

Prison Reform Trust response to the Equality and Human Rights Commission consultation on its Draft Strategic Plan for 2019-22

About the Prison Reform Trust

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
- promoting equality and human rights in the criminal justice system

www.prisonreformtrust.org.uk

Introduction

The Prison Reform Trust welcomes the opportunity to contribute to this consultation. Currently there are around 83,000 people in prisons in England and Wales. Standards of safety and decency in custody have deteriorated markedly in recent years and there is strong evidence to suggest that the UK authorities are failing in their requirements under both domestic and international human rights legislation. We welcome the Commission's recognition of concerns about the treatment of prisoners in its report "Is Britain Fairer? (2018)". As PRT's regular annual analysis of facts and figures about prisons and prisoners – the [Bromley Briefings 2018](#) – shows, there is no indication that the system as a whole is improving. Indeed, trends in safety for both prisoners and staff continue to show sharp deterioration quarter by quarter, and while parts of the government's response offer hope, other elements are likely to make matters worse rather than better. In particular, the decision to equip all prison officers with PAVA spray flies in the face of the government's own evidence from a pilot scheme in four prisons and is likely to have damaging consequences in both the short and long term.

Why the treatment of prisoners should be central to this plan

Prisoners are by definition amongst the people whose rights are most at risk – in part simply because of the coercive potential of the prison environment. But they are at risk also because, taken as a whole, they have typically experienced extreme disadvantage throughout their lives. 24% have been taken into care as a child, compared to 2% of the general population. 42% have been excluded from school, compared to less than 1% of the general population. 68 % are unemployed on entry to prison, compared to under 8% of the economically active population.

Prison exacerbates the impact of those histories, particularly in relation to protected characteristics of age, gender, race, religion and disability. People from black and ethnic minority communities are over-represented in the prison population, and suffer worse treatment within prison. Women, though a small proportion of the prison population as a whole, are sent to prison sooner and for less serious offending than men. Sentences for both young adults and older people have increased very significantly in length as a consequence of legislation. 36% of people in prison are estimated to have a physical or mental disability, compared to 19% of the general population, and, despite a policy intention to provide health care equivalent to the community, in practice often do not receive adequate support and disproportionately report feeling unsafe in the prison environment.

A good test of a framework of rights is the extent to which it protects those who attract least public sympathy. As matters stand, that test is being failed.

The most important priority aims under the strategic goals of the draft plan

Goal 1 – To advance the conditions for a more equal and rights-respecting Britain.

Unlike most modern European states, the UK does not have a statutory code of standards for the treatment of prisoners. The legislation governing prisons is out of date and partial in scope. Prisoners' rights are enforceable largely through internal complaints processes, with access to a nominally independent but non-statutory Ombudsman if internal processes are exhausted. Prisoners' access to the courts is now very heavily restricted by government policy limiting the availability of legal aid.

It follows that the way complaints processes operate is of even greater practical importance. In partnership with the Zahid Mubarek Trust, PRT published a report in 2017 [Tackling Discrimination in Prison: still not a fair response](#), which examined in detail the handling of complaints by prisoners about discriminatory treatment. It found multiple failings, including one particularly startling finding that only 1% of prisoner complaints about discrimination by an officer were upheld.

The Lammy review revisited and added to the evidence that people from black and minority ethnic communities suffer worse treatment in key aspects of their prison experience, including the extent to which they are subject to use of force, disciplinary proceedings and segregation. The government's response to David Lammy's review

has not as yet delivered on the “explain or reform” principle which he set out, and successive inspection reports confirm that prisoners from minority communities continue to experience worse treatment.

We welcome without reservation the Commission’s intention to conduct an inquiry into the experience of disabled people within the criminal justice system. Despite some advances in the extent to which people with learning disabilities and difficulties, and mental health problems, are identified in police stations and at court, we know that a disproportionate number of people facing those challenges do still end up in prison and suffer disproportionately once there. We also know that a rapidly ageing prison population is generating a demand for social care, prompted both by disability and infirmity as a consequence of old age, which prisons are not adequately meeting.

In summary, we would judge the first priority aim under this goal, and in particular the examination of whether people are able to seek redress, as the most important. We would support all of the activities listed, in particular the proposed inquiry into the experience of disabled people in the criminal justice system, and the work to challenge restrictions on access to legal aid for people both at risk of custody and in prison.

Goal 2 – To remove the barriers to opportunity, so that people’s life chances are transformed.

Older prisoners represent the fastest growing section of the prison population and must live in a prison estate that is physically inadequate. Overcrowding affects 25% of all prisoners, but for older prisoners with a disability, even an uncrowded environment is often lacking in basic decency. Government plans to replace prisons that are no longer fit for purpose with new prisons have not materialised, and there is a chronic backlog of basic maintenance work in prison, exacerbated by the collapse of contracted out services provided by Carillion during 2018. Priority Aim 4 should include a survey of how the built environment in prisons is affecting both older and disabled prisoners.

Priority aim 5 should include an examination of the failure of the government’s “Transforming Rehabilitation” reform of the probation service, and the consequent impact on prisoners’ access to housing, employment and social support following release. These are serious for the majority of prisoners on release, but especially so for women, whose needs, taken as a whole, are more complex. Women have also suffered disproportionately from the introduction of mandatory post release supervision, with a 131% increase in the number of women recalled to custody for failing to keep to the terms of a licence. In reality, as our recent report , [Broken Trust](#), explains, women are being recalled because of a failure to provide the access to services that they need, in particular a safe place to live.

Under priority aim 6, we would encourage the Commission to look at the operation of the Rehabilitation of Offenders Act, long overdue for revision and still having a disproportionate impact on the life chances of people with a conviction. While under priority aim 7, the government’s failure to make arrangements for prisoners to apply

for benefits prior to release means that prisoners are discharged with a £46 discharge grant and no other financial support despite all the obvious risks this poses in terms of immediate re-offending.

It will be obvious that it is difficult for us to choose one of these priority aims as more important than the others. We would simply urge the Commission to keep in mind the extra layer of disadvantage which a criminal conviction, and in particular a period in custody, adds to the experience of people who are struggling to access services and opportunity in any event.

Strategic Goal 3 – to protect the rights of people in the most vulnerable situations

The Commission has already noted the catastrophic decline in safety within prisons following a drastic reduction in staffing numbers after 2013. As noted earlier, there is no sign of the rate of decline abating, still less of any improvement. We have welcomed the recruitment of new staff to replace in part the losses since 2013, and the introduction of “keyworking”, with dedicated time for officers to build relationships with prisoners. But we are deeply concerned about the government’s decision to issue PAVA spray to all prison officers in the adult male public prison estate. Our detailed analysis of that decision is available at this link <http://www.prisonreformtrust.org.uk/Portals/0/Documents/PAVA%20PRT%20position%20paper.pdf>

We would strongly urge the Commission to use its powers to challenge the decision to roll out PAVA in this way, on the grounds both that it contravenes the human rights of the prisoners against whom it is used and on the grounds that it will disproportionately affect prisoners from black and minority ethnic backgrounds, whom we know are already disproportionately subject to use of force. Prisoners with mental health issues, against whom, it was wrongly used in the pilot prisons, despite guidance to the contrary, are similarly at risk.

Successive inspection reports, and the evidence of the PAVA pilots, show that the institutional and procedural safeguards governing use of force in prisons are not operating effectively, and that recommendations from oversight bodies, including but not limited to the Inspectorate of Prisons, Independent Monitoring Boards, and Prison and Probation Ombudsman, are not being actioned, even where they relate to serious harm up to and including death. In our judgement, the situation is extremely serious and deserves the commission’s urgent attention.

Priority aim 9 presents an equally compelling case for action, and we struggle to distinguish it from aim 8 in terms of importance. Our report [There's a reason we're in trouble](#) describes the prevalence of domestic abuse in the backgrounds of women in prison, who have very often been the victim of much more serious crime than they have committed. It also shows how the criminal justice system is failing those women, and how foreign national women are even more vulnerable as a consequence of their immigration status. It describes a failure to identify victims of modern slavery who should be protected from prosecution.

The Commission's approach to bringing about change

We support the approach set out in the draft plan, and in particular welcome the Commission's intention to use its compliance and enforcement powers more readily. Prison reform was made a priority by the then Prime Minister in a major speech in February 2016. A White Paper was published and a Prisons Bill introduced. All three have long since disappeared from the scene and the actual conditions of imprisonment have deteriorated sharply. We estimate that there have been several hundred individual written or oral commitments to policy changes of one kind or another about prisons, but almost invariably without a commitment to a timetable for implementation and without resources attached.

It follows that the Commission's role in influencing decision makers and setting out the arguments for change needs to be accompanied by a willingness to hold the relevant authorities to account for a day to day operation that is not delivering the protections which the Human Rights Act and the Equality Act are supposed to guarantee. Whilst we understand the intense competition for the Commission's attention and finite resources, we would argue that prisoners' vulnerability has rarely been more extreme, given the breakdown in the systems that are designed to protect them. The oft-repeated adage that a society can be judged by its treatment of those it incarcerates is apt, and we are falling terribly short when measured against it.

Prison Reform Trust
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