

Submission to Justice Committee inquiry on prisons: planning and policies

by HM Chief Inspector of Prisons

Summary

- Her Majesty's Inspectorate of Prisons (HMI Prisons) is an independent inspectorate whose primary statutory duty is to report on the treatment of prisoners and the conditions in prisons. HMI Prisons is one of the bodies that deliver the UK's obligations to have a mechanism for the independent inspection of all places of detention which arises from its status as a party to the Optional Protocol to the Convention Against torture.

Overview

- Inspection findings in 2012/13 showed a significant decline in activity and resettlement outcomes.
- Current higher than projected population figures are creating overcrowding pressures.
- There has been a recent trend of closing old, local prisons and opening new, large institutions. The difficulties in opening new, large prisons have been underestimated.
- Prison closures, however necessary, have inevitably created anxiety and uncertainty amongst staff.
- Plans to change arrangements for young adults have been put on hold but this group still creates significant challenges and further changes should not be made without careful planning.
- 'Fair and Sustainable' and the 'benchmarking' processes have led to the loss of experienced staff and in some cases have distracted managers from their core tasks. In some cases the result of the process has left establishments without sufficient staff.
- Commissioning processes risk leaving local governors insufficiently resourced to provide control over the services provided in their prisons.
- Some managers have struggled to manage the amount and pace of change. The centre has been insufficiently resourced to provide enough support. The tenure of many governors is too short.

Safety and risk

- In our view these pressures have directly contributed to the very high level of suicides in 2013/14 – 89 (to date) compared with 51 in 2012/13 and the highest annual figure for 10 years.
- Our 2012/13 annual report reported increases in the level of self-harm and assaults in adult male prisons.
- All these issues are a symptom of a lack of control in prisons.

Purposeful activity

- We are disappointed that the concept of working prison appears to have been abandoned.
- Activity outcomes, jointly inspected with Ofsted, were not sufficiently good or were poor in half the prisons inspected in 2012/13.
- Prisoners spend much too long locked in their cells.
- Black and minority ethnic and Muslim prisoners report more negatively on their access to activities than White or non-Muslim prisoners respectively.

Offender management and rehabilitation

- The welcome concept of resettlement prisons may be threatened by population pressures and inflexible commissioning arrangements.

- Offender management arrangements are persistently weak and the system as a whole needs to be reviewed.

Introduction

1. Her Majesty's Inspectorate of Prisons (HMI Prisons) is an independent inspectorate whose duties are primarily set out in section 5A of the Prison Act 1952. HMI Prisons has a statutory duty to report on conditions for and treatment of those in prisons, young offender institutions (YOIs) and immigration detention facilities. HMI Prisons also inspects court custody; police custody and customs custody (jointly with HM Inspectorate of Constabulary); and secure training centres (with Ofsted).
2. HMI Prisons is one of the organisations that deliver the UK government's obligations arising from its status as a party to the UN Optional Protocol to the Convention Against Torture (OPCAT). OPCAT requires state parties to establish an independent National Preventive Mechanism (NPM) to inspect of all place of detention. Article 19 (c) of the Protocol sets out the NPM's powers to submit proposals concerning existing or draft legislation.
3. We inspect adult male prisons at least once every five years and immigration removal centres (IRCs) at least once every three years. All inspections are full and almost all are unannounced. Inspections are conducted jointly with Ofsted, Care Quality Commission (CQC) and specialist pharmacy inspectors. In addition to individual inspections, we periodically carry out cross-cutting thematic reviews.
4. All inspections are carried out against our *Expectations* - independent criteria based on relevant international human rights standards and norms. Expectations are brigaded under four healthy prison tests: safety, respect, purposeful activity and resettlement.
5. There is no doubt that the prison system is a system under strain at present – evidenced by our inspection findings and the hard data about prison performance. Whatever the outcome of the significant changes now under way, good or bad, the process of change is proving very challenging for individual prisons and the prison system as a whole to manage. In our view, the system currently carries significant risk and lacks sufficient resilience.
6. The Justice Committee's focus on prisons (planning and policies) at a time when significant reforms to criminal justice policy are underway is therefore very welcome. The following submission sets out some of the issues arising from HMIP's inspections and analysis that are relevant to the Committee's inquiry, specifically:
 - Overview of the general situation across prisons in England and Wales
 - Safety and risk
 - Offender management and rehabilitation
 - Purposeful activity provision

Overview

Inspection findings

7. Our 2012/13 annual report shows a decline in the percentage of prisons and YOIs assessed as 'good' or 'reasonably good' according to HMIP's healthy prison assessment (HPA) scores during the year 2012-13. These findings are replicated in Table 1 below. The most marked declines were for purposeful activity and resettlement. Figures for 2013/14 are not yet available.

Table 1: ‘Good’ or ‘Reasonably Good’ Outcomes in full inspections, 1 April 2012 – 31 March 2013¹

	2005–06	2006–07	2007–08	2008–09	2009–10	2010–11	2011–12	2012–13
	%	%	%	%	%	%	%	%
Safety	75	57	69	72	78	84	82	80
Respect	65	63	69	69	76	74	73	73
Purposeful activity	48	53	65	71	68	69	73	50
Resettlement	68	62	75	75	76	71	84	64

Population pressures

8. The current prison population of 85,338 (at 21 March 2014) is considerably higher than projected figures and for the last 8 weeks the system has remained at 99.2% operational capacity or higher. After a peak in December 2011 (when the population reached 88,179), the total prison population had dropped at the end of 2012 and into 2013. Recent figures show the total population is once again creeping upwards.
9. The capacity of the prison estate is also constrained and overcrowding (where the population exceeds the certified normal capacity) is on the increase. At the December 2011 peak, the system ran at 12.4% over capacity. Throughout 2012 the figure appeared to be reducing. However, since the beginning of 2013 the figure has been steadily rising reaching a new peak of 12.8% over capacity in March 2013². Inspections have also identified individual prisons with significant overcrowding, such as HMP Brixton which was operating at 60% over its certified normal capacity when we inspected in July 2013.³ Our inspection evidence confirms the conclusions reached by the Public Accounts Committee⁴ that prison overcrowding has become institutionalised.
10. Overcrowding across the estate is not simply a matter of how many prisoners can be squeezed into the available space but also impacts on whether sufficient activity spaces, rehabilitation resources and other facilities and services are available. A high degree of overcrowding across the estate means prisoners have to be placed where there is space available, not where they need to be, and so directly threatens the government’s plans to have prisoners with only a short time left to serve located in resettlement prisons close to their homes.

Changes to the prison estate

11. For a number of years there has been a trend for the closure of older, smaller prisons, often in the centre of large town and cities, and their replacement by new, larger prisons in less central locations. As our most recent inspections of HMP Oakwood, HMP Thamesmead and HMP YO1 Isis illustrate, we are concerned that planners underestimate the difficulty of opening a new prison, particularly a large one (although our 2013 report on HMP Parc shows large prisons, once well established, can run successfully) and that a number of high

¹ Forty-four inspections conducted. Figures include women’s and young people’s establishments but exclude extra-jurisdiction and immigration removal centre inspections. At establishments with more than one function, we made separate assessments of each function; this applied to Isle of Wight and Winchester.

² https://d19ylpo4aovc7m.cloudfront.net/fileadmin/howard_league/user/pdf/Prison_watch/Prison_Watch_21.03.2014.pdf

³ <http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/prison-and-yoi-inspections/brixton/brixton-2013.pdf>

⁴ House of Commons Committee of Public Accounts 2013, *Restructuring the National Offender Management Service Thirty-fifth Report of Session 2012–13*.

performing and specialist small prisons such as HMPs Kingston and Shepton Mallet have been closed. As the NAO has pointed out:

“The strategy for the prison estate is the most coherent and comprehensive for many years, has quickly cut operating costs, and is a significant improvement in value for money on the approaches of the past. However, the Agency urgently needs to improve new prisons and look at ways to close fewer high-performing ones in future. The new larger prisons are bringing economies of scale but the Agency does need to understand the consequences in terms of performance of building very large prisons.”⁵

12. HMP Oakwood had good facilities and a decent environment but these were not sufficient to offset the difficulties caused by an inexperienced staff and new processes in a very large establishment. The prison had high levels of violence and drug use, poor staff/prisoner relationships, poor safety and health provision.
13. Prison closures in 2013 inevitably created anxiety and uncertainty amongst staff across the prison estate. Recently announced re-roles, with changes to the function of HMP Lancaster Farms, the introduction of young adults to HMP YOI Hindley and a change to the function of HMP Littlehey will create new challenges in those establishments.

Young adults

14. We recently responded to the Ministry of Justice consultation on its plans to integrate young adults (18-20 year olds) into the adult prison estate⁶. Although these plans are currently on hold, pending the outcome of the recently-announced inquiry into deaths in custody, the plans highlighted a very real concern with the current state of provision for young adults. As our response stated, HMIP inspections highlight that current outcomes for young adults in custody are too often not good enough, regardless of the type of establishment they are held in. In existing young adult YOIs, safety and purposeful activity outcomes are not good enough and these same institutions record disproportionately high levels of violence. However, young adults’ perceptions are that they receive worse treatment and outcomes when integrated into the adult estate.
15. Some changes have already been made to the locations in which young adults are held. Young adults who have been remanded in London are no longer held in Feltham but are held in London local prisons. Our recent (not yet published) inspection of HMP Winchester found evidence that the prison had struggled to manage young adults who moved to HMP Winchester when HMP YOI Reading closed.
16. Future plans for holding young adults need very careful consideration. In the interim, pending any further changes, actions need to be taken to address the serious safety issues in young adult YOIs. It would be of concern if current overcrowding across the prison estate were to lead to further integration of young adults and adults before the outcome of the inquiry and the Ministry of Justice’s response to its consultation.

Staffing changes and levels

17. It is not just new prisons that suffer from a lack of experienced staff. ‘Fair and Sustainable’ which involved management re-organisation in every prison was too closely followed by the ‘benchmarking’ exercise that led to substantial job losses in some establishments. Taken

⁵ Amyas Morse, head of the National Audit Office, 12 December 2013, quoted in *Managing the Prison Estate*, National Audit Office, November 2013

⁶ <http://www.justice.gov.uk/downloads/about/hmipris/hmip-response-moj-transforming-management-young-adults-in-custody-consultation.pdf>

together these two exercises involved the loss of a significant number of experienced staff (even if some did need to go) and undoubtedly proved a major distraction to managers at every level. In some prisons, such as HMP Pentonville and HMP Sudbury for example, we have been very concerned about staffing levels overall.

Commissioning processes

18. The nature of prison management has changed dramatically over recent years. In a system that contracts out large numbers of the functions that prisons provide – healthcare, learning, skills and work, support functions and soon to include resettlement services – the ability of a prison governor to have control over the services provided is diminished. This also means the governor’s ability to take corrective action, when limitations or failures are identified, is constrained. We have seen examples of this problem with regard to Healthcare in, for example HMP Blundeston⁷. It is important that similar problems do not occur when responsibility for resettlement passes to Community Rehabilitation Companies.

Managing change

19. The combined effect of budget reductions, management re-organisation, uncertainty and major new policy initiatives has been a very large process of change for individual governors and the prison service as a whole to manage. To quote the Francis Inquiry, there is danger that some prisons have become: “preoccupied with cost cutting, targets and processes and which lost sight of... [their] fundamental responsibility to provide safe care.”⁸.
20. The short tenure of many prison governors does not help address this problem.
21. We are concerned that the level of savings NOMS has made at the centre and in its regional management structures means that its capacity to identify problems or address them before they become critical has reduced. The system lacks resilience.

Safety and risk

22. We believe these pressures have a direct bearing on the number of self-inflicted deaths that have occurred in prisons in 2013/14. We are dismayed this appears to attract so little concern and attention.
23. According to HMIP’s own monitoring, between April 2013 and 28 March 2014 there have been 89 self-inflicted deaths in prisons. This represents a major increase on the 51 deaths recorded in the year to March 2013 and is the highest figure since the year ended 2004 (and at the time of writing, the year ending March 2014 was not yet over.)

Table 2: Self-inflicted deaths in all prisons - April 2004 to March 2014⁹

YE	Mar 05	06	07	08	09	10	11	12	13	14
SID	87	74	72	85	64	59	54	66	51	89

⁷ <http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/prison-and-yoi-inspections/blundeston/blundeston-2013.pdf>

⁸ Robert Francis QC; Press release: Final Report Of The Independent Inquiry Into Care Provided By Mid Staffordshire NHS Foundation Trust

⁹ Forty-four inspections conducted. Figures include women’s and young people’s establishments but exclude extra-jurisdiction and immigration removal centre inspections. At establishments with more than one function, we made separate assessments of each function; this applied to Isle of Wight and Winchester.

24. It is of further concern that at least 37 of these deaths in 2013/14 were prisoners already identified as at risk through the Assessment, Care in Custody and Teamwork (ACCT) procedure. It is also of concern that at least seven of the deaths in 2013/14 were prisoners who were being held in Care and Separation Units.
25. In our 2012/13 Annual Report we set out our concerns that although the number of self harm incidents and assaults had fallen overall, they had risen in adult male prisons:

“Furthermore, while the number of self-harm incidents in the adult estate has fallen in total, this is exclusively driven by a very large (and impressive) fall in the number of self-harm incidents in women’s prisons from 11, 516 in 2010–11 to 6,317 in 2012–13. The number of self-harm incidents in men’s prisons rose from 14,769 to 16,370 over the same period. We repeatedly reported concerns about the management of prisoners identified as being at risk of suicide or self-harm. Too many were held in segregation without evidence of the exceptional circumstances required to justify this. Suicide and self-harm prevention processes were often poorly managed with the needs of the individual prisoners subsumed by the requirements of the process.

The fall in the number of assaults appears to result from the sharp fall in the number of young people in custody. From January 2011 to December 2012 the number of young people and young adults aged 15 to 20 who were assailants fell by about 8.5% to 3,350 – but the number of those in this age group in custody fell by more than twice this percentage. The number of adults aged 21 to 39 who were assailants rose by just over 3% to 3,779. Contrary to what might therefore be suggested by the headline figures, the levels of violence in too many adult male prisons have risen. “

26. These figures are concerning not just because of the individual tragedies that each self-inflicted death represents or the harm done to individual victims of assault. These figures are concerning because they are a symptom of a wider inability of the prison service to manage its population safely. The figures demonstrate a loss of control as prisons struggle to manage the pressures on them.

Purposeful activity provision

27. We are disappointed that, other than in a few cases, there no longer appears to be an aspiration to create working prisons.
28. Ofsted join all our inspections and we jointly assess purposeful activity outcomes with them. Our assessment of purposeful activity outcomes for prisoners in 2012-13 gives a concerning picture. Outcomes were not sufficiently good or were poor in over half of all prisons fully inspected, the worst outcome for six years. They were particularly bad in local prisons where we assessed 11 out of 12 as providing outcomes that were not sufficiently good or were poor.
29. We have found that too many prisoners are currently being locked up for too long every day. In 2012-2013, time spent out of cell had reduced, with only 17% of prisoners surveyed in category C training prisons and 15% in category B training prisoners telling us they spent 10 hours out of cell on a weekday. Our random roll checks during the working day found at least a third of prisoners in local prisons locked in their cells and an average of 14% across all the prisons we inspected. At HMP Bristol and HMP Exeter, for example, we found about half the prison’s population locked in cell during the working day. At HMP Brixton we observed considerable variation in time unlocked, ranging from just under 12 hours for most category D prisoners to around three hours for the many unemployed category C prisoners. We also observed significant reductions in the length of evening association in some prisons, introduced as a means of making efficiency savings. In the women’s estate, this means that

access to telephones at times when the women's families are most likely to be available is curtailed.

30. In half of the establishments we inspected in 2012-2013 there were insufficient activity places for the population. The situation was particularly bad in local prisons but even training prisons had a shortage of places. It is of further concern that even where places were available (such as in HMP Holloway and HMP Belmarsh), these were not being used effectively with many prisoners left unnecessarily without work or training.
31. New contractual arrangements for the provision of learning and skills and work in prisons came into force in August 2012. Our inspection reports have documented a mixed picture, with some improvements in the standard of teaching, learning and assessment, but too little emphasis on vocational and employment-related work across the prison estate and too much prison work being mundane, repetitive and insufficient to occupy prisoners throughout the day. The opportunity to allow prisoners to work to commercial standards and develop a good work ethic is too often lost, as is the failure to recognise or record the good employability skills developed by prisoners that could provide evidence of these to future employers.
32. In its 2012/13 Annual Report, Ofsted set out its concerns about training and education in prisons as follows:

"Training and education in prisons are very poor and are failing to support offenders into employment. This contributes to a cycle of reoffending that costs taxpayers billions each year. Very few prisoners are getting the opportunity to develop the skills and behaviours they need for work. Despite some prisons having state of the art facilities, the quality of training and education is not good enough in about two thirds of the prisons inspected in the past four years. In many prisons, training and education comes too far down the list of priorities for prison governors and other senior staff. Accountability for the quality of this provision is weak and must be addressed urgently."¹⁰

33. Our surveys of prisoners demonstrated more negative perceptions among black and minority ethnic prisoners who were less likely to report having at least 10 hours a day out of their cell and less likely to be working than white prisoners. Fewer Muslim than non-Muslim respondents said they were in work. Prisoners who considered themselves to have a disability were less likely to be working or attending education or vocational training and also reported less access to the library, gym, exercise, association and time out of cell than non-disabled prisoners.

Offender management and rehabilitation

34. We welcome the intention to create resettlement prisons and the intention to provide more effective resettlement support to prisoners serving short sentences. However, the ability to create resettlement prisons depends on there being sufficient headroom in the system to place prisoners where they need to be rather than just where there is space. The current level of overcrowding would be a significant obstacle if it were to continue and it is very important that the impact of short term prisoners on licence being recalled is not underestimated in forward population projections.
35. In paragraph 11 above, we referred to the challenge of prison governors managing resettlement contracts that have been commissioned nationally. If a significant number of prisoners live outside the area of the Community Rehabilitation Companies (CRC) or

¹⁰ Ofsted 2012/13, *The Report of Her Majesty's Chief Inspector of Education, Children's Services, Learning and Skills: Further Education and Skills*, 2013

CRCs providing resettlement services in that prison, there is a risk that although the CRC would be contracted to provide a basic level of service to all prisoners, they would not have any opportunity to obtain 'payment by results' bonuses for prisoners from outside their area and so those prisoners might receive an inferior service. This may be a particular risk in women's prisons which, because there are fewer of them, are more likely to hold women from a wider area than is the case for men in male prisons. If for any reason the resettlement services in a prison do not meet the needs of the population held or are inadequate, it will be important that the governor of the prison has the powers to address this directly.

36. HMI Prisons and HMI Probation published their most recent assessment of Offender Management Units in prisons in December 2013.¹¹ This report highlights a number of concerns about the functioning of the offender management model in prisons, and that while many prisons paid good attention to the resettlement needs of prisoners (ie their personal and social circumstances), they paid insufficient attention to the rehabilitation of the prisoner and protection of the public.
37. More specifically, we found that although there was improved integration of the strategic leadership of offender management into the wider functions of prisons, the separation of resettlement and offender management responsibilities was confusing for prisoners and potentially led to poorer outcomes in terms of planned activity and preparations for release. Almost half of the prisons inspected did not have an up to date analysis of prisoner needs on which to base decisions about investment in interventions, and important information about prisoners was held in various places rather than on central case records, and was not communicated effectively. Training for offender supervisors had improved, but they lacked guidance and supervision about what their role should entail and how to improve performance. Planned contact with prisoners was not seen as a priority
38. Many of the concerns identified in this report had been raised in 2012, demonstrating that insufficient progress had been made to implement recommendations previously made. Outcomes for prisoners for resettlement and rehabilitation were no better than the previous year. HMI Prisons and HMI Probation concluded that lack of progress and these persistent concerns cast doubt on the Prison Service's capacity to implement the changes required under the *Transforming Rehabilitation Strategy*.

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¹¹ CJI, *Third Aggregate Report on Offender Management in Prisons: Findings from a Series of Joint Inspections* by HM Inspectorate of Probation and HM Inspectorate of Prisons. December 2013