



## **Prison Reform Trust response to Justice Committee Inquiry**

### **Budget and structure of the Ministry of Justice**

The Prison Reform Trust is a registered charity that works to create a just, human and effective justice system.

We welcome the opportunity to make a submission to the committee. Our observations focus largely on the prison estate, which is our primary area of concern.

#### **Executive summary**

1. This submission envisages a Ministry of Justice charged with ensuring that a decent, effective prison estate is used as a place of last resort. It would work across Government to develop and administer justice policy and practice and promote and support a full range of restorative and reparative responses to crime. The infrastructure would be comparatively light at the centre but highly skilled and experienced, with an emphasis on co-operation across the sectors at a local level, with the Probation Service taking a central role.

#### **What should the core objectives be of the MoJ?**

2. To ensure the delivery of just, humane, efficient and effective responses to crime and in the fields of civil and family justice.

#### **Which functions provided by the MoJ are essential, and which could be best provided by others or not at all?**

3. To administer a fair, effective and humane justice system should the MoJ consider a model where delivery of services is largely done through the bodies it sponsors? If so should it have a more active engagement in maintaining standards and consistency of delivery? A small centre at the MoJ would by definition require excellent commissioning and outsourcing capacity and the ability to monitor quality and standards both in relation to UK legislation and international justice requirements.
4. The Ministry of Justice needs to develop policy and the context for legislation, publish original research, commission independent evaluations, disseminate good practice, monitor performance and ensure regulatory mechanisms are in place.
5. The Justice website would suggest that the Ministry exists to serve the many organisations which carry out its duties, rather than to carry out a number of essential functions.

6. The functions that involve the use of imprisonment were usefully summarised in March 1980 by the then Home Secretary, Willie Whitelaw, in a speech to the Conservative Central Council, as:

“...we must ensure that prison is reserved for those whom we really need to contain in custody and that sentences are no longer than necessary to achieve this objective.”

7. At the time there was concern at a record high prison population for England and Wales of 44,800 and consequent problems of overcrowding.
8. With the prison population in September 2011 above 87,000; reoffending rates showing that one in two prisoners will be convicted within a year of release; and the average cost of each prison place averaging £45,000; it is apparent that the Ministry of Justice is failing to provide and promote sufficient options to ensure that prison is reserved for those who commit the most serious offences.

### **Does the MoJ have sufficient understanding of costs to enable it to model the impact of future changes?**

9. It is difficult to determine MoJ costs from documentation publicly available. A limitation of costing a single department is that it does not take account of wider cross-governmental costs. A model which took into account costs across government departments and extended beyond the parliamentary lifetime would be more likely to enable the MoJ to model the impact of future changes.
10. There is little transparency, particularly on the real costs of imprisonment. For example, official estimates of the cost of keeping children in a Young Offender Institution (c £70,000 pa) do not include transportation costs, the costs of health services, of social and YOT worker visits, or the overheads in NOMS and the YJB. Without knowing the real cost of imprisonment and community alternatives, the MoJ cannot properly develop policy. Comparative costs of different sentences should take account of full costs and their social and economic impact. This is particularly when considering community disposals as opposed to use of custody.
11. Decisions about budget allocation are skewed by the long term commitment to fund prison places. Many community options, such as the provision of women's centres, are by contrast dependent on annual funding decisions from a number of funding streams. Such a massive disparity inevitably places the prison estate at the centre of the criminal justice system, with community initiatives continuously struggling to survive.
12. If the MoJ were to build a justice model based on the principles of justice, fairness, efficiency and effectiveness, the criminal justice system would arguably look very different.
13. Essential features would include:
  - Diversion of those suffering from mental illness or severe learning disability away from the criminal justice system and into treatment. It would be helpful if the justice and health select committees were to jointly oversee the implementation of Lord Bradley's review.
  - Diversion from court processes of all minor offences, using cautions and conditional cautions as appropriate.
  - Restorative practices placed at the heart of the criminal justice system. This is an approach that gives priority to the needs of victims, while facing offenders with the

harm they have caused and requiring them to take practical steps to repair the damage. It can involve direct contact between an offender and the victim, or victims; and/or reparative work to repair damage done and harm caused to the victim (s) or the wider community. Restorative justice should be available to victims at all stages of the criminal justice process: as an alternative to prosecution; at the remand stage, prior to sentence; as a requirement in a community order; or, in the most serious cases, as an adjunct to a prison sentence. With confidence in our framework of law and order at a low ebb, politicians should seize the moment and give priority in terms of funding and structural arrangements to creating the necessary infra-structure for the delivery of high quality restorative justice. A recent ICM opinion poll commissioned by Prison Reform Trust indicates there would be public support for such an approach.

- Community sentences: recent robust Ministry of Justice research has shown community sentences to be seven percentage points better in preventing reoffending than short prison sentences. Funding and structural changes should reflect this clear performance disparity and build on the success of community measures.
- Prison to be reserved as a place of last resort with prison sentences to be determinate in all but the most exceptional cases.
- Once people are in prison, they should have every possible opportunity to make progress. The current system means that many people are often stuck and unable to make constructive use of their time. This could be alleviated somewhat by expansions of the open estate, so that all security cleared prisoners can move into open conditions, (which are considerably less expensive than closed conditions) centralised waiting lists for offending behaviour courses, so prisoners are not moving to prisons that cannot facilitate their sentence plan, central oversight of allocating prisoners with social care, and mobility needs so that they can be accommodated appropriately and increasing volunteering and purposeful activities in prisons.

#### **What changes to the current structure of the MoJ could contribute to improved performance or efficiency savings?**

14. We recognise that it is difficult to deliver a wide range of services and maintain quality and standards while at the same time ensuring flexibility and scope for policy and planning. The MoJ could usefully examine whether at Board and top management level it has the capacity to combine these two functions, maintain oversight and avoid vested interest. Where relevant, more account could be taken of NAO reports.
15. The *Justice Reinvestment* report produced by the Justice Committee in January 2010 provides an alternative model. It postulates that the prison population could be safely reduced by one-third over the next few years, with benefits arising from reduced costs made available for local crime prevention measures.
16. The Ministry of Justice should be restructured to develop and support a national infra-structure of restorative approaches as both an alternative to court proceedings and as an integral part of community and custodial sentences. It is apparent that many of those involved in the recent disturbances gave little if any thought to the consequences of their offending. The Prison Reform Trust has published *Making Amends*, a detailed study of the Youth Conference Service, established in Northern Ireland in 2003. This has placed restorative justice at the heart of the youth justice system, integrated within both the prosecution and sentencing processes. Youth conferences bring together the offender, victim (or victim representative), professionals and others from the local community to discuss the offence and its repercussions, and to agree an action plan for the offender. The number of young people engaged in youth conferencing in Northern Ireland has grown, year on year,

reaching more than 5,500 by 2009. There is sound evidence that victims who attend conferences express high levels of satisfaction with the process and outcomes. There are also encouraging signs that youth conferencing is leading to a reduction in reoffending rates. These findings mirror those of an intensive Ministry of Justice study by Professor Joanna Shapland and others published in 2008, which demonstrated the wider applicability of restorative practices for adults as well as young people and children.

17. In terms of how it is structured the MoJ needs to pay proper attention to particular groups. This would pay dividends, reduce reoffending and save costs.
  
18. *Reforming Women's Justice*, the report of the Women's Justice Taskforce published by the Prison Reform Trust in 2011 calls for: "A cross-government strategy to be developed to divert women from crime and reduce the women's prison population, which includes measures of success and a clear monitoring framework. Responsibility for implementation to lie with a designated minister and accountability for the strategy to be built into relevant roles within government departments and local authorities." It further suggests that this may benefit from "the appointment of a director of women's justice and the establishment of a women's justice agency."
  
19. Young adult offenders (18-20 year olds) have long been recognised as the age group most at risk of offending. The Prison Reform Trust is calling for the following reforms to meet the needs of young adult offenders more effectively and reduce the number sentenced to custody:
  - Diverting first-time and low-level offenders out of the criminal justice system through the use of a restorative pre-court disposal similar to the Youth Restorative Order;
  - Expanding the age-remit of Youth Offending Teams (YOTs) to accommodate 18-20 year olds – this would enable health, well-being and social care needs of this age group to be more effectively addressed through the multi-agency structure of YOTs – or, for Probation and other relevant agencies to adopt the YOT multi disciplinary model for 18-20 year olds;
  - The development of Sentencing Guidelines specific to young adults – in recognition of the age, maturity, intellectual and emotional capacity of this particular group;
  - Introducing a robust community sentence, tailored to the specific needs of this age group, as an alternative to custody – this could take the form of the Intensive Alternative to Custody (IAC) currently being piloted.
  
20. Sharing information and reducing bureaucracy is crucial. People who come into contact with the justice system often find they are completing multiple forms or assessments or being asked during interviews repeatedly for the same information. Currently, prison departments within a single establishment don't fully share information. Work on the Isle of Wight cluster has shown the benefit, efficiency and economy of a Single Assessment System. All information sourced pre court by police and probation must be shared with a prison if there are implications for safer custody or risk assessments.

**Does the MoJ have the right processes and measures in place to manage robustly the organisations it sponsors?**

21. Robust management of NOMS would have led to a better balance being struck between prison and probation services. The MoJ has not acted decisively on the evidence that community sentences are more effective in reducing reoffending than short prison sentences.
  
22. Until recently, the MoJ has accepted and administered without demonstrating its discomfort at the imprisonment of thousands of people on indeterminate sentences of imprisonment for public protection (IPPs), with little prospect of release. Such apparent passivity in the face of large scale inhumane practices has undermined justice. We would hope that a fair resolution can be found in the LASPO Bill.

**Will the transition of the administration of legal aid from the Legal Services Commission to an executive agency within the MoJ lead to more effective and efficient performance?**

23. This is an area that Liberty and Justice are better placed to comment on. The concern from the Prison Reform Trust is to ensure access to justice for the most vulnerable in our society.

**Does the relationship between the MoJ and NOMs, and the relationship between prison and probation, contribute to effective and efficient working?**

24. Closer working arrangements between the Prison Service and the Probation Service have long been a desirable goal. Other countries, such as Canada have a corrections service that is integrated and coordinated. In Canada this includes shared management systems, accountabilities and IT. However, the means by which this has been taken forward in England and Wales was misguided and has created more problems than it has solved. These were two organisations with different cultures and which needed to operate in different environments. The Probation Service is now in a chain of command that is dominated by Prison Service managers. Communication between prisons and probation is still not working in many areas. By way of example, on a recent visit to Stoke Heath YOI it became apparent that senior staff there had never heard of the Manchester IAC (Intensive Alternative to Custody) for young adults, despite the fact that Stoke Heath takes many Manchester young adults and the IAC scheme is well established.
  
25. A successful innovation of recent years in protecting the public and ensuring effective multi-agency cooperation has been MAPPA. Based on a particular construct, the essence of the work is for intelligence to be pooled and actions agreed on a carefully co-ordinated local approach to working together across agency boundaries. There are lessons to be taken from this approach and the Total Place pilots that would develop the concepts of pooled budgets and devolved responsibilities.
  
26. To be successful the Probation Service needs to be alert to local needs and to have a good awareness of local resources. This requires a national strategic framework, with strong professional Probation leadership, allied to formal links to local authorities and local courts. Local managers and leaders of the Service must be empowered to make key decisions in allocating resources to protect the public and reduce reoffending in their locality. Such devolution of powers should also establish Probation Trusts as the prime commissioners of services. At a national level, the

Probation Service requires a small number of objectives and operational standards. A secure information system should ideally be provided for courts, police, crown prosecutors, prisons, probation and local authorities.

27. Whether NOMS has a future in such a model should be subject to specific review.

**How effectively does the MoJ use IT, and does the MoJ have the right balance between centrally and locally commissioned IT?**

28. If the criminal justice system is to act as a proper system, then a pre-requisite is a single information base. The attempt to create C-NOMIS to underpin the work of prisons and probation was an expensive failure.

29. In relation to prisons the MoJ seems to have quite an unbalanced approach and could benefit from a centralised strategy for deployment of IT that could cut costs; assist in better allocation of staff time and resources as well as benefitting prisoners in terms of access to educational resources, resettlement materials and family contact. It appears that IT decision making in the prison estate is hit and miss and left to area managers or individual governors to decide policy - which is good in the private sector prisons but not so good in the state-run establishments.

30. The importance of a joined up IT system across the justice system cannot be overstated. Research conducted by the Prison Reform Trust found that data provided by local courts to the MoJ appeared patchy and in this instance did not appear to give adequate reasons for use of custodial remand.

**Does the MoJ have procedures in place in order to realise its objective of having more services delivered by the voluntary and community and private sectors?**

31. It is not clear that current arrangements for commissioning and contracting are adequately developed and incorporate the necessary checks and balances that the MoJ would like to see.

32. The current 'Payment by results' model is proving particularly difficult for small and medium sized voluntary sector organisations. The model may not be sustainable unless blended or flexible arrangements are introduced. There are concerns about whether PBR is best value for the tax payer. The costs involved in complicated contractual arrangements, the use of prime contractors that will top slice funding, and the costs involved in developing and monitoring/evaluating pilot services will all divert money from service delivery. Justice reinvestment models offer more effective use of resources, better opportunities for a mixed economy and more sustainable ways of reducing reoffending.

33. The voluntary sector could make a huge contribution – providing enormous value for money – to reducing re-offending and improving prisons. There are two major structural impediments which undermine the involvement of the voluntary sector and obstruct its efficiency in working with offenders. They are: risk-averse policies which create barriers to working with offenders; and uncertain funding arrangements, in particular the system of deferred payments, which makes work with offenders unsustainable. It would be useful to join up work on the Big Society and its emphasis

on the importance of volunteering to avoid an unintended consequence of reducing small voluntary organisations to sub prime contractors of either the large voluntaries or the private sector. Currently this threatens the viability of many small to medium charities both in terms of their resources and maintenance of their unique identity.

34. The aim of reducing re-offending depends on partnerships between NOMS and agencies which can bring particular expertise. A risk avoidance ethos within prisons is effective in keeping voluntary sector agencies at arms' length.
35. The Prison Reform Trust report *Time Well Spent* (2010) details the contribution that volunteering and active citizenship can play in rehabilitation, developing work in prison and the wider concept of the 'Big Society'. It shows that a great deal of active citizenship work can be established and carried out with little additional investment of resources. Such work enables establishments to make full use of a vast and valuable resource which is otherwise largely wasted: namely the prisoners themselves. To achieve the necessary shift in culture for personal responsibility to be realised will require strong and consistent leadership.
36. A Guide produced by Clinks and NOMS included a range of recommendations for facilitating partnership.
  - "The prison should have accurate information about all the agencies that work within the prison, the services that they provide and their contact details."
37. Few prisons do this, or prioritise the voluntary sector partnership by maintaining good communications with their voluntary sector providers.
  - "A process should exist that enables community-based agencies to communicate directly with prisoners. This process should be clearly defined and made explicit to staff and prisoners in written form."
38. Many prisons are poor at enabling voluntary sector partners to have direct contact with prisoners; nor are prisons efficient in referring prisoners to appropriate voluntary sector support. In the Shapland study of restorative justice schemes, the system depended on referrals to the schemes from criminal justice partners. Few referrals were forthcoming, and as a result, the voluntary sector schemes were forced to recruit participants themselves – not the function for which they contracted.

"... by the end of the first year, many of our schemes had effectively given up on the likelihood of many individual referrals. ... They had decided they could not afford to wait on this difficult, uncertain process to obtain referrals. They moved to organise acquisition of agencies' or courts' records of forthcoming cases and to a process of extraction, rather than referral, of cases."

(Shapland *et al.*: 52)

39. In PRT's review of the CSV prisoner volunteering pilot, we recommended that:
  - "CSV staff must have regular, direct contact with prisoners on the wings in order to become familiar to prisoners and staff. The case for direct access to prisoners can be made on the outputs from successful pilot prisons and the explicit recommendation of the Clinks Guide."
40. We know of no evidence that prisons have improved their performance in facilitating voluntary sector access to serving prisoners.

41. The principle, in the voluntary sector, that values voluntary participation is regularly trampled by criminal justice professionals, who impose the condition that the voluntary sector jettisons the principle of engagement by consent.
42. The few prison governors who fully recognise the unique contribution which the voluntary sector makes are forced to take extraordinary steps to promote voluntary sector involvement in the prison; and for this, they receive no acknowledgement in terms of career advancement.
43. Drawing on the resource of thousands of people who are willing to give up their time voluntarily, the voluntary sector could provide real value for money. However, the commissioning relationship with NOMS is exploitative, to the extent that smaller, local charities cannot survive if they try to provide a service to offenders and their families. NOMS commissioning favours large organisations (on the presumption that the lowest cost per head confers value for money); and arrangements in particular prisons are short-term, such that the voluntary sector partner assumes long-term risk of loss of funding.

CLINKS, HM Prison Service (2001): Good Practice Guide, 'Getting it right together: Prisons and the Voluntary and Community-based Sector', York: CLINKS.

Shapland, J, Atkinson, A, Colledge, E *et al.* (2004) 'Implementing restorative justice schemes (Crime Reduction Programme): A report on the first year', Home Office: Home Office Online Report 32/04.

Edgar, K and Talbot J (2006) 'The Impact of Volunteering: a Review of the CSV national day release prisoner volunteering project', London: Prison Reform Trust.

**Does the MoJ have the necessary skills to ensure value for money contracts for the public purse and to effectively manage those contracts?**

44. Effective commissioning involves strategic planning, procurement and review. It is not currently evident that many officials will have the highly developed skills or knowledge base necessary to set contracts and objectives. Some of the examples given above would suggest that the necessary skills have been lacking hitherto. In fairness, few commissioners would have the analytical, technical, negotiation, programme management and relationship management skills needed to fully operationalise payment by results.
45. The payment by results approach is a high risk single strategy with evident shortcomings. It is essential that the MoJ develops a range of methods for ensuring value for money for the tax payer including the application of justice reinvestment principles and practice.

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