

## **Prison Reform Trust response to the Justice Committee inquiry on prison reform – September 2016**

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.

### **Introduction**

The Committee's inquiry is timely. Many prisons are unsafe and the system as a whole is failing to deliver what the public should expect. The Government's commitment to reform is welcome but has yet to result in either a detailed description of what it intends to do or any improvement in conditions on the ground. In fact, all the indicators suggest the system's problems are getting worse.

This response answers the six questions on which we believe we have something to offer the committee.

### **What should be the purpose(s) of prisons?**

- **How should i) the prison estate modernisation programme and ii) reform prisons proposals best fit these purposes and deal most appropriately with those held?**
- **What should be the roles, responsibilities and accountabilities of**
  - i) prison staff**
  - ii) prison governors**
  - iii) National Offender Management Service**
  - iv) Ministry of Justice officials and Ministers and**
  - v) other agencies and departments**

**be in creating a modern and effective prison system?**

1. The people who live and work in prisons are rarely confused about what prison does. It punishes, and it achieves that in every case, including for those not yet convicted or convicted in error. But it is good that this Government has explicitly endorsed the familiar dictum that a person goes to prison "as punishment" not "for punishment". That fundamental approach should now be established in statute as part of a Prison Reform Bill, encapsulating the key principle described in *Raymond v Honey* (1982), that "a convicted prisoner, in spite of his imprisonment, retains all civil rights which are not taken away expressly or by implication."<sup>1</sup>
2. The significance of this starting point is that the other purposes of prison all flow from an acknowledgement of the prisoner as a citizen. The best and most enduring statement of those purposes was devised in the aftermath of the Woolf Report—still the most insightful and comprehensive prescription for prison reform of the last 3 decades. The statement reads:

"Her Majesty's Prison Service serves the public by keeping in custody those committed by the courts. Our duty is to look after them with humanity and help them lead law-abiding and useful lives in custody and after release."<sup>2</sup>
3. This makes plain that prison should **not** be expected to "cure" people of crime, or to solve the social problems that characterise the lives of many prisoners. But it **should** provide the motivation, opportunity and support for imprisoned citizens to desist from crime in the future.
4. For all but a tiny minority, imprisonment is a temporary interruption to a life lived in a community. So prison should have the same expectations, and provide most of the same opportunities, as the communities to which prisoners will return. Those expectations should include contributing to the well being of the prison community and abiding by its rules, but also meeting responsibilities outside the prison, as a parent or tenant or taxpayer, or in making amends to a victim. The opportunities should include the ability to live a healthy and purposeful life, with the ability to grow and realise one's own potential.
5. Prison is immensely wasteful of both human and financial capital. That is the price we choose to pay to achieve punishment in the last resort of offending which is too serious to be dealt with in any other way. But a determination to limit that waste is the proper foundation of policy both for how we use prison and what the experience of it should be.
6. The necessary implication of this approach is that prison should not divorce the prisoner from the community to which they will return—either in terms of their rights or their responsibilities. In its turn, that community should retain its obligations towards its citizen and be engaged in preparing for their return. An estate plan must take that as its starting point. In practice, this requires multifunctional institutions or effectively clustered institutions close to the

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<sup>1</sup> *Raymond v Honey* [1982] AC 1, [1981] UKHL 8

<sup>2</sup> Woolf, H and Tumim, S (1991) *Prison disturbances April 1990, Report of an inquiry*, London: HMSO

places which produce most prison sentences, and that should drive decisions on both new prison sites and prison closures. Estate planning in the modern era has always been driven chiefly by expediency and cost—there may now be an opportunity to establish a principle that delivers a rational and effective estate instead, albeit over the next 2 to 3 decades.

7. In relation to reform prisons, so little of the detail of that initiative has been articulated that it is difficult to comment in the way the committee requests. In our view, there is a significant risk that reform prisons may deflect energy and attention from the fundamentals of prison reform. Many different models for managing individual prisons have been adopted over the years—indeed, the current system has a variety in operation already. None represent a panacea and all can only be said to succeed or fail to the extent that the benchmarks for success have been clearly described and can be accurately assessed. If that critical policy task could be completed, it is hard to see why the government would confine its ambition to 6 public sector prisons, or postpone the action needed to realise it.
8. There is too little space within this response to answer the committee's question of the roles and responsibilities of key players in any detail. Perhaps the most important general point to make that affects all those listed is that their success relies entirely on recognising their inter-dependence. A prison system that is genuinely geared to realising the human capital of those it incarcerates can only do so in partnership and with performance measures that reflect that. This relies on the close integration of health, social care, education and accommodation, with police, Crown Prosecution Service, the courts, prisons, and probation services. To achieve this, systems are needed which promote cooperation and the sharing of data and information between different agencies. Initiatives such as the Greater Manchester Justice Devolution project have the potential to provide important learning on how a more effective and joined up justice system at the local level can be delivered.<sup>3</sup>
9. It is also important to register that major structural reform at the centre risks deflecting attention from the operational emergency in prison conditions. We would be pleased to provide further evidence if this emerges as a key line of enquiry.
10. However, we would encourage the committee to consider a longer list of key players in addressing this question. In particular, we would suggest that Parliament, the public and prisoners all require attention:
  - Parliament, because the statutory framework for our prison system is inadequate and out-dated. Reform should be founded upon a modern and comprehensive Prison Act, taking its cue from the international instruments of which this country has been a principal architect.
  - Prisoners, because they are the great under-used resource in a system crippled by its lack of human capacity. Prisoners can and should play a

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<sup>3</sup> See [https://www.greatermanchester-ca.gov.uk/info/20101/justice\\_devolution](https://www.greatermanchester-ca.gov.uk/info/20101/justice_devolution)

far more responsible role in delivering safe and constructive prison communities, and there is a well of existing good practice from which to draw.

- The public, because prison is a public service that affects and should be accountable to every citizen. The absence of any local influence in the commissioning or funding of imprisonment, or any formal accountability to local communities, should change.

### **What are the key opportunities and challenges of the central components of prison reform so far announced by the Government, and their development and implementation?**

11. Despite a welcome shift in tone following the former Prime Minister's speech in February 2016, and the announcement of a number of policy reviews, the government has as yet provided few tangible policy announcements or changes. It would be helpful for the committee to seek clarification on progress and plans. This includes "banning the box" for all civil service positions at the application stage; reforming release on temporary licence; and alternative ways of dealing with women offenders.
12. But the reassertion of some key underlying principles by the Government over the last year does provide an opportunity to re-establish the role of prison as an important punishment of last—rather than common—resort. Although the National Audit Office, along with international research, has shown that there is no consistent correlation between prison numbers and levels of crime,<sup>4</sup> England and Wales has the highest rate of imprisonment in western Europe;<sup>5</sup> our prison population has nearly doubled since 1993;<sup>6</sup> and prison sentences are getting longer.<sup>7</sup>
13. The government's emphasis for its reform plans has, so far, largely focused on improving prison conditions and performance. Whilst this is of course welcome, and urgently required, we are concerned that this should not be to the exclusion of reforms to sentencing. Limiting sentence inflation generally and curbing the growth in tariff length for indeterminate sentences would do more than any other measure to ease pressure on prison numbers, reduce overcrowding and free up resources to invest in rehabilitation. Sentencing reform holds the key to balancing the demands on our prisons with the

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<sup>4</sup> National Audit Office (2012) Comparing International Criminal Justice Systems, London: National Audit Office and Lappi-Seppälä, T (2015) Why some countries cope with lesser use of imprisonment, available at <http://bit.ly/Tapio>

<sup>5</sup> International Centre for Prison Studies website, [http://www.prisonstudies.org/highest-to-lowest/prison\\_population\\_rate?field\\_region\\_taxonomy\\_tid=14](http://www.prisonstudies.org/highest-to-lowest/prison_population_rate?field_region_taxonomy_tid=14), accessed on 29 September 2016

<sup>6</sup> Table A1.2, Ministry of Justice (2015) Offender management statistics prison population 2015, London: Ministry of Justice and Table 1.1, Ministry of Justice (2016) Offender management statistics quarterly: July to September 2015, London: Ministry of Justice

<sup>7</sup> Table Q5.1b, Ministry of Justice (2016) Criminal justice statistics quarterly: December 2015, London: Ministry of Justice

resource needed to meet the range of expectations we rightly place upon them. In our view, there is an unusual and precious opportunity for the government to spend less overall while radically improving effectiveness, but that is only possible through a return to levels of incarceration last seen under governments led by Margaret Thatcher.

14. More could also be done to promote the use of effective community approaches, including through the expansion of liaison and diversion services and the devolution of criminal justice powers to support joint working between police, health and local government services. Conservative manifesto proposals to promote alternatives to custody for women with children through the use of electronic monitoring should be brought forward as part of prison reform plans.
15. It is widely acknowledged that prison is not the right place for people with severe mental health problems. The commitment to roll out alternative provision for severely mentally ill people will be important in ensuring that people suffering from mental illnesses are diverted into treatment and care. It is welcome that Theresa May as home secretary outlined her support for these approaches.<sup>8</sup> It remains essential that healthcare in prisons is commissioned by health experts to expectations and quality standards equivalent to those in the community, albeit with the Governor “at the table” to reflect their accountability for the welfare of those in their care.

**What can be learnt from existing or past commissioning and procurement arrangements for i) private sector prisons and ii) ancillary prison services which have been outsourced?**

i) Private prisons

16. In terms of performance, it has long been clear that neither public nor private sectors have a monopoly on good practice. Recent inspection reports continue to suggest a mixed picture, with some giving serious grounds for concern, while others have avoided the general decline in standards that has afflicted the system as a whole. Private prisons provide some outstanding examples of innovation, not least in the way prisoners contribute to the regime, and in the use of technology.
17. But the Government's policy on competition has changed regularly throughout the last two decades, and the potential benefits of competition have not been realised as a consequence. In particular:
  - the stop/start nature of competition policy and repeated changes in the procurement model have inhibited the development of a strong market, added to providers' costs (all of which are passed on to the taxpayer) and prevented partnerships with the not for profit sector from

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<sup>8</sup> 'Home Secretary outlines next steps in delivering the Care not Custody commitment', Prison Reform Trust website, available at <http://www.prisonreformtrust.org.uk/PressPolicy/News/ItemId/219/vw/1>

developing as far as they could have, including the formation of alternative models of prison governance and ownership such as mutuals;

- a loss of confidence in the civil service's ability to procure effectively and to manage contract has led to over-specified offers and a conservatism in every aspect, from prison design through to use of IT and different operating models;
- the recent absence of competition for whole prisons has not been healthy for the operation of public sector prisons. Their costs have reduced to previous private sector benchmarks but without the concomitant investment and contractual certainty which underpin the private sector's most successful prisons.

18. Fundamentally, to improve quality, competition requires a clear, proportionate policy on the use of imprisonment and adequate funding to deliver it, both of which are currently lacking.

ii) Ancillary services

19. The current model of contracting out so-called "ancillary services" is hard to square with either a community prison model or with greater accountability for Governors and Directors. A prison must be more than a collection of managed contracts. But vesting all commissioning with Governors makes no sense either—they need a seat at the commissioning table rather than sole control. The key flaw in the current approach is that it has been driven entirely by cost reduction considerations, to the exclusion of broader objectives for rehabilitation and community engagement.

20. There is no sensible alternative to joint commissioning, driven by the central acknowledgement of prisoners as citizens, so that prisons can benefit from the expertise of community based commissioners and access to community resources.

21. In summary, there are important lessons to learn from our extensive experience of competition. The best private prisons have used their freedoms to innovate and to invest in robust technology that improves the quality of life for prisoners and staff alike. The certainty of purpose and funding offered by a binding contract has allowed some to develop incrementally and to overcome the problems of youth and inexperience that are typical when new prisons are commissioned. But the many changes in approach to competition policy have been damaging and impeded its potential benefits for both public and private sectors, while creating a confusing and sometimes perilous operating environment for third sector organisations.

## **What principles should be followed in constructing measures of performance for prisons?**

22. An effective system of performance measurement needs to capture both how prisons spend their money to provide a safe and secure environment, and whether they improve the life-chances of offenders on release. Measures need to be transparent and geared towards encouraging learning and sharing best practice between establishments. They should always be underpinned by a commitment to robust and accurate data collection.
23. The key point of principle which we would urge the Committee to endorse is that measures should reflect the importance of joint work between prisons and other agencies responsible for the supervision and rehabilitation of offenders, including probation, employment, health and welfare services. The Prison Rating System measures outcomes for which the prison is directly responsible. However, a prison system that is genuinely geared to reducing reoffending and realising the human capital of those it incarcerates can only do so in partnership with other agencies. Performance measures should therefore be adopted which require cooperation and joint accountability for driving up standards. For instance, measures of 'Settled accommodation on release', 'Employment on release', 'Education and training on release' should measure progress three months after an individual leaves prison as well as at the point of release, to ensure engagement with services has been sustained.
24. Measures should continue to include qualitative evidence of prison performance with direct account of the experience of people in prison. The MQPL (measuring the quality of prison life) surveys regularly undertaken in our prisons represent a world leading tool and it is vital that their use is sustained and given weight. We would encourage the development of indicators which measure the experience of families and visitors to prisons too, both in terms of their treatment as members of the public and in terms of their ability to contribute to the well being of those for whom they care whilst in prison.
25. In general, the weighting of indicators within the PRS has sometimes been too crude, for example in the catastrophic impact on a prison's performance of a single escape. They have been designed to send messages rather than to assess performance in a rounded way. As with every other aspect of prisons policy, consistency and continuity are vital and would be enhanced by a new and detailed statutory expression of the minimum standards to which a prison should operate and the entitlements and accountabilities of those it holds.
26. Greater priority should be given to safety in performance, with responsibility on the Secretary of State to intervene directly in the management of a prison if standards of safety are judged to be insufficient. It is the primary duty of prison to hold people safely and securely. If a prison is found to be performing at an unacceptable level on safety, the government should be required to respond within a given time frame and report to Parliament.

27. Measures should take account of the equality impact of different interventions. For instance, there are two additional women-specific pathways to reduce reoffending (support for women who have been abused, raped or who have experienced domestic violence; support for women who have been involved in prostitution)—and these should be reflected in the performance measures adopted for women’s establishments.

**Are existing mechanisms for regulation and independent scrutiny of prisons fit for purpose?**

28. It is crucial that the arrangements for performance measurement and any assessment of management competence should be kept distinct from the independent role of the prisons inspectorate. Prisons are inherently coercive environments which entail severe restrictions on the rights and civil liberties of individuals. An independent prisons inspectorate which monitors treatment and conditions according to international human rights standards is vital. Making the inspectorate responsible for evaluating performance against standards set by the government would undermine its independence and the important function it plays in overseeing the service’s compliance with its human rights obligations.

29. Moreover, the Secretary of State is personally and directly accountable for the operation of prisons in a way that is not true for other public services such as health or education. She can only benefit from a mechanism separate from the inspectorate to satisfy herself that she is meeting those responsibilities and delivering the policy objectives she chooses to set. Neither her interests nor those of the public would be served by a system which waited for adverse inspection reports to draw the Secretary of State’s attention to serious failings either in individual prisons or the system as a whole.

30. HM Inspectorate of Prisons provides high quality, detailed reports on individual prisons, thematic reports, and an annual report that captures shifts over time. During many years of upheaval in the way prisons are managed and the policies to which they operate, the independence and, crucially, the longevity of its expectations, have enabled the inspectorate to provide probably the only reliable and consistent account of whether the service provided has been improving or deteriorating. That represents an accolade for the inspectorate and a rebuke to successive governments, but not a reason for confusing the role of the inspectorate with regulation or management audit. We believe the inspectorate should be confirmed in its role with legislation that further defines its independence from the Ministry of Justice and its accountability to the Crown through Parliament. Similarly, the Prisons and Probation Ombudsman should be established in statute.

31. As the committee will be aware, as the National Preventive Mechanism (NPM) the inspectorate coordinates all UK bodies holding the duty to prevent torture, an important dimension of which is the treatment of people in custody. The NPM provides a model for the implementation of international standards, such as the new UN Standard Minimum Rules for the Treatment of Prisoners



(SMR). The SMR should be disseminated to practitioners in criminal justice and prisons, to promote their application.

32. The Woolf Report called for binding minimum standards for prisons.<sup>9</sup> Minimum standards would guard against arbitrary differences among prisons; inform prisoners of their legitimate expectations from the prison; encourage NOMS and Government to drive up the quality of treatment and conditions, and prevent an incremental loss of decency. Lord Woolf's prescription remains as relevant and necessary now as it did in 1991 and the government should take the opportunity of legislation to enable the long overdue creation of binding minimum standards.
33. Independent Monitoring Boards (IMBs) also have a role in ensuring standards of care and decency are maintained in prison. Their annual reports often contain valuable insights into individual prisons which would not be available elsewhere. They provide a contact point for prisoners to raise concerns about their treatment. Despite this, some of the prisoners who contact PRT's advice and information service are reluctant to engage with IMB; many are dubious about their independence from prison governance. This perception could be reversed by greater support from the Secretary of State when an IMB officially raises concerns. IMBs should also be encouraged to ensure more uniformity and detail in their reports, and should play a more prominent role in checking that recommendations accepted following inspections or investigation reports following deaths in custody are implemented.

**What are the implications for prison reform of i) the Transforming Rehabilitation programme and ii) devolution of criminal justice budgets now and in the future?**

34. The criminal justice landscape has changed significantly in recent years. As the transitional phase of Transforming Rehabilitation comes to an end and if the devolution agenda gathers pace it is essential that lessons are learnt.
35. Whilst there is a pressing need for continuity and stability we believe there is a case for change in the following areas:

**Breach and Recall:** The extension of statutory supervision to short sentence offenders has driven up the prisoner population. Recent Ministry of Justice data reveal that the number of recalls for those serving less than 12 months has increased dramatically from 112 in January–March 2015 to 1,965 in October–December 2015.<sup>10</sup> A measure intended as rehabilitative appears to be reinforcing the revolving door of prison, breach and recall back into custody with significant cost to the MOJ and local authorities who are already seeking to manage significant reductions in public expenditure. In line with the approach adopted by the Peterborough pilot, which was

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<sup>9</sup> Woolf, H and Tumim, S (1991) Prison disturbances April 1990, Report of an inquiry, London: HMSO

<sup>10</sup> Table 5.2, Ministry of Justice (2016) Offender Management Statistics October to December 2015

allegedly a pilot for the Transforming Rehabilitation programme, PRT would like to see an end to statutory supervision for short sentenced prisoners with support offered on a voluntary basis. This would provide an incentive for providers to engage effectively with prisoners to secure their commitment and demand the provision of services which prisoners valued and genuinely believed would help. There is no evidence that coercion assists in rehabilitation—there is evidence that compulsory supervision has significantly increased the weight of sentencing and is driving up both the cost and harm caused by short prison sentences.

**Support for those with multiple needs:** Many service providers supporting those with multiple needs have been adversely affected by the Transforming Rehabilitation reform programme. We understand that some women’s services have already closed, reduced their services or put their staff on redundancy notice, as a result of funding uncertainty. HM Inspectorate of Probation has found that efforts to tackle offending by women are being hampered by a lack of accommodation for women, doubts over the future of Women’s Centres, and a lack of funding.<sup>11</sup> A thorough government audit of provision under s.10 Offender Rehabilitation Act 2014, which for the first time provides a statutory duty to consider the ‘particular needs of female offenders’, is required.

**Local transparency on the cost of imprisonment:** More can and should be done to embed prison establishments within the communities they serve. It remains one of the curious features of imprisonment that its cost is neither known nor considered by the communities which create the demand. It is a “free good” with no local accountability for controlling demand or meeting its cost. The public is informed only in the broadest terms of the cost of imprisonment and there is no local benefit to reducing it. Steps should be taken to ensure the local costs of imprisonment are transparent and any savings from its reduction are reinvested locally rather than absorbed centrally. In our view, the long term aim should be a small “federal” prison estate, centrally managed, for those serving the longest sentences; and devolved, locally accountable and funded prisons for the remainder, all set within a new statutory framework of binding minimum standards.

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<sup>11</sup> HM Inspectorate of Probation (2016) A thematic inspection of the provision and quality of services in the community for women who offend, Manchester: Her Majesty’s Inspectorate of Probation