



Independent Advisory Panel on Deaths in Custody

*Chair: Juliet Lyon CBE
Head of Secretariat: Andrew Fraser*

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www.independent.gov.uk/iapdeathsincustody

**The Rt Hon Boris Johnson MP
Prime Minister, First Lord of the Treasury and Minister for the Civil Service**

Dear Prime Minister,

Urgent review of sentencing policy

Following your announcements of the urgent review of sentencing policy and wider plans for prisons, I am writing to outline the work of the Independent Advisory Panel on Deaths in Custody (IAP), which I chair, and to set out ways in which I hope we can support you and your Ministerial colleagues in your vital role of preventing deaths in custody. While the review focusses on sentencing within the criminal justice system, any recommendations it makes will be likely to have an impact on self-harm and deaths in custody – which is where the IAP is focussed. We are keen to work with the review team as they consider risks and concerns and ways to mitigate them. I would be pleased to discuss with you, and your Ministers, your Government's over-arching responsibility to protect the lives of those whose offending is so serious that the State has deprived them of their liberty. I will start, if I may, by introducing the remit and work of the IAP.

The Independent Advisory Panel on Deaths in Custody

The IAP is a small, independent arms-length body developed after the Fulton review¹, which established the Ministerial Council on Deaths in Custody. Our role is to act as a primary source of advice to Ministers on how best to prevent deaths in state custody. The IAP is co-sponsored by the MoJ (the lead sponsor), the Home Office and the Department of Health & Social Care, and is uniquely placed to encourage effective ways of working across these three departments. Prisons, approved premises, police custody, establishments holding people under the Mental Health Act, and immigration centres all fall within our ambit. Panel members have considerable experience in forensic psychiatry, research and statistics, custodial environments and human rights – as well as direct work with prisoners and bereaved families. The IAP identifies and draws on examples of national and international good policy making and practice. We are supported and informed by a broad group of around 200 interested parties, including members of bereaved families and health and

¹ <http://iapdeathsincustody.independent.gov.uk/wp-content/uploads/2010/02/The-Fulton-Report-2008.pdf>

justice professionals. Our single objective is to help prevent avoidable deaths, natural and self-inflicted, in custody and to enable the State to fulfil its obligation to protect life.

Keeping people safe in custody and on release

There are clear connections between the sentencing framework and deaths in custody, and the IAP will be making this point to the review team. Fundamentally, entering custody significantly increases the risk of someone harming themselves or taking their own lives² - a compelling reason to use prison as a place of last resort. Changing the approach to sentences to raise the prison population further will – at a basic level – increase the number of people more likely to harm themselves in custody. The prison population has risen by 69% in the last thirty years³ – and increasing it further runs specific risks regarding self-harm and suicide in custody.

Any decision to increase the prison population would raise concerns over its impact on the existing prison environment. While the IAP notes your recently announced commitment to build 10,000 new prison places, such investment takes time to come to fruition and in the meantime increasing sentence lengths and convictions are likely to have more immediate consequences in terms of over-crowding, pressure on hard working staff and wider services. You may be aware of Keeping Safe⁴, the IAP's consultation with prisoners, and resulting report, on how best to prevent suicide and self-harm. This collaboration with Inside Time, Prison Radio and the Samaritans resulted in responses from over 150 people in more than 60 prisons across England and Wales. By far the most common solution set out by prisoners was the need for good, trained staff able to build supportive professional relationships. They saw this as the most significant factor in preventing suicide and self-harm. Some of the other most frequently raised solutions include treatment for mental health needs, closer attention to early days in custody, greater purposeful activity, better physical conditions, peer support, easier access to families, rehabilitation and proper preparation for release – and this is where the new sense of urgency and additional resources you have introduced could make a real difference.

A consequence of increasing sentences for the more serious offences is the cumulative impact on the cohort of prisoners who would be in custody. In a study of self-inflicted deaths from 2002 – 2013⁵, prisoners convicted of violence against the person comprised by far the highest number of self-inflicted deaths, accounting for 41% of self-inflicted deaths in the time period. Prisoners who had been convicted of sexual offences comprised the second highest number of self-inflicted deaths overall. This suggests that the demands on prisons and staff and prison healthcare teams may increase significantly with such a change in population. It will be more important than ever that staff are trained and supervised to work with challenging offenders. It is also important that regimes are developed with the specific aim of reducing the risk of further serious offending. We note that the independent monitoring board at HMP Littlehey has just drawn attention to scant provision for interventions and treatment in a prison of 1,200 men, 98% of whom have committed sexual offences. At present out of 117 prisons, only one, HMP Grendon, runs an establishment-wide regime that enables violent and sexual offenders to face up to what they have done, explore why they have done it and commit

² https://www.griffith.edu.au/_data/assets/pdf_file/0034/359863/Suicide-Research-Text-Vol1.pdf#page=23

³ <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Bromley%20Briefings/Prison%20the%20facts%20Summer%202019.pdf>

⁴ <http://iapdeathsincustody.independent.gov.uk/wp-content/uploads/2017/12/Keeping-Safe-FINAL-Dec-2017.pdf>

⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/440290/report-on-self-inflicted-deaths.pdf

to ways they can avoid ruining the lives of future victims. Needless to say, reconviction rates are convincingly low.

Increasing sentence lengths may change another factor – that of the average age of those in prison. There are now over 5,000 people over 60 years old in prison⁶ and, as this cohort is the fastest growing group in custody, this number will steadily rise if sentences lengthen still further. This will undoubtedly have an impact on the functioning of prisons, and greater investment may be needed in order to manage higher numbers of elderly prisoners with growing levels of ill-health in general, and dementia in particular. More attention will need to be paid to palliative care, compassionate realisation and social care in alternative environments.

Dealing with indeterminate sentences for public protection

The Justice Committee recently expressed its concerns regarding the 2,500 people still in prison serving IPP sentences, although their report noted the reduction in this cohort since its peak in 2012. The Committee pressed the Government to consider options to resolve the uncertainty of this sentence, and the IAP firmly supports this move. In the interests of fairness and proportionality, unduly harsh, as well as unduly lenient, sentences should be scrutinised. The use, and subsequent abolition of this Kafkaesque sentence, demonstrates the need to be aware of the longer-term consequences of over-hasty reforms to sentences and the sentencing framework.

The IAP recently sought views from IPP prisoners themselves on the physical and mental health impact of the sentence. We undertook this consultation so that our findings and recommendations are directly informed by the experience of those involved, and to provide tangible advice that we hope can be implemented to protect those in custody currently with limited hope of progression or release. As you would expect, the detailed letters and messages from prisoners enduring this sentence make bleak reading, and underline the impact the lack of certainty has on them and their families. One man with a tariff of two and a half years, and who has served over 11 years to date, wrote: *'I have seen so many IPP prisoners harming themselves unreported and taking any drugs just to end the suffering quickly because this is nothing but torture of the highest order'*. A lack of hope has evidenced links to suicidal thoughts and behaviour and the IAP is concerned that – as the number of prisoners recalled and over tariff increase – this hopelessness, and consequent risk, will only increase in the population. Self-harm rates are exceptionally high. The sentencing review should take account of, and avoid, such pitfalls and unintended consequences. It could also prove a vehicle for righting a wrong.

Supporting greater use of robust community sentences

The IAP notes your emphasis on robust community sentences; this is more possible following reform to the beleaguered probation service. A complementary move could be extending the previous administration's focus on withdrawing most short custodial sentences in favour of effective community sentences. Sentences of 12 months or less accounted for over two thirds of all immediate custodial sentences over the last year.

⁶ [Ministry of Justice \(2019\) Offender management statistics quarterly: October to December 2018, London: Ministry of Justice](#)

The former Lord Chancellor stated last month:

“The latest evidence suggests that if all offenders who currently receive prison sentences of less than six months were given a community order instead, we estimate that there would be around 32,000 fewer proven reoffences a year.”

Making proper use of community sentences will help reduce reoffending – and mitigate the financial implications of a larger prison population. The IAP recently undertook a survey of magistrate mental health champions and bench chairs to seek their views on why community sentences and treatment requirements are not used as widely as they might be. In fact, in 2018 the numbers were pitiful, with drug treatment orders making up 5.7% of all community orders levied by the courts, alcohol treatment requirements 4.1%, and mental health treatment requirements just 0.6%. This survey was conducted in collaboration with the Magistrates Association (MA), and we have had a good representative response from across the country. The report, *‘Effective community sentences and the role treatment requirements can play in preventing deaths in custody’*⁷, was recently published and the results present interesting – and, at times, concerning – reading. While there is a lack of confidence among some magistrates in handing down community sentences and treatment requirements, there also appears to be a lack of knowledge of what is available and possible in their areas. We hope that the results of this survey and detailed, practical recommendations will provide you and your Health and Justice Ministers with achievable ways to work with the judiciary, without compromising their independence, to facilitate far better use of such sentences.

Taking active steps to protect life

I would like to end by saying that your announcement of additional resources for the criminal justice system is to be welcomed. As is your determination to drive drugs out of prison, improve rehabilitation and create safer environments. Safety and security must align if the state is to meet its duty to protect lives. The IAP would urge you to ensure that, following the rapid review, this new provision for criminal justice benefits those concerned, and does not play a part in leading to tragic unforeseen circumstances. In the light of this, it would be wise to scrutinise each planned new policy and operational change for its likely impact on prisoner and staff safety and make any necessary adjustments. I am copying this letter to relevant Ministers and officials as outlined below.

As ever,



Juliet Lyon CBE, Chair of the Independent Advisory Panel on Deaths in Custody

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⁷ <http://iapdeathsincustody.independent.gov.uk/news/magistrates-association-and-iap-survey-report-2019/>

cc.

- **The Rt Hon Robert Buckland QC MP**, Lord Chancellor and Secretary of State for Justice
- **Lucy Frazer QC MP**, Minister of State, Ministry of Justice
- **Kit Malthouse MP**, Minister of State, Home Office
- **Nadine Dorries MP**, Parliamentary Under Secretary of State, Department of Health & Social Care
- **Edward Argar MP**, Parliamentary Under Secretary of State, Ministry of Justice
- **Blair Gibbs**, Special Adviser, Number 10
- **Peter Cardwell**, Special Adviser, Ministry of Justice
- **Jerome Glass**, Director – Prisons Policy, Ministry of Justice
- **Nick Poyntz**, Deputy Director - Prison Safety and Security, Ministry of Justice
- **Claire Fielder**, Deputy Director - Bail, Sentencing and Release Policy, Ministry of Justice
- **Richard Kelly**, Deputy Director - Serious Mental Illness and Offender Health, Department of Health & Social Care
- **Kate Davies** - Director of Health & Justice, Armed Forces and Sexual Assault Services Commissioning, NHS England.
- **Heidi Pearson**, Deputy Head of the Police Powers Unit, Home Office