

## **Prison Reform Trust response to the Justice Committee Inquiry into the prison population 2022: planning for the future – December 2017**

The Prison Reform Trust (PRT) is an independent UK charity working to create a just, humane and effective penal system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, government and officials towards reform. The Prison Reform Trust provides the secretariat to the All Party Parliamentary Penal Affairs Group and has an advice and information service for people in prison.

The Prison Reform Trust's main objectives are:

- reducing unnecessary imprisonment and promoting community solutions to crime
- improving treatment and conditions for prisoners and their families.

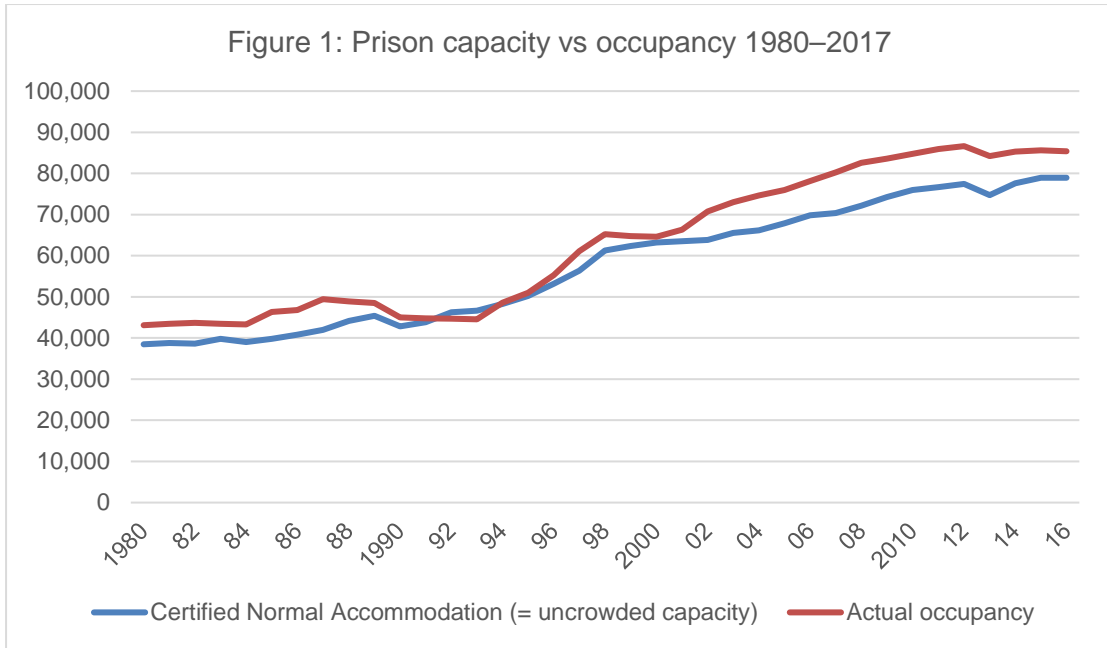
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### **Introduction**

The Prison Reform Trust welcomes the Committee's decision to inquire into this issue and to do so at this time. There is considerable confusion over the government's plans for the prison estate, with apparently conflicting accounts given on successive days earlier in the autumn about whether or not the government's commitment to a programme of prison closures during this parliament still holds good. In addition, important changes are happening on the ground which have an impact on prisoners, their families and on the many statutory and voluntary partners with whom prisons engage. But there has been no public consultation on the strategic principles which should drive a long-term strategy for the prison estate.

The importance of establishing a principled long-term plan for the prison estate can hardly be overstated. The condition of prisons, where they are, their function, their capacity and the degree to which they are overcrowded, are all at least as important as the design of the buildings. But the history of prison building and closures suggests there has never been a long term plan for the estate. Instead there has been a virtually permanent state of crisis management, building new prisons when the money has been available, closing old prisons when it has been tight, but always falling short of what the system requires.

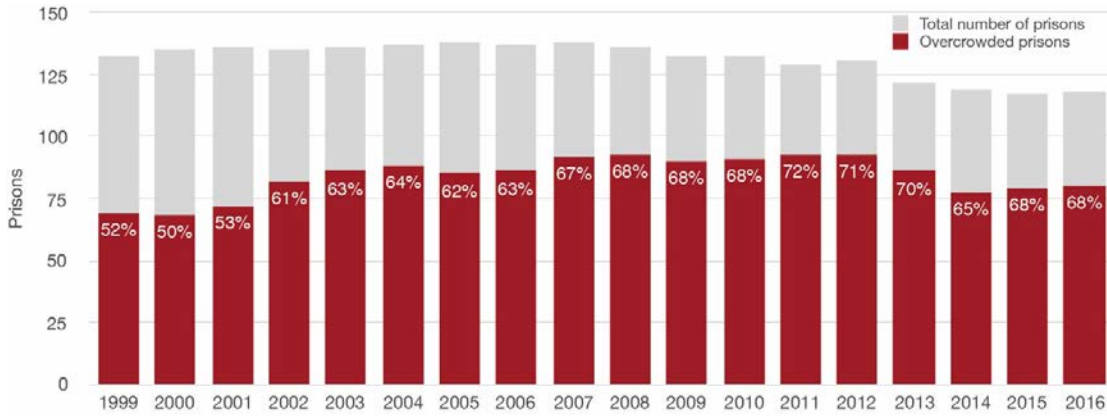
The chart below shows how prison building has tried and failed to catch the coat tails of demand for most of the last 4 decades despite a prodigious capital investment during that period.



Nearly 21,000 people were held in overcrowded accommodation in 2016–17—almost a quarter of the prison population. This level of overcrowding has remained broadly unchanged for the last 14 years.<sup>1</sup>

As the next chart shows, the proportion of the estate affected by overcrowding has increased significantly as pragmatic decisions have been taken to share the burden of overcrowding more widely.

Figure 2: Number of prisons in England and Wales and proportion which are overcrowded, 1999–2016



Source: Ministry of Justice, Annual National Offender Management Service digest: 2016 to 2017 and monthly population statistics

<sup>1</sup> Tables 2.2, 2.3 and 2.4, Ministry of Justice (2017) Annual National Offender Management Service digest: 2016 to 2017, London: Ministry of Justice

## Why overcrowding matters

1. The significance of estate planning is brought home to staff at the Prison Reform Trust every day. A small team handles well over 6,000 telephone and written queries a year, from prisoners and their loved ones. The impact of an overcrowded, unplanned estate is a dominant theme. This case is typical:

*“Mr B was a prisoner who had been held in a reception prison more than 4 hours from his family for several months. He was a young man with autism and suspected mental health issues and the prison had been trying hard to get him to a prison closer to his family for the support he needed. A more settled environment would also be more suited to his support needs than a prison where staff and prisoners faces changed regularly. PRT spoke to staff there who described transfers as getting harder to arrange and taking much longer as a result of pressure on prison places and transport.*

*“Mr B experienced a number of false starts—despite a receiving prison having finally agreed to take him transport was repeatedly cancelled for operational reasons outside the control of the prison staff. By the time transport was available again the receiving prison could no longer accommodate him.*

*“When Mr B was finally transferred to a more settled prison, it was only about one hour closer to his family. He accepted this partly because he thought it would be less stressful environment but also because he was told he could do an offender behaviour course there that was on his sentence plan. When he arrived, he was told he had been given false information, that they did not run this course and so they would have to transfer him again as soon as they could.”*

2. In short, overcrowding in a chaotic estate affects very much more than the physical conditions in a prisoner’s cell and the availability or otherwise of sufficient purposeful activity. The complexity of the way the estate is organised, the frequent changes in role of individual prisons, and the incessant operational pressure of having to fill every available space all contribute to prisons that are less stable. That most basic of concerns for any prisoner—where you will be held and for how long—is uncertain and can alter at a moment’s notice regardless of your best interests or your behaviour.
3. Some of the effects of this were made apparent in our seminal study of segregation, Deep Custody published in October 2015.<sup>2</sup> It found that the practice of engineered segregation, where prisoners deliberately break prison rules in an attempt to force the hand of the authorities, accounted for 2 in 5 of the cases studied, with transfer to another prison the most common motivation.
4. The importance of family relationships to both the welfare of prisoners during their sentence and to their prospects of successful resettlement on release was described in Lord Farmer’s report for the government earlier this year (“The Importance of Strengthening Prisoners’ Family Ties to Prevent Reoffending and Reduce Intergenerational Crime”).<sup>3</sup> Physical proximity that allows face to face visits is obviously a major benefit to maintaining family ties, but the government’s proper ambitions to see prisons better integrated with local services are also undermined when prisoners are held far from the communities to which they will be released.

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<sup>2</sup> Shalev, S. and Edgar, K. (2016) Deep Custody: Segregation Units and Close Supervision Centres in England and Wales, London: Prison Reform Trust

<sup>3</sup> Farmer, M. (2017) The importance of strengthening prisoners’ family ties to prevent reoffending and reduce Intergenerational Crime, London: Ministry of Justice

Governors need to establish relationships with local leaders if that integration is to be achieved, and that process is problematic if the prisoners they hold come from a wide variety of different communities and from far afield.

5. Few prisoners are unaffected by the endless compromises and confusion of the prison estate, but some suffer disproportionately.
6. Women are typically held furthest from home, despite the primary carer responsibilities which they also disproportionately maintain compared to men. The fact that they also disproportionately get sent to prison for less serious offending and for very short sentences only underlines the folly of subjecting many of them to the dislocation of a prison term in the first place.
7. In the absence of a national strategy for older prisoners, this fastest growing group of people in custody experience a very wide range of treatment. Their choice may often be between staying reasonably close to home and being able to live in a prison where their most basic physical requirements can be adequately met.
8. For a very long time, prisoners serving the longest sentences have been conditioned to accept a system which may move them all round the country to create an appearance of “progression” and to access specialist interventions. Prisoners and staff alike use this as a way of breaking very long sentences up into shorter periods that are manageable psychologically. But part of the price of that approach is that the longest serving prisoners will often lose all meaningful contact with the community to which they will eventually return. Their sentences are punctuated by the need to make new relationships and establish themselves in very different custodial environments, and setbacks or mistakes can result in a move to a completely different part of the country as well as the anxiety that the prospects for their eventual release have been damaged. Restrictions on access to open conditions and to release on temporary licence (ROTL) for prisoners who have been recalled to prison or failed to return from a previous temporary release now mean that those prisoners have to go to a prison with a bespoke regime designed around that restriction. In practice, that can mean a person choosing between the chance of securing their release at a parole hearing months or years in the future on the one hand, and receiving visits from their family on the other.
9. The uncomfortable reality is that the prison estate is organised around the pressures faced by the prison service, and not the needs or aspirations of the people for whom it cares.

### **The history of attempts to match capacity to demand**

10. There is nothing new in the analysis that overcrowding presents a structural obstacle to virtually every aspect of a reform agenda. It was recognised as one of the essential causative factors in the series of disturbances triggered by the Strangeways riot in the spring of 1990.

*“The removal of overcrowding is, in my view, an indispensable pre-condition of sustained and universal improvement in prison conditions...for improvement to be solid and service-wide, the canker of overcrowding must be rooted out.”*

Director General of the Prison Service giving evidence to the Woolf inquiry after the Strangeways riot, 1990

11. In his seminal report following the disturbances the then Lord Justice Woolf consequently recommended a permanent statutory mechanism to end overcrowding...

*“Recommendation 7: A new prison rule that no establishment should hold more prisoners than is provided for in its certified normal level of accommodation with provisions for Parliament to be informed if exceptionally there is to be a material departure from that rule.”*

Woolf report, 1990

...which the then government accepted—in principle.

*“A decent service depends on the end of overcrowding...the Government accepts therefore that the objective should be that no prisoner should have to be accommodated in overcrowded conditions.”*

Home Office, Custody, Care and Justice, 1991

12. In reality, no subsequent government has delivered on this fundamental requirement of a decent service. Even the policy objective was quietly abandoned in 2011. So it was good that the White Paper on prison reform published in 2016 made a cautious commitment to “reduce” overcrowding, but that has yet to be translated into either a measurable objective or a published plan of action.
13. We are very concerned that the current administration appears to be pursuing the same policy as its many predecessors of attempting to build its way out of the capacity crisis. Against the backdrop of several decades of the same policy failing, the approach seems flawed in principle. But it is also taking place in the middle of a financial crisis for the ministry which goes far deeper than has been publicly acknowledged.

### **An unaffordable plan**

14. PRT has commissioned a former Prison Service Finance Director, Julian Le Vay, to analyse the department’s ambitions for prison building in the light of its current spending review settlement with the Treasury and we intend to publish his analysis separately in the near future. It concludes that the capital cost of a policy based on building more prisons since 1980 has been £3.7bn, and generated an additional annual running cost of £1.5bn. But he also concludes that the ministry’s current ambitions are inadequately funded to the tune of £162m in 2018/19, rising to £463m in 2022/23. On current population projections, there is no prospect of any impact on overcrowding before 2022—indeed, unless the Government abandons plans to close old prisons and instead keeps them all open as well as building new ones, emergency measures to create space are likely to be necessary as early as next year and throughout the period up to 2022. His projections assume there are no unforeseen events, such as fire, riot or loss of accommodation to other reasons of health and safety. But as we know, those events have been a regular feature of the last three decades, and have become more rather than less frequent in the last 3 to 4 years. The analysis suggests there is no prospect of being able, safely or decently, to take any existing accommodation out of use before 2022.
15. Looking a little further ahead, the analysis concludes that a further prison building programme is likely to be required from 2026, and that no more than half of the capacity created by then will have resulted in the closure of older and unfit prisons.

## **Planning behind closed doors**

16. The Committee will know better than most that the government's approach to prison reform since the then Prime Minister's speech on the matter in February 2016 has been characterised by a multitude of ambitious policy announcements and a plethora of promised reviews and consultations on how to achieve them. PRT cannot but welcome a consultative approach, although the pace at which action is taken after a review is completed might be said to lag behind the alacrity with which reviews are set up in the first place. But in the area of estate planning, there has been far less transparency.
17. In particular, PRT is concerned that the underlying principles which should drive the creation of a prison estate that appears designed rather than accidental have not been publicly articulated or subject to consultation with the people most affected. We know that the competing priorities for future planning—cost, closeness to home, efficiency, rehabilitation, flexibility and others—are understood within the department and that the difficulty of balancing them is extreme. But there is no reason for that difficult process to be undertaken behind closed doors. The reverse is true, given the implications for prisoners, their families and for the many statutory and voluntary sector partners whose work is profoundly affected by the decisions that those priorities will drive.
18. On the ground, significant changes have been and continue to be made as part of an internal programme of "reconfiguration", uninformed by a proper public and parliamentary debate about the future shape of the prison estate and what we expect from it.

## **An alternative approach**

19. PRT proposes an alternative to the failed orthodoxy of the last three decades. Unashamedly, we hark back to the last occasion on which the strategic future of the prison estate was considered in a holistic and principled way, taking into account the purpose of imprisonment and the minimum expectations we should have of what life in prison should be like. That occasion was Lord Woolf's 1990 report into the Strangeways riot and other prison disturbances, and—just as significantly—the then government's white paper response, "Custody Care and Justice, published in 1991.

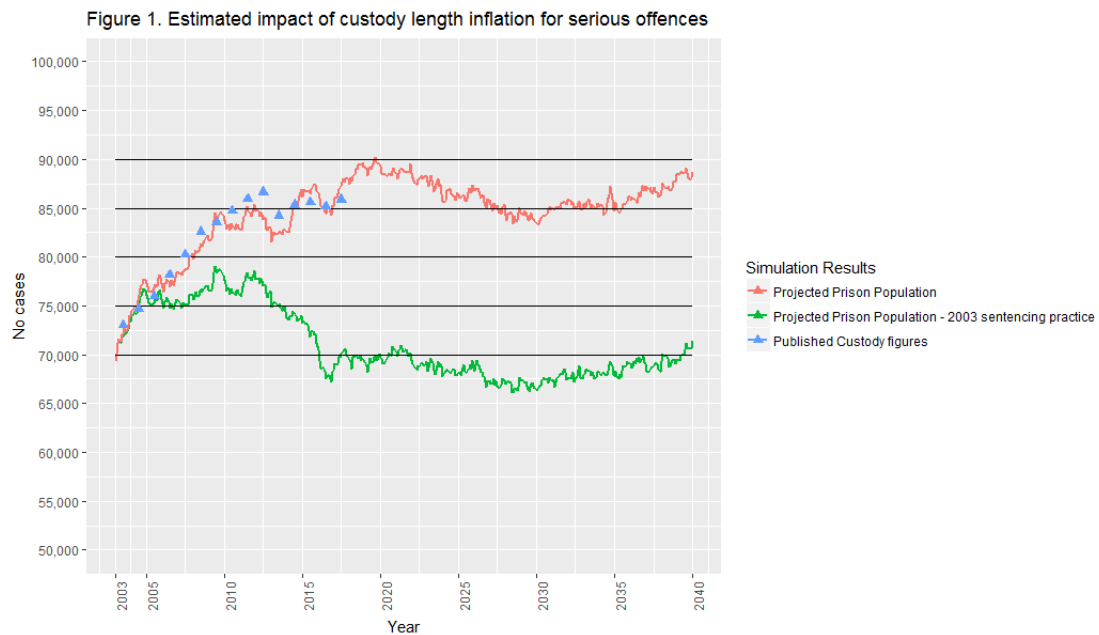
### *A local service*

20. The first element of a new approach should be an acknowledgement that, even in the face of a prison population dominated by people serving very long sentences, imprisonment should be considered primarily a local service, delivering for and accountable to a local community. For the family of a life sentence prisoner and for the prisoner him or herself, there is no advantage in that person being moved around the country. "Specialist" interventions in custody will typically consume a small fraction of a person's time in custody—the less specialist but equally vital work of motivation, maintaining hope, preserving links to vital services such as accommodation, employment, health and social care, all benefits from being delivered close to home and without the disruption of moves out of area. Equally, only a very small fraction of the prison population at any one time requires conditions of high security, with all the cost and inevitable impediments to a more responsible and rehabilitative way of life that they entail. Governors should expect to be integral

to a local ecosystem that is concerned with the people who need most help to become self-reliant members of their community. That the prison estate should support rather than frustrate this role should be a governing principle of its design.

### *Managing demand*

21. The second element of a new approach should be a radical rethinking of sentencing. In a time of austerity, a continuing fixation across the political spectrum with ever longer sentences for an ever longer list of misdemeanours is hard to understand in the absence of any evidence that longer sentences have any impact on either deterring crime or securing better post custody outcomes. All we know for certain is that the startling increase in sentence lengths for serious crime in recent years has been the single biggest factor in ensuring that the size of the prison population consistently outstrips our ability to resource a system capable of delivering a decent or effective service. Although the use of very short prison sentences has declined in recent years, the need to accommodate people serving those sentences continues to lie behind some of the worst conditions in our most dilapidated prisons, with wholly predictable consequences for violence, self-harm and all the problems associated with illegal drugs. The exponential growth in very long and indeterminate sentences, including a burgeoning population of people recalled from the conditional release element of such sentences, guarantees that a majority of every such sentence is concerned not with rehabilitation but rather with occupying someone's time in the least damaging way possible. The balance we strike between retribution and mercy has changed fundamentally, but through successive and largely opportunistic statutory interventions. The sad state of our prisons is an unintended but wholly predictable consequence. In the absence of any realistic prospect that parliament will find the time for the thorough-going sentencing bill that is required, the government should reverse the inflationary trend by attending to specific groups, including women, young adults, IPP prisoners and the disproportionately punished BAME communities highlighted in David Lammy's recent report.
22. The Committee may already be aware of some ground-breaking work undertaken by Dr Savas Hadjipavlou (of *Justice Episteme*) to model the impact of both environmental and policy changes on the criminal justice system. His model uses what we know about the typical life histories of people who end up in the criminal justice system, together with what we know about how that system operates, to assess the impact of demographic or other changes on key criminal justice outcomes—including the likely size of the prison population. It allows the impact of particular policies in the past to be estimated, and for the potential impact of current and future policies to be predicted. PRT commissioned Dr Hadjipavlou to analyse the impact of changes made to the sentencing framework in the Criminal Justice Act 2003 and the Offender Rehabilitation Act 2014 on the prison population. We asked him to estimate what the prison population would have been without changes that have increased time served in custody—essentially the introduction of the IPP sentence, the imposition of mandatory minimum sentences for certain offences and the introduction in 2014 of mandatory supervision for sentences of under 12 months. The model assumes that harsher sentencing practice since 2003, reflected and codified in sentencing guidelines, has taken its cue from the 2003 Act. The outcome of his projection is shown below:



23. As will be apparent, the model appears to track the actual behaviour of the prison population reliably (the red line represents the model’s prediction without adjustments and follows the actual custodial population from 2003 to the present with remarkable accuracy). Its projection for a world in which governments and parliament had not driven an increase in sentence length is that the prison population now could have been around 70,000, some 16,000 fewer. It is hard to think of any other public service for which a government would choose deliberately to increase its workload during a period of austerity, passing up potential annual savings of some £560m (assuming the cost of a prison place is in the region of £35K).

*A permeable boundary*

24. The third element of a fresh approach to estate planning should be to reimagine the prison boundary. No-one disputes the range of individually challenging requirements prisons face because of the circumstances of the prisoners they hold. In every respect, from education to work to health, prisons must accommodate an extraordinary variety of need. Traditionally, the prison system has responded by creating and buying in services to be delivered inside the prison boundary, with all the additional complexity and cost involved. Sometimes, the services delivered are of an equivalent standard to those in the community—often they are not, and few overcome the challenges of maintaining continuity of service between custody and the community. Yet one of the prison service’s outstanding successes has for many years been its safe use of ROTL, where prisoners access jobs and services in the community, trusted to return to the prison at night. 999 of every 1,000 such releases is completed without incident. But since 2013, use of ROTL has fallen by 40% and is largely confined to the open prison estate.

25. ROTL has the potential to transform our idea of what a prison is able to deliver, and the extent to which the prison estate must cater for very particular needs and specialisms by bringing services in rather than sending prisoners out. For many prisoners, the only reason for going to a remote open prison is that it currently represents their only realistic chance of ROTL. A much greater use of ROTL for many more prisoners across the whole of what is called the “resettlement” estate



would not only transform the rehabilitative quality of their regimes but also generate a powerful incentive to good institutional behaviour. A discrete and sizeable “resettlement unit” should be a standard expectation within any closed prison outside the high security estate.

### *Active citizenship in prison*

26. The fourth element we recommend for a fresh approach to the prison estate is that it should be designed with an expectation that prisoners should play a much more responsible role in the life of the prison. PRT has championed the idea of “active citizenship” in prisons for many years. Our report “Time well spent” in 2012<sup>4</sup> and most recently “A different lens”<sup>5</sup>, published in December 2017, both describe ways in which existing prisons draw on the knowledge and talent of prisoners to help create safer and more purposeful prison communities. As a design principle, this should inform how new prisons are built (for example through the provision of privacy locks on cell doors, wing based laundry and cooking facilities, and modern ICT to facilitate communication and personal accountability within and beyond the prison walls). But it should also inform regime design, expecting prisoners to involve themselves in identifying and solving problems within the prison, and undertaking roles which reflect a commitment to the place in which they are living—active citizenship. Our reports reflect the wide variety of ways in which this already happens—sometimes as a result of imaginative national initiatives (such as the Listener scheme) and sometimes through local inspiration. What they show is that prisoners are a largely untapped resource for the safe and purposeful management of the prison system. Nothing could be in greater contrast to the current use of the estate, which treats prisoners as a commodity to be parcelled up and moved from place to place, generating legitimate grievance and in the process undermining the essential work staff do to encourage a sense of responsibility in prisoners for their own future and the ones they love.

## **Conclusion**

27. In our view, the committee has chosen to examine an issue which may well have the most significant impact on our prison system of any element of the government’s sprawling prison reform programme. It absolutely deserves the principled examination which this inquiry will make possible. The current approach is unaffordable, and the government should pause to take stock both of the committee’s work and of the lamentable history of previous attempts to build our way out of the prison crisis. The product, eventually, should be a long term strategic plan for the prison estate which reflects the extent to which we want to use prison in the first place, a considered view of what we want prisons to achieve when there is no alternative, and the way of life we wish to cultivate for those in the state’s care in custody. PRT understands that the government does not have a blank sheet of paper, still less a blank cheque, and that decisions on opening and closing prisons will always contain elements of pragmatism. But precisely because of that, there must be a principled vision to inform all those intermediate decisions. After nearly three decades of hand to mouth decision making, and £3.7bn of capital investment, a revisiting of Lord Woolf’s prescription for a just and humane prison estate is overdue.

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<sup>4</sup> Edgar, K., Jacobson, J. and Biggar, K. (2011) *Time Well Spent: A practical guide to active citizenship and volunteering in prison*, London: Prison Reform Trust

<sup>5</sup> Edgar, K. (2017) *A Different lens: report on a pilot programme of active citizens forums in prison*, London: Prison Reform Trust