

Independent Advisory Panel on Deaths on Custody

A proposal for embedding staff and prisoner safety in all major decisions

**Independent Advisory Panel on Deaths in Custody
recommendation**

September 2019

About the Independent Advisory Panel on Deaths in Custody

The Ministerial Council on Deaths in Custody formally commenced operation on 1 April 2009 and is jointly sponsored by the Ministry of Justice, the Department of Health and the Home Office. The Council consists of three tiers:

- Ministerial Board on Deaths in Custody
- Independent Advisory Panel (IAP)
- Practitioner and Stakeholder Group

The remit of the IAP (and overall of the Council) covers deaths which occur in prisons, in or following police custody, immigration detention, the deaths of residents of approved premises and the deaths of those detained under the Mental Health Act (MHA) in hospital. The principles and lessons learned as part of this work also apply to the deaths of those detained under the Mental Capacity Act in hospital.

The role of the IAP, an arms-length body, is to provide independent advice and expertise to the Ministerial Board. It provides guidance on policy and best practice across sectors and makes recommendations to Ministers and operational services. It assists Ministers to meet their human rights obligations to protect life. The IAP's aim is to bring about a continuing and sustained reduction in the number and rate of deaths in all forms of state custody in England and Wales.

Juliet Lyon CBE was appointed Chair of the IAP in September 2016.
Members of the IAP appointed in July 2018:

- Deborah Coles
- Professor Seena Fazel
- Professor Jenny Shaw
- Jenny Talbot OBE
- John Wadham

Further information on the IAP can be found on the website:
www.iapondeathsincustody.org

For more information on this paper – or on the IAP more generally - please contact:
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Introduction

1. The Safety Impact Assessment, recommended by the Independent Advisory Panel on Deaths in Custody (IAP), is designed to have a positive impact on decision-making at a systemic level, and help to maintain a consistently high level of priority for promoting safety for staff and prisoners in prisons. Such a proposal would strengthen accountability, reduce the risk of fluctuations in risk levels and help to prevent suicide, self-harm and violence in custody
2. The potential benefits of introducing a safety impact assessment include:
 - Demonstrating that Ministers and the department do not accept the status quo, and are prepared to adopt new solutions to prevent risks to safety in custody.
 - Guaranteeing that senior decision-makers and Ministers are made fully aware of the impact on safety of any proposed policy/decision.
 - Encouraging officials to consider mitigations as they develop policies.
 - Providing an audit trail of decisions made by senior decision makers and Ministers
 - Encouraging the department to view all decisions through the lens of safety – rather than just those explicitly concerning safety.
3. The IAP hosted a workshop in December 2018, where MoJ and HMPPS staff were invited to discuss the idea and possible workings of a safety assessment process. Following this, the IAP developed a template for a potential safety assessment (based on initiatives such as the equality impact assessment process). Subsequent feedback sessions took place in summer 2019, where a potential assessment form was discussed with staff in more detail. The IAP received helpful feedback from staff which included the need to consider who would 'own' the process and ensure completion, the specific questions involved and when the process should be used. The feedback received has resulted in this paper which, while taking a less prescriptive approach to the exact format, argues that some form of assessment should be immediately implemented.

Context

4. Article 2 of the ECHR sets out the duty of care prison service and staff have towards the prisoners it holds and should take 'active steps to protect life' keep people safe. For example, if prison staff were aware of the threat or risk to safety and did not take reasonable steps to prevent it, it could be deemed as negligence.
5. Since 2012, there has been a decrease in staff numbers and staff experience, as well as changes to the illicit economy as serious organised crime's increased use of prisons as a market (most notably seen in the rise in use of psychoactive substances since 2013). This has coincided with a concerning increase in the number and rate of self-inflicted deaths in prisons since 2010, in addition to the steep rise in incidents of self-harm and serious violence. The

impact of these deaths goes beyond those directly affected to families, friends and the whole institution, staff and other prisoners as well.

6. The increase in the number and rate of deaths since 2010, is, and should be, a source of real concern. The almost doubling of self-inflicted deaths since 2008 in a prison system where the overall population has risen only comparatively slightly in numerical terms, suggests that some of the fundamental supporting mechanisms vital for safeguarding lives have diminished, or the environment has changed significantly since then. The proposed safety assessment will act to ensure that the safety of staff and prisoners is considered in all relevant decisions.

The need for safety to be at the heart of policy decisions

7. There is a huge amount of work undertaken by officials in headquarters and governors, staff and Samaritan Listeners in establishments across England and Wales to help keep people safe in custodial environments. Reducing suicide, self-harm and violence in custody is a high priority for Ministers and officials; the challenge is ensuring that this focus is maintained when all relevant decisions are undertaken – not just those explicitly relating to safety. The IAP is concerned that questions about safety are taken too much in isolation from other factors that impinge on it. Arguably, impacts on safety are considered too far ‘downstream’ in the policy process, and are not sufficiently covered in wider, upstream policy areas that could have relevance such as education, sentencing and estates.
8. For example, it is not sufficient for the safety of staff and prisoners only to be actively considered when decisions need to be reached on matters such as the ACCT process or peer support initiatives. The IAP’s extensive consultation exercise with prisoners – summarised in the ‘Keeping Safe’ report¹ - outlined the multiple factors with relevance to safety including staff numbers, support and behaviour, physical health, contact with families, physical environment and meaningful activities. Unless these – and many other – issues are considered in the light of staff and prisoner safety, it is likely that some counter-productive, or at least sub-optimal, solutions will be reached.
9. Some of the significant decisions that affect conditions in prisons are taken at senior policy and operational levels, and others are resolved by Ministers. This paper was designed to initially cover those decisions going to Ministers for approval – partly due to their significance, and partly because it is right for Ministers to receive advice on where their wider decisions may impact on safety. However, despite the IAP’s initial focus on Ministerial decisions, we would welcome this approach being adopted and embedded in all levels of decision-making in the department and its agencies.
10. Any positive news on self-harm, suicide and assaults could be viewed as a reason not to start, or to end, a process such as this one. However, this

¹ <http://iapdeathsincustody.independent.gov.uk/wp-content/uploads/2017/12/Keeping-Safe-FINAL-Dec-2017.pdf>

would be short-sighted and miss the fundamental point of this initiative. Any good news in such statistics is to be welcomed, but the deterioration in safety after 2010 shows that, at present, it is too easy to fall into a cyclical state where periods of (relative) safety are swiftly followed by periods of decline. Endorsing this idea of an assessment would help to safeguard and maintain safety and ensure that, as and when safety improves, any future threats to it are clearly identified and mitigated before decline can set in.

The proposal

11. The IAP believes that the department should introduce a system to ensure that the safety and welfare of staff and prisoners are put at the forefront of all policy making decisions. The potential impact on safety, and the likely risk of this impact occurring, should be made clear to the decision-maker when they are asked to decide on anything that could reasonably impinge on safety. Adopting such a test is not a radical idea, as similar concepts are already in place such as the equalities impact assessment.
12. The IAP believes that, as important as it is for Ministers to be aware of the other issues contained in the impact assessments they receive, safety to staff and prisoners surely cannot be subordinate to them. This adds weight to the argument that a specific consideration of the impact on safety is needed. The IAP firmly believes that safety should be an explicit consideration when deciding on any new policy.
13. The IAP acknowledges that the department is best placed to determine the nature of the actual assessment process to be used, so a prescriptive approach is not outlined in this document. However, the IAP recommends that the following type of issues are included in whichever format deemed best:
 - How could the proposed policy negatively impact on staff and prisoner safety, or on the drivers of safety?
 - How can these impacts be mitigated?
 - Do these mitigating actions remove the risk, or does residual risk remain?
14. The department will want to consider whether the assessment includes some form of overall rating system, or provides more of a narrative commentary. There will also need to be consideration given to the knowledge needed by those completing the form, and whether they require a central hub to go to with any questions about its completion. However, when the assessment is designed, we would encourage the department to think about the possible application it could have in the following processes:
 - **Submission form** – the safety impact assessment could be included in, or added to, the existing submission form. This would avoid the need for a separate form and may be less resource-intensive. However, it may also be too brief to give clear advice on this vital issue.

- **OSAG process** – the Operational and System Assurance Group provides an assurance process on prison policies, confirming whether the appropriate assessments have been conducted. A Safety Impact Assessment could potentially be integrated into this current process.
- **Formal impact assessment** – it could be presented as a separate document to be completed for every policy change impacting on prison safety. This would provide the clearest and most detailed method of assuring that the impact on safety is properly considered, but would also be the most resource-intensive.

Conclusion and recommendations

15. The IAP supports the efforts of the department and HMPPS in attempting to prevent self-harm and deaths in custody. However, the fluctuating levels of self-harm, deaths and assaults on staff demonstrate that the current approach is insufficient, and a more 'whole-department' system is needed. The IAP has heard many Ministers and senior leaders talk of safety as their top priority – the fact that the impacts on it are not considered during many decisions, suggests that the reality does not always match the rhetoric.
16. The IAP does not believe that developing a safety assessment is a panacea. However, it will raise the awareness and profile of safety in the department, and flush out areas of inconsistency and contradiction between policy areas, helping to ensure a more coherent policy approach to the most pressing responsibility of the department. The IAP will be recommending that this approach is adopted by the department at the Ministerial Board on Deaths in Custody, and we urge the department to work with us to help develop such an initiative.
 - **The department should develop a Safety Assessment to ensure that risks to staff and prisoner safety are fully considered before all relevant decisions.**
 - **The department should work with the IAP to develop such an assessment.**
 - **The department should, once implemented, monitor the process and improve it where necessary.**
 - **The department should consider formalising this process in legislation in due course.**