Release's written response to the Prisons Strategy White Paper Consultation

4th February 2022

Release is the national centre of expertise on drugs and drugs law in the UK. The organisation, founded in 1967, is an independent and registered charity. Release provides free non-judgmental, specialist advice and information to the public and professionals on issues related to drug use and to drug laws. The organisation campaigns directly on issues that impact its clients - it is their experiences that drive the policy work that Release does and why Release advocates for evidence-based drug policies that are founded on principles of public health rather than a criminal justice approach. Release believes in a just and fair society where drug policies should reduce the harms associated with drugs, and where those who use drugs are treated based on principles of human rights, dignity and equality. Release is in Special Consultative Status with the Economic and Social Council of the United Nations.

This document is submitted in response to the Prisons Strategy White Paper Consultation. As the centre of expertise on drugs and drugs law, Release's response will be specifically addressing the *following* Prisons Strategy proposals: the prison build roadmap; a zero-tolerance approach to drugs; GPS-enabled and alcohol abstinence-monitoring electronic tagging expansion; piloting the introduction of drugs testing of staff; investment in drug dogs and other drug-detection methods; the focus on recovery and abstinence-based treatment; and initiatives to aid the custody-community transition.

1. The Prison Build Roadmap

"The next two years will be critical to meeting this long-term vision. Over this Parliament, we will deliver: The next stages of our prison building roadmap: Continuing delivery of the 18,000-place prison build programme currently underway, as well as up to an additional 2,000 temporary prison places, amounting to nearly £4 billion investment" (Prisons Strategy White Paper, p.9)

We strongly **oppose** the expansion of the prison estate and the addition of over 18,000 prison places. Prisons are the expression of a failed society and the UK already has the third largest prison population in Europe and is the European country with the second highest spend on prisons, second only to Russia.[1] The prison build represents a failure to invest in prevention, and a readiness to criminalise public health issues.

The current state of UK prisons is unacceptable due to overcrowding and understaffing, and prisons being well over their recommended capacity levels is considered a contributing factor to the high levels of self-harm and suicide.[2] Whilst overcrowding and poor conditions for those currently incarcerated must be improved, and is a cited driver of the prison build programme, the Government has previously acknowledged that the build reflects the planned recruitment of 20,000 additional police officers by the year 2023[3] and reflects the proposed Policing, Crime, Sentencing and Courts Bill's[4] tougher sentencing rules. Moreover, evidence-based ways to significantly **reduce** the prison population, principally, diverting non-violent offenders from custody, are being ignored in favour of a costly expansion programme that is a waste of resources that could be otherwise directed into alternatives to custody, improvement

to the conditions of the current prison estate, spending to facilitate the Prisons Strategy's custody-community transition goals, and the proposed improvements to drug and alcohol services, and meaningful education and employment opportunities.

Phase one of Dame Carol Black's review estimated that 42% of men, and 28% of women entering the prison system are dependent on drugs.[5] The think-tank Reform estimates that 15% of people in prison develop a drugs problem *whilst* they are there.[6] According to the biennial Scottish Prisoners Survey 2019,[7] 41% of respondents stated that their drug use was a problem for them on the outside, 39% said that they had used illegal drugs whilst in prison, and more than one in ten (12%) stated that they only started using drugs whilst in prison.

In Release's written submission[8] to phase two of Dame Carol Black's independent review of drugs,[9] we presented a number of suggestions in terms of supporting people who use drugs in custody. Firstly, we suggest that the Government **reconsider** whether custody is the most effective resolution – particularly given evidence of diversion programme-success[10] and support for these schemes.[11] A high proportion of people in prison are incarcerated for non-violent drug offences and acquisitive crimes to fundraise to buy drugs. In 2018, 59,000 people were sent to prison in England and Wales, 69% of these had committed a nonviolent offence and 46% were sentenced to six months or less. Convictions for drug offences make up approximately 15% of the prison population, and the Government's own evidence has found that over two thirds of those in prison for under 6 months are considered to misuse substances, with a similar proportion without stable or suitable accommodation. The imposition of these sentences does not provide an opportunity for rehabilitation, does not address offending behaviour, and does not 'level up 'individuals or communities by improving employment prospects following release. There is little point in *improving* a pathway that continues to fail to lead us anywhere productive, particularly when there is substantial evidence that diversion schemes reduce reoffending.

1a. Reduce the prison population by diverting non-violent offenders from custody

By decriminalising the possession of controlled drugs for personal use, resources could be diverted from the criminal justice system into health and other services for people who use drugs, thus ensuring a greater return on investment for communities and criminal justice agencies.[12]

The vast majority of recorded drug offences are simple **possession** offences.[13] Despite evidence that tough sanctions are ineffective at reducing drug use,[14] and that self-reported illicit drug use has been increasing globally[15] - including in the UK[16] - over the last decade, the Home Office continues to push the rhetoric that current drug policy is working. Meanwhile, when the Home Office compared the legal framework of 14 countries, it concluded that there was not "any obvious relationship between the toughness of a country's enforcement against drug possession, and levels of drug use in that country".[17] Regardless, the central Government spend on drug law enforcement and related activities is estimated to be approximately £1.6 billion per annum.[18]

The high spend on drug law enforcement continues despite evidence of its inefficacy in terms of drug control and health outcome-improvement,[19] evidence of racial inequity in drug law enforcement,[20] and despite evidence from the Government's own 2017 review of the 2010 UK Drug Strategy which concludes that enforcement activity designed to remove drugs from the market "has little impact on availability", and that enforcement activities impacting the operation of drug markets "is likely to be short lived… given the resilience of markets".[21] Furthermore, we consider that drug-related death rates being at their highest since records began across the UK[22] - with Scotland continuing to have Europe's highest per capita rate of drug deaths[23] - to be a shocking indictment of the current punitive approach.

Release advocate for full de jure (in law) decriminalisation as the best option for those who use drugs and the society that surrounds them. Release support a **no punishment** model of decriminalisation in law for drug use and possession - which is the approach taken by Spain, the Netherlands, and Uruguay.[24] It is also the approach we *currently* have in the UK in relation to the psychoactive substances which fall under the Psychoactive Substances Act, 2016,[25] as opposed to those falling under the Misuse of Drugs Act, 1971.[26]

Research undertaken by Release looked at countries across the world that no longer criminalised use or possession of drugs; none experienced increases in drug consumption linked to policy.[27] Countries such as Australia (which had decriminalised cannabis possession in a number of states and had diversion schemes for all controlled substances in

every state), Portugal, and the Czech Republic, reported improved physical and mental health outcomes. Decriminalisation has also been associated with reduced rates of recidivism, reduced burden on police resources, and savings to public spending related to social costs.[28] Portugal, for example, decriminalised the use and personal possession of all drugs in 2001, whilst also investing in harm reduction and treatment programmes. The number of annual drug overdose deaths reduced from 318 in 2000 to 55 in 2018.[29] A 2015 study found an 18% reduction in the social costs of drug use in the first ten years of decriminalisation in Portugal.[30] The proportion of the prison population sentenced for drug offences in Portugal has fallen from over 40% to 15%, rates of drug use have remained consistently below the EU average, and Portugal has gone from accounting for over 50% of yearly HIV diagnoses linked to injecting drug use in the EU to 1.7%.[31]

Criminalisation is acknowledged as an obstacle to treatment access, while decriminalisation is backed by all 31 UN Agencies[32] and acknowledged by the World Health Organization as a 'critical enabler' of service access.[33] Both the Health and Social Care Select Committee[34] and the Scottish Affairs Committee[35] in their inquiries on drugs in 2019 have directly recommended that the UK Government consult on reforming the law to end criminal sanctions for possession offences. However, the Government's new 10-year Drug Strategy dismisses decriminalisation, reducing it to a "simple solution" that would "leave organised criminals in control while risking an increase in drug use." Such a statement is ignorant of evidence from the now over 30 countries[36] that have ended criminal sanctions for drug possession. Release has published multiple resources on how drug decriminalisation, when done correctly, can improve health outcomes, reduce drug-related deaths, and reduce offending - the exact targets of the Government's drug strategy. This is in addition to evidence that policy liberalisation is not related to prevalence of drug use in countries that have reformed their laws.[37,38]

The vast majority of people who use drugs do so 'recreationally', that is, without experiencing problematic use (9 in 10)[39] and their criminalisation creates life-changing criminal records which limit opportunities and has been cited as the gateway into further drug use and future offending.[40] Those engaging in low-level supply are often driven by lack of opportunity and economic hardship, and sometimes to fund their own drug use. For the minority of people who use drugs who do experience problematic use, and may engage in drug-related crime - which has been over-zealously linked to acquisitive offending[41] including within Government's new 10-year Drug Strategy - greater effort should be made to fund and utilise evidence-based initiatives like heroin-assisted treatment (HAT) and improve access to medical safe supply, including opioid substitution treatment (OST), to support this population and facilitate desistance.

In the *absence* of decriminalisation de jure (in law), Police forces should implement **diversion** schemes to divert people who use drugs away from the criminal justice system, improve outcomes, and reduce costs. The political opposition the Mayor of London has received in response to the announcement of the diversion pilot in three London Boroughs is surprising and disappointing given that: (1) plans to double "out-of-court disposal schemes" by the end of 2024/25 are included within the new 10-year drug strategy; (2) police have been dealing with cannabis via warnings and on the spot fines since the early 2000s; and (3) diversion schemes are evidence-based. There are a growing number of existing police diversion schemes in England and Wales (with some including minor drug possession offences only and others including minor supply offences) and there is mounting evidence of diversion programme-success[42] and support for these schemes.[43]

We would advocate that diversion is applied to not only possession offences (pre-arrest), and supply offences (post arrest), but also to other low-level, non-violent offending. These schemes should apply to both young people (under 18's) and adults, and considering that community sentences have declined by half in the last decade,[44] more must be done to encourage out of court disposals.

In response to the COVID-19 global pandemic, which has had a particularly negative impact on both the physical and mental health of serving prisoners,[45] some jurisdictions actively **reformed** their prosecution policy for drug possession and other low-level offences to reduce the prison population. In March 2020, State's Attorney Marilyn Mosby announced that drug and drug paraphernalia possession as well as prostitution would no longer be prosecuted in Baltimore City in the US State of Maryland, in a move designed to reduce the burden on city police and on the poorer, predominantly Black city residents who are traditionally arrested for such crimes. Whilst this initiative began during the pandemic, a year into the change it was announced the no prosecution policy would continue given its success, with research findings 14 months post-policy change including:[46]

- Significant declines in arrests for drug and paraphernalia possession as well as prostitution
- An estimated 443 drug and paraphernalia possession arrests being averted, the majority (78%) of which were averted among Black individuals
- Extremely low prevalence of rearrests for serious crimes, such as robbery and assault - 0.8%, or six of the 741 individuals whose drug and prostitution charges were dropped. This suggests that the vast majority of direct beneficiaries of the policy change did not go on to commit crimes
- No evidence of an increase in public complaints pertaining to drugs or prostitution, measured by 911 calls made in Baltimore City

The independent report concluded that "these preliminary findings suggest that declining to prosecute low level drug and prostitution offenses may avert arrests among individuals with intersecting vulnerabilities without posing a threat to public safety or resulting in increased public complaints. Ensuring that these individuals can access health and social services instead of criminal punishment is a public health priority".[47]

1b. Reduce the prison population by banning short sentences

"Prisoners serving short sentences generally have worse outcomes than those serving longer sentences; the reconviction rate (58.9%) is 17.3 percentage points greater than the general reconviction rate for all individuals released from custody (41.6%).41 To support this often harder to engage population, a Short Sentence Function (SSF) will be established in all Probation Regions by June 2022, which will support all prisoners serving 10 months or less. This will include engagement with treatment services such as Drugs and Alcohol services and working with healthcare partners, both in custody and upon release. This preventive approach would deliver greater public protection by reducing crime through ensuring the support is in place before prison leavers have the chance to relapse into substance misuse" (Prisons Strategy White Paper, p.41)

Former Secretary of State for Justice, David Gauke, recommended instituting a presumption against sentences up to 12 months, and abolishing sentences of under 6 months, supported by evidence of their inefficacy and harm.[48] Whilst the Prisons Strategy proposes additional support for prisoners serving *10 months or less,* the Strategy and Government should go further to **ban** short custodial sentences *across* the UK in favour of community resolutions, and should at the very least, mirror the presumption against short sentences that we see in Scotland.

Release welcomed the extension of the 'presumption against short sentences' (PASS) to now include sentences of up to 12 months (previously up to 3 months) in **Scotland** as of June, 2019 as voted by MSPs, in recognition that short sentences often disrupt factors that can help prevent offending, including family relationships, housing, employment and access to healthcare and support.[49] This change - as described by then Justice Secretary Humza Yousaf MSP - is designed to "encourage courts to consider *alternatives* to custody, which can be more effective in rehabilitating individuals as they pay their debt to society".[50] Evidence to support the PASS extension has been outlined by Howard League Scotland, including evidence of the disproportionate harm of custodial sentences (of any length) for women,[51] who are frequently subject to ineffective, short custodial sentences of 12 months or less (the case for 90% of women sent to prison in Scotland in 2017/18).[52]

An area of concern remains, however, which is that the presumption is not a ban, and that courts are still able to impose prison sentences of 12 months or less. The think-tank 'Reform' propose that "a full ban on short sentences would mean a significant increase in the use of community sentences" and add that "Probation services would need to be resourced to manage this increase".[53] Reform also add that "clearly, one unintended consequence could be that sentencers pass harsher sentences to circumvent a ban" and warn that "this would need to be monitored and action taken if evidence shows this to be the case".[54] Sentencers should also be more informed about community alternatives to custody with better training and the increased use of pre-sentence reporting.

2. A 'zero-tolerance' approach to drugs

"Over the next ten years, we will: operate a zero-tolerance approach to drugs in our prisons, and crack down on the smuggling of drugs, weapons or other illicit items. We will use all of the techniques and tools at our disposal to identify prisoners smuggling drugs, and ensure the minority of staff susceptible to corruption are identified and stopped from smuggling drugs or other contraband. We want to build on the

successes of the Government's investment of £100 million in the prison Security Investment Programme, which has seen X-Ray body scanners rolled out across the entire closed male estate resulting in 10,000 positive scans preventing drugs and other contraband entering prison; and which will see Enhanced Gate Security, mimicking airport screening, deployed across 42 high-risk sites by the end of March 2022" (Prisons Strategy White Paper, p.30).

Whilst a carceral approach to drug offences remains, it is important to minimise harm in custody to those already using drugs and those who may use drugs in prison. A wealth of evidence exists to support that drug use is common place in prison, which should already be an indication that no new measures, including the extreme suggestion of drug testing staff, will address the issue of drugs in prison and that a 'zero-tolerance' approach is not a realistic ambition. It is also an indictment of drug prohibition, if drugs cannot be prevented in highly securitised environments like prisons how does the Government suggest eliminating or suppressing drug use in the community?

As drug offences continue to be criminalised, (*see section 1*), there must be an exploration and investment in evidence-based interventions including: (1) meeting the needs of those dependent on substances whilst incarcerated through medical safe supply; (2) preparing for safer drug use through needle and syringe exchange or at the least, increased availability and provision of naloxone and harm reduction advice; (3) reducing the demand for substances for people who may be motivated to use substances due to the prison environment itself - namely, isolation, boredom, trauma, and poor living conditions;[55] and (4) addressing the training and working conditions of prison staff, specifically addressing the factors that motivate some staff to engage in drug supply.

2a. Further investment in drug detection methods and piloting drug testing of staff

"We want to build on the successes of the Government's investment of £100 million in the landmark prison Security Investment Programme, which has seen 74 X-Ray body scanners rolled out across the entire closed male estate resulting in more than 10,000 positive scans, and preventing internally secreted items like phones and drugs from entering prisons; and Enhanced Gate Security, mimicking airport screening, which has seen metal detecting portals, drug detection dogs and other technology installed" (Prisons Strategy White Paper, p.12)

"35 of 42 higher risk sites have received Enhanced Gate Security capability and are implementing routine searching of staff and visitors. This includes 594 staff, 154 drugs dogs and over 200 pieces of equipment (archway and handheld metal detectors). All 42 sites are scheduled to implement EGS by end of March 2022" (Prisons Strategy White Paper, p.21)

We are concerned to learn of the strategy's plans to build on the already £100 million investment in intensifying drug detection methods – including adding to the significant rollout of X-ray body-scanners and drug detection dogs, as well as a proposed pilot to drug test staff. Considering the cost and unreliability of sniffer dogs[56] and random mandatory drug testing[57] to detect drugs, we would advise against this approach and would instead emphasise the need for adequate healthcare provision for people who use drugs in custody (please refer to sections 3 and 4 of this response for more detail on healthcare provision), investment in *meaningful* activities to reduce demand, and the addressing of factors motivating a small proportion of prison staff conveying prohibited articles into prison.

"It is crucial that we close off every avenue for the entry of drugs into our prisons to uphold stability, order and rehabilitation efforts. We have seen record investment in cutting-edge technology and increased staffing to disrupt criminal networks and frustrate drug supply efforts. Protecting our hardworking frontline staff remains a key priority and, as part of that, we should explore all options to improve their safety. In this context, we will explore a range of intelligence-led and physical counter measures, including the potential use of our cutting-edge X-Ray body scanners, to protect vulnerable staff and ensure the safety of our prisons. We would also like to carefully consider with prison Governors, recognised trade unions and wider stakeholders the merits (or otherwise) and practicalities of piloting the introduction of drugs testing of staff as part of our wider safety approach, including to protect those at risk from threats and coercion." (Prisons Strategy White Paper, p.24)

The Trade Unions Congress (TUC) argues that "the biggest criticism of any form of drug testing is that it does not tell an employer what they want to know, which is whether someone is, or was, under the influence of drugs while at work. It will, at best, tell you that the person is likely to have consumed a particular drug in the recent past". [58] TUC also state that "we believe that every employer should seek to negotiate a comprehensive drugs and alcohol policy that addresses these issues in a fair, open and non-judgemental way. In some workplaces, some form of drug testing can have a part to play in that, but they should **never** be the first line of protection".[59]

Privacy and data protection considerations have also been addressed by the Information Commissioner's Office (ICO), whose Employment Practices Data Protection Code on obtaining and handling information about workers' health puts

strict limits on the health information that can be obtained by employers. It concludes that in most instances alcohol and drug testing is an **unwarranted** intrusion. The ICO's Code states that "very few employers will be justified in testing to detect illegal use rather than on safety grounds", adding that "even in safety critical businesses such as public transport or heavy industry, workers in different jobs will pose different safety risks. Therefore, collecting information though the random testing of all workers will rarely be justified".[60]

This is in addition to the significant body of evidence suggesting that, for example, random mandatory drug testing (rMDT) is a costly, ineffective deterrent that can exacerbate drug-related health harms for people in custodial settings.[61] The EMCDDA has cautioned that rMDT is likely to be ineffective at deterring drug use and instead is likely to exacerbate drug-related health harms due to drug *substitution*, such as the substitution of synthetic cannabinoids with synthetic opioids to minimise risk of detection.[62] Then there is also the issue of false positives, take the cautionary report of the Governor of Brixton Prison who tested positive for opiates after consuming poppy seed bread[63] – he took the test after a number of inmates complained they had falsely tested positive.

2b. GPS-enabled and alcohol abstinence-monitoring electronic tagging expansion

"Backing our work in prisons with an additional £155 million per year for the new unified probation service, to support rehabilitation and improve public protection, a 15% increase on 2019-20 funding, and investing £75 million a year by 24/25 to expand the use of GPS-enabled and alcohol abstinence-monitoring electronic tagging to help offenders stay off alcohol." (Prisons Strategy White Paper, p.10)

The focus on surveillance of offenders by GPS-enabled and alcohol abstinence electronic tagging, presumably using private companies, raises a whole host of ethical and legal issues and enhances the stigma around dependency issues. Considerations of this approach would need to be given in respect of data protection legislation where private companies were processing sensitive data of people released from prison. In addition, Article 8 of the Human Rights Act 1998 would be engaged in relation to an individual's right to privacy. Ultimately, this kind of approach fails to understand the nature of addiction. As a health issue we need to ensure that people can access support to address the underlying drivers for their dependency, often linked to experiencing trauma as the strategy itself acknowledges, rather than the Government imposing short term punitive, and populist, responses to a chronic societal problem.

3. A focus on recovery

3a. Recovery and abstinence-based treatment

"Ramping up work to tackle the substance misuse and mental health issues which for too many prisoners pose a barrier to rehabilitation reform by deploying the full range of treatment options, including abstinence-based treatment, to support recovery from drug dependency" (Prisons Strategy White Paper, p.5)

The provision of treatment in the context (and under the threat of further) punishment is already serving to undermine treatment efforts. While a carceral approach remains, a **full** range of treatment and harm reduction services all have important roles in custodial institutions' drug response, but decisions about appropriate treatment need to be made by clinicians and service users based on evidence of best practice, absent of external political or ideological pressures. A commitment to the right to health should be absolute, but decisions on best practice are rightly the domain of practitioners not politicians, and should ensure service providers meet people who use drugs where they actually *are*, not where people may wish they were. Otherwise interventions risk being inappropriate for many - and may even have harmful unintended consequences.

Whilst the Prisons Strategy does highlight access to the 'full range of treatment options', the emphasis on 'recovery' - which can mean different things to different people - is a term that has become loaded in the debate around how best to tackle drug issues, often meaning just abstinence-based approaches. Abstinence is not a realistic or safe treatment goal for *everybody*. Measuring drug treatment efficacy with achieving abstinence is inappropriate.

Within the present Prisons Strategy, and confirmed by ideological comments to the press from current Secretary of State for Justice, Dominic Raab, there appears to be a skew towards favouring a right to access certain types of

treatment and health intervention options - specifically, abstinence-based treatments and services - and a marginalisation or absence of others - specifically, drug harm reduction interventions such as substitute prescribing, rapid access to opioid substitution treatment (OST), naloxone provision, heroin-assisted treatment, and needle and syringe programs.

As part of Release's joint response[64] to the 2022 consultation on the proposed 'Right to Addiction Recovery (Scotland) Bill', in collaboration with Transform Drug Policy Foundation, Cranstoun, and EuroNPUD, we cautioned against an emphasis on **abstinence**-based treatments. In our response, we cited that such strategies can negatively impact the role of medication-assisted recovery and treatment, while encouraging stigma around opiate substitution treatment. We also highlighted that the recovery agenda, promoted by the Drug Strategy 2010, with recovery defined as being "drug free", had a significant impact on the sector, and in our view, is one factor in the high level of drug-related deaths we are witnessing today. In 2012 a coalition of charities and NGOs,[65] including Release and Transform, warned that recovery in the context it was being defined would put people's lives at risk, unfortunately we were right - this approach coupled with austerity has created a public health crisis in drug-related deaths.

Finally, the principle of "equivalence in care" is fundamental to the practice of health care in prison settings, and is the legal right of all prisoners, any derogation from that would be subject to potential legal challenges.

3b. Absence of evidence-based drug harm reduction in prison

Getting people into opioid substitution treatment (**OST)** is the globally recognised gold standard treatment to reduce drug death risk, underpinned by a significant body of evidence,[66] yet there is no mention of plans to provide rapid access, if needed and desired, to OST within the current Prisons Strategy. In a written submission to the Advisory Council of the Misuse of Drugs (ACMD), Release stated that an area of concern was "the somewhat confusing and non-uniform approach to prescribing pain medication, either as an adjunct or replacement to, existing OST medication".[67] This especially applies to gabapentin and pregabalin, where an audit of prescribing in prisons found 23 (of 94) sites used gabapentin or pregabalin as first line opioid therapy (contrary to guidance)[68] with other institutions refusing to provide these substances under any conditions. This inconsistency means prisoners may be inappropriately titrated from existing medications, and therefore are potentially receiving inadequate doses.

There also continues to be a lack of *clear* guidance on the appropriate management of opioid maintenance within secure settings, with earlier Department of Health guidelines[69] on prison-based opioid maintenance introducing an arbitrary figure of 26 weeks as a sentence length above which 'it should be explained that at an appropriate time there will be an expectation that the prisoner works towards reducing their dose of OST medication, and that abstinence remains the ultimate goal', however the proceeding National guidelines on clinical management of drug misuse and dependence (known as the 'Orange guidelines')[70] states that 'it is difficult to justify on the basis of clinical evidence, a required withdrawal of OST from a prisoner based on a particular duration of imprisonment (not least in circumstances that their prescribing clinician and team consider that continuing OST is judged to be the treatment they still need)'.[71] Although these more recent guidelines supersede the earlier DoH guidelines, as an organisation, Release has previously encountered earlier DoH guidelines being used as justification for non-consensually reducing dose levels of prisoners on OST.

In Release's written response[72] to phase one of the Dame Carol Black Independent Review of Drugs, we emphasised that people who inject drugs in prison should be able to access needle and syringe programmes (**NSPs**). Under international law, they are entitled to enjoy the right to the highest attainable standard of health and to receive health care in prisons equivalent to that in the community.[73] The lack of NSPs in UK prisons leaves people who inject drugs in prison extremely vulnerable to HIV and viral hepatitis infections and other health harms. The United Nations Office on Drugs and Crime conducted a review of the evidence for prison NSPs and found that they are "feasible and affordable…effective in decreasing syringe sharing among PWIDs in prison, thereby decreasing the risk of disease transmission…are not associated with increased attacks on prison staff or other prisoners…do not lead to increased initiation of drug consumption or injection…can reduce incidence of abscesses…[and] facilitate referral to available drug dependence treatment programmes", among other benefits.[74] Prison NSPs successfully operate in Spain, Germany, Switzerland, Luxembourg, and elsewhere outside of Europe.[75] Prison NSPs should be rolled out across the

UK, and particularly in areas of need, in recognition of the right to health and principle of equivalence of care. A prison NSP might be particularly beneficial in Scotland, given the historical outbreaks of HIV among people who inject drugs in Scottish prisons[76] and the outbreak of HIV among people who inject drugs in Glasgow, which has been linked to frequent incarceration among this group.[77]

3c. Inequalities in treatment provision

Ethnic minority individuals experience disproportionate rates of imprisonment, despite making up 14% of the population, people from minority backgrounds account for 25% of the total prison population.[78] Black people are four times more likely to be imprisoned compared to White people.[79] If inequalities are to be tackled, the overrepresentation of Black and Brown people must be dealt with urgently, and this involves addressing the racial bias that exists across all elements of the criminal justice system, from the police to the judiciary. Nowhere is this more obvious than in relation to drug law enforcement, where Black people are less likely to use drugs compared to White people but are more likely to be the target of police for stop and search. And even when searched, they are less likely to be found in possession of drugs compared to a White person, and if they are found in possession, they are more likely to face a harsh response. In fact, a Black person caught in possession of cannabis is 12 times more likely to be sentenced for that offence compared to a White person.[80] Ultimately, more must be done to end the high rates of imprisonment of people of colour in the carceral system.

Despite lower overall drug use among people of colour when compared to the White population,[81] ethnic minority individuals are likely to face substantial barriers when accessing drug treatment services, which is likely to impact access to treatment in prison settings as well. People of colour, in particular Black people, are known to face multiple and complex disadvantages and require service provision which is both culturally and religiously sensitive, and yet, there is a lack of drug treatment options that are appropriate to their needs. Significant regard must be given to how health systems more generally fail this population, and that distrust is borne out of this failure. As such, working directly with groups that have been impacted is vital. There should be specific funding and initiatives in custodial settings to support individuals from minority backgrounds to access support which recognises and nurtures different cultures and religions.

Whilst Release welcomes the discussion of trauma-informed approaches mentioned within the Prisons Strategy, in Release and Harm Reduction International's joint response to the United Nations Committee on the Elimination of Racial Discrimination (CERD), we advised that trauma-informed services also include specialist services for Black and other ethnic minority individuals experiencing trauma directly related to racial disparity, discrimination, and disproportionate policing.

4. Custody-Community Transition

Release welcome the Prison Strategy's commitment to improve the transition into the community whilst a carceral approach remains. Particularly we welcome the commitment to increase access to stable housing and meaningful education and employment opportunities (including workplace ROTL), and the proposed changes to Friday discharges. However, we are critical of the lack of drug harm reduction included within the custody-community transition plans, for example, the failure to include guidance on take-home naloxone and ensure access to substitute medications on release, including the use of transitional prescribing between the prison and community agencies.

4a. Increased ROTL for meaningful employment opportunities and prospects

"Transform the opportunities for work in prisons and on Release on Temporary License (ROTL) to increase job prospects for prison leavers" (Prisons Strategy White Paper, p.32)

The evidence for the relationship between employment and desistance is compelling,[82] with employment cited as one of the most important factors in reducing reoffending.[83] As the Ministry of Justice themselves acknowledged, the

power of work to transform lives "is not just the financial security of having a pay packet, but everything else that comes with being in work: purpose, structure, networks, having a stake in something".[84] Evidence confirms that Release on Temporary Licence (or workplace ROTL) is an effective tool - and one that has been significantly 'under-used' for both men and women.[85] We therefore welcome the strategy's proposal to enhance access to ROTL so as to improve job prospects for prison leavers, and recommend that the use of ROTL is also expanded to include access to further education institutions and opportunities.

Existing research demonstrates that when companies do commit to positive, inclusive employment strategies (in relation to serving prisoners and those with previous convictions), the outcomes are positive and mutually beneficial. A number of specific benefits to employers include:

- *resolving skills shortages*: skills shortages are found to be responsible for a fifth of vacancies in the wholesale and retail sector alone.[86] Inclusive recruitment can expand talent pools and current prisoners/ex-prisoners have a widening breadth of skills.[87]
- *increasing staff retention and reducing staff absence:* Employees recruited from disadvantaged groups are often found to demonstrate lower turnover rates; hypothesised to be a result of the higher value placed on having a job.[88] Timpsons, who have a policy to recruit those released from prison, cite high staff retention (80%) and link this to the respect and opportunities awarded to those on their programme.[89]
- *reducing staff absence*: organisations actively employing ex-prisoners report positive experiences with regards to employee engagement, reliability, productivity[90] and below-average number of days off work.[91]
- *positive financial and social impact:* research that studied organisations recognised as offering 'distinct and leading practice' in this field - including Timpsons, Greggs the Baker, and Network Rail - concluded that such ex-prisoner programmes were both heavily subscribed, and positively perceived.[92] Indeed**,** 92% of inclusive employers stated that working with prisoners and ex-offenders had enhanced their organisation's reputation and had ultimately had a positive financial impact.[93]

However, given ongoing *resistance* among the majority of employers - with research indicating that between 50%[94]and 75%[95]of employers would not hire a candidate because of a previous conviction - it is unsurprising that only 17% of ex-offenders were able to secure employment a year after their release from prison.[96] Further evidence suggests that obtaining work after release is especially challenging for *female* prisoners.[97]

Therefore, in addition to the proposed improvements to meaningful employment opportunities contained within the strategy, changes must be made by the Government to the **criminal records** disclosure system, given the barriers to employment that this presents for those with previous convictions. In addition to independent campaigns like 'Ban the Box',[98] and calls for fair recruitment by non-governmental organisations like 'Unlock'[99] - which appeal to employers directly - the Government can and should **review** the offences that would be disclosed as part of criminal record checks.

The Government also need to do more to **ensure** commitment from employers and should promote the evidenced-based benefits of workplace ROTL and hiring those with previous convictions, and should **reward** businesses who proactively engage with this practice. In Release's written submission to the Advisory Council of the Misuse of Drugs' (ACMD) call for evidence on custody-community transitions, we stated that "it is imperative that routes to employment are addressed, this could include tax incentives for employers to recruit people who have a history of dependency and/or offending".[100] The Criminal Justice Alliance - based on a commitment in the 2017 Conservative Manifesto in relation to hiring veterans[101] - have also recommended the introduction of a one-year holiday on Employer National Insurance Contributions. [102]

4b. Commitment to stable housing on release

"Too many people are currently released from prison homeless: over 12,000 in 2019/20.45 Having somewhere safe, stable and secure for ex-offenders to live is important to protect the public and ensure offenders turn their backs on crime. Our vision is that no one who is subject to probation supervision is released from prison homeless. 134. Building on the 20 Housing Specialists already in post, we will increase the number of Housing Specialists to 48 posts across 12 regions. These will be placed in Probation regions to strengthen collaborative working

between Prisons, Probation and Local Authorities and improve the quality of referrals made under the Homelessness Reduction Act (2017) in England, or the Offender Pathway in Wales" (Prisons Strategy White Paper, p.46)

Whilst the focus on housing and the commitment to skill up the number of housing specialists is welcomed, there must be more investment in housing solutions, this includes investment in building more social housing. In addition, Housing First should be key to any housing strategy to supporting people coming out of prison, who have a history of drug and/or alcohol dependency.

The Housing First approach meets people where they are at, and does not predicate entitlement to housing on abstinence from drugs or alcohol, rather the approach provides support for people in their homes and pathways to enhance that support. Engagement with this population - those released from prison who are drug and alcohol dependent - and maintaining this engagement as time progresses, must be the central aim. It is estimated that 4% of people released from prison in England and Wales in 2019/20 were street homeless, this figure increased to 26% of all those released from custody when taking into account unsettled accommodation.[103] Of those sleeping rough in London, who reported prison as their last settled address, 86% reported having a drug, alcohol or mental health need, of this number nearly two thirds reported having more than one support need.[104] Given the prevalence of substance use among the homeless population it is vital that accommodation is provided in a way that supports people with a dependency issues, and their wider physical and mental health needs, and why Housing First models are fundamental to any housing strategy for people being released from prison.

Where Housing First is provided it has been shown that it ends homelessness for "at least 80% of people with high and complex needs; improves anti-social behaviour; reduces use of emergency and criminal justice systems"[105] and stabilises or reduces problematic substance use. Given that 68% of those who are released from prison into rough sleeping, and 55% released into other forms of homelessness, reoffend within a year,[106] a Housing First approach can significantly reduce the risk of recidivism.

4c. Friday release flexibility

"Friday releases. We know that accessing timely support on release can be particularly challenging on a Friday, due to the limited time before services close for the weekend. We need to do more to support those with complex needs to access support on release such as older prison leavers who struggle to access social care and those that face practical challenges such as travelling significant distances to access services on time. We will therefore explore allowing prisoners who are at risk of reoffending to be discharged one or two days earlier at governor discretion where a Friday release can be demonstrated to be detrimental to an individual's resettlement." (Prisons Strategy White Paper, p.47)

In Release's 2021 written submission to phase two of Dame Carol Black's Independent Review of Drugs,[107] and the Scottish Criminal Justice Committee roundtable,[108] we emphasised the dangers of releasing this population on a **Friday** in terms of accessing stable housing, drug treatment, and job centres; increasing the chances of a relapse, reoffending, and death.[109]

We welcome the strategy's proposed new *flexibility* around Friday discharge, however caution that despite the Prisoners (Control of Release) (Scotland) Act 2015,[110] whereby prisoners due for release on a Friday can already have their release brought forward by one or two days to allow them to access housing or medical services, according to figures obtained by The Herald on Sunday, as of October, 2019, just **15** people had had their release brought forward since the enactment of the law in February 2016, while 17 had been refused early release, and 11,054 had been released on a Friday.[111]

4d. Absence of evidence-based drug harm reduction on release

*"Leaving prison can disrupt progress towards recovery from drug misuse. Our ambition is to ensure that all prisoners needing treatment after release are **referred to community providers** and continue to engage in treatment, including abstinence-based drug and alcohol rehabilitation, to prevent future offending. To ensure prisoners can have their first appointment with their community treatment provider **virtually before release**, we will expand the use of telemedicine technology for substance misuse treatment in prisons, subject to evaluation results. We are also providing enhanced and increased levels of drug treatment for those in prison and probation in Wales and working with NHS England to engage prison leavers in **recovery-focused** community treatment in England. We welcome the continued roll-out of NHS England and NHS Improvement's RECONNECT, a care after custody service, which supports prison leavers in England to remain engaged*

with the right treatment upon resettlement through referrals into community health services, including for those with substance misuse needs" (Prisons Strategy White Paper, p.41)

Whilst we welcome the commitment to referrals to community providers and first appointments prior to release, it is concerning to see a lack of drug harm reduction provisions on release from custody discussed within the strategy.

There is a very high risk of premature mortality for people who use heroin (and indeed people who use opioids more broadly) when they are released from prison, compared to the general population.[112] To reduce the risk of such premature mortality, national **naloxone** programmes have been implemented in Wales, Northern Ireland, and Scotland - with part of these programmes providing (as well as monitoring and reporting on) take-home naloxone (THN) to people released from custody.[113] Yet, it is unclear whether THN is being *routinely* provided to people released from custody in prisons in England. It is vital that we ensure people released from prison are offered naloxone, with only 12% of prisoners who were previously heroin-dependent leaving an English prison with naloxone in 2017/18,[114] and with Release's own research suggesting that little over half of all prisons in England even have a Take Home Naloxone programme.[115]

Custodial institutions must take responsibility for releasing people into safety and it is vital that we ensure people released from prison are offered naloxone. Release call for the urgent provision of naloxone in **all** custody settings. It should be made freely available to those who are leaving police custody at the station, at Magistrates and Crown Courts, and where needed at custodial institutions such as prisons and YOIs. A **national** naloxone programme in England would also ensure greater accountability and management of THN provision to people released from custody to prevent premature mortality among people who use opioids following prison release. If THN provision is instead pushed onto community providers, this is also concerning considering that only 32.1% of people assessed as needing treatment when they leave prison actually enter treatment in the community within 21 days of release.[116]

Within the National (UK) guidelines on clinical management of drug misuse and dependence (the Orange guidelines) the benefits of prison staff supplying THN are recognised:[117] "programmes for the provision of take-home naloxone may help save lives after release. Commissioners should agree with prison health and community providers how best to ensure provision of naloxone… All [prison] staff, including non-healthcare staff and operational/security staff, should have training in recognising and responding to opiate overdose, including using available naloxone."

In response to an August 2017 freedom of information request from Release, the Probation Service confirmed that "there are no arrangements in place for the Probation Service in England to supply offenders with THN kits". In the absence of a reason for not providing the life-saving medication to people under their supervision, we would speculate that this could in part be related to requirements to be drug-free while on probation.

In addition to the above, people who are prescribed **OST** in custody and released without a prescription are at a very high risk of premature mortality. This is known to be a particular issue for people released from custody on a Friday afternoon that are unable to attend an appointment with a community prescriber before the weekend, which will hopefully be addressed by the Prisons Strategy's proposed flexibility around Friday release dates (*see section 4c*), but is also an issue in areas where communication between service providers in custody and the community is poor. To prevent premature mortality among this group, we would recommend that people released from custody should be provided with at least a 2-week prescription of OST, either to take-home or to pick-up;[118] providing people the opportunity to manage their symptoms until they are able to enrol with a treatment service and minimising the risk of illicit substance use, overdose, or immediate offending behaviour.

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