

Lynn Emslie
102 Petty France
7th Floor
London
SW1H 9AJ

MoJ ref: ADR114681

20 May 2024

Dear Lynn,

INDEPENDENT ADVISORY PANEL ON DEATHS IN CUSTODY

Thank you for your letter of 26 April 2024 regarding the key priorities of the Independent Advisory Panel on Deaths in Custody (hereafter the Panel) relating to prison capacity, safety and access to mental health services.

I have read your correspondence with care and acknowledge your concerns on the number and rate of deaths in custody.

National Regime Model and Business Planning Process

I welcome the Panel's positive feedback on the National Regime Model (NRM) we have recently introduced to prisons. On my behalf, His Majesty's Prison and Probation Service (HMPPS) officials presented the Model to the Panel in April, and I have asked them to return with an update within six months. I welcome the Panel's view that the NRM is an important step towards improving regimes and it is already driving standards. In its first year it has delivered a first ever minimum expectation for time out of cell and doubled the previous expectation for time in the open air.

Prisons must also commit to expand regime in new areas by including new extra-curricular enrichment activities and structured on-wing activities. Prisons must also develop their own local commitments for the first-time including setting targets for the percentage of their population in full time and half-time activities and the average number of regime sessions each prisoner will receive per week.

New commitments are a minimum expectation, not the scale of our vision, and prisons that can deliver more have been instructed to do so. Each prison Governor must agree their plans with their Prison Group Director (PGD) and Area Executive Director (AED) to ensure each commitment and overall plan is stretching but sustainable. Minimum expectations are a mandatory standard to exceed wherever possible and those that cannot reach a standard by May 2024 must agree their best response as an interim, whilst working towards the expectation. Regime plans must be reviewed quarterly and again the AED and PGD must satisfy themselves that prisons are doing everything within their power to achieve the mandated expectations.

At the start of each annual regime planning cycle, new national priorities and core expectations will be set that push delivery forwards so that planning becomes a cycle of continuous improvement. Our messaging

will be consistent – that prisons must exceed minimum expectations and deliver the best regime possible, not deliver the best possible response to the minimum expectations.

In the case of key work, which the Panel rightly identifies as critical, the national model is under review and we will shortly begin consulting with Trade Unions on future key work delivery. The expectation for 2024/5 is an interim position to improve delivery but prisons have been instructed to deliver more than the minimum for prisoners in their priority cohorts. Engagement will commence soon to develop the future key work expectations.

Management of Prisoners with mental ill health

We welcome the findings from the Independent Monitoring Boards (IMB) and HM Inspectorate of Prisons recent reports on the management of prisoners with acute mental health needs and recognise that too many vulnerable offenders who meet the threshold for detention under the Mental Health Act, and require a transfer to hospital, still experience delays in accessing the specialist care and treatment they need.

I would like to assure you that this Government remains firmly committed to introducing the Draft Mental Health Bill when parliamentary time allows. In the meantime, we continue to work with our health partners to reduce unnecessary delays, including driving forward work to introduce a non-statutory independent role designed to improve oversight and monitor delivery of the 28-day time limit, as set out in NHS England's Good Practice Guidance.

At an operational level, NHS England are taking steps to address some of the barriers to timely transfers from prison to secure hospital, including improving the way data is collected and monitored, reviewing and improving the referral process, and providing training to prison staff. They have also established the Mental Health and Justice Strategic Advisory Group to provide clinical leadership, advice and oversight across the secure pathway.

Segregation is an absolute last resort and I agree that nobody should be in prison solely because of their poor mental health. We remain committed to ending the use of prison as a 'place of safety' for those who are awaiting treatment or assessment under the Mental Health Act, and to tackling inappropriate remands to prison solely on the grounds of mental health under the Bail Act.

Together with His Majesty's Courts & Tribunals Service and NHS England, we are piloting a regional Health and Justice Hub in the North East to improve the way that courts, health services and prisons work together at a local level to better support defendants with severe mental illness, with the aim of smoothing the pathway into the right treatment for defendants, whether that is in hospital or in the community.

More broadly, we are continuing to explore how we can further support the judiciary and increase awareness of alternatives to custodial remand, as well as aligning with the expansion of the Bail Information Service which will ensure judges are given timely and accurate information to be able to make well-informed decisions on bail and custodial remand under the Bail Act.

I agree that it is vital mental health needs are identified at the earliest opportunity. We are continuing to work with NHS England and the Home Office (HO) to explore how we can strengthen NHS England's Liaison and Diversion services, which are in place across all police custody suites and courts to support people with mental health needs to access the treatment and care they need from their first point of contact with the criminal justice system.

The issue of Imprisonment for Public Protection (IPP) sentences remains a top priority for the Lord Chancellor and HMPPS. That is why we introduced measures in the Victims and Prisoners Bill to restore

greater proportionality to IPP sentences by reducing the qualifying period that triggers the duty to refer an IPP licence to the Parole Board for termination from 10 years to three years and providing a clear pathway to a definitive end to the licence.

The Government continues to focus on the rehabilitation of IPP prisoners via the IPP Action Plan. The Plan provides a renewed focus on supporting those serving IPP sentences in both custody and the community. It sets out actions to help prisoners progress towards safe release, by ensuring each prisoner has a sentence plan tailored to their individual needs.

Presumption of community sentence under 12 months

The presumption against short custodial sentences presents an opportunity for us to support more people to tackle the health-related causes of their offending behaviour in the community, including through increased use of Community Sentence Treatment Requirements (CSTRs).

From October to December 2023, there were 2,010 Drug Rehabilitation Requirements commenced – an increase of 34% from the same period in 2022. In the same period, Alcohol Treatment Requirements increased by 17.6% with 1,620 being started, and 1,030 Mental Health Treatment Requirements (MHTRs), an increase of 68.6% as the implementation of new treatment sites are rolled out.

Together with partners in NHS England and Department of Health and Social Care (DHSC), we are working to increase the availability of treatment and ensure that CSTRs are working effectively. This includes work to improve the pre-sentence report process, through a 'Pathfinder to Improved Pre-Sentence Advice' project, launched in Autumn 2023. Effective and timely pre-sentence reports play a major role in ensuring that community sentences, including CSTRs are targeted and effective. We also continue to support NHS England in their rollout of primary care MHTRs, which will support more offenders with lower-level mental health needs, which is on track to reach 100% coverage across England's criminal courts by late 2024.

DHSC have also invested £532m to increase substance misuse treatment provision in all Local Authorities in England, including having recruited dedicated criminal justice focused staff to increase the quality of treatment assessment and delivery.

We have increased capability for probation to drug test those on Drug Rehabilitation Requirement (DRR) and have recruited over 50 Health and Justice Partnership Coordinators to improve join up between probation and treatment providers, HMPPS and DHSC are also developing a good practice framework, which set out the principles which underpin effective working between probation and treatment providers for those on an Alcohol Treatment Requirement or a DRR.

Drug-related deaths

In line with established protocols for deaths in custody, I am not able to comment on individual cases until the relevant investigations from the Prisons and Probation Ombudsman and inquests have concluded. However I share the Panel's concerns about the tragic deaths at HMP Parc, the serious threat that drugs present in custody, and the corresponding importance of ensuring all prisons are vigilant in monitoring this threat and proactive in responding. HMP and YOI Parc has taken a range of actions to gather intelligence on drug entry points and movement within the prison, and staff on site are working closely with partners to provide support for at risk prisoners to improve safety and security.

More broadly across the prison estate, we are making progress on initiatives to help tackle the supply of drugs into prisons, identify people at risk, and refer them into treatment – working closely with our health partners. Our £100m investment in tough security measures is helping tackle the supply of illicit drugs into

prisons. This includes X-ray body scanners, which are in every prison in the adult male closed estate. To prevent the smuggling of drugs such as psychoactive substances through the mail, we have introduced next-generation drug trace detection machines. These have been rolled out to every public sector prison, and two are now in place at HMP Parc. To ensure we can effectively identify and respond to drug misuse, all public prisons have been provided with access to forensic testing of items seized or found within the estate. Private prisons are able to access the same terms and conditions, by contracting directly with the supplier. Any prisoner suspected of being under the influence of drugs can be subjected to a mandatory drug test to enable the identification of prisoners requiring referral to treatment services. HMPPS has also joined a cross-government taskforce to monitor and tackle the emerging risks presented by synthetic opioids.

To help motivate prisoners to live drug-free in prison, we have dramatically expanded the number of prisons with an Incentivised Substance-Free Living (ISFL) unit, where prisoners commit to living drug-free with incentives and regular drug tests. 80 prisons now have an ISFL, up from 25 in summer 2022.

You raise the importance of staff capability, which is vital to ensure we can appropriately support prisoners at risk of substance misuse. We are boosting training for staff to better spot and support those with substance misuse issues, as well as rolling out training for prison staff to administer nasal naloxone on a voluntary basis. The New Psychoactive Substances Toolkit for prison staff has been promoted across the estate, and HMPPS are currently reviewing the guidance for staff responding to prisoners under the influence, as well as on the signs of overdose. Alongside this, and in line with the recommendation in your letter on ensuring joined-up working across the diverse activity to tackle drugs in prison, we are recruiting over 50 Drug Strategy Leads in key prisons. These new posts will support a holistic approach across treatment and security activities in prison and ensure that local drug strategies are implemented effectively. The measures taken at HMP Guys Marsh, raised in your letter, have been disseminated to our Drug Strategy Leads as an example of good practice, alongside other examples from the wider estate. Guidance on drugs in prison and probation has also been updated to reflect our learning on good practice.

Prison capacity and safety impact assessment

Our number one priority is protecting the public and cutting crime by taking dangerous criminals off the street. We can only do this by always ensuring we have sufficient places to hold all those sentenced to custody. This is why we are delivering the largest prison building programme since the Victorian era – with 10,000 of the 20,000 additional places to be delivered by the end of 2025. As of May 2024, we have already delivered c.5,900 of the additional 20,000 places.

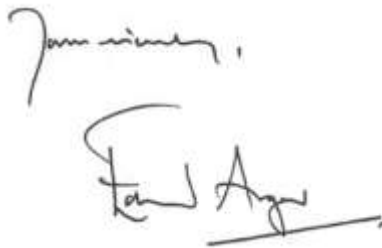
We continue to pursue the package of longer-term measures the Lord Chancellor announced on 16 October 2023 to reform the justice system and to address prison capacity challenges. The measures include: the extension of the Early Removal Scheme, introducing a presumption to suspend sentences of 12 months or less, curtailing the licence period for IPP sentences and extending the use of Home Detention Curfew. On 11 March 2024, the Lord Chancellor announced the next steps in our plan, to allow us to go further and faster in removing Foreign National Offenders (FNos). This includes expediting prisoner transfers with our priority partners such as Albania and the creation of a new taskforce across the HO and Ministry of Justice to change the way we process FNO cases radically.

The safety and decency of our prisoners is paramount. We continually monitor prison conditions, and take places on and offline depending on safety, stability, staffing levels and maintenance needs. We will not take decisions that create unacceptable risks to prison safety – but it is right that we explore every measure to deal with immediate capacity pressures, as the public would expect, while we continue with delivering new prison places.

As you are aware, safety impact assessments (SIAs) were introduced for Policy Frameworks and change programmes from July 2021 and are now a well-embedded process. The SIA assessments consider a breadth of issues and the supporting SIA panels have the right membership, level of oversight and decision-making authority to ensure that safety is at the heart of our policy-making. SIAs ensure that any inconsistencies and conflicts of safety impacts between major policy areas and/or programmes can be taken into account, prompting safety risks to be mitigated and producing an audit trail through which teams can be held to account for managing those impacts.

In addition to this, publishing impact assessments is routine alongside the legislative process. The current estimates for the impact of the announced measures on the future population have been published and can be found on the gov.uk pages on each Bill. As the Bills progress through Parliament, if an update to these estimates and impact assessments are required, then these will be updated and republished during Bill progress. I look forward to receiving the report you are conducting into capacity modelling.

Finally, I would like to thank you for your continued interest and expertise across each of these issues.

A handwritten signature in black ink, appearing to read 'Edward Argar', with a horizontal line extending from the end of the signature.

RT HON EDWARD ARGAR MP