Prison Reform Trust response to Strengthening probation, building confidence – September 2018

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

We are grateful for the opportunity to comment on the proposals outlined in "Strengthening probation, building confidence" (Cm 9613). Insofar as it is possible, we have done so in the form requested, but there are several fundamental issues of policy on which the paper does not seek a response. As a result, we are concerned that the full implications of the disastrous original design of the "Transforming Rehabilitation" experiment have either not been understood, or are being ignored to avoid further political embarrassment. It is critical that the government should face up squarely to the mistaken policy assumptions in which all political parties acquiesced during the passage of the Offender Rehabilitation Act 2014.

Compulsory post release supervision for short custodial sentences

The first of those assumptions was that compulsory supervision was likely to reduce reoffending rates amongst short term prisoners. There was never evidence for that assumption. The fact that reconviction rates for longer sentence prisoners are lower than for short termers does not support a conclusion that compulsory supervision is the defining difference. It is noticeable that the consultation paper contains no analysis of the impact of compulsory supervision on conviction rates specifically for the under 12 month prisoner cohort (paragraph 35), and no reason is given for that omission. It is hard to see why that data is not available. What we do know, of course, is that many thousands of prisoners have been recalled to prison as a consequence of the Act, compounding the damage done to their chances of successful rehabilitation by the original prison sentence and, anecdotally, providing a new route for the smuggling of contraband into local prisons.

The “pilots” for Transforming Rehabilitation required voluntary engagement. In the event, the full programme was rolled out before those pilots were complete. Had it not been, there would have been evidence to show that the element of compulsion is not necessary to rehabilitation—which matches up to all that we know about desistance generally, and to the experience of the many voluntary sector providers that the government still wants to involve.

So the blithe acceptance on page 5 of the consultation paper that extending post release supervision to short sentenced prisoners was a “sound principle” is simply wrong. Extending help and support to that group makes sense –the threat of retribution for failure unsurprisingly has no effect on people who have consistently failed to respond to that tactic in the past. The government should abolish compulsory supervision for short sentence prisoners, and require providers to provide assistance which prisoners recognise as worth having.

Reducing reoffending as a contractual measure

The second unquestioned assumption in the paper is that providers can be incentivised by a measure of reducing reoffending. The difficulty here, which has never been resolved, is that there is no satisfactory measure of reoffending. With considerable effort and expense, the system generates a lagging indicator of reconviction. There may be no better proxy measure for reoffending, but as a contractual mechanism, it has been inadequate from the start and the complexity of the payment mechanism in the contracts eventually signed under TR reflected that.

The paper goes a small way towards a more sensible system of outcome measures that would properly drive the behaviours the government seeks, but the final proposals must go further, with targets for the proportion of people in stable accommodation and employment several months after release from prison. Those measures should be identical and shared between prison and probation services at the very least, and it should be an objective for the cabinet committee on reducing reoffending to have them adopted by other government departments and local authorities as well.

Mandatory monthly face to face meetings

The third unquestioned assumption in the paper is that it is always the relationship between the offender and the Responsible Officer (RO) that drives rehabilitation. Many offenders would not see it that way, fearful of telling their RO about problems they have encountered lest it lead to their recall or to more stringent reporting requirements. The desistance literature supports the importance of key relationships, but also that those relationships cannot be imposed. It may very often be that the key relationship is not with the RO, but with a family member, or a worker from the voluntary sector. The decision—apparently already taken—to have a mandatory minimum of monthly face to face reporting to an RO is not only not based on any evidence of its effectiveness, but flies in the face of the evidence that does exist about the importance of the first three months of support (and the matching decline in its importance thereafter).

It is extraordinary in a document that is so undecided on so many things, that the one issue not open to consultation is one where the judgement of practitioners is most likely to be instructive. A mandatory face to face meeting once a month will often be a waste of time and money for both the RO and the offender, and will certainly undermine the credibility of the relationship. Offenders in work will have to make their excuses to their employer more often, while those out of work will have to find the

money for journeys they see no point in making. ROs will feel their professional judgement undermined and mistrusted. This decision guarantees a “tick in the box” mentality and should be reversed.

A presumption against custody

Finally, the paper helpfully repeats the evidence which ministers have finally accepted that community penalties work better than short custodial sentences. But the actual proposals for change all cling to the heroic optimism that somehow the practical obstacles created by a grossly overburdened prison system can be overcome with more money, more guidance from the centre, and a senior MoJ leader in the 10 regions.

The aspect of TR which has failed most predictably and most completely has been the through the gate provision for short term prisoners. By far the most cost effective solution is to shrink that cohort to a small fraction of its current size. A paper on the future of probation that relies wholly on the hope that courts will be inspired with confidence in a newly reorganised probation service to achieve that impact is simply ignoring the lessons of history—and doomed therefore to repeat it. Parliament should legislate to amend the Offender Rehabilitation Act by removing compulsory supervision for short custodial sentences and at the same time introduce a statutory presumption against their use in the first place.

Consultation questions

1. **What steps could we take to improve the continuity of supervision throughout an offender's sentence?**

   The description at paragraph 21 of the current multiple assessments offenders undergo proves conclusively how misguided the policy design of TR was from the start. It is disheartening that the paper only promises to "explore" a more sensible approach, and then moves quickly to announce a decision to mandate monthly face to face contact in the absence of any evidence that this is either necessary or likely to be effective. Our covering note sets out why his is a fundamental error and should be firmly within rather than outside the scope of this consultation exercise. Where the current situation cries out for a reduction in unnecessary and centrally prescribed practice (multiple assessments), the response is to announce an increase.

   By far the most significant aid to continuity would be an IT system that works as originally promised in the TR competition. The failure to deliver that solution is not explained or analysed, and the solution proposed is a universal use of OASys and existing IT systems. The paper appears to have given up on the prospect of more appropriate and agile case management ICT altogether.

2. **a. What frequency of contact between offenders and offender managers is most effective to promote purposeful engagement?**

   See our introductory notes. This is a matter for professional discretion—a "minimum standard" requirement is a fundamental mistake and flies in the face of the evidence of what works.

b. How should this vary during a period of supervision, and in which circumstances are alternatives to face-to-face meetings appropriate?

This is a matter for professional discretion. There is long standing evidence to suggest that the first three months of supervision are critical in many cases and that the requirement for regular contact tails off thereafter. But national prescription on this is misguided and unnecessary, and will do harm.

The need or otherwise for face to face meetings is similarly a matter for professional judgement, and likely to alter significantly from client to client, with age, background and personal circumstances. There are countless anecdotes of people being required to attend meetings where a phone call or other form of electronic communication would have been adequate, and avoided disrupting work or domestic arrangements to no good purpose.

c. Do you have evidence to support your views?

The evidence of many years of probation practice is that breach is most likely to occur in the first three months of an order or licence.

3. How can we promote unpaid work schemes which both make reparation to communities and equip offenders with employment-related skills and experience?

Not all offenders need to develop work related skills. Many have jobs or are not available for work for a variety of legitimate reasons. There is no need to specify nationally what proportion of schemes need to be both reparative and training related.

4. What changes should we make to post-sentence supervision arrangements to make them more proportionate and improve rehabilitative outcomes?

Compulsory supervision for short prison sentences should be abolished. If, however, some kind of sliding scale is to be introduced, that must relate to sentence length, not to need. Longer supervision based on need will simply discourage people from disclosing need in the first place.

In relation specifically to women, two-thirds of sentenced women entering prison serve sentences of six months or less, and many of these have been sentenced to less than 3 months, overwhelmingly for minor non-violent offences. In 2017 nearly 1,800 women were sentenced to less than 1 month in prison.

Since the introduction of the Offender Rehabilitation Act 2014 there has been a year on year increase in the disproportionate number of women recalled to prison. The 2016 Inspectorate report on HMP Bronzefield noted that nearly 10% of the women were there on recall and many did not understand their licence conditions. Ministry of Justice data shows that most of the women recalled to custody have been recalled for ‘failing to keep in touch’. The reasons for this can be many and various as the women concerned are likely to have multiple and complex needs which are not being identified or addressed by the supervision they are receiving. Qualitative research currently being conducted by PRT with women who have been recalled to custody suggests that women need much more practical and holistic support post-release, especially with housing, access to benefits and employment, drug rehabilitation and

mental health services. It also suggests that women are unlikely to disclose or discuss the problems or challenges in their lives in case these result in punitive responses (such as recall). We look forward to sharing the findings and recommendations of this research in the near future, but note that these are likely to echo and reinforce what the government already knows about the nature and extent of unmet needs of women in the criminal justice system. Repealing the mandatory supervision requirement and offering instead opportunities for voluntary support would be the single most effective way of improving outcomes for women as it would remove the risk of recall to prison, remove the disproportionately punitive quality of supervision currently provided, and encourage relationships of trust to develop that will enable women to address the factors that may lead to their offending.

The solutions lie in improved investment in sustainable women's community services. Compliance with section 10 Offender Rehabilitation Act 2014, which recognises women's distinct needs, should include a commitment to specific outcome measures for women in relation to:

- Accommodation—see our updated briefing Home Truths: housing for women in the criminal justice system;
- Women's primary care responsibilities for children—see our recent report What About me? the impact on children when mothers are involved in the criminal justice system
- Women's histories of victimisation, trauma and abuse—see our report There's a reason we're in trouble—domestic abuse as a driver to women's offending.
- Women's unmet mental health and substance abuse needs—see Prison: the facts
- The specific needs of Black, Asian and Minority Ethnic Women who are over-represented in prison—see our report Counted Out—Foreign national women in prison, who may need interpreting and translation offences

The Ministry of Justice needs to give effect to its own research, and the findings of its inspectorates that clearly demonstrate the value and effectiveness of gender-specific support services policy commitments:

- Service Specification for Rehabilitation Services- In Custody. NOMS, 2016

  This specification stated that female offenders are a minority group with complex which need to be addressed, specifically in relation to domestic violence, sexual violence and abuse.

- Female Offender Strategy. MOJ, 2018

  This identifies the need to develop a more gender-informed probation service, with stronger links to women's services and ultimately improve through-the-gate services.

- 'A thematic inspection of the provision and quality of services in the community for women who offend'. An inspection by HM Inspectorate of Probation, September 2016.

  This found that since TR funding dedicated to women's community services has virtually disappeared, despite evidence that they can be pivotal in turning women away from crime.

- HMP Styal and CRC Through The Gate Pilot 2018

The report looked at 20 women's experience of the revolving door, some of whom had been in and out of prison 11 times in 12 months. It identified lack of accommodation as a significant barrier in women's chances of resettling back into the community. It also found that the Community Behaviour Orders imposed on women set unachievable expectations and were a signification feature in the speed with which women returned to prison.

- 'Enforcement and Recall' A thematic inspection of HM Inspectorate of Probation. February 2018.

  This report confirmed that neither CRC or NPS services had sufficient access to appropriate women-only services and a lack of clear pathways for women. 'Quality and Impact inspection: The effectiveness of probation work by the London Community Rehabilitation Company. An inspection by HM Inspectorate of Probation, March 2018. This reiterated that the London CRC did not have effective strategies in place for women. It also recognised that although the CRC claimed to provide women-only reporting this was not in fact the case.

5. What further steps could we take to improve the effectiveness of pre-sentence advice and ensure it contains information on probation providers' services?

This is about time and the ready availability of information. The paper's proposals seem to assume that information is to hand and that the problem is about matching need to an appropriate recommendation. Our view is that the much more serious problem is the lack of time to prepare reports, and the expectation that most will be done on the day. A good report will require access to a wide range of information from different agencies, and potentially consultation with the authors of that information as well as those who might provide an appropriate intervention/ support in order to avoid custody. Those issues are compounded if the defendant has learning disabilities or difficulties, or autism. The overriding emphasis on speed must be foregone in the interests both of justice and a more efficient use of scarce resource in the system as a whole.

Specifically in relation to women, there should be a presumption in favour of a Pre-Sentence-Report if a woman is at any risk at all of a custodial sentence (i.e. it is an imprisonable offence). We are aware of too many cases where women, especially first-time offenders, have been given a custodial sentence when she has not expected this, and where on the information available it seems unwarranted. Members of the judiciary often point out to us that in an adversarial system they are reliant on the relevant information being presented to them to enable them to take full account of an individual's circumstances and mitigating factors. Because women are a minority of those coming before the courts, sentencers should be encouraged to refer to the relevant provisions in the Equal Treatment Bench Book which explains that treating women and men equally does not mean treating them the same. There is online training in the UN Bangkok Rules which should be a compulsory requirement for all those working in the criminal justice system. The materials on maternal imprisonment developed by Dr Shona Minson, with support and input from PRT, should be widely disseminated and a mandatory part of probation officer training. The information for judges is available only to them through the Judicial College and the Magistrates Association. The NPS commitment to roll out this training is welcome and should be monitored and evaluated as part of the implementation of the Female Offender Strategy.

6. What steps could we take to improve engagement between courts and CRCs?

See previous answer on pre-sentence reports.

7. How else might we strengthen confidence in community sentences?

There is a real danger in assuming a general lack of confidence in the absence of any systematic measurement. It can become self-fulfilling and damaging in itself. The hard evidence is that community sentences already work well, and better than prison. In the past, attempts to boost confidence through "toughening up" community options have backfired, displacing cheaper and equally effective lower order disposals rather than custody. For men, the key challenge is to resource the range of options already available rather than to generate more.

On women, there must be a clear understanding of the particularly damaging impacts of imprisonment on women (and their families) and the futility in most cases of short custodial sentences. It is not justifiable to impose a custodial sentence because there are no adequate community sentencing options. It is of course incumbent on government to ensure the availability of community programmes of supervision and support but the lack of them is not a reason to imprison. Key to this is sustainable funding. Magistrates and judges express frustration that short term funding of key services and programmes often means the loss of support programmes and interventions just at the point where longitudinal evidence of effectiveness could be produced.

It has been historically difficult to evidence the effectiveness of women's centres due to the small numbers going through the system. However, there is a growing body of both qualitative and quantitative evidence, some of it in our 'Why focus on women' briefing—see page 7. This briefing is currently being updated.

The women-specific Community Sentence Treatment Requirement in Northampton needs to be funded in a sustainable way. Outcome data for the first 12 months is very promising, due in no small part to the involvement of the women's centre, the Good Loaf, and strength of the local multi-agency steering group, led by the office of the PCC for Northamptonshire. For further information and data, contact mignon.french@clearsight.biz, Mignon French Programme Manager Community Sentence Treatment Requirements (CSTR) on behalf of: MOJ, DH, PHE and NHS England.

8. a. How can we ensure that the particular needs and vulnerabilities of different cohorts of offenders (e.g. female, BAME, young adult offenders) are better met by probation?

For women, probation supervision and support outcome measures for women need to include:

- increased unpaid work opportunities as part of Rehabilitation Activity Requirements;
- recognition of and provision for women's childcare responsibilities;
- training in trauma-informed practice for probation managers working with women;
- the availability of one-stop-shop women's centres; and

- the use of an ‘outcome star’ approach rather than reoffending measure.

High numbers of offenders have difficulties with communication and cognition, which affects their ability to participate effectively in justice interventions and to understand the implications of non-compliance. While some will have a clinical diagnosis, for example of learning disability and/or autism, and be known to services, most will not. It is estimated that only 21% of adults with learning disabilities are known to services (Emerson et al., 2012). A more significant group, in terms of numbers, are those who have poor cognition and communication skills but who are unlikely to be diagnosed as learning disabled because—having an IQ of 70 and above—they are considered too able. Research suggests that around 25% of the prison population has an IQ of between 70-80 and, while most are unlikely to be diagnosed as learning disabled, will experience many of the same ‘disabilities’ as those known to services. Taken together, the proportion of offenders with a learning disability (whether known to services or not) and an IQ of between 70-80 is around a third.

This has implications for identification of need, staff training, and how interventions are developed and delivered in order to meet the needs of individual offenders and reduce reoffending.

The following actions should help ensure the needs of this cohort are better met by probation:

- Effective screening of all offenders to inform the PSR. This may be undertaken by liaison and diversion services and should include information on whether the offender is known to community learning disability and/or autism services. If information provided by liaison and diversion services is missing or incomplete, screening and/or investigations should be undertaken by the NPS Court Duty Officer and the PSR delayed. Screening tools do exist; a recent example is described in the HMPPS Analytical Summary 2018: The development of a screen to identify individuals who may need support with their learning, by Helen Wakeling.
- Contractual arrangements with local community learning disability and autism services and the development of a Criminal Justice Learning Disability Champions Group. The contractual arrangement and Champions Group should include support for both the individual offender and members of probation staff providing supervision and interventions. See, for example, work undertaken by Derbyshire NPS/North Offender Management Unit: Danielle.Kenny@justice.gov.uk.
- Ensure the delivery of each of the 13 community sentence requirements meets the needs of offenders with learning disabilities and/or autism, and those with reduced cognition and communication skills (IQ 70-80).
- All information and correspondence used by Probation providers should be written in accessible language, such as Easy Read.
- All probation staff who deal directly with offenders, including those who write PSRs, should undertake awareness training for learning disability, autism, effective communication and accessible information.

b. Do you have evidence to support your proposals?

In relation to women, the government's own strategy on women offenders sets out in detail the issues we have described and makes multiple recommendations, though without a timetable or resources to deliver.

12. Do you agree that changes to the structure and leadership of probation areas are sufficient to achieve integration across all providers of probation services?

No. Acknowledging that there is no perfect solution, it is nevertheless true that TR adopted a geographic model that was perverse. So a rationalisation into 10 coterminous regions represents a modest improvement. But the paper's argumentation for a different approach in Wales only demonstrates the absence of a coherent reason for the decision to separate out the NPS in the first place. There has never been an operational justification for that divorce, and probation will remain an unnecessarily fractured service under these proposals.

That fracture in turn underlies the proposal of a senior HMPPS "leader" in each region. It is unclear whether this is a new freestanding post, or is to be a role tacked on to the existing responsibilities of someone doing another job. There are individuals still working in HMPPS and in the CRCs who worked as either Directors of Offender Management (DOMs) or Regional Offender managers (ROMs) during previous attempts to achieve coordination of the sort the paper describes. A sober review of their success or otherwise in doing so would repay dividends, including the resources that were devoted to giving them the depth of analysis and representational capacity to be taken seriously by other local players.

Given the substantial overhead that already exists through the contract management and audit functions created by TR, a much clearer description of the role and resourcing of these senior leader roles is essential. On the face of it, they represent a potentially substantial new overhead (and on past evidence, likely to become more substantial over time).

13. How can probation providers effectively secure access to the range of rehabilitation services they require for offenders, and how can key local partners contribute to achieving this?

See previous answer in relation to "senior leaders".

On the issue of the rate card, this was a device to provide what was expected to be a guaranteed income stream to CRC providers. It plainly needs to be laid to rest.

16. How can we ensure that arrangements for commissioning rehabilitation and resettlement services in Wales involve key partners, complement existing arrangements and reflect providers' skills and capabilities?

As noted in an earlier answer, there is nothing about the Welsh context that particularly justifies the abolition of the CRC . The reason for doing so, which the paper spells out—better integration within the probation operation and with external partners—applies with equal force in England. The only surprise is that community payback and the delivery of accredited programmes should be excluded, given the mixed experience of contracting out those services in London earlier this century. In

short, what is proposed for Wales is likely to make it easier to deliver the ambition this question describes—the imponderable is why only Wales should be given that head start.

17. What should our key measures of success be for probation providers, and how can we effectively encourage the right focus on those outcomes and on the quality of services?

See introduction note on the necessity of acknowledging that there is no measure of re-offending and the unsuitability of re-conviction as a contractual measure.

See previous answer on measures for accommodation and employment. It is a mistake to confine performance measures to outcomes that are "solely within the gift of probation to tackle". None of the significant outcomes we want from probation fit that description. Which is precisely why the service should have performance measures that depend utterly on its ability to form relationships with key partners both within and outside the criminal justice world. Shared targets with prisons on accommodation and employment outcomes 3 months after release would be a straightforward and overdue start.

Paragraph 120 of the paper demonstrates the continuing confusion about oversight which has dogged TR from its inception. A policy which appeared to be driven by a desire to reduce central prescription and control quite radically, was implemented in a way which actually increased both, with substantial resource devoted to doing so. The clarity which the Inspectorate of probation can now bring to its expectations of performance should presage a dismantling of the machinery within the ministry's contract management and audit functions which duplicates it. That appears to be the intention of paragraph 121, but it is preceded by a description of a new MoJ team created to check up on providers' responses to inspection findings. the department cannot have it both ways, and will continue to deprive the frontline of vital resources for as long as it attempts to do so.