

Prison Reform Trust response to Governor empowerment and prison performance – January 2017

The Prison Reform Trust (PRT) is an independent UK charity working to create a just, humane and effective penal system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, government and officials towards reform. The Prison Reform Trust provides the secretariat to the All Party Parliamentary Penal Affairs Group and has an advice and information service for people in prison.

The Prison Reform Trust's main objectives are:

- reducing unnecessary imprisonment and promoting community solutions to crime
- improving treatment and conditions for prisoners and their families.

www.prisonreformtrust.org.uk

Introduction

We are grateful for the opportunity to supplement our original submission and to contribute to the committee's first sub-inquiry on governor empowerment and prison performance. We think it is uncontroversial that the pendulum in public sector prisons has swung too far towards centralised control during a period of centrally driven cost cutting. But a swing back towards local discretion carries risks as well as opportunities.

As in our original submission, we will address the specific headings the committee has suggested to the extent that we feel we have a contribution, but there are some overarching themes for this sub enquiry that we think are worth describing at the outset. Our insight, such as it is, comes from PRT's long experience in the field, from the personal histories of PRT staff in different capacities within prisons, and from the generous access which we are given to visit prisons and to listen to the people who live and work in them.

Response

1. Our first general observation is that there is a serious risk of concluding too readily that the blame for the very serious operational problems facing prisons should be laid at the feet of the people who operate prisons day to day, and therefore that the solutions also lie with changes in the operating model or practices. As our original evidence made clear, our view is that the fundamental issue concerns a gross overuse of custody, both in terms of its

use for people who could be punished in the community, and the unnecessary length of time for which people rightly in custody for serious offences are kept there. That has generated a pressure which the system as a whole has not been resourced to withstand.

2. The current government is fond of the analogy with education reforms, and the empowerment of head teachers and academies generally, but those reforms were accompanied by investment not only in the physical condition of schools but in the human resources needed to guarantee acceptable class sizes. The health analogy is equally important—the empowerment of trusts has not saved many from crisis precisely because demand for their services has so far outstripped their capacity to respond. The strikingly different feature with prisons is that government does have the means to restrict demand and so to give those to whom it offers operational freedoms a fighting chance of success. To pretend that empowerment can make a difference without that structural adjustment in demand would fly in the face of all that we have learned in the last two decades.
3. The second overarching theme concerns the dangers of oversimplifying the balance that needs to be struck between specifying outcomes and prescribing process in setting the framework for how prisons work. At either end of the scale, there are examples where one approach or the other is clearly to be preferred. For example, and notoriously, in the past ministers have found themselves sucked quite wrongly into deciding what kind of entertainments prisoners are to be allowed at Christmas or other holidays. If governors are to be trusted with a broad outcome of not misusing public funds—or not undermining public confidence in prisons—then this type of detailed interference in their discretion clearly has to be foresworn. But at the other end of the scale, no-one would seriously argue that the solitary confinement of individual prisoners should be governed by broad outcomes rather than careful and prescribed processes which guarantee decency, safety and lawfulness in this extreme form of detention. In between those extremes lies a host of difficult judgements, and there is no short cut to making them well. In reality, given that prison is such an extreme infringement of the citizen's ordinary rights, and prisoners are so dependent on the prison authorities for the necessities of life, it is not surprising that a good deal of prescribed process is appropriate, particularly when prisoners move so often between so many establishments. It would serve neither prisoners nor staff and governors well to create a system in which the protection of fundamental rights and reasonable expectations required the drafting of detailed processes in every individual prison, even if prisons were resourced to carry out that task.
4. The third overarching theme we suggest with caution and it will be interesting to see whether the committee's investigation confirms that it is significant. It concerns the relationship between Governors and NOMS, particularly when compared to the relationship between Directors in private prisons and their employers. Any generalisation in this area is difficult, but our impression is that, whilst Governors often show extreme loyalty to NOMS, to an almost pyrrhic extent on occasion, the origins of that loyalty lie in a fierce commitment to their profession and the people they care for, prisoners and staff. It is often

mixed with frustration about their employer. Directors share that passion for the job, but are more likely to speak positively about their standing within the organisation that employs them and the respect it affords their professional judgement. Our impression is that the difference often lies in relatively minor symbols and demonstrations of trust. That might include the way in which they are invited to engage with their executive board members, or their personal treatment if they need to live away from home to lead a particular prison. The ability to purchase refreshments is an apparently trivial but often quoted example of how private and public have diverged in recent years. Directors are subject to stringent financial control in the same way as governors, and to a whole range of company policies in addition to the prison service instructions they are required to follow. Unlike Governors, they have a controller on site who also restricts their freedom of action. But in general, and particularly when, as most have, they have come across from the public sector at some point, their feelings both of empowerment and respect from their employer appear to be stronger.

5. If the committee finds evidence to support this impression, it may suggest that the changes needed to create a sense of empowerment and freedom to innovate are less dramatic than might at first appear.

Turning to the headings the committee has suggested:

The pace of devolution of budgets and responsibilities

6. There are undoubtedly some quick wins. Restrictions in the public sector on trivial but irritating matters such as the ability to provide refreshments or to travel to meetings have symbolic importance and have sent a deeply unfortunate signal to governors about the trust placed (or not) in them. But in general, we recommend that the pace of change should be cautious. There is no halcyon era to look back to—prisons in the 1990s were characterised as much by inexcusable disparities in performance and adherence to common standards as by the occasional shaft of inspirational leadership. The process of instilling order and control in the management of the prison service during the first decade of this century was necessary and improved the consistency and quality of the custodial experience for both prisoners and staff.
7. For many Governors, the overwhelming challenge of each day at present is simply to get through it as safely as possible—there is no spare capacity in most prisons and it is noticeable how much additional senior resource has been drafted in to the reform prisons to help manage change. The government's last major reform programme in criminal justice—Transforming Rehabilitation—made a virtue of the breakneck speed of its implementation and signally failed to wait for the evaluation of the pilots it had set up before putting its faith in an untested model nationwide. At the very least, the government should set out what it hopes to learn from the 6 reform prisons it has designated and how and when it plans to evaluate their success.
8. Above all, the promised new framework of performance standards and outcome focused instructions must be clear, detailed and settled so that

Governors can understand and trust the new “rules of engagement”. A previous exercise in the late 1990s, following uncannily familiar criticisms of the prison service instructions framework by the Woodcock and Learmont reports, took years rather than months to complete.

The capacity and skills of Governors

9. Again, we are concerned that too early a focus on this subject may be to put the cart before the horse. It is a given that prisons require excellent leadership. But a prison’s failure does not necessarily result from a failure of leadership. It is possible to ask too much and to provide too little for even the most brilliant leader to succeed. That is where we believe the prison service currently finds itself corporately, and it is likely to be true of many establishments too. The frequency with which the response to a poor inspection report draws attention to the arrival of a new governor as the key plank of its plan for improvement attracts something close to derision, especially when the prison in question is known to be overcrowded, poorly maintained, ill equipped and unable to recruit even the staff it has money for.
10. Governors certainly deserve and should in future receive far more space to prepare for governing and to develop their skills and experience across a career. They have that in common with all prison staff, for whom the resource devoted to in service training and development is pitifully small. In relation to Governors, the service has run a variety of imaginative recruitment schemes over many years which have attracted strong candidates from a range of backgrounds, but that investment has rarely been followed through with sufficient professional development and career planning.

The relationship between governors, NOMS, MoJ and the Secretary of State

11. At the risk of complicating the committee’s task still further, we would draw attention to the other individuals and institutions to which a Governor or Director is accountable. Both have legal duties to a variety of bodies, including the Health and Safety Executive for example, and can expect to find their actions scrutinised in court—sometimes the criminal justice system, but more often the civil courts, employment tribunal or coroner’s court. If the prison is genuinely to have a rehabilitative purpose, its leader should expect to be forging strong relationships with the key service providers in the communities to which it discharges prisoners (assuming it knows which communities those are and holds a population of prisoners that has some kind of geographical focus). And even if it does not, it holds a group of citizens with rights and responsibilities which it must support, from social care to safeguarding. It should also understand its place in the local economy, as an employer, as a significant purchaser of goods and services, and as a source of future taxpayers in the prisoners it will release.
12. The natural inclination of prisons is to be introspective—the institution is complex and may be vulnerable to disorder. But if empowerment is to mean

anything, it must include a responsibility to be outward looking and to have the freedom to engage meaningfully with all the local partners with a stake in the future of the people the prison holds.

13. Two issues in particular are crucial to allowing a prison's leader to be a credible and influential local player. First, they must have some certainty about—and there must be some logic to—the population of prisoners for which they care. This is what prisons have to take to the table; the opportunity to intervene with people in prison who at some point will return to communities either to contribute or to disrupt. If that population constantly changes or bears no relation to any place or places with which the governor deals, they have nothing to offer.
14. Secondly, the Governor or Director must be able to take some modest resource that they can contribute to shared projects. This may sometimes be a benefit in kind—prisons have valuable physical plant which communities rarely get to use as they might. But it may sometimes also need to be cash—a contribution to a jointly funded resettlement project, for example, or seed funding for an innovative approach to engaging families. As a general rule, only small amounts are involved, and within the multi million budget of a prison, the normal ebb and flow of expenditure is likely to give the flexibility its leader needs to find this kind of contribution. But they must be trusted to do so, and the risk accepted that not every investment will pay a dividend.
15. The significance of this for the relationship between governors and NOMS, MoJ and the Secretary of State is that none of those relationships can be exclusive or even guaranteed pre-eminence. The Governor or Director in reality must serve many masters and must be trusted to do so.

Performance agreements, measures and league tables

16. As our response to the white paper on safety and reform pointed out, for an approach relying so heavily on the setting of appropriate performance measures, the level of detail contained in the white paper was surprisingly low. This is not new territory. Although it contains flaws, the current Prison Rating System (PRS) does represent a sophisticated attempt to compare very different institutions across a wide range of different responsibilities. In ranking prisons in four broad bands, it attempts a sensible compromise between a simplistic league table and the counsel of despair that comparisons are simply too difficult to make. But its flaws are significant. In particular, it requires too little collaboration with partners. Its starting point is that governors should be measured only against those things over which they have control. But very few managerial jobs involve only control. Most require influence and all involve partnership of one kind or another.
17. So we would suggest, as both an important element of a prison's performance and as a symbolic shift to a system of measurement that relies on collaboration, that the measures for employment and accommodation should require prisons to count how many prisoners are in employment or

accommodation **three months after their release**—not what prisoners tell staff they expect to be going to on the day they are discharged. All prisoners are now subject to statutory supervision, so the data should be capable both of being collected and verified by the CRC or NPS as part of their normal supervision of discharged prisoners. Further, we suggest that the CRC and NPS should have exactly the same measure—the Governor and the Chief Executive of the CRC or NPS should stand or fall on a measure that assesses their ability to work together just as much as the outcome for prisoners.

18. There are other aspects of the white paper’s limited proposals which we think require challenge. Specifically:

- Safety, where we welcome the suggestion that measurement should include feelings of safety. Prisons already have the benefit of an unusually sophisticated and well established set of “soft” indicators in the form of the Measuring the Quality of Prison Life Survey (MQPL). The survey asks a range of highly relevant questions and translates the answers into meaningful numerical indicators across a range of “dimensions” of prison life. These include safety, and we would urge the government to use the MQPL platform as the foundation for a good measure on safety. It has the virtue of offering historical as well as inter-prison, and even inter-wing comparisons and a robust research basis.
- Release on Temporary Licence (ROTL), where the only measure proposed continues to penalise failure rather than reward success. Ministers have repeatedly said that they want to encourage the use of ROTL for employment, learning and resettlement. But a promised review to give that reality on the ground has not materialised. It should, and should include measures that reward the extended use of ROTL—currently unavailable to prisoners in the majority of so-called “resettlement prisons”.
- Substance misuse, where we welcome the idea of a “distance travelled” measure but counsel against the idea of drug testing on release as impractical and unlikely to incentivise what the government wants. How much better to carry out a test a substantial period before release as a gateway to periods of ROTL, with continued testing as a condition of maintaining ROTL.
- Time out of cell—which we welcome as one good indicator of a decent prison, but where accurate measurement has in the past proved impossible. We would suggest that this and other decency indicators are susceptible to the “mystery shopping” technique, with snapshot surveys of the kind the inspectorate carry out instead of daily in-house data collection.
- Education, where despite the radical change in approach urged by Dame Sally Coates (and we thought accepted by the government), the measures proposed deal only with classroom attainments in English and Maths.

- Fairness and decency, which go largely unrepresented in the list of measures proposed, but which virtually all commentators would accept provide the foundation for anything else the prison seeks to achieve. Measures on fairness should include both perceptions and objective indicators such as the timeliness and quality of responses to complaints. On decency, as noted above, there is scope to develop “mystery shopper” techniques, in which prisoners themselves could and should be involved, to know whether essential routines such as laundry and the provision of an adequate diet are being delivered. MQPL again provides a sophisticated and objective assessment process.
- Active citizenship amongst prisoners, where we would suggest that the degree to which the prison is able to engage prisoners in taking responsibility for their lives both in prison and after release can and should be measured. It is an aspect of good practice in many prisons, and reflected in several dimensions of MQPL survey.

19. The absence of an indicator on reducing reoffending is curious, given the emphasis on rehabilitation as a core function of the prison system. The shortcomings of reconviction measures as a proxy for reoffending are well known, but those shortcomings could be substantially mitigated if different data systems were able to communicate more effectively. Integrated offender management schemes have shown that criminal justice agencies can share information very promptly about reoffending in relation to a small cohort of offenders locally—the ability to share real time data on arrest and charge, for example, exists—but not nationally or as a matter of course. Indeed, the difficulties in tracking even convictions through the PNC remain significant. The government should not lose sight of the prize of knowing whether a particular prison can impact on reoffending rates, and should set out a programme of work to tackle the obstacles to doing so.

20. It follows that the white paper’s proposal for league table measures as it stands looks both dangerously unsophisticated and depressingly likely to drive an introspective rather than an outward facing approach to the leadership of prisons. We are very concerned that, in practice, a league table would quickly come to “trump” all other indicators and assessments, and that the contents of the league table proposed in the white paper would drive a narrow interpretation of the governor’s responsibilities, excluding decency and fairness, the extent to which prisoners are required to take responsibility for their own situation, and partnership with the communities to which prisoners will return. “Holding to account” is not the same as making it “quick and easy” for “those not responsible for the system to see how prisons are performing”. The government must not dumb down the assessment of a complex leadership task.

Poor performance mechanisms

21. As with some other elements, we believe that it is premature to devote too much energy to a discussion of dealing with poor performance when the

definition both of good performance, and what a governor is entitled to expect by way of a level playing field remain so uncertain. The experience of contracting for private prisons is relevant, as is the more limited experience of public sector prisons operating to a service level agreement after a market test. In both cases, the initial business of defining both measures of expected performance and the resourcing required to deliver those expectations is detailed and exhaustive, but once concluded can only be changed through a prescribed process of negotiation. The stability and predictability offered by these processes create a very different environment for assessing the success or failure of leadership. It is certainly not a panacea—private prisons and public sector prisons operating to service level agreements have not had unchequered histories, but it gives a sense of the detail required to support a contractual agreement based on delivering an agreed level of performance for an agreed price. Governors in almost all public sector prisons have none of that protection—they might reasonably expect it before being exposed to the same consequences for failure.

Education devolution

22. Commissioning for services in prisons should be a collaborative exercise. In recent history, many governors will have felt frustrated that large contracts let for large geographical areas to centrally mandated service indicators failed to give them a voice, and failed to give them effective means to raise concerns over delivery. A stronger local voice is welcome, but governors should not be able to commission in isolation from the community they serve. Again, the importance of a prison having a stable population of prisoners that it is likely to retain and which has some geographical coherence cannot be overstated. Most prisons should be aiming for their prisoners to carry out some of their learning during some of their sentence outside the prison walls, so the provision inside the prison must be commissioned both to the standards that prevail in the community and with a view to what the community can provide during and after custody. The community also has clear responsibilities to its citizens within prison—sometimes, as with care leavers for example, responsibilities over and above its responsibilities to others. So it is crucial that giving a stronger voice to governors in commissioning pulls resource and expertise in rather than releasing other funders from their responsibilities.
23. Governors are not resourced to run procurement exercises, and devolution of both commissioning and contract management will not work unless they are adequately supported in both, probably on a shared basis with other prisons or potentially other agencies locally. The goal should be a seat at the commissioning table, not command and control.

Health devolution

24. We welcome the fact that the government has drawn breath on this issue. The central commissioning of health services in prison to an agenda of equivalence with treatment in the community, inspected by the CQC, has

undoubtedly transformed healthcare in prisons over the last two decades. There is a long way to go, especially in relation to mental health (reflecting the disparity also found in the community at large), but there is also a great deal to lose. Good commissioning will be collaborative, driven by a detailed assessment of need (which governors have neither the competence nor the resource to carry out) and informed by up to date knowledge of clinical developments. As with education, local health commissioners have responsibilities to their citizens who happen to be in prison, and good collaboration has led to significant wins for public health in the community, for example through immunisation programmes delivered to high risk cohorts in prison prior to release. Just as with education, prisons often accumulate concentrations of the very people local health service providers are most anxious to help and for whom they have their own targets.

25. The key issue for health commissioning, as with so many other services on which the prison depends, is the stability and predictability of the prison's population and function. Given those, governors can readily establish the relationships with key partners across a wide range of services, both those delivered in the prison and those on which prisoners will depend when they are released. Without that stability, the governor is hamstrung from the start, whatever the apparent freedoms he or she has been given to engage or to commission.

Offender management reforms

26. There is much to welcome in the government's commitment to a ratio of 1 officer to 6 prisoners announced in support of its reforms to offender management. But the programme also encapsulates the fine judgements to be made between central prescription and local empowerment. Governors and Directors will gladly accept the increase in officer and PCO complements that the announcement offers. But in the long term, a prison that succeeds in providing a full working day, a good quality of life in the evenings and weekends, and that draws prisoners into the centre of how the prison's day to day way of life is organised and delivered, may well find that it wants to spend its money in other ways. It might, for example, feel that the support described as "offender supervision" can be delivered by the people who run workshops, prison kitchens or laundries. Or it might want to employ more officers to go and check on prisoners doing jobs on ROTL outside and fewer teachers or instructors inside. It might consider that a smaller complement of better paid and trained staff will work better than the complement delivered by the 1 to 6 ratio. Or it might want to invest in technology that allows prisoners to carry out day to day tasks for which they currently rely on officers for assistance.
27. There is no clarity at present on the extent to which the government is prepared to give public sector governors the kind of investment and other financial opportunities open to the private sector. Could a governor borrow funds, for example, to invest in ICT on the basis of a long term, multi year return on investment through efficiency savings? Could they create a reward package for a post or range of posts to attract good candidates from

neighbouring prisons, public or private, or from CRCs, the police or other public sector “competitors” in the labour market? And crucially, with any freedom, does an incoming governor have carte blanche to change how the particular prison runs provided the outcomes are still delivered?

28. The offender management reforms also highlight the dilemma of how much process to specify. Prisoners move continually, and will continue to do so for the foreseeable future. There must be common processes and common systems for handling information if prisoners are not to be disadvantaged and staff time is not to be wasted. The absence of common or communicating systems already generates huge waste.
29. As with every element of the “empowerment” agenda, there are difficult judgements to be made, balancing a welcome desire to promote local innovation and leadership with the need to deliver common standards in a system which most prisoners are likely to experience in more than one institution. We hope very much that the committee’s inquiry and the evidence it receives will help the government create a stable and predictable environment for those who live and work in prisons, and for the many agencies with whom they should interact.