



## **Prison Reform Trust submission to the Labour Party Justice Policy Working Group Consultation, Punishment and Reform: What Works to Protect the Public and Stop Crime?**

The Prison Reform Trust (PRT) is an independent UK charity working to create a just, humane and effective penal system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, government and officials towards reform.

The Prison Reform Trust's main objectives are:

1. reducing unnecessary imprisonment and promoting community solutions to crime
2. improving treatment and conditions for prisoners and their families
3. promoting equality and human rights in the justice system

### **Introduction**

There is consensus across the top of the justice system and beyond on the need to reverse the unsustainable trend in ever expanding prison numbers. In the last two decades the prison population has almost doubled from around 44,000 in the early 1990s to over 88,000 today. Inflation in sentencing and massive overuse of custody leaves us with a society where seven per cent of school children experience their father's imprisonment.<sup>1</sup> Estimates reveal that more children are affected by parental imprisonment than by divorce in the family.<sup>2</sup>

Reform is essential to overhauling an overcrowded, expensive and, in many ways, counter-productive prison system. It costs £39,573<sup>3</sup> per year to lock up an individual and two out of every three prisoners are reconvicted within two years of release. The National Audit Office estimates that reoffending by former prisoners costs the UK economy between £9bn and £13bn a year.<sup>4</sup> Research by the Prime Minister's Strategy Unit shows that the 22% increase in the prison population since 1997 is estimated to have reduced crime by around 5% during a period where overall crime fell by 30%. The report states: "There is no convincing evidence that further increases in the use of custody would significantly reduce crime."<sup>5</sup>

In the previous Parliament, criminal justice policy, instead of being led by informed debate and evidence of what works, was subject to a damaging political arms race between the two main political parties. As we outline below, this contributed to a massive expansion in prison numbers during this period. The coalition government has now embarked on a programme of justice reform that is seeking to get to grips with a distorted system which places too much store on what imprisonment can achieve. A measure of political consensus will therefore be essential to ensuring reform has the opportunity to embed in the system. We welcome statements by the leader of the Labour party and shadow minister for justice, made in party conference speeches and national newspaper interviews, that they will work to achieve a political consensus on justice reform. We hope the party will keep to this intention in the important months and years ahead.

There are many proven measures that cut crime and make communities safer, outlined in our consultation response below, which the working group can draw for its policy review. Community penalties are now outperforming short prison sentences by eight percentage points at reducing one-year proven reoffending rates. An ICM telephone poll conducted one month after the riots in England show overwhelming popular support for constructive ways in which offenders can make amends to victims for the harm they have caused. Solutions lie across departments and local authorities in education, health, social care, housing, employment and justice reinvestment. We look forward to contributing to the policy review and would be happy to meet the working group to discuss our submission.

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<sup>1</sup> Department for Education and Skills (2003) Every Child Matters, London: The Stationery Office

<sup>2</sup> Action for Prisoners' Families, CLINKS, Prison Advice & Care Trust, Prison Reform Trust (2007) The children and families of prisoners: recommendations for government, 5 December 2007

<sup>3</sup> Table 1, Ministry of Justice (2011) Costs per place and costs per prisoner by individual prison, National Offender Management Service Annual Report and Accounts 2010-11: Management Information Addendum, London: Ministry of Justice

<sup>4</sup> National Audit Office (2010) Managing offenders on short custodial sentences, London: The Stationery Office

<sup>5</sup> Carter, P. (2003) Managing Offenders, Reducing Crime, London: Strategy Unit

## **Q1. Where was the previous government most effective in its criminal justice policy?**

Policies adopted by the previous Labour government have led to some important improvements in prison conditions and regimes. The decency agenda has largely eradicated overtly racist behaviour by prison staff, a culture shift that has required strong, consistent and visible leadership. A willingness to learn the lessons required to improve safer custody measures has resulted in a sustained fall in the number of self-inflicted deaths. Placing responsibility for healthcare in prisons with primary care trusts, a move intended to achieve equivalence of treatment for prisoners, has resulted in significant progress in a relatively short space of time. Given the massively increased number of older and disabled people in prison, a similar change is needed in relation to the provision of social care in prisons.

A number of institutional reforms made by the previous Labour government have had a lasting and positive impact. The Sentencing Council has helped to achieve greater consistency and stability in sentencing and reduce the politicisation of sentencing policy. The Youth Justice Board has helped to improve the co-ordination of youth justice services, and towards the end of the Labour government there was a welcome reduction in numbers of children and young people in custody. There is potential for applying this learning to other vulnerable groups. The Human Rights Act has begun to establish respect for human rights principles in prisons and supported the work of bodies such as HM Chief Inspector of Prisons and the Prisons and Probation Ombudsman in the monitoring and inspection of conditions and regimes.

Two major reviews carried out by the Labour government have helped to change the way in which certain vulnerable groups in the justice system are treated. Baroness Corston's review of vulnerable women in the criminal justice system highlighted evidence that community solutions are more effective and appropriate as a response to most offending committed by women. The review helped to establish the targeted funding of a national network of women's centres. Lord Bradley's review of diversion from the criminal justice system for people with mental health problems and learning disabilities has gained cross-party support. Its key recommendation, to establish a national liaison and diversion network in police stations and courts, has been adopted by the coalition government, backed by joint funding from the Department of Health and the Ministry of Justice.

## **Q2. Where was the previous government less effective in its criminal justice policy?**

For a government whose watchword was social inclusion, it is disappointing that it did not go much further in seeking to join up its social and criminal justice policies. The early work of the Social Exclusion Unit had the potential to provide the foundation of an effective cross-government approach to tackling crime and building safer communities.<sup>6</sup> The failure to initiate a programme of justice reform based on this work is one of the great missed opportunities of the previous government.

In its place, Labour adopted a crude 'predict and provide' approach to prison building at enormous financial and social cost. Between 1996 and 2010 the prison population in England and Wales grew by 29,746 or 54%.<sup>7</sup> This rise was a result of both harsher sentencing and people being dealt with through the criminal courts, who would have been dealt with either informally, or through community-based treatment and welfare agencies, in the past. An effective response might have been to invest in early intervention and make proper arrangements for liaison and diversion throughout the system, as well as to limit the use of shorter sentences and promote greater use of community alternatives. The former government's answer was to build more prisons. This is despite clear evidence of the damaging social effects of incarceration and poor record at reducing reoffending. From 1997 to 2010, 27,000 additional prison places were provided in England and Wales<sup>8</sup> at a cost of around £170,000 per place.<sup>9</sup> Labour promised to increase capacity to 96,000 by 2014.<sup>10</sup>

A feature of the previous Labour government was a stream of criminal justice legislation. This made it difficult for practitioners and members of the public, including victims and offenders, to understand an ever-changing and increasingly complex legislative framework. It also had a direct impact on the size of the prison population, as sentencers became tougher in response to new laws and a raft of mandatory and indeterminate penalties, guideline judgements and political and media pressure (See

<sup>6</sup> See Social Exclusion Unit (2002) Reducing reoffending by ex-prisoners, London: Social Exclusion Unit

<sup>7</sup> Table A1.1, Ministry of Justice (2011) Offender Management Caseload Statistics 2010, London: Ministry of Justice and Table 8.1, Ministry of Justice (2007) Offender Management Caseload Statistics 2006, London: Ministry of Justice

<sup>8</sup> Hansard, HC, 5 January 2010, c14

<sup>9</sup> Hansard HC, 13 September 2010, c847W

<sup>10</sup> Ministry of Justice (2009) Capacity and Competition Policy for Prisons and Probation, London: Ministry of Justice

*The Decision to Imprison (2003)*<sup>11</sup>). Important bodies such as the Sentencing Guidelines Council and the Parole Board found it difficult to function effectively and authoritatively under a welter of new legislation.

Much policy appeared to have been drafted on the hoof, often as a reaction to a horrendous crime or media storm. One example is the sentence of imprisonment for public protection (IPP) introduced in the 2003 Criminal Justice Act. This ill drafted legislation has left thousands of people sentenced to a bureaucratic limbo with little or no hope of gaining legitimate release. The coalition government is seeking to abolish the sentence but the challenges of unwinding its ill-effects, not least the large and growing population of IPP prisoners held over tariff, will be considerable.

Although Labour did focus effort and resources on women in the justice system, the numbers of women in custody have remained largely unchanged. This is primarily because women were caught up in the wider moves towards harsher sentencing and expansion of the criminal justice net. The 2001 Labour manifesto committed the party to improve provision for young adults aged 18-21 in the justice system. This was never put into effect. Many of the improvements to youth justice made by the previous government could be usefully extended to this age group.

### **Q3. What are the best measures of efficiency in the criminal justice system?**

Reoffending rates are an important measure of efficiency in the criminal justice system. They can help government to assess how well offenders are being supported and rehabilitated and are an incentive for those working with offenders to focus on activities which are most likely to help them desist from crime. However, rehabilitation can be a long and difficult process involving many complex and inter-related factors. The measure of reoffending therefore needs to be a sophisticated one that can incorporate the frequency and severity of offending committed. The new methods adopted by the Ministry of Justice are a substantive improvement on the previous model, which failed to identify improved outcomes, such as an offender completing a community order who subsequently committed fewer offences.

Because of the multiplicity of factors involved in the process of rehabilitation, the performance of providers should not solely be measured in terms of reoffending. As the Social Exclusion Unit<sup>12</sup> and Justice Committee<sup>13</sup> have highlighted, many of the solutions to crime lie outside of the justice system, and this should be reflected in the way services are commissioned and accessed. The successful completion of interventions linked to reducing reoffending, such as housing, employment and drug and alcohol addictions, should also be rewarded through contracts and commissioning arrangements.

### **Q4. What are the best ways of ensuring those most vulnerable (eg young people, mentally ill, drug and alcohol addictions) are kept out of the justice system?**

Prisoners are among the most marginalised groups in society with high levels of school exclusion, illiteracy, mental disorder, substance misuse and complex needs. A disproportionate number of people in prison come from black and minority ethnic backgrounds. Former prisoners face difficulties in securing jobs, homes, access to health treatment and fractured family and community ties.

The Prison Reform Trust has conducted substantial programmes of work on the treatment of particular vulnerable groups in the justice system. Below we outline these programmes and draw attention their main findings and recommendations.

#### **Learning disabilities**

The Prison Reform Trust's *No One Knows* programme, supported by The Diana, Princess of Wales Memorial Fund, has looked at shortcomings across the criminal justice system in dealing with people with learning disabilities and difficulties and, following extensive consultation, drawn up recommendations for change. The *No One Knows* programme informed Lord Bradley's review of people with mental health problems or learning disabilities in the criminal justice system. Of particular interest to the working group will be: [\*\*Vulnerable Defendants in the Criminal Courts: a review of\*\*](#)

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<sup>11</sup> Hough, M., Jacobson, J. and Millie, A. (2003) *The decision to imprison: sentencing and the prison population*, London: Prison Reform Trust

<sup>12</sup> Social Exclusion Unit (2002) *Reducing reoffending by ex-prisoners*, London: Social Exclusion Unit

<sup>13</sup> Justice Committee (2010), *Cutting crime: the case for justice reinvestment*, London: The Stationery Office Limited

provision for adults and children (2009);<sup>14</sup> Prisoners Voices: Experiences of the criminal justice system by prisoners with learning disabilities and difficulties (2008);<sup>15</sup> and Police responses to suspects with learning disabilities and difficulties: a review of policy and practice (2008).<sup>16</sup>

To ensure fair and appropriate treatment of people with learning disabilities in the justice system we advocate the following:

- Recognise and enforce the need to identify when a person has learning disabilities in order that appropriate action can be taken, for example diversion away from the criminal justice system into social care, appropriate support to ensure effective participation in court, extension of existing provision for vulnerable witnesses to vulnerable defendants and informed sentencing.
- Ensure that sentencing requirements are appropriate for people with learning disabilities and are adapted as necessary, for example to avoid unreasonable or unrealistic expectations being imposed without appropriate support also being put in place.
- Given the inappropriateness of custody for offenders with learning disabilities,<sup>17</sup> to prioritise community sentence options over the use of custody wherever possible.
- Community sentences to include explicitly participation in community learning disability services as part of the pre-existing mental health treatment option and to introduce the option of support with daily living.
- Highlight the pre-existing option of a guardianship order (Mental Health Act 1983) for people with learning disabilities.

## **Mental health**

The Prison Reform Trust has undertaken a number of mental health applied research studies, which have informed Lord Bradley's review. Three reports, supported by the Nuffield Foundation, showed the prevalence of mental health need, and the suffering of those who were imprisoned, and set out detailed solutions for reform of the system, placing greater responsibility on the Department of Health for delivery of treatment and care within the NHS: *Troubled Inside: Responding to the Mental Health Needs of Children and Young People in Prison* (2001 – available in hard copy only); *Troubled Inside: Responding to the Mental Health Needs of Women in Prison (2003)*;<sup>18</sup> and *Troubled Inside: Responding to the Mental Health Needs of Men in Prison (2005)*.<sup>19</sup>

In 2009 the Prison Reform Trust, supported by the Mercers' Company, published *Too Little Too Late: an independent review of unmet mental health need in prison*.<sup>20</sup> This report, conducted with the National Council for Independent Monitoring Boards, made clear recommendations for change, which informed and accorded with the Bradley review. Chief among these was the need to establish a proper network of court and police diversion and liaison schemes.<sup>21</sup>

We welcome the coalition government's commitment to roll out a national liaison and diversion scheme by 2014, backed by £50m joint funding from the Department of Health and Ministry of Justice. The National Federation of Women's Institutes, the WI, is running a *Care not Custody* campaign across England and Wales following the tragic death by suicide in prison of the mentally ill son of a WI member.<sup>22</sup> The WI and the Prison Reform Trust are leading a coalition of organisations, including the NHS Confederation, the Royal College of Nursing, the POA and the PGA, representing over one million professional staff, set up to monitor reform and ensure the government keeps its care not custody promise.

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<sup>14</sup> Talbot, J & Jacobson, J (2009), *Vulnerable Defendants in the Criminal Courts: a review of provision for adults and children*, London: Prison Reform Trust

<sup>15</sup> Talbot, J (2008), *Prisoners Voices: Experiences of the criminal justice system by prisoners with learning disabilities and difficulties*, London: Prison Reform Trust

<sup>16</sup> Jacobson, J (2008), *Police responses to suspects with learning disabilities and learning difficulties: a review of policy and practice*, London: Prison Reform Trust

<sup>17</sup> See *Prisoners' Voices*; and JCHR, March 2008:212

<sup>18</sup> Rickford, D (2003), *Troubled Inside: Responding to the Mental Health Needs of Women in Prison*, London: Prison Reform Trust

<sup>19</sup> Rickford, D & Edgar, K (2005), *Troubled Inside: Responding to the Mental Health Needs of Men in Prison*, London: Prison Reform Trust

<sup>20</sup> Rickford, D & Edgar, K (2005), *Too Little Too Late: an independent review of unmet mental health need in prison*, London: Prison Reform Trust

<sup>21</sup> See also 'Outcome of Psychiatric Admission through the Courts' (2002) James D. RDS occasional paper 79 Home Office

<sup>22</sup> See <http://www.thewi.org.uk/standard.aspx?id=14999>

## Women

Baroness Corston's government-commissioned report, published in 2007, presented an unequivocal case for avoiding the huge public cost of custody for women offenders who pose no risk to the public.<sup>23</sup> It called for the closure of women's prisons over a 10 year time period and their replacement with some small custodial units for serious and dangerous offenders, and, for most women offenders, a larger network of support and supervision centres in the community providing access to services to help women deal with addictions, mental illness, rape and domestic violence, trauma and debt, while also helping them to gain skills and take responsibility for their families.

Baroness Corston concluded that there first needs to be "a strong, consistent message from the top of government ... that prison is not the right place for women offenders who pose no risk to the public". Her findings reflect the conclusions of a number of independent and government reviews and reports including the Prison Reform Trust review chaired by Professor Dorothy Wedderburn, Fawcett, HM Chief Inspector of Prisons and Cabinet Office.

The Government accepted nearly all of Corston's recommendations, but progress has been slow. On 30 September 2011 there were 4,256 women in prison, 24 more than the same date in 2009.<sup>24</sup> Despite strong Ministerial leadership during the previous Labour government and a stated commitment to diverting women from custody by the coalition, the number of women in prison remains unacceptably high. Significant internal and cross-departmental barriers continue to exist, hindering necessary progress. Substantial structural changes within the Ministry of Justice's women's policy team have exacerbated this, leading to a loss of specialist knowledge and a dilution of working time spent specifically on reducing the number of women in custody.

The Women's Justice Taskforce was established in 2010 by the Prison Reform Trust, supported by the Bromley Trust, to map out for policy-makers the most effective structure and mechanism for prioritising vulnerable women in the justice system. Chaired by Fiona Cannon OBE, Diversity and Inclusion Director at Lloyds Banking Group, Taskforce members include senior representatives from the Magistrates' Association, the Association of Chief Police Officers, probation, prisons, women's centres, politics, business, the media and former offenders.

The Taskforce report, [\*Reforming Women's Justice \(2011\)\*](#),<sup>25</sup> includes an economic analysis by Dr James Robertson, former chief economist at the National Audit Office. It demonstrates that there is "an overall net advantage for society from community based intervention for women offenders, compared to custodial sentences." Recognising that many of the solutions to women's offending lie outside of the justice system, the report calls for a cross-government strategy for women's justice with accountability built into relevant roles within government departments and local authorities. It says lessons can be learnt from reform of the youth justice system where, in contrast to women, there has been a measurable reduction in the numbers of children in prison, the numbers of young people entering the justice system for the first time, and in youth offending.

## Foreign national prisoners

Foreign national prisoners are currently 13% of the prison population. The sentences for drug importation are disproportionately long and unlike other sentences do not qualify for mitigation. In addition, sentences for passport offences have become longer. The rationale given for increasing the length of these sentences was to act as a deterrent but there is no evidence that this is effective. Numbers of foreign national prisoners continue to grow.

We suggest two measures that could be considered by the justice policy working group. Firstly, sentences for 'immigration offences', often possession of false documents have risen sharply in number and severity. In 1994, 229 foreign national prisoners were charged with these offences, but by 2005 it had risen to 1,995. People entering the country and convicted of a first, less serious offence could be deported quickly without serving a sentence in a UK prison.

Secondly, people found to be coerced or trafficked into importing drugs, cannabis 'gardening', sex work, bonded labour or other employment in illegal activities should be treated appropriately. Some

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<sup>23</sup> Baroness Corston (2007) *A Review of Women with Particular Vulnerabilities in the Criminal Justice System*, London: Home Office

<sup>24</sup> Table 1.1C, Ministry of Justice (2011), *Offender Management Caseload Statistics Quarterly Bulletin* (April June 2011), London: Ministry of Justice

<sup>25</sup> Women's Justice Taskforce (2011) *Reforming Women's Justice*, London: Prison Reform Trust

will qualify for protection. Others found guilty of these activities should be repatriated to a prison in their own country. Those already in prison, many serving disproportionate terms, should have their sentences reviewed for conditional early release and deportation.

The Prison Reform Trust has just produced a briefing paper with Hibiscus, [No Way Out \(2012\)](#),<sup>26</sup> to show the impact of current sentencing practice on foreign national women, many of whom have been trafficked into offending. Our recommendations include a re-assessment of sentencing guidelines taking into account mitigating factors, welfare of dependent children and any evidence of coercion in compliance with CEDAW. Foreign national women in the justice system should have access to independent legal support and immigration advice. Those arrested on passport charges on point of departure should be allowed to leave the country rather than being brought back to face charges and the prospect of an expensive custodial sentence.

## Young adults

Young adults account for a tenth of the prison population and one in five receptions into prison. Despite much evidence suggesting the needs of 18-20 year olds are closer to those of children than of adults, the criminal justice system makes few adjustments for the developmental immaturity of this age group. In order to meet the needs of young adults offenders more effectively, and to reduce the number who are sentenced to custody, we would advocate the following:

- Diverting first-time and low-level offenders out of the criminal justice system through the introduction of a restorative pre-court disposal similar to the Youth Restorative Disposal
- Expanding the age-remit of youth offending teams (YOTs) to accommodate 18-20 year olds – this would enable health, welfare and social care needs of this age group to be more effectively addressed through the multi-agency structure of YOTs
- 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 Order (IAC) currently being piloted.

The Prison Reform Trust will shortly be publishing a briefing on young adults which we will share with the working group. The Prison Reform Trust is a member of the Transition to Adulthood (T2A) alliance, supported by the Barrow Cadbury Trust. We would recommend the following T2A publications to the working group: [Young Adult Manifesto](#) (2010);<sup>27</sup> and [Why is the criminal justice system failing young adults?](#) (2010)<sup>28</sup> and the Prison Reform Trust report, [A lost generation](#).<sup>29</sup>

## Children

England and Wales has one of the highest rates of child imprisonment in Western Europe. Imprisoning children is expensive, damaging and doesn't work, with three-quarters reconvicted within a year of release. The Prison Reform Trust believes that child imprisonment should be reserved for the minority of children who commit serious, violent crimes and who pose an ongoing risk to themselves and to their communities.

To ensure child imprisonment can only ever be used as a last resort we advocate the following:

- Raising the custody threshold in primary legislation to prevent the imposition of custodial sentences for non-violent offences
- Raising the age of criminal responsibility to at least the age of 14 – this would bring England and Wales in line with the rest of Europe and would comply with the UN Convention on the Rights of the Child
- Reforming bail legislation to ensure custodial remand is reserved for children who are accused of committing serious, violent offences and who threaten to commit further violent

<sup>26</sup> Prison Reform Trust and Hibiscus (2012), *No Way Out: A briefing paper on foreign national women in prison in England and Wales*, London: Prison Reform Trust

<sup>27</sup> T2A (2010), *A young adults manifesto*, London: T2A Alliance

<sup>28</sup> T2A (2010), *Why is the criminal justice system failing young adults?*, London: T2A Alliance

<sup>29</sup> Solomon, E (2004), *A lost generation*, London: Prison Reform Trust

offences whilst on bail. The Prison Reform Trust supports proposals in the Legal Aid, Sentencing and Punishment of Offenders Bill for the reform of youth remand.

*Out of Trouble*, supported by The Diana, Princess of Wales Memorial Fund, is the Prison Reform Trust's lasting legacy campaign to reduce child and youth imprisonment. The following publications will be of interest to the working group: *Punishing Disadvantage; Care – a stepping stone to custody; Last resort? Exploring the reduction in child imprisonment 2008-2011 (2011)*,<sup>30</sup> *Making amends: restorative youth justice in Northern Ireland (2009)*,<sup>31</sup> *Reducing child imprisonment in England and Wales - lessons from abroad (2009)*<sup>32</sup>

### Looked after children and care leavers

Children in care and care leavers are over-represented in the prison population. The most recent survey of 15-18 year olds in custody found that more than one in four of the boys, and half of all girls were, or had been, looked after.<sup>33</sup> Earlier research from the Social Exclusion Unit suggested that 27% of the adult prison population had been in care at some point as a child. Whilst the Prison Reform Trust report *Care - a stepping stone to custody? The view of children in care on the links between care, offending and custody (2011)*<sup>34</sup> found that the solutions to much offending by looked after children lie in the care system<sup>35</sup>, there is much that the justice system can do.

YOTs can support children's services in delivering a restorative justice-based response to minor offending occurring in children's homes, to prevent children in care being criminalised for behaviour that would be dealt with differently in a family context. This would prevent, for example, children appearing in court for breaking a cup.<sup>36</sup> In addition, improved identification of children in care at pre-sentence report stage would ensure sentencers have all relevant information in front of them when a looked after child appears before them. This would enable them to ensure looked after children are appropriately accompanied in court and that any questions about the child's placement or care plan can be answered. More broadly, YOTs and the secure estate have a role to play in ensuring local authorities fulfil their duties towards looked after children in custody, by visiting them and planning for their release. Children in care should never be released from custody not knowing who will be meeting them at the gate or where they will be staying that night, as sometimes happens at present.<sup>37</sup>

Despite accounting for a significant proportion of the adult prison population, care leavers have, to date, been a vulnerable yet neglected group. More needs to be done to ensure they are supported whilst in custody and on release. The duty on local authorities to continue to provide support to care leavers up to the age of 21 (and up to the age of 25 for those wishing to undertake a programme of education or training), for instance by visiting those who end up in custody,<sup>38</sup> could go some way to ensuring this. There is little evidence to suggest these duties are currently being fulfilled.

### Q5. What are the key drivers for improving the public's confidence in the criminal justice system?

The current adversarial approach to crime is very expensive and produces poor returns in terms of victim satisfaction, reoffending rates and public confidence. Increased opportunities for restorative justice could help deliver improved confidence in and positive engagement with the criminal justice system. An ICM telephone poll of 1,000 members of the public, conducted one month after the riots in England, show overwhelming popular support for constructive ways in which offenders can make

<sup>30</sup> Allen, R (2011), Last resort? Exploring the reduction in child imprisonment 2008-2011, London: Prison Reform Trust

<sup>31</sup> Jacobson, J. and Gibbs, P. (2009), Making Amends: restorative youth justice in Northern Ireland, London: Prison Reform Trust

<sup>32</sup> Solomon, E & Allen, R (2009), Reducing child imprisonment in England and Wales - lessons from abroad, London: Prison Reform Trust

<sup>33</sup> HM Inspectorate of Prisons/ Youth Justice Board (2011) Children and Young People in Custody 2010-11 An Analysis of the experiences of 15-18 year olds in prison HMIP: London

<sup>34</sup> Blades, R, Hart, D, Lea, J & Willmott, N (2011), Care - a stepping stone to custody? The view of children in care on the links between care, offending and custody, London: Prison Reform Trust

<sup>35</sup> Children cited loss of contact with family and friends; poor relationships with carers and social workers; frequent placement change; and peer pressure as risk factors in offending.

<sup>36</sup> [http://www.thelancasterandmorecambecitizen.co.uk/news/9451477.Lancashire\\_runaway\\_children\\_costing\\_police\\_and\\_taxpayers\\_5m/](http://www.thelancasterandmorecambecitizen.co.uk/news/9451477.Lancashire_runaway_children_costing_police_and_taxpayers_5m/)

<sup>37</sup> HMIP (2011) The care of looked after children custody - A short thematic review HMIP: London

<sup>38</sup> Department for Education (2010) The Children Act 1989 Guidance and Regulations Volume 3: Planning transition to adulthood for care leavers DfE: London

amends to victims for the harm they have caused.<sup>39</sup> Nearly nine out of 10 people (88%) agree that victims of theft and vandalism should be given the opportunity to inform offenders of the harm and distress they have caused. Almost three quarters (71%) believe victims should have a say in how the offender can best make amends for the harm they have caused.

A greater focus on effective solutions to crime and disorder rather than punitive measures would also improve public confidence in the justice system. In the same poll, when asked by interviewers 'how effective, if at all, do you think each of the following would be in preventing crime and disorder?', most people (84%) considered that better supervision of young people by parents would be effective. This was followed by 'better mental health care' (80%); 'making amends to victims' (79%); 'unpaid community work' (76%); and 'treatment to tackle drug addiction (74%)'. Just under two-thirds (65%) considered that a prison sentence would be effective in preventing crime and disorder. Prison was the second least popular option. Only 'treatment to tackle binge drinking' scored lower with 62% of people surveyed considering it to be effective (we believe this finding was an anomaly resulting from the way the wording of the option was phrased). No measure received less than a 60% level of support.

#### **Q6. How can we better inform the public and the media in what is most effective at reducing crime?**

Every effort should be made to avoid the kind of party political war of words on toughness on crime which does nothing to keep people safe and indeed leads to an unhealthy increase in fear of crime. Some things are too important to argue about. Our ICM opinion poll<sup>40</sup> conducted just four weeks after the summer riots indicated a public appetite for restorative measures and making amends. (See also answers to questions 12, 16 and 32).

#### **Q7. What role can productively be played by the state, the voluntary sector and the private sector in the criminal justice system?**

As the most severe punishment in this country, imprisonment should remain the ultimate responsibility of the state, in order to safeguard prisoners' human rights. The voluntary and community sector can contribute far more to crime prevention and the rehabilitation of offenders. But the contribution must be set within a considered, carefully planned framework to avoid unintended consequences. Circles of Support and Accountability provides an example of a scheme that effectively addresses a previously unmet need, using volunteers in a clearly defined way, following a selection process, thorough training, with oversight and agreed links to the MAPPA framework. Its work to reduce the risk of offending by former sex offenders is widely recognised and respected. Mentoring schemes have similar important characteristics. In our report *Time Well Spent (2011)*<sup>41</sup> we profile the work done by a number of charities to engage prisoners in taking responsibility. In particular we draw attention to the invaluable work of prisoners acting as Samaritan Listeners operating in almost every prison in the country trained and supported by the local branch of the Samaritans. In these examples the sector is fulfilling roles that could not be performed to such good effect by statutory services.

The voluntary and community sector needs to be a significant player in the planning and commissioning arrangements. The public sector should always provide the glue that binds the various service delivery initiatives together – without this there will be a weakening of formal accountability, the potential for fragmentation of services with accompanying risks and duplication of assessments and sentence planning.

#### **Q8. What can we learn from other countries in creating an effective justice system?**

The Prison Reform Trust's report *Making Amends: restorative justice in Northern Ireland (2009)*<sup>42</sup> highlighted Northern Ireland's experience of introducing restorative conferencing as both a pre-court diversionary disposal and the default court disposal. To date, youth conferencing has delivered high levels of victim participation and satisfaction, improved reoffending rates and a reduction in the number of children being imprisoned.

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<sup>39</sup> Prison Reform Trust (2011), Public want offenders to make amends, London: Prison Reform Trust. Available at <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Riots%20poll%20briefing%20lo.pdf>

<sup>40</sup> Ibid.

<sup>41</sup> Edgar, K, Jacobson, J & Biggar, K (2011), Time Well Spent: A practical guide to active citizenship and volunteering in prison, London: Prison Reform Trust

<sup>42</sup> Jacobson, J. and Gibbs, P. (2009), Making Amends: restorative youth justice in Northern Ireland, London: Prison Reform Trust



We would draw the Review's attention to the Prison Reform Trust report ***Reducing child imprisonment in England and Wales – lessons from abroad*** which showcased international examples of policy and practice, from countries including the USA and Canada, which delivered reductions in the use of child custody.

Finally, we would take this opportunity to highlight the work of the International Centre for Prison Studies (ICPS), Penal Reform International (PRI) and the Transition to Adulthood (T2A) alliance (of which the Prison Reform Trust is a member), in this context. T2A, for example, has published ***a briefing on international norms and practices*** for dealing with young adult offenders which cites examples of good practice including Germany, which uses maturity assessments to identify young adults who should be sentenced under juvenile legislation.

**Q10. What lessons can be learnt from the youth justice system, and applied successfully to the adult system?**

In recent years, the youth justice system has achieved a measurable reduction in the numbers of children in prison, the numbers of young people entering the justice system for the first time, and in youth offending. There are a number of lessons which can be learnt from this and applied successfully to the treatment of other vulnerable groups in the justice system. First, despite evidence suggesting the needs of 18-20 year olds are closer to those of children than of adults, the criminal justice system makes few adjustments for the developmental immaturity of this age group. We believe the age-remit of youth offending teams (YOTs) should be expanded to accommodate 18-20 year olds – this would enable health, welfare and social care needs of this age group to be more effectively addressed through the multi-agency structure of YOTs (see answer to Q4. on young adults).

Second, some of the lessons from youth justice could usefully be extended to women. Overall, women offenders represent a similar proportion in the offender population as under 18 year olds and levels of vulnerability are not dissimilar. A women's justice commission, as recommended by Baroness Corston, could help maintain effective governance and oversight of women's justice in a similar way to that exercised by the Youth Justice Board for young people (see answer to Q4. on women). In addition, some of the youth justice proposals contained in the Legal Aid, Sentencing and Punishment of Offenders Bill, such as the devolution of youth custody budgets to local authorities, could apply to women.

**Q11. What lessons can be learnt from local schemes and pilots that can be rolled out and applied nationally?**

There are many examples of effective local schemes and pilots which could be rolled out and applied nationally. The Prison Reform Trust has been impressed by the success of the Intensive Alternative to Custody (IAC) schemes run by Greater Manchester Probation Trust and West Yorkshire Probation Trust, which are tailored to the specific needs of young adults. They are achieving good compliance rates and the early indications are that they are also successful in reducing reoffending rates. Experienced probation officers describe the IACs as the first real opportunity that they have had to create requirements that will change offending behaviour. Local magistrates also support the IAC approach. A robust community sentence, tailored to the specific needs of young adults, as an alternative to custody, could be modelled on this pilot.

The Prison Reform Trust has published a detailed study of the Youth Conference Service, established in Northern Ireland in 2003.<sup>43</sup> 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.

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<sup>43</sup> Jacobson, J. and Gibbs, P. (2009), *Making Amends: restorative youth justice in Northern Ireland*, London: Prison Reform Trust

## **Q12. How can we ensure greater confidence and transparency in sentencing?**

A simpler sentencing framework would improve public confidence and provide greater transparency and clarity for victims and offenders. The Prison Reform Trust would like to see the sentencing framework as a broad based pyramid, starting with the base as follows:

- Diversion from the criminal justice system of people who suffer from mental illness or severe learning disabilities and learning difficulties.
- Opportunities for restorative justice at all stages in criminal justice proceedings and as an alternative to prosecution as appropriate.
- Cautions for most first offenders and those who have committed minor offences.
- Financial penalties, adjusted to take account of ability to pay or transfer into unpaid work, for the bulk of offenders who appear before the courts.
- Community sentences for more serious offenders, including those who would benefit from supervision and other interventions.
- Greater control and surveillance (including where appropriate electronic monitoring) of persistent offenders using integrated offender management approaches, which include intensive work to reduce reoffending.
- Imprisonment reserved for the most serious and violent offenders for whom no other disposal would be proportionate and from whom the public require protection.

Prison sentences should almost always be determinate, with automatic release on licence at the half way point. Indeterminate prison sentences should be reserved for those serving a life sentence, where the tariff would be determined by the judge in the light of the individual circumstances in each case.

(With regards to young adults, any simplification of the legal framework may make it more difficult to treat them as a distinct group in legislation. Rather than simplification, we recommend instituting the principle of proportionality into sentencing for this age group – this could be achieved through the use of maturity assessments to inform sentencing decisions, drawing on experience in Germany and as proposed by T2A. Alternatively, the threshold at which young people transfer out of the youth and into the adult justice system could be raised to, for instance, 21 years, thus allowing young adults to be sentenced under juvenile legislation.)

Politicians should be consistent in informing the public that the aims of imprisonment (public protection, punishment, rehabilitation) are difficult to achieve when 1) prisons are over-crowded; and 2) prisons inevitably cause an increase in homelessness, unemployment (and unemployability), financial problems and family break-up. The Sentencing Council has a duty to work to improve public confidence in sentencing and could be given a greater role in informing the public of the social and economic consequences of sentencing policy.

Where there is public benefit from a sentence, for example victim surcharge, community payback or restorative justice, this should be explained clearly and publicised via the local media if possible. Opportunities should be taken to explain sentencing such as citizenship education in schools, open court days, events run by magistrates and probation teams and learning drawn from an expansion of community courts.

## **Q13. Do the current sentencing guidelines achieve the right balance between punishment and reform of offenders?**

The sentencing guidelines set out sentence ranges reflecting different levels of seriousness and, within each range, a starting point for the sentence. The guidelines also provide guidance on factors the court should take into account that may mean a more or less severe sentence should be imposed. They provide a structured approach to determining the appropriate sentence while still allowing for judicial discretion. This allows judges and magistrates in different courts to be consistent in their approach to sentencing, providing greater clarity for victims, defendants and the public.

The Prison Reform Trust welcomed the creation of the Sentencing Council, which sets the sentencing guidelines in England and Wales, by the previous Labour government. Its functions are similar to those recommended in its publication [\*Creating a Sentencing Commission for England and Wales:\*](#)

[an opportunity to address the prisons crisis \(2008\)](#).<sup>44</sup> That report called for the creation of a body to:

- Achieve greater consistency and stability in sentencing practice, thereby preventing any further upward drift in sentencing severity; and
- Reduce the politicisation of sentencing policy and practice, by acting as an institutional buffer between the political process and penal practice.

It envisaged three functions for a newly established Sentencing Commission:

- Providing guidance to sentencers leading to greater consistency in sentencing without restricting judicial independence;
- Gathering and providing information and statistics for monitoring, planning and policy development; and
- Community engagement, to inform and consult the public.

#### **Q14. Can lessons be learnt from elsewhere (eg. Northern Ireland) in making indeterminate sentences for public protection (IPPs) work more effectively?**

The Prison Reform Trust welcomes the Government's decision to abolish the IPP and DPP and reform the release test for prisoners serving IPP sentences. This ill drafted legislation has left thousands of people sentenced to a bureaucratic limbo with little hope of gaining legitimate release. At the end of March 2011 there were 6,550 prisoners serving an indeterminate IPP sentence. 3,500 of these prisoners are held beyond their tariff expiry date.<sup>45</sup> Since 2005 just 320 people serving IPP sentences have been released from custody.<sup>46</sup>

We do not believe that the system of indeterminate sentences in Northern Ireland is necessarily a suitable model for reform of the IPP sentence. While the numbers of prisoners on ICS and ECS have been slower to build than their equivalent on the IPP, the potential for applying the lessons of Northern Ireland to England and Wales is limited. First, the new arrangements in Northern Ireland have only been in place since 2008 so it is not yet clear what its long term effects will be. The first ICS was handed down in 2010 and, as yet, no ICS prisoner has reached tariff. Second, there is evidence to suggest that the indeterminate sentencing regime in Northern Ireland is starting to place similar pressures on the Prison Service there as the IPP in England and Wales. The Interim report (February 2011) of the Review of the Northern Ireland Prison Service states: "There is considerable and growing pressure on staff in OMUs, as more prisoners are sentenced to indeterminate or extended custodial sentences under the Criminal Justice Order, or recalled to custody."<sup>47</sup> Finally, adopting the Northern Ireland model would do nothing to address the problem of the large and growing number, currently over 3,500, of IPP prisoners held beyond tariff.

Attempts have already been made to reform the IPP sentence introduced by the 2003 Criminal Justice Act. Following widespread criticism from, amongst others, the senior judiciary, Prison Governors Association and Independent Monitoring Boards, changes were made to the legislation limiting IPP sentences to those with a minimum tariff of two years and over (equivalent to a determinate sentence of four years). This came into effect in July 2008. However, a study published in 2010 revealed that IPPs were still being passed by the courts at a rate of around 75 per month. It is estimated that, at the present rate, by 2015, about 10 per cent of the entire prison population will be serving IPP sentences.<sup>48</sup>

#### **Q15. Has the right balance been struck between mandatory sentences and giving judges more discretion?**

Mandatory sentences limit the ability of sentencers to take the specific circumstances of the individual case fully into account. Long, determinate sentences are already available for serious offences and judges should be allowed the discretion needed to sentence appropriately.

The Prison Reform Trust is concerned about the proposals in the Legal Aid, Sentencing and Punishment of Offenders Bill to extend a mandatory life sentence to people convicted of second listed

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<sup>44</sup> Hough, M & Jacobson, J (2008), *Creating a Sentencing Commission for England and Wales: an opportunity to address the prisons crisis*, London: Prison Reform Trust

<sup>45</sup> Ministry of Justice (2011) *Provisional figures relating to offenders serving indeterminate sentence of imprisonment for public protection (IPPs)*, London: Ministry of Justice

<sup>46</sup> Hansard HL, 21 November 2011, c825

<sup>47</sup> Department of Justice (2011), *Interim Report, Review of the Northern Ireland Prison Service*, February 2011

<sup>48</sup> Hough, M & Jacobson, J (2010), *Unjust deserts: imprisonment for public protection*, London: Prison Reform Trust

offence. Currently, a mandatory life sentence is restricted to convictions for murder. To breach this principle, even with the allowances for the exercise of discretion by the courts built into the new provisions, could in time be seen as the thin end of the wedge.

We are particularly concerned about the proposals in the bill to introduce a mandatory minimum custodial sentence of four months for 16 and 17 year olds convicted of knife offences. We are disappointed that, in the House of Commons report stage of the bill, Labour introduced amendments to extend mandatory prison sentences to children as young as 13. There is understandable public concern about knife crime. Young people themselves are most likely to be the victims of this offence. However, mandatory prison sentences fetter the discretion of judges and magistrates. Under the Violent Crime Reduction Act 2006, the courts already have the power to sentence an under-18 year-old to a term of up to four years in prison for possession of a knife in a public place. The latest statistics show that the number of such offences by children in the last quarter reduced by 27 per cent compared to the same period 2 years ago.

Under the UN Convention on the Rights of the Child, imprisonment should be used only as a last resort and for the shortest possible time. The impact assessment for this extension suggests that 200-400 more children are likely to be imprisoned as a result. Given that over 70 per cent of children are reconvicted within a year of leaving custody, evidence suggests that imprisonment is rarely rehabilitative for this age group and that other measures, including restorative justice, could be used to better effect.

#### **Q16. What more can be done to break down barriers to achieving greater public confidence in alternatives to custody?**

Community sentences should be used far more as an alternative to custody, particularly for people serving short sentences. However, they require investment and strong, consistent political backing for public and court confidence to increase and be sustained. Community payback successfully marries punishment, reparation and rehabilitation and its widespread use should be valued and promoted. The public should be made aware of the benefits of the work carried out as part of community orders. Work should be advertised in the local press and records of what has been done by community payback work should be regularly published and promoted. Local communities should be involved in identifying projects that would be of benefit to them. They might also exercise some general oversight and play a part in acknowledging when a job has been performed to a high standard. Our *SmartJustice* programme was able to offer a template as to how best to promote and develop community sentences.<sup>49</sup>

Community sentences have recently been shown to be more effective in reducing reoffending than short prison sentences for offenders with similar characteristics and offending history.<sup>50</sup> This provides a sound basis for promoting their use as an alternative to custody.

#### **Q17. What best practice is there in this country and abroad in effective probation?**

International delegations organised by the Foreign Office and the British Council frequently visit and seek to replicate our probation service. Whilst its work has been impeded by excessive reorganisation and increased bureaucracy it is nonetheless a high-achieving service. Its lack of top level advocacy and leadership needs to be put right. Meanwhile, specific achievements in regard to public safety include MAPPA arrangements and Intensive Alternatives to Custody often run in partnership with the police. The partnership between West Yorkshire probation and women's centres in Calderdale and the surrounding area has proved particularly productive, with a proven reoffending rate of just 3.2% and marked success in housing, health, finance and employment.

#### **Q18. How do we deliver lower re-offending rates in an age of reduced public finance?**

The economic climate offers the opportunity to rethink the current inefficient and ineffective model of criminal justice spending. Prison is expensive and has a poor record at reducing reoffending. 47% of adults are convicted within one year of being released. For those serving sentences of less than 12

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<sup>49</sup> See <http://www.smartjustice.org/index.html>

<sup>50</sup> Table 1, Ministry of Justice (2011) 2011 Compendium of reoffending statistics and analysis, London: Ministry of Justice

months this increases to 57%.<sup>51</sup> The average annual overall cost of a prison place in England and Wales is £39,573.<sup>52</sup>

Research by the Ministry of Justice shows that community sentences were more effective (by eight percentage points) at reducing one year proven reoffending rates than custodial sentences of less than 12 months for similar offenders.<sup>53</sup> They are also on average far cheaper than a short prison sentence. Introducing a presumption against short custodial sentences and increasing the use and availability of community sentences would be an effective way of reducing reoffending without increasing public expenditure.

The Prison Reform Trust supports the policy of justice reinvestment that has been implemented in some jurisdictions. Shifting resources away from incarceration towards rehabilitation and prevention would have a beneficial impact on cutting crime and reducing reoffending without additional government spending. The idea has been authoritatively covered in the 2010 report of the Justice Committee, [Cutting crime: the case for justice reinvestment \(2010\)](#).<sup>54</sup> It argues 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.

#### **Q19. What works best in ensuring those in custody are fully equipped with the skills and confidence needed for effective rehabilitation?**

An overstretched, overcrowded criminal justice system is self-evidently less effective at rehabilitation than one whose resources are designed to match demand. The pressures of overcrowding means prison staff do not have the time and resources to devote to rehabilitation work. Prisoners are more likely to be locked in their cells for longer periods with little or no access to training or education. Overcrowding also means prisoners are more likely to be further from home. As well as the obvious difficulties for family support and contact, this also means resettlement is far more difficult as local community services are unable to provide services to someone far away. Reducing needless imprisonment, so that custody is reserved only for the most serious offenders, is therefore of critical importance to ensuring effective rehabilitation.

Rehabilitation is a complex process that requires work in multiple areas. The Social Exclusion Unit (2002) report, [Reducing re-offending by ex-prisoners](#),<sup>55</sup> established the importance of a multi-dimensional approach, which tackles problems of homelessness, unemployment, family relationships, physical and mental health, drug and alcohol dependency, finances and debt, and education and training – as well as attitudes. Any of these dimensions can have a decisive impact on whether someone re-offends and the greatest risks come when risk factors are combined.

Rehabilitation work in prisons requires consistent management and leadership and a far greater emphasis on sentence management and thorough preparation for release. Everyone should have a sentence plan devised with an offender manager during a process in which they have participated. More effective personal officer schemes would also help in the long-term rehabilitation of offenders. More needs to be done to reduce the high turnover of prison governors which contributes to instability and short-termism in the running of the prison regime. The average tenure for governing governors in an establishment is 2.4 years.<sup>56</sup>

Research indicates that maintaining family contact can reduce the likelihood of reoffending by 39%.<sup>57</sup> In recent years the numbers of prison visits from families has fallen despite an increasing prison population and up to 45% of people in prison lose contact with their families during imprisonment.<sup>58</sup> The Prison Reform Trust's work on first night centres in prisons (see [There when you need them most: PACT's first night in custody service](#)<sup>59</sup>) showed that newly sentenced or remanded

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<sup>51</sup> Table 18a, 19 and 7a, Ministry of Justice (2011) Proven Re-offending Statistics Quarterly Bulletin January to December 2009, London: Ministry of Justice

<sup>52</sup> Table 1, Ministry of Justice (2011) Costs per place and costs per prisoner by individual prison, National Offender Management Service Annual Report and Accounts 2010-11: Management Information Addendum, London: Ministry of Justice

<sup>53</sup> Table 1, Ministry of Justice (2011) 2011 Compendium of reoffending statistics and analysis, London: Ministry of Justice

<sup>54</sup> Justice Committee (2010), Cutting crime: the case for justice reinvestment, London: The Stationery Office Limited

<sup>55</sup> Social Exclusion Unit (2002) Reducing reoffending by ex-prisoners, London: Social Exclusion Unit

<sup>56</sup> Hansard HC, 2 November 2009 c746W

<sup>57</sup> May, C. et al. (2008) Factors linked to reoffending: a one-year follow-up of prisoners who took part in the Resettlement Surveys 2001, 2003 and 2004, London: Ministry of Justice

<sup>58</sup> Nacro (2000) The forgotten majority, London: Nacro

<sup>59</sup> Jacobson, J. et al (2007) There When You Need Them Most: pacts First Night in Custody Services, London: Prison Reform Trust

prisoners are more concerned about their family and community links than their own welfare in prison. Families are often a vital resource for prisons in supporting successful resettlement. Family work is relatively inexpensive and provides huge returns. We recommend extended and more regular family visits, partnerships with voluntary sector organisations to provide services for families and more family involvement in offending reduction work.

Work done by the Ormiston Trust in Norwich, the Chelmsford visitor's centre with its impressive local support, POPS in the North West and PACT all provide good, well evaluated models that increase levels of family support, aid resettlement and can be seen to reduce costs of further offending. For a breakdown of changes needed in policy and practice see the Prison Reform Trust, Action for Prisoners' Families, CLINKS and PACT (2007), [\*The children & families of prisoners: recommendations for government\*](#)<sup>60</sup>

Training and employment reduce the risk of re-offending. The Ministry of Justice found in its follow up study of resettlement (2008) that prisoners who have problems with both employment and accommodation on release from prison had a reoffending rate of 74% during the year after custody, compared to 43% for those with no problems.<sup>61</sup> Work and training in prisons should enable offenders to learn vocational skills that will increase their chances of securing employment in the community. The CBI supports its members in a 'second chance' initiative to employ former offenders. Apprenticeships organised by the National Grid and a number of other companies have high success rates. We support the government's decision to reform the Rehabilitation of Offenders Act. More should be done to incentivise employers, including local authorities, to take on former offenders as employees.

Encouraging active citizenship, including involvement in prisoners' councils and opportunities for wider participation in the democratic process, can play an important part in the process of offenders' successful rehabilitation. A recent PRT report, [\*Time Well Spent \(2011\)\*](#),<sup>62</sup> argues that greater opportunities for volunteering in prisons would help counter the dependency and 'learned helplessness' that institutions foster, and enable people to develop empathy and to do things for themselves. Prisoners' councils should be created in every establishment as an effective way of encouraging prisoners' responsibility and autonomy and promoting more stable prison regimes. Our report [\*Having their say – the work of prisoners' councils\*](#) (2004)<sup>63</sup> outlines the benefits of prisoners councils for people in prison and the effective running of establishments.

There is scope for expanding restorative justice in prisons, as well as in the community. Restorative practices have proven benefits in resolving conflicts, restoring victims and raising the awareness of offenders of the full consequences of their actions. Programmes such as SORI in HMP Cardiff facilitate dialogue between victims and prisoners so they can learn more about the impact of crime. Restorative principles can also be employed effectively in the management of prisons. A few prisons have experimented with mediation as a response to racist incidents, or restorative conferences following fights between prisoners. Challenges which are central to running prisons - working through conflicts, addressing harm, and fostering personal responsibility – could be tackled using restorative practices.<sup>64</sup>

Effective resettlement is crucial to successful rehabilitation. Prisons do not have the resources or expertise to provide resettlement services without significant support and input from community services. Consideration needs to be given to ways to incentivise local authorities to take the lead in managing resettlement and to build on the success of existing police- and probation-led schemes. Mentoring schemes, where people are met at the gate, show good results. There is much to learn from schemes to support and monitor those who have committed serious offences on their return to the community. The exceptional work of trained volunteers and the Lucy Faithful Foundation is one such. The success of Circles of Support and Accountability<sup>65</sup> is testimony to what can be achieved to enable people who have committed sexual offences not to offend again.

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<sup>60</sup> Prison Reform Trust, Action for Prisoners' Families, CLINKS and PACT (2007), *The children & families of prisoners: recommendations for government*, London: Prison Reform Trust

<sup>61</sup> Ministry of Justice (2008) *Factors linked to reoffending: a oneyear follow-up of prisoners who took part in the Resettlement Surveys 2001, 2003 and 2004*, London: Ministry of Justice

<sup>62</sup> Edgar, K. et al (2011) *Time Well Spent: A practical guide to active citizenship and volunteering in prison*, London: Prison Reform Trust

<sup>63</sup> Solomon, E & Edgar, K (2004), *Having their say – the work of prisoners' councils*, London: Prison Reform Trust

<sup>64</sup> See Newell T & Edgar K (2006), *Restorative Justice in Prison: A guide to making it happen*, Waterside Press

<sup>65</sup> See 'Circles of support and accountability' in APPAG (2010), [\*Too many prisoners: the All-Party Parliamentary Penal Affairs Group January 2008 – March 2010\*](#), Prison Reform Trust, pp.89-94

Safe, stable housing is one of the bedrocks of successful rehabilitation. According to the Social Exclusion Unit and the Home Office Niven and Stewart study, it can reduce reoffending by over 20%. An estimated 30% of people released from prison will have nowhere to live.<sup>66</sup> Housing advice and practical help, together with an expansion in supported and halfway housing, should be a priority. Successful schemes run by Nacro and St Giles Trust train prisoners to be peer advisers in housing advice. These schemes can be rolled out in many other areas of work - this enables prisoners to improve skills and knowledge and other prisoners to access the services they need.

The findings of our joint report with UNLOCK, [Time is Money \(2010\)](#),<sup>67</sup> suggest that the financial exclusion faced by offenders is a major barrier to rehabilitation'. The main areas covered by the report are offenders' access to banking, insurance, credit, identity verification and financial advice. It also addresses prisoners' pay, inadequacy of the discharge grant, problems with debt and money management and prisoners' experience of the Rehabilitation of Offenders Act. The report calls for the development of a national framework for tackling the financial problems faced by offenders, and makes a number of specific recommendations for improving offenders access to financial services and advice. These will involve the active engagement of financial services and the DWP as well as those in the justice sector.

## **Q20. How best can we address the challenges of mental health, drug and alcohol dependency in our prisons and outside our prisons?**

Drug and alcohol misuse are primary drivers respectively of acquisitive crime and violence and public disorder offences. The development of effective drug treatment in the community, including residential rehabilitation options and specialist women-only and age-appropriate services, would start to obviate the need sentencers openly identify in using custodial sentences primarily as a gateway to health treatment. Further work to reduce binge drinking and misuse alcohol needs to be done as a matter of urgency.

Prison is often not the best setting in which to deliver effective treatment for drug and alcohol dependency or mental illness. It is also often ill-equipped to provide appropriate care and support for people with learning disabilities and difficulties. As a result of overcrowding in the prison estate, prisoners are frequently transferred between different establishments meaning they are unable to complete programmes on which they have started. Prison also separates people from families and friends which can provide important networks of support during the process of recovery from addiction or mental illness. The loss of a home and a job, which are frequent consequences of a custodial sentence, can also be significance barriers to effective recovery and contribute to relapse.

While a prison sentence may be appropriate for the most serious and violent offenders, a far greater emphasis should be placed on treatment in the community through the use of appropriate community order requirements. Effective arrangements for diversion and liaison for people with drug, alcohol and mental health problems and learning disabilities and difficulties should be available throughout the criminal justice process. For the most serious offenders with addiction or mental health problems or learning disabilities or difficulties, for whom there is no other option but to impose a custodial sentence, equivalent treatment should be available in prison with clear links between prison and local health and community services. Proper provision for the continuation of treatment between custodial establishments and on release should be in place throughout the system, facilitated by a genuine integrated offender management approach.

The Prison Reform Trust has been awarded funding for a major programme focussing on the provision of health and social care in the criminal justice system. The programme will build on the success of our work on mental health 'Troubled Inside' and learning disabilities and difficulties 'No One Knows', which have contributed to policy development relating to the treatment of these vulnerable groups in the justice system. The following publications contain detailed recommendations on addressing the challenges of mental health, learning disabilities and alcohol dependency, and will be of interest to the working group: [Too Little, Too Late: An Independent Review of Unmet Mental Health Need in Prison](#),<sup>68</sup> [Prisoners' Voices: Experiences of the criminal justice system by](#)

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<sup>66</sup> Niven, S. and Stewart D. (2005) 'Resettlement Outcomes on Release from Prison in 2003', Home Office Research findings no. 248, London: Home Office

<sup>67</sup> Bath, C. and Edgar, K., (2010) Time is Money: Financial responsibility after prison, London: Prison Reform Trust

<sup>68</sup> Rickford, D & Edgar, K (2005), Too Little Too Late: an independent review of unmet mental health need in prison, London: Prison Reform Trust

**Q21. What challenges are there in payment by results models delivering a more cost effective way of reducing reoffending?**

The key to payment by results is how outcomes are defined, how 'distance travelled' by individual offenders is recognised, and how the contributions of partners are integrated and evaluated. Although one over-riding objective is the prevention of reoffending, most providers of social support aim to deliver other, linked outcomes, such as employment, stable housing, or improved mental health. A housing provider should not be judged solely on their ability to deliver reduced reoffending. At this point, while the evidence is strong, it is not sufficient to provide precise measures of the extent to which housing, or employment, or successful drug treatment contributes to the reduction of reoffending. However, the aim of integrating such social support into work with former offenders is commendable – as individual 'pathways', pursued through separate silos, is unworkable.

A justifiable concern at the payment by results approach is that the market becomes dominated by a small number of large private and voluntary sector providers. Efficiencies relating to size can easily prove decisive in a competitive market, outweighing softer benefits of local resources being better placed to meet local needs. There needs to be a platform of practical support for small local bodies that is attuned to providers addressing diversity, discrimination and local equality concerns.

There are considerable risks in adopting a new approach too quickly. These can be mitigated in part by taking a flexible, developmental and diverse approach to payment by results, not entering into long term fixed contracts and protecting the interests of small local voluntary organisations, such as the national network of women's centres, that have such an important part to play in the rehabilitation of offenders.

**Q22. What consensus is there around the drive to reduce the size of the prison population?**

Leading justice figures and others agree that the time has come to reserve prison for serious and violent offenders. The Prison Reform Trust has released 'Talking Justice: Talking Sense', a six minute film that presents the case for prison to be used as a place of last resort.<sup>71</sup> The film highlights the degree of consensus across the justice system and looks to community payback and restorative justice as effective ways to cut crime. In a series of film clips, those in charge of the system, regulators, offenders, victims and well known faces, reflect on their experience and talk sense about justice.

Public opinion polls suggest that there is public support for, and interest in, a range of measures to prevent crime and disorder. A recent survey found that "while the public may 'talk tough' in response to opinion polls which ask whether sentencing is harsh enough, when considering specific criminal cases and individual circumstances, there is considerable support for mitigating punishments".<sup>72</sup>

In a survey<sup>73</sup> commissioned by the Prison Reform Trust conducted one month after the riots in August 2011 a huge majority of the public (94%) support opportunities for offenders who have committed offences such as theft or vandalism to do unpaid work in the community, as part of their sentence, to pay back for what they have done.<sup>74</sup>

In a recent poll only 11% of people surveyed believe that increasing the number of offenders in prisons would 'do most' to reduce crime in Britain. The public is more focused on intervening at the level of families and young people, with 55% thinking that better parenting, and 42% thinking that more constructive activities for young people would have most effect.<sup>75</sup> An ICM poll of 1,000 victims of crime commissioned by SmartJustice in partnership with Victim Support, shows that almost two thirds of victims of crime do not believe that prison works to reduce non-violent crime.<sup>76</sup>

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<sup>69</sup> Talbot, J (2008), Prisoners Voices: Experiences of the criminal justice system by prisoners with learning disabilities and difficulties, London: Prison Reform Trust

<sup>70</sup> Prison Reform Trust (2004), Alcohol and reoffending: who cares?, London: Prison Reform Trust

<sup>71</sup> See <http://www.prisonreformtrust.org.uk/TalkingJustice>

<sup>72</sup> Roberts, J. and Hough, M. (2011) Custody or community? Exploring the boundaries of public punitiveness in England and Wales, Criminology & Criminal Justice 11(2) pp181-197, Norwich: Page Bros

<sup>73</sup> Prison Reform Trust (2011) Public want offenders to make amends briefing paper, London: Prison Reform Trust

<sup>74</sup> Ibid.

<sup>75</sup> Gottschalk, E. (2009) Public perceptions of organized crime -results from an opinion poll, London: Home Office

<sup>76</sup> SmartJustice (2006) Briefing: Crime victims say jail doesn't work, <http://www.smartjustice.org/pr16jan06.html>



## **Q27. What can we do to ensure greater confidence and transparency in the role of the judges and magistrates?**

Greater confidence in the role of magistrates and the judiciary could be achieved through greater diversity, through their changing behaviour in the courtroom and through getting them to engage more in the community. A barrier to confidence in judges is their lack of diversity. Judges are insufficiently representative in terms of race, class and gender of the general population, and in particular, of those likely to appear in criminal courts. Greater diversity amongst both judges and magistrates would increase the confidence of court users in judges' ability to understand the context of offences and life circumstances of offenders and victims. In the court judges and magistrates should seek to explain proceedings as clearly as possible and, in particular, to justify in layman's language the remand decisions and sentences they use, and the reasons for them. Judges and magistrates should develop relationships with other agencies using the court and seek to take part in programmes which educate the public about how judges and magistrates operate.

## **Q32. How do we avoid the tensions between a central role for victims and ensuring fair and open justice for offenders?**

The Prison Reform Trust agrees with Labour's shadow justice minister Sadiq Khan and Matthew Ryder, a member of the working group, that "justice doesn't come from securing one set of rights over another".<sup>77</sup> Everyone involved in the justice system has an interest in a fair and transparent process that enables justice to be seen to be done. A proportionate and consistent approach to sentencing, underpinned by clear sentencing guidelines, provides clarity for victims, defendants and the public. We do not believe that victim impact statements should play a role in sentencing, as has been proposed by some in the Labour party, as this could potentially undermine consistency and proportionality.

A survey published by SmartJustice and Victim Support challenges many pre-conceived ideas that victims always want heavy penalties such as prison for people who commit non-violent crimes.<sup>78</sup> Instead, they support a range of measures which they believe are more effective in stopping further offending. The poll, conducted by ICM, found that 8 out of 10 (80%) victims think that more constructive activities for young people in the community and better supervision by parents would be effective in stopping re-offending. Seven out of ten victims also want to see more treatment programmes in the community for offenders suffering from mental health problems, and for drug addicts, to tackle the causes of non-violent crime.

Among the key findings from the poll, which asked how non-violent crimes like shoplifting, car theft and vandalism can be reduced, were:

- Two-thirds (62%) of victims think that going to prison does not prevent re-offending
- More than half (54%) were in favour of making offenders work in the community - in schools, old people's homes or parks - to stop them returning to crime

As the results of our more recent ICM poll reveal, greater use of restorative justice has the potential to deliver greater public confidence in the criminal justice system (see answer to Q5.). Research highlights it could also improve rates of victim satisfaction and reduce reoffending. The Prison Reform Trust has published 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.<sup>79</sup>

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<sup>77</sup> Khan, S (ed) (2011), Punishment and reform: how our justice system can help cut crime, London: Fabian Society

<sup>78</sup> SmartJustice (2006) Briefing: Crime victims say jail doesn't work, <http://www.smartjustice.org/pr16jan06.html>

<sup>79</sup> Ministry of Justice (2008), Does restorative justice affect reconviction? The fourth report from the evaluation of three schemes, London: Ministry of Justice. Available at [http://webarchive.nationalarchives.gov.uk/+/http://www.justice.gov.uk/docs/restorative-justice-report\\_06-08.pdf](http://webarchive.nationalarchives.gov.uk/+/http://www.justice.gov.uk/docs/restorative-justice-report_06-08.pdf)

There is scope for mainstreaming restorative justice as a disposal throughout the justice system. According to Victim Support, fewer than 1 per cent of victims of adult crime currently have access to restorative justice.<sup>80</sup> A Home Office research study showed that:

- Most victims agreed to participate in a face to face meeting with the offender;
- 85 per cent of victims said they were satisfied with the process;
- Participation in restorative justice reduced re-offending by 14 per cent.<sup>81</sup>

The Restorative Justice Council has estimated that using restorative justice presentence, with 70,000 adult offenders would produce savings of £185 million from reductions in re-offending alone. In its March 2010 Report, *Cutting Crime: The case for justice reinvestment*, the Justice Select Committee, concluded, "We urge the Justice Secretary to take immediate action to promote the use of restorative justice."<sup>82</sup>

#### **Q34. What are the better aspects of the current government's proposals on punishment and reform?**

The *Breaking the Cycle* Green Paper presented a coherent programme of legislative reform to reduce unnecessary use of imprisonment. Such reform is designed to make better use of scarce public funds and ameliorate the damaging effects of populist criminal justice legislation from the past two decades.

The Legal Aid, Sentencing and Punishment of Offenders Bill contains many important features of the Green Paper. It has, however, lost some of its clarity of purpose. We welcome proposals in the bill to cut any unnecessary use of custodial remand, increase discretion in response to technical breach of licence and intervene to get children and young people out of trouble. Proposals to abolish the sentence of imprisonment for public protection (IPP), and reform the release test for IPP prisoners, are welcome. Plans to strengthen rehabilitation, by extending opportunities for work in prisons and reforming the outdated Rehabilitation of Offenders Act, should help reduce reoffending on release.

In addition, we welcome the government's commitment to take forward Lord Bradley's recommendation to roll out a national liaison and diversion scheme by 2014. Backed by £50m joint funding from the Department of Health and Ministry of Justice, this could at long last make provision for proper diversion for people who are mentally ill, and those with learning disabilities, to get the treatment and care they need.

#### **Q35. Which aspects of the current government's proposals are of concern to you?**

The Prison Reform Trust has concerns about proposals in the bill for more mandatory sentences and plans to extend the maximum duration of curfews for adults and children respectively from 12 to 16 hours a day and from six to 12 months. We are also concerned by proposals to remove the court's duty to explain its consideration of the thresholds for imposing a custodial sentence or community order.

We are disappointed by the lack of provision in the bill for vulnerable groups including women and young adults. *Breaking the Cycle* promised to increase the range and availability of restorative justice, particularly with adult offenders, but this has not been carried forward into the proposed legislation.

Prison Reform Trust  
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<sup>80</sup> Victim Support (2011), Policy position statement: restorative justice, London: Victim Support

<sup>81</sup> Ministry of Justice (December 2010), *Breaking the Cycle Evidence Report*

<sup>82</sup> Justice Committee (2010), *Cutting crime: the case for justice reinvestment*, London: The Stationery Office Limited