

Prison Reform Trust written response to the Prisons Strategy White Paper

The Prison Reform Trust (PRT) is an independent UK charity working to create a just, humane and effective penal system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, government and officials towards reform. The Prison Reform Trust provides the secretariat to the All-Party Parliamentary Penal Affairs Group and has an advice and information service for people in prison.

The Prison Reform Trust's main objectives are:

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

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Introduction

In July 2021, after the possibility of a Prisons White Paper had been trailed in the Daily Mail, we wrote to the Second Permanent Secretary of the Ministry of Justice, Jo Farrar, asking for a transparent and detailed process of consultation before it was published.¹ That letter was never answered, and the process of consultation we requested never materialised. It is a matter of great regret that a government which in this white paper sets much store by holding Governors to account through transparent and published performance indicators, should have been so unwilling to be transparent and accountable in developing this crucial document.

Although there are encouraging signs that some parts of the ministry are starting to understand the value of engaging directly on policy development with people who live or have lived in prison, there is no evidence in the white paper that this was done prior to its publication. Following publication, two copies of the paper were sent to each prison, with an instruction to governors that prisoners should be given the opportunity to comment. We understand that the deadline for them to do so has been slightly extended. While that is welcome, it scarcely represents an adequate opportunity to benefit from the experience and wisdom of the people who have the most profound understanding of how prisons work. It contrasts with the decision Lord Woolf took before writing his seminal report in the early 1990s, when he wrote to every prisoner in the system to seek their views. It is no coincidence that his report remains the best blueprint for reform.

¹ Dawson. P. (2021, July 5) *Letter to Jo Farrar*.

<http://www.prisonreformtrust.org.uk/Portals/0/Documents/Letters/2021.07.05%20Jo%20Farrar%20PD%20-%20prison%20reform%20long%20term.pdf>

In a small way, we have tried to make up for that deficiency by inviting a dozen members of our Prisoner Policy Network² to contribute their views to assist in our response. A much larger number contributed to our report on the future of prison regimes, “*It doesn’t have to be like this*”, published before Christmas 2021.³ What follows reflects some of what they told us. But it is crucial that the government should make the effort to hear direct from the people in its care in our prisons.

The consequence of this introspective approach is that the white paper has omitted, by accident or design, several critical aspects of prison reform. The questions it asks within the white paper do not invite comment on these aspects, but if they are not addressed the many aspirations listed in the white paper are destined to go the same way as their precursors. Very few of the government’s ambitions are new. Most have been articulated repeatedly, often in published strategies by this government or its recent predecessors. But what has happened in the past is that failure to deliver on those strategies has simply been followed by the issuing of a new strategy, normally without acknowledgement of what has gone before. Repeating grand ambitions without pausing to understand why they have so often not been delivered in the past is a recipe for further disappointment.

So before addressing what the white paper does contain, much of which is welcome in its ambition if not in its credibility, it is crucial to list the omissions which will affect the government’s ability to deliver.

A principled foundation for prison reform

Debates about what prison is for can easily generate a good deal of argument to little obvious benefit. It is all too easy to stereotype approaches as either “tough” or “soft”, punitive or rehabilitative. In reality, no well-run prison is ever confused on the issue, because it is obvious that any rehabilitative ambition must rest on a foundation of a safe, secure, decent way of life for all those who live or work there. But achieving that clarity doesn’t happen by accident. It requires consistent moral leadership.

Prison life is made up of many thousands of small daily interactions and decisions. In the best prisons, the relationships which underpin those interactions facilitate safety, security, decency, justice and a purposeful, busy routine. Staff and prisoners collaborate to make the community where they work and live a safe place, replete with opportunity. In recent years, the prison service has produced an evidence-based and comprehensive account of what it terms “rehabilitative culture”. That work provides a framework for the exercise of discretion in all those detailed interactions and explains how the ambitions of rehabilitation depend on a pyramid of enabling factors, safety and decency first amongst them, all informed by a set of moral values.⁴

It is disappointing that that work is nowhere referenced in the white paper, not least because the apex of the rehabilitative culture approach is precisely the outcome of better public protection through successful reintegration which the government seeks. It conclusively lays

² Prison Reform Trust website. Available at <http://www.prisonreformtrust.org.uk/WhatWeDo/Projectsresearch/PrisonerPolicyNetwork>

³ Wainwright, L., Harriott, P., Saajedi, S., Conway, M., & Laryea-Adekimi, F. (2021). *It Doesn’t Have To Be Like This*. Prison Reform Trust. http://www.prisonreformtrust.org.uk/Portals/0/Documents/PPN/PPN_regimes_consultation_report.pdf

⁴ Mann, R., Fitzalan Howard, F., & Tew, J. (2018). What is a rehabilitative prison culture? *Prison Service Journal*, 235, 3–9. https://www.crimeandjustice.org.uk/sites/crimeandjustice.org.uk/files/PSJ_235_January_2018.pdf

to rest the sterile debate about whether prisons should focus on punishment or reform. For leaders and staff to act consistently in all those thousands of daily interactions, this moral and philosophical framework is vital. The same is true for the policies and strategic decisions taken at the centre. Its omission from the white paper is a missed opportunity and a failure of leadership. It leaves room for confusion about the values and behaviours which are acceptable and those which are not, a confusion that is all too evident in inspection reports such as that on HMP Chelmsford in November 2021.⁵

We recommend that ministers endorse the evidenced and comprehensive framework that the existing prison service description of “rehabilitative culture” represents.

Overcrowding

Overcrowding has been widely acknowledged as a fundamental obstacle to serious prison reform for the last 3 decades. It is extraordinary that it is not mentioned once in the white paper. Its consequences include but go far beyond physical conditions that are shaming, dangerous and obviously incompatible with the ambitions the white paper sets out. A relatively recent description of the history of overcrowding and its impacts can be found in the 2017 edition of the Bromley Briefings Prison Factfile.⁶

The white paper’s ambitions for new prison spaces almost precisely match the anticipated rise in the prison population over the next 5 years. Leaving aside the question of whether the government’s building plans are deliverable, the policy intention is clearly to continue to overcrowd the same number of prisoners as now and to continue to use a wide variety of prisons where inspectors repeatedly find physical conditions falling well below acceptable standards. Within a fortnight of the white paper’s publication it was made public that HMP Dartmoor, opened in 1809, was to be kept in use as a prison indefinitely.⁷ Around two thirds of prisons are directly affected.

Overcrowding requires prisoners to be held in prisons far from home, with inadequate provision of work and education facilities. Inspectors regularly find between a third and a half of prisoners in their cells during the working day. It requires people to live alongside other people in conditions of deep indignity and mutual fear, of a kind that are uncivilised and shaming. It delays progression through the system for those whose release depends on showing that the risk they may present has reduced, and it frustrates the development of local partnerships and relationships that support resettlement. It feeds violence, including assaults within cells, and on staff as prisoners seek to manufacture moves out of particular prisons. During a pandemic, overcrowding exacerbates the risks of infection to prisoners and staff, and requires the continued use of prisons where social distancing and adequate ventilation are physically impossible. It creates poor working conditions for staff and makes the modernisation of significant parts of the prison estate impossible or uneconomic.

In short, there is no aspect of the white paper’s ambitions that is not undermined by overcrowding and the absence of any policy intention to eliminate it is inexplicable.

⁵ HM Inspectorate of Prisons. (2021). *Report on an unannounced inspection of HMP & YOI Chelmsford*. <https://www.justiceinspectorates.gov.uk/hmiprison/wp-content/uploads/sites/4/2021/11/Chelmsford-web-2021.pdf>

⁶ Prison Reform Trust. (2017). *Bromley Briefings Prison Factfile: Autumn 2017*. <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Bromley%20Briefings/old%20editions/Autumn%202017%20Factfile.pdf#page=8>

⁷ BBC News. (2021, December 22). *Dartmoor Prison to stay open ‘beyond 2023’*. <https://www.bbc.co.uk/news/uk-england-devon-59755473>

We recommend that a target is set to eliminate overcrowding, with a timetabled plan of reductions in the number of prisoners living in overcrowded cells.

Race

The equalities statement that accompanies the white paper joins a list of complacent assessments that show the government's unwillingness to comply with its own laws. It rests on the assumption that general improvements in prison will benefit all equally. But we know from the data that is available about life in prison that this is not what happens. Prisoners from minority backgrounds are more likely to be on lower privilege levels, to have force used against them, to be adjudicated upon. They have a one in a hundred chance of having a complaint about discrimination upheld. Policies are introduced with the promise that their impact will not be disproportionate—such as the rollout of PAVA spray—but when that turns out not to be the case, no action is taken to correct it.

The assessment relies on the unpublished “Race Action Programme” for reassurance that things will be different this time around, but the white paper itself makes no mention of how both direct and indirect discrimination in prison on the grounds of race is to be addressed. In a situation where the criminal justice system is having a grossly disproportionate impact on young black men in particular, evidenced in over 50% of children in custody now coming from an ethnic minority and a rapid and large increase in the number of young adults from the same background beginning very long sentences in the adult estate, the failure to address race specifically in the white paper represents a deeply troubling omission.

We recommend the immediate publication of the Race Action Programme and measures of its impact on prisoners.

Understanding the future population

It would be reasonable to expect that the starting point for a 10-year plan would be an analysis of whom the government expects to be in prison over that period. The white paper contains no such analysis beyond the headline figure. Whilst we recognise the uncertainties inherent in them, the regular publication of forecasts with explanatory notes shows that some of that analysis has been done in the past. So it is disappointing that white paper does so little to distinguish between the needs of different cohorts within the future population.

We know there is an ambition at operational level to adopt a much more individualised approach to how a prisoner uses their time inside, and we welcome that. But it has far-reaching implications for how prisons run and what they cost. If that ambition is to be realised, prisoners can no longer be a commodity parcelled off to the prison where it is most convenient for the prison service to hold them. It may well be possible for a prison to deal with the needs of a young man starting a very long sentence as well as the needs of someone beyond retirement age coming to the end of a sentence, but it has cost implications across the whole of the prison's operation, from physical environment, to education, work, health and activity provision, to staff training and voluntary sector engagement.

The prison service knows that it has always struggled with looking after some cohorts effectively. Young adults would be a particularly good example, and the white paper is virtually silent on that issue, despite the urgent challenge already presented by the rapid growth in the number of young men beginning very long sentences. Recalled prisoners would be another example of a rapidly growing cohort posing different but specific

challenges. A strategy for older prisoners has been promised for several years but the white paper goes no further than to anticipate its publication in “2022”.

Given the dramatic change in the characteristics of the prison population in the last decade, driven by a decline in receptions but very large increases in sentence length and recalls, the absence of a more detailed analysis of whom our prisons will be holding is a serious omission, and makes it difficult not just for the prison service, but for all those statutory and voluntary organisations on whom it depends to plan for what is to come.

We recommend that the government publishes a detailed forecast of how it expects the prison population to be made up over the period covered by the white paper; and to make clear what its strategic response will be to what that analysis reveals.

Resources

The new resourcing for 3 elements of the resettlement task—substance misuse, employment and accommodation—is welcome, albeit that the white paper gives little detail of how or where this money will be spent. The funding for improved physical security to stop some of the people who bring drugs into prison from doing so is equally important. Substantial investment in tagging when the evidence base for its impact is so far largely unpublished raises more questions. A recent report by HM Inspectorate of Probation suggests that there are serious deficiencies in the way electronic monitoring has been implemented to date, and comes hard on the heels of an embarrassing £98m write off following the collapse of a new casework system to support it.⁸

All of this investment, however, stands in very stark contrast to the complete absence of any information about how the other ambitions in the white paper are to be funded.

There are examples in every section of the paper that will leave those responsible for delivering these ambitions scratching their heads. A full working day, tailored to the needs of individual prisoners and delivered in small regime groups, is admirable but manifestly far more resource intensive than the pattern of part time working in large groups with mass movement that it replaces. Governors designing new regimes built on the learning from the pandemic (whatever the government considers that to be), will wonder how they are to provide structured on wing activity when at the moment the best they can afford is to lock the prison up after a meal served in late afternoon. Vastly improved training for staff, with monthly supervision and reflective practice, is undoubtedly needed, but how many more prisoners will have to be locked in their cells to make the time for it to happen?

All of this is readily calculated by a Governor negotiating new work profiles and shift patterns, and none of it comes for free.

Radically improved mental health support for all prisoners who need it, better family engagement, detailed assessment and sentence planning for all, a single digital prisoner record seamlessly linked to healthcare records, in cell technology, recovery options for all those with substance misuse problems, new leadership training for Governors and middle managers—virtually everything has a price tag which the white paper scrupulously avoids.

⁸ HM Inspectorate of Probation. (2022). *The use of electronic monitoring as a tool for the Probation Service in reducing reoffending and managing risk*. <https://www.justiceinspectors.gov.uk/hmiprobation/wp-content/uploads/sites/5/2022/01/Electronic-monitoring-thematic-inspection.pdf>

Perhaps most dramatically of all, the white paper invites us to believe that the existing crumbling prison estate will be transformed by a maintenance and renewal programme at the same time as 20,000 new spaces are created. But we know that the spending review delivered only around a third of the estimated bill for basic maintenance in the prison estate, and that major renewal works typically require the temporary closure of accommodation—all at a time when the projections show demand for prison places exceeding capacity within the next two to three years. If HMP Dartmoor, unchanged in many respects since it was built in 1809, has to remain open to deal with a capacity crisis, it is hard to take any of the government’s assertions about improving conditions seriously.

The prisoners we heard from expressed a similar scepticism about the promises in the white paper. They have read similar documents and heard similar rhetoric in the past. But the “Rehabilitation Revolution” promised in 2012 by one of the Lord Chancellor’s predecessors ushered in the chaos from which the prison service has yet to recover. In 2016, a Prime Minister promised a “revolution in the prisons system”, full of promises uncannily close to what the current deputy Prime Minister now sets out.⁹ One of our correspondents called this a “cut, copy, paste” approach, and it is easy to understand why. After a decade of undelivered ambitions, the white paper reads as an unfunded wish list.

We recommend that the department publishes an analysis of the costs of all of the white paper proposals, and how they are to be met.

The immediate crisis

Nevertheless, we welcome the government’s desire to think strategically about the future of prisons, however much we may disagree with some of its conclusions or doubt its ability to deliver. But there is an imminent crisis which threatens to derail any reform process before it has got underway. The government continues to pursue policies which deliberately inflate the number of people in prison, regardless of the crime rate and regardless of the evidence that increasing the severity of sentences does nothing to increase public confidence.¹⁰ Much of the pressure it is under it has generated itself. But it also faces the pressure of recovery from the pandemic, and clearing the backlog of cases in the courts which are likely to lead to a surge in prison numbers. Given the state of the labour market as a whole, it now faces the prospect of a dramatic fall in the number of people applying to become a prison officer at a time when one in nine prison officers are leaving the profession every year. And it will do so after repeatedly denying prison officers a pay rise recommended by an independent pay review body.

We have been somewhere very similar before, and in the recent past. The explosion in deaths, self-harm and violence that has characterised the last decade in prison coincided with drastic reductions in staffing levels in an estate that remained grossly overcrowded. Too many prisoners and too few staff produces this very predictable and distressing set of outcomes. The warnings from successive recent inspection reports could not be any clearer—small signs of progress cannot survive either an increase in overcrowding levels or

⁹ Prime Minister’s Office, 10 Downing Street. (2016, February 8). *Prison reform: Prime Minister’s speech*. GOV.UK. <https://www.gov.uk/government/speeches/prison-reform-prime-ministers-speech>

¹⁰ Prison Reform Trust. (2022, January 23). *New survey reveals longer prison sentences have failed to improve public confidence*. <http://www.prisonreformtrust.org.uk/PressPolicy/News/vw/1/ItemID/1098>

a failure to solve the staffing crisis afflicting some of the prisons that will first feel the effect of any surge in receptions from the courts.^{11 12}

The government has committed to the administrative implementation of a system of “Safety Impact Assessments”, at the prompting of its Independent Advisory Panel on Deaths in Custody. If ever there was a moment to carry out such an assessment, this is surely it.

We recommend that the white paper is the subject of a safety impact assessment, and that the assessment is published.

The remainder of this response follows the headings in the white paper and the questions posed.

¹¹ HM Inspectorate of Prisons. (2022). *Report on an unannounced inspection of HMP Wandsworth*. <https://www.justiceinspectors.gov.uk/hmiprison/wp-content/uploads/sites/4/2022/01/Wandsworth-web-2021.pdf>

¹² HM Inspectorate of Prisons. (2021). *Report on an unannounced inspection of HMP & YOI Rochester*. <https://www.justiceinspectors.gov.uk/hmiprison/wp-content/uploads/sites/4/2022/01/Rochester-web-2021.pdf>

The Purposes of Prisons

The white paper's preamble is a curious jumble of purposes and projects, with a brief paragraph on "values" that ignores the moral challenges of imprisonment. As noted above, leadership in prisons is not morally neutral, and cannot be reduced to treating imprisonment simply as a means to an end, however admirable that end of public protection undoubtedly is. Ministers are charged with the care of every person in prison, and in choosing to require people to spend very much longer in prison, their accountability for the whole of a prisoner's mental and physical wellbeing throughout their time inside has only grown. Around 1 in 7 prisoners have not been convicted or sentenced. An increasing proportion are over retirement age, and an increasing number expect to die in prison. Well over 300 people in a normal year do end their life in prison. Over 11,000 prisoners are guaranteed to spend a decade or more in custody—many of them two decades or more.

So the purposes of prison must include the care as well as the rehabilitation of every prisoner, and the provision of opportunities for personal growth irrespective of its relevance to the risk of future offending. Many of our responses from prisoners serving long sentences reflect that necessity. The values which underpin the prison service's mission must include respect for every individual regardless of the crime they may have committed, and concern for their well-being. The only proper interference with the rights and liberties of a prisoner are those which statute allows or which are an inevitable consequence of imprisonment. We send people to prison as punishment, not for punishment.

Very little of this plays well politically. But that is part of the burden of leadership in prisons, and there are few heavier responsibilities within government than the proper treatment of citizens from whom it has sanctioned the withdrawal of liberty. This preamble to a document that purports to chart the way ahead for prisons over a decade and beyond betrays a disturbingly superficial grasp of the full implications of those responsibilities. It is telling that no views are sought about it.

Chapter One: A Roadmap to Building the Future Prison Estate

Question 1: Do you agree that these are the right long-term ambitions for the prison estate?

Fundamentally, the ambition in the white paper is wrong because it takes as its premise that a prison population of nearly 100,000 will improve the protection of the public from crime. There is no evidence for that premise, either domestically or internationally. A prison building programme should be dedicated to ending overcrowding and to removing from use many prisons and parts of prisons that are not fit for use and will never support the ambitions laid out in the white paper. Prisoners see the need for radically better physical conditions, but in order to replace not supplement the many establishments which are no longer fit to use.

However, given that the government has chosen this path, there are elements within its ambitions which we would encourage it to re-examine.

First, the section on maintenance and renewal betrays the reality that in the short term the priority is to retrofit fire safety measures to 35,000 cells. We understand the necessity of undertaking that work, and indeed would argue that it should have been done sooner and should now be completed more quickly. The obstacle to doing so is overcrowding and if lives are lost as a consequence, the failure to tackle overcrowding will be to blame. However, the unspoken implication is that other maintenance requirements will have to command lower

priority, so the benefits to prisoners in terms of cells that are adequately ventilated and maintained, decent hygienic washing and toilet facilities, heating and hot water systems that work reliably, will all be slower to materialise, if they do at all. The ambition merely to “begin work on a new strategy for the maintenance and renewal of the prison estate”, which even when complete will only “bring together in one place a detailed overview of the needs of the estate and the associated effect of underinvestment”, is therefore very disappointing.

We recommend that the strategy for maintaining and renewing the prison estate should be completed within six months, fully costed and timetabled.

Secondly, while the trial at HMP Deerbolt of a new regime to help young men transition from the children’s to the adult estate is welcome, there is a much larger issue concerning the number of young men starting exceptionally long sentences. The white paper has nothing to say about how the prison service is going to respond to the growth in this population and the impact of exceptionally severe sentencing policy upon it. There is a good deal of evidence about the challenges this presents, both for the young men and for those that care for them, in and out of prison. The government has repeatedly failed to respond adequately to successive reports about young adults in the criminal justice system and the prison system in particular.

We recommend that the government sets out where it plans to hold the current and predicted population of young adults and what regime it intends to provide, with what training for staff and what facilities for prisoners. It should take into account the evidence base on both maturity and the comparative disadvantage suffered by young black men within this cohort.

The proposed investment in digital transformation for both staff and prisoners is welcome. Prisoners have stressed to us the importance of access to ICT both to keep up with how the world outside prison now works, and to help in the practical aspects of preparing for release. But it is disappointing that there is no timetable for most of what is promised. In relation to staff, it is very concerning that the integration of prison and healthcare information appears to be more than 10 years away, given how often the failure to communicate important information between prison and healthcare staff is cited in coroners’ and PPO reports into deaths in custody. There is no analysis in the white paper of why the ambition for integrated prison and probation information systems failed so dismally in the Transforming Rehabilitation programme, and no costings to support the ambitious proposals set out again in this document.

So far as prisoner-facing ICT is concerned, the ambition does not go far enough in two respects. First, the rate of rollout is too slow and the paper gives no indication of when or whether all prisons will be equipped with in-cell ICT of the sort described. Again, overcrowding and the need to keep in use prisons which should be closed undermine the white paper’s credibility. Secondly, the paper only discusses the availability of software and applications that improve access to information and services within the prison. If prisoners are to take responsibility for their resettlement in the way the white paper properly envisages, they will need to be able to apply for jobs, for places to live, to interact with their partners and children, and take part in education alongside students in the community. Controlled but generous access to these opportunities should be an explicit goal.

We recommend that prisoners should be given controlled access to the internet to facilitate their learning, future reintegration, and communication with those that support them outside prison.

Chapter Two: Tackling Violence, Preventing Harm and Promoting Good Order and Discipline

Question 2: Do you agree these are the guiding principles around which the future regime should be designed?

No sensible person wants prisons to be anything other than safe for all the people who live and work in them. Every prisoner response supports that aim. But ministers have had a “zero tolerance” policy for well over a decade, during which time violence spiralled as staff numbers and experience were slashed. Much of what the white paper describes should help, but overcrowded prisons and sentences that destroy hope represent fundamental structural problems which the government itself has generated.

Prisoners also stress that there needs to be equity in the system’s intolerance of violence. They point out that staff violence towards prisoners is not mentioned and goes unpunished. Practically, they point to the failure of staff to wear or turn on body worn cameras and the absence of any consequences when they do. This echoes repeated findings from inspection reports.

We particularly welcome the proposed study on debt. Prisoners tell us repeatedly that debt is generated by the low level of prison wages. Many want to save while in prison to have something to help in resettlement, or to remit small amounts to support family while they are inside. Avoiding apparently trivial debts is as crucial as avoiding the much larger debts which come from acquiring phones or drugs, and a rise in prison wages would help in that—as well as rewarding participation in work and education.

We also welcome the emphasis on peer support. There is already a much wider variety of peer support in prisons than the white paper acknowledges, and there is no need to delay for the outcome of a centrally mandated pilot before building on what many prisons already know—that prisoners are the great under-used resource in prisons. Most are motivated to make prisons better places to live, and to help those who struggle to cope.^{13 14} Prisoners tell us that they want the prison to find out about their skills and ambitions so that they can be put to use in practical ways to improve the prison environment and the way it runs. They are frustrated by assumptions that are made about the jobs for which it is worth training them:

“not every lady want to do Beauty not every man wants to do plumbing, Ask the inmate what would you like to do. What have you always wanted to achieve make the inmate be in control of their future and they won’t go back to crime.”

In relation to regime design, the resource implications of what it proposes are ignored. A much more individualised approach to the needs and, we would argue, the aspirations of prisoners is crucial to the objective of reducing reoffending. Activities delivered in smaller groups will make sense in some contexts at some times, although the prison service would be foolish to ignore the ability of some prisons in the past to manage large scale freedom of movement without difficulty. But none of this comes for free. Regimes delivered in small groups with controlled movement require more staff of all disciplines and a longer core day.

¹³ Prison Reform Trust. (2019). *Prisoners reforming prisons: Active citizens panels’ suggestions for improving their prison.*

<http://www.prisonreformtrust.org.uk/Portals/0/Documents/Prisoners%20reforming%20prisons%20FINAL.pdf>

¹⁴ Prison Reform Trust. (2017). *A Different Lens: Report on a pilot programme of active citizen forums in prison.* <http://www.prisonreformtrust.org.uk/Portals/0/Documents/A%20Different%20Lens.pdf>

In relation to technology, we have long argued for a radically different approach in prisons and welcome the fact that the pandemic has spurred the department into faster progress.¹⁵ It will be crucial that the opportunity is taken to allow prisoners safe and secure access to resources available outside prison as well as inside. Applying for work, finding accommodation, undertaking further and higher education, as well as communicating with families and communities to which they will return, will all require a more ambitious approach than the white paper sets out.

Useful technology is not restricted to electronic and digital improvements. Privacy locks support safety, combat theft and bullying, and reduce a good deal of nugatory work for staff, as well as fostering responsibility amongst prisoners.

We recommend the adoption of the simple and proven technology of privacy locks for cells across the whole existing estate and not just new prisons.

We reiterate that the prison service's own work on rehabilitative culture is a better evidenced and more comprehensive basis for regime design than the text in this section of the white paper. Our consultation with prisoners on the future of regime design, published in November 2021 and entitled "It doesn't have to be like this", drawing on the contributions of around 650 prisoners from over 50 prisons, shows that there is much support for the busy, purposeful regimes that the white paper describes.¹⁶ But it also contains a profound insight into the principles that should inform regime design, which the white paper misses.

Prisoners want a way of life in prison that mimics normal life outside prison to the greatest extent possible. The ability to earn and learn are crucial parts of that, but so are opportunities to be social and build relationships. Choice and the opportunity to be trusted are critical, as well as the opportunity to do good and contribute, both inside the prison and as an absent parent or carer for people on the other side of the wall. For the thousands of prisoners serving long and very long sentences, normality means opportunities to mature and develop as individuals within prison that have nothing to do with their eventual release many years into the future; and for a distressingly large number of prisoners, that means the opportunity to find meaning in a life that is certain to end in prison.

The principle of normality is based in domestic and international law^{17 18}, and is the foundation of regimes in prison systems that have much lower reconviction rates than ours.¹⁹ That should not come as a surprise. Without it, prison does nothing to teach people to make good choices, to take responsibility or to be accountable. It attempts to do things to people,

¹⁵ Champion, N., & Edgar, K. (2013). *Through the Gateway: How Computers Can Transform Rehabilitation*. Prison Reform Trust.

<http://www.prisonreformtrust.org.uk/Portals/0/Documents/Through%20the%20gateway.pdf>

¹⁶ Wainwright, L., Harriott, P., Saajedi, S., Conway, M., & Laryea-Adekimi, F. (2021). *It Doesn't Have To Be Like This*. Prison Reform Trust.

http://www.prisonreformtrust.org.uk/Portals/0/Documents/PPN/PPN_regimes_consultation_report.pdf

¹⁷ Raymond vs Honey [198] AC1

¹⁸ Council of Europe's recommendation on Prison Rules (2006) part 1, number 2: "Life in prison shall approximate as closely as possible the positive aspects of life in the community"[2]. Also, the United Nations Standard Minimum Rules for the Treatment of Prisoners, better known as the Nelson Mandela Rules, include an explicit statement that... the prison regime should seek to minimize any differences between prison life and life at liberty that tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings.

¹⁹ *About the Norwegian Correctional Service - Kriminalomsorgen.no*. (n.d.). Kriminalomsorgen. Retrieved 3 February 2022, from <https://www.kriminalomsorgen.no/information-in-english.265199.no.html>

often by coercion or threat, when all the evidence is that desistance from offending has to be achieved with a person, driven by their motivation and vision of a better future. Prisoners stress to us the importance of having the opportunity to make choices and to be given responsibility.²⁰

Successive ministers have accepted the maxim that we send people to prison “as punishment, not for punishment”, but the reality of life in prison has fallen a long way short of that ideal, and never more so than in the last 22 months. In the context of the pandemic, the principle of normality found expression in the stated policy of aiming to match restrictions in prisons with restrictions in the community. But that principle was quickly eroded, as overcrowding and a failure to respond to the particular vulnerabilities of people in prison and their environment meant that the restrictions imposed on prisoners far exceeded those endured in the community. That continues to be the case, with no prospect in sight of the gap being closed.

For the future, taking the current legal duty to normality seriously should inform every aspect of regime design. It is a simple test against which every aspect of design can be measured, as well as the thousands of day-to-day discretionary judgments that staff in prison must make. The first and most important of these is the extent to which it is legitimate to require prisoners to remain locked in their cell. The principle of normality requires that the government starts from the presumption that the statutory authority for imprisonment extends only to keeping prisoners within the secure perimeter of a prison. Further confinement within that perimeter must be justified either as a necessary implication of imprisonment or on the strength of specific legislative provision approved by parliament (such as internal disciplinary punishments under Prison Rules). In other words, if the government wants to keep a prisoner locked in their cell it must have a compelling reason to do so.

A deeply disturbing narrative has emerged that reductions in recorded violence and self-harm due to the enforced confinement of almost all prisoners for 23 hours or more every day may be a useful lesson for regime design. That narrative is only possible because of the appalling condition of many prisons before the pandemic began, with violence and self-harm at levels that were unthinkable before staff numbers were savagely cut from 2012 onwards. Prior to that disastrous decision, prisons operated on the basis that safety, security and every other attribute of a healthy prison were best served by prisoners being unlocked, not the reverse. Too little for prisoners to do, inadequate supervision, poor relationships, sentences that destroy hope, debt resulting from low pay, unreliable processes that generate legitimate grievance, all feed the potential for violence and self-harm that have characterised prisons for nearly a decade. But none of those issues are solved by locking prisoners up for longer. Exactly the reverse is true, and it is plainly unjust that prisoners should be expected to pay the price for government’s strategic failure to sustain a safe environment for people in its care.

So the answer to this question is that the guiding principles as described in the white paper are partial. What they miss out is at least as important as what they include, and is crucial to designing a way of life which provides hope and meaning for all prisoners rather than just those for whom release is a reasonably imminent prospect.

²⁰ Wainwright, L., Harriott, P., & Saajedi, S. (2019). *What do you need to make the best use of your time in prison?* Prison Reform Trust.
http://www.prisonreformtrust.org.uk/Portals/0/Documents/PPN/What_do_you_need_to_make_best_use_of_your_time_in_prisonlo.pdf

We recommend that the government now consults widely to inform a comprehensive rather than partial set of principles for future regime design, drawing both on its own evidence of what works and the wisdom of the prisoners whose lives are most affected.

Question 3: How should we develop outcomes frameworks to ensure our Future Regime Design ambition is realised?

The only way to know that a regime is tailored to the needs of an individual is to ask them. Fortunately, there are good tools already in use. In the Measuring the Quality of Prison Life (MQPL) survey, the prison service already has a world leading methodology to understand how prisoners experience custody. Set alongside the surveys that the inspectorate complete, there is rich data to assess both changes over time and whether the regime works differently for different groups or in different areas of the prison.

The white paper correctly implies that prisons must be much more outward facing to deliver its resettlement ambitions. Very often this will be family members, or voluntary sector organisations. But it can and should also be community organisations that can play a part in providing a welcoming and supportive context for reintegration. Sports clubs and religious communities might fall into that category. Understanding the views of those who seek to assist in resettlement but who all too often feel poorly treated or simply ignored by prisons is both a good measure of performance and a spur to the behavioural change that's needed in some places. Closeness to home or the community to which a person plans to go on release are known to be important, and are measured periodically.

We recommend developing a tool to obtain the views of families and others in the wider community who support prisoners to stand alongside measures of prisoner opinion.

We welcome what appears to be a loss of enthusiasm for reconviction data as a measure of outcomes. Measures for sustained employment and stable accommodation are less prone to the vagaries of police and prosecution practice. The complexities of measurement within the prison—from violence to self-harm to purposeful activity and time out of cell—are well understood and there is no perfect formula. But a new performance framework for prisons has been promised for several years, and it is disappointing that the white paper offers so little detail on where that work has got to. Our response to Chapter 6 deals with this issue.

Question 4: Do you agree with our long-term priorities for making prisons safer?

Question 5: Where can we go further?

It is good to see an explicit recognition of the importance of fairness in prisons, and an implied acceptance of the copious evidence that incentives have a greater impact on behaviour than either threats or punishment. Several prisoners have pointed out the disjunction between this policy and the white paper's proposal to withdraw wet shave razors from all prisoners because of the bad behaviour of a few. They see this as collective punishment. It is a good example of how a policy conceived with good intentions but without consulting prisoners has the potential to do more harm than good. Prisoners repeatedly demonstrate in their engagement with us, through our active citizens work and the policy network which we have established, that they want to contribute to safer, more purposeful prisons—but they must be given the opportunity to do so.

We understand the importance of assaults against staff attracting swift and certain consequences, and regret only that the white paper neglects to say the same about assaults on prisoners. It is striking how many of the prisoners who we hear from ask for tackling violence by staff to be afforded the same priority as violence by prisoners. They point to persistent failures by staff to wear, switch on or preserve the evidence from body-worn cameras, for example. Successive inspection reports have confirmed this pattern of behaviour. A much more robust response to this professional failure is overdue.

We recommend that all staff issued with body worn cameras should be required to have them switched on, and that failure to do so or to preserve video evidence should be treated as a serious disciplinary offence.

The white paper fails to deal with the glaring example of unfairness which undermines the prison service's performance in its approach to managing prisoner behaviour, which is the persistently disproportionate treatment of people from minority backgrounds. This is evident in the operation of the incentives scheme, in the use of force—including the deployment of PAVA spray—and in the use of the formal disciplinary system. It is also evident in the treatment of discrimination complaints. The published information available from inspectorate surveys typically shows that prisoners from minority backgrounds have a less favourable view of their experience in prison than others.

In short, there is an overwhelming body of evidence that prison is a less fair place if you are not white and British. The fact that the white paper is completely silent on this issue, and is accompanied by an equalities assessment that follows other recent examples in its unabashed complacency, suggests a lack of commitment to fairness.

We very much regret the impression of hypocrisy that the white paper has created as a result. Our experience is that the operational leadership in the prison service, locally and centrally, does care about the long-standing failure to eradicate discrimination in prisons, and is currently devoting resource in its Race Action Programme to make improvements. But that leadership has to be visible, to be seen to have ministerial support, and to be prepared to be held to account against the outcomes for prisoners rather than the publication of policies or outcomes for staff.

We recommend that both the Race Action Programme and performance against its outcomes for prisoners should be published.

We note and welcome the ambition for a single digital prisoner record, mentioned in this chapter of the white paper. Just as the recent introduction of a digital tool for recording use of force has the potential to transform both our understanding of how and why force is used, and to influence staff practice, so a single digital record could help transform the quality of supervision within prisons. But it is not a new ambition, and no timetable or cost is attached to its delivery. It is very troubling that both this and the essential link to health records are relegated to the "longer term". At a time when staff are under immense pressure, and £4bn is being found to build new prisons, the provision of such a basic tool for delivering the white paper's ambitions should be at the top of the priority list.

We recommend that a resourced timetable is published for delivery of an integrated digital prisoner record.

As noted above, after the calamitous consequences for safety of strategic decisions taken at the start of the last decade, the prison service now has a safety impact assessment procedure. We do not understand why it has not been applied in respect of the white paper, and believe that it should be.

Chapter Three: The Role of Prisons and Probation in Cutting Crime and Protecting the Public

Question 6: Where can we go further to give prisoners the skills to secure stable employment on release? Specifically, we would like to hear from charities, employers and training providers working with prison leavers or who would like to support our mission of getting more prisoners into jobs. We would also be interested to hear about how schemes that delay the disclosure of convictions during job applications, such as ‘Ban the Box’, could be enhanced and embedded with employers.

We welcome the new funding to support three aspects of the resettlement challenge. We hope that the government will quickly provide further detail on how that money is to be allocated.

Inevitably, the fact that new funding is available for three resettlement pathways begs the question of how ambitions in other areas are to be delivered. This is particularly so in relation to the white paper’s promises on mental health. We understand the importance of the needs analysis that the white paper says is to be published “this year”, without making entirely clear what more precisely that phrase means, and of agreeing a new specification for prisons thereafter. But it is already clear from multiple analyses of mental health in prisons and from the testimony we receive from prisoners that the current level of provision is inadequate.²¹ Very substantial additional resources will be needed to make a difference.

We recommend that the government give an undertaking to fund in full the revised mental health specification due in 2023.

The white paper disappointingly fails to give a timetable for the enforcement of a 28 day time limit for MH transfers from prisons to secure hospitals, and does not mention at all the need to abolish prison as a “place of safety” for people for whom courts can find no alternative under bail provisions. Both reforms are crucial to stop prisons having to care for people when prison is manifestly the wrong place for them to be.

We recommend that the government sets out a timetable for implementation of time limits for prisoner transfers to secure hospitals and for the abolition of prison as a “place of safety”.

In relation to education, we remain wholly confused about what the form of the new “Prison Education Service” is to be, and the white paper unfortunately does nothing to dispel that confusion. Two years on from a manifesto commitment, we would welcome a clear description of what is proposed and how it differs from the various models that have preceded it since responsibility for prison education transferred to the then Department for Education at the turn of the century.

Regardless of the organisational model, we urge the government to include in the new service’s remit a requirement to provide opportunities for learning that are not directly related to future employment. Repeatedly we hear from prisoners serving long sentences, and from those likely to be beyond retirement age on release, how important this is.

We recommend that the current restrictions on prisoners receiving student loans to undertake higher education are substantially relaxed.

²¹ Most recently—House of Commons Justice Committee. (2021). *Mental health in prison*. House of Commons. <https://committees.parliament.uk/publications/7455/documents/78054/default/>

In relation to work, we welcome the renewed emphasis on prisoners having the opportunity to undertake real work for a real salary. The white paper correctly identifies release on temporary licence (ROTL) as the most important tool for delivering this ambition. But it does not give any detail as to how the use of ROTL is to be reformed. Prisoners welcome both policy intentions, and are very frustrated by the current rules.

We recommend that Release on Temporary Licence (ROTL) should be a substantial element in the regime of all Category C prisons and available to all prisoners in them who pass an appropriate individual risk assessment. Long term prisoners should be allowed to undertake ROTL earlier in their sentence.

In relation to family engagement, we welcome the proposals set out in the white paper. However, we draw attention to the fact that no new resources are promised to deliver the ambitions the white paper sets out. A clear operational model for enhanced family support exists and has been rolled out at two London prisons with philanthropic support.

We recommend that the government publishes an analysis of the actual costs of delivering enhanced family support as the basis for the future commissioning of these services.

With resources clearly under intense pressure, we regret the fact that the white paper chooses to fund a new public sector provision of support for short sentence prisoners rather than supporting services which could avoid the need for damaging short sentences altogether. This is especially true for women, but many men also continue to be sent to prison when earlier intervention in the community could have prevented it.

In terms of further reforms to improve the prospect of prisoners obtaining secure long-term employment, prisoners invariably point to the disclosure requirements which either exclude them from significant sections of the workplace or in practice cause employers not to select them.

We recommend that the government undertake radical reform of the Rehabilitation of Offenders Act, consulting experts such as Unlock and NACRO.

The government has said it wants to lead by example, but has so far not published a progress report on its own commitment to recruit more prison leavers. It would increase its credibility by doing so.

We recommend that the government publish regular updates on its promise to employ 1,000 prison leavers by the end of 2023.

Question 7: What are the main issues and barriers that prison leavers face when they are making a claim for Universal Credit? What impact do they have on prison leavers?

We welcome the improvements made during the pandemic. In the medium term, we suggest that the aim should be to enable prisoners who are able to do so to make applications directly from within prison by providing secure personal electronic access.

Question 8: Should we take a legislative approach, as described above, for those at risk of reoffending who would otherwise be released on a Friday? If so, how should we structure this approach?

We are surprised that the white paper should seek advice on the question of whether the law needs to be changed to allow for prisoners to be released early to avoid the problems associated with Friday releases. The case for greater discretion appears to us to have been made by NACRO and other organisations, and the structure for delivering such a change operationally is straightforward provided only that ministers are prepared to trust Governors to take a decision in an individual case. A prisoner has recommended an even simpler approach, which would be to require courts to pass sentences which did not finish on a Friday or a weekend. We understand the government has rejected that apparently elegant solution and would urge it to reconsider.

An opportunity exists in the PCSC bill to take the necessary power to avoid Friday releases, and we recommend that the government amends the bill to that effect.

Question 9: Do you agree with the ‘guiding principles’ and priority outcomes and areas of focus we have identified for developing the Resettlement Passports?

Question 10: How can we implement the Resettlement Passport approach in a way which is most effective for prison leavers and practitioners?

Question 11: How should we encourage prisoners and prison leavers to comply with conditions and expectations in return for support provided, and what consequences should be in place if they do not?

We understand that the proposal for a resettlement passport is made with the best of intentions. However, we suggest that the government should start with an analysis of why an almost precisely similar ambition failed in the context of the Transforming Rehabilitation (TR) programme over which it presided for much of the previous decade. Our interpretation would be that there is little difficulty in describing the content of a plan shared between the prisoner and the various agencies responsible for helping them during their sentence and on release. The best existing models are based on desistance theory and involve the prisoner in setting their individual goals and assessing their progress towards meeting them. The use of such tools is common outside the statutory sector.

The difficulty comes in providing access to a common tool, with all the personal and potentially sensitive data it contains, across multiple agencies, both statutory and voluntary and with potentially conflicting priorities. This is both technically challenging, as the failure to deliver the necessary infrastructure under TR demonstrated, and complex because of the data sharing protocols necessary to support it. But if this is a flagship innovation, those challenges need to be overcome—the suggestion that the passport might be launched as a paper document strikes us as extraordinary and an admission of defeat.

However desirable the idea of a “resettlement passport” might be, the challenge lies in learning from past disappointments and setting out a realistic, costed plan to deliver it. We recommend that the government does just that.

So far as securing the co-operation of prisoners with a tool of this sort is concerned, our impression from sectors that use similar tools is that the extent to which people engage with them is in direct proportion to the help they actually facilitate. The passport needs to guarantee access to services without stigma, not represent yet another set of conditions—or, in prisoners’ eyes, reasons to be recalled. Prisoners describe probation to us as a “hostile”

service, and our own research has shown how the vastly increased incidence of recall has undermined relationships of trust between released prisoners and their supervising officers. By definition, prisoners have previously shown that they are unlikely to modify their behaviour in response to threats of future punishment. Just as the prison service's own evidence that positive reinforcement works better than punishment in changing behaviour within prison, so the resettlement journey post release is more likely to succeed through the provision of real help than the threat of punishment for "non-compliance". Probation staff have more than adequate powers already to respond to failures to comply with licence conditions, and the extent and frequency with which those powers are used can serve to undermine the trust which ought to underpin the relationship between supervisor and the person supervised.²² The radical change which is needed to increase compliance is an increase in the help provided, and which the white paper seeks to deliver.

Question 12. Do you agree with our long-term vision?

Question 13. Where can we go further in turning prisoners away from crime?

In 2013, the then Justice Secretary, Chris Grayling set out what was described by the ministry as "the most significant reforms to tackling reoffending and managing offenders in the community for a generation".²³ There is little to choose between his vision and what this white paper describes. The issue is not with the vision, but with its delivery, and the white paper's reluctance to analyse why so many similar previous policy ambitions have not come to fruition is a cause for concern.

The simple division of people into offenders and victims is immediately recognised as simplistic and misleading by people who work with the communities where crime does most harm. The process of delivering a vision for safer communities can be significantly improved if all those most affected are centrally involved at both a strategic and operational level. There are signs that the department is beginning to understand the value of this approach in relation to the involvement of prisoners and their families. That should stand alongside the closer involvement of victims of crime, to which the government is also quite properly committed.

We recommend a step change in the way the government involves prisoners and their families in both the development and delivery of its plans for reform.

²² For example:

Prison Reform Trust. (2018). *Broken Trust: The rising numbers of women recalled to prison*. <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Broken%20Trust.pdf>

Edgar, K., Harris, M., & Webster, R. (2020). *No life, no freedom, no future The experiences of prisoners recalled under the sentence of Imprisonment for Public Protection*. Prison Reform Trust. http://www.prisonreformtrust.org.uk/Portals/0/Documents/no%20freedom_final_web.pdf

²³ Ministry of Justice. (2013, January 9). *Transforming Rehabilitation - less crime, fewer victims, safer communities*. GOV.UK. <https://www.gov.uk/government/news/transforming-rehabilitation-less-crime-fewer-victims-safer-communities>

Chapter Four: A New Approach to Women's Prisons

Question 14: Do you agree with our long-term vision for women's prisons?

Question 15: What more could we do to support women in custody, with particular reference to meeting the needs of women prisoners with protected characteristics?

Despite repeated requests, the government has refused to provide any analysis of what it expects the composition of the future population of women in prison to be. Without that analysis, planning for the future prison estate for women and for the regimes it provides is bound to be speculative rather than properly informed. If the government delivers its Female Offenders Strategy and plans on that basis, this chapter should be concerned with the provision of custody for a much smaller number of women in prison, all serving sentences for serious crime for which custody is the only possible response. So it is impossible to agree that this chapter represents a good long term vision for women's prisons, despite many elements within it which are necessary and welcome. As with most of the white paper, it provides no information on either timing or resourcing for its various ambitions, and we regret that the funding which will undoubtedly be needed to deliver change in custody is not being directed instead to preventing the problem in the first place.

Recognising that for a minority of women, custody will remain the only appropriate sentence, we have begun work to understand the experience of women serving long sentences.²⁴ We look forward to helping women in that situation support the design of future regimes and provision for them.

We recommend that the government commits to a target for reducing the number of women in custody, as its Female Offender Strategy requires, and then publishes an analysis of the women it expects still to be in prison over the planning period the white paper sets out.

Chapter Five—Our People

Question 16. Are there specific areas of training you think we should be offering prison officers which we do not already?

Question 17. Do you agree that more bespoke recruitment training will enable prison officers to better support the needs of prisoners? What other cohorts should we be focusing on and how can we do this in a manner that advances equality of opportunity for offenders with protected characteristics?

We welcome the fact that the white paper devotes a chapter to the staff who make the most difference to what a prison is like. But the absence of any information about how the many ambitions set out in this chapter are to be resourced is deeply troubling. If the implication is that those ambitions can be delivered from within existing resources, the credibility not just of this chapter but of the whole white paper is irredeemably damaged.

²⁴ Vince, C., & Evison, E. (2021). *Invisible Women: Understanding women's experiences of long-term imprisonment*. Prison Reform Trust.
http://www.prisonreformtrust.org.uk/Portals/0/Documents/Building%20Futures/invisible_women.pdf

We regret that there is no detail to support the figure of 5,000 additional officers being required to staff the new accommodation that is planned. On the face of it, that figure implies a less rather than more generous staff to prisoner ratio than at present. The 5,000 figure also only relates to the increase in officer numbers required, and at current wastage rates, we estimate that the true number of officers that will have to be recruited by 2025 is more likely to be in the region of 15,000.

Given the state of the labour market not just nationally but in some areas where recruitment is already most difficult for prison officers, and the government's reluctance to accept the recommendations of the independent pay review body, the fact that the white paper only promises a "retention framework" for the future (rather than describing something that is already in place and working), will ring alarm bells for Governors across the country.

It is difficult to comment in any detail on the white paper's proposals when they are described in such general terms. It describes the successful and popular Unlocked Graduates programme as a scheme for future leaders. But our understanding is that that programme is actually designed to equip people to be good prison officers. It demonstrates both the potential to attract high quality candidates to that role, and the immense gulf between current training and in-service development for most prison officers and what a commitment to most of the professionalisation ambitions the white paper describes really requires. It also involves people with lived experience of imprisonment at every stage of its recruitment and training—a model which the prison service would do well to emulate.

We recommend that prisoners should play a part in the recruitment, training and appraisal of prison officers.

Similarly, the white paper invites comment on the scope of training for prison officers, but is silent on the structural flaw within public prisons which deprives prison officers of effective first line management and professional supervision. Prisoners very quickly understand which individuals have the values and attitudes necessary to be a good prison officer, but the prison service expects first line managers for prison officers to make the same judgement with unrealistically large spans of control and far too little time spent in the same workspace observing an officer's interactions with prisoners. Whilst the introduction of regular supervision sessions and reflective practice are welcome initiatives, neither can substitute for an effective first line management structure with realistic spans of control.

In short, while the white paper diagnoses some of the current problems with prison officer training and development, its description of the solutions is too general to inspire confidence and has no analysis of the substantial costs that a significant investment in training, supervision and development would incur.

In relation to leadership, on which no question is asked but on which so much depends, it is impossible not to reflect on the words of the then Prime Minister in 2016, who said:

*"We are going to give prison governors unprecedented operational and financial autonomy, and be trusted to get on and run their jail in the way they see fit. They'll be given a budget and total discretion over how to spend it."*²⁵

It is surprising that this white paper should be setting out a programme of future work rather than describing the outcome of a process that a Prime Minister supposedly set in train 5 years ago. Governors may be forgiven a degree of scepticism as they try to decipher what these latest thoughts really amount to.

²⁵ Prime Minister's Office, 10 Downing Street. (2016, February 8). *Prison reform: Prime Minister's speech*. GOV.UK. <https://www.gov.uk/government/speeches/prison-reform-prime-ministers-speech>

Chapter Six—Delivering Better Outcomes in Prisons

Question 18. Are there any areas where we should extend autonomy for all Governors to support the delivery of improved outcomes?

We welcome the white paper's basic premise that Governors should be trusted and supported to deliver good outcomes in prison. But this has to be set against the context both of the Prime Ministerial commitment quoted above, and a process since 2016 which has seen the trust placed in Governors continuously eroded. There are no fewer than 5 layers of management between Governors and the person in charge of the service in which they work, with a further two political "bosses" above that. In practice, under the current administration, Governors have also noticed a further layer of oversight and command through the detailed involvement of No.10 Downing Street in the management of prisons during the pandemic. The rhetoric and the reality have been very different.

Similarly, many in the prison service will remember a reasonably stable and intelligible performance management regime in the first decade of this century. It contained all of the features the white paper describes, including transparency; and some which it does not, including an attempt to measure value for money. Inevitably, it had flaws and encouraged some unhelpful behaviours, including the "gaming" of certain indicators, and its data collection in some instances was hampered by a lack of technology. Nevertheless, prisons of a similar type were ranked against each other, and an incremental process of adjustment allowed new indicators more geared to qualitative measures to be included. Several prisoners have told us that they support the idea of league tables—perhaps reflecting the fact that prisoners have little difficulty in ranking the various prisons to which they will be sent during a long sentence.

By the time the pandemic struck, however, performance management for prisons had become confused and unduly burdensome, with overlapping indicators reflecting the organisational confusion within the ministry. "Assurance" had become a self-sustaining industry, soaking up resources that would have been better spent in solving problems rather than endlessly re-diagnosing them. Governors breathed a sigh of relief when, under the pressures of the pandemic, performance management was effectively suspended.

So there is an opportunity for a reset, but the text in the white paper gives so little away that it is impossible to be confident that the familiar ambitions it describes are any closer to being delivered than they were before the pandemic. There needs to be transparency in the detailed development of the various indicators that are hinted at, as well as in their publication following adoption. The devil is entirely in the detail, and the white paper contains none.

While detail on performance management is scarce, it is entirely absent in relation to the familiar debate on autonomy for Governors. As already noted, Governors operate under a top-heavy management structure and the promise of increased autonomy held out in 2016 has not been delivered. The only people in the system who serve shorter periods in post are ministers, and the "reward" for good performance in a prison is typically either to be moved to a prison in crisis or to a job in headquarters. Various experiments in autonomy have come and gone without evaluation—6 "reform prisons", then a "10 prisons project", and now "accelerator prisons". The white paper tells us nothing about what has been learned. So Governors will await with some scepticism a detailed description of what "earned autonomy" in its latest incarnation will really mean.

The white paper also fails to answer the key question about the framework of instruction within which prisons operate. That question should be "what is never optional?", and the

answer to it remains confused, generating unfairness and complaint throughout the system. There is still no clear statement of the minimum standards to which all prisons should operate, and it is left to the inspectorate to call out the depressingly large number of prisons where the treatment of prisoners most obviously falls below any civilised threshold.

Prisoners see this very clearly. They want Governors to have more freedom and they want to be part of innovation in the way a prison community can operate. But they know that their sentence will be served in more than one establishment, so they also want consistency between prisons on the issues where consistency matters. That includes basic issues of decency and lawful treatment, but also the continuity of provision in areas which contribute to successful release and resettlement.

In the aftermath of a previous catastrophe in our prisons in 1990, Lord Woolf recommended that there should be a code of standards governing the way of life in prisons, and that a government should only be able to derogate from those standards in exceptional circumstances and with parliamentary approval²⁶. The pandemic has shown why that recommendation holds good and the dreadful consequences of failing to implement it. In reality, prisoners have had no effective protection against a government that has treated them badly. This is a moment to provide that protection, and certain areas demand priority attention.

Our letter to Jo Farrar in July last year suggested what those areas might be—the right to life; space; equivalence in health, education and social care; the right to family life; justice; the right to be heard and to be involved. It is disappointing, to put it mildly, that a white paper setting out a ten year vision should have nothing to say about the basic rights of the people most affected, and fail to describe a minimum civilised standard of treatment after nearly a decade during which much of the system has manifestly failed in that regard.

We recommend, as Lord Woolf did three decades ago, that the government should develop a code of standards governing the way of life in prisons, and should only be able to derogate from those standards in exceptional circumstances and with parliamentary approval.

The persistent lack of clarity about what is or is not acceptable is especially worrying when the white paper posits two significant innovations in how Governors are to be held to account. The first is a throwaway promise to “strengthen local accountability”. No detail is given, and there is no discussion either of existing systems for local accountability (such as Independent Monitoring Boards) or the limits that are currently placed on it (for example in Governors’ freedom to deal with local media). There is much to be said in favour of closer links between prisons and their local communities, and many Governors already devote much attention to this, but “accountability” can have very different meanings and the white paper does nothing to clarify its intentions here.

The second innovation is a ministerial performance board, supposedly with a remit to provide Governors with “a direct line to ministers”. That raises two immediate questions which the white paper does not address. The first is what that “direct line” means for the five layers of management between Governors and the prisons minister. Is it really intended that ministers should be the arbiter of a Governor’s performance and if so, on the basis of what evidence or advice? The second question is what the implication is in terms of personal ministerial accountability for operational failure. If this “direct line” exists, who carries the can when a prison is subject to an Urgent Notification from the Chief Inspector? A performance

²⁶ Woolf, H., & Tumim, S. (1991). *Prison disturbances, April 1990: report of an inquiry by the Right Hon. Lord Justice Woolf (Parts I and II) and His Honour Judge Stephen Tumin (Part II)*. HM Stationery Office.

board cannot solely be concerned with the pleasant business of conferring greater autonomy on the successful.

In summary, as with so much of the white paper, a broad statement of familiar ambition counts for little without the detail to support it.

We recommend that the ministry publish the detail of its proposals on both performance management and Governor autonomy.

Question 19. How can we further strengthen independent scrutiny of prisons in future?

We welcome the proposals for Arm's Length Bodies, and question only why the opportunity has not been taken to make these changes in current legislation, given that a formal consultation on the issue was concluded in September 2020.

What is not clear is what the promise to "consider how it (the system of accountability) can be further refined and reformed to drive better outcomes, improve accountability and transparency in the long term" actually means in terms of how that consideration is to be undertaken.

We recommend that the government says in terms what form the "comprehensive review of prison and detention scrutiny" is to take, why and when.

In our view, the prison inspectorate remains one of the few parts of our penal system that merits the international respect it commands. Inspection reports remain the most credible indicator of what a prison is really like and its independence and right of unimpeded access are both precious and essential. That independence would be strengthened if the appointment of the Chief Inspector was taken out of the hands of the Justice Secretary and if the Inspectorate was given control over the terms and conditions of its workforce.

Independent Monitoring Boards provide a more variable quality of independent scrutiny, which is probably inevitable for boards composed entirely of volunteers with a seriously under-resourced central unit responsible for their support and oversight. The national Chair requires both more resource and greater control over how they choose to recruit and deploy.

However, for all the Arm's Length Bodies, the most important answer to the question the white paper poses is that ministers, the department and the prison service must respond more promptly and more effectively to their findings and recommendations. Their credibility with prisoners, families and the wider public cannot survive being ignored or fobbed off, which is all too regularly what happens at present. Transparency counts for little if those whose shortcomings are exposed do not then behave in an accountable way.

We therefore recommend that there should be an annual published analysis of the government's responses to the reports and recommendations of all the Arm's Length Bodies.

Conclusion

We regret that there are so many criticisms to be made of this white paper, but we believe an honest and determined response to them can pave the way to genuine reform. The government has an unhappy history of promising criminal justice reform but failing to deliver—we would very much like to play our part in helping it to buck that trend.