Prison Reform Trust briefing on the Prisons and Courts Bill

House of Commons, Second Reading, Monday 20 March 2017

Imprisonment represents perhaps the most extreme exercise of the state's power over the individual that peacetime allows. The law governing it should transcend party politics, and should be designed to protect those subject to imprisonment from the possibility of quixotic or expedient decision making within the government of the day or those delivering prison services. The government's emphasis on rehabilitation is welcome. But parliament's primary concern should be the principled foundation for rehabilitation that only a decent, fair and safe prison environment can provide.

It is extraordinary that the current legislation on what prisons should be like is 65 years old, and that the Prisons Act 1952 was itself a consolidating Act that repealed legislation dating back as far as 1862. It is very rare for parliament to have the opportunity to consider in the context of legislation the fundamental principles on which our prison system runs. This Bill therefore represents a precious opportunity to ensure that the conditions in which prisoners are held reflect modern standards appropriate to the 21st century rather than the 1950s. In the light of the widely acknowledged crisis in our prisons, parliament's aim should be to draw a line in the sand, defining the minimum requirements of decency, safety and fairness that no prison in England and Wales should ever be permitted to fail to deliver, other than in a temporary operational emergency.

The published Bill falls well short of the comprehensive penal code that many comparable democracies would consider both necessary and uncontroversial. It is also silent on the most pressing issue facing our prisons – that of sentence inflation and the resulting pressures of overcrowding which cripple the ability of the system to provide safe, decent and constructive regimes focussed on rehabilitation. Without provision on sentencing, the Bill is also unable to address the injustice faced by thousands of people in prison serving indeterminate sentences of public protection (IPPs), some held years beyond the expiry of their original tariff date. Despite these flaws, the Bill does contain important and welcome provisions which open the way to a more secure legislative base for the way of life our prisons deliver, and a stronger oversight of that delivery by parliament. In our view there are several areas in which the Bill must be strengthened to be effective in the long term.

Part 1 – Prisons

Clause 1

- The Bill sets out a statutory purpose for prisons, and that is welcome. But the purpose does not capture important elements of what a prison must achieve in order to meet its rehabilitative ambition. In particular, the purpose must include the provision of an environment which is both decent and fair. This

was a central conclusion of Lord Woolf's Inquiry into the disturbances at Strangeways and other prisons in 1990, and remains the essential foundation for everything else that a prison might achieve.

- The purpose should also enshrine in statute the existing case law on what life in prison should be like, as set out in Raymond v. Honey (1982), which states that prisoners retain all civil rights not taken away expressly by parliament or by necessary implication of the fact of imprisonment (such as freedom of movement).

- The Bill should require its purpose to be reflected in a comprehensive revision of Prison Rules, the secondary legislation already provided for by the Prisons Act 1952. Those revised Rules should be organised by reference to the elements of the statutory purpose, and reserve to parliament the task of setting out essential minimum requirements that no administration should be free to alter without reference back to parliament. The Bill should make clear that Prison Rules should fulfil our obligations to meet norms and standards set out in international instruments to which we are a signatory, and to meet domestic legal requirements to avoid discrimination.

- In relation to standards of safety and decency, the Bill should require that these revised Prison Rules should include but not be limited to:
    - the provision of accommodation to a specification guaranteeing the cubic space within a cell, the circulation of fresh air, standards of heat and light, and access to sanitary and showering facilities;
    - the prevention of overcrowding other than in an emergency and then only with a time limited authority conferred by Parliament;
    - entitlements to minimum periods each day when the cell door is unlocked; and
    - minimum standards governing the ability to communicate with individuals outside prison.

- The Bill lays out clearly the Secretary of State's personal accountability for the prison system and contains welcome requirements on the Secretary of State to respond to both the Chief Inspector and the Ombudsman. Those responsibilities should be extended to the reports of Independent Monitoring Boards.

Clause 2

- We welcome the statutory recognition of the inspectorate, but believe the Bill could be further strengthened to ensure that the mechanisms by which the Secretary of State is held to account are genuinely independent of the Secretary of State. The independence of both HM Inspectorate of Prisons and the Prison and Probation Ombudsman should be secured by removing the responsibility for their funding and sponsorship from the Secretary of State for Justice, with the appointment of both the Chief Inspector and Ombudsman a matter for the Justice Committee rather than the Government. Making the Inspectorate accountable to Parliament would also make it more compliant with its duties under the Optional Protocol to the Convention Against Torture

(OPCAT).

- The recognition in the Bill of the importance of OPCAT in relation to the role of the inspectorate in monitoring against international human rights standards is welcome but not sufficient. In particular, the language of clause 2, subsection 2, lines 30-32 is declarative, so as to assume that the provisions of the Act will be in accordance with the objectives of OPCAT. The Bill should be amended so that the work of HM Inspectorate of Prisons is required to be compliant with the objectives of OPCAT.

- The Bill should give statutory recognition to the other members of the National Preventative Mechanism (NPM) which carry out the UK's international obligations under OPCAT. In addition, the role of the NPM could be enhanced through the introduction of a statutory duty for the members of the NPM to cooperate in carrying out their duties under OPCAT.

Clauses 4-20

- We welcome the provisions of clauses 4-20 and the statutory recognition which they afford to the Prison and Probation Ombudsman and its associated powers and responsibilities. As above, we would like to see the independence of the Prison and Probation Ombudsman protected by making its appointment a matter for the Justice Committee rather than the Secretary of State.

Clause 21

- We welcome the introduction of sensible and proportionate measures to prevent the damaging and illicit trade in mobile phones in prisons. As well as targeting the supply side, however, attention should also focus on limiting demand, by improving the availability of, and prisoners' access to, lawful telephones in prison.

- While some more modern prisons have telephones in cells, most prisoners are required to make calls from a shared phone located on the prison landing, where access is limited due to high demand and the length of time prisoners spend locked in their cells. Access to phones is also limited by the prohibitive costs of phone calls, with a ten minute weekday phone call to a family landline costing nearly a quarter of a prisoner's weekly income, and the same call to a mobile would cost nearly half. Improving the access of prisoners to phones, through the increased use of in cell phones and more time out of cell for association, as well as reducing costs, would help limit demand for illegal mobile phones, as well as improving family contact and resettlement outcomes.

Clause 22

- While the provisions of this clause are straightforward and sensible, it should be noted that monitoring the prevalence of psychoactive substance misuse cannot rely solely on drugs testing, as new compounds are designed to prevent detection. Strategies for prevention and reduction of psychoactive

substance misuse should recognise that punitive approaches may well increase the incentives to find new substances which can evade detection, thus exacerbating the problem. As in the community, effective supply reduction relies on intelligence led operations, targeting those who profit from the trade rather than those whom they employ and abuse. That intelligence can only be gleaned in an environment where prisoners can be confident of receiving help, support and protection if they seek to address their own drug use.

Part 2 – Procedures in civil, family and criminal matters

Part 2 creates new procedures in civil, family, tribunal and criminal matters. It makes changes to court procedures in the Crown Court and magistrates' courts which will enable a defendant (if he or she wishes) to engage with the court in writing on entering a plea or the allocation of cases involving triable either-way offences. This includes engaging online using the Common Platform (a unified online platform for all case management in the criminal justice system). Part 2 also allows some offenders charged with summary-only, non-imprisonable offences to be convicted and given standard penalties using a new online procedure; and extends the use of live audio and video links, and 'virtual' hearings where no parties are present in the court room but attend by telephone or video conferencing facilities.

We appreciate the need for greater efficiencies across our justice system. However, to ensure our justice system is just, proportionate and accessible, it is of utmost importance that access to justice is realised by the most vulnerable citizens in our communities – whether they are witnesses, victims or the accused. It is well established that high numbers of people in contact with criminal justice services have multiple needs, many of which are directly related to their ability to interact with HMCTS in a meaningful and effective manner using technology.

For example, literacy rates amongst prisoners are low, with around half at or below Level 1 in reading and four-fifths at or below Level 1 in writing; around a third of prisoners have an IQ of less than 80, and it is generally acknowledged that between five and ten percent of adult offenders have a learning disability. For many, such low levels of IQ will mean they need support with reading, writing, communication and comprehension. People with a learning disability may be acquiescent and suggestible; they may fail to understand what they are accused of and the implications of decisions they are being asked to make. In the absence of adequate safeguards, a person with learning disabilities and/or autism might, for example, plead guilty, in order to expedite proceedings in the hope of being allowed to leave police custody and to return home quickly, without appreciating the implications of entering a guilty plea. Many people with mental health problems have conditions that fluctuate, meaning that they might engage well with technology on one occasion, but not on another – even on the same day.

The use of technology can no doubt help to deliver greater efficiencies. However, to ensure that all defendants, and especially those who are vulnerable, do not fall prey to the exigencies of a swift and efficient resolution, robust safeguards need to be in place to secure informed decision making and a comprehensive understanding of the implications of decisions made.