

## **Prison Reform Trust response to the Justice Committee inquiry into prison governance – May 2019**

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
- promote equality and human rights in the criminal justice system.

[www.prisonreformtrust.org.uk](http://www.prisonreformtrust.org.uk)

### **Introduction**

1. The question of the best model for governance of the prison service has been a matter for debate since prisons were first brought under national control in 1877. More recent history has been heavily influenced by the question of “agency status” – normally as officials have wrestled with its arcane detail, but occasionally in the public eye as the dividing line between ministers and their employed servants has become controversial. That line, and the line between the ministry and the operational service have both been subject to almost continual adjustment. There is nothing new either about prison inspectors periodically taking Secretaries of State by surprise in reporting to them about individual prisons in shocking states of decay and disorder, nor in the responses to those scandals that seek to “fix” the prisons concerned and promise that the embarrassment will not be repeated.
2. Agency status in the 1990s helped to usher in a period of operationally informed leadership and attention to the day to day quality of delivery in prisons which reduced the number of prisons that were performing obviously below an acceptable standard. The Woolf report also gave government a comprehensive and sensible policy map to follow, much of which could be properly delegated to the prison service to take forward. A period of confidence inspired by more reliable (though far from uniformly good) performance probably also played a part in securing significant new resource for prisons in the first decade of this century, largely directed to health and education provision. But the inherent problem of an agency operating public prisons competing with the private sector in competitions organised by that same agency proved impossible to resolve. Austerity then dealt a blow to the fundamental stability on which agency status relies, with decisions on resourcing driven by macro-economic considerations rather than the needs of the service. The damage done by the cuts of 2012–2014 is well-documented, and undermined the confidence ministers might

previously have had in the agency's ability to sustain what had been an improving trend in performance.

3. The "10 prisons project" set up by Rory Stewart as prisons minister has attracted a good deal of public comment, not least because of his now redundant promise to resign if it failed to reduce levels of violence in those prisons. Its real novelty, of course, was in the close personal involvement of a minister in the operational management of those prisons. There are any number of reasons why he will have been advised against that involvement, most of them sound. But the project encapsulates the dilemma for a minister wanting to gain sufficient confidence in the operational delivery of prisons so as to then step back from it and spend his or her time on the issues which only the minister can tackle – for example how to control the demand on prisons, and how to ensure adequate long term resources to meet that demand.
4. In the end, the minister's sudden departure from his role probably shows why advice not to confuse operational and policy responsibilities in this way was always correct. Real continuity in leadership, and success in sustaining operational reform over the long periods it needs to become embedded as "business as usual", cannot be delivered by the minister but only by suitably devolved authority to an expert and dedicated professional head. Agency status, as originally conceived, sought to enshrine this basic division of responsibilities. It is manifestly not being interpreted in that way at present. The government has a first principles question to answer about whether it even wants to retain that ambition when the new Chief Executive of the relevant agency has had the board positions of head of finance and of HR removed from the agency in the days prior to her taking up post.

### **Getting "back to basics" on governance**

5. These issues of institutional confidence tend to dominate thinking in the highest echelons of the ministry. Loss of confidence, rationally or otherwise, invariably prompts Whitehall thoughts of structural re-organisation, and a desire for advice independent of the agency responsible for delivery. The deckchairs have been moving rapidly around the Petty France deck as a result. But in September 2016, in our evidence to the committee's inquiry into prison governor empowerment and prison performance, we wrote:  
  
*"major structural reform at the centre risks deflecting attention from the operational emergency in prison conditions".*
6. We think we were right. In the three years since the then Prime Minister, David Cameron made a speech billed as the largest prison reform programme since Victorian times, by our calculation there have been 278 separate ministerial policy promises about the prison system. Many of those 278 have been made on multiple occasions. But we have so far been unable to get a reply from the ministry about how many have been delivered, or even which of them still represent government policy. A generous resource for policy-making in the ministry has unsurprisingly generated a great deal of new policy – it has done much less to put that policy into effect.
7. At the same time, the real condition of our prison system following the disastrous cuts to resourcing made in the years following 2012 has become more and more apparent. That in turn has prompted a string of initiatives designed to spot where the problems are worst, and to check up on the efforts of those trying to manage the day to day consequences of resourcing decisions for which they were not responsible.

8. There are many examples of the confusion in governance created by the energetic initiative-making of the three years or so since the committee last looked at these issues of governance. Six “reform prisons” were set up and then quietly shelved, with neither apology nor evaluation. A commissioning directorate in the ministry was created to set budgets and prison by prison performance targets, but has also faded away. As noted above, a “world beating” new agency – Her Majesty’s Prison and Probation Service – has been created to replace the National Offender Management Service, but now has a structure with an accounting officer but no head of finance or HR. “Empowerment” has gone from being the watchword of future governance to a slightly embarrassed footnote. Where middle managers in prisons typically may manage over 20 individuals, Governors are now managed in teams of as few as four or five. The 18 “Prison Group Directors” given that role each have funding for 13 support staff, the majority graded at the same level as the senior management team of a prison, even as many of those roles in prison are filled on a temporary basis. A long-promised performance framework has yet to be subject even to external consultation, still less put into operation. And inspection, until recently an assessment almost exclusively of how prisoners are treated, has started to drift into an assessment of management competence.
9. None of this is to excuse the condition of many prisons – it has always been true that determined local leadership with the right sort of support can improve the state of even the most problematic prisons, if only temporarily. But it is hard to think of any circumstance in which spending more on senior roles, and requiring ever more attention to be devoted to reporting on progress rather than actually making it, represents the best response to a crisis created overwhelmingly by the withdrawal of resources from the front line.
10. It is a confusing picture. However, inside prisons some things remain absolutely clear. For the prisoner, the person most likely to make the difference to their quality of life is the prison officer. And for the prison officer, that person is the Governor. This is the core, simple, strength of the prison service. It should be obvious that accountability lies with the Governor, and everything the rest of the service does should be designed to support that. Our evidence unapologetically looks to take the debate “back to basics”, to coin a phrase, and to suggest what the key constituent elements of a more stable and sustainable approach to governance in the future might contain.

### **The role of the Governor**

11. The answer to the committee’s first question – “What should the role of the Governor be?” – is in our view very simple. The Governor is recognised by all those who live and work in the prison as the person ultimately accountable for everything that happens within it. Those people have got it right – that is the role. It is where the buck stops.
12. Of course, Governors do not directly control all that happens, or all the individuals and agencies that contribute. The Governor leads through influence, inspiration and negotiation more than by direct fiat. Their management team should comprise a wide mixture of expertise and backgrounds, and will certainly not comprise only directly employed members of the prison service. Governors will rely on resources funded in a variety of different ways, and on some services that they do not personally procure. They will rarely, if ever, have as much money or as many freedoms as they would like, and the vast majority of day to day operational decisions will be taken not by them, but by people to whom they delegate the authority to do so.

### **What should Governors be responsible for?**

13. The view is sometimes expressed, including by some Governors, that they should not be held responsible for things that are outside their control. But it is hard to think of a significant leadership role in any walk of life where that is not also the case. What makes governing unusual (though far from unique) is that the stakes are very high. Governing is literally a matter of life and death. Governors often talk about the people “in their care”, referring to both prisoners and staff, and the answer to the committee’s second question – “What should Governors be responsible for?” – is contained in that phrase. Governors are responsible for the care of the people who live, work and visit in their prison. They also have a responsibility to the people whose lives may be affected in the future – most obviously the general public if a dangerous prisoner were to escape, but also the families of those in their care and the potential future victims of crime that could be avoided by effective resettlement practice.
14. It is, self-evidently, an extremely weighty combination of responsibilities. But the weight of that burden cannot be reduced by parcelling responsibility off to different players, either within or outside the prison. The key reason for that is what we described in our evidence to the committee in 2017 – for a prison to work, all of its constituent elements need to be united in a common purpose and ethos. The Governor must make clear that no-one succeeds or fails in isolation – a perfect security record at the expense of resettlement, a drug free environment at the expense of family ties, or violence reduced because prisoners never leave their cells, are all failures. The Governor must describe the values and set the tone which will inform the tens of thousands of individual interactions and decisions which make up the prison’s life.

### **To whom is the Governor accountable?**

15. The committee’s third question – “to whom is the Governor accountable?” – invites a long and probably even then not exhaustive list of answers. Most obviously, the Governor is accountable to the court for the safe custody of the prisoner. Day to day, the most pressing accountability is probably through the management line, whether in the public or private sector. But there is also accountability to:
  - The prison inspectorate
  - The IMB
  - The Prison and Probation Ombudsman
  - The Parliamentary Ombudsman
  - The Coroner
  - CQC
  - Ofsted
  - Lay observers of prison escort services
  - The Health and Safety Inspectorate
  - Environmental health officers
  - The Crown Premises Fire Inspection Group
  - Internal and standards audit teams

- The criminal courts, potentially on a charge of corporate manslaughter
- The civil courts, frequently in cases of compensation
- The Employment tribunal
- Parole Board
- Local MAPPA and safeguarding boards
- The local MP
- Parliament, not least in the form of select committees
- Local authorities
- In relation to particular funded projects and their role in crime reduction, Police and Crime Commissioners
- From time to time, the prison minister (notably within the “10 prisons” project)
- A wide assortment of officials within HMPPS and the ministry, and sometimes in other government departments, who need access to information or who are legitimately looking to check upon the implementation of policies for which they are responsible;
- Trades Unions, both in individual cases and on matters of local negotiation and agreement
- The Equality and Human Rights Commission
- Visiting teams from the United Nations Committee for the Prevention of Torture
- Periodically, other statutory inspections or inquiries, such as the Independent Inquiry into Child Sexual Abuse
- The public, not least through their interaction with the local press, but also in dealing directly with correspondence, phone calls and emails
- And, almost as an afterthought, the prisoners who depend utterly upon the way the prison in which they happen to be held is led, and who have (at least in theory) a right of confidential access to the Governor.

Governors could be forgiven for feeling that the one thing they're not short of is accountability.

### **How should the Ministry of Justice and Her Majesty's Prison and Probation Service (HMPPS) provide oversight of prisons?**

16. There is a reason for labelling the point about the Governor being such an obvious focus for the way the prison service organises itself to deliver its responsibilities, and that relates to the committee's second question – “how should the Ministry of Justice and HMPPS provide effective oversight of prisons?” The way the question is framed implies that “oversight” is the key role for those bodies. Our contention would be that the key role is to support the operational delivery of prisons, which for the most part translates into giving Governors what they reasonably need to fulfil the role we have described above.
17. We understand why the committee – and many others – have raised concerns that HMPPS and the MoJ have appeared to be unsighted on wholly unacceptable

conditions in individual prisons. But the response to those concerns has involved the creation of ever more onerous and expensive “oversight” mechanisms. Governors in prisons with the biggest operational challenges to overcome now face a blizzard of requests for what has become known as “assurance”. They in turn must delegate those requests to their management teams. Specialist teams from regions and the centre descend to provide compulsory “support”, which may in reality constitute no more than a re-diagnosis of problems already identified. Typically, a Governor now has a chain of command above them containing at least four more senior levels in HMPPS, all wishing to be “assured”, independently of the demands from the ministry more widely.

18. This has a number of unwelcome consequences. First, far from clarifying accountability, it confuses it. If something has gone both seriously wrong and unnoticed, which of the five people in that management line is to blame?
19. It diverts resources – at every level above the Governor, people are employed either simply to check, or to develop specialist capacity. Most of those people have operational backgrounds and experience, at a time when both are in short supply in prisons.
20. It diverts the energy and resources of those in the HMPPS and MoJ hierarchies from the support roles on which Governors absolutely depend. Those roles include delivering an instructions framework which sets out what Governors can and can't decide locally (wherever that line happens to be drawn in different aspects of the business). They include making quick rather than painfully slow progress on reforms to diversity, procurement, ICT, maintenance, estate management and many other subjects on which a corporate approach can deliver both economies and desirable consistency if done well, but stymie the governor's ability to put right the most basic problems if done poorly.
21. It occupies the time and energy of the Governor and their teams in servicing its demands.
22. It undermines the Governor's authority when more senior people become regularly involved in the day to day operational detail of the prison.
23. And, crucially, it undermines the trust the organisation is seen to place in its most important leaders – Governors.
24. Whilst it is understandable that the hierarchy in HMPPS and MoJ should feel nervous about what is happening in a geographically dispersed service which it knows to be struggling, that nervousness cannot justify adopting an organisational model which in practice undermines the one role which has the capacity to deliver reform on the ground. Given the extraordinarily comprehensive and intrusive mechanisms for external accountability described earlier, the government's approach to “oversight” should concentrate on ensuring that those external mechanisms operate properly and are focussed on what they are competent to oversee. The priority of the Ministry of Justice and HMPPS should be to support prisons to “pass” those external tests – not second guess their likely outcome.

## **A blueprint**

We think the components of a more effective and efficient governance model largely exist already, with a small number of important gaps. There is more to be stripped out than added in, and we offer the following blueprint for a simpler, more robust approach.

### *The Governing role*

25. This key role requires investment at every stage. Various schemes over the years have successfully attracted high calibre candidates from both within and outside the prison service, but the care taken over recruitment has rarely been matched by sufficient attention to the nurturing of future leaders thereafter. Too few externally recruited people have thrived, and good governors have tended to be promoted out of governing roles into oversight, rather than given opportunities to broaden their leadership experience outside the service before returning to govern prisons again.
26. As the former prisons minister suggested, other operational services invest much more heavily in the preparation of their key leaders for the most important operational roles. The prison service should do the same.
27. For the toughest governing jobs, the prison service needs the flexibility to offer rewards, including generous help with living away from home if that is unavoidable, that relate to that role at that time, rather than a rigid grading structure which provides rewards in perpetuity.
28. Governors need to be trusted with flexibility over managing their budget and their people far more than they need flexibility over the rules governing the treatment of prisoners, where consistency between similar establishments is often crucial.
29. And of course, the service needs to stock its governing cupboard sufficiently for there to be high quality competition for every governing Governor role. This is a long-term project, which needs investment and the freedom to depart from rules and procedures appropriate to leadership development in the rest of the MoJ.

### *HMPPS*

30. If the prison service is to continue as an agency, which is the strong logic of the approach we suggest, it needs the tools to go with that status – in particular the ability to manage its own budget and human resources policies. The management line above prisons needs a radical pruning, and the whole of the organisation above establishment level needs to be measured against its performance in supporting prisons.

### *MoJ*

31. The ministry's role is, above everything else, to control the demand on prisons through legislation and policy, to eliminate overcrowding, and to secure the resources needed to deliver a humane and decent service in response to that demand. It has a key role too in negotiating with other parts of central government about the environment in which Governors operate and their access to the services which the citizens in their care are entitled – from health to education, housing, social care and many more.

32. The ministry should also have responsibility for the way in which the external oversight of prisons operates.

### *Oversight*

#### Minimum standards

33. The glaring gap in the current oversight framework is the absence of a statutory code of minimum standards. Since the Woolf report made its recommendation for such a code nearly three decades ago, successive governments have fought shy of the issue. The result is that, when the former prisons minister quite rightly took as his priority that a prison system in crisis should concentrate on “the basics”, there was no definition of what those “basics” were. Each layer of external scrutiny and management oversight adopts its own view, and suffers its own frustrations when that view is compromised by the competing demands of a different scrutineer.

#### An instructions framework

34. There are finally significant signs of progress in the long-promised project to revise prison service instructions. As we have made clear in previous evidence to the committee, there is no short cut to a painstaking case by case analysis of where the balance between prescription and managerial discretion should be drawn. Making things simpler is not a simple task. But completing those analyses is urgent – everyone in prison, leading, living or working in them, needs to know what the rules are.

#### A performance framework

35. A common performance framework for prisons is another gap. Though a central plank of the then Prime Minister’s reform programme in 2016, no framework has ever emerged for wider consultation. Meanwhile, previous, relatively sophisticated measures such as the “weighted scorecard” and prison rating system appear to have fallen by the wayside in anticipation of something new emerging. We do not support league tables, or a single overarching “mark” for a prison, not least because of the huge differences in the roles and make-up of different prisons. But there should be a pass/fail assessment on safety, externally measured, and a suite of performance measures which require collaboration with partners, from health and education through to resettlement. The three year delay in even consulting on a framework since the then prime Minister made this a central plank of reform is hard to excuse.

#### The experience of prisoners

36. No-one understands the actual performance of prisons better than prisoners. In the Measuring the Quality of Prison Life (MQPL) survey, the prison service has a world-leading tool to draw on that insight systematically. But the potential to do more is also very largely untapped. We have come across a scheme which uses prisoners to assess performance against HMCIP expectations, for example, and democratically elected prison councils, pioneered by User Voice, also represent world leading technology. PRT’s own “Active Citizens” consultations and our “Prisoner Policy Network” consistently demonstrate that prisoners take a balanced view of prison performance and a constructive attitude towards improving it. There is scope to do much more to use prisoners both to assess performance and to contribute to solving the problems that their assessment identifies.



## Inspection

37. International visitors come to the UK to learn from our independent inspection regime. It has done more than any other aspect of oversight to draw attention to the calamitous state of some of our prisons, not only in recent years but ever since it was first made properly independent of the prison department in the late 1980s. Its expectations are the closest we come to a code of minimum standards, and are firmly based on the international human rights instruments to which we are subject as a nation. At its best, it concentrates single-mindedly on the experience of prisoners.
38. We are concerned that the way the “Urgent Notification” procedure has been implemented has diluted that precious focus on outcomes rather than inputs. For all its many virtues, the inspectorate is not equipped during a week’s inspection to determine the competence of a prison’s management. Its recent willingness to make that judgement has meant that at least one prison where the treatment of prisoners has fallen below the standard at which the UN procedure has been invoked elsewhere, has escaped that censure and the action that comes with it. This is not fair on the prisoners suffering those conditions, and puts the inspectorate in the uncomfortable position of having some responsibility for the consequences of its assessment of management competence.
39. We are also concerned that the inspection process should more clearly and fearlessly highlight the structural failures which contribute to unacceptable conditions for prisoners. For example, the fact that no government appears willing to adopt a strategy to eliminate overcrowding should not be a reason for not highlighting the impact of overcrowding wherever and whenever it occurs. Inspection must hold the Secretary of State to account as clearly as it does the Governor – more so if adverse findings result from a failure to provide the human and physical resources necessary to decent treatment. That is the Secretary of State’s fundamental responsibility, in which he or she is supported by his ministry.
40. Nevertheless, the Inspectorate remains a precious asset, and its expectations the best alternative to a statutory code of standards. It should remain at the centre of the accountability framework, and the prison service should be resourced to meet the standards it sets.

## Independent Monitoring Boards

41. The appointment of Dame Anne Owers as the national chair of IMBs was a significant step forward in a much-needed re-vitalisation of IMBs. But she cannot work miracles. The excellence of some IMB annual reports throws into relief the struggles others face to rise to the same standard. Some of the country’s most important prisons, especially in remote areas, struggle to maintain a functioning IMB at all. Prisoners often report little or no confidence in the IMB, and their standing has been undermined by the dilatory response of many ministers in the past to the concerns that they raise.
42. The intention to create accountability by giving members of the public access to scrutinise the daily operation of our prisons is unimpeachable. But the system requires substantial investment to support its national chair in her reform agenda. A small fraction of what has been invested in internal HMPPS “assurance” mechanism could deliver a significantly higher dividend.

## Conclusion

To summarise:

- Any approach to governance and oversight of prisons is built on sand for as long as parliament neglects to describe minimum standards for the treatment of prisoners. In their absence, the best description of what constitutes “the basics” is HMCIP’s expectations document, and the government should commit to resourcing the prison service to meet those expectations.
- In deciding on an appropriate organisational structure for the prison service, the case for making the Governor the focus of both authority and accountability is overwhelming. The framework within which they are allowed to operate requires clarity of instruction, and a balance between freedom and prescription. But the driving principle must be to invest in the selection, training and support of those key leaders to promote trust in their ability to deliver. More and more detailed and onerous internal assurance mechanisms will ultimately do more harm than good.
- Just as the operational model within the prison service ultimately needs to decide to place its trust in Governors, so the ministry needs to decide to place its trust in a professionally led agency. The current situation represents an uncomfortable hybrid arrangement.
- Oversight is best delivered independently, and the framework for doing so is already comprehensive. But it risks being undermined if inspection becomes an assessment of management rather than a test of outcomes for prisoners. Certain elements of the oversight framework – notably IMBs – are too poorly supported to deliver anywhere near their full worth. The insight of prisoners offers largely untapped potential.

43. All of these issues are important. But no amount of re-organisation or oversight can change the fundamentals of an overcrowded and under-invested system. The catastrophe that has engulfed our prison system in recent years has shown itself in many more failing prisons and shaken the foundations on which our approach to safe custody has rested for many years. Inevitably, it has taken its toll on leaders within the prison service just as it has on staff and prisoners. It is hard to overstate the appalling moral dilemma for those who have chosen to continue to attempt to deliver a decent level of care in prisons when their capacity to do so has been destroyed by resourcing decisions wholly outside their control. Resilience is a highly prized quality in prisons, but there are times when it prevents uncomfortable truths from being spoken. In the four prisons that have been made subject to the Urgent Notification protocol since its inception, at the time of inspection the total certified normal accommodation available was 2,435 spaces. The number of prisoners held was 3,078. In other words, nearly 1,300 of the prisoners being held in those prisons were being forced to share accommodation designed for fewer people. No reorganisation – of operations or oversight – can compensate for such a gross failure to match demand and supply. Only ministers can address that fundamental fault in our criminal justice system, and any discussion of accountability should start by asking why every government of the last 30 years has failed to do so.