour and a variety of different approaches to reducing recidivism, so payment-by-outcome may facilitate exploration of ‘what works’ to reduce re-offending. Finally, payment-by-outcome increases accountability as commissioners only pay for interventions that have a demonstrable, positive effect on the ultimate objective.
While one aim of payment-by-outcome is to encourage innovation, commissioners require some knowledge about different approaches so that they can evaluate bids, define measures and structure incentives appropriately. There is a lack of widespread agreement about what works to reduce re-offending. While evaluations of rehabilitation programmes no longer conclude that ‘nothing works’, the evidence now supports a conclusion that “some things work for some people, some of the time, in some settings.” The lack of clear evidence about what works underlines the potential benefits that might arise from incentivising providers to develop alternative new programmes to reduce re-offending, but it also helps to explain why commissioners cannot simply specify high-level outcomes and allow delivery models to remain a ‘black box’.

Two different sets of literature inform the debate about how best to reduce recidivism. One is a theoretical literature seeking to understand why offenders desist. The contributors to this literature are psychologists, sociologists and criminologists who test their theories about why offenders stop committing crime using longitudinal studies. Practitioners can draw on these theories and the accompanying evidence to design interventions to speed the process of desistance. The other body of evidence has been called the ‘what works’ literature. Rather than theorising about the reasons for desistance, these authors evaluate programmes to identify those that are most effective at reducing re-offending.

There is some convergence in the findings of these two literatures. Subscribing to one theory of desistance over another does not necessarily lead to the exclusion of certain types of programmes, although, it is likely to lead to some being given more weight than others. As one author has described, all programmes carry within them “implicit criminologies” – assumptions about why offenders begin and
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cease to commit crime and understandings of how programmes aid the process of desistance.\textsuperscript{9} The commissioner’s theoretical framework will have a powerful influence on the design of the payment-by-outcome system, and the specification of a particular output measure may lock out alternative approaches to rehabilitation, thereby narrowing the scope for innovation.

Resettlement approaches
Voluntary organisations have provided ad hoc resettlement services to prisoners leaving custody since the nineteenth century, but resettlement regained importance with the publication of the 2002 Social Exclusion Unit report. The document argued that ex-prisoners’ needs were not being met in areas such as, employment and housing, and that this was contributing to the high rate of recidivism.\textsuperscript{10} The government’s response was the National Action Plan, which identified seven distinct pathways, six of which are based on public services, while only one focuses on ‘attitudes, thinking and behaviour’. The emphasis is on services that help offenders manage daily life in the community, and the continuity of those services across the boundary from prison to the community.

It has been argued that ‘through the gate’ interventions of this kind are, at their root, determinist in nature reflecting a view that “offenders are largely the victims of their social circumstances and problems beyond their control”.\textsuperscript{11} Even if this description is unfair, it is true that characterising the problem in this way has resulted in a significant emphasis on structural and managerial reforms.

Motivational approaches
There is a multitude of competing theories that can be categorised as motivational, but they differ from resettlement theory in their focus on individual agency, rather than structure, in the process of desistance. Change is seen as “a difficult and often lengthy process”, with numerous relapses and reversals. Thus programmes based on motivational theory tend to place much greater focus on the development of human capital.\textsuperscript{12}

Motivational approaches to desistance can live harmoniously alongside a resettlement approach, as they recognise the importance of helping offenders with the practicalities of daily life. Indeed, one author suggests that the two approaches are mutually reinforcing; solving the practical problems without addressing thinking and attitudes or vice versa is unlikely to be effective.\textsuperscript{13}
The Ministry of Justice recognises the importance of a mixed approach. The 2010 Green Paper Evidence Report cites “good evidence that cognitive/motivational programmes… can reduce re-offending; and there is promising evidence about the impact of drug treatment programmes [and] education, training and employment”.\textsuperscript{14} Moreover, the report emphasises the importance of the supervisory relationship between offender and case manager to rehabilitation and reduced re-offending.\textsuperscript{15} However, the foundation of NOMS’s recent work on desistance is the more effective coordination of services ‘through the gate’: “the [regional] plans outlined under most of the Pathways seem to take it for granted that good service provision will result in less re-offending…”\textsuperscript{16} Given limited time and scarce resources, there is an even greater danger that ambitious plans for one-to-one supervision of offenders, as foreseen in the Green Paper, will be abandoned in favour of more practical approaches.\textsuperscript{17}
Examples of Payment-by-Outcome in Offender Management

Outputs and reconviction outcomes are often monitored to assess the effectiveness of rehabilitation programmes, but it is only relatively recently that payment-by-results systems have been modelled and piloted.

Monitoring outcomes
A plethora of studies have evaluated the effectiveness of programmes in reducing reconviction rates. The examples discussed here have been selected to illustrate the variety of programmes that monitor outcomes. The four programmes represent both resettlement and motivational approaches and are run in prison and community settings by providers from the public, voluntary and private sectors.

Restorative justice “is a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future.” One of its main principles is to involve “those mainly concerned (particularly the offender and the victim, but also their families and communities)”. The objectives of restorative justice include attending “fully to victims’ needs”, preventing “re-offending by reintegrating offenders into the community”, enabling “offenders to assume active responsibility for their actions” and involving the community in the rehabilitation of offenders and victims. An evaluation by the Ministry of Justice of three schemes showed that while restorative justice did not produce a statistically significant reduction in the number of offenders who were reconvicted or the severity of re-offending,
offenders who participated in the scheme did exhibit a statistically significant reduction in the frequency of their offending.\textsuperscript{22}

*The Diamond Initiative*, launched in 2008 in six London boroughs, is a two-year pilot established by the London Criminal Justice Partnership which aims to reduce re-offending by targeting resources on offenders returning from short sentences to neighbourhoods with a large number of resident offenders.\textsuperscript{23} Rather than aggressively policing these neighbourhoods, local agencies focus on helping offenders to reintegrate into their communities. Early results show that only 28\% of participants have been reconvicted in the six months since the scheme began, compared to 43\% of offenders in a comparison group.\textsuperscript{24}

**Therapeutic communities** provide residential treatment for offenders who have a number of “specific needs relating to self-management, interpersonal relating, anti-social beliefs, values and attitudes, emotional management and functioning, and who have additional psychological and emotional needs which may hinder participation in other treatment programmes”.\textsuperscript{25} The focus of therapy is to understand and therefore learn to control offending behaviour. Therapy is conducted in various creative ways, including through group sessions chaired by residents, art therapy and psychodrama.

The first therapeutic community was opened at HMP Grendon in 1962 and was the only therapeutic community operating in England and Wales until the opening of HMP Dovegate in 2001. Initial studies of offenders who had been residents of Grendon did not reveal a statistically significant effect of participation in the therapeutic community on reconviction rates. However, a 1997 study of 700 prisoners admitted to Grendon between 1984 and 1989 showed that among those inmates who completed a stay of at least 18 months, four-year reconviction rates were reduced by 20-25\%. Conversely, there was little effect on the reconviction rates among those who stayed for less than 12 months.\textsuperscript{26} While there is a rigorous application procedure for prisoners wishing to enter the therapeutic community, the evaluation eliminated the problem of selection bias by comparing offenders on the waiting list to offenders who actually participated in the therapeutic community.

One pilot that achieved comparatively good results in relation to employment outputs was *Path2Work*. Managed by an alliance between a private provider and two voluntary sector organisations, the scheme provided services to increase the employability of ex-offenders in the East of England from 2006 to 2009. The voluntary programme was additional to other welfare to work services, including
New Deal and Pathways to Work provision. Path2Work provided a variety of services to offenders including improving basic skills, job matching and advice on disclosing information about their criminal convictions to employers. Offenders were also offered in-work support once they had found employment. Four and 12 week employment outcomes of participants were monitored, and the results were promising. An evaluation carried out by Deloitte indicated that although Path2Work did not meet its 2007 targets, 30% of participants were placed in work, compared to 6 to 11% of offenders participating in similar welfare to work programmes.

Payment-by-outcome pilots and models
As well as programmes that have been evaluated in terms of outcomes, two pilots have also been established in which providers are paid for outcomes or outputs. In addition, a proposal for a payment-by-outcome system for short-term prisoners was published by the Social Market Foundation in early 2010.

Peterborough: In September 2010, the Ministry of Justice announced a six-year pilot scheme catering for 3,000 male prisoners at Peterborough Prison serving sentences of less than 12 months (a class of offender who would not normally be subject to post-release supervision). The service delivered by not-for-profit providers will be financed by a ‘social impact bond’. Third-party investors will be compensated if social outcomes are achieved, in this case, if the number of reconviction events is less than that of a control group. Payments start when the reconviction rate of the intervention group is 7.5% less than that of the matched comparison group, with increasing returns up to a maximum rate of 13%. The Peterborough pilot is the first in the world where private investors have assumed financial risk for reducing re-offending.

Job Deal aims find employment for young people not in education, employment or training, prisoners with less than three years to serve, and offenders on community sentences. It is part of a larger scheme funded by the European Social Fund and the Department of Work and Pensions, and is managed by NOMS. From the Department’s perspective, employment for ex-offenders is itself an outcome; however, there is also evidence that improving the employment prospects of offenders contributes to a reduction in re-offending. Phase One of the pilot programme began in 2010 and will run for two years.

Each offender participating in the programme is assigned a case manager. Together they develop a tailored action plan and identify any specialist support the
offender may need. The scheme is voluntary, although participants must commit
to meeting with their designated case managers at least once every three weeks.
The provider that runs the programme receives 70% of its funding in the form of
a monthly service fee; the remaining 30% is contingent on achieving set targets.
One third of the conditional payment is for successfully enrolling offenders on the
programme. Another third is for achieving ‘hard outcomes’, such as clients entering
employment or enrolling in further learning. The remainder is for meeting what the
programme refers to as ‘soft outcomes’, but which are in reality a combination of
outputs and processes, including helping clients open bank accounts, organising
mentoring and providing in-work support.

In early 2010 the Social Market Foundation proposed a model in which ten
regional prime providers would operate prisons dedicated to the incarceration of
short-term prisoners. Providers would manage offenders both in custody and the
community. They would receive a payment for the secure and humane incarceration
of prisoners and outcome payments every six months for two years after a cohort of
offenders had been released, based on the number of offenders who had not been
reconvicted during each six month period.\textsuperscript{32}

Finally, in December 2010, the government announced it would be
commissioning six pilots to test payment-by-results in offender management. Two
of these will be aimed at offenders on community sentences and those released on
licence while another two will target offenders sentenced to less than 12 months in
custody. It seems likely that at least one of these pilots will be jointly commissioned
and will focus on an output such as drug use cessation or employment as well
as reduced re-offending.\textsuperscript{33} A further two pilots will involve local partners working
together to reduce re-offending. They will be able to retain a share of any savings
made, to “be reinvested in further crime prevention activity at the local level.”\textsuperscript{34}
Paying providers by outcome is intended to encourage providers to deliver substantial decreases in the rates of re-offending, but commissioners face many challenges in implementing such a system. This section analyses some of the tools that commissioners might use to implement a payment-by-outcome system successfully. In particular, it examines how performance can be measured, how commissioners can segment the population in different ways for various purposes and how an incentive system that encourages the right behaviour can be developed.

Measuring outcomes
Theoretically, desistance could be measured by a reduction in the rate of re-offending; however, it is impossible in practice to measure this as there are no reliable statistics on the rates of crime overall. When categories of crime that are recorded both in the British Crime Survey (BCS) and by police are examined, 2009-2010 estimates indicate that only about 43% of crimes recorded in the BCS are reported to police. The BCS only includes crime against households (not against commercial or public bodies) and its results are subject to sampling errors. Therefore even combining the offences recorded by police with those captured by the BCS does not provide an accurate representation of total crime. While it is possible to use self-reported measures of re-offending, these are unlikely to be reliable as they rely on offenders accurately recalling all offences and disclosing potentially self-incriminating information. Moreover, even if all crimes were detected, it would be necessary to attribute them to known offenders in order to measure rates of re-offending. Commissioners will therefore need to find an alternative means of measuring desistance.
Selecting measures

Since it is not possible to observe re-offending directly, commissioners will require a proxy to measure desistance from crime. Commissioners can choose to measure intermediate outcomes, such as reductions in the rates of reconviction or re-imprisonment, or a range of outputs.

Unlike re-offending, intermediate outcomes are relatively easy to measure through the Police National Computer and prisons data. However, neither reconviction nor re-imprisonment rates capture all re-offending behaviour, as only about 45% of offenders who are reconvicted are incarcerated and it is possible to be recalled to prison for breaching license conditions without being reconvicted. Alternatively, commissioners might specify a cluster of outputs that they believe are important factors in reducing re-offending, such as reductions in drug misuse, improvements in the stability of relationships, and success in becoming debt-free. However, as output measures are only factors which may impact on offending behaviour, not measures of proven re-offending, commissioners carry the risk of paying for activities that may not lead to outcomes.

Once a proxy has been selected, performance can be measured in one of two ways. The first is known as a binary measure and simply records whether or not an outcome has been achieved in a certain period. Examples of binary measures include whether or not offenders have been re-imprisoned or become drug-free. The second kind of performance measure is referred to as a ‘distance travelled’ measure and allows commissioners to assess the progress providers have made towards achieving outcomes, such as how many reconvictions occurred, how severe the offences were or how many weeks of addiction therapy offenders have completed.

Finally, commissioners must decide for how long to monitor offenders until they are satisfied that an outcome has been achieved.

Commissioners’ choice of proxy, type of measure and length of measurement all have strengths and weaknesses that commissioners will need to weigh when making their selection. The following section will highlight some of the choices that commissioners must make when measuring desistance from crime.

Accuracy of measures

Two factors will influence the accuracy of the measure selected: the type of measure and the length of the measurement period. Measures that are closely correlated to the primary outcome will better reflect provider performance at achieving outcomes.
than measures that are only weakly correlated. Intermediate outcomes, such as reconviction and re-imprisonment rates, are measures of proven re-offending; therefore, they are likely to be more reliable measures of performance than output measures such as finding employment or stable accommodation, which are merely factors thought to influence offending behaviour.

Intermediate outcomes such as these are also closely correlated to the secondary outcome of achieving cost savings. Each reconviction entails court costs and either custodial or community supervision costs, while re-imprisonment involves incarceration costs. It is therefore relatively straightforward for a commissioning body wishing to implement an invest-to-save model to establish a price to pay providers for each reconviction or prison sentence avoided.

Although intermediate outcome measures are more accurate, there may be reasons why commissioners choose to use output measures. Intermediate outcomes cannot be measured while offenders are in prison, so if commissioners want to measure providers’ progress while offenders are still in custody, outputs will need to be monitored.

Furthermore, the length of time over which intermediate outcomes are measured will impact on their accuracy as proxies. Of offenders who completed sentences between January and March 2000, 43% were reconvicted within one year of their release; by the end of nine years, this figure was 75%. Clearly, measures of non-reconviction taken at the end of nine years more accurately reflect actual desistance than measures taken at the end of the first year after release.

However, the increased reliability of intermediate outcomes measured over longer periods must be weighed against higher transaction costs and a greater likelihood of extraneous variables influencing results. Ministry of Justice statistics show that of offenders who completed sentences between January and March 2000, 78% of those who re-offended in the two-year follow up period did so within the first year of measurement (see graph below). This suggests that the benefits of measurement decline substantially after the first year.

The length of the measurement period may need to be changed if measures of severity are used. Most severe offences occur in the second and third year after release, so to ensure an accurate representation of providers’ impact on offending behaviour, a three year measurement period may be necessary.
Another factor that may influence the choice between intermediate outcomes and outputs is the level of innovation commissioners expect from providers. Commissioners can use different measures to control how much providers experiment with different types of services and service delivery models. They should take care to use this tool consciously, ensuring they are fully aware how using a particular measure could narrow or broaden the scope for innovation.

Where commissioners use intermediate outcomes, the scope for innovation by providers is likely to be considerable since providers may take quite different approaches to reducing reconviction or re-imprisonment rates. Where commissioners decide to measure and reward outputs, however, innovation is likely to be constrained as the achievement of particular outputs will not be compatible with the use of some service models.

For example, Job Deal is clearly based on resettlement theory. Providers of this programme are not free to experiment with motivational approaches since they have been contracted to provide employment-related services, and one-fifth of their payment depends on their achieving ‘soft’ and ‘hard’ employment and education targets.

Source: Ministry of Justice, Compendium of re-offending statistics and analysis (London: Ministry of Justice, 2010): 91
Commissioners may deliberately choose to limit the extent to which providers are able to utilise different service models, either because they consider the evidence for those approaches to be weak or because the programmes would be politically unacceptable. For example, paying offenders to desist could be controversial.

**Simplicity of measurement**

Several issues must be considered when deciding whether to use binary or distance travelled measure. Yes/no measures are easier to employ than distance travelled measures. For example, more complex measurement systems are required to track the frequency of offending, since offenders who are re-incarcerated are unable to commit any further recorded offences. Commissioners could solve this problem by ‘pausing’ the monitoring of offenders while they were imprisoned and restarting it once they were released, but this could make tracking a cohort complicated as there would be multiple ‘graduating’ dates.

However, many criminologists argue that offenders do not abruptly desist from crime but rather gradually reduce the frequency and severity of their offending. Given the nature of desistance, commissioners may wish to reward providers who had achieved reduced frequency and severity of offences even if some of their offenders were nevertheless reconvicted. They may therefore decide that managing a more complex measurement system is worthwhile.

**Continuity of service provision and provision for high-risk offenders**

While binary measures have the advantage of giving providers a clear indication of what they must achieve and send a strong signal that anything less than complete desistance is a failure, using a binary measurement system could disrupt service provision for some offenders. Providers would not be able to earn outcome payments for helping offenders who had been reconvicted; therefore, such offenders would cease to receive services from their providers, even if they remained in the community and still needed assistance. Using re-imprisonment rates as a measure would allow providers to continue to work with offenders who were reconvicted but avoided incarceration, ensuring better continuity of service provision which could ultimately improve the rate of desistance.

Rewarding reductions in the number of offenders reconvicted may lead to the parking of offenders who are at a greater risk of re-offending. Distance travelled measures of frequency and severity of offending may incentivise providers to engage with high-risk offenders who are unlikely to achieve absolute desistance.
However, public opposition to the use of re-imprisonment and distance travelled measures could be a problem. The public may perceive such measures to be too lenient, as they allow providers to receive payments for clients who have been reconvicted but not re-imprisoned.45

**Measuring providers’ impacts on outcomes**

Measurements of ‘raw’ outcomes (for example, the number of offenders not reconvicted) include outcomes that occurred by chance or because of factors outside of providers’ control. Extraneous factors include offenders’ existing motivation levels, employment rates and interventions by other agencies. To effectively measure providers’ impacts on outcomes requires monitoring the outcomes of a sufficiently large cohort of offenders and controlling for extraneous variables.46 This can be achieved by comparing providers’ performances to a statistically-derived benchmark or the performance of control groups.

The Home Office has adapted the Scientific Methods Scale to assess the scientific rigour of different benchmarking methods.47 This ranks benchmarking mechanisms by scientific rigour, with level 1 being the least rigorous and level 5 being the most.48

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**Figure 2: Scientific Methods Scale adapted for reconviction studies**

<table>
<thead>
<tr>
<th>Standard</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Level 1</td>
<td>A relationship between intervention and reconviction outcome (<em>intervention group with no comparison group</em>)</td>
</tr>
<tr>
<td>Level 2</td>
<td>Expected reconviction rates* (or predicted rates) compared to actual reconviction rates for intervention group (<em>risk predictor with no comparison group</em>)</td>
</tr>
<tr>
<td>Level 3</td>
<td>Comparison group present without demonstrated comparability to intervention group (<em>unmatched comparison group</em>)</td>
</tr>
<tr>
<td>Level 4</td>
<td>Comparison group matched to intervention group on theoretically relevant factors e.g. risk of reconviction (<em>well-matched comparison group</em>)</td>
</tr>
<tr>
<td>Level 5</td>
<td>Random assignment of offenders to the intervention and control conditions (<em>Randomised Control Trial</em>)</td>
</tr>
</tbody>
</table>

*Expected reconviction rates can be generated using the Offender Group Reconviction Scale-Revised (OGRSR), see Taylor (1999). This is a Home Office-developed risk prediction instrument that assesses the likelihood of reconviction based on criminal history risk factors.

Randomised control trials (RCTs) are the most scientifically rigorous method of measuring impact because they eliminate selection effects by randomly assigning offenders to intervention or control groups and often involve difference-in-difference evaluations where the changes in outcomes of the intervention and control groups are compared. Despite ethical and legal concerns about withholding services from the control group, feasibility studies have shown that RCTs may be possible in certain circumstances.49

Other methods are more often used to measure impact in offender management. A matched comparison group is being used in Peterborough where each cohort of 1,000 offenders is matched against a comparison group of 10,000 offenders using data from the Police National Computer.50 Yardstick competition could involve comparing matched or unmatched groups, but using unmatched cohorts is more likely because of practical problems related to matching. To be effective, a matched comparison group must at least classify and compare offenders on major static risk factors such as criminal history and gender.51

Using predicted measures of re-offending involves establishing baselines constructed from statistical models and is considered less rigorous than relying on control groups, as statistical models may be highly simplified and subject to design or operator error. The Ministry of Justice calculates predicted rates of re-offending annually to control for changing offender characteristics over time so that the statistics it publishes can be compared over a number of years. However, constructing predicted measures of frequency and severity of re-offending is highly complex and such measures do not currently exist.52 This could limit the ability of commissioners to measure distance travelled.

Choosing and segmenting the population
Resource constraints mean that access to services is often rationed and it is inevitable that commissioners must make policy decisions about the populations to target for particular interventions. Commissioners may also divide groups of service users into smaller sub-groups in order to make payment-by-outcome work.

The initial choice of population will reflect policy goals. Policymakers may wish to target interventions on the most prolific or violent offenders who cause the most harm. The Social Market Foundation model is designed for offenders on short-term sentences, as they have high rates of re-offending and do not currently receive any organised post-release supervision. Alternatively, commissioners may wish to focus
on offenders who are the most likely to desist, such as first-time and older offenders. These individuals may have greater motivation to desist so programmes may have a greater impact. If demonstrating the effectiveness of a programme in a short period of time is important to policymakers, they may begin by focusing on the ‘low hanging fruit’ and then expand programmes to higher risk groups.

Commissioners may also divide the population into sub-groups. Segmentation may be required where the cost of helping offenders to desist varies greatly. If providers can earn the same outcome payment for helping a low-risk offender to desist as for a high-risk one, it is more likely that high-risk offenders will be parked, receiving minimal services. Commissioners can segment the population based on their risk of re-offending, ensuring that providers are paid more for helping the more difficult groups. Offenders are already risk-assessed using the national Offender Assessment System (OASys), which analyses both static risk factors, such as the number of previous convictions or gender, and dynamic risks, such as homelessness or substance abuse. However, OASys “only predicts re-offending moderately well.” It is currently used only as an advisory tool to assist with sentence planning, and there is little support for using it as a robust method of population segmentation.

Finally, segmentation can be used to ease the task of measuring providers’ impacts on outcomes. If commissioners divide the population so that each group has a similar risk profile, yardstick competition can be used to compare providers’ performance. Yardstick competition among providers serving populations with similar risk profiles is a way of controlling for the impact of offender characteristics on outcomes. However, other extraneous factors such as local economic conditions and housing markets may still affect providers’ results. Comparing providers operating in the same region or statistically adjusting providers’ outcomes based on such variables are ways of avoiding unfair comparisons.

Developing an incentive structure
A large element of payment-by-outcome is the incentive system. Although providers will predominantly be influenced by financial incentives, reputational, regulatory and governance incentives also play an important role in influencing behaviour. High intensity financial incentives can lead to gaming, but other types of incentives may have a mitigating impact. It is therefore important to consider the interactions among different kinds of incentives when designing the system.
Financial incentives
Payment-by-outcome involves using financial incentives to align providers' interests with those of the commissioner. They can be used to encourage the achievement of outcomes and to further other goals, as discussed below. In developing a financial incentive system commissioners will need to consider the optimal degree of risk transfer to providers and how such incentives can be used to decrease the incidence of unwanted gaming behaviour.

Transferring risk
Determining the optimal degree of risk transfer
One of the main purposes of payment-by-outcome is to transfer the risk of delivering outcomes to providers. However, this can be achieved without transferring all of the revenue risk, as would be the case, for example, under an invest-to-save scheme where providers were paid nothing until some of the outcomes were delivered and demonstrable savings secured by commissioners.

Based on past experience with public service contracting, it is unlikely that providers need to have much more than their profit at risk for them to be strongly incentivised to deliver performance targets. If the contract is of sufficient scale, then the prospect of not recovering the cost of capital will focus the attention of senior executives in the provider’s parent organisation. In short, invest-to-save resolves a funding problem but it is not an essential element of payment-by-outcome.

Moreover, if commissioners are concerned with creating clearer alignment between providers’ interests and their own, and in strengthening the motivation of providers to deliver the primary outcomes, then raising the intensity of financial incentives may not always be the best approach.

Increasing the amount of risk transferred may increase the inclination of providers to game. Gaming can occur where financial incentives are weak, but it is generally acknowledged that where providers are under intense financial pressure, they are even more likely to engage in creaming or parking, and other forms of gaming behaviour, to be sure of delivering outcomes and remaining financially viable.

Moreover, the level of innovation may be affected. Where providers carry a high level of financial risk, they may be unwilling to experiment with new service models, electing to use tried-and-tested methods that are more familiar and thus more easily priced.
Finally, some organisations are better placed to manage risk, so that increasing the amount of risk transferred will reduce the diversity of the market. In particular, voluntary sector organisations and small- to medium-sized enterprises will find it more difficult to deliver services in their own right. The prime contractor model, employed in the Flexible New Deal, reserves a place for such organisations, but only at the second tier.

Controlling the degree of risk transfer
Commissioners can adjust the level of risk transferred to providers in several different ways. Models in which commissioners pay service fees in addition to outcome payments involve risk-sharing between commissioners and providers. Commissioners can increase or decrease the proportion of payment in service fees to adjust the level of risk to which providers are exposed. This has already occurred in welfare to work, where the Department of Work and Pensions decided to pay Flexible New Deal providers a 40% service fee (instead of 20%) because of the recession.

Commissioners can also change the timing of payments to providers, using staged payments to decrease risk or full outcome payments to increase risk. Staged outcome payments, such as a payment every six months for each offender who has not been reconvicted, as advocated in the SMF model, reward progress towards outcomes and may better reflect the process of desistance. They also help resolve the cash flow problem for providers and may encourage providers to work with high-risk offenders. Full outcome payments, say for each offender who has not been reconvicted within one year of release, create a higher threshold for outcome attainment and may lead providers to park offenders with a very high probability of re-offending within one year.

Another way of modifying the payment schedule is to create a minimum threshold of achievement that providers must attain before payments commence. For example, in Peterborough, providers must reduce re-offending by at least 7.5% for investors to receive any compensation. Clearly, this raises the risk to providers of not receiving any payment for their services. However, the use of a relatively high minimum threshold increases the commissioners’ confidence that improvements in the re-offending rate are statistically significant.

Minimising gaming opportunities
Commissioners can also adjust financial incentives as a tool for controlling creaming and parking. Paying providers the same rate for low- and high-risk offenders will lead providers to cream; that is, providers will focus on those offenders they believe
they can help desist at the least cost. Alternatively, if commissioners wanted to incentivise providers to engage with all offenders they could increase outcome payments in line with risk, as proposed in a Conservative Party green paper published before the 2010 election.\textsuperscript{54}

One way of aligning the amount of the outcome payment with the risk posed by offenders is to individually assess offenders and assign them to categories. Low-risk offenders would then attract one level of payment, with medium- and high-risk offenders attracting progressively higher amounts. Although offenders are already risk-assessed using OASys, it is still possible that, in this type of system, offenders could be miscategorised.

The target accelerator, whose use has been advocated in welfare to work, could be adapted to offender management as another way of aligning price with risk. This would involve paying progressively higher outcome payments as providers help more offenders to desist.\textsuperscript{55} For example, if 45\% of a control group re-offended within one year of release, and only 30\% of a provider’s clients had re-offended, the commissioner would reward the provider for the 15\% difference. To acknowledge that some offenders were more difficult to help than others, the commissioner might pay £500 for the first 5\% past the benchmark, £1000 for the next 5\% and £1500 for the last 5\%.\textsuperscript{56} Using a reverse target accelerator reduces the risk of commissioners misclassifying offenders, but commissioners will still need to be able to calculate the proportion of offenders in each risk category and an appropriate level of payment for each group.

**Reputational incentives**

Reputational incentives can work to counteract perverse financial incentives, since where reputations matter, providers will try to avoid damaging their brand. Where past performance is clearly linked to the probability of securing future business, reputational incentives will be stronger.

The quantitative data on outcomes that commissioners gather in order to approve payments gives commissioners a certain amount of information about providers’ performance. However, there are also qualitative aspects of service provision which may need to be monitored. The monitoring regime operating in offender management services provides commissioners with frequently-updated information about providers’ performance and thus has a major impact on reputations.
The current prisons management regime consists of a portfolio of different monitoring, inspection and reporting systems. Her Majesty’s Inspectorate of Prisons reports to the government on the conditions in prisons and the treatment of prisoners. Full inspections of adult and young adult establishments occur on average once every five years and last for at least one week. They may be followed up with unannounced inspections to assess progress. Private prisons are also assigned a controller to oversee the day to day running of the prison and ensure compliance with the contract, and every prison in England and Wales has an Independent Monitoring Board that helps ensure that standards of care and decency are maintained. Moreover, offenders can complain to the Prisons and Probation Ombudsman.

Probation services are also monitored. Her Majesty’s Inspectorate of Probation reports directly to the Secretary of State for Justice on the effectiveness of probation trusts at providing offender management both in custody and in the community. Trusts are judged based on their ability to reduce the risk of harm to the community and to reduce the likelihood of re-offending and ensure that offenders comply with the terms of their sentences. Because much of probation trusts’ work occurs in the field, inspectors base their findings on in-depth studies of a sample of cases, which means some problems may go undetected. Community-based payment-by-outcome schemes will need to be monitored in a similar way.

Finally, NOMS produces quarterly performance assessments for each prison and probation establishment based on approximately 40 quantitative indicators. Prisons and probation trusts receive a performance rating from Level 1 to Level 4, which is generated by their performance against targets and where appropriate, performance against the national average.

It is likely that providers will place more importance on achieving good results on certain inspections than others. For example, negative prison inspection reports can receive considerable national media attention which could damage a provider’s brand and future contract prospects and if serious enough, the share price. NOMS’s performance assessments, on the other hand, generally receive little publicity unless there are any unusual changes in the figures.
Regulatory incentives

Providers will also need to comply with legislation and other formal and informal regulation governing services to offenders. Providers working in prisons must follow a range of legislation in place to ensure the safe and humane treatment of prisoners, such as the 1967 Criminal Justice Act, which, for example, bans the use of corporal punishment in prisons, and the 1998 Human Rights Act which among other things ensures that prisoners are protected from ill-treatment by other prisoners and are able to contact their families. Failure to comply with legislation can result in civil or criminal proceedings against providers.

Programmes designed to reduce re-offending, whether they are delivered in custody or the community, must be certified by the Correctional Services Accreditation Panel, which is a panel of experts that helps the Ministry of Justice and NOMS “develop and implement high quality offender programmes and promotes excellence in programme design.” The panel primarily uses reconviction data to judge the effectiveness of programmes. Newer programmes can become accredited based on research evidence supporting the “general approach and the majority of specific methods used in the model.”
Due to the challenges involved, commissioners will need to implement payment-by-outcome carefully. This section highlights some of the key issues that may impact on the implementation of a payment-by-outcome system in offender management.

There is no clear consensus about ‘what works’ best to reduce re-offending
There is no consensus as to why offenders desist and it is unclear under what circumstances particular interventions are successful. Commissioners may therefore find paying for outcomes particularly desirable as a way of incentivising providers to experiment with innovative new service models and lead the process of ascertaining ‘what works’.

It is not possible to directly measure re-offending
The primary outcome of offending programmes is to encourage desistance from crime, which could be most effectively measured by recording the level of re-offending. However, it is not possible to measure re-offending directly, as there are no reliable statistics about the rate of crime. Commissioners will therefore need to use intermediate outcomes, such as reconviction or reimprisonment rates, or a range of outputs, to measure performance. Commissioners will have to make trade-offs when deciding what is most important for the measurement system to achieve, as it is difficult to find a ‘perfect measure’.

Desistance from crime is a gradual process
Evidence from desistance studies has shown that offenders do not suddenly cease to commit crime but instead gradually reduce the severity and frequency of
their offending. This has important implications for how commissioners measure desistance. Yes/no reconviction measures are unable to capture the complex process of desistance but are clear, easy to measure and set a high threshold for provider performance. Conversely, distance travelled measures provide commissioners with more detailed information about changes in the frequency or severity of offending. However, measuring progress towards outcomes condones a certain level of offending behaviour and can increase the complexity of the measurement system. It is also unclear for how long offenders need to be monitored until they can be considered to have desisted. Statistics suggest that in the case of most offenders, the benefits of further monitoring decrease substantially after the first year post-release.

**It is difficult to measure providers’ impacts on outcomes**

For logistical and ethical reasons it is generally not feasible to use more rigorous benchmarking systems such as randomised control trials or matched comparison groups in offender management. Commissioners are likely to rely on statistically-derived expected standards of performance as benchmarks, but it is very difficult to develop these for more nuanced measures such as the frequency and severity of offending.

**There is a well developed monitoring regime in criminal justice**

The monitoring regime already in operation in offender management is very comprehensive. A combination of full inspections and lighter-touch regular monitoring can be used to supplement the primary performance tools of measures, standards and financial incentives.
Endnotes

10. Ibid., 21-22.
11. Ibid., 27.
12. Ibid., 24.
13. Ibid., 24-25.
15. Ibid., 59.
20. Ibid.
24. Ibid., 32.
29. A reconviction event occurs when an offender is reconvicted for any number of offences at a single court appearance in the 12 months following release. As the measure counts each court appearance it is tightly linked to cashable savings.
34. Ibid., 43.
39. Data from offenders discharged from custody or commencing court orders supervised by the probation service between January and March 2007, indicates that of the offenders incarcerated in the 12-month follow up period, only 86% were reconvicted. Ministry of Justice, *Compendium of re-offending statistics and analysis* (London: Ministry of Justice, 2010): 67.
40. Ibid., 91.
41. Ibid., 90.
42. Ibid.
49. Cynthia McDougall, Jane Clahrbour, Amanda E. Perry and Roger Bowles, *Evaluation of HM Prison Service Enhanced Thinking Skills Programme: Report of a randomised controlled trial* (London: Ministry of Justice, 2009): 2; Jane Kerr et al., *Assessing the feasibility of conducting a randomised control trial or other evaluation of the FOR…A Change programme* (London: Ministry of Justice, 2010): 3. RCTs may be acceptable for new services if randomisation were carried out by a third-party to ensure prisoners’ confidence in the process and measures were in place to manage negative cognitive impacts on offenders placed in the control group.
56. Please note these figures are for illustrative purposes only.
61. Ibid., 12.
Payment-by-Outcome in Offender Management

James Dicker