

*Independent Advisory Panel on Deaths in Custody*

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Dear Minister,

I am writing on behalf of the Independent Advisory Panel on Deaths in Custody (IAPDC) to outline our key priority areas relating to prison capacity, safety, and access to mental health services and ahead of the upcoming Ministerial Board on Deaths in Custody (MBDC) meeting on 13 May 2024. These issues cut across government departments and agencies and require strong, strategic and joined-up leadership to significantly reduce the troublingly high number and rate of deaths in custody.

**National Regime Model and Business Planning Process**

The Panel have corresponded with the HMPPS Director General of Operations welcoming the National Regime Model but also conveying the Panel's concerns and offering advice. The central role of purposeful activity and time out of cell in keeping safe prisoners who are vulnerable to self-harm and suicide is well understood and the Panel see the focus and commitments required by the model as an important step towards improving availability and access. However, the Panel note that the model is based on a requirement to deliver only "*best possible*" outcomes in current conditions and that, where mandated minimum standards have been introduced, these fall far below what is needed. Examples include the minimum requirements for one key worker one to one meeting per month and a minimum of just two hours out of cell time each day.

Given that the prison estate continues to operate at around 99% of its Usable Operational Capacity,<sup>1</sup> with a majority of prisons officially classified as overcrowded,<sup>2</sup> it is unavoidable that this will impact what is achievable to keep prisoners safe. This is reflected in repeated findings from HMIP inspection reports.<sup>3</sup> Whilst the Panel welcome the fact that prisons will be monitored on actual attendance at, rather than just the offer of, planned activity, our advice is that progress is needed towards reporting against, best practice informed acceptable minimum standards and targets. This will ensure that service wide performance gaps can be properly understood. We consider that recording all out of cell time and robust quarterly and year end data-based reporting are key to tracking progress and ensuring delivery.

It remains the Panel's firm advice to Ministers that tackling current prison overcrowding, and avoiding future overcrowding, is fundamental to realising the good intentions of the NRM by enabling prisons to consistently deliver regime, enable effective management and mitigation of risk factors for self-harm and suicide, and optimise rehabilitation. This includes ensuring access to physical and mental health treatment, addiction and other support services,

purposeful activity, adequate outdoor and exercise opportunities, effective key worker support, comprehensive sentence and resettlement planning, and regular family contact.

### **Management of prisoners with mental ill health**

We were deeply concerned by the findings of two reports published earlier this year which highlighted the unacceptable impact of the chronic lack of mental health inpatient beds available to acutely unwell prisoners. A report by the Chief Inspector of Prisons found that severely mentally unwell individuals “*linger in prison for weeks, often months and even, in the worst cases, for more than a year waiting for their transfer to be completed*”.<sup>4</sup> Concerningly, of the 185 patient cases looked at across 21 prisons, less than 15% of patients were transferred within the 28-day target, when measuring from the most relevant reference point – that is, when it was identified their mental health needs could not be treated in prison.

Further, a report by the Independent Monitoring Board (IMB) found an overreliance on the use of care and separation units (i.e. segregation units) to manage the needs of prisoners with mental ill health due to a lack of alternative provision in the community.<sup>5</sup> The report also questioned the prolonged use of segregation for prisoners serving a sentence of Imprisonment for Public Protection (IPP). This raises significant concerns given the vulnerabilities of IPP prisoners and the sharp increase in deaths by suicide among this cohort.

We welcome the fact that this issue will be a central focus for discussion at the upcoming MBDC meeting. Prisons are not suitable or safe environments for people experiencing severe mental illness, and holding acutely unwell people in prison carries a heightened risk of self-harm and/or suicide. This is particularly the case where unwell prisoners are held in segregation units. Holding acutely unwell prisoners in unsuitable conditions without access to necessary treatment and care risks violating Article 3 of the European Convention on Human Rights (ECHR). Delay in transfers may also impact on the safety and wellbeing of prison staff who, despite their best efforts, do not have the skills or training to safely manage the needs of prisoners with complex and often co-morbid diagnoses.

The draft Mental Health Bill, which would enact a statutory 28-day time limit for the transfer of such persons to hospital for treatment, appears to have been stalled since 2022. We are deeply concerned that without such a statutory deadline, the 28-day target will continue to go unmet with unacceptable consequences for prisoner safety. This issue requires a joined-up approach and we have written to the Minister for Mental Health and Women’s Health Strategy to understand what steps her department is taking to ensure the delivery of healthcare for individuals requiring transfer. It is the unequivocal advice of the Panel that, with or without the enactment of new legislation, the 28-day rule must be realised in practice, and that urgent action is vital to ensure the availability of beds to facilitate this.

### **Presumption of community sentence under 12 months**

The Panel welcome the measures in the Sentencing Bill to “*help low risk offenders escape the merry-go-around of short prison terms and turn their lives away from crime*”, as part of efforts to ease pressures on prison capacity.<sup>6</sup> The MoJ has said those given a suspended sentence would be “*strictly overseen*” by the probation service and would be better supported.<sup>7</sup>

The Panel are well aware that this measure will have a relatively modest impact in terms of total numbers on capacity pressures, particularly within the context of long-term sentence inflation.<sup>8</sup> However, we note that prisoners on short sentences place considerable and disproportionate demands on prison committal processes, physical and mental health, and addiction services, such that a reduction in numbers can be expected to yield a disproportionate benefit for service delivery.

The corollary of this is that a high percentage of short-term sentence offenders will demonstrate one or more significant vulnerabilities and it is important to note that these offenders may be more vulnerable to self-harm and suicide in the community. The Panel are, therefore, concerned about the lack of universal availability of programmes to deliver Community Sentence Treatment Requirements (CSTRs) across the country. It is essential that the MoJ recognise the critical importance of comprehensive probation input and access to drug, alcohol, mental healthcare, and other support to keep offenders safe. The Panel would, therefore, be grateful to know what steps your department is taking, in partnership with NHS England, the Department of Health and Social Care, and HMPPS to ensure that CSTRs are working effectively across England and Wales, and that treatment services have the capacity and resources to meet the expected increase in demand.

### **Drug-related deaths.**

The Panel were very concerned by the Prisons and Probation Ombudsman's (PPO) announcement of six recent deaths at HMP Parc, at least four of which it appears were drug related. The risks of fatality associated especially with so-called new psychoactive substances (NPS) – including heightened suicidal ideation – have been clear for some considerable time. The PPO's annual report for 2022/23 stated that in that year they began investigations into 65 other non-natural deaths, most of which were drug related. This was 28 more than the previous year.<sup>9</sup> 20 deaths awaiting classification are also expected to be identified as drug related. We strongly support the PPO's advice to prisons that they regularly review their drug strategies to identify key weaknesses and take steps to ensure staff vigilance and a rapid response whenever a prisoner is identified as being under the influence of drugs.

In response to the self-inflicted death of Anthony Clacher at HMP Guys Marsh in March 2018 and the deaths of other prisoners whilst under the influence of NPS, the prison developed a local policy to ensure welfare checks and an initiative to provide further support and monitoring.<sup>10</sup> In February 2022, in response to a Prevention of Future Death report made by the Senior Coroner for Dorset in the Inquest into Mr Clacher's death, HMPPS stated that the National Drug Strategy Team had been gathering information on local initiatives implemented around the country, including those in place at HMP Guys Marsh, and were in talks with NHSE about rolling out some of these on a national scale. More generally, the response stated HMPPS' ongoing commitment to learning from local practices and using these to inform the development of national policies to drive work to save lives.<sup>11</sup>

We would be grateful to receive an update on progress made since, and recommend sustained attention to ensuring that arrangements for joined-up prison and healthcare vigilance, monitoring, and treatment of prisoners found under the influence of drugs (backed by robust training) are in place and operating effectively in practice.

### **Prison capacity and safety impact assessment**

The Panel continue to provide input and advice to support the efforts to address and mitigate the effects of overcrowding, which is fundamental to keeping prisoners safe. The Panel firmly believe that a longer-term strategy is needed. Our advice is that the current prison capacity crisis, and its inextricable impact on prisoner and staff safety, demands a step change in policy making processes to ensure that the prison service is never in this position again.

We have previously recommended that all policy decisions impacting prisoner or staff safety be underpinned by a properly informed assessment at a formative stage in the decision-making process. In 2019, against the background of a decrease over seven years in staff numbers and experience, a rise in the use of NPS, and a concerning increase in the number and rate of self-inflicted deaths in prisons, the Panel recommended that the MoJ and HMPPS introduce a process of Safety Impact Assessment (SIA) to ensure that the safety and welfare

of staff and prisoners is put at the heart of all policy decisions.<sup>12</sup> Following a pilot, HMPPS adopted the use of SIAs for large change programmes and policy frameworks in 2021. Last year, the Panel were pleased to hear that an HMPPS review had concluded that the SIA process was playing a positive role. The Panel also welcome the Home Office commitment to consider learning from the SIA process in the immigration detention context.

An examination of impact assessments for proposed legislation effecting the prison population and the current application of modelling tools, suggests attempts to forecast the impact on prisoner numbers are currently limited. This is particularly so where a number of proposed changes over different timeframes are under consideration, for example, the Sentencing Bill 2023, the Criminal Justice Bill 2023, and the Victims and Prisoners Bill 2023, all of which contain a range of measures likely to affect the prison population.

To avoid capacity crises in the future – and the unacceptable, yet inevitable, consequences for prisoner safety – it is vital that Ministers and policymakers implement defined processes to properly understand the impact of decisions on the prison population, to identify and take account of the safety implications of increases in prison numbers for prisoners and staff, and to proactively mitigate adverse safety impacts. The Panel are currently undertaking research into current practices and available best practice on capacity modelling and will report to you and MBDC co-sponsors in due course.

Ultimately, a decision-making redline must be established that custody numbers cannot be permitted to exceed safe capacity. There must also be an unqualified commitment to ensuring that risks to the safety of prisoners and staff associated with increases in prison numbers are identified and mitigated in advance. In the Panel's view, such an assessment is of such fundamental importance that it must be reflected in statute, but it must in any event be firmly embedded in policy at the highest level. A firm ministerial commitment to this end would be significant and a real testament to making safety a first priority.

The Panel look forward to discussing these issues further at the upcoming meeting of the Ministerial Board. I would also welcome the opportunity to meet with you to explore all of these areas further and discuss how the Panel can continue to support the efforts of you and your officials to address the significant challenges and opportunities facing the prison service.

As ever,



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<sup>1</sup> MoJ, 'Prison population figures: 2023', 6 January 2023, available [here](#).

<sup>2</sup> UK Parliament POST brief 58, 'Prison population growth: drivers, implications and policy considerations', January 2024, available [here](#).

<sup>3</sup> For example see here for doubling up of cells designed for single occupancy: HMIP, 'Report on an unannounced inspection of HMP Dartmoor by HM Chief Inspector of Prisons', 6 July 2023, available [here](#).

<sup>4</sup> HMIP, 'A thematic review of delays in the transfer of mentally unwell prisoners', February 2024, available [here](#).

<sup>5</sup> IMB, 'Segregation of men with mental health needs: A thematic monitoring report', January 2023, available [here](#).

<sup>6</sup> MoJ, 'Victims to be protected through Sentencing Reforms', 14 November 2023, available [here](#).

<sup>7</sup> Ibid.

<sup>8</sup> Impact assessment, 'Sentencing Bill – Changes on the Presumption of the suspension of short sentences', November 2023, available [here](#).

<sup>9</sup> PPO, Annual Report 2022/23, September 2023, available [here](#).

<sup>10</sup> Prevention of Future Death (PFD) Report in the case of Anthony Clacher, 22 October 2021, available [here](#).

<sup>11</sup> HMPPS response to PFD report in the case of Anthony Clacher, 2 February 2022, available [here](#).

<sup>12</sup> IAPDC, 'A proposal for embedding staff and prisoner safety in all major decisions', September 2019, available [here](#).