

# HER MAJESTY'S PRISON SERVICE OF ENGLAND AND WALES

*Michael Spurr\**



## I. THE MANAGEMENT OF PRISONS AND THE REHABILITATION OF PRISONERS

### A. The Organisation and Functions of Her Majesty's Prison Service

#### 1. Mission Statement

The Mission Statement of Her Majesty's Prison Service for England and Wales is:

*"Her Majesty's Prison Service serves the public by keeping in custody those committed by the courts. Our duty is to look after them with humanity and help them lead law-abiding and useful lives in custody and after release."*

#### 2. Background

The Government of the United Kingdom is complicated. While the UK is governed overall from Westminster, some of the Home Secretary's responsibilities in England and Wales are discharged by the Secretaries of State for Scotland and Northern Ireland in those countries. Her Majesty's Prison Service covers England and Wales, while Scotland and Northern Ireland have their own Prison Services and there are some differences in their legal frameworks. Although Wales also now has an elected Assembly with some devolved powers and responsibilities, it does not have its own Prison Service.

England and Wales does not have a Justice Department as many other countries do. Policing and the delivery of punishment are the responsibility of the Home Office, while courts and sentencing come under the Department of Constitutional Affairs, formerly the Lord Chancellor's Department. The judiciary are staunchly independent of Parliament and the Executive.

#### 3. Executive Agency Status

Historically the Prison Service has always been linked with the Home Office but the closeness of this link has changed; at times it has been largely independent, at others it has been a fully integrated department within the Home Office.

In the 1980s the British Government first introduced the concept of Executive Agencies, separating out those former Government Departments and organisations whose role is to deliver specific services from the main policy-making Departments of State. Executive Agencies have wide delegated authority within a formal Framework Document. Parent departments set budgets and standards, and give Executive Agencies delegated authority and responsibility for delivering the service, while Ministers retain overall accountability to Parliament.

The decision to make the Prison Service an Agency dates back to 1991. In 1990 there was a major riot at Manchester prison, then known as Strangeways, with outbreaks of lesser copycat disorder elsewhere. Lord Justice Woolf's investigation into the disturbances identified issues about the management structures of the Prison Service. In August 1991, the then Home Secretary appointed Admiral Sir Raymond Lygo to conduct a review of the managerial effectiveness of the Prison Service. He reported in December 1991.

In his report he said: "The Prison Service is the most complex organisation I have encountered and its problems some of the most intractable". He went on to list a number of problems that were outside the control of the Prison Service - overcrowding, neglect of buildings, increase in violent crime and terrorism, and public attitudes to sentencing. However, there were also internal managerial issues: leadership,

---

\* Director of Operations, H. M. Prison Service, United Kingdom.

independence and unity. Lygo said "If the Prison Service is to achieve the direction and unity for which successive reports have called, it must be allowed to operate much more independently of day to day Ministerial control and more separately from the Home Office". He went on "The critical factor in the success or failure of any new arrangement will be the ability of Ministers to allow the Prison Service to operate in an almost autonomous mode while retaining their responsibility to Parliament for the overall policy and conduct". Lygo strongly recommended Agency status for the Prison Service – a recommendation that was accepted. He also set out a number of structural devices to ensure the correct balance between operational independence and Ministerial accountability.

The Prison Service became an Executive Agency in 1993.

#### 4. "Reducing Crime - Changing Lives"

In 2003 the then Director General of the Prison Service, Martin Narey, was appointed to a new post of Commissioner of Correctional Services. This brought together custodial and community interventions under a single line manager.

Earlier this year the Government published the report "Managing Offenders - Reducing Crime". Its recommendations, which the Government has accepted, aim to ensure a more seamless service between prison and probation to do more to reduce re-offending through the creation of a National Offender Management Service (NOMS).

The key elements of this are:

- (i) To cap the prison population at 80,000 by encouraging more use of fines and other non-custodial sentences. This is going to be challenging. A Sentencing Guidelines Council is to be created but it remains to be seen how far this will influence the judiciary and magistracy. And the report also proposes measures to increase confidence in alternatives to custody and fines.
- (ii) To develop seamless links between prison and probation so that offending behaviour programmes can be continued in the community. The Prison Service and the Probation Service will both be part of the National Offender Management Service.
- (iii) To create "contestability" to ensure a wider base of providers of both custodial and non-custodial programmes. Providers will be from both the public and private sectors.
- (iv) To introduce a model of commissioning services with the creation of Offender Managers (commissioners/purchasers) who are separate from community and custodial providers.
- (v) To introduce a new sentencing framework including:
  - Custody Plus – a sentence part served in prison and part in the community.
  - Intermittent custody where low risk offenders are imprisoned at weekends so as not to lose their job and home; or during the week only so as to maintain family ties.

In organisational terms this will mean that the Prison Service will no longer be an executive agency but will be part of NOMS, and thus will revert to being an integral part of the Home Office. This is because of the different legal position of the Probation Service, which cannot become part of an executive agency. Martin Narey has been appointed Chief Executive of NOMS.

#### 5. The Management Structure of HM Prison Service

##### *Directors and Area Managers*

The Prison Service will continue to operate as a discrete public sector provider within NOMS with significant 'operational freedoms', headed by the Director General, Phil Wheatley, a permanent Civil Servant and former Prison Governor who reports to the Chief Executive of the National Offender Management Service. He chairs the Prison Service Management Board.

The Director of Operations line manages most of the public sector prisons through 13 Area Managers. The only prisons not managed in this structure are the nine High Security Prisons that are managed separately by the Director of High Security Prisons. Otherwise all prisons are managed on a geographical basis regardless of their function. However there are two Assistant Directors who retain a functional lead responsibility for female prisoners and juveniles (under-18s) respectively.

The Directorate also includes the Estate Planning and Development Group whose main functions are to monitor actual and forecast prison population changes and to identify, plan and manage programmes to

develop and expand the prison estate to meet population needs; and the Population Management Unit whose most immediate daily task is to ensure that spaces exist in appropriate places for all the prisoners committed to custody by the courts that day.

### *The Prison Governor*

The individual Prison Governor has a legal status conferred by the Prison Act 1952 and has considerable delegated authority to manage their prison within a budget agreed with their Area Manager. They have to meet a range of Key Performance Targets, also agreed with the Area Manager, and which contribute to the Prison Service as a whole meeting its targets. In addition to the ongoing management oversight exercised by the Area Manager, prison establishments are subject to regular Standards Audits by the Prison Service's own Standards Audit Unit and to a range of external checks and inspections described later in this paper.

Governors are managers of an operation, of people and of resources and to the "normal" manager role is added the need to interface personally with the client population to a degree unprecedented in most other occupations. The Governor has to be "a Manager with a Social Purpose". The Governor must understand and take personal responsibility for everything that happens in a gaol; a medium sized gaol may have a budget of £19m, 250 staff and 600 prisoners.

The Governor is supported by a management team which includes the Deputy Governor and other senior operational managers who are responsible for specific functions (such as Residential care; Regime/Activities; Operations). Health Care in prisons is now provided in partnership with the National Health Service who commission provision of services in prisons.

## 6. The Private Sector

Nine out of 137 prisons are privately managed. Two of these were built by HMPS but are privately operated; the other 7 were procured under DCMF – Design, Construct, Manage & Finance – arrangements whereby the contractor – usually a consortium – has a contract under which they raise the capital, design and construct the prison as well as operate it. Private sector prisons are managed separately within the National Offender Management Service. The Director General and Management Board of HM Prison Service are only responsible for the management of the 128 public sector prisons. High security prisoners are only held in public sector prisons.

The private sector is likely to grow for two reasons. Firstly, for some time now it has been Government policy to fund most major capital expenditure through the Private Finance Initiative, which means new prisons are likely to be constructed under DCMF. And secondly, "Reducing Crime – Changing Lives" envisages more contestability by encouraging a thriving private sector.

The main ways in which the private sector makes efficiencies in comparison with the public sector is through greater use of technology and also by setting local pay rates which can be lower in some parts of the country. The Prison Service is tied to national pay agreements, albeit with some local pay additions in areas where the cost of living is particularly high.

The private sector has succeeded in winning contracts for the running of a number of new prisons, and competition has brought efficiency improvements to the public sector too. However, over recent years the Prison Service has an excellent record of success where it has been able to compete with the private sector to run existing gaols. The Prison Service has never lost to the private sector in any competition to run an existing public sector prison; and where the early private sector contracts have come up for renewal, the Prison Service has won the contract to take over two prisons previously managed by private companies.

## **B. Current Trends in the Prison Population and their Characteristics**

The prison population is at record levels. On 16<sup>th</sup> April 2004, the population was 75,532, of whom 4,625 were women.

The use of prison and probation has increased by a quarter since 1996, whilst the use of fines has fallen by a similar amount. In 1996, 85,000 offenders were given custodial sentences. By 2001 this figure had risen to 107,000.

Sentencing is becoming more severe. The number of people arrested in 2001- 2.1 million – was in fact

slightly fewer than in 1996. The number of offenders found guilty fell from 1.44 million in 1996 to 1.35 million in 2001. There has not been any increase in the overall severity of offenders brought to justice to justify the greater use of prison and probation. In 1995/96, someone convicted of domestic burglary stood a 27% of being given a custodial sentence. By 2000, this had increased to 48%, with the average sentence length increasing from 16 to 18 months. Between 1992 and 2002, the longer sentenced population (four years and over) rose from 42% of the population to 48%. More first time offenders are being sent to prison.

Sentencing severity has increased significantly for women. At magistrates courts the chances of a woman receiving a custodial sentence has increased seven-fold. The number of women in custody as a percentage of the total population doubled between 1992 and 2002, from 3% to 6%.

While the average overall population increased by 7% between June 2001 and June 2002, the female population increased by 15% and the remand population by 14% over this period.

Sentencing has become more severe for several reasons because of both legislative changes, including the introduction of more mandatory life sentences for repeat offenders, and public, political and media pressure. A recent example has been a major high-profile campaign to reduce street robbery which has seen more severe sentencing as well as measures to improve arrest and conviction rates.

Recent legislation has increased the number of life sentenced prisoners and this trend is set to continue. There are currently about 5,700 life sentence prisoners and this number is expected to double over the next five years. Only a handful of these prisoners are actually likely to remain in prison for their whole natural life. In the English and Welsh system, when imposing a life sentence, the judge will also set a tariff which is the minimum period the offender should serve in custody. Upon expiry of the tariff, their release is subject to the approval of the independent Parole Board, who will decide on the basis of reports and assessments from prison staff whether the offender can safely be released without posing a threat to the public. Life sentence prisoners approaching release have to be tested in open prison conditions from which they will eventually go out to work in the community for a period before being released. Life sentence prisoners can remain in prison for several years beyond tariff expiry. When they are released, they remain on life licence and can be recalled to prison at any time for the rest of their life if their behaviour indicates the risk of re-offending has increased.

In response to political and public pressure, life sentences are now imposed for a wide range of offences; apart from the serious offences such as murder, a life sentence can be mandatory for repeat offences even where the offence itself is quite minor. Such life sentences do however attract short tariffs – as little as eighteen months in some cases – but have the effect of ensuring that release is subject to an assessment of risk and that the prisoner remains liable to recall throughout the rest of their life.

### **C. Treatment Programmes for Offenders**

Offending Behaviour Programmes (OBPs) are a key part of the Prison Service's Strategy to reduce the risk of re-offending, alongside a range of other regime activities for prisoners such as basic skills education and drugs treatment.

The Prison Service has steadily increased its repertoire of offending behaviour programmes that have been designed and are delivered in line with the principles of "What Works" research in to what is likely to be effective in reducing reconviction. The programmes are accredited as such by an independent panel of international experts, the Correctional Services Accreditation Panel (CSAP).

The repertoire includes a general programme, Enhanced Thinking Skills (ETS) which is designed to develop skills in effective problem solving, social perspective taking and moral reasoning. There is a family of five programmes targeting sexual offending according to level of risk, stage in sentence and intellectual ability. Additionally there is the CALM (Coping with Anger/Learning to Manage It) programme targeting offending associated with emotional management; the Cognitive Self Change programme which targets high risk violent adult offenders; and the healthy relationships programme for domestic violence offenders; Programmes for short-term prisoners and for women are also under development.

Prisoners in 108 establishments completed accredited offending behaviour programmes in 2003-04. The Prison Service delivered 8720 prisoner programme completions, of which 1191 were Sex Offender

Treatment Programme completions.

The programmes are subject to ongoing evaluation. This allows the Prison Service to develop and improve provision. Evaluations examining reconviction rates for prisoners who have undertaken general offending behaviour programmes has produced mixed results; the evidence of their effectiveness in reducing re-offending is mixed, although their impact on behaviour within the institution is clearer. However, research conducted outside the UK shows that some variation in evaluation results can be expected.

Providing programmes on such a scale presents many challenges. A comprehensive programme of work is underway to increase our understanding of "What Works" with who and in what circumstances, and to apply our learning, so that we can optimise the impact of programmes. However, we believe that without improving their thinking skills many prisoners will not be able to make proper use of help with accommodation, employment and other rehabilitation support, which we are also increasingly putting in place.

Provision of sex offender programmes has steadily increased. At the end of June 2003, there were about 5,400 prisoners whose index offence involved sexual offending, of these about 950 (17.6%) would have been serving sentences of less than 2 years and therefore will not be in custody long enough to complete a Sex Offender Treatment Programme (SOTP). In addition there were 590 lifers who had a sexual element to their offending.

The SOTP is open to all adult male prisoners who have been convicted of a sexual offence, or whose index offence appears to have a sexual motive, and to those who have been convicted of a sexual offence in the past and are assessed as needing to participate in the programme.

They must be willing to participate in it. A large number of sex offenders are refusers and deniers and are therefore unsuitable for the existing programmes. Research has been undertaken, a strategy produced and work is being undertaken to address this issue.

The Prison Service's Offending Behaviour Programmes Unit (OBPU) is working closely with the National Probation Directorate, Drugs Strategy Unit and Women Estate Policy Unit to develop and deliver an increased range of programmes for women in custody, the community and across both settings.

The Prison and Probation Services have also been working together to develop a programme specifically for short term prisoners. This is currently being piloted in two establishments. The two Services have established a project to develop an intervention strategy for this group of prisoners which takes account of the broad range of interventions available to help short term prisoners. This looks strategically at the overall balance of provision within prisons and between prison and the community, anticipating the implementation of Custody Plus.

Custody Plus is a new form of sentence in which offenders will be required to spend a period in custody followed by a period under supervision in the community. It aims to combine the severity of a loss of liberty with programmes to resettle the offender into the community and to complete programmes that there would not be time to deliver in custody.

An experiment in Intermittent Custody is also under way. Under this scheme, offenders can be sentenced to weekend custody, so they can retain their jobs outside but also suffer loss of liberty while attending programmes at weekends. Alternatively those who do not have jobs can be sentenced to mid-week custody, leaving them free to maintain family ties at weekends. This sentence should be imposed instead of continuous custody, not instead of a community penalty.

It is early days for the Intermittent Custody project but the emerging picture is that there are a number of sentences of weekend custody but very few of midweek custody. This leads to inefficient use of accommodation. It may be possible to continue and expand weekend custody by dovetailing it with the empty accommodation created by releasing prisoners with release dates of Friday, Saturday or Sunday on the Friday.

## **D. Systems and Procedures to Maintain Discipline and Order in Prison Establishments**

There is a need to strike the right balance between rigid control and operating an active regime that keeps prisoners content through purposeful activity. Aside from their impact on re-offending, many offending behaviour programmes, such as anger management, have a real impact on behaviour in an establishment.

### 1. Management of the Most Dangerous Prisoners

HM Prison Service operates a Dispersal system – highest security prisoners (“Category A”) are distributed between six high security prisons where they are mixed with a good number of Category B (the next highest category) prisoners. This system is preferred to the concentration of all of the most dangerous prisoners in a single “Supermax” jail, because it enables prisoners to be moved around individually, preventing the building up of dangerous liaisons, prevents the conditioning of staff and dilutes the risk.

There are a number of dangerous and difficult to manage prisoners with Dangerous and Severe Personality Disorders who are held in prisons rather than secure mental hospitals because their conditions are not treatable. They are held in discrete, dedicated units within the High Security Estate.

There are also five Close Supervision Centres (CSCs) within the High Security Estate. These are small discrete units holding the most disruptive prisoners in the system. At present there are 37 prisoners managed in Close Supervision Centres. Staff are specially trained and the CSCs aim to manage the most difficult prisoners safely and humanely working with them to return individuals to mainstream prison accommodation wherever possible.

### 2. Categorisation

Prisoners are categorised according to potential to escape and the risk they present to the public should they succeed, and not according to control. Category A are highest risk and Category D the lowest – these are suitable for open conditions and often work outside the prison. However, Category Cs are also scored according to factors generally associated with threats to order and control. Those presenting the highest risk are Score 3. Each Category C prison has an agreed upper limit of Score 3s according to its ability to cope with them on the basis of design, total population, regime and staffing levels.

### 3. Bullying

Within any institutional environment there will be a hierarchy of prisoners and the potential for stronger prisoners to prey on the weak. Thus the Prison Service is committed to ensuring that every prison has a strategy to tackle the bullying of prisoners by other prisoners. Each establishment should have an anti-bullying co-ordinator and an anti-bullying committee. Indicators of bullying must be monitored and there should be confidential prisoner surveys to measure the scale of the problem.

The following may indicate a bullying problem

- i. number of absconds from open prisons;
- ii. number of assaults;
- iii. number of applications to the Independent Monitoring Board;
- iv. number of escape attempts;
- v. number of fights;
- vi. number of successful requests for segregation under Prison Rule 45 (for own protection);
- vii. number of refusals to work;
- viii. number of requests to move wing;
- ix. number of requests for transfer;
- x. number of incidents of self-harm;
- xi. number of Security Information Intelligence Reports (SIR's) indicating bullying;
- xii. number of unexplained/explained physical injuries;
- xiii. number of victim concern referrals.

Responses to bullying can include:-

- i. Increased or targeted supervision to tackle identified patterns of bullying e.g. shouting from windows, taking of property;
- ii. Programmes targeted at changing bullying behaviour, ideally accompanied by removal of bullies to a separate unit;
- iii. Disciplinary adjudication;

- iv. Use of the Incentives and Earned Privileges scheme;
- v. Removal of the offender from a particular job or location where the bullying is taking place;
- vi. It is important not to make the victim suffer by removing or transferring them, but some establishments do provide programmes for victims of bullying which may combine coping mechanisms with guidance on how to avoid behaviour that may encourage victimisation.

#### 4. Intelligence Systems

There are standard procedures for staff to record intelligence information based on, for example, “tip-offs” from prisoners, things they observe or overhear, and for this information to be collated and assessed by the prison’s Security Department. There are procedures and guidelines for the use of prisoner informants who provide intelligence from within the prison, and prisoners can leave anonymous messages in a mail box.

Each prison has a police liaison officer to supply intelligence coming from outside.

#### 5. Control Systems

All prisons operate a system of Incentives and Earned Privileges (IEP) designed to encourage good behaviour. Earned privileges can include better cells, more time out of their cell, more visits, more access to private cash which can be spent in the prison shop. Rather than separate and segregate vulnerable prisoners such as those convicted of sexual offences, many prisons offer integrated regimes. Prisoners who can be trusted not to bully vulnerable prisoners can benefit from more attractive conditions and regimes than those who do not. On the other hand, prisoners who present a threat to the safety of other prisoners or the good order of the establishment can be segregated although there are strict levels of authorisation required for this to happen and to continue for any length of time.

#### 6. Prison Disciplinary System

Where a prisoner is alleged to have committed an offence against prison discipline, they face an adjudication before one of the Operational Senior Managers of the prison. The role of the adjudicator is to enquire objectively into the facts, reach a finding as to guilt, and to award an appropriate punishment taking account of the prisoner’s record of behaviour. Punishments range from a caution through to a fine or a period of cellular confinement. Moving to a lower level of the IEP scheme is not, however, an available punishment although it may follow as a management action. For serious offences against prison discipline, (for example assault on an officer or possession of a Class A drug) the charge will be heard by a visiting circuit Judge who can impose added days (loss of remission) to the prisoner’s sentence. A maximum of 42 days can be added to a sentence by the Judge for any one offence.

Disciplinary hearings must be conducted according to the principles of natural justice and the standard of proof is “beyond reasonable doubt”. Prisoners are only allowed legal representation in limited circumstances, but they must be given the opportunity to obtain legal advice if they wish.

There are twenty five prison disciplinary offences, and racially motivated offences are identified separately. However, all the offences are specific. A former “catch all” offence of “offends against good order and discipline” was abolished a few years ago because it was open to abuse. One of the natural justice principles is that it must be clear to the prisoner what they are alleged to have done and why it constituted an offence.

The full list of offences against discipline is:

- (1) commits any assault;
- (1A) commits any racially aggravated assault;
- (2) detains any person against his will;
- (3) denies access to any part of the prison to any officer or any person (other than a prisoner) who is at the prison for the purpose of working there;
- (4) fights with any person;
- (5) intentionally endangers the health or personal safety of others or, by his conduct, is reckless whether such health or personal safety is endangered;
- (6) intentionally obstructs an officer in the execution of his duty, or any person (other than a prisoner) who is at the prison for the purpose of working there, in the performance of his work;
- (7) escapes or absconds from prison or from legal custody;

- (8) fails to comply with any condition upon which he is temporarily released under rule 9;
- (9) administers a controlled drug to himself or fails to prevent the administration of a controlled drug to him by another person (but subject to rule 52);
- (10) is intoxicated as a consequence of knowingly consuming any alcoholic beverage;
- (11) knowingly consumes any alcoholic beverage other than that provided to him pursuant to a written order under rule 25(1);
- (12) has in his possession -
  - (a) any unauthorised article, or
  - (b) a greater quantity of any article than he is authorised to have;
- (13) sells or delivers to any person any unauthorised article;
- (14) sells or, without permission, delivers to any person any article which he is allowed to have only for his own use;
- (15) takes improperly any article belonging to another person or to a prison;
- (16) intentionally or recklessly sets fire to any part of a prison or any other property, whether or not his own;
- (17) destroys or damages any part of a prison or any other property, other than his own;
- (17A) causes racially aggravated damage to, or destruction of, any part of a prison or any other property, other than his own;
- (18) absents himself from any place he is required to be or is present at any place where he is not authorised to be;
- (19) is disrespectful to any officer, or any person (other than a prisoner) who is at the prison for the purpose of working there, or any person visiting a prison;
- (20) uses threatening, abusive or insulting words or behaviour;
- (20A) uses threatening, abusive or insulting racist words or behaviour;
- (21) intentionally fails to work properly or, being required to work, refuses to do so;
- (22) disobeys any lawful order;
- (23) disobeys or fails to comply with any rule or regulation applying to him;
- (24) receives any controlled drug, or, without the consent of an officer, any other article, during the course of a visit (not being an interview such as is mentioned in rule 38);
- (24A) displays, attaches or draws on any part of a prison, or on any other property, threatening, abusive or insulting racist words, drawings, symbols or other material;
- (25)
  - (a) attempts to commit,
  - (b) incites another prisoner to commit, or
  - (c) assists another prisoner to commit or to attempt to commit, any of the foregoing offences.

Where a prisoner's behaviour also constitutes a criminal offence, for example a serious assault, the Governor may call in the police to conduct a criminal investigation leading to further criminal charges.

#### 7. Deaths in Custody

There were 126.2 self-inflicted deaths per 100,000 of the prison population in 2003-04, (94 cases) which was a reduction from 146.9 (105 cases) in 2002-03. 62% of cases have a recent history of drug abuse. The first days in custody are the time of highest risk with 10% of deaths occurring within the first 24 hours and 27% within the first week.

The Prison Service has been pursuing a vigorous programme to reduce self-inflicted deaths over a number of years. The programme includes support from specially trained "listeners" (fellow prisoners) and the development of safe cells where ligature points and other means to self-harm are, as far as possible, designed out.

#### 8. Drugs

Drugs are a major problem in any custodial setting. Drug misuse is a major factor in crime, especially acquisitive crime to fund a habit of drug misuse, and many prisoners come into custody with a pattern of drug misuse.

Of the 160,000 people who pass through prisons in England and Wales in a year, 40-50% of men and 60% of women have a chronic substance misuse problem which requires clinical treatment.

The loss of access to drugs is therefore an additional distress factor added to the loss of freedom and can put prisoners at risk of self-harm. Prisoners' history of drug use is identified at the reception stage and appropriate detoxification treatment and therapy offered. Last year around 53,000 prisoners completed a



drug detoxification programme. The number of drug treatment (rehabilitation) programmes available within prisons has increased from 6 in 1999 to 60 this year with around 5,000 prisoners entering drug treatment. We are currently working to increase capacity with a target of 9,000 prisoners entering treatment programmes by March 2006.

However, effective treatment is a long term process and it can be difficult to do so effectively where prisoners have to be moved between establishments or are in custody for short periods. Also, while every effort is made to prevent access to drugs, prisoners, whether convicted or not, cannot be compelled to undergo medical treatment against their will.

It follows that drugs are a highly sought after commodity within prison and efforts to obtain them can lead to theft, bullying and taxing between prisoners and attempts to bribe or condition staff. Attempts are regularly made to bring drugs into prison by mail and through visits, and prisoners are always inventing new ways of concealing drugs in permitted items as well as passing sealed packets from mouth to mouth in visits and swallowing sealed packets while out of the prison e.g. at court.

Measures to detect drugs include:

- Searching of visitors, including the use of passive drugs dogs
- Monitoring of visits by staff assisted by closed circuit television
- Screening of incoming mail and strict controls on what may be brought in
- All purchases being made by mail order from approved suppliers
- Searches of cells using search dogs (and volumetric controls of what prisoners may have in their possession)

Prisoners who admit to a drug problem are offered help to overcome it. But many have to be dealt with through the disciplinary process. Any prisoner can be subject to a random Mandatory Drug Test, and refusal to give a sample is itself a disciplinary offence. Prisoners with a history of drug misuse are subject to targeted testing more frequently than the general population. Testing positive is a serious disciplinary offence as is possession. Progression to certain attractive and lower security prisons may require a drug-free record, as can progression through IEP. Some prisons offer drug-free units at the higher levels of IEP and prisoners applying to these units are required to agree to frequent voluntary drug tests.

The dual approach of tackling both supply and demand for drugs has been successful. The overall drug positive rate in prison has been reduced by 50% from over 24% positive in 1997 to 12.6% in 2003/4. The use of heroin (the most common drug used by offenders when entering custody) has also fallen sharply by 40% from 5.5% to 3.6% last year. Nevertheless, the drug problem is likely to remain a continuing issue in managing prisons and dealing with drug addiction and dependency is a key part of our strategy to reduce re-offending.

## **E. The System for Securing Transparency and Accountability in the Administration of Institutions and Its Implementation**

### 1. Historical Context

Although the Courts have historically had 'authority over all the Prisons in the land' (Lord Justice Manston), until the late 1970s there was a policy of 'judicial abstention in public cases'. Prisoners were limited in their access to communicating with any other persons without the permission of the Secretary of State, and this included their legal advisers.

From 1977, and the relaxation of the rules applied by the Supreme Court for those wishing to seek redress through Judicial Review, there has been an increase in the intervention of the Courts in how Prisons are administered and the emergence of an 'active judiciary'. The predominant opinion has moved from 'prisoners do not have the same rights as other individuals' to that of 'a prisoner retains all his civil rights that are not taken away expressly or by necessary implication ... by his imprisonment'. They have the right of access to the Courts and the right of access to legal advice to make that access a reality.

The incorporation of the Human Rights Act into domestic law on 2<sup>nd</sup> October 2000 took this a step further, opening up opportunities to make legal challenges on issues previously outside the remit of the British Courts, such as the administration of the Prison and Prison rules. Prison reform groups, together

with civil rights campaigners and solicitors specialising in prisoner litigation, have also had a significant impact on Prison regulations and the way in which prisoners are held. Although recourse to the Human Rights Act is now available through the domestic Courts, recent judgements from the European Court of Human Rights (ECHR), in Strasbourg have had a significant impact on the Prison Service, necessitating reconsideration of certain practices within the UK prison system. The ECHR ruling in *Ezeh and Connors* effectively removed the right of prison Governors to award added days (loss of remission) to prisoners who were found guilty of disciplinary offences. It was as a result of this decision that Independent Adjudicators (Circuit Judges) were introduced to deal with the most serious disciplinary offences in prison.

There has been a substantial growth in the access and use of the legal system by prisoners to challenge and influence their treatment and access to facilities, and as described below, the statutory inspection and monitoring systems have been strengthened. In addition, in the prison system as across the administration of Government as a whole, voluntary and pressure groups have gained greater influence and access to Ministers and senior civil servants. Established groups such as the Prison Reform Trust, the National Association for the Care and Resettlement of Offenders, the Howard League and the New Bridge Trust have been instrumental in influencing the treatment of and conditions for prisoners, and in some cases are now actually working in partnership with the Prison Service to deliver services to prisoners. Some of these established national groups include senior establishment figures in their management, including in two cases former Home Office Ministers, but they have now been joined by some energetic grass roots groups such as Partners of Prisoners. Senior Prison Service managers have found it worthwhile and instructive to give time to meet personally with the founders and leaders of these groups; "ordinary" former prisoners and partners of prisoners who have a first hand experience of how the system affects individuals and whose representations have led to the identification and implementation of real improvements in the way the Prison Service deals with prisoners and their families. Among the products of these links have been the co-operation between the Prison Service and the ex-prisoners' organisation Unlock to produce information books for prisoners and the involvement of Partners of Prisoners in setting up support networks for minority ethnic prisoners.

## 2. Parliamentary Accountability

The Home Secretary is accountable to Parliament for the operation of the Prison Service. Individual Members of Parliament can ask questions in writing, orally or by letter; while this may often appear to be a token gesture, the question and answer will be published in Hansard, the record of Parliamentary proceedings, and if it is an oral question it will be broadcast on television or radio. They can also use the mechanism of an adjournment debate to raise the profile of particular matters; an Adjournment Debate is a Parliamentary device whereby any matter raised by a Member of Parliament chosen by ballot is debated for 30 minutes at the end of the day's business.

Ministers and Civil Servants may be called to give evidence to a Select Committee of MPs (held in public and often shown on television).

## 3. International Accountability

In addition to the European Court already mentioned, there is a European Committee on the Prevention of Torture. Members of the Commission visit prisons in England and Wales on a regular basis to satisfy themselves that prisoners are being treated properly and conditions are acceptable. In the past they have criticised levels of overcrowding and access to sanitation. However, all prisoners in England and Wales now have 24 hour access to sanitation/toilets. The Committee's recent interest has focussed on the small number of detainees held under Anti-Terrorism legislation, and some of the issues raised relate to the appropriateness of detention which is not, of course a matter for the Prison Service. However, some concerns have been raised about the care and treatment of detainees considered by the delegation to be mentally ill. The Committee have suggested that the level of care given to some such detainees amounts to inhuman or degrading treatment. They have not suggested that detainees are being subjected to torture by the Prison Service. This is not the case. But they have suggested that the fact of indeterminate detention is sufficient to evoke memories of experiences of torture elsewhere in the past. These concerns are taken seriously and considered by the Special Appeals Courts established to review detention for individuals detained under Anti-terrorist legislation.

The CPT is an important body and any issues raised by the CPT will be investigated and a full response

will be provided.

#### 4. Handling Questions and Complaints from Prisoners

Any prisoner can make either an oral or written request or complaint at any time. They are encouraged to raise their complaints orally and informally so that staff can listen to a prisoner's problem, give advice and deal with straightforward matters quickly. However they have the right to use the formal written complaint system straight away. Until about three years ago, prisoners had to ask staff for a form on which to make a request or complaint, but there were concerns that prisoners were being obstructed or deterred from doing so. Complaint forms are now freely available for prisoners to pick up, complete and return without having to ask a member of staff, and the boxes must not be in or directly outside the wing office. All informal applications and formal complaints have to be recorded and must be answered within strict time limits.

Most complaints are answered by an appropriate member of staff in the prison, and the prisoner has a right of appeal to the Governor if they are unhappy with the reply. Complaints with a racial element are monitored by the prisons' Race Relations Liaison Officer. Certain subjects – appeals against disciplinary adjudications and a few key decisions that are handled at Prison Service Headquarters – are described as reserved subjects and complaints about these are referred to Prison Service Headquarters.

Prisoners can also make a complaint under confidential access which means it goes unopened to the Governor or the Area Manager. This enables prisoners to report serious matters such as alleged harassment by staff to a senior manager without fear that it will be intercepted and lead to retribution.

Of course, there is nothing to stop prisoners or their relatives raising complaints directly with Prison Service Headquarters, through solicitors or with their Members of Parliament.

#### 5. Prisons Ombudsman

Lord Justice Woolf's inquiry into the Manchester riots in 1990 identified lack of prisoner confidence in the complaints system as a contributory factor in prisoner unrest. This led to the creation of a Prisons Ombudsman who is independent of the Prison Service. He can investigate any complaint only after internal Prison Service procedures have been exhausted, and the prisoner must apply to the Ombudsman within 30 days of the Prison Service reply. However he can also investigate any case where the Prison Service has not replied to the prisoner within the appropriate time limit.

The Ombudsman has full access to prison staff, records and prisoners. Prison staff must provide him with documents and information. However he must clear his reports with the Prison Service to ensure that they do not reveal any information which would compromise the security of the prison. He can make recommendations to the Prison Service. These are not binding but the Prison Service is committed to accepting most recommendations, and in practice this is what occurs.

The Prisons and Probation Ombudsman also deals with complaints against the Probation Service and since 1 April 2004 he has also been given the responsibility for investigating all deaths in prison custody.

In 2003-03, the Ombudsman received 3,132 complaints about the Prison Service, a 15% increase on the previous year. The most common subject (17%) is lost or damaged property, followed by 12% about general conditions. 33% of complaints are upheld, but the Ombudsman reports that increasingly the problem is put right locally by the Governor when the problem is pointed out and he does not need to make formal recommendations to the Prison Service.

#### 6. Independent Monitoring Boards

The 1952 Prison Act created Boards of Visitors made up of lay members of the local community who have unfettered access to the prison and were described as the eyes and ears of the Home Secretary. They were able to raise any matter whether about the welfare of prisoners or staff or the fabric of buildings. They were expected to visit regularly, talk to prisoners and hear their complaints. They met regularly with the Governor and aim to resolve matters at the appropriate level locally, but they had access to the Home Secretary and a duty to report to him on anything they feel they need to. In any event they were required to submit an Annual Report to Home Office Ministers containing their assessment of the prison, issues of concern to the Board, and an account of their activities.

Boards of Visitors were independent of the Prison Service. They were made up of volunteers, appointed by the Home Secretary for three years at a time, and paid expenses only. Understandably it proved difficult to recruit Board members because only a limited number of people could make the time available, especially during the normal working day. Recruiting members from minority ethnic groups and others representative of the prison population was particularly difficult and boards tended to be made up of white middle class middle aged people, such as those running their own business or the active retired.

Boards of Visitors used to hear the more serious disciplinary charges – they had more serious penalties available – but this was withdrawn as it created conflict with their role in support of prisoners. They were also required to approve the continued segregation of any prisoner for longer than 72 hours.

Boards of Visitors have now been replaced with Independent Monitoring Boards (IMBs). While broadly similar, they are no longer responsible for authorising segregation. Whereas the old Boards of Visitors operated largely independently, IMBs have a new National Council with the authority to direct Boards rather than just advise, so ensuring greater consistency. They have a particular role in the complaints process and are bound by law to be satisfied with the treatment of prisoners, including examination of the complaints records and statistics as well as individual replies. Prisoners may raise confidential access complaints with the IMB.

There are about 1800 volunteer Board members in 137 prisons and 9 immigration detention centres.

## 7. Inspection of Prisons

Her Majesty's Inspectorate of Prisons was established in 1980 following recommendation of the May Committee of enquiry into the United Kingdom Prison Services. It provides independent scrutiny and public assurance and reports in public. At times in the past, various Chief Inspectors of Prisons have indeed taken a high and controversial public profile, although at the present time the Inspectorate combines robust inspection with a constructive approach to guiding and encouraging improvements in the care and treatment of prisoners and in reducing re-offending.

The Chief Inspector is appointed by the Home Secretary from outside the Prison Service; although some of the Inspectorate staff are seconded from the Prison Service.

She is the Inspector of Prisons, not of the Prison Service; she and her team will comment on the management structures and practices of the Prison Service, and indeed on the policies of the Government, where they consider that they adversely affect conditions for prisoners, but they do not inspect Prison Service headquarters.

The Inspectorate inspects for outcomes not processes. It inspects against published criteria, and focuses on four tests of a healthy prison:

- i. Safety;
- ii. Respect;
- iii. Purposeful Activity; and
- iv. Resettlement.

The Inspectorate's focus is therefore different from the Ombudsman, who is concerned with individual prisoners, and the Prison Service's own Standards Audit Unit, who are more process-oriented and provide Prison Service Managers with assurance about adherence to procedures and standards. The Inspectorate provides infrequent but in-depth inspection, in contrast to the IMB who provide continuous monitoring. Inspections always include surveys and interviews with prisoners.

The Inspectorate carries out a five year cycle of full inspections (three yearly for juveniles), together with a programme of short inspections, usually unannounced, in-between to check progress. In 2003-04, their programme provided 24 full announced inspections and 24 unannounced, 17 juvenile inspections, six immigration removal centres and one Military Training Centre inspection, and five thematic inspections. Between September 2002 and August 2003, unannounced inspections followed up 2237 recommendations of which 54% had been achieved and 14% partly achieved.

#### 8. Commission for Racial Equality

The Commission for Racial Equality has a statutory role to monitor application of Race Equality legislation. It recently conducted a formal investigation into racism in the Prison Service. This arose out of a number of allegations of racist incidents including in particular:

- i. The murder of a young Asian prisoner in Feltham Young Offender Institution by his cellmate in March 2000. It was found that the murderer had a history of displaying racist behaviour and violence but had been located in the same cell as an Asian prisoner.
- ii. An Employment Tribunal that found against the Prison Service for the victimisation and harassment of a black member of staff at Brixton prison.

Following completion of the investigation the Prison Service is now working closely with the Commission to implement a Joint Action Plan to promote Race Equality and ensure that Race discrimination is eradicated. This is one of the Service's highest priorities. Minority ethnic prisoners account for 17% of the prison population (compared to 7% in the community) and ensuring that the Prison Service treats all prisoners fairly and promotes good race relations is absolutely essential in this context.

#### **F. Current Challenges**

The main challenges now facing the Prison Service are population pressures, organisational change and contestability (competition).

As indicated in section B of this paper, the population is at a record level and it is quite possible that by the time you read this, we will have had to resort to accommodating prisoners in police station cells because the absolute capacity of the prison estate will have been passed. That is not only expensive but it also provides inadequate conditions and regimes for prisoners.

If nothing is done to change sentencing practice, the prison population is forecast to reach 93,000 by 2009. The report "Managing Offenders – Reducing Crime" postulates that the measures it recommends to increase confidence in alternative punishments will in fact enable this to be capped at 80,000. It remains to be seen how far this is actually achievable; but even this figure requires the provision of a further 5,000 prison places over the next few years.

While endeavouring to manage this record population, the Prison Service also has to engage in the major re-organisation described earlier in this paper with the loss of Agency status and the creation of the National Offender Management Service. Large parts of Prison Service headquarters will move into the centre of NOMS while the Prison Service must adapt to being just one of the suppliers of custodial services and associated programmes in a competitive market.

This adjustment to competition will require a major cultural change for the Prison Service, to become more flexible and customer focused. While it seems likely that only the various private sector operators will be able to bid for the provision of new prisons, it is also likely that the Service will have to compete to retain some of its existing operations. And it remains to be seen whether the Prison Service is also able to compete to deliver non-custodial interventions or to continue offending behaviour programmes started in custody following a prisoner's release.

The Prison Service is a public service organisation largely made up of people who are committed to a public service ethos. We are committed to working more closely with our criminal justice partners to reduce re-offending. But at this point in time it is clear that we are facing a period of major change and uncertainty. It will require a great deal of managerial skill and commitment to ensure that the day-to-day business of running safe and secure gaols is continued effectively during this period of upheaval.