



Prison Reform Trust response to the Justice Committee inquiry on mental health – May 2021

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.

www.prisonreformtrust.org.uk

Introduction

1. Our response is founded on the important principle established in prison policy and practice that people in prison ought to receive the same standard of healthcare in prison that they would otherwise receive in the community.
2. It is based on the evidence we receive from prisoners through our advice and information service, which provides information about prison rules, prison service instructions, life in prison and gives advice to people about how they can make requests for things they need or challenge unfair treatment. Health and social care are among the most common categories of enquiry that we receive. In 2020 we received 268 enquiries relating to mental health problems and access to mental health support services in prison.
3. Our response also draws from evidence submitted to our CAPPTIVE project.¹ This was established to hear from people in prison, and the people who care about them, about their own experience of the pandemic, and to ensure that prisoners' voices are heard in the discussions amongst wider society about what our lives will look like afterwards.

The scale of mental health issues within prisons

4. There is currently insufficient data to identify how many people are remanded in custody pending a psychiatric report; how many are assessed as having a mental health problem; and how many are so unwell that they require transferring out of

¹ See Prison Reform Trust website at <http://www.prisonreformtrust.org.uk/PressPolicy/News/Coronavirus/CAPPTIVE>

custody for treatment. That lack of data in itself represents a serious obstacle to delivering equivalence of care. If the prison service does not know the scale and nature of the challenge it faces, it plainly cannot plan effectively to meet it. However, there is no doubt that the prevalence of mental health need in prisons is very high—the latest Annual Report by HM Chief Inspector of Prisons revealed that seven in 10 women and half of men surveyed in 2019–20 reported having mental health problems.²

The appropriateness of prison for those with mental health needs.

5. We welcome the roll-out of liaison and diversion services across England, which achieved 100% coverage in March 2020.³ These services identify and, where appropriate, divert people with mental health problems, learning disabilities and other support needs away from the criminal justice system and into treatment and care. By diverting those who would otherwise be incarcerated into treatment and care in the community, these services should also ease the pressure on prison based mental health provision and enable them to deliver a more effective service to people in prison. A total of 87,450 people used liaison and diversion services in 2018–19.⁴
6. The introduction of the Community Sentence Treatment Requirement (CSTR) protocol in a small number of areas in England is welcome. The protocol brings together three effective—but rarely used—treatment requirements as part of a community sentence—Mental Health Treatment Requirements (MHTR), Drug Rehabilitation Requirements (DRR) and Alcohol Treatment Requirements (ATR). Health and justice services assess, and where appropriate divert people from short custodial sentences, and *should* improve access to treatment. However, as the Centre for Justice Innovation revealed in its recent briefing on CSTRs:

“The latest available statistics show that alcohol treatment, drug treatment and mental health treatment requirements were part of only 3%, 4% and 0.5% of orders respectively. There are a number of factors driving the low levels of use of CSTRs, perhaps most notably the lack of treatment provision.”⁵
7. We would like to see the roll out of CSTRs accelerated, with national coverage for the MHTR in particular, both for primary and secondary care.
8. We are pleased the Government agrees with the recommendation of the Independent Review of the Mental Health Act (MHA) that prison should never be used as a place of safety for individuals who meet the criteria for detention under the MHA.⁶
9. However, we strongly reject the delays inherent in the suggested course of action to undertake further work ahead of implementation. Prisons are neither safe, nor a

² HM Chief Inspector of Prisons (2020) Annual report 2019–20, HM Stationery Office

³ NHS England website, available at <https://www.england.nhs.uk/commissioning/health-just/liaison-and-diversion/about/>

⁴ Table 4.1e, Ministry of Justice (2020) Women and the Criminal Justice System 2019, London: Ministry of Justice

⁵ [Lugton, D. \(2021\) Delivering a Smarter Approach: Community Sentence Treatment Requirements \(CSTRs\), Centre for Justice Innovation](#)

⁶ [Department of Health and Social Care \(2021\) Reforming the Mental Health Act, DHSC](#)

place of safety—as the high levels of self-harm and self-inflicted deaths testify.⁷ The use of prison as a place of safety should be abolished forthwith, and arrangements made to enable the timely transfer of people from court to a healthcare setting, as required.

10. The immediate removal of prison as a place of safety should be considered alongside the removal of prison for a person's own protection (Bail Act 1976), as recommended by the APPG on Women in the Penal System.⁸
11. How often prison is used as a place of safety or for a person's own protection is unclear—data are not routinely collected locally or at the national level. Early findings (as yet unpublished) suggest that numbers are relatively small; ensuring adequate provision is, therefore, not an onerous or unreasonable request, especially given the high risk of harm that prison can inflict on people in need of specialist healthcare and support.

Transfers

12. Transfer from prison under the Mental Health Act remains problematic. Despite best efforts, reviews continue to report lengthy delays for people who are acutely ill. For this reason, we propose that a timeframe should be included in the MHA within which the statutory time limit for secure transfers is implemented.
13. Transfers for women and children (<18 years of age) can be even more problematic. Women and children represent minority groups within the prison estate and, as such, are often held far from home. These long distances are frequently replicated when secure or specialist beds are sought, making it hard for family ties to be maintained. Specialist provision for women and children should be made available to avoid additional delays, and to reduce/eliminate being placed long distances from home.
14. A single competent assessment should be undertaken and, if transfer under the MHA is deemed necessary, the individual should be found the nearest available bed, at an appropriate level of security. Many prisons have within their mental health staff teams adequately qualified and experienced forensic psychiatrists⁹ who could provide a competent assessment that would demonstrate the need for transfer and at what level of security. Another option might be to have a locally commissioned rota of psychiatrists to provide rapid response as needed.
15. The transfer rule (the first 14 day 'clock') should commence from the moment a formal referral for assessment for transfer is made. It is reported that some patients have considerable waits for assessment.
16. Unlike Part II of the MHA, there is no description of urgency in Part III or in the Code of Practice. This can lead to people in prison being segregated and placed on constant watch while awaiting transfer. Being held in such conditions will be, for most people, exacerbating factors in any deterioration of their mental wellbeing. This is an

⁷ Ministry of Justice (2021) Safety in custody quarterly: update to December 2020, Ministry of Justice

⁸ [APPG on Women in the Penal System \(2020\) Prison for their own protection: The case for repeal, Howard League for Penal Reform](#)

⁹ Their expertise may not, however, include learning disabilities and/or autism, and additional input may therefore be necessary.

area where reform of the Act itself should support parity of esteem between people in the community and people in the criminal justice system.

17. For individuals in a community setting, s.140 MHA allows clinical commissioning groups (CCGs) to commission emergency beds when a person is deemed to require an admission under S2/S3 MHA, but where no formal admission bed space is identified. An equivalent process should be available for NHS England, enabling them to commission emergency beds for patients in the criminal justice system in need of assessment and/or treatment, to prevent their being imprisoned due to a lack of mental health resources.
18. We are disappointed to note and reject the reasons given in the government's response to the independent review for the delay in extending the statutory right to an Independent Mental Health Advocate for patients awaiting transfer from a prison or an immigration detention centre. Extending the statutory right is complementary to, rather than dependent on the development of the new role for managing transfers from prisons and immigration removal centres. We strongly urge that the government progresses this with the same urgency as it is for other patients.

Access to support for mental health needs

19. Access to mental health support is a regular concern for users of our Advice and Information service and is the most common health care related enquiry that we receive—barring the past year's understandable spike in enquiries regarding Covid-19.
20. We hear from people with mental health problems such as depression and anxiety who feel they are not able to access the support they need—for example, not being able to see a mental health professional easily enough, or a lack of access to talking therapies.
21. Given the prevalence of mental health needs in prison, it is hardly surprising that stretched services are forced to prioritise support for those with severe and complex needs—for example psychotic illnesses like schizophrenia—leaving those with more common disorders such as depression and anxiety with reduced access to mental health services.
22. A lack of support at an early stage increases the chance that conditions will deteriorate, with people forced to wait until their condition is sufficiently 'serious' to be regarded a priority, placing further pressure on services. Sadly, we often hear from family members who have helplessly watched a rapid deterioration in the mental wellbeing of a loved one since their arrival in prison. Without sufficient support, people are more likely to turn to other coping mechanisms such as self-harm or self-medicate using recreational and unprescribed drugs.
23. The solution requires action on a number of fronts. It is clear that services are in need of an increase in resources to provide adequate support for the high numbers of people in prison with mental health needs. It is also clear that overcrowded prisons running poor regimes are likely to exacerbate mental ill health. Excessively long sentences; the overuse of indeterminate sentences; and a very sharp increase in the use of recall powers—that can result in a person spending years longer in prison without having committed a further crime—all destroy the protective factors that mitigate the harm that imprisonment invariably causes. The weight of imprisonment

has increased very substantially in the last two decades and the Police, Crime, Sentencing and Crime Bill currently before parliament will increase it further.

24. As we have already highlighted in our response, we should also be questioning the continued use of prison in any circumstances for people who have severe mental health needs or who become severely unwell while in prison.

The effect of physical prison environment on mental health

25. We support the conclusion of the Health and Social Care Committee in its inquiry into Prison Health¹⁰, which stated:

“The evidence to our inquiry paints a dismal picture of conditions inside English prisons. This picture too frequently is one of overcrowded, unsanitary and outdated establishments. These establishments, due to staff shortages, severely restrict, and too often compromise, the safety and wellbeing of prisoners and staff alike and fail to provide an enabling environment consistent with the rehabilitative purpose of prisons.”

26. Overcrowding is the principal cause of this damning indictment. It underlies the worst conditions in prisons that are still in use, and prevents the decommissioning of prisons which are unfit for purpose. The government has plans to build new prisons but no plan to reduce overcrowding. The previous ambition to build “new for old” has been abandoned.¹¹

The effect of Covid on prisoner mental health

27. The severe restrictions introduced at the start of the pandemic have averted the worst predictions of loss of life from the virus. But as the Chief Inspector of Prisons has warned,¹² and our own research conducted throughout the pandemic has shown, this has come at an extraordinary cost.¹³

28. Left with little to occupy their time but their own thoughts, prisoners’ emotional and mental health have suffered. The full scale of the impact will take time to become fully apparent, and longer still to remedy.

29. One prisoner, responding to our CAPPTIVE project explained:

“The thing that is really beginning to show more is prisoners are struggling with mental health as they are locked up for mass amounts of time. Myself personally, I have worked hard on my mental health but due to all the lockdown it now feels like all the hard work is beginning to come undone.”

30. In its guidance on Covid, the World Health Organization wrote¹⁴:

¹⁰ [Health and Social Care Committee \(2018\) Prison health, House of Commons](#)

¹¹ [Justice Committee \(2019\) Oral evidence: The work of the Prison Service, response to Q24, House of Commons](#)

¹² [HM Chief Inspector of Prisons \(2020\) Aggregate report on short scrutiny visits, HMIP](#)

¹³ [Prison Reform Trust \(2020\) Project CAPPTIVE, Briefing #3— Briefing #3The prison service’s response, precautions, routine health care, disabilities, well-being, mental health, self-harm, and what helped, PRT](#)

¹⁴ [World Health Organization: Regional Office for Europe \(2020\) Preparedness, prevention and control of Covid-19 in prisons and other places of detention, WHO](#)

“The COVID-19 outbreak must not be used as a justification for undermining adherence to all fundamental safeguards incorporated in the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) including, but not limited to, the requirement that restrictions must never amount to torture or other cruel, inhuman or degrading treatment or punishment; the prohibition of prolonged solitary confinement (i.e. in excess of 15 consecutive days)”.

31. Despite this, many prisoners still remain confined to their cells all day—after more than a year spent in conditions which amount to solitary confinement. Family and legal visits have been suspended; classrooms, gyms, libraries, and workshops closed; offending behaviour programmes and sentence planning have been placed on hold. Whilst some of these restrictions are now beginning to ease, prisons remain a long way behind the freedoms that many of us in the community are now able to enjoy.

32. One prisoner, responding to our CAPPTIVE project told us:

“The lockdown period here is up to 29 hours between exercise times. The morale with prisoners is very low at the moment. Many are suffering with mental health issues and are not receiving any help for this.”

33. Even at their best, prisons are damaging environments for people with mental health needs. Under such a restrictive regime, the negative impact on mental health has been amplified.

34. As one prisoner wrote:

“Depression, anxiety, discomfort, boredom and comfort eating...I feel I’m in the passenger seat of an out of control car and we are about to hit a brick wall.”

35. From outside a closed cell door, a prison officer can learn very little about how a person is responding to the lockdown. Officers are not trained to provide mental health care.

36. As one prisoner, responding to our CAPPTIVE project told us:

“Originally, the prison staff were very supportive and helpful, prisoners with mental health problems (like myself) and those subject to ‘isolation’ were approached by an officer who would ask how you were coping through the lockdown and offering distraction packs. This was happening at least once weekly. However, for the past six weeks I have not had any conversation with any officer regarding how I’m coping.”

37. Another prisoner told us:

“As would be expected, my bipolar personality disorder suffered as a consequence...starting with huge anxiety then mood shifts downwards. Having a clear backup plan that has been managed well for years meant nothing as it became clear no real mental health support, meds review, psychiatrist, was on offer for many weeks. Eventually I fought to get what I needed but eight weeks later than was safe or ideal.”

38. Well before Covid-19, there was a serious disparity between the levels of need for mental health support and provision in prisons. There was substantial evidence that support was reduced during a time when it was most needed.

In some prisons, mental health in-reach teams, which would normally provide support to people with diagnosed needs, were unable to maintain the level of care during the lockdown. As HM Inspectorate of Prisons revealed at HMP Littlehey “staff were stretched, particularly within the mental health team, which was running with half the usual number of staff due to staff vacancies and staff shielding.”¹⁵

39. Mental health teams urgently need to assess the prevalence of mental health need face-to-face with every prison resident. It is certain that the need for expert mental health support will exceed what is currently available. The Government must fund and procure the necessary additional support, to address the impact that the restrictive measures to safeguard lives have had on the mental health and wellbeing of those in prison during the pandemic.

¹⁵ [HM Chief Inspector of Prisons \(2020\) Report on short scrutiny visits to prisons holding prisoners convicted of sexual offences, HMIP](#)