

Prison Reform Trust submission to the Ministry of Justice:

March 2011

Breaking the Cycle:

Effective Punishment, Rehabilitation and Sentencing of Offenders

The Prison Reform Trust welcomes the broad thrust of the justice green paper, which seeks to reserve imprisonment for those who have committed serious offences and to find more humane and effective ways of preventing and reducing crime. Reform is essential to overhaul an overcrowded, expensive and, in many ways, a counter-productive prison system.ⁱ

Our summary response focuses on the proposals that are central to the remit of the Prison Reform Trust. Thereafter, a detailed response to each question in the green paper consultation is submitted.

The key to the success of the proposals will be in their implementation. The Prison Reform Trust has identified ten broad principles to guide this process:

1. Early intervention and diversion to be used wherever possible – many of the solutions to crime lie outside the ambit of the Ministry of Justice.
2. Unnecessary and improper use of remand to be eliminated.
3. A proper restorative justice approach to be introduced and integrated throughout the justice system.
4. Criminal justice services to provide clear, accurate, timely information for the public, victims, offenders, prisoners and their families.
5. An appropriate response to be ensured for vulnerable people in the justice system, according to principles of equality and human rights, and all interventions made accessible, or suitable alternatives provided.
6. A marked shift in investment and emphasis to be made from custody to community.
7. Sentences to be determinate except in wholly exceptional circumstances.
8. Prisoners to be regarded and treated as citizens.
9. Time served in prison to be constructive and resettlement to be supported by effective practical measures.
10. Public services to work together to provide a cohesive local infra-structure for the criminal justice system.

There are significant gaps in the green paper and subsequent plans should afford more attention to the treatment of and outcomes for vulnerable groups, including young adults,ⁱⁱ women,ⁱⁱⁱ people with learning disabilities, the elderly and prisoners' families. The equality impact statement was weak in both depth and scope. A thorough assessment is required before legislation and implementation.

Below is a summary response to proposals contained in the green paper.

1. Punishment and payback

Prisons will become places of hard work and industry

Prison regimes should involve all prisoners in worthwhile employment or education, with equitable provision for those with health problems and disabilities. To achieve this, even across all 'training prisons' will require a significant change in culture and targeting of resources. It is important that the impetus for change extends across the whole estate, including local prisons. To have lasting benefit, sentence management, work and education should be linked to opportunities in the community and this in turn requires prisoners to be placed close to home. The Rehabilitation of Offenders Act (1974) has long been in need of fundamental reform to remove the double

punishment that arises from lengthy periods of unspent sentences. The working week should be met with a working wage and it is right that a proportion of the wage be paid into a fund to support victims of crime, providing a tangible means of reparation. To foster responsibility, there is considerable scope to build on the example of prisons with established prisoner councils and well developed schemes for volunteering by prisoners and active citizenship.^{iv} The enfranchisement of sentenced prisoners, to comply with the European Court judgment, would reinforce civic responsibility.

Community sentences punishing offenders and making them pay back to society and the taxpayer

Community sentences require investment and strong, consistent political backing for public and court confidence to increase and be sustained. Government must avoid pandering to populist clamour for degrading punishments, designed to publicly shame offenders. Community payback successfully marries punishment, reparation and rehabilitation and its widespread use is to be valued and promoted. Responsibility for overseeing each community order should remain with the Probation Service, who should be responsible locally for working in partnership with the police, health and local authorities in addition to commissioning additional resources and interventions. Such an arrangement ensures public accountability and avoids fragmentation of service delivery with accompanying risks to public safety. Performance standards can be raised by greater local scrutiny, allied to revised national standards and the work of the probation inspectorate. Community sentences have recently been shown to be more effective in reducing reoffending than short prison sentences for offenders with similar characteristics and offending history. This provides a sound basis for promoting their use as an alternative to custody.

Increased opportunities to use restorative justice approaches

The current adversarial approach to crime is very expensive and produces a poor return in terms of victim satisfaction and reoffending rates. The green paper's commitment to increasing the range and availability of restorative justice approaches is therefore to be welcomed. While constituting a major step forward, the Prison Reform Trust would suggest that an opportunity exists for an even bolder stance. Restorative justice should be placed at the heart of the justice system in youth justice and also increasingly for adults. It should be available as an alternative to formal criminal justice action, as well as at each stage of the criminal justice process. The form the restorative approach would take would be determined by the willingness of the victim and the offender to participate, the nature of the offence and associated risk factors. Such a policy stance is supported by a substantial body of Home Office research.

2. Rehabilitating offenders to reduce crime

A new integrated approach to managing offenders

The green paper acknowledges the value of joint work between probation, police, local authorities and voluntary partners in managing prolific and serious offenders. To do justice to this effective model, government policy should explicitly recognise the importance of health as a partner and of probation in the role of co-ordinator and monitor. Funding should be restored to support local criminal justice boards who should be charged with ensuring and supporting a multi-disciplinary approach in each locality. A higher profile should be given to inspection reports of integrated offender management schemes.

Rehabilitating offenders: supporting offenders to get off drugs for good

The Prison Reform Trust understands that the UK Drug Policy Commission is submitting an evidence based response to this section of the green paper. We will therefore focus our attention on the welcome commitment to tackle **alcohol abuse**. Surprisingly little has been done in this area given its association with much crime including serious offences. Rather than remaining a footnote to the drugs debate, the Prison Reform Trust recommends a high level strategic approach across a number of departments led by health and justice. Programmes to tackle alcohol abuse should be given much greater prominence as a community disposal and in prison.

Attention to **women offenders** is diminished by its restriction to a section under this heading. The Prison Reform Trust has convened a high level and independent Women's Justice Taskforce which is making its own submission. The Prison Reform Trust supports the recommendations of Baroness Corston's review that sentences in the community should be the norm for women convicted of non-violent offences, and that alternatives to custody should be designed to allow for the particular needs of women, such as childcare responsibilities. Further, the particular support needs of many women offenders should be recognised and met. Restorative justice approaches are often suited for women offenders and should be central to future plans. The Prison Reform Trust is concerned at the apparent lack of priority and strategic oversight given to the Corston agenda by the coalition government. The growing, but still embryonic, network of women's centres should be given financial security for a three year period, accompanied by a thorough evaluation to determine what works best and in what settings.

Rehabilitating offenders: making them pay their way

These sections on getting offenders into **work**, reform of the **Rehabilitation of Offenders Act** and reducing barriers to settled **accommodation** are welcome and vital if reoffending rates are to be reduced. The challenges are heightened at a time of rising unemployment and require determined, inter-departmental action across the Ministry of Justice, the Department for Work and Pensions and the Department for Business, Innovation and Skills.

The commitment to reduce unnecessary obstacles to successful rehabilitation will be usefully informed by *Time is Money*.^v This report from the Prison Reform Trust and UNLOCK, the national association of reformed offenders, charts the barriers former offenders face to opening bank accounts, securing insurance cover and coping with lengthy periods before offences become spent. Ensuring adequate, timely benefits for prisoners on release requires urgent attention. It is also worth revisiting a Home Office report *Making Punishments Work*,^{vi} which called for a thorough review of the intermediate estate. Hostels, halfway houses and supported accommodation should be part of a wider accommodation plan drawing on local and central government, key agencies and the voluntary and private sectors.

Managing offenders with mental health problems

The Prison Reform Trust welcomes the commitment to roll out a national liaison and diversion service by 2014, as proposed by the Bradley report. Arrangements for diversion must include provision for those with **learning disabilities**. All police stations and courts should have timely access to liaison and diversion schemes. Each scheme should have a named lead, responsible and accountable for local delivery and the development of a commissioning template will be important. The findings and recommendations of the Prison Reform Trust's *No One Knows*^{vii} and *Troubled Inside*^{viii} programmes of work were valued by the Bradley review and should inform the implementation plan.

3. Payment by results

Policies and investment should be based, as far as possible on evidence of what works. The key to payment by results is how outcomes are defined, how 'distance travelled' by individual offenders is recognised, and how the contributions of partners are integrated and evaluated. Reducing rates of reoffending will rightly be a key objective. However, most providers of supervision and social support aim to deliver other, linked outcomes, such as employment, stable housing, improved mental health or reduced drug or alcohol use. Rewards will need to be judged according to the weight given to each contribution. The Prison Reform Trust is supportive of the six pilot projects and trusts that government will harness the lessons and evidence of success before rolling out a payment by results scheme nationally.

Community sentences

The Prison Reform Trust continues to advocate replacing the generic community order with a number of substantive orders, such as an unpaid work order, curfew order, drug treatment and testing order, attendance centre order and a probation order. This would allow the various disposals

to be evaluated and promoted. It would also potentially lengthen the path to custody for a number of offenders, allowing the courts to consider matching different community penalties to particular offences and circumstances, rather than yielding to the temptation to consider that, because one experience of a community order has ended in failure, a custodial sentence is inevitable. As the Magistrates Association has previously suggested, much more use could be made of Attendance Centres if they were revitalised and available to every court as a constructive, relatively cheap community penalty.

For reasons of coherence and to avoid any suggestions of vested interest, the public sector should be responsible for managing delivery of each sentence and answerable to the court or state. As a locally based public service, Probation Trusts should commission services in the community. The payment by results approach should, if it proves successful, inform a template to ensure that a local focus marries with similar calibration between areas. Also, a vibrant platform of practical support should be in place to foster smaller local service providers. Support should be particularly available to providers that meet the needs of vulnerable people and which reflect diversity in the local population. This will avoid succumbing to domination by a small number of large organisations, with financial efficiencies that can easily prove decisive in a competitive market, outweighing the important benefits of local resources being better placed to meet local needs.

4. Sentencing reform

The Prison Reform Trust agrees with the need for a simpler sentencing framework that is easier for courts to operate and the public to understand.

The Prison Reform Trust supports the proposed increased use of diversionary **restorative justice** approaches for adults and young people and believes such approaches should be given far greater prominence than is apparent from the green paper. The *Making Amends*^{ix} report demonstrates that restorative approaches can transform criminal justice, for the benefit of victims and public safety.

Financial penalties have declined in use, while rates of custody have increased dramatically. Lessons can be learnt from Germany and other countries where fines are imposed in proportion both to the seriousness of the offence and the offender's ability to pay. There is scope for increased use of **compensation** payments and this can be integral to a restorative approach, and a court sentence in its own right.

The Prison Reform Trust welcomes the intention to remove the option of **remand** in custody for defendants who would be unlikely to receive a custodial sentence. Each court area should be served by a bail information and a bail support scheme to avoid recourse to custodial remands for want of other options. Custodial remands are frequently used for the primary purpose of obtaining a psychiatric report, especially for women. This is damaging, expensive and should not be permitted.

The generic community order should be replaced by a number of substantive **community sentences** (see above). Greater discretion over action on technical **breaches**, for both community sentences and post-custody licences, is long overdue.

Imprisonment should be reserved for those who commit serious and violent offences. It should almost always be determinate, with automatic release on licence at the halfway point. Custodial sentences of less than twelve months should be used far less frequently, given their poor track record in reducing reoffending. Where such a sentence is given, the court should be required to state its reasons, making clear why community disposals were not appropriate. **Mentoring** should be available to support short term prisoners prior to and post release, using wherever possible the experiences of former offenders.

Supervision in the community on **licence** should be retained as part of custodial sentences of more than 12 months. Clear explanation of the full sentence and its component parts should be given in court, together with the relevant time periods. The Prison Reform Trust agrees that the Home

Detention Curfew scheme should be retained. Release on temporary licence (ROTL) should be a standard feature of all prison sentences of more than 12 months, at regular intervals as the date of release approaches, to improve the prospects of effective resettlement.

Indeterminate sentences should be abolished, except in wholly exceptional circumstances. This decisive policy shift and a return to the 'just deserts' model would enable all concerned to see that the severity of the sentence was proportionate to the seriousness of the offence, taking into account aggravating and mitigating factors. Sentencing would be clear and transparent. For those currently serving sentences of imprisonment for public protection (IPPs) who have reached their tariff, it should be incumbent on the state to demonstrate that an individual poses a very serious risk of future harm. As the Prison Reform Trust's report *Unjust Deserts*^x states 'those who receive the sentence find themselves confronted with Kafkaesque obstacles to discovering when they have any prospect of release'.

The Prison Reform Trust also calls for abolition of the mandatory penalty for **murder**. The offences of murder and manslaughter should be replaced with a single offence of homicide, the sentence for which should be discretionary within guidelines set by the Sentencing Council. These reforms would ensure justice in individual cases and would be of great benefit to the management of the lifer prison population, with a steadily increasing proportion serving determinate sentences. Reviews of those currently serving life sentences and held beyond tariff should be expedited.

The Prison Reform Trust welcomes the commitment to retain **Multi-Agency Public Protection Arrangements**, which provide an effective means of combining knowledge and expertise across probation, police and prisons in dealing with those people who are thought to pose the greatest risk of causing serious harm to the public.

Young adults have distinct needs relating to their age, development and social circumstances. We propose developing a tailored approach to responding to young adult offending, to better address these needs and reduce the likelihood of reoffending. Community orders which have been designed with these needs in mind, a discrete secure estate, and recognising maturity as a mitigating factor in sentencing are all outlined as ways in which this could be achieved.

For **foreign national prisoners** two reforms could usefully be incorporated in the sentencing review. Firstly, people who have committed a less serious immigration or other offence could be dealt with as proposed, by means of a conditional caution, which for many would also involve leaving the UK. Secondly, people found to be coerced or trafficked into criminal behaviour should be dealt with humanely and appropriately. For the majority this would mean being recognised as victims and being afforded support and protection. Those who are shown to be culpable, with little mitigation should usually be repatriated to a prison in their own country. Many foreign nationals currently sentenced to imprisonment in the UK are serving disproportionate terms and they should have their sentences reviewed for conditional early release and deportation. These reviews and sentence reforms should allow mitigating factors to play a full part, together with considerations for the welfare of dependent children and any evidence of coercion in compliance with CEDAW. Care should be taken to identify those who should not be deported, such as: those who came to the UK as children and have no links with the country they were born in; those who have previously been given indefinite leave to stay; and those who have been trafficked.

5. Youth Justice

Preventing offending by young people

Steps to simplify the existing framework and encourage greater use of out of court disposals, thus keeping children out of the youth justice system wherever possible, are to be welcomed. PRT research in high and low custody youth offending teams suggests a correlation between extensive use of out of court disposals and low use of custody. The success of pre-court diversionary youth conferencing in Northern Ireland, where prosecutors refer cases involving a guilty plea, provides a template which could be applied in England and Wales.

The Prison Reform Trust fully supports proposals to put **restorative justice** approaches at the heart of the youth justice system's response to youth offending. We recommend adoption of the Northern Ireland model of youth justice conferencing for most out of court and in court disposals/sentences. Restorative justice based community sentences should be available to sentencers for consideration with most offences, including many of those within the violence against the person category. It is not clear whether the existing framework of volunteer panel members, responsible for delivering Referral Orders, is the right mechanism for delivering high quality restorative justice conferences which have the confidence of sentencers. Learning can usefully be drawn from the success in reducing the number of under 18 year olds as first time entrants into the youth justice system, and subsequent reduction in child custody, to apply to the prevention of offending and reoffending by young adults.

Effective sentencing for young offenders

The Prison Reform Trust supports proposals to address the existing anomaly in bail legislation which sees 17 year olds treated as adults for purposes of bail, contrary to the UN Convention on the Rights of the Child. The proposals to (gradually) devolve the cost of custodial **remand** to local authorities, to incentivise them to do everything possible to keep children out of prison, are welcome. Devolution of costs should be extended to the full costs of custody for children as a way of incentivising innovative practice in early intervention and prevention and in the delivery of locally tailored community orders. The criteria for child custodial remand should be tighter. Banning remand for those who would not be imprisoned is of symbolic importance, but may not in reality make much difference since so many offences are imprisonable. The approach for children should be different to that of adults. There should be a higher threshold so that custodial remand is only used for those for whom there is good evidence they would be likely to commit further violent/sexual offences if on bail. Overall it is disappointing that there is no default diversion for those under 12 years old and that there is no new custody threshold.

Most of the solutions to preventing youth offending and reoffending lie outside the criminal justice system, with the sanctions meted out having only a limited effect. To reduce offending, children's additional needs must be identified and met by mainstream and specialist children's services. Once in contact with youth justice services, effective screening and assessment of children's additional needs should be undertaken at an early stage unless such information is readily available from children's services. Financial, legal and performance management levers could in theory be used to incentivise agencies to address the causes of offending as well as to deliver more effective criminal justice approaches. The Prison Reform Trust favours the use of all these levers and particularly supports the delegation of the **cost** of custody to local authorities to incentivise them to do everything possible to keep children out of prison.

When the main function of the Youth Justice Board is taken over by the Ministry of Justice, it is essential that future **governance** remains in the hands of a unit or directorate which is dedicated to under 18 year olds and that this productive sole focus is not diluted or lost. Officials should have access to expertise and advice on vulnerable children and be mindful of the importance of meeting the welfare needs and the rights of children in the criminal justice system. The secure estate team within the Ministry of Justice must be separate from those dealing with adult custody, so they have the independence needed to make custody truly appropriate for the needs of vulnerable children.

6. Working with communities to reduce crime

The police have an important role in crime prevention and reducing reoffending alongside probation and prison staff. It is important for effective liaison and joint working that police and probation **boundaries** are coterminous with each other and that the catchment areas for prisons and courts have a workable fit with these areas. With so many solutions to crime being outside the criminal justice system it is clearly also important that police and probation boundaries are coterminous with individual or groups of local authority and health boundaries.

The adversarial approach often does not provide satisfaction for victims, it is expensive and it is not always the best way of holding offenders to account. High quality **restorative justice** approaches should be firmly embedded in each locality. They should be available for low level offences instead of the court process and at each stage where a criminal prosecution proceeds. The experience of youth conferencing in Northern Ireland demonstrates that the scope for restorative approaches far exceeds current practice. The Prison Reform Trust would support a significant transfer of resources to place restorative justice at the heart of the criminal justice system. Such change would also require a significant shift in the culture of relationships between justice agencies and the voluntary sector.

The section in the green paper which highlights the importance of working in **partnership** across government is particularly to be welcomed. The Prison Reform Trust would like to see details of the arrangements to develop and sustain close working across such a range of departments and how this national framework will be married with devolved powers and joint working at a local level. A firm commitment to crime prevention needs to run through a wide range of local and national bodies. By way of example, all prisoners in need of social care in prison and on release should be linked to their local authority, but there remains a troubling lack of clarity nationally and locally as to the responsible body for meeting even chronic needs. Neighbourhood justice panels may be helpful, but only if they operate within a clear policy framework.

Finally, the many lessons of the cross-party House of Commons Justice Committee report **Justice Reinvestment**^{xi} should be heeded. It stated that the seemingly inexorable rise in the prison population could be halted and, further, that the number of people incarcerated could safely be reduced by one third over the next few years. The green paper includes proposals that may help that cause, but it remains light on the detail of implementation and its commitment to the imperatives of competition and payment by results will require considerable refinement.

Below is our full response to proposals contained in the green paper.

ⁱ All-Party Parliamentary Group on Penal Affairs (2010), *Too Many Prisoners*, London: Prison Reform Trust. Available at <http://www.prisonreformtrust.org.uk/Portals/0/Documents/APPPAG2010.pdf>

ⁱⁱ The Prison Reform Trust is a member of the Transition to Adulthood (T2A) Alliance and supports the recommendations made in its submission to the green paper consultation on Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders.

ⁱⁱⁱ The Prison Reform Trust, with the support of the Bromley Trust, has convened a high level Women's Justice Taskforce to ensure women in the justice system are a priority for government. The Taskforce will be making a separate submission to the green paper. Its report will be published in spring 2011.

^{iv} Edgar, K & Jacobson, J (2011 forthcoming), *Time Well Spent*, London: Prison Reform Trust

^v Bath, C & Edgar, K (2010), *Time is Money: financial responsibility after prison*, London: Prison Reform Trust & Unlock: the national association of reformed offenders. Available at <http://www.prisonreformtrust.org.uk/Publications/vw/1/ItemID/46>

^{vi} Halliday, J (2001), *Making Punishments Work: report of a review of the sentencing framework for England and Wales*, London: Home Office.

^{vii} Talbot, J (2008) *No One Knows: report and final recommendations*, London: Prison Reform Trust. Available at <http://www.prisonreformtrust.org.uk/Publications/vw/1/ItemID/89>

^{viii} See <http://www.prisonreformtrust.org.uk/ProjectsResearch/Mentalhealth/TroubledInside>

^{ix} Gibbs, P & Jacobson, J (2009), *Making Amends: restorative youth justice in Northern Ireland*, London: Prison Reform Trust. Available at <http://www.outoftrouble.org.uk/learn/library/publications/making-amends-restorative-youth-justice-northern-ireland>

^x Hough, M & Jacobson, J (2010), *Unjust Deserts: imprisonment for public protection*, London: Prison Reform Trust. Available at <http://www.prisonreformtrust.org.uk/Publications/vw/1/ItemID/44>

^{xi} Justice Committee (2010), *Cutting Crime: the case for justice reinvestment*, London: The Stationary Office. Available at <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmjust/94/94i.pdf>

1. Punishment and payback

Q1. How should we achieve our aims for making prisons places of hard work and discipline?

This requires a marked shift of culture and resource allocation from a place of containment to a prison with purpose. It is feasible, having been achieved in some prisons in some other countries. The task would be easier to achieve if imprisonment was reserved for the most serious offenders. The reduced core day, and the prospect of further cuts in constructive activity, presents a risk and runs directly counter to this first green paper proposal. The extent of wasted time in prison is unacceptable, even in many establishments deemed to be 'training prisons'.^{xii} Regimes in most local prisons are counter-productive with many prisoners released in a state more likely to lead to further offending than when they were received.^{xiii}

In the main, prisons are disciplined environments which pay regard to safety and security. Radical change can be achieved by building on established discipline and enhancing the focus on rehabilitation and resettlement. This has implications for management and staff training, supervision and regular review of results. A back to basics approach from assessment to induction, identification of personal officers/offender managers and the development of proper sentence planning would add rigor. A combination of opportunities for volunteering, paid work, education and training can be achieved. The pivot is sound professional relationships between staff and prisoners, enough real work to go around, and a preparedness to foster personal responsibility.

Q2. How should we best use the expertise and innovation of the private and voluntary sectors to help develop the working prison?

The government's commitment to transform prisons so that prisoners are expected to work is commendable. Currently, less than one-third of prisoners are engaged in any work; an average of 10,000 prisoners are employed in nearly 300 workshops across the prison estate, and 40% of these work for 'contract services' producing goods and services for an external, commercial market. The scale of the challenge requires innovative changes to the policies which inhibit prisoners working. These range from harsh pay restrictions through to arrangements for release on temporary licence (ROTL).

To move towards a working prison, lessons need to be learned from previous initiatives such as the 'Barbed' graphic design studio introduced by the Howard League for Penal Reform at HMP Coldingley^{xiv} and the success of apprenticeships introduced by National Grid and others. If prisons are successful in attracting the interest of outside employers, they will need to follow through on commitments to ensure the stability of the workforce and reduce the churn between establishments generated by overcrowding and reactive population management.

This will not be easy given the characteristics of the prison population. As the Green Paper points out, the population has longstanding, unmet needs with 47% of people in prison saying they had no qualifications, and 13% saying that they have never had a paid job. The most recent credible measure of mental health problems among prisoners estimates that 72% of male, and 70% of female sentenced prisoners suffer from two or more mental health disorders, including a concerning 10% with a psychotic illness.^{xv} It is estimated that 20-30% of offenders have learning disabilities or learning difficulties that interfere with their ability to cope with the criminal justice system.^{xvi}

Despite the scale of the challenge, there is a need to ensure that the work opportunities provided for people in custody are sufficient to allow them to develop new skills which can be transferred to future employment and sufficiently assist them as part of their rehabilitation. This will require support and training in areas such as literacy and numeracy, ICT, time keeping and working as part of a team. This last point is particularly important, whilst space may be at a premium, prisons should not rely on 'in-cell' work as a substitute for workshops; this may be okay for short periods of time but

can increase isolation and depression, particularly amongst vulnerable people. The government should encourage the involvement of business in the rehabilitation of prisoners, particularly younger prisoners, to improve their chances of leading a law-abiding life upon release and secure long-term employment.

Breaking the Cycle states the government's commitment to encourage people in prison to see work as a way to pay the debt they owe to society and to victims of crime in particular. Prisoners' descriptions of active citizenship in the recent Prison Reform Trust report *Time Well Spent* implied that they were grateful that the prison provided a means for them to make amends for what they had done.^{xvii}

I want to give something back. Most people in here feel guilty for what they've done. That's something we often talk about back on the wing. Helping other prisoners is a way of helping out.

With over a quarter of newly sentenced prisoners reporting a long-standing physical disorder or disability^{xviii}, and people aged 60 and over now the fastest growing age group in the prison estate^{xix} this may make working a 40 hour week difficult or impossible for a significant proportion of prisoners. The Prison Reform Trust agrees with the concerns raised by Age UK in its submission that offending behaviour programmes, employment opportunities and education and training schemes are primarily designed for, and aimed at, young men. Consideration will therefore need to be given to the practicalities of implementing working prison proposals for older people in prison. Voluntary work is particularly well-suited to the government's aim of involving prisoners in work, because the voluntary sector can be far more flexible, enabling each person to work at their own pace, providing arrangements such as part time and flexible working. That means that active citizenship schemes can engage prisoners who have mental health problems, learning disabilities, or a lack of job skills.

Some prisons are already exploring the possibility of having a joint workshop/ day centre model for older prisoners, which would provide an opportunity to work for a few hours a week and also be constructive in the 'day centre' when not working. Future employers are also more likely to take on someone who has shown initiative, responsibility and developed soft and hard skills volunteering in a service role in prison such as acting as a Samaritan Listener or peer mentor.

The challenge for prisons is to facilitate volunteering and active citizenship schemes and manage risks at the same time. Prisons have to be open to innovation to enable the schemes to operate, and they need to guard against overly restrictive safeguards which can stifle the scope for personal development and creativity. They need to find ways of including all prisoners, not just those who are the most obvious candidates in terms of competence or reliability. They must offer prisoners the opportunity to use their initiative and take real responsibility in carrying out their roles and activities. All this can only be achieved if active citizenship is supported by staff and management at all levels within the prison, as well as by the prisoners themselves. With the necessary support and commitment from staff and management, volunteering and active citizenship can operate in all kinds of prison settings, and not only those that might seem most suitable.

Q3. How can we make it possible for more prisoners to make reparation, including to victims and communities?

The Prison Reform Trust has long advocated that prisons can and should become places that facilitate a full range of restorative processes (see Edgar, 1999^{xx}; Edgar and Newell, 2006^{xxi}). Reparation reflects one aspect of restorative justice. The principles for enabling prisoners to make reparation should be no different from those governing all restorative processes.^{xxii} These principles are based on what works best to reduce the risk to future victims, and on knowledge, gained through years of practice. To ensure that these are fully implemented, staff who facilitate the use of restorative justice should receive a basic introduction to restorative processes.

Restorative justice requires inter-agency cooperation. Thus, prisons should work with local mediation services, Victim Support, probation victim contact units, and the police; and young offender institutions should work closely with the restorative justice co-ordinators in the relevant youth offending teams.

Innovative changes in the relationships between prisons and the voluntary sector will be needed to enable restorative justice to expand. In particular, prison and probation staff must improve their performance in promoting restorative justice to victims and offenders, in referring interested parties to restorative justice practitioners and in actively developing court confidence in such work. In its research on the implementation of restorative justice schemes, Shapland and colleagues found that when restorative justice practitioners depended on criminal justice agencies to select suitable cases, they were let down, with practitioners being forced to recruit victims and offenders directly, because the criminal justice workers failed to select suitable cases.^{xxiii} Government will therefore need to consider ways to ensure that statutory services contact victims and offenders with the offer of restorative justice.

An emphasis on reparation should not obscure the considerable benefits that victim-offender mediation might bring to victims of very serious offences. While in these cases it is unrealistic to expect the harm done to be repaired, victims of serious crimes have needs which restorative justice can meet. An evaluation of a victim-offender scheme in Kent, dealing with serious crime, was carried out by the Department of Law and Criminal Justice Studies at Canterbury Christ Church University.^{xxiv} The interim evaluation quoted one victim whose sense of closure echoed others who had experienced mediation in the prison:

'I've certainly been able to move on, it's given me some power back, I feel quite empowered by it ... I suppose it's accepting that actually this was totally one person's fault and one person only and I've been able to release any irrational feelings....I've been able to push it firmly back where it belongs.'
(Victim, Case C)

Home Office research on restorative justice indicates that the offenders who benefit the most are those who have made a personal commitment to take part.^{xxv} This strongly supports the view that reparation works best with the offenders' role is voluntary, coerced reparation may appear to be tougher, but it is much more likely to foster resentment, and undermine the long-term aims of reparation.

Many victims have spoken of the uphill struggle they faced when they asked to meet the offender. Prison and probation staff must be directed to work more openly with victims and to be far more supportive of their interests in restorative processes. Edgar and Newell have produced guidelines for prison staff in working with victims of crime.^{xxvi}

Direct, facilitated meetings between victims and the offenders who harmed them are the most restorative outcome. Evidence from Northern Ireland strongly suggests that most victims would welcome the opportunity to meet the offender, particularly if they are aware of the support and safeguards available to them through careful preparation.^{xxvii} However, where the victim does not wish to meet the offender, or to receive any kind of reparation, it is still desirable that society offers offenders a chance to make amends indirectly.

Q4. How do we target tough curfew orders to maximise their effectiveness?

Curfew orders are a form of house arrest and should be used only where a short prison sentence would have otherwise been inevitable. To avoid them being used in place of community penalties requires clear guidance from the Sentencing Council and strong, consistent political statements that

place them within the spectrum of forms of incarceration. Particular care should be taken to avoid using curfew orders with those vulnerable people living in unsafe households and subject to domestic violence or abuse. This applies to women, children and people with learning disabilities or mental health needs especially. We are also concerned that increased use of tagging will lead to more young people breaching their curfews, with national standards on breach tougher than youth offending teams and compliance being a particular issue for young adults (18-21 year olds).

Q5. What are the best ways of making Community Payback rigorous and demanding?

Government must be careful not to pander to the populist clamour for degrading punishments, designed to publicly shame offenders. Community Payback is arguably the most striking criminal justice innovation of the past 50 years and the concept has been adopted by many countries around the world. In 2007-08 over 55,000 people successfully completed Community Payback sentences.^{xxviii} Reoffending rates are low compared to those released from short prison sentences. A sentence that so successfully marries punishment, reparation and rehabilitation is to be valued and promoted.

There have for many years been national standards. If there are concerns about laxity or poor performance in certain areas then this should be dealt with by revising the standards and/or calling on the inspectorate to identify poor practice, promote lessons from the best performing areas and holding those performing poorly to account. Availability of work placements and a prompt start after a sentence is handed down should be basic features of the standards, together with regular hours and intensity of work undertaken. Community Payback for women need not offer only outdated 'women's work' but must take account of the need for childcare provision and provide women-only opportunities if possible.

Q6. How can communities be more involved in influencing the type of work completed by offenders on Community Payback?

The work undertaken in community payback schemes should be demonstrably of value to the local community. This is important in ensuring a reparative element. Work that is helpful to others is also more likely to rehabilitate offenders than work that gives no sense of pride or ownership.

It therefore follows that the local community should be involved in identifying projects that would be of benefit to them. They might also exercise some general oversight and play a part in acknowledging when a job has been performed to a high standard. Probation Trusts should establish a network of 'community payback monitors'. These should be at the most local possible level and linked to initiatives contained in recent Government reports: *Building a stronger civil society* and *Supporting a stronger civil society*.

Q7. How should we seek to deliver Community Payback in partnership with organisations outside government?

Probation Trusts, together with the 'Community Payback monitors' referred to in Q6 would form a national network to identify potential work opportunities. Commissioning of service providers would be undertaken at Trust or even more local level within a framework of national standards.

2. Rehabilitating offenders to reduce crime

Q8. What can central government do to help remove local barriers to implementing an integrated

approach to managing offenders?

An integrated approach should be central to the work of each Local Criminal Justice Board. Annual reports on the work of the schemes should be owned and highlighted by each local criminal justice agency. A higher profile should be given to inspection reports of integrated offender management schemes. The success of such schemes and the role of police, probation and local voluntary organisations should be publicised to increase community confidence and reduce fear of crime. The proposal to develop integrated offender management based on the youth offending team approach would be particularly appropriate for young adults.

Q9. How can we incentivise and support the growth of Integrated Offender Management approaches?

The integrated offender management approach has been developing in different ways, with varying degrees of enthusiasm across the country, for some years. As the Green Paper suggests there are a number of excellent schemes that work effectively with persistent offenders and those at risk of causing serious harm. Further encouragement could be given by highlighting the benefits of shadowing schemes and exchanges for staff between police, probation, prisons and the voluntary sector. The new police commissioners and local authority chairs and chief executives, as well as sentencers and court officials, should be enabled to see first hand, the benefits of the best performing areas.

Q10. How can we ensure that providers from the voluntary and community sector can be equal partners in the delivery of this integrated approach?

The voluntary and community sector can contribute far more to crime prevention and the rehabilitation of offenders than has yet been recognised. The contribution must however be set within a considered, carefully planned framework to avoid unintended consequences. Circles of Support and Accountability provides an example of a scheme that effectively addresses a previously unmet need, using volunteers in a clearly defined way, following a selection process, thorough training, with oversight and agreed links to the MAPPA framework. Mentoring schemes have similar important characteristics. In these examples the sector is fulfilling roles that could not be performed to such good effect by statutory services.

The starting point should be an analysis of need. Priorities should then be agreed at local level and commissioning of services to meet the need. The voluntary and community sector needs to be a significant player in the planning and commissioning arrangements. The public sector should always provide the glue that binds the various service delivery initiatives together – without this there will be a weakening of formal accountability, the potential for fragmentation of services with accompanying risks and duplication of assessments and sentence planning.

Q11. How can we use the pilot drug recovery wings to develop a better continuity of care between custody and the community?

Q12. What potential opportunities would a payment by results approach bring to supporting drug recovery for offenders?

Q13. How best can we support those in the community with a drug treatment need, using a graduated approach to the level of residential support, including a specific approach for women?

The Prison Reform Trust supports the submission of the UK Drug Policy Commission to questions 11, 12 and 13 of the green paper consultation. The government's determination to reduce, not

foster, addictions in prison is important. A recent inspectorate report on one of the better functioning local prisons found for example that one in six prisoners said they had developed a drug problem while in the prison.^{xxix} Drug and alcohol misuse are primary drivers respectively of acquisitive crime and violence and public disorder offences.

The development of effective drug treatment in the community, including residential rehabilitation options and specialist women-only and age-appropriate services, would start to obviate the need sentencers openly identify in using custodial sentences primarily as a gateway to health treatment. Further work to reduce binge drinking and misuse alcohol needs to be done as a matter of urgency.

Q14. In what ways do female offenders differ from male offenders and how can we ensure that our services reflect these gender differences?

The Prison Reform Trust agrees with comments made by Female Prisoners Welfare Project (FPWP) Hibiscus, Clean Break, and Women in Prison in their submissions. Evidence published with the Green Paper highlights some of the most important gender differences. Women offenders tend to be convicted for less serious offences, have multiple, and therefore more complex, problems related to their offending, high rates of poly-drug use, and histories of domestic and sexual abuse. Incarceration is further from home and disproportionately harsher for women than for men. Separation from small dependent children and terrible levels of self-harm and unmet mental health needs testify to this. These echo findings of the Corston and Wedderburn reviews both of which maintained that sentences in the community should be the norm for women convicted of non-violent offences, and that alternatives to custody should be designed to allow for the specific needs of women, such as childcare responsibilities.^{xxx} Differences between male and female offenders, and the implications for their treatment and conditions both in custody, and for women serving community sentences, are set out in the recently ratified *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)*.^{xxxi}

The Cabinet Office and the Home Office recognise that a history of abuse contributes to the risk of offending, along with mental illness, drug dependency and self harm. Restorative justice processes take prior victimisation into account, accepting it as part of the explanation for the offending behaviour, but nonetheless holding the offender responsible for making amends for the harm she has done.

Another strength of restorative approaches is their sensitivity to individual's needs (both for victims and offenders). Unlike most criminal justice outcomes, the agreements emerging from restorative justice fit the persons directly involved, largely because they have had a voice in generating the agreement. This includes commitment to engage with drug treatment, counselling, or other programmes that will specifically address the reasons for their offending. Restorative justice can motivate offenders to engage with the treatment they need to stop offending. Judith Rumgay has concluded that women offenders seem to be particularly receptive to approaches which recognise their prior victimisation, yet expect them to repair the harm they have caused others.^{xxxi}

The Prison Reform Trust is not alone in calling for a greater role for restorative justice in responding to offending by women and girls. The Independent Commission on Youth Crime and Antisocial Behaviour drew attention to the particular needs of young women who offend.^{xxxi}

It would be wrong simplistically to assume that needs are the same across all types of young women offenders. By placing restorative justice at the heart of the system, we believe we can establish a framework where young female offenders are dealt with more appropriately.

An evaluation of restorative justice found that young girls involved in a final warning restorative justice scheme were significantly less likely to reoffend than the control group (118 fewer arrests per 100 offenders compared to 47 fewer for the control group).^{xxxi}

Prior victimisation indicates the need for women-only service provision. The women's centres which inspired the Corston review team, and the embryonic network of centres that have developed with government funding since the review was published, now need to be placed on a firmer sustainable footing. Setting standards and agreeing outcomes, plus monitoring and evaluation are vital components of centres acting as court disposals. The proven effectiveness of these centres, which succeed in reducing crime, breaking addictions, getting women out of debt and into training and work, enhancing parenting skills, securing safe housing and enabling vulnerable women to take responsibility for their lives and their children, could provide a template for payment by results models. As with any other issue, leadership will be key to the success of work in this area, and senior leadership from ministerial level through to local champions for women would be helpful.

Q15. How could we support the Department of Work and Pensions payment by results approach to get more offenders into work?

As the Green Paper highlights, having a job is a major factor in preventing future offending and many offenders face significant barriers to entering the labour market with almost half of surveyed prisoners (47%) saying that they had no qualifications compared with 15% among a similar age group in the general population.^{xxxv}

Such an approach will require increased opportunities for offenders to tackle these barriers to employment such as training, education and volunteering opportunities in custody and the community. Many lack the basic skills necessary for gaining and maintaining a job such as time keeping, knowledge of ICT, and numeracy and literacy.

A payment by results approach could be used as an incentive to Jobcentre Plus, rewarding individual centres that process applications on time for prisoners on release from custody. Centres could also be incentivised to provide services within prisons and larger probation offices through a PBR model, improving access by bringing services directly to offenders.

Offenders and former offenders often need assistance not just with finding work but with emotional support as well, PBR could be given for mentoring and befriending services attached to employment advice services.

Given the complexity of some offenders needs, some will require long-term support, PBR could be incremental for up to 3 years for those with ongoing support needs that have to be addressed when trying to secure stable employment. It is unrealistic, given the existing complexities, that most offenders will leave custody and go straight into employment; greater opportunities for skills and training are essential if we are to increase the number of former offenders securing long term, stable employment. A PBR model could be used to recognise the incremental progress being made, for example completion of literacy and numeracy courses, volunteering, writing a CV, or getting a job interview, doing vocational training.

Payment by results methods could also be used to support initiatives that foster self-employment. Apex Trust runs a 'business den' initiative in Leicester, backed by amongst others local employers, Asian community organisations and the Institute of Directors (IOD). Former offenders prepare a business plan and receive coaching and support to start up small businesses in their local communities.

Q16. What can we do to secure greater commitment from employers in working with us to achieve the outcomes we seek?

Review the Rehabilitation of Offenders Act and disclosure policies so that employers can only ask about offences that are relevant to the job in question. The public sector and local government must take the lead on employing former offenders and have fair employment policies to actively promote the rehabilitation of former offenders. Government cannot expect the private sector to do this unless the public sector leads the way. We recognise that this will be sensitive at a time of job cuts within the public sector. Improving the transferable skills of former offenders through a wide range of volunteering opportunities and internships will also be vital in increasing the likelihood of employment. This could be achieved by strengthening links between local probation and the private sector to work with organisations with corporate responsibility strategies. Organisations such as the CBI, TUC, Business in the Community, local commercial bodies and civic society groups such as Rotary and the Soroptomists could be engaged to support second chance job and volunteering opportunities for former offenders.

Q17. What changes to the Rehabilitation of Offenders Act 1974 would best deliver the balance of rehabilitation and public protection?

Recent research from Prison Reform Trust showed that only one in 47 prisoners interviewed had an accurate idea of what the Act meant.^{xxxvi} Prison Reform Trust believes that the concept of “rehabilitation periods” before an offence becomes “spent” should be expressed in simple terms within a framework that is fair and is easy for offenders and employers to understand. All rehabilitation periods in the Act are over-long and do not serve the needs of society in encouraging offenders to lead law-abiding lives or of becoming financially active citizens.

For those offenders sentenced to longer prison sentences Prison Reform Trust believes that the rehabilitation period should be determined by the Parole Board at the time that release is granted. The Parole Board would need to determine guidelines, in order to ensure consistency. Prison Reform Trust also proposes a review mechanism in such cases to allow for the possibility of good behaviour to be rewarded. This would be informed by the Probation Service and where appropriate by the Prison Service.

Checks and balances could be achieved by having a new judicial discretion, in addition to exceptions from the disclosure scheme, to waive the normal disclosure periods in cases where the sentencer decides there is a particular risk of significant harm.

We support a “two year rule” to apply to rehabilitation periods, from the date of conviction for community sentences and from the date of release for the majority of prison sentences. The exceptions to this rule would be Schedule One Offences and sentences of imprisonment of four years or more.

We also support a review of the rehabilitation period for IPP sentence to bring it in line with equivalent determinate sentence periods rather than with the life sentence.

Q18. How can we better work with the private rented sector to prevent offenders from becoming homeless?

The proposal to limit the use of remand to only those offences likely to receive a custodial sentence will mean that fewer people lose their accommodation unnecessarily and is welcomed.

The government could consider a system of incentives for private landlords, including deposits and bonds. Currently many of the integrated offender management models pay deposits to landlords without the ex-offender having access to the funding. Unfortunately this is not mirrored in custody, with prison governors only able to provide up to £50 on a discretionary basis for a landlord to be paid directly for an ex-offender leaving prison, this is inadequate and should be reviewed. Green Paper reforms should include a review of the discharge grant.

There also needs to be realistic continued support for people once they have secured their accommodation. This should include tenancy support services that provide budgeting advice, information on tenants rights and responsibilities as well as systems to identify rent arrears at an early stage and provide appropriate support. There is much to learn from specialist providers such as the Foyer Federation, Eaves Housing and the Richmond Fellowship.

Q19. How can we ensure that existing good practice can inform the programme of mental health liaison and diversion pilot projects for adults and young people?

The Prison Reform Trust welcomes plans for a national network of liaison and diversion schemes by 2014 as well as invaluable partnership working between the Department of Health, the Home Office and the Ministry of Justice.

There are a number of good practice models that can be drawn upon to inform the development of effective liaison and diversion schemes, and some of these contributed to Lord Bradley's review of people with mental health problems or learning disabilities in the criminal justice system; further piloting is not necessary, and would incur additional costs and delay implementation. All liaison and diversion schemes should also explicitly include people with learning disabilities.

Information gathered by local Women's Institute members as part of the National Federation of Women's Institutes 'Care not Custody' campaign could also be used to inform the programme.

Q20. How can we best meet our ambition for a national rollout of the mental health liaison and diversion service?

All police stations and courts should have timely access to liaison and diversion schemes. Who might benefit from such schemes should be clarified, and screening to determine inclusion standardized to ensure that all suspects/defendants with a similar degree of mental ill-health or learning disability will benefit from appropriate support and possible diversion - regardless of geographical location. All schemes should accommodate people with mental health problems and with learning disabilities. Clarity is required however on the question of 'fitness for interview' at the police station and 'fitness to plead' in court.^{xxxvii}

National standards for liaison and diversion schemes should be mandatory and developed in consultation with professionals and practitioners from criminal justice, health and social care, local services such as housing, and those currently providing liaison and diversion schemes for people with mental health problems and learning disabilities. For children and young people, the national pilots currently being undertaken by the Centre for Mental Health, and early evaluation findings, should be drawn upon. Each scheme should have a named lead, responsible and accountable, for local delivery and a commissioning template for delivery is recommended.

The training needs of Judges, magistrates, court staff and police services should be assessed and appropriate training commissioned and delivered in consultation with the Home Office, Judicial Studies Board, the Magistrates' Association, National Police Improvement Agency, ACPO, the Police Federation and all police staff associations and unions.

See also Prison Reform Trust publications, *Police responses to suspects with learning disabilities and learning difficulties: a review of policy and practice* (2008); *Vulnerable defendants in the criminal courts: a review of provision for adults and children* (2009).

Q21. How can we reshape services to provide more effective treatment for those offenders with

severe forms of personality disorder?

The Henderson Hospital was, until recently, a therapeutic community designed to meet this need. It provided an invaluable resource to probation staff supervising people with severe personality disorder in London. HMP Grendon has a proven track record within the prison estate. The DSPD programme is being evaluated. The painstaking, resourceful efforts of practitioners within the criminal justice system in working with people with severe forms of personality disorder often go unrecognised and are a considerable benefit to society.

3. Payment by results

Q22. Do you agree that the best way of commissioning payment by results for community sentences is to integrate it within a wider contract which includes ensuring the delivery of the sentence?

Not necessarily. For reasons of coherence and to avoid any suggestions of vested interests, the public sector should be responsible for managing delivery of the sentence and answerable to the court or the state. It should commission services where this will prove beneficial and in many cases this will be for a project or programme that contributes towards the delivery of the sentence. Given the variety of requirements that apply to many court orders and many offender profiles, skills and resources will often need to be drawn from a variety of agencies.

In certain circumstances it will be appropriate to take a more holistic approach and assess the impact on reoffending rates over a period. The Peterborough pilot with the St Giles Trust, which focuses on short sentence prisoners who would not otherwise have received any supervision or help, lends itself to such an approach.

Q23. What is the best way of reflecting the contribution of different providers within a payment by results approach for those offenders sentenced to custodial sentences and released on licence?

The skills of commissioners need to be highly developed. This will be reflected in the contracts that are set and the objectives contained within them. Often an organisation's performance will be measured by its contribution to reducing the likelihood of reoffending. Rewards will need to be judged accordingly and examples of valid contributions could for instance include: housing placements; securing employment or education places and degree of remaining in post or on a course; and reducing drug or alcohol use. The development of the approach will need to ensure that a local focus marries with similar calibration between areas. Thought needs to be given to accountability, regulation and inspection of services.

Q24. What is the best way of developing the market to ensure a diverse base of providers?

A justifiable concern at the payment by results approach is that the market becomes dominated by a small number of large private and voluntary sector providers. Efficiencies relating to size can easily prove decisive in a competitive market, outweighing softer benefits of local resources being better placed to meet local needs. There needs to be a platform of practical support for small local bodies that is attuned to providers addressing diversity, discrimination and local equality concerns.

There are considerable risks in adopting a new approach too quickly. These can be mitigated in part by taking a flexible, developmental and diverse approach to payment by results, not entering into long term fixed contracts and protecting the interests of small local voluntary organisations that have such an important part to play in the resettlement of offenders.

Q25. Do you agree that high-risk offenders and those who are less likely to reoffend should be excluded from the payment by results approach?

The public sector should be responsible and accountable for the supervision of high risk offenders. This provides the basis for a national network of multi agency work underpinned by the MAPPA arrangements. It enables an assessment process linked to sentence planning that avoids the dangers of fragmentation and duplication. The public sector will call on other resources to contribute to a sentence plan where the expertise lies outside the public sector. It is perfectly possible for some such services to be commissioned using a payment by results model. It is also important that all services can be justified in terms of their cost effectiveness and this applies to work with high risk offenders just as much as it applies to work with lower risk offenders.

Q26. What measurement method provides the best fit with the principles we have set out for payment by results?

The key to payment by results is how outcomes are defined and how the contributions of partners are integrated. Although one over-riding objective is the prevention of reoffending, most providers of social support aim to deliver other, linked outcomes, such as employment, stable housing, or improved mental health. A housing provider should not be judged solely on their ability to deliver reduced reoffending. At this point, while the evidence is strong, it is not sufficient to provide precise measures of the extent to which housing, or employment, or successful drug treatment contributes to the reduction of reoffending. However, the aim of integrating such social support into work with former offenders is commendable – as individual ‘pathways’, pursued through separate silos, is unworkable.

Q27. What is the best option for measuring reoffending and success to support a payment by results approach?

The former method of measuring reoffending was based on the proportion of people who committed a new offence within two years of the end of their sentence. This crude method failed to identify improved outcomes, such as an offender completing a community order who subsequently committed fewer offences. The new methods used by the Ministry of Justice are a substantive improvement because they measure both the frequency of re-conviction and the seriousness of subsequent offending – all within a one-year period. This model is much stronger in demonstrating changes that are in the public interest (such as an intervention that over time reduces the seriousness of any subsequent offences), fits better with the proposed developments of Restorative Justice programmes, and it should therefore be used as the basis for measuring performance. As mentioned in Q26 the performance of providers should not solely be measured in terms of reoffending, the successful completion of interventions linked to reducing reoffending should also be rewarded.

A question remains about whether a one-year period is best. On one hand, a disproportionate number of reoffences occur within one month of completion of sentence. On the other hand, many interventions take time to produce change, and the process of desisting from crime is long-term. With such a short-term measure, there may be added perverse incentives to select offenders who are least likely to reoffend rather than engaging with those who need longer term support.

Q28. Is there a case for taking a tailored approach with any specific type of offender?

Yes. There will be particular groups whose problems require special attention. Ultimately each

intervention should contribute to a reduction in the likelihood of reoffending. A mentoring scheme could for instance match BAME offenders with mentors of the same ethnic group. The objective could be to improve compliance with court orders and post custody licences. The expectation would be that the programme allied to formal supervision and other services to meet individual needs would reduce the likelihood of reoffending. The particular contribution of the provider should however be limited by its scope to its impact on compliance and breach rates.

Both Baroness Corston^{xxxviii} and Professor Wedderburn^{xxxix} set out strong cases for the need to have a distinct approach to dealing with women offenders. The Prison Reform Trust agrees with the response to this question submitted by the Women's Justice Taskforce and supports the comments made by Women in Prison in their submission.

As a member of the Transition to Adulthood (T2A) Alliance, we support T2A in its call for a distinct approach to dealing with young adult offenders aged between 18-24 years. As the T2A submission makes clear, 'there is extensive evidence, both demographic and developmental, for recognising young adulthood as a particular stage in life', requiring a tailored approach built around the particular needs of this age group. Greater Manchester Probation Trust's Intensive Alternative to Custody (IAC) pilot offers one model for delivering such an approach in the community to this age group, as do the T2A pilots in London, Birmingham and Worcestershire. In custody, it is essential that distinct provision for young adults delivered through Young Offender Institutions (YOIs) is retained to allow for regimes which can be better focussed on the offending, educational, training and rehabilitative needs of this age group.

Deportation and removal decisions must be made on a case by case basis, any blanket policy or procedures driven by an aim to remove as many people as possible from the country would lead to an unfair and biased system. Many foreign national prisoners are people who are desperate to return home. For these individuals we welcome the continuation of the Facilitated Returns Scheme for those who are willing to return to their country of origin. We also welcome removing IPP foreign national prisoners at tariff for people wishing to return to their country of origin. We agree with the Female Prisoners Welfare Project (FPWP) Hibiscus submission that treating foreign national prisoners as a single homogeneous group fails to recognise the complexity of these diverse non-British passport-holding groups and their concerns regarding prisoner transfer agreements.

The following groups of prisoners should be excluded from the deportation process:

- Those who came to the UK as children and have no links with the country they were born in;
- Those who have previously been given indefinite leave to remain following claiming asylum; and
- Those where there is possibility that they have been trafficked.

We strongly support the proposals to explore conditional cautions for people entering the country and leaving the country. However, a system that used conditional cautions for people already living and working in the UK, on the condition that they left the country would be racially discriminatory and open to challenge under the Equalities Act.

Although there are no public figures available regarding the numbers of post tariff lifers, we know that the parole board reviewed around 1,530 post tariff lifers in the year 2009/10, so the numbers of post-tariff lifers could be as many as 3,000. We are particularly concerned about short tariff and automatic lifers, many of whom are in a similar position to an IPP prisoner, having served far longer than their original given tariff. One of the impacts of the IPP sentence has meant that life sentence prisoners and long term determinate sentence prisoners have been de-prioritised for interventions and offending behaviour courses as resources have been redirected toward IPP prisoners. This has seen a 'silting up' of the system with many lifers being warehoused and unable to access the interventions they need to progress towards release. The rehabilitation revolution should look at

measures to engage these prisoners and enable them to move through the system constructively.

Q29. What are the key reforms to standards and performance management arrangements that will ensure that prisons and probation have more freedom and professional discretion and are able to focus on the delivery of outcomes?

Each statutory agency should be given a small number – no more than three or four – priorities each year or for a given planning period. These, together with legislative requirements and national standards would reflect the national agenda and concerns to improve crime prevention and to reduce reoffending that affect every area. All other priorities should be set and monitored at a local level.

In the prison service stabilising prison governors' length of stay and improving systems for professional development and career progression would help.

Q30. What are the key reforms to financial arrangements that will support prisons and probation in delivering outcomes at less cost?

There will be advantages to organising support services across areas for a number of functions.

The lessons of justice reinvestment should be taken from the Justice Committee report published in 2010.^{xi} The report concluded that the prison population could safely be capped and then reduced by one third over a period of years. The report examines different funding arrangements and transfers of funds from custodial to community provision. Areas should certainly be rewarded for performance that translates into sustained reductions in the use of custody, with a commensurate reduction in the cost to the taxpayer.

Q31. How do we involve smaller voluntary organisations as well as the larger national ones?

Whilst we are broadly supportive of the principles informing PBR we share the concerns raised by Clinks in their submission. There needs to be a platform of practical support available in each area for smaller voluntary organizations. There also needs to be funding arrangements that span a number of years for smaller organizations. It is somewhat ironic that multi-national companies with vast assets can achieve 25 year plus contracts for running prisons, while BAME and women's organizations often struggle to survive on annual contracts for small amounts of money from numerous funding streams. Such an approach has unintended consequences, adding to the complexity of providing services and increased administration costs in delivering contractual obligations from a wide range of statutory funders. Providing greater coordination of funding streams at a local level could alleviate this problem backed by support from the Cabinet Office.

4. Sentencing reform

Q32. What are the best ways to simplify the sentencing framework?

Prison Reform Trust would like to see the sentencing framework as a broad based pyramid, starting with the base as follows:

- Diversion from the criminal justice system of people who suffer from mental illness or severe learning disabilities and learning difficulties.
- Opportunities for restorative justice at all stages in criminal justice proceedings and as an

- alternative to prosecution as appropriate.
- Cautions for most first offenders and those who have committed minor offences.
- Financial penalties, adjusted to take account of ability to pay or transfer into unpaid work, for the bulk of offenders who appear before the courts.
- Community sentences for more serious offenders, including those who would benefit from supervision and other interventions.
- Greater control and surveillance (including where appropriate electronic monitoring) of persistent offenders using integrated offender management approaches, which include intensive work to reduce reoffending.
- Imprisonment reserved for the most serious and violent offenders for whom no other disposal would be proportionate and from whom the public require protection.

In the words of former Conservative Home Secretary Willie Whitelaw:

“...we must ensure that prison is reserved for those whom we really need to contain in custody and that sentences are no longer than necessary to achieve this objective...”

Prison sentences should almost always be determinate, with automatic release on licence at the half way point.

Indeterminate prison sentences should be reserved for those serving a life sentence, where the tariff would be determined by the judge in the light of the individual circumstances in each case.

Sentences of imprisonment for public protection (IPPs) should be used in wholly exceptional cases.

With regards to young adults, any simplification of the legal framework may make it more difficult to treat them as a distinct group in legislation. Rather than simplification, we recommend instituting the principle of proportionality into sentencing for this age group – this could be achieved through the use of maturity assessments to inform sentencing decisions, drawing on experience in Germany and as proposed by T2A. Alternatively, the threshold at which young people transfer out of the youth and into the adult justice system could be raised to, for instance, 21 years, thus allowing young adults to be sentenced under juvenile legislation.

Q33. What should be the requirements on the courts to explain the sentence?

The court should satisfy itself that the defendant has understood the full meaning of the sentence passed and, in the event of a prison sentence, the provision for appeal and the procedures governing release. In the case of someone with mental health problems or learning disabilities or difficulties this may take a little time. The court should allow time for such a measured approach to sentencing.

Q34. How can we better explain sentencing to the public?

The sentence should immediately be placed on the public record with an explanation as to what it means in practice, including where appropriate, time to be served in custody and an explanation of how the remainder of the sentence will be served. A simpler structure, as suggested under Q32 above will help.

Q35. How best can we increase understanding of prison sentences?

A simpler sentencing framework would help. If all but a tiny minority of prison sentences were determinate, with release on licence at the half way point, this would immediately improve

transparency and improve understanding by the public.

Government should be consistent in informing the public that the aims of imprisonment (public protection, punishment, rehabilitation) are difficult to achieve when 1) prisons are over-crowded; and 2) prisons inevitably cause an increase in homelessness, unemployment (and unemployability), financial problems and family break-up.

Where there is public benefit from a sentence, for example victim surcharge, community payback or restorative justice this should be explained clearly and publicised via the local media if possible. Opportunities should be taken to explain sentencing such as citizenship education in schools, open court days, events run by magistrates and probation teams and learning drawn from an expansion of community courts.

Q36. Should we provide the courts with more flexibility in how they use suspended sentences, including by extending them to periods of longer than 12 months, and providing a choice about whether to use requirements?

The risk in developing suspended sentences in the way this question suggests is that its increased use could in many cases replace the more onerous community penalty rather than a short prison sentence. The Sentencing Council and those framing legislation would need to be mindful of this considerable risk. For this reason, the Prison Reform Trust would not be in favour of more flexible suspended sentences, seeing them as extending the reach of custodial provision.

Q37. How can we make community sentencing most effective in preventing persistent offending?

The impressive work of Integrated Offender Management teams is recognised in the green paper. These should exist in each area and the lessons from the best performing schemes promoted widely.

Recent Ministry of Justice research shows that community sentences are more effective than short prison sentences for matched offenders. This is achieved at a fraction of the budget for incarceration. Community sentences have lacked consistent political support and adequate investment and both should be put right if prison is to be reserved for those who have committed serious offences.

The success of the IAC pilots targeting young adult offenders demonstrates the value of intensive community interventions which take a holistic approach to addressing offending behaviour. Persistent offending does not occur in a vacuum – it is therefore vital that community sentences aimed at young adults offenders are tailored to meeting their particular health, accommodation and training and employment, as well as offending, needs.

Q38. Would a generic health treatment community order requirement add value in increasing the numbers of offenders being successfully treated?

Yes; however it is important that certain safeguards are in place. For example, care should be taken to ensure that the proposed treatment is agreed and understood by the individual offender prior to an order being made. Further, treatment should be made available within a reasonable timeframe, set by the court, and agreed by the individual offender. If an offender subsequently decides they no longer wish to receive the treatment detailed by the community order, they should be able to return to court without prejudice. If the treatment isn't provided within the timeframe determined by the court, the treatment provider should be required to explain, to the court, the reasons for this lapse. The court, informed by the offender manager and the offender, would then decide whether a further

order should be made.

Q39. How important is the ability to breach offenders for not attending treatment in tackling their drug, alcohol or mental health needs?

Very; however it is important that certain safeguards are in place. In addition to the above points (Q38), it should be borne in mind that offenders with mental health needs and learning disabilities, in particular, may need additional support to ensure they attend treatment. For example, 'accessible' appointment reminders, such as mobile phone texts and 'easy read' letters are especially important for people who are unable to read very well, tell the time, or organise themselves; while for young people, attendance at mental health centres is known to be particularly hard, therefore 'outreach' may need to be considered. Treatment programmes should be accessible to all offenders, and be delivered at venues where people feel safe and non-stigmatised; offenders should have confidence in the programmes they are expected to attend.

Assuming these safeguards are in place, breach for non-attendance should be an option for professionals when offenders fail to attend treatment.

Q40. What steps can we take to allow professionals greater discretion in managing offenders in the community, while enforcing compliance more effectively?

Greater discretion in managing offenders is to be encouraged. This is especially important where different professional groups are involved in the treatment of offenders, e.g. mental health or substance misuse treatment programmes, and offenders with learning disabilities. Equally important is for offender managers to understand why an offender may not have complied, and to support enforcement and future compliance. This has the potential to ensure a more effective outcome overall. The courts response to technical breach of license needs to include increased supervision and provision for review rather than a single default setting of custody which may not be appropriate in individual circumstance.

Q41. How might we target community sentences better so that they can help rehabilitate offenders before they reach custody?

Effective assessment is critical in ensuring that community sentences are well targeted.^{xi} However, there is currently no routine screening or procedure to identify when an offender might have learning disabilities or low average IQ or other impairments that might affect their ability to understand what is expected of them, which in turn is likely to compromise the effectiveness of a community sentence.

Many offenders have particular support needs including accommodation, and employment and training, while others have more complex support needs and dual diagnosis. There is likely to be a 'hierarchy' of need that requires addressing in order. For example, an offender with no fixed abode is unlikely to be able to effectively tackle their substance misuse or focus on finding work.

Further, community sentences must be appropriate for individual offenders. Whilst offending behaviour programmes are cited as an example of giving 'offenders the best chance of changing their lives'^{xii} such programmes are only generally accessible to people with an IQ of more than 80, creating a mismatch between the literacy demands and the skill level of offenders, particularly in speaking and listening.^{xiii}

The level of support required by individual offenders to complete a community sentence will vary. For some, clear expectations and routine supervision will be adequate, while for others, ongoing

support – including specialist support for people with mental health problems and learning disabilities – provided on a regular basis, will be necessary.

Q42. How should we increase the use of fines and of compensation orders so as to pay back to victims for the harm done to them?

Placing restorative practice at the heart of the criminal justice system would provide a variety of means for the offender to make amends for the harm done and distress caused. This could include in all but the most serious cases the possibility of a compensation order or, if the victim prefers, payment to a charity.

Income related ‘unit fines’ have the potential to restore the fine to a place of prominence in the range of court disposals.

In 2003, a Prime Minister’s Strategy Unit report^{xliv} stated:

“In Germany, between 25 and 30 per cent of offenders are given conditional dismissals as an alternative to prosecution. The decision is the responsibility of the prosecutor. The offender can be asked to pay a fine or make reparation or undertake community service. They do not get a criminal record. If they fail to keep to the conditions they can be taken to court.”

The report suggested use of a similar approach in England and Wales linked to the conditional caution. It also recommended that the conditional caution be “linked with financial reparation to the victim, an apology, restorative work, victim-offender mediation or community work”.

The imposition of fines should be treated with caution however, especially if the offender is unwaged and the subsequent risk of non-payment is likely to be high. Where a fine is deemed appropriate, personal budgeting should be developed with the individual offender. The option of translating a fine into units of unpaid community work should be made available.

Q43. Are there particular types of offender for whom seizing assets would be an effective punishment?

More attention should be paid to dealing with those who organize crime and exploit vulnerable people. This includes drug barons, child traffickers and those running the sex industry. Seizure of assets is an appropriate response to such offenders who can make large sums of money from their crimes, just as it is to those convicted of offences of large scale fraud and embezzlement.

Q44. How can we better incentivise people who are guilty to enter that plea at the earliest opportunity?

While proposals to reduce bureaucracy, delay and expense are welcome there are inherent risks associated with incentivising certain suspects to enter a guilty plea. Evidence shows that during police interview people with learning disabilities, for example, are likely to be acquiescent and suggestible and, under pressure, may try to appease other people. This may result in an individual entering a guilty plea because they believe it is the ‘correct’ answer and because they do not fully understand the implications of their actions. Although people with a learning disability are entitled to support from an Appropriate Adult during police interview, it is generally acknowledged that, in the absence of routine screening for learning disabilities, the support needs of many suspects are left unrecognised and unmet.

Any incentive to enter a guilty plea should therefore be accompanied by a robust undertaking on the part of criminal justice services that the individual concerned understands the charge, is fit to be

interviewed by police – with or without support – and is fully cognisant of the implications of entering a guilty plea at the earliest opportunity.

Q45. Should we give the police powers to authorise conditional cautions without referral to the Crown Prosecution Service, in line with their charging powers?

Conditional cautions can be onerous and should only be imposed where it is clear guilt has been freely admitted. To leave detection, taking of plea and administration of punishment with one body, without any outside checks allows too much scope for abuse of power. The Crown Prosecution Service should have a facility for a swift review prior to a conditional caution being given and powers to intervene and review if necessary.

Q46. Should a simple caution for an indictable only offence be made subject to Crown Prosecution Service consent?

Similar concerns to those expressed at Q44 would also apply to this question.

Q47. Should we continue to make punitive conditional cautions available or should we get rid of them?

A caution is a warning. The only conditions that should be attached are: reparative, where someone who has admitted an offence agrees to make a limited form of amends; and rehabilitative, where participation in a short-term activity to reduce the likelihood of reoffending is agreed to. A conditional caution demands that an offender admits guilt of the offence for which they are being given the caution. If they do not meet the conditions of the caution then they can be prosecuted for the original offence.

5. Youth Justice

Q48. How can we simplify the out of court disposal framework for young people?

Steps to simplify the existing framework and encourage greater use of out of court disposals are to be welcomed.

Only those offences judged to be so serious as to warrant formal entrance to the youth justice system should be recorded on the Police National Computer (PNC). Minor offending dealt with out of court should neither be recorded on the Police National Computer (PNC) nor warrant a criminal record. Discretion to record out of court disposals locally should lie with the police and any future out-of-court disposal framework should be decoupled from the police performance target and incentives structure.

To address concerns about justice by geography, all out of court disposals should be restorative in nature helping young people to understand the impact of their behaviour and, where relevant, make amends. The Youth Restorative Disposal and the Youth Conditional Caution provide a framework for delivering such a system. In recognition of young people's capacity for change and of the aim of out of court disposals to keep them out of the youth justice system where their offending does not merit formal intervention. The number of times a pre-court disposal can be awarded should not have any artificial limit but rather decided on a case-by-case basis. In addition, a young person who is, or has been, subject to a court disposal should still be eligible for an out of court disposal, where this constitutes the most appropriate response to their offending.

Using financial penalties to sanction low level offending and minor anti-social behaviour by young people is inappropriate – under-18 year olds are unlikely to have the means to pay them and the imposition of a fine has little or no rehabilitative impact. We recommend raising to 18 years the minimum age at which the Fixed Penalty Notice and Penalty Notice for Disorder can be issued. Offending by under-18 year olds which is serious enough to merit a disposal should be dealt with restoratively. The success of pre-court diversionary youth conferencing in Northern Ireland provides a template which could be applied in England and Wales.

Diversion from the formal youth justice system into alternative provision such as mental health, alcohol or drug services, where appropriate, should be the default for all minor and low level offending, including anti-social behaviour, where there is an admission of guilt. Triage schemes, which place specially trained youth offending team staff inside police custody suites to assess and divert children out of the youth justice system on the basis of mental health need, vulnerability and offence gravity, provide one model for doing so, and should be expanded to every area.

Q49. How can we best use restorative justice approaches to prevent offending by young people and ensure they make amends?

The Prison Reform Trust believes that restorative justice has the potential to be an effective tool for reducing offending and helping to rehabilitate children who offend. We would advocate a restorative approach to youth offending based on the integrated model of Northern Ireland's Youth Conference Service. This could be added to the menu of potential options within the Youth Rehabilitation Order (including as an alternative to ISS) and piloted in a number of areas. The restorative conference is the first option offered to most children who offend, whether they have been diverted from court or convicted. Conferences are organised and chaired by highly-trained paid staff who work with both the victim and the perpetrator. Only if the perpetrator does not want to take part, or if the child is sentenced to custody, is the restorative conference not used.

In Northern Ireland a significant proportion of victims take part in conferences, with 89% expressing satisfaction with the outcome. In addition the court ordered youth conferences have a reoffending rate of 47.4%, significantly lower than that of the supervision order used in England and Wales (71%). A key finding of the recent National Audit Office report on the youth justice system in England and Wales was that "there appears to be little improvement in the reoffending rate amongst those offenders serving serious community sentences and custodial sentences"^{xlv}. Given the relative lack of success of the most intensive and expensive community sentences, we feel another approach must be tried.

In line with the T2A submission, we believe restorative justice conferencing should also be extended for use with young adults, particularly in light of research from Matrix Evidence on the financial benefits which would be accrued by such an approach.

Q50. How can we increase the effective enforcement of youth sentencing?

A high number of children subject to community sentences are brought back to court for breach. Breach of statutory order is the only offence type which has increased every year, constituting 6% of all offences resulting in a disposal in 2007/8, almost double the proportion in 2002/3. A substantial proportion of those sentenced to custody are sentenced for breach of community orders or ASBOs, with breach of statutory order accounting for more detention and training orders in 2007/08 than any other offence. We are concerned that so many children are being imprisoned for non-compliance and support a change in legislation to prevent children being imprisoned for breach.

The emphasis on reducing breach should be on increasing the engagement of children with their orders or sentences. The best staff are those able to win trust, persuade children to attend meetings

and challenge their offending behaviour. The latest guidelines on the Sentencing of Youths state that “before imposing a custodial sentence as a result of re-sentencing following breach, a court should be satisfied that the YOT and other local authority services have taken all steps necessary to ensure that the young person has been given appropriate opportunity and support necessary for compliance”.^{xlv} We would support the enforcement of this principle for all breaches that come before the court.

YOT managers should be encouraged to use their discretion to stay breach in certain circumstances. A breach panel, where key members of staff, including the YOT officer who has breached, the child and their parents, discuss why the breach occurred and whether the child can comply without being prosecuted for non-compliance should be adopted. Where the manager supports prosecution, they must be sure staff sufficiently adhered to the Sentencing Council guidelines above. In the case of looked after children, the manager should require the attendance of the child’s key social worker to ensure that support will be provided to help them comply. Given the vulnerability of looked after children, and the duty of the state to look after them, we believe they should only be prosecuted for breach in exceptional circumstances.

We note a concern expressed in the Green Paper that children who breach Detention and Training Orders can escape punishment through absconding until the order end date has elapsed. We would not welcome any change in legislation to meet this problem but would like to know the number of children to which this applies, whether they were subject to electronic curfew and whether existing legislation has so far been misinterpreted and could still be used to sanction breach in these exceptional circumstances.

Q51. How can we succeed in reducing the need for custodial remand for young people?

UN Standard Minimum Rules on the Administration of Juvenile Justice state that “wherever possible, detention pending trial should be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home”.^{xlvii}

By expanding existing police station triage schemes to cover bail decisions where refusal of bail is likely, overnight detention in police cells, and next day court appearances can be limited. If inadequate accommodation in the community places a child at risk of overnight detention, triage staff can contact family and friends to identify suitable placement until the child is due in court. This approach was adopted by Hull Youth Offending Team and should be replicated throughout the country.

We welcome the proposal to bring bail legislation in line with the UN Convention on the Rights of the Child which will prevent 17 year olds being treated as adults for the purposes of bail, however Police and Criminal Evidence legislation must also be amended, to ensure that 17 year olds in the police station are no longer discriminated against. Remand legislation for under 18 year olds should be distinct from that for adults, recognising that a child accused of an offence is a child first and foremost. Remand to non-secure local authority accommodation is an important, if under-used, option for bail and should remain so under the proposed Single Remand Order.

The minimum age at which a child can be subject to custodial remand should be raised from 12 years to 14 years. Where there are significant concerns of risk of harm to the public associated with releasing children under the age of 14 on bail, the court can request, and the local authorities can apply for, a secure placement under welfare legislation, as is currently the case for 10 and 11 year olds.

Linking remand decisions to probable sentence outcomes is unlikely, on its own, to lead to a significant reduction in use of custodial remand, given the flexibility within the existing custody threshold. Nevertheless, any steps taken to address the current imbalance in remand/sentence

conversions, whereby a third of children remanded are subsequently given community sentences, are to be welcomed. To ensure custodial remand is only ever used when a young person is accused of committing a serious violent offence, or sexual offence, and where there is good evidence they pose a significant risk of committing further such offences if released on bail, the criteria for custodial remand should be tightened. Simplifying remand legislation by removing the existing distinction between court-ordered secure remand and remand in custody is an important step towards rebalancing the system and ensuring that age cannot be used as a barrier.

Children subject to the Single Remand Order should be placed securely according to the criteria used for sentenced children. Decisions on vulnerability should be made by an individual or body independent of the placement authority.

Q52. How do you think we can best incentivise partners to prevent youth offending?

Most solutions lie outside the criminal justice system, with the sanctions meted out having only a limited effect. The Prison Reform Trust report, *Punishing disadvantage: a profile of children in custody*^{xviii}, revealed that 39% of children in custody had been on the child protection register and/or experienced abuse or neglect, 48% had been excluded from school and 11% had attempted suicide. To reduce offending, those needs must be met by mainstream and specialist agencies, particularly children's services. Financial, legal and performance management levers could be used to incentivise agencies to address the causes of offending as well as to deliver more effective criminal justice approaches.

There is currently no positive financial incentive for local authorities to prevent children being sentenced to custody as costs are met centrally. Individual authorities, like Leeds and Hull, which have made huge efforts to lower their custody rate, have saved central government millions of pounds while their own costs have increased as a result of supervising more children on intensive orders in the community.

The Prison Reform Trust supports proposals to (gradually) devolve the cost of custodial remand to local authorities to incentivise them to do everything possible to keep children in the community and out of custody. In view of the variable cost attached to placements in secure children's homes, secure training centres and young offender institutions, the cost charged to the local authority should be an average cost, per child, for a custodial remand. We would support devolution of the full costs of custody for children as a way of incentivising innovative practice in early intervention and prevention and in the delivery of locally-tailored community orders.

If local authorities are to be liable for the full cost of imprisoning children from their area, they should be reimbursed according to a formula related to their historic use of custody and the per capita use of custody in similar areas. This arrangement would reward local authorities who reduce or retain low use of custody while allowing them the freedom to choose how to spend any savings involved. They could use the money saved on custody on community orders, better educational provision for children with behavioural problems, or support for families where one or more adult member is in prison. Areas where the use of custody increased would be penalised financially.

Q53. How can we deliver a performance management and inspection regime that achieves our aim to reduce burdens and increase local accountability?

Broadly speaking, we support a performance management regime focused on outcomes, rather than process. Moving away from centralised prescription in favour of a framework built around local discretion should incentivise innovation in the delivery of locally tailored community orders and preventative programmes. There is, however, a need for national minimum standards to ensure that all children are supported to participate effectively. Minimum standards on assessment and

screening tools, or on the adaptability of community orders to encourage active engagement by all children (including for instance those with learning disabilities) should be developed to ensure they are supported to comply. This would also facilitate local accountability, providing benchmark data against which individual areas could be inspected and reviewed.

In some instances performance indicators have been instrumental in delivering significant outcomes. National indicator number 111 is credited with delivering a sustained reduction in first entrants to the youth justice system. We would be concerned by any attempt to remove all pre-existing performance indicators relating to youth justice, where this was not accompanied by the introduction of a new, transparent mechanism for holding local authorities to account.

We would welcome the introduction of an indicator on looked after children which collected data on the number of children in the care of the state who are imprisoned on remand or under sentence, so as to incentivise local authorities to do everything possible to keep children in care out of custody. This would also enable local stakeholders, including sentencers and practitioners, to better hold local authorities to account.

Q54. What are some of the ways we might be able to further involve local communities in youth justice?

One of the best ways of involving communities in local justice is to further restorative justice. All major evaluations of restorative justice have found victims to be more satisfied by this process than by the mainstream criminal justice system. Currently in England and Wales, local community volunteers sit on referral panels, which are sometimes restorative. We advocate greater involvement of victims in referral panels and the introduction of a restorative justice conference system, similar to that of Northern Ireland. Whilst volunteers do not run conferences in the Northern Ireland model, if the conference system were introduced here we could envisage a greater role for them as part of a restorative justice conference panel, with the panel chaired by a paid conference coordinator (see also response to Q49).

We are supportive of the principle behind both the Youth Justice Board's Making Good, and Probation's Community Payback schemes, that local people should have an opportunity to advocate for certain projects and that offenders make amends for some of the harm they do. However we are concerned that the difference between the two schemes may be confusing to the public, given that the kind of reparation projects proposed for under-18 year olds and adults are very similar. We would propose that under-18s should be included for public and promotional purposes in the Community Payback scheme, with probation and youth offending teams liaising to decide which proposed projects were most suitable for particular age groups.

We would also welcome greater involvement of local businesses and the voluntary sector in delivering volunteering and unpaid work requirements as part of existing community orders. Ensuring young people who undertake work in the community as part of statutory orders learn new, appropriate skills through the use of innovative training or work placements would be one way of improving engagement in, and completion of, unpaid work elements of community sentences.

Q55. How can the functions of the Youth Justice Board best be delivered by the Ministry of Justice?

It is essential that there remains a unit or directorate which is dedicated to under-18 year olds, recognising that the United Nations Convention on the Rights of the Child states that very justice system should treat children (under-18) differently to adults. Staff, resources and management within the Ministry of Justice must be dedicated to children to comply with this. Officials should have access to expertise and advice on vulnerable children and be mindful of the importance of meeting the welfare needs and the rights of children involved in the criminal justice system.

We are particularly concerned that two current responsibilities of the Youth Justice Board – commissioning a distinct secure estate, and placing individual young people in custody – should be fulfilled by Ministry of Justice staff working within the Youth Justice Unit/directorate, rather than the National Offender Management Service. Whilst commissioning and placement in the juvenile secure estate should remain the responsibility of central government, children's needs are distinct and are not well met by current young offender institution provision. The secure estate team within the Ministry of Justice must be separate from those dealing with adult custody, so they have the independence needed to make custody truly appropriate for the needs of vulnerable children. Without these measures there is a risk that, over time, authority, dedicated budget and single focus priority on under-18 year olds will be lost and services and outcomes for children and their families will suffer.

6. Working with communities to reduce crime

Q56. What sort of offences and offenders should Neighbourhood Justice Panels deal with and how could these panels complement existing criminal justice processes?

There are three crucial players in restorative justice processes: the first two are the victim and the perpetrator. Neighbourhood Justice Panels provide a process that strengthens the role of the third party: the community. As criminal courts become increasingly remote from the local neighbourhoods, the relevance of the Big Society becomes more important. Neighbourhood Justice Panels can become an innovative and effective response to anti-social behaviour.

Neighbourhood Justice Panels will need a range of restorative approaches in order to manage the individual circumstances that give rise to anti-social behaviour. In some cases, the background might be a dispute between neighbours, where both have caused harm to the other, a situation best managed through mediation and other processes focused on resolving conflict. In other cases, the harm-doing is more unilateral, and requires a restorative conference based on one party taking responsibility for the harm done.

The scope of the Neighbourhood Justice Panels should not be restricted explicitly by type of offence. A key to how they are used will be the referral system, which will require training of police officers, magistrates courts, and other criminal justice professionals to help them to determine when a restorative response is likely to be constructive. It is clear that a panel should work at an early stage in the criminal justice process, ideally reducing the workload of magistrates' courts.

Q57. What are the other ways in which we can work effectively across Government to increase local flexibility to tackle offending?

Structures already in place are designed to work with local authorities to reduce reoffending. In particular, people coming out of prison have legally established rights to social support but are often ignored. There are laws and policies that oblige local authorities to assess the needs of vulnerable people, prior to release from prison. If they fail to do so, the relevant authorities may be in breach of their legal duties.

Under Section 47 of the National Health Service and Community Care Act (1990), the local authority has a duty to assess the needs of any vulnerable person. The assessment should include an identification of the person's needs, together with decisions as to which services are required. The policy encourages a single, integrated plan to manage the full range of problems requiring social support, including housing, health, and community care needs.

Under the Health Service Act (2006), released prisoners can be entitled to health care from GPs, community mental health teams, learning disability services, and hospitals. In addition, many prisoners are eligible for the Care Programme Approach, an ongoing process to manage the provision of health services to the patient. Others, not eligible for a care plan, are nonetheless entitled to access community care. The National Assistance Act (1948) is also relevant, as it places a duty on local authorities to provide residential accommodation for those, 'who, by reason of illness, disability or any other circumstances are in need of care and attention which was not otherwise available to them' (Section 21). The Children (Leaving Care) Act 2000 places a duty on local authorities to provide continuing support for vulnerable care leavers up to the age of at least 21, and help given to meet expenses concerned with education or training may continue to the young person's 24th birthday. This should include many young adults on release from custody.

Q58. What more can be done to support family relationships in order to reduce reoffending and prevent intergenerational crime?

There will be different requirements and needs between groups of offenders, with a range of support needed for those in the community, those in custody, and foreign nationals.

Families in the community

Information sharing protocols across all statutory services need to be reviewed to ensure that all relevant agencies involved in supporting children and families are working together. Sure Start could further develop work with hard to reach families and support the roll out of parenting classes through schools, faith groups and community centres. Teachers and support workers in schools need clearer referral routes to mental health, drug and alcohol services for young people, and family services. Early intervention and behaviour support programmes in schools, support for excluded pupils and their families and youth inclusion projects should have a whole family approach wherever possible. Identification by probation staff of those on community payback with children and clear referrals routes for any families experiencing difficulties. In addition community payback schemes should provide information and support for families. Health and social services should support the entire family of any one with problematic drug or alcohol use, rather than supporting the individual.

Families of someone in custody

Identification of those with children or other caring responsibilities is crucial and this information should be routinely monitored and published. Despite family links being crucial in helping to prevent further reoffending current allocation procedures do not take sufficient account of prisoners' home circumstances, therefore the location of prisoners should be reviewed before reception to prioritise family and community links wherever possible and subsequently in last 6 months of sentence to enable local discharge. Prisoners should be supported and encouraged in making links with family through emails telephone letters and visits – email should be available in all prisons, video links and Skype possibilities should be explored, and the cost of phone calls from prison should be reduced in line with market rates. First night in custody schemes, such as those run by PACT, should be expanded.^{xlix} Assisted prison visits units should be retained and support should be provided to prison visitors with disabilities. Funding for family support work, visits and parenting classes in prison should be ring fenced and centrally supported. The Department of Education and Department of Health social services should recognise children of prisoners as a potentially vulnerable group and their policies, practice and practitioner training should reflect this.

Q59. What more can we do to engage people in the justice system, enable and promote volunteering, and make it more transparent and accountable to the public?

Less emphasis should be placed on expensive adversarial proceedings and more on restorative practices which have been shown to improve victim satisfaction and reduce the likelihood of reoffending.

Schemes such as Local Crime: Community Sentence should be built into citizenship programmes at schools.

Government officials should promote the value of opening the criminal justice system, including prison conditions and expenditure, to public view.

Most crime is a local phenomenon. It should be managed locally, with local people involved in preventing crime and reducing reoffending. Restorative practices allied to mentoring schemes, a range of youth activities and fostering placements can all play their part, as can apprenticeships with local employers and education helpers for those who have missed out at school or have difficulty in benefitting from classroom education. Government can, through national and local media and personal visits, do a great deal to help people understand the benefits to them. Volunteering opportunities such as the Youth Conference Service raised in Q49 would allow improved accountability and transparency at the same time as engaging new volunteers.

^{xii} HM Chief Inspector of Prisons for England and Wales (2010), *Annual Report: 2008-2009*, London: The Stationery Office. Available at http://www.justice.gov.uk/inspection/hmi-prisons/docs/HMIP_AR_2008-9_web_published_rps.pdf

^{xiii} All-Party Parliamentary Group on Penal Affairs (2010), *Too Many Prisoners*, London: Prison Reform Trust. Available at <http://www.prisonreformtrust.org.uk/Portals/0/Documents/APPPAG2010.pdf>

^{xiv} The Howard League for Penal Reform (2010), *Barbed: what happened next?*, The Howard League for Penal Reform. Available at: <http://www.howardleague.org/barbed-what-happened-next/>

^{xv} Singleton, N et al. (1998), *Psychiatric Morbidity among Prisoners in England and Wales*, London: Office for National Statistics. Available at http://www.statistics.gov.uk/downloads/theme_health/PyscMorbYoungOffenders97.pdf

^{xvi} Talbot, J (2008) *No One Knows: report and final recommendations*, London: Prison Reform Trust. Available at: <http://www.prisonreformtrust.org.uk/Publications/vw/1/ItemID/89>

^{xvii} Biggar, K, Edgar, K & Jacobson, J (2011 forthcoming), *Time Well Spent: Prisoners as active citizens*, London: Prison Reform Trust.

^{xviii} Stewart, D. (2008), *The Problems and Needs of Newly Sentenced Prisoners: Results from a National Survey*, London: Ministry of Justice. Available at <http://www.justice.gov.uk/publications/docs/research-problems-needs-prisoners.pdf>

^{xix} Ministry of Justice (2010), *Offender Management Caseload Statistics 2009*, London: Ministry of Justice. Available at <http://www.justice.gov.uk/publications/docs/omcs-2009-complete-210710a.pdf>

^{xx} Edgar, K (1999), 'Restorative Justice in Prison?', *Prison Service Journal*, 123, 6-7.

^{xxi} Edgar, K & Newell, T (2006) *Restorative Justice in Prisons: A guide to making it happen*, Winchester: Waterside Press.

^{xxii} Restorative Justice Council (2004), *Principles of restorative processes*. Available at: http://www.restorativejustice.org.uk/resource/principles_of_restorative_processes_december_2004

^{xxiii} Shapland, J, et al. (2004), *Implementing restorative justice schemes (Crime Reduction Programme): A report on the first year*, Home Office Online Report 32/04, London: Home Office. Available at: <http://rds.homeoffice.gov.uk/rds/pdfs04/rdsolr3204.pdf>

^{xxiv} Tong, S, O'Mahoney, J, Bryant, R and Waters, B (2009), *Interim Report: An Evaluation of Adult Prison RJ Mediation*, Dept Law and Criminal Justice Studies, Canterbury Christ Church University. Available at [http://www.canterbury.ac.uk/social-applied-sciences/crime-and-policing/mediation-clinic/documents/Sheppey Interim Report.pdf](http://www.canterbury.ac.uk/social-applied-sciences/crime-and-policing/mediation-clinic/documents/Sheppey%20Interim%20Report.pdf)

-
- ^{xxv} Shapland, J, et al. (2004), *Implementing restorative justice schemes (Crime Reduction Programme): A report on the first year*, London: Home Office. Available at <http://rds.homeoffice.gov.uk/rds/pdfs04/rdsolr3204.pdf>
- ^{xxvi} Edgar, K and Newell, T (2006), *Restorative Justice in Prisons: A Guide to Making it Happen*, Winchester: Waterside Press. Available at [http://books.google.co.uk/books?id=SV2T1WzW42gC&lpg=PP3&ots=jWKrUEneIW&dq=Restorative Justice in Prisons Edgar&pg=PP3 - v=onepage&q&f=false](http://books.google.co.uk/books?id=SV2T1WzW42gC&lpg=PP3&ots=jWKrUEneIW&dq=Restorative+Justice+in+Prisons+Edgar&pg=PP3-v=onepage&q&f=false)
- ^{xxvii} Jacobson, J and Gibbs, P (2009), *Making Amends: restorative youth justice in Northern Ireland*, London: Prison Reform Trust. Available at <http://www.prisonreformtrust.org.uk/Portals/0/Documents/making%20amends%20restorative%20youth%20justice%20in%20northern%20ireland.pdf>
- ^{xxviii} Hansard HC, 8 May 2009, c485W. Available at [http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090508/text/90508w0011.htm - 09050836000088](http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090508/text/90508w0011.htm-09050836000088)
- ^{xxix} HM Chief Inspector of Prisons (2011), *Report on a full unannounced inspection of HMP Holme House: 19–23 July 2010*, London: HM Inspectorate of Prisons. Available at: http://www.justice.gov.uk/inspectors/hmi-prisons/docs/Holme_House_2010_rps.pdf
- ^{xxx} Corston, J (2007), *The Corston Report: A Report by Baroness Jean Corston of a Review of Women with Particular Vulnerabilities in the Criminal Justice System*, London: Home Office. Available at <http://www.justice.gov.uk/publications/docs/corston-report-march-2007.pdf>
- ^{xxxi} United Nations (2010), *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)*. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/LTD/N10/561/94/PDF/N1056194.pdf?OpenElement>
- ^{xxxii} Rumgay, J (2004), *When Victims Become Offenders: In Search Of Coherence in Policy and Practice*, London: Fawcett Society, Gender and Justice Policy Network. Available at http://www.fawcettsociety.org.uk/documents/When_Victims_Become_Offenders_Report_14.12.04.pdf
- ^{xxxiii} Independent Commission on Youth Crime and Antisocial Behaviour (2010), *Time for a Fresh Start: The Report of the Independent Commission on Youth Crime and Antisocial Behaviour*, London: The Police Foundation. Available at http://www.youthcrimecommission.org.uk/attachments/076_FreshStart.pdf
- ^{xxxiv} Sherman, Lawrence and Strang, Heather (2007) *Restorative Justice: The Evidence*, London: Smith Institute. Available at <http://www.smith-institute.org.uk/file/RestorativeJusticeTheEvidenceFullreport.pdf>
- ^{xxxv} From a sample of 1,435 reception prisoners sentenced to between one month and four years in prison, in England and Wales, in 2005/06. ONS (2003) and Compendium of reoffending statistics and analysis, published November 2010, available at <http://www.justice.gov.uk/publications/compendium-reoffending.htm>
- ^{xxxvi} Bath, C and Edgar, K (2010) *Time is Money: financial responsibility after prison*, London: Prison Reform Trust. Available at [http://www.prisonreformtrust.org.uk/Portals/0/Documents/Time is Money_8a_Layout_1.pdf](http://www.prisonreformtrust.org.uk/Portals/0/Documents/Time_is_Money_8a_Layout_1.pdf)
- ^{xxxvii} The Law Commission (2010), *Unfitness to Plead: A Consultation Paper*, Consultation Paper No 197, London: The Law Commission. Available at http://www.lawcom.gov.uk/docs/cp197_web.pdf
- ^{xxxviii} Corston, J (2007), *The Corston Report*
- ^{xxxix} Wedderburn, D (2000), *Justice for women: the need for reform; the report of the Committee on Women's Imprisonment*, London: Prison Reform Trust. Available from the Prison Reform Trust.
- ^{xl} House of Commons Justice Committee (2010), *Cutting crime: the case for justice reinvestment*. Available at <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmjust/94/94i.pdf>
- ^{xli} Ministry of Justice (2010), *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*, London: Ministry of Justice, p24. Available at http://sentencing.justice.gov.uk/consultation/Breaking_the_Cycle.pdf
- ^{xlii} *Ibid.*
- ^{xliii} Davies, K, et al. (2004), *An evaluation of the literacy demands of general offending behaviour programmes*, Home Office Findings 233, London: Home Office. Available at <http://rds.homeoffice.gov.uk/rds/pdfs04/r233.pdf>

-
- ^{xliv} Carter, P. (2003), *Managing Offenders, Reducing Crime—a New Approach*, Correctional Services Review by Patrick Carter, London: Prime Minister's Strategy Unit. Available at <http://webarchive.nationalarchives.gov.uk/20060715135117/http://strategy.gov.uk/downloads/files/managingoffenders.pdf>
- ^{xliv} National Audit Office (2010), *The youth justice system in England and Wales: Reducing offending by young people*, London: The Stationery Office. Available at http://www.nao.org.uk/publications/1011/reoffending_by_young_people.aspx
- ^{xlv} Sentencing Guidelines Council (2009), *Overarching Principles – Sentencing Youths*, London: Sentencing Guidelines Council. Available at http://www.sentencingcouncil.org.uk/docs/web_overarching_principles_sentencing_youths.pdf
- ^{xlvii} United Nations (1985), United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"). Available at <http://www.un.org/documents/ga/res/40/a40r033.htm>
- ^{xlviii} Jacobson, J, et al. (2010), *Punishing Disadvantage: a profile of children in custody*, London: Prison Reform Trust. Available at http://www.outoftrouble.org.uk/sites/default/files/Punishing_Disadvantage_0.pdf
- ^{xliv} Jacobson, J, Edgar, K, and Loucks, N (2008), *There When You Need Them Most: Pact's First Night in Custody Services*, London: Prison Reform Trust. Available from the Prison Reform Trust.