Justice Committee

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

Written submission from the Association of Visiting Committees

Whether or not the proposed changes are a positive step

While we welcome confirmation that independent monitoring will continue in some form, we are deeply disappointed that after all this time the Government has reverted to the proposals that it set out in June 2012 which were roundly condemned by stakeholders and that, having commissioned a Review of its proposals by a former prison governor and internationally renowned expert on prisons and human rights, it has gone on to ignore his key recommendations.

We, and others, have been at a loss to understand why the Government is so determined to press ahead with a system which has attracted such widespread criticism and will cost almost four times the present system. This determination is all the more baffling in the light of the fact that the proposals were, we are told, drawn up by the former Chief Inspector “on the back of a fag packet”. Thus, these proposals are very far from being the product of a considered review of best practice, which is what we might have expected after three years of government deliberation.

It is a matter of great regret that the proposed system would cost significantly more, be less independent and provide less rigorous scrutiny of the prison system. In our view it is very far from the gold standard that the Justice Secretary said in September last year that he aspired to.

Specifically, the proposed system has a number of deficiencies:

(a) The functions of monitoring and inspection would be merged.
   • The important distinction between inspection and monitoring would therefore be lost, contrary to the recommendations in OPCAT which recommends a “layered” approach to National Preventative Mechanisms.
   • Despite Scottish Government’s assertion in the consultation paper that they “are clear about the distinctions between the functions of inspection and monitoring” it is very clear that they are not. An example of this is the duty in Section 7A (4)(g) of the Draft Order for Prison Monitors to maintain records about matters “inspected” by them. In addition, it is envisaged that “inspection and monitoring standards” will be developed and this suggests a further eliding of the distinction between the two functions.
   • There is a real risk, whatever assurances are given at the outset, that monitoring will end up as ongoing inspection with lay monitors being used to collect statistics for inspection.

(b) It envisages a hierarchical and complex structure of prison monitoring.
   • The Chief Inspector of Prisons would be responsible for a combined inspection and monitoring role. Paid Monitors would report to him/her and lay monitors would in turn report to the paid monitors.
• An Advisory Board (though not mentioned in the Order) would be established to be responsible for appointments, training and agreeing monitoring priorities

(c) It will be far more expensive than the current system
• The current system of monitoring costs around £50,000 in respect of reimbursement of travel and subsistence expenses and administrative support for Visiting Committees and around a further £25,000 for training and development and AVC administration costs. It is estimated by the Government that the cost of the new system will be £255,000. This includes the costs of 4 salaried monitors but it is unclear whether this includes other expenses such as travel and overnight accommodation, office accommodation, support staff, training, administrative costs etc. Scottish Government has declined to provide this information.

(d) It will be far less independent than the current arrangements
• The current system of Visiting Committees is founded on a cohort of around 240 independent lay monitors drawn from the local community and appointed by local authorities or, in the case of Young Offender establishments, by the Justice Secretary. VC members are charged with monitoring the prison and the condition of prisoners and report any concerns directly to the Governor. If VCs do not consider that the Governor has remedied the matter within a reasonable period, they can notify Scottish Ministers.
• What is proposed is that the monitoring function will be the responsibility of 3 or 4 paid public servants. The role of the lay monitor is simply to assist them but the Order does not specify what this will amount to.
• The Paid monitors will report to the Chief Inspector and there is no provision for reporting concerns to Scottish Ministers.
• Monitoring priorities are to be set by the Paid monitors and the Chief Inspector (and the Advisory group).
• Lay monitors must comply with any instructions issued by Paid monitors.
• The independence of both paid and lay monitors is compromised by the requirement that paid monitors must comply with instructions from the Chief Inspector and that lay monitors must comply with instructions from paid monitors.
• Given these concerns about the independence of monitors, it is perhaps significant that the word “independent” does not appear anywhere in the draft Order.

(e) It will be far less rigorous and robust than the current arrangements for Monitoring
• Under the current legislation (The Prison Rules) most of the requirements for independent monitoring are specified in the legislation. For example, VC members are appointed to monitor a specific establishment; the number of members in each committee is specified; and, they are required to meet as a Committee in the establishment at least 4 times a year. These meetings provide a formal opportunity to discuss any matters of concern, receive a report from the Governor and question the Governor on relevant matters. VCs are also required by statute to ensure a rota of visits so that at least 2 VC members a fortnight visit the establishment and to produce a report on their
visit. VCs are also required to produce an Annual Report to Scottish Ministers concerning the state of the prison and may include any suggestions and advice they consider appropriate.

- None of these arrangements are contained in the new system. In contrast, the draft Order envisages that Lay monitors can be assigned to any or all prisons in Scotland. This ignores the benefits that come from having a body of monitors assigned to a particular prison, who are familiar with the operation of that prison and who benefit from sharing expertise and knowledge with each other. There is no provision for a committee for each prison or a formal opportunity for the Governor to report on and be questioned about the operation of the prison and the conditions and treatment of prisoners. The frequency of monitoring is unspecified except that paid monitors must visit at least once a month.

(f) Complaints handling will be less robust

- Although the current requirement for lay monitors to hear complaints is retained, the requirement to produce a written report and to inform the prisoner of the findings has been eliminated, as has the duty of the Governor to provide a confidential setting for VC members to hear complaints

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

Professor Coyle’s Report considered a number of options for support of independent monitoring, including the possibility that HMIPS might fulfil this role. He noted however that it would elide the distinction between inspection and monitoring and weaken the layered approach of the NPM. He was concerned about independent monitors being influenced by HMIP and the need to ensure direct access by monitors to Ministers

It is clear that there is very little support for monitoring to become part of the Chief Inspector’s functions. The SG consultation in 2011, sought views on

“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. The Government does not have a blueprint for how this option might work in practice: we would prefer to see whether, in principle, there is widespread support for such a move, including from the bodies concerned.”

In the event, of the 60 published responses to the consultation, 96% were opposed to integration. It should be noted that the then Chief Inspector of Prisons was opposed to taking on responsibility for monitoring although he reversed his position in the summer of 2012.

The 2011 consultation paper also stated that:

“[integration] may require a greater involvement of the inspectorate in the kinds of areas of activity which are currently undertaken by VCs. This will
mean greater overlap with the work of VCs, which had not been envisaged in the 2005 review of VCs."

Again, this raises concerns about the extent to which SG envisage that monitoring and inspection would remain distinct for the purposes of OPCAT.

The confidence of prisoners in any system also has to be considered. Prisoners do not have confidence that HMIPS is independent. While this may be unfair and unfounded, the fact remains that prisoners are generally mistrusting of authority and do not trust the inspection system because it is perceived as being an arm of government and because members of the Inspectorate, including, usually, the Deputy Chief Inspector, are serving SPS staff. On the other hand, prisoners are much more inclined to trust unpaid monitors who are, and are perceived to be, independent of Government and the SPS.

In summary, the AVC has not considered the integration of monitoring and inspection functions to be the best option. We have concerns about the extent to which the separate and distinctive features of inspection and monitoring can be protected and preserved. As noted above, the Scottish Government seems to be not at all clear about the distinction, even in the drafting of the Order. Furthermore, prisoners are unlikely to have confidence in this model.

Nevertheless, if the role of HMIP were to be rigorously circumscribed in legislation so that it fulfilled a support role with regard to monitoring but was not permitted to influence the work and priorities of independent monitors, then that might be a workable option. This should be underpinned by the protocol recommended by the Coyle Report.

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

The notion of 3 paid prison monitors was suggested by the then Chief Inspector in June last year to replace 240 volunteer monitors with a connection to the community. At that time it was envisaged that the paid monitors would require senior level experience of working in the prison service which suggested that the posts might be filled by retired prison governors. The proposals have undergone a number of modifications in the intervening 16 months and what is now proposed is a model which combines 3 or 4 paid monitors with an unspecified number of lay monitors. The current proposals are silent on the appointments process.

We have struggled to understand the need for paid monitors and what their added value will be. Paid monitors will be expensive (at least another £180,000 each year). Professor Coyle expressly stated that if his recommendations were implemented, there would be no need for the paid monitors.

The Draft Order specifies the role of the paid monitor but is silent on the role of the lay monitor. Instead it requires the lay monitors to “assist” the paid monitors and to “comply with any instructions” issued by the paid monitor.
Paid monitors will by definition be public servants with powers to direct the lay monitors. The proposed system has all the appearance of being designed to keep lay monitors on a short rein and circumscribe their independence. It is hard to understand how such an arrangement would constitute independent monitoring.

It will be much harder to recruit lay monitors of the appropriate quality if their function is subordinate to the paid monitors. Current VC membership is diverse and drawn from all walks of life. This includes serving and retired social workers, nurses, lawyers, chief executives of charities, retired lawyers, former police officers and fire fighters. These people are unlikely to be attracted to a role which is effectively one of unpaid help, being told when and where to monitor and how. Many volunteers (and existing VC members) would instead seek a voluntary role where they felt they could use their abilities better and make more of a difference.

Prisoners will be unlikely to have confidence in paid monitors and by extension this will undermine their confidence in the entire monitoring system.

The Coyle recommendations suggested a number of options for support and oversight of independent monitoring but the model in the draft Order seems entirely concerned with oversight and control. There is undoubtedly a need for greater support for independent monitors particularly in relation to training and administrative support. The considerable resources to be made available for paid monitors could be much more usefully directed to providing a funded training programme (much of which is currently undertaken by volunteers), administrative support for reporting and annual reporting, co-ordination and liaison with SPS.

Other comments on the draft Order

1. We welcome the recommendations set out in the Coyle Report, many of which reflect the recommendations in the 2005 Review of Visiting Committees which were accepted by the current Administration but never implemented by them. However, the Government’s proposals are markedly different from the Coyle recommendations in a number of important respects.
2. The draft Order omits any reference to a number of requirements and safeguards which are in the existing legislation. For example, unlike the current legislation, the draft order does not:
   - specify the frequency of lay monitoring;
   - specify the number of monitors required;
   - make any reference to the appointment process, the term of appointment, the eligibility criteria or the circumstances in which a monitor might be asked to resign;
   - provide for the setting up of a committee for each establishment or require it to meet a minimum number of times each year;
   - require an annual report on each establishment; and
   - provide for any concerns to be reported to Scottish Ministers.

Also omitted from the Draft Order is
   - any reference to the Advisory Group; and
   - implementation of the two recommendations from the Coyle Report that the Justice Secretary said specifically would be included in statute. These are:
the independent monitors for each prison should submit an annual report to Scottish Ministers and should publish these reports (Rec 5)

monitors should bring to the attention of the Governor any matter which is of concern to them. If the matter is not resolved, monitors should bring it to the attention of Scottish Ministers. (Rec 6).

It is also a matter for concern that Governors are to be given increased discretion to withhold documents from lay monitors if, in their opinion, disclosure would have implications for the security of the prison.

The terms of the Explanatory Memorandum are misleading in many respects. For example there is reference to the 2011 consultation exercise but not to the outcome which was a resounding endorsement for continuation of independent monitoring, modernised as envisaged in the 2005 Review and separate from Inspection. Only the SPS supported the abolition of VCs.

The Explanatory Memorandum also notes that the current system is not OPCAT complaint. However, it omits to mention that the reason for this is that the funding for VCs is currently held by SPS – an arrangement which was criticised by the 2005 review and could have been changed by Scottish Government at the stroke of a pen and without recourse to legislation.

It is disappointing that there appears to be no intention to include the new monitors in membership of the UK NPM. As mentioned above, currently VC members, unlike their equivalents in the other two UK jurisdictions, are not members of the NPM because of their lack of independence from the SG through its agency the SPS. An irony of the proposed arrangements is that the new monitors may well still be excluded from the NPM because they will be regarded as an extension of HMIPS which is already a member.

Finally, the Order is a missed opportunity to have in Scotland a system of independent monitoring of prisons which sets the gold standard rather than merely being a grudging and questionable compliance with international obligations and human rights.

Andrew Nisbet
Secretary
8 November 2013