CONSULTATION ON DRAFT INCENTIVES AND EARNED PRIVILEGES POLICY FRAMEWORK

FEEDBACK FORM

Stakeholder Name	Prison Reform Trust
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Date Feedback Form Returned	Leave blank – for internal use only

Section 1- Context
Please provide feedback on the Context section below
The opening line of the Framework starts on the wrong foot. The phrase 'in favour of those prisoners who play by the rules' sets both a patronising and authoritarian tone, with an explicit threat to those who don't conform. This is not a game for prisoners but their whole life. The language about positive reinforcement and procedural justice, well used later in the document, is conspicuously absent. We also take issue, here and throughout the policy, with the inclusion of evidence of engaging with "rehabilitation" as a criterion for IEP decisions, articulated here by the phrase 'those who want to turn their lives around'. We maintain that "ensuring prisoners engage with rehabilitation" is an inappropriate purpose of the IEP scheme. A successful return to life outside prison is incentive enough for all those prisoners for whom it is within reach. For an increasing number, the extreme length of their sentence means it is not, and there is an implicit dishonesty in requiring them to pretend that it is. There are others for whom rehabilitation is not in reality a meaningful concept from day to day. This would include foreign national prisoners who are often specifically excluded from rehabilitative opportunities, unconvicted and wrongly convicted prisoners, and also the many long term prisoners who have completed all the rehabilitative work expected of them but who still face many years in prison. For them, the construction of a meaningful existence, with purpose and hope, cannot be based on a continual reference back to offending which could be many years, or even decades behind them. Personal development, and the ability to be a valued and active citizen within the prison community, are likely to be the relevant and motivating factors in making their sentence survivable. So the focus of IEP should be about the wellbeing of the prison community, enabling a safe and just environment. It flies in the face of all that we know about desistance – and the approaches the prison service itself has adopted – to use the IEP scheme to force prisoners to "jump through hoops". For an individual to engage in rehabilitative work meaningfully they need to be genuinely committed to it, engage through their own choice and for the purpose of real long-term goals as opposed to short term privileges. Using the IEP scheme as a way to incentivise rehabilitative work can result in lazy approaches to engaging and motivating people which use punishment rather than understanding, compassion and encouragement. The importance of establishing a positive culture and tone is underlined by recent prison inspection findings in one women's prison where inspectors found that '*Women valued their place at the prison; this attitude had a positive effect on their behaviour. There was a nominal incentives and earned privileges (IEP) scheme, but all women were on the enhanced level during the inspection. Women responded positively to warnings and demotions were rare*.' (HMP & YOI East Sutton Park, 2016).

In other words, it is legitimate to aim for a prison community in which the artificiality of an IEP scheme has become largely irrelevant, and which mimics “real life” in the community to a much greater degree. Our extensive consultation with prisoners on the theme of incentives suggests that prisoners value having trust placed in them, and being treated as adults. Much of the later guidance in this framework is in tune with that finding, but its opening and many of its mandatory rather than discretionary elements describe an approach which risks infantilising those whose behaviour it seeks to affect. IEP was invented to avoid the creation of local and unauthorised systems of informal punishment. That remains a risk and a national IEP framework is necessary protection against it. But it must support an approach which treats prisoners as adults with rights and responsibilities, and which adopts the principle of normality for the design of their way of life in custody.

We are supportive of increased discretion for Governors to work with prisoners in their care about how to create a safe and just community, though this must be carefully balanced with clear mandatory requirements and as much done as possible to mitigate the frustration that will be caused by the inevitable inconsistencies within and between prisons. This mitigation should include clearer language in the framework to distinguish between what is mandatory across the estate what is not. The universal use of “must” or “may” would be one way to avoid confusion. We point out a significant number of instances in section 7 where we believe the wrong judgement has been made about where the line between mandatory requirements and discretion has been drawn. But there is a separate issue about drafting which simply leaves that distinction unclear, with a high likelihood of generating complaint and confusion.

We also suggest amending para 1.2 to highlight why the interaction of different policy frameworks in this area is so important. In particular, it should make clear that the effect of the IEP policy is undermined if other procedures, for example the disciplinary system, categorisation and allocation, and ROTL, do not support the principles of positive reinforcement and procedural justice described at some length in this document.

Section 2 - Purpose
Please provide feedback on the Purpose section below

The purpose statement is another missed opportunity to make clear what is intended to be different about the Policy Framework compared to the current policy. Again, there are no references to positive reinforcement or procedural justice.

Language here is crucial as it is indicative of the relationship between prisoners, staff and local privilege policies, and therefore the culture that the policy projects. The idea of privileges ‘ensuring’ any particular behaviour is clearly the wrong approach and should be replaced with language relating to encouragement and incentivising behaviour.

We would suggest

“The system of privileges is a tool for supporting a safe and just environment in prison, and a necessary safeguard against the development of informal systems of punishment. But to achieve these goals it must prioritise reward ahead of sanctions and demonstrate scrupulous fairness in the way it operates.”

Women offenders

The redrafting of the IEP framework provides an opportunity for implementation of some of the commitments made in the Female Offender Strategy to improve conditions for women in custody.

The existing gender informed standards for working with women prisoners, contained in PSO 4800, which are to be replaced by a new Women's Policy Framework to be published by the end of the year, are expected to set out more detailed measures aimed at developing a more gender informed approach to working with women in prison and in the community. PSO4800 makes clear that IEP schemes should identify and relate specifically to women.

However disappointingly this draft framework does not include any reference to women specific requirements and treatment. The purpose section and the framework as a whole need to be examined to make clear the expectation for a gendered approach to be taken to meet the specific needs of women where they differ from those of men, and to ensure that the framework supports this.

Recent prison inspectorate reports have identified some areas for improvement in the existing operation of IEPs for women which there is an opportunity to address through this new framework. A number of inspections noted that the IEP scheme worked well or reasonably well for women and was used appropriately (HMP & YOI Askham Grange, 2014; HMP & YOI New Hall, 2015; HMP & YOI East Sutton Park, 2016; HMP & YOI Styal, 2018). However a number of areas of comment from inspectors merit consideration when reviewing the national framework.

For example, an inspection at HMP & YOI Low Newton in 2014 found the national scheme was 'not flexible enough to motivate women. The opportunity for enhancement was unobtainable for some as they had to have been in the prison for three months,'. Another inspection noted that the new scheme introduced in 2013 'had generated some anxiety as women needed to demonstrate regularly that their behaviour warranted the enhanced status' (HMP Send, 2014). We also note that it was reported that 'black and minority ethnic prisoners … felt they were treated less fairly in their experience of the IEP system' in one prison (HMP & YOI Foston Hall, 2016).

Why take a women specific approach?

The Ministry of Justice and HMPPS are well aware of women's particular vulnerabilities and high rates of self-harm in prison and the disturbing increase in women's deaths in prison in recent years (see the guidance on a whole systems approach to women offenders, published by the Ministry of Justice alongside the Female Offender Strategy, the recent reports of the Independent Advisory Panel on Deaths in Custody and INQUEST's 2018 report Still Dying on the Inside).

Treating women and men equally does not mean that everyone should be treated the same. Where the circumstances and needs of women and men are different, distinct approaches may be required to achieve equitable outcomes and the Equality Act 2010 allows women only or women-specific services. The Public Sector Equality Duty requires public services, including those delivered by the private and voluntary sector, to assess and meet the different needs of women and men. However, the Justice Committee concluded in 2014 that "the duty does not appear to have had the desired impact on the provision of gender specific services, or on broader policy initiatives."

Section 10 of the Offender Rehabilitation Act 2014 amended the Offender Management Act 2007 to give women's services a statutory foothold, placing a duty on the Secretary of State for Justice to ensure that arrangements for supervision or rehabilitation identify specific need and so make appropriate provision for women.

The UK is signed up to the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules) which require that the distinctive needs of women be recognised. The Rules stress the importance of providing physical and psychological safety for women and mandate the provision of diversionary measures and sentencing alternatives, "taking account of the history of victimisation of many women offenders and their caretaking responsibilities."

The UN Special Rapporteur on Violence Against Women visited the UK in 2014 and raised concerns over the disproportionate number of black and minority ethnic (BME) women in prison, the number of women who have been subjected to violence prior to their imprisonment, and the number of young women who are incarcerated. She called for the development of "gender-specific sentencing alternatives" and recognition of "women's histories of victimisation when making decisions about incarceration."

We also refer you to the evidence in PRT's recent reports Counted Out: Black, Asian and minority ethnic women in the criminal justice system (2017) and Still No Way Out: Foreign national women and trafficked women in the criminal justice system (2018) regarding the need to improve responses to minority ethnic women, foreign national women and trafficked women in prison.

All of which suggests that a gender neutral framework is not going to meet the government's own policy intentions in relation to women offenders, still less its international commitments.

Section 3 – Evidence
Please provide feedback on the Evidence section below

We welcome the inclusion and prominence of the evidence section within the Policy Framework to direct Governors towards effective implementation.

The inclusion of procedural justice principles both here and in the guidance section is encouraging and has the potential to improve prisoners' experience of the system. Similarly, promoting positive reinforcement addresses one of the major problems with the current system and could represent a real change if translated into practice. However, these principles are not reflected systematically or consistently elsewhere in the document. Where references are made elsewhere they are vague and permissive. To stand a chance of driving real cultural change, these must run through every part of the policy and not just appear as an optional extra. It is impossible to avoid the conclusion that there are two competing philosophies at play, and the framework is attempting to reconcile an evidence based approach (drawing on the importance of positive reinforcement and procedural justice) with a politically driven concern about appearing insufficiently "tough". That confusion can only produce inconsistency and unfairness if not resolved and will be immediately perceived by prisoners. If the evidence matters it should be followed.

We have examined each section of the document for inclusion of these themes and have highlighted this in our response to each section.

The importance of monitoring schemes and staff training are two more key themes included here which are lost in the rest of the document. Monitoring is referenced in the outcomes section at 4.11 (annual review) 4.12 (accounting for protected characteristics) but these are not reflected in the requirements section other than meeting the requirement of the Lammy Review, and there in insufficient detail.

Equally, training, which will be essential if the principles of procedural justice and positive enforcement are to be embedded and the negative perception of the IEP scheme reversed, is not mentioned anywhere else in the document. Given the significant cultural shift required, implementation without dedicated and continuing resource for training is likely to fall short of the ambitions the framework sets out.

Section 4 – Outcomes

Please provide feedback on the Outcomes section below

We disagree with outcome 4.1 in regards to rehabilitation, for the reasons we have outlined above.

Positive reinforcement is not properly represented in this section of the document. Outcome 4.2 states that privileges are earned by progression through IEP levels, but does not mention positive reinforcement. **We recommend the inclusion of an outcome which states that positive reinforcement, through commendations or positive NOMIS entries, is used significantly more often than warnings and negative entries**. Without such an outcome, the current perception amongst prisoners that IEP is more stick than carrot will remain. One way to achieve this would be for the establishment to create a new category, in NOMIS, for a register of the individual's strengths, skills, and interests

Recent inspections at a number of women's prisons found widespread perceptions of unfairness in IEP schemes. For example, in HMP & YOI Downview (2017) 'fewer than half of respondents felt the [IEP] scheme was fair and too few felt it encouraged a change in behaviour' and 'unemployed women on the basic level of the IEP scheme had little over an hour [out of cell on weekdays]'. Perceptions of fairness were also low amongst women surveyed as part of the 2018 inspection of HMP & YOI Peterborough.

Outcome 4.3 is an important inclusion. We agree that privilege levels should be 'determined by patterns of behaviour' rather than single incidents. We often speak to prisoners who feel that one out of character moment is enough to downgrade them amongst otherwise good behaviour. Looking at behaviour as a whole also minimises the impact of one subjective view of an incident or a less than constructive relationship with a particular staff member. Making sure that local privilege polices take a holistic approach is also important to establish procedural fairness and to distinguish the scheme from disciplinary processes. But the absence of such an holistic approach is one of the principal criticisms prisoners make of the current IEP implementation (despite a very similar policy intention in the current instruction). So outcome 4.3 needs reinforcement by the measure suggested above, with a **monitoring system that counts how often movements in IEP levels occur on the basis of single incidents or entries, and whether certain categories of prisoner are more likely than others to experience that departure from the policy intention**.

Outcome 4.4 helpfully includes the importance of prisoners' perceptions of fairness, but needs to say in terms how this is to be measured. It also of course needs to be clear that the policies are in fact fair, consistent and non-discriminatory and refer to the ways in

which this will be objectively assessed. It would be little consolation to a BAME prisoner if a prison overwhelmingly occupied by white prisoners perceived IEP as fair if the actual experience of the BAME prisoners amounted to discrimination.

We agree that consequences should be proportionate, as per outcome 4.5. Although we agree that consequences, as well as privileges, should be decided and communicated without unnecessary delay, it is important that speed of process does not override fairness.

Outcome 4.6 mentions but does not deal adequately with a crucial point about the need for consistency beyond the walls of a single prison and the disruption which can be caused by inconsistency. We regularly hear from people who have difficulties of this nature in the current system – for example being able to purchase something in one prison which is not permitted in possession on transfer. **A better "outcome" would be that prisoners transferring from one prison to another suffer no detriment as a consequence**. This will require the sending and receiving prisons to consider whether the privileges the prisoner has can be preserved as they are and, if not, what form of compensation will be paid to the prisoner by way of recognition for the detriment suffered. This cannot simply be that items of property are placed into storage, for example, when a prisoner has purchased an item in the expectation that they will be able to enjoy its use for the remainder of their sentence.

Outcome 4.6 must not be limited to the prisons to which a prison generally transfers prisoners. It is obviously contrary to the principles of procedural justice if a prisoner is disadvantaged by being sent to a prison "out of area" – especially when such a move may already be a cause of distress. The principle of no detriment must apply to any move to any prison.

The inclusion of outcome 4.7 is an important one, though there are opportunities to remind Governors later in the document that the minimum legal entitlements for some of these things are very low (e.g. one shower per week).

Outcome 4.8 carries little force in the absence of a statement of the **minimum standards of a safe, decent and legal regime**. This is a historic and fundamental failing, and the current focus on "delivering the basics" only serves to highlight the absence of a clear statement of what that phrase means. Without it, this framework risks legitimising treatment which falls below the UK's international obligations, and cementing a variety of interpretations across the estate as to what is or is not acceptable. This has to be an area in which local discretion is not appropriate, and a prescriptive national set of standards applies, with the means for prisoners to seek redress where those standards are not met

Outcome 4.9 outlines key principles of procedural justice. In practice, the detail elsewhere in this document does not consistently deliver the means to deliver an admirable ambition.

The inclusion of outcome 4.10 is both concerning and confusing. It gives no indication of why public confidence in such a detailed aspect of prison management should be given a specific reference. Public confidence is axiomatic to everything prisons do, from preventing suicide and escape to supporting effective resettlement. So the signal this outcome gives to governors and prisoners is that it is intended to discourage Governors from any privileges which might catch the attention of tabloid press. This mindset is often contrary to what is productive for prisoners and prisons as a whole. We recall events such as that in HMP Leyhill when a putting course that was providing much needed physical activity for older prisoners was put out of action after negative headlines. Giving this issue such prominence is likely to undermine Governor's confidence and stifle innovation. It should be removed completely.

It is important for policies to be regularly reviewed, as per outcome 4.11. We would improve this to say that they should be reviewed 'at least' every 6 months and sooner if there is reason to believe the current system is discriminatory in any way. Both prisoners and frontline staff should be part of the review process. There are different purposes in reviewing the local policy and monitoring implementation. A review of local policy should include consultations with prisoners – at least twice a year – about what are provided as incentives and about the degree to which the policy is fair and equitable. Monitoring should include a focus on equal treatment, with regular updates on outcome measures. Monitoring should be continuous and reviewed at least quarterly.

Outcome 4.12 is another important principle which should be better represented in requirements and guidance sections of the document. It should also make clear that discrimination is avoided as a matter of fact – providing equal opportunity is not sufficient if the actual outcome of the process is discriminatory.

Even with the amendments we have suggested, this focus on outcomes counts for little without a section explaining the success measures against which the outcomes will be judged, and where responsibility, locally and centrally, lies for responding to failures to deliver those outcomes. The evidence that close monitoring of a scheme is crucial to its success, helpfully quoted in section 3, has not been followed in the construction of this framework. It is a good example of where the distinction between what should be mandatory and what can be permissive has been missed. A mandatory requirement to review locally is insufficient – there should also be mandatory requirements for the key components of that review, including how they are assessed and measured. Leaving the methodology for review open to local discretion guarantees inadequate review in the prisons where it is most likely that the scheme is falling short of the ambitions this framework sets out.

Section 5.1-5.2 Legal Requirements
Please provide feedback on the Legal Requirements section below
We are in favour of legal requirements being clearly stated at the top of the requirements section in this way. This could be improved by spacing out the different elements of paragraph 5.1, and adding more detailed references to the relevant duties within the referenced legislation. For example, the wording from the Prison Rules could be included. We have not seen the equality analysis for this framework (as distinct from the requirement it places on governors locally). As pointed out elsewhere, we believe that it is potentially discriminatory as currently set out, both in its impact on prisoners for whom rehabilitation is not a realistic objective and because of the inadequacy of prescribed systems to monitor and correct discriminatory impacts should they occur.

Section 5.3-5.6 Privilege scheme structures
Please provide feedback on privilege levels below
We are in favour of Governors using their discretion to create further privilege levels – this could lead to some positive and innovative practice. However, allowing Governors to create levels above enhanced is meaningless if there are no prescribed criteria for

incentive levels up to that point. This could result in schemes which devalue standard and enhanced status in order to incentivise additional levels.

We welcome the clarity regarding retention of IEP level on transfer, as there has been some inconsistent practice and messaging about this under the current system. It is an important recognition and unavoidable side effect of Governor's discretion that levels may not be immediately comparable at the receiving establishment.

However, in line with a no detriment principle, where there is no obvious correlation between sending and receiving prisons, a prisoner should always be placed on the privilege level that is more rather than less generous than the one which they leave behind. This also reflects the principle of positive reinforcement in way that the current draft does not, as it leaves the decision to the receiving prison.

Section 5.7-5.9 Criteria for progression/downgrading
Please provide feedback on progression/downgrading section below

The primary factors listed in paragraph 5.7 should be bulleted to be clearer. We comment on each of them in turn, as follows.

- Work towards their rehabilitation through personal progression and engagement with sentence plans – as per our reasoning in section 2 of this form, this should be removed.

- Substance free living – although we appreciate that possession and use of drugs will inevitably affect someone's privilege level, this should not be confused with using IEP schemes to incentivise engaging with substance misuse service and proactively tacking addiction. Not only is it inappropriate to relate such an important and challenging change to local behaviour schemes, it is also unlikely to be effective – in many cases people with addictions to alcohol and drugs have lost employment, homes and relationships as a result of their addiction, so the risk of downgrade in IEP level is unlikely to be a motivator.

- Engaging in the prison regime – this is a more realistic expectation on which to base privilege levels. Care should be taken to recognise when someone is engaging with the regime as it is much easier to identify when someone does not. Regimes also need to be decent for prisoners to be able to achieve this – it would not be appropriate for people to be downgraded for being unable to complete daily tasks if they are not given enough time to do so.

- Contributing positively to prison life – this appears to be a reviewed version of 'help other prisoners or prison staff' in the current PSI. When judging on this criteria consideration must be given to the opportunities afforded to an individual. For example, those working full time on ROTL may have much less time in the establishment to demonstrate this. Similarly, we have heard from prisoners who report that a limit in the number of responsible and helpful roles such as peers or reps means that they cannot fulfil this criteria. Good judgement must also be exercised when it comes to this – what seems like a minor contribution from one person could actually represent a very positive step.

- Demonstrating specific desired behaviours – it not clear what this refers to – are these behaviours set specifically for the individual or those that the Governor has specified for the prison as a whole?

Paragraph 5.7 contains a couple of important lines at the end regarding procedural justice and positive reinforcement which should be separate for emphasis. These are that all prisoners must have the IEP scheme clearly explained to them, including how they can progress and that they can lose privileges for poor behaviour; and that positive verbal reinforcement for good behaviour or achievements both recognise and incentivise progress alongside formal reviews.

In paragraph 5.9, assaults on other prisoners should be viewed as seriously as assaults on staff. We welcome the removal from this paragraph of 'drugs, mobile phones, abscond or possession of weapon' as triggers for an immediate review and the removal of the 'strong presumption that such incidents will lead to an immediate downgrade to basic level'. This should make for more balanced judgements on cases of this nature – however, it must be recognised that the approach of the current instruction is likely to be ingrained in many establishments and will require explicit guidance to reverse. We advise that a requirement is added that 'decisions to downgrade from enhanced to basic are only made in the most serious of cases'.

In general in this section, there are questions about capacity and about provision. The risks for each should be made explicit: some prisoners will not progress, not through lack of willpower but due to incapacity. Withholding enhanced status due to lack of engagement in rehabilitation is doubly damaging (and unjust) for people who have learning disabilities. Prisoners' contribution to the prison should be rewarded, but IEP schemes must find ways of recognising that many roles are limited. (No prison can make everyone a Listener). And a privilege should not be held back because a person who wants to contribute lacks an opportunity to do so.

We are interested as to the intention of the mention of "the Governor" in para 5.9. Is it intended that this is a decision that can only be taken by the governing Governor, and not delegated. If so, this should be made clear.

Section 5.10-5.13 Reviews
Please provide feedback on reviews below

We are pleased that minimum review periods for people on basic have been retained (these were missing from the draft we had sight of in 2016).

The Policy Framework is not clear about opportunities for prisoners to re-apply for Enhanced or other higher levels in the event of a negative decision after the first 3 months, only stating that reviews should take place at least annually. This interval is too long to incentivise someone working towards the Enhanced Level. The current PSI allows prisoners to apply for Enhanced at three monthly intervals if not successful after the initial 3 months – a similar opportunity should be a requirement of any new policy.

A minimum automatic review period of 12 months, referenced in paragraph 5.12, is only sufficient if there are more regular opportunities for people to apply for progression, as per

our previous point. Without this, the minimum review period must be much less - we would advise a minimum of 3 months.

This section is an example of when language used confuses between guidance and mandatory actions. Despite sitting in the Requirements section of this document, it includes vague and permissive phrases such as 'Governors should consider that evidence shows that schemes work best when positive enforcement is immediate.' Given the emphasis of the principle set out in evidence we would expect this to be more clearly stated as mandatory practice – we suggest 'Governors must ensure that positive reinforcement is a central element of policy and practice'.

Paragraph 5.12 refers to the benefits of being able to move to a higher privilege level with the same ease as being downgraded. The logical conclusion from the evidence on positive reinforcement is that it should be **easier** to move up than down and this should be the framework's expectation, with performance across the prison measured against it.

Paragraph 5.13 states that prisoners must have the opportunity to make their case and mentions procedural justice principles in passing. A real commitment to procedural justice requires these principles to be explicitly stated here as mandatory requirements of the policy and process – we suggest the 4 principles at 7.4 in the guidance section should be listed here. But these must also be translated into mandatory requirements that apply nationally and without exception or local discretion. For example, the prisoner must be able to make their case face to face with the person taking the decision, have full sight of all the evidence on which a decision is to be based, and receive written reasons for the decision taken in a form that they understand so that any subsequent appeal can be properly informed.

We are concerned about the lack of requirements as to who conducts the review – we cover this more in the section related to guidance, below.

Finally, reviews are an opportunity to gain an understanding of the current needs of an individual, the factors that might be affecting behaviour, and set goals for them to address these and regain any lost privileges. This should be reflected within the Policy Framework.

Section 5.14-5.15 Appeals
Please provide feedback on appeals below
The inclusion of a proper appeals process demonstrates a commitment to procedural justice but is undermined by lack of details about who can conduct them – this must be a more senior member of staff and this should be clearly stated in this section. There must also be a mandatory national minimum timescale for hearing and responding to appeals. Neither issue is appropriate for local discretion, and to allow it will undermine the scheme's credibility with prisoners. Prisoners' perceptions of fairness are far more likely to be influenced by differences between prisons than the perceptions of staff, simply because prisoners often transfer and staff rarely do. This appeals process should be distinct from the standard internal complaints process. It should be available to challenge individual triggers/warnings as well as the decisions of reviews – the current system prevents people from adequately challenging warnings until a review stage which can be difficult when reviews are held some time after the warning

took place. Rectifying this would be an important step towards procedural justice and mark a significant improvement on the current system.

Section 5.16 IEP forum
Please provide feedback on the IEP forum below
Putting recommendation 24 of the Lammy Review into practice marks considerable progress for the scheme. The detailed guidance and reference to procedural justice principle in the associated Annex A are also very welcome, as well as the clear line of accountability. But the degree of local discretion allowed on which data should be examined and the inferences that can be drawn is unhelpful. The framework would be more helpful to governors and provide better assurance of a positive impact if it included a mandatory national framework for the presentation and interpretation of data from the sources mentioned. This has been done in the past to inform the way prisons look for evidence of discrimination and represents both a more efficient approach and one protected against inadequate or misleading treatment of numerical data in particular. The Lammy principle of “explain or reform” only works if the need to “explain” is consistently triggered. Although we would not want to reduce the forums’ emphasis on race, this seems like an opportunity to ensure other protected characteristics are fairly represented too, beyond that of dual discrimination mentioned in the guidance at Annex A. In para 5.16, we would particularly draw attention to the absence of religion as a factor affecting representation in the forum.

Section 5.17 Communication
Please provide feedback on communication below
Communication is an important part of procedural justice and much more should be made of this here to strengthen good practice. It should include: • Prisoners must always be told when they have been given a warning/trigger, as well as a commendation, and have the reasons explained to them. This should be verbally and in writing. • Prisoner must always be told the outcome of the review, and have the reasons explained to them. This should be verbally and in writing. • At the earliest opportunity, prisoners must be advised about the local privileges policy in any prison to which they are likely to be transferred, including the contents of the facilities list. This will prepare them for changes and minimise disruption by, for example, discouraging them from purchasing items which are not allowed in possession in those establishments.

Section 5.18-5.21 Facilities List
Please provide feedback on the facilities list below

We are confused about the implication of paragraph 5.20. It appears to suggest that any local addition to the Annex B list must be approved centrally in the Ministry of Justice, having passed through the office of the Prison Group Director – and that any addition approved in this way is then made part of the national facilities list. This would seem to undermine dramatically the real extent of local discretion to provide incentives and to innovate. If this is the actual intention of the instruction, at the very least the process of approving items for addition to the list should have a timetable attached, so that the centre can be held to account for responding in a prompt and reasoned way to requests that governors consider to be operationally necessary. The grounds for rejecting any request should be explicit and given in a form that can be communicated to staff and prisoners.

Paragraph 5.21 should make reference to current PSI/PF about property.

In relation to Annex B, we welcome the simplification of the Facilities list and find that the separation into two parts is much clearer. The removal of limits allows for more sensible decision making per establishment, though it is important that local schemes are prevented from imposing limits which are manifestly unfair or unreasonable.

The facilities list is one of the key areas when inconsistency between prisons could cause frustration and confidence in the system – for example if an item someone has worked hard to earn for is later not allowed in possession. As indicated earlier, we believe a no detriment principle must be adopted, so that prisoners are compensated when they suffer detriment through no fault of their own and as a consequence of a difference in approach between prisons. This principle must apply nationwide and not just in clusters that may be meaningful to the prison service but provide no consolation to prisoners with no control over where they are housed.

In general, the list contains no explanation for the items that it prohibits. While there may exceptionally be security considerations not to give reasons, the presumption should be the reverse, in line with the principle of procedural justice. So, for example, the prohibition on a shaving brush with a metal element looks curious when the previous item on the list is nail clippers – which are both metallic and sharp. A reason explaining the prohibition would remove the apparent inconsistency of approach.

We have specific comments about the contents of the list:

- It appears that watches with digital displays on watches and alarm clocks are not permitted. This could disproportionately affect anyone who find this type of watch easier to use, such as people with learning disabilities or learning difficulties. We don’t understand why this prohibition exists and it should be explained if it is retained.
- Bluetooth has clearly caused confusion across the estate recently, as it is increasingly difficult to purchase stereos without this facility. We understand that this has resulted in different establishments taking different approaches to this. This policy frame does little to address this confusion. The reality is that it may soon be impossible to source stereos without Bluetooth and this prohibition should be dropped.
- Posters showing “indecent” material is open to an impossibly broad interpretation. It needs to be more detailed.
- Non-prescription glasses (reading glasses) should be allowed

- It should not be possible for a prisoner in segregation to have a radio removed as a quasi or actual disciplinary measure.
- The position of Cat B and dispersal prisons in relation to crockery and cutlery is unclear. We assume the intention is that they should benefit from the same approach as cat C prisons.

Section 5.22 Private cash
Please provide feedback on private cash below
We welcome the increase in access to private cash, though the gap between basic and standard remains disproportionate. Those on basic should be able to access at least half the amount that someone on standard can, rather than less than a third. However we note the potential for limited access to private cash, as well as limitations on prisoner pay (para 7.22), to have a detrimental impact on prisoners' telephone contact with children and family. This may be particularly acute for women who, according to PSO4800, use the telephone on average more than men to maintain relationships. This may relate in part to the fact that they are generally held further from home, as well as the fact that they are significantly more likely than men to be the primary carer of dependent children when they go into prison (PRT, What about me? The impact on children when mothers are involved in the criminal justice system, 2018). As part of the Female Offender Strategy Lord Farmer has been asked to review the arrangements for women to maintain contact with their children and families and it would make sense to take its recommendations into account in developing this aspect of the IEP

Section 5.23 In-cell televisions
Please provide feedback on in-cell televisions below
In-cell televisions should be provided free of charge for those who are unable to work due to age or disability and considered for people who are at risk of suicide or self-harm regardless of IEP level. We appreciate there is further guidance about this is section 7, but this should at least be referenced here for clarity and should be mandatory.

Section 5.24 Clothing
Please provide feedback on clothing below
Insistence on prison clothing is an unnecessary and outdated approach which only serves to dehumanise prisoners and lower self-esteem. We have long supported the recognition of this in the women's estate and reversing that policy would be a needless backward step. In light of the legal action being taken on this issue, the only sensible thing to do would be to remove this regulation from all prisons and allow people to wear their own clothes at all stages in prison. A further benefit of this would be the reduction of complaints

targeted at transgender prisoners being allowed to wear their own clothing in the male estate.

It is depressing that a framework that gives such apparent prominence to positive reinforcement and to considerations of decency and humanity should be requiring convicted prisoners to wear a uniform unless local discretion is exercised to prevent it. The female estate has shown that neither practical nor security concerns justify an insistence on prison clothing and this good practice should now be adopted as the norm across the male estate. No prisoner should be required to wear prison issue clothing unless that is their choice or their actions make it impossible to avoid.

As it stands, the framework is inconsistent with the female offender strategy and existing guidance on the management of women in prison.

PSO4800 stipulates that for women in prison, maintaining and raising self esteem – important aspects of rehabilitation – is often linked to personal appearance. As PSO4800 acknowledges, access to toiletries (not mentioned in the draft framework) should also not be restricted for women based on IEP status.

All relevant guidance should ensure the specific needs of Muslim women and BAME women are accommodated in the provision of both clothes and toiletries, as well as ensuring adequate provision of sanitary products for all women and appropriate clothing and toiletries for pregnant and post-natal women

Section 5.25 Handing and sending in
Please provide feedback on handing and sending in below
We are pleased to see that having books sent or handed in remains in the mandatory requirements. A reference to later information in section 7 should be included here.

Section 6 - Constraints
Please provide feedback on constraints below
The constraint about use of ROTL, whilst welcome, should be clearer. It should be enough to say that ROTL eligibility should not be based on IEP level, and allow for the guidance in the corresponding ROTL documents to go into more detail. The final line in paragraph 6.2 and the subsequent paragraph 7.7 in the guidance section overly complicate the issue and risk confusion. HDC should not be included as a privilege in any local privilege policy – this point was made in the previous draft we saw and should be retained. We are pleased to see that access to family days must not be part of any local privilege policy, but the policy should go further and prevent the use of access to family in any form as part of the IEP scheme. As Lord Farmer's review made clear, the benefits of encouraging contact with family are varied and significant. They include resettlement and reduction in self harm for prisoners, but also, crucially, a reduction in suffering for partners and children. The use of family contact as a tool to manage institutional behaviour is inhumane and cruel to both prisoners and families. The government's policy in the light of

Lord Farmer's findings should be to seek to maximise family contact by all means for all prisoners. It has no place in an IEP scheme.

It is of course right that local policies must not undermine decency, as stated at paragraph 6.3. Showers are used as the example here, and it is again worth noting that the legal minimum is disgracefully low at one shower per week and that fortunately most establishments aim to achieve higher than this. It is therefore important that this constraint does not just mean adherence to legal minimums, but that an individual gets the same access to showers and other decency provisions as others regardless of IEP level – in other words if people on standard have daily access, then so should people on basic.

IEP levels should not restrict access to faith, education, library service, healthcare services or resettlement services.

The specific exclusion of conjugal visits and access to a wider range of TV channels in paragraph 6.5 is at odds with the procedure set out earlier for governors to make proposals for a wider range of privileges. Both feature in the extensive feedback we have received from prisoners and, at the very least, the framework should give a detailed explanation of why they are specifically excluded (and presumably not therefore open to governors to propose as they seek to benefit from a supposedly greater discretion). The unreasoned exclusion of two potential privileges which would be seen by prisoners as particularly significant sends a clear and unfortunate signal about the actual priorities of the framework, as distinct from the evidence base on which it purports to draw.

Section 7 - Guidance
Please provide feedback on the guidance below

Although the evidence-based guidance at the start of this section is welcome, we are not convinced that it is presented clearly or that its location within the document is the most logical, particularly given the repetition from the previous evidence section. This again feels like it has been just copied into the document rather than having been integrated properly.

Whilst we acknowledge that this section of the document is about guidance rather than mandatory actions, the language used is still too permissive particularly in relation to procedural justice and ethos which are the key mechanisms likely to drive positive change. Key decisions about what needs to be mandatory and what can be permissive have been misjudged.

For example, paragraph 7.4 suggest that the 4 principles of procedural justice 'can be embedded' into local policies. Given the emphasis being placed on procedural justice and the cultural shift which it is striving to achieve, clearly these principles 'must' be embedded in local policies. Strengthening this assertion and similar evidence based guidance around ethos and positive reinforcement increases the chance of seeing changes in practice. Mandating adherence to these principles does not undermine the discretion which is being offered to Governors about how to deliver. It would also create a stronger link to the outcomes listed earlier in the document.

In paragraph 7.6 governors are encouraged to design their local IEP scheme to integrate with the Managing the Custodial Sentence Policy Framework which has now been

published. Where OMiC is in place, we suggest that input from the key worker should be a requirement of reviews.

The second part of paragraph 7.6 makes an important point about the inclusion of other staff in reviews – this point is not necessarily relevant to the heading it falls under, perhaps sitting better under 'Review considerations' and is important enough in itself to be stated separately.

Paragraph 7.6 also makes reference to a policy framework for managing the custodial sentence. This is not attached and has not been subject to external consultation, so far as we are aware. Given the essential link between that framework and this document, we suggest that it should be made subject to consultation now.

Paragraph 7.7 regarding ROTL and IEP is unnecessary and only serves to confuse the point made in the Constraints section. It should be completely removed.

The menu of suggested incentives is largely unchanged, with the exception of Enhanced Wings which have existed in practice in some establishments for many years. This is a missed opportunity to re-shape the way we incentivise people in prison and is likely to result in local schemes which feel very similar if not the same to the current system. Early themes coming from the consultation through our Prisoner Policy Network suggest that genuine responsibility, trust and choice are the most effective ways to incentivise people in prison. These elements are not as nearly as apparent as they could be within this guidance.

- **Enhanced Wings** – enhanced wings as a privilege have advantages and disadvantages and much of this depends on what is practically on offer. Elements which increase the autonomy and responsibility which people have over their everyday life are more likely to be real incentives. Being able to prepare own meals, manage their own time, etc are good examples of this.

  However, privileges like enhanced wings can result in a negative relationship with the IEP system if used incorrectly, with prisoners feeling like they are walking on eggshells to avoid any chance of being removed from the wing. The Policy Framework actually echoes this by suggesting a process that quickly returns to a standard wing anyone who breaks the rules' – this is clearly at odds with the principle that it should be as easy to progress as it is to be downgraded (or, in our interpretation of what the evidence requires, easier to progress than to be downgraded).

  Governors will also need to consider whether the use of enhanced wings has a positive impact on the prison population as whole, or whether it breeds resentment and damages motivation for those who feel it is unobtainable.

- **Visits** – as indicated above, we maintain that family contact should not be part of the IEP scheme. Doing so fundamentally misunderstands the relationship between family contact, mental wellbeing and behaviour. Family contact should be seen as a potential solution for frustrations and resulting behaviour that a person may be experiencing and not a way of punishing them. Reduction of visits also punishes family members unnecessarily. Family contact should be maximised for all, and not used as a behaviour management tool.

  Evidence supporting the crucial importance of family ties and particularly contact with children in order to support women's rehabilitation in prison and upon release

and in order to meet the best interests of children whose mothers are imprisoned is set out in our 2018 report on the impact on children of maternal imprisonment (What about me? 2018). Linking family contact to the IEP scheme is inconsistent with the female offender strategy which identifies improving family ties as a particular area of focus for planned work to improve conditions in custody for women.

- **Time out of cell** – again it is important to recognise that current expectations for for time out of cell and for access to physical exercise in most prisons are far too low. The absence of a clear statement of what basic decency requires – minimum standards in line with our international obligations – opens the way to a system of privileges where the bottom level is too low and used to justify provision at higher levels which also falls short of what prisoners can reasonably expect.

- **In-cell televisions** – as per our previous comments, in-cell televisions should be provided free of charge for those who are unable to work due to age or disability. It should also be easy for individuals to opt out of in-cell televisions if they wish to use their wages on something else. Governors should not have the ability to remove TV sets other than in line with the procedures in this framework or as a disciplinary measure. Paragraph 7.14 appears to imply that this can be done as a unilateral measure independently of the safeguards either IEP or the disciplinary system provides.

- The discretion in para 7.15 for governors to prohibit any material they consider "unsuitable" requires clarification. At the very least, governors should be required to give advance notice, with reasons, of any intention to prohibit a particular programme.

- **Games consoles and games –** this is fine, provided there is consistency across the estate about what is permitted. We understand that current guidance has established some consistency, but HMPPS should be prepared to amend policy as market changes affect what is available for people to purchase.

- **Handing and sending in** – Inclusion of this privilege at certain levels should not override common sense decisions about handing in of necessary items such as glasses, walking aids, important documents, etc. In practice, given the resources required to facilitate the handing in of items, it is more likely that this will be withheld than extended, contrary to the principle of positive reinforcement.

- **Clothing –** we have already commented above on the changes made to clothing requirements as a result of legal action being taken. We welcome recognition here in relation to clothing for transgender prisoners and for faith and pastoral care, and the references to the associated guidance.

- **Access to private cash –** we have included comments about this above

- **Prisoner Pay –** being paid differing amounts for doing the same job is always likely to result in resentment and perception of unfairness in the system and is not reflective of normal employment practices in the community. Having access to more responsible and therefore better paid roles as a result of a person's IEP level, is a more constructive practice. In general, the historic failure to increase prisoner pay in line represents a failing of a procedural justice in the prison service's own practice, and generates understandable scepticism on prisoners' part about the principles set out in this framework.

When discussing what parts of the current IEP scheme incentivise people, one of the points made by prisoners through our Prisoner Policy Network was the difference in value many privileges have for different people. For example, an older prisoner may have little need for the gym, have fewer people to visit them or send in private cash, A possible solution that was suggested is that privileges should include a menu of options from which an individual can choose the things they would like access to.

We suggest greater sharing of good practice in this area going forward – HMPPS must play an active role in identifying effective and innovative practice and including it in the guidance section of future versions.

Commendations and triggers

We welcome guidance to include a system of commendation and triggers within local policy, and the assertion that an accumulation of either could lead to a review. However it is not clear, given the importance placed elsewhere on positive reinforcement and procedural justice, why this is not a requirement.

IEP warnings are currently a central part of the negative perception associated with the scheme – prisoners report that they are highly subjective, they are often not told they have received one let alone have it properly explained and are often unable to challenge them effectively until the review stage at which point the incident could be many months previously. The difficulty of receiving a positive IEP comment compared to the ease of getting a warning is also a recurring theme. The guidance here must do more to address these specific issues and embed procedural justice principles on a practical level.

Review considerations

We agree that reviews should be multi-disciplinary and, as mentioned elsewhere in the document, that they consider patterns of behaviour rather than one-off incidents. We hope that the implementation of the Offender Management in Custody model will go some way to addressing this as well, with better relationships and understanding of individuals contributing to more holistic decisions. However, we remain concerned about the practice of reviews being undertaken by a single member of staff, which the draft allows for. This increases the risk of procedural unfairness and undermines trust in the system.

Double jeopardy

Although we accept that there are circumstances when both the adjudications and IEP process are a necessary response to a person's behaviour, this section does not address one of the most common complaints relating to IEP. Prisoners often contact us to inform us that their IEP level was downgraded in light of being placed on report for a particular incident, but when the adjudication for the same incident was found not guilty/no evidence the IEP decision is not reversed – or is reversed but only weeks later. It is crucial for procedural justice that this common occurrence is mandated for – we suggest automatic and immediate reviews of any IEP decision which was based solely or largely on an incident which is dismissed at adjudication

Transfers and consistency

Paragraph 7.27 recognises the importance of clear information for prisoners about differences between prisons when being transferred. This information should be available as early as possible when transfers are being considered to help mediate possible frustrations and to inform choices where a decision is needed. Recognising this as good practice is unlikely to be enough to ensure this practice is common. Information must be up to date and accurate – too often we hear from someone who has been transferred to a prison only to find it does not have the provision that staff at the sending prison told them it would have. Governors must make sure information about the local privilege policy (and

indeed other local policies as Policy Frameworks roll out) is easily available to staff across the estate so that they can inform prisoners before transfer. Prisoners must be told of what to expect, and in specific rather than general terms.

Considerations for prisoners with specific requirements

We are pleased that prisoners with specific requirements are still recognised in the Policy Framework. However, there are elements here which should clearly be requirements to meet equality and diversity expectations, such as having local policies translated into relevant languages. Other statements such as 'officially recognised appellants should be considered as eligible for Enhanced' are clearly intended to be mandatory and yet are also included in the guidance as oppose to the requirements section of the draft.

This section should also emphasise the importance of meeting with individuals or groups who might have specific requirements as part of the process for establishing and reviewing local policy.

HMPPS has recently published a series of 'Model of Operational Delivery (MOD)' documents which include good practice for groups of prisoners with specific needs such as foreign national prisoners and older people in prison. Though these documents contain encouraging recognition of good practice, their lack of mandatory requirements mean that they could easily get lost amongst completing expectations. Cross referencing them in relevant places in Policy Frameworks such as this one would be an important step in keeping this at the forefront of Governor's minds and tying together otherwise separate pieces of guidance.

Paragraph 7.33 regarding decisions to place, or keep people with mental health issues or learning disabilities on basic, and paragraph 7.39 in relation those at risk of suicide or self-harm, should both be mandatory to ensure safeguarding standards are maintained. The phrase in paragraph 7.34 that "governors will want to.." is confusing and should be deleted. It should plainly be mandatory that governors agree this with local clinical teams, and unthinkable that they would not.

As a separate response from the T2A alliance, of which PRT is a member, makes clear, para 7.35 is a wholly inadequate response to the challenge of taking into account what we now know about maturity and the development of the brain in young adults. It requires a much fuller treatment, with a mandatory requirement to ensure that the evidence on young adults and the government's policy intentions, inform on a nationally consistent basis how IEP schemes affect them.

Para 7.36 refers to the Separation Centre operating manual, which is not attached and we have not seen. It is impossible therefore to say whether this paragraph provides adequate protection for prisoners in those centres.

Paragraph 7.39 regarding prisoners at risk of suicide and self harm is plainly not suitable for a permissive rather than a mandated approach. It is very troubling that the case by case consideration of prisoners in these circumstances should be described as something that governors "will want" to do, rather than must do.

In paras 7.40 to 7.42, we are concerned that the approach to people maintaining their innocence, whilst allowing Governor's to make decisions about this, does not do enough to avoid blanket policies against this group which prisoners have reported being the practice in some establishments. Privilege levels in prison are unlikely to encourage someone to change their stance towards their offence, so blanket policies are likely only to demotivate those who might otherwise engage well with the prison regime. The fundamental problem remains the use of IEP to manipulate the desistance relationship. If

IEP is reserved to enabling a safe and just community, as we recommend, the difficulty is immediately resolved.

Annexes
Please identify the relevant Annex and provide any feedback below
We have provided comments about ‘Annex A – Guidance and Principles for the Implementation for Fair and Effective IEP Forums’ in Section 5.16 IEP forum We have provided comments about ‘Annex B – National Facilities List’ in Section 5.18-5.21 Facilities List

Name of the policy; IEP schemes have been criticised for being focused on punishment, rather than incentives and some prisoners may have a negative perception of IEP. We welcome suggestions for a new name for this policy, if you consider this would help with its successful implementation.
Renaming the policy is crucial to make sure that staff and prisoners understand there is a real intention to change practice. The current negative associations of IEP are far too ingrained to make this change without this step. We suggest ‘Encouraging Positive Choices’ as a possible alternative.

Minimum review period; 5.12 of the draft policy gives discretion to Governors to determine the period of time between privilege level reviews, subject to a safeguard of 12 months. Unless specified above, we welcome your views on whether the 12-month safeguard is adequate or whether a shorter timeframe is feasible and preferred.
We have responded to this point in ‘Section 5.10-5.13 Reviews’, above

Prison-issue clothing; Unless specified above, we welcome your views on 5.24 of the policy which requires all convicted prisoners, including prisoners in female prisons to wear prison-issue clothing, as the default position, in line with the Prison Rules, but gives Governors the authority to make provision in their local IEP policy for prisoners to wear their own clothes as a privilege at any IEP level, including Basic**.** This ensures that national policy on prison-issue clothing is the same for male and female prisoners. A prisoner has challenged the existing policy – which allows convicted female prisoners to wear their own clothing, whilst this is an earned privilege for convicted male prisoners - through Judicial Review, claiming it unlawfully discriminates against male prisoners on grounds of their sex.
We have responded to this point in ‘Section 5.24 Clothing’, above.

We would like to add that, as well as being a backward step, requiring all convicted prisoners to wear prison clothing is unlikely to resolve the discrimination complaint if in practice the idea is to encourage Governors of women's prisons to use their discretion and continue to allow it for all privilege levels. Discrimination complaints can be fairly made against clear practice differences and not just policy. The only long term solution to this is to allow all prisoners to wear their own clothes, regardless of IEP or conviction status.

Do you have any other comments about the draft IEP Policy Framework that you would like to be taken into account?
☒ Yes ☐ No
If you have answered Yes, please provide feedback below
Although far from being Easy Read, the style and language used in this document marks an improvement in terms of accessibility. Explanations are less convoluted and formal and there is a reduction in unnecessary jargon. This should improve its application with both staff and prisoner. This must be reflected however in the local privilege policies which will be produced as a result – again a line in the Policy Framework to demonstrate the importance of this would be a welcome addition. We would welcome an indication of what steps will be taken generally to assess the compliance of local policies with this framework.