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**Consultation on Incentives and Earned Privilege scheme**

We were grateful to be consulted on this draft framework, and recognise the progress that has been made since the desire to amend current instructions was first announced in 2016. In particular we welcome the removal of the cruel and unnecessary “entry level” status which has been inflicted on prisoners at their most vulnerable moment. It is impossible to be certain whether your predecessors’ decision to introduce this provision contributed to a very sharp rise in self-inflicted deaths but it is wholly plausible that it did.

We have sent detailed comments to your officials, drawing on a large response to a consultation we are conducting with prisoners on the theme of incentives. But I wanted to highlight a few strategic issues which I think should concern you as the responses from many individuals and organisations are collated.

The draft framework helpfully refers in some detail to the evidence on incentives schemes. Two particular findings stand out – that positive reinforcement works better than sanctions, and that procedural justice is essential if any scheme is to achieve its ambitions. We agree, and the response from prisoners categorically endorses those principles. But the extent to which that evidence is actually carried through to the detail of the new framework is patchy. Candidly, the document reads as though it has been authored by two different hands – one driven by the evidence, and the other clinging to the belief that prison regimes need to be seen as “tough” to command public confidence. Our extensive consultation – which when complete will have gathered the views of many hundreds of serving and former prisoners – already demonstrates conclusively that prisoners currently see the IEP as focused on punishment, not reward; unfair in its implementation; and constantly in fear of a lurid tabloid headline. As it stands, we doubt that the framework will change any part of that perception, and our detailed comments make suggestions of how that could be different.

An obvious second point is the lack of any reference in the draft framework to women specific requirements and treatment. The main practical implication of the draft framework for women

would be the removal of the current presumption that they all wear their own clothes rather than prison uniform. This is all surprising and disappointing in the light of the female offender strategy published only last June. Our detailed response suggests changes which could bring the framework more into line with that strategy.

The third issue is that the framework lacks any definition of what the minimum provision for any way of life in prison should be. To borrow your language, what the “basics” look like. We applaud your focus on this, but it urgently needs the security of a comprehensive statement of what it means. We are unusual in western democracies in not having a statutory code of minimum standards for our prisons, though a number of versions exist that could be used given the opportunity. The Chief Inspector’s expectations would provide a good alternative in the absence of legislation. But without that foundation, a framework for privileges over and above the minimum inevitably looks shaky and open to the accusation that it fails a core test of fairness and humanity. We can draw on a wealth of international and domestic learning on this to suggest a way forward if you would find it helpful.

A fourth strategic consideration, that comes directly from our consultation with prisoners, is that the biggest incentives in prison seem to be the hope of a better life in the future, and the opportunity to be trusted in the present. This clearly has implications far beyond the IEP scheme, and perhaps is most important for demonstrating the limitations of that scheme in isolation in delivering the fundamental change that you rightly seek. A way of life in prison that gives prisoners responsibility for decisions about how their community works, and which makes far greater use of opportunities for them to demonstrate that they can be trusted as “active citizens”, is what prisoners value most. ROTL of course is the biggest single opportunity to reinforce such an approach, but far from the only one. A common theme from the consultation is the extent to which prison wages have fallen behind the costs of the few benefits that prisoners can earn in prison – paying people fairly so that they get to make choices how they spend their earnings is not just a simple principle inside, but also a preparation for life outside.

Ultimately, the incentive that matters to everyone is the possibility of being released sooner because of the work that you do to earn that. The current sentencing framework makes hardly any use of that incentive – parole is dominated by an assessment of risk over which many prisoners will legitimately feel they have very little influence, and of course the majority of prisoners are not subject to parole in any event. We made proposals to one of your predecessors for a simple early release scheme based wholly on objective criteria about prisoners using their time in prison constructively. We would be happy to revive that proposal if you were interested.

The final issue is a generic one. As the first “framework” that we have seen, we were particularly interested in where the lines have been drawn between what is mandatory and what is discretionary. We have always taken the view that all of these decisions are a matter of judgement – some areas of prison operation require national uniformity and others plainly do not, but the area in between the two is pretty broad and tricky to navigate. We think this framework has left too many procedural safeguards – which tend to determine perceptions of whether the system is just – to local discretion. But the generic point is that the framework often hedges its bets, in reality generating confusion about where the line between prescription and discretion is drawn. That is not in the best interests of either staff or prisoners.

As I have mentioned, we are concluding a very extensive consultation with prisoners on the issue of incentives, taking our cue from the Secretary of State's remarks earlier in the year. We will send you the full report of that consultation in early November. Inevitably, from day to day you will tend to hear more about prisoners who behave poorly. But our work is showing that the quiet majority have a strong desire to make prisons work better and much to contribute to making that happen. We'd be pleased to set up another meeting with prisoners on ROTL to continue the discussion you started earlier this year.

*With best wishes*



**Peter Dawson**  
Director