Justice Committee

Public Services Reform (Prison Visiting Committees) (Scotland) Order 2014

Written submission from Cornton Vale Over 21’s Visiting Committee

General comments:

While we welcome the decision to retain independent monitoring of prisons in Scotland and the commitment to lay monitors dealing with the bulk of the monitoring, the draft Order is a great disappointment. This document comes at the end of years of detailed consultation. If the information relating to the inspection of prisons and the rights of access (which has simply been lifted from the existing legislation) are removed, the draft Order becomes a classic example of the emperor’s new clothes. It offers no clear role for lay monitors, proposes a “control and command” environment where individuals are expected simply to follow instructions, provides no indication of the prospect of collegiate working or any commitment to support and leaves all of the details to be worked out by the incumbent Chief Inspector of Prisons.

Specific Responses to the questions asked by the Committee:

1. Whether or not the proposed changes are a positive step:

a) We would commend the draft Order for:

i. While it is not explicitly stated in the draft Order, it is evident from the wording of the draft Order that the bulk of monitoring activity, especially dealing with issues raised by prisoners, is seen as being undertaken by lay monitors. We very much welcome this position.

ii. We also welcome the continuation of the broad rights to access which are proposed for lay monitors.

iii. We strongly support the commitment to evaluating the performance of lay monitors.

b) We have a number of serious reservations regarding the proposed changes:

i. We would prefer that the substantive role for lay monitors was explicitly stated, rather than simply implied. The current statutory requirement represents a minimum commitment to a weekly visit to the prison by a lay monitor and we feel that there should be a similar stated commitment in the Order. In our view, the removal or reduction of this stated commitment would represent a significant reduction of a commitment to independent monitoring and, as such, a substantial reduction of the rights of prisoners.

ii. The current statutory basis of independent monitoring in all parts of the UK (Visiting Committees in Scotland and Independent Monitoring Boards in England, Wales and Northern Ireland) rests on the principle of specific
teams of community-based lay monitors attached to a named prison or other establishment. It has been recognised in all of the areas of the UK that the two most significant aspects of quality monitoring are firstly, lay monitors working effectively together as a team and, secondly, the team being able to develop a collaborative, in-depth understanding of a particular institution, its staff and prisoners.

The Draft Order proposes to depart radically from these principles, suggesting instead in paras 7B 2 a) and b) that individual lay monitors be assigned to “prisons” rather than “a prison”, with no recognition of the need for team work and no commitment to training, mentoring, supporting or managing. We submit that this reflects a basic lack of understanding of the differences between “inspection” and “monitoring”. While individual inspectors can undertake occasional inspections over a wide range of establishments, monitors need to be part of a team undertaking regular, co-ordinated visits to a particular establishment. Recruiting lay monitors locally would also retain a link with local communities and, importantly, mean that lay monitors are not having to spend lengthy amounts of time travelling.

We suggest that the Order should specifically refer to identified groups of lay monitors attached to individual, local establishments, should specifically require them to work as a team and should state a minimum number of lay members per institution. In our experience, when the number of active members of our Visiting Committee has dropped below ten we have experienced difficulties meeting our basic obligation to undertake weekly visits and timeously follow up issues raised by prisoners. We feel that it would also be helpful if the Order also specified a basic requirement of commitment in terms of time from lay members – two to three days per month – and that the present “control and command” structure of “instructions” being passed to individual lay monitors be replaced by a clear statement of the role and function of lay monitors and the requirement to work as a team.

iii. We recognise that there will be a need to recruit, train, mentor, support, manage and evaluate a substantial number of lay monitors across the country. However, we feel that these very demanding tasks should form a substantive role separate from monitoring duties. Splitting the responsibility for monitoring between part-time, “paid monitors” covering some five establishments and individual “lay monitors” responding to “instructions”, does not seem to provide any basis for the delivery of the “gold standard monitoring” which the Justice Minister espouses. We would suggest that the Order should make provision for supporting the recruiting, training, mentoring, supporting, managing and evaluating institution-based teams of local lay monitors.

iv. Currently, the role and responsibilities of Prison Visiting Committees and members are spelled out in legislation and echoed in the prison rules. The Draft Order suggests replacing this arrangement with ad hoc “guidance” issued by the incumbent Chief Inspector of Prisons. We would see this as
v. Currently, each Visiting Committee member is required to write and submit to the Governor a report of every visit. In the case of issues raised by prisoners, they are also obliged to convey the outcome to the prisoner before submitting their report. The Draft Order requires no such commitment from lay members. We consider this lack of requirement for feedback and reporting to be a serious diminution of the quality of monitoring and a very significant reduction in the rights of individual prisoners.

vi. Currently, each Visiting Committee is required to produce an annual report detailing their work during the year and, using an agreed template, highlighting their commendations and concerns. These reports provide an annual, detailed picture of independent monitoring of each prison and, being on the internet, complete transparency and easy public access.

No such system of reporting is suggested in the draft Order. Rather it proposes that ad hoc reports by the “paid monitors” during the year would inform inclusions in the Chief Inspector of Prisons’ annual report. Again, the draft Order illustrates confusion about the separate nature of monitoring and inspection. The proposals in the draft Order would make the work of the independent prison monitoring virtually invisible. We would recommend that there should be a separate report on independent monitoring for each prison and a national report summarising this.

vii. Any successful lay monitoring of which we have had experience has been associated with sophisticated recruitment and selection policies and practices, initial training, mentoring, follow-up training and regular opportunities for lay members to meet and share experiences. Without performing as a team and having regular, adequate, appropriate and timeous training and the opportunity to meet together and plan, lay monitors cannot reasonably be expected to perform well. It will not be good enough just to “instruct” lay monitors to undertake individual tasks and then attempt to evaluate their performance as individuals. The aspirations and effectiveness of the whole system need to be planned, delivered and evaluated. We take the view that training should be a core support provision and the responsibility for delivering it made explicit. It will not be sufficient for the authority in charge to be “responsible for the recruitment and oversight of prison monitors and lay monitors in Scotland.” We would suggest that they be responsible for “the recruitment, training, support and oversight of lay prison monitors in Scotland and ensuring the quality of independent monitoring within individual institutions and across the country.”

viii. The current legislation covers a raft of areas including numbers attached to each establishment, frequency of visits, work practices, reporting schedules, etc.. The Draft Order replaces this with a situation where no
such detail is available in the primary legislation. Instead it is suggested that this will be covered by periodic guidance issued by various Chief Inspectors of Prisons. This represents a very considerable dilution of the rights which prisoners currently enjoy where very clear guidelines regarding practices and roles lie within the legislation itself. In addition, we would be concerned that the lack of a clear definition of the role of independent lay monitors and of the competences which they need to possess to enable them fulfil their role within the primary legislation would not necessarily ensure OPCAT compliance.

ix. As stated earlier, we welcome the commitment to evaluating the performance of lay monitors. However, in order to evaluate meaningfully, a clear statement of role needs to be given. In the Draft Order the only two functions stated in detail are to follow “instructions” and deal with prisoners’ issues – hardly a basis for meaningful evaluation.

x. Currently Visiting Committee members are obliged to engage “in promoting the efficiency of the prison” and “immediately bring to the notice of the Governor any circumstances relating to the administration of the prison”. These requirements seem to have been omitted from the draft proposals.

xi. Currently all activities and visits undertaken by Visiting Committee members need to be communicated to the Governor and incorporated in the Visiting Committees Minute book. We are not supportive of the view that reporting of particular issues should be discretionary.

xii. Lay monitors will be expected to outlay expenditure on items other than travel and subsistence (postages, printing reports, etc. 9 (b) should reflect this – “travel, subsistence and other agreed expenses”.

xiii. Currently, legislation requires us to meet with the Governor (or his/her representative). We feel that this is an extremely valuable experience for both monitors and prison staff. We recognise that governor’s report on a quarterly basis and feel that a quarterly meeting with prison lay monitors should be a central part of the monitoring process.

Such a meeting would also allow lay monitors to share experiences and to identify common issues. In the absence of such contact it would be extremely difficult to identify systemic issues.

xiv. Currently, legislation requires Visiting Committee members to maintain confidentiality, this requirement seems to have been omitted from the draft Order.

2. Whether or not the proposed structure of monitoring becoming part of the Chief Inspector’s functions is to be welcomed:

We have always been concerned that monitoring and inspection are seen as related but entirely separate issues. The draft Order clearly promotes monitoring as a subset
of inspecting, particularly with respect to reporting. Given our initial concerns and our concerns regarding the draft Order, we would not welcome the inclusion of monitoring as part of the Chief Inspector’s functions.

3. **Whether or not the roles of the prison monitors and lay monitors are required and if so whether the roles are appropriately drawn:**

We welcome the recognition of the need to provide support for the process of independent monitoring but would see the “monitor” and “lay monitor” titles as fudging the issue. In our view monitoring should be undertaken by teams of lay monitors and any paid staff should be responsible for delivering the recruitment, training, support and oversight of lay prison monitors in Scotland and ensuring the quality of independent monitoring within individual institutions and across the country, together with the responsibility for ensuring that the activities of the teams of lay monitors are reported annually on a discrete public basis.

The 2012-13 Annual Report of the Visiting Committee and earlier reports are available at:


and

http://avc.bpweb.net/annual-reports-c-7.html?zenid=0190d028e608a8f5aa93c08c170e28e9

4. **Other comments on the draft Order:**

We are greatly concerned that the draft Order is not likely to encourage community volunteers to engage with the process as lay monitors nor lead to circumstances where the quality of independent prison monitoring in Scotland has any prospect of becoming “gold standard”.

Murray Dickie
1 November 2013