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of Justice



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Independent Advisory Panel on Deaths in Custody

*Chair: Juliet Lyon CBE
Head of Secretariat: Andrew Fraser*

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www.independent.gov.uk/iapdeathsincustody

The Rt Hon David Gauke MP
Lord Chancellor and Secretary of State for Justice

Dear Secretary of State

Preventing deaths in custody

Following publication of the Justice Committee's Sixteenth Report of Session 2017–19, *Prison population 2022: planning for the future* I am writing to outline the work of the Independent Advisory Panel on Deaths in Custody (IAP), which I chair, and to set out ways in which I hope we can support you and your Ministerial colleagues in your vital role of preventing deaths in custody. The Committee's report touches on a number of areas where the IAP is undertaking work, and I hope that this account offers points of relevance as you consider your response. I would be pleased to discuss these matters with you, and your Ministerial team.

The Independent Advisory Panel on Deaths in Custody

The IAP is a small, independent arms-length body developed after the Fulton review, which established the Ministerial Council on Deaths in Custody. Our role is to act as a primary source of advice to Ministers on how best to prevent deaths in State custody. The IAP is co-sponsored by the MoJ (the lead sponsor), the Home Office and the Department of Health and is uniquely placed to encourage effective ways of working across these three departments. Prisons, approved premises, police custody, secure hospitals, establishments holding people under the Mental Health Act, and immigration centres all fall within our ambit. Panel members have considerable experience in forensic psychiatry, research and statistics, custodial environments and human rights – as well as direct work with prisoners and bereaved families. The IAP identifies and draws on examples of national and international good policy making and practice. We are supported and informed by a broad group of around 200 interested parties, including members of bereaved families and health and justice professionals. Our single objective is to help prevent avoidable deaths, natural and self-inflicted, in custody and to enable the State to fulfil its obligation to protect life.

Reducing the number of short sentences and increasing confidence in community sentences

The Justice Committee welcomed your February 2019 speech where you explained the merits of ending sentences of six months or less. The IAP has undertaken focused

pieces of work, some cited by the Committee in its report, that connect this ambition with that of reducing deaths in custody.

In March 2017 the IAP published a report on preventing the deaths of women in custody¹. This report was supported by over 45 detailed written submissions from professionals across health, justice and policing sectors as well as input from 60 women prisoners including Samaritan Listeners and mentors in HMPs Bronzefield, Eastwood Park, Foston Hall, Drake Hall and Low Newton. One of the main findings in the report was that insufficient attention was being paid to preventative work, mental healthcare, treatment for addictions and effective community sentences which would avoid separation from family, the losses sustained by imprisonment and the uphill battle on release to find somewhere safe to live and a means of earning a living – all of which increase the risk of suicide and self-harm. The IAP recognises – and supports – your focus on reducing shorter sentences for both men and women and believes that adopting this approach would have particularly beneficial outcomes in the women's estate where both the proportion of shorter sentences and the levels of vulnerability are higher. Two sets of figures issued by your department illustrate this starkly: 62% of women and 47% of men in custody are serving sentences of six months or less; and 46% of women in prison have attempted suicide at some point in their lives compared with 21% of male prisoners and 6% of the general population.

Given these concerns, the IAP has recently undertaken a survey of the magistrate mental health champions and bench chairs to get their views on why community sentences and treatment requirements are not used as widely as they might be. This survey was run in collaboration with the Magistrates Association (MA), and we have had a good representative response from across the country. We are in the process of finalising the report and associated commentary with the Chairman of the MA and we will be in the position to share this with you and your officials in the next few weeks. In the meantime, I can confirm that the results present interesting – and, at times, concerning – reading. While there is a lack of confidence among some magistrates in handing down community sentences and treatment requirements, there also appears to be a lack of knowledge of what is available and possible in their areas. We hope that the results of this survey will provide you with achievable ways to work with the judiciary, without compromising their independence, to facilitate better use of such sentences.

Keeping people safe in prison custody

The Justice Committee noted the efforts of the department in seeking to improve the conditions inside prisons – both in terms of staffing and in the culture and physical integrity of the establishments. We agree, of course, that these factors are important in terms of keeping people safe in custody. You will be aware of Keeping Safe², the IAP's consultation with prisoners and subsequent report. This collaboration with Inside Time, Prison Radio and the Samaritans resulted in responses from over 150 people in over 60 prisons across England and Wales. By far the most common issue raised by prisoners was the need for good, trained staff able to build supportive professional relationships as the significant factor in preventing deaths. Some of the other most frequently raised areas include closer attention to early days in custody, greater purposeful activity, better physical conditions, peer support and easier access to families – all of which I know you and colleagues are determined to deliver. A number of prisoners stressed the importance of preventative work and assessing and responding to unmet mental health

¹ <http://iapdeathsincustody.independent.gov.uk/wp-content/uploads/2017/11/Women-evidence-collection-v-0.3.pdf>

² <http://iapdeathsincustody.independent.gov.uk/wp-content/uploads/2017/12/Keeping-Safe-FINAL-Dec-2017.pdf>

needs in the community. One wrote: *'Jail is not a mental hospital. Well it shouldn't be. But it is at present.'*

The IAP's consultation was well received by officials in MoJ and HMPPS, and we have continued to work with our partners in this project to promote the findings and recommendations of the report among those who have responsibility for people in custody. We have discussed with the then Prisons Minister, Rory Stewart MP, and welcomed his support for, a learning event for cross-departmental and service staff, charities and external providers, former Listeners, family members and academics to share best practice and ideas on how to keep people safe. We are currently discussing the logistical details with departmental colleagues, and will keep you informed of plans. We are keen for Justice and Health Ministers to speak at the event to demonstrate the commitment the Government has to preventing deaths in custody, and to outline your priorities in this area.

Indeterminate sentences for public protection

The Justice Committee expressed their concerns regarding people still in prison serving IPP sentences, although their report noted the significant reduction in this cohort since its peak in 2012. The Committee pressed the Government to consider options to resolve the uncertainty of this sentence, and the IAP firmly supports this move. At the last Ministerial Board we agreed to respond to the Prison Minister's request for advice on day-to-day support for IPP prisoners particularly in response to health needs.

The IAP has – in a manner similar to the Keeping Safe consultation outlined above – sought views from IPP prisoners themselves on the physical and mental health impact of the sentence. We have reached out to such prisoners to ensure that the findings and recommendations are directly informed by the experience of those involved, and to provide tangible advice that we hope can be implemented to protect those in custody currently with limited hope of release.

As you would expect, the detailed letters and messages from prisoners enduring this sentence make bleak reading, and underline the impact the lack of certainty has on them and their families. A lack of hope has evidenced links to suicidal thoughts and behaviour and the IAP is concerned that – as the number of prisoners recalled and over tariff increase – this hopelessness, and consequent risk, will only increase in the population. The IAP's work in this regard is near completion and we will share it with you, the Prisons Minister and the Ministerial Board.

Reducing the number of deaths from natural causes

The Justice Committee noted that the proportion of older prisoners in the prison population is forecast to increase, thereby presenting a different kind of challenge for HMPPS in terms of how it looks after a growing number of ill and infirm people, often suffering from dementia. The IAP is interested in the potential impact this demographic shift has for people in these circumstances and those attempting to care for them as well as for deaths in custody. We note that poor use is made of existing provisions for compassionate release. My colleagues on the Panel, Professor Jenny Shaw and Jenny Talbot, have started to focus on all deaths that are not self-inflicted. As you will be aware, deaths from natural causes make up the majority of deaths in prisons. Given the relatively young ages of some people who die from natural causes, we believe that there may be achievable ways of substantially reducing the number of such deaths, and we look forward to working with your officials and those in DHSC in taking this work forward.

Preventing future deaths

Time and again the same or similar recommendations are made by Coroners and the Prisons and Probation Ombudsman following a death in custody on how to best to prevent future deaths – a point underscored by, amongst others, Dame Elish Angiolini in her independent review of deaths in police custody and Lord Harris in his review of young deaths in prison. In 2018 the IAP convened a meeting of custodial investigatory, monitoring and regulatory bodies across departments to determine which of their recommendation, if implemented, would have the most impact on preventing future deaths and what they believed were the barriers to implementation. Since then we have been working with members of the Ministerial Board and bereaved families on how to embed learning and strengthen measures to ensure compliance.

Maintaining prison safety as a priority

Section 4 of the Justice Committee's report analyses the needs for safe prisons, and the measures being undertaken to deliver them. The IAP is currently developing a safety assessment which is planned to help ensure that this priority is given sufficient weight in all significant decisions. This would mean that major new policy and resource plans under consideration would be scrutinised for their impact on prisoners' and staff safety and, if shown to present a risk, then mitigating steps would have to be taken, or plans revised, until you and Ministerial colleagues were satisfied that the obligation to protect life could be met. The safety assessment is designed to have a systemic impact on such decision-making and help to maintain a consistent level of priority for safety in our prisons. Such a proposal would strengthen accountability, reduce the risk of fluctuation and help to prevent suicide, self-harm and violence in custody.

This idea was discussed at the last Ministerial Board. We are now working with officials to trial and refine a safety assessment. We want to make sure that it is not a bureaucratic device but rather a flexible, dynamic way to test new proposals against safety considerations. Once ready, this assessment will offer the department a ready-made tool that can be implemented to help you be assured that safety underpins all the advice you receive from your officials.

I have asked our secretariat to arrange the next of my regular meeting with the Prisons Minister. I have written on behalf of the IAP to Robert Buckland QC MP to congratulate him on his appointment and to welcome the considerable experience he brings to the role. I hope that we can meet soon to discuss further some of the areas outlined in this overview. The IAP's role is to advise and support you and Ministerial colleagues to meet your obligation to take active steps to protect life.

With kind regards



Juliet Lyon CBE, Chair of the Independent Advisory Panel on Deaths in Custody

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cc. Robert Buckland QC MP, Minister of State