Justice Committee

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

Written submission from Aberdeen Prison Visiting Committee

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

Aberdeen Prison Visiting Committee welcomes the Cabinet Secretary's aspiration to implement a gold standard monitoring system within prisons in Scotland, as well as the confirmation that independent monitoring would continue, albeit in a different form. Although, having had concerns regarding the Government's proposal to abolish Visiting Committees from the outset, the Visiting Committee appreciated the Government's commissioning of an independent review by Professor Coyle into its proposals to improve arrangements for independent monitoring of prisons in recognition of the concerns which stakeholders had raised.

The Visiting Committee, as did other Visiting Committees, had recognised the need for change to some areas, and as such prior to the Government's proposals had been working towards implementing the recommendations of the 2005 Review (published in 2007), and Aberdeen Prison Visiting Committee was particularly supportive of the suggested change of name to “Independent Monitoring Boards”.

1.1 Independent Monitoring and Structure

The Visiting Committee remain committed to the view that the monitoring role of visiting committees is quite different from the role of HM Inspectorate of Prisons, and that the two functions should complement each other and their structures should sit separately. Visiting Committees offer an irreplaceable and unique form of reassurance in that their members appear at prisons frequently, and unannounced. The informality of Visiting Committees means there is never any fear that “everyone is on their best behaviour”. The Committee note that if the proposal is implemented, both the monitoring and inspection roles, which are very distinct, will sit under the Chief Inspector and therefore the proposal does not reflect the ‘layered’ approach to National Preventative Measures recommended by the Optional Protocol to the UN Convention Against Torture (OPCAT).

The Committee further noted and welcomed the statement that “the Scottish Government is clear about the distinction in functions of inspection and monitoring and that these functions will operate separately”, however upon reading the draft Order, specifically the terminology used regarding the functions of Prison Monitors and the lack of distinction between the inspection and monitoring roles of the structure which is now proposed to sit under HMIP, it has raised dubiety as to whether the draft Order fully reflects the distinct roles and as such the Visiting Committee would recommend that the terminology of the draft Order regarding the role of prison monitors and lay monitors and the separation from inspections be revisited to ensure the distinction between monitoring and inspection was clear to all from the outset.

The difference between monitoring and inspecting has been well rehearsed and raised significantly by Professor Coyle in his review, however this is a vital point and would urge the Government to assure all stakeholders that the functions would
remain distinct and operate separately and therefore request that clearer governance arrangements be provided.

The Visiting Committee has concerns regarding the level of detail of the draft Order and the omission of vital functions currently undertaken by Visiting Committees. Similarly, the Visiting Committee had previously been advised that an Advisory Board would be established, however this is not referred to in the draft Order, therefore clarity over this aspect is sought. Should the Advisory Board not be established who would be responsible for appointments and training etc.

1.2 Financial Implications
The proposed new monitoring system will be substantially more cost prohibitive in that it is estimated that the new system will cost £255,000. The Visiting Committee has assumed that this is the total cost per annum however clarification on this point is requested. The Visiting Committee has been advised by the Association of Visiting Committees that the annual total cost of Visiting Committees is £50,000.

1.3 Reduced Independence and Clarity of Roles and Requirements
The Visiting Committee agree that the current system of lay monitors appointed by the relevant local authorities is completely independent with a clear structure for monitoring and reporting and from the experience in HMP Aberdeen works very well. Members are concerned that the new structure does not have such clearly defined arrangements and that they remain unclear as to the relationship between lay and paid monitors and the specific roles of each. To emphasise the importance of greater information regarding the structure and roles of the proposed new arrangements, the Visiting Committee noted from the information available at present regarding the structures, that lay monitors must comply with any instructions issued by paid monitors, this brings into question the independence and role of the lay monitors. The perceptions of independence matter greatly.

Under the current legislation most of the requirements for independent monitoring are specified (we assume the Committee have seen the current legislation and therefore we will not repeat the legislation). The Visiting Committee is concerned that these requirements contained within existing legislation are not detailed in the draft Order. Concern was also expressed about the lack of detail regarding the frequency of visits, Members agreed that visits should continue to be undertaken on a regular, unannounced basis.

Members highlighted the benefits of each establishment having a consistent set of lay monitors who were tasked with visiting the establishment on a regular unannounced basis. Members again emphasised the importance of the detail of all requirements of both paid and lay monitors being included within the draft Order. Unfortunately, the draft Order is in contrast to this important aspect and envisages that lay monitors can be assigned to any or all prisons in Scotland. One of the advantages of the existing model is the ability of Visiting Committee members to build up knowledge about one prison establishment over time. Should this aspect be implemented, there would be 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.

The Visiting Committee also note that there is no provision within the draft Order for the paid monitors to report concerns to Scottish Ministers if they remain unsatisfied with the outcome further to it having been reported to the Chief Inspector. Members would welcome this additional provision, as well the existing functions which have been omitted being added to the Order.

With regards the monitoring priorities, the Visiting Committee sought clarification whether the lay monitors would have any input in to the process of setting these priorities. Members feel that lay monitors will have a wealth of experience and their input into this process would be invaluable. In addition, involvement in the process would provide them with a clear understanding of the expectations.

1.4 Complaints Process
The Visiting Committee welcomed the continued requirement for lay monitors to hear complaints, however were concerned that there is no mention of the requirement for lay monitors to produce a written report and etc. Again, the Committee would welcome clarification on this aspect and whether further detail regarding the complaints process could be added to the Order. Should these aspects not be included or expected of lay monitors, then the Visiting Committee is of the view that the process for complaints is less vigorous that the existing system.

2. Whether or not the proposed structure of monitoring becoming part of the Chief Inspector’s functions is to be welcomed
With regards the proposed structure, the Visiting Committee remain committed to the view that the monitoring role of visiting committees is quite different from the role of HM Inspectorate of Prisons, and that the two functions should complement each other and their structures should sit separately.

The Committee also agree with Professor Coyle that the main concern of a model under the auspices of HM Inspectorate of Prisons is that it would elide the important distinction between inspection and monitoring. Again as stated above, members notend the statement that “the Scottish Government is clear about the distinction in functions of inspection and monitoring and that these functions will operate separately”, however upon reading the draft Order and the terminology used regarding the functions of Prison Monitors, it has raised dubiety as to whether the draft Order fully reflects the distinct roles and as such the Visiting Committee would again recommend that the terminology of the draft Order regarding the role of prison monitors and lay monitors and the separation from inspections be revisited to ensure the distinction between monitoring and inspection was clear to all from the outset.

The Committee also noted that Professor Coyle had highlighted that OPCAT recommends a “layered” approach to national preventive mechanism activities and this would arguably be weakened under this model. It would also weaken the local features of monitoring since the independent monitors might be subject to influence in their work by HM Inspectorate of Prisons.
The Visiting Committee shared this view and thereby emphasised the importance of the new structure providing monitors with direct access to Scottish Ministers. Unfortunately, at present there is no provision for this.

Members also highlighted the importance of prisoners being clear of the separation between both functions under HMIP and of prisoners continuing to have faith in the independence of the monitoring system. It has been the experience of Members that prisoners have greater trust in the Visiting Committee than they do in HMIP and other agencies and the Visiting Committee would not want the trust to diminish due to a change in structure.

The Visiting Committee remain of the view that integration of monitoring and inspection functions is not the best option for the future monitoring of prisons. On the basis of the draft order, Members have concerns about the extent to which the separate and distinctive features of inspection and monitoring will remain complementary rather than joint. The Visiting Committees concerns would be reduced should the role of HMIP be rigorously detailed 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.

3. **Whether or not the roles of the prison monitors and lay monitors are required and if so whether the roles are appropriately drawn**
   The current model proposes a structure of 3-4 paid monitors, as well as an unspecified number of lay monitors. Professor Coyle stated that if his recommendations were implemented, there would be no need for the paid monitors. The Visiting Committee concur with this view and feel that the paid monitors will make the new system very expensive and on the basis of the draft Order are unclear as to the added value they will bring.

   As advised above, the Visiting Committee would welcome clarity and greater detail on the role of lay monitors. From the draft Order, their role is unclear as at present it merely states that lay monitors will “assist” the paid monitors and “comply with any instructions” issued by the paid monitor. Members feel that it will be difficult for lay monitors to truly be independent when they are being instructed by paid monitors, who do to their payment will be viewed as public servants.

   Members are concerned that given the relationship between lay and paid monitors, where the paid monitor instructs the lay monitor, the recruitment of suitable individuals may be difficult. There is undoubtedly a need for greater support for independent monitors particularly in relation to training and administrative support. However, Members feel that the resources available for paid monitors could be much more usefully directed to providing a funded training programme, administrative support for reporting and annual reporting, co-ordination and liaison with SPS.

   Finally, Members believe that prisoners will be unlikely to have confidence in paid monitors and by extension this will undermine their confidence in the entire monitoring system.
4. **Any other comments you may have on the draft order**

The Visiting Committee are disappointed that the draft Order and proposal does not fully reflect the recommendations contained in Professor Coyle’s review. Had Professor Coyle’s recommendation been proposed in full, and had the draft Order explicitly detailed the roles of lay and paid monitors and the separation of monitoring and inspection function under HMIP, then the Visiting Committee would have been reassured that a clear, transparent and independent structure was being proposed. Unfortunately this is not the position. The review of monitoring arrangement and the draft Order were an opportunity to implement a gold standard independent monitoring system supported by all stakeholders; and although this was the intention of the Scottish Government, unfortunately this has not been the reality and the Visiting Committee view this as a missed opportunity.

Members have concerns over the lack of detail and omissions of key functions and requirements of existing Visiting Committees which will be equally important for new lay or paid monitors to undertake. In addition, there is no mention of an Advisory Group, however Visiting Committees had previously been advised that this Group would be included within the structure. Similarly, the Justice Secretary had previously stated, as recommended by Professor Coyle, that (a) independent monitors for each prison would be expected submit an annual report to Scottish Ministers and should publish these reports; and (b) 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. It is of great concern that neither of these are included in the draft Order. There is also no information about the recruitment process, training and administrative support for lay monitors.

Finally, with regards the Explanatory Memorandum, the Visiting Committee feel that this document is misleading in areas. 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. It 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.

Councillor Forsyth
Chair
8 November 2013