



## Prison Reform Trust Representation to the Autumn Budget 2017

### Who we are

The Prison Reform Trust (PRT) is an independent UK charity working to create a just, humane and effective prison 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 prisoners and their families.

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.

[www.prisonreformtrust.org.uk](http://www.prisonreformtrust.org.uk)

### Our proposal

Our core representation is that new projections for the prison population show that the current strategy to manage the crisis in our prisons by adding to capacity on a new for old basis is undeliverable both operationally and financially. By contrast, a significant reduction in the use of imprisonment could unlock resource savings ultimately of nearly £1bn annually.<sup>1</sup> In the long term, a smaller, modernised estate would offer significant and enduring savings and the prospect of significantly better performance.

It is well known that the use of imprisonment in England and Wales has grown dramatically over the last two decades. A succession of expert reviews has charted the reasons for that growth.<sup>2 3</sup> What is clear is that the growth in the population has not been caused by an increase in crime, which has fallen on all measures during the same period. Nor has an increase in imprisonment been pursued as an object of policy. With the exception of a brief interlude in the late 1990s, when the then Home Secretary, Michael Howard, declared that “prison works”, successive administrations have accepted the consistent and persuasive evidence that community penalties have a better record in terms of reducing reoffending than custodial penalties for an equivalent cohort<sup>4</sup>. Instead, the growth in the population reflects a series of individual decisions, often prompted by a desire to respond to public

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<sup>1</sup> Estimates of the cost of a prison place vary, but NOMS Annual Report and accounts for 2015/16 reported an average annual cost of £35,182 per prison place. A reduction of 27,600 prison places would produce a saving of £971m

<sup>2</sup> Ministry of Justice (2013) Story of the prison population: 1993–2012 England and Wales, London: Ministry of Justice

<sup>3</sup> A Presumption against Imprisonment, British Academy for Humanities and Social sciences 2014, which in turn cites a number of previous studies and reports

<sup>4</sup> 2013 Compendium of re-offending statistics and analysis Ministry of Justice Statistics bulletin Published 11 July 2013

concern over particular cases, and the impact of which on long term population growth has either been misunderstood or considered secondary to the need to maintain public confidence. These have led to harsher sentencing overall, a dramatic increase in the use of indeterminate sentences and longer determinate sentences, and a significantly more risk-averse approach to decisions associated with discretionary release and recall of long term prisoners.<sup>5</sup>

The consequence has been a 90% increase in the use of imprisonment since 1993, and, despite a dramatic cost cutting exercise in public prisons, an overall expenditure on prisons in 2015/16 of £2.7bn.<sup>6</sup>

Our submission is that the prison population could safely be returned to 1993 levels by a variety of interventions aimed at:

- reducing the flow of suspects and convicted offenders into custody;
- increasing the intensity but reducing the length of sentences, which should in future be served largely in local community prisons; and
- adjusting the framework within which discretionary decisions affecting release and recall are taken.

That conclusion echoes the finding of the Justice Select Committee's March 2015 Report on Prisons: Planning and Policies. It concluded that, "the size of the prison budget, the fact that it completely dominates expenditure on crime, the importance of reducing crime, and other problems identified in this report all indicate that we need to re-evaluate how we use custody and alternatives to custody in a cost-effective way which best promotes the safety of the public and reduces future crime".<sup>7</sup>

Our proposal is particularly relevant in view of the new prison population projections published on 24 August 2017.<sup>8</sup> These reveal that the population is expected to grow by around 1,600 above current levels by 2022. But they also reveal that the 2016 projection, on which plans will have been made for the prison estate, were significantly more optimistic. The gap between the 2016 projection and the 2017 projection is around 2,000 spaces by the end of this year.

The practical implication of this change is dramatic. Under the government's prison estate transforming programme (PETP), it had planned to replace old inefficient prisons with new prisons that are cheaper to run, through committed investment of £1.3bn during the current spending review period. The eventual savings were anticipated to contribute to the Ministry of Justice's overall savings plan. However, without the option of closing older prisons, as now appears inevitable under the current population projections, no funds are released to run the new prisons planned—still less to finance the building and running of new prisons that will be required over and above the 10 promised by the previous government.

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<sup>5</sup> When Kenneth Clarke became Justice Minister in the new Coalition Government in 2010, he asked 'why is the prison population twice what it was when I was the home secretary not so very long ago?' (in 1992), and committed the government to a serious review of sentencing policies. He noted 'it's not to be soft on sentencing, it's to be sensible on sentencing, and bear in mind everybody who is sent to prison costs more than it costs to send a boy to Eton'.

<sup>6</sup> Table 1, Ministry of Justice (2016) Costs per place and costs per prisoner by individual establishment 2015 to 2016 tables, London: Ministry of Justice

<sup>7</sup> HC 309 Published on 18 March 2015 by authority of the House of Commons London: The Stationery Office Limited

<sup>8</sup> Ministry of Justice & Office of National Statistics (2017) Prison Population Projections 2017 to 2022, England and Wales, London: MOJ & ONS. Available at: <https://www.gov.uk/government/statistics/prison-population-projections-ns#history>

An early indication of the long-term impact of the revised prison population projections on the government's plans for estate modernisation is highlighted in the National Offender Management Service Annual Report and Accounts 2016-2017:

"In 2016-17 the demand for custodial places initially followed the population projection. The situation changed in September when the population increased sharply and in October was around 900 places higher than projected. The impact of this was contained but the position was made worse by the serious disturbances which led to the temporary loss of around 1,000 places. **The population continued to exceed projections during early 2017 necessitating the continued use of contingency places.**"

The Prison Reform Trust has played an important role in designing and helping to carry through a comparable strategic 5 year programme to reduce the use of imprisonment for children. That programme has been independently researched and evaluated<sup>9</sup>, and contributed to a reduction of two thirds in the number of children imprisoned between 2007 and 2014.<sup>10</sup> Proven offences by the same age group also fell by 72% during that period.<sup>11</sup> Both imprisonment rates and proven offences amongst children have continued to fall.<sup>12</sup>

We examine later in this representation some of the potential components of an overall strategy, much of which reflects work with which PRT is already closely involved. We believe it meets the aims of the Budget as set out in the guidance in the following ways:

## Spending Review guidance

### Likely effectiveness and value for money

Prisons serve a number of different purposes, which need to be held in balance. The long standing statement of purpose for the Prison Service states:

*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.*

The Prison Service's record for secure custody has improved beyond recognition over the last two decades. Escapes are rare, and the failure rate for prisoners released under the Governor or Director's discretionary power of temporary release is now vanishingly small<sup>13</sup>. None of these achievements are put in jeopardy in a smaller estate – indeed, the reverse is true, if a modest amount of the overall saving is reinvested in promoting better staff-prisoner relationships with the increase in intelligence and compliance that that brings with it.

The service's record on treating prisoners with humanity, by contrast, has deteriorated markedly in the face of staffing cuts during the last five years<sup>14</sup>, made while prisons remain overcrowded and in the absence of investment in both regime facilities and prisoner-facing ICT. After several years of steady improvement, safety in prisons has deteriorated rapidly

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<sup>9</sup> An Independent Review of the Out of Trouble programme, Annabelle Jackson Associates 2012

<sup>10</sup> Table 2.1 Youth Justice Board (2015) Monthly youth custody report – March 2015, London: Ministry of Justice

<sup>11</sup> Table 4.2, Ministry of Justice (2015) Youth Justice Statistics 2013/14, England and Wales

<sup>12</sup> Youth Justice Board Monthly youth custody report March 2017 and Youth Justice Statistics 2015-16

<sup>13</sup> Ministry of Justice (2014) Statistical Notice: Releases on Temporary Licence. Of 485,000 releases in 2012, there were 428 failures, with only 26 of those involving a prisoner being arrested on suspicion of committing an offence

<sup>14</sup> Table 2, Ministry of Justice (2015) National Offender Management Service workforce statistics bulletin: December 2014, London: Ministry of Justice

during the last six years. People in prison, prisoners and staff, are less safe than they have been at any other point since records began, with more self-inflicted deaths, self-harm and assaults than ever before. Writing in his 2016–17 Annual Report, HM Chief Inspector of Prisons said:

“Staff shortages, increased violence and antisocial behaviour, widespread use of [new psychoactive substances] and severely restricted regimes characterised many of the prisons we visited.”<sup>15</sup>

The rapid deterioration in standards includes the task of helping prisoners to lead law abiding lives in custody.

“Debt, bullying, and self-segregation by prisoners looking to escape the violence generated by the drugs trade are commonplace. This has all been compounded by staffing levels in many jails that are simply too low to keep order and at the same time run a decent regime that allows prisoners to be let out of their cells to get to training and education, and have access to basic facilities.”<sup>16</sup>

The objective of helping prisoners to lead law abiding lives after release has received a great deal of dedicated attention for much of the last two decades. There have been modest improvements in reoffending rates for longer term prisoners, and some evidence of a treatment impact from cognitive behavioural programmes that typically take around 6 weeks to complete<sup>17</sup>. But the reoffending rate for prisoners serving short sentences remains stubbornly high, with nearly three in every five people going on to commit a further offence on release.<sup>18</sup> Overall, 43% of prisoners released from custody are reconvicted within a year of release from prison, nearly double the reconviction rate for all offenders.<sup>19</sup> The former Chief Inspector of Prisons, Nick Hardwick, explained in his last Annual Report that overcrowding—the inevitable consequence of a rising population—

“...is not simply a matter of two prisoners sharing a cell designed for one with an unscreened toilet – undesirable though that is. It means that a prison will not have the activity places, the support mechanisms or the rehabilitation programmes it needs for the size of its population.”<sup>20</sup>

In short, in all but one of its balanced elements, the unnecessary use of imprisonment is seriously undermining the effectiveness of the Prison Service. The Service’s own analysis of its performance supports the Chief Inspector’s findings, with the proportion of prisons judged to be “of concern” or “of serious concern” rising from 13% in 2012/13 to 42% in 2016/17.<sup>21</sup>

As with other areas of public service, prisons have been subject to continuous efficiency measures for many years. Competition and, more recently, benchmarking have driven down the cost of imprisonment dramatically.<sup>22</sup> The scope for further efficiency gains is now limited,

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<sup>15</sup> HM Chief Inspector of Prisons (2017) Annual Report 2016–17, London: The Stationery Office

<sup>16</sup> Ibid.

<sup>17</sup> Evaluation of the impact of the HM Prison Service Enhanced Thinking Skills programme on reoffending Outcomes of the Surveying Prisoner Crime Reduction (SPCR) sample Greg Sadlier Ministry of Justice Research Series 19/10 November 2010

<sup>18</sup> Table C2a, Ministry of Justice (2017) Proven reoffending statistics: October 2014 to September 2015, London: Ministry of Justice

<sup>19</sup> Tables C1a and A1, Ibid.

<sup>20</sup> HM Chief Inspector of Prisons (2015) Annual Report 2014–15, London: The Stationery Office

<sup>21</sup> HM Prisons and Probation Service (2017) Prison Annual Performance Ratings 2016/17, London: HMPPS, and National Offender Management Service (2013) Prison Annual Performance Ratings 2012/13, London: NOMS

<sup>22</sup> Table 1, Ministry of Justice (2016) Costs per place and costs per prisoner by individual establishment 2015 to 2016 tables, London: Ministry of Justice and Table 42, Ministry of Justice

however, especially in an operation where the maintenance of good professional relationships between staff and prisoners is the cornerstone of every aspect of the service delivered—security, safety and rehabilitation. The quality of prison regimes in many prisons is now severely compromised, and the attention that should be paid to sensible investment – for example, in ICT that could improve many aspects of prison life, or in staff training to raise skill levels and improve their impact on the lives of offenders – is curtailed by the incessant pressure to create new spaces.

Paradoxically, the effect of overcrowded prisons now operating with little or no margin is that the existing facilities within the prison – often contracted separately at considerable cost – tend to be underused. As part of its inspection framework, HM Chief Inspector of Prisons expects people in prison “to be unlocked for at least 10 hours a day so that they can attend education or work, engage with health or substance misuse services or plan for resettlement, as well as wash, collect meals, clean their cell and keep in contact with their families.” However, only 14% of prisoners said that they were unlocked for this length of time according to the 2016/17 Annual Report. Time spent unlocked is particularly poor for young adults in prison, with 30% of those surveyed reporting that they spent less than two hours a day out of their cell a day.<sup>23</sup>

As the Chief Inspector explains, the effects of increased time spent in cells is not only a missed opportunity to help people to turn their lives around, but can also lead to declining safety and instability.

“When prisoners spend long periods locked in their cells they become frustrated with staff and each other, they are bored and have more time to use illicit substances, and many can suffer deteriorating physical and mental health.”<sup>24</sup>

Even in the best scenario, there is now an acceptance as a matter of policy that education, gymnasium and visits facilities, for example, will lie idle every evening, 7 days a week. This is in sharp contrast to facilities in the community, where similar physical assets are expected to be in use for far more of every day, providing both value and choice.

Similarly, the retrenching of prison regimes to save money has had the effect of ensuring that all the unusual fixed costs of the prison environment – the investment in security and safety systems, for example, and catering, health, heating, lighting and maintenance – represent a higher proportion of the overall cost of a prison sentence than they otherwise would. Crudely, the amount of time spent in constructive, purposeful engagement with prisoners, likely to impact on their future behaviour, is in much smaller proportion to the overall cost of keeping them incarcerated than it needs to be. Prisons waste far more time than they use. Shorter periods of custody, but of greater intensity, would represent far greater value for money than the public currently expects or receives from imprisonment. Our view is that only a modest portion of the overall saving from a reduced prison population would need to be reinvested to create this new paradigm for the prison experience.

The example of reducing child imprisonment is instructive. We recognise the critical importance of maintaining public confidence. However, the raft of adjustments needed to achieve a significant reduction in unnecessary imprisonment would not impinge either on the just and proportionate punishment of serious offending nor on the incidence of crime generally. The reverse is likely to be true, with lower reoffending rates for community based punishments, and a wide range of social benefits from a reduction in the damage done to families and other factors that tend to reduce the prevalence of offending, including

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(2011) National Offender Management Service Annual Report 2009/10: Management Information Addendum, London: Ministry of Justice

<sup>23</sup> HM Chief Inspector of Prisons (2017) Annual Report 2016–17, London: The Stationery Office

<sup>24</sup> Ibid.

employment and housing. We set out below areas in which work is already underway or could be started which is both feasible and likely to contribute to the overall benefit of a smaller prison population.

### **Wider macro-economic implications**

Incarceration obliterates a person's contribution to the economy, and is likely to do the same for their family. There is no tax yield from prisoners, and families are more likely to require state support following imprisonment than with a community penalty. Assistance with housing, employment, benefit and debt is required for a majority of released prisoners.<sup>25</sup> The cost to the economy of reoffending has been estimated by the National Audit Office as between £9.5bn and £13bn annually.<sup>26</sup> In summary, the potential savings to the public purse of a reduction in the prison population are in addition to, and far greater than, the direct and cashable savings associated with the operation of prisons.

### **Administrative and compliance costs and issues**

These are materially affected by a reduction in the prison population, insofar as they should reduce, with fewer prisons to inspect and a reduction in central overheads.

### **Legislative and operational requirements**

Most of the programme of change required is not reliant on primary legislation. Although the statutory basis for prisons is old (the Prison Act 1952), and the sentencing framework has been confused by a plethora of criminal justice legislation under successive governments, practical improvements are possible without primary legislation.

One exception is correcting the continued injustice of the Indeterminate sentence for Public Protection (IPP). Although the sentence was abolished in 2012, there are still 3,353 people in prison serving IPP as of 30 June 2017, unsure on when they will be released. Over four-fifths (85%) of people serving an IPP sentence are still in prison having passed their tariff expiry date—the minimum period they must spend in custody and considered necessary to serve as punishment for the offence. 552 people are still in prison despite being given a tariff of less than two years—nearly half of these (278 people) have served eight years or more beyond their original tariff.

Despite recent efforts by the Parole Board and prison service to increase the rate of release of IPP prisoners, the Parole Board predicts that, without legislative action, by 2020 there will still be 2,000 people in prison serving on IPP sentence.

Primary legislation is now required to bring a conclusive resolution to a process started by the abolition of the sentence in 2012. Those serving the sentence in custody need to be given a firm date for release and the indeterminate licence period for all IPP offenders needs to be converted to a fixed term. Without these changes, it is likely that the recall of IPP offenders in the community will soon outstrip the rate of release of those still in custody. We give a more detailed description of the measures required below.

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<sup>25</sup> Edgar, K. and Bath, C. (2010) *Time is Money: financial responsibility after prison*, London: Prison Reform Trust

<sup>26</sup> National Audit Office (2010) *Managing offenders on short custodial sentences*, London: The Stationery Office

## **An outline programme to reduce imprisonment**

As we have indicated, we believe a programme to reduce the unnecessary use of imprisonment can be described under two broad headings:

- controlling the flow of people into the system; and
- making better and more intense use of a shorter custodial period, which should in future be served largely in local community prisons.

### **Controlling the flow of people into the system**

#### **Revising the sentencing framework**

The decisions of sentencing courts will continue to provide the main driver for either growth or reduction in the prison population. They operate within the framework that Parliament sets, in terms of the offences which carry the potential for imprisonment, the range of sentences available for particular crimes, and the factors which the court may take into account in fitting the sentence to the particular circumstances of the case and the offender. They operate too within a climate of public opinion which can be significantly affected by the politics of the day.

The growth in the average length of prison sentence has been both incremental and accidental. In only ten years, the average sentence length for an indictable offence has grown by 21 months, averaging 56.8 months in 2016. The use of long, determinate sentences of over 10 years has also risen markedly, with its use increasing by 250% over the same time period, an effect not seen in any other determinate sentence category.<sup>27</sup>

Our submission is that its reduction should also be incremental, but not left to chance. A coherent and comprehensive approach should include:

- a review of the offences for which imprisonment is available;
- a review of guidelines concerning both aggravating and mitigating factors in sentencing, with particular emphasis on the mitigating impact of both lack of maturity and mental health considerations; and
- an incremental review of guidelines for the more serious offences taking into account the existing statutory duty of the Sentencing Council to “have regard to the cost of different sentences and their relative effectiveness in preventing re-offending”.<sup>28</sup>

A variety of means have been proposed to allow the political space for the calm and dispassionate analysis required for this to happen.<sup>29</sup> The case for bringing imprisonment properly within the scope of the first principles debate that this Budget requires is clear. It is indefensible that proposals to reduce the cost of imprisonment should be limited to unit cost reductions when other public services – including the police and armed services for example – have had to take fundamental decisions about the scope and volume of their activity. If that political argument is made effectively, the practical means to make the incremental adjustments required largely exist already, notably in the shape of the Sentencing Council and its system of guidelines, to which sentencing courts now adhere.

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<sup>27</sup> Ministry of Justice (2017) Criminal justice statistics quarterly December 2016, London: Ministry of Justice

<sup>28</sup> Coroners and Justice Act 2009.

<sup>29</sup> Cf The British Academy “A Presumption Against Imprisonment” 2014, which proposed a new Penal Policy Committee, to mimic the influence of the Monetary Policy Committee over fiscal policy

## Indeterminate sentences for Public Protection

This country's appetite for indeterminate sentences of imprisonment is startling. We have more than twice as many people serving indeterminate sentences of one kind or another than France, Germany and Italy combined—the highest in Europe by a significant margin.<sup>30</sup> 1 in 7 people serving a custodial sentence in England and Wales is serving an indeterminate sentence.<sup>31</sup> The number has mushroomed in recent years fuelled by two factors. First the length of time served in custody by people serving a mandatory life sentence (i.e. the penalty for murder) has grown from 13 years in 2001 to 16 years now.<sup>32</sup> That in turn has been driven by a much greater political influence over the issue, with mandatory minimum terms set by statute for certain circumstances of murder, including so called “whole life tariffs”. Nearly 60 people now have such a tariff.<sup>33</sup>

The second driver has been the introduction in 2005 of the indeterminate sentence for public protection (IPP). The sentence was abolished in 2012, but there are still 3,353 people in prison serving an IPP as of 30 June 2017.<sup>34</sup> Over four-fifths (85%) of people serving an IPP sentence are still in prison having passed their tariff expiry date—the minimum period they must spend in custody and considered necessary to serve as punishment for the offence.

A particular injustice is faced by the 552 people in prison serving an IPP sentence with an original tariff of less than two years.<sup>35</sup> Nearly half of these (278 people) have served eight years or more beyond their original tariff.<sup>36</sup> This group would not have been eligible to receive an IPP sentence following reforms to the legislation introduced in 2009, but instead would have been likely to have been given a relatively short determinate sentence.

In the past two years, changes introduced by the Parole Board and prison service have led to a welcome increase in the rate of release for IPP prisoners. In 2016, for every 1,000 people serving an IPP sentence, 144 were released.<sup>37</sup> However, the Parole Board predicts that, without legislative action, there will still be 1,500 people in prison serving an IPP by 2020.<sup>38</sup> The Parole Board has also raised concerns about the growing number of people serving an IPP sentence in the community being recalled to custody for breach of licence conditions.<sup>39</sup> On 30 June 2017, there were 760 people in custody serving IPPs who had been recalled to prison – an increase of 22% on the same period the previous year.<sup>40</sup>

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<sup>30</sup> Table 7, Aebi, M., et al. (2016) Council of Europe Annual Penal Statistics, Survey 2014, Strasbourg: Council of Europe

<sup>31</sup> Table 1.1, Ministry of Justice (2017) Offender management statistics quarterly: January to March 2017, London: Ministry of Justice

<sup>32</sup> Table A3.3, Ministry of Justice (2017) Offender management statistics prison releases 2016, London: Ministry of Justice and Table A3.5, Ministry of Justice (2011) Offender management statistics annual tables 2010, London: Ministry of Justice

<sup>33</sup> Table 1.9a, Ministry of Justice (2017) Offender management statistics quarterly: January to March 2017, London: Ministry of Justice

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> Table 1.9b, Ibid.

<sup>37</sup> Table A3.3, Ministry of Justice (2017) Offender management statistics prison releases 2016, London: Ministry of Justice and Table A1.15, Ministry of Justice (2016) Offender management statistics prison population 2016, London: Ministry of Justice

<sup>38</sup> Martin Jones to Nick Hardwick, July 6, 2016. Letter. Parole Board. Available at <http://www.prisonreformtrust.org.uk/Portals/0/Documents/MJ%20IPP%20paper%20July%202016.pdf>

<sup>39</sup> Ibid.

<sup>40</sup> Table 1.9a, Ministry of Justice (2017) Offender management statistics quarterly: January to March 2017, London: Ministry of Justice



The legislative options outlined by the Parole Board include:

- Conversion of IPP sentences into their equivalent determinate sentences.
- Establishing a “sunset” provision for all or some IPP sentences.

Without further delay, the government should bring forward proposals to implement the advice of the Parole Board. We recommend an approach to reform based on the three principles of Convert, Protect and Rehabilitate (CPR):

- **Convert** IPP sentences from indeterminate to fixed length sentences, starting with the shortest tariff lengths where the greatest injustice has occurred;
- **Protect** the public with a guaranteed minimum licence period for all cases following release; and
- **Rehabilitate**, ensuring that a proper investment is made in the support IPP prisoners after release, in contrast to the neglect they have suffered in custody.

## Recall

Following changes introduced under the Transforming Rehabilitation reforms as part of the Offender Rehabilitation Act 2014, anyone leaving custody who has served two days or more is now required to serve a minimum of 12 months under supervision in the community.<sup>41</sup> As a result, the number of people recalled to custody following their release has increased dramatically. The recall population has increased by around 750 people since the changes were introduced in February 2015. 6,390 people were in prison on recall at the end of June 2017<sup>42</sup>, and over 8,100 people serving a sentence of less than 12 months were recalled back to custody in the year to March 2017.<sup>43</sup>

Despite these additional pressures on HM Prisons and Probation Service, there is no evidence as yet that mandatory supervision has had any impact on the reoffending rate of short sentenced prisoners—the principle justification for its introduction.

An earlier pilot at HMP Peterborough, which was often cited by the government in support of the extension of mandatory supervision, was a voluntary scheme, and so its participants were self-selecting. As such, it provides very little evidence for the likely impact of a mandatory period of statutory supervision on rates of reoffending. The Prison Reform Trust would like to see a return to the principles which underpinned the pilot at HMP Peterborough by making the supervision of short sentenced prisoners voluntary.

## Reducing the use of short custodial sentences

Following the introduction of the Transforming Rehabilitation reforms, we remain concerned at the significant risk that the availability of short sentences combined with a year’s supervision guaranteed could encourage the unnecessary use of custody, and make the task of reducing reoffending more rather than less difficult.

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<sup>41</sup> Ministry of Justice (2013) Offender Rehabilitation Bill Impact Assessment, London: Ministry of Justice

<sup>42</sup> Table 1.1, Ministry of Justice (2017) Offender management statistics quarterly: January to March 2017, London: Ministry of Justice and previous editions of the same publication

<sup>43</sup> Table 5.2, Ibid.

Early indications of the performance of the Transforming Rehabilitation reforms have been damning. A joint inspection report, published by HM Chief Inspectors of Probation and Prisons stated that “if Through the Gate services were removed tomorrow, in our view the impact on the resettlement of prisoners would be negligible.”<sup>44</sup>

Short prison sentences are not only wasteful but also ineffective, with nearly three in every five people going on to commit a further offence on release.<sup>45</sup> Community sentences are more effective than short custodial sentences at reducing reoffending<sup>46</sup> but their use has nearly halved since 2006.<sup>47</sup> The government should seek to learn lessons from the experience of Scotland, where since 2009/2010 there has been a 30% decline in the numbers of custodial sentences of three months or less. This follows the introduction of a presumption against prison sentences of up to three months.<sup>48</sup> The Scottish Government has now announced an extension to this presumption to custodial sentences of up to 12 months.<sup>49</sup> We recommend the Government adopts the same approach for England and Wales.

Historically, the provision of new and more demanding alternatives to custody has not always achieved the outcome governments have wanted. The risk is that courts will pull cases “up-tariff” – using the more expensive community alternatives instead of fines or conditional discharges, rather than as a substitute for custody. Nevertheless, it is vital that the community rehabilitation companies deliver on their promise to provide courts with credible sentencing options across a broad spectrum of severity. The use of tagging technology is useful if it gives courts the confidence to allow people to serve a sentence in the community rather than in custody, and supports the effective completion of community penalties.

There has also been significant development in many areas in recent years of integrated offender management schemes, normally led by police and probation together, which have benefitted from close joint working to target prolific offenders in particular. The adoption of similar ways of working to underpin joint working with offenders posing a risk of serious harm has been adopted in the Bristol based IRIS scheme, evaluated in 2014 by the University of Portsmouth. These locally created and locally well publicised schemes demonstrate that a concern for victims and a rigorous approach to reducing crime are perfectly compatible with a reluctance to use imprisonment when it is not essential.

There is space also for a much greater use of problem solving courts, giving courts the opportunity to hold offenders to account for promised changes in lifestyle and attitude before resorting to imprisonment. There are well established international examples but closer to home an outstanding example is the pioneering Family Drug and Alcohol Court piloted by Judge Crichton with funding from 4 separate government departments and 3 local authorities.

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<sup>44</sup> Criminal Justice Joint Inspection (2017) An Inspection of Through the Gate Resettlement Services for Prisoners Serving 12 Months or More, Manchester: HM Inspectorate of Probation

<sup>45</sup> Table C2a, Ministry of Justice (2017) Proven reoffending statistics: October 2014 to September 2015, London: Ministry of Justice

<sup>46</sup> Ministry of Justice (2013) Compendium of re-offending statistics and analysis, London: Ministry of Justice

<sup>47</sup> Ministry of Justice (2017) Criminal justice statistics quarterly December 2016, London: Ministry of Justice

<sup>48</sup> Table 10(d), The Scottish Government (2017), Criminal proceedings in Scotland 2015–16, Edinburgh: The Scottish Government

<sup>49</sup> The Scottish Government (2017) A nation with ambition: the government’s programme for Scotland, Edinburgh: The Scottish Government

## **Use of custodial remands**

In 2014, 14% of the prison population comprised people on remand<sup>50</sup>. 10% of those people were subsequently acquitted and a further 15% received a non-custodial sentence<sup>51</sup>. 84,000 people went through the risk and expense of a reception into prison custody as a result of being remanded from court pending either conviction or sentence<sup>52</sup>, with all of those decisions carrying the potential risks to families, jobs and housing that imprisonment of any kind carries. The average length of remand while the court process was completed was 9 weeks<sup>53</sup>. Prisoners on remand typically account for around a third of self inflicted deaths in custody.

The introduction of the “no real prospect” test in the Legal Aid Sentencing and Punishment of Offenders Act 2012 held out the promise of a significant reduction in these figures, but that has not materialised – a short term temporary reduction having been quickly reversed. There are wide differences between areas in the proportion of remanded defendants who go on to receive custodial sentences, and the need for a renewed focus on the over-use of custodial remands is urgent.

## **Devolution of criminal justice powers to local areas in England and prevention**

One of the curious features of imprisonment is that its cost is neither known nor considered by the communities which create the demand for it. It is a “free good” in the criminal justice system, 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. A recent study of “justice reinvestment” pilots shows that local authorities are able to influence demand<sup>54</sup>, and we urge that further work be undertaken to make the local costs of imprisonment transparent, and to allow for the reinvestment of at least a portion of savings from its reduction to be invested locally rather than absorbed centrally.

Specifically in relation to Greater Manchester, we are aware that local agencies have collaborated in detail and for some time to redesign the delivery of local services in ways that reduce reoffending and avoid duplication. Prisons in the area are involved, but inevitably on the periphery when their management and resourcing is centrally determined and controlled. We suggest that Greater Manchester represents a promising area to consider absorbing the responsibility and funding for imprisonment as part of the devolution deal in its next iteration. We believe this would require far greater transparency about the costs of imprisonment and prompt more radical consideration of how to provide a service to the public and local courts which both commands their confidence and achieves best value for money. It would symbolise and reinforce the reality that offenders from the region, including those in custody, remain the responsibility of local services and are most likely to refrain from further offending if those local services collaborate effectively both during and after their sentence.

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<sup>50</sup> Table 1.1, Ministry of Justice (2015) Offender management statistics quarterly: October to December 2014, London: Ministry of Justice

<sup>51</sup> Table Q3a, Ministry of Justice (2014) Criminal Justice Statistics Quarterly Update to March 2014, London: Ministry of Justice

<sup>52</sup> Ibid

<sup>53</sup> Hansard HC 21 January 2013 c51W

<sup>54</sup> Wong, K., Ellingworth, D. and Meadows, L. (2015) Local Justice Reinvestment Pilot: Final process evaluation report, London: Ministry of Justice

## **Overrepresentation of black, Asian and minority ethnic people in the criminal justice system**

The publication of David Lammy's independent review into the treatment and outcomes for black, Asian and minority ethnic individuals in the criminal justice system, is the latest in a line of reports drawing attention to the disproportionate outcomes for BAME people in contact with our justice system. Ministry of Justice analysis, conducted for the Lammy Review, found that the economic cost of BAME overrepresentation in our courts, prisons and Probation Service is estimated to be £309 million a year.

David Lammy has delivered an unanswerable case for change with a practical set of recommendations to achieve it. The government has an opportunity to right a deep seated wrong at the heart of our justice system and should now implement his recommendations in full.

## **People with mental health problems or a learning disability**

Many people who come into contact with criminal justice services have multiple needs, and high numbers have mental health problems or learning disabilities.

The high incidence of mental health problems amongst people who offend, especially prisoners, has long been acknowledged; see for example, Singleton, N. et al (1998)<sup>55</sup>; Social Exclusion Unit (2002)<sup>56</sup>; Stewart, D. (2008)<sup>57</sup>; Centre for Mental Health (2009)<sup>58</sup>; Brooker et al (2011)<sup>59</sup>. Some groups of offenders are especially vulnerable to mental health conditions; for example poor mental health amongst women prisoners is higher than for men (Ministry of Justice, 2013)<sup>60</sup>; while the rates of mental health conditions amongst children who offend are around three times higher than within the general children's population (Hagell, 2002<sup>61</sup>; Chitsabesan, 2006)<sup>62</sup>. Research shows that 43% of children on community orders have emotional and health needs, and rates amongst children in custody are even higher (Healthcare Commission, 2009)<sup>63</sup>. Black and minority ethnic communities are disproportionately represented in both mental health care and in the criminal justice system (Race for Justice, 2008<sup>64</sup>; Centre for Mental Health, 2013)<sup>65</sup>; yet, despite such over-

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<sup>55</sup> Singleton, N. et al (1998) Psychiatric morbidity among prisoners in England and Wales, ONS 1998, London; HMSO

<sup>56</sup> Social Exclusion Unit (2002) Reducing re-offending by ex-prisoners, London: Social Exclusion Unit

<sup>57</sup> Stewart, D. (2008) The problems and needs of newly sentenced prisoners: results from a national survey, London: Ministry of Justice

<sup>58</sup> Centre for Mental Health (2009) Mental Health Care and the Criminal Justice System, London: Centre for Mental Health

<sup>59</sup> Brooker, C., Sirdifield, C., Blizard, R., Maxwell-Harrison, D., Tetley, D., Moran, P., Pluck, G., Chafer, A., Denney, D. & Turner, M. (2011) An investigation into the prevalence of mental health disorder and patterns of health service access in a probation population. Lincoln: University of Lincoln.

<sup>60</sup> Ministry of Justice (2013) Gender differences in substance misuse and mental health amongst prisoners. London: Ministry of Justice

<sup>61</sup> Hagell, A. (2002) The mental health of young offenders, a report commissioned by the Mental Health Foundation, London: Mental Health Foundation

<sup>62</sup> Chitsabesan, P., Kroll, L., Bailey, S., Kenning, C., Sneider, S., MacDonald, W. and Theodosiou, L. (2006) 'Mental health needs of young offenders in custody and in the community' *The British Journal of Psychiatry*, 188, 534-540

<sup>63</sup> Healthcare Commission (2009) Actions speak louder: a second review of healthcare in the community for young people who offend, Commission for Healthcare Audit and Inspection and HM Inspectorate of Probation

<sup>64</sup> Race for Justice (2008) *Less equal than others: Ethnic minorities and the criminal justice system*

<sup>65</sup> Centre for Mental Health (2013) *The Bradley Commission: Black and Minority Ethnic Communities, mental health and criminal justice*, London: Centre for Mental Health

representation, evidence suggests that BME prisoners are under-represented in prison mental health team case loads (Centre for Mental Health, 2011)<sup>66</sup>.

More recently, the incidence of prisoners with a learning disability has come to the fore. It is estimated that around 2% of the general population has a learning disability (Department of Health, 2001<sup>67</sup>; Emerson and Hatton, 2008<sup>68</sup>), compared to around 7% of the prison population (Mottram, 2007)<sup>69</sup>; while 20-30% of the prison population has a learning disability or difficulty that interferes with their ability to cope within the criminal justice system (Prison Reform Trust, 2007)<sup>70</sup>. In 2008, the UK Joint Committee on Human Rights raised concerns about 'serious failings in the criminal justice system, which gives rise to the discriminatory treatment of people with learning disabilities' (paragraph 212, March 2008)<sup>71</sup>; which, according to two joint thematic reports on the treatment of offenders with learning disabilities within the criminal justice system, continues to this day (HM Inspectorate of Probation, 2014 and 2015)<sup>72</sup>.

In December 2007 Lord Bradley was invited by the government to undertake an independent review of people with mental health problems or learning disabilities in the criminal justice system. Lord Bradley's subsequent report, The Bradley Report (Department of Health, 2009)<sup>73</sup>, made 82 recommendations, most of which are being taken forward, one being for a nationwide liaison and diversion service. Services work with the police to identify suspects with mental health problems, learning disabilities or substance misuse problems, and help to secure the most appropriate response to improve their health and wellbeing and reduce reoffending. For example, an appropriate response might be to address an individual's mental health and/or substance misuse problems; a referral to social support, such as a women's centre, housing or independent living; reasonable adjustments to ensure an individual can understand and participate effectively in criminal justice proceedings; or diversion away from criminal justice into treatment or care.

Liaison and diversion trial sites became operational in April 2014, with 22% population coverage across England in the first year. In 2014/15, the first full year of trial site liaison and diversion services – and with only 22% population coverage – 16,273 adults and 2,431 children benefitted from intervention support. Over half of these individuals were identified in police custody, so reducing unnecessary use of police time in managing vulnerable individuals and their subsequent progression through the criminal justice system. Population coverage for 2015/16 increased to 53% and, according to NHS England, the number of vulnerable suspects receiving support has grown proportionately.

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<sup>66</sup> Centre for Mental Health (2011) Briefing 39: Mental health care and the criminal justice system, London: Centre for Mental Health

<sup>67</sup> Department of Health (2001) Valuing People; White Paper, Cm 5086, London: Department of Health

<sup>68</sup> Emerson, E. and Hatton, C. (2008) People with Learning Disabilities in England, Lancaster University: Centre for Disability Research

<sup>69</sup> Mottram, P.G. (2007) HMP Liverpool, Styal and Hindley Study Report, Liverpool: University of Liverpool

<sup>70</sup> Prison Reform Trust (2007) Prisoners with learning disabilities and learning difficulties – review of prevalence and associated needs, London: Prison Reform Trust

<sup>71</sup> Joint Committee on Human Rights (2008) A life like any other? Human Rights of Adults with Learning Disabilities, Seventh Report of Session 2007-08, London: TSO

<sup>72</sup> HMI Probation (2014 and 2015) Criminal Justice Joint Inspection: A joint inspection of the treatment of offenders with learning disabilities within the criminal justice system – phase one (2014) from arrest to sentence; phase two (2015) in custody and the community, HMI Probation: London

<sup>73</sup> Department of Health (2009) The Bradley Report: Lord Bradley's review of people with mental health problems or learning disabilities in the criminal justice system, Department of Health: London

It is encouraging to note the continued progress of liaison and diversion services, and investment to ensure further roll out to 75% population coverage by 2018. At a recent Projects Authority Review, it was found that the national programme is on track to deliver 100% coverage of police custody suites and criminal courts by 2020/21, and will move to 'business as usual' as quickly as possible. We are pleased also to note work being undertaken by the Department of Health and Ministry of Justice to encourage greater use of the Mental Health Treatment Requirement (MHTR). Despite high numbers of offenders with mental health conditions, the MHTR is rarely used – fewer than 0.1% of all Community Orders made.

Opportunities should be taken to review sentencing guidelines, with liaison and diversion services providing a 'safeguard' for vulnerable adults and children who come into contact with criminal justice services. For adults identified by liaison and diversion services as having particular needs, who continue along the justice pathway and are sentenced by the courts, it is noteworthy that community orders and suspended sentence orders are more effective, by almost seven percentage points, at reducing one-year proven reoffending rates than custodial sentences of less than 12 months (Ministry of Justice, 2013a)<sup>74</sup>. Support facilitated by liaison and diversion, or referrals made to local services have the potential to add value; for example, when offenders serving community sentences were asked what would help them to stop offending, 50% said having somewhere to live (Ministry of Justice, 2013b)<sup>75</sup>, while the independent living support charity, KeyRing<sup>76</sup>, has calculated that the support they provide for their members who are ex-offenders can save at least £349 for every week that an individual is kept out of prison<sup>77</sup>.

Many individuals identified by liaison and diversion services are 'high-frequency/high-cost' users of public services. For example, in 2014/15, 55% of adults identified with mental health needs also had problems with substance abuse, alcohol abuse or both. Amongst those with alcohol abuse problems, three-quarters also experienced mental health problems; while for adults with substance abuse problems, the percentage with mental health problems was higher, at 79%. Amongst children who come into contact with liaison and diversion services, slightly fewer than a fifth are identified as having suspected learning disabilities, autism, and/or communication difficulties; and slightly more than a fifth experience family conflict. Intervention by liaison and diversion services, and referral to local services, can help to prevent the escalation of situations that may require a more intensive and costly response at a later date.

Timely intervention from liaison and diversion services should further help to build a clearer picture of local need, so helping to inform joint strategic needs assessments and health and wellbeing strategies. Opportunities for co-commissioning, utilising aligned or pooled budgets, where appropriate, should result in value for money and, ultimately, better outcomes for offenders, for the families of offenders, and the wider community. While the integration of

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<sup>74</sup> Table A1, Ministry of Justice (2013a) 2013 Compendium of reoffending statistics and analysis, London: Ministry of Justice

<sup>75</sup> Ministry of Justice (2013b) Results from the Offender Management Community Cohort Study: Assessment and sentence planning, London: Ministry of Justice

<sup>76</sup> [www.keyring.org](http://www.keyring.org)

<sup>77</sup> This calculation is based on a prison placement costing £40,000 per annum compared with KeyRing costs, housing benefit, job seekers allowance and council tax but does not include savings made by police and courts.

liaison and diversion services with healthcare in police custody, alongside street triage, place of safety (s136)<sup>78</sup> and Appropriate Adult services<sup>79</sup> offers further value for money potential.

Liaison and diversion services have an important role to play in reducing prison numbers; they are well placed to identify need at an individual's first point of contact with criminal justice services, and can help to ensure necessary treatment or support to reduce reoffending and improve health and wellbeing.

The existing level of investment for liaison and diversion services should be base-lined within mandate funding for NHS England, and finances made available to extend liaison and diversion services to 100% population coverage.

## Women

The Government's White Paper Prison Safety and Reform included a commitment to "publish a strategy setting out how we will improve the treatment of female offenders in custody and in the community. This will look at how we can reduce the number of women offending and ending up in custody, including through early and targeted interventions." The recent commitment to dedicated provision for women offenders in the Conservative Party Manifesto is most welcome. However, as yet no funding has been announced or allocated to the strategy and we are concerned about the impact this may have on the delivery of the long-promised female offender strategy, now scheduled for publication by the end of this year.

The Justice Select Committee inquiry into women offenders concluded that "prison is an expensive and ineffective way of dealing with many women offenders who do not pose a significant risk of harm to public safety" and called for "a significant increase in residential alternatives to custody as well as the maintenance of the network of women's centres" seen as "more effective, and cheaper...than short custodial sentences".<sup>80</sup>

However, in the year to March 2017, 62% of sentenced women entering prison were serving six months or less, and 84% of them had committed a non-violent offence.<sup>81</sup> The average cost of keeping a woman in prison is £42,7658 per annum. The number of women in prison could be reduced safely and easily—nearly half (45%) of women entering prison do so on remand, but few of them go on to receive a custodial sentence.

The Ministerial Advisory Board on Female Offenders (ABFO), of which the Prison Reform Trust is a member, recently engaged HM Treasury in an exercise to consider the costs of women's offending and imprisonment. The Female Offenders Costing Project, to which the PRT was invited to contribute, reported to the ABFO in February this year. It assessed the total costs to government of female offending at £1.7bn and compared the costs of prison compared to community sentences. We recommend that full consideration be given to its findings. The report concluded that:

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<sup>78</sup> See, HMI Constabulary (2013) 'A Criminal Use of Police Cells?' The use of police custody as a place of safety for people with mental health needs'; a joint review by HMI of Constabulary, HMI of Prisons, the Care Quality Commission and Healthcare Inspectorate Wales to examine the extent to which police custody is used as a place of safety under section 136 of the Mental Health Act 1983.

<sup>79</sup> See, National Appropriate Adult Network (2015) There to help: ensuring provision of appropriate adults for mentally vulnerable adults detained or interviewed by police, London: NAAN

<sup>80</sup> House of Commons Justice Committee (2013) Women offenders: after the Corston report, London: The Stationery Office

<sup>81</sup> Tables 2.4a and 2.4b, Ministry of Justice (2017) Offender Management Statistics Quarterly: January to March 2017, London: Ministry of Justice

- If all female theft offenders who receive a custodial sentence of 3 months or less were given a non-custodial sentence, this could result in a saving to HM Government of c £20m per annum.
- Reoffending accounts for c£340m of sentence costs—with reoffending rates particularly high for women serving short custodial sentences.
- Moving a low-medium risk offender from a typical prison sentence to a typical community sentence could save £8,000 per person.

The economic case for reducing the use of imprisonment for women is especially compelling because of the prevalence of women in prison who are primary carers. 6 out of 10 women in prison are parent to two or more dependent children, but less than one in ten of those children are cared for by their father during the mother’s imprisonment. A much lower proportion of women leave prison to go into employment than men (8% against 27%), and a 2008 study by the New Economics Foundation (NEF) estimated the cost over 10 years of children of imprisoned mothers becoming NEET (not in education, employment or training) as £170m<sup>82</sup>. The average annual cost per year for a woman is also higher than for a man’s prison place (£44,329 against £36,327)<sup>83</sup> reflecting in part the significantly higher proportion of women presenting with serious mental health and other health and social care needs.

The effectiveness of community penalties in preventing reoffending compared to custodial penalties is well established – with a difference in “treatment effect” of 9% for comparable offenders.<sup>84</sup> In fact women are more likely than men to complete community orders successfully or have them terminated early for good behaviour. The difference in outcomes between community orders and custody is greater for women than for men.

Our report *Brighter Futures: working together to reduce women’s offending* brought together the evidence for, and examples of, effective early intervention. The case for change was recognised in the March 2015 budget, which outlined plans to “[design] a more integrated, multi-agency approach to divert female offenders convicted of petty, non-violent offences from custody where appropriate” as part of broader work “exploring the cost-effectiveness of integrated spending around some of the most vulnerable groups of people”<sup>85</sup>. The Conservative manifesto for the 2015 general election also included a commitment to improve the treatment of women offenders, exploring how new technology may enable more women with young children to serve their sentence in the community<sup>86</sup>.

Limited progress nationally has been made on either of these fronts, although there is encouraging progress in some areas where a whole systems approach is being developed. Emerging findings from the Greater Manchester area in particular demonstrate the savings that can be made from a joined-up and problem-solving approach to women at risk of imprisonment. Recent briefings and reports published by PRT collate evidence and make recommendations for a rebalancing of public expenditure and investment away from prisons and into women’s centres and services.<sup>87</sup>

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<sup>82</sup> New economics foundation (2008) *Unlocking value: How we all benefit from investing in alternatives to prison for women offender*, London.

<sup>83</sup> Ministry of Justice (2014) *Costs per place and costs per prisoner – National Offender Management Service annual report and accounts 2013-14 management information addendum* London: MoJ

<sup>84</sup> *Why focus on reducing women’s imprisonment? a Prison Reform Trust briefing*, 29 July 2015

<sup>85</sup> HM Treasury (2015) *Budget 2015*, London: HM Treasury

<sup>86</sup> *Conservatives (2015) The Conservative Party Manifesto 2015*, London: Conservatives

<sup>87</sup> See Prison Reform Trust (2016) *Home truths: housing for women in the criminal justice system*, London: Prison Reform Trust; Guiney, T. and Earle, J. (2017) *Fair Cop? Improving outcomes for*



Section 10 of the Offender Rehabilitation Act 2014 places a duty on the Secretary of State for Justice to ensure that arrangements for the supervision or rehabilitation of offenders identify any specific provision for women.

The unmet need for Approved Premises for women returning to the London area was found to be unlawful direct sex discrimination in the unanimous recent Supreme Court decision in *Coll v Secretary of State for Justice* [2017] UKSC 40. This provides further weight to the case for funding supported accommodation for women, and the opportunity exists to provide for this in the redevelopment of the Holloway prison site in North London.<sup>88</sup>

The forthcoming budget must deliver on these obligations and commitments. Practically, that means resourcing the policy work centrally, ensuring the sustainability of services which provide a community sentencing or treatment order when women do come to court, as well as the services in prison, through the gate, and in the community that support women after release. PRT is able to support that work in a wide range of different ways, from public education and sharing models of best practice, through to detailed analysis of criminal justice outcomes in geographical areas with high custody rates.

There should be cross-governmental investment in a network of women's centres across the country, as well as in other specialist women's services including for domestic and sexual abuse. Such services have significant expertise and should be involved in shaping local strategy and service provision.

This would help ensure the success of the whole systems approach and tackle the causes of women's offending, including violent and coercive relationships, mental health problems, drug and alcohol addictions, homelessness, parenting pressures, unemployment and debt.

Many Community Rehabilitation Companies are not commissioning the services that have been shown to work. Some specialist services are not being contracted at all; others are being offered a reduced payment for their services and some are not getting commissioned referrals through in the numbers that they are contracted for. All of which jeopardises their viability.

In the absence of an overarching strategy for women in the justice system, we consider plans to invest in building five new community prisons for women to be premature. A strategy with the appropriate emphasis on prevention and diversion will enable more rational planning of future prison capacity. We believe the budget would be better spent addressing the patchy provision of women's community services which results in a postcode lottery for women affected by the criminal justice system.

## **Young Adults**

The Justice Committee's recent inquiry on young adult offenders highlights the potential to learn from the transformation in value for money of our approach to children at risk of imprisonment, and to apply those lessons to a broader cohort. An encouraging fall in the number of young adults in custody may imply that the benefits of our approach to the imprisonment of children are feeding through into the adult system, delaying or avoiding

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women at the point of arrest, London: Prison Reform Trust; and Jarvis, A. (2016) *Leading change: the role of local authorities in supporting women with multiple needs*, London: Prison Reform Trust

<sup>88</sup> Islington Council (2017) *Development of Holloway Prison site consultation*. Available at <https://www.islington.gov.uk/consultations/development-of-holloway-prison-site>

altogether the corrosive impact of imprisonment on a person's life and potential to contribute to society. In order to capitalise on these developments, the Prison Reform Trust will emphasise:

- the importance of recognising maturity (and, in particular, the absence of maturity) at every stage of the criminal justice process. In particular, opportunities to divert people from the expense and damage of the formal criminal justice system should be taken at arrest, charge and prosecution stages;
- building on the welcome recognition of a lack of maturity as a mitigating factor in sentencing, the Sentencing Council should develop overarching principles for the sentencing of young adults, similar to the overarching principles for under-18s;
- the need for Community Rehabilitation Companies to have a credible and effective range of non-custodial interventions for young adults which commands the confidence of victims, the courts and local communities;

### **Making better and more intense use of a shorter custodial period, which should in future be served largely in local community prisons.**

#### **Intensity**

For many years, community penalties have been denominated in hours of activity to be completed, rather than a length of sentence to be served. If a similar approach were applied to the current use of custody, the results would be revelatory. Successive Chief Inspector's reports show that the normal day for thousands of prisoners is almost entirely spent in a cell, idle. Only half of prisons are now judged by inspectors to be delivering an acceptable level of purposeful activity, and even that assessment accepts as a regrettable fact of life the idea that purposeful activity is confined to a shortened version of office hours, Monday to noon on Friday.<sup>89</sup>

That approach is not inevitable. Since 2012, PRT has worked in partnership with the Winston Churchill Memorial Trust to support fellows travelling overseas to learn more about criminal justice practice, including the use of imprisonment. It has also facilitated new thinking inspired by overseas practice. A prime example concerns Finland, one of the few European countries that has realised a dividend from a falling crime rate in a falling incarceration rate as well.<sup>90</sup> Although it reserves the use of custody to more serious offences, with an incarceration rate roughly one third of that in England and Wales its average sentence length is *also* lower. Its approach to imprisonment is characterised by an intensive rehabilitative effort from the moment of incarceration in institutions where prisoners both take more responsibility and are held more accountable.

Prisoners themselves can contribute far more to the creation of a type of imprisonment which promotes citizenship and accountability. PRT's reports *Time Well Spent*<sup>91</sup> and *Out for Good*<sup>92</sup> collated existing good practice, but this remains haphazard rather than systematic and is jeopardised by the amount of time prisoners now spend in their cells, and the paucity of staff resources to develop innovative work.

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<sup>89</sup> HM Chief Inspector of Prisons (2017) Annual Report 2016–17, London: The Stationery Office

<sup>90</sup> Allen, R. (2012) Reducing the use of imprisonment What can we learn from Europe? London: Criminal Justice Alliance

<sup>91</sup> Edgar, K., Jacobson, J., and Biggar, K. (2011) *Time well spent*, London: Prison Reform Trust

<sup>92</sup> Edgar, K., Aresti, A., and Cornish, N. (2012) *Out for Good*, London: Prison Reform Trust

In similar vein, PRT and the Prisoners Education Trust report *Through the Gateway* set out a comprehensive description of how ICT within prisons could safely transform both the day to day routine and the prospects for successful resettlement.<sup>93</sup> The use of ICT within prisons remains significantly under-developed though a mixture of caution and lack of investment, with examples of excellent practice left uncopied. In its best form, ICT safely liberates staff time to be spent in constructive engagement with prisoners and puts prisoners in a position to do much of the work towards their own resettlement, including the resumption of responsibilities towards their families and wider community.

Any prison professional will agree that prisons are safer, more secure and more likely to have an impact on reoffending when prisoners are unlocked for the whole day and their time is constructively filled with meaningful activity that equates as closely as possible to a “normal” working day. The hours available to make a prison sentence both demanding and constructive are in easy supply, and the means to create a more intense experience are already to hand. In no non-custodial environment would such under-utilisation of both physical and human capital be tolerated. A modest re-investment of the dividend of a lower population could achieve a dramatic recalibration of what serving a prison sentence is like.

### **A rational approach to estate planning**

As noted earlier, the prison estate reflects historical accident rather than a strategic approach. The pressure of a rising population has kept prisons in use for decades that were intended to be temporary and short term solutions to a crisis. With the advent of *Transforming Rehabilitation*, there has been a welcome attempt to identify clusters of prisons regionally to limit the disruption and expense of prisoner transfers, and to make the best use of the estate with which the service is saddled. But the basic premise – that it is somehow in a prisoner’s interest to be transferred out to a remote training prison many miles from home, and then transferred back shortly before their release to an overcrowded local prison with a poor regime – is plainly the best of a bad job rather than the best way to manage a sentence.

The large reduction in population which we argue is realistic would allow for a genuinely strategic approach to the prison estate that would be most cost effective. Like schools or hospitals, prison locations should be driven by the needs of the communities they serve. There should be an expectation that, for the majority of prisoners, they will serve their sentence close to those communities, receiving services provided by them and, as the sentence progresses, starting to contribute to them in a positive way. The potential to progress to conditions of lower security could and should be provided within the context of a community prison, both through the designation of accommodation and the use of existing powers of temporary release, rather than at one of the few large open prisons dotted around the country. That in turn provides the means to manage behaviour in the prison as a whole in a way that improves both safety and security.

Local community prisons could be accountable to their communities – and for their performance in all aspects of their task, including the reduction of reoffending – in a way which is not possible in the current fragmented estate. This would fit well with the government’s strategic aim to devolve both power and accountability from the centre. Whilst we recognise that this is a long term goal, our submission is that it continues to represent the best strategic guiding aim for the prison estate, and should help to determine how the dividend of a reduced population is realised.

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<sup>93</sup> Champion, N., and Edgar, K. (2013) *Through The Gateway: How computers can transform rehabilitation*, London: Prison Reform Trust

## **Conclusion**

This is not intended as an exhaustive description of the programme required to reduce the prison population to levels last seen in the 1990s. It does demonstrate, however, that such a programme is feasible and capable of reversing the cumulative impact of many successive decisions from the last two decades. Those decisions have produced a fiscally irresponsible reliance on imprisonment. There has never been an evidence base to justify that growth and for much of the period, the policy framework has been largely reactive rather than strategic. We do not underestimate the political challenge that a new approach represents. Our submission, however, is that the use of imprisonment which two decades of reactive policy making has permitted is no longer economically sustainable, and has never represented value for money. Reversing the trend offers the opportunity to create a smaller, safer and more effective prison system.