

Written evidence submitted by 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
- promote equality and human rights in the criminal justice system.

www.prisonreformtrust.org.uk

Introduction

We welcome the opportunity to comment on this important and shocking report. The committee's inquiry is timely for two reasons.

The first is that the government is about to embark on a repetition of all the policy errors which have led to the dismal failure described by the NAO – a prison estate falling far below the standards of a civilised nation, providing poor value for money and impeding rather than facilitating the delivery of the prison service's purpose and objectives.

The second of course is that the shortcomings of the estate have been utterly exposed by the Covid-19 pandemic. Overcrowded and dilapidated buildings have vastly complicated the task of keeping the people who live and work in prisons safe, and required the prison service to resort to an inhumane regime for a prolonged period already—which may persist for another 12 months. Whilst the worst-case scenario for deaths from the pandemic has been avoided, the cost to the mental health of prisoners is certain to be very high.

A long term plan

The NAO's report echoes the conclusions of the Justice Committee in its 2019 report on prison governance¹. That committee drew attention to the absence of a "long-term, multi-year strategy", and bemoaned what it termed "policy by press notice", "without a clear vision for the future of the prison system." However, we believe the Justice Committee describes more accurately than the NAO report where responsibility for that failure really lies. The NAO necessarily restricts itself to issues which are within the control of Her Majesty's Prison and Probation Service (HMPPS). But the story its report tells, of plans for reconfiguration and new builds ceaselessly blown off course by the pressure of a rising prison population, is a political narrative.

¹ <https://publications.parliament.uk/pa/cm201919/cmselect/cmjust/191/19102.htm>

Pressure on prison places is not an accident of nature, nor a result of trends in crime. Since 2003, the growth in the prison population can be directly traced to government-driven measures to increase the length of prison sentences for more serious offending and to respond to a much higher proportion of such offending with indeterminate sentences, where release is subject to a parole board consideration of future risk. In 2017 we asked Dr Savas Hadjipavlou, of Justice Episteme, to run a scenario on the sophisticated forecasting model he has created². This uses what we know about the typical life histories of people who end up in the criminal justice system, together with what we know about how that system operates, to assess the impact of demographic or other changes on key criminal justice outcomes—including the likely size of the prison population. The scenario removed the statutory changes that have inflated sentencing since 2003, and suggests that we would in 2017 have had a prison population of 70,000 had those changes not been made—in other words, a population that would have eliminated the need for overcrowding.

The proportion of the prison population that results from short sentences has diminished sharply in recent years. That is not to say that those sentences could not be reduced further, but HMPPS has only the most limited capacity to influence the size of the prison population through what it does on community penalties or even on post release supervision. Without a reduction in sentence lengths for more serious crime, the prison service is destined to have to deal with a growing population, comprising largely people serving longer sentences, for the foreseeable future. The government's plans to increase the proportion of such sentences that are served in custody rather than under licence following release, will exacerbate that situation, regardless of the impact of additional police officers (although it is of course highly likely that numbers will be significantly inflated because of that as well).

The government's response is to promise a further 10,000 prison places. The NAO report lays bare the irony that as recently as 2016—in far more propitious economic circumstances than we now face—a government made an identical promise, which it has utterly failed to deliver. But even if the new promise is delivered, it is unapologetically designed only to meet new demand. There is no quantified objective to reduce overcrowding or to take out of service prisons which are obviously no longer fit for purpose.

In other words, the current “plan” designs in, on a permanent basis, the feature of our prison system which guarantees its failure. Lord Woolf—the author of still the most authoritative plan for our prisons from the last 30 years—described overcrowding as “the cancer eating at the ability of our prisons to deliver”. It is a scandal that the government's plan for the prison estate does not deal with that cancer. As civil servants, HMPPS leaders will do their best with the tools they are given. But no Governor of an overcrowded Victorian prison, given the choice, would choose more staff rather than fewer prisoners if asked what would make the biggest difference to the service they can provide. It is noticeable that, when one of these prisons hits the news because the Chief Inspector has lost patience and issued an “Urgent Notification”, the immediate action that is taken is to move significant numbers of prisoners out of the gaol. Good management and modest investment generally then pull those prisons back to a more respectable condition, but in time, as attention drifts, the prison is overcrowded once more, and the cycle of crisis and recovery starts over. The 2017 of the Bromley Briefings Prison Factfile begins with an historical overview of the pattern of policy commitments to reduce overcrowding

² [Hadjipavlou, S. \(2017\) The impact of the Criminal Justice Act 2003 on the prison population. London: Justice Episteme](#)

which successive prison building initiatives have failed to deliver. At the time, a former Prison Service Director of Finance, Julian Le Vay, estimated that the capital cost of those failures since 1980 amounted to £3.7bn, with additional annual running costs of £1.5bn.³

Ministers are fond of saying that they will always provide enough spaces for those sent to prison by the courts. But the truth is that they do not, and no ministers have done in living memory. A service running permanently at 20–25% above its capacity is permanently failing to deliver a custodial experience that meets all the purposes of sentencing set out in statute. The first and most basic planning assumption for prisons has to be the provision of enough uncrowded space to deliver those purposes consistently. Experience over more than three decades has shown that that cannot be done by an approach that relies only on increasing supply. Controlling demand—and in particular demand created by sentence inflation—is essential if the chronic failure described in the NAO’s report is not to be repeated.

Ministers have also made much of the potential for new prisons to deliver a more rehabilitative experience. The history of prison building over more than two centuries is littered with claims that a particular prison design will change the future of the people it holds. Those ambitions have more often met with disappointment than success, but it is fair to acknowledge that a good deal of thought has gone into the design of the next generation of prisons. However, in the autumn of last year, ministers specifically abandoned the ambition to build “new for old”, replacing the least humane and least efficient prisons in the estate. So regardless of the success or otherwise of new designs, the majority of prisoners will continue to be held in a poorly designed, poorly located, poorly maintained estate.

The absence of a coherent plan is also evident in the confusion that surrounds the future of the prison estate for women and children.

In relation to women, unlike men, the opportunity exists to reduce the size of the estate significantly by bearing down on a chronic overuse of short-term custody. The majority of women serve short sentences for non-violent offences, but two years after its publication, the government’s female offender strategy has achieved very little. Community alternatives to prison, shown to be effective for women, have been starved of investment. Women continue to serve their sentences largely in prisons designed for men and in locations far from home. So far as we are aware, there is no plan for the female estate.

The same is true for children. The government’s policy appears to be to move over an unspecified period towards a new network of secure schools, but the first of these is to be opened in buildings designed as a secure training centre rather than as a school. Key questions, including the optimum size, design and location for secure schools, remain to be answered, and it is not even clear if these schools are to replace all current provision in Young Offender Institutions in due course.

The impact of Covid-19

The Committee is right to invite comment specifically on the implications of the last three months for the future prison estate.

³ [Prison Reform Trust \(2017\) Bromley Briefings Prison Factfile: Autumn 2017, London: Prison Reform Trust](#)

It is obvious to all that the condition of the estate, and the fact that it is grossly overcrowded, has made the management of the pandemic in prisons very much harder than it would have been in any case. Amongst the impacts have been:

- The need for around a third of the prison population to share cells, with no reliable means of ensuring that a person with the virus is not sharing with a person who does not have it. The best the system has managed is to isolate prisoners who are symptomatic, but we have come across many cases in which even those procedures have been flawed—for example with a new cell mate being forced upon a prisoner coming to the end of a quarantine period, but the first prisoner then being moved to another cell in any case before a further quarantine period is complete.
- The impossibility of keeping many cells, especially overcrowded cells in all but the newest prisons, clean. This represents a risk for transmission of diseases of all types, especially with an uncovered toilet in those cells. But with almost all prisoners locked in cells for over 23 hours a day, the conditions are manifestly inhumane.
- Inadequate ICT provision in cell has meant that simple techniques to maintain communication, education and resettlement preparation have all been impossible. Ministers have made much of the temporary provision of handsets that can be handed through the inundation point of cells in prisons without in-cell telephony, but this was the very least that could be expected given the restriction on access to telephones on the landing.
- Progress on using ICT has been painfully slow. Most prisoners still have no access to video calls in England and Wales. In Northern Ireland, provision was made for all prisoners across all prisons over two months ago. In-cell phones are not able to receive calls, in practice preventing safe communication with resettlement workers and others denied access to the prison during the pandemic.
- The compartmentalisation strategy at the heart of the prison service response is much harder to implement in some prisons than others. We hear repeated stories of where the implementation of that strategy is necessarily imperfect because, in an overcrowded estate, very few cells can be left unused. Overflows from one unit to another are inevitable.
- The Chief Inspector's short scrutiny reports have described the difficulty of social distancing on narrow landings.
- In the worst cases, outdated sanitation arrangements have led to the return of "slopping out".
- Prisoners are routinely not able to spend time in the open air, to which they have a statutory entitlement, because outdoor spaces are too limited, and the number of prisoners needing to access them is larger than the number for which the prison was designed.
- Significant and unplanned expenditure has been incurred on a special payments scheme for prison officers, on temporary emergency cells, and on the wholly unnecessary purchase of electronic tags to support a failed early release scheme for prisoners who would have been released untagged within two months in any event.

The net effect of the measures necessary to contain the virus in prisons has been to subject all prisoners to a regime that falls catastrophically below a humane standard and which will leave a legacy of severe mental health harm. There is no timetable for

when that situation will end and no easing equivalent to what the wider community is now seeing. There is understandable operational anxiety about the extent to which prisoner compliance, based on an acceptance that exceptional measures were legitimate in the original circumstances of the crisis, will continue.

The significance of the NAO's report in this context is that there is nothing in the government's planning, short or long term, which will prepare the prison service better for a future outbreak, whether of Covid-19 or a similar pandemic. Indeed, in the immediate future, the government's policies on policing and sentencing are likely to leave the prison service in an even worse position should infection rates rise. The unlikely promise of 10,000 new prison places many years in the future is irrelevant at best. At worst it represents a diversion from the real policy challenge of controlling demand on a finite and, as this report shows, crumbling prison resource.

June 2020