

## **Prison Reform Trust response to the Justice Committee inquiry into Transforming Rehabilitation – November 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**

Our evidence concentrates on the impact of Transforming Rehabilitation (TR) on people serving short prison sentences or at risk of doing so. It is informed by:

- Our report on a specific project, “[Out for Good](#)”<sup>1</sup>, which embedded a PRT colleague in HMP Brixton from 2015-2017 to understand and improve the processes for getting prisoners into employment after release.
- Our three year project, “Transforming Lives”, funded by the Big Lottery, to reduce the unnecessary imprisonment of women.
- Our evidence to the inquiry of the select committee for work and pensions in 2016, looking at support for ex-offenders [Evidence to Work and Pensions Committee](#)<sup>2</sup>.
- Our Care not Custody work, which seeks to improve health and justice outcomes for people with mental health problems, learning disabilities and other needs in the justice system.
- The author’s personal experience both as the Governor of a local prison in the period immediately before TR, and then as a member of the team bidding for TR contracts within one of the private sector providers.

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<sup>1</sup> Pedder, K. (2017) Out for Good—lessons for the future, London: Prison Reform Trust

<sup>2</sup> Written evidence from the Prison Reform Trust (SEO0023) to the Work and Pensions Select Committee April 2016

## Summary

- TR was deeply flawed from its inception—poorly thought through policy and a reckless implementation approach lie at the root of its many current shortcomings. Only better policy will fix it.
- Much is demanded of CRCs and Governors in terms of local co-ordination of delivery, but national co-ordination of both policy and commissioning remains dislocated and ineffective.
- Promised improvements in services for neglected groups, including short term prisoners and women, have not materialised.
- The reorganisation of the prison estate, supposedly to make it easier for TR to operate, has already been superseded. We still await a fundamental reform of the prison estate—to end overcrowding and to keep most prisoners close to home throughout their sentence.
- The continuing and unexplained delay in reversing the halving by a previous Secretary of State of prisoners' access to release on temporary licence (ROTL) has deprived both governors and CRCs of an invaluable resettlement tool, to the extent that ROTL is barely used outside the open prison estate.
- Progress on key operational issues—especially the provision of national ICT that helps statutory and voluntary agencies to work effectively together—has gone much slower than organisational restructuring.
- Above all, TR has allowed the government to ignore the futility of the short prison sentence as a means of delivering any of the statutory purposes of imprisonment.
- A better approach for the future should incorporate:
  - A presumption against prison sentences of under 12 months, as Scotland has now decided to adopt.
  - Voluntary rather than mandatory supervision for the few people who continue to serve a prison sentence of under 12 months.
  - A long term strategic plan for the prison estate that aims to end overcrowding and has closeness to home at its heart.
  - Full roll out of liaison and diversion services in police custody suites and criminal courts to help inform criminal justice decision making, including diversion away from custody, as appropriate.
  - Joint performance measures for offenders in employment and accommodation 3 months after release from prison.
  - A common IT platform for allocating and tracking cases between agencies, including the voluntary sector, and for measuring performance.
  - A national strategy for female offenders that finally delivers a sharp reduction in the use of custody.
  - A recognition that re-organising probation can be no substitute for a co-ordinated cross-departmental policy approach. This should tackle the lack of suitable accommodation for people leaving prison; delays in accessing benefits; and structural obstacles to obtaining employment, including an outdated and discriminatory criminal records regime.

## **Response**

### ***The policy underpinnings***

1. We are conscious that the Committee's terms of reference deliberately avoid a post mortem on the design and implementation of TR. But it is important to acknowledge that the programme represents an object lesson in both poor policy making and rushed implementation. For all its alleged enthusiasm for evidence based policy, the government embarked on national reform long before the modest pilots of its proposed approach had even reached mature operation, still less evaluation. The core policy of "payment by results" simply refused to acknowledge the non-existence of a reliable measure for its key result—reoffending. And an unevidenced and spurious conclusion about the efficacy of mandatory post release supervision was used to justify its extension to prisoners serving short sentences.
2. The dislocation of probation into national and local, and on the basis of allegedly more or less risky caseloads, was always going to create a myriad of handover points which the criminal justice system is notoriously poor at handling. People with multiple and complex needs are especially vulnerable in a system set up in this way. And keeping CRCs at arm's length from both the courts and the NPS staff responsible for giving advice was always likely to undermine sentencers' confidence in what was on offer.
3. An all or nothing implementation plan driven through at breakneck speed inevitably exposed the fault lines in the operational model of a service split both by geography and function, and allowed crucial shortcomings in the basic data underpinning the procurement to go unresolved. The learning from competition for prisons, that it is difficult to commission well first time around and that commissioning too much all at once tends to end badly, was completely ignored. The dictum that "you don't pilot a revolution" was a poor substitute for a proper appreciation of the damage which an all or nothing approach was likely to cause. Despite the heroic attempts of officials to craft a meaningful payment mechanism without the possibility of piloting it, the failure of that mechanism has been calamitous in terms of outcomes on the ground. The speed and once for all nature of the implementation also meant that a great deal of significant and difficult detail was glossed over. In reality TR was not introducing a new service for short term prisoners as was claimed, but adding a layer of complexity to an already crowded operational field, with multiple overlapping commissioned services and poorly co-ordinated basic systems for managing information, accountability and performance management.

### ***Joined up commissioning***

4. The subsequent shortcomings in TR as it has rolled out have been well documented in public by the Chief Inspectors of both Probation and Prisons. The process of review by the government, by contrast, has been opaque. We understand that there has been a "review", but so far as we are aware no terms of reference were ever published and there was no public call for evidence. Given the wealth of knowledge outside the department, it is regrettable that the review should have been conducted behind closed doors and perhaps not surprising that the principal outcome has been seen as being a "bail out" of CRCs struggling with the financial impact of much lower than predicted workloads.
5. Had we been invited to contribute to a review, PRT would have drawn on our submission to the Work and Pensions Committee inquiry about support for ex-

offenders, in which we highlighted the confusion of overlapping contracts and lack of effective outcome measurement which the Transforming Rehabilitation agenda has so far only made worse. There is no need to labour the point, but better referral processes for housing and benefits, for example, will not help if there is no housing available, or delays in paying benefit leave former prisoners destitute at the moment when they are most vulnerable.

6. For people with multiple complex needs, the distance between the sentence and the provider of an intervention is especially worrying, as is the focus on speedy justice (separate from TR but a key part of the overall picture). The new Community Sentence Treatment Requirement (CSTR) is a good example of where assessments by liaison and diversion services inform the courts, in a timely manner, of an offender's particular needs and, in turn, their suitability for a treatment requirement. But by the same token, the current underuse of the Mental Health Treatment Requirement (MHTR) is a symptom of the system not delivering what it could and should. Improving that situation requires completing the rollout of liaison and diversion services, but also finding a way to ensure that the CSTR option in due course is available everywhere, sentencers know about it, and those advising the court have the knowledge and time to see when it should be recommended.

### ***The situation on the ground***

7. We can also draw on the first-hand evidence of an in-depth study of the way in which prisoners at a London resettlement prison, Brixton, were helped to gain employment after release. The report of that study, "Out for Good—lessons for the future", gives a valuable insight into the reality of how TR has played out in prisons, and some highly practical recommendations for improvements short of yet another major reorganisation. Amongst other findings we concluded that:
  - the pattern of provision within the prison to help prisoners into sustainable employment was very complex, and lacked co-ordination;
  - there was no target to achieve sustainable employment shared by the prison and the seven different agencies within it variously contracted in different ways and by different commissioners to help;
  - the process of data gathering and sharing was very poor and inadequately supported by ICT.
8. In short, the presence of the CRC had added to an already complicated picture of significant pre-existing services, but done nothing to improve co-ordination. The study also found that some very important aids to successful resettlement—in particular the use of release on temporary licence (ROTL)—were grossly under-used for reasons that had nothing to do with TR and everything to do with political timidity and an overcrowded, under resourced prison system.
9. The report made a number of practical recommendations:
  - a step change in the use of ROTL for employment and education in the community prior to a prisoner's release. Under existing instructions, ROTL could be a normal part of most prisoners' sentences. But as matters stand, most so-called resettlement prisons use it hardly at all, and so for most prisoners it constitutes neither a real incentive to use their time in prison well, nor a practical way to overcome their own resettlement challenges;

- a radical simplification of the commissioning and provision of overlapping services to help prisoners into employment;
- adequate resource for the governor of a prison to co-ordinate that provision and build relationships with the local labour market;
- a heavily weighted target for the sustained employment of prisoners after rather than on release, applying equally to the prison and the agencies commissioned to help it, including the community rehabilitation companies;
- improved national systems for data collection and sharing on individual prisoners, saving time in prisons and making possible the routine measurement of achievement after release;
- and, fundamentally, a prison system in which overcrowding does not require prisoners to be held far from the communities—and jobs—to which it makes sense to release them.

10. Whilst we know that a number of these recommendations are under consideration—in the case of ROTL for at least the last two years—we are not aware that decisive progress has been made on any of them. In relation to performance management, there have been positive noises about shared targets for specific resettlement outcomes, but nothing concrete has been delivered. The simplification of targets for governors promised in the prison reform white paper seems further away than ever, with separate performance regimes operated by MoJ commissioners on the one hand and HMPPS line management on the other. Adopting any of the recommendations from PRT's short report would help provide better value for the money currently invested, even allowing for the byzantine procedural complexity TR has brought with it.

### **Women**

11. PRT also has extensive knowledge of the challenges faced by women in the criminal justice system. Section 10 of the Offender Rehabilitation Act which paved the way for TR provided one of the few reasons for optimism at the outset of TR, requiring services to take into account the particular needs of women.
12. In the event, many providers have been adversely affected by the Transforming Rehabilitation reform programme. We are aware of some women's services that have been told they are "too expensive" by the responsible Community Rehabilitation Company (CRC), who say they have inherited greater numbers of probation staff than expected so are reducing expenditure on external providers. Many women's services have already closed, reduced their services or put their staff on redundancy notice, as a result of funding uncertainty. Some CRCs did offer last-minute interim 3-6 months funding whilst they scoped and mapped service provision and reviewed plans. In other areas, CRCs are reported to be bringing women specific service provision in-house to save money or are putting contracts out to competitive tender, despite assurances during the bidding process that they would work with specified women's-service providers which have proved their effectiveness.
13. The sustainability of women's community services has long been a concern—a point recognised by the Justice Committee in its March 2015 follow-up report on women offenders: *"We are concerned that funding appears to be a recurring problem for women's centres and that future funding arrangements have not been put on a sound basis as we recommended...we reiterate our recommendation that*

*sustainable funding of specialist women's services should be a priority.*"<sup>3</sup> More recently, a HM Inspectorate of Probation thematic inspection of women's services found *'a lack of focus on outcomes for women, both strategically and operationally'* and went on to note that *'funding was a major concern for women's centres at the time of our inspection... A number of women's centres had temporary or 'roll-on' contracts, mostly of three months duration. This led to uncertainty about future funding, staffing and the sustainability of services.'*<sup>4</sup> Despite assurances that most of the women's services contracted by probation pre-March 2015 would receive interim funding by the newly privatised CRCs to tide them over, comprehensive information is not available and 'commercial sensitivity' arguments are inhibiting transparency.

14. Cost-savings and improved outcomes could be achieved by diverting women who commit non-violent and minor offences out of the criminal justice system at the first opportunity. For the minority of women whose offending is more serious, greater use of community sentencing options, in particular women's centres or other gender-sensitive interventions where they exist, are both significantly more cost-effective and have better outcomes than short prison sentences. Community sentences enable women to take control of their lives, care for their children and address the causes of their offending. Recent research by Hedderman and Jolliffe found that 55.8% of women released from prison reoffend within a year, compared to 26% of those completing a community order.<sup>5</sup> The long promised government strategy on women offenders must deliver a step change—it is clear that TR has not.

### ***Supervision and recall***

15. Optimists also looked to the introduction of supervision for people serving under 12 month prison sentences as a potential benefit of TR—indeed this was probably the feature that commanded most cross party support. But there was little debate over the logic of imposing mandatory supervision rather than offering voluntary support. The argument ran that reoffending rates for longer sentences—where mandatory supervision exists—were better than for shorter, so a similar benefit could be expected from extending it. But this was not evidenced, and the two pilots set up ostensibly to test the payment by results principle relied on providers constructing an offer of voluntary engagement which offenders would think was worth taking up.
16. There are two difficulties with compulsory supervision. The first is that it reduces the need for providers to work at how they engage prisoners with through the gate services. But we know that the threat of future sanctions is, almost by definition, a poor tool for motivating people who regularly get sent to prison. The second difficulty, of course, is that compulsory supervision significantly inflates the liability to custody of a very large group of people—at a time when prisons are grossly overcrowded, and the local prisons most likely to receive people on recall are the least able to cope. Not only is a large new group of people put at risk of imprisonment, but the grounds for going there fall way below the normal threshold of having been convicted of a significant offence. Whilst people may be recalled for a number of concurrent reasons, figures from the Ministry of Justice reveal that fewer than two-in-five people

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<sup>3</sup> House of Commons Justice Committee (2015) Women offenders: follow-up, London: HMSO

<sup>4</sup> HM Inspectorate of Probation (2016) A thematic inspection of the provision and quality of services in the community for women who offend, London: HMSO

<sup>5</sup> Hedderman, C. & Jolliffe, D. (2015) 'The impact of prison for women on the edge: paying the price for wrong decisions', Victims and Offenders: An international journal of evidence-based research, policy and practice

(37%) serving a sentence of less than 12 months were recalled for a further charge in the year to June 2017.<sup>6</sup>

17. To no-one's surprise, the number of people recalled to custody has increased sharply as a consequence of TR. 8,309 people serving a sentence of less than 12 months were recalled to prison in the year to June 2017.<sup>7</sup> Disproportionately sent to prison for less serious offences, women are also suffering most from the change. The number of women recalled to custody whilst under supervision after their release has doubled since the end of 2014, with 1,458 recalled in the year to June 2017.<sup>8</sup> And whilst there has been some levelling out in the number of men in custody for recall, there are still 490 more men there than before the introduction of TR—a 9% increase.<sup>9</sup>
18. We understand that the Chief Inspector of Probation will shortly publish a thematic inspection on recall, and that this will address the concerns of some that recall powers are in fact not being used often enough. But the fundamental issue which we would invite the committee to consider is whether the starting premise—that drastically extending the liability to custody for the under 12 month cohort is likely to reduce offending—withstands scrutiny in the light of experience. We would argue that it has added the equivalent of a medium size prison to the pressures the government must meet, and anecdotally led to a new operational problem as prisoners are bullied into agreeing to get themselves recalled to bring illicit drugs back with them.
19. In 2010, a Payment by Results (PbR) pilot was launched at Peterborough prison, aimed at reducing reoffending among people serving sentences of up to 12 months. Support was available to people for a further year after their release, and engagement was on a voluntary basis. The final evaluation of the scheme, published in July 2017 to no fanfare from the Ministry of Justice, found that it achieved a 9% reduction in reconvictions, above the 7.5% reduction required to trigger payment.<sup>10</sup> So the evidence of at least one of the pre-TR pilots is that voluntary engagement is probably more effective than compulsory supervision at reducing crime—and a great deal cheaper and less damaging to both the prisons and families affected by recall in its current form.

### ***The prison estate***

20. We know that minor and prolific offending are overwhelmingly local in nature. TR sought to recognise this by creating a local structure for CRCs, and the specification required bidders to show how they would tailor their offer to the particular geographical area concerned. A major reorganisation of the prison estate was promised to complement TR, alongside an equally ambitious promise to return most prisoners to a prison close to their home area in the three months prior to their release.

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<sup>6</sup> Table 5.10, Ministry of Justice (2017) Offender management statistics quarterly: April to June 2017, London: Ministry of Justice

<sup>7</sup> Table 5.2, Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Table 1.1, Ibid. and earlier editions

<sup>10</sup> Ministry of Justice (2017) Final results for cohort 2 of the Social Impact Bond Payment by Results Pilot at HMP Peterborough, London: Ministry of Justice

21. Inevitably, this produced more sensible results in some areas than others. The prison estate is an accident rather than a design, and we look forward to contributing to the Justice Committee's examination of this crucial issue in the coming months. But specifically in relation to TR, it is clear that the compromise solution the government put together has not delivered, and indeed appears to have been quietly superseded. A "reconfiguration" plan for the estate will mean that city centre prisons largely hold unconvicted prisoners, and release will generally take place from more remote training prisons. This represents a really significant change to the promised operating context for CRCs, so it is reasonable to ask why the government would undertake it midway through a troubled 7 year contract term, knowing that CRCs were already facing unforeseen operational challenges.
22. The answer of course is the persistence of overcrowding and its corrosive impact on every aspect of the rehabilitation agenda. Nearly 21,000 people were held in overcrowded prison accommodation in 2016–17—almost a quarter of the prison population. Two-thirds of prisons in England and Wales are overcrowded (79 of the 119 prisons). Overcrowding affects the whole prison population, not just those who are recalled. It limits access to activities, staff and other resources to reduce risk of reoffending, as well as increasing distance from families and other support networks. It produces a constant stream of enforced prisoner movements, utterly divorced from the requirements of sentence plans or the needs of families. It requires governors to establish relationships with local agencies and leaders in physically remote locations and often in many more than one place. They must get to know multiple CRCs, housing authorities, health commissioners, statutory partners like the police and social services, not to mention the voluntary sector organisations that TR was supposed to bring into the fold.
23. Although this issue perhaps sits more centrally in another of the committee's inquiries, it is important to point out that the government yet again chose to pursue a complicated organizational reform in the shape of TR while ignoring the fundamental problem of a prison system constantly expected to operate far beyond its intended capacity, and holding prisoners far from the place to which they will return and the organisations that have a responsibility to help them when they do.

### **The future**

24. In the story told to justify TR, organisational shortcomings in probation were always in reality the proverbial mote—the chronic overuse of short prison sentences and an overburdened prison system were and remain the plank in the government's eye.
25. It follows that we would urge the committee to focus the government's attention on the strategic challenges which it ducked in the TR programme. Many departments must share in that task. But the Ministry of Justice can and should have a timetabled plan to end overcrowding by reducing the prison population, driven by a reduction in the length of longer sentences and an avoidance of short custodial sentences altogether. A prison system operating within rather than beyond its capacity would be able to deliver many of the government's rehabilitative ambitions—as inspection reports of uncrowded prisons with a settled function and leadership already demonstrate from time to time. Endless tinkering with organisational and operational models is no substitute for a determined policy programme to alter the context within which prisons and their many partners work. Changing the context is unquestionably the more difficult challenge, but revolutionary in a way that TR never was and never will be.