

Prisons strategy white paper: Response to questionnaire

About Unlock

Unlock is a national, independent advocacy charity for people facing obstacles, stigma and discrimination because of their criminal record. Every year we hear from thousands of people who are unnecessarily held back in life because of their criminal record. We work at policy level to address systemic and structural issues. We listen to and consult with people with criminal records, undertake research and produce evidence-based reports to inform policy makers and the public.

About this response

We welcome the opportunity to respond to the prisons strategy white paper and we look forward to continued engagement with the Ministry of Justice as the work progresses. Our responses are confined to those we have knowledge or evidence on.

Response

Q1. Do you agree that these are the right long-term ambitions for the prison estate? and Q12. Do you agree with our long-term vision?

Although there is a section titled 'the purposes of prisons' the long-term ambitions for the prison estate does not include any detail on the Ministry's belief in the purpose of prisons. Without that, it is difficult to know if these are the right long-term ambitions for it. The [2016 prisons white paper](#) said

'As it stands, the prison system does not have clear objectives set out in law by Parliament. This is surprising, particularly given the importance of prisons in protecting the public and helping to prevent crime, and the cost of the system to the taxpayer...What is missing is clarity over what that system as a whole should be delivering. This is not just a symbolic change. To meet the challenges the prison system faces and transform the service, change needs to be properly embedded across the system. **Reform that focuses on fixing specific parts of the system, however well-chosen, is doomed to fail because it does not bring that system together to deliver the changes it seeks.** We need to go back to the beginning and make sure that it is crystal clear what the prison system exists to deliver, both to everyone who works in and with it and to society beyond. We therefore intend to legislate to introduce a clear statutory purpose for the prison system. [59-62 emphasis added]

Has this position been abandoned and does the Ministry of Justice believe that reform can be delivered without clarity of what the system as a whole should be delivering?

The ambitions listed here focus on the ability to build more, greener and more secure prisons, cheaper and quicker – but is the building of new prisons the right ambition? Building new prisons creates a self-fulfilling prophecy (they will have to be filled) and projections for the numbers of

people in prison in future years are also based on a presumption of more people serving longer sentences. A growing prison population is an admission that prisons do not reduce crime.

The quality of prison estate is important, however, ploughing money into new prisons without a plan for closing old, unsafe prisons is not the answer. The best way to 'minimise effects on the environment, reduce operating costs and deliver value for money' is to focus on safely reducing the prison population, improving the effectiveness and availability of non-custodial sentences and investing in services proven to prevent crime and reduce reoffending.

Q6. Where can we go further to give prisoners the skills to secure stable employment on release? Specifically, we would like to hear from charities, employers and training providers working with prison leavers or who would like to support our mission of getting more prisoners into jobs. We would also be interested to hear about how schemes that delay the disclosure of convictions during job applications, such as 'Ban the Box', could be enhanced and embedded with employers.

The white paper does not provide detail on how the effectiveness of initiatives to increase employment will be monitored. Monitoring and adapting will be an important part of fulfilling the mission of getting more prisoners into jobs. We also consider it vital to success that the learning from this is fed back to the criminal records policy team.

England and Wales is unusual in allowing widespread criminal records collection by employers. Unsurprisingly, the relative ease with which employers can collect and use this information means that [most do](#). Disclosure remains a significant barrier to work – for many the only long-term barrier – long after leaving prison.

The Ministry of Justice could go further in enabling prison leavers to secure work – immediately after release and later on – by reviewing the role of criminal records disclosure. Unlock welcomes the planned reduction in disclosure periods, which will also enable some sentences of over four years to become spent but these do not go far enough. The proposals exclude a wide range of offences from ever becoming spent – we think the stories of [Ian](#) and [Amir](#) show why a blanket exclusion is unfair. The majority of sentences can become spent in time but the law, as it stands, provides no protection for people with spent convictions. Internet searches and unlawful DBS checks can reveal spent criminal records and our helpline hear regularly from people who have been rejected or even dismissed from employment because of a spent conviction that the employer should legally ignore.

The plan to provide employer guidance is welcome, but it remains unclear why government continue to expect employers 'to make better assessments regarding risk'. Do government really consider employers best placed to conduct complex assessments without tools, training or expertise? For many employers, this is simply not feasible and they will refuse to employ a person who discloses a conviction. More than half of employers admit they would [discriminate against an applicant with a criminal record](#). Guidance can support those employers who are motivated to employ people with convictions but will do little to persuade those who are reluctant. We would like to see a plan for public engagement that supports this guidance, challenging perceptions of prison leavers and promoting the benefits of inclusion.

Delayed disclosure of convictions – 'banning the box' - can help some applicants. The UK GDPR already requires that organisations processing criminal offence data identify a legal basis and

condition of processing before doing so. The information (like all personal data) must only be processed if it is 'necessary'. There are very few examples where criminal offence data is 'necessary' at application stage, yet most employers continue to ask at this point. A statutory presumption against asking about criminal records on application – either in the Rehabilitation of Offenders Act 1974 or the UK GDPR – could further improve prison leavers' prospects. Employers who have banned the box report positively on the experience and applicants report a greater sense of fairness, even where they are unsuccessful.

However, banning the box is only the first step. We regularly hear from applicants who were not asked to disclose until interview, or even after they were offered the role but who were rejected once they disclosed. Many employers have a blanket ban on hiring people with unspent convictions – [some publicly state it](#).

The Ministry, along with the Home Office, could go further and consider ways to make Disclosure and Barring Service basic checks more narrowly focused, so that an employer may request (where necessary) a check disclosing unspent convictions for relevant offences rather than, as now, receiving a certificate disclosing all unspent convictions.

Insurance can present another barrier to employment, as employers sometimes believe they would invalidate their policy or increase their premiums if they were to hire a person with a criminal record. In our experience this is not the case, but it is an enduring belief and one the Ministry could investigate with colleagues in BEIS. Insurance is a particular problem for people who opt for self-employment.

Q9. Do you agree with the 'guiding principles' and priority outcomes and areas of focus we have identified for developing the Resettlement Passports?

We agree that a clear and stated purpose is essential in ensuring both practitioners' and prison-leavers' buy-in to resettlement passports. Given the complexity of the task, we consider that the principles listed in the white paper could benefit from some refinement. For example, number 3, 'improve the sequencing of existing processes and new services' – is fundamental, but is an aim rather than a principle. It may be that aims are a better way of framing resettlement passports so that the end users – practitioners and prison leavers – make the best use of them.

Principle number 5 'A compact between the prison leaver and wider society' raises ethical questions and creates a significant issue for organisations delivering services. Support services are not usually delivered in exchange for compliance. People with mental ill health, substance misuse issues or learning difficulties are more likely to find compliance difficult – do they risk losing the support they need? And what type of support might be at risk – healthcare? Mentoring? Access to recovery services? Compliance with law and licence conditions is already expected and there are consequences for non-compliance. The Ministry's own research has found that [non-compliance was the primary reason for recall in 43% of cases](#). Creating additional forms of non-compliance could result in the unintended increase in recalls, which would undermine the resettlement ambitions in the white paper.

If this is an accurate reflection of the principle we consider there should be careful and sustained engagement with organisations that deliver services, particularly those that are contracted to the Ministry of Justice.

Q10. How can we implement the Resettlement Passport approach in a way which is most effective for prison leavers and practitioners?

The Resettlement Passport is described as:

'a personalised document covering mental health, drugs, education, skills, work, accommodation and family ties, that organises, plans and records the information and services that prisoners, prison leavers and professionals working with them need access to, starting on entry into prison and continuing through to their resettlement into the community post-release. We will ensure this document is secure and prisoners' personal information is protected appropriately.'

This is very ambitious and raises a number of fundamental questions.

- Is it an electronic document, a paper document or a wallet? A set of documents?
- How does it differ from the resettlement planning parts of OASys or pages on NOMIS, or other tools/protocols?
- On what system will it sit and will it be easy for professionals to access?
- How can a document 'organise and plan' information and services?
- How does the passport benefit the prison leaver? How does it benefit professionals (who have access to all this information already, albeit not necessarily in one place)?
- Who owns the document and how is access to it governed? How long will it remain active after licence completion?
- Who has been/will be involved in development?
- Is it mandatory?

In addition, the Ministry of Justice will need to be clear how long resettlement passports will remain active and the retention period/s for personal data held in this format. What assessment has been made of the data protection implications of resettlement passports? The ICO's enforcement notice, issued in [January 2022](#), indicates a significant backlog of subject access requests. Has there been an assessment of any additional resources needed to manage compliance and transparency issues arising from resettlement passports?

Q14 Do you agree with our long-term vision for women's prisons?

We welcome the ambition to work towards smaller, therapeutic environments and the Young Women's Strategy but question why this is exclusive to women, and the lack of any specific focus on building skills or strengths to help women post-release.

The Childcare Resettlement Licence, as described in the current [ROTL policy framework](#), should be used to enable mothers to spend time with their children rather than bringing children into the prison for extended visits. Elsewhere in the paper there are indications that the Ministry of Justice aims to increase ROTL for employment purposes – this should also be considered for childcare and other family purposes.

Women's needs in relation to employment differ to men's and data shows fewer women than men are in PAYE employment 6 weeks and 12 months after release. We suggest a specific strand of work aimed at understanding and tackling the barriers women face in finding employment on release from prison.