

Prison Reform Trust response to the Ministry of Justice consultation on strengthening the independent scrutiny bodies through legislation – September 2020

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.

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Introduction

We are grateful for the opportunity to respond to this consultation. In our view, there is certainly scope to strengthen the scrutiny arrangements, including through statutory protection for their independence in some of the ways the paper suggests. We only support one of the suggested mergers (of Lay Observers and IMBs).

However, we are concerned that the paper does not deal with the threats to the effectiveness of independent scrutiny posed by inadequate resourcing, by a failure on the part of ministers to respond promptly in all circumstances when serious criticisms are made, and by the failure of operational services effectively to implement recommendations which they choose to accept. We suggest various ways in which these shortcomings might be overcome.

The Prison and Probation Ombudsman (PPO)

We strongly support the proposal to give statutory status to the PPO. It is a matter of great regret that the Bill which would have achieved this long overdue reform has not been reintroduced following last year's general election.

Legislation should contain provision that clarifies the remit of the PPO and requires the Secretary of State adequately to resource that remit. Any changes in the PPO's functions should be subject to prior discussion with the PPO and adequate resources being provided.

The legislation should also give the PPO the power to require the attendance of relevant witnesses for interview, and the ability to draw inferences from any refusal on a witness's part to answer questions during an interview.

Finally, legislation should place a duty on the Secretary of State to respond to recommendations from the PPO in a timely manner, and to report on the implementation of any recommendations with general application that the Secretary of State accepts.

HMI Prisons

We strongly support the proposal to give statutory status to the inspectorate, as distinct from the Chief Inspector. As with the PPO, this legislation should place a duty on the Secretary of State adequately to resource the Inspectorate.

We do not support making legislative provision for the Urgent Notification Procedure in its current form, which we consider to be flawed. As with the PPO, however, legislation should deal with the duty of the Secretary of State both to respond to recommendations, and to report on the implementation of those that are accepted.

Independent Monitoring Boards

We support the proposal to merge Lay Observers and IMBs, and to give statutory status to the role of National Chair and management board. As with other statutory roles, legislation should place a duty on the Secretary of State adequately to resource both the Chair's office and IMBs/Lay Observer panels generally.

Particularly with IMBs, a new statutory duty on the Secretary of State to respond in a timely fashion to both individual and national reports is essential, and to report on the implementation of any recommendations accepted. The current delays and poor response to IMB reports seriously undermines the credibility of the boards and their role.

We do not support the proposal to merge IMBs and the Inspectorate (the Scottish model). We believe the roles are complementary but significantly different, and that, particularly given the current crisis in prisons, a major reorganisation of this kind would divert the energy and attention of both IMBs and HMIP in an unhelpful way.

Independent Advisory Panel on deaths in custody (IAP)

We support giving the IAP statutory status (both Chair and panel), with the same duties to resource adequately, respond to recommendations and report on recommendations accepted.

In addition, we support the IAP's proposal for a statutory requirement that all major policy decisions affecting the welfare of people in custody should be subject to a safety impact assessment, and that the IAP should have a role in assessing the adequacy of those assessments and the implementation of any mitigating measures that they contain.

National Preventive Mechanism

We strongly support the proposal to place the NPM in statute, along with an obligation to comply with the United Nations Optional Protocol on the Convention against Torture (OPCAT). The core purpose of the NPM (to prevent ill treatment) should be incorporated into the statutory purpose of each of its constituent members.

We also believe that the NPM should be funded by government as an organisation in its own right and that its secretariat should be more generously resourced than at present in order to make effective an unusually dispersed operating model.

Appointments generally

In order to reinforce their independence and increase public confidence, we suggest that the appointment of all the statutory office holders should rest with the Justice Committee. That committee should make the final decision on appointment (or recommendation to the Crown) from a shortlist drawn up under the public appointments process, rather than the committee having no involvement or simply holding a confirmation hearing for a candidate selected by the Secretary of State as at present.

We support the proposal that all statutory office holders should be appointed for a period of 5 years.

NDPB status

Where bodies do not already have this status, we believe that they should. In particular, we think it is essential that the bodies should be employers of their own staff and should not have to rely on the sponsoring department for secondments, or for administrative support on recruitment and selection.

In particular, we think it is essential that all oversight bodies should have people with lived experience of custody within their teams, both centrally and locally, and at all levels of the organisation. That experience is crucial both to the quality of oversight and, as a consequence, the credibility of the body itself. A combination of unduly restrictive policies and the inherent conservatism of the civil service and Ministry of Justice in particular, have so far prevented any significant recruitment of people with lived experience. Whilst NDPB status will not in itself solve that problem, we hope this review may provide the opportunity to committing to do so.