

INCENTIVES AND EARNED PRIVILEGES

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 Incentives and Earned Privileges system, which was introduced in 1995, is an essential tool of prison management. It promotes conforming behaviour through rational choice. Enabling people to earn benefits in exchange for responsible behaviour encourages prisoners to engage with sentence planning and ensures a more disciplined and controlled environment which is safer for staff and prisoners. Other outcomes include a reduced risk of self-harm and improved staff-prisoner relationships.

The initial evaluation of the scheme demonstrated the value of re-considering and fine-tuning the policy. Thus, the current review is a welcome opportunity to re-examine how IEP works.

Legitimacy depends on equal access

The legitimacy of the scheme is under-pinned by monitoring its application to ensure that benefits and deprivations are distributed fairly. IEP schemes must demonstrate equality with regard to the protected characteristics including ethnicity, religion and disability. The consistent evidence that black prisoners are more likely to be on the basic regimeⁱ and that prisoners at risk of suicide or self harm are placed on the basic regime without sufficient safeguards for their careⁱⁱ highlights the need for greater attention to the fairness of the scheme in operation.

The Prison Reform Trust encourages NOMS to take further steps to identify schemes in which prisoners with learning disabilities, minority ethnic prisoners, women, or older prisoners are disadvantaged, and take corrective action. Judgments about an individual's progress should be made on the basis of consistent effort and not on attainments. Otherwise, the system will disadvantage people who have limited achievements due to their disabilities.

Equality under IEP is also influenced by the length of time the person spends in prison. Benefits are valued to different degrees, depending on the length of time the person expects to remain in prison. For these reasons, access to enhanced levels and the nature of its benefits should be re-defined to apply equally to remanded and short-term sentenced prisoners.

Resettlement and rehabilitation should not depend on IEP level

A fundamental purpose of prison is to ensure that the person is less likely to re-offend when they are returned to their community. This principle is undermined if aspects of prison that reduce the risk of re-offending and promote resettlement are provided selectively to individuals who are the most compliant.

Rewards for good behaviour should be distinct from the support, information and services a prisoner needs to prepare for resettlement; otherwise, prisoners most in need of rehabilitation could be excluded from participation. For example, as the support of families contributes to reducing reoffending, basic regimes should not reduce the number of visits (a measure which also punishes the children of imprisoned parents). Conversely, access to some kinds of entertainment – for example, videos with

violent or sexually graphic content – cannot reasonably be said to promote a reduction in reoffending. Such ‘rewards’ could legitimately be removed from the benefits of the enhanced regime.

IEP kept distinct from prison discipline

The basic regime is not intended to punish illegal activity, but to provide a powerful disincentive for a consistent and deliberate failure to engage with the regime. The basic regime becomes less effective when it is used widely, because it is no longer clear to the prisoner what undesired behaviour results in a withdrawal of benefits. The system becomes more arbitrary, less legitimate, and less effective. When the deprivations of the basic regime appear arbitrary, it no longer promotes personal responsibility, as there is no clear connection between the person’s decisions and their IEP level.

Natural justice requires that punishment is reserved for conduct which is explicitly against the rules. As an informal method of encouraging good behaviour, therefore, it is important that IEP be kept separate from discipline. Changes to a prisoner’s IEP level should be based on a consistent pattern of conduct, rather than one-off events. Examples include repeated refusals to engage with the regime, strong evidence that the person is bullying others, and intimidating staff. Infractions of prison rules should normally be managed through adjudications and formal sanctions.

Effective management of prisoners requires the proper balance between security, control, and justice. In 1990, Lord Woolf argued that a contributor to the disturbances was a neglect of justice:

“These themes must come together in the programmes provided for prisoners and in the way they are treated in prison. They must come together also in what is expected of prisoners. . . . were these proposals to be followed, then we believe that they would substantially influence the way that prisoners come to view the prison system.”ⁱⁱⁱ”

By implication, people are more likely to accept that the prison is run fairly if it protects their rights, ensures decent conditions and respectful treatment, and provides reasons for decisions that disadvantage them. Procedural safeguards are vital to IEP, as they preserve the legitimacy of the system.

Deprivations of the basic regime

Evidence presented to Parliament by Crispin Blunt, MP, showed that in 2011, about 2% of prisoners were on the basic regime at any time^{iv}. The deprivations of the basic level are experienced as a punishment; the challenge is to set the right balance, so that use of the basic regime does not undermine the legitimate authority of the prison.

The requirements of a fair basic regime can be summarised briefly:

- No one should be demoted to the basic regime arbitrarily: decisions should be based on a pattern of behaviour, not single incidents; demotions should be decided by a board, not an individual; no one should be demoted to basic status for conduct which has already been punished through a disciplinary process; the reasons for demotions in status should be recorded, and prisoners must receive an explanation; the process must allow for appeals; and the status must be reviewed regularly
- The deprivations attached to the basic regime should be proportionate and meet the standards of decency; in particular, the Prison Service’s decency agenda requires that: no one is punished outside the rules; prisoners are protected from harm, including harm to them as a result of the prison experience; the regime provides them with enough variety and choice to make imprisonment

bearable; they receive fair and consistent treatment by staff; and they are held in clean, properly equipped and properly maintained facilities^v.

An unfair process or treatment which does not meet the standards of decency creates conditions in which prisoners become more resistant, less capable of acting responsibly, as well as more at risk to themselves. People on a punitive basic regime have nothing to lose and are therefore less likely to cooperate. The 'consent of the ruled' is withdrawn, with the result that the prison is de-stabilised. According to the Prisons and Probation Ombudsman, a disproportionate number of prisoners who take their own lives in prison were on the basic regime at the time^{vi}. These problems will be accentuated if a basic regime does not uphold decency.

Staff-prisoner relationships

Managing prisoners depends on incentives and disincentives. If people were received into prison on the basic level, they would have no benefits to lose if they choose to disrupt the regime. While an argument could be made that fewer places on the enhanced level would make it more challenging to achieve, the evaluation of the IEP scheme found that increasing the number of prisoners on basic would constitute a serious risk to staff-prisoner relationships. Professor Alison Lieblich found that, in prisons with high rates on the basic regime, officers were more reluctant to engage with prisoners:

"The relatively high use of privilege removal (punishment) seemed to be associated with distant and poor staff-prisoner relationships. On the wing where high numbers were placed on the basic regime, staff were 'retreating into their offices' rather than mixing with prisoners."^{vii}

NOMS should consider further training for officers in how to implement IEP so that it is impartial, experienced as fair by prisoners, and effectively contributes to reducing re-offending.

Safer prisons

The enhanced regime more than justifies any added costs by its impact on the prison environment. Prisoners who value increased time out of cell, higher rates of pay or higher cash allowances are aware that their status will be at risk if they undermine staff or cause conflicts among their peers. By its contribution to reducing violence, the enhanced regime leads to safer prisons, which means huge cost savings, but also sustains a community that encourages rehabilitation. It is worth noting that one reason televisions were introduced into cells was that having an activity to fill the hours locked up would reduce the risk of self-harm.

Encouraging responsibility

Basic Principle 5 of the European Prison Rules provides that:

"Life in prison shall approximate as closely as possible the positive aspects of life in the community."

The idea that acting responsibly and making a contribution to one's community are recognised and valued by society can be replicated in prisons, but only if the system is fair and offers benefits for those who are most responsible.

Prisoners are motivated to engage in positive behaviour, which includes taking part in constructive activities, supporting the efforts of others to be rehabilitated, and acting to reduce conflicts on the wing, by evidence that their efforts have been recognised through the benefits of enhanced status. The enhanced regime is the foundation of a tacit agreement with the prisoner: If you are a responsible member of the prison community, your efforts will be validated by staff and lead to benefits that encourage greater responsibility.

Further, people are more likely to co-operate when prisons enable them to use their time in constructive and meaningful ways. Time out of cell, personally fulfilling roles and constructive activities encourage people in prison to engage with the regime to reduce their risk of re-offending.

Recommendations

A helpful outcome of this review would be to provide further guidance about the aims and the practice of the IEP scheme. The Prison Reform Trust proposes that:

- 1) Rehabilitation and resettlement be given priority over IEP, so that all prisoners remain eligible for services essential to reducing re-offending, including family visits and education – access to these should not be determined by IEP status
- 2) In the interests of natural justice, IEP should be distinct from prison discipline; more work needs to be done to ensure that people are not punished twice for the same actions (by an adjudication and demotion); and part of the solution may be to make clear that IEP should not be used to impose punishment for actions which are already punishable under prison rules
- 3) There should be a renewed commitment to ensuring the fair distribution of benefits, in particular by monitoring ethnicity and equal chances for learning disabled prisoners
- 4) Judgements informing the prisoner's status should be based on consistent effort, and not on attainments
- 5) At all times, the basic regime should fully meet the tests of decency
- 6) Given the evidence of increased risks of self-harm and suicide among prisoners who are maintained on basic for extended periods, IEP schemes should be required to assess the impact of the regime on the prisoner's mental wellbeing
- 7) Access to the enhanced level and the nature of its benefits should be re-considered to give equal access and benefits for remanded and short-term sentenced prisoners
- 8) Prison staff should receive updated guidance and training in how best to administer the IEP scheme fairly and in ways that help to maintain safety and decency.

ⁱ “Black prisoners are consistently more likely than white British prisoners to be on basic regime.”

Ministry of Justice (2008) Race Review 2008, Implementing Race Equality in Prisons - Five Years On, London: Ministry of Justice

ⁱⁱ “[People] on suicide and self-harm monitoring [are] placed on the basic regime, without consideration of its effect on their care arrangements.” HM Chief Inspector of Prisons, (2009) Annual Report 2008-2009, page 22. “Prisoners at risk of suicide tended to have high needs and to find engagement with formal aspects of the regime difficult, and so fell foul of what the policy required of them (strategic and self-controlled behaviour).” Liebling, Alison (2008) Incentives and Earned Privileges Revisited: Fairness, discretion and the quality of prison life, *Journal of Scandinavian Studies in Criminology and Crime Prevention*, online: <http://dx.doi.org/10.1080/14043850802450773>

ⁱⁱⁱ The Rt Hon Lord Justice Woolf (1991) Prison Disturbances April 1990: The Woolf Report, London: HMSO, paras. 14.437 – 14.438

^{iv} Crispin Blunt, MP (22 October, 2010) Offenders: Incentive and Earned Privileges Scheme, Col 907W – 908W; online:

<http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm101022/text/101022w0001.htm#1010227001849>

^v Ministry of Justice (2008) HM Prison Service Annual Report (2007-2008)

Online: <http://www.official-documents.gov.uk/document/hc0708/hc08/0860/0860.pdf>

^{vi} The Prisons and Probation Ombudsman for England and Wales (March 2013) Basic regime: Learning from deaths in custody about the use of basic regime as part of the incentives and earned privileges scheme in prison, Learning Lessons Bulletin, Fatal Incidents Investigations, Issue 4; online

http://www.ppo.gov.uk/docs/Learning_lessons_bulletin_FII_issue_4_Basic_regime_web.pdf

^{vii} Alison Lieblich (2000) Prison officers, policing, and the use of discretion, *Theoretical Criminology*, Vol 4 (3) pp 333-357