Justice Committee

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

Written submission from Edinburgh Prison Visiting Committee

Introduction

The Edinburgh Prison Visiting Committee (EVC), the group of volunteers who currently deliver independent monitoring within Edinburgh Prison, welcome the opportunity to provide written evidence to the Justice Committee on the draft Public Services Reform (Prison Visiting Committees) (Scotland) Order 2014.

The EVC would welcome the opportunity to provide the Committee with oral evidence or any further written evidence that it would find helpful to inform its conclusions. We are fully committed to working with the Scottish Parliament, the Scottish Government and other stakeholders to ensure that the best possible independent prison monitoring is developed.

For ease of reference, the following submission broadly follows the stated questions within the call for evidence.

Overall Position

We welcome confirmation that independent monitoring (including complaints handling) will continue in some form however we are disappointed with the current proposals as they stand. We are particularly disappointed that many of the concerns and suggestions proposed within the Review of Independent Monitoring, carried out by Professor Andrew Coyle in 2012 have not been addressed within the draft order.

The theme of our response is the need to ensure the most robust form of independent monitoring of prisons but also acknowledging changes would need to be made to the current system to fully deliver this. The Association of Visiting Committees (AVC) has acknowledged this for many years and tried continuously to work with Scottish Government to deliver this. The reform of visiting committees must not be seen as distinct from broader reform of criminal justice services and the on-going development and enhancement of community planning.

Whether or not the proposed changes are a positive step

The new arrangements appear far less independent that current arrangements. Currently, independent volunteers are recruited from local communities. 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.
Within the new arrangements, paid monitors recruited by the Inspectorate will carry out this function. The role of the independent lay monitor is simply to assist them and monitor priorities set by paid monitors (and the Chief Inspector). The paid monitors will report to the Chief Inspector and there is no provision for reporting concerns to Scottish Ministers.

This appears to lead to a hierarchical structure rather than independent monitors being able to go directly to a Governor or Scottish Ministers with concerns around the fair and humane treatment of prisoners.

The new arrangements merge and blur the functions of monitoring and inspection. The important distinction between inspection and monitoring would therefore be lost, contrary to the recommendations in the Optional Protocol to the Convention against Torture (OPCAT) which recommends a “layered” approach to National Preventative Mechanisms. There is a real risk that monitoring will end up as ongoing inspection with lay monitors being used to carry out practical tasks for paid monitors or tasked to collect information for inspection.

An example of where this distinction is blurred is within the Draft Order is the duty in Section 7A (4)(g) 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.

The new monitoring arrangements appear far less robust than current arrangements. Current legislation sets out key duties and key tasks that lay volunteers must carry out, including: being assigned to a specific establishment; undertaking regular rota visits; receiving regular reports from the Governor; and producing annual reports for Ministers. There is no detail within with draft order compounding fears that lay monitors will simply be aids to delivering the inspection regime, as noted above.

The new complaints handling arrangements appear far less robust than current arrangements. We welcome the current requirement for lay monitors to hear complaints. However, 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. This is likely to dilute activity within this crucial area.

The new system will be far more expensive. The current system costs around £70,000. It is estimated that Scottish Government estimate the new arrangements to cost £255,000, between 3 and 4 times as expensive as current arrangements.

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

EVC acknowledges that within the current system closer links could be made with the inspectorate however we do 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. We have explained the rationale behind our thinking above and have continuing concerns if they meet OPCAT requirements.

In his report, Professor Coyle noted however that it would elide the distinction between inspection and monitoring and weaken the layered approach of the National prevention Model. Further, he was concerned about independent monitors being influenced by HMIP and the need to ensure direct access by monitors to Ministers.

This was also the conclusion of the Scottish Government’s consultation in 2011 where 96% of respondents opposed the proposal of integration. At the time the Chief Inspector of Prisons also opposed this proposal.

To make the system workable prisoners must be confident that the monitors are independent. A direct link with an authoritative body (in this case HMIP) puts this relationship at significant risk.

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

EVC firmly believes we need independent monitors within the Scottish prison system. The current system is not ideal and we are not proposing retention of the status quo. Professor Coyle suggested a number of options for support and oversight of independent monitoring which merit further consideration. There is undoubtedly a need for greater support for independent monitors particularly in relation to training and administrative support.

We do not see the value paid monitors will provide. They will be expensive. The proposed resources available for paid monitors could be much more usefully directed to providing a funded training programme for lay monitors (much of which is currently undertaken by volunteers), administrative support for reporting and annual reporting, co-ordination and liaison with the Scottish Prison Service (SPS).

Professor Coyle expressly stated that if his recommendations were implemented, there would be no need for the paid monitors. Paid monitors will by definition be public servants with powers to direct the lay monitors (as set out in the order) which will impact on their ability to proactively monitor in prisons. Compared to current arrangements this would appear to be a much reduced level of independent monitoring.

Further, due to prisoners past relationships with authority many are unlikely to have confidence in paid monitors. Our experience has continually confirmed that prisoners are only willing to place their trust in VC members after we are explicitly clear about our voluntary capacity and our independence from any other body. By extension the use of paid monitors is likely to undermine prisoner confidence in the entire monitoring system.

Finally, current VC membership is diverse and drawn from all walks of life including serving and retired social workers, nurses, lawyers, chief executives of charities, retired lawyers, former police officers and fire fighters etc. This diversity and experience is extremely valued and must be retained under any new system. It will
be much harder to recruit lay monitors of the appropriate quality if their function is subordinate to the paid monitors.

**Any other comments**

EVC welcomes the recommendations set out in the Coyle Report. Two fundamental recommendations from the Coyle Report that we feel should be implemented to ensure the standard and level of independent monitoring does not deteriorate under a new system are:

- the independent monitors for each prison should submit an annual report to Scottish Ministers and should publish these reports (Rec. 5); and
- 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).

The draft Order omits any reference to a number of requirements and safeguards which are in the existing legislation. For example, it does not specify the: frequency of lay monitoring; number of monitors; appointments process; term of appointment; eligibility criteria; the circumstances in which a monitor might be asked to resign; or reporting requirements.

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.

Finally, it is important to highlight that the Explanatory Memorandum does not explicitly confirm the outcome of the 2011 Scottish Government 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. The fundamental reason for this is, as identified in the 2005 Review, the VC budget is held by the Scottish Prison Service. This could have been changed to the Scottish Government to make the system compliant.

**Conclusion**

EVC supports the development of the best possible independent prison monitoring system for Scotland however we are not convinced that the current proposals, as set out in the draft Order achieve this. There is much within the Report by Professor Coyle that would see significant improvement on where we are now. We would like to propose that the Justice Committee consider the recommendations within the Report whilst considering the future of independent monitoring in Scotland.

Sue Cook
Chairman
7 November 2013