

## Written evidence from the Prison Reform Trust (COV0179)

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](http://www.prisonreformtrust.org.uk)

### Introduction

Our evidence focuses on the particular experience of people held in prison during the Covid-19 period, and the implications for their human rights and that of their loved ones. We have chosen to focus our evidence on three particular articles of the European Convention on Human Rights:

- Article 2—Right to life;
- Article 3—Prohibition of torture; and
- Article 8—Right to respect for private and family life.

All three articles are affected by the fundamental problems that already afflicted the prison system before Covid-19, as evidenced by a succession of recent independent reports.<sup>1</sup> In particular, overcrowding in a physically dilapidated estate poses permanent threats to human rights, which have been exacerbated by decisions taken and not taken during the pandemic .

The government received—but chose not to follow—advice to reduce the prison population significantly in response to the emerging threat of Covid-19, with estimates by Public Health England that there could be up to 3,500 deaths in prison. This decision has meant that in its attempts to uphold its obligation to Article 2, and its ability to meet its obligations to Articles 3 and 8 have been severely compromised.

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<sup>1</sup> See:

Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (2020) Report to the United Kingdom Government on the visit to the United Kingdom carried out by the CPT from 13 to 23 May 2019, Strasbourg: CPT;

National Audit Office (2020) Improving the prison estate, London: NAO; and

House of Commons Justice Committee (2019) Prison Population 2022: planning for the future, London: HMSO

As independent inspection reports conducted during the pandemic, and evidence provided directly to us from prisoners and their families show, the government's mitigating actions look to have been insufficient in respect of Articles 3 and 8.<sup>2</sup>

As a result, the prison service finds itself little better placed now than it first was in March should infection rates rise once more. The resumption in court activity and exhausted prisoner forbearance—as indicated by HM Inspectorate of Prisons—are both likely to contribute to a situation where successful management of a second wave will be at least as difficult and probably more so than first wave.

A substantial reduction in prisoner numbers therefore remains essential to meeting the government's obligations under all three articles.

## **1. What steps need to be taken to ensure that measures taken by the Government to address the COVID-19 pandemic are human rights compliant?**

### **External scrutiny**

Following the introduction of lockdown in March, calls and emails to our advice service revealed that not all prisons were consistently delivering even the most basic elements of the lockdown regime. This was perhaps not surprising, but the temporary withdrawal of regular inspections by HM Inspectorate of Prisons (HMIP), and of Independent Monitoring Board (IMB) members, whilst understandable, meant that there was no impartial way to identify whether such failure was widespread or systematic.

Following its visit to the UK before the pandemic, the Council of Europe's Committee for the Prevention of Torture found "the prison system remained in deep crisis" and that the government's measures "remain insufficient to address the root causes" of it.<sup>3</sup> As the subsequent Short Scrutiny Visit reports published by HMIP reveal, the Covid-19 pandemic has made those conditions worse.

The swift action of both HMIP and IMBs in developing new ways to resume independent external scrutiny has been vital, providing the necessary information and intelligence to ensure that the government's measures during the pandemic can be assessed to some extent against their human rights obligations. The introduction of a confidential hotline by the Independent Monitoring Board to receive calls from prisons, and the subsequent publication of findings by its National Chair, Dame Anne Owers has been a particularly welcome development, with potential to improve the credibility of IMB scrutiny permanently.<sup>4</sup>

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<sup>2</sup> See HM Inspectorate of Prisons Short Scrutiny Visit reports, available at <https://www.justiceinspectors.gov.uk/hmiprison/inspections?s&prison-inspection-type=short-scrutiny-visits>; and Prison Reform Trust (2020) CAPPTIVE: How prisons are responding to Covid-19—Families and communications, London: PRT

<sup>3</sup> Council of Europe website, 30 April 2020, 'Council of Europe anti-torture Committee publishes report on the United Kingdom', available at <https://www.coe.int/en/web/cpt-/council-of-europe-anti-torture-committee-publishes-report-on-the-united-kingd-2>

<sup>4</sup> Independent Monitoring Boards website, 27 April 2020, 'Independent monitors launch new hotline for prisoners to report concerns during pandemic', available at <https://www.imb.org.uk/independent-monitors-launch-new-hotline-for-prisoners-to-report-concerns-during-pandemic/>; and

Independent Monitoring Boards (2020) Letter from Dame Anne Owers to Chair, House of

## Government transparency

An epidemic requires a delicate balance between restrictions on liberty that help to prevent transmission and minimising the harm that those restrictions cause. Achieving that balance is categorically different in prisons, as both the risks and the unintended collateral damage are shaped by the total institution within which they apply.

The initial handling of the Covid-19 response had widespread backing from prisoners and their families. They understood that the restrictions, including loss of visits, were designed to prevent transmission of Covid-19. During this time, communication played an important role in responding to prisoners and their families.

At their best, some prisons put considerable thought into being transparent, addressing prisoners' anxieties, and explaining the reasons for imposing restrictions. However, this was not universal, and it was not matched by central government.

The first report from our newly created CAPPTIVE project, explores the experience of prisoners and their families during the pandemic and the effectiveness of communication to them. It revealed a gap between what was promised by the government to make up for the loss of social visits and what has so far delivered on the ground.<sup>5</sup>

It is not that the system has done nothing, or failed to recognise the importance of family ties, but our evidence shows that the system's response has been slower and less ambitious than the public presentation of it would imply. As a result, the harm caused to families and prisoners is likely to be deeper and more long-lasting.

Nowhere was this more evident than the government's approach to the emergency use of temporary release during the pandemic, the introduction of which evolved from resistance, to secrecy and confusion, and finally produced only disappointment, wasted effort and frustration.

The government's announcement that it was introducing an End of Custody Temporary Release scheme to consider the release of up to 4,000 people from prison, along with the investment of almost £4 million in electronic tagging equipment, should have been cause for cautious optimism.<sup>6</sup> However, the hopes amongst prisoners and their families that they would be able to safely isolate in their own homes, quickly shifted from impatience to dismay. To date, just 177 people have been released under ECTR, with a further 50 under compassionate release arrangements—including pregnant women.<sup>7</sup>

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Commons Justice Committee—22 July 2020, available at <https://committees.parliament.uk/publications/1811/documents/17713/default/>

<sup>5</sup> Prison Reform Trust (2020) CAPPTIVE: How prisons are responding to Covid-19—Families and communications, London: PRT

<sup>6</sup> Ministry of Justice, 'Measures announced to protect NHS from coronavirus risk in prisons', 4 April 2020, available at <https://www.gov.uk/government/news/measures-announced-to-protect-nhs-from-coronavirus-risk-in-prisons>

<sup>7</sup> Table 3, Ministry of Justice (2020) HM Prison and Probation Service COVID-19 statistics: 10 July 2020, London: Ministry of Justice

The promise of the early release of up to 4,000 prisoners seemed to demonstrate a genuine commitment to preserve life. Failing to deliver it suggested the opposite. Families described the uncertainty and anxiety caused by the sluggish action following the announcement. Families also told our CAPPTIVE team how rumours (which may or may not have been accurate) filled the gap when communication was neglected.

The government appears never to have had any serious intention of releasing significant numbers of prisoners. The detail of the scheme provides an extraordinarily long list of reasons for not releasing people who will be out in a maximum of two months in any event—and a bureaucratic process guaranteed to delay the release of the minority who may still qualify.

In summary, the government concealed the initial advice it received about the extent of the threat to life the pandemic posed in prisons. Under external pressure, it devised a modest early release scheme, but hedged around with so many exclusions and such bureaucratic process that it was certain never to produce the potential reduction in prison numbers which the government claimed was possible. The government's alternative, of installing temporary cells where there happened to be space in some prisons, fell very far short of the potential benefit of early release both in terms of overall numbers and in terms of timing. It has been an approach that has condemned many of the most vulnerable prisons to continue to operate with gross overcrowding, employing procedures to deliver the Article 2 obligation on right to life at the avoidable expense of obligations under Articles 3 and 8.

As matters stand, there is no timetable for when the current restrictions in prison will end and no easing equivalent to what the wider community is now seeing. The need to relieve pressure on prisons, through the use of temporary and compassionate release remains just as urgent now as it did when Public Health England provided its initial advice.

## **2. What will the impact of specific measures taken by Government to address the COVID-19 pandemic be on human rights in the UK?**

Despite a flurry of policy announcements throughout the pandemic, there remains a sizeable gulf between the government's stated policies, and the reality for many of the people living in prison.

### **Conditions—Article 2 and 3**

The government's refusal to release a more substantial number of people from prison has resulted in all prisoners being subjected to a regime that falls far below a humane standard—and which may persist for a further 12 months.

The government's actions have ensured that people remain held in overcrowded and unhygienic conditions, during a pandemic. The impossibility of keeping many cells clean represents a risk for transmission of diseases of all types, especially with an uncovered toilet in many of those cells.

Prison places which should have been decommissioned long before the outbreak of the pandemic continue to be used out of desperate necessity. For a time, this left prisons with outdated sanitation arrangements, such as HMP Coldingley, resorting to the routine use of buckets in cells—a return to “slopping out”.

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 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 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.

As one person in contact with our Advice and Information service summarised:

“Prisoners are forbidden to mix due to social distancing, but are also being forced to two up [share a cell] during this crisis by the same people who have forbidden them to mix in the first place.”

Despite the additional resources that have been given to prisons to cope with the crisis, every report from HM Inspectorate of Prisons has painted a clear, bleak picture of prisons which are devoid of purposeful activity, and where almost all prisoners are locked in cells for over 23 hours a day.

Furthermore, 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.

Contact to our Advice and Information service reveals that the current fragile containment of the virus in prisons is coming at a heavy price. Multiple contacts have told us of days with no more than half an hour out of cell a day—and sometimes only two or three times a week.

Worryingly, even that opportunity sometimes has to be weighed up against the risks of going into an environment where social distancing and other safety precautions are not being observed or enforced. The inspection of three local prisons<sup>8</sup> mentioned that staff continued to gather in wing offices, and this letter to our advice service describes something worse:

“Officers aren’t keeping 2m distance. A prisoner just asked an officer not to come close and an officer said, ‘throw him in his pad’. If he did what the prison officers are doing and breached social contact, outside in the community, he would be arrested. Why shouldn’t officers do the same.”

This situation is inhumane and untenable. It is also unlawful. In 2015 the Supreme Court ruled that safeguards and external scrutiny are required under the prison rules where prisoners were removed from association, because of the risk of irreversible psychiatric harm that can be caused by solitary confinement. Yet since the lockdown began, the routine isolation of people in prison has not been subjected to these safeguards and there is a real risk that we will reap the consequences over the years to come in terms of the mental health of those affected.

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<sup>8</sup> HM Inspectorate of Prisons (2020) Report on short scrutiny visits to local prisons by HM Chief Inspector of Prisons, London: HMIP

The combined efforts of the people who live and work in our prisons have so far contained outbreaks of Covid-19. But the price has been almost four months of unregulated solitary confinement for two-thirds of prisoners. That can't continue, especially as restrictions outside prisons begin to be eased. Ministers must set a new and more humane minimum standard below which the treatment of a fellow human being cannot fall.

### **Roll out of PAVA incapacitant spray: Article 3**

On 18 May, the government made the unexpected decision to roll out PAVA spray to all staff trained in its use in prisons on the adult male closed estate.

The decision, which was only made public in a letter to stakeholders some time after it had been implemented, goes against a previous commitment made in April to pause the roll out of the controversial weapon in prisons for three months as a consequence of the Covid-19 pandemic.<sup>9</sup>

The Prison Reform Trust wrote to the prisons minister Lucy Frazer on 13 June, to highlight our concerns regarding the disproportionate impact of the roll out on the 27% of prisoners from Black, Asian and Minority Ethnic (BAME) backgrounds, and the potential risk of contributing to the spread of Covid-19 in prisons.

Evidence over many years has consistently shown that people in prison from BAME backgrounds are more likely to have force used against them than white prisoners.

The government's own equality assessment of the roll out found that the weapon "has been drawn or used more against BAME prisoners. The evidence from wider use of force would suggest that this trend will continue as roll out progresses."

Despite these concerns, the external advice and scrutiny panel, set up by the government to support the implementation of the recommendations of David Lammy's review of racial disproportionality in the criminal justice system, was not even given notice of, still less consulted about, the decision to roll out the spray.

The use of the incapacitant spray, which causes people affected to cough, is also untested in the context of the Covid-19 pandemic, and risks contributing to the spread of the disease in prisons. The government has so far rejected requests to disclose the medical advice taken to inform the rollout decision during a pandemic.

### **Family contact: Article 8**

Progress on the introduction of ICT in prisons had been painfully slow prior to the pandemic. Lord Farmer's two reviews on maintaining family ties for those held in prison—the first published in 2017—recommended that video calling should be made available for those unable to visit in person.<sup>10</sup>

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<sup>9</sup> See Prison Reform Trust, 'Prison Reform Trust calls on government to reverse PAVA spray roll out', 13 June 2020, available at <http://www.prisonreformtrust.org.uk/PressPolicy/News/vw/1/ItemID/871>

<sup>10</sup> Farmer, M. (2017) *The Importance of Strengthening Prisoners' Family Ties to Prevent Reoffending and Reduce Intergenerational Crime*, London: Ministry of Justice

It is clear that the current situation has made the implementation of that recommendation even more vital. As the committee's own recent report found, the right to family life of children whose mothers are in prison risks being breached, and there will be many fathers in similar circumstances.<sup>11</sup>

This month, we published the first of a series of briefings that we are producing as part of our Covid-19 CAPPTIVE project.<sup>12</sup> The briefing explores the experience of prisoners and their families during the pandemic. It reveals a gap between what was promised by the government to make up for the loss of social visits and what has so far been delivered on the ground. It also highlights the dearth of information and communication technology, such as video calls, in prison compared to the community, and a lack of ambition to close this digital divide.

The long-overdue announcement that video calls would begin to be introduced in prisons could not have come soon enough. So far, nearly four months into lockdown, video calls have been rolled out to just 27 of the 120 establishments on the prison estate in England and Wales.<sup>13</sup>

In Northern Ireland, albeit with a significantly smaller prison estate, provision was made for all prisoners across all prisons three months ago.<sup>14</sup>

The government's recently published analysis—as well as our own experience—has shown that the availability of in-cell telephony has made a significant difference in the extent to which prisoners can get external advice and support.<sup>15</sup> Perhaps unsurprisingly, given the near 24-hour lockdown, those with access to a phone in their cell have accounted for the overwhelming majority of our advice calls during the pandemic.

However, in-cell phones still remain inaccessible for many. Latest government figures suggest that 'around 60% of cells' in the prison estate currently provide in-cell phones.<sup>16</sup> Furthermore, 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 government announced that 900 secure phone handsets would also be provided to 55 prisons without access to telephones within cells, to enable contact with families during the suspension of visits. In reality, families and those in prison have

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<sup>11</sup> Joint Committee on Human Rights (2020) Human Rights and the Government's response to COVID-19: children whose mothers are in prison, London: HMSO

<sup>12</sup> Prison Reform Trust (2020) CAPPTIVE: How prisons are responding to Covid-19—Families and communications, London: PRT

<sup>13</sup> Ministry of Justice website, 'Guidance: Secure video calls with prisoners', accessed on 16 July 2020, available at <https://webcache.googleusercontent.com/search?q=cache:WXtL4TKbin8J:https://www.gov.uk/guidance/visit-a-prisoner-using-a-video-call>

<sup>14</sup> Northern Ireland Department of Justice (2020) 'Long welcomes launch of virtual visits for prisoners', 10 April 2020, available at <https://www.justice-ni.gov.uk/news/long-welcomes-launch-virtual-visits-prisoners>

<sup>15</sup> Palmer, E. et al. (2020) Evaluation of digital technology in prisons, London: Ministry of Justice

<sup>16</sup> Ministry of Justice (2020) 'Coronavirus: Q&A for friends and family of prisoners', available at <https://www.gov.uk/guidance/coronavirus-qa-for-friends-and-family-of-prisoners#phone-service>

been left disappointed. Many prisoners and family members have commented that the provision for these phones is lacking, with demand hugely outweighing supply.

Our CAPPTIVE report found that some of the phones were shared between prisons, so that one provided phone calls in the mornings, then sent the phones to another prison for the afternoon. While this method helped ensure people at both prisons had the same access, it demonstrates that the supply was inadequate.

One family member noted that prisoners were told that whilst mobile handsets were available at the prison, they were yet to be distributed by staff. For those isolating, mobile handsets were not available and instead they had to rely on the goodwill of fellow prisoners to pass messages to their loved ones regarding the state of their health. As noted by HMIP, particular prisons, such as Coldingley, provided prisoners with mobile phones to use. Unfortunately, as phone signal was so poor, prisoners were only able to make phone calls on exercise yards, which potentially compromised the privacy required to discuss personal matters.

## **Conclusion**

The risk of rapid and deadly transmission of Covid-19 remains very high in prisons. The failure of successive governments to tackle overcrowding and a dilapidated estate makes that risk higher than it needs to be. A second wave of infection continues to place the government's obligations under Article 2 in peril. The continuing refusal to take either short or medium term action that will reduce overcrowding (the prison building programme the government announced has no such ambition), requires the continued operation of a very restricted regime that forces prisons to operate in breach of Articles 3 and 8. Whilst the government is right to praise the combined efforts of prison service staff and prisoners locally to prevent major loss of life, the political decisions needed centrally to mitigate the impact on human rights have been and continue to be inadequate.

*21/07/2020*