



HMIPS
HM Inspectorate of Prisons for Scotland
INSPECTING AND MONITORING

News Release
HM Chief Inspector's Annual Report 2021-22

During this reporting year, the COVID-19 pandemic continued to exert its effects throughout Scotland and the wider world. The pandemic has been one of the most challenging periods for those living and working within prisons and those who inspect and monitor. Mercifully, catastrophic predictions of hundreds of fatalities in prison never came to fruition; thanks largely to the swift response from the NHS and the Scottish Prison Service (SPS). The bad news was that prisons became places of containment, rather than rehabilitation.

The tension between European Convention on Human Rights (ECHR) Articles 2, 3 and 8 in the pandemic was fundamentally the difficulty of ensuring that transmission of the virus was minimised (Article 2) against the definition of ill treatment (Article 3), and the need to respect family life (Article 8). The guidelines provided for prisons rightly placed an emphasis on the obligations under Article 2.

Lives were undoubtedly saved, and in many prisons, levels of violence reduced, but there were immediate and longer-term costs, both direct and indirect, that have yet to be fully evaluated or perhaps even recognised by the wider public. As I indicated in last year's report there is a risk that locked-down prisons are seen as safer and better places, but that crucially misses the adverse impact on mental health and rehabilitation. The question remains how to ensure Scottish prisons are both safe, humane and rehabilitative.

As the pandemic weakened its grip, I became increasingly concerned by the disparity of COVID-19 restrictions between prisons and the wider community. Under the principle of equivalence, people in prison should be afforded provision of, or access to, appropriate services or treatment which are at least consistent in range and quality with that available to the wider community. The requirement of close contacts to isolate for a minimum of 10 days continued long past the community requirements; maintaining a set of health restrictions so out of step with what is required for safe management of the population risks an adverse reaction. Prisoners, who may well have been double vaccinated and negative from COVID-19, were isolating for disproportionately long periods. It is worth remembering what COVID-19 isolation requirements meant for Scottish prisoners – being kept behind their cell door for most of the day, for at least 10 days, often longer. Under the Mandela rules, prisoners should be offered at least one hour of fresh air and two hours of meaningful interaction. This simply was not always met. It amounted to social isolation for significant periods and risked breaching ECHR requirements under Article 3. The consequences of such prolonged isolation cannot be overstated.

Within that context, the welcome lifting of all national restrictions means that there is now no reason why prisons cannot return to regimes at least as open as they were before the pandemic. Continuing extreme restrictions for any cohort cannot be the answer in a post-or normative COVID-19 world. Importantly there is also the opportunity to review and reset after a difficult two years and build on the creativity and energy generated during the pandemic, to make best use of technology to build back better. The aspiration must not be simply to return to pre- COVID-19 levels of rehabilitation-focussed activity, for example, but to offer prisoners far more than that. There were too many inherent blockers to progression for prisoners within the system prior to the pandemic for just returning to pre-COVID-19 ways of operating to be considered acceptable.

COVID-19 also placed a spotlight on children in prison. HMIPS became concerned at the treatment and conditions experienced by children in prison during COVID-19 and conducted

a health and wellbeing survey in the Year of Childhood. As defined by international standards recognised by the UK, solitary confinement of children is prohibited and recognised both as an amplifier of trauma in judicial detention and as a source of trauma in itself. Our survey resulted in a proposal to the Scottish Government to expedite the removal of all those aged under 18 from prison custody. This would be fully in line with the Scottish Government's commitment to A Rights-Respecting Approach to Justice for Children and Young People: Scotland's Vision and Priorities. "We welcome the Youth Justice Vision, and the recent approval by the High Court of the new sentencing guideline for young people developed by the Scottish Sentencing Council, as positive first steps.

Scotland has a high rate of imprisonment and a rising rate of deaths in prison custody. In November 2021, HMIPS published our Independent Review of the Response to Deaths in Custody after two years of research. Two pillars of trauma-informed practice are choice and control; the Review showed clearly that families bereaved through a death in prison custody, despite best intentions by the authorities, had neither. The review recommended a wide-ranging set of systemic, practical, and compassionate changes, but in particular recommended that a separate independent investigation should be undertaken into each death in prison custody, supplementary to the existing investigative framework. In addition, the Review recommended the commissioning of a comprehensive review into preventing deaths in custody that would directly involve families. We welcome the Scottish Government's commitment to implement the review's recommendations and that work is actively underway to consider which organisation might best lead in providing additional scrutiny around deaths in custody.

Our inspections of court custody this year reported on a wide disparity between units, ranging from cells that frequently contained significant graffiti, and in some cases a lack of privacy in using toilet facilities, to modern purpose built units that in contrast were clean and graffiti free. The care by individual staff working in court custody units continued to be impressive where, in a busy and often uninviting subterranean environment; they did their best to make sure custodies were treated with dignity and respect.

The Prisoner Escort Custody Services contract has experienced significant staffing challenges and we witnessed the poorest overall service performance by GEOAmev since being awarded the contract in January 2019. With multiple failures to meet their contractual requirements the impact on missed hospital appointments, children arriving very late into prison, and women being transferred in the same vehicles as men was visibly concerning. We were encouraged to see some improvement in performance later in the year, but issues remain far from fully resolved.

Indeed, despite many examples of good practice, for example the growth of recovery cafes and greater use of technology to support family contact, the entrenched problems we have identified over recent years have not disappeared. The rise in remand, overcrowding, social isolation, an ageing estate, limited access to purposeful and rehabilitative activity, the backlog in offending behaviour, work, alcohol and substance issues, and inequitable access to good health remain highly problematic.

If prisons are to continue to be an essential component of a successful justice system that is trusted by the public to keep them safe, the ambition must also be to go further. Making sure that governors, education providers and the NHS do everything within their power to enhance the likelihood of a crime-free life, and reduce the risk to the community on liberation. To their credit, all of these issues are being reviewed to determine the best use of resources in a system that cannot exert influence over the number of people entering their doors. A bold and brave transformational justice agenda, including removing children from prison, reducing the reliance on remand, considering recovery as a presumption of liberty, increasing digitisation, and a full review of the out-of-date Prison Rules, could allow Scotland

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to lead the way again in enlightened justice and penology. With the added possibility of being able to close some of the aging buildings. My greatest concern now is that the consequences of a flat budget for the SPS for the next four years can only have a deeply difficult and damaging impact on their ability to support that transformational agenda.

NOTES TO EDITORS

1. HM Chief Inspector of Prisons for Scotland, Wendy Sinclair-Gieben was appointed in July 2018.
2. On publication the report can be found at www.prisoninspectorscotland.gov.uk
3. For further information please contact Kerry Love, Business Manager, at Kerry.Love@gov.scot or on 07939 980452.

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