

This document sets out the high level response of the Prison Reform Trust (PRT) to the white paper. A recurring theme in our response is that the aspirations in the white paper can only be met through the delivery of very detailed policy development, most of which has yet to be undertaken. So we try to indicate where, given our limited resources, we think PRT may be able to help in that work over the coming months.

**We welcome:**

**the acknowledgement of the system's serious shortcomings.** But not all prisons are failing in the way described, and it is crucial to learn from those that are doing well as well as those that are failing;

**the acknowledgement of the Secretary of State's personal accountability to parliament for what our prisons are like and how they perform.** Just as the root causes of the current crisis are political as well as operational, so are the solutions to it.

**the commitment to a statutory purpose for prisons, and the promise of prison specific legislation.** The precise scope and content of a bill needs to be published as early as possible. A statutory purpose without the means for parliament to describe the standards that give it form and reality will not advance the cause of reform. But if parliament does set out the minimum standards inherent in a civilised prison system, there is a hugely important prize to be won in removing much of the debate about prison conditions from the political sphere. Finally enshrining in statute the principle established in *Raymond v Honey* that there should be no greater loss of liberty than the necessary consequence of imprisonment or as expressly provided for by parliament would give future administrations the freedom to concentrate on improving the system's performance in reducing reoffending, rather than deliberating over the minutiae of day to day conditions. Fundamentally, the definition of those minimum standards, informed by our international obligations, should belong to parliament, not to the government of the day;

**the apparent commitment to a statutory personality for the Prisons Ombudsman and the Prisons Inspectorate** (though the language of paragraph 85 seems curiously elliptical);

**a shift in the direction of greater autonomy for those who lead prisons, although the detail of this shift is missing from the white paper and is crucially important.** Decency and fairness in particular often rely on the reliable delivery of a consistent set of processes across the system – complaints procedures, for example, or the internal disciplinary system for prisoners, the monitoring of

statutory diversity responsibilities, or the operation of solitary confinement. We would strongly urge that the experience of contracting for prison services be reviewed for learning on where the sensible boundaries between prescription and discretion should lie. This is familiar territory, and there is no substitute for working through every aspect of a prison's operation to make the best decision on where the balance should lie;

**the commitment to a ratio of 1 prison officer to 6 prisoners and the acknowledgement that safety is enhanced by more rather than less time out of cell.** But the detail of how this ratio is to be delivered is absent, and is crucial. We hope that a much fuller description of the role and the training to support it will also follow soon;

**the commitment to reduce the number of women entering custody although this should in our view be accompanied by a specific expectation of the extent of that reduction and in what period.** The commitment to “community prisons” for women can only be properly evaluated in the context of the promised overall strategy for female offenders. They will frustrate rather than further the cause of reform if courts come to view them as preferable to community based penalties, for example. There is an opportunity to use the promised legislation to acknowledge the special considerations that apply to female offenders, given the preponderance of those with responsibility as primary carers, akin to s10 of the Offender Rehabilitation Act.

**But we also believe some critical elements of reform are missing. They include:**

**measures to control the demand for prison places are essential, and there must be a strategic planning assumption to eliminate rather than reduce overcrowding.** The ambitions for a rehabilitative system set out in the white paper are not new, but every previous programme to make prisons places of reform, redemption or rehabilitation have ultimately been thwarted by the demands of managing too many people in too few places. In a myriad of practical ways, overcrowding defeats reform. It generates instability through poor conditions for individual prisoners of course, but also through the constant movement of prisoners regardless of whether that movement is in their interests and will further their prospects of successful resettlement. It requires the continued use of accommodation which is unfit and in the wrong place. It requires prisons to hold people together who should be kept apart, and prevents consistent or efficient commissioning of services from education to health to substance misuse. Overcrowding denies the consistency of function necessary to see sentence planning through to a conclusion. It continually prevents prisons from delivering on the promises they make to prisoners and to those who support them in their rehabilitation. And of course, it is the demand for more and more places which has

ultimately caused the mismatch between the work to be done and the resources available to do it, and which has prompted the current collapse in standards of safety and decency in many prisons across the estate;

**standards for decency and fairness.** These were the watchwords for the progress made following the Woolf report in the early 1990s and the evidence of that progress now being reversed is abundant. The measures of a prison's success must include delivering both, and standards must be set in relation to both. The white paper's four "purposes" for performance standards miss this. A key purpose of prison is for the state to meet its obligations to respect the rights of those most vulnerable to its power. Of course there are good practical reasons for this, but it goes further than operational good sense - a statutory standard for prisoners' rights is a necessary bulwark against a future government that might be careless of those rights;

**a role for prisoners in designing and delivering reform.** The absence of such a commitment represents both a fundamental risk and a missed opportunity. The suggested third purpose, to "reform prisoners" sits uneasily with the current, and correct, premise that change lies with the offender and requires his or her agency to be durable. On the one hand, putting prisoners at the centre of reform points to a system in which prisoners must take far more responsibility and accountability for their own futures - not passive recipients of help with their "needs", but active citizens facing up to their responsibilities and creating lives which are worth living. On the other, it opens up the potential - already realised in many ways in many prisons - for prisoners to play a much greater part in creating decent, safe and stable prison communities where the habits of active citizenship can be learned and practised. Prisoners have much to offer in both the design and delivery of a reformed system, and it would be wise to find the time and means to consult them.

**the acknowledged gaps on strategies for women, children and young adults, which are all crucial and interdependent with the white paper. We would add gaps on community based provision for offenders with mental health problems and learning disabilities, the diversion of children in care from custody and, at the other end of the spectrum, a strategy for older prisoners.**

We appreciate the complexity, but for the offenders on the receiving end of this "system", the shape of those strategies will have a major impact on their lives and the extent to which they or their dependants migrate through to the "adult system" or successfully leave it. It is a truism that most of what determines the composition of the custodial population lies with agencies other than those in the criminal justice system. In particular, the care of looked after children, and both children and adults with mental health problems and learning disabilities, feed directly through to whether individuals begin a lengthy history in the criminal justice system or avoid it. The evidence supporting a properly bespoke approach to young adults also now appears to be overwhelming, and the absence of a coherent strategy for older prisoners is both wasteful and, on occasions, inhumane.

### **a commitment to transparency in the planning of the future prison estate.**

Chapter 7 of the white paper begs many more questions than it answers, but the timetable for critical decisions on the location and design of new prisons, the closing of old ones, and the roles to be given to those that remain, is tight. We strongly urge that this process is opened up to detailed scrutiny and that a much fuller exposition of the current thinking is made public. If governors and directors are to be held to account in the way the white paper describes, their establishments must have reasonable continuity of function, with measures that are appropriate to that function, and processes for change (akin to those provided within the contracted estate) that allow time for planning and adjustments in resourcing. Decisions on estate planning and prison design will reverberate for decades, and the process for taking them is currently too introspective and opaque.

## **We would like to help**

As already noted, the most striking absence in the white paper is the detail of how most of its ambitions are to be delivered. PRT has much to offer if the government is prepared to approach its detailed design work in an open and collaborative way. In particular, we could assist with policy development on:

**measures to control demand**, ranging from the abolition of short custodial sentences, and the roll out of liaison and diversion services for people with mental health problems and learning disabilities, to changes in recall criteria and practice, and a solution to the scandal of IPP prisoners held needlessly beyond tariff;

**the design of minimum standards approved by parliament;**

**the development of the inspection approach** to support both those minimum standards and the separate ministerial ambition for advice on when and how to “step in” if a prison is failing;

**the design of an overall strategy for women offenders** that will deliver less custody and better outcomes for women and their children, and a governance structure that will ensure it gets delivered;

**detailed knowledge and training material to improve staff confidence in helping people with mental health problems and learning disabilities**, and to inform the right provision of services and disposals for those people;

**creating performance measures that work as they are intended.** Chapter 3 is a particularly disappointing section in the white paper given the central importance attached to this particular method of managing performance. The white paper includes measures in use now or in the recent past that have been discredited (such as accommodation and employment on the point of release) and others that have

previously proved beyond the system's ability to collect accurately (such as time out of cell). The initial list of measures for a league table begs questions in every line about the practicalities of data collection and the probable impact on institutional behaviour. And the relationship between the league table measures, the measures for each standard (which are largely undeveloped), and the framework for independent inspection is not explained.

**finding the right balance between prescription and empowerment in the instructions framework.** There is no short cut on this, and the timetable described in the white paper seems wholly unrealistic. The exercise has been completed before, following criticisms made in the Woodcock and Learmont reports of the 1990s in the aftermath of high profile escapes. It requires a long series of good judgements to be made, and a robust system for future amendments. There is learning, again, in the experience of the contracted prisons estate as well as the much more recent and limited experiment of "reform prisons". Done badly, this exercise will lead to an explosion in the quantity of poorly drafted and inconsistent local instructions, to which prisoners may or may not have adequate access, and every likelihood of expensive litigation as those instructions are challenged.

- **developing a strategy for older prisoners**
- **managing conflict as the route to violence reduction**
- **the use of prisoner facing ICT**
- **a radical rethink of how release on temporary licence can support objectives across the white paper**
- **the design of both the future prison estate and future prisons**
- **involving prisoners as active citizens in the design and delivery of prison reform.**

The government has rightly set its sights high for our prison system. But it can only deliver on that ambition if it accepts its unique responsibility to tackle the issue of demand, and if it engages comprehensively with the detail of implementation that is missing from every section of the white paper. In doing so, it can draw on much that is useful from the history of similar reform packages over the last 25 years in this country, on some good practice in prisons now, and on a knowledgeable, well disposed community of individuals and groups outside government that also want to help create a better system.