

Consultation on the Independent Monitoring of Prisons

Question 1. Is the monitoring role of Visiting Committees for Scottish Penal Establishments required to complement the scrutiny role of HM Inspectorate of Prisons?

The Howard League for Penal Reform in Scotland (HLS) answers “Yes” to this question. The role of VCs, however, needs to be strengthened and changes put in place to make them more effective, as per the recommendations of the 2005 Review of Prison Visiting Committees which were almost all accepted in March 2007 by the then Scottish Executive.

The background to this consultation is the Government’s response to the Crerar Review which confirmed that there will be, in many circumstances, a continued need for external scrutiny and that the way it is undertaken should be improved, while rationalising and removing duplication in the scrutiny landscape.

In answering Question 1, which of course is based on the assumption that there is agreement that prisons must continue to be scrutinised, we are asked to consider whether monitoring as well as inspection is required and also, by implication, if the Visiting Committees for Scottish Penal Establishments (VCs) continue to function, whether their role would duplicate that of HM Inspectorate of Prisons for Scotland (HMIPS) or could improve the way scrutiny is undertaken.

Definitions of “Inspection”, “Monitoring” and “Scrutiny” are on P24 of the consultation paper. Both bodies play a part in scrutiny but only HMIPS inspects and only VCs monitor. This is clear because, as is said on P7, HMIPS carries out full inspections of each establishment every 3-4 years, whereas VCs monitor the establishment to which they are connected on a fortnightly basis. The former is periodic and targeted, the latter regular, almost continuous.

This shows that VCs do have a complementary role to HMCIPS. However, is this complementary role required? There is a suggestion on P14 that there may in future be greater overlap between HMCIPS and VCs’ roles. HLS cannot envisage the capacity of HMCIP being increased to the level where this overlap is so great as to allow the detailed monitoring undertaken by VCs (1459 VC prison visits in 2009/10) or the taking up of individual cases (1110 applications in 2009/10) as is currently done by VCs. The overlap should of course mean excellent communication and co-operation between the two bodies.

There remains a need for monitoring. We understand this is recognised in England & Wales, Northern Ireland and overseas by the Optional Protocol to the Convention against Torture (OPCAT). By picking up, as it says on P20, “issues, problems and complaints as they undertake a tour of the prison” and by “these matters [being] dealt with by the VC member there and then” and not becoming part of formal processes, this must save SPS time and money. The VC monitoring can pick up issues that may be of more general relevance than a personal complaint a prisoner might make. The VC discussing such an issue with the Governor may be a more appropriate, quicker way to have the matter dealt with. VCs can pick up on matters, for example, to which prisoners may have become resigned and so are not raising, despite them being related to poor standards. VCs raise issues at the lowest possible level and allowing as early as possible the prevention of escalation of discontent or further deterioration of standards. This

must also save staff time in dealing with unnecessary paperwork. Early warnings of this sort should be a useful source of intelligence for Governors and staff. There is a suggestion (P18) that voluntary and other external organisations operating within prisons “provides a degree of transparency about how prisons are operating” but this is ad hoc, unstructured and, being informal, are no substitute for a formal monitoring role.

One of the key features of VCs which distinguishes them from HMCIPS is the number of volunteers (c250) involved. Without volunteers it is unlikely there could be such regular monitoring across all establishments as VCs are currently statutorily required to make.

Importantly, as these volunteers are drawn from the community and have diverse backgrounds this makes VCs an important expression of democracy.

The element of the VC role “to hear and investigate any complaint which a prisoner makes” could perhaps be said to be unnecessary as the Scottish Prisons Complaints Commission (SPCC) only had 2.4% of formal complaints referred to it in 2009-10. This suggests the SPS procedures worked well and we are told they have been improved since then. Also, as the paper points out, there are a number of ways prisoners can access advice and support. However, none of these are independent of SPS, unless perhaps the Listeners Scheme and the Chaplains could be said to be so to some degree.

Despite having these other avenues, prisoners do raise complaints informally with VC members (numbers up 15% 2009/10 from previous year), so there is a need for this independent route to remain open to them. Just as the Listener Scheme “acknowledges that for some prisoners it is easier to speak to their peers....than to members of staff.” [P18] so we should acknowledge that in relation to making complaints it may be easier to talk to a VC member. Another advantage is that complaints taken to a VC member can be dealt with immediately and without recourse to formal procedures, enhancing the prisoner’s experience and saving time of SPS staff, and potentially of SPSO.

VCs can engage with the most marginalised, inarticulate prisoners, as such prisoners may have access to VC members more readily than other external bodies. This of course depends on the VC functioning as best it can and the 2005 Review recommendations being implemented.

All the above shows there is a requirement for VCs to continue to carry out their monitoring role, though with changes and improvements. It also shows VCs to be complementary to HMCIP.

Question 2. Should visiting committees be developed as envisaged by the 2005 Review of Visiting Committees, and re-established as Independent Monitoring Boards?

The HLS answers “Yes” to this question.

The 2005 Review concluded that “VCs perform an important and valuable role”. The only hint in this document that might alter that view is that in future there might be greater overlap with HMCIP. This is vague. As we say above, HLS cannot envisage the capacity of HMCIP being increased to the level where this overlap is so great as to allow the detailed monitoring undertaken by VCs or the taking up of individual cases as is currently done by VCs.

The 2005 Review made the recommendations for consistency and independence, already referred to, all of which we endorse and believe are essential to improve the effective functioning of VCs. We are told on P11 that a number of these have already been implemented by the AVC. Those not yet implemented are not in their gift, these are the transfer of appointments to Community Justice Authorities, the budget being transferred to the Scottish Government Directorate and the name change. Another key recommendation perhaps still to be implemented is greater consistency in good practice.

If Councillors are to be appointed this should be on the same basis as any applicant i.e. by open recruitment using the agreed appointment protocol.

P7 tells us that “The Scottish Government’s scrutiny priorities policy suggests the need for external scrutiny services where those services are focused on adults in need of support and protection-including all adults in the care of the state”. As they are dealing with “adults in need of support and protection” it is important to ensure VC members are adequately trained and supported in the advocacy role and in Human Rights.

Question 3. Could the Government integrate the monitoring functions of visiting committees into HM Inspectorate of Prisons and remove visiting committees as separate public bodies?

The HLS answers a qualified “No” to this question. This qualification is because we do not believe we have adequate information on this option. One positive would be that if VCs were under the wing of HMCIPS they would remain independent from SPS, the body being scrutinised. However, we doubt whether there is in HMCIP the experience and expertise to recruit, select, train and support volunteers to effectively integrate VCs with HMCIPS. If volunteers were not used then the number of Inspectors would have to be substantially increased to allow the volume of visits currently undertaken by VC members.

Given the very small budget on which VCs are run there would be no financial case for reducing the number of public bodies by removing VCs as a separate public body. Nor would it be any easier for the public to access services. As VCs are closest to potential service users they should remain as a separate part of the landscape.

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