Justice Committee

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

Written submission from Orkney Visiting Committee

We strongly support the position of the AVC Executive. We share their views and for the avoidance of doubt our responses to the four questions that the Justice Committee wish to have answered are as follows –

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

1. 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 an internationally renowned expert and former prison governor, they have gone on to ignore his key recommendations.

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

3. Specific deficiencies:
   (a) The functions of monitoring and inspection would be merged
   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 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 influencing 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 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 have 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 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.

(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. For example, visiting committee members are appointed to monitor a specific establishment; the number of members in each committee is specified; 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. 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 gone, as has the duty of the Governor to provide a confidential setting for VC members to hear complaints

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

1. Professor Coyle’s Report considered a number of options for support of independent monitoring, including the possibility that HMIP 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.
2. It is clear that there is no strong 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 summer of 2012.

3. 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.

4. The confidence of prisoners in any system also has to be considered. Prisoners do not have confidence that HMIP 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 are serving SPS staff. On the other hand, they are much more inclined to trust unpaid monitors who are and are perceived to be independent of government.

5. In summary, we have 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. As noted above, the Scottish Government seem 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.

6. 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.

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

1. The notion of 3 paid prison monitors was suggested by the then Chief Inspector in June last year to replace 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. These 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.
1. 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.

2. 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.

3. Paid monitors will by definition be public servants with powers to direct the lay monitors. It 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.

4. 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 seek a voluntary role where they felt they could use their abilities better and make more of a difference.

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

6. 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 resources 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.

4. 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
• Provide for any concerns to be reported to Scottish Ministers

3. Also omitted from the Draft Order is
• any reference to the Advisory Group
• 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)

4. 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.

5. The terms of the Explanatory Memorandum are misleading. 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.

6. 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.

7. Finally, we agree with the view of the AVC Executive that 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

Orkney Visiting Committee
8 November 2013