Justice Committee

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

Written submission from Anne Freebairn

Undertaken is my response to the four questions posed by the Justice Committee in respect of the draft order to improve the efficiency of public functions in relation to the inspection and monitoring of prisons in Scotland.

Whether or not the proposed changes are a positive step.

Change to the system is to be welcomed as there has been a need to modernise and streamline the processes. It is reassuring that the need for independent monitoring of prisons has been recognised. It is however disappointing to note that the Scottish Government has reverted to its original plan to employ paid monitors, a move which I firmly believe to be detrimental to truly independent monitoring. The plan to have prison monitors, paid and lay, reporting to and overseen by HM Inspector of Prisons endangers the distinction between inspection and monitoring and indeed the draft order refers in more than one place to “inspection” by prison monitors. Any loss of this important distinction could be contrary to Optional Protocol to the Convention against Torture (OPCAT) recommendations.

I know that it has been said that the proposed system has nothing to do with money, but surely in this day and age of restrictions money has to come into it. Paid prison monitors will be an additional cost and an additional layer of bureaucracy. Would the money to be spent there not be better spent in upgrading the training and administration of a modernised version of unpaid volunteer monitors that we have now?

As a VC member for many years I have always been clear about my duties and the functions I am expected to carry out. The Prison Rules laid out specific instructions and Scottish Prison Service (SPS) issued a “Guide for Visiting Committees” which had the answer to most questions and was (and still is at the time of writing) an essential tool for carrying out monitoring. At present the draft order tells us very little about what would be expected of lay members, apart from the fact that they would report to and take instructions from the paid members. I am sure that any person regularly going into prisons and talking to prisoners will agree with me that the main thing that prisoners like about taking concerns to Visiting Committee (VC) members is that they are not paid, and so they are independent.

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

The Scottish Government’s 2011 consultation asked the question “whether it might be possible for HMIP to take on the current role of visiting committees in monitoring prisons and thereby remove the need for a separate institution …..”

Of the 60 published responses to the consultation, 96 per cent were opposed to integration. In my opinion this was directly related to the difference between
inspection and monitoring, and important difference which could easily be lost sight of. Visiting Committee members, assigned to a specific prison and visiting it regularly, bearing in mind that a member of the team will be in that prison on a weekly basis, develop a knowledge of and “feel for” that prison which becomes an essential part of monitoring. Inspection is a very different thing. In addition prisoners, who are happy to talk to VC members like myself because of their independence, have no confidence in HMIP. They see him as another branch of the prison authority, paid to do his job and therefore not independent. This may not be entirely fair to HMIP, but that is the way that prisoners see it.

I would not welcome integration with HMIP as the situation lies at present. If there was some structure which would protect independent monitoring from being influenced by the inspection branch of the proposed system then perhaps it could be worked on, but not as it stands at present.

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

The proposal at the present time is to have 3 or 4 paid monitors with an unspecified number of lay monitors.

I have a problem with the appointment of paid monitors which I feel would be a threat to independence, or at least the perception of independence. In fact paid monitors would be public servants who would be given powers to direct or instruct lay monitors. This would not lend itself to independent monitoring, indeed it seems to me that a system of lay monitors assisting paid monitors would be “a tier too far”.

I have mentioned the prisoners’ reaction to HMIP who they do not perceive as independent. The same would apply to paid monitors and prisoners would probably have no confidence in their independence either.

**Other comments on the draft order.**

The Coyle Report made recommendations many of which were similar to the recommendations in the 2005 Review of Visiting Committees and these were welcome. However the draft order does not refer to several requirements which have been in place for visiting committees and would have been expected to apply to prison monitors and lay monitors.

For example, the frequency of visits; the requirement to hold meetings in each establishment with a minimum number of meetings per year are not covered. Also how would concerns be communicated to Scottish Ministers; how long would lay members be appointed for and how would under-performing members be asked to resign?

The Explanatory Memorandum referred to the 2011 consultation exercise but neglected to mention the outcome, which was a huge endorsement for continuation of independent monitoring which would be consistent with the modernisation programme set out in the 2005 Review and also kept separate from the inspection
process. It is worthy of note that the only body which supported the abolition of VCs was the Scottish Prison Service.

Anne Freebairn
6 November 2013